

**City University of Hong Kong**

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

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**Part I**

**Course Code:** LW5605A

**Course Title:** Constitutional and Administrative Law I

**Course Duration:** One semester

**Credit Units:** 3

**Level:** P5

**Medium of Instruction:** English

**Prerequisites:** Nil

**Precursors:** Nil

**Equivalent Courses:**

LW3605 Constitutional & Administrative Law (LLB) (The semester A part)

LW3605A Constitutional & Administrative Law I

LW5608 Constitutional Law

**Exclusive Courses:** Nil

**Part II**

**Course Aims**

*This course aims to*

1. To examine the nature of the constitutional framework established under the Basic Law.
2. To provide an understanding of the legal, political and social values underlying the Basic Law.
3. To develop in the student the knowledge and skills to analyse the basic principles underlying the concept of “one country, two systems” and understand the practical significance of the concept.
4. To enable the student to analyse and understand the working of the future SAR government in the light of the provisions of the Basic Law.
5. To explain the legal position of Hong Kong vis-a-vis the Central Government and the Constitution of the People’s Republic of China.
6. To identify areas of uncertainty, conflict and problems in the Basic Law.

## Course Intended Learning Outcomes (CILOs)

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

No.	CILOs	Weighting (if applicable)
1.	understand the working of the constitutional machinery set up under the Basic Law as one integral whole.	25%
2.	understand the relationship between the various organs of government inter se and with the People's Republic of China.	25%
3.	appreciate the interplay of the political and legal principles underlying the Basic Law.	25%
4.	understand how the Basic Law can be used to ensure Hong Kong's progress and prosperity within the existing social, economic and legal framework.	25%

*Alignment of CILOs with PILOs:*

PILOs		CILOs
1	Explain and assess specified areas of the law and the legal system of Hong Kong, with particular emphasis on the law in action and the dynamic interplay between law and other social phenomena.	1
2	Assess the common law system and its values, and its interaction with the law and legal system of mainland China, the East Asian region and the wider world.	2
3	Explain, interpret and apply main principles of ethics, civil duty, and social and professional responsibility.	4
4	Critically assess the strengths and weaknesses of law as a means of regulating society in the context of competing and conflicting interests.	4
5	Demonstrate and apply skills of legal analysis and reasoning, of legal research, or problem solving, and of oral and written communication to a level appropriate to a graduate-entry degree in law.	3

## Teaching and Learning Activities (TLAs)

*(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 1-4	Tutorial presentation and/or debate	1 hour / week
CILO 1-4	Lecture	2 hours/ week

## Assessment Tasks/Activities

(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)

CILO No.	Type of Assessment Tasks/Activities	Weighting (if applicable)	Remarks
CILO 1-4	Coursework	30%	
	Tutorial and class performance*	20%	
	Examination	50%	2 or 3 hours

**Grading of Student Achievement:** Refer to Grading of Courses in the Academic Regulations (Attachment) and to the Explanatory Notes.

Students may be required to do class work orally or in writing at different intervals of the course. Students are encouraged to read more materials apart from the reading materials listed for the tutorial to enrich their performance in the class.

To pass this course student must obtain an aggregate mark of 40% and a minimum of 40% in each of the coursework and the examination elements of the assessment. Coursework for this purpose means those ways in which students are assessed otherwise than by the end of session examination.

## Part III

### Keyword Syllabus

#### Background: Historical and Ideological

1. History of Hong Kong as a colony of Great Britain and its political evolution up to the present including international influences on such evolution.
2. Circumstances leading to the enactment of the Basic Law: the Sino-British Joint Declaration on the question of Hong Kong (Joint Declaration).
3. Respective obligations of the parties under the Joint Declaration and the extent to which such obligations are reflected in the Basic Law.
4. Ideology of “one country, two systems” under the constitutional framework.

#### Analysis

1. Legitimacy of the Basic Law.
2. General Principles.
3. Basic Law under the Chinese Legal Hierarchy.
4. Relationship between the Central Government and the SAR; Autonomy and its extent.
5. The impact of the Basic Law on the legal system.
6.
  - a) Amendment of the Basic Law
  - b) Interpretation of the Basic Law
  - c) Changes in the legal system
7. Political structure:
  - a) The Legislature
  - b) The Executive
  - c) The Judiciary

8. Selected Issues on the application of the Basic Law in HK.
  - a) Issues of Right of Abode with case studies
  - b) Issues of National Flag
  - c) Nationality Law of PRC
  - d) Stationing of PLA
  - e) Bilingualism in SAR
  - f) Fundamental Rights and Civil Liberties under the Basic Law
9. Foreign, External, and Defence affairs.
  - a) Judicial Assistance – mutual enforcement of court judgments
  - b) Role of HKSAR in the world
  - c) Relationship of Taiwan & HKSAR
10. Economic, social and cultural aspects of the SAR.

