

PCLL CONVERSION EXAMINATION AUGUST 2022

Title of Paper: Hong Kong Constitutional Law
Date: 24 August 2022
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**

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Hong Kong Constitutional Law

Question 1 (50 marks)

‘The [Hong Kong] Basic Law is a unique document. It reflects a treaty made between two nations. It deals with the relationship between the Sovereign and an autonomous region which practises a different system. It stipulates the organisations and functions of the different branches of government. It sets out the rights and obligations of the citizens. Hence, it has at least three dimensions: international, domestic and constitutional’. *HKSAR v Ma Wai Kwan David & Others* [1997] HKLRD 761.

Discuss the nature of the Hong Kong Basic Law from three dimensions as practised under the framework of ‘one country, two systems’.

Question 2 (50 marks)

‘The successful transition of Hong Kong from a British Colony to a Special Administrative Region of the People’s Republic of China under the principle of “one country two systems” has frequently been acknowledged. An essential component of that success is the fact that this is a society with a strong commitment to the rule of law and its concomitants of an independent judiciary and respect for the separation of powers’. *Democratic Republic of the Congo & Others v FG Hemisphere Associates LLC* (2011) 14 HKCFAR 95.

Since 1997, Hong Kong’s rule of law order has evolved and adapted to fit within the framework of ‘one country, two systems’, under which Hong Kong remains a common-law jurisdiction. Discuss the checks and balances of powers among the legislature, judiciary, and executive in Hong Kong’s common law context, with reference to relevant constitutional provisions and case law.

Question 3 (50 marks)

‘In exercising their judicial power conferred by the [Hong Kong] Basic Law, the courts of the Region have a duty to enforce and interpret that Law. They undoubtedly have the jurisdiction to examine whether legislation enacted by the legislature of the Region or acts of the executive authorities of the Region are consistent with the Basic Law and, if found to be inconsistent, to hold them to be invalid. The exercise of this jurisdiction is a matter of obligation, not of discretion, so that if inconsistency is established, the courts are bound to hold that a law or executive act is invalid at least to the extent of the inconsistency. Although this has not been questioned, it is right that we should take this opportunity [to state] it unequivocally. In exercising this jurisdiction, the courts perform their constitutional role under the Basic Law of acting as a constitutional check on the executive and legislative branches of government to ensure that they act in accordance with the Basic Law’. *Ng Ka Ling & Another v The Director of Immigration* [1999] HKCFA 72.

Discuss the function of judicial review of legislation in Hong Kong’s common law system, and its limits under the ‘one country, two systems’ framework, with reference to relevant constitutional provisions and case law.

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