

**City University of Hong Kong
Course Syllabus**

**offered by School of Law
with effect from Semester B 2018 / 2019**

Part I Course Overview

Course Title: Law and Society in China

Course Code: LW5966

Course Duration: One semester

Credit Units: 3

Level: P5

Medium of Instruction: English

Medium of Assessment: English

Prerequisites:
(Course Code and Title) Nil

Precursors:
(Course Code and Title) Nil

Equivalent Courses:
(Course Code and Title) LW6172E

Exclusive Courses:
(Course Code and Title) Nil

Part II Course Details

1. Abstract

This course aims to provide a basic understanding of the theoretical and practical issues relating to law and society in China, the extent to which law as a tool for social engineering has affected social development and how far social forces have influenced the functioning of law and the interaction among legal institutions in China.

2. Course Intended Learning Outcomes (CILOs)

(CILOs state what the student is expected to be able to do at the end of the course according to a given standard of performance.)

No.	CILOs	Weighting (if applicable)	Discovery-enriched curriculum related learning outcomes (please tick where appropriate)		
			A1	A2	A3
1.	Identify, evaluate and synthesize the theoretical framework of issues relating to law and society and in particular their impact on legal policies.		√	√	√
2.	Explain the relationship between law and society in China, examine their interaction for the purpose of understanding the rule of law and promoting social development.		√	√	√
3.	Identify the legal issues that affect China's society.		√	√	√
4.	Critically assess the legal development relating to social forces.		√	√	√
5.	Explain, evaluate and compare issues relating to constitutional law, administrative law, property law, labor law, etc in China with a view to critically analysing these issues within the framework of law and society.		√	√	√
		100%			

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 self-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.

3. Teaching and Learning Activities (TLAs)

(TLAs designed to facilitate students' achievement of the CILOs.)

TLA	Brief Description	CILO No.					Hours/week (if applicable)
		1	2	3	4	5	
Lecture and discussion	Students will be provided with certain reading materials every week that will form the basis for discussions in the seminar each week. While the reading materials that will be given for the purposes of discussions will be essential reading, the students will also be encouraged to identify of their own additional materials relevant to the topic of discussion in a particular seminar.	√	√		√	√	3 hours/week or a total of 39 hours of block teaching
Seminar/presentation/problem specific debate/tutorial	The seminar discussions will be conducted in an interactive manner. The lecturer will provide an overview of the subject matter of the topics that will be discussed in a particular seminar and the students are expected to participate in the discussion that would follow. The lecturer will be moderating the discussion. The focus on the seminar will be to analyse and critically examine the key issues relating to the topic for discussion on the basis of the arguments given in the reading materials. Students are expected to be prepared for questions and other forms of assessment during the seminars.			√	√	√	

4. Assessment Tasks/Activities (ATs)

(ATs are designed to assess how well the students achieve the CILOs.)

Assessment Tasks/Activities	CILO No.					Weighting	Remarks
	1	2	3	4	5		
Continuous Assessment: 50%							
Coursework	√	√	√	√	√	50%	
Examination: 50% (duration: 3 hours)							
Open book examination	√	√	√	√	√	50%	
						100%	

Students are required to attend at least 70% of the classes (lectures, seminars, presentations). If a student does not meet this requirement, he/she may be disqualified for assessment.

Assessment will be formative to enable students to demonstrate their capacity to understand and analyse socio-legal phenomena. It is also the purpose of the assessment pattern to assess the ability of students to creatively and critically analyse issues relating to the subject with a holistic perspective of law and society.

Students must obtain a minimum mark of 40% in both coursework and examination and an overall mark of 40% in order to pass the course.

5. Assessment Rubrics

(Grading of student achievements is based on student performance in assessment tasks/activities with the following rubrics.)

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
1. Coursework	students to demonstrate their capacity to understand, analyse socio-legal phenomena. It is also the purpose of the assessment pattern to assess the ability of students to creatively and critically analyse issues relating to the subject with a holistic perspective of law and society.	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.
2. Examination	students to demonstrate their capacity to understand, analyse socio-legal phenomena. It is also the purpose of the assessment pattern to assess the ability of students to creatively and critically analyse issues relating to the subject with a holistic perspective of law and society.	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Part III Other Information (more details can be provided separately in the teaching plan)

1. Syllabus

(An indication of the key topics of the course.)

1.1 Keyword Syllabus Various dimensions of discourses relating to law and society in China and their impact on the rule of law, social and economic development, and civic and political culture of the people. The role of social forces and their impact on law. Policy and theoretical issues relating to the functioning of legal institutions in China.

1.2 Detailed Syllabus

PART ONE: A MODERN LEGAL SYSTEM?

PART TWO: CREATING CHINESE LEGAL INSTITUTIONS

- I. Culture, politics and institution: what factors are shaping Chinese legal system?
- II. Creating a Chinese Judiciary
- III. Judicial independence
- IV. Judicial decision-making

PART THREE: CONTEMPORARY ISSUES IN CHINESE LAW

- I. Constitutional law
- II. Law and the administrative state
- III. Property rights and land issues
- IV. Law and social movement
- V. Lawyering

2. Reading List

Recommended Reading

Text(s)

Marc Galanter, "The Modernization of Law," reprinted in Friedman and Macaulay, *Law and the Behavioral Sciences*, pages 989-998.

