

## 9. Syllabus and Reading Lists for the Examination

<u>Paper</u>	<u>Subject</u>	<u>Pages</u>
<b>I</b>	<b>Contract</b>	6
	<b>Tort</b>	8
<b>II</b>	<b>Property Law (including Real and Personal Property) and Conveyancing</b>	10
	<b>Equity (including the Law of Trusts)</b>	14
<b>III</b>	<b>Criminal Law</b>	17
	<b>Criminal Procedure</b>	19
	<b>Criminal Evidence</b>	23
<b>IV</b>	<b>Hong Kong Legal System</b>	24
	<b>Constitutional and Administrative Law</b>	27
	<b>Company Law</b>	30
<b>V</b>	<b>Civil Procedure and Civil Evidence</b>	34
	<b>Professional Conduct</b>	37
	<b>Advocacy</b>	39

Detailed below are the syllabus and reading lists for each subject in the Examination.

Please note that:

- Questions set in one paper may require knowledge of other areas of law and particularly knowledge from another paper or papers in the syllabus.
- The latest editions of recommended texts should always be used.
- Applicants should ensure that later editions have not superseded those indicated.
- Applicants are reminded that they will be expected to be familiar with the laws of Hong Kong currently in force three months prior to the Examination.

## **PAPER I : CONTRACT and TORT**

### **CONTRACT**

#### **Syllabus**

- 1. Formation of Contract**
  - Offer
  - Acceptance
  - Doctrine of consideration
  - Intention to create legal relations
  - Formalities, contracts requiring written evidence
  - Estoppel
- 2. Contents of Contract**
  - Terms of contract, express/implied terms
  - Rules of construction of written contracts
  - Classification of terms conditions, warranties, innominate terms
- 3. Privity of Contract**
- 4. Capacity of Parties**
- 5. Vitiating Factors**
  - Misrepresentation
  - Mistake
  - Duress and Economic Duress
  - Undue influence
  - Unconscionable bargains
- 6. Performance and Discharge of Contract**
  - Time of performance
  - Partial performance of entire obligation
  - Discharge by performance
  - Discharge by agreement
  - Discharge by breach
  - Discharge by frustration
- 7. Assignment and Novation of Contract**
- 8. Illegality and Public Policy**
- 9. Remedies**
  - Damages:
    - (a) Causation
    - (b) Remoteness
    - (c) Mitigation
    - (d) Penalty/Liquidated damages

- Equitable remedies:
  - (a) Specific performance
  - (b) Injunction
  - (c) Rescission
- Restitution
- Loss of remedy

**10. Estoppel**

**11. Limitation of Actions**

**Recommended Reading Materials**

Books:

**Butterworths Hong Kong Contract Law Handbook** (2<sup>nd</sup> ed. LexisNexis, 2006)

**Cheshire, Fifoot and Furmston** *Law of Contract* (15<sup>th</sup> ed. OUP, 2006)

**Chitty on Contracts** (30<sup>th</sup> ed. Sweet & Maxwell Asia, 2008), Vol. 1 and Hong Kong Specific Contracts and 1<sup>st</sup> Supplement to the Hong Kong Volume (2008)

**Betty Ho** *Hong Kong Contract Law* (2<sup>nd</sup> ed. Butterworths, 1994)

**Treitel** *Law of Contract* (12<sup>th</sup> ed. Sweet & Maxwell, 2007)

Legislation:

See after Tort Syllabus

## **TORT**

### **Syllabus**

- 1. Nature of Tortious Liability**
- 2. Trespass to the Person**
- 3. Trespass to Chattels**
- 4. Trespass to Land**
- 5. Defences to Trespass to the Person and Property**
- 6. Indirect Interference with the Person**
- 7. Negligence**
  - Duty of care
  - Breach of duty
  - Causation
  - Remoteness of damage
  - Defences to negligence
- 8. Employer's Liability**
  - Employers' liability to employees
  - Vicarious liability
- 9. Breach of Statutory Duty**
- 10. Occupiers' Liability and Defective Premises**
- 11. Rylands v. Fletcher Liability**
- 12. Nuisance**
- 13. Defamation, Defences and Remedies**
- 14. Interference with Economic Interest**
  - Torts involving false representations:
    - (a) Deceit
    - (b) Passing off
    - (c) Injurious Falsehood
  - Economic Torts:
    - (a) Conspiracy
    - (b) Intimidation
    - (c) Inducing breach of contract
    - (d) Unlawful interference with trade
    - (e) Breach of confidence
- 15. Multiple Tortfeasors**
  - Joint and Several Liability
  - Contribution
- 16. General Remedies**
- 17. Limitation of Actions**

### **Recommended Reading Materials**

#### **Books:**

- Buckley** *The Law of Negligence* (4<sup>th</sup> ed. LexisNexis UK, 2005)  
**Clerk & Lindsell on Torts** (19<sup>th</sup> ed. Sweet & Maxwell, 2005)  
**Charlesworth & Percy on Negligence** (11<sup>th</sup> ed. Sweet & Maxwell, 2006)  
**Glofcheski** *Tort Law in Hong Kong* (2<sup>nd</sup> ed. Sweet & Maxwell Asia, 2007)  
**Jones** *Textbook on Torts* (8<sup>th</sup> ed. OUP, 2002)  
**Tort Law and Practice in Hong Kong** (Sweet & Maxwell Asia, 2005)  
**Winfield & Jolowicz** *Tort* (17<sup>th</sup> ed. Sweet & Maxwell, 2006)

#### **Legislation for Contract and Tort Syllabus:**

- The Basic Law of the HKSAR  
Civil Liability (Contribution) Ordinance (Cap. 377)  
Control of Exemption Clauses Ordinance (Cap. 71)  
Defamation Ordinance (Cap. 21)  
Hong Kong Reunification Ordinance (Cap. 2601)  
Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)  
Limitation Ordinance (Cap. 347)  
Misrepresentation Ordinance (Cap. 284)  
Occupiers Liability Ordinance (Cap. 314)  
Unconscionable Contracts Ordinance (Cap. 458)  
Civil Liability Contribution Ordinance (Cap. 377)  
Employees' Compensation Ordinance (Cap.282)  
Fatal Accidents Ordinance (Cap.22)

**PAPER II : PROPERTY LAW (including Real and Personal Property),  
CONVEYANCING and  
EQUITY (including the Law of Trusts)**

