

City University of Hong Kong

Course Syllabus

**offered by School of Law
with effect from Semester A 2022/23**

Part I Course Overview

Course Title: Constitutional and Administrative Law of China

Course Code: LW6121E

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) LW6121C and LW5965

Exclusive Courses:
(Course Code and Title) Nil

Part II Course Details

1. Abstract

This course aims to introduce the historical and ideological background of the constitutional and administrative law of the PRC and give students a specialized knowledge of the actual working of the legal system of the PRC from the constitutional and administrative law perspectives. It gives students a thorough knowledge of the debates and theories of China's constitutional and administrative law, the legislative process and legal remedies in the field of constitutional and administrative law, and enables them to understand the dynamics behind the rapidly changing constitutional and administrative law of the PRC.

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.	Identify and describe the legislative powers and functions of the National People's Congress and the Local People's Congresses.		√	√	√
2.	Critically analyse various Chinese constitutional issues such as constitutional principles, constitutional structure, central-local relationship, constitutional review system, and protection of human rights in the context of China.		√	√	√
3.	Critically analyse various Chinese administrative law issues relating to administrative reconsideration, administrative litigation and state compensation in the context of China.		√	√	√
		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	Lecture will be given on theoretical issues; Case studies will be used; Comparison with other legal systems will be made; Students will be	√	√	√				3 hours/week or a total of 39 hours of block teaching

	engaged in both case analysis and comparative study discussion.							
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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: 50%								
Coursework	√	√	√				50%	
Examination 50% (duration: 3 hours)								
							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)
Coursework	<p>Demonstration of understanding of principles and theories.</p> <p>Application of knowledge to specific issues.</p> <p>Ability to engage in argument-based analysis.</p> <p>Aptitude in formulating original arguments.</p>	High	Significant	Moderate	Inadequate
Examination	<p>Demonstration of understanding of principles and theories.</p> <p>Demonstration of ability to identify issues.</p> <p>Application of knowledge to specific issues.</p> <p>Ability to engage in argument-based analysis.</p> <p>Aptitude in formulating original arguments.</p>	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	<p>Demonstration of understanding of principles and theories.</p> <p>Application of knowledge to specific issues.</p> <p>Ability to engage in argument-based analysis.</p> <p>Aptitude in formulating original arguments.</p>	<p>Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.</p>	<p>Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.</p>	<p>Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.</p>	<p>Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.</p>	<p>Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.</p>
2. Examination	<p>Demonstration of understanding of principles and theories.</p> <p>Demonstration of ability to identify issues.</p> <p>Application of knowledge to specific issues.</p> <p>Ability to engage in argument-based analysis.</p> <p>Aptitude in formulating original arguments.</p>	<p>Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.</p>	<p>Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.</p>	<p>Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.</p>	<p>Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.</p>	<p>Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.</p>

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, Administrative Law, People's Republic of China, National People's Congress, Local People's Congress, Basic Law, Illegality of Governmental Action, Unconstitutionality of Governmental Action, Party System, Human Rights, Local Legislation, Legislative Process, Civil Duties.

1.2 Detailed Syllabus

1. Historical development of constitutional and administrative law of the PRC; legal tradition of Chinese law; comparisons with developments in other civil law and common law countries.
2. Basic concepts of the constitutional law of the PRC; current debates on the theories of China's constitutional law; relationship between constitutional law and socialist legality.
3. The role of the Communist Party under the Constitution; nature and classification of the Constitution; relationship between the Party and the State; public law and politics.
4. Nature of the State; unified, federal or confederal system; autonomous regions; special administrative regions and their future developments; the organisation of the PRC government; the relationship between legislative, executive and judicial branches; role of the army; the function of the courts and procuratorates.
5. Election system; election of the delegates of the legislature—the national and local people's congress; election of members of the State Council and the local governments; the Party system.
6. Civil duties and political rights of citizens; socialist concept of citizen rights and human rights; international and domestic human rights; realities and expectations; human rights remedies.
7. Legislative process; law-making bodies (i.e., National People's Congress and Local People's Congress, State Council); hierarchy of law (i.e., the Constitution, national legislation, ordinary legislation, administration regulation, provincial legislation, departmental order etc.) Functions of the National People's Congress (i.e., law-making, interpretation of laws; supervision of the enforcement of laws.)
8. Concepts of administrative law; procedural and substantive law; role of administrative law; Administrative Procedure Law; origin of the petition right to sue the government; Letters and Visits system.
9. Administrative review/reconsideration system; administrative liability.
10. Administrative compensation and the State Compensation Law.

2. Reading List

2.1 Recommended Readings

(Additional references for students to learn to expand their knowledge about the subject, and other relevant readings may be recommended while the class is ongoing.)

