

# LW5616: LAW OF EVIDENCE

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## Effective Term

Semester B 2024/25

## Part I Course Overview

### Course Title

Law of Evidence

### Subject Code

LW - Law

### Course Number

5616

### Academic Unit

School of Law (FL)

### College/School

School of Law (FL)

### Course Duration

One Semester

### Credit Units

3

### Level

P5, P6 - Postgraduate Degree

D8 - Professional Doctorate

R8 - Research Degree

### Medium of Instruction

English

### Medium of Assessment

English

### Prerequisites

LW5601 Hong Kong Legal System LW5622 Legal Methods, Research and Writing, LW5602A Law of Contract I and LW5602B Law of Contract, and LW5606A Criminal Law I

### Precursors

Nil

### Equivalent Courses

LW4616 Law of Evidence

### Exclusive Courses

Nil

## Part II Course Details

### Abstract

The law of evidence underlies the whole practice of law, including, most obviously, civil and criminal litigation, but also the various stages of the fact-finding process prior to litigation, including investigative processes and even alternative modes of dispute resolution. It is therefore imperative for law students, legal scholars and practitioners to have a clear grasp of what constitutes relevant evidence, a thorough understanding of the rules of admissibility, as well as the weight and tactical significance of evidence at the various junctures of civil, criminal or other legal proceedings. The term ‘evidence’ generally refers to that information by which disputed facts tend to be proved, and the Law of Evidence is that body of law and discretion regulating the means by which disputed facts may be proved in courts, tribunals and arbitration hearings in which the strict rules of evidence apply. The Law of Evidence therefore forms part of the adjectival law and operates in tandem with the law of criminal procedure and the law of civil procedure. Upon completion of this course, students will have a thorough theoretical knowledge of as well as the ability to apply the Law of Evidence as developed in Hong Kong to novel case scenarios.

### Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Describe and explain the role and scope of the Law of Evidence in the adversarial common law system.	20	x	x	
2	Describe and compare the substantive rules of evidence and to explain the principles upon which those rules are based.	20		x	x
3	Apply the rules of evidence in a practical setting.	20		x	x
4	Propose reforms and developments in the Law of Evidence within the Hong Kong legal system.	20	x	x	x
5	Describe and explain the role and scope of the Law of Evidence in the adversarial common law system.	20	x	x	x

#### A1: Attitude

Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions or engaging in inquiry together with teachers.

#### A2: Ability

Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to real-life problems.

#### A3: Accomplishments

Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative works/new artefacts, effective solutions to real-life problems or new processes.

### Learning and Teaching Activities (LTAs)

LTAs		Brief Description	CILO No.	Hours/week (if applicable)
1	Lectures	Weekly didactic lectures on key topics relating to the prescribed material. Will often include an in-class discussion component.	1, 2, 3, 4, 5	2
2	Tutorials	Small group tutorials during which students will present on, ask questions about and discuss problem questions that are based on the course material discussed in the lectures. Students will analyse and evaluate various topics in the Law of Evidence and will have a forum where doubts and uncertainties can be relayed to the tutor.	1, 2, 3, 4, 5	1 (2 hours, every second week)
3	Self-Directed Study	In a self-directed manner, students prepare for class by reading from the compulsory and optional prescribed readings, taking notes, drafting answers to tutorial questions, reviewing class content, and conducting court visits.	1, 2, 3, 4, 5	5 (approx.)

### Assessment Tasks / Activities (ATs)

ATs	CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	The tutorial contribution mark is divided between a group problem question presentation (20%), a group court visit report (10%) and general participation (10%). General participation will be assessed on the quality of the participation not quantity. The group tasks require public speaking and groupwork skills. Generally, the tutorials allow students to demonstrate their capacity to understand, analyse, and apply relevant legal rules and principles. The oral responses of students in these sessions enables tutors to assess both understanding of the law and the capacity to apply the law to real and hypothetical factual situations.	1, 2, 3, 4, 5	40

**Continuous Assessment (%)**

40

**Examination (%)**

60

**Examination Duration (Hours)**

3

**Additional Information for ATs**

The examination primarily tests knowledge and understanding of legal rules and principles and the ability to apply those principles, within a limited time frame, to hypothetical factual circumstances. The examination will also feature a compulsory essay component with a focus on theory, comparison and/or law reform. The format of the examination (i.e. the number of questions) will be at the discretion of the course leader and shall be announced during the final lecture. Although the cohorts are taught and examined together, JD students must answer one more question than do LLB students.

