

City University of Hong Kong

Course Syllabus

**offered by School of Law
with effect from Semester A 2023/24**

Part I Course Overview

Course Title: Dispute Resolution in Theory and Practice

Course Code: LW6126E

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) LW6126C, LW5526 and LW6401

Exclusive Courses:
(Course Code and Title) LW6526C, LW6526E Dispute Resolution in Theory and Practice

Part II Course Details

1. Abstract (*same as LW6401, LW6126C and LW6526C/E Dispute Resolution in Theory and Practice*)

This "*Dispute Resolution in Theory and Practice*" course is intended to introduce students to the legal and regulatory issues surrounding methods of dispute resolution aside from litigation. Specifically, the course focuses on the practical factors relevant to selecting appropriate dispute resolution methods in resolving conflicts in distinct circumstances, within the commercial sector.

Students will be provided with the resources to acquire a detailed theoretical and practical understanding of the contextual benefits and constraints associated with the use of different forms of dispute resolution methods in resolving conflicts of a commercial nature. Students will be further encouraged to develop their ability to evaluate the effectiveness of certain interventions, especially when used as an adjunct to court proceedings. The course tracks historic and current developments in relation to the use of Alternative Dispute Resolution (ADR), highlighting how government policy and the judiciary have supported ADR from the standpoint of developing more creditable and flexible forms of dispute resolution methods with the goal of allowing disputants the ability to effectively gain access to justice.

The primary objectives of the course are as follows:

- Identify broader social, economic and political issues underlying the developments taking place in the context of conflict resolution;
- Demonstrate a detailed understanding of the legal and regulatory issues surrounding dispute resolution processes, including negotiation, mediation, arbitration, adjudication and litigation;
- Apply knowledge to the analysis and evaluation of complex dispute case scenarios, identify relevant strategies, risk factors, legal principles, and case law, and participate in critical discussions on the issues raised;
- Demonstrate a detailed understanding of the concepts and principles that govern the choice of the most common dispute resolution processes;
- Critically analyse and evaluate the relationship between different forms of dispute resolution techniques, and how one chooses the best method to adopt to minimise one's future exposure; and
- Demonstrate a detailed understanding of the skills and attributes necessary to effectively advise and represent clients in the ADR process.

2. Course Intended Learning Outcomes (CILOs)

(same as LW6401, LW6126C and LW6526C/E Dispute Resolution in Theory and Practice)

(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.	Demonstrate an attitude of discovery and curiosity as related to relevant legal and regulatory issues surrounding dispute resolution processes.	30%	✓	✓	✓
2.	Acquire the necessary skills and abilities in order to conduct the following: <ul style="list-style-type: none"> ▪ critically evaluate ongoing developments in academic and policy debates relating to alternative dispute resolution; ▪ address contemporary debates as to how various dispute resolution methods should be used to settle claims in different contexts; and ▪ understand the relevant legal and theoretical concepts needed to assess which method of dispute resolution will be more effective in resolving certain conflicts. 	40%	✓	✓	✓
3.	Engage in advanced dispute resolution systems design.	10%	✓	✓	✓
4.	Identify and critically analyse the complex drivers of dispute behaviour from both legal and social contexts.	5%	✓	✓	✓
5.	Understanding of the ethical and legal issues surrounding ADR models and practice.	10%	✓	✓	
6.	Ability to adaptively apply ADR theories in varied practical contexts, including commercial, international, and socio political.	5%	✓	✓	✓
		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)

(same as LW6401, LW6126C and LW6526C/E Dispute Resolution in Theory and Practice)

(TLAs designed to facilitate students' achievement of the CILOs.)

TLA	Brief Description	CILO No.						Hours/week (if applicable)
		1	2	3	4	5	6	
Lectures	The course leader will present and explain the legal and theoretical aspects on the topics listed below in the syllabus.	✓	✓	✓	✓	✓	✓	2

Interactive class discussion	Students will be engaged in debates to develop a critical view on the adoption of various forms of dispute resolution methods to resolve conflict problems.		√	√	√	√	√	1
------------------------------	---	--	---	---	---	---	---	---

4. Assessment Tasks/Activities (ATs)

(same as LW6401, LW6126C and LW6526C/E Dispute Resolution in Theory and Practice)

(ATs are designed to assess how well the students achieve the CILOs.)

