

LW6119E: CONSTITUTIONAL LAW

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Constitutional Law

Subject Code

LW - Law

Course Number

6119E

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

Nil

Exclusive Courses

LW5608

Part II Course Details

Abstract

This course aims to:

- a. Examine the nature of constitutional law and the Basic Law of HKSAR and the new constitutional order established under the Basic Law;
- b. Develop in the student the knowledge and skills to analyse the doctrine of "One Country, Two Systems" and understand the practical significance of the doctrine;
- c. Explain the legal position of HKSAR vis-à-vis the central government and within the framework of the Constitution of the People's Republic of China;
- d. Enable the student to analyse and understand the working of the HKSAR Government in the light of the provisions of the Basic Law and from comparative perspective;
- e. Enable the student to apply legal doctrines and principles developed in constitutional cases in order to provide solutions to possible real-life situations; and
- f. Identify major and important issues arising from the implementation of the Basic Law and areas of uncertainty, conflict and potential problems in the Basic Law.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if DEC-A1 app.)	DEC-A1	DEC-A2	DEC-A3
1	Understand the concept and principles of constitutional law and the new constitutional order and machinery established under the Basic Law.	20	x	x	
2	Understand the functioning of the Government of HKSAR and the relationship between the HKSAR and the central government of the PRC.	30	x	x	x
3	Understand the legal doctrines and principles underlying the major judicial decisions of the court and their application.	30	x	x	x
4	Critically analyse important constitutional documents such as the Basic Law and propose options for solutions of possible real-life situations.	20	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	Lecture	Lectures according to detailed syllabus.	1, 2, 3, 4	3

Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Coursework	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

Exam:

The use of Generative AI tools is not allowed.

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.

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.

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 of constitutional law of Hong Kong.

Demonstration of ability to identify legal issues and to apply knowledge to specific legal problems.

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

Demonstration of ability to engage in argument-based analysis based on critical thinking. Application of legal writing and research 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

Demonstration of understanding of concepts, principles, and theories of constitutional law.

Demonstration of ability to identify legal issues.

Demonstration of ability to engage in argument-based analysis based on critical thinking.

Application of knowledge to specific legal problems, to discuss questions, and to comment on legal phenomenon.

Application of legal writing and research 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

Demonstration of understanding of concepts, principles, and theories of constitutional law of Hong Kong.

Demonstration of ability to identify legal issues and to apply knowledge to specific legal problems.

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

Demonstration of ability to engage in argument-based analysis based on critical thinking. Application of legal writing and research 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

Demonstration of understanding of concepts, principles, and theories of constitutional law.

Demonstration of ability to identify legal issues.

Demonstration of ability to engage in argument-based analysis based on critical thinking.

Application of knowledge to specific legal problems, to discuss questions, and to comment on legal phenomenon.

Application of legal writing and research skills.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

Constitutional Law, The Basic Law of the HKSAR, New Constitutional Order of the HKSAR, Central and SAR Relations, Executive-led Government, Separation of Powers, Legislative Power, Judiciary Power and Independence, Constitutional Review, Constitutional Interpretation, NPCSC and Legislative Interpretation, Constitutional/Basic Law Amendment, National Security and Freedom of Expression, Fundamental Rights and Obligations, and Civil and Political Rights

Detailed Syllabus

The following subjects shall be examined:

- a. Basic Law as National Law and Constitution of the Region
 - b. The Doctrine of "One Country Two Systems" and the Making of New Constitutional Order of the HKSAR
 - c. Basic Principles underlying the Basic Law of the HKSAR
 - d. The Relationship between central authorities and the HKSAR
 - e. Autonomous Regime under "High Degree of Autonomy"
 - f. Separation of Powers as Constitutional Principle
 - g. Executive Power and Executive-led Government
 - h. Legislative Power and Legislative-Executive Relation
 - i. Judicial Power and Judicial Independence
 - j. Constitutional/Basic Law Interpretation by Court and by the NPCSC
 - k. Constitutional/Basic Law Amendment
 - l. National Security Issues in the HKSAR and Law-making
 - m. Regime of Human Rights Protection
- The above is subject to minor adjustment.

Reading List

Compulsory Readings

Title	
1	Danny Gittings, Introduction to the Hong Kong Basic Law, 2nd ed., Hong Kong: Hong Kong University Press, 2016.
2	Albert Hung-yee Chen & Po Jen Yap, The Constitutional System of the Hong Kong SAR: A Contextual Analysis, Hart, 2023.
3	Johannes Chan & CL Lim (eds.), The Law of the Hong Kong Constitution, 2nd ed., Sweet & Maxwell, 2015.
4	Wang Shuwen (ed.), Introduction to the Basic Law of Hong Kong Special Administrative Region, Beijing: Law Press, 2000. (It is a translated of 王叔文主編：《香港特別行政區基本法導論》，修正本，北京：中共中央黨校出版社1997年版。)
5	Guobin Zhu (ed.), The Basic Law of the HKSAR of the PRC and Related Constitutional Instruments 2023 / 《中華人民共和國香港特別行政區基本法及相關憲制性法律文件2023》，bilingual & pocket-size, Hong Kong: City University of Hong Kong, July 2023.

