

City University of Hong Kong

**Information on a Course
offered by School of Law
with effect from Semester A in 2014/2015**

Part I

Course Title:	Dispute Resolution in Theory and Practice
Course Code:	LW6126C
Course Duration:	One semester
Credit Units:	3
Level:	P6
Medium of Instruction:	predominantly Chinese (Putonghua),
Prerequisites:	Nil
Precursors:	Nil
Equivalent Courses:	LW6126C, LW6126E, LW5526 and LW6401 are equivalent courses.
Exclusive Courses:	LW6526C, LW6526E Dispute Resolution in Theory and Practice

Part II

Course Aims (*same as LW6401 and LW6526C/E Dispute Resolution in Theory and Practice*)

This course aims to introduce the theory and practice of dispute resolution, and to examine the spectrum of dispute resolution processes in China and other jurisdictions with particular emphasis on the following:

- Arbitration
- Mediation
- Adjudication
- Negotiation
- Litigation

The course will further innovate a student's ability to grasp the fundamental concepts with the ultimate goal of discovering how the spectrum of dispute resolution processes are applied into actual practice.

Course Intended Learning Outcomes (CILOs) (same as LW6401 and LW6526C/E Dispute Resolution in Theory and Practice except alignment of CILOs with PILOs)

Upon successful completion of this course, students should be able to:

No.	CILOs	Weighting (if applicable)	Alignment of CILOs with PILOs	
			Stream	PILO No. Contributed to
1.	Apply the various dispute resolution methods in practice and to discover how effective such methods are used in the context of actual scenarios.	30%	All	1 & 2
2.	Apply the techniques to various scenarios and to discover whether such techniques are effective.	40%	All	2
3.	Analyse the techniques and where possible create/innovate workable solutions	10%	All	3 & 4
4.	Develop innovative systems to reduce disputes	5%	All	2, 3 & 4
5.	Effectively manage disputes by understanding the dispute resolution concepts	10%	All	1, 3 & 4
6.	Assess the strategy to adopt and implement such strategy into actual scenarios	5%	All	4

Teaching and Learning Activities (TLAs) (same as LW6401 Dispute Resolution in Theory and Practice)

(Indicative of likely activities and tasks designed to facilitate students' achievement of the CILOs. Final details will be provided to students in their first week of attendance in this course)

CILO No.	TLAs	Hours/week (if applicable)
CILO 1-6	Lectures and Tutorials	3

Assessment Tasks/Activities (same as LW6401 and LW6526C/E Dispute Resolution in Theory and Practice)

(Indicative of likely activities and tasks designed to assess how well the students achieve the CILOs. Final details will be provided to students in their first week of attendance in this course)

AT No.	Type of Assessment Tasks/Activities	Weighting (if applicable)	CILO Assessed	Remarks (exam duration, etc)
AT 1	Coursework	50%	4,5&6	See below
AT 2	Examination	50%	1, 2, 3,4,5,6	See below 3 hours

Remarks:

- (i) A student must obtain a minimum mark of 40% in both coursework and examination and an overall mark of 40% in order to pass a course.
- (ii) Students must meet the attendance requirement of 70% for the above course. If students fail to fulfil a 70% attendance requirement, their coursework will not be marked and they will not be allowed to take the final examination unless there is justification. The School may accept deviation of the proposed minimum attendance requirement if students have justifiable grounds.
- (iii) Students' coursework will focus on certain types of dispute resolution methods selected by them while examination will cover various types of dispute resolution learned in the course.

Grading of Student Achievement:

Refer to Grading of Courses in the Academic Regulations for Taught Postgraduate Degrees.

Grading is based on student performance in assessment tasks/activities.

Part III

Keyword Syllabus (same as LW6401 and LW6526C/E Dispute Resolution in Theory and Practice)

Dispute Resolution — Theory and Practice; Negotiation; Mediation; Litigation; Arbitration — practice and procedure; Spectrum of Processes.

Detailed Syllabus (same as LW6401 and LW6526C/E Dispute Resolution in Theory and Practice)

1. Introduction: Conflict theory

The sources, incidence, nature and cost of conflict in personal, intra- and inter-organizational disputes, with an emphasis on commercial disputes; the resolution of disputes in and out of the courts, the incidence of unresolved disputes; the importance of the cultural context.

