

PCLL Conversion Examination
January 2015
Examiner's Comments
Hong Kong Constitutional Law

1. For Question 1, students are expected to:
 - (a) illustrate the purposive approach of interpretation as elaborated in cases like *Ng Ka Ling* and *Chong Fung Yuen*. (10 marks);
 - (b) define civil nomination as nomination by a specified no. of eligible voters (5 marks);
 - (c) identify the key concepts in Article 45 including “broadly representative nominating committee”, “ democratic procedures” and universal suffrage” (5 marks);
 - (d) refer to other provisions of the Basic Law including Article 25, 26 and 39 of the Basic Law (10 marks);
 - (e) apply the principle of interpretation to the various provisions mentioned above and provide an analysis supporting her conclusion, i.e. whether civil nomination is or is not compatible with the Basic Law. (20 marks).

2. The overall performance of students answering Question 1 was not very satisfactory. Though most students could demonstrate adequate understanding of the relevant issues and principles but many were weak in applying the constitutional principles of interpretation in analyzing the constitutionality of civil nomination.

3. For Question 2, students are expected to:
 - (a) explain the constitutional requirements for restricting a right protected under the bill of rights including the requirements of “prescribed by law,” “legitimate purpose”, “rational connection” and “proportionality” (10 marks);
 - (b) identify the rights that may be affected by this amendment including freedom of expression and freedom of peaceful assembly and illustrate the scope of such rights (10 marks);
 - (c) illustrate how the amendment will limit the enjoyment of the rights (10 marks);
 - (d) apply the various constitutional requirements to the amendment and provide an analysis supporting her conclusion, i.e. whether the restriction imposed by the amendment can satisfy the constitutional requirements (20 marks).

4. The overall performance of students answering Question 2 was satisfactory. Most students can provide an adequate account of the constitutional principles of limiting a constitutional right. Like Question 1, students were weaker in applying the constitutional principles to analyze whether the offence is unconstitutional.

5. For Question 3, students are expected to:
 - (a) illustrate the protection of judicial independence under the Basic Law including Article 2, 19 and 85 of the Basic Law (5 marks);
 - (b) illustrate the power of final adjudication enjoyed by the HKSAR under the Basic Law including Article 2, 19, and 82 of the Basic Law (5 marks);

- (c) explain the main points made by Andrew Li including the Standing Committee should only exercise its power to interpret the Basic Law in the most exceptional circumstances and the Standing Committee's power to interpret the Basic Law should not be exercised to override a court judgment in Hong Kong, especially one of the Court of Final Appeal (10 marks);
 - (d) explain the meaning of high degree of autonomy enjoyed by the HKSAR under "One Country Two Systems" including the importance of the maintenance of the rule of law and judicial autonomy (10 marks);
 - (e) provide an analysis on Andrew Li's views supporting her conclusion, i.e. whether she agrees or disagrees with his views (20 marks).
6. The overall performance of students answering Question 3 was good. Most students can provide a detailed account on the cases and issues related with the conflict between the interpretation of the Basic Law by the Standing Committee of the National People's Congress and the judicial autonomy of the HKSAR. Students can be more specific in explaining whether they supported or disagreed with Andrew Li's view.