

**City University of Hong Kong
Course Syllabus**

**offered by School of Law
with effect from Semester A 2020 / 2021**

Part I Course Overview

Course Title: Arbitration Law

Course Code: LW6405

Course Duration: One Semester

Credit Units: 3

Level: P6

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) Nil

Exclusive Courses:
(Course Code and Title) Nil

Part II Course Details

1. Abstract

This course aims to give the student a comprehensive understanding of basic arbitration law and the factors and circumstances which are considered in utilizing the arbitration process. Particular emphasis will be given to the arbitration law of Hong Kong and Mainland China.

The course will further innovate a student's ability to understand the fundamental concepts with the ultimate goal of discovering how Arbitration Law is applied into actual practice.

LW6405 Arbitration Law is a CI Arb recognised course. Students who have successfully completed this course achieving at least 55% of the coursework and examination marks can be exempted from the CI Arb Module.

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.	explain the origins, practices, principles and theory of arbitration and to discover how effective the Law of Arbitration is used in the context of actual scenarios	Nil	✓	✓	✓
2.	identify, analyse, evaluate and critically comment on the legal issues and procedural issues of arbitration and where possible create/innovate workable solutions that apply such legal issues and procedures	Nil	✓	✓	✓
3.	creatively apply their knowledge and skills in further research and/or professional development in arbitration	Nil	✓	✓	✓
		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	
Lectures and seminars	Lectures explain the principles and theory of arbitration to students. Seminar sessions provide a forum for discussion and allow them to deepen their understanding of the arbitration law and develop their ability to identify, analyse, evaluate and critically comment on the legal issues and procedural issues of arbitration and thereby to creatively apply their knowledge and skills in further research and/or professional development in arbitration.	√	√	√	3

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		
Continuous Assessment: <u>40</u> %					
Coursework	√	√	√	40%	See below
Examination: <u>60</u> % (duration: 3 hours)					
Open book examination	√	√	√	60%	See below
				100%	

Remarks:

- (i) A student must obtain a minimum mark of 40% in both coursework and examination and an overall mark of 40% in order to pass a course.

The HKSAR Government's Continuing Education Fund (CEF) recognizes the LLMArbDR programme both as a whole and as individual courses (i.e. LW5303, LW6401, LW6405, LW6406, LW6407). The minimum attendance requirement for all CEF courses is **70%**. For the purpose of claiming reimbursement of CEF course fee or the professional recognition (i.e. CIArb, CPD), please note that it is the students' own responsibility to attend every class and examination during the teaching and examination periods.

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	Demonstration of ability to identify critical issues, presentation of ideas/solutions based on the course material and research on the subject.	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	Application of knowledge learnt to specific problems with logical thinking and presentation.	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. Keyword Syllabus

Arbitration law. Process of arbitration. Hong Kong and Mainland China.

1.1. Detailed Syllabus

1) Introduction to arbitration

The essential character of arbitration, definition, history, types (ad hoc & administered), arbitration in different sectors in commerce (construction, insurance, maritime, commodities, joint venture contracts, projects, investments, finance, etc.).

The pros and cons of arbitration.

An introduction to the arbitration law and rules: Arbitration Ordinance (LHK Cap.609); UNCITRAL Model Law; The English Arbitration Act 1996; case law; The PRC Arbitration Act and UNCITRAL Arbitration Rule; etc.

An introduction to the role of institutions and arbitration centres: Hong Kong International Arbitration Centre (HKIAC); the Chartered Institute of Arbitrators (CIArb); the ICC International Court of Arbitration; CIETAC and CMAC; London Court of International Arbitration (LCIA); American Arbitration Association (AAA); Singapore International Arbitration Centre (SIAC) etc.

Arbitration contrast with other forms of ADR or valuation/adjustment.

The role of national courts in supporting and supervising arbitration. Working relationship with arbitration.

2) Agreement to arbitrate

Importance, source of jurisdiction, scope, form.

Reasons and examples of ambiguous arbitration agreement.

Construction/interpretation of arbitration agreement, including the doctrine of separability and competence-competence.

Enforcing arbitration agreement – stay of court proceedings.

Arbitrability.

