OLQE Examiners' Comments 2025

Head VI: Hong Kong Constitutional Law

Question 1

This question was the second most popular, being attempted by 160 of the 166 candidates who sat the exam. It had a pass rate of 73%. Drawing on provisions in the Basic Law, it asked candidates to discuss issues relating to the mechanism for the application of national laws.

In Part 1, which was worth 10 marks, candidates were expected to explain the significance of this mechanism to the HKSAR's high degree of autonomy by reference to the default rule under Article 18(2) that PRC national laws do not generally apply in the HSKAR as well as other relevant provisions in the Basic Law such as Articles 5 and 8. Answers were expected to correctly identify the limited categories of national laws that are applicable under Article 18(3) as well as the two different methods of application listed in Article 18(2).

In Part 2, which was worth 15 marks, candidates were expected to explain how this mechanism defines the HKSAR's constitutional status and its constitutional relationship with the central authorities of the People's Republic of China by particular reference to how the power to add or delete laws from Annex III resides exclusively with the National People's Congress Standing Committee (NPCSC). Candidates were expected to not only cite specific examples of national laws listed in Annex III but also analyse what the substance of these laws says about sovereignty. Excellent answers made reference to relevant case law and used this to explain the constitutional relationship between the central authorities of the PRC and the HKSAR.

While there were some excellent answers, many others did not seem to understand and follow the requirements of the question. Most displayed insufficient or only very general understanding of the relevant Basic Law provisions. A few simply didn't understand the question or seemed to have resorted to trying to answer the question by guesswork.

Question 2

This question was the most popular, being attempted by 162 of the 166 candidates who sat the exam. It also had the highest pass rate, at 80%.

In Part 1, which was worth 15 marks, candidates were required to draft an email to Mr Stellios explaining the legal and constitutional relationship between the Court of Final Appeal (CFA) and the NPCSC. Answers were required to address Mr Stellios's claim that the NPCSC can overturn any judgment of the CFA, and to incorporate relevant legal sources.

This part of the question was generally well-answered, though some candidates should have put more emphasis on the content and operation of Article 158 of the Basic Law which is a key provision governing the legal and constitutional relationship between the CFA and the NPCSC. Insufficient focus on Article 158 was the most common defect in answering this part of the question. Some answers did not make any mention of Article 158 whatsoever, which is a fatal omission in defining the relationship between the two bodies. Answers which explained and/or expanded on the content and operation of Article 158, rather than simply copying from it verbatim, generally scored more highly. Some answers failed to address Mr Stellios's claim that the NPCSC can overturn any judgment of the CFA, despite it being expressly required by the question, which would clearly cause marks to be lost.

In Part 2, which was worth 10 marks, candidates were required to draft an email to Mrs Alexopoulou explaining the legal and constitutional basis of judicial independence in Hong Kong, including an explanation of how judges are appointed, and to incorporate relevant legal sources.

This part of the question was also generally well-answered. Some answers cited few, if any, Basic Law articles which was clearly required by the question. Citation of a single article, e.g. Article 85, was inadequate as the question directly engages multiple Basic Law articles. Some answers failed to include an explanation of how judges are appointed, despite this being expressly required by the question, which would clearly cause marks to be lost. A smaller number of answers mixed up Basic Law articles, wrongly attributing the content of one article to another (e.g. mixing up Articles 85 and 88). The most common defects that occurred in answers to Part 2 of the question were therefore easily avoidable.

With regard to both parts of the question, answers that adopted a bullet point approach generally scored less highly than those which were written in paragraphs. After all, the question did require candidates to draft emails to members of a visiting delegation, so a bullet point approach was inappropriate.

Question 3

This question was the least popular, being attempted by 48 out of the 166 candidates who sat the exam. It also had the lowest pass rate, at 56%.

The standard of this year's exam was disappointing compared to previous years. The question was one on judicial review, which allowed for a degree of creativity on the part of the candidates. Credit was given for responses that engaged with the substantive issues and developed a sensible analysis and proposed tenable solutions.

The relevant right engaged was that of freedom of religion and conscience, which most candidates correctly identified. Many candidates, however, could not progress much further than that, failing to develop even a basic procedural or technical framework to explain what the core of CC's grievance was and how this could be addressed, if at all.

Disappointingly, and despite repeated warnings in previous examiners' reports, weaker candidates continued to rely almost entirely on a verbatim transcription of course notes. These 'info dumps' garnered no or very few marks. Candidates should be made aware of that fact: unless their other answers are all very much above average, they run the risk of failing the whole paper. One may query whether a strict policy of awarding zero marks for copying from notes should be adopted and clearly communicated to candidates.

Of the candidates who passed, most correctly identified the underlying principles and process of judicial review, including the remedies that a Court might grant in the event the application were granted. In the interests of clarity, candidates would be well advised to make clear from the outset what exactly they propose be impugned by way of judicial review. It is one thing to challenge the School's ad hoc decision to reject CC's request not to attend the Assemblies; it is, however, altogether another to strike down the Ordinance, or any part of it, on the grounds that it is unconstitutional, as some more ambitious scripts appeared to suggest.

Regrettably, some candidates thought that this was an anti-discrimination question and invoked the jurisdiction of the EOC. The EOC does not, however, have jurisdiction over complaints of alleged religious discrimination. Accordingly, such answers invariably fell below the pass threshold because they did not contain sufficient relevant material.

