

LW6196E: INTERNATIONAL AND COMPARATIVE LAW OF TRADE MARKS AND PATENTS

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

International and Comparative Law of Trade Marks and Patents

Subject Code

LW - Law

Course Number

6196E

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

LW4642, LW5642

Part II Course Details

Abstract

This course seeks to:

- Examine the law of trade marks and patents in the Hong Kong SAR, including the Trade Marks Ordinance, the Patents Ordinance and relevant case law
- Apply the law of trade marks and patents of Hong Kong to fact-based problems
- Understand the trade mark and patent regime of Hong Kong from an international and comparative perspective
- Discuss, at an introductory level, important developments in selected jurisdictions, such as the United States of America, Canada, the People's Republic of China, the United Kingdom and the European Union (where appropriate)

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Identify current legal issues in the trade mark and patent laws of Hong Kong.		x		
2	Identify and analyse the sources and key features of the trade mark and patent laws of Hong Kong.		x	x	
3	Critically evaluate the significance of Hong Kong's trade mark and patent laws from an industry perspective and to compare these laws with those of other jurisdictions (where appropriate).			x	x
4	Apply the knowledge to hypothetical fact situations and / or in further research.			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/ seminars Lectures/seminars - Students are required to pursue intensive, self-directed learning and research. The goal of the teaching approach is to provide essential information as well as to further develop students' analytical and research skills. Student participation will be emphasized and problem solving exercises will be used to provide opportunities for analysis. The class discussions will be based on specified / assigned reading materials. Students shall prepare for the seminars by studying the relevant materials as directed by the course leader. Students may be asked to set out and explain the legal decisions of various cases. Existing and proposed legislation may be studied. Students may be asked to discuss the policy rationales underlying selected legislative provisions. The purpose of such an exercise is to develop students' skills in analysis, critical thinking, writing and oral presentation.	1, 2, 3, 4	3

2	Coursework	On the framework of dynamics between copyright, technology, and fundamental right protection, write a critical copyright essay assessing a particular subject matter of copyright significance. Students are expected to write an academic essay with their own topic on a specific practical/theoretical issue within the topic framework given. A comparative study that offers a comparison across jurisdictions is an asset, and is highly encouraged.	1, 2, 3, 4	
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Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Participation	1, 2, 3, 4	20	The use of GenAI tools to assist students in finishing their homework assignments is permitted, only if the benefit and support from the GenAI tools are clearly indicated and acknowledged. This permission is intended to allow access to benefits of new technological development that will assist and facilitate the improvement of students' academic research quality, rather than a green light for dishonest free riding. The onus of clearly indicating and acknowledging the use of GenAI tools is on students themselves by assignment submission should they choose to use GenAI to assist their assessment, and the failure of doing so will be treated as academic dishonesty accordingly.

2	Coursework	1, 2, 3, 4	20	The use of GenAI tools to assist students in finishing their homework assignments is permitted, only if the benefit and support from the GenAI tools are clearly indicated and acknowledged. This permission is intended to allow access to benefits of new technological development that will assist and facilitate the improvement of students' academic research quality, rather than a green light for dishonest free riding. The onus of clearly indicating and acknowledging the use of GenAI tools is on students themselves by assignment submission should they choose to use GenAI to assist their assessment, and the failure of doing so will be treated as academic dishonesty accordingly.
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Continuous Assessment (%)

40

Examination (%)

60

Examination Duration (Hours)

2

Additional Information for ATs

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 coursework and examination and an overall mark of 40% in order to pass the course. Coursework for this purpose means those ways in which students are assessed other than by the final examination.

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. Coursework for this purpose means those ways in which students are assessed other than by the final examination.

Assessment Rubrics (AR)**Assessment Task**

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

Criterion

Demonstration of oral presentation skills and willingness / ability to answer questions in class.

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

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

Criterion

- Demonstration of understanding of principles, theories and concepts.
- Demonstration of ability to identify issues.
- Application of knowledge to specific problems and discussion questions.
- Application of research, writing and / or communication skills.
- Ability to engage in argument-based analysis.
- Aptitude for formulating innovative solutions to designated fact-based 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.