3) Appointment of arbitrator

Capacity, availability and qualifications imposed by agreement and/or law, if any.

The appointment of an arbitrator in different tribunals of a sole, two, three or more.

Power to appoint – parties, appointing bodies, statutory appointing bodies (such as the HKIAC) and the national courts.

Terms of appointment.

Resignation and replacement of an arbitrator; death of an arbitrator.

4) Rights, duties and powers of an arbitrator

Basic duties of an arbitrator: natural justice, to proceed diligently without undue delay and economically.

Arbitrator's rights to fees/remunerations: parties jointly and severally liable; normal way of charge; difference between reasonable fees and fixed fees on appointment; right to deposit, cancellation fees and lien on award; control, if any, by national courts (contrast HK with England).

Immunity of arbitrators.

Source of arbitrators' powers and widening of powers: powers to progress with reference and interim measures.

Control of arbitrators' powers by national courts.

5) Commencement and interlocutory proceedings

Commencement of arbitration and time bar/limitations imposed by legislation, foreign law and contract.

Normal interlocutory proceedings: Preliminary meetings; pleadings (amendments & clarifications); preliminary issues; general or specific discovery/disclosure of documents; capping of costs; interrogatories; preparations for hearing; hearing; award; want of prosecution; case management and sanctions.

Documents only arbitration.

Interim measures: security for costs; security for claim & counterclaim; injunctions; preservation of evidence; sale of goods/property; etc.; concurrent powers of arbitrator and court; apply to whom? Difference between HK and English arbitration law.

Inquisitorial and adversarial approaches.

Orders and sanctions.

6) Hearing

Fixing of days and place.

Preparations: exchange of witness statements and expert reports in advance, representations, witnesses, experts, bundles, opening & closing submissions, transcript/Livenote, interpreter, video-link, etc.

Normal proceedings in an oral hearing: order of speeches; examination, cross-examination and re-examination of witnesses; experts to meet and experts conferencing.

Part hearing and chess-clock procedure.

7) Evidence for arbitrators

Relevance of rules of evidence.

Types of evidence.

Privilege document or information.

Dangers for an arbitrator: secret evidence; taking evidence in the absence of one party; etc.

IBA Rules of Evidence.

8) Costs & Interest

Types of arbitration costs; the general rule; departure from the general rule: payment into court, sealed and Calderbank offers, Part 36 offer; unreasonable conduct; proportionality; unsuccessful issues wasting a lot of time; etc.

Assessment and determination of recoverable costs: by courts or by arbitrators? basis of assessment; benefits of an award on costs.

Ways to minimize or reduce high costs in arbitration.

Interest: period, applicable rate, simple or compound.

9) Award

Form and essential requirements.

Reasoned awards and other types of awards (interim final/partial awards, consent awards, injunctive awards, performance awards, provisional awards, declaratory awards, final awards, default awards, truncated awards).

Working & publication of an award; scrutiny; release of draft award; etc.

Remedies and challenges of an award: slip rule, clarification or additional award; appeal to courts on points of law and setting aside/remission of an award.

Enforcement: domestically and under New York Convention 1958; other methods.

2. Reading List

2.1 Compulsory Readings

(Compulsory readings can include books, book chapters, or journal/magazine articles. There are also collections of e-books, e-journals available from the CityU Library.)

1.	Arbitration in Hong Kong – A Practical Guide (by Sweet & Maxwell)
2.	Hong Kong Arbitration – A User’s Guide (by Dr. Michael Moser & Teresa Cheng, SC)
3.	The Arbitration Act 1996 – A Commentary (by Bruce Harris, Rowan Planterose & Jonathan Tecks, 3rd Edition)
4.	Bernstein’s Handbook of Arbitration and Dispute Resolution Practice (by John Tackaberry QC and Arthur Marriott QC, 4th Edition)

2.2 Additional Readings

(Additional references for students to learn to expand their knowledge about the subject.)

1.	www.hkiac.org
2.	www.adr.org
3.	www.cedr.co.uk
4.	www.jamsadr.com
5.	www.odr.info
6.	www.arbitrators.org
7.	www.hklawsoc.org.hk
8.	www.hkba.org