**PROPERTY LAW (including Real and Personal Property),  
CONVEYANCING**

**Syllabus**

- 1. Hong Kong System of Landholding**
  - Meaning of land
  - Demarcation of land (sectioning and subdivision)
  - Government leases and conditions
  - Planning and building restrictions
    - (a) Town Planning Ordinance (Cap. 131)
    - (b) Buildings Ordinance (Cap. 123)
    - (c) Government lease
  - Co-ownership
  - Pre-sales: consent scheme
  - Land registration
- 2. Common Ownership**
  - Nature of interest: tenancy-in-common
  - Deeds of mutual covenant
    - (a) content
    - (b) enforcement
  - Building management
    - (a) owners' incorporation
    - (b) Building Management Ordinance (Cap. 344)
    - (c) owners and manager
- 3. Title**
  - Duty to show and to give good title
  - Root of title and chain of title
  - Proof of title
    - (a) encumbrances
    - (b) occupiers
    - (c) illegal structures
    - (d) breach of government grant
    - (e) breach of deed of mutual covenant
    - (f) execution of deeds
      - (i) presumptions
      - (ii) individuals; signatures
      - (iii) corporations
      - (iv) attorneys: Powers of Attorney Ordinance (Cap. 31)
    - (g) requisitions
  - Registration: priority and notice
  - Vendor and purchaser applications
- 4. Transfer of Title**
  - Contract of sale

- (a) requirement of writing
  - (b) part performance
- Preliminary agreements
- Formal sale and purchase agreement
- Remedies for breach
  - (a) damages
  - (b) rescission
  - (c) specific performance
  - (d) forfeiture of deposit and relief
- Assignment
  - (a) completion
  - (b) undertakings
  - (c) registration

## **5. Easements**

- Express
- Implied
- Lost Modern Grant

## **6. Mortgages**

- Nature of mortgages and charges
- Form and contents
- Equity of redemption
- Registration and priority
- Remedies of mortgagee

## **7. Tenancies**

- Creation of leases
  - (a) formalities
  - (b) deposits
- Licences contrasted
- Enforcement of leases
- Termination of leases
  - (a) notice
  - (b) forfeiture

## **8. Trespassers**

- Adverse possession and limitation
- Actions for adverse possession
  - (a) Court of First Instance
  - (b) District Court
  - (c) Lands Tribunal

## **8. Personal Property**

- Personal Property and Interests in Personal Property
  - Types of Personal Property
  - Choses in Action
  - Choses in Possession
  - Ownership
  - Possession (finders' possessory interests)
  - Bailment

- Credit and Security
  - Security Interests
  - Different Forms of Security Interests
  - Pledges
  - Liens
  - Mortgages
  - Fixed Charges
  - Floating Charges
  - Retention of Title (*Romalpa*) Clauses
- Non-sale acquisitions: *nemo dat* and gifts
  - *Nemo dat* and exceptions
  - Gifts
  - Conditional Gifts
  - Gifts of Future Property
- Sale of Goods
  - Contract of Sale
  - Passing of Legal and Equitable Title
  - Duties of Sellers and Buyers
- Assignments of Choses in Action
  - Sales of Choses in Action
  - Sales of Legal and Equitable Choses in Action
  - Sales of Future Choses in Action
  - Sales of Part of an Identified Bulk
- Share Acquisition & Equitable Assignment
  - Protection of Interests in Property & Remedies
  - Claims in Tort (Trespass to Goods, Conversion, and Detinue)
  - Claims in Unjust Enrichment (Waiver of Tort, Claims in Subtractive Unjust Enrichment)
  - Set-off (as a self-help remedy)
- Relevant local Ordinances for the drafting of Commercial Contracts
  - Unconscionable Contracts Ordinance
  - Control of Exemption Clauses Ordinance
  - Moneylenders Ordinance
  - Supply of Services (Implied Terms) Ordinance

### **Recommended Reading Materials**

#### Books:

**Atiyah**, *The Sale of Goods* (11<sup>th</sup> ed. Pearson Higher Education, 2005)

**Bell**, *Modern Law of Personal Property in England and Ireland* (Butterworths, 1989)

**Bridge**, *Personal Property Law* (3<sup>rd</sup> ed. OUP, 2002)

**Crossley Vaines**, *Personal Property* (5<sup>th</sup> ed. Butterworths, 1973)

**Farrand**, *Contract & Conveyance* (4<sup>th</sup> ed, Oyez Longman, 1983)

**Goode**, *Commercial Law* (4th ed. LexisNexis UK, April 2009)

**Goo and Lee**, *Land Law in Hong Kong* (2<sup>nd</sup> ed. LexisNexis Butterworths, 2003)  
Chapters 2, 5, 6, 10 & 15

**Megarry & Wade** *The Law of Real Property* (7<sup>th</sup> ed. Sweet & Maxwell, 2008)

**Merry, Malcolm** *Hong Kong Tenancy Law* (4<sup>th</sup> ed. LexisNexis Butterworths, 2003)  
Chapters 3-5, 7, 8, 11, 15-17, 19 and 20

**Merry & Kent** *Building Management in Hong Kong* (LexisNexis Butterworths, 2008)

**Nield, Sarah** *Hong Kong Land Law* (2<sup>nd</sup> ed. Longman Asia, 1997) Chapters 3, 4, 5, 6,  
7, 10, 16 and 17

**Nield, Sarah** *The Hong Kong Conveyancing and Property Ordinance*  
(Butterworths Asia, 1988) Pages 15-28, 37-40, 131-168, 174-188

**Sihombing and Wilkinson** *H.K. Conveyancing Law and Practice*  
(LexisNexis Butterworths) Vol. 1 Chapters I, IV, V and VI (for reference)

**Sihombing and Wilkinson** *A Student's Guide to Hong Kong Conveyancing*  
(5<sup>th</sup> ed. LexisNexis Butterworths, 2007) Chapters 2, 4, 5, 6, 8 and 13

**Conveyancing Miscellany, Title and Other Current Problems**  
(HK Law Journal Ltd., 1989) Chapters 4 and 6

Legislation (for reference):

Buildings Ordinance (Cap. 123), sections 2, 14, 15, 16, 21, 22, 23, 24, 24A, 24B, 25,  
33, 40 and 41

Building Management Ordinance (Cap. 344)

Conveyancing and Property Ordinance (Cap. 219)

District Court Ordinance (Cap. 336), sections 35, 36, 48A, 69, 69A, 69B and 69C

District Court Rules, Orders 86, 88 and 113

High Court Ordinance (Cap. 4), sections 17, 21F, 21G and 21H

High Court Rules, Orders 86, 88 and 113

Land Registration Ordinance (Cap. 128)

