

# LW6120E: BASIC LAW OF HONG KONG

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## Effective Term

Semester B 2024/25

## Part I Course Overview

### Course Title

Basic Law of Hong Kong

### Subject Code

LW - Law

### Course Number

6120E

### Academic Unit

School of Law (FL)

### College/School

School of Law (FL)

### Course Duration

One Semester

### Credit Units

3

### Level

P5, P6 - Postgraduate Degree

### Medium of Instruction

English

### Medium of Assessment

English

### Prerequisites

Nil

### Precursors

Nil

### Equivalent Courses

LW6120C and LW6120E are equivalent courses.

### Exclusive Courses

Nil

## Part II Course Details

### Abstract

This course aims to examine the nature of the constitutional framework established under the Hong Kong Basic Law. It will offer an understanding of the legal, political and social values underlying the Basic Law. It will seek to explain the legal position of Hong Kong vis a vis the Central Government and the Constitution of the People's Republic of China.

### Course Intended Learning Outcomes (CILOs)

| CILOs |                                                                                                                                                            | Weighting (if DEC-A1 app.) |   | DEC-A2 | DEC-A3 |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|---|--------|--------|
| 1     | Explain and describe the working of the constitutional machinery set up under the Basic Law.                                                               |                            |   | x      |        |
| 2     | Explain and describe the relationships among the various organs of government inter se and with the Peoples' Republic of China.                            |                            |   | x      |        |
| 3     | Explain, describe and identify the political and legal principles underlying the Basic Law.                                                                |                            |   | x      | x      |
| 4     | Explain and describe how the Basic Law can be used to ensure Hong Kong's progress and prosperity within the existing social, economic and legal framework. |                            | x | x      | x      |

#### 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 real-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.

### Learning and Teaching Activities (LTAs)

| LTAs |                     | Brief Description                                                                                                                                                                                                                                        | CILO No.   | Hours/week (if applicable) |
|------|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------------------------|
| 1    | Seminars / lectures | Students will be provided with a package containing the relevant basic documents and materials. Emphasis will be on research and students will be required to do some research before each seminar so that they can participate actively in the seminar. | 1, 2, 3, 4 | 3                          |

### Assessment Tasks / Activities (ATs)

| ATs |            | CILO No. | Weighting (%) | Remarks (e.g. Parameter for GenAI use)         |
|-----|------------|----------|---------------|------------------------------------------------|
| 1   | Coursework | 3, 4     | 50            | The use of Generative AI tools is not allowed. |

**Continuous Assessment (%)**

50

**Examination (%)**

50

**Examination Duration (Hours)**

3

**Additional Information for ATs**

Exam: The use of Generative AI tools is not allowed.

Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

Students must obtain a minimum mark of 50% in both coursework and examination and an overall mark of 50% in order to pass the course.

Applicable to students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter

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.

**Assessment Rubrics (AR)****Assessment Task**

Coursework (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

**Criterion**

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.

**Excellent**

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

**Good**

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

**Fair**

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

**Marginal**

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

**Failure**

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

### Assessment Task

Examination (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

#### Criterion

Demonstration of understanding of concepts, principles, and theories.

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(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

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(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

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Demonstration of aptitude for formulating innovative solutions to designated fact-based questions.

#### Excellent

(A+, A, A-) High

#### Good

(B+, B) Significant

#### Marginal

(B-, C+, C) Moderate

#### Failure

(F) Inadequate

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## Assessment Task

Examination (for students admitted from Semester A 2022/23 to Summer Term 2024)

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## Part III Other Information

### Keyword Syllabus

Basic Law, Constitution, "One Country, Two Systems", Special Administrative Region, Hong Kong, People's Republic of China, Central Government, Rule of Law, Legislative Council, Executive Council, Chief Executive.

### Detailed Syllabus

#### Background: Historical and Ideological

- a. History of Hong Kong as a colony of the United Kingdom and its political evolution up to the present including international influences on such evolution.
- b. Circumstances leading to the enactment of the Basic Law: the Sino-British Joint Declaration on the question of Hong Kong (Joint Declaration).
- c. Respective obligations of the parties under the Joint Declaration and the extent to which such obligations are reflected in the Basic Law.
- d. Ideology of "one country, two systems" .

