

LW6423: CONSTRUCTION LAW AND DISPUTE RESOLUTION

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Construction Law and Dispute Resolution

Subject Code

LW - Law

Course Number

6423

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

The course aims to equip students with an in-depth knowledge and understanding of key topics in the fields of construction law and dispute resolution processes, providing specific focus on those processes which run alongside traditional litigation. Students will study the principles of construction law, the approaches to dispute resolution and construction claims. Students will also analysis recent developments within the industry, with a focus on Hong Kong and common law cases and materials as well as international trends and best practices. The course will also enhance students' abilities in identifying and evaluating appropriate decision-making strategies within the construction industry.

The course provides opportunities for students:

- To broaden and deepen their knowledge of construction law within the jurisdiction of Hong Kong and other common law jurisdictions;
- Identify issues in construction and contractual disputes and define possible solutions to mitigate such occurrences where possible and evaluate their effectiveness;
- Conduct research and analysis relating to construction law and problems associated with in the construction industry;
- Apply appropriate methods of dispute resolution to a variety of situations to mitigate possible risks;
- Study appropriate documentation for dispute management and draft recommendations to steer one towards choosing the appropriate method for resolving one's differences i.e. planning for effective dispute resolution;
- Study the various contractual and non-contractual aspects of partnering including NEC and alliancing;
- Identify contractual and ethical aspects of adopting new technologies within the construction industry such as the use of AI and BIM;
- Identify the legal and contractual aspects of technology transfer within the construction industry;
- Compare and contrast the different standard forms of contracts used within the construction Industry;
- Understand the fundamental aspects of the competition law within the confines of the construction industry;
- Develop a knowledge of the statutory frameworks surrounding dispute resolution associated with the construction industry such as adjudication and apply these statutory requirements to dispute situations;
- Identify the various forms of finance arrangements for a project and their associated attributes from a disputes management context.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if DEC-A1 app.)	DEC-A1	DEC-A2	DEC-A3
1	Identify, evaluate, and formulate the knowledge in the functions of proactively managing construction disputes and familiarise one's self with the various techniques and dimensions that characterise the current and future trends of handling construction contracts and disputes.	20	x	x	
2	Discover and further develop critical skills and hands-on techniques of managing construction contracts from inception to the resolution of disputes.	40	x	x	x
3	Explore and acquire the technical knowledge needed to draft appropriate construction provisions to be included into contracts that prevent and mitigate disputes.	20	x	x	x
4	Demonstrate a grasp of dispute resolution techniques that have an impact towards the avoidance and resolution of construction disputes.	20	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	1	Explanation of the main features of construction law and dispute resolution through lectures on the understanding of the application of key construction terms and terminology from a legal perspective; security of payment provisions and statutory regime of adjudication; the concepts of contractual and non-contractual partnering; competition law and regime within the construction industry; comparing and contrasting some of the key standard forms of contract; the legal issues associated with Artificial Intelligence and Building Information Modelling; the role of an Expert Witness and the formulation of an expert witness reports; and the financing of a construction project from the World Bank and Asian Development Bank' s perspective.	1, 2, 3, 4	

2	2	In-class legal interpretation and analysis exercises, small-group analysis, and evaluation of key contractual terms within a construction contract, in-class presentation by students of their drafting and interpretative works, followed by critique and discussions in class.	2, 3	
3	3	Film clips and industry best practices will be shown to students in relation to the various techniques and applications used from inception to completion of the construction project and how disputes are effectively and efficiently managed to stimulate student' s critical thinking and analysis.	1, 2, 3, 4	
4	4	In-class demonstrations and exercises, small-group analysis and evaluation of the risks associated with a construction project in a developed and non-developed country and how these risks are mitigated from a time and cost perspective. In-class presentation by students of their works in relation to a simulated scenario, followed by critique and discussions.	1, 2, 3	

Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	In-class Activities: Students need to participate actively in in-class activities such as case studies, discussion, and exercises designed to facilitate their understanding of knowledge taught in class.	1, 2, 3, 4	10	The use of Generative AI tools is not allowed. See below
2	Participation of student' s general performance throughout the semester, for instance in analysing and drafting appropriate contractual terms to be inserted into construction contracts to mitigate risk together with discussions in class on managing contractual risks in a construction project.	1, 2, 3, 4	10	The use of Generative AI tools is not allowed. See below
3	Completion of an assignment in relation to analysing problems within the construction industry.	1, 2, 3, 4	20	The use of Generative AI tools is not allowed. See below

Continuous Assessment (%)

40

Examination (%)

60

Examination Duration (Hours)

3

Additional Information for ATs

Examination: Students will be assessed via an examination of their understanding of the concepts learned in class, textbooks, reading materials and their ability to apply the subject related knowledge to various case scenarios with emphasis on construction law and dispute resolution. See below. The use of Generative AI tools is not allowed.