Landlord and Tenant (Consolidation) Ordinance (Cap. 7)

Lands Tribunal Ordinance (Cap. 17), sections 3, 8A, 8B, 10, 11, 11A, 12 and 16 and  
Schedule

Lands Tribunal Rules, Parts I, II, XIII and XIV

Limitation Ordinance (Cap. 347), sections 7, 8(1), 13 and 17

New Territories (Renewable Government Leases) Ordinance (Cap. 152)

New Territories Leases (Extension) Ordinance (Cap. 150)

Powers of Attorney Ordinance (Cap. 31)

Town Planning Ordinance (Cap. 131)

## **EQUITY (including the Law of Trusts)**

### **Equity Syllabus**

#### **1. Background to Equity**

- Nature and history of equity
  - (a) Deficiencies of the common law courts
  - (b) Petitions to the Chancellor
  - (c) The Court of Chancery
  - (d) Judicature Acts 1873 and 1875
- Equitable interests
  - (a) Legal v. equitable interests
  - (b) Equitable interests v. mere equities
- Maxims of equity

#### **2. Rules Governing Priorities**

- Basic rule: ranking of competing interests in order of creation
- *Bona fide* purchaser of legal estate for value without notice
- The rule in Dearle v. Hall  
[**N.B.** Land registration and how it affects equitable principles as to priorities are dealt with in the Property Law Syllabus in paragraph 3]

#### **3. Equitable Assignments**

#### **4. Securities**

- Pledges
- Liens
- Suretyship  
[**N.B.** Mortgages of land are dealt with in the Property Law Syllabus at paragraph 5]

#### **5. Equitable Remedies**

- Specific performance
- Injunctions  
[**N.B.** Damages under section 17 of the High Court Ordinance (Cap. 4)]
- Rescission  
[**N.B.** Section 2 and section 3(2) of the Misrepresentation Ordinance (Cap. 284)]
- Rectification
- Account
- Equitable compensation
- Receivers
- Subrogation

#### **6. Equitable Defences**

- Equitable set-off
- Equitable estoppel
- Laches
- Analogy of statutes of limitation
- Penalties and Forfeitures

## Trusts Syllabus

### **7. Concept of a Trust**

Distinctions between trusts and other relationships (power, agency, contract, bailment and personal representatives)

### **8. Concept of a Fiduciary Trust**

### **9. Classifications**

- Express v. implied trusts
- Bare v. special trusts
- Fixed v. discretionary trusts
- Executed v. executory trusts

### **10. Express (or Declared) Private Trusts**

- Capacity of parties
- Requirements regarding essential validity: the “three certainties”
  - (a) intention
  - (b) subject-matter
  - (c) object/beneficiary
- The beneficiary principle (non-charitable purpose trusts)

### **11. Illegality**

- Trusts against public policy
- Rule against perpetuities (HK exception: Chinese customary trusts: New Territories Ordinance (Cap. 97) s.15)
- Trusts circumventing insolvency law

### **12. Formalities for Creation**

- Trust of personalty
- Trust of land (Conveyancing and Property Ordinance (Cap. 219) s.5(1)(b))
- Trust of an equitable interest (Conveyancing and Property Ordinance (Cap. 219) s.5(1)(a))
- Testamentary trust (Wills Ordinance (Cap. 30) s.5)

### **13. Revocation and Variation of Trusts**

### **14. Trusts Imposed by Law**

- Resulting trusts
  - (a) equitable interest not or not wholly disposed of
  - (b) trust for an illegal consideration or purpose
  - (c) voluntary disposition
  - (d) purchase in the name of another; competing presumption of advancement
  - (e) Quistclose Trust
- Constructive trusts
  - (a) unauthorised profits by a trustee or fiduciary
  - (b) fraudulent or unconscionable conduct
  - (c) vendor under a specifically enforceable contract of sale
- Resulting and Constructive trusts contrasted
- Application to the trust of the family home

- 15. The Trustee**
- Appointment
  - Death, retirement and removal
  - Duties in relation to the trust property
    - (a) duty to collect in the assets
    - (b) duty to invest
    - (c) duty to distribute
  - Duties in relation to the beneficiaries
    - (a) duty to maintain equality between the beneficiaries
    - (b) duty to keep accounts and records
  - Powers
- 16. Breach of Trust and Fiduciary Duty and Remedies therefor**
- Unauthorised profits
  - Conflicts of interest
  - Account of profits
  - Equitable compensation
  - Tracing
- 17. Liabilities of Third Parties for Disposition of Property in Breach of Trust**
- Inconsistent dealing
  - Knowing receipt
  - Dishonest assistance
- 18. Control by Beneficiaries (the rule in Saunders v. Vautier)**

**Recommended Reading Materials**

Books:

**Hanbury & Martin** *Modern Equity* (17<sup>th</sup> ed. Sweet & Maxwell, 2005)

**Hayton & Marshall** *Commentary and Cases on the Law of Trusts & Equitable Remedies* (12<sup>th</sup> ed. Sweet & Maxwell, 2005)

**G. Moffat** *Trusts Law: Text and Materials* (4<sup>th</sup> ed. Cambridge University Press, 2005)

**Parker & Mellows** *The Modern Law of Trusts* (9<sup>th</sup> ed. Sweet & Maxwell, 2008)

**Snell's Equity** (31<sup>st</sup> ed. Sweet & Maxwell, 2005) (for reference)

**Spry** *Principles of Equitable Remedies* (7<sup>th</sup> ed. Law Book Co., 2007)

**Underhill and Hayton** *Law of Trusts and Trustees* (17<sup>th</sup> ed. LexisNexis, 2006)

**Belinda Wong** *Chinese Customary Law – an Examination of Tsos & Family Tongs* (1990) 20 HKLJ 13

Legislation:

Conveyancing and Property Ordinance (Cap. 219), section 5

High Court Ordinance (Cap. 4), section 17

New Territories Ordinance (Cap. 97), section 15

Recognition of Trusts Ordinance (Cap. 76)

Sale of Goods Ordinance (Cap.26)

Trustee Ordinance (Cap. 29)

