

## **PART IV: SYLLABUS FOR EXAMINATION**

This is applicable to the Conversion Examinations in 2007.

### **IMPORTANT INFORMATION**

#### **1. Syllabi and reading lists**

Part IV of the Information Package (“Syllabus for Examination”) issued by the Conversion Examination Board in December 2006 has been revised with the inclusion of more details on the content of the syllabus and of a reading list for each of the subjects. The revised Part IV is included in this Information Package.

#### **2. Sources**

Sources are listed at the end of each syllabus. Hong Kong cases can be accessed at the Hong Kong Judiciary’s website: [www.judiciary.gov.hk](http://www.judiciary.gov.hk) and the Hong Kong Legal Information Institute (“HKLI”) website: [www.hklii.org](http://www.hklii.org). The Laws of Hong Kong can be accessed at the Bilingual Laws Information System (“BLIS”) website: [www.legislation.gov.hk](http://www.legislation.gov.hk).

#### **3. Preparation for the Examination**

Students are expected to keep themselves up to date on the law at all times. For the purpose of the Conversion Examination, students will be tested on the relevant law as it applies one month prior to the date of the examination. Credit will be given to students who demonstrate accurate knowledge of relevant update legal developments that occur within one month before the examination.

#### **4. Format of the Examination**

Format of the Examination will be put on the PCEA website nearer the date of examination.

## **Syllabus for Civil Procedure**

### **1. Overview of the conduct of civil litigation in the District Court and the High Court**

- Jurisdiction of the District Court
- Jurisdiction of the High Court
- Transfer of an action

### **2. Considerations prior to the commencement of an action: time limitation, legal aid and jurisdiction of the courts**

- Identifying the cause(s) of action
- Identifying the parties to an action
- Identifying limitation periods
- Choice of court
- Legal Aid considerations

### **3. Commencement of proceedings by writs and originating summonses**

- Methods of commencing proceedings
- Validity and renewal of the writ

### **4. Service of Process**

- Service within the jurisdiction
- Service on individuals
- Service on a body corporate
- Service on a partnership
- Substituted service
- Service on persons under a disability
- Service out of the jurisdiction

### **5. Pleadings**

- The definition and purpose of pleadings
- The order of pleadings
- General rules of pleadings
- The purpose of further and better particulars

(Note: candidates will **not** be expected to draft pleadings in the examination)

### **6. Parties and Joinder**

- Third party proceedings
- Joinder of parties by plaintiff/by defendant/by the court
- Joinder of causes of action
- Consolidation of actions or order for separate trials
- The interpleader procedure

## **7. Summary disposal of actions: default judgment and summary judgment**

- Summary judgment: general principles
- Summary judgment: timing and procedure
- Summary judgment: possible outcomes and the appeal procedure
- Default judgment: general principles
- Setting aside default judgments (regular and irregular)

## **8. Interlocutory and ex parte proceedings**

- Striking out a writ or pleadings
- Dismissal of an action for want of prosecution
- Application for an interim payment
- Discovery and inspection of documents
- Extraordinary forms of discovery
- Interrogatories
- Exchange of witness statements and expert reports
- Summons for Directions
- Case management: pre-trial review, setting a case down for trial
- Interlocutory injunctions
- Mareva injunctions and Anton Piller orders

## **9. Payments into Court and Settlement**

- Payments into court
- Calderbank offers
- Terminating an action by order of the Court: consent orders, Tomlin orders
- Terminating an action by withdrawal or discontinuance

## **10. Aspects of a civil trial**

- Conduct of the trial
- Judgment

## **11. Costs**

- Security for costs
- Solicitor and own client costs
- Costs of interlocutory applications
- Recoverable costs of litigation: the court's discretion
- Recoverable costs of litigation: orders for costs
- The bases of taxation
- Gross sum assessments

## **12. Civil Appeals**

- Interlocutory appeals
- Appealing a judgment
- Appeals to the Court of Appeal
- Appeals to the Court of Final Appeal (s.22 CFA Ordinance)

## **13. Enforcement of Judgments**

- Overall strategy regarding enforcement of a judgment
- Writs of fi fa
- Garnishee proceedings
- Charging orders
- Oral examination of the judgment debtor
- Prohibition orders and stop notices

## Reading List for Civil Procedure

### Texts

Wilkinson, Booth & Cheung, *Student Guide to Civil Procedure in Hong Kong*, LexisNexis Butterworths, 2005 (ISBN 981 236 466 8)

