

LW6401: DISPUTE RESOLUTION IN THEORY AND PRACTICE

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Dispute Resolution in Theory and Practice

Subject Code

LW - Law

Course Number

6401

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

LW6126C, LW6126E and LW5526 are equivalent

Exclusive Courses

LW6526C, LW6526E Dispute Resolution in Theory and Practice

Part II Course Details

Abstract

(same as LW6126C/E and LW6526C/E Dispute Resolution in Theory and Practice)

This "Dispute Resolution in Theory and Practice" course is intended to introduce students to the legal and regulatory issues surrounding methods of dispute resolution aside from litigation. Specifically, the course focuses on the practical factors relevant to selecting appropriate dispute resolution methods in resolving conflicts in distinct circumstances, within the commercial sector.

Students will be provided with the resources to acquire a detailed theoretical and practical understanding of the contextual benefits and constraints associated with the use of different forms of dispute resolution methods in resolving conflicts of a commercial nature. Students will be further encouraged to develop their ability to evaluate the effectiveness of certain interventions, especially when used as an adjunct to court proceedings. The course tracks historic and current developments in relation to the use of Alternative Dispute Resolution (ADR), highlighting how government policy and the judiciary have supported ADR from the standpoint of developing more creditable and flexible forms of dispute resolution methods with the goal of allowing disputants the ability to effectively gain access to justice.

The primary objectives of the course are as follows:

- Identify broader social, economic and political issues underlying the developments taking place in the context of conflict resolution;
- Demonstrate a detailed understanding of the legal and regulatory issues surrounding dispute resolution processes, including negotiation, mediation, arbitration, adjudication and litigation;
- Apply knowledge to the analysis and evaluation of complex dispute case scenarios, identify relevant strategies, risk factors, legal principles, and case law, and participate in critical discussions on the issues raised;
- Demonstrate a detailed understanding of the concepts and principles that govern the choice of the most common dispute resolution processes;
- Critically analyse and evaluate the relationship between different forms of dispute resolution techniques, and how one chooses the best method to adopt to minimise one's future exposure; and
- Demonstrate a detailed understanding of the skills and attributes necessary to effectively advise and represent clients in the ADR process.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Demonstrate an attitude of discovery and curiosity as related to relevant legal and regulatory issues surrounding dispute resolution processes.	30	x	x	x
2	Acquire the necessary skills and abilities in order to conduct the following: - critically evaluate ongoing developments in academic and policy debates relating to alternative dispute resolution; - address contemporary debates as to how various dispute resolution methods should be used to settle claims in different contexts; and understand the relevant legal and theoretical concepts needed to assess which method of dispute resolution will be more effective in resolving certain conflicts.	40	x	x	x
3	Engage in advanced dispute resolution systems design.	10	x	x	x
4	Identify and critically analyse the complex drivers of dispute behaviour from both legal and social contexts.	5	x	x	x
5	Understanding of the ethical and legal issues surrounding ADR models and practice.	10	x	x	

6	Ability to adaptively apply ADR theories in varied practical contexts, including commercial, international and socio political.	5	x	x	x
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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	The course leader will present and explain the legal and theoretical aspects on the topics listed below in the syllabus.	1, 2, 3, 4, 5, 6	2
2	Interactive class discussion	Students will be engaged in debates to develop a critical view on the adoption of various forms of dispute resolution methods to resolve conflict problems.	2, 3, 4, 5, 6	1

Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Class participation (Active involvement in class, which includes consistent attendance, engaging in thoughtful discussions and maintaining focus during lectures).	1, 2, 3	20	Week 1 to 13. The use of Generative AI tools is not allowed.
2	Coursework (A 4000-word essay, focusing on a challenging topic or case study within the dispute resolution arena).	2, 3, 6	30	To submit the coursework in week 7. The use of Generative AI tools is not allowed.