**Grading of Student Achievement:** Standard (A+, A, A-...F).

Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

To pass this course students must obtain an aggregate mark of 50% and a minimum of 50% in each of the continuous assessment and the examination elements of the assessment. Continuous Assessment for this purpose means those ways in which students are assessed otherwise than by the end of session examination.

Applicable to students admitted before Semester A 2022/23 and in Semester A 2024/25 and thereafter

To pass this course students must obtain an aggregate mark of 40% and a minimum of 40% in each of the continuous assessment and the examination elements of the assessment. Continuous Assessment for this purpose means those ways in which students are assessed otherwise than by the end of session examination.

### **Artificial Intelligence**

The use of Generative AI tools is not allowed in completing assessment tasks for this course.

### **Assessment Rubrics (AR)**

#### **Assessment Task**

Tutorial participation 40% (Problem Question Presentation 20%, Court Visit Report 10%, General Participation 10%) (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

#### **Criterion**

-Prior preparation on tutorial questions and a willingness to actively engage in discussion - Ability to fluently describe and apply legal doctrines and principles - Public speaking and group cooperation for group tasks - Ability to communicate effectively via a written handout a summary of key findings

#### **Excellent**

(A+, A, A-) Strong evidence of capacity to analyse and synthesise; superior grasp of subject matter; superior public speaking and groupwork dynamic; superior written expression with handouts.

#### **Good**

(B+, B, B-) Evidence of analytical ability; reasonable understanding of issues; evidence of familiarity with the law; reasonable public speaking and groupwork dynamic; decent level of written expression.

#### **Fair**

(C+, C, C-) Student who is profiting from the university experience; basic understanding of the subject; ability to develop solutions to simple problems in the material. Some evidence of group cooperation and some ability to speak publicly, satisfactory level of written work.

#### **Marginal**

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course. Sporadic evidence of positive group dynamic, faltering level of written expression

#### **Failure**

(F) Little evidence of familiarity with the subject matter; an incorrect understanding or application of the law; poor public speaking and an unworkable group dynamic. Poor quality written expression.

#### **Assessment Task**

Examination 60% (3 hour length; open book) (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

#### **Criterion**

-Ability to explain legal and theoretical principles - Ability to identify legal issues - Application of legal knowledge to specific fact-based and essay type questions - Ability to engage in argument-based analysis - Ability to write and communicate ideas and arguments in a logically coherent and persuasive manner - Ability to complete tasks under time pressure

#### **Excellent**

(A+, A, A-) Strong evidence of original thinking; good organisation, capacity to analyse and synthesise; superior grasp of subject matter; evidence of extensive knowledge base.

#### **Good**

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytical ability; reasonable understanding of issues; evidence of familiarity with the law.

**Fair**

(C+, C, C-) Student who is profiting from the university experience; basic understanding of the subject; weakness in critical and analytical skills; ability to develop solutions to simple problems in the material.

**Marginal**

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

**Failure**

(F) Little evidence of familiarity with the subject matter; incorrect understanding or application of the law.

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**Assessment Task**

Tutorial participation 40% (Problem Question Presentation 20%, Court Visit Report 10%, General Participation 10%) (for students admitted from Semester A 2022/23 to Summer Term 2024)

**Criterion**

-Prior preparation on tutorial questions and a willingness to actively engage in discussion - Ability to fluently describe and apply legal doctrines and principles - Public speaking and group cooperation for group tasks - Ability to communicate effectively via a written handout a summary of key findings

**Excellent**

(A+, A, A-) Strong evidence of capacity to analyse and synthesise; superior grasp of subject matter; superior public speaking and groupwork dynamic; superior written expression with handouts.

