

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: Maritime Arbitration Law

Course Code: LW6179E

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) LW5579 Maritime Arbitration Law

Exclusive Courses:
(Course Code and Title) LW6579E Maritime Arbitration Law

Part II Course Details

1. Abstract

The course introduces students to arbitration law and practice in the maritime industry. It aims to teach the skills, substantive law and procedures involved in maritime arbitration. Particular emphasis will be given to the arbitration law of Hong Kong, Mainland China and the United Kingdom.

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, comprehend and explain the fundamental elements of maritime arbitration as a method of dispute resolution			√	√
2.	Critically evaluate the principles of maritime arbitration, national and international conventions and rules of maritime arbitration procedure used by various maritime arbitration centers			√	√
3.	Critically evaluate, assess and compare instruments within the international framework of arbitration conventions, model laws and special maritime industry form agreements		√	√	√
4.	Comprehend and explain the legal framework for maritime arbitration in Hong Kong and China		√	√	√
		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	Explain processes and describe procedures associated with Maritime arbitration and compare and contrast with other dispute resolution methods applicable to maritime disputes.	√				3 hours lecture/week or a total of 39 hours of block teaching
	Compare and contrast particular rules (such as UNCITRAL Model Law, New York Convention, Rotterdam Rules) applicable to Maritime Arbitrations.		√			
	Chart or describe the key elements and differences between international statutes and conventions and how they are interpreted.			√		
	Analyse both the HKIAC Rules and cases conducted in Hong Kong under the HKIAC Rules.				√	

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: 30%						
Coursework	√	√	√	√	30%	
Examination: 70% (duration: 2 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)
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.
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.)

Hong Kong Arbitration Ordinance, New York Convention, UNCITRAL Model Law, jurisdiction, maritime arbitration procedure, maritime arbitration agreements, arbitration clause, maritime arbitration process, recognition and enforcement of awards.

1.2 Detailed Syllabus

Introduction to Maritime Arbitration

- The essential character of maritime arbitration, history.
- An introduction to arbitration law and rules: arbitration ordinance(LHK Cap.341), UNCITRAL Model law, English Arbitration Act, PCR Arbitration Act
- Introduction to principle institutions: HOIAC, ICC, Chinese Maritime Arbitration Commission, Singapore Chamber of Maritime Arbitration

The Principles, Practice and Procedure of International Maritime Arbitration

- Introduction to Maritime Law and its Procedure
- The Sources of Maritime Law
- Unique Aspects of the Maritime Law,
- Incorporation of arbitration clauses in maritime contracts including charter parties and bills of lading
- Practice of maritime arbitration in Asia Pacific Region
- Practice of maritime arbitration in United Kingdom and USA
- International Conventions relating to Carriage of Goods by Sea

The Arbitration Agreement-its formation and validity

- The importance of an arbitration agreement
- The role of arbitrators and courts in determining jurisdiction
- Types of agreement, pre and post-dispute
- Arbitrability/public policy
- Incorporation by reference
- What law applies to the arbitration agreement?
- Interpretation, doctrine of separability, case law, Fiona Trust.
- Can non-signatories be bound to arbitrate?

The Commencement of the Arbitral Process, the activation and scope of the agreement

- Activating the arbitration agreement
- Scope of the arbitral agreement
- Requirement of arbitrator independence and disclosure
- Power to appoint arbitrators, parties and institutions
- Resignation or death of arbitrator
- Duties of arbitrators to parties
- Duty of arbitrator to proceed diligently
- Arbitrator's right to fees, cancellation fees, lien on award, immunity.

The Hearing

- Place of Arbitration, choice of law
- UNCITRAL Notes on Organising Arbitral Proceedings
- Right of parties to be represented, witnesses
- Legal representation/local practice requirements
- Failure of a party to attend
- Order of proceedings
- Procedural rulings
- Transcripts

Interim Measures of Protection

- When made, in what form and against whom
- Ex parte
- After Tribunal constituted
- By the arbitral panel/tribunal
- Security for costs
- Judicial support for interim measures; anti-suit injunctions
- The powers and practice under Procedural Rules, eg LMAA (maritime arbitration other than salvage claims under Lloyd's open form)

The Award and Costs

- Basic rules or principles to be applied, required elements of an award.
- Quantum assessment-when made and by whom, statutory support, compensatory and punitive damages.
- Assessment-rates/party-party/indemnity, limiting liability by contract.
- Different types of costs; parties' costs, witnesses' costs, costs of hearing and arbitrator's costs
- Security for costs-of the parties

Recognition and Enforcement of Arbitral Awards

- Enforcement of arbitral awards in Hong Kong; the New York Convention
- The procedures involved
- Comparison with court outcomes
- Locale for setting aside awards
- Public policy considerations
- Illegality
- Grounds for refusal of enforcement or recognition

2. Reading List

2.1 Recommended Readings

- <http://www.lmaa.org.uk/>
- London Maritime Arbitration, 3rd Edition Clare Ambrose, Karen Maxwell and Angharad Parry
- [Limitation of Liability for Maritime Claims, 4th Edition](#) Patrick Griggs, Richard Williams and Jeremy Farr
- [Shipping Law Handbook, 4th Edition](#) Michael Bundock
- [Arbitration Law](#) Editor: Robert Merkin
- International Arbitration: A Handbook, 3rd Edition Phillip Capper
- [Arbitration Act 1996, 4th Edition](#) Robert Merkin and Louis Flannery

- [Arbitration Law Handbook](#) Ben Horn and Roger Hopkins
- [Singapore Arbitration Legislation - Annotated](#) Robert Merkin and Johanna Hjalmarsson
- Arbitration in Hong Kong: A Practical Guide *The Hon. Mr. Justice Ma, Editor-in-Chief
Mr. Neil Kaplan CBE QC FCI Arb, General Editor*
(Sweet & Maxwell Asia)
- The Law Reform Commission of Hong Kong - Report on the Adoption of the [UNCITRAL Model Law](#) of Arbitration (Topic 17) (Government Printer, Hong Kong)
- The [Arbitration Ordinance](#) of Hong Kong: A Commentary
Robert Morgan (Butterworths Asia)
- Arbitration in Hong Kong: A User's Guide *Michael J Moser and Teresa Y.W. Cheng J.P.*
(Kluwer Law International)

2.2 Online Resources

United Nations Commission on International Trade (UNCITRAL) website at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration_online.html.

Jean M. Wenger, *International Commercial Arbitration: Locating the Research* at <http://www.llrx.com/features/arbitration2.htm>.

International Centre for Settlement of Investment Disputes (ICSID) website at <http://icsid.worldbank.org/ICSID/Index.jsp>.

International Chamber of Commerce (ICC) Arbitration Rules and website at <http://www.iccwbo.org/policy/arbitration/id2882/index.html>.