

PCLL CONVERSION EXAMINATION JUNE 2024

Title of Paper : Hong Kong Constitutional Law
Date : 17 June 2024
Time : 9:30 a.m. – 9:45 a.m. (Reading Time)
9:45 a.m. – 11:15 a.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-hour 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. The paper consists of 3 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded. Each question is worth 50 marks.
8. 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 2024
Hong Kong Constitutional Law**

Answer any two of the following questions.

Question 1 (50 marks)

In *David Ma WK*, Chief Judge Chan of High Court opined that:

The Basic Law is not only a brainchild of an international treaty, the Joint Declaration. It is also a national law of the PRC and the constitution of the HKSAR. It translates the basic policies enshrined in the Joint Declaration into more practical terms.

The Basic Law [of the HKSAR] is a unique document, reflecting a treaty made between two nations. It deals with the relationship between the Sovereign and an autonomous region which practices a different system. It stipulates the organisations and functions of the different branches of government. It sets out the rights and obligations of the citizens. It has at least three dimensions: international, domestic and constitutional. [Emphasis added by the examiner.] [1997] HKLRD at 772.

- A. Discuss the status of the Basic Law in the system of laws of the HKSAR, and its position in the hierarchy of law of the PRC. (25 marks)**
- B. Explain and comment on the meaning of “three dimensions” given by the Chief Judge. (25 marks)**

Support your arguments with the theory of the Basic Law and whenever appropriate, case law.

Question 2 (50 marks)

Hon Hartmann JA, in *Leung Kwok Hung v. President of the Legislative Council*, [2007] 1 HKLRD 401-2, stated that:

66. The Basic Law enshrines the separation of powers. A reading of the Law makes it evident that the executive, the administration and the legislature are each to perform their constitutionally designated roles in a coordinated and co-operative manner for the good governance of Hong Kong. Mr Thomas described it as the “workability principle”.
67. Hong Kong has an executive-led government. It is the function of the Chief Executive to lead the government, to decide on government policies and to approve the introduction of motions regarding revenues or expenditure to the Legislative Council : art.48. It is the function of the Government; that is, the executive authorities (led by the Chief Executive) to formulate and implement policies, to conduct administrative affairs and to draw up and introduce (into LegCo) budgets and final accounts : art.62. LegCo does not exercise executive or administrative functions of the kind I have just described. To put it plainly, it does not run any

‘mirror’ Ministry of Finance. It is instead the function of LegCo to enact, amend or repeal laws, to examine and approve budgets introduced by the executive authorities and to ‘approve’ (not create or decide upon) taxation and public expenditure : art.73.

- A. Understand and explain why “Hong Kong has an executive-led government”, against the widely perceived understanding that the design of the HKSAR Government under the Basic Law reflects the constitutional principle of the separation of powers. (30 marks)**
- B. Argue if the principle of separation of powers and the principle of executive-led government are mutually exclusive, and why or why not. (20 marks)**

Question 3 (50 marks)

Article 4 of the *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* (“NSL”) states the principle of the protection of human rights as follows:

Human rights shall be respected and protected in safeguarding national security in the Hong Kong Special Administrative Region. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region enjoy under the Basic Law of the Hong Kong Special Administrative Region and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law.

Section 2(B) of the *Safeguarding National Security Ordinance* (“NSO”) also highlights the principle of the protection of human rights as follows:

(b) human rights are to be respected and protected, the rights and freedoms, including the freedoms of speech, of the press and of publication, the freedoms of association, of assembly, of procession and of demonstration, enjoyed under the Basic Law, the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to the HKSAR, are to be protected in accordance with the law;

- A. Generally discuss the significance of the principle of the protection of human rights in the course of the implementation of the NSL and NSO. (20 marks)**
- B. Discuss in greater details the ways in which the rights and freedoms enjoyed by the residents of Hong Kong can be effectively protected in judicial process. (30 marks)**

~End of Examination Paper~