

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>Chinese and Comparative Alternative Dispute Resolution</u>
Course Code:	<u>LW6187E</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>Courses on Dispute Resolution</u>
Equivalent Courses: <i>(Course Code and Title)</i>	<u>Nil</u>
Exclusive Courses: <i>(Course Code and Title)</i>	<u>LW6587E Chinese and Comparative Alternative Dispute Resolution</u>

Part II Course Details

1. Abstract

This course aims to introduce and critically examine the main types of alternative dispute resolution mechanisms in the PRC, namely, arbitration, mediation and negotiation. It identifies their main characteristics and considers the legal framework provided for them by current PRC law and practice. It also compares methods for resolving commercial disputes under the current law and practice in other jurisdictions.

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, describe and analyse important legal concepts of core areas of dispute resolution under current law and practice in the mainland of China and compare with other jurisdictions	20%	√		
2.	Apply dispute resolution principles and current law to complex fact patterns at an advanced level; and discover and provide creative solutions to the relevant legal issues	35%	√	√	√
3.	Analyse, evaluate, and critically examine legal problems in the core areas of dispute resolution	35%	√	√	√
4.	Locate pertinent legal materials in databases and libraries; and creatively use them for further research and/or professional development	10%	√	√	√
		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 Seminars	Primarily, the Socratic method will be relied upon in all lectures and seminars. Students are expected to study relevant law and materials in advance.	√	√	√	√			3
	Lectures and revision seminars, case studies and problem-based learning.		√	√				
	Lectures and revision seminars, case studies and problem-based learning.			√				
	Reading and research tasks.				√			

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%								
Written coursework: Students are required to write a DEC Journal	√	√	√	√			50%	
Examination: Negotiation practice and assessment 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.

A student 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	Knowledge and understanding of the subject; Original thinking and analytical skills; Organisation and writing skills.	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	Knowledge and understanding of the subject; Original thinking and analytical skills; Organisation and writing skills.	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.)

Dispute resolution, Litigation, Arbitration and Mediation, The People's Court, China

1.2 Detailed Syllabus

- Introduction to dispute resolution mechanisms in the PRC and draw comparisons with other jurisdictions
- Legal framework for ADR in the People's Court
- Main characteristics of ADR under current PRC law and practice
- Legal framework for arbitration in the People's Court
- Main characteristics of arbitration under current PRC law and practice
- Legal framework for mediation in the People's Court
- Main characteristics of mediation under current PRC law and practice
- Legal framework for resolving inter-territorial commercial disputes
- Main characteristics of interest-based negotiation compared with positional negotiation

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.)

Required textbook:

YANG Fan, *Foreign-related Arbitration in China: Commentary and Cases*, Cambridge University Press (2 Volume Hardback Set), 2015 (ISBN: 978-110-70821-9-9)

WANG Guiguo and YANG Fan (eds), *Mediation and its Impact on Legal Systems in Asia-Pacific*, Wolters Kluwer Law & Business and CCH Hong Kong, 2013 (ISBN 978-988-12216-0-5)

2.2 Recommended Readings

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

- Jason A Crook, 2010. What is alternative dispute resolution (ADR)?, in Julio Cesar Betancourt (ed.) London: CIArb. 2010;
- Fan Yang, *ICCA's Guide to the Interpretation of the 1958 New York Convention (Chinese-English bilingual version)*, International Council for Commercial Arbitration (ICCA), (ISBN: 978-908-17251-3-2), c2012;
- Damon Y.C. So et al. *Arbitration: a Butterworths Hong Kong Arbitration Law Handbook*, Hong Kong: LexisNexis Butterworths, c2012;

- Nadja Alexander, *Mediation: process and practice in Hong Kong*, Hong Kong: LexisNexis, 2010;
- To, Ken C., *Butterworths Hong Kong Mediation Practical Guide*, Hong Kong: LexisNexis, 2010;
- Sarah E. Hilmer, *Mediation Theory and Practice in Hong Kong*, Hong Kong: Lexis Nexis, 2010;
- Jingzhou Tao, *Arbitration law and practice in China*, Wolters Kluwer Law & Business; Alphen aan den Rijn : Kluwer Law International, c2008. 2nd ed;
- Choong and Weeramantry (eds), *The Hong Kong Arbitration Ordinance: commentary and annotations*, Hong Kong: Sweet & Maxwell/Thomson Reuters, 2011;
- Gary B. Born, *International Commercial Arbitration*, Wolters Kluwer Law & Business; Alphen Aan Den Rijn: Kluwer Law International, c2009, (available online from CityU e-resources);
- Justice Geoffrey Ma; general editor, Denis Brock and a team of expert contributors, *Arbitration in Hong Kong: a practical guide*, Hong Kong: Sweet & Maxwell 2011. 2nd ed;–
- Redfern, Hunter, et al., *Redfern and Hunter on International Arbitration*, (2009); (available online from CityU e-resources);
- David St. John Sutton, Judith Gill, Matthew Gearing, *Russell on arbitration* Russell, Francis, 1816-1891. London: Sweet & Maxwell, 2007. 23rd ed., (available online from CityU e-resources);
- Lew, Mistelis, et al., *Comparative International Commercial Arbitration*, (2003); (available online from CityU e-resources);
- Sarah E. Hilmer, *Mediation in the People's Republic of China and Hong Kong (SAR)*, Eleven International Pub; Portland, c2009;
- Cheng Dejun, Michael Moser, Wang Shengchang, *International Arbitration in the PRC: Commentary, Cases and Materials – 2nd ed*, Butterworths 2000;

2.3 Online Resources

PRC Law Databases:

北大法寶 / INFOBANK 中國資訊行 / iSinoLaw / pkulaw (English version of 北大法寶) / LEXIS.com

HK Law Databases:

BLIS / Judgments and Legal Reference (Unreported Judgments) / Hong Kong Law Reports & Digests on Westlaw International / Hong Kong Cases on Lexis.com

Arbitration:

<http://www.arbitration-icca.org>

Mediation:

<http://www.mediate.com>

Negotiation:

<http://www.pon.harvard.edu/>