Course Title: The Hong Kong Basic Law

| Course Code: | C C L W 4 0 0 3 |  |

### Aims and Objective

This course covers:

1. the status of the Hong Kong Basic Law in relation to other laws in Hong Kong and China;
2. the structure of the Hong Kong Basic Law and the key provisions in each of its chapters;
3. the issues that have caused the most controversy in the implementation of the Hong Kong Basic Law.

This course acts as a foundation block for the study of the other courses in the programme, since it covers general principles relating to the Hong Kong Basic Law and Hong Kong’s constitutional framework that are necessary for the study of all areas of law. Through the in class exercises and other assessment activities, students will need to develop an awareness of this legal framework through which all other laws pass. The assessment activities aim to provide the students with the opportunity to reflect upon the historical background through which this framework was created and to describe key features of the system as it exists today, with particular emphasis on important case law and relevant recent developments.

### Intended Learning Outcomes of the Course

On completion of the course, students should be able to

- **ILO1.** identify the common characteristics of constitutional documents around the world, and discuss to what extent the Hong Kong Basic Law shares similar characteristics;
- **ILO2.** identify the key features of the autonomy granted to Hong Kong under the Hong Kong Basic Law, and compare these with the autonomy granted to other localities elsewhere in China and the rest of the world;
- **ILO3.** explain the concept of “one country, two systems,” by reference to specific provisions in the Hong Kong Basic Law;
- **ILO4.** explain how civil liberties are protected under the Hong Kong Basic Law, and in what circumstances they can be restricted;
- **ILO5.** explain the governmental structure under the Hong Kong Basic Law, including concepts such as “separation of powers” and “executive-led government”;  
- **ILO6.** explain the role of the courts under the Hong Kong Basic Law, with particular reference to the Court of Final Appeal’s power of final adjudication;
- **ILO7.** explain the difference between the power of final adjudication in court cases and the power of final interpretation of the Hong Kong Basic Law, and the practical significance of this distinction.

### Syllabus

1. Understanding the historical origins of the Basic Law
   - Evolution of the “one country, two systems” concept and its enshrinement in the Joint Declaration
   - The Basic Law’s relationship with the Joint Declaration
   - Discussion of the Joint Declaration’s legal status and how much relevance it still has today

2. Understanding the constitutional origins of the Basic Law
   - Background to the Chinese constitution and its status as the authority for all laws in China
   - Explanation of the enactment of Article 31 to permit one country, two systems
   - Discussion of the contradictions between parts of the Chinese constitution and the Basic Law and the problems this may pose
3. Understanding the status of the Basic Law within the Chinese legal system
   • Meaning of the term “basic law” in the Chinese legal system
   • Hierarchy of laws in the Chinese legal system
   • Role of the National People’s Congress (NPC) and its Standing Committee (NPCSC)

4. The Basic Law and the Hong Kong legal system
   • Provisions on which laws apply in Hong Kong
   • National laws and the Basic Law: balancing one country and two systems
   • Provisions limiting the jurisdiction of the Hong Kong courts

5. Understanding Beijing’s main powers under the Basic Law
   • The meaning of a “high degree of autonomy”
   • Foreign affairs and defense
   • Brief introduction to NPCSC’s power of interpretation

6. The importance of interpretation
   • Interpretation of laws under the Chinese legal system
   • Applying Chinese legal principles of interpretation to the Basic Law
   • NPCSC interpretations since 1997
   • Hong Kong court’s power of interpretation

7. The role of the Bill of Rights in protecting human rights
   • Historical background to its enactment
   • Status of Bill of Rights before July 1, 1997
   • Changes to the Bill of Rights after July 1, 1997

8. The role of the Basic Law in protecting human rights
   • Importance of Article 39
   • How far can human rights be limited under the Basic Law?
   • Development of proportionality principle
   • Discussion of key cases on human rights

9. Political Structure under the Basic Law
   • Separation of Powers and Executive-led Government
   • The Chief Executive’s powers and dual constitutional responsibilities
   • Powers of the Legislative Council
   • Checks and Balances between executive, legislature and judiciary

10. The Judiciary under the Basic Law
    • Continuity of pre-1997 judicial system
    • Establishment of Court of Final Appeal
    • Limits on the Judiciary

**Assessment**

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<th>Type of Assessment(Weighting)</th>
<th>Description</th>
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<tr>
<td>Continuous Assessment (50%)</td>
<td>In-class exercise (10%)</td>
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<tr>
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<td>Reading and research exercise (20%)</td>
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<td>Essay assignment (20%)</td>
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<td>Examination (50%)</td>
<td>Written Examination (50%)</td>
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**Pre-requisite(s)**

Nil
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19.6.2018