

**PCLL Conversion Examination
January 2022
Examiner's Comments
Hong Kong Constitutional Law**

Question 1

For Question 1, students were expected to discuss the ways in which Hong Kong's constitutional system has operated in practice. It entailed an analysis of the extent to which the separation of powers arrangement has been reflected in the provisions of Basic Law and practiced after the handover. It was also expected to analyse the argument that Hong Kong has, or should have, an executive-led government accordingly. Meanwhile, judicial independence, as a cornerstone for Hong Kong's rule of law order, has been an essential component of check and balance in the constitutional system of Hong Kong. It was expected to refer to relevant case laws to illustrate this point through the development of Hong Kong's judicial review system after the handover, such as *Ng Ka-Ling and others v. Director of Immigration*, among others. Moreover, students were expected to provide a critical assessment of the recent electoral reform of the Legislative Council which is relevant to the debate over whether Hong Kong adopts a "separation of powers" or "executive-led" system, and response to the argument for a more assertive judiciary as mentioned in the question.

The overall performance of students answering Question 1 was satisfactory. Most students can identify relevant provisions of the Basic Law concerning various aspects of the issue. Better answers sought to provide an in-depth analysis of relevant issues with reference to relevant case laws as well as the recent development of the Hong Kong constitutional system. However, some answers were overly descriptive.

Question 2

For Question 2, students were expected to analyse the function of the NPCSC's interpretation of the Basis Law and its constitutional limitations under the "One Country, Two Systems" framework. Students were required to analyse the nature of NPCSC's interpretation of the Basic Law with reference to article 158 of the Basic Law, and its necessity of this symbolic function for the "One Country" component given Hong Kong's high degree of autonomy, as well as its supplementary function when some matters have been going beyond the scope of Hong Kong's autonomy. In particular, how NPCSC's interpretation has been reconciled with the Hong Kong courts' final authority of adjudication based on the common law system was expected to be analysed. Moreover, relevant case law was expected to be analysed, such as *Democratic Republic of the Congo v FG Hemisphere*, among others, in order to show the dynamics of the interpretation mechanism under the framework of "One Country, Two Systems." Furthermore, students were expected to provide an analysis of NPCSC's power of interpreting the Basic Law which should be exercised according to the principle of "One Country, Two Systems." It entailed a relevant analysis of the oath-taking case regarding the constitutional obligation of the courts of Hong Kong to decide a case according to Hong Kong laws if they are sufficient to resolve it within Hong Kong's autonomy.

The overall performance of students answering Question 2 was satisfactory. Most students were able to identify the basic features of the NPCSC's function of interpreting the Basic Law. Better answers can provide a convincing normative analysis from a rule of law perspective. However, some students did not provide an appropriate analysis of relevant case laws in their answers.

Question 3

For Question 3, students were expected to discuss the practice and importance of human rights protection in Hong Kong's constitutional order and how it may be limited. This entailed an analysis of the human rights protection in Hong Kong as reflected in the Basic Law and Bill of Rights, and its importance for Hong Kong's common law system under the framework of "One Country, Two Systems". In particular, the enforcement of international human rights instruments as mentioned in Article 39 of the Basic Law was also relevant, and expected to be analysed. Moreover, it was expected to analyse the limitations of human rights, in particular through the test of proportionality as illustrated in the case *Hysan Development Co. Ltd and others v. Town Planning Board and Another* [FACV nos. 21&22 of 2015]. Four-step test, including legitimate aim, rational connection, necessity, and balancing, was expected to be analysed with reference to the case law.

This question was not answered by many students. For these students answering Question 3, the overall performance was satisfactory. However, some students did not provide an appropriate analysis of the proportionality test in their answers.