



The Hong Kong University of Science and Technology  
School of Engineering  
Spring 2022 - 2023  
CONSTRUCTION LAW AND CONTRACT ADMINISTRATION  
CIVL 4270

Teacher and Course Convener: Dr. Arthur McInnis	Mobile: 9520-4295 E-mail: ceamcinnis@ust.hk arthur.mcinnis@gmail.com c/o Room 3575, Main Academic Building, HKUST
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INFORMATION ABOUT CLASSES:

The classes will be held as per the schedule and teaching timetable for the second semester.

PREREQUISITES:

There are no prerequisites for this course.

READINGS MATERIALS:

A course pack will be provided with all the assigned readings.

REFERENCE MATERIALS:

If you have a special interest in this area though and wish to refer to the texts some of our readings came from or just want to refer to more materials I would recommend any of these:

- G Soo (prior editions with T Cheng, with E Wong and A McInnis) *Construction Law and Practice in Hong Kong*, Thomson, 4th Edition. This serves as a general reader for the subject and is one of the few local texts. Broad coverage with a reasonable divide between the law and practice sides.
- J Murdoch, W Hughes and R Champion. *Construction Contracts: Law and Management*, Taylor and Francis, 5<sup>th</sup> edn. Routledge. This is another good text but from the UK. I like this because of how it brings construction management into the subject.
- A McInnis, Gen Editor, *Emden's Construction Law Hong Kong*, Lexisnexis, Hong Kong, 2 volumes, looseleaf. This is my main work which covers the field in real detail and with an obvious emphasis upon the law. It is the original construction law textbook in England dating to 1882 though this edition is thankfully a little more up to date!

- A. Mak, *Butterworths Building Law Handbook*, Butterworths. 5<sup>th</sup> Edition. Very good on the building legislation (e.g. the Buildings Ordinance) in Hong Kong. The first and second editions were by McInnis.
- A McInnis, *The New Engineering Contract*, Thomas Telford. "Very good" coverage of this leading international standard form of contract now in use in Hong Kong. I am currently working on a second edition with a UK barrister, Michael Curtis, QC of Crown Office Chambers.
- S Furst *et al*, *Keating on Building Contracts*, 11<sup>th</sup> edn. Sweet & Maxwell. The first (no pun intended) of three leading UK texts on the subject and overseen by prominent London construction barristers.
- Atkin Chambers, *Hudson's Building and Engineering Contracts*, 14<sup>th</sup> edn. Sweet & Maxwell. The second of the leading UK texts. Another text put out by well-known London construction barristers. Both *Keating* and *Hudson* have supplements and are. Hardback while Emden's issues updates and is online.
- S Hoffman, *The Law and Business of International Project Finance*, 3<sup>rd</sup> edn, Kluwer. A very good resource with sound practical overview of the subject.
- F Pretorius, P Lejot, McInnis *et al*, *Project Finance for Construction & Infrastructure. Principles and Case Studies*. 2008. Blackwell. This text is still used in the UK for built environment students. Covers public private partnerships as well. Helpful case studies including the Western Harbour Crossing.
- M Jeffries and S Rowlinson, *Public-Private Partnerships and relationship-based procurement approaches*, 2016, Routledge. The most comprehensive look at how these two go together. Rowlinson had his career at HKU in Real Estate and Construction.
- *Arbitration in Hong Kong: A Practical Guide*, 3<sup>rd</sup> edn. Sweet & Maxwell, Hong Kong. Good overview by local practitioners.
- *Construction Dispute Resolution Handbook*, 2<sup>nd</sup> edn. Keating Chambers, ICE Publishing. Very practical.
- James Pickavance, *A Practical Guide to Construction Adjudication*, 2015. Wiley Blackwell. One of the best texts on the subject. It covers the UK but also has chapters on Australia, Malaysia, New Zealand and Singapore which have all passed security of payment legislation now like HK will.
- *Hong Kong Law Reports*. This is the official set of law reports for Hong Kong. Sweet & Maxwell. The other leading set of law reports is *Hong Kong Cases* by Lexisnexis.
- *Building Law Reports*, Informa, Atkins Chambers edits, one of two leading report law reports in this area in the UK but also covering a small selection of cases from overseas including Hong Kong. The other set of UK law reports are the *Construction Law Reports* by Lexisnexis.
- *International Construction Law Review*, Informa, Humphrey Lloyd, Doug Jones eds. The leading international review on the subject.
- *The Construction Law Journal*, Sweet & Maxwell, Andrew Burr, ed. Cases and articles also with an international side.

