

# 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 –National Laws - NPCSC's interpretations - PRC Constitution;

## 3. Doctrine of Stare Decisis

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 – 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 - 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;

## 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 - Conflicts between the two systems - Admissibility of documents issued in the Mainland – Taking evidence in the PRC;

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

Law reports and judgment – reported and unreported judgments

**11. Enforcing the Law**

Police Powers – 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* (2016) 2<sup>nd</sup> ed., Sweet & Maxwell

Michael J. Fischer, *The Legal System of Hong Kong* (2010) Hong Kong: Blue Dragon Asia Ltd.

Stefan HC Lo & Wing Hong Chui, *The Hong Kong Legal System* (2012) Singapore: McGraw-Hill Education (Asia)

Ian Dobinson and Derek Roebuck, *Introduction to Law in the Hong Kong SAR*, 2nd ed., Sweet & Maxwell, Hong Kong, 2001

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 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

Edward Tyler, 'The Legal System', in Joseph Cheng (ed), *The Other Hong Kong Report 1997* (The Chinese University Press, 1997), pp 15-28

Johannes Chan, 'To Change or Not to Change: The Crumpling Legal System', in Nyaw Mee-kau & Li Si-ming (eds), *The Other Hong Kong Report 1996* (The Chinese University Press, 1996), pp 13-32

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

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)

Priscilla Leung & Zhu Guobin (eds.), *The Basic Law of the HKSAR: From Theory to Practice* (Butterworths, 1998)

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