

# City University of Hong Kong

## Information on a Course offered by School of Law with effect from Semester A in 2012/2013

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### Part I

**Course Title:** Chinese and Comparative Commercial Law

**Course Code:** LW4672

**Course Duration:** One semester

**Credit Units:** 3

**Level:** B4

**Medium of Instruction:** English

**Prerequisites:** Nil

**Precursors:** Nil

**Equivalent Courses:** Nil

**Exclusive Courses:** Nil

### Part II

#### Course Aims

The objective of this course is to study PRC contract and commercial law in comparison with the international rules of law on international contracts and commercial law. In addition to Chinese contract and commercial law and practice, this course examines fundamental principles of private international law against the rapid development of Chinese and international commercial law and practice. It raises issues relating to the harmonization of Chinese and international contract and commercial law and relevant problems of private international law, and Chinese as well as international dispute settlement which will be discussed during the course.

## Course Intended Learning Outcomes (CILOs)

*Upon successful completion of this course, students should be able to:*

No.	CILOs	Weighting (if applicable)	Alignment of CILOs with PILOs
1.	Identify, describe and synthesize the statutes, important legal concepts and institutions of Chinese and international contract, banking, company and commercial law	20%	1
2.	Apply the statutory provisions of Chinese contract, banking, company and commercial laws to complex fact patterns at an advanced level	30%	3 and 4
3.	Analyse, evaluate, and reflect critically on legal problems of Chinese contract, banking, company and commercial law from the perspective of international rules of law on contract and the harmonisation of Chinese and international commercial law	40%	1 and 2
4.	Locate Chinese and English legal materials in databases and libraries	10%	1-4

## Teaching and Learning Activities (TLAs)

*(Indicative of likely activities and tasks designed to facilitate students' achievement of the CILOs. Final details will be provided to students in their first week of attendance in this course)*

CILO No.	TLAs	Hours/week (if applicable)
CILO 1-3	Seminars: The course leader will pose questions and discuss topics listed below in the course syllabus.	1.5
CILO 2-3	Interactive small group presentations and discussions: Students will learn how to apply the law to cases. Students will also be engaged in debates to develop a critical view on the strengths and deficiencies of Chinese and international contract and commercial law	1.5
CILO 1-4	Guided research: Students will use relevant materials and authorities to write one paper	1

## Assessment Tasks/Activities

*(Indicative of likely activities and tasks designed to assess how well the students achieve the CILOs. Final details will be provided to students in their first week of attendance in this course)*

AT No.	Type of Assessment Tasks/Activities	Weighting (if applicable)	CILO Assessed	Remarks
AT 1	Coursework Assignment: Students will be required to write an essay or a case analysis.	50%	1-4	
AT 2	Examination: To test students' acquisition of knowledge and comparative understanding of Chinese and international commercial law and the ability to apply the law to complex cases.	50%	1-4	3 hours

Students must obtain a minimum mark of 30% in both coursework and examination and an overall mark of 40% in order to pass the course.

**Grading of Student Achievement:** Standard (A+, A, A-...F). Grading is based on student performance in assessment tasks/activities.

## **Part III**

### **Keyword Syllabus**

Harmonisation of Chinese and International Commercial Law, Contract, Company, Banking, Sale of Goods, Choice of Law, Documentary Sales, INCOTERMS, Commercial Dispute Resolution.

### **Detailed Syllabus**

1. Introduction to Chinese and International Commercial Law: Principles of party autonomy, multiplicity of contracts and the theories and practice of harmonisation of Chinese and international commercial law
  - a. Chinese and International Contract Law: sources, characteristics and general principles of PRC Contract Law 1999 and the UNIDROIT (International Institute for the Unification of Private Law) Principles of International Commercial Contracts (2004) (UPICC)
  - b. Chinese and International Sale of Goods: Contracts for Sales under PRC Contract Law 1999 and the United Nations Convention on Contracts for the International Sale of Goods (CISG)
  - c. Chinese and International Carriage of Goods by Sea: PRC Maritime Law Chapter Four on Carriage of Goods by Sea, the Rotterdam Rules, the Visby rules, and the importance of the bill of lading
  - d. International Documentary Sales and INCOTERMS: Introducing CIF and FOB
  - e. Chinese and International Private International Law: PRC contract law choice of law issues, the Law of the Application of Law for Foreign-related Civil Relations of the PRC, the EC Convention on the Law Applicable to Contractual Obligations (Rome Convention, 19 June 1980) (80/934/EEC) and the EC Regulation on the Law Applicable to Contractual Obligations (Rome I 2009)
2. Introduction to Chinese Company Law
  - a. Basic regulatory regimes;
  - b. Business forms and classification of companies;
  - c. Incorporation and corporate personality;
  - d. Promoters and pre-incorporation contracts;
  - e. Company Constitution;
  - f. Corporate governance instrumentalities and division of powers;
  - g. Senior company officers and their duties;

