



BASIC ELEMENTS OF THE RULE OF LAW



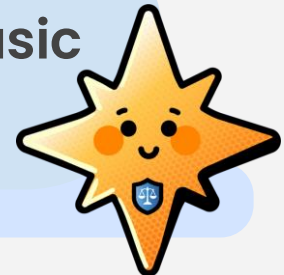
Is there **only one model** of the “**rule of law**”?
Does it have to be **exactly the same** everywhere?



There is no universal definition of the term “rule of law”, nor is there a single correct model to follow.

Affected by historical, cultural and other factors, “rule of law” is reflected in different ways, laws and systems in different societies to meet the local development needs.

Do you have any example to share?
Are there any common and basic principles for the “rule of law”?



Basic Elements of the Rule of Law



The basic **elements** of the rule of law are, a set of laws that meet **specific standards in substance and form**, and **judicial power is exercised independently in accordance with the law**. We can view them as the hardware of the “rule of law”.



Of course, even with good hardware, we also need reliable software to complement our hardware, and such software will be Hong Kong’s rich pool of legal talents.

Whether the “rule of law” is achieved depends ultimately on **the joint efforts of the entire society and its residents to uphold the spirit of the “rule of law” and to respect the authority of the law.**



Basic Elements of the Rule of Law



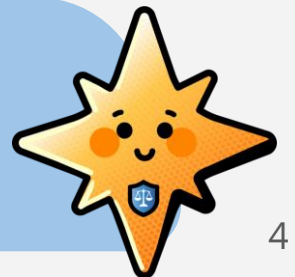
So what is “a set of laws that meet specific standards in **substance and in form**”?

In terms of substance, laws should regulate rights and obligations, for example, safeguarding fundamental human rights and freedoms.



Safeguarding fundamental human rights and freedoms? Then why was I not allowed to dine in groups and why was I required to wear a mask during the coronavirus pandemic? I don't think my freedom was safeguarded at all.

Think about this, when we say that “laws should safeguard fundamental human rights and freedom”, does it mean that all human rights and freedoms are free from restrictions?

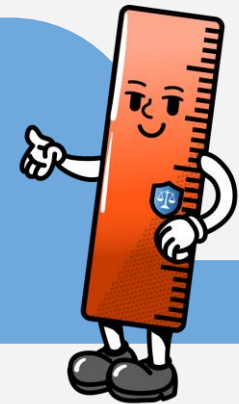


Basic Elements of the Rule of Law



In fact, except for a few human rights (e.g. rights against torture) that are considered to be absolute, the law allows for reasonable restrictions on most human rights and freedoms.

Such restrictions exist so as to **strike a balance between personal freedom and the overall interests of society.**

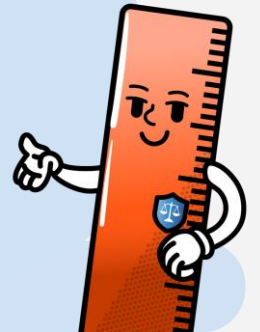


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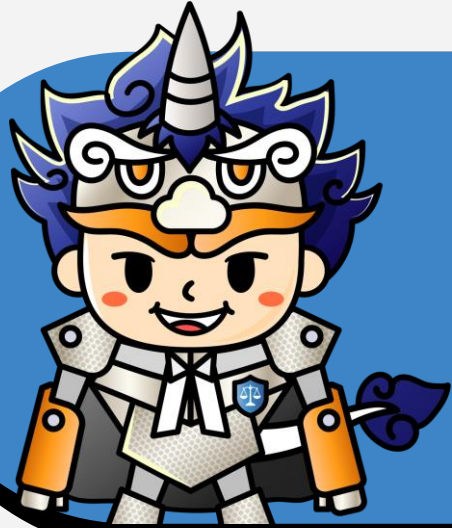


**Equality before the law,
no one is above the law.**

There is no “privileged” class before the law. Even if a person is an authoritative figure or enjoys a high social status, the person may still be investigated for the offences which that person is suspected to have committed, and shall bear criminal liability once convicted.

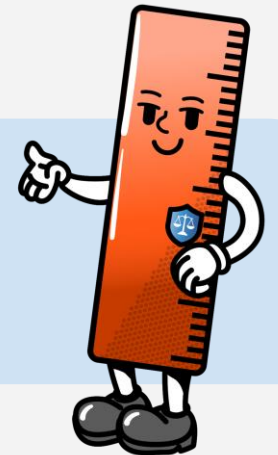


Basic Elements of the Rule of Law



Regarding the **substance**, apart from regulating rights and obligations, the law should provide fair and practical procedures for everyone to enforce their rights, address legal issues, settle disputes and for penalising those who have violated the law.

Otherwise, the law would just be empty words.



Basic Elements of the Rule of Law



In terms of **form**, all laws must be **open** and **clear**. Ordinances and subsidiary legislation enacted by the Legislative Council or other executive bodies need to be gazetted and announced.

