

PCLL CONVERSION EXAMINATION JUNE 2016

Title of Paper: Hong Kong Constitutional Law
Date: 24 June 2016
Time: 2:30 p.m. – 2:45 p.m. (Reading Time)
2:45 p.m. – 4:15 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of three pages, including three questions. Candidates are only **REQUIRED** to answer **TWO** questions of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination June 2016

Hong Kong Constitutional Law

Question 1 (50 marks)

Mr Geoffrey Ma Tao-li, Chief Justice of the Hong Kong Court of Final Appeal, Speech at the Ceremonial Opening of the Legal Year, 11 January 2016:

‘If society puts any value on the concept of the rule of law as a cornerstone or pillar in our community, it is important to understand Hong Kong’s legal system and how justice – for, conceptually, this is after all the purpose of law – is administered. Hong Kong’s legal system is based on the common law and on that system’s characteristics of fairness, transparency and access to justice.’

Analyse how far the principle of the rule of law – in terms of the administration of justice – is recognised by the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China.

Question 2 (50 marks)

Article 106, The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China:

‘The Hong Kong Special Administrative Region shall have independent finances.

The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People’s Government.

The Central People’s Government shall not levy taxes in the Hong Kong Special Administrative Region.’

Analyse the autonomous powers in the economic realm enjoyed by the Hong Kong Special Administrative Region of the People’s Republic of China under its Basic Law.

Question 3 (50 marks)

Shucheng Wang, 'Emergence of a Dual Constitution in Transitional China' (2015) 45(3) *Hong Kong Law Journal* 819-850, 819:

'Western concepts are unable to provide a holistic view of China's Constitution, especially after 1978. China's Constitution, centered on the Communist Party and the State, has been largely transformed since then. ... [A] dual constitution has sprouted up in China, within which the Party's Constitution attempts to keep pace with that of the State.'

The Hon Sir Anthony Mason AC KBE, 'The Rule of Law in the Shadow of the Giant: The Hong Kong Experience' (2011) 33(4) *Sydney Law Review* 623-644, 625-626.

'The unique character of the *B[asic] L[aw]* stems from certain aspects of its provisions ... These provisions give effect to the central principle of the *BL*, namely "one country, two systems", which is recited in the preamble; that is the continuation of the capitalist system in the Region, notwithstanding the existence of the prevailing socialist system in mainland China'

There seem to be very different understandings on the nature and the role of a constitution in mainland China as compared with Hong Kong. Analyse how these differences affect the implementation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Support your answer with examples drawn from the past 19 years.

~ End of Examination Paper ~