Additional Readings

Title	
1	General Study
2	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.
3	Michael Ramsden & Stuart Hargreaves, Hong Kong Basic Law Handbook, 3rd ed., Sweet & Maxwell, 2022.
4	P Y Lo, The Hong Kong Basic Law, LexisNexis Butterworths, 2011.
5	Priscilla MF Leung, The Hong Kong Basic Law: Hybrid of Common Law and Chinese Law, 2nd ed., Lexis Nexis, 2006.
6	Priscilla MF Leung & Guobin Zhu (eds.), The Basic Law of HKSAR: From Theory to Practice, Hong Kong: Butterworths Asia, 1998.
7	Lau Siu-kai, The Practice of "One Country, Two Systems" Policy in Hong Kong, Hong Kong: The Commercial Press, 2017.
8	Albert HY Chen, The Changing Legal Orders in Hong Kong and Mainland China – Essays on "One Country, Two Systems", Hong Kong: City University of Hong Kong Press, 2021.
9	Xiao Weiyun (ed.), One Country Two Systems: An Account of the Drafting of the Hong Kong Basic Law, Beijing: Peking University Press, 2001. (It is a translation of 肖蔚雲主編：《一國兩制與香港基本法制度》，北京：北京大學出版社1990年版。)
10	王振民著：《"一國兩制"與基本法：歷史、現實與未來》，香港：三聯書店（香港）有限公司2017年版。
11	朱國斌著：《建構"一國兩制"憲制：在動態中達至平衡》，香港：三聯書店（香港）有限公司2020年版。
12	梁愛詩著：《飛鴻踏雪：香港基本法實踐20年》，香港：香港城市大學出版社2017年版。
13	饒戈平著：《與時偕行-一國兩制與基本法在香港的實踐》，香港：香港城市大學出版社2019年版。
14	陳弘毅、鄒平學主編：《香港基本法面面觀》，香港：三聯書店（香港）有限公司2015年版。
15	朱國斌著：《香江法政縱橫：香港基本法學緒論》，北京：法律出版社2010年版。
16	李浩然著：《"一國兩制"下的香港法治和管治研究》，香港：三聯書店（香港）有限公司2015年版。
17	一國兩制研究中心主編：《香港回歸十周年基本法回顧與前瞻研討會論文集2007》，香港：一國兩制研究中心出版2008年版。
18	Hong Kong Law Journal, 10 Years of the Basic Law, Special Anniversary Issue, Vol. 37 Part 2, 2007, Hong Kong.
19	Guobin Zhu, Mark Kielsgard & Surya Deva (eds.), Constitutional Law and Human Rights in Hong Kong: A Sourcebook, Hong Kong: City University of Hong Kong Press, July 2021.
20	Special and Focal Study
21	李浩然主編：《香港基本法起草過程概覽》（共三卷），香港：三聯書店（香港）有限公司2012年版。
22	袁求實編著：《香港回歸以來大事記》（卷一，1979-1997，第二版；卷二，1997-2002，第二版；卷三，2002-2007，第一版），香港：三聯書店（香港）有限公司2015年版。
23	Johannes Chan & Lison Harris (eds.), Hong Kong's Constitutional Debate, Hong Kong: Hong Kong Law Journal Limited, 2005.

