



School of Law

香港城市大學  
City University of Hong Kong

## POSTGRADUATE CERTIFICATE IN LAWS (PCLL) 2024-2025

### Corporate and Commercial Practice

\*\*\* PLEASE READ THIS COURSE GUIDE BEFORE ATTENDING LARGE GROUP 1 \*\*\*

### Course Guide

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This course is part of the Postgraduate Certificate in Laws Programme (PCLL). The overall aim of the PCLL is to prepare you:

- to enter the legal profession as a trainee solicitor or pupil barrister in Hong Kong;
- to understand and fulfil your professional responsibilities;
- to undertake a basic range of legal services commonly undertaken by trainee solicitors and pupil barristers and in the initial years of practice; and
- to manage your work efficiently and effectively.

Accordingly, when you complete the PCLL you should be able to:

- communicate at an advanced level, both verbally and in writing;
- obtain and act upon clients' instructions to achieve their objectives and provide practical solutions to their problems;
- organize and manage your work appropriately, and to meet deadlines;
- research and learn independently;
- demonstrate strategic and critical thinking in your work; and
- identify professional ethical issues which may arise in practice and deal with them appropriately.

## 1. The aim and course intended learning outcomes

The aim of *Corporate and Commercial Practice* is to prepare you to assist clients on the appropriate business structures and financing arrangements for their business ventures. We will consider the legal issues arising from the setting up to the dissolution of a business, and to analyse the relevant documentation therefor.

Accordingly, when you complete this course:

1. You should:
  - 1.1 have an understanding of what some typical business transactions involve;
  - 1.2 have learned some of the vocabulary that clients use when talking about business transactions and have a basic understanding of the key accounting and financial principles in business transactions;
  - 1.3 understand what clients expect their corporate lawyers to do for them;
  - 1.4 be able to identify legal issues which may arise in achieving clients' goals with respect to business transactions; and
  - 1.5 be able to apply the law to clients' circumstances to achieve their desired outcomes.
2. You should be able to resolve problems encountered in achieving clients' business objectives by identifying the legal issues involved and the option(s) that may be taken, and giving appropriate advice.
3. You should be able to review and draft certain basic documents used in the practice of corporate and commercial law.

## 2. Assessment

There will be a four-hour open book examination with a maximum mark of 100 at the end of the semester. The examination will contain problem-based questions, which may include short questions, skills exercises, letter writing, document analysis and drafting. To obtain a pass in this course, your mark must be at least 50.

## 3. Timetable of activities

Please note that the timing of the topics below is tentative and subject to adjustment throughout the course.

Date (2024)	Topics for Large Group
2 Sept	<p><b>Large Group 1</b> <b>Business Associations; Incorporation</b></p> <ul style="list-style-type: none"> <li>• Introduction – structure of course, housekeeping matters</li> <li>• Case study to be used throughout the course</li> <li>• Corporate lawyers' functions</li> <li>• Start of a business               <ul style="list-style-type: none"> <li>- choice of business form (sole proprietorship/ partnership/ company)</li> <li>- pre-formation considerations</li> <li>- forming a company limited by shares</li> </ul> </li> </ul>
5 Sept	<p><b>Large Group 2</b> <b>Corporate Governance</b></p> <ul style="list-style-type: none"> <li>• Articles of Association – model v. tailored</li> <li>• Role of various players in a company</li> <li>• Directors' duties and powers</li> <li>• How are decisions made in a company?</li> </ul>
9 Sept	<p><b>Large Group 3A</b> <b>Understanding Financial Statements</b></p> <ul style="list-style-type: none"> <li>• Accounting equation (assets, liabilities, equity, revenue and expenses) illustrated with listed company accounts</li> <li>• Accounting judgments and estimates made in the preparation of financial statements</li> <li>• Financial ratios and their use</li> </ul>
10 Sept	<p><b>Large Group 3B</b> <b>Understanding Financial Statements</b></p> <ul style="list-style-type: none"> <li>• Interpretation including ratios, year-on-year, trend analysis and benchmarking</li> <li>• Use of financial information in practice including financial covenants, reps and warranties</li> <li>• Valuating a Business: Discounted Cash flow Model</li> </ul>
16 Sept	<p><b>Large Group 4</b> <b>Types of shares; Issuance and transfer of shares; Shareholders Agreement</b></p> <ul style="list-style-type: none"> <li>• Bundle of rights</li> </ul>

