

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

Overall Assessment

This exam paper includes three questions, and candidates were required to answer any two of them, each carrying 50 marks. It covers three major areas/aspects/issues of HK Constitutional Law, i.e., the nature and position of the Basic Law, the structure of the government – executive-led government or separation of powers, the protection of human rights after the enactment of national security laws (National Security Law and National Security Ordinance). These questions cover some of the very basic aspects / contents of HK constitutional law.

Generally observing, majority of the candidates understood better the first two questions than the third one which is an issue of actuality, for the first two questions require basic knowledge/understanding and normative analysis based on the theory of “one country two systems” and the Basic Law provisions.

Those who chose them to answer were able to obtain fairly good marks unless they did not attend the class of HK Constitutional law, or any tutoring class. The third question concerning the major constitutional development in recent years in HK was chosen by only a small number of candidates most of whom were unable to provide a comprehensive and satisfactory answer, or wrote the answer in a rather abstract, vague or messy manner.

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

Question 1

This question (50 marks) asked the candidates to discuss the nature and position of the Basic Law. It is not a very difficult question as long as candidates have attended an introduction to the Basic Law. Many have attempted this question. Still some failed to address properly the position of the Basic Law in the hierarchy of law of the PRC.

Question 2

This question asked the candidates to properly understand HKSAR governmental structure and provide their own opinions about it. The question is at the core of the Basic Law. Again, many have attempted it, and grasped the basic meaning of the executive-led government and its significance by referring to the Basic Law provisions. What is to be noted is that candidates who chose it were able to tell that executive-led government would be able to coexist with checks and balances. They generally perceived the importance and necessity of the power distribution and separation under the Basic Law, and the judicial independence. However, some of them have not provided sufficient arguments supported either by academic authorities or by legal provisions.

Question 3

This question was set to examine the candidates' curiosity on the recent constitutional development regarding national security law and the restrictions of human rights, a major issue

today that deserves our close attention, and invited students' correct understanding of the importance of balancing national security and human rights, and the (judicial, in this exam paper) way to realise it.

The question itself was not an easy one since it specially requires candidates to be informed of not only law development but also judicial practice since 2020. Candidates who did not follow the development of law and were not familiar with constitutional case law automatically failed in obtaining a passing mark. Although candidates could feel free to develop the answer, they still needed to possess the basic knowledge of national security law, and more importantly, to be able to apply the long-standing tests, doctrines, and concepts developed by the judiciary since the handover and by reference to other jurisdictions.

Only a handful of candidates tried this question, but not many of them have satisfactorily completed it.

Some Remarks

As I once wrote in a previous report, the Basic Law is a "living instrument" (as understood by the HK courts) and candidates need to catch up with the new development of law and practice. In addition to the normative study of the Basic Law, I suggest candidates to spend sufficient energy and time on ongoing constitutional practice including new cases decided from time to time.