

For updates to this book, and other interesting material relating to the Hong Kong Basic Law, visit <http://www.hkbasiclaw.com>

Hong Kong University Press
The University of Hong Kong
Pokfulam Road
Hong Kong
www.hkupress.org

© Hong Kong University Press 2013

ISBN 978-988-8139-48-4 (*Hardback*)
ISBN 978-988-8139-49-1 (*Paperback*)

All rights reserved. No portion of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage or retrieval system, without permission in writing from the publisher.

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library.

10 9 8 7 6 5 4 3 2 1

Printed and bound by Condor Production Ltd., Hong Kong, China

Contents

Preface	vii
Main Abbreviations	ix
Table of Cases	xi
Table of Hong Kong Basic Law Provisions and Related Documents	xvii
Table of Other Legislation and International Agreements, Conventions and Treaties	xxiii
Chapter 1 Introduction	1
Chapter 2 Birth of the Hong Kong Basic Law	9
2.1 The 1997 Deadline	10
2.2 Sino-British Joint Declaration	13
2.3 Drafting the Hong Kong Basic Law	18
2.4 Battles and Changes	21
2.5 Sino-British Disputes	29
2.6 Through Train	33
Chapter 3 What Is the Hong Kong Basic Law?	37
3.1 International Dimension	37
3.2 Domestic Dimension	40
3.3 Constitutional Dimension	46
3.4 Relationship With Chinese Constitution	50
Chapter 4 How High a Degree of Autonomy?	55
4.1 Executive Power	58
4.2 Legislative Power	72
4.3 Judicial Power	80
4.4 Dispute Resolution	85
Chapter 5 System of Government	93
5.1 Chief Executive	95
5.2 Separation of Powers	103
5.3 Small-Circle Selection Process	107

5.4	Hong Kong SAR Government	114
5.5	Elected Legislature	124
5.6	Functional Constituencies	131
5.7	How Powerful a Legislature?	142
Chapter 6	Role of the Courts	153
6.1	Judicial Independence	155
6.2	Judicial Review	168
6.3	Composition of the Court of Final Appeal	188
6.4	Constitutional Role of the Court of Final Appeal	195
6.5	Limits on Courts	210
Chapter 7	Interpretation and Amendment	219
7.1	Hong Kong Courts	223
7.2	Standing Committee	230
7.3	Avoiding Interpretations	240
7.4	Judicial Referral	250
7.5	Amendment	258
Chapter 8	Protection of Human Rights	263
8.1	ICCPR and Bill of Rights	270
8.2	Restrictions on Rights	285
Chapter 9	What Will Happen After 2047?	303
9.1	Future of Property Rights	304
9.2	What Does 50 Years Mean?	307
9.3	How Much Change?	309
9.4	Parallels With 1997	312
Appendix 1	Full Text of the Hong Kong Basic Law	315
Appendix 2	Full Text of Related Decisions and Interpretations	351
Bibliography		377
Index		389

Preface

The aim of this text is to provide a straightforward introduction to the Hong Kong Basic Law that can be easily understood by those with no prior knowledge of the subject. As a former journalist I have sought to place much emphasis on readability, with the use of acronyms kept to a minimum and much of the additional detail conveyed through comprehensive footnotes in order to provide for a less cluttered text.

As an introductory text, this book does not seek to cover every last detail about the Hong Kong Basic Law. However, based on more than ten years' experience of teaching this subject, I believe it covers all the major areas necessary for a broad understanding of the nature of this important document and the major ways in which it impacts on life in Hong Kong today. For those wishing to use this book as an introduction to more detailed research, extensive reference is made to the many more advanced texts on particular areas.

Although written for an audience wider than students, the structure of the book closely follows the syllabus for many popular courses in both Hong Kong Basic Law and Hong Kong Constitutional Law and should prove particularly useful for those studying these subjects. Among others, these include students studying Hong Kong Constitutional Law for both the PCLL Conversion Examination and the CPE (Graduate Diploma in English and Hong Kong Law), as well as students studying Hong Kong Basic Law on the Diploma in Legal Studies and the Associate of Arts in Legal Studies.

History is, of course, constantly evolving. Important developments can be expected in coming years, especially as Hong Kong moves towards the promised introduction of universal suffrage for the election of first the Chief Executive and then all members of the Legislative Council. I have sought to provide some pointers as to how such events may unfold, based on the current thinking on these issues. But if there is one thing that the experience of the past 15 years has taught us, it is that events in Hong Kong sometimes take a turn which no one could have predicted.

A word on the numerous references to specific provisions in the Hong Kong Basic Law: In order to make it easier for readers to understand exactly which part of these often lengthy provisions is being described, I have followed the common practice of referring to specific paragraph numbers. So, for example, Article 158(3) denotes the third paragraph of Article 158. Where, as is occasionally the case, the Hong Kong Basic Law uses sub-section numbers, these follow the relevant paragraph number. So, for example, Article 24(2)(3)—which was the subject of one of the most important controversies over