



律政司
Department of Justice



ROLE STARS

STARS

TRAIN-THE-LEADERS
PROGRAMME

KEY TAKEAWAYS



BASIC ELEMENTS OF THE RULE OF LAW



Equality before the law



Laws
regulating
substantive
rights and
obligations

Provide fair
and
practicable
procedures
to resolve
disputes



The law
must be
open and
clear

Independent
judicial power

Citizens
consciously respect
the legal system
and uphold
the rule of law



"ONE COUNTRY, TWO SYSTEMS"

"One Country, Two Systems" means that there are two systems within a country. One country comes before two systems. The HKSAR is an inalienable part of the PRC (Basic Law Art. 1)

01 Constitution of the PRC

02 Basic Law of the HKSAR of the PRC

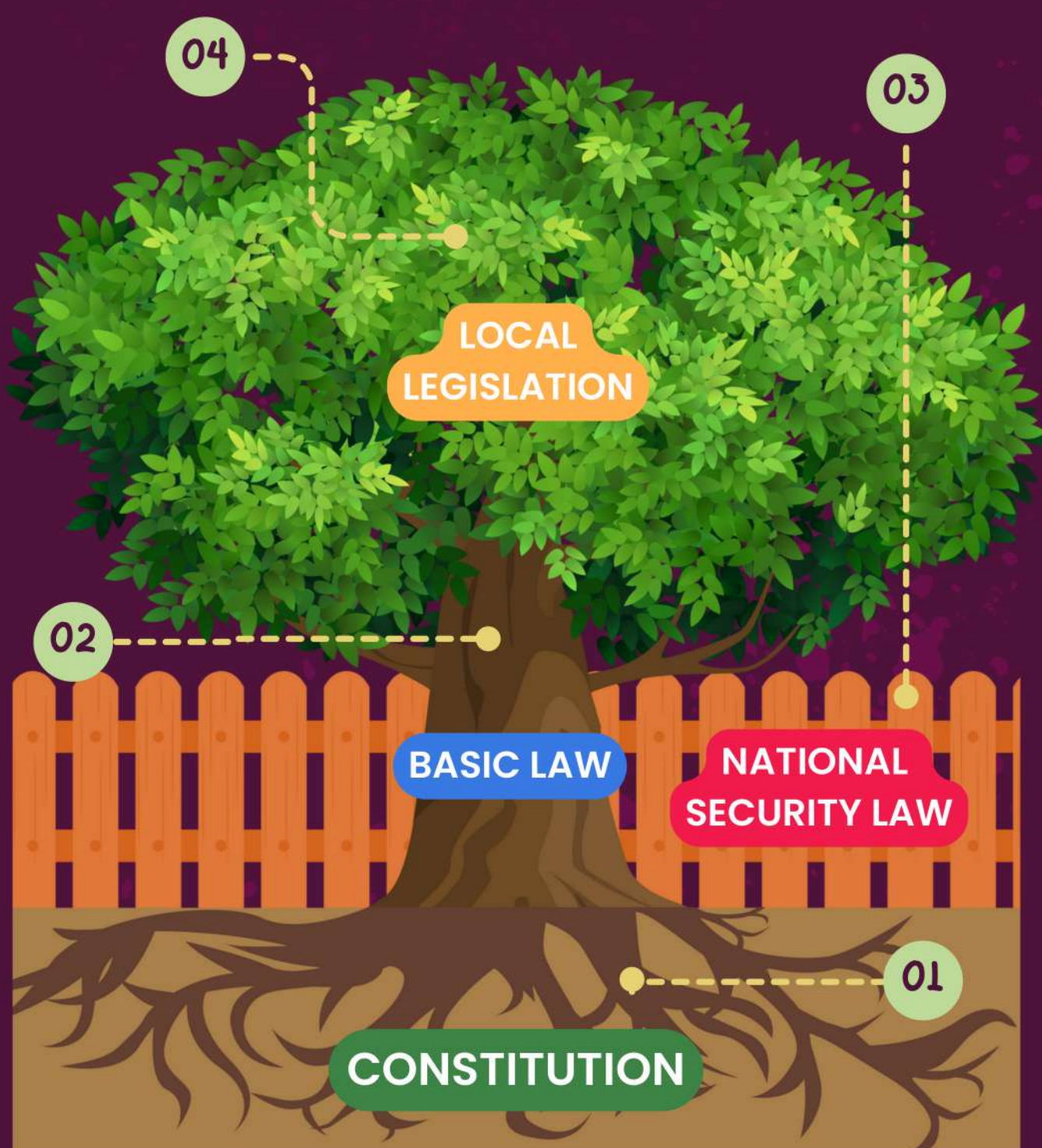
Together they form the constitutional basis of the HKSAR.

03 National Security Law

The National Security Law is the safeguard of "One Country, Two Systems".

04 Local Laws

The Basic Law guarantees the legislative power of the HKSAR.