### **Recommended Reading**

#### **Text(s)**

- Priscilla Leung, *The Hong Kong Basic Law: Hybrid of Common Law and Chinese Law*, Lexis Nexis, 2007 (N.B. Those who use the old edition. I.e. The edition of this book must refer to the CD Rom corrections available at the City University library)
- Xiao Wei Yun, *Introduction to the Basic Law of Hong Kong Special Administrative Region*, Law Press-China, 2000
- Priscilla Leung & Ord (ed): *Basic Law - From Theory into Practice* (Butterworths Asia, 1998)
- Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law*, Hong Kong University Press, Hong Kong, 1999
- Collection of Articles 2007, *Seminar on Review and Prospect of the Basic Law, the 10<sup>th</sup> Anniversary of Hong Kong's return to China*, One Country Two Systems Research Institute, 2010 edition
- Johannes Chau and others, *Immigration Law in Hong Kong*, Sweet & Maxwell Asia, 2004.

### **Online Resources**

[www.lexisnexis.com/](http://www.lexisnexis.com/)  
[www.isinolaw.com/](http://www.isinolaw.com/)  
[www.legco.gov.hk/english/index.htm](http://www.legco.gov.hk/english/index.htm)  
[www.legislation.gov.hk/eng/home.htm](http://www.legislation.gov.hk/eng/home.htm)  
[www.westlaw.com](http://www.westlaw.com)

### Journal Articles

1. Priscilla Leung, "Balance Shall be Valued When Formulating the Law of Minimum Wage", *Sing Tao Daily*, 20/7/2010, A16 (Chinese)
2. Priscilla Leung, "Chief Justice Shall Remain Politically Neutral", *China Daily*, 25/6/2010, H02
3. Priscilla Leung, "Neutrality is a Key for Judges", *Sing Tao Daily*, 15/6/2010, A16 (Chinese)
4. Priscilla Leung, "Time to Review Law on Political Advertising", *China Daily*, 13/5/2010, M01 (Chinese)

5. Priscilla Leung, "Political Advertising Law Shall be Reviewed", *Sing Tao Daily*, 4/5/2010, A19 (Chinese)
6. Priscilla Leung, "'Referendum' is Against 'One Country Two Systems'", *China Daily*, 29/4/2010, M01
7. Priscilla Leung, "'Referendum' Against the Law", *China Daily*, 22/4/2010, M01
8. Priscilla Leung, "Why Does Law Exist?", *Sing Tao Daily*, 20/4/2010, A18 (Chinese)
9. Priscilla Leung, "Why Is the 'Referendum' against the Constitution?", *Wen Wei Pao*, 9/4/2010, A26 (Chinese)
10. Priscilla Leung, "Extending Legal Aid to Middle Class", *China Daily*, 9/4/2010, M02
11. Priscilla Leung, "Enlarging Legal Aid to Assist Middle Class", *Sing Tao Daily*, 30/3/2010, A18 (Chinese)
12. Priscilla Leung, "'Mediation prior to Arbitration' Saves Time", *China Daily*, 25/3/2010, M01
13. Priscilla Leung, "'Mediation prior to Arbitration' Saves Time and Money", *Sing Tao Daily*, 23/3/2010, A16 (Chinese)
14. Priscilla Leung, "Mediation to Resolve Building Disputes", *China Daily*, 11/3/2010, M01
15. Priscilla Leung, "Resignation Tricks Unacceptable to Law and Politics", *Ming Pao*, 11/3/2010, A30 (Chinese)
16. Priscilla Leung, "Progressive advancement of constitutional development", *China Daily*, 26/2/2010, H01
17. Priscilla Leung, "Time to Review the Election Ordinance", *Commercial Daily*, 5/2/2010, A19 (Chinese)
18. Priscilla Leung, "Time to Plug the Election Loopholes", *China Daily*, 28/1/2010, H01
19. Priscilla Leung, "Abuse of By-elections Sets a Dangerous Precedent", *China Daily*, 14/1/2010, H01
20. Priscilla Leung, "Response to Mr. Albert Cheng's Legal Misconception", *Hong Kong Economic Journal*, 9/1/2010, P05 (Chinese)
21. Priscilla Leung, "Legislators have the Right to Oppose 'De Facto Referendum'", *Wen Wei Pao*, 8/1/2010, A30 (Chinese)
22. Priscilla Leung, "Political Reform – 'Cans' and 'Cannots'?", *Sing Tao Daily*, 8/12/2009, A16 (Chinese)
23. Priscilla Leung, "A few Legal Issues Raised by 'Five Constituencies Referendum'", *Wen Wei Pao*, 5/12/2009, A20 (Chinese)
24. Priscilla Leung, "Who Forces the Government to Breach the Law?", *Sing Tao Daily*, 1/12/2009, A16 (Chinese)
25. Priscilla Leung, "Abuse of By-elections Sets a Dangerous Precedent", *Hong Kong Economic Journal*, 27/11/2009, P16 (Chinese)
26. Priscilla Leung, "Beware of Overcorrection in Protecting Privacy Law", *Sing Tao Daily*, 22/9/2009, A14 (Chinese)
27. Priscilla Leung, "Distortion of the Basic Law Makes It Difficult to Achieve Consensus", *Wen Wei Pao*, 15/9/2009, A22 (Chinese)

