

Syllabus and Reading Lists for the Examination

<u>Paper</u>	<u>Subject</u>	<u>Pages</u>
I	Contract	6
	Tort	8
II	Property Law (including Real and Personal Property) and Conveyancing	10
	Equity (including the Law of Trusts)	14
III	Criminal Law	18
	Criminal Procedure	21
	Criminal Evidence	25
IV	Hong Kong Legal System	27
	Constitutional and Administrative Law	30
	Company Law	35
V	Civil Procedure and Civil Evidence	40
	Professional Conduct	44
	Advocacy	46

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- Applicants should ensure that later editions have not superseded those indicated.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:

Cheshire, Fifoot and Furmston *Law of Contract* (16th ed. OUP, 2012)

Chitty on Contracts (32nd ed. Sweet & Maxwell, 2015), Vol. 1 and Hong Kong Specific Contracts (4th ed. Sweet & Maxwell Asia 2014)

Contract Law in Hong Kong (Sweet & Maxwell Asia, 2011)

Hall *Law of Contract in Hong Kong: Cases and Commentary* (3rd. ed. LexisNexis HK, 2011)

Treitel *Law of Contract* (14th ed. Sweet & Maxwell, 2015)

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 and Nuisance* (5th ed. LexisNexis UK, 2011)
Clerk & Lindsell on Torts (21st ed. and 1st Supplement, Sweet & Maxwell, 2015)
Charlesworth & Percy on Negligence (13th ed. and 1st Supplement, Sweet & Maxwell, 2015)
Glofcheski *Tort Law in Hong Kong* (3rd ed. Sweet & Maxwell Asia, 2012)
Tort Law and Practice in Hong Kong (3rd ed. Sweet & Maxwell Asia, 2014)
Winfield & Jolowicz *Tort* (19th ed. Sweet & Maxwell, 2014)

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* (12th ed. Pearson Education, 2010)

Bridge *Personal Property Law* (4th ed. OUP, 2015)

Bridge, Gullifer, McMeel and Worthington *The Law of Personal Property* (1st ed. Sweet & Maxwell, 2013)

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

Goo and Lee *Land Law in Hong Kong* (4th ed. LexisNexis, 2015)

Megarry & Wade *The Law of Real Property* (8th ed. Sweet & Maxwell, 2012)

Merry, Malcolm *Hong Kong Tenancy Law* (5th ed. LexisNexis, 2010)

Merry & Kent *Building Management in Hong Kong* (2nd ed. LexisNexis, 2008)

Nield, Sarah *Hong Kong Land Law* (2nd ed. Longman Asia, 1997)

Nield, Sarah *The Hong Kong Conveyancing and Property Ordinance* (Butterworths Asia, 1988)

Nield & Da Roza *Hong Kong Conveyancing and Property Law Handbook* (3rd ed. LexisNexis, 2007)

Sheehan, Duncan *The Principles of Personal Property Law* (Oxford: Hart Publishing, 2011)

Sihombing and Wilkinson *H.K. Conveyancing Law and Practice* (LexisNexis)

Sihombing and Wilkinson *A Guide to Hong Kong Conveyancing* (7th ed. LexisNexis, 2014)

Sihombing and Wilkinson *A Student's Guide to Hong Kong Conveyancing* (6th ed. LexisNexis, 2011)

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:

P Davies & G. Virgo *Equity and Trusts: Text, Cases and Materials* (OUP, 2013)

Hanbury & Martin *Modern Equity* (20th ed. Sweet & Maxwell, 2015)

Hayton & Mitchell *Text, Cases and Materials on the Law of Trusts & Equitable Remedies* (14th ed. Sweet & Maxwell, 2015)

Lewin on Trusts (19th ed. with 1st Supplement, Sweet & Maxwell, 2015)

M. Merry *Are Tsos Really Trusts?* (2012) 42 HKLJ 669

Snell's Equity (33rd ed. and 1st Supplement, Sweet & Maxwell, 2015) (for reference)

Spry *Principles of Equitable Remedies* (9th ed. Thomson Reuters Australia, 2013)

Underhill and Hayton *Law of Trusts and Trustees* (18th ed. LexisNexis, 2010)

G. Virgo *The Principles of Equity & Trusts* (2nd ed. OUP, 2016)

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

Standards

Candidates will be expected to be knowledgeable in the principles of criminal liability as set out below.