HONG KONG'S COMMON LAW SYSTEM UNDER “ONE COUNTRY, TWO SYSTEMS”

The Basic Law retains Hong Kong's laws previously in force and the common law system. Hong Kong is the **only** common law jurisdiction within China.



Bilingualism
(Chinese and English)

Independent
judicial power
(including the power of
final adjudication)



Principle of precedents

Hong Kong courts may
refer to precedents of
other common law
jurisdictions



Overseas
non-permanent judges
sitting in the
Court of Final Appeal

Adversarial system



HONG KONG COURTS



Court of Final Appeal

The highest appellate court in Hong Kong. It hears appeals on civil and criminal matters from the High Court.

High Court

Consists of the Court of Appeal and the Court of First Instance, which hear appeals and trials.



District Court

Hears civil disputes of higher values and more serious criminal cases.

Magistrates' Courts

There are 7 Magistrates' Courts in Hong Kong. They hear a wide range of criminal cases.



傳承共建·法治社會



INDEPENDENT

JUDICIAL POWER



Hong Kong courts enjoy independent judicial power, including that of final adjudication.
(Basic Law Art. 2, 19 & 82)



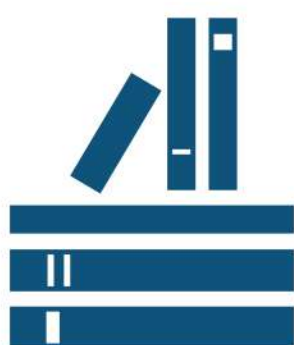
Hong Kong courts shall exercise judicial power independently, free from any interference.
(Basic Law Art. 85)



Judges of the Hong Kong courts shall be appointed by the Chief Executive on the recommendation of an independent commission.
(Basic Law Art. 88)



Judges must take the judicial oath upon assumption of office to uphold the Basic Law, and to safeguard the law and administer justice without fear or favour, self-interest or deceit.



The power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress. This forms part of Hong Kong's legal system and does not affect the exercise of independent judicial power by the Hong Kong courts.
(Constitution Art. 62 & 67, Basic Law Art. 158)

NATIONAL PEOPLE'S CONGRESS, CENTRAL PEOPLE'S GOVERNMENT AND

MAIN FUNCTIONS OF THE INSTITUTIONS OF CPG IN HKSAR

The National People's Congress

is the highest state organ of power.

The State Council of the People's Republic of China

(i.e. the Central People's Government (CPG))
is the executive organ of the highest state organ of power.

Liaison Office of the CPG in the HKSAR

is responsible for, among others, promoting the exchanges between Hong Kong and the Mainland in different aspects.



The Commissioner's Office of China's Foreign Ministry in the HKSAR

is responsible for, among others, handling foreign affairs concerning the HKSAR.

The Office for Safeguarding National Security of the CPG in the HKSAR

is responsible for, among others, providing opinions and making proposals on major strategies and important policies for safeguarding national security.



The People's Liberation Army Hong Kong Garrison

is responsible for, among others, safeguarding the security of the HKSAR.





CIVIL LITIGATION AND CRIMINAL LITIGATION

Differences between the two litigation procedures

Civil Litigation



Commenced by
individuals,
companies,
the Government, etc.

The purpose is
to protect the rights
under private law
(including contract law,
tort law, property law,
etc.), for example,
breach of contract,
personal injury etc.

The standard of proof
is
balance of probabilities

If the plaintiff wins,
the plaintiff could obtain
the judicial remedy(ies)
sought,
such as damages and
court orders for
specific performance,
etc.

Criminal Litigation



Commenced in
the name of
the HKSAR

The purpose is
to curb crime
and
penalize offenders

The standard of proof
is
beyond reasonable doubt

If the accused is
convicted,
penalty(ies) will be
imposed depending on
the offence(s)
committed.
For instance, fines,
community service
order, imprisonment etc.

CRIMINAL LITIGATION PROCEDURE

Principles and Rights



Presumption of innocence

The Basic Law guarantees that anyone who is lawfully arrested shall be presumed innocent until convicted by the judicial organs.

Prosecutorial independence

The Basic Law stipulates that the Department of Justice of the HKSAR shall control criminal prosecutions, free from any interference.



Burden of proof lies on the prosecution

The prosecution must adduce evidence to prove beyond reasonable doubt that the accused has committed the offence(s) concerned.

Open court hearings

Court hearings are open to the public. The public and the press can attend and observe the court hearings. This ensures that court hearings are open, transparent, fair and just.



The accused to be clearly informed of the nature and content of the charge(s)

Right to a fair trial without delay

The Basic Law guarantees that anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay.



Right to confidential legal advice

Right to engage lawyers for protection of lawful rights and interests





FLOW OF CRIMINAL PROCEDURE (SIMPLIFIED VERSION)

To convict an accused person, the court must be convinced beyond reasonable doubt that the person committed the offence(s) concerned.

