City University of Hong Kong
Course Syllabus

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

Part I   Course Overview

Course Title: Chinese and Comparative Trade Secrets Law

Course Code: LW6150E

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)   Nil

Exclusive Courses:
(Course Code and Title)   Nil

Part II   Course Details

1.   **Abstract**
(A 150-word description about the course)

Trade secrecy, one of the most neglected area of IP laws, is always considered by certain companies as a paramount tool to safeguard their creative innovations. Its importance is gradually recognized by the public during the recent years. Particularly in mainland China, an increasing focus is given to trade secrets law during the past few years with the statute being amended, new judicial interpretation and administrative regulation being promulgated. There can be various interesting topics to explore for trade secrets protection, ranging from very basic questions about whether trade secrets can be classified as IP rights to detailed discussions on their protection requirements and how trade secrets law in mainland China developed into today's status.

The aim of this course is to provide a comprehensive understanding of both theories backing trade secrets and, particularly, the PRC trade secrets law to students through comparative lens. That being said, though the standing point for the course is the PRC law, occasionally references will be made to the laws of UK/Hong Kong, the US, and the international regime. Through the course, students are expected to obtain sufficient knowledge of trade secrets protection in mainland China as well as other major jurisdictions.

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	DEC related learning outcomes		
			A1	*A2*	*A3*
1.	Appreciate the laws of trade secrets in the intellectual property context	10%	✓	✓	
2.	Understand thoroughly trade secrets legal principles in Mainland China	40%	✓	✓	
3.	Understand basic trade secrets laws and principles in Hong Kong, UK, and the US for comparative purposes	20%	✓	✓	
4.	Develop the capacity to advise on trade secrets in different circumstances.	30%	✓	✓	✓
		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. 1	2	3	4	Hours/week (if applicable)
Lectures	Students will be introduced to substantive trade secrets laws in mainland China, the principles within, and to concepts and issues. They will also be introduced to comparative perspectives on trade secrets laws in Hong Kong, the UK, and the US.	✓	✓	✓	✓	
Case Studies & Group Discussions	During the lectures, students will be organized as groups to study specific cases and to clarify the theories and principles behind via Socratic way of teaching. Develop self-confidence in application of legal principles, advocacy skills and public speaking. Foster students' growth through development of greater intellectual and interpersonal maturity.	✓	✓	✓	✓	
Reading Week (Week 7)	During the Reading Week students will be given a chance to summarize and develop their knowledge in the subject by doing further reading and research on the conceptual and theoretical sides of the subject, and to complete the take home assignment.					

4. Assessment Tasks/Activities (ATs)
(ATs are designed to assess how well the students achieve the CILOs.)

Assessment Tasks/Activities	CILO No. 1	2	3	4	Weighting	Remarks
Continuous Assessment:	40%					
Group Assignment (20%)	✓	✓	✓	✓	20%	
Students are expected to master the basic skills of legal research and apply it in their written works. Their works should demonstrate their analytical abilities and good understanding of the legal theories as a group.						The use of Generative AI tools is not allowed.
Group Presentation (15%) and Participation (5%)	✓	✓	✓		20%	
Students are expected to present on a trade secrets related topic and engage in discussions. Their high-quality comments, questions and answers, and interactions with others will be assessed and valued. They are also expected to be confident and mature in cooperating with each other and conducting the group work.						The use of Generative AI tools is not allowed.
Examination: (duration: 2 hours)	60%					
Open Book Exam (60%)	✓	✓	✓	✓	60%	
Students will be tested with theoretical and policy-type questions, they should demonstrate good understanding of the general theories and principles, and the ability to critically analyze them and provide their own opinions.						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 the continuous assessment and final 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 the continuous assessment and final 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)	Fair (B-, C+, C)	Failure (F)
1. Group Assignment	- Original thinking - Rational analysis - Structure and formation - Reasonable conclusion	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.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.
2. Participation	- Quality of the questions/comments/ - General attendance - Confidence building and students' maturity				
3. Final Exam	- Application of Law in theoretical scenarios - Critical thinking in essay questions				

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. Group Assignment	- Original thinking - Rational analysis - Structure and formation - Reasonable conclusion	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. Participation	- Quality of the questions/comments/ - General attendance - Confidence building and students' maturity					
3. Final Exam	- Application of Law in theoretical scenarios - Critical thinking in essay questions					

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.)

    Trade secrets, Confidential Information, Misappropriation, Reasonable Secrecy Measures, Non-compete agreements, Reverse engineering, Remedies, Criminal Consequences

    PRC Anti-Unfair Competition Law, Law on Confidential Information, the US Federal Trade Secrets Law and State Trade Secrets Law

Detailed Syllabus

1) A brief introduction to intellectual property protection in China and Trade Secrecy's position in the IP paradigm

2) Theoretical justifications underpinning trade secrecy protection

3) Introduction to trade secrecy protection in different jurisdictions

4) Requirements for trade secrecy protection: reasonable secrecy measures and confidentiality agreement

5) Requirements for trade secrecy protection: secrecy and commercial value requirements

6) Requirements for trade secrecy protection: misappropriation

7) Defending trade secrets claims: reverse engineering, independent development, whistleblower, and trade secrets use

8) Non-competes and trade secrets protection

9) Remedies for trade secrets claims: damages and equitable reliefs

10) Criminal consequences for trade secrets misappropriation: introduction and criticisms on the trend of IP criminalization

