

City University of Hong Kong

Course Syllabus

offered by School of Law
with effect from Semester B 2021/22

Part I Course Overview

Course Title: Introduction to Common Law System and Methodology

Course Code: LW6102E

Course Duration: 2 weeks

Credit Units: 3

Level: P6

Medium of Instruction: English

Medium of Assessment: English

Prerequisites: Nil
(Course Code and Title)

Precursors: Nil
(Course Code and Title)

Equivalent Courses: LW6181E, LW5622, LW5653
(Course Code and Title)

Exclusive Courses: Nil
(Course Code and Title)

Part II Course Details

1. Abstract

This course is a bridging course for students admitted to the LLM programme and with their LLB obtained from non-common law jurisdictions so as to equip them to embark on their LLM study under the common law jurisdiction. There are three principal objectives.

The first objective is to introduce students to the common law system in Hong Kong under the following themes:

- (a) The sources of law, their hierarchy, and their makers;
- (b) A brief history of the common law system, and its emphasis on precedents; and
- (c) An overview of the key elements of the legal system in Hong Kong.

The second objective is to equip students with skills in reading and interpreting the different parts of any given judgment. Examples will be drawn from both private and public law so that students acquire a sense of how public law analyses differ from private law analyses, and how ratio decidendi is distinguished from obiter dictum.

The third objective is to equip students with the skills for reading and interpreting statutes. Students will be taught the legislative process so as to enhance their application of such skills in relation to statute law. They will be introduced to the general principles of statutory interpretation with focus on the development of the conventional rules to the contextual/purposive approach adopted in the more recent cases, and the relevance of legislative intent that could be ascertained from the statutes and official record of legislative proceedings. They will be required to apply these principles to selected statutes in class discussions.

The course will be conducted through the Socratic Method.

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.	Demonstrate an understanding of the common law tradition, its methods, and its relevance to the Hong Kong legal system.	25%	√		
2.	Understand the different sources of law and how they are used in cases.	25%	√	√	
3.	Develop the ability to distinguish statements of facts, statements of law, and ratios in case-laws.	25%		√	√
4.	Develop the skills to apply general principles of statutory interpretation to real-life statutes.	25%	√		√
		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.)

Duration of course: 2 weeks.

Course teaching methods: This course will use a seminar-based approach that integrates in-class discussions and guest lectures, giving students full opportunity to achieve the CILOs of the course. Students will be encouraged to raise questions and stimulated to engage in discussions so as add value to the class; contributing to the understanding of the course contents and their application to factual scenarios.

Students are encouraged to form study groups with their classmates and conduct group learning outside of the classroom.

TLA	Brief Description	CILO No.				Hours/week (if applicable)
		1	2	3	4	
Seminar	<ul style="list-style-type: none"> Students will be introduced to principles related to the common law legal system; Students are encouraged to actively participate during in-class discussions on evaluating, critically analysing, and developing a working knowledge of how to conduct legal research; 		√	√	√	
	<ul style="list-style-type: none"> Students will be introduced to methods for critically evaluating case law, Hong Kong ordinances, and subsidiary legislation, extracting key legal principles, extracting the ratio of a case, and applying both statutory and case law authority to the analysis of legal issues. 			√		
Class Discussions	Through class discussions, students are encouraged to develop an attitude of curiosity, critical thinking, analytical reasoning and creative problem-solving.	√			√	
Readings	<ul style="list-style-type: none"> Readings will be assigned in preparation for class. 		√	√		
Library workshops	<ul style="list-style-type: none"> Students will be introduced to the following topics by the Law Librarian: <ol style="list-style-type: none"> Case law research (2 hours) Finding legislation and citing legal information (2 hours) Research on secondary sources (2 hours) 					

4. Assessment Tasks/Activities (ATs)

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

Grading of student achievement is based on the City University of Hong Kong's assessment policy as outlined in the *University Assessment Policy and Principles for Taught Programmes* as well as other relevant academic regulations. Grading is based on student performance in both the mid-course examination and the end-of-course examination.

Assessment Tasks/Activities	CILO No.				Weighting	Remarks
	1	2	3	4		
Continuous Assessment: 20 %						
Mid-course Take home Assignment	√	√	√	√	20%	
Open-Book Examination: 80 %						
End-of-Course Examination: (2 hours)		√	√	√	80%	
					100%	

Students must obtain a minimum mark of 40% in the end-of-course 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. Mid-course Take-home assignment	<p>Ability to demonstrate their capacity to understand, analyse and apply rules and principles to the problem concerned.</p> <p>Ability to master principles, theories and concepts;</p> <p>Ability to identify the right issues and address the problems;</p> <p>Ability to apply the relevant laws to the issues;</p> <p>Ability to present arguments and observations clearly and in a well thought out manner.</p>	Excellent student performance with respect to the achievement of the applicable CILOs.	Good student performance with respect to the achievement of the applicable CILOs.	Fair student performance with respect to the achievement of the applicable CILOs.	Marginal student performance with respect to the achievement of the applicable CILOs.	Student failed to achieve the applicable CILOs.
2. End-of-Course Open-Book Examination	Ability to identify and address the right issues in the problems;	Excellent student performance with respect to the achievement of	Good student performance with respect to the achievement of	Fair student performance with respect to the achievement of the	Marginal student performance with respect to the achievement of the	Student failed to achieve the applicable CILOs.