Wills Ordinance (Cap. 30), section 5

**PAPER III : CRIMINAL LAW, CRIMINAL PROCEDURE and CRIMINAL EVIDENCE**

**CRIMINAL LAW**

**Syllabus**

- 1. Criminal Capacity**
  - Age
  - Insanity
  - Automatism
- 2. Elements of a Crime – Factors Determining Criminal Liability**
  - (a) Criminal Conduct**
    - Acts
    - Omissions
    - Actus reus
    - Causation
  - (b) Fault**
    - Mens rea
    - Intention
    - Recklessness
    - Negligence
    - Strict, vicarious and corporate liability
- 3. Participation**
  - Principal offenders
  - Secondary parties
  - Joint enterprise
- 4. Defences**
  - Capacity
    - (a) age
    - (b) insanity/automatism
    - (b) intoxication
  - Lawful use of force
  - Duress
  - Necessity
  - Provocation
  - Mistake
  - Consent
- 5. Preparatory Offences**
  - Conspiracy
  - Incitement
  - Attempt
- 6. Specific Crimes**
  - Murder
  - Manslaughter

- Assault
- Sexual offences
  - (a) rape
  - (b) indecent assault
  - (c) incest
- Public order offences
  - (a) public meetings etc
  - (b) disorder in public places
  - (c) offensive weapons
- Criminal damage
- Offences of dishonesty
  - (a) Theft
  - (b) Deception offences
  - (c) Robbery
  - (d) Handling stolen goods
  - (e) Burglary
- Commercial crime and corruption
  - (a) Fraud
  - (b) Conspiracy to defraud
  - (c) Deception
  - (d) Forgery
  - (e) Bribery and corruption
- Triads
- Dangerous drugs
- Immigration offences
- Organised and Serious Crimes

### **Recommended Reading Materials**

#### Books:

**Arlidge & Parry** *Fraud* (3<sup>rd</sup> ed. Sweet & Maxwell, 2006)

**Smith & Hogan** *Criminal Law* (12<sup>th</sup> ed. OUP, 2008)

#### Legislation:

See the Recommended Reading Materials for Criminal Evidence.

## **CRIMINAL PROCEDURE**

### **Standards**

Candidates will be expected to be knowledgeable in:

- (i) principles of criminal liability;
- (ii) principles of evidence in criminal proceedings;
- (iii) the drafting of notices of appeal, and advices; and
- (iv) the rules of practice and procedure as set out in the syllabus below.

### **Syllabus**

- 1. Hong Kong's Criminal Courts**
  - Magistrate's Court
  - Juvenile Court
  - District Court
  - Court of First Instance of the High Court
  - Court of Appeal of the High Court
  - Court of Final Appeal
- 2. Criminal Procedure**
  - The role of judge and jury
  - Police powers
  - Classification of offences
- 3. Commencement and Progress of Proceedings**
  - Prosecuting authorities and the Secretary for Justice's role
  - Arrest, detention, seizure of property, arrest and false imprisonment
  - Questioning of suspects and obtaining statements
  - Charging
  - Bail
  - Proceeding by summons
  - Service and compelling attendance at court
- 4. The Charge**
  - Summonses, charges and indictments
  - Duplicity
  - Joinder of offences and offenders
  - Severance and separate trials
- 5. Procedure in Magistrates' Court**
  - Bail applications
  - Plea before Magistrate
  - Trial before Magistrate
  - Amendment
  - Sentencing
  - Transferring to and from District Court
  - Transferring to Court of First Instance

- 6. Procedure in District Court**
  - From transfer to trial
  - Trial in District Court
  - Sentencing
  
- 7. Procedure in Court of First Instance**
  - Preparing indictment and preliminary matters
  - Arraigning the accused
  - Trial in Court of First Instance
  - Role of judge and jury
  
- 8. Particular Problems during Trials**
  - Admissibility of cautioned statements; voir dire, and alternative procedure
  - Objecting to the information, charge or indictment
  - The duty to the court and the client
  - Vulnerable witnesses, video linking and pre-trial statements
  - Stay of proceedings
  
- 9. Evidence**
  - Oral testimony
  - Competence and compellability
  - Rules of evidence
  - Documentary evidence
  - Miscellaneous evidence
  - Hearsay rule
  - Similar facts
  - Identification
  
- 10. Verdict and Sentencing**
  - Alternative verdicts
  - Principles of sentencing
  - Available sentences
  - Sentencing guidelines
  - Enhancement of Sentence
  
- 11. Appeals**
  - Appealing from Magistrates' Court
  - Magistrates' review powers
  - Appealing from the District Court
  - Appealing from Court of First Instance
  - Appealing from Court of Appeal
  - Reviewing sentence
  - Role of prosecution and defence in appeal process
  
- 12. Costs**
  - Court's power to award costs
  - Compensation and restitution orders
  - Forfeiture proceedings
  - Duty Lawyer Scheme
  - Legal Aid

### **Recommended Reading Materials**

#### **Books:**

**Archbold Hong Kong 2009** *Criminal Pleading, Evidence & Practice* (4<sup>th</sup> ed. Sweet & Maxwell Asia)

**Blackstone** *Criminal Practice* (OUP, 2008)

**Bruce, A.A.** *Criminal Procedure: Trial on Indictment* (Butterworths, 1996 onwards)

**Bruce & McCoy** *Criminal Evidence* (3<sup>rd</sup> ed. Butterworths, 1995 onwards)

**Cross, I.G. and P.W.S. Cheung** *Sentencing in Hong Kong* (5<sup>th</sup> ed. LexisNexis Butterworths, 2007)

**Halsbury's Laws of Hong Kong**, Vol. 9 – *Criminal Law and Procedure*; Vol.3 – *Bribery and Organised Crime*

**Knight, C. and Upham, A. R.** *Hong Kong Legal Practice Manuals: Criminal Litigation* (2<sup>nd</sup> ed. Sweet & Maxwell Asia, 2002)

**Wasik, M.** *Emmins on Sentencing* (4<sup>th</sup> ed. OUP, 2001)

#### **Legislation:**

##### ***Essential:***

Costs in Criminal Cases Ordinance (Cap. 492)

Criminal Procedure Ordinance (Cap. 221) and Indictment Rules (Cap. 221)

District Court Ordinance (Cap. 336)

High Court Ordinance (Cap. 4)

Hong Kong Court of Final Appeal Ordinance (Cap. 484)

Independent Commission Against Corruption Ordinance (Cap. 204)

Juvenile Offenders Ordinance (Cap.226)

Magistrates Ordinance (Cap. 227)

Police Force Ordinance (Cap. 232)

The (Hong Kong) Rules and Directions for the Questioning of Suspects and the Taking of Statements (Hong Kong SAR Government)

##### ***For reference, including subsidiary legislation:***

Hong Kong Bill of Rights Ordinance (Cap. 383)

Community Services Orders Ordinance (Cap. 378)

Complex Commercial Crimes Ordinance (Cap. 394)