Cameron & Kelly, *Principles and Practice of Civil Procedure in Hong Kong*, Sweet & Maxwell (Asia) 2001 (ISBN 962 661 070 0)

Clarke, *Hong Kong Civil Court Practice*, Desk Edition 2005, LexisNexis Butterworths (ISBN 962 885 5557)

### References

Rogers (Ed.) *Hong Kong Civil Procedure 2007*, Sweet & Maxwell (Asia) (The Hong Kong “White Book”) (ISBN 978 962 661 305 4)

*District Court Handbook 2002: Civil Practice*, Sweet & Maxwell (Asia) (ISBN 962 661 157X)

Lo, *Hong Kong District Court Practice*, LexisNexis/Butterworths (ISBN 962 810 541 8)

### Sources

Court of Final Appeal Ordinance (Cap.484)

High Court Ordinance (Cap.4)

Rules of the High Court (Cap.4A)

District Court Ordinance (Cap.336)

Rules of the District Court (Cap.336A)

Practice Directions of the High Court

Hong Kong cases

## **Syllabus for Criminal Procedure**

- 1. An introduction to criminal procedure in Hong Kong**
  - An overview of the criminal courts
    - Magistrates' Court (including Juvenile Court)
    - District Court
    - Court of First Instance ("CFI")
    - Court of Appeal
    - Court of Final Appeal
  - Classification of offences
    - Summary offences
    - Indictable offences
    - Excepted offences
  
- 2. Police Powers**
  - Stop, detain and search
  - Search warrants
  - Arrest powers
  - Rules and directions for the questioning of suspects
  - Identification parades
  - Cautioned statements and post-recorded statements
  - Other law enforcement agencies (e.g. the "ICAC", Customs and Excise, Commercial Crime Bureau etc.)
  
- 3. Commencement of Proceedings**
  - Functions of the Secretary for Justice
  - Department of Justice's prosecution policy and practice
  - Arrest and Charge
  - Summonses
  - Fixed Penalty Offences
  
- 4. Bail**
  - The right to bail
  - Police bail
  - Magistrates Court bail
  - Applications to CFI for bail
  - Offences relating to bail
  
- 5. Indictments, Charges and Summonses**
  - Form of summonses and charges
  - Indictment rules
  - Rule against duplicity
  - Joinder of defendants and charges
  - Severance
  - Alternative charges and amendments

**6. Procedure before and at Trial**

Magistrates Court

Pleas of guilty and trials of not-guilty pleas

Transfer to the District Court

Committals and preliminary inquiries

Review and appeals

District Court

Trials, transfers to CFI and appeals

Court of First Instance (“CFI”)

Voluntary bills and pre-trial procedures

Juries

Verdicts

Appeals from the Magistrates Court

Court of Appeal

Appeals from District Court and CFI to Court of Appeal

Court of Final Appeal

Appeals from Court of Appeal to Court of Final Appeal

Particular issues at trial

Applications to stay proceedings

Submissions of no case

**7. Sentencing - Theory and Practice**

Pleas of guilty

Conviction after trial

Pre-sentence reports

Sentencing guidelines, totality and starting points

Deterrent sentences

Suspended sentences

Non-custodial sentences

Special sentences e.g. treatment orders, hospital orders

Pleas of mitigation

**8. Funding Criminal Litigation**

Private funding

Legal Aid

Duty Lawyer Service

Costs in Criminal Cases Ordinance (Cap.492)

Costs against convicted defendants

Assessment of costs

Wasted costs orders

## Reading List for Criminal Procedure

### Texts and Materials

Criminal Litigation, Christopher Knight and Anthony Upham (2<sup>nd</sup> Ed),  
Thomson Sweet & Maxwell Asia. ISBN 962 661 039 5

Criminal Procedure in Hong Kong - A Guide for Students and Practitioners, Amanda  
Whitfort, LexisNexis – Butterworths

Criminal Procedure - Trial on Indictment, Andrew Bruce S.C., Butterworths

Magistrates Court Manual, Audrey Campbell-Moffat, Sweet and Maxwell

Criminal Procedure Handbook, Butterworths

Sentencing in Hong Kong, Cross and Cheung, Butterworths

The “*Statement of Prosecution Policy and Practice*”, issued by the Department of  
Justice, should be read for an insight on the criteria for prosecutions.

