

# **Syllabus for Hong Kong Constitutional Law**

## **1. The Drafting History of the Hong Kong Basic Law and Hand-over**

The Colonial History of Hong Kong - The Constitution and the System of British Hong Kong Government - Development of the Administrative System – Development of Democracy in Before 1997 - Sino-British Negotiation and the Joint Declaration - the Drafting of the Basic Law – Understanding the Doctrine of One Country Two Systems - The Major Guiding Principles underlying the Hong Kong Basic Law (“One Country Two Systems”, Hong Kong People Ruling Hong Kong, and High Degree of Autonomy) - Scope of Application of Chinese Constitution and National Laws – the Establishment of the HKSAR;

## **2. The Framework of the Basic Law**

Models of Autonomy under One Country, Two Systems - The Nature of the Basic Law – The Structure of the Basic Law - General Principles – Separation of Powers in the Basic Law - Relationship between the Central Authorities and the HKSAR;

## **3. The Political and Administrative System**

The Political Structure - Basic principles - Forms of Representation - NPC - Centralized and Consultative Government - Separation of Powers or Executive-led Government - Legislative Council – Composition - Powers and Functions of the LegCo - Restriction on Law-making Powers - Law-making Process - Supervision of Executive and Parliamentary Enquiry - Public Finance - Impeachment of the Chief Executive - Selection of the Chief Executive - The Executive and the Chief Executive in Council - Contradictions in the Political System - Neutrality of the Civil Service and the Ministerial System - Localization and Principal Officials;

## **4. Constitutional Jurisdiction of the Courts of the HKSAR**

Parliamentary Sovereignty and its Application to the HKSAR – Doctrine of Act of State - Facts of State - Judicial Review of legislation - resolutions of the NPCSC;

## **5. Interpretation and Amendment of the Basic Law**

The importance of Interpretation and the Mode of Interpretation - The Scheme for Interpretation under Art 158 - Judicial Referral, Classification Test and Necessity Test - The Interpretation Powers of the NPCSC and the HKSAR Courts - Problems arising under Art 158 - Legislative Interpretation versus Judicial Interpretation - Role of the Basic Law Committee - Principles of and Approach to Constitutional Interpretation - The Scheme of Amendments to the Basic Law;

## **6. Rights and Freedoms**

The General Framework for the Protection of Rights and Freedoms - Chapter 3, the Bill of Rights Ordinance and the ICCPR - ICESCR and ILO - Civil and Political Rights - Economic Rights and Property Rights - Social and Cultural Rights and Policies - Lawful Traditional Rights and Interests of the New Territories Indigenous Inhabitants - Limitations or Restrictions of Rights and Freedoms - State of Emergency and Application of National Laws - Restrictions of Rights and Freedoms under Art 23;

## **7. International Aspects of the HKSAR**

Chinese View of International Law - External Affairs Powers of the HKSAR - Role and Problems of HKSAR in International Legal Regime - Succession of Rights and Obligations in International Treaties Applicable to Hong Kong before 1997 - Capacity to Participate in International Treaties, Conferences and Organizations - Conflicts of Law and Recognition of Judgments of Taiwan Courts;

## **8. The Constitutional System of the People's Republic of China**

Theory of Socialist Constitution - A Brief History of Chinese Constitutional System - The PRC Constitution and its Amendments – The Central Authorities of the PRC (NPC, NPCSC, State Council, Central Military Commission) - The Role and Organization of the Communist Party - Special Administrative Regions under Art 31 - Rights and Obligations of the Citizen - Sources of Law (Legislative Interpretation, Judicial Interpretation and Executive Interpretation) - The Judiciary, the Procuratorate and the Public Security - Review of the Judiciary - A Developing Constitution.

## Recommended Reading List for Hong Kong Constitutional Law

### Major Readings

\*\*Johannes M. M. Chan & C.L. Lim (eds), *The Law of the Hong Kong Constitution* (Sweet & Maxwell, 2<sup>nd</sup> edn. 2015).

\*\*Danny Gittings, *Introduction to the Hong Kong Basic Law* (HKU Press, 2<sup>nd</sup> edn. 2016).

### Reference work

Michael Ramsden & Stuart Hargreaves (eds.), *Hong Kong Basic Law Handbook* (Sweet and Maxwell, 2015)

P Y Lo, *The Hong Kong Basic Law* (LexisNexis Butterworths, 2011)

### Readings

Janice Brabyn, "Leung Kwok Hung and others through the Hong Kong Courts", (2006) 36 *HKLJ* 83.