Detention Centres Ordinance (Cap. 239)

Drug Addiction Treatment Centres Ordinance (Cap. 244)

Jury Ordinance (Cap. 3)

Legal Aid in Criminal Cases Rules (Cap. 221D)

Probation of Offenders Ordinance (Cap. 298)

Rehabilitation Centres Ordinance (Cap. 567)

Rehabilitation of Offenders Ordinance (Cap. 297)

Training Centres Ordinance (Cap. 280)

**Candidates must ensure that they obtain the latest editions of texts**

*Criminal procedure in Hong Kong is modeled upon the procedure in England. Candidates must, however, appreciate that there are differences between procedure in England and that in Hong Kong.*

*As an example, the (English) Police and Criminal Evidence Act 1984 has not been adopted in Hong Kong. Candidates using English texts for background reading must take care to ascertain from Hong Kong Ordinances whether similar procedures to those addressed in those texts apply in Hong Kong.*

## **CRIMINAL EVIDENCE**

### **Syllabus**

1. Hearsay
2. Documentary Evidence
3. Admissions and Confessions
4. Privilege
5. Relevance
6. Presumptions
7. Circumstantial Evidence
8. Corroboration

### **Recommended Reading Materials**

#### **Books:**

**Bruce and McCoy** *Criminal Evidence* (3<sup>rd</sup> ed. Butterworths, 1996 onwards)

#### **Legislation:**

Complex Commercial Crimes Ordinance (Cap. 394)

Crimes Ordinance (Cap. 200)

Dangerous Drugs Ordinance (Cap. 134)

Evidence Ordinance (Cap. 8)

Prevention of Bribery Ordinance (Cap. 201)

Theft Ordinance (Cap. 210)

**PAPER IV : HONG KONG LEGAL SYSTEM, CONSTITUTIONAL and ADMINISTRATIVE LAW and COMPANY LAW**

**HONG KONG LEGAL SYSTEM**

**Syllabus**

- 1. Background to the Hong Kong Legal System**
  - Hong Kong as a British dependent territory before 1 July 1997
  - Sino-British Joint Declaration 1984
  - The Basic Law
- 2. Interface between the Hong Kong and Mainland Legal Systems**
- 3. Sources of Hong Kong Law**
  - The Basic Law under the Constitution of the People's Republic of China
  - Common law and rules of equity
  - Statute law
  - Chinese customary law
  - National laws under Annex III to the Basic Law
  - Treaties
  - Customary international law
- 4. Statutory Interpretation**
  - General rules of construction
  - Methods of construction
  - Presumptions
  - Omissions
  - Retrospective effect of statutes
  - Aids to construction
  - Repeals and penal statutes
  - Enabling statutes
  - Delegated legislation
- 5. The Court System**
  - Functions and jurisdictions of the Court of Final Appeal
  - The Court of Appeal
  - The Court of First Instance
  - The District Court
  - The Magistracies
- 6. Specialised Courts and Tribunals**
  - The Small Claims Tribunal
  - The Labour Tribunal
  - The Lands Tribunal
  - The Coroner
  - The Administrative Appeal Board
- 7. Doctrine of Stare Decisis and Binding Precedents**

8. **The Legal Profession and Legal Services**
  - Judges
  - Arbitrators
  - Barristers
  - Solicitors
  - Legal officers
9. **Jury System**
  - Principle of trial by jury under Article 86 of the Basic Law
  - Juries in criminal trials
10. **Legal Aid**
  - Right of access to court
  - Legal Aid Department
  - Legal aid in civil cases
  - Legal aid in criminal cases
  - Supplementary legal aid scheme
  - Duty Lawyer Service
11. **Arbitration**

### **Recommended Reading Materials**

#### Books:

**Peter Wesley-Smith** *An Introduction to the Hong Kong Legal System* (3<sup>rd</sup> ed. OUP, 1998)

**Ian Robinson & Derek Roebuck** *Introduction to Law in the Hong Kong SAR* (2<sup>nd</sup> ed. Sweet & Maxwell, 2001)

**Peter Wesley-Smith** *The Sources of Hong Kong Law* (HKU Press, 1994)

**Raymond Wacks** (ed) *The New Legal Order in Hong Kong* (HKU Press, 1999)

**Raymond Wacks** (ed) *Hong Kong, China and 1997: Essays in Legal Theory* (HKU Press, 1993)

**Halsbury's Law of Hong Kong Vol. 1 Administrative Law** (Butterworths)

**Mr. Justice Ma & Neil Kaplan** (ed) *Arbitration in Hong Kong: A Practical Guide* (2003 Sweet & Maxwell Asia)

#### Legislation and Other Legal Instruments:

Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's China on the Question of Hong Kong

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Twenty Fourth Session of the Standing Committee of the Eighth National People's Congress on 23 February 1997)

Administrative Appeals Board Ordinance (Cap. 442)  
Arbitration Ordinance (Cap. 341)  
Commissions of Inquiry Ordinance (Cap. 86)  
Coroners Ordinance (Cap. 504)  
District Court Ordinance (Cap. 336)  
High Court Ordinance (Cap. 4)  
Hong Kong Court of Final Appeal Ordinance (Cap. 484)  
Hong Kong Reunification Ordinance (Cap. 2601)  
Judicial Officers Recommendation Commission Ordinance (Cap. 92)  
Judicial Officers (Tenure of Office) Ordinance (Cap. 433)  
Jury Ordinance (Cap. 3)  
Labour Tribunal Ordinance (Cap. 25)  
Lands Tribunal Ordinance (Cap. 17)  
Legal Aid Ordinance (Cap. 91)  
Legal Officers Ordinance (Cap. 87)  
Legal Practitioners Ordinance (Cap. 159)  
Legislative Council Ordinance (Cap. 542)  
Magistrates Ordinance (Cap. 227)  
Official Languages Ordinance (Cap. 5)  
The Ombudsman Ordinance (Cap. 397)  
Small Claims Tribunal Ordinance (Cap. 338)

