

The Hong Kong University of Science and Technology
School of Engineering
2024 - 2025

CONSTRUCTION LAW AND CONTRACT ADMINISTRATION

CIVL 4270

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INFORMATION ABOUT CLASSES:

The classes will be held as per the schedule and teaching timetable for the second semester. This course could change your life. It is essentially only in the area of construction that non-lawyers can 'practice law'. How? Engineers and others in the built environment routinely draft contracts, prepare and defend claims, and appear as counsel, expert witnesses, arbitrators and now adjudicators in arbitrations and adjudications of construction cases. Hong Kong will enact legislation mandating adjudication of certain construction disputes this year after already stipulating it in the Hong Kong Government General Conditions of Contract (HKGCC). The Hong Kong Institution of Engineers is now an Adjudicator Nominating Body in Hong Kong and can appoint qualified engineers as adjudicators to decide certain construction disputes. These changes will significantly impact the practice of engineers on site and the career directions open to you and other engineers in Hong Kong. This course provides a timely and effective introduction to these recent changes as well as the ongoing move from the use of the HKGCC to the new Hong Kong version of the NEC4 Standard Form.

PREREQUISITES:

There are no prerequisites for this course.

READING MATERIALS:

All Readings, References and Powerpoint slides will be available on the Canvas course website.

AIMS: This comprehensive course in Construction Law and Practice 2024-2025 offers students a robust understanding of legal principles and their application in the construction industry as divided into four key areas:

1. **Construction Law and Practice:** Covers fundamentals, focusing on contracts and NEC4 and one case study.
2. **Law in Context:** Explores construction claims, including time and cost considerations under Hong Kong Government and NEC4 standard forms of contract and X29 Climate Change Option.
3. **Public Private Partnerships (PPPs):** Examines PPP structures in construction projects, including a Beijing Metro case study.
4. **Dispute Resolution:** Introduces all Alternative Dispute Resolution techniques, emphasizing the new Adjudication and Security of Payment legislation (2024) in Hong Kong.

The course aims to equip students with practical knowledge and skills essential for navigating the complex landscape of construction law, preparing them for real-world challenges and further qualifications in the field.

LEARNING OUTCOMES:

This course aims to address the following skills. By the end of the course, you 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. 50% (or 80%). 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.
- Mid-Term Exam. 30% You will have a one-hour mid-term exam in week 9 on a topic to be advised during classes beforehand. It will be a “help not hinder” exam which means that it will only count toward your final grade if it is higher in percentage terms than your final exam mark.
- One Short Answer Test. 10%. You will be expected to take one short answer test up to 20 minutes in duration in week 4 at the beginning of class. The topic will be advised during a class beforehand.

- Participation. 10%. This reflects attendance and your active learning during the course.
- Marking. The course convenor (me) will do all the marking in the course.
- Feedback. Feedback will be given on the assessments.

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

To enable the full benefit to be obtained from this course, you should attend all the classes and activities. Assessment is intended to enable you 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 1-hour examination and a three-hour examination will be held, one during the University examination period and one during the teaching term. The examinations are designed to assess aspects of your knowledge and understanding of the course and materials. You are expected to read the prescribed readings and revise those materials covered in class. You will not be assessed on materials designated 'Reference'. Further information on the examinations will be provided throughout the course including topics and areas of emphasis.

Attendance, participation and active learning are 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. You are encouraged to take an active approach to your 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. You 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.

You are advised to complete the assigned Readings in real time to maximize your learning in the classroom and peruse the recommended References. References in this course outline are not examinable.

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 yet some of you will become de facto lawyers in your careers.

SUBMISSION POLICY:

Any written materials including assessments that might be submitted during the course electronically will be checked for plagiarism using the *Turnitin* system. You 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> With regard to generative AI and the assessments you are not permitted to use it to produce any materials or content related to the mid-term exam and the final exam.

TOPICS OF STUDY IN FOUR PARTS:

1. CONSTRUCTION LAW AND PRACTICE

- Introduction to Construction Law and Practice
- Contracts and Standard Forms
- NEC4
- Fuk Man Road Case Study

2. LAW IN CONTEXT

- Construction Claims I: Preparation and Negotiation, Types and Assessment
- Time and Money under HKGCC
- Construction Claims II: Delay, Concurrent Delay, Prolongation and Disruption
- Payment and Compensation Events under NEC4

3. PUBLIC PRIVATE PARTNERSHIPS

- Mid-Term Exam One Hour, and Public Private Partnerships (PPP)
- Beijing No 4 Metro Subway Line

