

PCLL Conversion Examination
January 2020
Examiner's Comments
Hong Kong Constitutional Law

General Remarks:

Hong Kong Constitutional Law paper consists of three questions. The students need to answer only two of them, and each question carries 50 marks.

The main rationale behind setting up this exam paper is to test students' general understanding of the basic systems of the HKSAR, the theory and doctrines of the Basic Law, and the interaction between the HKSAR and the Central Authorities. I did not deliberately connect all the questions directly to what has been taking place in Hong Kong and to the recent events such as Anti-mask Protest. Instead I think it is useful to step back and observe, examine and review them in a rational way.

Having said that, I set three questions regarding the fundamental systems and actual issues of the Basic Law, they are: the system of interpretation by the NPCSC which actually also relates to the judicial system of the HKSAR, the vertical division of powers between the HKSAR and the central authorities, and the proposed doctrine of comprehensive jurisdiction which has a far-reaching impact on the governance of the HKSAR.

Although we cannot cover in the paper every major aspects under the Syllabus every time and every year, we still can include some of them for the purpose of examination.

Explanations and Observations on the Performance of Examination:

There are three questions, and they are: 1, regrading Art 158 and Legislative interpretation of the Basic Law by the NPCSC; 2, regarding the competence and authorities of the central authorities, and the circumstance in which Beijing is allowed to intervene in the HKSAR business; and 3, regarding the concept of comprehensive jurisdiction and its legitimacy, and its impact on the operation of the autonomy in the HKSAR.

These questions seem theoretical, but they are very actual, and without sufficiently broad and deep knowledge of practice and case law, students would not be able to understand and explain, and answer well the paper. Combination of law/theory and practice is the principle guiding the setting of the paper.

Most students have chosen Question 1, which appeared to be easier and there were closely related court cases decided here in the HKSAR and discussed in the classroom. Most students were able to answer A and C, and got good marks, but many failed to deal with B. This may reflect their weak understanding of application of law and were not too attentive to the details of system in question.

Many students have attempted Question 2, and most of whom had a vague grasp of the issue tested here. While they understood that the central authorities have

legitimate reasons and competence to intervene in the HKSAR affairs in the emergency context, but they failed to identify what they should be and the circumstances. Actually most of them were confused and could not tell the difference between regular powers and emergency ones. However they could identify most of the autonomous powers enjoyed by the HKSAR.

Question 3 was a rather difficult one and was used to test students' ability to argue and to defend the principle of high degree of autonomy. A good answer would require students' thorough understanding of the principle of one country two systems. It was an open-ended question and I deliberately set it this way. I wished that after learning the course, students would be able to not only cite the legal provisions and case law, understand our constitutional system, but also to defend our system under the Basic Law. The concept of comprehensive jurisdiction looks like a self-sufficient concept, and has moral basis in the Basic Law, but it is very confusing, even deceiving. Therefore by answering this question, I hoped students could clarify the substance of the concept, delimit to the scope of the central powers, and better understand and defend autonomy of the HKSAR. Unfortunately the performance was not as good as expected.

Last Comment:

The primary aim of learning the course of Hong Kong Constitutional Law should be, first, to equip students with the knowledge of basic law, systems, theories and doctrines under the Basic Law and in the HKSAR, then to train them to be qualified legal professionals with the thorough and solid understanding of our constitutional system, and last but not least, to prepare them with the necessary ability to defend the system in which we live.