

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

This examination paper consisted of three questions. Candidates were required to answer two questions of three. A total of 100 marks could be awarded. Each question was worth 50 marks. The passing mark was 50 marks.

The paper tested candidates on a range of Hong Kong Constitutional Law topics. It also tested candidates on four levels of skills. These skills are the ability to:

- identify relevant legal issues;
- identify relevant legal principles;
- apply the principles to the issues;
- provide authoritative critical analysis.

Candidates received a pass mark on a question if they correctly identified the legal issues and principles, applied the principles to these issues in a sensible manner, and provided authoritative critical analysis.

Question 1

For Question 1, students were expected to critically discuss the:

- Constitutional recognition of fundamental rights for the administration of justice under the rule of law:
 - o right to trial by jury (Art 86, Basic Law);
 - o right to fair trial and the criminal process (Art 87, Basic Law);
 - o right to fair hearing in non-criminal process (Art 35, Basic Law);
 - o right to privacy, unlawful search and surveillance (Arts 28, 29, 30, Basic Law);
 - o right to equality and non-discrimination (Art 25, Basic Law);
 - o right to judicial remedies (Art 35, Basic Law).
- Constitutional recognition of an independent judiciary to enforce these fundamental rights (Art 85, Basic Law).

The answers to this question were generally satisfactory. Most candidates understood that the question was not on the principle of the rule of law generally but on that principle in terms of the administration of justice. Some candidates, however, restated the principle of the rule of law as a constitutional concept without an attempt to relate it to the Basic Law's recognition of fundamental rights for the administration of justice and an independent judiciary to enforce those fundamental rights. Most students failed to identify all the various fundamental rights that the Basic Law recognises for the administration of justice under the rule of law.

Question 2

For Question 2, students were expected to critically discuss the constitutional recognition of economic sovereignty, including economic rights and freedoms:

- capitalist system (Art 5, Basic Law);
- right to property (Arts 6, 105, Basic Law);
- independent finances (Art 106, Basic Law);
- independent taxation system (Art 108, Basic Law);
- status as an international financial centre (Art 109, Basic Law);
- free operation of financial business and financial markets (Art 110, Basic Law);
- freely convertible currency (Art 112, Basic Law);
- free flow of capital within, into, and out of (Art 112, Basic Law);
- status as a free port (Art 114, Basic Law);
- policy of free trade (Art 115, Basic Law);
- separate customs territory (Art 116, Basic Law);
- economic and legal environment for encouraging investments (Art 118, Basic Law);
- promote the development of trades (Art 119, Basic Law).

The answers to this question were generally not satisfactory. Most candidates mistakenly understood the question to be about the capacity of Hong Kong to negotiate and conclude international agreements. Some candidates mistakenly understood the question to be on the jurisdictional autonomy of Hong Kong. Few candidates discussed the concept of economic sovereignty and even fewer candidates identified the very many provisions that inform the economic constitution of Hong Kong beyond the taxation power under Article 106, Basic Law.

Question 3

For Question 3, students were expected to discuss the relationship between:

- the State (the People's Republic of China) and the Party (the Communist Party of China);
- the Central Authorities and the Hong Kong Special Administrative Region;
- the Standing Committee of the National People's Congress and the powers of interpretation and amendment of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the power of final interpretation versus the power of final adjudication).

The answers to this question were generally satisfactory. Most candidates critically explained the differences between the Basic Law and the Constitution of the People's Republic of China. Few candidates, however, analysed the role of the Communist Party of China as a constitutional actor in Mainland China. Many candidates mentioned the *Ng Ka Ling* right of abode cases but not all of those candidates could explain the relevance of those cases to the question.