

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

**Question 1**

For Question 1, students were expected to include the following points of analysis in their answers: (1) the nature of National Security Law (NSL) as a national law made by the National People's Congress under the framework of 'One Country, Two Systems', as well as its relationship with the existing common laws concerning national security issues. As Hong Kong remains a common law system, it is logical for the courts of Hong Kong to apply common laws to resolve national security disputes within its high degree of autonomy; this does not exclude the necessity of applying the NSL if Hong Kong's common law system is exhausted or insufficient for safeguarding national security; (2) the application of NSL shall follow common law principles under the framework of 'One Country, Two Systems'. A discussion of the judicial independence for adjudicating national security cases was expected; (3) the human rights protection shall be ensured in applying the NSL. These fundamental rights as enshrined in the Basic Law and Hong Kong Bill of Rights Ordinance shall be protected when applying the NSL. In particular, analysis of how to strike a balance between the application of NSL and human rights protection was expected. Relevant discussion of the proportionality test was also expected.

The overall performance of students answering Question 1 was satisfactory. Most students can provide relevant analysis of NSL issues from the 'One Country, Two Systems' perspective. Better answers sought to provide an in-depth and critical analysis of relevant issues with reference to the relevant applicable statutes. However, some answers were overly descriptive or merely assertive with no detailed analysis.

**Question 2**

For Question 2, students were expected to include the following points of analysis in their answers: (1) the nature of the Basic Law as the fundamental national law to implement the principle of 'One Country, Two Systems' and the higher justiciable law than other Hong Kong laws as applied by Hong Kong courts; (2) the nature of the Basic Law as the 'living instrument' that is to be defined and interpreted through a common law approach as distinguished from the interpretations of the Standing Committee of the National People's Congress (NPC) based on Article 158 of the Basic Law, according to the principle of 'One Country, Two Systems'; (3) the meaning of purposive approach as applied by the courts. As enunciated by the Court of Final Appeal in the two leading cases of *Ng Ka Ling v Director of Immigration* and *Director of Immigration v Chong Fung Yuen*, '[t]he Basic Law must not be read with a literal, technical, narrow or rigid approach. It must be given a purposive interpretation, which fully takes into account the context and purpose of the relevant provisions. The context and purpose of the relevant provisions, and indeed that of the Basic Law, should be considered in the light of the internal, as well as the external, aids to interpretation already described' (*Cheng Kar Shun v Li Fung Ying*, [2011] 2 HKLRD, 587).

The overall performance of students answering Question 2 was satisfactory. Most students were able to offer an appropriate analysis of the nature of the Basis Law as a 'living document'. Better answers can provide a detailed analysis with reference to relevant case laws. 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 include the following points of analysis in their answers. They may refer to Articles 36 and 145 and relevant case law for their analysis (e.g. *Kong Yunming v The Director of Social Welfare*): (1) the constitutional status/importance of socio-economic rights (as different from civil and political rights) in the Basic Law; (2) the extent to which it is justiciable with reference to the case law *Kong Yunming v The Director of Social Welfare*; (3) the rationale of the justiciability of socio-economic rights, in particular the extent to which the court shall conduct the constitutional review of the acts of the government involving social-economic policies.

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 relevant case law in their answers.