

**PCLL Conversion Examination
January 2024 Examiner's Comments
Hong Kong Constitutional Law**

Overall Assessment

The exam paper has three questions, and students were required to answer any two of them, each carrying 50 marks. It covers three major areas/aspects of HK Constitutional Law, i.e., the relationship of three governmental branches under the separation of powers, interpretive power of the Basic Law as allocated under Art 158 of the Basic Law and its operation, and understanding of comprehensive jurisdiction of the central authorities and high degree of autonomy of the HKSAR and their interaction.

Generally observing, students understood better the first two questions than the third one, for these two questions require basically general knowledge and normative analysis based on the theory of one country two systems and the Basic Law provisions. The third question reflects the recent development (since the publication of the 2014 White Paper) of constitutional law.

Below is the report on the performance of each of the questions:

Question 1

This question (50 marks) focuses on the relationship between the legislative, executive and judicial powers with special reference to the principle of separation of powers and checks and balances. As said above, most students have had a good mastering of law (theory, provisions) and practice (case law for example), articulated the answer properly, and achieved rather satisfactory performance. Those who failed this question seem to me they didn't follow the training course and/or textbook systematically, nor did they understand the requirements. The sub-question on the constitutional role of the courts of HK failed a number of students who I believe were nor familiar with cases decided since the handover. By the way, some spent disproportionate time on the sub-question A.

Question 2

This question often appears in the exam paper of LLB students and it deals with a novel constitutional system introduced by the Basic Law. It is a rather easy question should students have followed the training course. Again, most students were able to provide a satisfactory or basic understanding/answer. The reasons for failure or bad performance look like the same as for Question I. It seems they haven't understood the rationale of the mechanism/arrangements of interpretive power – a dual track system - under the Basic Law (Art 158), or not understood why the Standing Committee enjoys this power, although we have a landmark case (the “Congo”) that implemented Art 158, and that should be referred to and explained in the answer.

Question 3

This question invites students' correct understanding of "comprehensive jurisdiction" under the unitary state of China, and particularly, their analysis of the relationship and the possible tension between "comprehensive jurisdiction" and "high degree of autonomy". This is almost an open-end question and students can freely develop the arguments with support of the authorities and proper justifications.

Only a minority of students tried this question, but not many of them have received high marks. The reasons for this are among: first, they did not have sufficient overall knowledge of the new constitutional order of the HKSAR; second, they have had some vague ideas based on which they started their answer without solid explanations and reliable reference; third, they were not able to manage such a theoretical question with the support of necessary knowledge; and last, they simply did not understand the question.

Some Remarks

The Basic Law is a "living instrument" (as understood by the HK courts) and students need to catch up with the new development of law and practice. In addition to the White Paper for example, the National Security Law made by the National People's Congress Standing Committee and the ongoing Art 23 Legislation, both would have significant impact on the enjoyment of our rights and liberties and ways of life as guaranteed by the Basic Law, should deserve our close attention. I don't suggest to spend much energy and time disproportionate to its place under constitutional law, but suggest that future students be taught the general knowledge and given enough information next.