

Course Form for PKU Summer School International 2018

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| Course Title | Chinese Constitutional & Administrative Law |
| | 中国宪法与行政法 |
| Teacher | YAN Tian |
| First day of classes | July 2, 2018 |
| Last day of classes | July 13, 2018 |
| Course Credit | 3 credits |
| Course Description | |
| Objective: | |
| <p>This course introduces the history, institutions and theories of constitutional law and administrative law in China. It aims to have the students prepared for further and deeper understanding of Chinese politics, law, society, and culture. The administrative law section focuses primarily on institutional analysis. It briefs the major channels through which the Chinese citizens solve their conflicts with the administrative system, and the impacts made by such channels on the rule of law of China. The constitutional law section puts emphasis on history. It reviews the progress made by China in establishing constitutionalism, securing independence and sovereignty, and bringing about economic prosperity. The course also contains an introduction of the elements of current Chinese constitutional order. Most time of the course is reserved for lecturing, and students are encouraged to participate in class discussion.</p> | |
| Pre-requisites /Target audience | |
| Background of legal education is not required but preferred. | |
| Proceeding of the Course | |
| The course is comprised of the administrative law section and the constitutional law section. It will reverse the normal sequence of instruction, putting administrative law first and then move to constitutional law. | |
| Assignments (essay or other forms) | |

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| Evaluation Details | |
| Students will be required to write a five-page, double-spaced, 11-font responsive paper. Class evaluation will be based on that. | |
| Text Books and Reading Materials | |
| Reading materials will be offered. No textbooks required. | |
| Academic Integrity (If necessary) | |
| No special requirements on that. | |
| CLASS SCHEDULE (Subject to adjustment) | |
| Session 1: <i>Basic Ideas of Administrative Law in China</i> | Date: Jul.2, 2018 |
| <p>【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will draw the contour of the public law system in China, especially its administrative law part. It will also deal with the administrative issues of the course.</p> | |
| <p>【Questions】 Why does China create a system of public law besides other governmental mechanisms? What roles are supposed to be played by Chinese administrative law?</p> | |
| <p>【Readings, Websites or Video Clips】 Anyu FANG, <i>Pacifying the Peasant: Political Instability, Administrative Law Reform, and the Recentralization of State Power in China during the 1990s and 2000s</i>, 31 QUINNIPIAC L. REV. 903 (2013). Xin HE, <i>Maintaining Stability by Law: Protest-Supported Housing Demolition Litigation and Social Change in China</i>, 39 LAW & SOC. INQUIRY 849 (2014).</p> | |
| <p>【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above.</p> | |
| Session 2: <i>Administrative Dispute Resolution & Administrative Inspection</i> | Date: Jul.3, 2018 |
| <p>【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will first briefly introduce the major channels through which the Chinese citizens resolve their disputes with the administration. It then introduces a specific channel – administrative inspection.</p> | |

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| 【Questions】 What is the relationship among different channels of dispute resolution? What are the shaping factors of the administrative inspection system? | |
| 【Readings, Websites or Video Clips】 Hon S. Chan & Edward Li Suizhou, <i>Civil Service Law in the People's Republic of China: A Return to Cadre Personnel Management</i> , 67 PUB. ADMIN. REV. 383 (2007). | |
| 【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above. | |
| Session 3: <i>Administrative Reconsideration</i> | Date: Jul.4, 2018 |
| 【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will introduce the administrative reconsideration system through which Chinese citizens require the administrative bodies to reconsider its decision or actions in dispute. | |
| 【Questions】 Is administrative reconsideration a viable channel to solve administrative disputes at all? If not, why bother to create such a time-consuming obstacle on the road to judicial resolution? | |
| 【Readings, Websites or Video Clips】 Michael Asimow, <i>Five Models of Administrative Adjudication</i> , 63 AM. J. COMP. L. 3 (2015). | |
| 【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above. | |
| Session 4: <i>Legislative Supervision</i> | Date: Jul.5, 2018 |
| 【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will introduce the interrelationship between the legislative and administrative branches of the Chinese government and elaborate the supervisory actions made by the people's congresses against the administration. | |
| 【Questions】 Is it politically feasibly (and legally possible) for the legislative to put any pressure on the administration in specific administrative disputes? What are the major consideration when the people's congresses decided whether to intervene in such disputes or not? | |
| 【Readings, Websites or Video Clips】 Andrew Mertha, <i>"Fragmented Authoritarianism 2.0": Political Pluralization in the Chinese Policy Process</i> , 200 CHINA Q. 995 (2009). | |