4. DISPUTE RESOLUTION

- Alternative Dispute Resolution
- Adjudication and Security of Payment

5. REVIEW

OVERALL TIMETABLE

Classes	Topics and Powerpoint Slides	Readings and References
1	Introduction to Construction Law and Practice	<p>“Hong Kong,” Haley, in Greenham, ed. <i>The International Compendium of Construction Contracts: A country by chapter review</i>, 2021, Reading</p> <p>“Construction and Projects in Hong Kong: Overview,” Starr, Ng and Tan, King & Wood Mallesons, <i>Practical Law</i>, 2021, Reading</p>
2	Contracts and Standard Forms	<p>“The Contract: the Foundation of Construction Projects,” Nadar, in Brekoulakis, ed. <i>Guide to Construction Arbitration Law</i>, 2017, Reading</p> <p>“Applying FIDIC Contracts in Hong Kong,” Bury and Mallis in <i>FIDIC Contracts in Asia Pacific</i>, 2021, Reading</p> <p>Technical Circular 32/2004, <i>Reference Guide on Selection of Procurement Approach and Project Delivery Techniques</i>, Development Bureau, 2004, Reference</p>
3	NEC4	<p><i>The NEC4 engineering and construction contract: A commentary</i>. Eggleston, 2019, Excerpt, Reading</p> <p>NEC4 Contract, and Supplement, Thomas and Lee, <i>Keating on Construction Contracts</i>, 2024, Excerpt, Reference</p> <p>Development Bureau, <i>Practice Notes for New Engineering Contract (NEC) – Engineering and Construction Contract (ECC) for Public Works Projects in Hong Kong</i>, July 2022, Reference</p> <p>“NEC4 ECC and ECC Hong Kong Edition compared – key differences, Knee-Robinson, December 2023,</p>

		Reference
4	Fuk Man Road Case Study	<p>“Hong Kong’s first public sector NEC contract: lessons learnt. Li, Luk, and Cheng, <i>Proceedings of the Institution of Civil Engineers-Management, Procurement and Law</i>, 2016, Reading</p> <p><i>Reference Materials NEC Case Book – Improvement of Fuk Man Road Nullah in Sai Kung</i>, CIC, 2016, Reading</p>
5	Construction Claims	<p>“Contractual Claims and Damages,” McInnis and Adams, <i>Emden’s Construction Law Hong Kong</i>, looseleaf, Reading</p>
6	Money and Time under HKGCC	<p>“Money,” and “Time,” Soo, <i>Construction Law and Practice in Hong Kong</i>, 2018, Reading</p>
7	Construction Claims II: Delay, Concurrent Delay, Prolongation and Disruption	<p>Same Reading as Week 5</p> <p><i>The Henry Boot Case: Valuations</i>, (slides, reference)</p>
8	Payment and Compensation Events under NEC4	<p>Payment Notes, Reading</p> <p>Compensation Events Notes, Reading</p> <p>“Payment”, Rawlinson, <i>A Practical Guide to the NEC4 Engineering and Construction Contract</i>, 2018, Reference</p> <p>“Compensation Events,” Rawlinson, <i>A Practical Guide to the NEC4 Engineering and Construction Contract</i>, 2018, Reference</p> <p>Dr Jon Broome, Managing Compensation Events Properly! (slides, reference)</p>
9	Public Private Partnerships	<p><i>An Introductory Guide to PPPs</i>, Efficiency Unit Hong Kong, 2008, Reading</p> <p>PPP Reference Guide, PPP Basics, World Bank,</p>

		2018, Reference
10	The Beijing No 4 Metro Subway Line Case Study	“Public-private partnerships in China: A case of the Beijing No 4 Metro Line,” Zheng Chang, <i>Transport Policy</i> 30, 2013, Reading
11	Alternative Dispute Resolution	<p><i>Reference Materials for Application of Dispute Resolution in Construction Contracts</i>, Construction Industry Council, 2015, Reading</p> <p><i>Guide to Conflict Avoidance & Dispute Resolution for the Construction and Engineering Industry</i>, ICE, RICS, RIBA, DRBF and CI Arb, 2012, Reference</p> <p>“ADR”, McInnis, Caldwell and Cohen, <i>Emden’s Construction Law Hong Kong</i>, looseleaf, Reference</p>
12	Adjudication and Security of Payment	<p><i>Adjudication Handbook for Security of Payment Provisions</i>, Society of Construction Law HK, and HKU, Faculty of Architecture, Dept of Real Estate and Construction, 2023, Reading</p> <p>Technical Circular, 06/2021, <i>Security of Payment Provisions in Public Works Contracts</i>, Development Bureau, 2021, Reference</p> <p><i>Proposed Security of Payment Legislation for the Construction Industry, Summary and Guide</i>, Development Bureau, 2015, Reference</p> <p>Adjudication,” McInnis and Curtis, <i>Emden’s Construction Law Hong Kong</i>, looseleaf, Reference</p>
13	Review	as above

EVALUATION OF TEACHING:

You 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 Professor Liman Zhang.