

# **Syllabus for Hong Kong Constitutional Law**

## **1. The Short History of Colonial Hong Kong and the Drafting of the Hong Kong Basic Law**

The Colonial History of Hong Kong - The Constitution and the System of British Hong Kong Government - Development of the Administrative System - Development of Democracy in Before 1997 - Sino-British Negotiation and the Joint Declaration - the Drafting of the Basic Law - Understanding the Doctrine of One Country Two Systems - The Major Guiding Principles underlying the Hong Kong Basic Law (“One Country Two Systems”, Hong Kong People Ruling Hong Kong, and High Degree of Autonomy) - Scope of Application of Chinese Constitution and National Laws - the Establishment of the HKSAR.

## **2. The Framework of the Basic Law**

The Nature of the Basic Law - The Structure of the Basic Law - General Principles - Separation of Powers in the Basic Law - Autonomy under One Country, Two Systems - Relationship between the Central Authorities and the HKSAR.

## **3. The Political and Administrative System**

The Political Structure - Basic principles - Forms of Representation - NPC & NPCSC - 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 - Selection of the Chief Executive - Impeachment of the Chief Executive - The Executive and the Chief Executive in Council - Relationship between Executive and Legislative Powers - Contradictions in the Political System - Neutrality of the Civil Service and the Ministerial System - Localization and Principal Officials.

## **4. Constitutional Jurisdiction of the Courts of the HKSAR**

Independence of the Judiciary - Parliamentary Sovereignty and its Application to the HKSAR - Doctrine of Act of State - Facts of State - Judicial Review of

Legislation and Executive Acts - Judicial Interpretation of the Basic Law

## **5. Interpretation and Amendment of the Basic Law**

The Power of Interpretation and the Modes 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 - NPCSC's Interpretation versus Judicial Interpretation - Role of the Basic Law Committee - Principles of and Approach to Constitutional Interpretation - The Scheme of Amendments to the Basic Law - Restrictions over the Amendment under Art. 159.

## **6. Rights and Freedoms**

The General Framework for the Protection of Rights and Freedoms - Chapter 3 of the Basic Law, the Bill of Rights Ordinance 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 and Application of National Laws

## **7. National Security Law and Its Implementation**

The Making of the Law on Safeguarding National Security in the HKSAR (NSL) - Major Offences created under NSL - Art 23 and the Making of Safeguarding National Security Ordinance (NSO) - Major National Security-related Offences under Crimes Ordinance - Restrictions of Rights and Freedoms under NSL and NSO - New National Security Law System and Impact on Current Legal and Judicial System

## **8. International Aspects of the HKSAR**

Chinese View of International Law - Positioning of the HKSAR in the PRC - External Affairs Powers of the HKSAR - Role and Problems of the HKSAR in International Legal Regime - 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**

A Brief History of Modern and Contemporary Chinese Constitutional System - Theory of Socialist Constitution - Guiding Constitutional Principles - The PRC Constitution and its Amendments - The Central Authorities of the PRC (NPC, NPCSC, President of the Republic, State Council i.e. the Central People's Government, Central Military Commission) - The Role and Organization of the Communist Party - Special Administrative Regions under Art 31 - Rights and Obligations of the Citizen - Sources of Law (Legislative Interpretation, Judicial Interpretation and Executive Interpretation) - The Supervision Commission, the Judiciary, the Procuratorate and the Public Security - Review of the Judiciary - A Developing Constitution.

## **Recommended Reading List for Hong Kong Constitutional Law**

### **Major Readings**

\*\*Johannes M. M. Chan & C.L. Lim (eds), *The Law of the Hong Kong Constitution* (Sweet & Maxwell, 2<sup>nd</sup> edn. 2015).

\*\*Danny Gittings, *Introduction to the Hong Kong Basic Law* (HKU Press, 2<sup>nd</sup> edn. 2016).

### **Reference work**

Michael Ramsden & Stuart Hargreaves (eds.), *Hong Kong Basic Law Handbook* (Sweet and Maxwell, 2015)

P Y Lo, *The Hong Kong Basic Law* (LexisNexis Butterworths, 2011)

### **Readings**

Janice Brabyn, "Leung Kwok Hung and others through the Hong Kong Courts", (2006) 36 *HKLJ* 83.

