

**2025 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD VI: HONG KONG
CONSTITUTIONAL LAW**

Wednesday, 5 November 2025



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Question 1 (25 marks)

Your firm's client is a foreign lawyer who is considering setting up an office in Hong Kong and, as part of his due diligence, is seeking more information on the application of national laws of the People's Republic of China ("PRC") in the Hong Kong Special Administrative Region ("HKSAR"). His attention has been drawn to Article 18(2) - (3) of the Basic Law which states as follows:

"Article 18 (2) National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.

Article 18 (3) The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law."

Questions:

You are a newly qualified solicitor in private practice. Draft a memorandum for your supervising partner's approval which, with reference to (i) the criteria for application of national laws stated in the above provisions; (ii) the mechanism for application of national laws stated in the above provisions; and (iii) the specific laws listed in Annex III (attached), explains:

(See over the page for a continuation of Question 1)

(1) How is this mechanism fundamental to establishing and maintaining the HKSAR's high degree of autonomy?

(10 marks)

(2) How does this mechanism define the HKSAR's constitutional status and its constitutional relationship with the central authorities of the PRC?

(15 marks)

Your memorandum is expected to cite relevant legal authorities, including both national laws of the PRC and local laws of HKSAR, cases, interpretations by the Standing Committee of the National People's Congress and other relevant examples.

(See the next page for a continuation of Question 1)

List of National Laws in Annex III of the Basic Law

1. Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China
2. Resolution on the National Day of the People's Republic of China
3. Declaration of the Government of the People's Republic of China on the Territorial Sea
4. Nationality Law of the People's Republic of China
5. Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities
6. Law of the People's Republic of China on the National Flag
7. Regulations of the People's Republic of China concerning Consular Privileges and Immunities
8. Law of the People's Republic of China on the National Emblem
9. Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone
10. Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region
11. Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf
12. Law of the People's Republic of China on Judicial Immunity from Compulsory Measures Concerning the Property of Foreign Central Banks
13. Law of the People's Republic of China on the National Anthem
14. Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

Question 2 (25 marks)

You work as Government Counsel in the Department of Justice (the “Department”) of the Hong Kong Special Administrative Region (“HKSAR”) Government. An overseas delegation has arrived in Hong Kong to learn about the political and constitutional structure of Hong Kong. The Department has organised an afternoon conference event for the delegation. Despite your colleagues giving clear presentations on Hong Kong’s political and constitutional structure, several members of the delegation appear to have enjoyed their lunch rather too much and not to have listened carefully to the presentations. As the event concluded, some members of the delegation were overheard expressing fundamental misunderstandings about the role and powers of state institutions in Hong Kong and the People’s Republic of China more broadly.

Your supervisor is concerned that the delegation will leave Hong Kong with a false understanding of Hong Kong’s political and constitutional structure and is particularly concerned that they will claim to have been told this erroneous information by the Department. There were two comments overheard by your supervisor that have caused specific concern. One member of the delegation, Mr. Stellios, was overheard saying the following:

“I don’t understand why the Court of Final Appeal carries that name. It is not a court of final appeal at all, because the National People’s Congress Standing Committee can overturn any judgment of the Court of Final Appeal. It’s the National People’s Congress Standing Committee that is the real court of final appeal.”

(See the next page for a continuation of Question 2)

Another member of the delegation, Mrs. Alexopoulou, was overheard saying the following:

“There can’t be any judicial independence in Hong Kong. The judges are political appointees, so how can they rule on cases ‘without fear or favour’? There is no guarantee of judicial independence in that system.”

Your supervisor sends you an email instructing you to urgently email these two members of the delegation to correct their misunderstandings.

Questions:

(1) Draft an email to Mr. Stellios explaining the legal and constitutional relationship between the Court of Final Appeal and the National People’s Congress Standing Committee. As part of your answer, address Mr. Stellios’s claim that the National People’s Congress Standing Committee can overturn any judgment of the Court of Final Appeal. Incorporate relevant legal sources into your answer.

(15 marks)

(2) 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. Incorporate relevant legal sources into your answer.