1 Initiation of prosecution

- The Department of Justice of the HKSAR exercises power to prosecute independently, free from any interference
- Decision to prosecute are made based only on the sufficiency of evidence and public interest



2 Plea-taking

- The court will ask the accused whether to plead guilty or not to the offence(s) concerned
- If the accused pleads guilty, the accused will be convicted of the offence(s) and the court will proceed to sentencing

3 Prosecution's case

- If the accused pleads not guilty, the court will proceed to trial
- The prosecution may make opening submissions and call witness(es) to give evidence
- The prosecution will then close its case



4 Defence's case

- If the court finds that there is a case to answer, the defence may call its witness(es) (if any) to give evidence



5 Closing submissions and verdict

- The prosecution and the defence may make closing submissions (if any)
- The judge then gives verdict
- If the accused is convicted of the offence(s), the court will proceed to sentencing

FLOW OF CIVIL LITIGATION (SIMPLIFIED VERSION)



The plaintiff must prove that the claim is true on the balance of probabilities.

1. Commencement of proceedings (if by writ of summons)

- A plaintiff issues a writ of summons (indorsed with a statement of claim) against a defendant
- The plaintiff serves the writ of summons on the defendant



2. The defendant sends an acknowledgment of service to the registry of the court



3. If the defendant contests the proceedings, the defendant must file and serve a defence



4. The plaintiff files and serves a reply to the defendant's defence

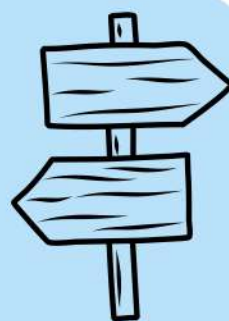


5. The parties disclose documents relevant to the dispute

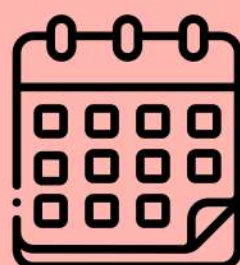


6. Issuance of summons(es) for directions

- The parties apply to the court for directions on how to proceed with the case, for example, to exchange witness statements by a certain date



7. Application to set down the case for trial



8. The parties proceed to trial



RESOLVING DISPUTES THROUGH ALTERNATIVE DISPUTE RESOLUTION

Common methods

01 Mediation

An independent and impartial third party acts as mediator to assist the parties to the dispute to identify the issues and formulate settlement proposals

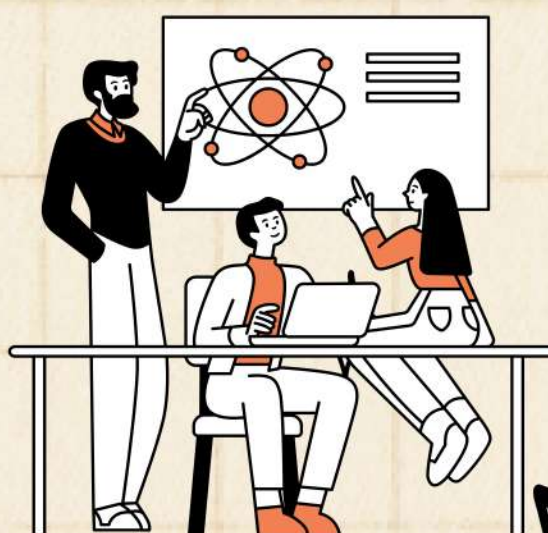


02 Arbitration

The parties to the dispute agree that the dispute shall be submitted to an arbitral tribunal. An arbitral award made by the arbitral tribunal shall be final and binding on the parties.

Advantages

Voluntary in nature
Time-saving
Cost-effective
Flexible
Confidential



THE LEGAL PROFESSION OF HONG KONG

Two branches carry out different roles.
There is no superiority between the two.

SOLICITOR	BARRISTER
Can be in sole proprietorship, partnership or employed	Self-employed
Can provide a wide scope of legal services, but has limited rights of audience before the courts*	Specialises in litigation work and has unlimited rights of audience in all courts
Can provide legal advice to clients directly	Generally required to contact clients and provide legal advice through solicitors
Must comply with The Hong Kong Solicitors' Guide to Professional Conduct	Must comply with the Code of Conduct of the Hong Kong Bar Association
Regulated by The Law Society of Hong Kong	Regulated by the Hong Kong Bar Association

*Except those who have obtained a certificate of higher rights of audience



HOW TO BE A GOOD RULE OF LAW EDUCATION LEADER



To promote
correct messages on
the rule of law
from
a fair and impartial
perspective and
through a
easy-to-understand
approach

Empower more people
to understand and
abide by the law,
and foster their
self-consciousness to be

**GUARDIANS OF
THE RULE OF LAW**



Five principles of conduct

- Good character
- Uphold the rule of law and be a role model
- Self-improvement
- Respect differences
- Actively share knowledge to others



EFFECTIVE COMMUNICATION SKILLS



01

Listen attentively

02

Respond appropriately

Express clearly

03

Appropriate body language

04



05

Respect different views

06

Have empathy

Raise open-ended questions

07

Diversified teaching and learning methods

08



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