

LW6402: PROCEDURE AND PROOF

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Procedure and Proof

Subject Code

LW - Law

Course Number

6402

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

This course aims to:-

- (i) evaluate civil procedure in the adversarial and inquisitorial systems, and to identify the scope for and merit of departing from principles of civil litigation in arbitration proceedings;
- (ii) consider the reception, evaluation and use of evidence, including opinion evidence, in arbitration and other alternative dispute resolution processes; and
- (iii) provide an understanding of civil remedies in commercial disputes.

Course Intended Learning Outcomes (CILOs)

CILOs	Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1 Identify the differences between civil procedure in the adversarial and the inquisitorial systems, as well as relative strengths of the two		x	x	x
2 Acquire familiarity with the potential for arbitration tribunals to adapt and tailor procedural rules		x	x	x
3 Analyse the rules of civil evidence and the continued significance of many of the rules, as well as the diminished importance of others		x	x	x
4 Acquire familiarity with how the reception of evidence relates to the determination of facts and judicial decision-making		x	x	x
5 Acquire familiarity with the basic principles of civil remedies in the context of commercial disputes		x	x	x
6 Discover whether there have been any major changes to the rules of civil evidence, either in Hong Kong or in a jurisdiction outside of Hong Kong, which affect the application of the rules and procedure in Hong Kong		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 will provide basic information and guide reading and research.	1, 2, 3, 4, 5, 6	Week 1, 2 and 13: 3 hours Week 3 to 12: 1.5 hours

2	Tutorial	Some of the tutorials will be conducted as seminars, with students assigned the responsibility to lead the discussion. The assigned topics will require further analysis and evaluation of material covered or referred to in lectures. Several of the tutorials will be designed to give the students the opportunity to apply the principles to practical and realistic hypothetical problems.	1, 2, 3, 4, 5	Week 3 to 12: 1.5 hours
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Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Coursework	1, 2, 3, 4, 5, 6	40	See below (i), (ii) The use of Generative AI tools is not allowed.

Continuous Assessment (%)

40

Examination (%)

60

Examination Duration (Hours)

3

Additional Information for ATs

The use of Generative AI tools is not allowed.

Remarks:

Applicable to students admitted before Semester A 2022/23 or in Semester A 2024/25 & thereafter

(i) A student must obtain a minimum mark of 40% in both coursework and examination and an overall mark of 40% in order to pass a course.

(ii) The coursework and examination will focus on different topics of the course.

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

(ii) A student must obtain a minimum mark of 50% in both coursework and examination and an overall mark of 50% in order to pass a course.

(iii) The coursework and examination will focus on different topics of the course.

The HKSAR Government's Continuing Education Fund (CEF) recognizes the LLMArbDR programme both as a whole and as individual courses (i.e. LW5303, LW6401, LW6405, LW6406, LW6407). The minimum attendance requirement for all CEF courses is 70%. For the purpose of claiming reimbursement of CEF course fee or the professional recognition, please note that it is the students' own responsibility to attend every class and examination during the teaching and examination periods.

Assessment Rubrics (AR)**Assessment Task**

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

Criterion

Demonstration of ability to identify issues, current trends and practices.

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 ability to identify issues, current trends and practices.

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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(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.

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(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 ability to identify issues, current trends and practices.

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 ability to identify issues, current trends and practices.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

Civil procedure: adversarial and inquisitorial systems. Evidence in arbitration.

Detailed Syllabus

- (i) Civil procedure: a comparative evaluation of inquisitorial procedures and adversarial procedures; an examination of the application of these principles to arbitration, including consideration of the innovations and modifications possible in arbitration, the limits on this opportunity to adapt principles of civil litigation; and an evaluative assessment of many of the proposed reforms of civil procedure in the context of arbitration, and any recent developments.
- (ii) Civil evidence: the applicability of the law of evidence to arbitration; the rules of evidence as aids to judicial decision making; burden and standard of proof; the programme of evidence; the concepts of weight, relevance and admissibility; hearsay; judicial notice; privilege and policy exclusions; vestiges of the parol evidence rule, including partly oral contracts, oral collateral contracts, rectification, waiver and estoppel and evidence of geneses and any recent developments.
- (iii) Expert evidence: the distinction between fact and opinion; the status of expert; admissibility of opinion evidence; the scope of the arbitrator's power to rely on her or his own expertise or to retain an expert; the expert witness before the hearing, during the hearing and in dealings with the client and other participants in the arbitration and any recent developments.

(iv) Civil remedies in the commercial setting: damages in contract and tort, with an emphasis on breach and without reference to personal injuries; liquidated damages; termination; specific performance; injunctions, including Mareva injunctions and Anton Piller orders.

Reading List

Compulsory Readings

Title	
1	Mike McConville and Dimitri Hubbard, Hong Kong Law of Evidence (2nd ed 2014), Blue Dragon Asia Ltd.
2	Allan Leung and Douglas Clark Civil Litigation in Hong Kong (5th ed 2017), Sweet & Maxwell.
3	Simon N. M. Young, Hong Kong Evidence Casebook (2004), Sweet & Maxwell.
4	Hong Kong Civil Procedure 2022 (White Book), Sweet & Maxwell

Additional Readings

Title	
1	Hodge M Malek (ed), Phipson on Evidence (20th ed 2020), Sweet & Maxwell. (Other books in the Common Law Library may also be useful.)
2	The Law Reform Commission of Hong Kong, Hearsay in Criminal Proceedings (Report, November 2009).
3	Online Resources
4	www.elegislation.gov.hk
5	www.judiciary.gov.hk