

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: Chinese and Comparative Labour Law

Course Code: LW6169E

Course Duration: One semester

Credit Units: 3

Level: P6

Medium of Instruction: English

Medium of Assessment: English

Prerequisites:
(Course Code and Title) Nil

Precursors:
(Course Code and Title) Nil

Equivalent Courses:
(Course Code and Title) NA

Exclusive Courses:
(Course Code and Title) NA

Part II Course Details

1. Abstract

This course aims to identify and analyse key issues in the regulation of labour in the PRC, Hong Kong, Japan, South Korea and Taiwan. It will also develop comparative perspectives on common issues including rights and duties under the contract of employment, employment termination, occupational safety and health/employees' compensation, collective bargaining, institutional arrangements for labour regulation and labour migration. The course aims to produce students with an enhanced understanding of labour law issues both locally and in the region and an ability to resolve common employment disputes through techniques of Alternative Dispute Resolution (ADR). The course aims to expose students to a wide range of issues which are taught by a team of colleagues drawn from the law school, the practicing profession and other departments of the University.

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. | Identity, compare and describe key rights and duties of employers and employees in multiple jurisdictions | 25% | | √ | √ |
| 2. | Compare and analyse contractual and statutory rights of employees in relation to employment termination in a variety of East Asian jurisdictions | 25% | | √ | √ |
| 3. | Apply their knowledge of occupational safety and health policy to daily issues arising in workplaces | 25% | √ | √ | √ |
| 4. | Articulate and comparative principles of risk management, mediation recruitment, promotion and retrenchment problems, termination in multiple jurisdictions through knowledge of national laws and an ability to mediate problems | 25% | √ | √ | √ |
| | | 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 | | | |
| | Lectures and participation in interactive workshops and seminars | √ | | | | | | 3 |
| | Seminar presentation on remedies for employment termination in PRC and Hong Kong | | √ | | | | | NA |
| | Participation in an assessed three person group research exercise and class presentation on how three different countries (other than PRC and HK) regulate a particular issue in employees' compensation | | | √ | | | | In week 6 each student will give a 15 minute presentation reporting on their research and comparative class discussion will follow |
| | Participation as a party and a mediator in an assessed alternative dispute resolution problem exercise on a termination without notice or cause. | | | | √ | | | In week 8 the student will complete their ADR exercise over 20 mins in class time |

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 | | | | |
| Continuous Assessment: 50% | | | | | | | | |
| Coursework | | √ | | | | | 50% | |
| Examination on employment termination and OSH in PRC and HK: 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.)

Skills week (group work and mediation skills)

Sources and institutional arrangements of East Asian labour law and rights and duties of employment

Employment termination in China and Hong Kong

Occupational safety and health and employees' compensation issues in China and Hong Kong

Collective bargaining regimes in East Asia

Assessed research presentations and ADR exercise

Specific labour regulation issues in Hong Kong

Specific labour regulation issues in Japan

Specific labour regulation issues in Korea and Taiwan

Revision on employment termination remedies in China and HK

1.2 Detailed Syllabus

Skills week (group work and mediation skills)

- Models of dispute resolution
- Facilitated ADR/mediation: opening statements, reiteration and summary, agenda setting, first joint session/agenda exploration
- ADR practice exercises
- Techniques for effective group work
- Research techniques
- Introduction to the values of comparison, absolutist approaches and cultural relativism
- The effect of globalisation on structure and enforcement of national labour laws in the PRC

Sources and institutional arrangements of East Asian labour law and rights and duties of employment

- National courts and tribunals and their jurisdictions
- Labour codes
- Role of common law
- Institutional arrangements in Hong Kong
- Rule of law in China and enforcement of judgments
- The employment relationship in Hong Kong
 - Employee duties
 - Employer duties