(10 marks)

Question 3 (25 marks)

Chloe Chan (“CC”) is a final year A-Levels pupil at the Mater Suspiriorum Convent School in Austin, Hong Kong (the “School”), which is a well-known and highly regarded institution for girls. Pupils at the School regularly obtain some of the highest public examination marks in Hong Kong. The School is a statutory body established under the Mater Suspiriorum Convent School Ordinance (the “Ordinance”) and is funded, in part, by the Government of Hong Kong.

Insofar as is relevant, section 3 of the Ordinance provides as follows:

“The [School] shall be a body corporate and shall have perpetual succession and may sue or be sued in that name and shall have a common seal”.

Insofar as is relevant, section 4 of the Ordinance provides as follows:

“The objects of the [School] are to offer without regard to race or religion, a modern liberal education through the medium of the English language to girls who are able to benefit from such an education [...]”

CC is very academically minded. She holds an offer from Casterbridge University in England (the “University”) to read for a BSc in Quantitative Finance. That is a highly competitive course. CC has been informed by the University that she must obtain top grades in all her subjects to meet the requirements of her offer. If she fails to score top marks in any given final exam, her place will be forfeited and assigned to another candidate.

(See the next page for a continuation of Question 3)

At the beginning of each school day, the School requires all students to participate in an assembly involving a religious ceremony – essentially, Roman Catholic prayers followed by a sermon (the “Assemblies”). Assemblies usually last between 45 – 60 minutes. CC considers that the Assemblies are distracting and a waste of time. She has written to the School on multiple occasions to apply to be exempted from the Assemblies so that she can study for her exams without interruption.

Moreover, CC is a committed atheist and objects in principle to participating in religious ceremonies.

Between May and September 2025, CC and the School exchanged six rounds of correspondence regarding the Assemblies. In the last letter in that chain of correspondence dated 12 September 2025 (the “Letter”), the School wrote to CC as follows:

“[...] on behalf of the [School] the final decision of the Board of Governors is that it is contrary to the [School’s] ethos and vocation to exempt students from attending the [Assemblies]. Religious instruction and acts of devotion are essential in providing all students with a comprehensive spiritual and moral education. Failure to participate may result in disciplinary sanctions, including, but not limited to, suspension and exclusion [i.e., expulsion]”.

CC is due to sit her A-Level exams in May 2026 and has sought urgent advice on how, if at all, she can challenge the School’s decision to compel her to participate in the Assemblies (the “Decision”). The Ordinance, however, does not contain any mechanism for appealing the administrative and/or disciplinary decisions of the School.

(See over the page for a continuation of Question 3)

Question:

You are a first-year associate at the boutique litigation firm Dobermann & Rottweiler. Your supervising partner has taken on CC's case on a *pro bono* basis. As he is busy with billable work, he has instructed you to write a succinct memorandum to enable him to advise CC on whether the Decision to enforce her attendance at the Assemblies is lawful and, if not, what remedies are available to her and how such remedies could be obtained.

You should assume that the Ordinance was duly enacted and that the only provisions of the Ordinance that are relevant to your analysis have been reproduced above. You should also assume that CC is an adult who is capable of acting on her own behalf.

(25 marks)

Question 4 (25 marks)

The Legislative Council recently enacted the Professional Qualification Recognition Ordinance. This Ordinance establishes a new, highly stringent process for recognising professional qualifications obtained in Mainland China for practice in Hong Kong (e.g., medical, legal, or engineering professions). It introduces additional examinations, residency requirements, and a mandatory ‘common law competency assessment’. The Hong Kong Special Administrative Region (“HKSAR”) Government states the Ordinance is designed to uphold the high standards of Hong Kong’s professional sectors and protect local employment.

A group representing Mainland professionals residing in Hong Kong, the Cross-Boundary Professionals Alliance, challenges the Ordinance’s validity in the HKSAR courts. They argue that the Ordinance, by creating excessive barriers, discriminates against Mainland professionals and effectively undermines the spirit of integration and cooperation envisioned by the Basic Law. They contend that the Ordinance infringes upon matters relating to the ‘relationship between the Central Authorities and the Region’ by negatively impacting the flow of talent and economic activity from the Mainland to the HKSAR and thus falls outside the HKSAR’s legislative autonomy in this specific context.