- h. Protection of minority shareholders;
  - i. Bankruptcy and restructuring; and
  - j. Corporate social responsibility.
3. Introduction to Chinese banking law
    - a. Chinese financial systems.
    - b. Commercial banking law.
    - c. Chinese foreign financial institutions.
    - d. Securities.
    - e. Guarantees and insurance.
    - f. Syndicated loans: structure of a syndicated loan transaction, rights and obligations of the parties, sovereign risks and applicable law.
    - g. Foreign exchange
  4. Chinese and International Commercial Dispute Resolution: Resolving commercial disputes in today's China and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958)
  5. Revision

### **Recommended Reading on PRC Law**

Patricia Blazey/Kay-Wah Chan (eds.): **The Chinese Commercial Legal System** (Lawbook 2008)

Wang Guiguo: **Wang's Business Law of China** (LexisNexis 2003)

Kui Hua Wang: **Chinese commercial law** (Oxford 2000)

Mo Zhang: **Chinese contract law: theory and practice** (Martinus Nijhoff 2006)

Bing Ling: **Contract law in China** (Sweet & Maxwell Asia 2002)

Paul Vout, Ye Jing-Sheng and Yi Yi Wu: **China contracts handbook**, 2nd ed. (Sweet & Maxwell Asia 2000)

Lingyun Gao, Xiling Jia, **Series on Contemporary Chinese Law Vol. 2 Chinese Business Law** (Thomson/West 2008)

Jianfu Chan, **Chinese Law: Context and Transformation**, (Martinus Nijhoff 2008)

Albert Chen: **An Introduction to the Legal System of the People's Republic of China** (LexisNexis 2004)

Relevant articles from the Journal **China Law & Practice**

Ian F.G. Baxter, **Law of Banking**, 4th ed., (Carswell, 1992)

George G. Kaufman, ed., **Banking Structures in Major Countries**, (Boston: Kluwer

Academic Publishers, 1992)  
Derek Roebuck, Cheques, 2nd ed., (Hong Kong: Hong Kong University Press, 1991)  
David Palfreman, Banking: The Legal Environment, 2nd ed., (London: Pitman, 1991)  
Edward L. Symons, Jr./James J. White, Banking Law: Teaching Materials, 3rd ed., (St. Paul, Minn: West Pub. Co., 1991)  
T.K. Ghose, The Banking System of China and the China-Hong Kong Nexus, (Perth, W.A.: Div. of Business & Administration, Curtin University of Technology, 1990)

Gu Minkang, Understanding Chinese Company Law, (Hong Kong: Hong Kong University Press, 2006)  
John R Boatright, Ethics and the conduct of business, 5th ed., (Upper Saddle River, N.J.: Pearson Prentice Hall, 2007)  
Stamford Law Corporation, Mergers and Acquisitions in China, 2nd ed., (Thomson, 2007)  
Vanessa Stott, Hong Kong Company Law, 12th ed., (Hong Kong: Longman, 2008)  
Peter Koh Soon Kwang, Major Issues in Company Law, (Sweet & Maxwell, 2009)

## Online Resources

### **PRC Law:**

Chinalawinfo.com 北大法律信息網 / INFOBANK.cn/ 中國資訊行 / iSinoLaw / LawInfoChina / LEXIS.com

### **CISG:**

<http://www.cisg.law.pace.edu/>

[www.cisgac.com](http://www.cisgac.com)

### **UIPCC:**

<http://www.unidroit.org/>

### **ICC:**

[www.iccwbo.org](http://www.iccwbo.org)

### **EC:**

[http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm)

[http://europa.eu/legislation\\_summaries/index\\_en.htm](http://europa.eu/legislation_summaries/index_en.htm)

<http://eur-lex.europa.eu/en/index.htm>

### **UNCITRAL:**

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods.html)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods.html)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration.html)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/electronic\\_commerce.html](http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce.html)