28. Priscilla Leung, "Improve "Public Security, Prosecution and Court" Systems to Protect Citizens' Rights", *Hong Kong Economic Journal*, 31/8/2009, P09 (Chinese)
29. Priscilla Leung, "Recognition and Enforcement of laws across the Strait", *China Daily*, 28 November 2005
30. Priscilla Leung, "Return of the Luk Yu TeaHouse Killer", the *Hong Kong Lawyer*, April Issue, *Hong Kong Lawyer*, 2003 pp. 43-48
31. Priscilla Leung, "Practical Necessity of Enacting Legislation Pursuant to Article 23 " November Issue, *Hong Kong Lawyer*, 2002, pp. 84-85
32. Wang Gui Guo and Leung Mei Fun ( J ), " Case Studies to review the practicality of the Free Zone Model between Hong Kong and mainland China " , *Economic Monthly Journal*, November Issue, 2002, Vol 308, pp.19-22 ( 50 % contribution )
33. Priscilla Leung, " The Applicability of National Laws in Hong Kong", the *Hong Kong Lawyer*, February issue, *Hong Kong Lawyer*, 2000, p.26-28
34. Wang Guiguo and Leung Mei Fun ( J ), " Proposals on the Free Zone Model between Hong Kong and mainland China under the structure of WTO", *Economic Monthly Journal*, August Issue, 2002, Vol 305, pp.41-44 ( 50 % contribution )
35. Priscilla Leung, " The Nature of Basic Law, " *Hong Kong Lawyer*, April Issue, 1999, pp.66-70
36. Priscilla M.F. Leung, (Co-author) "One Country, Two Systems: Theory Into Practice", *Pacific Rim Law and Policy Journal*, Vol. 7, No. 2 (March 1998), pp. 279-321.
37. Priscilla M.F. Leung, "The Principles of Judicial Assistance Applicable to Cheung Tse Keung Case", *Economic Journal* (27 October 1998).
38. Priscilla M.F. Leung, "The Interpretation of the Criminal Law by Hong Kong Government is Unnecessary", *Hong Kong Economic Times* (24 November 1998).
39. Priscilla M.F. Leung, "Interpreting the Chinese Law must be Consistent", *Ming Pao*, (21 December 1998)
40. Priscilla M.F. Leung, "The Big Spender, Cheung Tse-keung Case, a brief analysis", (January 1999)
41. Priscilla M.F. Leung, (Co-author) "Patent Law under One Country Two Systems", *Journal of World Intellectual Property*, Vol. 1(1), p. 55-74 (Geneva), 1998.
42. Huang Jin, *A Study of Interregional Conflicts of Law*, Yong San Culture Press, Taiwan, 1996
43. Wang Guiguo, *A Comparative Study on the Act of State Doctrine - With Special Reference to the Hong Kong Court of Final Appeal, Legal Developments in China*, (ed) by Wang Guiguo & Wei Zhen Ying, Sweet & Maxwell, 1996.
44. Zheng, Zhen, "Discussion on Unequal Treaties", in Zhou Zhonghai (ed.) *Peace, Justice and Law*, China International Broadcasting Press, 1993, at pp.111.
45. Jerome Alan Cohen and Huangdah Chiu, *People's China and International Law: A Documentary Study Vol.1*, Princeton University Press, USA, 1974
46. Jeong Wan Chong, 'One Country Two Systems' and the Modern Constitutional Science, University of Macao Press, 1996
47. Xiao Weiyun (ed.), *One Country Two Systems and the Basic Legal System of Hong Kong*, Peking University Press, 1990

