

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:	Private International Law: Basic Principles and Advanced Application in the Digital Economy
Course Code:	LW6173E
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>	LW6173C
Exclusive Courses: <i>(Course Code and Title)</i>	Nil

Part II Course Details

1. Abstract

Legal disputes involving a foreign element create three fundamental questions. First, whether the courts of a forum have jurisdiction on the dispute. Second, if they have jurisdiction, whether foreign law(s) may or should be taken into account in order to resolve the dispute in question. Third, whether foreign judgments are to be recognised and enforced. These questions arise routinely in commercial affairs, claims in tort, marriage and divorce disputes, inheritance, wills and rights with respect of movable and immovable property. International contracts almost invariably pose the questions of jurisdiction and applicable law. Commercial arbitration poses one additional question: which law applies to the arbitration proceedings.

Every legal system has given answers to these questions but the answers are not always the same. The course provides students with a practical and legal background to the nature, scope and rules of Hong Kong's private international law (for the purposes of this course private international law is understood as conflict of laws) with emphasis on the issues arising in commercial disputes and arbitration. The course will cover issues of jurisdiction, choice of law, proof of foreign law, jurisdiction of arbitral tribunal, enforcement of arbitral awards and foreign judgements. The law of Hong Kong will be compared with that of other jurisdictions to enable students to gain an understanding of the various solutions developed around the world. Technology, particularly transactions online and on the "cloud", automated (smart) contracts, torts committed online and the location of online assets, all pose challenges to the adopted solutions for private international law issues. This is because the elements connecting a court with a particular dispute are not as easy to identify as under commercial practices predating the development of each type of technology. The course will discuss these issues and the way solutions are being developed.

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.	Describe and demonstrate an understanding of basic concepts of private international law		√		
2.	Identify situations where private international law is relevant and critically assess the ways such problems have been solved under Hong Kong law and under the law of other states.		√	√	
3.	Demonstrate good understanding of way conflict of laws are resolved under the law of Hong Kong in contractual disputes, in extra-contractual liability cases and in alternative dispute resolution situations.		√	√	
4.	Apply conflict of law rules and relevant statutes to solve complex factual problems		√	√	√
5.	Identify and critically assess the problems of private international law posed by technological development in commercial disputes.		√	√	
		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	5	
Seminars	Interactive classes on the substantive issues of Private International Law, its concepts and its application.	√	√	√	√	√	2 hours/week or a total of 26 hours of block teaching
Tutorials and practical problems	Students will integrate their substantive knowledge and develop functional skills and deeper understanding by working on problem and case studies.	√	√	√	√	√	0.75 hour/week or a total of 9 hours of block teaching
Guided individual studying	Development of basic independent research and critical assessment skills.	√	√	√	√	√	
Formative work	Application of legal principles and knowledge to practical situations.	√	√	√	√	√	0.25 hour/week or a total of 3 hours of block teaching

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	5		
Continuous Assessment: 30%							
Quizzes	√	√	√			20%	4 x 5%; The use of Generative AI tools is not allowed.
Group presentation and report	√	√	√	√	√	10 %	The use of Generative AI tools is not allowed.
Examination: (2 hours)							
	√	√	√	√	√	70%	The use of Generative AI tools is not allowed.
						100%	

* The weightings should add up to 100%.

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

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

Students will be required to take a computer-based examination in a computer laboratory. During the examination students will not have access to the Internet. However relevant materials will be allowed in the exam.

Applicable to students admitted before Semester A 2022/23

Students must obtain a minimum mark of 40% in examination and an overall mark of 40% in order to pass the course.

Students will be required to take a computer-based examination in a computer laboratory. During the examination students will not have access to the Internet. However relevant materials will be allowed in the exam.