Remarks:

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

(i) 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.

(ii) The examination will be an open-book examination.

(iii) Students' coursework will focus on researching and analysing problems within the construction industry while the examination will cover various types of legal and contractual aspects of the construction industry learned in the course.

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

(i) 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.

(ii) The examination will be an open-book examination.

(iii) Students' coursework will focus on researching and analysing problems within the construction industry while the examination will cover various types of legal and contractual aspects of the construction industry learned in the course.

Assessment Rubrics (AR)

Assessment Task

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

Criterion

- Demonstration of ability to identify issues, current trends and practices.
- Demonstration of ability to engage in argument-based analysis based on critical and logical thinking.
- Application of legal writing and research skills.
- 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 principles, theories, and concepts.
- Demonstration of ability to identify issues associated with construction claims.
- Critically evaluate construction contract doctrines and drafting.
- Application of knowledge to specific legal problems and to discuss questions associated with various case scenarios.
- Ability to engage in analysis and offer innovative solutions to various situations.

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 from Semester A 2022/23 to Summer Term 2024)

Criterion

- Demonstration of ability to identify issues, current trends and practices.
- Demonstration of ability to engage in argument-based analysis based on critical and logical thinking.
- Application of legal writing and research skills.
- 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 principles, theories, and concepts.
- Demonstration of ability to identify issues associated with construction claims.
- Critically evaluate construction contract doctrines and drafting.
- Application of knowledge to specific legal problems and to discuss questions associated with various case scenarios.
- Ability to engage in analysis and offer innovative solutions to various situations.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

Construction, Abandonment, Variation Orders, Extension of time, Liquidated Damages, Default, Notice, Termination, Warranties, dispute resolution, jurisdiction, competition law, Performance Bond, Bill of Quantities, Contract Sum Analysis, Interim Certificate, Loss and Expense, Retention, Defects, Liability Period, Specification, Adjudication, AI, BIM, MIC, Financing, Governing Law, Contractual Partnering, Non-Contractual Partnering, Technology Transfer and Final Account.

1.1. Detailed Syllabus

1. Overview of the construction industry in Hong Kong and the Asia Pacific region;
2. Problems associated with the construction industry and the competition regime;
3. Understand the principles and fundamental legal and contractual aspects of the construction industry – contract formation, interpretation, variations, valuations, liquidated damages, extension of time, certificate and payment, suspension and determination, assignment, and sub-contracting;
4. Understand the various dispute avoidance and resolution mechanisms within the construction industry;
5. Understand the concepts of contractual and non-contractual partnering and apply such concepts into actual scenarios;
6. Understand the importance of technology within the construction environment and technology transfer together with the problems associated with such transfer within the context of the construction industry;
7. Understand the various forms of financing a construction project and the problems associated with such from a dispute management concept;
8. Overview of the role and functions of the Hong Kong Monetary Authority Infrastructure Financing Facilitation Office;
9. Contract documentation and interpretation - review the various standard forms of contract and compare and contrast their differences;
10. Develop knowledge of the statutory frameworks surrounding dispute resolution associated with the construction industry including Arbitration, Adjudication, Mediation and apply statutory requirements to dispute situations;
11. Plan and develop an appropriate dispute resolution strategy for a hypothetical situation within the construction industry;
12. Understand the concept of interface management and consultancy framework agreements;
13. Understand the concept of Engineering, Procurement, and Construction and Engineering, Procurement, and Construction Management from a dispute management framework.

Reading List

Compulsory Readings

Title	
1	James Kwan and Christopher To, Construction Arbitration in Hong Kong: A Practical Guide.
2	John Murdoch and Will Hughes, Construction Contracts Law and Management.
3	John UFF, Construction Law.
4	Andrew Mak, Butterworths Hong Kong Building Law Handbook.

