

City University of Hong Kong

Course Syllabus

offered by School of Law
with effect from Semester A 2015/16

Part I Course Overview

Constitutional and Administrative Law of China

Course Title:

LW6121E

Course Code:

One semester

Course Duration:

3

Credit Units:

P6

Level:

English

Medium of Instruction:

English

Medium of Assessment:

Nil

Prerequisites:

(Course Code and Title)

Nil

Precursors:

(Course Code and Title)

LW6121C, LW6121E and LW5965 are equivalent courses.

Equivalent Courses:

(Course Code and Title)

Nil

Exclusive Courses:

(Course Code and Title)

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 legislative process of the PRC 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, and protection of human rights from the perspective of comparative law.		√	√	√
3.	Critically analyse various Chinese administrative law issues relating to administrative reconsideration, administrative litigation and state compensation from the perspective of comparative law.		√	√	√
		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				
Lectures and Seminars	Lecture will be given on theoretical issues; Case studies will be used; Comparison with other legal systems will be made; Students will be engaged in both case analysis and comparative study discussion.	√	√	√				3 hours/week or a total of 39 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					
Continuous Assessment: 50%								
Coursework	√	√	√				50%	
Examination 50% (duration: 3 hours)								
							100%	

Students are required to attend at least 70% of the classes (lectures, seminars, presentations). If a student does not meet this requirement, he/she may be disqualified for assessment.

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.)

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Adequate (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, Provincial Legislation, Legislative Process, Civil Obligations.

1.2 Detailed Syllabus

1. Historical and ideological background of constitutional and administrative law of the PRC. Developments before and after 1949. Comparisons with developments in other civil law countries.
2. Basic concepts of the constitutional law of the PRC: Theories of constitutional law; relationship between constitutional law and socialist legality; the position and the role of the Communist Party under the Constitution; nature and classification of the Constitution.
3. Nature of the State: Unified, federal or confederal system; autonomous regions; special administrative regions; future developments; the organisation of the PRC government; the relationship between Legislature, Executive and Judiciary; role of the Army.
4. 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 government; the Party system.
5. Civil obligations and political rights of citizens: Socialist concept of citizen rights and human rights; White Paper on Human Rights; international standards on human rights; realities and expectations.
6. Legislative process: Law making bodies—National People's Congress and Local People's Congress, State Council. Hierarchy of law—Constitution, national legislation, ordinary legislation, administration regulation, provincial legislation, departmental order etc. Functions of the National People's Congress—Law making, interpretation and supervision of law, supervision of the Constitution. Comparison of the Chinese legislative process with that of other civil law countries.
7. Concepts of administrative law: Procedural and substantive law; comparison with other civil law systems and the common law system; Role of administrative law; Administrative Procedure Law, origin of the petition right to sue the government.
8. Administrative review system; administrative liability.
9. Administrative compensation and the State Compensation Law.
10. Case studies; administrative cases concerning foreign interests.

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.)

Nil

2.2 Recommended Readings

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

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

Albert H.Y. Chen (ed), Constitutionalism in Asia in the early twenty-first century, Cambridge; New York: Cambridge University Press, 2014

Qianfan Zhang, The constitution of China: a contextual analysis, Oxford; Portland, Oregon: Hart Publishing, 2012

Xu Chongde, Niu Wenzhan, Constitutional law in China, Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2013

Randall R. P. Peerenboom, China's long march toward rule of law, (Cambridge: Cambridge University Press, 2002)

Lin Lai-fan, From constitutional norm to normative constitution (从宪法规范到规范宪法: 规范宪法学的一种前言), (Beijing Shi: Fa lü chu ban she, 2001)

Mark Tushnet, Advanced introduction to comparative constitutional law, Cheltenham, UK: Edward Elgar, 2014

Rosalind Dixon & Tom Ginsburg (ed), Comparative constitutional law in Asia, Cheltenham, UK; Northampton, MA, USA: Edward Elgar, 2014

Durga Das Basu, Comparative constitutional law, Gurgaon, Haryana, India: LexisNexis Butterworths Wadhwa Nagpur, 2008

Vicki C. Jackson, Mark Tushnet, Comparative constitutional law, New York: Foundation Press, 1999

Tom Ginsburg and Rosalind Dixon, Comparative constitutional law, Cheltenham, UK; Northampton, MA: Edward Elgar, 2011

Michel Rosenfeld and András Sajó, The Oxford handbook of comparative constitutional law, Oxford, U.K: Oxford University Press, 2012

Shen Zong-ling, Comparative Constitutional Law (比较宪法: 对八国宪法的比较研究), (Beijing University Press, 2002)

Han Dayuan, Constitutional History of Modern China (新中国宪法发展史), (Hebei People's Press, 2000)

Han Dayuan, Study of Chinese Constitutional Events (中国宪法事例研究), (Beijing Shi: Fa lü chu ban she, 2005)

Lin Feng, Administrative law: procedures and remedies in China, (Hong Kong: Sweet & Maxwell Asia, 1996)

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

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

Paul Heng-chao Ch'en, Chinese Legal Tradition under the Mongols, (Princeton University Press, 1979)

Wang Guiguo/John Mo (ed.), Chinese Law, (Kluwer Law International, 1999)

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

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

Albert Hung-yee Chen, An Introduction to the Legal System of the People's Republic of China, (Hong Kong: Butterworths Asia, 1998)

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

Ch'ien, Tuan-sheng: The Government and Politics of China, (Stanford University Press, 1970, reprint of Harvard University Press, 1950)

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

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

Huang Huikang: Introduction to China's Law & Politics, (Wuhan University Press, 1990)

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