#### Analysis

- a. Legitimacy of the Basic Law.
- b. General Principles.
- c. Relationship between the Central Government and the SAR: Autonomy and its extent.
- d. Political structure:
  - (a) The Legislature
  - (b) The Executive
  - (c) The Judiciary
- e. The impact of the Basic Law on the Hong Kong legal system.
  - (a) Amendment of the Basic Law
  - (b) Interpretation of the Basic Law
  - (c) Changes in the legal system
- f. Selected Issues on the application of the Basic Law of Hong Kong.
  - (a) Issues of Right of Abode with case studies
  - (b) Issues of National Flag

- (c) Nationality Law of PRC
- (d) Stationing of PLA
- (e) Legitimacy of the Provisional Legislature
- (f) Bilingualism in SAR
- (g) Fundamental Rights and Civil liberties and the Basic Law ;
- g. Foreign, External, and Defence affairs
  - (a) Judicial Assistance - with case studies
  - (b) Multilateral treaties
  - (c) Role of HKSAR in the world
  - (d) Relationship of Taiwan & HKSAR
  - (e) Conflicts of Law, Judicial assistance between Hong Kong, Taiwan and the PRC.

## Reading List

### Compulsory Readings

| Title |     |
|-------|-----|
| 1     | Nil |

### Additional Readings

| Title |                                                                                                                                                                                                                           |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Priscilla Leung, The Hong Kong SAR Basic Law: Hybrid of Common Law and Chinese Law, 2nd ed., (Hong Kong: NexisLexis, 2007)                                                                                                |
| 2     | Xiao Wei Yun, Introduction to the Basic Law of Hong Kong Special Administrative Region, (Law Press-China, 2000)                                                                                                           |
| 3     | Priscilla Leung/Zhu Guobin, ed., Basic Law - From Theory into Practice (Hong Kong: Butterworths, 1998)                                                                                                                    |
| 4     | Yash Ghai, Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law, 2nd ed., (Hong Kong: Hong Kong University Press, 1999)                                                          |
| 5     | Priscilla Leung, "Return of the Luk Yu Tea House Killer" April Issue, Hong Kong Lawyer 2003 pp. 43-48                                                                                                                     |
| 6     | Priscilla Leung, "Practical Necessity of Enacting Legislation Pursuant to Article 23" November Issue, Hong Kong Lawyer 2002, pp. 84-85                                                                                    |
| 7     | Wang Gui Guo/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) |
| 8     | Priscilla Leung, "The Applicability of National Laws in Hong Kong", February issue, Hong Kong Lawyer, 2000, p.26-28                                                                                                       |
| 9     | Wang Guiguo/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)    |
| 10    | Priscilla Leung, "The Nature of Basic Law", Hong Kong Lawyer, April Issue, 1999, pp.66-70                                                                                                                                 |
| 11    | Priscilla 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                                                                 |
| 12    | Priscilla Leung, "The Principles of Judicial Assistance Applicable to Cheung Tse Keung Case", Economic Journal, (27 October 1998)                                                                                         |
| 13    | Priscilla Leung, "The Interpretation of the Criminal Law by Hong Kong Government is Unnecessary", Hong Kong Economic Times (24 November 1998)                                                                             |
| 14    | Priscilla Leung, "Interpreting the Chinese Law must be Consistent", Ming Pao, (21 December 1998)                                                                                                                          |
| 15    | Priscilla Leung, "The Big Spender, Cheung Tse-keung Case, a brief analysis", (January 1999)                                                                                                                               |
| 16    | Priscilla Leung, (Co-author) "Patent Law under One Country Two Systems", Journal of World Intellectual Property, Vol. 1(1), pp. 55-74 (Geneva), 1998                                                                      |
| 17    | Huang Jin, A Study of Interregional Conflicts of Law, (Taiwan: Yong San Culture Press, 1996)                                                                                                                              |
| 18    | Wang Guiguo/Wei Zhen Ying, ed., A Comparative Study on the Act of State Doctrine – With Special Reference to the Hong Kong Court of Final Appeal, Legal Developments in China, (Sweet & Maxwell, 1996)                    |