Georg Brunner, "The Functions of Communist Constitutions: An Analysis of Recent Constitutional Developments", (1977) 3 *Rev. Soc. Law* 121-153

Johannes Chan, "The Jurisdiction and Legality of the Provisional Legislative Council", (1999) 27 *HKLJ* 374

Johannes Chan, "Some Thoughts on Constitutional Reform in Hong Kong", 34 (2004) *HKLJ* 1

Johannes Chan, "Civil Liberties, Rule of Law and Human Rights: The Hong Kong Special Administrative Region in its First Four Years" in Lau Siu-kai (ed.) *The First Tung Chee-hwa Administration: The First Five Years of the HKSAR* (Chinese University Press, 2002)

Chan, Fu & Ghai (ed.) *Hong Kong's Constitutional Debate: Conflict over Interpretation* (HKU Press, 2000)

Chan, Johannes and Harris, Lison (eds.), *Hong Kong's Constitutional Debate, 2005* (Hong Kong: Hong Kong Law Journal Limited, 2005)

Chan, J. and Chan, E. "Perceptions of Universal Suffrage and Functional Representation in Hong Kong: A Confused Public?" (2006) *Asian Survey* 257-274

Albert Chen, "From Colony to Special Administrative Region: Hong Kong's Constitutional Journey" in Raymond Wacks, *The Future of the Law in Hong Kong* (Oxford University Press, 1989), pp. 76-126.

Albert Chen, "The Concept of Justiciability and the Jurisdiction of the Hong Kong Courts", (1997) 27 *HKLJ* 387

Albert H. Chen, "The Concept of 'One Country Two Systems' and its Application to Hong Kong" in C. Stephen Hsu (ed.) *Understanding China's Legal System: Essays in Honor of Jerome A. Cohen* (New York University Press, 2003)

- Albert Chen, "The interpretation of the Basic law - common law and Mainland Chinese perspectives", (2000) 30 *HKLJ* 380
- Albert Chen, "Hong Kong's Legal System in the New Constitutional Order" in Jianfu Chen, Yuwen Li and Jan Michiel Otto (eds), *Implementation of Law in the Republic of China* (The Hague: Kluwer Law International, 2002), pp. 213-245.
- Albert H. Y. Chen "The Constitutional Controversy in Hong Kong Spring 2004", 34 (2004) *HKLJ* 215
- Albert H.Y. Chen, "The Fate of the Constitutional Reform Proposal of October 2005", (2005) 35 *HKLJ* 537
- Albert Chen, "Constitutional Adjudication in Post-Hong Kong", (2006) 15 *Pacific Rim Law and Policy Journal* 627-682.
- Albert Chen, "One Country Two Systems' from a Legal Perspective" in Yue-man Yeung (ed)., *The First Decade: The Hong Kong SAR in Retrospective and Introspective Perspectives* (Chinese University Press, 2007), pp. 161-188.
- Albert H.Y. Chen, "A New Era in Hong Kong's Constitutional History", (2008) 38 *HKLJ* 1
- Albert H.Y. Chen, "Constitutional Developments in Autumn 2009", (2009) 39 *HKLJ* 751
- Albert Chen, "The Theory, Constitution and Practice of Autonomy: The Case of Hong Kong" in Jorge Oliveira and Paulo Cardinal (eds), *One Country, Two Systems, Three Legal Orders – Perspectives of Evolution* (Springer, 2009), pp. 751-767.
- Albert Chen, "Focus on the Congo Case: Introduction", (2011) 41 *HKLJ* 369.
- Cheng Jie, "The Story of a New Policy", (2009) 15 *Hong Kong Journal*.
- Diamond Larry, "Prospects for Hong Kong's Democratization", *Hong Kong Journal*, January 2008
- Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (HKU Press, 2<sup>nd</sup> ed. 1999)
- Hurst Hannum & Richard B. Lillich, "The Concept of Autonomy in International Law" in Dinstein (ed.), *Models of Autonomy* (1981)
- Ip, Eric C., *Law and Justice in Hong Kong*, 2nd ed., Sweet & Maxwell, Hong Kong, 2016
- Ma Ngok, "Executive-Legislative Relations: Assessing Legislative Influence in an Executive-Dominant System" in Lau Siu-Kai (ed.) *The First Tung Chee-hwa Administration: The First Five Years of the Hong Kong Special Administrative Region* (The Chinese University Press, 2002)
- Ma Ngok, "Democratice Development in Hong Kong: A Decade of Lost Opportunities" in Cheng, J. (ed.) *The Hong Kong Special Administrative Region in its First Decade* (Hong Kong: City University of Hong Kong Press, 2007)

Nwabueze, *Constitutionalism In the Emergent States* (1973), Chapter 1.

Carole Peterson, “Hong Kong’s Spring of Discontent: The Rise and Fall of the National Security Bill in 2003” in Fu, Peterson and Yong (eds.) *National Security and Fundamental Freedoms: Hong Kong’s Article 23 Under Scrutiny* (Hong Kong, Hong Kong University Press, 2005).