A working knowledge of the “*Rules and Directions for the Questioning of Suspects  
and Interviewing Witnesses*” is also necessary.

### Sources

Court of Final Appeal Ordinance (Cap.484)

Criminal Procedure Ordinance (Cap.221)

Magistrates Ordinance (Cap.227)

The websites of The Department of Justice, The Hong Kong Police Force and the  
ICAC (Independent Commission Against Corruption) are also useful sources of  
background information.

## **Syllabus for Evidence**

- 1. Introduction**
  - Principal items and classification of evidence
  - Relevance
  - Admissibility
  - Best evidence rule
  - Probativeness and prejudice
  - Judicial discretion to exclude
  
- 2. Burden and standard of Proof**
  - Legal burdens
  - Evidential burden
  - Criminal standard of proof
  - Civil standard of proof
  
- 3. Proof without evidence**
  - Presumptions
  - Judicial notice
  - Formal admissions
  
- 4. Division of functions between judge and jury**
  - Questions of law and fact
  - The voir dire and challenges to admissibility
  - Sufficiency of evidence
  
- 5. Witnesses (1) – Competence and compellability**
  - Accused and co-accused
  - Spouse
  - Children
  - Miscellaneous cases (diplomats, persons of unsound mind etc)
  
- 6. Witnesses (2) – Character**
  - Relevance
  - Good character
  - Bad character
  
- 7. Witnesses (3) – General**
  - Examination in chief
  - Cross examination
  - Corroboration
  - Protection of vulnerable witnesses
  - Warnings for special witnesses in criminal cases

8. **Course of evidence**
  - Rule against prior consistent statements
  - Refreshing memory
  - Hostile witnesses
  - Prior inconsistent statements
  - Collateral questions
  - Evidence in rebuttal
  
9. **Opinion Evidence**
  - Non-expert opinion evidence
  - Expert opinion evidence
  - Ultimate issues
  
10. **The Rule Against Hearsay**
  - Development of the rule and rationale
  - General principles
  - Exceptions
  
11. **Admissions and confessions**
  - Definitions
  - Oppression
  - Voluntariness
  - Unreliability
  - Implication of co-accused
  - Derivative evidence
  - Mixed statement rule
  
12. **Evidence unfairly or illegally obtained**
  - The common law
  - Statute
  - Human rights
  - Judicial discretion as to
  
13. **Privilege**
  - General principles
  - Legal professional privilege
  - Privilege against self-incrimination
  - Marital privilege

## Reading List for Evidence

### Texts

Simon N. M. Young, *Hong Kong Evidence Casebook*, Sweet & Maxwell (Asia), 2004  
(ISBN 962 661 264 9)

*Butterworths Hong Kong Evidence Law Handbook 2<sup>nd</sup> Edition*. 2005.  
LexisNexis/Butterworths (ISBN 962 8855 56 5)

*Cross on Evidence*, Wellington:LexisNexis NZ, 2005

### Sources

Evidence Ordinance (Cap 8)

Criminal Procedure Ordinance (Cap 221)

Magistrates Ordinance (Cap 227)

Rules and Directions for the Questioning of Suspects and the Taking of Statements  
1992

Hong Kong cases

## **Syllabus for Business Associations**

- 1. Outline and comparison of different types of business associations**
  - sole proprietorship
  - partnership
  - registered company
  
- 2. Partnerships**
  - nature of partnerships – their legal status, powers and characteristics
  - creation of partnerships
  - rights and duties of the partners *inter se* – rights and obligations arising in contract; fiduciary duties of partners
  - rights and duties of the partners *vis-a-vis* third parties – liabilities of partners to third parties in contract and tort; authority of partners to bind the partnership in transactions with third parties
  - introduction to dissolution
  
- 3. Development of companies**
  - the historical and economic background to the development of the registered company in Hong Kong
  
- 4. Formation of a company**
  - incorporation and registration
  - problems relating to incorporation
  - types of companies
  
- 5. Nature of a company**
  - separate corporate personality
  - limited liability doctrine – liability of members limited by shares or limited by guarantee
  - doctrines of piercing or lifting the corporate veil
  
- 6. Corporate constitution: memorandum and articles of association**
  - contractual effect of the memorandum and articles
  - enforcement of the memorandum and articles
  - ability of companies to alter the memorandum and articles, and restrictions under the general law and the Companies Ordinance
  - corporate capacity

7. **Membership**
  - subscribers to the memorandum
  - registration of members
  - membership in companies with share capital: issues and transfers of shares
  - rights of members
  