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|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 19 | Zhen Zheng, "Discussion on Unequal Treaties", in Zhou Zhonghai, ed., Peace, Justice and Law, (China International Broadcasting Press, 1993) at p. 111                                                                            |
| 20 | Jerome Alan Cohen and Huangdah Chiu, People's China and International Law: A Documentary Study, Vol. 1, (Princeton N.J: Princeton University Press, USA, 1974)                                                                   |
| 21 | Ieong Wan Chong, "One Country Two Systems" and the Modern Constitutional Science, (Macau: University of Macao Press, 1996)                                                                                                       |
| 22 | Xiao Weiyun, ed., One Country Two Systems and the Basic Legal System of Hong Kong, (Peking: Peking University Press, 1990)                                                                                                       |
| 23 | 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 (1998) |
| 24 | Chen Ke, "Interpretation of the Basic Law from a comparative Point of View", in Collection of Articles on Comparative Constitutional Law Studies, Vol.1, (Nanjing University Press, 1993)                                        |
| 25 | Kenneth C.K. Chow, "The Organization, Jurisdiction and Constituents of the Judiciary of HKSAR", China Law (Supplement for H.K. Return July 1997)                                                                                 |
| 26 | Peter Wesley-Smith/Albert H.Y. Chen, eds., The Basic Law and Hong Kong's Future, (Hong Kong: Butterworths, 1988)                                                                                                                 |
| 27 | Peter Wesley-Smith, Constitutional and Administrative Law in Hong Kong, 2nd ed., (Hong Kong: Longman, 1994)                                                                                                                      |
| 28 | Andrew Byrnes/Johannes Chan, Public Law and Human Rights – A Hong Kong Sourcebook, (Hong Kong: Butterworths 1993)                                                                                                                |
| 29 | Choi Po-king/ Ho Lok-sang, ed., The Other Hong Kong Report 1993, (Hong Kong: Chinese University Press, 1993)                                                                                                                     |
| 30 | Johannes Chan/Yash Ghai, The Hong Kong Bill of Rights, A Comparative Approach, (Hong Kong: Butterworths Asia, 1993)                                                                                                              |
| 31 | Raymond Wacks, ed., Human Rights in Hong Kong, (Hong Kong: Oxford University Press, 1992)                                                                                                                                        |
| 32 | Raymond Wacks, ed., The Future of the Law in Hong Kong, (Hong Kong: Oxford University Press, 1989)                                                                                                                               |
| 33 | Raymond Wacks, ed., Civil Liberties in Hong Kong, (Hong Kong: Oxford University Press, 1988)                                                                                                                                     |
| 34 | Ian Scott, Political Change and the Crisis of Legitimacy in Hong Kong, (Hong Kong: Oxford University Press, 1989)                                                                                                                |
| 35 | R. Randle Edwards/Louis Henkin/Andrew J. Nathan, Human Rights in Contemporary China, (New York: Columbia University Press: 1986)                                                                                                 |
| 36 | Ralph Haughwout Folsom/ John H. Minan/Lee Ann Otto, Law and Politics in the People's Republic of China in a Nutshell,( St. Paul, Minn.: West Pub., 1992)                                                                         |
| 37 | For students who can read Chinese, the following Chinese materials are also available for research as well as class discussion.                                                                                                  |
| 38 | List of books in Chinese (only for reference)                                                                                                                                                                                    |
| 39 | 董立坤，《中國內地與香港地區法律的沖突與協調》，法律出版社，2004年                                                                                                                                                                                              |
| 40 | 梁美芬，《兩岸三地婚姻家事法律比較》，三聯出版社，2003年                                                                                                                                                                                                   |
| 41 | 見袁求實編，《香港過渡期重要法律文憲》，文匯報出版社，1997                                                                                                                                                                                                  |
| 42 | 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                                                                                                                                                                                             |
| 43 | 沈學平，《香港未來與基本法》，香港出版集團有限公司，1994年                                                                                                                                                                                                  |
| 44 | 梁美芬、盧永鴻，《中國法制改革》廣角鏡出版社，1994年                                                                                                                                                                                                     |
| 45 | 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                                                                                                                                                                                            |
| 46 | 雲冠平等主編，《基本法概論》，暨南大學出版社，1992年                                                                                                                                                                                                     |
| 47 | 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                                                                                                                                                                                            |
| 48 | 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                                                                                                                                                                                       |
| 49 | 王叔文主編，香港特別行政區基本法導論，中共中央黨校出版社，1997年                                                                                                                                                                                               |