

City University of Hong Kong

Course Syllabus

offered by School of Law
with effect from Semester A 2024/25

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: <i>(Course Code and Title)</i>	Nil
Precursors: <i>(Course Code and Title)</i>	Nil
Equivalent Courses: <i>(Course Code and Title)</i>	LW6121C and LW5965
Exclusive Courses: <i>(Course Code and Title)</i>	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 real-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. Learning and Teaching Activities (LTAs)

(LTAs designed to facilitate students' achievement of the CILOs.)

LTA	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	√	√	√				3 hours/week or a total of 39 hours of block

	will be made; Students will be engaged in both case analysis and comparative study discussion.							teaching
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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%	The use of Generative AI tools is not allowed.	
Examination 50% (duration: 3 hours)									The use of Generative AI tools is not allowed.
							100%		

Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

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 and in Semester A 2024/25 & thereafter

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 from Semester A 2022/23 to Summer Term 2024

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 and in Semester A 2024/25 & thereafter

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.)

Priority Readings

Albert H.Y. Chen, An Introduction to the Chinese Legal System (Hong Kong: LexisNexis, 5th edition 2019. xxii + 445 pp)

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

Ngoc Son Bui, Stuart Hargreaves and Ryan Mitchell (eds), Routledge Handbook of Constitutional Law of Greater China (Routledge, November 2022).

Aalt Willem Heringa, Constitutions Compared: An Introduction to Comparative Constitutive Law 6th ed. (Elven, 2021)

Books

Xu Chongde and Niu Wenzhan, Constitutional Law in China (The Netherlands: Kluwer Law International, 2013)

Lin Feng, Constitutional Law in China (Hong Kong: Sweet & Maxwell Asia, 2000)

Jiang Jingsong, The National People's Congress of China (Beijing: Foreign Languages Press, 2003)

Yang Fengchun, Chinese Government (Beijing: Foreign Languages Press, 2004)

The General Affairs Office of the CPPCC National Committee, The Chinese People's Political Consultative Conference (Beijing: Foreign Languages Press, 2004)

Richard McGregor, The Party: The Secret World of China's Communist Rulers (Harper Collins Books, 2010)

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

Lin Feng, Administrative Law: Procedures and Remedies in China (Hong Kong: Sweet & Maxwell Asia, 1996)

Randall R. Peerenboom, China's Long March toward Rule of Law (Cambridge: Cambridge University Press, 2002)

Randall Peerenboom (ed.), Judicial Independence in China (Cambridge: Cambridge University Press, 2010)

Stanley B. Lubman, A Bird in a Cage: Legal Reform in China after Mao (Stanford University Press, 1999)

Peter Wang, Law as an Instrument: Sources of Chinese Law for Authoritarian Legality (Cambridge, 2022)

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

Joseph D. Lowe, The Traditional Chinese Legal Thought (Berkeley: Calif, 1984)

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

Derk Bodde and Clarence Morris, Law in Imperial China (Cambridge: Harvard University Press, 1967)

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

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

Albert H.Y. Chen (ed.), Constitutionalism in Asia in the Early Twenty-first Century (Cambridge; New York: Cambridge University Press, 2014)

Vicki C. Jackson and Mark Tushnet, Comparative Constitutional Law (New York: Foundation Press, 1999)

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

Michel Rosenfeld and András Sajó, The Oxford Handbook of Comparative Constitutional Law (Oxford, UK: Oxford University Press, 2012)

Mark Tushnet, Advanced Introduction to Comparative Constitutional Law (Cheltenham, UK: Edward Elgar, 2014)

Christine Sypnowich, The Concept of Socialist Law (Clarendon Press, 1990)

Fu Hualing, John Gillespie, Pip Nicholson & William Partlett (eds.), Socialist Law in Socialist East Asia (Cambridge University Press, 2018)

Juan J. Linz, Totalitarian and Authoritarian Regimes (Colorado, London: Lynne Rienner, 2000)

Selected Book Chapters and Journal Articles

Guobin Zhu, 'Constitutional Law', in WANG Chenguang & ZHANG Xianchu (eds.), Introduction to Chinese Law (Hong Kong and Singapore: Sweet and Maxwell, 1997, pp. 31-74)

Guobin Zhu, 'Constitutional Law and State Structure', in WANG Guiguo & John Mo (eds.), Chinese Law (La Hague: Kluwer Law International, 1999, pp. 23-62)

He Xin, 'The Party's Leadership as a Living Constitution in China', Hong Kong Law Journal,

No. 1, 2012, pp. 73-94

Wang Shucheng, 'Emergence of a Dual Constitution in Transitional China', *Hong Kong Law Journal*, Vol. 45, No. 3, 2015, pp. 819-850

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

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

Guobin Zhu, 'Constitutional Review with "Chinese Characteristics": Law, Institutions and Recent Developments', in Ngoc Son Bui, Stuart Hargreaves and Ryan Mitchell (eds), *Routledge Handbook of Constitutional Law of Greater China* (Routledge, November 2022, pp. 113-134)

Jiang Shigong, 'Written and Unwritten Constitutions: A New Approach to the Study of Constitutional Government in China', *Modern China*, January 2010, Vol. 36, No. 1, pp. 12-46

Guobin Zhu, 'A Hundred Schools of Thought Contending on Constitutionalism – The Short Life of the Great Debate of Constitutionalism Remembered', in Shiping Hua (ed.), *Chinese Legality: Ideology, Law, and Institutions* (Routledge, August 2022, pp. 26-51)

Guobin Zhu, 'Redefining the Central-Local Relationship under the Basic Law – with Special reference to the Law on Regional National Autonomy', in Priscilla MF Leung & ZHU Guobin (eds.), *The Basic Law of the HKSAR: From Theory to Practice* (Singapore: Butterworths Asia, Aug 1998, pp. 121-138)

Guobin Zhu, 'The Composite State of China under 'One Country, Multiple Systems' – Theoretical Construction and Methodological Considerations', in *I.CON - International Journal of Constitutional Law*, Vol. 10 No. 1 (2012), pp. 272

Guobin Zhu, 'Weak Courts, Weak Rights – Assessing the Realization of Constitutional Rights in the PRC Courts', *Hong Kong Law Journal*, (2013) HKLJ Vol 43 Part 2, pp.713-743

Randall Peerenboom, 'Assessing Human Rights in China: Why the Double Standard?' *Cornell International Law Journal*, 2005, Vol. 38, No. 1, pp. 72-163

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

Guobin Zhu, 'Prosecuting 'Evil Cults': A Critical Examination of Law regarding Freedom of Religious Belief in Mainland China', *Human Rights Quarterly*, Vol. 32 No. 3, 2010, pp. 471-501

Guobin Zhu, 'The Right to Minority Language Instruction in Schools: Negotiating Competing Claims in Multinational China', *Human Rights Quarterly*, Vol. 36 No. 3, 2014, pp. 692-721

Guobin Zhu, 'Deference to the Administration in Judicial Review: Comparative Perspectives', in Guobin ZHU (ed.), *Deference to the Administration in Judicial Review* (Springer, Dec 2019, pp. 1-21)

2.2 Online Resources

Westlaw China

Lexis HK

pkulaw (English version of 北大法寶)

2.3 Additional Readings

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

Some other relevant journal articles may be assigned for reading during the term.