	<ul style="list-style-type: none"> <li>• Adding new members</li> <li>• Transfer of shares</li> <li>• Common provisions in a Shareholders Agreement</li> <li>• Joint Ventures – resolving deadlocks</li> </ul>
23 Sept	<p><b>Large Group 5</b> <b>Negotiating simple agreements; Commercial writing and drafting</b></p> <ul style="list-style-type: none"> <li>• Different types of commercial agreements</li> <li>• Boilerplate provisions in agreements</li> <li>• Writing letter of advice</li> <li>• Drafting commercial agreements</li> </ul>
30 Sept	<p><b>Large Group 6</b> <b>Debt Financing; Loan Agreement</b></p> <ul style="list-style-type: none"> <li>• Introduction to a bank financing transaction</li> <li>• Loan agreements</li> <li>• Guarantees</li> <li>• Security interest</li> </ul>
Oct 7	<p><b>Large Group 7</b> <b>Buying 100% shares of a Private Company I</b></p> <ul style="list-style-type: none"> <li>• Life cycle of an M&amp;A transaction</li> <li>• Confidentiality agreement</li> <li>• Letter of intent / Term sheet</li> </ul>
14 Oct	<p><b>Large Group 8</b> <b>Buying 100% shares of a Private Company II</b></p> <ul style="list-style-type: none"> <li>• Due diligence</li> <li>• Share Purchase Agreement <ul style="list-style-type: none"> <li>- Representations and Warranties</li> <li>- Closing Conditions</li> <li>- Covenants</li> <li>- Survival; Caps and Baskets</li> <li>- Disclosure Schedule / Letter</li> </ul> </li> </ul>
28 Oct	<p><b>Large Group 9</b> <b>Buying 100% shares of a Private Company III</b></p> <ul style="list-style-type: none"> <li>• Share Purchase Agreement (cont'd)</li> <li>• Closing and beyond</li> <li>• Asset acquisition</li> <li>• Introduction to public M&amp;A</li> </ul>

4 Nov	<p><b>Large Group 10</b> <b>Equity Financing: Initial Public Offering</b></p> <ul style="list-style-type: none"> <li>• Introduction to capital markets</li> <li>• Initial public offering (“IPO”) and listing process in Hong Kong</li> <li>• Post-IPO obligations</li> <li>• Selected capital markets concepts</li> </ul>
11 Nov	<p><b>Large Group 11</b> <b>Corporate Insolvency; Dissolution</b></p> <ul style="list-style-type: none"> <li>• Voluntary v compulsory winding up</li> <li>• Distribution of assets</li> <li>• Selected topics in winding up of companies</li> </ul>
18 Nov	<p><b>Large Group 12</b> <b>Review session</b></p> <ul style="list-style-type: none"> <li>• Life-saving RAFT</li> <li>• Past exam paper</li> </ul>

#### 4. Discussion of this course and how it will be conducted

##### 4.1 Approach

The task of the corporate and commercial lawyer is both challenging and rewarding. The busy corporate and commercial lawyer is engaged in work that requires careful application of legal knowledge and skills learned both at university and in practice.

The knowledge and skills required of the competent corporate and commercial lawyer are so extensive and so varied, one must be well-rounded and versatile to be successful in this practice. Corporate law cannot be placed in a box by itself. It often requires knowledge of many areas of law and business and the use of various skills at one time or in one transaction.

The lawyer must also plan and perform a series of tasks in a highly competent manner – tasks which require different skills as well as the ability to integrate them in a coherent sequence and to evaluate constantly progress from the legal and commercial perspectives. The lawyer must interview the client, conduct due diligence, identify legal issues, evaluate options, draft agreements, negotiate contentious points, analyse documents and attend to the mechanics of completion.

At various stages of a transaction, the lawyer must explain to the client clearly, and in layperson’s language, what has occurred and what rights and

obligations have been created, if any. Throughout, the lawyer must have a clear vision of what the client wants, must continuously communicate with the client and yet must never let the client’s vision cloud the lawyer’s judgment. The lawyer must watch for obstructions and pitfalls and always search for creative ways of surmounting or avoiding them.

Finally, no matter how intense the pressure, the lawyer must never succumb to the expediency of unethical solutions – something you will learn more about in *Professional Conduct and Practice*.