Continuous Assessment (%)

50

Examination (%)

50

Examination Duration (Hours)

3

Additional Information for ATs

Examination (duration: 3 hours). Students will be assessed via the examination their understanding of concepts learned in class, textbooks, reading materials and their ability to apply subject related knowledge. The use of Generative AI tools is not allowed.

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

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.

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

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.

The HKSAR Government's Continuing Education Fund (CEF) recognizes the LLMArbDR 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

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

Criterion

- Demonstration of understanding of concepts, principles, and theories.
- Demonstration of ability to identify legal issues.
- Application of knowledge to specific legal problems.
- Application of legal writing and research skills.
- Demonstration of ability to engage in argument-based analysis based on critical and logical thinking.
- Demonstration of 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.

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 understanding of concepts, principles and theories.
- Demonstration of ability to identify legal issues.
- Application of knowledge to specific legal problems.
- Application of legal writing and research skills.
- Demonstration of ability to engage in argument-based analysis based on critical thinking.
- Demonstration of aptitude for formulating innovative solutions to designated fact-based questions.

Excellent

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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

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

Criterion

- Demonstration of understanding of concepts, principles, and theories.
- Demonstration of ability to identify legal issues.
- Application of knowledge to specific legal problems.
- Application of legal writing and research skills.
- Demonstration of ability to engage in argument-based analysis based on critical and logical thinking.
- Demonstration of aptitude for formulating innovative solutions to designated fact-based questions.

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 understanding of concepts, principles and theories.
- Demonstration of ability to identify legal issues.
- Application of knowledge to specific legal problems.
- Application of legal writing and research skills.
- Demonstration of ability to engage in argument-based analysis based on critical thinking.
- Demonstration of aptitude for formulating innovative solutions to designated fact-based questions.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

(same as LW6126C/E and LW6526C/E Dispute Resolution in Theory and Practice)

Dispute Resolution - Theory and Practice; Conflict; Conflict Resolution; Negotiation; Mediation; Litigation; Arbitration - practice and procedure; Spectrum of Processes.

Detailed Syllabus (same as LW6126C/E and LW6526C/E Dispute Resolution in Theory and Practice)

A lawyer's toolbox ideally should include a well-developed ability to analyse, manage and resolve disputes both within and outside the usual setting of the courtroom. This course aims to introduce students to the legal and regulatory issues surrounding other forms of dispute resolution aside from court litigation. Specifically, the course focuses on the practical factors relevant to selecting appropriate dispute resolution methods in distinct circumstances within the commercial context.

1. Conflict theory

- 1.1 Understand what conflict is and how it can escalate within the business environment, Identify the five most common conflict resolution styles, and when to use them, Establish effective techniques for timely intervention strategies.
- 1.2 Identify the sources, incidence, nature and cost of conflict in personal, intra and inter organizational disputes, with an emphasis on commercial disputes; the resolution of disputes in and out of the courts, the incidence of unresolved disputes; the importance of the cultural context.

2. Litigation

- 2.1 Generally, civil proceedings contrasted with criminal proceedings.
- 2.2 Pre trial: commencing an action, limitation periods; pleadings, counterclaims and third-party proceedings; interlocutory proceedings including applications to strike out, discovery and inspection, interrogatories, applications for further and better particulars, and payment into court.
- 2.3 Trial: order of proceedings; onus and burden of proof; inspection; rules of evidence.
- 2.4 Judgment: orders and remedies, including specific performance and injunctions; costs; interest; set off; joint and several liability; enforcement procedures.
- 2.5 Appeals: procedures; hearing; stay of execution; judicial review.
- 2.6 Introduction to the special features of international litigation.

3. An introduction to arbitration

3.1 Arbitration agreement; legislation; appointment, powers and duties of the arbitrator; institutional versus ad hoc arbitration and appointing bodies.

