

City University of Hong Kong
Course Syllabus

offered by School of Law
with effect from Semester A 2023/2024

Part I Course Overview

Course Title:	Constitutional Law
Course Code:	LW5608
Course Duration:	One semester
Credit Units:	3
Level:	P5
Medium of Instruction:	English
Medium of Assessment:	English
Prerequisites: <i>(Course Code and Title)</i>	Nil
Precursors: <i>(Course Code and Title)</i>	Nil
Equivalent Courses: <i>(Course Code and Title)</i>	LW5605A Constitutional & Administrative Law I LW3605A Constitutional Law
Exclusive Courses: <i>(Course Code and Title)</i>	LW6119E Constitutional Law

Part II Course Details

1. Abstract

This course aims to

1. To examine the nature of the constitutional framework established under the Basic Law.
2. To provide an understanding of the legal, political and social values underlying the Basic Law.
3. To develop in the student the knowledge and skills to analyse the basic principles underlying the concept of “one country, two systems” and understand the practical significance of the concept.
4. To enable the student to analyse and understand the working of the future SAR government in the light of the provisions of the Basic Law.
5. To explain the legal position of Hong Kong vis-a-vis the Central Government and the Constitution of the People’s Republic of China.
6. To identify areas of uncertainty, conflict and problems in the Basic Law.

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	Weigh ting	Alignme nt with PILOs	DEC related learning outcomes		
				A1	A2	A3
1.	understand the working of the constitutional machinery set up under the Basic Law as one integral whole.	25%	1	✓	✓	✓
2.	understand the relationship between the various organs of government inter se and with the People’s Republic of China.	25%	2	✓	✓	✓
3.	appreciate the interplay of the political and legal principles underlying the Basic Law.	25%	5	✓	✓	✓
4.	understand how the Basic Law can be used to ensure Hong Kong’s progress and prosperity within the existing social, economic and legal framework.	25%	3, 4	✓	✓	✓
		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	CILO No.				Hours/week (if applicable)
	1	2	3	4	
Tutorial presentation and/or debate	✓	✓	✓	✓	1
Lecture	✓	✓	✓	✓	2

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		
Continuous Assessment: 50%						
Coursework	✓	✓	✓	✓	30%	
Tutorial and class performance	✓	✓	✓	✓	20%	
Examination: 50% (duration: 3 hours)						
Examination	✓	✓	✓	✓	50%	
					100%	

The use of Generative AI tools is not allowed.

Grading of Student Achievement:

Students may be required to do class work orally or in writing at different intervals of the course. Students are encouraged to read more materials apart from the reading materials listed for the tutorial to enrich their performance in the class.

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

To pass this course student must obtain an aggregate mark of 50% and a minimum of 50% in each of the coursework and the examination elements of the assessment. Coursework 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

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

5. Assessment Rubrics

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

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

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B)	Marginal (B-, C+, C)	Failure (F)
1. Coursework	<ul style="list-style-type: none"> research ability innovation accuracy 	High	Significant	Moderate	Inadequate
2. Tutorial and class performance	<ul style="list-style-type: none"> presentation skill participation content 	High	Significant	Moderate	Inadequate
3. Examination	<ul style="list-style-type: none"> presentation accuracy time management precise and the point 	High	Significant	Moderate	Inadequate

Applicable to students admitted before Semester A 2022/23

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
1. Coursework	<ul style="list-style-type: none"> research ability innovation accuracy 	Impressive	Very satisfactory	Ordinary	Manage to present fundamental concepts only	Fail to understand the subject
2. Tutorial and class performance	<ul style="list-style-type: none"> presentation skill participation content 	Impressive	Very satisfactory	Ordinary	Manage to present fundamental concepts only	Fail to understand the subject
3. Examination	<ul style="list-style-type: none"> presentation accuracy time management precise and the point 	Impressive	Very satisfactory	Ordinary	Manage to present fundamental concepts only	Fail to understand the subject

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.)

Background: Historical and Ideological

1. History of Hong Kong as a colony of Great Britain and its political evolution up to the present including international influences on such evolution.
2. Circumstances leading to the enactment of the Basic Law: the Sino-British Joint Declaration on the question of Hong Kong (Joint Declaration).
3. Respective obligations of the parties under the Joint Declaration and the extent to which such obligations are reflected in the Basic Law.
4. Ideology of “one country, two systems” under the constitutional framework.

Analysis

1. Legitimacy of the Basic Law.
2. General Principles.
3. Basic Law under the Chinese Legal Hierarchy.
4. Relationship between the Central Government and the SAR; Autonomy and its extent.
5. The impact of the Basic Law on the legal system.
6.
 - a) Central and local laws
 - b) Interpretation of the Basic Law
 - c) Amendment of the Basic Law
7. Political structure:
 - a) The Legislature – checks and balances and election amendment
 - b) The Executive
 - c) The Judiciary
8. Selected Issues on the application of the Basic Law in HK.
 - a) National Security Law of the HKSAR
 - b) Issues of National Flag and National Anthem
 - c) Nationality Law of PRC
 - d) Issues of Right of Abode with case studies
 - e) Bilingualism in SAR
 - f) Fundamental Rights and Civil Liberties under the Basic Law
 - g) The Oaths Issues
9. Foreign, External, and Defence affairs.
 - a) Civil and Criminal Judicial Assistance
10. Economic, social and cultural aspects of the SAR.

2. Reading List

Text(s)

- Priscilla Leung, *The Hong Kong Basic Law: Hybrid of Common Law and Chinese Law*, Lexis Nexis, 2007 (For those students use the old edition in 2006, please refer to the CD Rom correction at the City U library to do the necessary update)
- Xiao Wei Yun, *Introduction to the Basic Law of Hong Kong Special Administrative Region*, Law Press-China, 2000
- Priscilla Leung & Ord (ed): Basic Law - From Theory into Practice (Butterworths Asia, 1998)
- Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law*, Hong Kong University Press, Hong Kong, 1999
- Collection of Articles 2007, *Seminar on Review and Prospect of the Basic Law, the 10th Anniversary of Hong Kong's return to China*, One Country Two Systems Research Institute, 2010 edition
- Johannes Chan and ors, *Immigration Law in Hong Kong*, Sweet & Maxwell Asia, 2004.
- P.Y. Lo , *The Judicial Construction of Hong Kong's Basic Law : Courts, Politics and Society after 1997*, Hong Kong University Press, 2014.

Online Resources

www.lexisnexis.com/
www.isinolaw.com/
www.legco.gov.hk/english/index.htm
www.legislation.gov.hk/eng/home.htm
www.westlaw.com

Journal Articles

1. Priscilla M.F. Leung, "An Oath: Constitutional Dialogue between Chinese Law and Common Law", *Tsinghua China Law Review* Vol 13, Fall 2020, pp.59 to pp.82.
2. Priscilla Leung Mei Fun, *The Political Reform in Hong Kong : From the Perspective of Constitutional Law* , *China Legal Science*, Vol.4, March 2016, pp.3 to pp.32
3. Priscilla Leung Mei Fun, *Cross Border Co-location Juxtaposed Control Between Hong Kong and the Mainland of China*, *China Legal Science*, July 2017, pp.109 to pp.127
4. Priscilla Leung, "Recognition and Enforcement of laws across the Strait", *China Daily*, 28 November 2005
5. Priscilla Leung, "Return of the Luk Yu TeaHouse Killer", *the Hong Kong Lawyer*, April Issue, *Hong Kong Lawyer*, 2003 pp. 43-48
6. Priscilla Leung, "Practical Necessity of Enacting Legislation Pursuant to Article 23 " November Issue, *Hong Kong Lawyer*, 2002, pp. 84-85
7. Priscilla Leung, "The Applicability of National Laws in Hong Kong", *the Hong Kong Lawyer*, February issue, *Hong Kong Lawyer*, 2000, p.26-28
8. Priscilla Leung, "The Nature of Basic Law," *Hong Kong Lawyer*, April Issue, 1999, pp.66-70
9. Priscilla M.F. Leung, (Co-author) "One Country, Two Systems: Theory Into Practice", *Pacific Rim Law and Policy Journal*, Vol. 7, No. 2 (March 1998), pp. 279-321.
10. Priscilla M.F. Leung, "The Big Spender, Cheung Tse-keung Case, a brief analysis", *Hong Kong Lawyers*, (January 1999)
11. Priscilla M.F. Leung, (Co-author) "Patent Law under One Country Two Systems", *Journal of World Intellectual Property*, Vol. 1(1), p. 55-74 (Geneva), 1998.
12. Wang Guiguo, *A Comparative Study on the Act of State Doctrine - With Special Reference to the Hong Kong Court of Final Appeal*, *Legal Developments in China*, (ed) by Wang Guiguo & Wei Zhen Ying, Sweet & Maxwell, 1996.
13. Jeong Wan Chong, *'One Country Two Systems' and the Modern Constitutional Science*, University of Macao Press, 1996
14. Xiao Weiyun (ed.), *One Country Two Systems and the Basic Legal System of Hong Kong*, Peking University Press, 1990