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. Classification of Offences**

6. Preparatory Offences

- Conspiracy
- Incitement
- Attempt

7. Specific Crimes

- Murder
- Manslaughter
- Assault
- Sexual offences
 - (a) rape
 - (b) indecent assault
 - (c) incest
 - (d) unlawful sexual intercourse
- 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 including fraud
 - (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, including dealing with proceeds of indictable offences

Recommended Reading Materials

Books:

Archbold Hong Kong 2016 *Criminal Pleading, Evidence & Practice* (Sweet & Maxwell Asia)

Arlidge & Parry *Fraud* (4th ed. Sweet & Maxwell, 2013)

Ian McWalters SC *Bribery & Corruption Law in Hong Kong* (3rd ed. LexisNexis, 2015)

Legislation:

Complex Commercial Crimes Ordinance (Cap. 394)

Crimes Ordinance (Cap. 200)

Dangerous Drugs Ordinance (Cap. 134)

Organised and Serious Crimes Ordinance (Cap.455)

Prevention of Bribery Ordinance (Cap. 201)

Theft Ordinance (Cap. 210)

Offences Against the Person Ordinance (Cap. 212)

CRIMINAL PROCEDURE

Standards

Candidates will be expected to be knowledgeable in:

- (i) principles of evidence in criminal proceedings;
- (ii) the drafting of notices of appeal, and advices; and
- (iii) 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**
 - Police powers
- 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
 - Committals 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**
 - See Criminal Evidence syllabus
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 2016 *Criminal Pleading, Evidence & Practice* (Sweet & Maxwell Asia)

Blackstone *Criminal Practice* (OUP, 2016)

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

Cross and Cheung *Sentencing in Hong Kong* (7th ed. LexisNexis, 2015)

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

Knight, C. and Upham, A. R. *Criminal Litigation in Hong Kong* (3rd ed. Sweet & Maxwell Asia, 2011)

Hong Kong Criminal Procedure Handbook (3rd ed. LexisNexis, 2008)

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)

Organised and Serious Crimes Ordinance (Cap.455)

The Secretary for Security's "Rules and Directions for the Questioning of Suspects and the Taking of Statements" 1992

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)

The "Statement of Prosecution Policy and Practice", Department of Justice

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. 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/persuasive burden
 - Criminal 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. Witnesses (4) – Overseas**
 - S.73 and 74 of the Evidence Ordinance
- 9. Course of evidence**
 - Rule against prior inconsistent statements
 - Refreshing memory
 - Hostile witnesses
 - Prior inconsistent statements
 - Collateral questions

- Evidence in rebuttal
- 10. Opinion evidence**
 - Non-expert opinion evidence
 - Expert opinion evidence
 - Ultimate issues
- 11. The Rule against Hearsay**
 - Development of the rule and rationale
 - General principles
 - Exceptions
- 12. Admissions and Confessions**
 - Definitions
 - Oppression
 - Voluntariness
 - Unreliability
 - Implication of co-accused
 - Derivative evidence
 - Mixed statement rule
 - Residual discretion
 - Lies and the Lie Direction
- 13. Evidence unfairly or illegally obtained**
 - The common law
 - Statute
 - Human rights
 - Judicial discretion as to
- 14. Privilege**
 - General principles
 - Legal professional privilege
 - Privilege against self-incrimination
 - Marital privilege

Recommended Reading Materials

Books:

Bruce and McCoy *Criminal Evidence in Hong Kong* (3rd ed. LexisNexis, 1996 onwards)

Cross on Evidence (*LexisNexis NZ, 2005*)

Hong Kong Evidence Law Handbook (3rd ed. LexisNexis Butterworths, 2009)

Colin Tapper, *Cross and Tapper on Evidence* (12th ed. OUP, 2010)

Legislation:

Criminal Procedure Ordinance (Cap. 221)

Evidence Ordinance (Cap. 8)

Hong Kong Law Reports

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
 - The Municipal Services Appeals Board
 - The Town Planning Appeal Board
 - The Torture Claims Appeal Board

7. **Doctrine of Stare Decisis and Binding Precedents**
8. **Jury System**
 - Principle of trial by jury under Article 86 of the Basic Law
 - Juries in criminal trials
9. **Arbitration and Mediation**
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

Recommended Reading Materials

Books and Other Materials:

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

Stefan H C Lo & Wing Hong Chui *The Hong Kong Legal System* (McGraw-Hill Education (Asia), 2012)

Sir Anthony Mason, "The Role of the Common Law in Hong Kong", in *The Common Law Lecture Series 2005* (Faculty of Law, The University of Hong Kong, 2006) pp. 1-26

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)

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

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)