48. Zhang Youyu, "The Reasons for Basic Principles in Formulating the Hong Kong Special Administrative Region Basic Law, and Its Essential Contents and Mode of Expression", *Journal of Chinese Law*, Vol.2, p.5 at pp. 11-12 (1988).
49. Chen Ke, "Interpretation of the Basic Law from a comparative Point of View", in *Collection of Articles on Comparative Constitutional Law Studies*, Nanjing University Press, 1993 Vol 1
50. Kenneth C.K. Chow, "The Organization, Jurisdiction and Constitutents of the Judiciary of HKSAR", *China Law (Supplement for H.K. Return July 1997)*
51. Peter Wesley-Smith & Albert Chen, (editors), *The Basic Law and Hong Kong's Future* (Butterworths) 1988
52. Peter Wesley-Smith, *Constitutional and Administrative Law in Hong Kong* 1993
53. Byrnes and Chan, *Public Law and Human Rights -- A Hong Kong Sourcebook*, Butterworth 1993
54. Choi Po-king, ed., *The Other Hong Kong Report 1993*, The Chinese University Press
55. Chan & Ghai, *The Hong Kong Bill of Rights, A Comparative Approach*, Butterworth 1993
56. Wacks R., ed., *Human Rights in Hong Kong*, Oxford University Press 1992
57. Wacks R., ed., *The Future of the Law in Hong Kong*, Oxford University Press 1989
58. Wacks R., ed., *Civil Liberties in Hong Kong*, Oxford University Press 1988
59. Ian Scott, *Political Change and the Crisis of Legitimacy in Hong Kong*, Oxford University Press 1989
60. R. Randle Edwards, Louis Henkin, Andrew J. Nathan, *Human Rights in Contemporary China*, 1986
61. Folsom, *Law and Politics in the People's Republic of China in a Nutshell*, West Pub., 1992

For students who can read Chinese, the following Chinese materials are also available for research as well as class discussion.

List of books in Chinese. (Only for reference)

1. 董立坤，中國內地與香港地區法律的衝突與協調，法律出版社，2004 年版
2. 梁美芬，〈兩岸三地婚姻家事法律比較〉，三聯出版社，2003 年
3. 見袁求實編，〈香港過渡期重要法律文憲〉，文匯報出版社，1997
4. 吳志森等著，〈香港居民的國籍和居留權〉，香港大學亞洲研究中心，1997 年
5. 沈學平，〈香港未來與基本法〉，香港出版集團有限公司，1994 年
6. 梁美芬、盧永鴻，〈中國法制改革〉廣角鏡出版社，1994 年
7. 梁美芬、盧永鴻，〈海峽兩岸知識產權比較研究論文集〉廣角鏡出版社，1994 年
8. 雲冠平等主編，〈基本法概論〉，暨南大學出版社，1992 年

9. 肖蔚雲主編，《一國兩制與香港基本法律制度》，北京大學出版社，1990年5月
10. 肖蔚雲主編，《一國兩制與香港特別行政區基本法》，香港文化教育出版有限公司，1990年
11. 黃江天，《香港基本法》的法律解釋研究，三聯出版社，2004年

### **Recommended Reading Text(s)**

- Priscilla Leung, *The Hong Kong Basic Law: Hybrid of Common Law and Chinese Law*, Lexis Nexis, 2006
- Xiao Wei Yun, *Introduction to the Basic Law of Hong Kong Special Administrative Region*, Law Press-China, 2000
- Priscilla Leung & Ord (ed): Basic Law - From Theory into Practice (Butterworths Asia, 1998)
- Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law*, Hong Kong University Press, Hong Kong, 1999

### **Online Resources**

[www.lexisnexis.com/](http://www.lexisnexis.com/)  
[www.isinolaw.com/](http://www.isinolaw.com/)  
[www.legco.gov.hk/english/index.htm](http://www.legco.gov.hk/english/index.htm)  
[www.legislation.gov.hk/eng/home.htm](http://www.legislation.gov.hk/eng/home.htm)  
[www.westlaw.com](http://www.westlaw.com)