

City University of Hong Kong
Course Syllabus

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

Part I Course Overview

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| Course Title: | Banking Law |
| Course Code: | LW5631 |
| Course Duration: | One semester |
| Credit Units: | 3 |
| Level: | P5 |
| Medium of Instruction: | English |
| Medium of Assessment: | English |
| Prerequisites: <i>(Course Code and Title)</i> | LW5621 Legal Systems of Hong Kong and Mainland China or LW5601 Hong Kong Legal System, LW5622 Legal Methods, Research and Writing, and LW5602 Law of Contract or LW5602A Law of Contract I |
| Precursors: <i>(Course Code and Title)</i> | Nil |
| Equivalent Courses: <i>(Course Code and Title)</i> | LW4631 Banking Law LW6109E Banking Law (only applicable to students who completed LW6109E before Sem A 2019/20) |
| Exclusive Courses: <i>(Course Code and Title)</i> | Nil |

Part II Course Details

1. Abstract

This course aims to equip students with a sound general knowledge and conceptual understanding of aspects of banking law and aims to develop in students associated practical legal skills in the application of those principles to banking problems. It also aim to introduce students to the law relating to negotiable instruments and the regulatory framework within which the banking system operates in Hong Kong. At the same time, the course will enable students to develop analytical and problem-solving skills in relation to various aspects of banking law. This course will also enable students to understand the concept and understanding of the essential principles of banking law and to apply these principles to solve factual problems that arise especially in the banker-customer relationship.

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) | DEC related learning outcomes | | |
|-----|---|---------------------------------|----------------------------------|----|----|
| | | | A1 | A2 | A3 |
| 1. | Analytically and evaluatively describe and explain the basic principles of different areas of law which impinge on Banking Law | | ✓ | | |
| 2. | Apply the principles of Banking Law to solve legal problems by: <ul style="list-style-type: none"> ● Analysing cases ● Interpreting statutes ● Conducting independent research on the law ● Marshalling arguments clearly, logically, coherently and effectively, both orally and in writing. | | | ✓ | ✓ |
| 3. | Research, analyse and critically evaluate: <ul style="list-style-type: none"> ● Legal principles and doctrines in Banking Law in light of both doctrinal coherence and in relation to the policy objective of the law. ● The framework and the applicability of Banking Law in Hong Kong | | | ✓ | |
| | | 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.

Alignment of CILOs with PILOs:

| Programme Intended Learning Outcomes (PILOs) | | CILOs |
|--|--|-------|
| 1 | Explain and assess specified areas of the law and the legal system of Hong Kong, with particular emphasis on the law in action and the dynamic interplay between law and other social phenomena. | 1,2 |
| 2 | Assess the common law system and its values, and its interaction with the law and legal system of mainland China, the East Asian region and the wider world. | N/A |
| 3 | Explain, interpret and apply main principles of ethics, civil duty, and social and professional responsibility. | 2,3 |
| 4 | Critically assess the strengths and weaknesses of law as a means of regulating society in the context of competing and conflicting interests. | 3 |
| 5 | Demonstrate and apply skills of legal analysis and reasoning, of legal research, or problem solving, and of oral and written communication to a level appropriate to a graduate-entry degree in law. | 2 |

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 | |
| Tutorials | <ul style="list-style-type: none"> Students' understanding will be enhanced by seeing the operation of the law in case studies and group discussions and presentations. Students will analyse cases, interpret statutes; conduct research and challenge policies to solve the legal issues presented in tutorial questions. Students will apply relevant legal analysis to case study situations, thereby develop issue recognition, problem solving and application skills and present it in writing. | | | | |
| Lectures | <ul style="list-style-type: none"> Students will be introduced to issues and concerns and different aspects of the operation of the substantive rules of Banking Law through multimedia or other presentation. Students will receive guidance on their readings through multimedia or other presentations to enhance their understanding of the substantive rules of Banking Law. Students will be encouraged to challenge policies and to engage in discussion with the teacher. | | | | |
| Other | <ul style="list-style-type: none"> This subject is taught through a lecture and tutorial and/or workshop program involving three class hours per week over the course of the semester. Prescribed chapters, cases and statutes and other materials will provide the framework and substantive rules of Banking Law Research are given on specific banking topics Out of classroom visits Students will visit institutions outside the University (e.g. Hong Kong Monetary Authority) and are able to view the running and working of banking institutions to further apply classroom knowledge to develop creative ideas. | | | | |