In your previous law studies, much of your time was devoted to the study of judicial decisions resulting from disputes. In the life of the corporate and commercial lawyer, however, the most conspicuous theme of daily practice is the anticipation and prevention of legal disputes. Some barristers have been known to joke that if it were not for the mistakes made by solicitors, the bar would have a lot less business. To the commercial lawyer – unless that lawyer is also a litigator – this is not at all funny. If the lawyer has worked hard to complete a transaction, watching it unwind in the harsh light of legal proceedings because of their mistake can be a costly embarrassment. Therefore, in the study of corporate and commercial legal practice, you must try to look at the law differently. When you analyse business problems, try to think of ways disputes could have been avoided. If you are structuring business arrangements or drafting an agreement, think of how disputes could arise in the future and apply your legal knowledge to the situation to navigate around them.

This course will provide you with some basic knowledge and skills to be a corporate and commercial lawyer, but your training will continue during your traineeship or pupillage and beyond. In this course, you will be exposed to the workings of relevant commercial transactions and tasks such as incorporation, shareholders agreements, purchase and sale or service agreements, due diligence, letters of intent, confidentiality agreements, joint ventures, and share acquisitions. These topics serve as the means to develop practical legal skills, such as document analysis and drafting, fact investigation, negotiation and problem-solving.

Topics such as initial public offerings, public mergers and acquisitions, private equity, bank financings, and corporate insolvencies are briefly included. We focus on Hong Kong private companies in this course, but will occasionally cover certain international aspects of deals as well.

#### 4.2 Areas of focus and skills you will learn

<b>Areas of practice dealt with</b>	<b>What you will be able to do</b>	<b>Skills you will develop</b>
<b>1 Business arrangements</b> o Partnerships o Companies o Sole trading	Advise a client on the choice of the most suitable business arrangement	Problem solving Client Communication
<b>2 Setting up a business</b> o Various forms listed above	Incorporate a company and register it	Document analysis

<b>Areas of practice dealt with</b>	<b>What you will be able to do</b>	<b>Skills you will develop</b>
<ul style="list-style-type: none"> <li>○ Business registration</li> </ul>	Review and analyse articles of association and resolutions	
<b>3 Understanding Financial Statements</b>	<p>Explain and apply basic accounting concepts and selected accounting ratios of company</p> <p>Apply analytical techniques to enhance understanding of a company's performance</p> <p>Explain the concept of DCF model and how it could be applied in business valuation</p>	Problem solving
<b>4 Running a business</b> <ul style="list-style-type: none"> <li>○ Meetings and resolutions</li> <li>○ Simple business agreements</li> </ul>	<p>Develop a plan to resolve a client's problem in preparation for a client interview</p> <p>Review and analyse simple agreements</p>	Problem solving Document analysis Drafting
<b>5 Corporate Governance</b>	<p>Understand how corporate decisions are made</p> <p>Analyse parts of a shareholder's agreement</p>	Understanding client's issues Document analysis
<b>6 Joint Ventures</b>	Review and draft critical provisions of a joint venture agreement	Document analysis
<b>7 Lending and borrowing money</b> <ul style="list-style-type: none"> <li>○ Lenders and borrowers' objectives and considerations</li> <li>○ Company charges</li> <li>○ Guarantees – giving and enforcing</li> </ul>	Review, analyse and draft loan documents; understand the significance of registration and apply the principles of determining priority and enforceability of security	Document analysis Problem solving
<b>8 Acquiring and disposing of a business</b>	Analyse critical portions of a share purchase agreement	Document analysis and drafting Problem solving Client communication
<b>9 IPO and Listing Rules</b> <ul style="list-style-type: none"> <li>○ IPO process, timeline and documentation</li> <li>○ Liability in relation to public disclosure</li> <li>○ Familiarity with the Listing Rules</li> <li>○ Public company disclosure requirements</li> </ul>	<p>Understand capital markets transactions, especially the IPO process and the players involved, and the disclosure requirements of a public company</p> <p>Analyse the liability of directors, officers and majority shareholders</p>	Document analysis Drafting Problem solving



<b>10 Insolvency</b> <ul style="list-style-type: none"> <li>○ Company winding up – compulsory and voluntary</li> <li>○ Corporate rescue</li> </ul>	Advise on options available to creditors or company in financial distress	Problem solving Client communication
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### 4.3 Substantive law

You have already learned much substantive law. You will remember some of it and some of it, with some study and research, you will be able to recall again.

But you didn't learn all the law and some of what you learned will have already changed.

