

PCLL CONVERSION EXAMINATION JANUARY 2020

Title of Paper: Hong Kong Constitutional Law
Date: 3 January 2020
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 4 pages, including three questions. Candidates are only required to answer **TWO** questions 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 January 2020

Hong Kong Constitutional Law

Question 1 (50 marks)

Article 158 of the Basic Law states that:

The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.

The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region.

The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.

In *Democratic Republic of the Congo and Others v. FG Hemisphere Associates LLC* [2011] 4 HKC 151 ("the Congo Case"), the Court of Final Appeal made a judicial reference to the Standing Committee of the National People's Congress ("NPCSC") to seek an interpretation of the relevant provisions of the Basic Law in accordance with Article 158 (3) of the Basic Law.

- A. Explain the rationale behind the arrangements in Article 158 (1) and (2). (20 marks)**
- B. Were the conditions provided in Article 158 (3) of the Basic Law for making a judicial reference to the NPCSC for interpretation satisfied in the Congo Case? (20 marks)**
- C. In addition to the interpretation arising from "the Congo case", there are other four interpretations made by the NPCSC in 1999, 2004, 2005, and 2016 respectively. Briefly identify the differences among them and comment on their impact on the judicial system of the HKSAR and the implementation of the Basic Law. (10 marks)**

Question 2 (50 marks)

In 1987, the paramount Chinese leader, and to some extent the architect of the principle of “one country, two systems”, Deng Xiaoping said to the members of the Drafting Committee of the Basic Law of the HKSAR that:

“Don’t think that all of Hong Kong’s affairs will be managed by Hong Kong with the central government sitting by idly, and everything will be just fine. This is not acceptable. This type of attitude is not practical. The central government indeed will not meddle in the SAR’s specific affairs; it will not need to meddle. However, what if something occurs within the SAR, which threatens the nation’s basic interests? Can you say that such a situation could not arise? At that time, shouldn’t Beijing concern itself with the matter? Can you say that no events will arise in Hong Kong, which may be harmful to Hong Kong’s own basic interests? Can you imagine that there will be no obstructions or destructive forces in Hong Kong? I see no grounds for such self-consolation. If the central government abdicates all power over Hong Kong, then chaos may ensue, damaging Hong Kong’s interests. Therefore, preserving certain powers for the central government is beneficial, not harmful, to Hong Kong. For instance, after 1997 if someone in Hong Kong condemns the Communist Party and condemns China, we will still allow him to speak; but if the words become actions and he wants to turn Hong Kong into a ‘democracy’ and set up a base to oppose the mainland, what then? If we cannot intervene at that time, it would not be acceptable. Intervention would first be by Hong Kong administrative organs; it is not at all certain that mainland troops stationed in Hong Kong would take any action. If there is disturbance or great turmoil, only then will the forces stationed in Hong Kong act; but in such circumstances they must always be able to intervene!”

- A. Identify the circumstances in which the central authorities in Beijing are allowed by the Basic Law to intervene in the HKSAR’s affairs and the implications of such intervention. (20 marks)**
- B. Based on your comments in question A, explain the bases upon which the central authorities exercise their authority over the HKSAR in accordance with the Basic Law. (20 marks)**
- C. Briefly outline the scope of autonomy of the HKSAR. (10 marks)**

Question 3 (50 marks)

In *The Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region*, a White Paper issued by the State Council of the PRC, on 10 June 2014, it is stated that:

“As a unitary state, China's central government has comprehensive jurisdiction (“全面管治權”) over all local administrative regions, including the HKSAR. The high degree of autonomy (“高度自治權”) of the HKSAR is not an inherent power, but one that comes

solely from the authorization by the central leadership. The high degree of autonomy of the HKSAR is not full autonomy, nor a decentralized power. It is the power to run local affairs as authorized by the central leadership. The high degree of autonomy of HKSAR is subject to the level of the central leadership's authorization. There is no such thing called "residual power."

Since the publication of the White Paper, "comprehensive jurisdiction" has dominated the official discourse. Henry, a local scholar, criticised that there is no such thing as "comprehensive jurisdiction", nor is there a legal basis for such in the Basic Law.

- A. Define the meaning of "comprehensive jurisdiction". (10 marks)**

- B. Analyse the relationship and the tension between "comprehensive jurisdiction" and "high degree of autonomy". Would "comprehensive jurisdiction" jeopardise "high degree of autonomy"? If the answer is the affirmative, then in what way; and if the answer is the negative, why? (20 marks)**

- C. Do you agree with Henry? Support your answer with the theory of "One Country, Two Systems", the provisions of the Basic Law and other relevant authorities. (20 marks)**

~ End of Examination Paper ~