Derk Bodde/Clarence Morris, Law in Imperial China, (Harvard University Press, 1967)

James P. Brady, Justice and Politics in People's China, (Academic Press 1982)

Paul Heng-chao Ch'en, Chinese Legal Tradition under the Mongols, (Princeton University Press, 1979)

Ch'ien, Tuan-sheng: The Government and Politics of China, (Stanford University Press, 1970, reprint of Harvard University Press, 1950)

T'ung-Tsu Ch'u, Law and Society in Traditional China, (Hyperion Press, Inc., 1980)

Albert H.Y. Chen, ed., Constitutionalism in Asia in the Early Twenty-First Century, (Cambridge University Press, 2014)

Albert Hung-yea Chen, An Introduction to the Legal System of the People's Republic of China (4th edition), (LexisNexis, 2011)

Albert H. Y. Chen/Andrew Harding, eds., Constitutional Courts in Asia: A Comparative Perspective, (Cambridge University Press, 2018)

Jerome Alan Cohen/R. Randle Edwards/Fu-mei Chang Chen, Essays on China's Legal Tradition, (Princeton University Press, 1980)

Wei Cui/Jie Cheng/Dominika Wiesner, 'Judicial Review of Government Actions in China', China Perspective, 2019, No.1, pp. 35-44

Rosalind Dixon/Tom Ginsburg, eds., Comparative Constitutional Law in Asia, (Edward Elgar, 2014)

Michael W. Dowdle, 'The Constitutional Development and Operations of the National People's Congress', Columbia Journal of Asian Law, 1997, Vol.11, No.1, pp. 1-125

Du Xichan/Zhang Lingyuan: China's Legal System: A General Survey, (New World Press, China, 1990)

Günter Frankenberg, Comparative Constitutional Studies: Between Magic and Deceit, (Edward Elgar, 2019)

Fu Hualing/Zhai Xiaobo, 'What Makes the Chinese Constitution Socialist?' International Journal of Constitutional Law, 2018, Vol.16, No.2, pp. 655–663

Tom Ginsburg/Rosalind Dixon, Comparative Constitutional Law, (Edward Elgar, 2011)

Helena Alviar García/Günter Frankenberg, eds. Authoritarian Constitutionalism: Comparative Analysis and Critique, (Edward Elgar, 2019)

- He Xin, 'The Party's Leadership as a Living Constitution in China', Hong Kong Law Journal, 2012, No.1, pp. 73-94
- Vicki C. Jackson/Mark Tushnet, Comparative Constitutional Law, (Foundation Press, 1999)
- Jiang Shigong, 'Written and Unwritten Constitutions: A New Approach to the Study of Constitutional Government in China', Modern China, 2010, Vol.36, No.1, pp. 12-46
- Kim L. Scheppelle, 'Autocratic Legalism', University of Chicago Law Review, 2018, Vol.85, No.2, pp. 545-583
- Lin Feng, Administrative Law: Procedures and Remedies in China, (Sweet & Maxwell Asia, 1996)
- Juan J. Linz, Totalitarian and Authoritarian Regimes, (Lynne Rienner, 2000)
- Joseph D. Lowe, The Traditional Chinese and Legal Thought, (Berkeley, Calif, 1984)
- Stanley B. Lubman, A Bird in a Cage: legal reform in China after Mao, (Stanford University Press, 1999)
- Ming Wan, 'Human Rights Lawmaking in China: Domestic Politics, International Law, and International Politics', Human Rights Quarterly 2007, Vol.29, No.3, pp. 727-753
- Randall R. Peerenboom, China's Long March toward Rule of Law, (Cambridge University Press, 2002)
- Randall Peerenboom, ed., Judicial Independence in China, (Cambridge University Press, 2010)
- Randall Peerenboom, 'Assessing Human Rights in China: Why the Double Standard?' Cornell International Law Journal, 2005, Vol. 38, No.1, pp. 72-163
- Michel Rosenfeld/Andr s Saj , The Oxford Handbook of Comparative Constitutional Law, (Oxford University Press, 2012)
- Zhiwei Tong, 'A Comment on the Rise and Fall of the Supreme People's Court's Reply to Qi Yuling's Case', Suffolk University Law Review, 2010, Vol.43, p. 671-680
- Mark Tushnet, Advanced Introduction to Comparative Constitutional Law, (Edward Elgar, 2014)
- Wang Guiguo/John Mo eds., Chinese Law, (Kluwer Law International, 1999)
- Wang Shucheng, 'Emergence of a Dual Constitution in Transitional China', Hong Kong Law Journal, 2015, Vol.45, No.3, pp. 819-850
- Xie Libin/Haig Patapan, 'Schmitt Fever: The Use and Abuse of Carl Schmitt in Contemporary China', International Journal of Constitutional Law, 2020, Vol.18, No.1, pp. 130-146
- Xu Chongde/Niu Wenzhan, Constitutional Law in China, (Kluwer Law International, 2013)

Qianfan Zhang, The Constitution of China: A Contextual Analysis, (Hart Publishing, 2012)

2.2 Online Resources

Westlaw China; Lexis HK; pkulaw (English version of 北大法寶)