8. **Management and control**
  - the board of directors
  - the members' general meeting
  - powers conferred by the Companies Ordinance
  - powers conferred by the articles of association
  - authority of directors to bind the company *vis-a-vis* third parties
  - scope of control of the board by the members in general meeting
  
9. **Duties of directors**
  - directors as fiduciaries
  - acting bona fide in the interests of the company
  - exercising powers for proper purposes
  - avoiding conflicts of interest – conflict rule, profit rule, misappropriation rule
  - acting with due care, skill and diligence – duties in equity and under the common law
  - requirements of the Companies Ordinance
  
10. **Protection of minorities**
  - proper plaintiff and irregularity principles – rule in *Foss v Harbottle*
  - derivative actions on behalf of the company – fraud on the company exception to the proper plaintiff principle; the statutory derivative action
  - members' personal rights of action under the general law; equitable restrictions on the powers of the majority in general meeting
  - statutory remedy in relation to unfairly prejudicial conduct
  - winding up on the just and equitable grounds
  - protection of class rights under the company's constitution and under the Companies Ordinance
  - statutory injunctions

## **11. Winding up**

- Types of winding up: compulsory winding up by the court and members' or creditors' voluntary winding up
- Insolvency and other grounds for winding up
- Effect of a winding up order
- Process of winding up
- Functions and powers of the liquidator
- Assets available for distribution; re-opening of antecedent transactions
- Distributions and priorities
- Dissolution

## Reading List for Business Associations

### Texts

Smart P, Lynch K, Tam A, *Hong Kong Company Law: Cases, Materials and Comments*, Butterworths, Hong Kong, 1997

Stott V, *Hong Kong Company Law*, 11th ed, Longman, Hong Kong, 2005

Loh S C and Wong W M F, *Company Law, Powers and Accountability*, Butterworths, Hong Kong, 2003

*Hong Kong Company Law Handbook: Companies Ordinance*, 8th edn, Butterworths, Hong Kong, 2006

### References

Brewer J, *The Law and Practice of Hong Kong Private Companies*, Sweet and Maxwell, Hong Kong, 2005

Mayson S, French D, Ryan C, *Mayson, French & Ryan on Company Law*, 22nd ed, Blackstone, London, 2006

Davies P, *Gower and Davies' Principles of Modern Company Law*, 7th ed, Sweet and Maxwell, London, 2003

Hicks A and Goo S H, *Cases and Materials on Company Law*, 5th ed, Oxford University Press, Oxford, 2004

Banks L R, *Lindley and Banks on Partnership*, 18th ed, Sweet and Maxwell, London, 2002

*Company Law in Hong Kong*, looseleaf, Sweet and Maxell, Hong Kong

*Hong Kong Company Law: Legislation and Commentary*, looseleaf, Butterworths, Hong Kong

### Sources

Partnership Ordinance (Cap.38)

Companies Ordinance (Cap.32)

Hong Kong cases

## **Syllabus for Commercial Law**

### **1. Part A: Sale of Goods**

Sales of Goods - Passing of Legal and Equitable Title - Duties of Sellers and Buyers;

### **2. Part B: Personal Property**

Personal Property and Interests in Personal Property

Types of Personal Property - Chose in Action - Chose in Possession - Ownership (especially mere equities) - Possession (finders' possessory interests) - Bailment;

Credit and Security

Security Interests - Different Forms of Security Interests - Pledges - Possessory Liens – Mortgages - Fixed Charges - Floating Charges - Retention of Title (*Romalpa*) Clauses - Set-off;

Non-sale acquisitions: *nemo dat* and gifts

*Nemo dat* and exceptions – Gifts - Conditional Gifts - Gifts of Future Property;

Assignments of Chose in Action

Assignments of Chose in Action – Assignments of Legal and Equitable Chose in Action – Assignments of Future Chose in Action – Assignments of Part of an Identified Bulk - Particular Focus on Share Acquisition & Equitable Assignment;

Trespass to Goods, Conversion, and Detinue;

Bills of exchange and negotiable instruments;

### **3. Part C: Consumer Credit and Protection**

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;

Doctrine of relation back and fraudulent preference.

