Rights and Responsibilities of Citizens
Foundation part: Rights, Responsibilities and the Rule of Law

• How do our rights and responsibilities change as we grow up? What is their significance to me and to society?
• Does the law protect non-permanent Hong Kong residents?
• How can we ensure the law protects all Hong Kong residents effectively?

Through cases of different categories of Hong Kong residents, this module points out the rights and responsibilities applicable to Hong Kong residents.
There are people of different backgrounds, ethnicities and cultures living in Hong Kong. Please refer to Article 24 of the Basic Law. Can you recognize the identity of the following people?

Basic Law

Article 24

Residents of the Hong Kong Special Administrative Region (“Hong Kong residents”) shall include permanent residents and non-permanent residents.

The permanent residents of the Hong Kong Special Administrative Region shall be:

1. Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
2. Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
3. Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
4. Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
5. Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
6. Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

The above-mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region and shall be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode.

The non-permanent residents of the Hong Kong Special Administrative Region shall be persons who are qualified to obtain Hong Kong identity cards in accordance with the laws of the Region but have no right of abode.
A. Permanent Hong Kong Residents

Mr. Ho, retiree

In 1950, I entered Hong Kong as a stowaway from the mainland when I was 12 years old. There were no immigration policies in Hong Kong in those days. I registered for a permanent identity card after I arrived in Hong Kong. Since then, I have been working and living in Hong Kong, and I established a family. Now, I am retired. I have long seen Hong Kong as my home.

Identity: A

B. Non-Permanent Hong Kong Residents

Ms. Cheung, from Fujian

My parents are Fujianese. I had been living in Fujian since I was born. Seven years ago, my dad came to Hong Kong alone to work there, and he obtained a Hong Kong Permanent Identity Card this year. Now I’ve just obtained a Two-way Permit to come to Hong Kong and visit my dad.

Identity: C

C. Non-Hong Kong Residents

Mr. Brown, tourist

Hello! I am Brown. I am a tourist from the US. I like traveling around to see the different cultures of different places. This year, I planned to stay in Hong Kong for two months to experience the mix of Chinese and Western cultures.

Identity: C
Why should the government define whom of the Hong Kong residents are permanent residents? What is its significance?

It is because permanent residents have the right of abode in Hong Kong. Clearly defining Hong Kong permanent residents can help with the long-term planning of various policies of the government. In addition, Hong Kong permanent residents have the right to vote and right to stand for election. These are the rights that non-permanent residents cannot enjoy.

Chow, university student

I was born and raised in Hong Kong. I have been living in Hong Kong since I was born. I enrolled at the University of Hong Kong this year. I wish to become an administrative officer of the HKSAR Government and serve Hong Kong people.

Tony, software designer

I am a computer software designer. I was transferred from the India head office to the Hong Kong branch three years ago. I couldn’t adapt to the fast pace of Hong Kong when I just arrived but I feel much better now.
In 2003, the HKSAR Government established the “Admission Scheme for Mainland Talents and Professionals”. The objective of the Scheme is to attract qualified Mainland talents and professionals to work in Hong Kong. They can acquire the right of abode in Hong Kong when qualified, such as musician Lang Lang, actress Zhang Ziyi etc. The Mainland talents and professionals must possess skills and knowledge not readily available or in shortage locally. They must be able to contribute to the operation of the firms and sectors concerned with a view to facilitating economic development in Hong Kong. The Scheme also caters for the entry of talents and professionals in the arts, culture and sports sectors as well as those in the culinary profession.

Reference: website of the Immigration Department, the Government of the Hong Kong Special Administrative Region

1. What do you think are the attractions of this Scheme to mainland talents and professionals to come to work in Hong Kong?
2. What do you think is the significance of this Scheme to Hong Kong’s economic and cultural development? Please explain.
3. Do you agree with the government to continue to promote this Scheme? Why?

Different Categories of Hong Kong Residents
There are two types of Hong Kong residents, including permanent and non-permanent residents. Permanent residents have the rights of abode, while non-permanent residents do not. The two categories of people possess different categories of identity cards in order to identify different Hong Kong residents.
Permanent Hong Kong residents

Most of the permanent Hong Kong residents are Chinese citizens born in Hong Kong. According to Article 24 of the Basic Law, Chinese citizens born in Hong Kong will enjoy permanent residency. In addition, some people who work in Hong Kong and have resided in Hong Kong for a continuous period of more than seven years are also qualified to apply for permanent residency.

