

PCLL Conversion Examination
June 2021
Examiner's Comments
Hong Kong Constitutional Law

Question 1

For Question 1, students were expected to apply a structured method in addressing this question - identifying the issues, applicable law, a hypothesis, and a conclusion. This question was broadly constructed, providing candidates with a measure of discretion in framing the issues. At the same time, candidates had to be sensitive to the issues raised in the quote and seek to integrate these points into a reasoned, synthesised, analysis. Authorities and principles referred to had to include:

- a. Discussion of the key features of the 'one country, two systems' concept, including different perspectives (be they executive, judicial or scholarly) on its meaning.
- b. The meaning of 'high degree of autonomy' and the division of functions between the HKSAR and PRC under the Basic Law.
- c. Discussion on the 'Basic Policies' in the Joint Declaration, including the extent to which the Basic Law mirrors this instrument.
- d. Critical evaluation as to the nature of Basic Law purposes and whether they have been adhered to over time.

The overall performance of students answering Question 1 was satisfactory. Most students could identify the major issues. Better answers sought to develop an argument. However, some answers were overly descriptive and did not connect their discussion closely to the question asked.

Question 2

For Question 2, students were required to adopt the same method of analysis as set out in Question 1 above. Candidates had to therefore differentiate the categories of rights recognized in the Hong Kong constitutional order. They had to engage with Yash Ghai's hypothesis that the Basic Law is more sensitive to the concept of 'human dignity' by addressing social and economic conditions and not merely civil and political rights. A working understanding of socio-economic rights needed to be shown in the answer, as well as the extent to which the Basic Law recognizes these rights. Candidates had to consider specific provisions of the Basic Law in which socio-economic rights are protected as well as the extent to which the International Covenant on Economic, Social and Cultural Rights finds expression in the Basic Law provisions and implementation.

The general performance on this question was disappointing, compared to Questions 1 and 2. Many candidates did not engage sufficiently with the quote in the question, focusing only on aspects of certain rights in the Basic Law, particularly civil and political rights. A proper engagement with this question required a closer attention to

Yash Ghai's claim, as well as the protection of socio-economic rights in the Basic Law.

Question 3

For Question 3, candidates had to evaluate the role of 'separation of powers' within Hong Kong's constitutional order. This entailed an analysis of relevant case law in which the concept has been expressly recognised as well as, per the quote, the extent to which two considerations place limits on the principle. Firstly, whether the executive-led system means that separation of powers has no application or is qualified in Hong Kong. Secondly, whether Hong Kong's status as a Special Administrative Region, rather than as a sovereign state, has a material bearing on the extent to which separation of powers applies as a constitutional principle, as the quote suggests. In developing a hypothesis, candidates needed to therefore provide an understanding of 'separation of powers', 'executive-led' system, and PRC-HKSAR relations, critically evaluating these concepts and the connections between them.

The overall performance in answering Question 3 was satisfactory. The best answers advanced an argument through careful construction of the constitutional concepts, critically evaluating the claims in the quote. However, some only discussed these concepts in a general way without proper engagement with the question asked.