

Overseas Lawyers Qualification Examination

Head VI: Hong Kong Constitutional Law

Standards, Syllabus and Reading List

STANDARDS

Candidates will be expected:

1. To demonstrate that they have achieved a general understanding of constitutionalism;
2. To demonstrate that they have achieved a general understanding of the status of the Hong Kong Special Administrative Region in the constitutional framework of the People's Republic of China;
3. To be familiar with the interpretation and amendment processes of the Hong Kong Basic Law.
4. To be familiar with the human rights framework of Hong Kong constitutional law.
5. To be familiar with the political structure (including the legislative process) of the Hong Kong Special Administrative Region.
6. To demonstrate that they have achieved a general understanding of the principles of judicial review (including constitutional judicial review and the outline of the process for obtaining the leave of the Court) of legislation and administrative action in Hong Kong.

Candidates will be expected to have achieved the standard of a newly qualified solicitor who has completed the PCLL and a two-year trainee solicitor contract in Hong Kong, and to be able to provide general legal advice on constitutional issues that may arise in client matters.

EXAM FORMAT

Three Hours and Thirty Minutes Open Book Examination Paper consisting of FIVE Questions.

Candidates should answer FOUR Questions (25% each) out of FIVE Questions.

SYLLABUS

1. Status of HKSAR in the Constitutional Framework of the People's Republic of China

- Constitutional structure of the People's Republic of China;
- Unitary state;
- Sino-British Joint Declaration;
- One country, two systems;
- High degree of autonomy;
- Rule of law;
- Roles of the National People's Congress and its Standing Committee;
- Applicability of Chinese national laws in the HKSAR;
- National Security Law of the HKSAR;
- Safeguarding National Security Ordinance;
- Related legislation on the carrying out of the duty to safeguard national security (e.g. Social Workers Registration (Amendment) Ordinance 2024);
- Case law on national security;
- A holistic approach to national security and brief comparison of national security laws of other jurisdictions.

2. Political Structure

- Executive-led Government and Separation of Powers;
- Executive authorities of the HKSAR;
- Legislative Council;
- Legislative process;
- Executive accountability;
- Selection of Chief Executive and appointment by Central People's Government;
- Selection of Legislative Councillors;
- Judiciary;
- Independent judicial power, including power of final adjudication.

3. Human Rights

- Rights and freedoms under the Basic Law;
- Hong Kong Bill of Rights Ordinance (Cap. 383);
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Anti-discrimination legislation in Hong Kong;
- Restrictions on rights and freedoms;
- Proportionality;
- Margin of appreciation.

4. Judicial Review

- Grounds of judicial review generally, with a focus on *Wednesbury* unreasonableness, illegality, *ultra vires*, and unfairness/impropriety;
- Outline of the process for applying for leave to bring a judicial review application;
- Judicial review of constitutionality of primary and subsidiary legislation;
- Constitutional and administrative law remedies;
- Declaration of invalidity;
- Remedial interpretation;
- Suspension of declaration;
- Damages.

5. Interpretation and Amendment of the Basic Law

- The importance of interpretation and the mode of interpretation;
- Interpretation under Article 158;
- Interpretation powers of the NPCSC and the HKSAR courts;
- Judicial referral;
- Principles of, and approaches to, interpretation adopted by the HKSAR courts;
- Amendment under Article 159.

READING MATERIALS

- Albert Hung-yea Chen and Po Jen Yap, *The Constitutional System of the Hong Kong SAR: A Contextual Analysis* (Hart 2023);
- Michael Ramsden & Stuart Hargreaves, *Hong Kong Basic Law Handbook* (Sweet & Maxwell, 3rd edition, 2022);
- Johannes Chan SC (Hon) & C.L. Lim, *Law of the Hong Kong Constitution* (Sweet & Maxwell Asia, 3rd edition, 2021);
- Guobin Zhu, Mark Kielsgard and Surya Deva, *Constitutional Law and Human Rights in Hong Kong—A Sourcebook* (City University of Hong Kong Press 2021);
- Danny Gittings, *Introduction to the Hong Kong Basic Law* (HKU Press, 2nd edition, 2016);
- P.Y. Lo, *The Hong Kong Basic Law* (LexisNexis, 2011);
- Stephen Thomson, *Administrative Law in Hong Kong* (Cambridge University Press, 2018);
- Richard Gordon QC & Johnny Mok SC, *Judicial Review in Hong Kong* (LexisNexis, 2nd Edition 2014);
- Constitution of the People's Republic of China (Adopted at the Fifth Session of the Fifth National People's Congress on 4 December 1982);

- Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong 1984;
- Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (Adopted by the Seventh National People’s Congress at its Third Session on 4 April 1990);
- National Security Law of the HKSAR (including the Implementation Rules for Article 43 of the National Security Law) and other laws of the People’s Republic of China listed in Annex III of the Basic Law;
- Interpretations of the Basic Law and the National Security Law issued by the Standing Committee of the National People’s Congress;
- Decisions on issues involving the Basic Law and the HKSAR issued by the National People’s Congress and its Standing Committee;
- White Papers on Hong Kong issued by the State Council Information Office (including 2014 White Paper on One Country, Two System and 2026 White Paper on National Security);
- Safeguarding National Security Ordinance;
- Hong Kong Bill of Rights Ordinance (Cap. 383);
- International Covenant on Civil and Political Rights 1966;
- International Covenant on Economic, Social and Cultural Rights 1966;
- Sex Discrimination Ordinance (Cap. 480);
- Disability Discrimination Ordinance (Cap. 487);
- Family Status Discrimination Ordinance (Cap. 527);
- Race Discrimination Ordinance (Cap. 602).

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