

City University of Hong Kong
Course Syllabus

offered by School of Law
with effect from Semester A 2020/21

Part I Course Overview

Course Title:	<u>Constitutional Law</u>
Course Code:	<u>LW5608</u>
Course Duration:	<u>One semester</u>
Credit Units:	<u>3</u>
Level:	<u>P5</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>LW5605A Constitutional & Administrative Law I</u>
Exclusive Courses: <i>(Course Code and Title)</i>	<u>LW6119E Constitutional Law</u>

Part II Course Details

1. Abstract

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.

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)	DEC related learning outcomes		
			A1	A2	A3
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%	✓	✓	✓
		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	CILO No.				Hours/week (if applicable)
	1	2	3	4	
Tutorial presentation and/or debate	✓	✓	✓	✓	1
Lecture	✓	✓	✓	✓	2

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	✓	✓	✓	✓	30%	
Tutorial and class performance	✓	✓	✓	✓	20%	
Examination: 50% (duration: 3 hours)						
Examination	✓	✓	✓	✓	50%	
					100%	

Grading of Student Achievement:

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.

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	<ul style="list-style-type: none">• research ability• innovation• accuracy	Impressive	Very satisfactory	Ordinary	Manage to present fundamental concepts only	Fail to understand the subject
2. Tutorial and class performance	<ul style="list-style-type: none">• presentation skill• participation• content	Impressive	Very satisfactory	Ordinary	Manage to present fundamental concepts only	Fail to understand the subject
3. Examination	<ul style="list-style-type: none">• presentation• accuracy• time management• precise and the point	Impressive	Very satisfactory	Ordinary	Manage to present fundamental concepts only	Fail to understand the subject

Part III Other Information (more details can be provided separately in the teaching plan)

1. Keyword Syllabus

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

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) Civil and Criminal Judicial Assistance
 - b) Role of HKSAR in the world
 - c) Relationship of Taiwan & HKSAR
10. Economic, social and cultural aspects of the SAR.

2. Reading List

Text(s)

- Priscilla Leung, *The Hong Kong Basic Law: Hybrid of Common Law and Chinese Law*, Lexis Nexis, 2007 (For those students use the old edition in 2006, please refer to the CD Rom correction at the City U library to do the necessary update)
- 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 10th Anniversary of Hong Kong's return to China, One Country Two Systems Research Institute, 2010 edition
- Johannes Chan and ors, *Immigration Law in Hong Kong*, Sweet & Maxwell Asia, 2004.

Online Resources

www.lexisnexis.com/
www.isinolaw.com/
www.legco.gov.hk/english/index.htm
www.legislation.gov.hk/eng/home.htm
www.westlaw.com

Journal Articles

1. Priscilla Leung, "Recognition and Enforcement of laws across the Strait", *China Daily*, 28 November 2005
2. Priscilla Leung, "Return of the Luk Yu TeaHouse Killer", *the Hong Kong Lawyer*, April Issue, *Hong Kong Lawyer*, 2003 pp. 43-48
3. Priscilla Leung, "Practical Necessity of Enacting Legislation Pursuant to Article 23 " November Issue, *Hong Kong Lawyer*, 2002, pp. 84-85
4. 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)
5. Priscilla Leung, " The Applicability of National Laws in Hong Kong", the *Hong Kong Lawyer*, February issue, *Hong Kong Lawyer*, 2000, p.26-28
6. 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)
7. Priscilla Leung, " The Nature of Basic Law, " *Hong Kong Lawyer*, April Issue, 1999, pp.66-70
8. 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.

9. Priscilla M.F. Leung, "The Big Spender, Cheung Tse-keung Case, a brief analysis", *Hong Kong Lawyers*, (January 1999)
10. 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.
11. Huang Jin, *A Study of Interregional Conflicts of Law*, Yong San Culture Press, Taiwan, 1996
12. 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.
13. Zheng, Zhen, "Discussion on Unequal Treaties", in Zhou Zhonghai (ed.) *Peace, Justice and Law*, China International Broadcasting Press, 1993, at pp.111.
14. Jerome Alan Cohen and Huangdah Chiu, *People's China and International Law: A Documentary Study* Vol.1, Princeton University Press, USA, 1974
15. Jeong Wan Chong, 'One Country Two Systems' and the Modern Constitutional Science, University of Macao Press, 1996
16. Xiao Weiyun (ed.), *One Country Two Systems and the Basic Legal System of Hong Kong*, Peking University Press, 1990
17. 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).
18. 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
19. Kenneth C.K. Chow, "The Organization, Jurisdiction and Constitutents of the Judiciary of HKSAR", *China Law* (Supplement for H.K. Return July 1997)
20. Peter Wesley-Smith & Albert Chen, (editors), *The Basic Law and Hong Kong's Future* (Butterworths) 1988
21. Peter Wesley-Smith, *Constitutional and Administrative Law in Hong Kong* 1993
22. Byrnes and Chan, *Public Law and Human Rights -- A Hong Kong Sourcebook*, Butterworth 1993
23. Choi Po-king, ed., *The Other Hong Kong Report 1993*, The Chinese University Press
24. Chan & Ghai, *The Hong Kong Bill of Rights, A Comparative Approach*, Butterworth 1993
25. Wacks R., ed., *Human Rights in Hong Kong*, Oxford University Press 1992
26. Wacks R., ed., *The Future of the Law in Hong Kong*, Oxford University Press 1989
27. Wacks R., ed., *Civil Liberties in Hong Kong*, Oxford University Press 1988
28. Ian Scott, *Political Change and the Crisis of Legitimacy in Hong Kong*, Oxford University Press 1989
29. R. Randle Edwards, Louis Henkin, Andrew J. Nathan, *Human Rights in Contemporary China*, 1986
30. Folsom, *Law and Politics in the People's Republic of China in a Nutshell*, West Pub., 1992

31. Chen AHY , " The Consultation Document and the Bill : An Overview " in Fu Hualing, Carole Petersen and Simon Young (eds), National security and fundamental freedom: Hong Kong 's Article 23 under scrutiny (Hong Kong University Press, 2005)

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. 梁美芬，《香港基本法：從理論到實踐》，法律出版社，2015年12月第1版
2. 王振民，《一國兩制與基本法，歷史，現實與未來》，三聯書店(香港)有限公司，2017年7月
3. 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
4. 梁美芬，《兩岸三地婚姻家事法律比較》，三聯出版社，2003年
5. 見袁求實編，《香港過渡期重要法律文憲》，文匯報出版社，1997
6. 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
7. 沈學平，《香港未來與基本法》，香港出版集團有限公司，1994年
8. 梁美芬、盧永鴻，《中國法制改革》廣角鏡出版社，1994年
9. 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
10. 雲冠平等主編，《基本法概論》，暨南大學出版社，1992年
11. 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
12. 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
13. 黃江天，《香港基本法》的法律解釋研究，三聯出版社，2004年