

City University of Hong Kong

Course Syllabus

offered by School of Law
with effect from Semester A 2020/21

Part I Course Overview

Course Title:	Common Law System, Reasoning and Methodology
Course Code:	LW6181E
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)	LW6102E, LW5622, LW5653
Exclusive Courses: (Course Code and Title)	LW6581E

Part II Course Details

1. Abstract

This course on Legal Method, in its current form, has three principal objectives.

The *first* objective is to introduce students to the basic terminologies of law in general, and of the common law system in particular. We will achieve this objective in the first part of the course. During this period, the course will focus on some preliminary 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;
- (c) The nature of common law reasoning; and
- (d) The IRAC approach to case analysis.

With this introduction over, the course will focus on two particular sources (types) of law and how to meaningfully engage with them: Cases and statutes.

The *second* objective is to introduce students to the first of these two: techniques of case analyses. The emphasis is on equipping students with a set of skills that will render them qualified to read and interpret the different parts of any given case. Examples will be drawn from both private and public law so that students acquire at least a preliminary sense of how public law analyses differ from private law analyses. The course will focus on some of these aspects:

- (a) Analogical reasoning;
- (b) Identifying and constructing ratios, and distinguishing them from obiter dicta; and
- (c) An introduction to reasoning by precedents, and the doctrine of stare decisis.

The *third* and final component of the course will deal with statutory interpretation. Apart from cases, statutes are the most important and common source of law. The course will introduce students to the general principles of statutory interpretation. Once again, we will examine a variety of statutes, from public and private law, and from civil and criminal law. The course will focus on some of the following aspects:

- (a) General principles of statutory interpretation (e.g. the literal rule, the golden rule, the purposive rule);
- (b) Relevance of parliamentary intent and finding parliamentary intent (including case-laws);
- (c) Specific principles for interpreting criminal law-related statutes; and
- (d) A brief overview of constitutional interpretation.

Overall, the course is designed to introduce students to the techniques of legal analysis – an essential building block on which they may erect their substantive knowledge of the law at CityU and beyond.

The course will be conducted in part through the Socratic Method. Students are *strongly* expected to come prepared, having read all of, and assimilated at least parts of, the assigned readings. The purpose of the lecture and tutorial is not to regurgitate the readings. Rather, the point is to use the readings as the basis for a more advanced analysis. As such, students should not expect PPTs to be used in the classroom. (They may be used sporadically, but the instructor will not circulate PPTs that summarises the weekly readings.)

For an introduction to the Socratic Method, see: <https://www.youtube.com/watch?v=rBBetEGvKpQ>.

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 relevance to the Hong Kong legal system.		√		
2.	Understand the different sources of law, and how judges may use conflicting sources.		√	√	
3.	Develop the ability to distinguish facts, legal reasoning, and ratios in case law.			√	√
4.	Develop the skills to apply general principles of statutory interpretation to real-life statutes.		√		√

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: 1 semester. One 2-hour lecture per week and one 2-hour tutorial every two weeks.

Course teaching methods: This course will use a discovery-enriched, interactive, seminar-based approach that integrates topic instructions, in-class discussions, out-of-class assignments, and independent as well as team projects. The course contains formative and summative assessment tasks designed to allow students full opportunity to achieve the CILOs of the course. Students will be required to attend library sessions which allow them to become familiar with the library facilities and to develop their research skills. A student's *meaningful* participation in classes will be taken into account in the overall assessment for the course. Meaningful participation includes, but is not limited to, participation which adds value to the class, contributes to the class' understanding of course materials, and demonstrates the student's own understanding and application of the course materials.

To ensure students obtain the full benefit of this course, students should attend all classes and engage fully in all activities. In addition, students are encouraged to form study groups with their classmates. Students must ensure that all work for assessment purposes is their own.

TLA	Brief Description	CILO No.				Hours/week
		1	2	3	4	
Class Discussions	<ul style="list-style-type: none"> In-class discussions and analysis of the course topics using the Socratic method (where applicable) designed to encourage students to develop an attitude of curiosity, critical thinking, analytical reasoning and creative problem-solving; Individual and team presentations on select issues designed to encourage students to analyse ideas and articulate legal issues. 	√	√	√	√	
Topic Discussions	<ul style="list-style-type: none"> Students will be introduced to principles related to the common law legal system; Students are required to actively participate during in-class discussions on evaluating, critically analysing, and developing a working knowledge of how to conduct legal research; Students will be introduced to methods for critically evaluating case law, Hong Kong ordinances, and other 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. 		√	√	√	
Readings	<ul style="list-style-type: none"> Weekly readings will be assigned in preparation for class; The law library may provide library assignments to increase knowledge of finding and using primary and secondary sources of law. 		√	√		
Exercises and Group Discussions	<ul style="list-style-type: none"> Assigned problems are discussed and analysed; Role play and student presentations may be used; Peer feedback may be given on assignments. 		√			

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 strictly on student performance in assessment tasks / activities. The assessment strategy includes both formative and summative assessment tasks designed to ensure that students have sufficient opportunities to develop and demonstrate their accomplishment of the CILOs.