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**
 - The importance of interpretation and the mode of interpretation
 - The Scheme of 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
 - Judgement previously rendered shall not be affected.
 - Role of the Basic Law Committee
 - Principles of and approach to interpretation
- 5. The Constitutional Roles of the Chief Executive, the Government of the HKSAR, the Legislature, and the Judiciary**
 - The political structure
 - The office of the Chief Executive
 - The Government of the HKSAR
 - Powers and functions
 - The Legislative Council
 - Powers and functions
 - Restrictions on law making process
 - Supervision of Executive
 - Impeachment powers
 - The Judiciary
 - Independent judicial powers including powers of final adjudication
 - Limits to jurisdiction
- 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**
 - Scope of judicial review
 - Jurisdiction

- The doctrine of ultra vires
 - Abuse of discretion or jurisdiction
- 9. Procedural Requirements and Fairness**
- Legitimate expectations
 - Obligation to give reasons
 - Breach of natural justice
 - Bias
 - Fair hearing
- 10. Remedies**
- Certiorari and prohibition
 - Mandamus, declarations and injunctions
 - Damages
 - Constitutional remedies:
 - Declaration of invalidity
 - Remedial interpretation
 - Suspension of declaration
 - Prospective overruling
- 11. Practice and Procedure for Application for Judicial Review**
- Leave to apply for Judicial Review
 - Time limits for application and delay
 - Standing
 - Exhaustion of remedies
 - Intervention
 - Remedies
- 12. Habeas Corpus**
- The writ of habeas corpus
 - Procedure

Recommended Reading Materials

Books: Hong Kong

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

Johannes Chan & Chin Leng Lim *Law of the Hong Kong Constitution* (2nd ed. Sweet & Maxwell Asia, 2015)

Yash Ghai *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (2nd ed. HKU Press, 1999)

Danny Gittings *Introduction to the Hong Kong Basic Law* (HKU Press, 2013)

Richard Gordon QC & Johnny Mok SC *Judicial Review in Hong Kong* (2nd ed. LexisNexis, 2014)

Stefan H C Lo & Wing Hong Chui *The Hong Kong Legal System* (McGraw-Hill Education (Asia), 2012)

P.Y. Lo *The Hong Kong Basic Law* (LexisNexis, 2011)

P.Y. Lo *The Judicial Construction of Hong Kong's Basic Law* (HKU Press, 2014)

Ramsden & Jones *The Hong Kong Basic Law Annotations and Commentary* (Sweet & Maxwell Asia 2010)

Swati, Ramsden & Scully-Hill *Hong Kong Administrative Law* (2nd ed. LexisNexis 2013)

Books: Other

De Smith *Judicial Review* (7th ed. and 2nd Supplement, Sweet & Maxwell, 2015)

Wade & Forsyth *Administrative Law* (11th ed. OUP, 2014)

Articles

Albert Chen, "The interpretation of the Basic law – common law and Mainland Chinese perspectives" (2000) 30 HKLJ 380

Albert Chen, The Rule of Law under "One Country, Two Systems": The Case of Hong Kong 1997-2010, (2011) 6(1) National Taiwan University Law Review 269

(2007) 37 (Special Anniversary Issue) *Hong Kong Law Journal* (articles by Sir Anthony Mason, the Hon. Wong Yan Lung, Denis Chang, Yash Ghai, Johannes Chan. Po Jen Yap, Benny Tai and Wang Zhenmin and Ling Bing)

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 15th Session of the Standing Committee of the Tenth National People's Congress on 27 April 2005)

Interpretation of Paragraph 1, Article 13 and Article 19 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 by the Standing Committee of the Eleventh National People's Congress at Its 22nd Session on 26 August 2011)

Chief Executive Election Ordinance (Cap. 569)

District Court Ordinance (Cap. 336)

Electoral Affairs Commission Ordinance (Cap. 541)

Rules of the High Court, Order 53 and Order 54

Hong Kong Bill of Rights Ordinance (Cap. 383)

Legislative Council Commission Ordinance (Cap. 443)

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

Private Bills Ordinance (Cap. 69)

Landmark Cases:

- Ng Ka Ling (No 1) (CFA)
- Ng Ka Ling (No 2) (CFA)
- Lau Kong Yung (CFA)
- Ng Kung Shiu (CFA)
- Chong Fung Yuen (CFA)
- Shum Kwok Sher (CFA)
- Solicitor v Law Society of HK (Secretary for Justice, intervener) (2003) (CFA)
- Leung Kwok Hung v HKSAR (CFA)
- Po Fun Chan v Winnie Cheung (CFA)
- Lam Kwong Wai (CFA)
- Koo Sze Yiu (CFA)
- Yau Yuk Lung (CFA)
- Lam Siu Po (CFA)
- Anderson Asphalt Ltd v Secretary for Justice (CFI)
- Democratic Republic of the Congo v FG Hemisphere Associates LLC (CFA)
- Fok Chun Wah (CFA)
- Re Leung Kwok Hung FAMV 22/2012(CFA)
- Ubamaka (CFA)
- Vallejos & Domingo (CFA)
- Kong Yunming v Director of Social Welfare (CFA)
- GA v D of Immigration FACV 7 – 10/2013 (CFA)
- Leung Kwok Hung v The President of the Legislative Council of the HKSAR & SJ FACV 1/2014 (CFA)