- The employment relationship in the PRC
Employee duties
Employer duties

Employment termination in China and Hong Kong

- China: Scope of Employment Contract Law, Compensation Measures, Labour Law, Labour Law Explanation and Labour Union Law
- Dismissal and notice issues in China
- Mandatory written contracts and duration of employment
- Resignation
- Fixed term contracts
- Immediate termination without severance pay
- Termination with 30 days' notice
- Unlawful termination and reinstatement
- Hong Kong: wrongful dismissal, unfair dismissal/valid reason and dismissal in discriminatory circumstances
- Employment Ordinance and the common law
- Liquidation of damages and availability of *Malik*, *Gunton* and other common law damages

Occupational safety and health and employees' compensation issues in China and Hong Kong

- China: Scope of Safe Production Law, Employment Contract Law, Labour Law, Regulations on Work-Related Injury Insurance and Occupational Diseases Law
- General safety and health obligations
- Employee obligations
- Occupational disease related rights
- Work-related injury insurance
- Administrative punishment, civil and criminal liability of employers
- Hong Kong: Scope of Occupational Safety and Health Ordinance, Employees' Compensation Ordinance and Employees
- Fines and sanctions on employers
- Employees' compensation: 'worker', 'arising out of employment' and travel claim issues
- Duty to provide a safe system of work and common law damages; relationship to employees' compensation

Collective bargaining regimes in East Asia

- PRC: Historical issues, All China Federation of Trade Unions and its role, enterprise unionism, structure, role and powers of Enterprise Union Organisation, participation rights, union funding and collective bargaining
- Hong Kong
- Japan
- South Korea

Assessed research presentations

Assessed ADR exercise

Specific labour regulation issues in Hong Kong

- Liquidation of damages for wrongful dismissal
- Scope of unfair dismissal compared
- Work attendance (adverse weather and infectious disease)
- Retirement age, age discrimination and under-employment of senior employees
- Employment of foreign domestic helpers

Specific labour regulation issues in Japan

- Unions, collective bargaining and the state
- Employment security, loyalty and changing workplace values
- Balance of interventionism and free market
- Managing older workers/ age discrimination issues

Specific labour regulation issues in Korea and Taiwan

- Korea: strikes and collective bargaining; Equal Employment Act (harassment), Labour Standards Act (labour contracts, hours of work, wages, notice and termination, holidays, females and minors; and accident compensation)
- Taiwan: Scope of Labor Union Law; Labor Standards Law

Revision on employment regulation in China and HK

- Revision session prior to exam on employment termination and OSH in China and HK

2. Reading List

2.1 Recommended Readings

There is no single suitable text. A unit Reader will be comprised of the following articles, book chapters and notes:

Chen, J. (2003). Reflections on labour law in China. In S. Frost, O. George & E. Shepherd (Eds.), *Asia Pacific labour law review: Workers' rights for the new century* (105-122). Hong Kong: AMRC.

Chiu, C.C.H. (2002). *Labour relations and regulations in Hong Kong: theory and practice*. Southeast Asia Research Centre Working Paper, No. 37. Hong Kong: SEARC, [On-line]. Available: <http://www.cityu.edu.hk/searc/WP.html>.

Frost, S. (2002). *Labour standards in China: The business and investment challenge*. Hong Kong: ASIA.

Hsu, J.C-F., & Wei, M.M. (2003). Labour legislation in Taiwan, 2000-2002. In S. Frost, O. George & E. Shepherd (Eds.), *Asia Pacific labour law review: Workers' rights for the new century* (341-351). Hong Kong: AMRC.

Lim, Y-I., Kim, O-S., & Kim, Y-H. (2000). South Korea. *Asia Pacific labour law review: 1999*. Hong Kong: AMRC and APEC Labour Rights Monitor.

Lauffs, A. (2008) *Employment Law and Practice in China*. Hong Kong Sweet & Maxwell

Pringle, T., & Frost, S. The absence of rigor and the failure of implementation: Occupational Health and Safety in China. *International Journal of Occupational and Environmental Health* (2003)

Tabata, H. (2003). Labour law in Japan in the era of neo-liberal reforms. In S. Frost, O. George & E. Shepherd (Eds.), *Asia Pacific labour law review: Workers' rights for the new century* (173-182). Hong Kong: AMRC.