Additional Readings

Title	
1	Hartman, Francis T. The Ten Commandments of Better Contracting: A Practical Guide to Adding Value to an Enterprise Through More Effective Smart Contracting.
2	Robert Gaitskell, Construction Dispute Resolution Handbook, second revised edition.
3	Paul Levin Construction Contract Claims, Changes & Dispute Resolution, second edition.
4	Gerber, P and Ong, B J Best Practice in Construction Disputes.
5	Nathan S. Collier Courtland A. Collier Don A. Halperin Construction Funding: The Process of Real Estate Development, Appraisal, and Finance.
6	Robert Gaitskell, Keating Construction Dispute Resolution Handbook.
7	Michael T. Callahan and H. Murray Hohns Construction Schedules.
8	Jane Jenkins and Simon Stebbings International Construction Arbitration Law.

9	Nicholas Gould, Claire King and Philip Britton, <i>Mediating Construction Disputes: An Evaluation of Existing Practice</i> .
10	Theresa Cheng and Gary Soo, <i>Construction Law and Practice in Hong Kong</i> .
11	Chow Kok Fong, Christopher Chuah Mohan R. Pillay, Edwin Lee Peng Khoon <i>Singapore Construction Adjudication Review</i> , 2011, ISSN 1793-9364.
12	Chow Kok Fong, Lim Chong Fong, Oon Chee Kheng, <i>Adjudication of Construction Payment Disputes in Malaysia</i> .
13	Adam Kramer. <i>The Law of Contract Damages</i> .
14	Roberto Hernandez-Garcia, <i>Construction and Infrastructure Disputes</i> .
15	Ashley Howlett <i>Chinese Construction Law: A Guide for Foreign Companies</i>
16	David Jones, David Savage and Rona Westgate, <i>Partnering and Collaborative Working</i> .
17	Frances Forward, <i>NEC3 Compared and Contrasted</i> .
18	Ali D. Haider and Peter Barnes, <i>Delay and Disruption Claims in Construction</i> .
19	Peter Barnes and Nigel Davies, <i>BIM in Principle and in Practice</i> .
20	<i>ICE Conditions of Contract</i> , Thomas Telford, London.
21	<i>Agreement and Schedules of Conditions of Building Contract</i> , 2006 edition.
22	<i>Agreement and Schedules of Conditions of Nominated Sub-Contract</i> , 2005 edition.
23	<i>Agreement and Schedules of Conditions of Nominated Supply Contract</i> , 2005 edition.
24	Chuck Eastman Paul Teicholz Rafael Sacks Kathleen Liston <i>BIM Handbook: A Guide to Building Information Modeling for Owners, Managers, Designers, Engineers and Contractors</i> .
25	Chuck Eastman Paul Teicholz Rafael Sacks Kathleen Liston <i>BIM Handbook: A Guide to Building Information Modeling for Owners, Managers, Designers, Engineers and Contractors</i> .
26	Suggested websites
27	http://cic.org.uk/
28	http://www.cic.hk/eng/index.html
29	http://www.scl.hk/
30	https://www.neccontract.com/NEC3-Products/NEC3-Books
31	http://www.australia.gov.au/information-and-services/business-and-industry/building-and-construction-industry
32	https://www.acif.com.au/
33	https://www.bca.gov.sg/
34	http://www.cidb.gov.my/cidbv5/index.php/en/
35	http://klrca.org/
36	http://www.mediation.com.sg/business-services/adjudication/
37	http://www.hk-lawyer.org/content/security-payment-legislation-way-out-hong-kongs-construction-payment-conundrum
38	http://www.hk-lawyer.org/content/consultation-hong-kong-construction-industry%E2%80%99s-proposed-security-payment-legislation-what
39	http://www.hk-lawyer.org/content/consultation-hong-kong-construction-industry%E2%80%99s-proposed-security-payment-legislation-%E2%80%9Csopl%E2%80%9D
40	http://www.hk-lawyer.org/content/statutory-adjudication-schemes-uk-and-under-hong-kong%E2%80%99s-proposed-legislation
41	https://www.adjudication.org/
42	http://msadj.org.my/
43	https://www.adjudication.org/cases/england-scotland
44	http://www.adjudicators.co.za/

45	http://www.adjudicate.com.au/
46	http://www.scl.org.au/adjudication_report.php
47	http://www.constructionglobal.com/management-and-planning/financing-trends-construction-industry
48	https://www.iffi.org.hk/
49	https://www.adb.org/sectors/finance/issues/infrastructure-housing-financing
50	https://www.adb.org/site/public-sector-financing/main
51	http://projects.worldbank.org/
52	http://www.kcl.ac.uk/law/research/centres/construction/assets/bim-research-report-1-jul-2016.pdf