**Note: Students are required to demonstrate competence and achieve a pass in all three parts.**

## **Reading List for Commercial Law**

### **Texts**

LS Sealy & RJA Hooley, "Commercial Law: Text, Cases and Materials" (LexisNexis, 3rd Edn, 2003)

PS Atiyah, John N Adams & Hector MacQueen, "The Sale of Goods" (Longman, 11th Edn, 2005)

Roy Goode, "Commercial Law" (Penguin, 3rd Edn, 2004)

Anne Carver, "Hong Kong Business Law" (Longman, 6th Edn, 2004)

### **Sources**

Bills of Exchange Ordinance (Cap.19)

Sale of Goods Ordinance (Cap. 26)

Unconscionable Contracts Ordinance (Cap.458)

Control of Exemption Clauses Ordinance (Cap.71)

Money Lenders Ordinance (Cap.163)

Supply of Services (Implied Terms) Ordinance (Cap.457)

Bills of Sale Ordinance (Cap.20)

Law Amendment and Reform (Consolidation) Ordinance (Cap.23)

## **Syllabus for Hong Kong Constitutional Law**

### **1. The Acquisition of British Sovereignty**

The Unequal treaties - the Basis of British Jurisdiction in Hong Kong - The Assumption and exercise of British Authority - The Constitution and the System of Government - Political reform in the Fifties - Development of the Administrative System - Development of Representative Government;

### **2. The Resumption of Sovereignty**

Sovereignty and Self-Determination - Sino-British Negotiation and the Joint Declaration - the Drafting of the Basic Law - Residual Powers - Scope of Application of Chinese Constitution - The Structure of the Basic Law - Transitional Issues - Patten's Political Reform in the Nineties - Breakdown of the Through-train model - Provisional Legislative Council and its Legality;

### **3. The Framework of the Basic Law**

Models of Autonomy and One Country, Two Systems - Separation of powers in the Basic Law - The nature of the Basic Law - General Principles - Relationship between Central Government and the HKSAR;

### **4. The Political and Administrative System**

The Political Structure - Basic principles - Forms of Representation - NPC - Centralized and Consultative Government - Separation of powers or Executive-led Government - Legislative Council - Composition - Powers and Functions of the LegCo - Restriction on law making powers - Law making process - Supervision of executive and parliamentary enquiry - Public Finance - Impeachment of the Chief Executive - Selection of the Chief Executive - The Executive and the Chief Executive in Council - Contradictions in the political system - Neutrality of the civil service and the Ministerial System - Localization and principal officials;

### **5. Constitutional Jurisdiction of the Courts of the HKSAR**

Parliamentary sovereignty and its application to the HKSAR - Act of State - Facts of State - Judicial review of legislation - resolutions of the NPCSC;

### **6. Interpretation and Amendment of the Basic Law**

The importance of interpretation and the mode of interpretation - The Scheme for interpretation under Art 158 - Judicial referral, classification test and necessity test - The interpretation powers of the NPCSC and the HKSAR Courts - Problems arising under Art 158 - Legislative interpretation versus judicial interpretation - Judgment previously rendered shall not be affected - Role of the Basic Law Committee - Principles of and approach to interpretation - The scheme of Amendments to the Basic Law;

**7. Rights and Freedoms**

The General Framework for the Protection of Rights and Freedoms - Chapter 3, the Bill of Rights and the ICCPR - ICESCR and ILO - Civil and Political Rights - Economic rights and property rights - Social and cultural rights and policies - Lawful traditional rights and interests of the New Territories Indigenous Inhabitants - Limitations or restrictions of rights and freedoms - State of Emergency - Restrictions under Art 23;

**8. International Aspects of the HKSAR**

Chinese view of international law - External Affairs powers of the HKSAR - Role and problems of HKSAR in international legal regime - Succession of rights and obligations in international treaties applicable to Hong Kong before 1997 - capacity to participate in international treaties, conferences and organizations - Conflicts of law and recognition of judgments of Taiwan courts;

**9. The Constitutional System of the People's Republic of China**

Theory of socialist constitution - A brief history of Chinese Constitutional System - The PRC Constitution - Central Authorities of the PRC (NPC, NPCSC, State Council, Central Military Commission) - The role and organization of the Communist Party - Special Economic Zones under Art 31 - Rights and legality - Sources of Law (Legislative Interpretation and Executive Interpretation) - The Judiciary, the Public Security Bureau and the Procuratorate - Review of the Judiciary - A Developing Constitution.