#### AIMS:

The purpose of this course is to provide a complete introduction to the subject of construction law and practice in Hong Kong. It will consist of four main areas: (1) the construction process and the law with an introduction to the topic and its importance to the local economy; the parties engaged in the construction industry and their regulation; the forms of contract and procurement methods for construction services; (2) law in the context of construction contracts; (3) public private partnerships and international projects; and (4) dispute resolution in the construction industry.

## LEARNING OUTCOMES:

This course aims to address the following skills. By the end of the course, students should have:

1. Awareness of the subject of construction law as both a discipline and legal practice area.
2. Understanding of the historical, legal, contractual and theoretical frameworks for the subject.
3. Facility in dealing with construction claims and disputes on a construction project.

## ASSESSMENT:

- Final Exam. 70%. This will be a three-hour open book style exam. This means you may bring into the exam any of your own notes or any materials distributed in class or posted on the course website. You are not permitted to rely upon any books other than an English language dictionary. Sample questions will be posted and answered during the term to familiarize you with this style of exam. A marking rubric to give you the standards for assessment will also be posted.
- Case Brief. 20% You will be expected to submit a “case brief” on an unreported court judgment in the area of construction law. According to M Makdisi & J Makdisi, “How to write a case brief for law school,” excerpted from *Introduction to the Study of Law: Cases and Materials*, 2009, LexisNexis, “*Case briefs are a necessary study aid in law school that helps to encapsulate and analyze the mountainous mass of material that law students must digest. The case brief represents a final product after reading a case, rereading it, taking it apart, and putting it back together again. in addition to its function as a tool for self-instruction and referencing.*” Credit earned for the assignment will count towards the final grade. The deadline for submission of the case comment is the end of week 8. You will be provided with an outline of how a case brief may be written to assist you with samples and a marking rubric for the criteria against which it will be assessed.
- Short Answer Test. 10% You will be expected to take a short answer test up to 30 minutes in duration after the end of week 4 and at the beginning of the class in week 5 which will examine some legal and construction law terms. All the terms examined will be assigned in advance. Answers will be covered in review.
- The course convenor (me) will do all the marking in the course for both assignments and the final exam.

To pass this course you must obtain an aggregate mark of 50% overall.

To enable the full benefit to be obtained from this course, students should attend all the classes and activities. Assessment is intended to enable students to demonstrate their capacity to understand, analyze and apply rules and principles and to assess their ability to synthesize primary and secondary material and to solve construction law problems.

A 3-hour examination will be held during the University examination period. The examination is designed to assess students’ knowledge and understanding of the course. Students are expected to read the prescribed readings and revise those materials covered in class. Further information on the examination will be provided throughout the course including areas of emphasis and whether online.

There is no mark for participation; however, participation is actively encouraged, and I look forward to welcoming you into the classroom. The topics of study for the course are outlined below in four general parts. Students will be encouraged to take an active approach to their learning in both self-study and the classroom. Sharing experiences and views will be welcomed and may play an important part in your learning and development. Students are encouraged to form study groups and work together online in the course as research has shown that co-operative peer learning enhances academic achievements through clarification of concepts, discussion of ideas, generation of approaches and problem-solving.

Students are advised to complete the assigned readings in real time to maximize your learning in the classroom. For purposes of the course additional readings may improve your overall result and is always encouraged though not expected.

