

PCLL Conversion Examination
June 2018
Examiner's Comments
Hong Kong Constitutional Law

Question 1 (50 marks)

Students are expected to:

- A. First identify these 8-10 powers belonging to the Central; (15 marks)
- B. Discuss the sovereign nature of these powers and the necessity for the Central to hold these powers, in accordance with the constitutional law theory under the One Country Two Systems principle. (20 marks)
- C. Critically examine the situations where the Central Authorities might abuse its powers and evaluate the negative consequences on the implementation of the Basic Law. Students are given liberty to assess and criticize. (15 marks)

The Question, theoretically not difficult, aimed to test student's thorough understanding of the power of the central authorities (CA) over the Region, including its definition, nature, scope, and the use/abuse of it. By doing it, students would be able to better understand the relationship and interaction between the CA and the HKSAR. It is an important question in HK constitutional law and it is not abstract but real.

Generally speaking, students have mastered this question in a satisfactory way, say, between 25-30 marks.

The difficulty was that in most cases, students could not cope with the Point C above, which means they could not examine the situations where the CA might abuse its powers, nor evaluate the negative consequences on the implementation of the Basic Law. This has caused quite low marks to some of them.

Question 2 (50 marks)

Students are expected to:

- A. Identify the nature of the matter: is it a matter of freedom of expression, or is it an act of subverting the Government? (15 marks)
- B. Answer why it is necessary, OR not necessary, to legislate to implement Art. 23 of the Basic Law (15 marks);
- C. Evaluate the impact of the legislation in the current context with special reference to the protection of human rights and to the provisions of the Basic Law and the Bill of Rights Ordinance. (20 marks).

My intention of designing this open-answer question, which is not an easy one, was to test students' ability to use/apply legal knowledge to resolve actual problem. The answer could take the form of a legal opinion.

In the first place, not many students have taken this question because the answer would require whole capacity of understanding, analysis, and drafting, and comprehensive mastering of law and cases. Second students didn't know well common law of freedom of expression, actually HK courts have produced quite a number of good judgments and there were relevant legal tests to be referred to. In the end, the knowledge demonstrated in the answer looked very narrow and shallow.

Question 3 (50 marks)

Students are expected to:

- A. The difference is located in the jurisdiction of the courts over the sovereign acts – NPC and/or NPCSC; CA's opinion is based on the past constitutional practice and the understanding of HK as a subnational unit of the PRC; (15 marks)
- B. Discuss the opinion of CA and comment on it; (15 marks)
- C. Thoroughly prepare a systematic answer to it including Basic Law jurisprudence and case law. (20 marks)

This was not a difficult question if students have acquired sufficient knowledge of HK judiciary system and general understanding of the Basic Law jurisprudence and case law.

Students generally understood there was a difference of CA and CFA in terms of jurisdiction, however many of them could not explain why they were different. In relation to the jurisdiction over sovereign acts, some students were able to understand the rationale and the analogy developed by CA, but failed to critically comment on the rationale developed by CFA.

The major problem with the answers was that students didn't show the understanding and a thorough grasp of the Basic Law jurisprudence and particularly case law