

LW4616: LAW OF EVIDENCE

Effective Term

Semester B 2023/24

Part I Course Overview

Course Title

Law of Evidence

Subject Code

LW - Law

Course Number

4616

Academic Unit

School of Law (FL)

College/School

School of Law (FL)

Course Duration

One Semester

Credit Units

3

Level

B1, B2, B3, B4 - Bachelor's Degree

Medium of Instruction

English

Medium of Assessment

English

Prerequisites

LW2601 Hong Kong Legal System
LW3606A Criminal Law I

Precursors

Nil

Equivalent Courses

LW5616 Law of Evidence

Exclusive Courses

Nil

Part II Course Details

Abstract

The law of evidence underlies the whole practice of law, including, most obviously, civil and criminal litigation, but also the various stages of the fact-finding process prior to litigation, including investigative processes and even alternative modes of dispute resolution. It is therefore imperative for law students, legal scholars and practitioners to have a clear grasp of what constitutes relevant evidence, a thorough understanding of the rules of admissibility, as well as the weight and tactical significance of evidence at the various junctures of civil, criminal or other legal proceedings. The term 'evidence' generally refers to that information by which disputed facts tend to be proved, and the Law of Evidence is that body of law and discretion regulating the means by which disputed facts may be proved in courts, tribunals and arbitration hearings in which the strict rules of evidence apply. The Law of Evidence therefore forms part of the adjectival law and operates in tandem with the law of criminal procedure and the law of civil procedure. Upon completion of this course, students will have a thorough theoretical knowledge as well as a practical appreciation and awareness of the Law of Evidence as it is applied and developed in Hong Kong.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	To enable students to understand and appreciate the role and scope of the Law of Evidence in the adversarial common law system.	1/6	x	x	
2	To develop students' understanding of the substantive rules of evidence and the principles upon which those rules are based.	1/6		x	x
3	To examine the role and operation of the rules and principles of evidence in the litigation decision-making process and in the provision of a fair trial.	1/6		x	x
4	To cultivate awareness, appreciation and understanding of the practical application and effect of the rules of evidence.	1/6	x	x	x
5	To discuss and analyse the strengths and weaknesses of the Law of Evidence as it operates within the Hong Kong legal system.	1/6	x	x	x
6	To analyse and propose reforms and developments in the Law of Evidence within the Hong Kong legal system.	1/6	x	x	x

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.

Teaching and Learning Activities (TLAs)

	TLAs	Brief Description	CILO No.	Hours/week (if applicable)
1	Lectures	Weekly didactic lectures on key topics relating to the prescribed material. Will often include an in-class discussion component.	1, 2, 3, 4, 5, 6	2
2	Tutorials	Small group tutorials during which students will present on, ask questions about and discuss problem questions that are based on the course material discussed in the lectures. Students will analyse and evaluate various topics in the Law of Evidence and will have a forum where doubts and uncertainties can be identified and addressed.	1, 2, 3, 4, 5, 6	1 (2 hours, every second week)
3	Self-Directed Study	Self-directed preparation for class by reading from the compulsory and optional prescribed readings, taking notes, drafting answers to tutorial questions, reviewing class content, and conducting court visits.	1, 2, 3, 4, 5, 6	5 (approx.)

Assessment Tasks / Activities (ATs)

ATs	CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Tutorial Contribution The tutorial contribution mark is divided between a group problem question presentation (20%), a group court visit report(10%) and general participation (10%). General participation will be assessed on the quality of the participation, not quantity. The group tasks require public speaking and groupwork skills. Generally, the tutorials allow students to demonstrate their capacity to understand, analyse, and apply relevant legal rules and principles. The oral responses of students in these sessions enables tutors to assess both understanding of the law and the capacity to apply the law to real and hypothetical factual situations.	1, 2, 3, 4, 5, 6	40

Continuous Assessment (%)

40

Examination (%)

60

Examination Duration (Hours)

3

Additional Information for ATs

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

To pass this course students must obtain an aggregate mark of 40% and a minimum of 30% in the examination component of the assessment.

Artificial Intelligence

The use of Generative AI tools is not allowed in completing assessment tasks for this course.

