

City University of Hong Kong

Course Syllabus

offered by School of Law
with effect from Semester B 2017/18

Part I Course Overview

Course Title:	<u>Property Rights in China: Legal, Economic, and Policy Analysis</u>
Course Code:	<u>LW6136E</u>
Course Duration:	<u>One semester</u>
Credit Units:	<u>3</u>
Level:	<u>P6</u>
Medium of Instruction:	<u>English</u>
Medium of Assessment:	<u>English</u>
Prerequisites: <i>(Course Code and Title)</i>	<u>Nil</u>
Precursors: <i>(Course Code and Title)</i>	<u>Nil</u>
Equivalent Courses: <i>(Course Code and Title)</i>	<u>LW6136C and LW6136E are equivalent courses.</u>
Exclusive Courses: <i>(Course Code and Title)</i>	<u>Nil</u>

Part II Course Details

1. Abstract

The past two decades have witnessed increased levels of private homeownership and domestic protest in China, despite a growing economy and rising living standards. This course aims to introduce contemporary and modern perceptions of private property from legislative, economic and sociological perspectives. Content-wise, it depicts land tenure system, housing reform, real estate development, rural land transfer, property management and land grabs etc. It also analyses the legislative framework concerning real property in China, including relevant legislation at national and local levels. In a nutshell, the course will equip the students a good knowledge of legal issues underlying the public and private properties in China.

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 structure of the current real property legal system in China.			√	
2.	Analyze the principles relating to sources of real property law in China.			√	
3.	Compare the differences between the real property legal system of Common law and the Civil law system adopted by China.			√	√
4.	Identify and describe the operation of the administrative institutions regarding real property in China.			√	√
5.	Apply the knowledge of real property transaction and related business in China to actual situations.		√	√	√
		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	4	5	
Lectures/seminars	A three-hour seminar will be conducted in order to facilitate interactive learning with a relatively small group of students. Both principles and cases from a comparative perspective will be used.	√	√	√	√	√	3

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	4	5		
Continuous Assessment: 50%							
Coursework	√	√	√	√	√	50%	
Final 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-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
1. Coursework	Demonstration of understanding of concepts, principles, and theories. Demonstration of ability to identify legal issues. Application of knowledge to specific legal problems, to discuss questions, and to comment on legal phenomenon. Application of legal writing and research skills. Demonstration of ability to engage in argument-based analysis based on critical thinking. Demonstration of aptitude for formulating innovative solutions to designated fact-based questions.	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	Demonstration of understanding of concepts, principles, and theories. Demonstration of ability to identify legal issues. Application of knowledge to specific legal problems, to discuss questions, and to comment on legal phenomenon. Application of legal writing and research skills. Demonstration of ability to engage in argument-based analysis based on critical thinking. Demonstration of aptitude for formulating innovative solutions to designated fact-based questions.	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

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

Socialist perception of property; a bufication of urban land and rural land; housing privatization or housing reform; real estate development and market (government's controls) ; public property; Land expropriation; rural land transfers; land registration condominium management, dispute resolution mechanism .

1.2 Detailed Syllabus

1. Socialist perception of property and legislative evolution relating to property in China: law and development theory
2. How to develop a real estate project in urban China: Land Use Right system and housing policies
3. Real property Mortgage and Sale
4. Is rural farmland property? Ongoing experiments on rural land transfer: law and policya
5. Land registration system: theory and practice
6. Condominium Laws (1) nature and features
7. Condominium Laws (2): Property management and property relations
8. The emergence of Homeowner Associations: Rise of grassroots democracy?
9. Land expropriation
- 10 A political Economy of property rights in China:
11. Judicial system regarding real property

The administrative decisions arising from cases violating land law; court and arbitration procedure and decisions arising from real estate cases.

2. Reading List

2.1 Recommended Readings

Terry L. Anderson & P. J. Hill, *The Evolution of Property Rights: A Study of the American West*, 18 *J.L. & Econ.* 163 (1975).