The course convener's (my) role in class is to lecture, inform and facilitate understanding of and interest in the subject matter as well as to raise questions. It is also to underscore just how important law is to the practice of civil engineering. Whether you know it or not just yet many of you will become de facto lawyers in your careers.

#### SUBMISSION POLICY:

The written materials that might be submitted during the course will be done so electronically and will be checked for plagiarism using the *Turnitin* system. Students are referred to the relevant regulations regarding the submission of all work and academic honesty below.

#### ACADEMIC HONESTY:

The University is a community designed for scholarship - for learning, teaching and research. In a community of scholars, academic integrity and honesty are of course critical values. Further, exams, homework, papers and other kinds of assessments are essential to the learning process and honesty and integrity are central to them and your studies. As you know you are bound by the Academic Honor Code which requires among other things that you observe and uphold the highest standards of academic integrity and honesty in all the work that you do in the course and that as members of the University community you have the responsibility to help maintain our academic reputation. Thus, the University takes a strict view on this and as a result if you are found to have infringed the Honor Code sanctions will be imposed. See <https://registry.hkust.edu.hk/resource-library/academic-honor-code-and-academic-integrity>

#### TOPICS OF STUDY IN FOUR PARTS:

1. The construction process and the law.
  - an introduction to the topic of construction
  - the forms of contract and procurement methods for construction services
  - the NEC form of contract
  - an NEC case study
2. Law in the context of construction contracts.
  - money

- time
- construction claims – part 1
- construction claims – part 2

### 3. Public private partnerships and international projects

- Public Private Partnerships (PPP)
- Beijing No 4 Metro Subway Line

### 4. Dispute resolution in the construction industry.

- construction arbitration and alternative dispute resolution
- adjudication and Security of Payment

## OVERALL TIMETABLE

The Week	The Topics	Required Readings	Powerpoints
1	An Introduction to the Topic of Construction	Ch 1 <i>Construction Law and Practice in HK</i> (Cheng, Soo, Wong, McInnis); <i>Construction and Projects in Hong Kong</i> (Philip Nunn)	An Introduction to the Topic of Construction
2	The Forms of Contract and Procurement Methods for Construction Services	Ch 3 <i>Construction Law and Practice in HK</i> 3.001 to 3.024 and Ch 19 (above)	The Forms of Contract Today
3	The NEC Standard Form of Contract	<i>Relational Contracts – NEC in Perspective</i> , (Robert Gerrard)	The NEC
4	NEC Case Study	Two summaries of the Fuk Man Road Project in Sai Kung	Fuk Man Road
5	Money	Ch 15 <i>Construction Law and Practice in HK</i> (above)	Money
6	Time	Ch 16 <i>Construction Law and Practice in HK</i> (above)	Time
7	Construction Claims Part 1	Claims and Damages, <i>Emden's Construction Law</i>	Construction Claims

		<i>Hong Kong</i> (McInnis and Adams)	
8	Construction Claims Part 2	Same	Construction Claims
9	Public Private Partnerships	Efficiency Unit Hong Kong, <i>An Introductory Guide to PPPs</i> , excerpts	Public Private Partnerships
10	The Beijing No 4 Metro Subway Line Case Study	Zheng Chang, <i>Public-private partnerships in China: A case of the Beijing No 4 Metro Line</i> , Transport Policy 30(2013) 153-160	
11	Construction Arbitration and Alternative Dispute Resolution	Ch 21 <i>Construction Law and Practice in HK</i> (above)	Construction Arbitration and ADR
12	Adjudication	Security of Payment Consultation Document Development Bureau Hong Kong June 2015	Adjudication
13	Review	as above	as above

#### EVALUATION OF TEACHING:

Students will be invited to complete an evaluation of teaching towards the end of the course.

#### CONCERNS AND QUESTIONS:

If you have any concerns or questions about the course, please contact the course convener. If your concerns persist, please contact the Program Leader Dr Jack Cheng.

Dr. Arthur McInnis, January 2023