S. de Smith, *Constitutional and Administrative Law* (7<sup>th</sup> ed. 1994), pp.3-13

Benny Tai, “The Development of Constitutionalism in Hong Kong” in Raymond Wacks, *The New Legal Order in Hong Kong* (HKU Press, 1999)

Benny Y. T. Tai, “Chapter One of Hong Kong's New Constitution: Constitutional Positioning and Repositioning” in Ming Chan and Alvin Y. So (ed.) *Crisis and Transformation in China's Hong Kong* (M.E. Sharpe, 2002)

Benny Tai, "One country two systems: the two perspectives", (2002) *Macau Law Journal* (Special Issue) 143-163

Benny Tai, “The Principle of Minimum Legislation for Implementation Article 23 of the Basic Law”, (2002) 32 *HKLJ* 579-614

Wang Zhenmin, “The Significance of China’s Decision on Universal Suffrage”, *Hong Kong Journal*, APRIL 2008, No. 10

Po Jen Yap, “Democratic Republic of the Congo v FG Hemisphere: Why Absolute Immunity Should Apply but a Reference was Unnecessary”, (2011) 41 *HKLJ* 393.

Po Jen Yap, “10 Years of the Basic Law: The Rise, Retreat and Resurgence of Judicial Power in Hong Kong”, (2007) 36 *Common Law World Review* 166- 191.

Young, S., “Restricting Basic Law Rights in Hong Kong”, (2004) 34 *HKLJ* 109.

Young, S. and Cullen, R., *Electing Hong Kong’s Chief Executive* (Hong Kong: Hong Kong University Press, 2010)

Young S. and Law, A. *A Critical Introduction to Hong Kong’s Functional Constituencies* (Civic Exchange, 2004)

## **Sources**

Sino-British Joint Declaration on the Future of Hong Kong (1984)

Constitutional of the people’s Republic of China (1982)

The Basic Law of the Hong Kong Special Administrative Region (1990)

The International Covenant on Civil and Political Rights (1966)

The International Covenant on Economic, Social and Cultural Rights (1966)

Hong Kong Bill OF Rights Ordinance (Cap. 383, 1991)

The Interpretation by the Standing Committee of the National People's Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Tenth Session of the Standing Committee of the Ninth National People's Congress on 26 June 1999)

The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Eighth Session of the Standing Committee of the Tenth National People's Congress on 6 April 2004)

Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008 (Adopted at the Ninth Session of the Standing Committee of the Tenth National People's Congress on 26 April 2004)

Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (Adopted at the Fifteenth Session of the Standing Committee of the Tenth National People's Congress on 27 April 2005)

Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage (Adopted at the Thirty First Session of the Standing Committee of the Tenth National People's Congress on 29 December 2007)

Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region (Approved at the Sixteenth Session of the Standing Committee of the Eleventh National People's Congress on 28 August 2010)

Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (Adopted at the Twenty Second Session of the Standing Committee of the Eleventh National People's Congress on 26 August 2011)

Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 (Adopted at the Tenth Session of the Standing Committee of the Twelfth National People's Congress on 31 August 2014)

Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (Adopted at the 24<sup>th</sup> Session of the Standing Committee of the Twelfth National People's Congress on 7 November 2016)

## Cases

Chan Kam-Nga and Others v Director of Immigration (FINAL APPEAL NO. 13 OF 1998 (CIVIL))([1999] 1 HKLRD 304, [1999] 1 HKC 347)

The Director of Immigration v. Master Chong Fung Yuen (FACV No. 26 of 2000)([2001] 2 HKLRD 533)

Democratic Republic of the Congo v FG Hemisphere (2011) 14 HKCFAR 95 (provisional judgment)

Democratic Republic of the Congo v FG Hemisphere (2011) 14 HKCFAR 395 (final judgment)

Gurung Kesh Bahadur v Director of Immigration (FACV No. 17 of 2001, [2002] HKCFA 30)

Kong Yunming v The Director of Social Welfare [2013] HKCFA 107.

Kwok Hay Kwong v Medical Council [2008] 3 HKLRD 524

Lau Kong-yung and 16 others v. Director of Immigration (FACV Nos.10 11 of 1999) ([1999] 3 HKLRD 778, [1999] 4 HKC 731)

Leung Kwok Hung and Others v. HKSAR (FACC 1 & 2/2005)

HKSAR v. Ma Wai-kwan David & Others (Reservation of Question of Law No. 1 of 1997) ([1997] HKLRD 761, [1997] 2 HKC 315)

Ng Ka-Ling and others v. Director of Immigration (FINAL APPEAL NO. 14, 15, 16 OF 1998 (CIVIL))([1999] 1 HKLRD 315, [1999] 1 HKC 291)

Ng Ka Ling v. Director of Immigration (No. 2) (FINAL APPEAL NO. 14, 15, 16 OF 1998 (CIVIL))([1999] 1 HKLRD 577, [1999] 1 HKC 425)

HKSAR v Ng Kung-Siu (FACC4/1999)([1999] 3 HKLRD 907, [2000] 1 HKC 117)

Yeung May Wan v HKSAR [2005] 3 HKLRD 212

Fok Chun Wah, FACV 10 of 2011

Leung Kwok-hung v. The President of the LegCo and Secretary for Justice, FACV 1/2014

Kwok Cheuk Kin v. Secretary for Constitutional and Mainland Affairs CACV 57/2014

Hysan Development Co. Ltd and others v. Town Planning Board and Another FACV Nos. 21 & 22 of 2015