

LW6187E: CHINESE AND COMPARATIVE ALTERNATIVE DISPUTE RESOLUTION

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Chinese and Comparative Alternative Dispute Resolution

Subject Code

LW - Law

Course Number

6187E

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

Courses on Dispute Resolution

Equivalent Courses

Nil

Exclusive Courses

LW6587E Chinese and Comparative Alternative Dispute Resolution

Part II Course Details

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.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-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	x		
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	x	x	x
3	Analyse, evaluate, and critically examine legal problems in the core areas of dispute resolution	35	x	x	x
4	Locate pertinent legal materials in databases and libraries; and creatively use them for further research and/or professional development	10	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	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.	1, 2, 3, 4	3
2	Lectures and Seminars	Lectures and revision seminars, case studies and problem-based learning.	2, 3	3

3	Lectures and Seminars	Lectures and revision seminars, case studies and problem-based learning.	3	3
4	Lectures and Seminars	Reading and research tasks.	4	3

Assessment Tasks / Activities (ATs)

ATs	CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1 Written coursework: Students are required to write a DEC Journal	1, 2, 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

Examination: Negotiation practice and assessment. The use of Generative AI tools is not allowed.

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

A student 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

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

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

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

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

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

Criterion

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

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

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

Criterion

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

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure(F) Inadequate

Part III Other Information**Keyword Syllabus**

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

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

Reading List**Compulsory Readings**

Title	
1	Required textbook:
2	YANG Fan, Foreign-related Arbitration in China: Commentary and Cases, Cambridge University Press (2 Volume Hardback Set), 2015 (ISBN: 978-110-70821-9-9)
3	WANG Guiguo and YANG Fan (eds), Mediation and its Impact on Legal Systems in AsiaPacific, Wolters Kluwer Law & Business and CCH Hong Kong, 2013 (ISBN 978-988-12216-0-5)

Additional Readings

Title	
1	Jason A Crook, 2010. What is alternative dispute resolution (ADR)?, in Julio Cesar Betancourt (ed.) London: CIArb. 2010;

2	Fan Yang, ICCA' s Guide to the Interpretation of the 1958 New York Convention (ChineseEnglish bilingual version), International Council for Commercial Arbitration (ICCA), (ISBN: 978-908-17251-3-2), c2012;
3	Damon Y.C. So et al. Arbitration: a Butterworths Hong Kong Arbitration Law Handbook, Hong Kong: LexisNexis Butterworths, c2012;
4	Nadja Alexander, Mediation: process and practice in Hong Kong, Hong Kong: LexisNexis, 2010;
5	To, Ken C., Butterworths Hong Kong Mediation Practical Guide, Hong Kong: LexisNexis, 2010;
6	Sarah E. Hilmer, Mediation Theory and Practice in Hong Kong, Hong Kong: Lexis Nexis, 2010;
7	Jingzhou Tao, Arbitration law and practice in China, Wolters Kluwer Law & Business; Alphen aan den Rijn : Kluwer Law International, c2008. 2nd ed;
8	Choong and Weeramantry (eds), The Hong Kong Arbitration Ordinance: commentary and annotations, Hong Kong: Sweet & Maxwell/Thomson Reuters, 2011;
9	Gary B. Born, International Commercial Arbitration, Wolters Kluwer Law & Business; Alphen Aan Den Rijn: Kluwer Law International, c2009, (available online from CityU eresources);
10	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;
11	Redfern, Hunter, et al., Redfern and Hunter on International Arbitration, (2009); (available online from CityU e-resources);
12	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 eresources);
13	Lew, Mistelis, et al., Comparative International Commercial Arbitration, (2003); (available online from CityU e-resources);
14	Sarah E. Hilmer, Mediation in the People's Republic of China and Hong Kong (SAR), Eleven International Pub; Portland, c2009;
15	Cheng Dejun, Michael Moser, Wang Shengchang, International Arbitration in the PRC: Commentary, Cases and Materials - 2nd ed, Butterworths 2000;
16	Online Resources
17	PRC Law Databases:
18	北大法寶 / INFOBANK 中國資訊行 / iSinoLaw / pkulaw (English version of 北大法寶) / LEXIS.com
19	HK Law Databases:
20	BLIS / Judgments and Legal Reference (Unreported Judgments) / Hong Kong Law Reports & Digests on Westlaw International / Hong Kong Cases on Lexis.com
21	Arbitration: http://www.arbitration-icca.org
22	Mediation: http://www.mediate.com
23	Negotiation: http://www.pon.harvard.edu/