Course Title: The Hong Kong Basic Law

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.

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 powers granted to the Legislative Council under the Hong Kong Basic Law, and how these operate in practice;
ILO7. 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;
ILO8. 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, with particular reference to the Garrison Law
   - Brief introduction to NPCSC’s power of interpretation

6. The Article 23 Controversy: Testing the limits of one country, two systems
   - How national security is protected under the Chinese legal systems
   - How national security is protected under the Basic Law, and how this changed during its drafting
   - The controversy over the National Security (Legislative Provisions) Bill in 2003
   - Comparison of government’s proposals with existing laws on national security

7. The most basic right: Right of Abode
   - Importance of right of abode under the Basic Law and distinction from Chinese citizenship
   - Role of Joint Declaration in determining right of abode provisions
   - The controversy over the Ng Ka Ling case
   - Discussion of the Chief Executive’s request for an interpretation from the NPCSC
   - Other right of abode court judgments

8. The importance of interpretation
   - Interpretation of laws under the Chinese legal system
   - Applying Chinese legal principles of interpretation to the Basic Law
   - Interpretation in practice: The NPCSC interpretations of 1999 and 2004
   - Hong Kong court’s power of interpretation

9. 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

10. 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?
    - Discussion of Wong Yeung Ng case on freedom of publication
    - Discussion of Ng Kung Siu case on defacing national flag
11. The Basic Law and an Executive-led political structure
- Influence of the Westminster and U.S. models in formulating a political structure under the Basic Law
- The Chief Executive’s powers and dual constitutional responsibilities
- Checks and Balances between executive, legislature and judiciary

12. The Judiciary and Legislature under the Basic Law
- Continuity of pre-1997 judicial system
- Establishment of Court of Final Appeal
- Limits on the role of the Legislative Council

13. Recent Developments
- Introduction of accountability system
- Constitutional development after 2007

### Assessment

<table>
<thead>
<tr>
<th>Type of Assessment (Weighting)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuous Assessment (50%)</td>
<td>In-class exercise</td>
</tr>
<tr>
<td></td>
<td>Additional reading</td>
</tr>
<tr>
<td></td>
<td>Course assignment</td>
</tr>
<tr>
<td>Examination (50%)</td>
<td>Written Examination</td>
</tr>
</tbody>
</table>

### Pre-requisite(s)
Nil

### Required and Recommended Reading

2. Danny Gittings, *An Introduction to the Hong Kong Basic Law* (Hong Kong University Press, 2009)
3. The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (One Country Two Systems Economic Research Institute (or other editions).
4. Newspaper extracts, selected cases.

04.07.2016