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* (Chinese University Press, 2002)

Johannes Chan, "Judicial Responses to the National Security Law" (2021) 51(1) *Hong Kong Law Journal* 1.

Chan, Fu & Ghai (ed.) *Hong Kong's Constitutional Debate: Conflict over Interpretation* (HKU Press, 2000)

Chan, Johannes and Harris, Lison (eds.), *Hong Kong's Constitutional Debate, 2005* (Hong Kong: Hong Kong Law Journal Limited, 2005)

Chan, J. and Chan, E. "Perceptions of Universal Suffrage and Functional Representation in Hong Kong: A Confused Public?" (2006) *Asian Survey* 257-274

Albert HY Chen, "From Colony to Special Administrative Region: Hong Kong's Constitutional Journey" in Raymond Wacks, *The Future of the Law in Hong Kong* (Oxford University Press, 1989), pp. 76-126.

Albert HY Chen, "The Concept of Justiciability and the Jurisdiction of the Hong Kong Courts", (1997) 27 *HKLJ* 387

Albert HY 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 University Press, 2003)

Albert HY Chen, "The interpretation of the Basic law - common law and Mainland Chinese perspectives", (2000) 30 *HKLJ* 380

Albert HY Chen, "Hong Kong's Legal System in the New Constitutional Order" in Jianfu Chen, Yuwen Li and Jan Michiel Otto (eds), *Implementation of Law in the Republic of China* (The Hague: Kluwer Law International, 2002), pp. 213-245.

Albert HY Chen, "Constitutional Adjudication in Post-Hong Kong", (2006) 15 *Pacific Rim Law and Policy Journal* 627-682.

Albert HY Chen, "One Country Two Systems' from a Legal Perspective" in Yue-man Yeung (ed.), *The First Decade: The Hong Kong SAR in Retrospective and Introspective Perspectives* (Chinese University Press, 2007), pp. 161-188.

Albert HY Chen, "A New Era in Hong Kong's Constitutional History", (2008) 38 *HKLJ* 1

Albert HY Chen, “The Theory, Constitution and Practice of Autonomy: The Case of Hong Kong” in Jorge Oliveira and Paulo Cardinal (eds), *One Country, Two Systems, Three Legal Orders – Perspectives of Evolution* (Springer, 2009), pp. 751-767.

Albert HY Chen, “Focus on the Congo Case: Introduction”, (2011) 41 *HKLJ* 369.

Albert H Y Chen & Po Jen Yap, *The Constitutional System of the Hong Kong SAR: A Contextual Analysis*, Hart Publishing, 2023

PY Lo & Albert Chen “The Judicial Perspective of “Separation of Powers” in the HKSAR”, (2018) *Journal of International & Comparative Law*  
Cheng Jie, “The Story of a New Policy”, (2009) 15 *Hong Kong Journal*.

Diamond Larry, “Prospects for Hong Kong’s Democratization”, *Hong Kong Journal*, January 2008

Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (HKU Press, 2<sup>nd</sup> ed. 1999)

Hurst Hannum & Richard B. Lillich, "The Concept of Autonomy in International Law" in Dinstein (ed.), *Models of Autonomy* (1981)

Hargreaves, Stuart “Canaries or Colonials? The Reduced Prominence of Hong Kong’s ‘Overseas Judges’” (2021) *Asian Journal of Comparative Law* 1-31  
doi:10.1017/asjcl.2021.15.

Hargreaves, Stuart “‘The Court’ Rises: The New Use of Depersonalized Opinions on Hong Kong’s Court of Final Appeal” (2021) 51(1) *Hong Kong Law Journal* 141.

Ip, Eric C., *Law and Justice in Hong Kong*, 3rd ed., Sweet & Maxwell, Hong Kong, 2019

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)

Ma Ngok, “Democratic Development in Hong Kong: A Decade of Lost Opportunities” in Cheng, J. (ed.) *The Hong Kong Special Administrative Region in its First Decade* (Hong Kong: City University of Hong Kong Press, 2007)

Nwabueze, *Constitutionalism In the Emergent States* (1973), Chapter 1.