Max Weber, Max Weber on Law in Economy and Society, Max Rheinstein ed, Harvard Univ. Press. 1954.

Mao Zedong, *On the Correct Handling of Contradictions Among the People* (February 27, 1957) from Stuart Schram, *The Political Thought of Mao Tse-tung* (1963), pp. 236-244.

Zhang Ning, "The political origins of death penalty exceptionalism: Mao Zedong and the practice of capital punishment in contemporary China", 10 *Punishment & Society*, no. 2, at 117.

Yang Su, "Demobilizing Law," in *Collective Killings in the Cultural Revolution*, Cambridge University Press, 2010.

Jerome Cohen, "Chinese Mediation on the Eve of Modernization," *California Law Review* 54: 1201-26(1966).

Excepts from Stanley Lubman, "Mao and mediation: politics and dispute resolution in Communist China." *California Law Rev.* 55: 1284-1359(1967).

Xin He, "Routinization of Divorce Law Practice in China," *International Journal of Family, Policy and Law*, no.1, 2009.

Xin He, "The Recent Decline in Economic Caseloads in China," *The China Quarterly*, 2007.

Upham, "Who Will Find the Defendant if He Stays with His Sheep? Justice in Rural China," 114 *Yale L. J.* (2005), pp. 1675-1718.

Zhu Suli, "Political Parties in the Chinese Judiciary," 17 *Duke Journal of International and Comparative Law*, 533, (2006).

Fu Yulin and Randall Peerenboom, "A New Analytic Framework for Understanding and Promoting Judicial Independence in China," in Randall Peerenboom ed., *Judicial Independence in China*, Cambridge University Press, 2009.

Xin He, "Courts Push Back: Law, Power, and Politics in the Decision-making of Chinese Courts," in Randall Peerenboom ed., *Judicial Independence in China*, Cambridge University Press, 2009.

Benjamin Liebman, "Chinese Courts: Restricted Reform," *China Quarterly* 2007.

Thomas E. Kellogg, "Constitutionalism With Chinese Characteristics? An Analysis Of Constitutional Litigation In China," *Intl J. Con. L.* 2009.

Mark Tushnet, "Authoritarian Constitutionalism," 100 *Cornell L. Rev.* 391 (2015).

Shucheng Wang, "Emergency of a Dual Constitution in Transitional China," *Hong Kong Law Journal*, Vol.45, No.3, 2015.

Shucheng Wang, "Guiding Cases as a Form of Statutory Interpretation," *Hong Kong Law Journal*, Vol. 48, No. 3, 2018.

Shucheng Wang, "Guiding Cases and Bureaucratization of Judicial Precedents in China," *University of Pennsylvania Asian Law Review*, Vol. 14, 2019.

Keith Hand, "Can Citizens Vitalize China's Constitution?," *Far East Economic Forum*, May 2007.

Keith Hand, "Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People's Republic of China," 45 *Columbia Journal of Transnational Law* 114 (2006).

Evan Osnos, "The Promised Land; Guangzhou's Canaan market and the rise of an African merchant class," *The New Yorker*, February 9, 2009.

Robert Kagan, "Adversarial Legalism and American Government," in *The New Politics of Public Policy* (Baltimore: Johns Hopkins Press), pp. 88-120.

Xin He, "Administrative Law as a Mechanism for Political Control," in Stephanie Balme and Michael Dowdle, eds., *Building Constitutionalism in Contemporary China* (Palgrave, 2009).

News reports on Chinese property law reform debate: Joseph Kahn, "Sharp Debate Erupts in China over Inequality and Ideology," *The New York Times* 12 March 2006; Zhao Lei, "Gong Xiantian vs Drafters of the Property Law," *China Law Digest* March 2006; Xinhua News Agency, "Draft Property Law Under Fifth Review", 24 August 2006.

Gong Xiantian, "A Property Law (Draft) that violates the constitution and basic principles of socialism. An open letter prompted by the annulment of section 12 of the constitution and section 73 of the General Rules of the Civil Law of 1986," posted online on 12 August 2005 (excerpt).

Mary Gallagher, "Use the Law as Your Weapon!' Institutional Change and Legal Mobilization in China," in *Engaging Chinese Law*, Neil Diamant, Stanley Lubman, Kevin O'Brien, eds. (Stanford: Stanford University Press, 2005).

Yang Su & Xin He, "Street as Courtroom: State Accommodation of Labor Protest in South China." *Law & Society Rev.* 2010.

Therese Hesketh et al, "The Effect of China's One-Child Family Policy after 25 Years," *The New England Journal of Medicine*, 1171, 2005.

Randall Peerenboom: *China's Long March toward Rule of Law*, Chap 10. 2002.

Xin He, "The Role of Contract Judgments Enforcement in Economic Development: A Comparison between Developed and Underdeveloped Areas in China." Manuscript, 2009.

Donald Clarke, "Economic Development and the Rights Thesis: A China Problem," *Am. J. Comp. Law*, 2003.

Jean Oi & Andrew Walder, "Property Rights in the Chinese Economy: Contours of the Process of Change," in Jean Oi and Andrew Walder, eds., *Property Rights and Economic Reform in China* Stanford: Stanford University Press, 1999, pp. 1-26.

Frank Upham, "From Demsetz to Deng," *NYU J. of L. & Politics*, 2009.

Appendix: Films

Hibiscus Town

The Story of Qiu Qu

To Live

Farewell to My Concubine