Benito Arruñada, *Property Enforcement as Organized Consent*, 19 (2003) *Journal of Law, Economics and Organizations* 401

Benito Arruñada, *Institutional Foundations of Impersonal Exchange: Theory and Policy of Contractual Registries* (University of Chicago Press 2012)

Stuart Banner, 'Transitions between Property Regimes' (2002) 31 *Journal of Legal Studies* 359

Richard Barrows and Michael Roth, 'Land Tenure and Investment in African Agriculture: Theory and Evidence' (1990) 28 *Journal of Modern African Studies* 265

Chris Bramall, "Chinese Land Reform in Long-Run Perspective and in the Wider East Asian Context", *Journal of Agrarian Change*, Vol. 4 Nos. 1 and 2, January and April 2004, pp. 107–141

Loren Brandt and others, 'Land Rights in China: Facts, Fictions and Issues' (2002) 47 *The China Journal* 67

Chen Lei and Van Rhee C.H. (eds), *Towards a Chinese Civil Code: Historical and Comparative Perspectives*, Martinus Nijhoff Publishers (Brill) Leiden, 2012 (562 pp)

Chen Lei, *The Making of Chinese Condominium Law*, Intersentia (Cambridge), 2010

----"Evolving Property Rights in China: Patterns and Dynamics of Condominium Governance", *The Chinese Journal of Comparative Law* (Oxford university press) (2014) 1-22

----"The Emergence of Private Property Law and its impacts on Human Rights". *Asian-Pacific Law and Policy Journal*. 15 (1) (with M. Kielsgard). 94 – 134 (2013)

---- "The Legal and Institutional Analysis of China's Expropriation System", in John Gillespie & Fu Hualing (eds), *Resolving Land Disputes in East Asia*, Cambridge University Press (2014)

---- "The historical development of the Civil Law tradition in China: a private law perspective", *Legal History Review*, 78(1-2), 2010, pp 159-181.

----"Land registration system in China: Theory, Practice and Future Challenges", 44:3 *Hong Kong Law Journal*, (2014)

---- "Private Property with Chinese Characteristics: A Critical Analysis of the Chinese Property Law of 2007", *European Review of Private Law*, 18(5), 2010, pp 983-1004.

----"Reflections on the role of the managing agent in South African and Chinese condominium legislation", *Journal of South African Law*, 2009 Issue 1

----"The Developer's Role in the Surging Chinese Condominium Housing: Through the Comparative Lens of the US System", *Asia Pacific Law Review*, 18(2), 21 2010, pp 223-242

----"The New Chinese Property Code: A Giant Step Forward?" (2007) 11:2 *EJCL* (succeeded by *European Journal of Comparative Law and Governance* by Brill).

---- "The Unavoidable Necessity of Formalizing Condominium Ownership in China: A Pilot Study" with H Mostert (2007) 2 *Asian Journal of Comparative Law* 62-88.

Donald Clarke "China's Stealth Urban Land Revolution," 62 *American Journal of Comparative Law* 323-366 (2014).

Harold Demsetz, *Toward a Theory of Property Rights*, 57 *AM. ECON. REV. (PAPERS & PROC.)* 347 (1967).

Yash Ghai and Jill Cottrell (eds), *Marginalized Communities and Access to Justice* (Routledge-Cavendish 2009)

John W Bruce, 'Learning from Comparative Experience with Agrarian Reform' in J Barry (ed), *Proceedings of the International Conference on Land Tenure in the Developing World* (University of Cape Town 1998)

Donald Clarke, "What kind of legal system is necessary for economic development?- The China Puzzle", in Tim Lindsey (ed) *Law Reform in Developing and Transitional States 2007*, Routledge,

The Economist (2008) 'Land Reform in China', 23 October.

Dang Guoying, Rural Land Shareholding is not the Direction of Rural Land Reform, <http://news.163.com/07/0704/08/3IHVS64G000121EP.html>;

Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Basic Books 2003).

Klaus Deininger, *Land Policies for Growth and Poverty Reduction* (World Bank 2003).

Richard A. Epstein, *The Allocation of the Commons: Parking on Public Roads*, 31 *J. Legal Stud.* S515 (2002),

F Feder & A Nishio, "The Benefits of Land Registration and Titling: Economic and Social Perspectives" 1999 (15) *Land Use Policy* 25

Xiaoming Guo, Major Developments and Future Trends in Rural Land Reform, *People's Daily*, July 02, 2010.

Xiaoming Guo, *Coordinating Urban and Rural Development and Rural Land Transfer Reform: An Empirical Study on Chengdu Model* (China Science Press, 2012).

Peter Ho, *Institutions in Transition: Land Ownership, Property Rights, and Social Conflict in China* (OUP 2005).

Jedidiah J. Kroncke, *Property Rights, Labor Rights and Democratization: Lessons from China and Experimental Authoritarians*, 46 *N.Y.U. J. Int'l L. & Pol.* 115 (2013).

James KS Kung, "Equal Entitlement versus Tenure Security under a Regime of Collective Property Rights: Peasants' Preference for Institutions in Post-reform Chinese Agriculture", *Journal of Comparative Economics*, Vol. 21 (1995), pp. 82-111.