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| 【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above. | |
| Session 5: <i>Letter-and-visit System</i> | Date: Jul.6, 2018 |
| 【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will discuss the letter-and-visit system, a highly criticized institution of both legal and political features, in the context of administrative dispute resolution. | |
| 【Questions】 Why does China maintain a quasi-formal, inefficient, and sometimes troublemaking system of letters and visits after establishing formal legal channels of administrative dispute resolution? | |
| 【Readings, Websites or Video Clips】 Official website of the National Bureau of Letters & Calls, available at http://www.gjxfj.gov.cn/ . | |
| 【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above. | |
| Session 6: <i>Administrative Litigation (Part I)</i> | Date: Jul.9, 2018 |
| 【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will deal with the single most important institution of administrative law in China – the administrative litigation system. It will follow the sequence of making an administrative case from the perspective of the plaintiff’s counsel. | |
| 【Questions】 What are the major steps to file an administrative suit before Chinese courts? What will be the major obstacles on the road towards winning the case? What factors shape the performance of the courts, the defendant administration, and the plaintiffs? | |
| 【Readings, Websites or Video Clips】 Ji LI, <i>Suing the Leviathan — An Empirical Analysis of the Changing Rate of Administrative Litigation in China</i> , 10 J. EMPIRICAL LEGAL STUDIES 815 (2013). John Wagner Givens, <i>Sleeping with Dragons? Politically Embedded Lawyers Suing the Chinese State</i> , 31 WIS. INT’L L.J. 734 (2013) | |
| 【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above. | |
| Session 7: <i>Administrative Litigation (Part II)</i> | Date: Jul.10, 2018 |

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| <p>【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will continue the discussion on administrative litigation launched by the last session.</p> | |
| <p>【Questions】 What are the major steps to file an administrative suit before Chinese courts? What will be the major obstacles on the road towards winning the case? What factors shape the performance of the courts, the defendant administration, and the plaintiffs?</p> | |
| <p>【Readings, Websites or Video Clips】 Michael Palmer, <i>Controlling the State?: Mediation in Administrative Litigation in the People's Republic of China</i>, 16 TRANS. L. & CONTEMP. PROB. 165 (2006). HE Haibo, <i>Litigations without a Ruling: The Predicament of Administrative Law in China</i>, 3 TSINGHUA CHINA L. REV. 257 (2011). Ji LI, <i>Dare You Sue the Tax Collector? An Empirical Study of Administrative Lawsuits against Tax Agencies in China</i>, 23 PAC. RIM L. & POL'Y J. 57 (2014).</p> | |
| <p>【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above.</p> | |
| Session 8: <i>What Is "Constitution" in China? – A Historical Review</i> | Date: Jul.11, 2018 |
| <p>【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will begin our discussion on Chinese constitutional law. It first analyzes the diversified understanding of the word "constitution" in Western world, then apply the findings to the history of constitutionalism in China.</p> | |
| <p>【Questions】 What does "constitution" mean in the Chinese context? Did China has any constitutions in the ancient times? What are the endeavors the Chinese people made to accomplish constitutionalism?</p> | |
| <p>【Readings, Websites or Video Clips】 William Partlett & Eric C. Ip, <i>Is Socialist Law Really Dead?</i>, 48 INT'L L. & POLITICS 463 (2016).</p> | |
| <p>【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above.</p> | |
| Session 9: <i>The 1982 Constitution: Background & Text</i> | Date: Jul.12, 2018 |
| <p>【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will introduce the current Constitution of China, which was enacted in 1982. It will begin with some background information of the making of the Constitution, then move to the major elements of its content.</p> | |

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| 【Questions】 What is the internal logic of the 1982 Constitution? What did the drafters of the Constitution think – and are their thoughts still relevant today? | |
| 【Readings, Websites or Video Clips】 Constitution of the People’s Republic of China (provided by the People’s Daily) ZHAI Zhiyong, <i>The Making and Structure of the 1982 Constitution of China</i> , 8 TSINGHUA CHINA L. REV. 141 (2016). | |
| 【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above. | |
| Session 10: <i>The 1982 Constitution: Implementation</i> | Date: Jul.13, 2018 |
| 【Description of the Session】 (purpose, requirements, class and presentations scheduling, etc.) This session will continue the discussion of the 1982 Constitution and focus on its implementation. It will analyze the major mechanisms to make the Constitution into reality, including judicial review, legislative review, populist movements, and so forth. | |
| 【Questions】 Is the 1982 Constitution implemented? Is there a better way to implement it? | |
| 【Readings, Websites or Video Clips】 Qi Yuling v Chen Xiaoqi et al (Higher People’s Court of Shandong Province) Qianfan Zhang, <i>A Constitution without Constitutionalism? The Paths of Constitutional Development in China</i> , 8 I•CON 950 (2010). