

**City University of Hong Kong
Course Syllabus**

**offered by School of Law
with effect from Semester A 2023/24**

Part I Course Overview

Course Title:	Constitutional Law
Course Code:	LW6119E
Course Duration:	One semester
Credit Units:	3
Level:	P6
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>	Nil
Exclusive Courses: <i>(Course Code and Title)</i>	LW5608

Part II Course Details

1. Abstract

This course aims to:

1. Examine the nature of constitutional law and the Basic Law of HKSAR and the new constitutional order established under the Basic Law;
2. Develop in the student the knowledge and skills to analyse the doctrine of “One Country, Two Systems” and understand the practical significance of the doctrine;
3. Explain the legal position of HKSAR vis-à-vis the central government and within the framework of the Constitution of the People’s Republic of China;
4. Enable the student to analyse and understand the working of the HKSAR Government in the light of the provisions of the Basic Law and from comparative perspective;
5. Enable the student to apply legal doctrines and principles developed in constitutional cases in order to provide solutions to possible real-life situations; and
6. Identify major and important issues arising from the implementation of the Basic Law and areas of uncertainty, conflict and potential 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	Weighting (if applicable)	Discovery-enriched curriculum related learning outcomes (please tick where appropriate)		
			A1	A2	A3
1.	Understand the concept and principles of constitutional law and the new constitutional order and machinery established under the Basic Law.	20%	√	√	
2.	Understand the functioning of the Government of HKSAR and the relationship between the HKSAR and the central government of the PRC.	30%	√	√	√
3.	Understand the legal doctrines and principles underlying the major judicial decisions of the court and their application.	30%	√	√	√
4.	Critically analyse important constitutional documents such as the Basic Law and propose options for solutions of possible real-life situations.	20%	√	√	√
		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			
Lecture	Lectures according to detailed syllabus.	√	√	√	√			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	4		
Continuous Assessment: <u>50</u> %						
Coursework	√	√	√	√		The use of Generative AI tools is not allowed.
Examination: <u>50</u> % (duration: 3 hours)						The use of Generative AI tools is not allowed.
					100%	

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

Students must obtain a minimum mark of 50% in both coursework and examination and an overall mark of 50% in order to pass the course.

Applicable to students admitted before Semester A 2022/23

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.)

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	Demonstration of understanding of concepts, principles, and theories of constitutional law of Hong Kong. Demonstration of ability to identify legal issues and to apply knowledge to specific legal problems. Demonstration of aptitude for formulating innovative solutions to designated fact-based questions. Demonstration of ability to engage in argument-based analysis based on critical thinking. Application of legal writing and research skills.	High	Significant	Moderate	Inadequate
2. Examination	Demonstration of understanding of concepts, principles, and theories of constitutional law. Demonstration of ability to identify legal issues. Demonstration of ability to engage in argument-based analysis based on critical thinking. Application of knowledge to specific legal problems, to discuss questions, and to	High	Significant	Moderate	Inadequate

	comment on legal phenomenon. Application of legal writing and research skills.				
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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	Demonstration of understanding of concepts, principles, and theories of constitutional law of Hong Kong. Demonstration of ability to identify legal issues and to apply knowledge to specific legal problems. Demonstration of aptitude for formulating innovative solutions to designated fact-based questions. Demonstration of ability to engage in argument-based analysis based on critical thinking. Application of legal writing and research skills.	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	Demonstration of understanding of concepts, principles,	Strong evidence of original thinking; good organization,	Evidence of grasp of subject, some evidence of	Student who is profiting from the university	Sufficient familiarity with the subject matter to enable the student	Little evidence of familiarity with the subject matter;

	<p>and theories of constitutional law. Demonstration of ability to identify legal issues. Demonstration of ability to engage in argument-based analysis based on critical thinking. Application of knowledge to specific legal problems, to discuss questions, and to comment on legal phenomenon. Application of legal writing and research skills.</p>	<p>capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.</p>	<p>critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.</p>	<p>experience; understanding of the subject; ability to develop solutions to simple problems in the material.</p>	<p>to progress without repeating the course.</p>	<p>weakness in critical and analytic skills; limited, or irrelevant use of literature.</p>
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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.)

Constitutional Law, The Basic Law of the HKSAR, New Constitutional Order of the HKSAR, Central and SAR Relations, Executive-led Government, Separation of Powers, Legislative Power, Judiciary Power and Independence, Constitutional Review, Constitutional Interpretation, NPCSC and Legislative Interpretation, Constitutional/Basic Law Amendment, National Security and Freedom of Expression, Fundamental Rights and Obligations, and Civil and Political Rights

1.2 Detailed Syllabus

The following subjects shall be examined:

1. Basic Law as National Law and Constitution of the Region
2. The Doctrine of “One Country Two Systems” and the Making of New Constitutional Order of the HKSAR
3. Basic Principles underlying the Basic Law of the HKSAR
4. The Relationship between central authorities and the HKSAR
5. Autonomous Regime under “High Degree of Autonomy”
6. Separation of Powers as Constitutional Principle
7. Executive Power and Executive-led Government
8. Legislative Power and Legislative-Executive Relation
9. Judicial Power and Judicial Independence
10. Constitutional/Basic Law Interpretation by Court and by the NPCSC
11. Constitutional/Basic Law Amendment
12. National Security Issues in the HKSAR and Law-making
13. Regime of Human Rights Protection

The above is subject to minor adjustment.

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.)

- Danny Gittings, *Introduction to the Hong Kong Basic Law*, 2nd ed., Hong Kong: Hong Kong University Press, 2016.
- Johannes Chan & CL Lim (eds.), *The Law of the Hong Kong Constitution*, 2nd ed., Sweet & Maxwell, Sept 2015.
- Wang Shuwen (ed.), *Introduction to the Basic Law of Hong Kong Special Administrative Region*, Beijing: Law Press, 2000. (It is a translated of 王叔文主編：《香港特別行政區基本法導論》，修正本，北京：中共中央黨校出版社 1997 年版。)
- Guobin Zhu (ed.), *The Basic Law of the HKSAR of the PRC and Related Constitutional Instruments 2023 / 《中華人民共和國香港特別行政區基本法及相關憲制性法律文件 2023》*, bilingual & pocket-size, Hong Kong: City University of Hong Kong, July 2023.

2.2 Additional Readings

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

- General Study
 - Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law*, 2nd ed., Hong Kong: Hong Kong University Press, 1999.
 - Michael Ramsden & Stuart Hargreaves, *Hong Kong Basic Law Handbook*, 3rd ed., Sweet & Maxwell, 2022.
 - P Y Lo, *The Hong Kong Basic Law*, LexisNexis Butterworths, 2011.
 - Priscilla MF Leung, *The Hong Kong Basic Law: Hybrid of Common Law and Chinese Law*, 2nd ed., Lexis Nexis, 2006.
 - Priscilla MF Leung & Guobin Zhu (eds.), *The Basic Law of HKSAR: From Theory to Practice*, Hong Kong: Butterworths Asia, 1998.
 - Lau Siu-kai, *The Practice of "One Country, Two Systems" Policy in Hong Kong*, Hong Kong: The Commercial Press, 2017.
 - Albert HY Chen, *The Changing Legal Orders in Hong Kong and Mainland China – Essays on "One Country, Two Systems"*, Hong Kong: City University of Hong Kong Press, 2021.
 - Xiao Weiyun (ed.), *One Country Two Systems: An Account of the Drafting of the Hong Kong Basic Law*, Beijing: Peking University Press, 2001. (It is a translation of 肖蔚雲主編：《一國兩制與香港基本法制度》，北京：北京大學出版社 1990 年版。)
 - 王振民著：《“一國兩制”與基本法：歷史、現實與未來》，香港：三聯書店（香港）有限公司 2017 年版。
 - 朱國斌著：《建構“一國兩制”憲制：在動態中達至平衡》，香港：三聯書店（香港）有限公司 2020 年版。
 - 梁愛詩著：《飛鴻踏雪：香港基本法實踐 20 年》，香港：香港城市大學出版社 2017 年版。
 - 饒戈平著：《與時偕行——一國兩制與基本法在香港的實踐》，香港：香港城市大學出版社 2019 年版。
 - 陳弘毅、鄒平學主編：《香港基本法面面觀》，香港：三聯書店（香港）有限公司 2015 年版。
 - 朱國斌著：《香江法政縱橫：香港基本法學緒論》，北京：法律出版社 2010 年版。
 - 李浩然著：《“一國兩制”下的香港法治和管治研究》，香港：三聯書店（香港）有限公司 2015 年版。
 - 一國兩制研究中心主編：《香港回歸十周年基本法回顧與前瞻研討會論文集 2007》，香港：一國兩制研究中心出版 2008 年版。
- Hong Kong Law Journal, *10 Years of the Basic Law*, Special Anniversary Issue, Vol. 37 Part 2, 2007, Hong Kong.
- Guobin Zhu, Mark Kielsgard & Surya Deva (eds.), *Constitutional Law and Human Rights in Hong Kong: A Sourcebook*, Hong Kong: City University of Hong Kong Press, July 2021.
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- Special and Topical Study
 - 李浩然主編：《香港基本法起草過程概覽》（共三卷），香港：三聯書店（香港）有限公司 2012 年版。

- 袁求實編著：《香港回歸以來大事記》（卷一，1979-1997，第二版；卷二，1997-2002，第二版；卷三，2002-2007，第一版），香港：三聯書店（香港）有限公司 2015 年版。
- Johannes Chan & Lison Harris (eds.), *Hong Kong's Constitutional Debate*, Hong Kong: Hong Kong Law Journal Limited, 2005.
- Johannes Chan. HLFU & Yash Ghai (eds.), *Hong Kong's Constitutional Debate: Conflict over Interpretation*, Hong Kong: Hong Kong University Press, 2000. [Note: a Chinese version 《居港權引發的憲法爭論》 is also available.]
- Fu Hualing et al (eds.), *National Security and Fundamental Freedoms: Hong Kong's Article 23 under Scrutiny*, Hong Kong: Hong Kong University Press, 2005.
- Fu Hualing, Lison Harris and Simon NM Young, *Interpreting Hong Kong's Basic Law: The Struggle for Coherence*, Palgrave MacMillan, 2007.
- P Y Lo, *The Judicial Construction of Hong Kong's Basic Law: Courts, Politics and Society after 1997*, Hong Kong University Press, 2014.
- Eric C. Ip, *Hybrid Constitutionalism: The Politics of Constitutional Review in the Chinese Special Administrative Regions*, Cambridge University Press, 2019.
- Simon NM Yeung & Yash Ghai (eds.), *Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong*, Cambridge University Press, 2014.
- Eric C. Ip, *Law and Justice in Hong Kong*, Hong Kong: Sweet & Maxwell, 2016.
- Simon NM Yeung & Richard Cullen, *Electing Hong Kong's Chief Executive*, Hong Kong: Hong Kong University Press, 2010. [Note: a Chinese version named 《選舉香港特區行政長官》 is also available.]
- Simon NM Young & Po Jen Yap, *Hong Kong Basic Law Bibliography*, 2nd ed., Hong Kong: Hong Kong Law Journal Limited, 2016.
- Johannes Chan, *Hong Kong Human Rights Bibliography*, Hong Kong: Hong Kong Law Journal Limited, 2006.
- Johannes Chan & Yash Ghai, *The Hong Kong Bill of Rights: A Comparative Approach*, Butterworths Asia, 1993.
- 王鳳超編著：《香港政制發展歷程（1843—2015）》，香港：中華書局 2017 年版。
- 朱國斌編著：《香港特區政治體制研究》，香港：香港城市大學出版社 2017 年版。
- 韓大元著：《憲法與基本法：歷史、文本與現實》，香港：香港城市大學出版社 2023 年版。
- 孫成著：《國家憲法在香港實施問題研究》，香港：三聯書店（香港）有限公司 2020 年版。
- 朱國斌、朱世海編著：《中央與特別行政區關係專論》，香港：香港城市大學出版社 2019 年版。
- 朱國斌編著：《“一地兩檢”與全國人大常委會的權力》，香港：香港城市大學出版社 2020 年 11 月版，341 頁。
- 朱世海著：《香港行政主導制研究》，北京：法律出版社 2016 年版。
- 朱國斌、章小杉、楊曉楠合編：《行政長官制度、權力與特區管治》，香港：香港城市大學出版社 2021 年 7 月版，312 頁。
- 張小帥著：《一國兩制下中央對香港特區的管轄權研究》，香港：香港城市大學出版社 2023 年版。

- 秦前紅、付婧著：《香港特區立法權與行政權關係研究》，香港：香港城市大學出版社 2018 年版。
- 王理萬著：《香港立法會普選研究》，香港：香港城市大學出版社 2018 年版。
- 強世功主編：《香港政制發展資料匯編（一）：港英時期及起草《基本法》；《香港政制發展資料匯編（二）：1997—2015 的政治發展》，香港：三聯書店（香港）有限公司 2015 年版。
- 黃江天著：《香港基本法解釋理論及判例研究》（上冊、下冊），香港：香港城市大學出版社 2018 年版。
- 朱國斌編著：《第五次人大釋法：憲法與學理論爭》，香港：香港城市大學出版社 2018 年版。
- 羅敏威著：《香港人權法新論》，香港：香港城市大學出版社 2009 年版。
- 沈太霞著：《守護人權-香港特別行政區法院二十年（1997-2017）》，香港：三聯書店（香港）有限公司 2020 年版。
- 鄒平學等著：《香港基本法實踐問題研究》，北京：社會科學文獻出版社 2014 年版。
- Other General Reference
 - Miners, N. (ed.), *The Government and Politics of Hong Kong*, 5th ed., Hong Kong: Oxford University Press, 1998.
 - Sing Ming (ed.), *Hong Kong Government and Politics*, Hong Kong: Oxford University Press, 2003.
 - Michael John Fisher, *Text, Cases and Commentary on the Hong Kong Legal System*, Hong Kong: HKU Press, 2019.
 - Paul Jackson & Patricia Leopold, *O. Hood Phillips and Jackson Constitutional and Administrative Law*, 8th ed., London: Sweet & Maxwell, 2001.
 - A. W. Bradley & K. D. Edwing, *Constitutional and Administrative Law*, 12th ed., London: Longman, 1997.
 - Ian Loveland, *Constitutional Law, Administrative Law and Human Rights: A Critical Introduction*, 5th ed., London: Oxford University Press, 2009.
 - Helen Fenwick & Gavin Phillipson, *Text, Cases and Materials on Public Law and Human Rights*, 3rd ed., London & NY: Routledge, 2011.
 - Stephen Thomson, *Administrative Law in Hong Kong*, Cambridge; Cambridge University Press, 2018.
 - Swati Jhaveri, Michael Ramsden & Anne Scully-Hill, *Administrative Law in Hong Kong*, Hong Kong: Lexis-Nexis, 2013.

2.3 Other Readings and Sources

- Texts and Statutes
 - Sino-British Joint Declaration (1984)
 - The Basic Law of the HKSAR (1990) and the Related Decisions
 - Hong Kong Reunification Ordinance (1997)
 - The Constitution of the PRC (1982)
 - International Covenant on Civil and Political Rights (ICCPR, 1966)
 - International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)

- The Bill of Rights Ordinance (BORO, 1991)
- Online Sources
 - <http://www.gov.hk/en/residents/>
 - www.legco.gov.hk/english/index.htm
 - <http://www.doj.gov.hk/>
 - <https://www.elegislation.gov.hk/>
 - <https://www.basiclaw.gov.hk/en/index.html>
 - http://www.judiciary.gov.hk/en/legal_ref/judgments.htm
 - <https://www.hklii.org/eng/>
 - <http://www.npc.gov.cn/npc/index.shtml>
 - <http://www.gov.cn/>

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