# **CONSTITUTIONAL and ADMINISTRATIVE LAW**

## **Syllabus**

- 1. The Nature and Characteristics of Constitutions**
- 2. Constitutional Doctrines**
  - Autonomy
  - Separation of powers
  - Democracy
  - The rule of law
  - Human rights
- 3. The Basic Law of the HKSAR and its Constitutional Relationship with the PRC Constitution**
  - The constitutional status of the HKSAR under ‘one country, two systems’
  - The relationship between the SAR and the Central Government of the PRC
- 4. Interpretation of the Basic Law**
- 5. The Constitutional Role of the Legislature, the Chief Executive, the Judiciary and the Secretary for Justice**
- 6. The Administration and the Functions of Government**
  - Public bodies and officers
  - Statutory tribunals and public inquiries
- 7. Theories in Administrative Law**
  - Manner of exercise of powers
  - Procedural requirements
  - Non-exercise of powers and duties
- 8. Judicial Review of Administrative Action**
  - Scope of judicial review
  - Jurisdiction and the doctrine of ultra vires
  - Abuse of discretion or jurisdiction
- 9. Procedural Requirements and the Right to a Fair Hearing**
  - Legitimate expectations
  - Obligation to give reasons
  - Breach of natural justice
- 10. Remedies**
  - Certiorari and prohibition
  - Mandamus, declarations and injunctions
  - Damages
- 11. Practice and Procedure for Application for Judicial Review**
- 12. Protection**
  - Judicial privilege
  - Quasi-judicial functions
  - Acts pursuant to judicial orders
- 13. Habeas Corpus**
  - The writ of habeas corpus
  - Procedure

### Recommended Reading Materials

#### Books: Hong Kong

**Yash Ghai** *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (2<sup>nd</sup> ed. HKU Press, 1998)

**Johannes Chan, H.L. Fu & Yash Ghai** *Hong Kong's Constitutional Debate: Conflict over Interpretation* (HKU Press, 2000)

**David Clarke & Gerard McCoy** *Hong Kong Administrative Law* (2<sup>nd</sup> ed. Butterworths, 1993)

**Peter Wesley-Smith** *Constitutional and Administrative Law in Hong Kong* (2<sup>nd</sup> ed. Longman, 1995)

**Andrew Byrnes & Johannes Chan** *Public Law and Human Rights: A Hong Kong Sourcebook* (Butterworths, 1993)

**Halsbury's Laws of Hong Kong Vol. 1 Administrative Law** (Butterworths)

**Hong Kong Civil Procedure 2008** (6<sup>th</sup> ed. Sweet & Maxwell Asia)

#### Books: Other

**Craig** *Administrative Law* (6<sup>th</sup> ed. Sweet & Maxwell, 2008)

**De Smith** *Judicial Review* (6<sup>th</sup> ed. Sweet & Maxwell, 2007)

#### Legislation and Other Legal Instruments:

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

The Constitution of the People's Republic of China (Adopted at the Fifth Session of the Fifth National People's Congress on 4 December 1982)

Decision of the National People's Congress on the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted by the Seventh National People's Congress at its Third Session on 4 April 1990)

Decision of the National People's Congress on the Establishment of the Hong Kong Special Administrative Region (Adopted by the Seventh National People's Congress at its Third Session on 4 April 1990)

Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region (Adopted by the Seventh National People's Congress at its Third Session on 4 April 1990)

Decision of the National People's Congress Approving the Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress (Adopted by the Seventh National People's Congress at its Third Session on 4 April 1990)

Decision of the Standing Committee of the National People's Congress on the English Text of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted on 28 June 1990)

The Interpretation by the Standing Committee of the National People's Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted by the Standing Committee of the Ninth National People's Congress at its Tenth Session on 26 June 1999)

Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong

The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted by the Standing Committee of the Tenth National People's Congress at its Eight Session on 6 April 2004)

Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (Adopted at the 15<sup>th</sup> Session of the Standing Committee of the Tenth National People's Congress on 27 April 2005)

Administrative Appeals Board Ordinance (Cap. 442)

Chief Executive Election Ordinance (Cap. 569)

Commissions of Inquiry Ordinance (Cap. 86)

District Court Ordinance (Cap. 336)

Election Affairs Commission Ordinance (Cap. 541)

High Court Ordinance (Cap. 4) sections 21I and 21K

Rules of the High Court, Order 53

Hong Kong Bill of Rights Ordinance (Cap. 383)

Legislative Council Ordinance (Cap. 542)

Legislative Council Commission Ordinance (Cap. 443)

Legislative Council (Powers and Privileges) Ordinance (Cap. 382)

Ombudsman Ordinance (Cap. 397)

Private Bills Ordinance (Cap. 69)

# COMPANY LAW

## Syllabus

### 1. Business Organisations

#### (a) **Distinctions between Companies and other Forms of Organisations**

##### (i) **Sole Proprietorship**

- establishment
- management
- disposal
- termination

##### (ii) **Partnership**

- types of partnership
- limited partnership
- establishment
- management
- disposal
- dissolution

##### (iii) **Company**

#### (b) **Choice of Business Vehicle**

#### (c) **Transfer of Business**

### 2. Company Practice

#### (a) **Types of Company**

- public v. private companies
- companies limited by shares
- companies limited by guarantee
- oversea companies
- specified corporation

#### (b) **Incorporation**

- consequence of incorporation
- registration
- continuing requirements

#### (c) **Memorandum of Association and Articles of Association**

- registration
- effect
- amendment
- distinction between objects, powers and regulations

#### (d) **Share Capital**

- authorised capital
- issued capital
- share capital v. loan
- classes of shares
- issue of shares at a discount
- issue of shares at a premium
- maintenance of capital
- reduction of capital

- (e) **Membership**
  - subscribers and shareholders
  - transfer of shares
  - transmission of shares
  - common incidence of shares ownership
  - valuation of shares
  - meeting of shareholders (constitution and conduct)
  - resolutions of shareholders' meeting
- (f) **Management**
  - corporate governance
  - relations between directors and members
- (g) **Directors**
  - nature of directorship
  - qualification and disqualification
  - appointment and removal
  - powers of directors
  - duties (common law, statutory, fiduciary)
  - meeting of directors (notice, constitution, conduct, resolutions)
  - dealings with third parties (e.g. indoor management rule, agency)
  - ratification of and remedies for breach of duties
  - relief from liabilities
- (h) **Protection for Shareholders**
  - personal action
  - derivative action
  - petition on unfairly prejudicial conduct
  - just and equitable winding up
  - relations between shareholders' agreement, memorandum and articles of association
- (i) **Reports and Accounts**
  - profit and loss account
  - balance sheet
  - statement of changes in financial position
  - statutory duties in relation to preparation of accounts

### 3. **Company Charges and Securities**

- (a) **Corporate Capacity and Director's Authority to Create Security**
  - Memorandum of Association
  - Articles of Association
- (b) **Debentures**
  - definition
  - remedies
- (c) **Fixed Charges**
  - definition
  - remedies
- (d) **Floating Charges**
  - definition