Carole Peterson, “Hong Kong’s Spring of Discontent: The Rise and Fall of the National Security Bill in 2003” in Fu, Peterson and Yong (eds.) *National Security and Fundamental Freedoms: Hong Kong’s Article 23 Under Scrutiny* (Hong Kong, Hong Kong University Press, 2005).

S. de Smith, *Constitutional and Administrative Law* (7<sup>th</sup> ed. 1994), pp.3-13

Benny Tai, “The Principle of Minimum Legislation for Implementation Article 23 of the Basic Law”, (2002) 32 *HKLJ* 579-614

Shucheng Wang, “Judicial Review of the Legislative Process in Hong Kong: A Comparative Perspective”, (2021) 42 (3) *Statute Law Review* 291–304.

Shucheng Wang, “Hong Kong’s Civil Disobedience under China’s Authoritarianism”, (2021) 35 (1) *Emory International Law Review* 21-62.

Shucheng Wang, “Reconciling Hong Kong’s Final Authority on Judicial Review with the Central Authorities in China: A Perspective from ‘One Country, Two Systems’”, (2006) 27 (3) *Public Law Review* 218-231.

Shucheng Wang, “Parliamentary Scrutiny over Subsidiary Legislation under an Executive-led Government in Hong Kong”, (2015) 36 (1) *Statute Law Review* 111-122.

Wang Zhenmin, “The Significance of China’s Decision on Universal Suffrage”, *Hong Kong Journal*, APRIL 2008, No. 10

Woodman, Sophia, “Legislative Interpretation by China's National People's Congress Standing Committee: A Power with Roots in the Stalinist Conception of Law” in *Interpreting Hong Kong’s Basic Law: the Struggle for Coherence*, Hualing Fu, Lison Harris, and Simon N.M. Young (eds.) 2007.

Yang, Xiaonan, 49(1) “Revisiting Legislative Interpretations in China and the Implications for Hong Kong” 2019 *Hong Kong Law Journal* 357

Po Jen Yap, “Democratic Republic of the Congo v FG Hemisphere: Why Absolute Immunity Should Apply but a Reference was Unnecessary”, (2011) 41 *HKLJ* 393.

Po Jen Yap, “10 Years of the Basic Law: The Rise, Retreat and Resurgence of Judicial Power in Hong Kong”, (2007) 36 *Common Law World Review* 166- 191.

Young, S., “Restricting Basic Law Rights in Hong Kong”, (2004) 34 *HKLJ* 109.

Young, S., “Legislative History, Original Intent, & Interpretation of the Basic Law” in *Interpreting Hong Kong’s Basic Law: the Struggle for Coherence*, Hualing Fu, Lison Harris, and Simon N.M. Young (eds.) 2007.

Young, S. and Cullen, R., *Electing Hong Kong’s Chief Executive* (Hong Kong: Hong Kong University Press, 2010)

Young S. and Law, A. *A Critical Introduction to Hong Kong’s Functional Constituencies* (Civic Exchange, 2004)

Zhu, Guobin, “*The Changing Constitutional Order of the HKSAR: A Retrospective Reflection*”, *Hong Kong Law Journal*, (2022) *HKLJ* Vol 52 Part 3, pp. 827-850.

Zhu Guobin, “*Deference as Proper Judicial Attitude - with Special Reference to Anti-Mask Law Judgments*”, co-authored with Xiaoshan ZHANG, *Hong Kong Law Journal*, (2020) *HKLJ* Vol 50 Part II, pp.517-540.

Zhu, G and Kouroutakis, A, “The Hong Kong Subconstitutional Model of Separation of Powers: The Case of Weak Judicial Review” (2017) 47 *HKLJ* 221.