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
- unlimited companies with share capital
- non-Hong Kong companies
- specified corporations

(b) **Incorporation**

- consequence of incorporation
- registration
- continuing requirements
- powers and functions of Registrar of Companies (Part 2, CO)
- dissolution, deregistration and restoration

(c) **Company Articles**

- content and effect
- model articles
- alteration
- distinction between objects, powers and regulations

(d) **Share Capital**

- abolition of par value
- issued capital
- share capital v. loan
- classes of shares and class rights (ss.176-192 CO)
- reduction of capital
- share redemptions and buy-backs
- financial assistance

- (uniform) solvency test (s.205 CO) and solvency statement (s.206 CO)
- (e) Membership**
 - subscribers and shareholders
 - transfer of shares
 - transmission of shares
 - common incidence of share ownership
 - valuation of shares
 - meeting of shareholders (constitution and conduct)
 - resolutions of shareholders' meeting
- (f) Management**
 - corporate governance
 - relations between directors and members
 - responsible person (s.3 CO)
- (g) Directors**
 - nature of directorship
 - natural v. corporate directors
 - types of directorship (incl. *de facto* and shadow directors)
 - qualification and disqualification
 - appointment and removal
 - powers of directors
 - duties
 - statutory duties of care, skill and diligence (ss.465-466)
 - common law duties
 - Fiduciary duties
 - fair dealing by directors
 - meeting of directors (notice, constitution, conduct, resolutions)
 - dealings with third parties and binding transactions (s.117 CO)
 - attribution
 - ratification of and remedies for breach of duties
 - relief from liabilities
- (h) Protection for Shareholders**
 - personal action
 - derivative action (common law and statutory)
 - petition on unfairly prejudicial conduct
 - just and equitable winding up
 - relations between shareholders' agreement, 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 statements and reports

3. Company Charges and Securities

- (a) Corporate Capacity and Director's Authority to Create Security**
 - general capacity (s.115 CO)
 - limitation by Articles

- (b) Debentures**
 - definition
 - debentures v. shares
 - 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
 - creditors' 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 (17th ed. LexisNexis, 2015)

Company Law in Hong Kong – Insolvency (2016 Update) (Sweet & Maxwell Asia, 2014)

Company Law in Hong Kong – Practice and Procedure (2016 Update) (Sweet & Maxwell Asia, 2014)

Stefan Lo & Dr. Qu *Law of Companies in Hong Kong* (2nd ed. Sweet & Maxwell Asia, 2015)

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

Stott *Hong Kong Company Law* (14th ed. Pearson Education Asia, 2015)

The New Companies Ordinance (Cap. 622) A Butterworths Hong Kong Handbook (LexisNexis, 2014)

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)

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

Briefing Notes on each Part and relevant commentary on the New Companies Ordinance (available from the Companies Registry website: http://www.cr.gov.hk/en/companies_ordinance)

Legislation:

Companies Ordinance (Cap. 622)

Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

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)

Other Books:

Rita Cheung *Company Law and Shareholders' Rights in Hong Kong* (LexisNexis, 2010)

Candidates should be aware that the new Companies Ordinance (Cap. 622) and the subsidiary legislation commenced operation on 3 March 2014.

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 and remedies in contract, tort, restitution and equity;
- (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, witness statements, statements of truth, 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. Underlying objectives of the rules of the High Court and District Court

- The underlying objectives
- Case management powers
- Use of alternative dispute resolution procedures such as mediation

4. Commencement and Progress of Proceedings

- Modes of originating process
- Modes of service
- Acknowledgement of service
- Service out of the jurisdiction
- Choice of forum and transfer

5. Pleadings and Particulars

- Their function
- Statement of claim
- Defence
- Counterclaim and/or set off
- Reply to Defence and Defence to Counterclaim
- Further and Better Particulars

