

LW6127E: INTERNATIONAL AND COMPARATIVE INTELLECTUAL PROPERTY LAW: TRADEMARKS AND PATENTS

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

International and Comparative Intellectual Property Law: Trademarks and Patents

Subject Code

LW - Law

Course Number

6127E

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

LW6127C and LW6127E are equivalent courses.

Exclusive Courses

LW6527C and LW6527E

Part II Course Details

Abstract

This course seeks to examine and compare the trademark and patent law regimes of Hong Kong, the People's Republic of China, and, where appropriate, the United States of America, the European Union and other jurisdictions.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Recognize the theoretical basis for the existence and continuing development of intellectual property law.		x		
2	Recognize the main components of the trademark and patent law regimes of the regions of Hong Kong, the People's Republic of China, and, where appropriate, the United States of America, the European Union and other jurisdictions.			x	
3	Analyse the main differences between the trademark and patent law systems of Hong Kong, the People's Republic of China, and, where appropriate, the United States of America, the European Union and other jurisdictions.				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	Lectures / seminars	Lectures/seminars— Highlight the essential elements and main arguments of the subjects under scrutiny. The seminars will also serve to clarify issues of uncertainty and allow students to make presentations and discuss solutions to problems posed. During seminars student participation will be emphasized and problem solving exercises will be used to provide opportunities for consideration, analysis and evaluation of issues, requirements and expectations in the area of intellectual property. The course will undertake a comparative study of the intellectual property laws of Hong Kong and China with reference to the laws of the United States of America and other jurisdictions where contrast is useful. The lectures/seminars will link with extensive, directed, preparatory study undertaken by the students. The aim is to balance basic information delivery with the continuing development of the students' critical and analytical skills. This course will, when appropriate, consider the intellectual property laws of Hong Kong and China in a social and economic context.	3

Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Class Participation	1, 2, 3	20	
2	Mid-Term Assessment	1, 2, 3	30	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 (class participation and mid-term assessment) and final 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 (class participation and mid-term assessment) and final examination and an overall mark of 40% in order to pass the course.

Assessment Rubrics (AR)**Assessment Task**

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

Criterion

Demonstration of oral presentation skills and willingness / ability to answer questions in class.

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

Mid-Term Assessment(s) (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

Demonstration of understanding of principles, theories and concepts.

Demonstration of ability to identify issues.

Application of knowledge to specific problems and discussion questions.

Application of research, writing and / or communication skills.

Ability to engage in argument-based analysis.

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

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

Criterion

Demonstration of understanding of principles, theories and concepts.

Demonstration of ability to identify issues.

Application of knowledge to specific problems and discussion questions.

Ability to engage in argument-based analysis.

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

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

Criterion

Demonstration of oral presentation skills and willingness / ability to answer questions in class.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

Mid-Term Assessment(s) (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Demonstration of understanding of principles, theories and concepts.

Demonstration of ability to identify issues.

Application of knowledge to specific problems and discussion questions.

Application of research, writing and / or communication skills.

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Aptitude for formulating innovative solutions to designated fact-based questions.

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(F) Inadequate

Part III Other Information

Keyword Syllabus

Intellectual property; TRIPS; trademarks; registration; infringement; passing off; dilution; remedies; international treaties; patents; biotechnology.

Detailed Syllabus

a. An Introduction to Intellectual Property Law

What is intellectual property law? Its legal and economic importance. The theoretical basis for intellectual property and intellectual property law. Protectability of intellectual property. The intellectual property regimes in the People's Republic of China and Hong Kong.

b. Trademarks

Subject matter of trade and service marks. Registration systems. What marks may be registered. Restrictions on registration. Who may apply. Duration. Dealings with registered marks. Infringement. Remedies for infringement. International treaties. Unregistered marks. Related rights (trade names, passing off, dilution, domain name disputes in cyberspace, cybersquatting, etc).

c. Patents

Subject matter of patents. Filing systems. What may be patented. Restrictions on patentability. First ownership. Duration. Dealing with patents. Infringement. Remedies for infringement. International treaties. Compulsory licences. Revocation. Emerging Issues in Patent Law (biotechnology, business method patents, access to generic drugs and essential medicines, etc).

Reading List

Compulsory Readings

Title	
1	Nil

Additional Readings

Title	
1	Books
2	William Cornish, David Llewelyn & Tanya Aplin, Intellectual Property: Patents, Copyrights, Trade Marks & Allied Rights (7th Ed) (Sweet & Maxwell, 2010)
3	Peter Ganeva & Thomas Pattloch, Intellectual Property Law in China (Kluwer Law International, 2005)
4	Xue Hong & Zheng Chengsi, Chinese Intellectual Property Law in the 21st Century (Sweet & Maxwell Asia, 2002)
5	Gordon Gao, Dixon Zhang & Fang Qi, Intellectual Property Rights in China (Sweet & Maxwell, 2011)
6	Alan S. Gutterman/Robert Brown, Intellectual Property Law of East Asia, (Hong Kong: Sweet & Maxwell, 1997)
7	Mark A. Cohen/A. Elizabeth Bang/Stephanie J Mitchell, eds, Chinese Intellectual Property: Law and Practice, (The Hague: Kluwer Law International, 1999)
8	Michael D. Pendleton, et al., The Law of Intellectual and Industrial Property in Hong Kong, (Hong Kong: Butterworths, 1999)
9	Peter Feng, Intellectual Property Law in China, 2nd ed., (Hong Kong: Sweet & Maxwell, 2003)
10	Robert P. Merges/Peter S. Menell/Mark A. Lemley, Intellectual Property in the New Technological Age, 4th ed., (New York: Aspen Law and Business, 2006)
11	William P. Alford, To Steal a Book in an Elegant Offence: Intellectual Property Law in Chinese Civilization, (Stanford: Stanford University Press, 1995)
12	Zheng Chengsi, Intellectual Property Enforcement in China: Leading Cases and Commentary, (Hong Kong: Sweet & Maxwell, 1997)
13	Articles
14	Ken Shao, "The Global Debates on Intellectual Property: What if China is not a Born Pirate?", Intellectual Property Quarterly, Issue 4, 2010, pp. 341-355
15	Peter Yu, "From Pirates to Partners (Episode II): Protecting Intellectual Property in Post-WTO China", 55 Am. U. L. Rev. 901 (2006)
16	Bryan Bachner/Mark Jiang, "Governing Trademarks in Cyberspace: A Comparative Study of the Regulation of Domain Names in China" 8, 2 Asia Pacific Law Review, (2000) pp. 191-209
17	Bryan Bachner, "The Promise of Biotechnology in a Traditional HK Environment" Hong Kong Lawyer (October 2000) pp. 78-88
18	Keith E. Maskus & Jerome H. Reichman, "The Globalization of Private Knowledge Goods and the Privatization of Global Public Goods", J. Int. Economic Law, No. 7, 2004, pp. 279-320
19	Haochen Sun, "Can Louis Vuitton Dance with HiPhone? Rethinking the Idea of Social Justice in Intellectual Property Law", University of Pennsylvania Journal of Law and Social Change, Volume 15, 2012, pp. 389-434.
20	Peter Wu, "From Pirates to Partners: Protecting IP in China in the 21st Century" 50 American University Law Review (2000) pp. 131-243
21	Ruth Okediji "Toward an International Fair Use Doctrine" 38 Columbia University Journal of Transnational Law (2000)

22	Online Resources
23	www.ipd.gov.hk
24	www.wipo.org
25	www.icann.org
26	www.unesco.org
27	www.biodiv.org