

PCLL Conversion Examination

January 2023

Examiner's Comments

Hong Kong Constitutional Law

Question 1

For Question 1, students were expected to make an argument as to whether or not the 'overseas judges' on the Court of Final Appeal should be assigned to hear cases brought under the National Security Law. First, students were expected to describe the role the overseas judges have historically played on the Court, identifying both strengths and weaknesses of the system. Second, students were expected to acknowledge that the NSL does not explicitly exclude the overseas judges from being assigned to cases brought under it, but also note that in practice it has never happened. Third, students were expected to consider advantages and disadvantages of having overseas judges hear *in particular* cases brought under the NSL.

The overall performance of students was satisfactory. Most were able to explain some reasons for the role of the judges historically and advance a claim as to whether those reasons still applied or whether they were outweighed by competing interests in the context of national security cases. Failing answers either failed to advance a clear argument or simply stated a conclusion without sufficient support or analytical rigour.

Question 2

For Question 2, students were expected to provide an insightful comment into a statement made by a spokesperson for the NPCSC following a decision of a local court, reflecting on what it meant for the system of constitutional judicial review practiced in the Region. First, students were expected to explain the general model of constitutional review in Hong Kong, citing appropriate authorities. Second, students were expected to be able to distinguish that power of review from the power of Basic Law Interpretation practiced by the NPCSC. Third, students were expected to be able to discuss the interaction and potential tension between those two elements, and consider the extent to which the spokesperson's statement accurately reflected that interaction.

The overall performance of students was satisfactory. Most students were able to correctly explain the history of constitutional review in Hong Kong and give specific examples, as well as correctly explain the NPCSC's power of Interpretation under Art. 158 and give examples. Most were able to make an argument regarding the spokesperson's statements as being consistent or inconsistent with their understanding of the interaction between the power of review and power of interpretation. Failing answers often failed to accurately understand the implications of the spokesperson's statement, or failed to ground their argument in any actual examples of constitutional jurisprudence in Hong Kong.

Question 3

Students were expected to critically discuss a statement regarding the success of the 'one country, two systems' policy with reference to the development of constitutional law in Hong Kong. This was an open-ended question and there was wide discretion for students to pick and choose constitutional cases or events with constitutional significance over the last twenty-five years in support of their thesis.

Most students were able to do this successfully, however failing answers typically discussed only provisions in the Basic Law implementing the 1C2S policy. This did not answer the question which asked students to focus on the evolution of constitutional law in HK, and so required description of actual cases or events in support of the students' contention about 'success'.