

City University of Hong Kong

Course Syllabus

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

Part I Course Overview

Dispute Resolution in Theory and Practice

Course Title:

LW6126E

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)

LW6126C, LW5526 and LW6401

Equivalent Courses:

(Course Code and Title)

LW6526C, LW6526E Dispute Resolution in Theory and Practice

Exclusive Courses:

(Course Code and Title)

Part II Course Details

1. Abstract (*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.

2. Course Intended Learning Outcomes (CILOs)

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

(*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.	Apply the various dispute resolution methods in practice and to discover how effective such methods are used in the context of actual scenarios.	30%	✓	✓	✓
2.	Apply the techniques to various scenarios and to discover whether such techniques are effective.	40%	✓	✓	✓
3.	Analyse the techniques and where possible create/innovate workable solutions	10%	✓	✓	✓
4.	Develop innovative systems to reduce disputes	5%	✓	✓	
5.	Effectively manage disputes by understanding the dispute resolution concepts	10%	✓		
6.	Assess the strategy to adopt and implement such strategy into actual scenarios	5%	✓		
		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)

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

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

TLA	Brief Description	CILO No.						Hours/week (if applicable)
		1	2	3	4	5	6	
Lectures	Face to face lectures	√	√	√	√	√	√	3
Tutorials	Group discussion	√	√	√	√	√	√	

4. Assessment Tasks/Activities (ATs)

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

(ATs are designed to assess how well the students achieve the CILOs.)

Assessment Tasks/Activities	CILO No.						Weighting	Remarks
	1	2	3	4	5	6		
Continuous Assessment: 50%								
Coursework				√	√	√	50%	
Examination: 50% (duration: 3 hours)								
							100%	

- (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.

5. Assessment Rubrics (*same as LW6401 and LW6526C/E Dispute Resolution in Theory and Practice*)
(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	Demonstration of ability to identify issues, current trends and practices.	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. Examination	Application of knowledge learnt to specific problems and issues.	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.

Part III Other Information (more details can be provided separately in the teaching plan)

1. Syllabus

1.1 Keyword Syllabus

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

(An indication of the key topics of the course.)

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

1.2 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.

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 Essential Reading

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

1. Mediation in Hong Kong – Law and Practice, July 2014, ISBN 9789881221629

2.3 Recommended Reading

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

1. Arbitration in Hong Kong – A Practical Guide Second Edition, Thomson Sweet and Maxwell Asia, October 2014, ISBN 9789626615898
2. Arbitration Law Hand Book, Butterworths Hong Kong, May 2012, ISBN 9789888146383
3. The Hong Kong Arbitration Ordinance – Commentary and Annotations – Sweet and Maxwell, July 2011, ISBN 9789626614099
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
21. Construction Arbitration in Hong Kong: A Practical Guide, Wolters Kluwer, April 2015, ISBN 97898881342928
22. Butterworths Hong Kong Alternative Dispute Resolution Law Handbook, LexisNexis, December 2014, ISBN 9789888300112
23. A Guide to Civil Procedure in Hong Kong, Fifth Edition, December 2014, LexisNexis, ISBN 9789888300242

2.3 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
www.cietac.org
www.iccwbo.org
www.lcia.org
www.hkiarb.org
www.aprag.org
www.judiciary.gov.hk
www.info.gov.hk/justice