The HKSAR Department of Justice argue that the Ordinance is a legitimate exercise of the HKSAR’s high degree of autonomy in managing its own professional standards and labour market, as guaranteed by the Basic Law. They maintain that the interpretation of provisions related to professional qualifications and standards is primarily within the jurisdiction of the HKSAR courts and does not necessitate an interpretation by the National People’s Congress Standing Committee (“the NPCSC”).

The case has reached the Court of Final Appeal.

(See over the page for a continuation of Question 4)

Questions:

Write a research brief addressing the following two issues:

- (1) Judicial Referral Criteria.** Given the arguments raised by both the Cross-Boundary Professionals Alliance and the HKSAR Department of Justice, under what specific conditions would the Court of Final Appeal be *required* to seek an interpretation from the NPCSC regarding the Professional Qualification Recognition Ordinance? Analyse the relevant criteria for judicial referral under Article 158 of the Basic Law and assess their applicability to this scenario.

(15 marks)

- (2) HKSAR Courts' Interpretive Approach:** If the HKSAR courts determine that no referral to the NPCSC is necessary, what principles should they apply when interpreting the Basic Law provisions relevant to the HKSAR's legislative autonomy concerning professional qualifications, the rights of Mainland professionals at issue, and the 'relationship between the Central Authorities and the Region'? Discuss how these principles might guide their decision on the Ordinance's validity.

(10 marks)

Question 5 (25 marks)

You are a newly admitted solicitor in an international firm which acts for the Blue Danube group of companies (“the group”). You have been asked to help your managing partner advise on a possible application for judicial review.

The group is based in Europe but has had a presence in Hong Kong for more than a century, operating a range of businesses from wines and spirits to private jet services. One of the businesses is a travel agency, Blue Danube Travel Agency (HK) Limited (“BD Travel”).

BD Travel has a well-established clientele and for decades was quite profitable. Before the Covid-19 pandemic, it employed more than 100 people under direction of an experienced manager, Mr. P.W. Law. Unfortunately, BD Travel’s business was decimated by the pandemic. Business volume dropped by more than 90%. Facing huge losses, the group decided to reduce BD Travel’s overheads drastically. Commercial leases were not renewed, 80% of the staff were let go, and BD Travel’s management was merged with that of the aviation division. This meant that Mr. P.W. Law was effectively made redundant. He was offered a generous severance package and asked to resign so there would be no blemish on his career. Mr. P.W. Law was very unhappy, but did as asked. He refused the group general manager’s offer of a farewell banquet.

Once pandemic travel restrictions had been lifted, BD Travel’s business revived and it returned to profitability.

In September 2025, BD Travel applied to the Travel Industry Authority (“the Authority”) to renew its 12-month Travel Agent licence. The application, and a reconsideration, were refused. The reason given in a curt letter was that there had been complaints about BD Travel’s treatment of its staff. The letter was signed by Mr. P.W. Law on behalf of the Authority. This was the first that BD Travel had heard of any such complaints.

(See over the page for a continuation of Question 5)

Your managing partner co-ordinates all of the firm's work for the group. She has asked you to advise what, if anything, can be done to help BD Travel renew its licence, saying she is a corporate and commercial solicitor and not familiar with matters such as judicial review. She asks only for a general indication whether there could be any grounds to pursue, so she can advise the client whether it would be worthwhile to instruct counsel for advice.

Question:

Prepare a note to your managing partner advising what possible grounds for judicial review there might be, and what remedies might be available.

In your answer you are not expected to know anything about the Travel Industry Ordinance, Cap. 634, save that:

- a travel agent's licence is required, and may be granted or renewed by the Authority,
- in order for a licence or renewal to be granted, the Authority must be satisfied that the applicant is 'suitable', which is defined to include factors such as insolvency, criminality and record in relation to previous applications,
- in the event of complaint that a licensed agency is not suitable to hold a licence the Authority may conduct a statutory investigation, with a right to be heard (no such investigation has been held in this case),
- reasons must be given in the event it is decided to refuse a renewal application.

(25 marks)

END OF TEST PAPER