	<p>Ability to analyse, argue and present original thinking;</p> <p>Ability to apply accurately the relevant laws to the analyses and arguments;</p> <p>Ability to present views and arguments clearly within a prescribed time under pressure.</p>	the applicable CILOs.	the applicable CILOs.	applicable CILOs.	applicable CILOs.	
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Part III Other Information (more details can be provided separately in the teaching plan)

1. Syllabus

1.1 Keyword Syllabus

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

Common law tradition, sources of law, common law processes, case law, statutes, legislation, judicial reasoning, custom, conventions, legal reasoning, legal interpretation, statutory interpretation, binding precedent, legal research, legal writing, case analysis, law reports, codified and uncoded, hierarchy of the courts, ratio decidendi, abstraction of judicial reasoning, obiter dicta, stare decisis.

1.2 Detailed Syllabus

The major topics covered in the course include, but are not limited to, the following:

1. Origins of the Common Law – Concepts, its Structure and comparison with civil law and codified systems
2. the English Legal System and the common law tradition -Major Legal system of the world and distinctions from civil law- Hong Kong system, its court system and legislature
3. Overview of the Hong Kong Legal System
4. Principles of legal research and reading in common law – sources of law – finding and reading the law – judicial impartiality and the objectivity of legal reasoning.
5. The origin, growth and organization of the courts in common law jurisdictions; courts, tribunals and decision-making bodies.
6. Judge-made law including matter of law, legal reasoning, precedents, Stare decisis.
7. Judicial activism, judicial law making - Ratio decidendi and obiter dictum.
8. Overview of constitutional interpretation
9. Legal methods from constitutional law perspective – doctrine of rule of law, legislative Supremacy of Parliament and the doctrine of the separation of powers – doctrinal conflict which courts have to resolve.
10. Statute law and statutory interpretation and legislative intention
11. Rules of statutory interpretation, technical meanings, Analysis in the Context and anatomy of a statute –I
12. Rules of statutory interpretation, technical meanings, Analysis in the Context and anatomy of a statute - II

Course Pack

Students will be given further readings from a variety of sources, where applicable. Where appropriate, copies of readings will be made available to the students either through the library catalogue, internet links or by lodging materials with the library's semi-closed collection.

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. John BAHRIJ, 'Hong Kong Research: Methods and Skills, (Sweet and Maxwell, 2007)
2. Kent Greenawalt, Statutory and Common Law interpretation New York: Oxford University Press, 2013
3. Calleros, Charles R, Legal method and writing 6th ed. New York, NY: Aspen Publishers, 2011

4. Wesley-Smith, P. *An Introduction to the Hong Kong Legal System*, Hong Kong, Oxford University Press

2.2 Recommended Readings

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

Students may consult one of several textbooks listed below. As far as possible, reading materials will be made available to students.

1. Abel, R.L. and Lewis, P.S., ed., *The Common Law World* (1988)
2. Baker, J.H., *The Legal Profession and the Common Law* (1986)
3. Becker, Carl L. *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Alfred A. Knopf, 1956 [1st ed., 1922].)
4. Bowen, Catherine Drinker. *Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787* (Boston: Little, Brown Co., 1966)
5. Brant, Irving. *The Bill of Rights: Its Origin and Meaning* (New York: New American Library, 1967 (paperback); Indianapolis: Bobbs-Merrill, 1965 (hardback))
6. Corwin, Edward D. *The "Higher Law" Background of American Constitutional Law* (Ithaca, N.Y.: Cornell University Press, 1955)
7. Hogue, A.R., *Origins of the Common Law* (1966)
8. Holmes, O.W., *The Common Law* (1881; new ed., ed. by M. DeWolfe Howe, 1963, repr. 1968)
9. Levy, Leonard W. ed. *Essays on the Making of the Constitution* (New York: Oxford University Press, 1969)
10. McDonald, Forrest. *We the People: The Economic Origins of the Constitution* (Chicago: University of Chicago Press, Midway Reprint Series, 1976 [1st ed. 1958])
11. Morris, Richard B. *Seven Who Shaped Our Destiny* (New York: Harper & Row, Publishers, 1973)
12. Plucknett, T.F., *Concise History of the Common Law* (5th ed. 1956)
13. Potter, H., *Historical Introduction to English Law and Its Institutions* (4th ed. 1958)
14. Rakove, Jack N. *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York: Alfred A. Knopf, 1979).
15. van Caenegem, R.C., *The Birth of the English Common Law* (1973)
16. Wood, Gordon S. *The Creation of the American Republic, 1776-1787* (New York: W. W. Norton, 1972 [1st ed., 1969])
17. Holland, J.A. & Webb, J.S. *Learning Legal Rules*, London, Blackstone

18. Zander, M. *The Law Making Process*, London, Butterworths
19. Diggory Bailey & [Luke Norbury](#), *Bennion on Statutory Interpretation*, 7th Edition, LexisNexis

2.3 Access to Library Resources

Students will have the opportunity to attend a tour of the library during the course. Students should take full opportunity to take a library tour. The legal research skills elements of the course will involve extensive use of the library and its materials. The law library will instruct students on how to access other libraries and facilities within and outside Hong Kong.

The Law Library has an excellent collection of legal materials in print copy and electronic format. Some important databases include:

- Hong Kong E-Legislation (HKeL) which contains the statutory Laws of Hong Kong and selected constitutional documents.
- Lexis/Nexis
- Westlaw
- Law Library Electronic Databases that include Index to Legal Periodicals and Index to Foreign Legal Periodicals, Latest Judgement Alert, Hong Kong Premium Service, Hansard U.K.

CD-ROM's include British Hansard, LEXIS/NEXIS, the Laws & Regulations of China, and the European Union Laws Library. There are also databases in Chinese as well as print format copies of Chinese law.