- fixed or floating charge
  - statutory restrictions
  - crystallization
  - priority
  - remedies
- (e) **Other Charges**
- rights of set-off
  - cash deposits
  - shares
  - title retention clauses
  - remedies
- (f) **Registration of Charges**
- procedures
  - effect of registration
  - late registration for foreign corporations
  - consequences of non-registration

#### 4. **Winding Up and Insolvency**

- (a) **Receivership**
- appointment of receiver
  - position of the receiver
  - disqualification of appointment as receiver
  - effect of appointment
  - duties of the receiver
  - receiver's rights and powers
- (b) **Voluntary Liquidation**
- members voluntary liquidation
  - creditor's voluntary liquidation
- (c) **Compulsory Liquidation**
- parties involved
  - grounds for winding-up
  - commencement
  - court's powers
  - powers and duties of the liquidator
  - consequences of commencement of compulsory liquidation
  - consequences of winding-up order
  - liquidation procedures (proof of debt, ranking of claims and principle of pari passu distribution)
- (d) **Avoidance Actions**
- unfair preferences
  - charges created as floating charges
  - fraudulent conveyances
  - misfeasance proceedings
  - fraudulent trading
- (e) **Reorganising or Restructuring Insolvent Companies**
- compromises and scheme of arrangements

## **Recommended Reading Materials**

### **Books:**

**Butterworths** *Hong Kong Company Law Handbook* (10<sup>th</sup> ed. LexisNexis Butterworths, 2009)

**Company Law in Hong Kong** (Sweet & Maxwell Asia, 2007)

**Ho** *Security for Credit Law and Practice in Hong Kong* (Butterworths, 1992)

**Smart, Lynch & Tam** *Hong Kong Company Law: Cases, Materials & Comments* (Butterworths Asia, 1997)

**Stott** *Hong Kong Company Law* (12<sup>th</sup> ed. Pearson Education Asia, 2008)

**Tomasic & Tyler** *Hong Kong Company Law: Legislation and Commentary* (Butterworths Asia, 1998 onwards)

### **Reference reading:**

**Official Receiver's Office** *A Simple Guide to Compulsory Winding-up of Companies* (2001) (Note this is available from the website: [www.info.gov.hk/oro](http://www.info.gov.hk/oro))

**Hong Kong Monetary Authority** "*Hong Kong Approach to Corporate Difficulties*" (1999) HKMA Quarterly Bulletin 11/1999

### **Legislation:**

Companies Ordinance (Cap. 32) including the First, Tenth, Eleventh and Twelfth Schedule thereto

Companies (Winding-up) Rules

Companies (Disqualification of Directors) Proceedings Rules

Partnership Ordinance (Cap. 38)

Rules of High Court, Order 102

Transfer of Business (Protection of Creditors) Ordinance (Cap. 49)

**PAPER V : CIVIL PROCEDURE, CIVIL EVIDENCE, PROFESSIONAL  
CONDUCT and ADVOCACY**

**CIVIL PROCEDURE and CIVIL EVIDENCE**

**Standards**

Candidates will be expected to be knowledgeable in:

- (i) causes of action arising in contract and in tort and equitable remedies;
- (ii) the standards of professional conduct and ethics as set out in the Code of Conduct of the Bar of the HKSAR;
- (iii) the drafting of pleadings, affidavits and advices; and
- (iv) the rules of practice, procedure and evidence as set out in the syllabus below.

**Syllabus**

**1. Hong Kong's Civil Courts**

- Sources of civil procedure: Ordinances, Rules of Court and Practice Directions
- Jurisdiction of the courts, including supervisory jurisdiction
- District Court and Tribunals
- Court of First Instance of the High Court
- Court of Appeal
- Court of Final Appeal

**2. Pre-action Considerations**

- The cause(s) of action
- Proper and necessary parties
- Time limits

**3. Commencement and Progress of Proceedings**

- Modes of originating process
- Modes of service
- Acknowledgement of service
- Service out of the jurisdiction

**4. Pleadings and Particulars**

- Their function
- Statement of claim
- Defence
- Counterclaim and/or set off

**5. Interlocutory Applications**

- Judgment in default and summary judgment
- Joinder of parties and third party proceedings
- Interpleader
- Striking out and stay of proceedings
- Withdrawal and discontinuance
- Security for costs
- Interim payment
- Discovery and inspection of documents
- Automatic directions, and summons for directions

- Interrogatories and admissions
  - Witness statements
  - Expert reports
  - Case management and pre-trial review
- 6. Pre-emptive Remedies**
- Interlocutory injunctions, interim prevention
  - Mareva injunctions
  - Anton Piller orders
  - Prohibition orders
- 7. Termination and Compromise**
- Without prejudice rule
  - Payments into and out of court
  - Settlement agreements
  - Consent orders and judgments
- 8. Trial**
- Preliminary issues
  - Organisation and conduct of trial
  - Trial by judge or a master
  - Review of judgment and liberty to apply
- 9. Judgment and Enforcement**
- Orders, accounts and enquiries
  - Enforcement
  - Oral examination
  - Injunctions and prohibition orders in aid of enforcement
  - Receivers: equitable execution
  - Committal
- 10. Evidence**
- Notice to admit and produce
  - Affidavits and witness statements
  - Writs of subpoena
  - Hearsay evidence
  - Expert evidence
  - Depositions
  - Court experts
- 11. Costs**
- Entitlement and discretion
  - Bases and scales
- 12. Appeals**
- Appeals to a judge in chambers
  - Appealing a judgment
  - Appeals to the Court of Appeal
  - Appeals to the Court of Final Appeal

### **Recommended Reading Materials**

#### **Books:**

##### *Essential:*

*Hong Kong Civil Procedure 2009* (7<sup>th</sup> ed. Sweet & Maxwell Asia)

##### *Recommended:*

*District Court Handbook 2002* (Sweet & Maxwell Asia)

**Camille Cameron & Elsa Kelly** *Principles and Practice of Civil Procedure in Hong Kong* (2<sup>nd</sup> ed. Sweet & Maxwell Asia, 2008)

**Halsbury's Law of Hong Kong**, Vol. 5 Civil Procedure (Butterworths)

**Allan Leung and Crispin Rapinet** *Hong Kong Legal Practice Manual: Civil Litigation* (3<sup>rd</sup> ed. Sweet & Maxwell Asia, 2002)