Therefore, permanent residency not only applies to Chinese citizens born in Hong Kong. Applicants to “Admission Scheme for Mainland Talents and Professionals”, “Capital Investment Entrant Scheme”, “Immigration Arrangements for Non-local Graduates”, etc., who have ordinarily resided in Hong Kong for a continuous period of more than seven years, can apply for the right of abode in Hong Kong and become permanent Hong Kong residents.

Permanent Hong Kong residents have taken Hong Kong as their place of permanent residence. They are long-term residents in Hong Kong and have connection with Hong Kong. They contribute to the long term social development of Hong Kong.

Non-permanent Hong Kong residents

Non-permanent Hong Kong residents do not have the right of abode in Hong Kong. This type of Hong Kong residents need to apply for an extension of stay or return to original places of residence when their current visas expire. They do not enjoy some of the rights that Hong Kong permanent residents enjoy. For example, the right to vote and the right to stand for election.

Most of the non-permanent Hong Kong residents regard Hong Kong as the place for earning their living, and they stay and work in Hong Kong for a short period of time. They will return to their original places of residence after their work in Hong Kong. Therefore, Hong Kong government grants them the non-permanent Hong Kong resident status, making them eligible to reside in Hong Kong and contribute to the social development of Hong Kong.
Articles 25-41 of the Basic Law state the basic rights of Hong Kong residents. According to the provisions, all Hong Kong residents shall be equal before the law. Hong Kong is a free society and Hong Kong residents enjoy a high degree of freedom and various rights, including freedom of speech, freedom of the person, and homes and other premises of Hong Kong residents shall be inviolable, freedom of communication, freedom to enter or leave the HKSAR, freedom of conscience, freedom of choice of occupation, freedom of marriage and the right to raise a family freely, freedom to engage in academic research, literary and artistic creation, and other cultural activities, etc. In addition, Hong Kong residents shall have the right to social welfare in accordance with law. Also, they shall enjoy the other rights and freedoms safeguarded by the laws of the HKSAR. Provisions of some international covenants as applied to Hong Kong shall remain in force. Also, Hong Kong permanent residents shall have the right to vote and the right to stand for election in accordance with law.

**Source 2: The appeals of different people**

I have been living in Hong Kong for 60 years. I’ve moved to the countryside recently but I’ve found that the security in the nearby area isn’t very good. Robberies often happened. I hope the Police Force could increase resources to maintain the security nearby.

Mr. Ho, retiree

I’m not a Hong Kong resident but my father is a permanent Hong Kong resident who works there. I know that Hong Kong provides 12-year free education. I hope I can study in Hong Kong and enrich my knowledge.

Ms. Cheung, mainlander
1. According to Source 1, please fill in the table the rights that those people in Source 2 would like to enjoy, and put a “✓” under the types of residents who shall be entitled to the related rights.

<table>
<thead>
<tr>
<th>People</th>
<th>Related rights</th>
<th>Do you think the person in the case can enjoy the related rights?</th>
<th>Types of residents who shall enjoy the related rights</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Permanent Hong Kong residents</td>
</tr>
<tr>
<td>Mr. Ho</td>
<td>Freedom of the person, and homes and other premises of Hong Kong residents shall be inviolable</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Mr. Brown, American

I am Brown. I am a tourist from the US. I will stay in Hong Kong for 2 months. I heard that some environmentalists are going to protest for improved air quality. I think it is meaningful and I want to join the protest!

Chow, University student

I was born and raised in Hong Kong. I have been living in Hong Kong since I was born. I am already 18 years old. I hope I can elect councillors who represent me to raise opinions and improve the society.

Tony, Indian

I am a computer software designer. I came from India and have been working in Hong Kong for three years. Although I left my home country, I still stick to the traditions of Hinduism that I believe in, including not to have beef. I will also join the festive ceremonies held by other Hinduists in Hong Kong.
<table>
<thead>
<tr>
<th></th>
<th>Other rights – Right to education</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Cheung</td>
<td></td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Mr. Brown</td>
<td>Freedom of speech</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Chow</td>
<td>Right to vote</td>
<td>✔</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tony</td>
<td>Freedom of conscience</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
</tbody>
</table>

2. Why some of the rights should be enjoyed by permanent Hong Kong residents only? Which rights can be enjoyed by everyone? Please explain.

