

LW6150E: CHINESE AND COMPARATIVE TRADE SECRETS LAW

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Chinese and Comparative Trade Secrets Law

Subject Code

LW - Law

Course Number

6150E

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

Nil

Part II Course Details

Abstract

Trade secrecy, one of the most neglected area of IP laws, is always considered by certain companies as a paramount tool to safeguard their creative innovations. Its importance is gradually recognized by the public during the recent years. Particularly in mainland China, an increasing focus is given to trade secrets law during the past few years with the statute being amended, new judicial interpretation and administrative regulation being promulgated. There can be various interesting topics to explore for trade secrets protection, ranging from very basic questions about whether trade secrets can be classified as IP rights to detailed discussions on their protection requirements and how trade secrets law in mainland China developed into today's status.

The aim of this course is to provide a comprehensive understanding of both theories backing trade secrets and, particularly, the PRC trade secrets law to students through comparative lens. That being said, though the standing point for the course is the PRC law, occasionally references will be made to the laws of UK/Hong Kong, the US, and the international regime. Through the course, students are expected to obtain sufficient knowledge of trade secrets protection in mainland China as well as other major jurisdictions.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Explain the laws of trade secrets in the intellectual property context	10	x	x	
2	Describe thoroughly trade secrets legal principles in Mainland China	40	x	x	
3	Describe basic trade secrets laws and principles in Hong Kong, UK, and the US for comparative purposes	20	x	x	
4	Apply the knowledge to advise on trade secrets in different circumstances.	30	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	Students will be introduced to substantive trade secrets laws in mainland China, the principles within, and to concepts and issues. They will also be introduced to comparative perspectives on trade secrets laws in Hong Kong, the UK, and the US.	1, 2, 3, 4	

2	Case Studies & Group Discussions	During the lectures, students will be organized as groups to study specific cases and to clarify the theories and principles behind via Socratic way of teaching. Develop self-confidence in application of legal principles, advocacy skills and public speaking. Foster students' growth through development of greater intellectual and interpersonal maturity.	1, 2, 3, 4	
3	Reading Week (Week 7)	During the Reading Week students will be given a chance to summarize and develop their knowledge in the subject by doing further reading and research on the conceptual and theoretical sides of the subject, and to complete the take home assignment.		

Assessment Tasks / Activities (ATs)

	ATs	CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Group Assignment (20%) Students are expected to master the basic skills of legal research and apply it in their written works. Their works should demonstrate their analytical abilities and good understanding of the legal theories as a group.	1, 2, 3, 4	20	The use of Generative AI tools is not allowed.

2	Group Presentation (15%) and Participation (5%) Students are expected to present on a trade secrets related topic and engage in discussions. Their high-quality comments, questions and answers, and interactions with others will be assessed and valued. They are also expected to be confident and mature in cooperating with each other and conducting the group work.	1, 2, 3	20	The use of Generative AI tools is not allowed.
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Continuous Assessment (%)

40

Examination (%)

60

Examination Duration (Hours)

2

Additional Information for ATs

Open Book Exam: Students will be tested with theoretical and policy-type questions, they should demonstrate good understanding of the general theories and principles, and the ability to critically analyze them and provide their own opinions. 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**

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

Criterion

- Original thinking
- Rational analysis
- Structure and formation
- Reasonable conclusion

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

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

Criterion

- Quality of the questions/comments/
- General attendance
- Confidence building and students' maturity

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

Criterion

- Application of Law in theoretical scenarios
- Critical thinking in essay 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

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

Criterion

- Original thinking
- Rational analysis
- Structure and formation
- Reasonable conclusion

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

Marginal

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

Failure

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

Assessment Task

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

Criterion

- Quality of the questions/comments/
- General attendance
- Confidence building and students' maturity

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.

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Failure

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

Part III Other Information

Keyword Syllabus

Trade secrets, Confidential Information, Misappropriation, Reasonable Secrecy Measures, Non-compete agreements, Reverse engineering, Remedies, Criminal Consequences

PRC Anti-Unfair Competition Law, Law on Confidential Information, the US Federal Trade Secrets Law and State Trade Secrets Law

Detailed Syllabus

- a. A brief introduction to intellectual property protection in China and Trade Secrecy's position in the IP paradigm
- b. Theoretical justifications underpinning trade secrecy protection
- c. Introduction to trade secrecy protection in different jurisdictions
- d. Requirements for trade secrecy protection: reasonable secrecy measures and confidentiality agreement
- e. Requirements for trade secrecy protection: secrecy and commercial value requirements
- f. Requirements for trade secrecy protection: misappropriation
- g. Defending trade secrets claims: reverse engineering, independent development, whistleblower, and trade secrets use
- h. Non-competes and trade secrets protection
- i. Remedies for trade secrets claims: damages and equitable reliefs
- j. Criminal consequences for trade secrets misappropriation: introduction and criticisms on the trend of IP criminalization

- k. The development of China's trade secrets law in the US shadow: a deeper understanding of how the PRC trade secrets law reaches today
 - 1. Trade secrets disputes across borders: international issues
- m. Concluding remarks and some notes on the future of China's trade secrets law