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% | |
| Assignment: 20% <ul style="list-style-type: none"> Students will be required to challenge the current banking structure and discover new and innovative ways to change the banking system/ policies. Students' ability to research, collect data and decipher primary and secondary materials in order to resolve problems and forward arguments, and to communicate in writing will be tested. | | | | | |
| Tutorials: 30% of marks for in class assessment which would include participation and Quiz <ul style="list-style-type: none"> Students' ability to analyse and critically evaluate, and to communicate arguments orally and in writing will be tested in class activities. | | | | | |
| Examination: (duration: 2 hours , if applicable) | | | | 50% | |
| <ul style="list-style-type: none"> An open-book examination held at the end of the semester during the normal examination period will be part of the assessment. The examination will assess on the student's ability to analyse and critically evaluate, and to communicate arguments in writing with knowledge and understanding of the rules and principles learnt from reading primary and secondary resources and also in class. | | | | | |
| | | | | 100% | |

Grading of Student Achievement: Standard (A+ A A- ... F)

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

To pass this course, students must obtain an aggregate mark of 50% and a minimum of 50% in each of the coursework/assignment, class participation 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, students must obtain an aggregate mark of 40% and a minimum of 40% in each of the coursework/assignment, class participation 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.

The portion of the overall mark allocated to performance/participation in inter-active in class activities will be assessed on the quality of the participation. Assessment criteria for those activities, their nature and their timing will be set out in the study guide/course manual and will be further expanded upon by the course leader.

The duration of the examination may be 2 hours at the discretion of the course leader. The course leader will announce the duration of the examination in the first week of the course. Similarly the course leader will announce whether the examination will be closed book or open book.

To enable the full benefit to be obtained from this course, students should attend all of the classes and activities.

Assessment will be formative to enable students to demonstrate their capacity to understand, analyse and apply rules and principles and summative to assess ability to synthesise primary and secondary material to solve novel problems.

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) |
|-----------------|--|--------------------------|-----------------|-------------------------|----------------|
| Tutorials | Demonstration of ability to articulate argument in an effective and clear way. Ability to apply the law with effective communication skills. Ability to complete examination questions and show ability of team work. | High | Significant | Moderate | Inadequate |
| Assignments | Require good articulation in written form of arguments and in depth opinions with proper research for evidences and authority. | High | Significant | Moderate | Inadequate |
| Examination | Ability to spot legal issues and to apply legal knowledge and legal principles to solve both problem and essay type 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) |
|-----------------|--|--|---|---|--|---|
| 1. Tutorials | Demonstration of ability to articulate argument in an effective and clear way. Ability to apply the law with effective communication skills. Ability to complete examination questions and show ability of team work. | 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. Assignments | Require good articulation in written form of arguments and in depth opinions with proper research for evidences and authority. | | | | | |
| 3. Examination | Ability to spot legal issues and to apply legal knowledge and legal principles to solve both problem and essay type 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.)

Banking System of Hong Kong; Banks and Customer; Negotiable Instruments; Payment and Collection of Cheques; Secrecy; Practical banking in context; Recovery of money paid by mistake; Banker's Commercial Credits; Banking Secrecy; Investment advice and banker's references; Bankers' Lien; Bankers' guarantee; overdrafts; Combining accounts; garnishee order; Termination of the banker-customer relationship.

Detailed Syllabus

1. The Hong Kong Banking System: the nature of its business and its supervision; special features of the banking industry in Hong Kong; the role of the Commissioner of Banking; the Note-Issuing Banks; Classification of Banks, Hong Kong Monetary Authority.
2. Definition of Banks; privileges of Banks; definition of a Customer; the relationship of banker and customer.
3. Payment Systems: Currency, Bills of Exchange and their negotiability; Plastic Cards and Electronic Funds Transfer.
4. Payment and Collection of Cheques: Role of the Paying banker; Protection of Paying Banker; Wrongful dishonour of Cheques; Protection of Collecting Banker.
5. Banker's Right to Recover Money Paid by Mistake: General Principles of the action; types of mistaken payments; defences.
6. Banker's Commercial Credits: Nature and types of Credit, documents; Legal relationship of the various parties.
7. Banking Secrecy; Investment Advice and Bankers' References.
8. Bankers' Lien; Bankers' Guarantee; Overdrafts; Combining Accounts; Garnishee Orders.
9. Termination of the banker-customer relationship.
10. Aspects of International Banking: Mareva Injunction; International aspects of banking secrecy; International Investments and Financing.
11. Practical elements of banking law documents – loans, term sheets and security documents.

2. Reading List

Main Text(s):

- Roebuck, Srivastava, Zafrullah and Tsui, "Banking Law in Hong Kong – Cases and Materials," 2nd Ed, LexisNexis, 2009.
- Ellinger, Lomnicka and Hooley, "Ellinger's Modern Banking Law," Oxford University Press, 2006.

Other Text(s)

- Philip Wood, "Law and Practice of International Finance," Sweet & Maxwell.
- Hsiao, "International Banking & Finance Law," Sweet & Maxwell.

Ordinance(s):

- The Banking Ordinance (Cap. 155)
- The Bill of Exchange Ordinance (Cap 19)
- Money lenders Ordinance (Cap 163)

Online Resources:

- Reference should also be made to websites, eg law reports and to obtain update knowledge and the developments of the law.