

# Syllabus for Hong Kong Legal System

## 1. Development of the Hong Kong Legal System 1842-1997

Reception of English Law - Captain Elliot's Proclamation - Supreme Court Ordinance 1843 - Application of English Law Ordinance - Sino-British Joint Declaration and the Resumption of Exercise of Chinese Sovereignty - Localization and Adaptation Exercises - Continuity of Previous International Treaties - Reunification Ordinance - Application of legislation to "State" - Impact of the change of sovereignty on the legal system – continuation and development of the previous legal system after 1997

## 2. Sources of Hong Kong Law

Laws previously in force in Hong Kong - Legislation, common law and equity, customary law - Special position in New Territories land - Imperial enactments - Prerogative power - Legislation and restriction on law making powers - NPCSC's interpretations and decisions - PRC Constitution - National Laws and Annex III of the Basic Law - The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region - the status of international law in Hong Kong

## 3. Judicial Precedents

Doctrine of precedent in Hong Kong - Full Court - Pre- and Post-1997 Privy Council Decisions - Status of House of Lords Decisions – Status of the Court of Final Appeal decisions – Precedents of other common law jurisdictions - Statutory interpretation

## 4. Hong Kong Court System

Hierarchy of courts - Jurisdiction and its constitutional limits - Role of the Court of Final Appeal - Appointment and tenure of judges - Judicial independence under the Basic Law - Judicial immunity and judicial accountability (and complaint against judges and judicial officers) - Jury system

## 5. The Law-making Process

The role of the HKSAR Government and the Chief Executive – The role of the Legislative Council – The process of law-making– primary and subsidiary legislations – the Emergency Regulations

## 6. Access to Justice

Forms of legal aid - Operation of legal aid - Characteristics of legal aid services in Hong Kong - Legal aid and resources – Duty Lawyer Service –Legal Aid Services Council - Independence of Legal Aid Authority - Legal profession - Regulating the legal profession

## 7. The Common law System and the PRC Legal System: A Comparative Overview

The essential differences between the common law system and the PRC legal system

**8. The Civil and Criminal Justice System**

Fundamentals of civil and criminal litigation – Alternative Dispute Resolution

**9. Interface between the two systems**

Concurrent jurisdictions - Mutual judicial assistance - enforcement of judgments and arbitral awards – extradition/rendition - cross-border crimes and jurisdiction - cross-border insolvency – cross-border matrimonial and family cases - Conflicts between the two systems - Admissibility of documents issued in Mainland China – Taking evidence in Mainland China – Collaborations for development of international legal services centre and international commercial dispute resolution centre in the Greater Bay Area

**10. Introduction to Legal Research: Sources and Skills**

Law reports and judgment – reported and unreported judgments

**11. Enforcing the Law**

Police Powers – police accountability (and complaints against the police) – Director of Public Prosecutions – Independent Commission Against Corruption - The Ombudsman

## Recommended Reading List for Hong Kong Legal System

### Texts and Materials

Eric Ip, *Law & Justice in Hong Kong* (2019) 3<sup>rd</sup> ed., Hong Kong, Sweet & Maxwell

Michael J. Fisher, *Text, Cases and Commentary on the Hong Kong Legal System* Hong Kong University Press, Hong Kong, 2019.

Stefan HC Lo, Wing Hong Chui & Kevin K-y Cheng, *The Hong Kong Legal System* 2<sup>nd</sup> ed., McGraw-Hill Education (Asia), Singapore, 2019

Peter Wesley-Smith, *An Introduction to the Hong Kong Legal System*, 3<sup>rd</sup> ed., Oxford University Press, Hong Kong, 1998

(2007) 37 (Special Anniversary Issue) *Hong Kong Law Journal* (articles by Sir Anthony Mason, the Hon Wong Yan Lung, Denis Chang, Yash Ghai, Johannes Chan, Po Jen Yap, Benny Tai and Wang Zhenmin and Ling Bing)

Sir Anthony Mason, 'The Role of the Common Law in Hong Kong', in *The Common Law Lecture Series 2005* (Faculty of Law, The University of Hong Kong, 2006), pp 1-26

James Crawford, 'Rights in One Country: Hong Kong and China', *Hochelaga Lectures 2004* (Faculty of Law, The University of Hong Kong, 2005)

Albert Chen, *The Changing Legal Orders in Hong Kong and Mainland China: Essays on "One Country, Two Systems"*, City University of Hong Kong Press, Hong Kong, 2021, pp 1-129, 386-392

Albert Chen and P. Y. Lo, 'Hong Kong's Judiciary under "One Country, Two Systems"' in H. P. Lee and Marilyn Pittard (eds), *Asia-Pacific Judiciaries: Independence, Impartiality and Integrity*, Cambridge University Press, Cambridge, 2018, pp 131-168

Albert Chen, 'The Constitution and the Rule of Law', in S K Lau (ed), *The First Tung Chee-hwa Administration* (The Chinese University Press, 2002), pp 69-88

Albert Chen, 'Continuity and Change in the Legal System', in Larry Chow & Yiu-kwan Fan (eds.), *The Other Hong Kong Report 1998* (The Chinese University Press, 1998), pp 29-48

Johannes Chan, 'National Security Law in Hong Kong: One Year On' (October 2021) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3956272](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3956272)>

Johannes Chan, *Paths of Justice*, Hong Kong University Press, Hong Kong, 2018

Johannes Chan, 'A Search for Identity: Legal Development in the Hong Kong Special Administrative Region since 1 July 1997', in Wang Gunwu and John Wong (eds), *Hong Kong in China: The Challenges of Transition* (Singapore, Times Academic Press, 1999), pp 245-286

Johannes Chan, 'A Storm of Unprecedented Ferocity: The Shirking Space of the Right to Political Participation, Peaceful Demonstration, and Judicial Independence in Hong Kong' (2018) *International Journal of Constitutional Law* 373-388

P. Y. Lo and Albert Chen, 'The Judicial Perspective of "Separation of Powers" in the Hong Kong Special Administrative Region of the People's Republic of China' (2018) 5(2) *Journal of International and Comparative Law* 337-362

P. Y. Lo, *Hong Kong: Common Law Courts in China* in Jiunn-rong Yeh and Wen-chen Chang (eds), *Asian Courts in Context*, Cambridge University Press, Cambridge, 2014, pp 183-227

### **Further reading**

Glanville Williams, *Learning the Law*, 15<sup>th</sup> ed., Sweet & Maxwell, London, 2013

Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law*, 2<sup>nd</sup> ed., Hong Kong University Press, Hong Kong, 1999

Johannes Chan & Yash Ghai (eds.), *Hong Kong's Constitutional Debate: Conflict over Interpretation* (Hong Kong University Press, 2000)

P. Y. Lo, *The Judicial Construction of Hong Kong's Basic Law: Courts, Politics and Society after 1997*, Hong Kong University Press, Hong Kong 2014

### **Sources**

The Basic Law of the Hong Kong Special Administrative Region (1990)

Hong Kong Reunification Ordinance (110 of 1997)

Sino-British Joint Declaration 1984

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region