Reading List

Compulsory Readings

Title	
1	PRC Anti-Unfair Competition Law (2019) and its related Judicial Interpretation (2020)
2	Douglas Clark. Intellectual property in Hong Kong. Hong Kong: LexisNexis, 2022.
3	Peter S Menell. et al., Intellectual Property in the New Technological Age 2023 Vol. I: Perspectives, Trade Secrets and Patents, Clause 8 Publishing, 2023.
4	David Llewelyn & Tanya Aplin, Intellectual Property: Patents, Copyrights, Trademarks & Allied Rights, Sweet & Maxwell, 2023
5	CHEN Yang, Development of China's Trade Secrets Law in the US' Shadow: Negative Consequences for China and Suggestions, 17 U. Pa. Asian L. Rev. 138 (2022).
6	CHEN Yang, Demystifying China's trade secrets law in action: a statistical analysis Queen Mary Journal of Intellectual Property 13.2 (2023): 198-238.
7	The Law and Theory of Trade Secrecy (Edited by Rochelle C. Dreyfuss), Research Handbooks in Intellectual Property series, 2012

Additional Readings

Title	
1	Kong Xiangjun (孔祥俊), New Principles of Anti-Unfair Competition Law (反不正当竞争法新原理), Law Press, 2019
2	Orly Lobel, Talent Wants to Be Free: Why We Should Learn to Love Leaks, Raids, and Free Riding, Yale University Press, 2013
3	James Pooley, SECRETS: Managing Information Assets in the Age of Cyberespionage, Verus Press, 2015
4	James Pooley, Trade Secrets (Intellectual Property Series), Law Journal Press, 2023
5	Bone, Robert G. "A New Look at Trade Secret Law: Doctrine in Search of Justification." California Law Review 86, no. 2 (1998): 241-313. https://doi.org/10.2307/3481134 .
6	Bone, Robert G. "The (Still) Shaky Foundations of Trade Secret Law." Tex. L. Rev. 92 (2013): 1803.
7	Lemley, Mark A. "The surprising virtues of treating trade secrets as IP rights." Stan. L. Rev. 61 (2008): 311.
8	Varadarajan, D. (2016). "Trade secret precautions, possession, and notice." Hastings LJ, 68, 357.
9	Varadarajan, D. (2014). "Trade Secret Fair Use." Fordham L. Rev., 83, 1401.
10	Pooley, J. (2015). "The Myth of the Trade Secret Troll: Why the Defend Trade Secrets Act Improves the Protection of Commercial Information." Geo. Mason L. Rev., 23, 1045.
11	Varadarajan, D. (2019). "Trade Secrecy Injunctions, Disclosure Risks, and eBay's Influence." American Business Law Journal, 56(4), 879-925.
12	Katyal, S., & Graves, C. (2021). "From Trade Secrecy to Seclusion. Georgetown Law Journal", Georgetown Law Journal, 109(6), 1137-1420
13	Fishman, J. P., & Varadarajan, D. (2018). "Similar secrets." U. Pa. L. Rev., 167, 1051.
14	Cui Guobin (崔国斌) (2020), "The Allocation of Burden of Proof in Trade Secrets Litigation" (商业秘密侵权诉讼的举证责任分配), SJTU Law Review (交大法学), 2020(4), 9-33.
15	Chen, Yang, "Rebalancing the Burden of Proof for Trade Secrets Cases in China: A Detailed Scrutiny and Comparative Analysis of Article 32", University of Pittsburgh Law Review, Vol. 84, No. 4, 2023 (Forthcoming).
16	Hrdy, C. A., & Lemley, M. A. (2021). "Abandoning trade secrets." Stan. L. Rev., 73, 1.

17	Friedman, D. D., Landes, W. M., & Posner, R. A. (1991). "Some economics of trade secret law." <i>Journal of Economic Perspectives</i> , 5(1), 61-72.
18	Bai, J. B., & Da, G. (2010). Strategies for Trade Secrets Protection in China. <i>Nw. J. Tech. & Intell. Prop.</i> , 9, 351.
19	Sandeen, S. K., & Seaman, C. B. (2017). Toward a federal jurisprudence of trade secret law. <i>Berkeley Technology Law Journal</i> , 32(2), 829-914.
20	Wu, P., & Weng, C. X. C. (2020). Implications of the China–US trade agreement on the civil protection of trade secrets in China: is it a game changer?. <i>Asia Pacific Law Review</i> , 28(2), 316-336.
21	Vecellio Segate, R. (2020). Litigating trade secrets in China: an imminent pivot to cybersecurity?. <i>Journal of Intellectual Property Law & Practice</i> , 15(8), 649-659.
22	Schmitz, K. (2020). TRIPing on Trade Secrets: How China's Cybertheft of US Trade Secrets Violated TRIPS. <i>Am. U. Int'l L. Rev.</i> , 36, 929.
23	Chen, L., & Yu, Q. (2019). The not-so-secret secret to trade secret protection in China. <i>Journal of Intellectual Property Law & Practice</i> , 14(6), 445-453.