

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

**Question 1**

For Question 1, students were expected to analyse the three dimensions of the Hong Kong Basic Law. First, it was expected to analyse the constitutional function of the Basic Law within Hong Kong's common law jurisdiction, which serves as a foundation for maintaining Hong Kong's rule of law order as distinct from the socialist legal order of Mainland China, under the 'One Country, Two Systems' framework. Second, it was expected to analyse the international dimension of the Basic Law as historically connected with the Sino–British Joint Declaration, along with the possible use of the Joint Declaration as an aid in interpreting both the 'context' and 'purpose' of provisions of the Hong Kong Basic Law in a common law approach (as illustrated in *Ng Ka Ling v Director of Immigration*). In addition, a critical analysis of the domestic dimension of the Basic Law, which deals with the relationship between the sovereign and an autonomous region, was expected. Apart from the analysis of relevant provisions of the Basic Law, students were expected to discuss relevant case laws, such as *Ng Ka Ling v Director of Immigration* and *HKSAR v Ma Wai Kwan David & Others*.

The overall performance of students answering Question 1 was satisfactory. Most students can identify the constitutional and domestic functions of the Basic Law. Better answers sought to provide a critical analysis of relevant issues with reference to relevant case laws. However, some answers were overly descriptive.

**Question 2**

For Question 2, students were expected to provide a critical analysis of the separation of powers components in the Hong Kong Basic Law, along with a discussion of judicial independence as the foundation of the common law system. In relation to this, relevant analysis of the checks and balances of powers among the court, executive and legislature, with reference to the relevant provisions of the Hong Kong Basic Law and case law (such as *Leung Kowk Hung v President of the Legislative Council*) was expected. Moreover, students were expected to analyse the executive–legislative relationship, and the extent to which a 'checks and balances' relationship exists between these two branches of the government, with reference to the relevant provisions of the Hong Kong Basic Law and the debate over whether Hong Kong has in fact adopted an executive-led system.

The overall performance of students answering Question 2 was satisfactory. Most students were able to identify the basic features of the power structure as illustrated in the Basic Law. Better answers can provide a critical analysis of the pros and cons of Hong Kong's constitutional structure from various perspectives. However, some students did not provide analytical answers. Some others did not provide an appropriate analysis of relevant case laws.

### **Question 3**

Students were expected to discuss the justiciable status of the Hong Kong Basic Law, based on which the court may exercise the power of judicial review over the legislation of Hong Kong. Moreover, it was expected to analyse the function of judicial review as developed in Hong Kong's common law system with judicial independence and the power of final adjudication, with reference to relevant case law such as *Ng Kai Ling v Director of Immigration*. In addition, relevant discussion of the respect for the national legislation outside the domain of Hong Kong's 'high-degree autonomy' was expected. Furthermore, students were expected to provide a critical analysis of the 'non-intervention' principle and its rationale as applied in the case law, such as the analysis in *Leung Kwok Hung v President of the Legislative Council* and the relevant analysis in *Cheng Kar Shun v Li Fung Ying*.

The overall performance of students answering Question 3 was satisfactory. Some good answers provided a good analysis of relevant issues from a comparative perspective. However, some students did not provide an appropriate analysis of relevant issues in the context of Hong Kong. Some concepts as applicable to some other common law jurisdictions, such as the UK, were misplaced in the analysis of relevant issues in the context of Hong Kong.