**Good**

(B+, B) Evidence of analytical ability; reasonable understanding of issues; evidence of familiarity with the law; reasonable public speaking and groupwork dynamic; decent level of written expression.

**Marginal**

(B-, C+, C) A student who is profiting from the university experience; basic understanding of the subject; ability to develop solutions to simple problems in the material. Some evidence of group cooperation and some ability to speak publicly and to write clearly.

**Failure**

(F) Little evidence of familiarity with the subject matter; an incorrect understanding or application of the law; poor public speaking and an unworkable group dynamic. Poor written expression.

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**Assessment Task**

Examination 60% (3 hour length; open book) (for students admitted from Semester A 2022/23 to Summer Term 2024)

**Criterion**

-Ability to explain legal and theoretical principles - Ability to identify legal issues - Application of legal knowledge to specific fact-based and essay type questions - Ability to engage in argument-based analysis - Ability to write and communicate ideas and arguments in a logically coherent and persuasive manner - Ability to complete tasks under time pressure

**Excellent**

(A+, A, A-) Strong evidence of capacity to analyse and synthesise; superior grasp of subject matter; superior public speaking and groupwork dynamic; superior written expression with handouts.

**Good**

(B+, B) Evidence of analytical ability; reasonable understanding of issues; evidence of familiarity with the law; reasonable public speaking and groupwork dynamic; decent level of written expression.

**Marginal**

(B-, C+, C) A student who is profiting from the university experience; basic understanding of the subject; weakness in critical and analytical skills; ability to develop solutions to simple problems in the material.

**Failure**

(F) Little evidence of familiarity with the subject matter; incorrect understanding or application of the law. No critical insights towards the law of evidence.

**Part III Other Information****Keyword Syllabus**

Law of evidence The adversarial system Types of evidence Burden and standard of proof; Proof without evidence Stages in the trial process Competence and compellability of witnesses Relevance and weight Opinion evidence Identification evidence The hearsay rule and its exceptions Evidence of bad character and similar fact evidence Legal professional privilege Discretionary exclusion of evidence. Detailed Weekly Syllabus ; An Introduction to the Law of Evidence: Basic Principles, Concepts and Theory ; Weight of Evidence, Burdens and Standards of Proof, Circumstantial Evidence and Inferential Reasoning ; Proof without Evidence: Formal Admissions and Confessions, Judicial Notice, Procedural and Substantive Presumption of Law ; Relevance and Admissibility: Character Evidence, Similar Fact Evidence ; Opinion/ Expert Evidence ; Hearsay and Documentary Evidence ; Identification Evidence ; Unconstitutionally and Unfairly Obtained Evidence and Abuse of Process ; Issues arising at Trial: Competence and Compellability ; Issues arising at Trial: Examination-in-Chief, Cross-Examination and Re-Examination: Vulnerable Witnesses and Special Measures ; Privileges and Immunities ; Revision and Exam Preparation \* Students should refer to the Lesson Plan for more detail on the specific topics to be covered each week. The above weekly syllabus is subject to change.

**Reading List****Compulsory Readings**

Title	
1	Nil

**Additional Readings**

Title	
1	Simon So Law of Evidence in Hong Kong (2020) Sweet & Maxwell
2	Andra le Roux Kemp, Hong Kong Law of Evidence (2020) Wolters Kluwer (for reference)
3	Ordinances relevant to the study of the Law of Evidence in Hong Kong, the most important being the Evidence Ordinance (Cap 8); Criminal Procedure Ordinance (Cap 221); Magistrates Ordinance (Cap 227), and Crimes Ordinance (Cap 200)
4	Archbold Hong Kong: Criminal Pleadings, Evidence and Practice (2024) Sweet & Maxwell (for reference, electronic version available via the Run Run Shaw Library website)
5	Case law prescribed by the course leader
6	Secondary materials prescribed by the course leader