- 6. 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
 - Case management summons and conference
 - Interrogatories and admissions
 - Witness statements
 - Expert reports
 - Case management and pre-trial review
 - Unless Order and relief from sanctions
- 7. Pre-emptive Remedies**
 - Interlocutory injunctions, interim preservation
 - Mareva injunctions
 - Anton Piller orders
 - Prohibition orders
- 8. Termination and Compromise**
 - Without prejudice rules
 - Offers to settle
 - Sanctioned offers and Sanctioned payments
 - Settlement agreements
 - Consent orders and judgments
 - Mediation and Alternative Dispute Resolution
- 9. Trial**
 - Preliminary issues
 - Organisation and conduct of trial
 - Trial by judge or a master
 - Review of judgment and liberty to apply
- 10. Judgment and Enforcement**
 - Orders, accounts and enquiries
 - Oral examination
 - Injunctions and prohibition orders in aid of enforcement
 - Receivers: equitable execution
 - Committal and sequestration
 - Garnishee orders, charging orders, writs of execution; writs of possession
- 11. Evidence**
 - Notice to admit and produce
 - Affidavits and witness statements
 - Statements of truth
 - Writs of subpoena
 - Hearsay evidence
 - Expert evidence
 - Depositions
 - Court experts

12. Costs

- Entitlement and discretion
- Bases and scales
- Wasted Costs Order
- Costs on interlocutory applications and of trial and appeal
- Summary assessment of costs

13. Appeals

- Appeals to a judge in chambers
- Appealing a judgment
- Appeals to the Court of Appeal
- Appeals to the Court of Final Appeal
- Stay of execution pending appeal
- Security for cost of appeal
- Admission of fresh evidence on appeal

Recommended Reading Materials

Books:

Essential:

Hong Kong Civil Procedure 2016 (Sweet & Maxwell Asia)

Hong Kong Civil Justice Reform Practice Manual (2nd ed. Sweet & Maxwell Asia 2010)

Recommended:

Clarke *Hong Kong Civil Court Practice 2016 Desk Edition* (LexisNexis)

Halsbury's Law of Hong Kong, Vol. 5 Civil Procedure (Lexis Nexis)

Dave Lau *Civil Procedure in Hong Kong: A Guide to the Main Principles* (3rd ed. Sweet & Maxwell Asia, 2014)

Allan Leung and Douglas Clark *Civil Litigation in Hong Kong* (4th ed. Sweet & Maxwell Asia, 2012)

P.Y. Lo *Hong Kong District Court Practice* (3rd ed. LexisNexis, 2015)

Wilkinson, Cheung and Meggitt *A Guide to Civil Procedure in Hong Kong* (5th ed. LexisNexis, 2015)

Recommended (other):

Bullen & Leake & Jacob's Precedents of Pleadings (18th ed. Sweet & Maxwell, 2015)

O'Hare & Browne *Civil Litigation* (17th ed. Sweet & Maxwell, 2015)

C. Hollander *Documentary Evidence* (12th ed. Sweet & Maxwell, 2015)

Sime S.A. *A Practical Approach to Civil Procedure* (18th ed. OUP, 2015)

Stone and Brock *Commercial Litigation in Hong Kong, A Practical Guide* (Sweet & Maxwell, 2012)

Legislation:

Essential:

Evidence Ordinance (Cap. 8)

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 & Wales 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 Civil Justice Reform came 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. Practice Promotion**
- 5. 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
- 6. Authorities of Counsel**
 - Express authority
 - Implied authority
 - Limitations upon counsel's authority
- 7. 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
- 8. Fees**
 - Charging basis
 - Brief fee
 - Refreshers
 - Negotiation of fee

- Payment arrangements

9. Discipline

- Powers of the Bar Council
- Disciplinary Tribunal

Recommended Reading Materials

Books:

Wilkinson & Sandor *The Professional Conduct of Lawyers in Hong Kong Desk Edition* (LexisNexis, 2014)

Professional Conduct and Risk Management in Hong Kong (Sweet & Maxwell Asia 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
- Requirements 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**
 - Voir Dires
 - Submissions of no case to answer
 - Opening speeches in civil and criminal cases
 - Closing speeches in civil and criminal cases
 - Juries
 - Matters to note when prosecuting versus defending
9. **Evidence in Chief**
 - Do's and don'ts
 - Organisation and preparation
 - 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* (3rd ed. LexisNexis, 2007)

Legislation:

Legal Practitioners Ordinance

Other reference materials:

Hong Kong Bar Association Circulars

Practice Directions [1999] HKLRD (PD)

Other texts:

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

Michael Hyam *Advocacy Skills* (4th ed. OUP, 2001)

Mauet & McCrimmon *Fundamentals of Trial Technique* (3rd ed. Thomson Reuters Australia, 2011)

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

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