15. Zhang Youyu, "The Reasons for Basic Principles in Formulating the Hong Kong Special Administrative Region Basic Law, and Its Essential Contents and Mode of Expression", *Journal of Chinese Law*, Vol.2, p.5 at pp. 11-12 (1988).
16. Chen Ke, "Interpretation of the Basic Law from a comparative Point of View", in *Collection of Articles on Comparative Constitutional Law Studies*, Nanjing University Press, 1993 Vol 1
17. Kenneth C.K. Chow, "The Organization, Jurisdiction and Constitutents of the Judiciary of HKSAR", *China Law* (Supplement for H.K. Return July 1997)

For students who can read Chinese, the following Chinese materials are also available for research as well as class discussion.

List of books in Chinese. (Only for reference)

1. 2021-08-04 China Daily-Deeply misunderstood Hong Kong needs time to heal its own wounds
2. 2021-09-02 China Daily-One country, two systems principle a herald of peace
3. 2022-04-08 China Daily-Judges' departure is chance to fine-tune appointments
4. 2022-06-22 文匯報-香港從來都不是殖民地
5. 2022-06-25 大公報-憲法乃「一國兩制」之根
6. 2022-06-28 文匯報-護法報國 傳承法治精神
7. 2022-06-29 羊城晚報-新選制促進特區政府達到良政善治
8. 2022-06-30 明報-一國兩制是和平的偉大事業
9. 2022-08-08 大公報-「愛國者治港」與「港人治港」的統一銜接
10. 《基本法》框架下的三權制衡-香港“拉布”案中法律爭議之解析·《中國法律評論》·2014年12月·總第4期·第87-95頁
11. 書：《香港基本法：從理論到實踐》·法律出版社·2015年版(即將出版)(獨著)
12. 從《剛果案》看涉的國家行為·《中國法律評論》·2015年4月(即將出版)
13. 《轟動香港社福制度的案例評析：孔允明案》·《港澳基本法實施評論第二卷》·(2015年卷)(即將出版)
14. 《憲政及政改之路》·《當代港澳研究》·2015年第1期(即將出版)
15. 梁美芬，《香港基本法：從理論到實踐》，法律出版社，2015年12月第1版
16. 王振民，《一國兩制與基本法，歷史，現實與未來》，三聯書店(香港)有限公司，2017年7月
17. 董立坤，中國內地與香港地區法律的衝突與協調，法律出版社，2004年版
18. 梁美芬，《兩岸三地婚姻家庭法律比較》，三聯出版社，2003年
19. 見袁求實編，《香港過渡期重要法律文憲》，文匯報出版社，1997
20. 吳志森等著，《香港居民的國籍和居留權》，香港大學亞洲研究中心，1997年
21. 沈學平，《香港未來與基本法》，香港出版集團有限公司，1994年
22. 梁美芬、盧永鴻，《中國法制改革》廣角鏡出版社，1994年
23. 梁美芬、盧永鴻，《海峽兩岸知識產權比較研究論文集》廣角鏡出版社，1994年
24. 雲冠平等主編，《基本法概論》，暨南大學出版社，1992年
25. 肖蔚雲主編，《一國兩制與香港基本法律制度》，北京大學出版社，1990年5月
26. 肖蔚雲主編，《一國兩制與香港特別行政區基本法》，香港文化教育出版有限公司，1990年
27. 黃江天，《香港基本法》的法律解釋研究，三聯出版社，2004年