

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

Question ONE

Students are expected to:

Under A:

- a, Describe the meaning of the principle of separation of powers and checks and balances in a modern regime of constitutionalism; (5 marks)
- b, Explain how the powers of the HKSAR Government are distributed and the relationship between the legislative, executive and judicial powers under the Basic Law; (15 marks)
- c, Explain how the courts actually further entrench the separation of powers as a constitutional principle, and describe how the different arms of the government check on each other, with reference to the cases, including but not limited to, David Ma, Ng Ka Ling, Leung Kwok Hung series, Cheng Kar Shun, Ng Siu Tung, Ng Kung Siu, etc.; (15 marks)

Under B:

- a, Describe the proper role of the HKSAR courts in dealing with cases concerning legislative and executive powers; (5 marks)
- b, Analyse the attitudes of the courts towards cases of judicial review since the hand-over, and critically evaluate the significant impact of judicial activism or judicial constraint on the judicial practice. (10 marks)

This is a relatively easy question and it requires normative understanding of law and practice. Ideally, students are expected to refer to case law to help explain the relationship and interaction. This will enhance the understanding and performance.

Most of the students have chosen this question and achieved good performance. For failed cases, I see these reasons: either students don't understand the question and requirements, or they have no systemic knowledge about law and certainly haven't been able to follow the judicial development.

Question TWO

Students are expected to:

- A. Identify the nature of the matter: is it a matter of the right to freedom of expression, or is it an act of subverting the Central Government? And, what is the demarcation line between the right to freedom of expression and actual subversion act. (20 marks)
- B. Answer with ample reasons why it is necessary, OR not necessary, to legislate to implement Art. 23 of the Basic Law (15 marks)
- C. Evaluate the impact of the legislation in the current context with special reference to the protection of citizens' fundamental rights and liberties, and to the provisions of the Basic Law and the Bill of Rights Ordinance. (15 marks).

More than half of the students have taken this question and generally they perform just good (which means above 25 marks).

The major problem with the underperformed answers is that students have sharp opinion, but are not able to argue, justify or support it with authorities, with theory, legal provisions from the Basic Law and other ordinances, and leading cases of HK or elsewhere.

The second observation is that they are more or less politically driven, although we all agree that we all have the right to advocate, believe nor not to believe something. The requirement is this simple: convince examiners with supporting views and materials.

Question THREE

The purpose of setting this question is to test students' proper understanding of: a, the relationship of the HKSAR and the central authorities; b, the power of the CPG in the HKSAR; and c, the principle of "high degree of autonomy".

It is NOT an easy one but is of very actual significance. This question is not just a mere constitutional question, but is also related to the politics. Should student fail to deal with the part of politics, they should not be punished by deducting marks.

In particular, students are expected to:

Under A (30 marks):

- a. Restate the principle underlining the Basic Law, particularly, "one country two systems" and "high degree of autonomy";
- b. Identify the status of the HKSAR (under art. 12), and the major power of the central authorities under the BL, arts. 13, 14, 15, 18, 96, 158, 159;
- c. Argue the State Council has no legal requirements to lead the daily operation of the HKSAR Government; and the concept of "Comprehensive Jurisdiction" does not mean comprehensive management at operational level;
- d. Based on the above, prove that the two Offices did, or did not, interfere in the affairs of the HKSAR;
- e. Prove that the election of the House Committee is an internal working, free from intervention. Here try to apply the principle of "non-intervention" to this case;

Under B (10 marks):

- a. Understand the limited role of the LO as liaison office, and it is not a normal functional department of the CPG;
- b. State that no law and regulations of the PRC directly authorize the LO to direct the business of the LegCo, and the HKSAR Government;
- c. State that LO's any dereliction of duty shall be properly and legally addressed.

Under C (10 marks):

- a. Bearing in mind that the two Offices have no separate legal identity;
- b. As a functional department of the State Council, HKMAO could make policy recommendations and provide advice and suggestions to the State Council, coordinate HK and Macau related work at central level;

- c. LO is a representative of the CPG, and without the proper authorisation of the latter, it is not allowed to make substantial criticism over the HKSAR Government and to put forward policy suggestions to the HKSAR directly;
- d. Both HKMAO and LO could make some general and fair comment, without pointing at operational activities of the HKSAR;
- e. Both should refrain themselves from taking liberty to criticize and point fingers to the HKSAR.

The question is closely related to some hot issues regarding the power of the central authorities in HK, and the relationship, and the proper way of interaction between HK and the central authorities. Examining it has theoretical as well as practical significance.

It is the most difficult one among three questions, because the existing legal provisions are not able to provide an answer it directly, and it requires that student have broad knowledge, multi-perspective understanding and solid reasoning.