

LW6138E: CHINESE AND COMPARATIVE CONTRACT LAW

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Chinese and Comparative Contract Law

Subject Code

LW - Law

Course Number

6138E

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 offer a comparative (with common law) introduction to the theories, principles and rules of the Chinese contract law, and their judicial application in resolving civil, particularly commercial, disputes; to lay down a foundation of essential concepts, structures and techniques for advanced research and practice; and to equip students with basic skills of functional comparison, critical thinking and creative use of law.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if DEC-A1 DEC-A2 DEC-A3 app.)			
1	Identify, analyse and critically explain the main substantive rules pertaining to the contract law in China.		x	x	
2	Compare and critically evaluate: - issues and concerns in the field of Chinese contract law and its operation of the substantive rules. - the objectives of the law and the practical implications of the rules in their social contexts and their roles and functions in the Chinese society.		x	x	
3	Apply the principles and rules of Chinese contract law to solve legal problems by: - investigating issues in a wider Asian or World perspective, comparing the social functions of legal rules.. - analysing and resolving problems; communicating their solutions orally and in writing clearly, coherently and accurately in their own words and in plain language. - dissecting the differences in private law concepts and doctrines as well as practical operation thereof between Hong Kong and the mainland. - devising innovative solutions, interpretations, reform suggestions for better resolution of disputes and more systematic development of law.		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	Reading of cases and other materials, and research	- Students will acquire knowledge of the substantive rules of Chinese contract law pertaining to the topics to be covered in the syllabus. - Preparation outside the class	1, 2, 3	3
2	Seminars by the instructor	- Students will be given guidance on their reading and research for their seminars and presentations through Student seminars - Students shall participate to such an extent as the course leader considers beneficial. The course leader may choose to use the internet as a means of distributing materials and organising topical discussions. Students will, by responding to questions and performing exercises, as well as discussing important issues pertaining to topics covered in the syllabus, develop their comparative, critical and innovative thinking capabilities.	1, 2, 3	3
3	Presentations	Students will engage in group-work and give presentations on selected topics in which they will scrutinise, analyse and evaluate issues and problems in the field through a comparative approach.	1, 2, 3	3

Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Class participation	1, 2, 3	10	The use of Generative AI tools is not allowed.

2	Presentation and/or coursework will test students' ability to research, analyse and critically evaluate some issues and problems in the field	1, 2, 3	40	The use of Generative AI tools is not allowed.
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Continuous Assessment (%)

50

Examination (%)

50

Examination Duration (Hours)

2

Additional Information for ATs

Final/End-of-semester Examination: 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 continuous assessment 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 continuous assessment and examination and an overall mark of 50% in order to pass the course.

Assessment Rubrics (AR)**Assessment Task**

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

Criterion

Class participation demonstrates regular contact, reasonable preparation, active involvement in class activities.

Excellent

(A+, A, A-) Strong evidence of original and critical thinking; good organization, capacity to analyse and synthesize; superior understanding of subject matter; evidence of extensive knowledge.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical thinking 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; inadequate or irrelevant use of literature.

Assessment Task

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

Criterion

Presentation and/or coursework demonstrates a good understanding of the relevant issues both from a theoretical and a practical perspective.

Excellent

(A+, A, A-) Strong evidence of original and critical thinking; good organization, capacity to analyse and synthesize; superior understanding of subject matter; evidence of extensive knowledge.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical thinking 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; inadequate or irrelevant use of literature.

Assessment Task

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

Criterion

Shows sound knowledge of the topics covered and capability of independent research and to apply knowledge critically and creatively to both abstract (theoretical) and concrete (practical) issues.

Excellent

(A+, A, A-) Strong evidence of original and critical thinking; good organization, capacity to analyse and synthesize; superior understanding of subject matter; evidence of extensive knowledge.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical thinking 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 issues 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; inadequate or irrelevant use of literature.

Assessment Task

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

Criterion

Class participation demonstrates regular contact, reasonable preparation, active involvement in class activities.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

Presentation and/or coursework (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Presentation and/or coursework demonstrates a good understanding of the relevant issues both from a theoretical and a practical perspective.

Excellent

(A+, A, A-) High

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(B+, B) Significant

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(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information**Keyword Syllabus**

Contract, civil juristic act, good faith, offer and acceptance, validity of contract, breach of contract, remedies, unjustified enrichment

Detailed Syllabus

- a. General introduction: Concept, function, history and fundamental principles of Chinese contract law
- b. Contract negotiation, including pre-contractual liability (Culpa in contrahendo)
- c. Contract formation and bargain, including offer and acceptance
- d. Contract validity, legality and procedural fairness
- e. Mistake and unfair terms
- f. Contract terms
- g. Termination of contract for non-performance or a supervening event
- h. Remedies following breach of contract, including unjustified enrichment

Given the width and depth of the topics, the course leader may choose not to cover all the topics set out above.

Reading List**Compulsory Readings**

Title	
1	-Various chapters (to be advised during course) in:
2	Bing Ling, Contract Law in China (Sweet & Maxwell HK, 2002) (note that many contents are seriously outdated, but the discussion of 'general jurisprudence' underlying legislative and judicial norms might still have some relevance)
3	For newer materials, Mo Zhang, Chinese Contract Law - Theory and Practice (2nd edn Brill Nijhoff 2019) provides coverage of Chinese contract law as developed up to, but not comprising, the enactment of the Chinese Civil Code in 2020
4	Primary sources of Chinese contract law (for an English translation of the entire Chinese Civil Code, see Lei Chen, Jiangqiu Ge, Jian He, Qiao Liu, Zhicheng Wu, Bingwan Xiong (eds), The Civil Code of the People's Republic of China: English Translation (Brill Nijhoff, Leiden 2021))
5	Larry DiMatteo and Chen Lei (eds), Chinese Contract Law: Civil and Common Law Perspectives (Cambridge University Press, 2018)

Additional Readings

Title	
1	Zweigert & Kotz (Tony Weir trans.): An Introduction to Comparative Law (Clarendon, 3rd edn, 1998)
2	For shorter summaries of selected contract topics of major Asian jurisdictions (including Chinese law) and some useful comparison between them: Mindy Chen-Wishart et al (eds), Studies in the Contract Laws of Asia (vol. I-IV)
3	James Gordley et al (eds), An Introduction to the Comparative Study of Private Law (2nd edn Cambridge University Press 2020) (contains an introduction to Chinese legal system, then followed by English translation of some Chinese contract cases as well as the CCC provisions in Part One under 'Contract Law')