11) The development of China's trade secrets law in the US shadow: a deeper understanding of how the PRC trade secrets law reaches today

12) Trade secrets disputes across borders: international issues

13) Concluding remarks and some notes on the future of China's trade secrets law

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.	PRC Anti-Unfair Competition Law (2019) and its related Judicial Interpretation (2020)
2.	Douglas Clark. Intellectual property in Hong Kong. Hong Kong: LexisNexis, 2022.
3.	Peter S Menell. et al., Intellectual Property in the New Technological Age 2023 Vol. I: Perspectives, Trade Secrets and Patents, Clause 8 Publishing, 2023.
4.	David Llewelyn & Tanya Aplin, Intellectual Property: Patents, Copyrights, Trademarks & Allied Rights, Sweet & Maxwell, 2023
5.	CHEN Yang, Development of China's Trade Secrets Law in the US' Shadow: Negative Consequences for China and Suggestions, 17 U. Pa. Asian L. Rev. 138

	(2022).
6.	CHEN Yang, <u>Demystifying China's trade secrets law in action: a statistical analysis</u>, Queen Mary Journal of Intellectual Property 13.2 (2023): 198-238.
7.	<u>The Law and Theory of Trade Secrecy</u> (Edited by Rochelle C. Dreyfuss), Research Handbooks in Intellectual Property series, 2012

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

1.	Kong Xiangjun (孔祥俊), <u>New Principles of Anti-Unfair Competition Law (反不正当竞争法新原理)</u>, Law Press, 2019
2.	Orly Lobel, <u>Talent Wants to Be Free: Why We Should Learn to Love Leaks, Raids, and Free Riding</u>, Yale University Press, 2013
3.	James Pooley, <u>SECRETS: Managing Information Assets in the Age of Cyberespionage</u>, Verus Press, 2015
4.	James Pooley, <u>Trade Secrets (Intellectual Property Series)</u>, Law Journal Press, 2023
5.	Bone, Robert G. "A New Look at Trade Secret Law: Doctrine in Search of Justification." *California Law Review* 86, no. 2 (1998): 241–313. https://doi.org/10.2307/3481134.
6.	Bone, Robert G. "*The (Still) Shaky Foundations of Trade Secret Law.*" Tex. L. Rev. 92 (2013): 1803.
7.	Lemley, Mark A. "*The surprising virtues of treating trade secrets as IP rights.*" Stan. L. Rev. 61 (2008): 311.
8.	Varadarajan, D. (2016). "*Trade secret precautions, possession, and notice.*" Hastings LJ, 68, 357.
9.	Varadarajan, D. (2014). "*Trade Secret Fair Use.*" Fordham L. Rev., 83, 1401.
10.	Pooley, J. (2015). "*The Myth of the Trade Secret Troll: Why the Defend Trade Secrets Act Improves the Protection of Commercial Information.*" Geo. Mason L. Rev., 23, 1045.
11.	Varadarajan, D. (2019). "*Trade Secrecy Injunctions, Disclosure Risks, and eBay's Influence.*" American Business Law Journal, 56(4), 879-925.
12.	Katyal, S., & Graves, C. (2021). "From Trade Secrecy to Seclusion. Georgetown Law Journal", Georgetown Law Journal, 109(6), 1137-1420
13.	Fishman, J. P., & Varadarajan, D. (2018). "*Similar secrets.*" U. Pa. L. Rev., 167, 1051.
14.	Cui Guobin (崔国斌) (2020), "*The Allocation of Burden of Proof in Trade Secrets Litigation*" *(商业秘密侵权诉讼的举证责任分配)*, SJTU Law Review (交大法学), 2020(4), 9-33.
15.	Chen, Yang, "*Rebalancing the Burden of Proof for Trade Secrets Cases in China: A Detailed Scrutiny and Comparative Analysis of Article 32*", University of Pittsburgh Law Review, Vol. 84, No. 4, 2023 (Forthcoming).

16.	Hrdy, C. A., & Lemley, M. A. (2021). "*Abandoning trade secrets*." Stan. L. Rev., 73, 1.
17.	Friedman, D. D., Landes, W. M., & Posner, R. A. (1991). "*Some economics of trade secret law*." Journal of Economic Perspectives, 5(1), 61-72.
18.	Bai, J. B., & Da, G. (2010). *Strategies for Trade Secrets Protection in China*. Nw. J. Tech. & Intell. Prop., 9, 351.
19.	Sandeen, S. K., & Seaman, C. B. (2017). *Toward a federal jurisprudence of trade secret law*. Berkeley Technology Law Journal, 32(2), 829-914.
20.	Wu, P., & Weng, C. X. C. (2020). *Implications of the China–US trade agreement on the civil protection of trade secrets in China: is it a game changer?*. Asia Pacific Law Review, 28(2), 316-336.
21.	Vecellio Segate, R. (2020*). Litigating trade secrets in China: an imminent pivot to cybersecurity?*. Journal of Intellectual Property Law & Practice, 15(8), 649-659.
22.	Schmitz, K. (2020). *TRIPing on Trade Secrets: How China's Cybertheft of US Trade Secrets Violated TRIPS*. Am. U. Int'l L. Rev., 36, 929.
23.	Chen, L., & Yu, Q. (2019). *The not-so-secret secret to trade secret protection in China*. Journal of Intellectual Property Law & Practice, 14(6), 445-453.