Assessment Rubrics (AR)**Assessment Task**

1. Tutorial participation 40% (Problem Question Presentation 20%, Court Visit Report10%, General Participation 10%)

Criterion

- Prior preparation on tutorial questions and to willingness to actively engage in discussion
- Familiarity with legal doctrines and principles
- Public speaking and group cooperation for group tasks
- Ability to communicate via a written handout a summary of key findings

Excellent (A+, A, A-)

Strong evidence of capacity to analyse and synthesise; superior grasp of subject matter; superior public speaking and groupwork dynamic; superior written expression with handouts.

Good (B+, B, B-)

Evidence of analytical ability; reasonable understanding of issues; evidence of familiarity with the law; reasonable public speaking and groupwork dynamic; decent level of written expression.

Fair (C+, C, C-)

Student who is profiting from the university experience; basic understanding of the subject; ability to develop solutions to simple problems in the material. Some evidence of group cooperation and some ability to speak publicly, satisfactory level of written work.

Marginal (D)

Sufficient familiarity with the subject matter to enable the student to progress without repeating the course. Sporadic evidence of positive group dynamic, faltering level of written expression.

Failure (F)

Little evidence of familiarity with the subject matter; an incorrect understanding or application of the law; poor public speaking and an unworkable group dynamic. Poor quality written expression.

Assessment Task

2. Examination 60%
(3 hour length; open book)

Criterion

- Understanding of legal and theoretical principles
- Ability to identify legal issues
- Application of knowledge to specific fact-based and essay type questions
- Ability to engage in argument-based analysis
- Ability to write and communicate ideas and arguments in a logically coherent and persuasive manner

Excellent (A+, A, A-)

Strong evidence of original thinking; good organisation, capacity to analyse and synthesise; superior grasp of subject matter; evidence of extensive knowledge base.

Good (B+, B, B-)

Evidence of grasp of subject, some evidence of critical capacity and analytical ability; reasonable understanding of issues; evidence of familiarity with the law.

Fair (C+, C, C-)

Student who is profiting from the university experience; basic understanding of the subject; weakness in critical and analytical skills; ability to develop solutions to simple problems in the material.

Marginal (D)

Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure (F)

Little evidence of familiarity with the subject matter; incorrect understanding or application of the law. No critical insights towards the law of evidence.

Part III Other Information

Keyword Syllabus

- Law of evidence
- The adversarial system
- Types of evidence
- Burden and standard of proof
- Proof without evidence
- Stages in the trial process
- Competence and compellability of witnesses
- Relevance and weight
- Opinion evidence
- Identification evidence
- The hearsay rule and its exceptions
- Evidence of bad character and similar fact evidence
- Legal professional privilege
- Discretionary exclusion of evidence.

Detailed Weekly Syllabus

- An Introduction to the Law of Evidence: Basic Principles, Concepts and Theory
- Weight of Evidence, Burdens and Standards of Proof, Circumstantial Evidence and Inferential Reasoning
- Proof without Evidence: Formal Admissions and Confessions, Judicial Notice, Procedural and Substantive Presumption of Law
- Relevance and Admissibility: Character Evidence, Similar Fact Evidence
- Opinion/Expert Evidence
- Hearsay and Documentary Evidence
- Identification Evidence
- Unconstitutionally and Unfairly Obtained Evidence and Abuse of Process
- Issues arising at Trial: Competence and Compellability
- Issues arising at Trial: Examination-in-Chief, Cross-Examination and Re-Examination: Vulnerable Witnesses and Special Measures
- Privileges and Immunities
- Revision and Exam Preparation

* Students should refer to the Lesson Plan for more detail on the specific topics to be covered each week. The above weekly syllabus is subject to change.

Reading List

Compulsory Readings

Title	
1	Simon So, Law of Evidence in Hong Kong (2020) Sweet & Maxwell (course textbook)
2	Andra le Roux Kemp, Hong Kong Law of Evidence (2020) Wolters Kluwer (for reference)
3	Ordinances relevant to the study of the Law of Evidence in Hong Kong, the most important being the Evidence Ordinance (Cap 8); Criminal Procedure Ordinance (Cap 221); Magistrates Ordinance (Cap 227), and Crimes Ordinance (Cap 200)

4	Archbold Hong Kong: Criminal Law, Pleadings, Evidence and Practice (2022) Thomson Reuters (for reference, electronic version available via the Run Run Shaw Library website)
5	Case law prescribed by the course leader
6	Secondary materials prescribed by the course leader

Additional Readings

Title	
1	Nil