3.2 Pre hearing procedures.

3.3 Hearings, interlocutory procedures and documents only proceedings.

3.4 The award and its enforcement.

3.5 Appeals, and other judicial involvement (role of state courts).

4. Alternative or additional dispute resolution methods

An introduction to the important processes and techniques of ADR, especially negotiation and mediation or conciliation, but including some reference to other traditional models and more contemporary models, including: adjudication, expert determination, med arb, mini trial, court annexed processes, and administrative tribunals.

5. An introduction to dispute resolution theory and practice in Hong Kong and Mainland China

An analysis of the rules for mediation and arbitration practised in Hong Kong and Mainland China with particular reference to the rules and procedures of HKIAC and CIETAC.

A comparison of rules for mediation and arbitration in Hong Kong, Mainland China and those of dispute resolution institutions in other jurisdictions.

Reading List

Compulsory Readings

Title	
1	Nil

Additional Readings

Title	
1	Essential Reading (Additional references for students to learn to expand their knowledge about the subject.)
2	Butterworths Hong Kong Alternative Dispute Resolution Handbook, 3rd ed. (Lexis Nexis; 2022);
3	ADR in Hong Kong (Sweet and Maxwell Asia: 2018);
4	Mediation in Hong Kong: Law and Practice, 2nd ed. (Wolters Kluwer: 2022);
5	A Practical Approach to Alternative Dispute Resolution, 5th ed. (Oxford University Press: 2018); and
6	Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration, 3rd ed. (Kluwer Law International; 2015).
7	Recommended Reading (same as LW6126C/E and LW6526C/E Dispute Resolution in Theory and Practice)
8	The Essentials of Negotiation, Harvard Business School Press, 2005;
9	Hong Kong Mediation Handbook (Sweet and Maxwell Asia: 2009);
10	Arbitration in Hong Kong – A Practical Guide, 5th ed. (Sweet and Maxwell Asia: 2021);
11	The Hong Kong Arbitration Ordinance – Commentary and Annotations (Sweet and Maxwell Asia: 2015);
12	International Commercial Arbitration – An Asia-Pacific Perspective (Cambridge: 2011);
13	Arbitration in China: A Legal and Cultural Analysis (Hart Publishing: 2013);
14	Freshfields Guide to Arbitration and ADR, 3rd ed. 2010;
15	Halsbury's Laws of Hong Kong (Arbitration);
16	Civil Procedure in Hong Kong: A Guide to the Main Principles, 4th ed. (Sweet and Maxwell Asia: 2017)
17	Civil Litigation in Hong Kong, 6th ed, (Sweet and Maxwell Asia: 2021);
18	Principles and Practice of Civil Procedure in Hong Kong, 2nd ed. (Sweet and Maxwell Asia: 2008);
19	Hong Kong Legal Principles, 2nd ed. (Hong Kong University Press: 2013);
20	Legal Discourse across Cultures and Systems (Hong Kong University Press: 2008);
21	Resolving Disputes in the Asia- Pacific Region (Routledge: 2010);
22	Mediation Asia-Pacific- A Practical Guide to Mediation and its Impact on Legal Systems, (Wolters Kluwer: 2013);

23	Hong Kong Annotated Statutes - Mediation Ordinance (CAP.620), (Wolters Kluwer: 2013);
24	Hong Kong Arbitration - A User's Guide, (Wolters Kluwer: 2014); and
25	Principles of Arbitration in Hong Kong (Lexis Nexis: 2023).
26	Online Resources
27	www.adr.org
28	www.arbitrators.org
29	www.aprag.org
30	www.cedr.co.uk
31	www.ciarb.org
32	www.ciarbasia.org
33	www.cietac.org
34	www.hkba.org
35	www.hklawsoc.org.hk
36	www.hkiac.org
37	www.hkmaal.org
38	www.hkiarb.org
39	www.iccwbo.org
40	www.info.gov.hk/justice
41	www.judiciary.gov.hk
42	www.jamsadr.com
43	www.lcia.org
44	www.odr.info