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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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Assessment Task

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

Criterion

Demonstration of oral presentation skills and willingness / ability to answer questions in class.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

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

Criterion

- Demonstration of understanding of principles, theories and concepts.
- Demonstration of ability to identify issues.

- Application of knowledge to specific problems and discussion questions.
- Application of research, writing and / or communication skills.
- Ability to engage in argument-based analysis.
- Aptitude for formulating innovative solutions to designated fact-based questions.

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(B+, B) Significant

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(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

- Introduction to trademarks
- Common Law tort of passing off
- Types of registered trademarks
- Criteria for, and procedures, examination of trademark registration
- Classification, refusal, and revocation of trademarks
- Rectification of the Register
- Ownership and licences of registered trademarks
- Infringement, exceptions, and remedies
- Protection of domain names in Hong Kong

- Introduction to patents
- Applications, examination, registration, and revocation of patents
- Validity: novelty, inventive step, patentable subject matter, disclosure and claims
- Scope of Monopoly: infringement and specification
- Property Rights and Exploitation: ownership, licences, compulsory licences, and government use
- Infringement and remedies
- Patent reform in Hong Kong
- Regional and international trading frameworks and trademark and patent reforms
- International trademark and patent protection in practice

Detailed Syllabus

With a comparative reference to the trademark and patent regimes in the EU, US, and the PRC, this course provides an overview of the law of trademarks and patents in the Hong Kong SAR from a practice-oriented and / or industry perspective. Keeping in mind the regional and international trademark and patent frameworks, specific legislation on trade mark and patent law, such as the Trade Marks Ordinance and the Patents Ordinance, will be examined and analysed. Strategies for the enforcement and protection of trade mark and patent rights in Hong Kong may be considered and discussed. Recent policy and industry developments relating to patent amendment in Hong Kong, trademark and patent reform in the PRC, EU and the development of regional and international trading negotiations and implications for trademark and patent protection etc., will be explored, where appropriate.

An Introduction to Intellectual Property Law

What is intellectual property law? Its legal and economic importance. The theoretical basis for intellectual property and intellectual property law. Protectability of intellectual property. Sources of intellectual property law in Hong Kong. International treaties and conventions on intellectual property law.

Trademarks

Subject matter of trade and service marks. Registration systems. What marks may be registered. Restrictions on registration. Who may apply. Duration. Dealings with registered marks. Infringement. Remedies for infringement. International treaties. Unregistered marks. Related rights (trade names, passing off, dilution, domain name disputes in cyberspace, cybersquatting, etc).

Patents

Subject matter of patents. Filing systems. What may be patented. Restrictions on patentability. First ownership. Duration. Dealing with patents. Infringement. Remedies for infringement. International treaties. Compulsory licences. Revocation. Emerging Issues in Patent Law (biotechnology, microbiorobotics, business method patents, access to generic drugs and essential medicines, etc).

Reading List

Compulsory Readings

Title	
1	Nil

Additional Readings

Title	
1	Selected Texts
2	William Cornish, David Llewelyn, and Tanya Aplin, Intellectual Property: Patents, Copyrights, Trademarks & Allied Rights (Sweet & Maxwell 2013/2019).
3	Kenny Wong and Alice Lee, Intellectual Property Law and Practice in Hong Kong (2nd ed., Sweet & Maxwell, 2017).
4	Online Resources
5	WIPO Lex - https://wipolex.wipo.int/en/main/legislation
6	Government of Hong Kong: Intellectual Property Protection - http://www.gov.hk/en/residents/communication/infosec/intproperty.htm
7	Intellectual Property Department, Hong Kong - http://www.ipd.gov.hk/eng/copyright.htm

8	Hong Kong Legal Information Institute - http://www.hklii.hk/eng/
9	Department of Justice Bilingual Laws Information System - http://www.legislation.gov.hk/eng/home.htm