24	Johannes Chan & Lison Harris (eds.), <i>Hong Kong's Constitutional Debate</i> , Hong Kong: Hong Kong Law Journal Limited, 2005.
25	Fu Hualing, Lison Harris and Simon NM Young, <i>Interpreting Hong Kong's Basic Law: The Struggle for Coherence</i> , Palgrave MacMillan, 2007.
26	Fu Hualing et al (eds.), <i>National Security and Fundamental Freedoms: Hong Kong's Article 23 under Scrutiny</i> , Hong Kong: Hong Kong University Press, 2005.
27	P Y Lo, <i>The Judicial Construction of Hong Kong's Basic Law: Courts, Politics and Society after 1997</i> , Hong Kong University Press, 2014.
28	Eric C. Ip, <i>Hybrid Constitutionalism: The Politics of Constitutional Review in the Chinese Special Administrative Regions</i> , Cambridge University Press, 2019.
29	Simon NM Yeung & Yash Ghai (eds.), <i>Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong</i> , Cambridge University Press, 2014.
30	Eric C. Ip, <i>Law and Justice in Hong Kong</i> , Hong Kong: Sweet & Maxwell, 2016.
31	Simon NM Yeung & Richard Cullen, <i>Electing Hong Kong's Chief Executive</i> , Hong Kong: Hong Kong University Press, 2010. [Note: a Chinese version named 《選舉香港特區行政長官》 is also available.]
32	Simon NM Young & Po Jen Yap, <i>Hong Kong Basic Law Bibliography</i> , 2nd ed., Hong Kong: Hong Kong Law Journal Limited, 2016.
33	Johannes Chan, <i>Hong Kong Human Rights Bibliography</i> , Hong Kong: Hong Kong Law Journal Limited, 2006.
34	Johannes Chan & Yash Ghai, <i>The Hong Kong Bill of Rights: A Comparative Approach</i> , Butterworths Asia, 1993.
35	王鳳超編著：《香港政制發展歷程（1843—2015）》，香港：中華書局2017年版。
36	朱國斌編著：《香港特區政治體制研究》，香港：香港城市大學出版社2017年版。
37	韓大元著：《憲法與基本法：歷史、文本與現實》，香港：香港城市大學出版社2023年版。
38	孫成著：《國家憲法在香港實施問題研究》，香港：三聯書店（香港）有限公司2020年版。
39	朱國斌、朱世海編著：《中央與特別行政區關係專論》，香港：香港城市大學出版社2019年版。
40	朱國斌編著：《“一地兩檢”與全國人大常委會的權力》，香港：香港城市大學出版社2020年11月版，341頁。
41	朱世海著：《香港行政主導制研究》，北京：法律出版社2016年版。
42	朱國斌、章小杉、楊曉楠編著：《行政長官制度、權力與特區管治》，香港：香港城市大學出版社2021年7月版，312頁。
43	張小帥著：《一國兩制下中央對香港特區的管轄權研究》，香港：香港城市大學出版社2023年版。
44	秦前紅、付婧著：《香港特區立法權與行政權關係研究》，香港：香港城市大學出版社2018年版。
45	朱國斌、葉海波編著：《香港新選舉制度研究》，香港：香港城市大學出版社2023年版。
46	王理萬著：《香港立法會普選研究》，香港：香港城市大學出版社2018年版。
47	強世功主編：《香港政制發展資料匯編（一）：港英時期及起草《基本法》；《香港政制發展資料匯編（二）：1997—2015的政治發展》，香港：三聯書店（香港）有限公司2015年版。
48	黃江天著：《香港基本法解釋理論及判例研究》（上冊、下冊），香港：香港城市大學出版社2018年版。
49	朱國斌編著：《第五次人大釋法：憲法與學理論爭》，香港：香港城市大學出版社2018年版。
50	朱國斌、馮柏林、張夢奇著：《香港基本法第23條立法史論》，香港：香港城市大學出版社2024年版。
51	鄒平學等著：《香港基本法實踐問題研究》，北京：社會科學文獻出版社2014年版。
52	羅敏威著：《香港人權法新論》，香港：香港城市大學出版社2009年版。
53	沈太霞著：《守護人權-香港特別行政區法院二十年（1997-2017）》，香港：三聯書店（香港）有限公司2020年版。
54	Other General Reference
55	Miners, N. (ed.), <i>The Government and Politics of Hong Kong</i> , 5th ed., Hong Kong: Oxford University Press, 1998.
56	Sing Ming (ed.), <i>Hong Kong Government and Politics</i> , Hong Kong: Oxford University Press, 2003.
57	Michael John Fisher, <i>Text, Cases and Commentary on the Hong Kong Legal System</i> , Hong Kong: HKU Press, 2019.

58	Paul Jackson & Patricia Leopold, O. Hood Phillips and Jackson Constitutional and Administrative Law, 8th ed., London: Sweet & Maxwell, 2001.
59	A. W. Bradley & K. D. Edwing, Constitutional and Administrative Law, 12th ed., London: Longman, 1997.
60	Ian Loveland, Constitutional Law, Administrative Law and Human Rights: A Critical Introduction, 5th ed., London: Oxford University Press, 2009.
61	Helen Fenwick & Gavin Phillipson, Text, Cases and Materials on Public Law and Human Rights, 3rd ed., London & NY: Routledge, 2011.
62	Stephen Thomson, Administrative Law in Hong Kong, Cambridge; Cambridge University Press, 2018.
63	Swati Jhaveri, Michael Ramsden & Anne Scully-Hill, Administrative Law in Hong Kong, Hong Kong: Lexis-Nexis, 2013.
64	Other Readings and Sources
65	Texts and Statutes
66	Sino-British Joint Declaration (1984)
67	The Basic Law of the HKSAR (1990) and the Related Decisions
68	Hong Kong Reunification Ordinance (1997)
69	The Constitution of the PRC (1982)
70	International Covenant on Civil and Political Rights (ICCPR, 1966)
71	International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)
72	The Bill of Rights Ordinance (BORO, 1991)
73	Online Sources
74	http://www.gov.hk/en/residents/
75	www.legco.gov.hk/english/index.htm
76	http://www.doj.gov.hk/
77	https://www.elegislation.gov.hk/
78	https://www.basiclaw.gov.hk/en/index.html
79	http://www.judiciary.gov.hk/en/legal_ref/judgments.htm
80	https://www.hklii.org/eng/
81	https://www.isd.gov.hk/nationalsecurity/eng/
82	https://www.sb.gov.hk/eng/bl23/consultation.html
83	http://www.npc.gov.cn/npc/index.shtml
84	http://www.gov.cn/