

Syllabus for Hong Kong Constitutional Law

1. The Acquisition of British Sovereignty

The Unequal treaties - the Basis of British Jurisdiction in Hong Kong - The Assumption and exercise of British Authority - The Constitution and the System of Government - Political reform in the Fifties - Development of the Administrative System - Development of Representative Government;

2. The Resumption of Sovereignty

Sovereignty and Self-Determination - Sino-British Negotiation and the Joint Declaration - the Drafting of the Basic Law - Residual Powers - Scope of Application of Chinese Constitution - The Structure of the Basic Law - Transitional Issues - Patten's Political Reform in the Nineties - Breakdown of the Through-train model - Provisional Legislative Council and its Legality;

3. The Framework of the Basic Law

Models of Autonomy and One Country, Two Systems - Separation of powers in the Basic Law - The nature of the Basic Law - General Principles - Relationship between Central Government and the HKSAR;

4. The Political and Administrative System

The Political Structure - Basic principles - Forms of Representation - NPC - Centralized and Consultative Government - Separation of powers or Executive-led Government - Legislative Council - Composition - Powers and Functions of the LegCo - Restriction on law making powers - Law making process - Supervision of executive and parliamentary enquiry - Public Finance - Impeachment of the Chief Executive - Selection of the Chief Executive - The Executive and the Chief Executive in Council - Contradictions in the political system - Neutrality of the civil service and the Ministerial System - Localization and principal officials;

5. Constitutional Jurisdiction of the Courts of the HKSAR

Parliamentary sovereignty and its application to the HKSAR - Act of State - Facts of State - Judicial review of legislation - resolutions of the NPCSC;

6. Interpretation and Amendment of the Basic Law

The importance of interpretation and the mode of interpretation - The Scheme for interpretation under Art 158 - Judicial referral, classification test and necessity test - The interpretation powers of the NPCSC and the HKSAR Courts - Problems arising under Art 158 - Legislative interpretation versus judicial interpretation - Judgment previously rendered shall not be affected - Role of the Basic Law Committee - Principles of and approach to interpretation - The scheme of Amendments to the Basic Law;

7. Rights and Freedoms

The General Framework for the Protection of Rights and Freedoms - Chapter 3, the Bill of Rights and the ICCPR - ICESCR and ILO - Civil and Political Rights - Economic rights and property rights - Social and cultural rights and policies - Lawful traditional rights and interests of the New Territories Indigenous Inhabitants - Limitations or restrictions of rights and freedoms - State of Emergency - Restrictions under Art 23;

8. International Aspects of the HKSAR

Chinese view of international law - External Affairs powers of the HKSAR - Role and problems of HKSAR in international legal regime - Succession of rights and obligations in international treaties applicable to Hong Kong before 1997 - capacity to participate in international treaties, conferences and organizations - Conflicts of law and recognition of judgments of Taiwan courts;

9. The Constitutional System of the People's Republic of China

Theory of socialist constitution - A brief history of Chinese Constitutional System - The PRC Constitution - Central Authorities of the PRC (NPC, NPCSC, State Council, Central Military Commission) - The role and organization of the Communist Party - Special Administrative Regions under Art 31 - Rights and legality - Sources of Law (Legislative Interpretation and Executive Interpretation) - The Judiciary, the Public Security Bureau and the Procuratorate - Review of the Judiciary - A Developing Constitution.

Reading List for Hong Kong Constitutional Law

- *Georg Brunner, "The Functions of Communist Constitutions: An Analysis of Recent Constitutional Developments" (1977) 3 Rev. Soc. Law 121-153
- *Johannes Chan, "The Jurisdiction and Legality of the Provisional Legislative Council" (1999) 27 HKLJ 374
- *Johannes Chan, "Some Thoughts on Constitutional Reform in Hong Kong," 34 (2004) HKLJ 1
- *Johannes Chan, "Civil Liberties, Rule of Law and Human Rights: The Hong Kong Special Administrative Region in its First Four Years in Lau Siu-kai (ed) The First Tung Chee-hwa Administration: The First Five Years of the HKSAR [Hong Kong: Chinese University Press, 2002]
- *Albert H. Chen "The Concept of 'One Country Two Systems' and its Application to Hong Kong" in C. Stephen Hsu (ed.) Understanding China's Legal System: Essays in Honor of Jerome A. Cohen (New York: New York University Press, 2003)
- *Albert Chen, "The Concept of Justiciability and the Jurisdiction of the Hong Kong Courts" (1997) 27 HKLJ 387
- *Albert Chen, "The interpretation of the Basic law - common law and Mainland Chinese perspectives" (2000) 30 HKLJ 380
- *Albert H. Y. Chen "The Constitutional Controversy in Hong Kong Spring 2004," 34 (2004) HKLJ 215
- *Chen, Fu & Ghai (ed) Hong Kong's Constitutional Debate: Conflict over Interpretation (2000)
- *Yash Ghai, Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law (2nd ed. 1999)
- *Hurst Hannum and Richard B. Lillich, "The Concept of Autonomy in International Law" in Dinstein (ed.), Models of Autonomy (1981)
- *Ma Ngok, "Executive-Legislative Relations: Assessing Legislative Influence in an Executive-Dominant System" in Lau Siu-Kai (ed) The First Tung Chee-hwa Administration: The First Five Years of the Hong Kong Special Administrative Region (The Chinese University Press, 2002)
- *S. de Smith, Constitutional and Administrative Law (7th ed. 1994), p3-13,
- * Nwabueze, Constitutionalism in the Emergent States (1973), Chapter 1
- *Benny Tai Yiu-ting, "The Development of Constitutionalism in Hong Kong" in Raymond Wacks, The New Legal Order in Hong Kong (1999)

*Benny Y. T. Tai, "Chapter One of Hong Kong's New Constitution: Constitutional Positioning and Repositioning" in Ming Chan and Alvin Y. So (ed.) *Crisis and Transformation in China's Hong Kong* (M.E. Sharpe, 2002)

*Benny Tai, "One country two systems: the two perspectives" (2002) *Macau Law Journal* (Special Issue) 143-163

Sources

The Basic Law of the Hong Kong Special Administrative Region (1990)
Sino-British Joint Declaration on the Future of Hong Kong (1984)