

PCLL CONVERSION EXAMINATION JUNE 2021

Title of Paper: Hong Kong Constitutional Law
Date: 28 June 2021
Time: 9:30 a.m. – 9:45 a.m. (Reading Time)
9:45 a.m. – 11:15 a.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 2 pages, including three questions. Candidates are only required to answer **TWO** questions of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination June 2021

Hong Kong Constitutional Law

Question 1 (50 marks)

“...[T]he purpose of the Basic Law is to establish the Hong Kong Special Administrative Region being an inalienable part of the People’s Republic of China under the principle of ‘one country, two systems’ with a high degree of autonomy in accordance with China’s basic policies regarding Hong Kong as set out and elaborated in the Joint Declaration.” (*Ng Ka Ling v Director of Immigration* (1999) 2 HKCFAR 4, 28–29 (Li CJ)).

To what extent has the implementation of the Basic Law achieved this understanding as to its purpose?

Question 2 (50 marks)

“[t]he Bill of Rights is confined to what might be called civil and political rights. The reach of the Basic Law is wider, encompassing economic, social and cultural rights also. The Basic Law represents a much better balance of rights, entitlements and duties, and is more sensitive to the truth that human dignity is a matter not merely of abstract rules but of social and economic conditions when these abstract rules become real.” (Y Ghai, *Hong Kong’s New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (1998, Hong Kong University Press, 2nd ed), pp 422–423).

Drawing from constitutional provisions and case law, critically evaluate the above quote.

Question 3 (50 marks)

“The suggestion that the concept of ‘separation of powers’ is a given in the constitutional order of the Hong Kong SAR (‘HKSAR’) is an oversimplification... The doctrine of separation of powers is commonly used in the context of political structures of sovereign states. It is trite that this doctrine has no place in the political structure of HKSAR. When the term ‘separation of powers’ is loosely used in the HKSAR it is prone to contribute to misinterpretation or misunderstanding of the constitutional order of HKSAR. One should not just refer to a label, but should objectively review the substance of the Basic Law in ascertaining what the political structure of HKSAR entails – an executive-led system, with the executive authorities, the legislature and the judiciary performing constitutionally designated roles with a division of work and complementing each other.” (Teresa Cheng, SC, Secretary for Justice, ‘An executive-led system, with the executive, legislature and judiciary performing constitutionally designated roles’, *South China Morning Post*, September 9, 2020).

How does the executive-led system and the nature of the HKSAR as part of the PRC affect the extent to which separation of powers is applicable as a constitutional principle in the HKSAR?

~ End of Examination Paper ~