In the PCLL, we focus on *doing* the work that lawyers do. That involves, in part, finding out what the law is and applying it to various legal problems. Just like a lawyer in practice, to do this legal work, you will need to refresh your memory of the law or, in many cases, find out what the law is.

This course is not a refresher course or a more advanced course in Company Law or Commercial Law. The focus is on applying substantive law to solve real problems. For each topic, we will give you preliminary reading. It is *essential* that you do this reading **BEFORE** class because without it you will not have the foundation of substantive law needed to do the legal work that we will assign.

### 4.4 How this course will be conducted

This course consists of 13 large group classes (including LG3A and LG3B on Financial Statements) and 11 small group classes. Please refer to the course timetable in the previous section.

Most of the large groups are followed by a corresponding small group on the same topic in the following week. While you will often find the materials covered in the large groups helpful in completing your small group assignments, you will encounter small group questions that require additional research and reading.

Large and small group classes are both participatory, and attendance is essential to understand the materials and acquire the skills required to pass this course and to succeed as a trainee or pupil.

## 5. Lawyers' skills

The Law Society has proposed a list of skills in its *Benchmarks for the PCLL*. The relevant skills for this course are addressed in the following ways:

*Problem solving* – Problem solving is the focus of a number of topics in this course.

*Legal research* – It may be necessary for you to research the law relevant to the exercises being undertaken.

*Communication (writing, drafting, advising, interviewing, and counselling in plain English)* – Communication is a fundamental skill of a competent lawyer, and this skill can be divided into two key components: verbal communication and written communication. This course focuses on written communication, and this is how you will be assessed. In the small groups, we will also develop your oral skills, which are seen as formative exercises to assist you in your verbal communication.

*Fact investigation and analysis* – In various exercises, you must read and understand a fact pattern and apply the law to the facts.

*Advocacy* – This skill is neither taught nor examined directly in this course.

*Litigation management and strategies* – This skill is neither taught nor examined directly in this course.

*Alternative dispute resolution* – This skill is neither taught nor examined directly in this course.

*Negotiation* – This skill is taught pervasively in this course.

*Legal analysis* – You will be required to demonstrate the ability to analyse the law and apply it to the facts.

*Organisation and management of legal work* – This is dealt with pervasively as students learn to structure transactions, to choose the appropriate precedents, to document transactions and to advise clients to achieve their business objectives.

*Recognising and resolving ethical dilemmas and ethical formation* – This is dealt with pervasively in general problem solving and planning.

When your work is assessed, you will be assessed, in part, on your performance of these skills.

## 6. Assumed knowledge

In this course, we will assume that you have studied:

Contract Law;  
Company Law;  
Commercial Law; and  
Equity

either at CityU or at another university in a common law jurisdiction. If you are unfamiliar with the Hong Kong law and procedure in these areas, you are expected to study them on your own.

It is also assumed that, for some of the small groups and for the examinations, you are well-versed in the other PCLL courses you have studied or are studying. In

performing skills and in practising law competently, one must use knowledge accumulated in a wide range of substantive and procedural areas. This is particularly true in this course.

## 7. Required reading and recommended sources

### **Required**

Please see the assigned readings listed under “Files” on *Canvas* each week. You should read the assigned materials **BEFORE** each large group lecture.

### **Optional**

You may also find the following books to be good general reference for topics covered in this course:

- John Brewer, The Law and Practice of Hong Kong Companies (3<sup>rd</sup> Ed., Sweet & Maxwell 2017)
- Cheng Po Wah, Sum Heung Suet, Anna, Yuen Kam Tim, Francis, The Hong Kong Company Secretary’s Handbook, Practice and Procedure (11<sup>th</sup> Ed., Pearson 2021)
- Stefan HC Lo and Charles Qu, Law of Companies in Hong Kong (4<sup>th</sup> Ed., Sweet & Maxwell 2023)
- Simon Luk, Private Equity in Hong Kong and China (4<sup>th</sup> Ed., LexisNexis 2023)
- Simon Luk, Private Mergers and Acquisitions in Hong Kong (LexisNexis 2016)
- Vanessa Stott, Hong Kong Company Law (15<sup>th</sup> Ed., Pearson 2020)
- Andrew Tsang, Natalie Chan, Concise Guide, Compliance and Company Secretarial Practice of Hong Kong Private Companies (Student Edition, Sweet & Maxwell 2017)
- Jessica Y. K. Young, Acquisition of Shares and Businesses in Hong Kong (2<sup>nd</sup> Ed., Mid Isle Publications Ltd. 2014)