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)
Quizzes	Demonstration of the ability to correctly identify and define the concepts of private international law, its legal sources, theoretical considerations and apply them to the solution of short problems.	High	Significant	Moderate	Inadequate
Group Presentation and report	The ability to identify the legal issues of private international law involved. The ability to formulate a logically structured and well-presented outline of an answer in a timely manner. The ability to respond to questions and criticism in a constructive manner. The ability to write a well-researched and critical academic essay with good use of the English language and proper use of referencing styles and citations.	High	Significant	Moderate	Inadequate
Examination	Demonstration of ability to identify issues. Application of knowledge to specific problems and discussion questions.	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)
Quizzes	Demonstration of the ability to correctly identify and define the concepts of private international law, its legal sources, theoretical considerations and apply them to the solution of short problems.	Strong evidence of accurate and complete knowledge of the concepts and theories of private international law. Strong evidence of functional skills in applying the principles of private international law to practical problems.	Evidence of accurate and complete knowledge of the concepts and theories of private international law. Satisfactory functional skills in applying the principles of private international law to practical problems.	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.
Group Presentation and report	The ability to identify the legal issues of private international law involved. The ability to formulate a logically structured and well-presented outline of an answer in a timely manner. The ability to respond to questions and criticism in a constructive manner. The ability to write a well-researched and critical academic essay with good use of the English	Strong evidence of good organization, excellent capacity to analyse the topic and identify the components of the answer, evidence of extensive knowledge base. Excellent time management. Responsive and appreciative to constructive comments. Strong skills in finding and	Evidence of good organization, competency in the identification of the topic and use in formulating an answer, evidence of good knowledge base. Good time management. Responsive and appreciative to constructive comments. Good skills in finding and synthesising legal	Basic organization and understanding of the legal issues. Ability to approach the problem in a superficial way. Small timing management issues. Ability to understand the criticism even if not able to respond adequately. Basic self-learning ability and rudimentary research skills.	Sufficient structure and understanding to enable the student to progress without repeating the course. Inability to benefit from criticism,	Little evidence of familiarity with the subject matter; no structure, no evidence of critical and analytic skills; limited, or irrelevant use of literature.

	language and proper use of referencing styles and citations.	synthesising legal resources in persuasive arguments.	resources in rational arguments.			
Examination	Demonstration of ability to identify issues. Application of knowledge to specific problems and discussion questions.	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.

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.)

Private international law, Conflict of laws, public policy, sovereign immunity, *renvoi*, jurisdiction, *forum non conveniens*, anti-suit injunction, choice of law in contract, choice of law in extra-contractual liability, choice of law in alternative dispute resolution, enforcement of arbitral awards and foreign judgements.

1.2 Detailed Syllabus

Seminar 1. Introduction – What is the course about.

Seminar 2. Basic Concepts of Private International Law. Foreign element, connecting factors and their definition, substantive and procedural issues. Characterisation.

Seminar 3. Establishing and challenging the jurisdiction of Hong Kong courts.

Seminar 4. Contractual disputes 1: Applicable law- Agreements on jurisdiction and choice of law.

Seminar 5. Contractual disputes 2: Incorporation of applicable law and jurisdiction clauses into contracts. Application of contractual agreements to parties other than the original parties.

Seminar 6. Applicable law and jurisdiction for non-contractual disputes.

Seminar 7. The anti-suit injunction.

Seminar 8. Enforcement of judgements.

Seminar 9. Issues with arbitration I. The law applicable to arbitration proceedings. The role of the seat of the arbitration.

Seminar 10. Issues with arbitration II. Enforcement of awards. Anti-suit injunctions in support of arbitration proceedings.

Seminar 11. Technology and private international law. Smart Contracts.

Seminar 12. Conflict of laws for Cryptocurrencies and fintech.

2. Reading List

2.1 Recommended Readings

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

- Sir Lawrence Collins and the others (eds), *Dicey, Morris & Collins The Conflict of Laws Volumes 1 and 2* (15th edition, Sweet & Maxwell 2018).
- James Fawcett and Janeen M. Carruthers, *Cheshire, North & Fawcett Private International Law* (15th edition, Oxford University Press 2017).
- Graeme Johnston, *The Conflict of Laws in Hong Kong* (3rd edn, Sweet & Maxwell Asia 2017).
- David McClean and Kisch Beevers, *Morris Conflict of Laws* (9th edn, Sweet & Maxwell 2016).
- Briggs A, *Agreements on Jurisdiction and choice of law*, Oxford University Press, 2008.
- Briggs A, *The Conflict of Laws*, (4th edition), Oxford University Press, 2019.
- Thomas Raphael, *The anti-suit injunction* 2nd edition 2019.

Journals:

International and Comparative Law Quarterly

Journal of Private International Law
Lloyd's Maritime and Commercial Law Quarterly

2.2 Online Resources

Conflict of Laws.net (<http://conflictoflaws.net>)

Hague Conference on Private International Law http://www.hcch.net/index_en.php