## Reading List for Hong Kong Constitutional Law

- \*Georg Brunner, "The Functions of Communist Constitutions: An Analysis of Recent Constitutional Developments" (1977) 3 Rev. Soc. Law 121-153
- \*Johannes Chan, "The Jurisdiction and Legality of the Provisional Legislative Council" (1999) 27 HKLJ 374
- \*Johannes Chan, "Some Thoughts on Constitutional Reform in Hong Kong," 34 (2004) HKLJ 1
- \*Johannes Chan, "Civil Liberties, Rule of Law and Human Rights: The Hong Kong Special Administrative Region in its First Four Years in Lau Siu-kai (ed) The First Tung Chee-hwa Administration: The First Five Years of the HKSAR [Hong Kong: Chinese University Press, 2002]
- \*Albert H. Chen "The Concept of 'One Country Two Systems' and its Application to Hong Kong" in C. Stephen Hsu (ed.) Understanding China's Legal System: Essays in Honor of Jerome A. Cohen (New York: New York University Press, 2003)
- \*Albert Chen, "The Concept of Justiciability and the Jurisdiction of the Hong Kong Courts" (1997) 27 HKLJ 387
- \*Albert Chen, "The interpretation of the Basic law - common law and Mainland Chinese perspectives" (2000) 30 HKLJ 380
- \*Albert H. Y. Chen "The Constitutional Controversy in Hong Kong Spring 2004," 34 (2004) HKLJ 215
- \*Chen, Fu & Ghai (ed) Hong Kong's Constitutional Debate: Conflict over Interpretation (2000)
- \*Yash Ghai, Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law (2nd ed. 1999)
- \*Hurst Hannum and Richard B. Lillich, "The Concept of Autonomy in International Law" in Dinstein (ed.), Models of Autonomy (1981)
- \*Ma Ngok, "Executive-Legislative Relations: Assessing Legislative Influence in an Executive-Dominant System" in Lau Siu-Kai (ed) The First Tung Chee-hwa Administration: The First Five Years of the Hong Kong Special Administrative Region (The Chinese University Press, 2002)
- \*S. de Smith, Constitutional and Administrative Law (7th ed. 1994), p3-13,
- \* Nwabueze, Constitutionalism in the Emergent States (1973), Chapter 1
- \*Benny Tai Yiu-ting, "The Development of Constitutionalism in Hong Kong" in Raymond Wacks, The New Legal Order in Hong Kong (1999)

\*Benny Y. T. Tai, "Chapter One of Hong Kong's New Constitution: Constitutional Positioning and Repositioning" in Ming Chan and Alvin Y. So (ed.) *Crisis and Transformation in China's Hong Kong* (M.E. Sharpe, 2002)

\*Benny Tai, "One country two systems: the two perspectives" (2002) *Macau Law Journal* (Special Issue) 143-163

### **Sources**

The Basic Law of the Hong Kong Special Administrative Region (1990)

Sino-British Joint Declaration on the Future of Hong Kong (1984)

# Syllabus for Hong Kong Legal System

## 1. Development of the Hong Kong Legal System 1842-1997

Reception of English Law - Captain Elliot's Proclamation - Supreme Court Ordinance 1843 - Application of English Law Ordinance - Joint Declaration and the Resumption of Sovereignty - Localization and Adaptation Exercises - Continuity of Previous International Treaties - Reunification Ordinance - Application of legislation to "State";

## 2. Sources of Hong Kong Law

Laws previously in force in Hong Kong - Legislation, common law and equity, customary law - Special position in New Territories land - Imperial enactments - Prerogative power - Legislation and restriction on law making powers - National Laws - NPCSC's interpretation - PRC Constitution;

## 3. Doctrine of Stare Decisis

Doctrine of precedent in Hong Kong - Full Court - Pre- and Post-1997 Privy Council Decisions - Status of House of Lords Decisions;

## 4. Hong Kong Court System

Hierarchy of courts - Jurisdiction and its constitutional limits - Role of the Court of Final Appeal - Appointment and tenure of judges - Judicial independence under the Basic Law - Judicial immunity and judicial accountability;

## 5. Access to Justice

Forms of legal aid - Operation of legal aid - Characteristics of legal aid services in Hong Kong - Legal aid and resources - current controversies - Independence of Legal Aid Authority;

## 6. The Common law System and the PRC Legal System: A Comparative Overview

The essential differences between the common law system and the PRC legal system;

## 7. Interface between the two systems

Concurrent jurisdictions - Mutual judicial assistance - enforcement of judgments - extradition - cross-border crimes and jurisdiction - cross-border insolvency - Conflicts between the two systems - Admissibility of documents issued in the Mainland - Taking evidence in the PRC;