As some of the rights, such as the right to vote and the right to stand for election, are geographically linked, the rights only belong to people who live in a certain area. On the other hand, some of the rights are basic human rights, such as freedom of speech, freedom of the person shall be inviolable. Therefore, both permanent residents and non-permanent residents can enjoy those rights.
3. Why only permanent residents can enjoy the right to vote and the right to stand for election? Please explain.

Residents can elect representatives for a certain area. The representatives will make political decisions on behalf of the residents in a particular period of time. These decisions are geographically linked and limited. Therefore, only permanent residents of the area can have the right to vote and the right to stand for election in order to clearly define the authorized persons and the representatives.

Why only students have the right to vote and the right to stand for student union elections in schools? What are the similarities to the establishment of a government?

**Tips**

Why only students have the right to vote and the right to stand for student union elections in schools? What are the similarities to the establishment of a government?

**To Know More** : What are basic human rights?

During World War II, human beings experienced the brutality of the war. Human rights were rudely trampled. Thus, the international community realized that a new legal order based on humanitarianism must be established for the world. For this reason, on 10 December 1948, the General Assembly of the United Nations approved a document that aimed to maintain basic human rights – the Universal Declaration of Human Rights.
The Universal Declaration of Human Rights

Article 1: Main idea
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Principle of equality
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3-21: Civil and political rights
Everyone has the right to life, liberty and security of person, equal protection of the law, freedom of movement, nationality, marriage, to own property, freedom of thought and religion, take part in the government of the country directly or through freely chosen representatives.

Article 22-27: Economic, social and cultural rights
Everyone is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality, including free choice of employment, equal pay for equal work, just and favourable remuneration, freedom to join trade unions, the right to rest and leisure, the right to necessary social services, the right to education, the right to freely participate in the cultural life of the community, and the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author, etc.

Article 28-30: Conclusion
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. Everyone has duties to the community. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined for the purpose of securing due recognition and respect for the rights and freedoms of others.

Source: The Universal Declaration of Human Rights

Note: Article 2 is an excerpt. All titles are added by the editor.
Try to compare the Universal Declaration of Human Rights and Chapter III of the Basic Law. Do you agree that the Basic Law has adequately secured our rights?

Yes. The Basic Law has stated most of the rights set forth in the Universal Declaration of Human Rights.

No. The rights listed in the Basic Law are not as detailed as those in the Universal Declaration of Human Rights. The rights in the Basic Law lack the items on enhancing quality of life, such as people should have the right to rest and leisure.

There is an increasing trend of doubly non-permanent resident pregnant women giving birth in Hong Kong. Some local pregnant women said that it becomes increasingly difficult to find a place to give birth in Hong Kong hospitals. Thus, there are more and more people requesting to curb the number of doubly non-permanent resident pregnant women giving birth in Hong Kong. A spokesperson of the Hospital Authority said on 8 April 2011, “The increasing trend of local pregnant women giving birth in public hospitals is projected to continue this year. In light of this increasing trend, proactive measures have to be implemented to ensure that the available capacity in public hospitals would be sufficient to meet the demand from local pregnant women.” Therefore the
Hospital Authority decided to suspend the delivery booking for non-local women from that date until December 2011. (Details refer to the press release of Hospital Authority on 8 April 2011, http://www.ha.org.hk/visitor/ha_visitor_index.asp?Content_ID=643&Lang=ENG&Dimension=100&Parent_ID=10000)

Meanwhile, some voices said that the related restriction is depriving the right of pregnant women from the mainland. Regarding the plan, you will carry out a debate to discuss the pros and cons of restricting the number of doubly non-permanent resident pregnant women giving birth in Hong Kong.