Assessment Tasks/Activities	CILO No.						Weighting	Remarks
	1	2	3	4	5	6		
Continuous Assessment: 50%								
Class participation (Active involvement in class, which includes consistent attendance, engaging in thoughtful discussions, and maintaining focus during lectures).	√	√	√				20%	Week 1 to 13. The use of Generative AI tools is not allowed.
Coursework (A 4000-word essay, focusing on a challenging topic or case study within the dispute resolution arena).		√	√			√	30%	To submit the coursework in week 7. The use of Generative AI tools is not allowed.
Examination: 50%								
Examination (duration: 3 hours). Students will be assessed via the examination their understanding of concepts learned in class, textbooks, reading materials and their ability to apply subject related knowledge.	√	√	√	√	√	√	50%	End of term. The use of Generative AI tools is not allowed.
							100%	

Applicable to students admitted in Semester A 2022/23 and thereafter

A student must obtain a minimum mark of 50% in both continuous assessment and examination and an overall mark of 50% in order to pass a course.

Applicable to students admitted before Semester A 2022/23

A student must obtain a minimum mark of 40% in both continuous assessment and examination and an overall mark of 40% in order to pass a course.

5. **Assessment Rubrics** (same as LW6401, LW6126C and LW6526C/E *Dispute Resolution in Theory and Practice*)
(Grading of student achievements is based on student performance in assessment tasks/activities with the following rubrics.)

Applicable to students admitted in Semester A 2022/23 and thereafter

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B)	Marginal (B-, C+, C)	Failure (F)
Class participation and Coursework	<ul style="list-style-type: none"> ▪ Demonstration of understanding of concepts, principles, and theories. ▪ Demonstration of ability to identify legal issues. ▪ Application of knowledge to specific legal problems. ▪ Application of legal writing and research skills. ▪ Demonstration of ability to engage in argument-based analysis based on critical and logical thinking. ▪ Demonstration of aptitude for formulating innovative solutions to designated fact-based questions. 	High	Significant	Moderate	Inadequate
Examination	<ul style="list-style-type: none"> ▪ Demonstration of understanding of concepts, principles and theories. ▪ Demonstration of ability to identify legal issues. ▪ Application of knowledge to specific legal problems. ▪ 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. 	High	Significant	Moderate	Inadequate

Applicable to students admitted before Semester A 2022/23

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
Class participation and Coursework	<ul style="list-style-type: none"> ▪ Demonstration of understanding of concepts, principles, and theories. ▪ Demonstration of ability to identify legal issues. ▪ Application of knowledge to specific legal problems. ▪ Application of legal writing and research skills. ▪ Demonstration of ability to engage in argument-based analysis based on critical and logical 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	<ul style="list-style-type: none"> ▪ Demonstration of understanding of concepts, principles and theories. ▪ Demonstration of ability to identify legal issues. ▪ Application of knowledge to specific legal problems. ▪ 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

(same as LW6401, LW6126C and LW6526C/E Dispute Resolution in Theory and Practice)
(An indication of the key topics of the course.)

Dispute Resolution — Theory and Practice; Conflict; Conflict Resolution; Negotiation; Mediation; Litigation; Arbitration — practice and procedure; Spectrum of Processes.

1.2 Detailed Syllabus

(same as LW6401, LW6126C and LW6526C/E Dispute Resolution in Theory and Practice)

A lawyer's toolbox ideally should include a well-developed ability to analyse, manage and resolve disputes both within and outside the usual setting of the courtroom. This course aims to introduce students to the legal and regulatory issues surrounding other forms of dispute resolution aside from court litigation. Specifically, the course focuses on the practical factors relevant to selecting appropriate dispute resolution methods in distinct circumstances within the commercial context.

1. Conflict theory

1.1 Understand what conflict is and how it can escalate within the business environment, Identify the five most common conflict resolution styles, and when to use them, Establish effective techniques for timely intervention strategies.

1.2 Identify the sources, incidence, nature and cost of conflict in personal, intra- and inter-organizational disputes, with an emphasis on commercial disputes; the resolution of disputes in and out of the courts, the incidence of unresolved disputes; the importance of the cultural context.

2. Litigation

2.1 Generally, civil proceedings contrasted with criminal proceedings.

2.2 Pre-trial: commencing an action, limitation periods; pleadings, counterclaims and third-party proceedings; interlocutory proceedings including applications to strike out, discovery and inspection, interrogatories, applications for further and better particulars, and payment into court.