##### *Recommended (other):*

**Gee, Steven QC** *Commercial Injunctions* (5<sup>th</sup> ed. Sweet & Maxwell, 2004)

**Jacob I.H.** *The Fabric of English Civil Justice* (Sweet & Maxwell, 1987)

**Jacob and Goldrein** *Pleadings: Principles and Practice* (Sweet & Maxwell, 1990)

**Odgers** *High Court Pleading and Practice* (23<sup>rd</sup> ed. Sweet & Maxwell, 1999)

**Sime S.A.** *A Practical Approach to Civil Procedure* (11<sup>th</sup> ed. OUP, 2008)

**C. Hollander** *Documentary Evidence* (9<sup>th</sup> ed. Sweet & Maxwell, 2006)

#### **Legislation:**

##### *Essential:*

Civil Justice (Miscellaneous Amendments) Ordinance 2008

High Court Ordinance (Cap. 4) and Rules of High Court (Cap. 4A)

Hong Kong Court of Final Appeal Ordinance (Cap. 484)

District Court Ordinance (Cap. 336) and Rules of District Court (Cap. 336H)

Limitation Ordinance (Cap. 347)

Practice Directions, High Court

##### *For Reference:*

Interpretation and General Clauses Ordinance (Cap. 1)

**Note:** Texts published in England may be useful references on civil procedure. Candidates must appreciate however, that although Hong Kong's civil procedure is modeled upon the English legal system, various procedures and circumstances are different in Hong Kong.

***Care must be taken to ascertain from Hong Kong Ordinances, Rules of Court and Practice Directions, whether procedures similar to those referred to in English texts, apply in Hong Kong.***

***Candidates should be aware that the Civil Justice Reform will come into effect in Hong Kong on 2 April 2009. These Rules are not necessarily the same as the Civil Procedure Rules in England.***

## **PROFESSIONAL CONDUCT**

### **Syllabus**

- 1. Practice Requirements**
  - Admission requirements
  - Issuing of practicing certificates
  - Compulsory professional indemnity insurance
  - Pupillage and limited practice
  - Dual qualification rule
  - Admission of overseas counsel for a particular case
- 2. Chambers Administration**
- 3. Acceptance and Return of Instructions**
  - Cab-rank principle
  - Marking of counsel's diary
  - Collection of the brief
  - Signed backsheets
  - Grounds for withdrawal and the return of the brief
  - Situations not entitling counsel to withdraw
  - Working with senior counsel
  - Direct professional access work
  - Overseas practice
- 4. Duties**
  - Duties to the lay client in general
  - Duties when defending a person accused of a crime
  - Duties when prosecuting a person accused of a crime
  - Duties to the opposing parties
  - Duties to the profession
- 5. Authorities of Counsel**
  - Express authority
  - Implied authority
  - Limitations upon counsel's authority
- 6. Conduct of Work**
  - Competency
  - Confidentiality
  - Conflict of interest
  - Drafting documents
  - Contact with witnesses
  - Attendance of professional client
  - Conduct in court
  - Media comment
  - Case of employed barristers and non-practising barristers
- 7. Fees**
  - Charging basis
  - Brief fee
  - Refreshers
  - Negotiation of fee
  - Payment arrangements

## **8. Discipline**

- Powers of the Bar Council
- Disciplinary Tribunal

### **Recommended Reading Materials**

#### Books:

**Wilkinson & Sandor** *The Professional Conduct of Lawyers in Hong Kong*  
(LexisNexis Butterworths, 2007)

#### Legislation:

**Legal Practitioners Ordinance and subsidiary legislation**

#### Other:

**Code of Conduct of the Bar of the Hong Kong Special Administrative Region**

## **ADVOCACY**

### **Standards**

Candidates will be expected to be knowledgeable in:

- (i) the practice of advocacy in civil or criminal courts, at first instance, and on appeal;
- (ii) the standards of professional conduct and ethics, as set out in the Code of Conduct of the Bar of the HKSAR; and
- (iii) the rules of practice and procedure, and evidence as set out in the syllabus below.

### **Syllabus**

#### **1. Introduction**

- Litigation contrasted with arbitration and mediation
- The language of the courts
- Addressing the court

#### **2. Ethics and Conduct**

- Duty to client
- Duty to court
- The Bar Code and Circulars
- Case law
- When in doubt
- Enforcement of standards by the Bar and the courts
- Witnesses
- Conflicts

#### **3. Preparation and Planning**

- Mastering the facts
- The issues
- Structures and chronologies
- Research: analysis and distinguishing cases
- Procedure, evidence and tactics
- Words and Style
- Repetition

#### **4. Speaking in Court**

- Voice and presentation
- Confidence
- Body language and appearance

#### **5. Interlocutory Applications**

- Limitations at the interlocutory stage
- Importance of Skeleton Arguments and their timing

#### **6. Applications for Summary Judgment**

- Strategy
- On fact, or law
- Preparation

#### **7. Bail Applications and Mitigation**

- Making the applications, and structure

- 8. Trial**
  - Submissions of no case to answer
  - Opening speeches in civil and criminal cases
  - Closing speeches in civil and criminal cases
  - Juries
- 9. Evidence in Chief**
  - Do's and don'ts
  - Organisation
  - Anticipating cross-examination and oral evidence
- 10. Cross-examination**
  - Aims
  - Organisation and style
  - Duties
  - Cross-examining experts and police officers
  - Handling objections and traps
  - Ending
- 11. Re-examination**
  - Do's and don'ts
- 12. Appellate Advocacy**
  - The judgment
  - Appeals on law, fact, or discretion
  - Importance of Skeleton Arguments, and their timing
  - Order of speeches

**Recommended Reading Materials**

Books:

*Essential:*

**Code of Conduct of the Bar of the Hong Kong Special Administrative Region**

**Wilkinson, Rajwani & Pierce** *Advocacy and the Litigation Process in Hong Kong* (3<sup>rd</sup> ed. LexisNexis Butterworths, 2007)

Legislation:

**Legal Practitioners Ordinance**

Other reference materials:

**Hong Kong Bar Association Circulars**

**Practice Directions [1999] HKLRD (PD)**

Other texts:

**Du Cann** *The Art of the Advocate* (Revised ed. Penguin Books, 1995)

**Keith Evans** *The Language of Advocacy* (OUP, 1998)

**Michael Hyam** *Advocacy Skills* (4<sup>th</sup> ed. OUP, 2001)

**Murphy & Barnard** *Evidence and Advocacy* (5<sup>th</sup> ed. OUP, 1998)

**Pannick** *Advocates* (OUP, 1993)

**Noel Shaw** *Effective Advocacy* (Sweet & Maxwell, 1996)