Assessment Tasks/Activities	CILO No.				Weighting	Remarks
	1	2	3	4		
Continuous Assessment: 100 %						
Class Participation: Class 10% and Tutorial Presentation 10%	√	√	√	√	20%	
Mid-semester Assignment (Individual or Group)	√	√	√		30%	
End of Semester Assignment (Individual)		√	√	√	50%	
					100%	

NOTE: To pass this course, students must obtain an aggregate mark of 40% across the entire course and a minimum of 40% in each of the above assessment tasks for this course.

Plagiarism in Academic Assignments

Warning: You must not plagiarize. Plagiarism is not acceptable and will result in a significant penalty or no credit for academic assignments. Plagiarism includes, but is not limited to, (1) paraphrasing of another person's words or the use of another person's ideas without proper referencing in footnotes; and (2) quoting of another person's words without placing the quote within quotation marks and without proper referencing in footnotes. Any plagiarism will be penalized in accordance with the Academic Regulations, Code of Student Conduct and Disciplinary Procedure and the Guidelines on Academic Honesty. All students are required to complete the online *Academic Honesty tutorial* by Week 2. Please ensure that you take appropriate steps to understand and avoid potential plagiarism in your work or seek further guidance.

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. Class Participation	<p>Ability to master principles, theories and concepts;</p> <p>Ability to identify the right issues and address the problems;</p> <p>Ability to conduct legal research;</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. Mid-semester Assignment (Individual or Group) and End of Semester Assignment (individual)	<p>Ability to identify and address the right issues in the problems;</p> <p>Ability to analyse, argue and present</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.

	<p>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>					
--	--	--	--	--	--	--

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

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 uncodified, hierarchy of the courts, *ratio decidendi*, abstraction of judicial reasoning, obiter dicta, stare decisis.

2. Detailed Syllabus

A detailed weekly course programme will be provided in Week 1 of the course as part of the Course Manual. The major topics covered in the course include, but are not limited to, the following:

- Origins of Common Law
- Learning Legal Skills
- Legal research skills and legal research tasks
 - *Finding and using primary sources of authority*
 - *Finding and using secondary sources of authority*
 - *Finding and using legal reference sources*
- Understanding the elements of a case
- Reading case law
- Conducting case law analysis
- The nature and function of the doctrine of stare decisis
- Understanding statutory interpretation
- Conducting statutory interpretation analysis
- Integrating statutory interpretation with case law analysis
- Understanding and using canons of statutory interpretation
- Overview of constitutional interpretation

3. 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.

4. Compulsory Readings

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

Compulsory Reading will be distributed to students every week.

5. Recommended Readings

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

As far as possible, reading materials will be made available to students through a variety of ways. 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. The following may be taken as examples of indicative reading:

- Baker, J.H. *The Common Law Tradition: Lawyer, Books and the Law*, London: Hambleton Press
- Bradney, A., Cownie, F., Masson, J., Neal A. & Newell, D. *How to Study Law*, London, Sweet & Maxwell
- Cotterrell, R., *The Politics of Jurisprudence*, London: LexisNexis
- Cottrell, J. *Legal Research: A Guide for Hong Kong Students*, Hong Kong, Hong Kong University Press
- Cross & Harris, *Precedent in English Law*, Oxford University Press
- Dane, J. & Thomas, P.A. *How to Use a Law Library*, London, Sweet & Maxwell
- Dobinson, I. & Roebuck D. *Introduction to Law in the Hong Kong SAR*, Hong Kong, Sweet & Maxwell
- Fox, M & Bell, C. *Learning Legal Skills*, London, Sweet & Maxwell
- Hanson, S, *Legal Method & Reasoning* (2nd edn, London: Cavendish Publishing 2003)
- Holland, J.A. & Webb, J.S. *Learning Legal Rules*, London, Blackstone
- McLeod, I, *Legal Method* (7th edn Basingstoke: Palgrave MacMillan 2009)
- Neumann Jr, Richard K, *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* (6th edn, New York: Wolters Kluwer Law & Business 2009)
- Smith, A.T.H., *Glanville Williams: Learning the Law* 16th edn (2016) London: Sweet and Maxwell
- Stychin, C. & Mulcahy, L. *Legal Method: Text and Materials* (2nd edn London: Sweet & Maxwell 2003)
- Twining, W. *Legal Theory & the Common Law*, Oxford: Blackwell
- Twining, W. & Meirs, D. *How to Do Things with Rules*, Weidenfeld & Nicolson
- Wesley-Smith, P., *An Introduction to the Hong Kong Legal System*, Hong Kong, Oxford University Press
- Wong, Bobby K.Y., *Hong Kong Statutory Interpretation Handbook* (Hong Kong: LexisNexis, 2008)
- Zander, M. *The Law Making Process*, London, Butterworths

6. Access to Library Resources

Students will have the opportunity to attend a tour of the library during the first few weeks of 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, 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.