## **Sources**

Sino-British Joint Declaration on the Future of Hong Kong (1984)

Constitutional of the people’s Republic of China (1982)

The Basic Law of the Hong Kong Special Administrative Region (1990)

The International Covenant on Civil and Political Rights (1966)



The International Covenant on Economic, Social and Cultural Rights (1966)

Hong Kong Bill of Rights Ordinance (Cap. 383, 1991)

The Interpretation by the Standing Committee of the National People's Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Tenth Session of the Standing Committee of the Ninth National People's Congress on 26 June 1999)

The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Eighth Session of the Standing Committee of the Tenth National People's Congress on 6 April 2004)

Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008 (Adopted at the Ninth Session of the Standing Committee of the Tenth National People's Congress on 26 April 2004)

Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (Adopted at the Fifteenth Session of the Standing Committee of the Tenth National People's Congress on 27 April 2005)

Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage (Adopted at the Thirty First Session of the Standing Committee of the Tenth National People's Congress on 29 December 2007)

Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region (Approved at the Sixteenth Session of the Standing Committee of the Eleventh National People's Congress on 28 August 2010)

Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (Adopted at the Twenty Second Session

of the Standing Committee of the Eleventh National People's Congress on 26 August 2011)

Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 (Adopted at the Tenth Session of the Standing Committee of the Twelfth National People's Congress on 31 August 2014)

Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (Adopted at the 24<sup>th</sup> Session of the Standing Committee of the Twelfth National People's Congress on 7 November 2016)

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region  
Safeguarding National Security Ordinance (Ord No 6 of 2024)

### Cases

*Chan Kam-Nga and Others v Director of Immigration* (FINAL APPEAL NO. 13 OF 1998 (CIVIL))( [1999] 1 HKLRD 304, [1999] 1 HKC 347)

*The Director of Immigration v. Master Chong Fung Yuen* (FACV No. 26 of 2000)( [2001] 2 HKLRD 533)

*Democratic Republic of the Congo v FG Hemisphere* (2011) 14 HKCFAR 95 (provisional judgment)

*Democratic Republic of the Congo v FG Hemisphere* (2011) 14 HKCFAR 395 (final judgment)

*Gurung Kesh Bahadur v Director of Immigration* (FACV No. 17 of 2001, [2002] HKCFA 30)

*Kong Yunming v The Director of Social Welfare* [2013] HKCFA 107.

*Kwok Hay Kwong v Medical Council* [2008] 3 HKLRD 524

*Lau Kong-yung and 16 others v. Director of Immigration* (FACV Nos.10 11 of 1999) ([1999] 3 HKLRD 778, [1999] 4 HKC 731)

*Leung Kwok Hung and Others v. HKSAR* (FACC 1 & 2/2005)

HKSAR v Lai Chee Ying [2021] HKCFA 3

HKSAR v. Ma Wai-kwan David & Others (Reservation of Question of Law No. 1 of 1997) ([1997] HKLRD 761, [1997] 2 HKC 315)

Ng Ka-Ling and others v. Director of Immigration (FINAL APPEAL NO. 14, 15, 16 OF 1998 (CIVIL))([1999] 1 HKLRD 315, [1999] 1 HKC 291)

Ng Ka Ling v. Director of Immigration (No. 2) (FINAL APPEAL NO. 14, 15, 16 OF 1998 (CIVIL))([1999] 1 HKLRD 577, [1999] 1 HKC 425)

HKSAR v Ng Kung-Siu (FACC4/1999)([1999] 3 HKLRD 907, [2000] 1 HKC 117)

Yeung May Wan v HKSAR [2005] 3 HKLRD 212

Fok Chun Wah FACV 10 of 2011

W v. The Registrar of Marriages FACV4/2012

Leung Kwok-hung v. The President of the LegCo and Secretary for Justice, FACV 1/2014

Kwok Cheuk Kin v. Secretary for Constitutional and Mainland Affairs CACV 57/2014

Hysan Development Co. Ltd and others v. Town Planning Board and Another FACV Nos. 21 & 22 of 2015

Director of Immigration v. Ot FACV1/2018

Leung Chun Kwong v. Secretary for The Civil Service and Another FACV8/2018

Tong Ying Kit v. HKSAR (21/08/2020, HCAL1601/2020) [2020] 4 HKLRD 382, [2020] HKCFI 2133