2. Litigation

- 2.1 Generally, civil proceedings contrasted with criminal proceedings.
- 2.2 Pre-trial: commencing an action, limitation periods; pleadings, counterclaims and third party proceedings; interlocutory proceedings including applications to strike out, discovery and inspection, interrogatories, applications for further and better particulars, and payment into court.
- 2.3 Trial: order of proceedings; onus and burden of proof; inspection; rules of evidence.
- 2.4 Judgment: orders and remedies, including specific performance and injunctions; costs; interest; set-off; joint and several liability; enforcement procedures.
- 2.5 Appeals: procedures; hearing; stay of execution; judicial review.
- 2.6 Introduction to the special features of international litigation.

3. An introduction to arbitration

- 3.1 Arbitration agreement; legislation; appointment, powers and duties of the arbitrator; Hong Kong International Arbitration Centre and other appointing bodies.
- 3.2 Pre-hearing procedures.
- 3.3 Hearings and documents-only proceedings.
- 3.4 The award, and its enforcement.
- 3.5 Appeals, and other judicial involvement.

4. Alternative or additional dispute resolution

An introduction to the important processes and techniques of ADR, especially negotiation and mediation or conciliation, but including some reference to other traditional models and more contemporary models, including: expert determination, valuation, fact finding, med-arb, mini trial, neutral expert, court-annexed processes, settlement days or weeks, the multi-door facility, the neighbourhood centre.

5. An overview

A model for evaluating the range of processes and the criteria: public and party costs, access and delay, party participation and autonomy, quality of results, cultural, social and other policy values.

Civil dispute resolution processes as a spectrum, ranging from formal litigation at one extreme, to arbitration, mediation and other forms of alternative dispute resolution which are located along the spectrum, and extending to informal negotiation at the other extreme; a taxonomy of dispute resolution methods.

6. An introduction to dispute resolution theory and practice in China and other jurisdictions

An analysis of the rules for mediation and arbitration practised in China with particular reference to the rules and procedures of CIETAC.

A comparison of rules for mediation and arbitration in China and those of dispute resolution institutions in other jurisdictions.

Essential Reading

1. Mediation in Hong Kong – Law and Practice 2014, ISBN 978-988-12216-2-9

Recommended Reading (*same as LW6401 and LW6526C/E Dispute Resolution in Theory and Practice*)

Text(s)

1. Arbitration in Hong Kong – A Practical Guide Second Edition, Thomson (Sweet and Maxwell) Asia 2011, ISBN 962-661-220-7
2. Arbitration Law Hand Book, Butterworths Hong Kong 2012, ISBN 978-988-8146-38-3
3. The Hong Kong Arbitration ordinance – Commentary and Annotations – Sweet and Maxwell
4. The Arbitration Ordinance of Hong Kong – A Commentary – Second Edition – Butterworths
5. International Commercial Arbitration – An Asia-Pacific Perspective – Cambridge
6. Construction Law and Practice in Hong Kong – Second Edition – Sweet and Maxwell
7. China Arbitration Handbook – Sweet and Maxwell
8. Hong Kong Mediation Handbook – Sweet and Maxwell
9. Hong Kong Legal Concepts (Hong Kong University Press)
10. Freshfields Guide to Arbitration and ADR
11. Civil Litigation – From Instruction to Trial
12. Halsbury's Laws of Hong Kong, Volume 2, Second Edition 2012
13. The Essentials of Negotiation, Harvard Business School Press 2005, ISBN 1-59139-574-7
14. Principles and Practice of Civil Procedure in Hong Kong, Sweet and Maxwell
15. Resolving Disputes in the Asia- Pacific Region, Routledge
16. Mediation Asia-Pacific- A Practical Guide to Mediation and its Impact on Legal Systems, Wolters Kluwer
17. Hong Kong Annotated Statutes – Mediation Ordinance (CAP.620), Wolters Kluwer
18. Hong Kong Arbitration – A User's Guide, Wolters Kluwer
19. Legal Discourse across Cultures and Systems, Hong Kong University Press
20. Hong Kong Legal Principles, Second Edition, Hong Kong University Press

Online Resources

www.hkiac.org

www.adr.org

www.cedr.co.uk

www.jamsadr.com

www.odr.info

www.arbitrators.org

www.hklawsoc.org.hk

www.hkba.org

www.hkmaal.org

www.ciarb.org

www.ciarbasia.org