<table>
<thead>
<tr>
<th>For</th>
<th>Against</th>
</tr>
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<tbody>
<tr>
<td>● Ensure local pregnant women can receive medical service</td>
<td>● Hinder the development of medical service industry</td>
</tr>
<tr>
<td>● Reduce the burden of Hong Kong medical service</td>
<td>● Hamper the operation of free market</td>
</tr>
<tr>
<td>● Reduce the problems caused by cross-border population</td>
<td>● Everyone should have the right to quality medical service</td>
</tr>
<tr>
<td>● (Despite the arguments for and against the plan, students can also analyze the pros and cons of the long-term and short-term effects brought by the doubly non-permanent resident pregnant women giving birth in Hong Kong.)</td>
<td>● Hong Kong is an open city. Letting doubly non-permanent resident pregnant women give birth in Hong Kong can relieve population aging in Hong Kong and will increase social vitality.</td>
</tr>
<tr>
<td></td>
<td>● (Despite the arguments for and against the plan, students can also analyze the pros and cons of the long-term and short-term effects brought by the doubly non-permanent resident pregnant women giving birth in Hong Kong.)</td>
</tr>
</tbody>
</table>
Worksheet (3): The Responsibilities of Hong Kong Residents

1. As a Hong Kong resident, what would you do when you are facing these situations?

   Oh! The old man needs a seat but I am very tired today. What should I do?
   If it were me, I would ______
   ____________________________
   ____________________________

   My neighbours are quarrelling again. Their daughter always got some bruises and cuts on her face after being beaten. What should I do?
   If it were me, I would ______
   ____________________________
   ____________________________

   I will be graduating from university this year! Some friends said that I could live a carefree life if I receive Comprehensive Social Security Assistance payment and live in public housing. What should I do?
   If it were me, I would ____________________________

   A thief is stealing someone’s purse but he looks so fierce. What should I do?
   If it were me, I would ____________________________

   My neighbours are quarrelling again. Their daughter always got some bruises and cuts on her face after being beaten. What should I do?
   If it were me, I would _____
   ____________________________
   ____________________________
2. From the above cases and base on your own knowledge, what are the responsibilities of Hong Kong residents?

Any reasonable and relevant answers are acceptable.

3. What is the significance that Hong Kong residents fulfil their responsibilities?

It can unite the society. The society will be more stable and it will help with social development. In addition, this will bring positive effects to the interpersonal, neighbourhood and community relationship.

4. Do you agree that we should “fulfil our responsibilities before we can enjoy the rights”?

I agree. Rights and obligations should coexist. We should be responsible for the society and fulfil the responsibilities before we can enjoy the rights.

I don’t agree. We are born with some rights. Those rights have nothing to do with the responsibilities. And there is not necessarily priority between rights and obligations.

There is $2000 left in an ATM. It seems nobody has noticed that. What should I do?

If it were me, I would _______
5. If the government legislate and stipulate that Hong Kong residents are obliged to do voluntary work every year, do you agree? Why?

I agree. From a personal point of view, Hong Kong residents can find their own value and significance as well as realizing their dreams through participating in voluntary work. From a social point of view, all residents should pay back to the society and doing voluntary work is similar to paying taxes.

I do not agree. It harms the right to freedom of personal choice. Voluntary work will lose its meaning if people are not doing it out of their own free will.

Rights and Responsibilities of Hong Kong Residents

Rights of Hong Kong residents

All Hong Kong residents shall be equal before the law. Hong Kong is a free society and Hong Kong residents enjoy a high degree of freedom and various rights, including freedom of speech, freedom of the person, and homes and other premises of Hong Kong residents shall be inviolable, freedom of communication, freedom to enter or leave the HKSAR, freedom of conscience, freedom of choice of occupation, freedom of marriage and the right to raise a family freely, freedom to engage in academic research, literary and artistic creation, and other cultural activities, etc. In addition, Hong Kong residents shall have the right to social welfare in accordance with law. Also, they shall enjoy the other rights and freedoms safeguarded by the laws of the HKSAR. Provisions of some international covenants as applied to Hong Kong shall remain in force.

Although Hong Kong residents have many rights safeguarded by the laws, as a responsible citizen, we should exercise our rights cautiously. We should proactively use our rights to influence others and promote social development. For example, Hong Kong residents have a high degree of freedom of speech and freedom of communication which facilitate circulation of information and
communication. We should promote the exchange of opinions of different parties and explore the truth in this favourable environment, instead of allowing various types of harmful and inaccurate information to widely spread into society. Therefore, we should deeply think about the influences and our responsibilities while exercising the rights.

**Responsibilities of Hong Kong residents**

Hong Kong residents shall have the obligation to abide by the laws in force in the Hong Kong Special Administrative Region. Residents should comply with the law and participate in constructing the society so as to become a citizen who is responsible to the society. Therefore, the lowest level of obligations for a Hong Kong resident is to comply with the laws of Hong Kong and be a law-abiding resident.

