

## **PCLL CONVERSION EXAMINATION JUNE 2011**

Title of Paper : Hong Kong Constitutional Law  
Date : 27 June 2011  
Time : 2:30 p.m. – 2:45 p.m. (Reading Time)  
2:45 p.m. – 4:15 p.m.

### **Instructions**

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 3 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK  
UNTIL YOU ARE TOLD TO DO SO**

# PCLL Conversion Examination June 2011

## Hong Kong Constitutional Law

### **Question One (50 marks)**

In *David Ma WK*, Chief Judge Chan of High Court opined that:

The Basic Law [of the HKSAR] is a unique document, reflecting a treaty made between two nations. It deals with the relationship between the Sovereign and an autonomous region which practices a different system. It stipulates the organisations and functions of the different branches of government. It sets out the rights and obligations of the citizens. It has at least three dimensions: international, domestic and constitutional. [Emphasis added by the examiner.] [1997] HKLRD at 772

**Critically comment on the remark of “three dimensions” given by the Chief Judge. Support your arguments with the theory of the Basic Law and with reference to the history of the Basic Law-making.**

### **Question Two (50 marks)**

In *HKSAR v. Ng Kung Siu & Anor*, the CFA has made it clear that:

“Freedom of expression is a fundamental freedom in a democratic society. It lies at the heart of civil society and of Hong Kong’s system and way of life.”

*HKSAR v. Ng Kung Siu & Anor* [2000] 1 HKC 117, at p. 135 A.

As regards the protection of freedom of expression, Article 27 of the Basic Law defines that:

“Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.”

Art 39 of the Basic Law further states that:

“The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

After the handover, a series of important cases have been decided by the courts of the HKSAR, including but not limited to *HKSAR v. Ng Kung Siu & Anor* [2000] 1 HKC 117, *Leung Kwok Hung & Ors v. HKSAR* (2005) 3 HKLRD 164, and *Yeung May Wan & Ors v. HKSAR* (2005) 2 HKLRD 212.

**Critically examine the extent to which freedom of expression could be restricted, and the relevant tests that the courts could apply in adjudicating disputes as to the scope of the freedom of expression.**

**Question Three (50 marks)**

In the Court of First Instance case of *Intraline Resources SDN BHD v. The Owners of the Ship or Vessel "HuaTian Long"*, commonly known as "HuaTian Long" (*HuaTian Long* (No 3) [2010] 3 HKC 557), the Court ruled that the common law doctrine of Crown immunity continues to subsist in the HKSAR after the resumption of sovereignty over Hong Kong by the PRC. As a result, the courts of the HKSAR do not have jurisdiction over the Central People's Government ("CPG") and any body corporate established thereunder which is controlled by the CPG and exercises its functions.

The factual background can be summarized, for the purpose of the examination, as follows:

This action arose out of an alleged breach of contract by Guangdong Salvage Bureau ("GSB"), the owners of the vessel "HuaTian Long" ("the Vessel"), for failing to honour its commitment under a Memorandum of Agreement to make the vessel available to Intraline Resources SDN BHD ("Intraline") for offshore projects in Malaysia and Vietnam. Intraline invoked the Admiralty jurisdiction of the High Court (of the HKSAR), and successfully arrested the Vessel in Hong Kong waters. Having furnished bail and thus securing the release of the Vessel by a court order, GSB applied for a stay or dismissal of the action on the ground that it, being a bureau of the Ministry of Communications ("MOC") of the CPG, enjoyed sovereign or Crown immunity. In court, Intraline contended that GSB is a state-owned enterprise ("SOE") with separate legal identity; GSB contended that it is just another name for the Guangzhou Salvage Bureau of the Ministry of Communications ("GSBMOC"), which is an institutional unit under the direct control of the MOC.

This case is believed to have "far-reaching implications" (citation of an article published in *Hong Kong Lawyer*, issue November 2010). Questions about this court decision have been raised by legal scholars and the public as to:

- (i) the rationale and justification of the survival of the common law doctrine of Crown immunity in Hong Kong after the handover of sovereignty in 1997;**  
**(10 marks)**
- (ii) whether the right to immunity should be transferred to the new sovereign power, the PRC, acting through the CPG and its instrumentalities;**  
**(15 marks)**
- (iii) whether a party can lodge a civil claim before the Hong Kong court against a Chinese state entity engaging in commercial transactions; and**  
**(10 marks)**
- (iv) In addition to these, whether the right to immunity may also restrict the jurisdiction of the courts of the HKSAR.**  
**(15 marks)**

**You are invited to put forward your pros and/or cons opinions and make critical comment on the above issues.**

**~ End of Examination Paper ~**