A substantial minority of candidates drafted well thought-out, technically solid, and practical answers. What distinguished the better scripts was, as is often the case, a willingness to engage with the facts and to think, as one would have to do in practice, in a critical and methodical manner. On the positive side, a few scripts were outstanding, attracting marks of 80+.

There are a number of salutary lessons for future and returning candidates (and their instructors) from this question. First, candidates should read the question carefully and understand what it is that the hypothetical client wants. A number of candidates seemed to have stopped reading at the first paragraph, and just assumed that they

could start writing about freedom of religion and conscience without explaining how this related to the remedies sought by CC. Second, and perhaps unlike other papers where there might be a 'one point, one mark' approach to assessment, in constitutional law credit will be given for the proper (or at least arguable) application of concepts. Candidates should not 'fish' for marks by regurgitating notes but would instead be better served by a sustained engagement with the facts.

Question 4

This question was relatively popular, being attempted by 156 of the 166 candidates who sat the exam. However, it had the second lowest pass rate, at 64%.

Part 1, which was worth 15 marks, was generally competently answered, though the quality of analysis varied significantly. Candidates were required to analyse Article 158 of the Basic Law, explaining the circumstances in which the Court of Final Appeal is obliged to refer a question of interpretation to the NPCSC. At a minimum, candidates had to distinguish between provisions that fall within the HKSAR's autonomous competence and those concerning 'affairs which are the responsibility of the Central People's Government' or 'the relationship between the Central Authorities and the Region', and to explain the "necessity for final judgment" requirement.

Stronger candidates accurately explained that HKSAR courts retain interpretive authority over provisions relating to autonomy, but that mandatory referral is triggered where (i) the provision concerns CPG affairs or the Central–Regional relationship, and (ii) interpretation of that provision is essential to the resolution of the case. Most candidates correctly identified Ng Ka Ling as the foundational authority on the referral mechanism and the limits of judicial autonomy.

In applying these principles to the Professional Qualification Recognition Ordinance scenario, better answers moved beyond abstract description and engaged directly with the characterisation problem: whether the Ordinance genuinely implicates the Central–Regional relationship or remains a matter of internal governance.

Arguments in favour of referral were generally well articulated where candidates reasoned that the Ordinance affects cross-boundary professional mobility and economic integration, thereby engaging the relationship between the Central Authorities and the Region. Stronger answers emphasised that classification of the Ordinance's subject matter was outcome-determinative, and that interpretation of the relevant Basic Law provisions could therefore be essential to the final judgment.

Arguments against referral were persuasive where candidates framed the Ordinance as a legitimate exercise of the HKSAR's high degree of autonomy over professional regulation and labour markets. Better candidates grounded this position in the constitutional allocation of legislative and judicial powers and stressed that not every cross-boundary effect elevates a matter into one of "relationship" within Article 158. Weaker answers, however, tended to assert autonomy in a conclusory manner without engaging with the referral criteria or the necessity requirement.

Part 2, which was worth 10 marks, was generally answered adequately, though quite a large number of the scripts were overly descriptive. Candidates were required to explain how the HKSAR courts would interpret the Basic Law if no NPCSC referral were required, rather than merely listing interpretive doctrines.

Most candidates correctly identified the purposive approach, the need to interpret the Basic Law in light of 'one country, two systems', and the principle of liberal and generous interpretation, particularly in relation to rights-protecting provisions.

Higher-quality answers applied these interpretive principles to assess the constitutionality of the Ordinance, including consideration of equality before the law and other relevant rights provisions where appropriate. Weaker answers merely recited interpretive principles without explaining their practical application to the facts.

Question 5

This question was the second least popular, being attempted by 123 of the 166 candidates who sat the exam. However it had the second highest pass rate, at 76%.

This was a straightforward question on judicial review of administrative action. It set out a somewhat lengthy fact pattern about a statutory tribunal's refusal to exercise its discretion to renew a licence to operate a travel agency. Candidates were asked whether on the facts there were any possible grounds for judicial review, and what remedies might be available. In order to do so, candidates had first to sort out the relevant facts from the irrelevant, something any solicitor needs to be able to do. Most of the candidates were able to do so, to their credit.

Having spotted the relevant facts giving rise to issues such as possible bias, failure to follow prescribed procedure and inadequate reasons, candidates' answers differed widely. At the top end there were candidates who clearly understood and explained the administrative law approach to such issues. At the bottom end were candidates who mistakenly strayed into human rights as guaranteed by various constitutional instruments and statutes. Some of these weaker candidates proceeded on the basis that the travel agency had a 'right' to a licence that had been violated in contravention of the Bill of Rights.

With regard to remedies, all that was required was to refer to the well-known remedies set out in the High Court Ordinance and Rules, such as certioriari and mandamus. Good candidates were able to specify which remedies might be appropriate in this case, but surprisingly, only a few of the best candidates were able to specify that an order of certioriari to quash the tribunal's decision would normally be coupled with remitter to the tribunal for fresh consideration by a different decision-maker. Weaker candidates strayed into discussion of remedial interpretation and suspension of declaration of invalidity, which are only relevant on judicial review of the constitutionality of legislation as to which no issue arose in the question.

On the whole candidates' performance was adequate to good; better on the grounds for judicial review, and rather weaker on remedies. It was pleasing to be able to award passing marks to most candidates.