Apart from the obligations stipulated by laws, Hong Kong residents should also base on their personal standards of morality to practise civic responsibilities that are not stated in the laws. For example, helping each other, love oneself and love others, etc. Those are the responsibilities that citizen should fulfil. Moreover, residents should proactively participate in social construction, actively contribute to the society, and fulfil the responsibilities as a part of the society. In addition, as Hong Kong residents, we should also recognise, accept, abide by and jointly safeguard the core values of Hong Kong, such as, democracy, justice, human rights, rule of law, clean, honesty and integrity, respect and tolerance, rational communication, etc., to jointly participate in constructing an ideal Hong Kong.

**To Know More**

Chapter III of the Basic Law: Fundamental Rights and Duties of the Residents:
Do you know what principles of the rule of law are the features of Themis, the Lady Justice, representing?

- Rational, fearless
- Fair verdicts, everyone is equal
- Wisdom and power, severe sanctions, no toleration
Worksheet (4): Protection of the rights of Hong Kong residents by major principles of the rule of law

Source 1: Major principles of the rule of law

The modern rule of law, in a large extent, is regarded as part of the constitutional democracy which means to safeguard everyone’s freedom and equality by the legal system. Thus, there is the saying that “Everyone is equal before the law”. It is expected that the legal system is effective and could promote social justice. In general, laws should be generally applicable to everyone, open, stable, clear, non-retroactive, feasible, non-arbitrary and conforming to social values. The direction and guidelines provided by the laws help build a clear and effective system and procedure to ensure every citizen could be treated fairly and justly through the system. These clear systems effectively restrain abuse of power by the government or persons in authority in order to achieve the effect of “regulation of power by law”.

Source 2: Two pieces of court news in Hong Kong

Case 1
An eighty-year old woman brought a lawsuit against a Hong Kong real estate company for securing her own interests. The right of ownership of a ten thousand square feet agricultural land lot was given to the Court for ruling. The Court of Final Appeal stated that although the real estate company bought the lot in 1961, the woman and her husband had rented the land from the original landlord in 1951. They built a house and lived there, and they did farming, animal husbandry and fish farming on that land. Therefore, the Court ruled that the ownership of the land should belong to the old woman by “adverse possession”.

(Summarising the reports of various newspapers, January 2006)
1. According to Source 1, what is the importance of rule of law in safeguarding the rights of Hong Kong residents?

   It helps to establish a fair, just and open system, and restrain the abuse of power by the government and the persons in authority via clear legal provisions in order to achieve “regulation of power by law”, and protect the rights of Hong Kong residents.

2. In the two verdicts of Source 2, what principles of rule of law are reflected? Please explain.

   The two verdicts reflect the principles that laws are generally applicable to everyone, open, consistent and clear. The clear and effective systems can help achieve the aim of the “regulation of power by law”.

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**Case 2**

A sixty-six-year old woman earlier filed a judicial review via Legal Aid Department. She contended that the Director of Environmental Protection failed to properly assess the air quality impact in the Environmental Impact Assessment Reports relating to Hong Kong-Zhuhai-Macao (HKZM) Bridge Hong Kong Boundary Crossing Facilities, and the HKZM Bridge Hong Kong Link Road on 23 October 2009. Thus, the decisions of the Director to approve the two reports as well as the environmental permits of the two projects in the same year were illegal and unreasonable. She sought to quash the decisions via judicial review. Yesterday, the High Court Justice ruled in favour of the woman and quashed the Director’s approval of the reports and the permits.

*(Summarising the reports of various newspapers, September 2011)*
3. How does the government protect the right to a fair trial of the underprivileged?

The government has established the Legal Aid Department. Those who are in financial difficulty could apply for legal aid to pay the legal fees, ensuring that people from all walks of life can have equal access to due process of law. In addition, the government will not intervene in the due process of law by administrative means in order to ensure the independence of the legal system.

4. What is the importance of appeal and judicial review system to the protection of the rights of Hong Kong residents?

It can ensure that the trial is fair and non-arbitrary, and protect people from being unfairly treated due to personal or procedural factors, and prevent some judicial officers from having overwhelming power and affecting the lawsuit outcomes so as to achieve the aim of “regulation of power by the law”.