2.3 Trial: order of proceedings; onus and burden of proof; inspection; rules of evidence.

2.4 Judgment: orders and remedies, including specific performance and injunctions; costs; interest; set-off; joint and several liability; enforcement procedures.

2.5 Appeals: procedures; hearing; stay of execution; judicial review.

2.6 Introduction to the special features of international litigation.

3. An introduction to arbitration

3.1 Arbitration agreement; legislation; appointment, powers and duties of the arbitrator;

institutional versus ad hoc arbitration and appointing bodies.

3.2 Pre-hearing procedures.

3.3 Hearings, interlocutory procedures and documents-only proceedings.

3.4 The award, and its enforcement.

3.5 Appeals, and other judicial involvement.

4. Alternative or additional dispute resolution methods

An introduction to the important processes and techniques of ADR, especially negotiation and mediation or conciliation, but including some reference to other traditional models and more contemporary models, including: adjudication, expert determination, med-arb, mini trial, court-annexed processes, and administrative tribunals.

5. An introduction to dispute resolution theory and practice in Hong Kong and Mainland China

An analysis of the rules for mediation and arbitration practised in Hong Kong and Mainland China with particular reference to the rules and procedures of HKIAC and CIETAC.

A comparison of rules for mediation and arbitration in Hong Kong, Mainland China and those of dispute resolution institutions in other jurisdictions.

2. Reading List

2.1 Essential Reading

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

1. Butterworths Hong Kong Alternative Dispute Resolution Handbook, 3rd ed. (Lexis Nexis; 2022);
2. ADR in Hong Kong (Sweet and Maxwell Asia: 2018);
3. Mediation in Hong Kong: Law and Practice, 2nd ed. (Wolters Kluwer: 2022);
4. A Practical Approach to Alternative Dispute Resolution, 5th ed. (Oxford University Press: 2018); and
5. Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration, 3rd ed. (Kluwer Law International; 2015).

2.2 Recommended Reading

(same as LW6401, LW6126C and LW6526C/E Dispute Resolution in Theory and Practice)

1. The Essentials of Negotiation, Harvard Business School Press, 2005;
2. Hong Kong Mediation Handbook (Sweet and Maxwell Asia: 2009);
3. Arbitration in Hong Kong – A Practical Guide, 5th ed. (Sweet and Maxwell Asia: 2021);
4. The Hong Kong Arbitration Ordinance – Commentary and Annotations (Sweet and Maxwell Asia: 2015);
5. International Commercial Arbitration – An Asia-Pacific Perspective (Cambridge: 2011);
6. Arbitration in China: A Legal and Cultural Analysis (Hart Publishing: 2013);

7. Freshfields Guide to Arbitration and ADR, 3rd ed. 2010;
8. Halsbury's Laws of Hong Kong (Arbitration);
9. Civil Procedure in Hong Kong: A Guide to the Main Principles, 4th ed. (Sweet and Maxwell Asia: 2017);
10. Civil Litigation in Hong Kong, 6th ed, (Sweet and Maxwell Asia: 2021);
11. Principles and Practice of Civil Procedure in Hong Kong, 2nd ed. (Sweet and Maxwell Asia: 2008);
12. Hong Kong Legal Principles, 2nd ed. (Hong Kong University Press: 2013);
13. Legal Discourse across Cultures and Systems (Hong Kong University Press: 2008);
14. Resolving Disputes in the Asia- Pacific Region (Routledge: 2010);
15. Mediation Asia-Pacific- A Practical Guide to Mediation and its Impact on Legal Systems, (Wolters Kluwer: 2013);
16. Hong Kong Annotated Statutes – Mediation Ordinance (CAP.620), (Wolters Kluwer: 2013);
17. Hong Kong Arbitration – A User's Guide, (Wolters Kluwer: 2014); and
18. Principles of Arbitration in Hong Kong (Lexis Nexis: 2023).

2.3 Online Resources

1. www.adr.org
2. www.arbitrators.org
3. www.aprag.org
4. www.cedr.co.uk
5. www.ciarb.org
6. www.ciarbasia.org
7. www.cietac.org
8. www.hkba.org
9. www.hklawsoc.org.hk
10. www.hkiac.org
11. www.hkmaal.org
12. www.hkiarb.org
13. www.iccwbo.org
14. www.info.gov.hk/justice
15. www.judiciary.gov.hk
16. www.jamsadr.com
17. www.lcia.org
18. www.odr.info