## 8. Introduction to Legal Research: Sources and Skills.

## **Reading List for Hong Kong Legal System**

### **Texts**

Ian Dobinson and Derek Roebuck, *Introduction to Law in the Hong Kong SAR*, 2nd edn, Sweet & Maxwell, Hong Kong, 2001

Peter Wesley-Smith, *An Introduction to the Hong Kong Legal System*, 3<sup>rd</sup> edn, Oxford University Press, Hong Kong, 1998

### **Further reading**

Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law*, 2<sup>nd</sup> edn, Hong Kong University Press, Hong Kong, 1999

Glanville Williams, *Learning the Law*, 13<sup>th</sup> edn, Sweet & Maxwell, London, 2006

### **Sources**

The Basic Law of the Hong Kong Special Administrative Region (1990)

## Syllabus for Hong Kong Land Law

### 1. Definitions and Formalities

The definitions of 'land' and 'legal estate' in s 2 *Conveyancing and Property Ordinance* Cap 219, the formalities for the creation, transfer and disposal of interests in land and the formalities for the sale or disposition of land (ss 3(1), 4, 5 and 6 *Conveyancing and Property Ordinance*).

### 2. Priority and Land Registration

The instruments registrable under the *Land Registration Ordinance* Cap 128, the dates of registration of instruments, priority under s 3(1) *LRO*, the effect of ss 3(2) and 4 *Land Registration Ordinance*, the doctrine of notice and the priority of unwritten equitable interests in land.

### 3. The Partition of Land in Joint Ownership

The destruction of the unity of possession, voluntary partition, application for partition under the *Partition Ordinance* Cap 352, who can apply, the court's powers to order partition or sale or to refuse an order.

### 4. Adverse Possession

The limitation periods under the *Limitation Ordinance* Cap 247, accrual of a right of action, the aggregation of periods, the surrender of a Government lease, the effect of renewal under the *New Territories (Renewable Government Leases) Ordinance* Cap 152 and extension under the *New Territories Leases (Extension) Ordinance* Cap 150.

### 5. Government Leases and Conditions

The vesting of land in the State, the right of the Chief Executive to dispose of land, the disposal of land by granting Government leases and Conditions, the nature of the interest under Conditions.

The conversion of the equitable interest held under Conditions to a legal interest, s 14 *Conveyancing and Property Ordinance*, the effect of compliance with conditions precedent to the grant of a Government lease, evidence of compliance, deemed compliance and registration of a certificate of compliance.

The sectioning of land, the subdivision of land by the sale of undivided shares in land and the creation of section and subdivision registers in the Land Registry.

The duration of Government lease terms, rights of renewal and automatic renewal under the *Government Leases Ordinance* Cap 40 and the *New Territories (Renewable Government Leases) Ordinance*. The effect of the Basic Law on the duration of Government lease terms (Articles 120, 121 and 123 of the Basic Law) and the *Government Leases (Extension) Ordinance*. Case law on user restrictions in Government leases, waiver by Government of restrictions in Government leases, express waiver, waiver by conduct and estoppel.

**6. Deeds of Mutual Covenant**

The subdivision of land into undivided shares, the reallocation of undivided shares, the need for a deed of mutual covenant and the parties, the passing of the benefit and burden of covenants in respect of multi-storey buildings, the enforcement of covenants in a deed of mutual covenants under ss 39, 40 and 41 *Conveyancing and Property Ordinance*.

**7. The Small House Policy**

Private grants of land, free building licenses, certificates of exemption under the *Buildings Ordinance (Application to New Territories) Ordinance* Cap 121, restrictions on dealing.

**8. Chinese Customary Trusts over Land**

The nature and purpose of Tsos and Tongs, recognition of them under the *New Territories Ordinance* Cap 97, the rule against perpetuities applied to tongs and tsos, the entitlement to tong and tso land, the alienability of tong and tso land, the management of tongs and tsos.

**9. Introduction to the *Land Titles Ordinance* Cap 583**

(not applicable to the 2007 examination)

Conversion for new land and existing land, caveats and cautions, registrable interests and overriding interests, the effect of registration, security of title and indemnity.

## **Reading List for Hong Kong Land Law**

### **Texts**

Sarah Nield, *Hong Kong Land Law*, 2<sup>nd</sup> edition, Longman, 1996

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