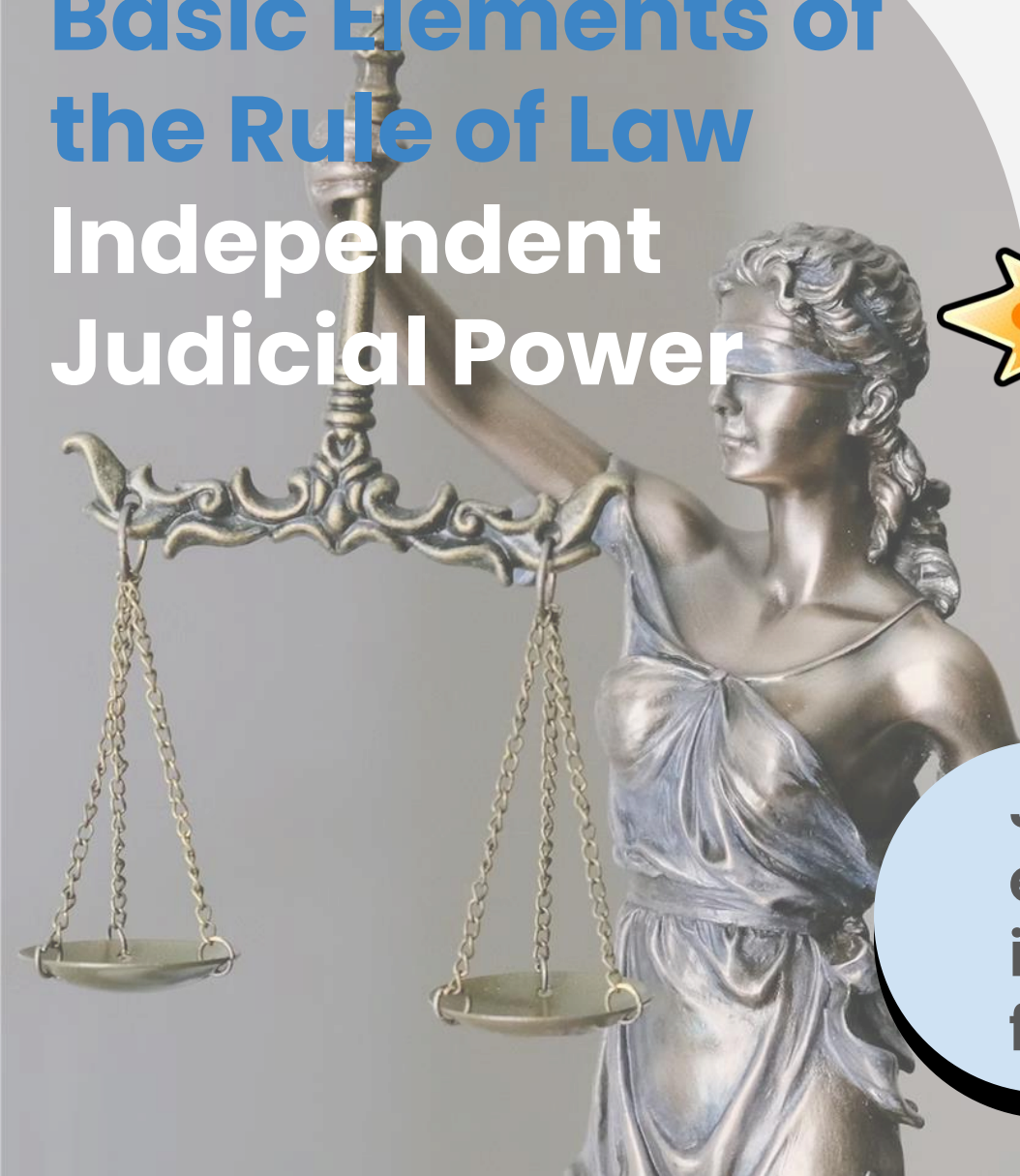
Similarly, court judgments, which form part of the common law, need to be published.



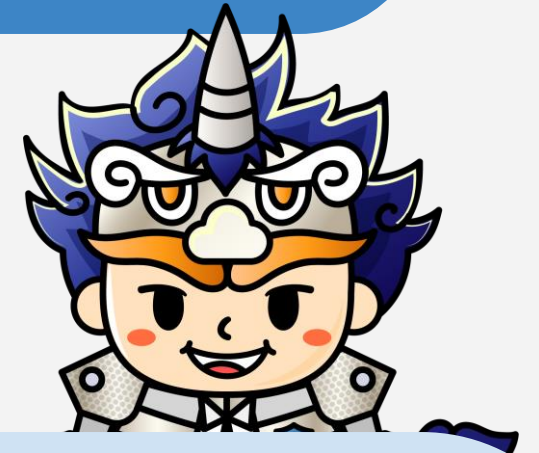
National laws, such as the Hong Kong National Security Law, must be promulgated in accordance with Article 18 of the Basic Law before their implementation in Hong Kong.

Basic Elements of the Rule of Law

Independent Judicial Power



Why is it important for a court to exercise judicial power independently?



Judicial power exercised independently ensures that the court adjudicates cases in accordance with law and evidence only, free from any interference.

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