James KS Kung, 'Choice of Land Tenure in China: The Case of a County with Quasi-Private Property Rights' (2002) 50 *Economic Development and Cultural Change* 793;

Saul Levmore, *Property's Uneasy Path and Expanding Future*, 70 *U. CHI. L. REV.* 181, at 182 (2003).

Thomas W. Merrill, *Introduction: The Demsetz Thesis and the Evolution of Property Rights*, 31 (2) (Pt. 2) *J. LEG. STUD.* 331, 331 (2002)

Ethan Michelson, 'Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China' (2007) 72 *American Sociological Review* 459-85;

McKinsey Global Institute (MGI) (2009) *Preparing for China's Urban Billion*, Shanghai: McKinsey & Company.

Mullan, K., Grosjean, P., & Kontoleon, A. (2011). Land tenure arrangements and rural-urban migration in China. *World Development*, 39(1),

Jean Oi, *Two Decades of Rural Reform in China: An Overview and Assessment*, *The China Quarterly*, 1999 Sep. No. 159

HWO Okoth-Ogendo, 'Legislative Approaches to Customary Tenure and Tenure Reform in East Africa' in Camilla Toulmin and Julian Quam (eds), *Evolving land rights, poverty and tenure in Africa*. (DFID, IIED, NRI, London 2000) at 128;

Payne, Geoffrey (2004) *Land Tenure and Property Rights*, Amsterdam: Elsevier

Eva Pils, 'Land Disputes, Rights Assertion and Social Unrest: a Case from Sichuan' (2006) 19 *Columbia Journal of Asian Law* 365;

Jean-Philippe Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa: Controversies and Guidelines* (Food & Agriculture Organization 1992)

Roy L Prosterman, Robert Mitchell, and Timothy Hanstad (eds), *One Billion Rising: Law, land and the Alleviation of Global Poverty* (Leiden University Press 2009);

Roy L Prosterman and Brian Schwarzwald, 'From Death to Life: Giving Value to China's Rural Land' (2004) 8 *China Economic Quarterly* 19;

Meng Qinguo, *A Study on China's Rural Land Reform*, Law Press China, (2009).

Michael Trebilcock and Paul-Erik Veel, 'Property Rights and Development: The Contingent Case for Formalization' (2008) 30 *University of Pennsylvania Journal of International Law* 397;

Frank Upham, 'From Demsetz to Deng: Speculations on the Implications of Chinese Growth for Law and Development Theory', (2009) 41 *NYU Journal of International Law and Politics* 551;

Hui Wang, Juer Tong, Fubing Su, Guoxue Wei, Ran Tao, "To reallocate or not: Reconsidering the dilemma in China's agricultural land tenure policy", *Land Use Policy*, 28 (2011) 805-814.

World Bank, *World Development Report 2005: A Better Investment Climate for Everyone* (World Bank and OUP 2004) 80-84. (Available at http://siteresources.worldbank.org/INTWDR2005/Resources/complete_report.pdf);

Wu, Fulong, Jiang Xu and Anthony Gar-On Yeh (2007) *Urban Development in Post-reform China. State, Market and Space*, London: Routledge.

Wu, Jinglian & Reynolds, Bruce L, "Choosing a Strategy for China's Economic Reform, *The American Economic Review*, 78(2), 461

Zhou Qiren, *Property Rights and Institutional Transformation: Empirical Study of China*, Peking University Press 2004

Keliang Zhu and others, 'The Rural Land Question in China: Analysis and Recommendations Based on a Seventeen-Province Survey' (2006) 38 New York University Journal of International Law & Policy 761.

Statutory instruments:

Chengdu Municipal Government, the Action Plan concerning the Establishment of Chengdu Agricultural Land Transaction Centre (Cheng ban fa [2009] No. 75).

National Development and Reform Commission (NDRC), The Circular approving Chongqing and Chengdu as the Special Experimental Zones for Coordinated Rural and Urban Development areas (Fa Gai Jing Ti [2007] No. 1248). This Notice was dated 7 June 2007. The Chinese version of this Notice: http://www.sdpc.gov.cn/zcfb/zcfbtz/2007tongzhi/t20100511_346231.htm

Official announcement in the PRC Ministry of Land and Resources
http://www.mlr.gov.cn/xwdt/jrxw/201204/t20120420_1086353.htm

Property Law of PRC 2007.

Rural Land Contract Law of 2002

The Opinion concerning Strengthening Agricultural land and Furthering Rural Land and Homestead Rights by the Chengdu Municipality of January, 2008.