

**PCLL Conversion Examination  
January 2016  
Examiner's Comments  
Hong Kong Constitutional Law**

**Question 1**

For Question 1, students were expected to:

- a) Considering Basic Law provisions, describe the Chief Executive's role and relationship to (1) the CPG and (2) HKSAR branches of government (Leg Co, Executive, Courts).
- b) From this, then offer an analysis on the view that the CE has a 'special legal position' as above the other institutions, drawing upon constitutional doctrines such as separation of powers, checks and balances, and executive-led government.
- c) Offer analysis on the distinction drawn between the CE's 'dual role', to the CPG and HKSAR, and whether this distinction is sustainable in light of the Basic Law.

The responses to this question were generally satisfactory. There were a handful of very good answers. Most candidates identified and addressed the key controversy in the speech, being the Chief Executive's 'special legal position'. However, some scripts just simply restated general principles and powers of the three branches without fully providing a cohesive response to all issues in the speech.

**Question 2**

For Question 2, students were expected to:

- a) Explain the key features of the Sino-British Joint Declaration and its 'basic policies'.
- b) Offer an analysis on the extent to which the provisions of the JD had been 'fully implemented, and its purpose and objectives' have been fulfilled.
- c) Offer an analysis on the legal status of the JD, and whether it gives rise to (international) legal obligations on the part of the PRC that the UK may invoke.

Almost all papers adequately addressed (a) above, being the key features of the Joint Declaration and its 'basic policies'. The quality of the answers varied widely with respect to the more analytical part of the question at (b) above. Here there was often insufficient analysis of the material difference between the Joint Declaration and the Basic Law. However, generally the weakest part of the answers pertained to (c) above. Few papers addressed the international dimension of the Joint Declaration, its continuing applicability and the scope for the British to involve itself in Hong Kong constitutional

affairs. Nor was there much understanding of the general context in which this speech was made.

### **Question 3**

For Question 3, students were expected to:

- a) Identify right(s) engaged under the Basic Law/BORO by this Ordinance, particularly freedom of expression.
- b) Apply the justification test: (i) legitimate aim, (ii) rational connection, (iii) minimal impairment.
- c) Draw upon the reasoning of the CFA in *HKSAR v Ng Kung Siu* (1999) 2 HKCFAR 442 on flag desecration.

Most students identified the engagement of rights, the applicability of the justification test, and the specific relevance of *Ng Kung Siu*. That said, few papers provided a comprehensive response to the question in these three aspects. Of concern, there were a fair number of papers that were unresponsive to the question and which focussed too much on the background of constitutional adjudication in Hong Kong (for example, by explaining that the ICCPR applies in Hong Kong) without any concrete application. A question of this type should not be approached as an ‘essay’, as some candidates perceived it to be, but rather as a problem that has to be addressed using the tools of constitutional review.