

# **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 constitutional judicial review 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.

### **2. Political Structure**

- Separation of Powers;
- Executive authorities of the HKSAR;
- Legislative Council;
- Legislative process;
- Executive accountability;
- Selection of the Chief Executive and 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. Constitutional Judicial Review**

- Judicial review of constitutionality of primary and subsidiary legislation;
- Constitutional 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**

- Kemal Bokhary, Michael Ramsden & Stuart Hargreaves, *Hong Kong Basic Law Handbook* (Sweet & Maxwell, 2015);
- Johannes Chan & C.L. Lim, *Law of the Hong Kong Constitution* (Sweet & Maxwell Asia, 2<sup>nd</sup> edition, 2015);
- Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (HKU Press, 2<sup>nd</sup> edition, 1999);
- Danny Gittings, *Introduction to the Hong Kong Basic Law* (HKU Press, 2<sup>nd</sup> edition, 2016);
- P.Y. Lo, *The Hong Kong Basic Law* (LexisNexis, 2011);
- P.Y. Lo, *The Judicial Construction of Hong Kong's Basic Law* (HKU Press, 2014);
- Stephen Thomson, *Administrative Law in Hong Kong* (Cambridge University Press, 2018);
- Wang Shuwen, *Introduction to the Basic Law of the Hong Kong Special Administrative Region* (Law Press, 2<sup>nd</sup> English edition, 2009);
- 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 Laws of the People's Republic of China listed in Annex III of the Basic Law;
- Interpretations of the Basic Law issued by the Standing Committee of the National People's Congress;
- Decisions on issues involving the Basic Law issued by the National People's Congress and its Standing Committee;
- 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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