Protection of the Rights of Hong Kong Residents by Major Principles of the Rule of Law

According to Joseph Raz’s (a professor of Columbia Law School, publications includes “The Concept of a Legal System”, “The Authority of Law”, etc.), the concepts of the rule of law include:

1) That laws should be prospective rather than retroactive;
2) Laws should be stable and not changed too frequently;
3) There should be clear rules and procedures for making laws;
4) The independence of the judiciary has to be guaranteed;
5) The principles of natural justice should be observed, particularly those concerning the right to a fair hearing;
6) The courts should have the power to review the way in which the other principles are implemented;
7) The courts should be accessible; no person may be denied justice;
8) The discretion of law enforcement and crime prevention agencies should not be allowed to pervert the law.

These principles of the rule of law can also be reflected in the governmental and the legal process of Hong Kong. They can protect the rights of Hong Kong residents. These principles of the rule of law can be seen in the process of legislation, law enforcement or judiciary.

From using these principles of the rule of law to examine the legislative, executive or judicial system of Hong Kong, it is revealed that the legislation system of Hong Kong is transparent and open. People can participate in different legislative consultation process. Legislative councillors, who are representing various sectors of the community, will establish open and clear laws for everyone to comply with. They have established a set of generally accepted rules and norms. The law enforcement agencies of the government (e.g. Hong Kong Police Force and ICAC) act in accordance with the principles of the rule of law, and each case will be handled impartially. The Department of Justice carefully lodges prosecutions to ensure that the law is properly used. Judicially, all Hong Kong residents shall be equal before the law. They shall have the right to confidential legal advice and access to courts so as to protect their lawful rights and interests. The independence of judiciary ensures all Hong Kong residents enjoy the right to fair, open and just trials and have the opportunities to lodge appeals. It realizes the principle of fairness and demonstrates social justice.

Extracted from Department of Justice (2008). *Legal System in Hong Kong* (Fifth edition). Hong Kong: Department of Justice.

The “rule of law” refers to some of the fundamental principles of law that govern the way in which power is exercised in Hong Kong. The rule of law has several different meanings and corollaries. Its
principal meaning is that the power of the government and all of its servants shall be derived from law as expressed in legislation and the judicial decisions made by independent courts. At the heart of Hong Kong’s system of government lies the principle that no one, including the Chief Executive, can do an act which would otherwise constitute a legal wrong or affect a person’s liberty unless he can point to a legal justification for that action. If he cannot do so, the affected person can resort to a court which may rule that the act is invalid and of no legal effect. Compensation may be ordered in the affected person’s favour. This aspect of the rule of law is referred to as the principle of legality.

One corollary of the principle of legality can be summarised as equality before the law. It is fundamental that all persons, regardless of race, rank, politics or religion, are subject to the laws of the land. Further, the rule of law requires that the courts are independent of the executive. This independence is crucial if impartial rulings are to be given when the legality of acts of government falls to be decided.

Legality and equality before the law are two fundamental facets of the rule of law. But the principle demands something more, otherwise it would be satisfied by giving the government unrestricted discretionary powers. A further meaning of the rule of law, therefore, is to be found in a system of rules which restrict discretionary power. To this end the courts have developed a set of guidelines aimed at ensuring that statutory powers are not used in ways which the legislature did not intend. These guidelines relate to both the substance and the procedures relating to the exercise of executive power. An example of the former is where a court concludes that a decision which purports to be authorised by a statutory power is plainly unreasonable and cannot have been envisaged by the legislature. An example of the latter is where a decision has been made without according the party affected the opportunity of being heard in circumstances where the legislature must have envisaged that such an opportunity would have been given. In both cases a court would hold that the decisions were legally invalid.

The Basic Law ensures that the legal system in the HKSAR will continue to give effect to the rule of law, by providing that the laws previously in force in Hong Kong (that is, the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic Law, and subject to subsequent amendment by the HKSAR legislature.
Concept Map of the Rights and Responsibilities of Citizens

Hong Kong residents → Categories
  ▪ Rights (Freedoms and rights are secured by the law)
  ▪ Obligations (To abide by the laws)

Permanent residents (have the right of abode)
Non-permanent residents (do not have the right of abode)

Principles of the rule of law protecting Hong Kong residents
  ▪ Judicial independence
  ▪ Equality before the law
  ▪ Fair, open and consistent legal system
  ▪ The power of the government is derived from law