

PCLL CONVERSION EXAMINATION JUNE 2022

Title of Paper: Hong Kong Constitutional Law
Date: 28 June 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 3 pages, including Part A and Part B. A total of 100 marks may be awarded.
8. Part A contains one compulsory question. Candidates must answer **Question 1**. There is **NO** element of choice. Part A is worth 60 marks.
9. Part B contains two questions. Candidates are only required to answer **ONE** question out of two. Part B is worth 40 marks.
10. 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 2022

Hong Kong Constitutional Law

Part A (you MUST answer Question 1):

Question 1 (60 marks)

National security, as an important cornerstone of stability, is a matter of top priority for all the world's nations. Since the enactment of the Law of the PRC on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL), there have been different arguments regarding how it shall be implemented in Hong Kong's common law order under the framework of 'One Country, Two Systems'. Some scholars argue that the law is a socialist legal transplant in Hong Kong's common law system. With respect to this, Secretary for Justice Teresa Cheng said that 'acts considered to endanger national security could go far beyond the specific crimes laid out in the Beijing-imposed National Security Law (NSL)'. Also, 'The courts, including the Court of Final Appeal, have confirmed that seditious acts – as stated in Articles 9 and 10 of the Crimes Ordinance – are considered as national security offences'. And also, 'People should not only look at the National Security Law, because national security is a very broad concept, and different legislation can also have provisions on safeguarding national security'. Moreover, regarding human rights protection, Cheng said that 'NSL struck a balance between human rights and the principle of rule of law'. Furthermore, she pointed out that Hong Kong is the only local government in the world that has the right to adjudicate national security cases, which has fully reflected the principle of 'One Country, Two Systems' (quoted from RTHK News, 2022-04-16).

In addition, in *Kwok Cheuk Kin v Chief Executive of HKSAR* ([2020] HKCFI 1521, para. 7), Judge Chow referred to Article 4 of the National Security Law, which provides that 'Human rights shall be respected and protected in safeguarding national security in Hong Kong'. He also remarked that 'the Judiciary should as far as possible, in line with legal principles and reasonableness, interpret the National Security Law and the fundamental rights of the Hong Kong residents under Chapter 3 of the Basic Law consistently'.

Provide your analysis of:

- (1) the application of the NSL according to the principle of 'One Country, Two Systems';
(20 marks)**
- (2) the ways in which the courts shall invoke the law in a common law approach thereof; and
(20 marks)**
- (3) how to strike a balance between the application of NSL and human rights protection.
(20 marks)**

Part B (answer Question 2 OR Question 3):

Question 2 (40 marks)

‘As was pointed out by the Chief Justice in *Ng Ka Ling v Director of Immigration*, p. 28D–I, the Basic Law is an entrenched constitutional instrument to implement the unique principle of “One Country, Two Systems”. It uses ample and general language. It is a “living instrument” intended to meet changing needs and circumstances. The Basic Law states general principles and expresses purposes without condescending to particularity and definition of terms. In interpreting the Basic Law, a purposive approach is to be applied’ (*Cheng Kar Shun v Li Fung Ying*, [2011] 2 HKLRD, 583).

Discuss the nature of the Basic Law as a ‘living document’ and the meaning of the purposive approach to interpreting it in Hong Kong’s common law order.

Question 3 (40 marks)

K was granted a one-way permit by the Mainland authorities for settlement in Hong Kong with her husband. Her husband died after she arrived in Hong Kong. She applied for Comprehensive Social Security Assistance (CSSA). However, her application was rejected by the Director of Social Welfare due to the requirement that all applicants for CSSA must have been residents of Hong Kong for at least seven years. She sought judicial review to challenge the constitutionality of the seven-year residence requirement under the CSSA scheme.

Analyze the justiciability of socio-economic rights with reference to relevant constitutional provisions and case law.

~ End of Examination Paper ~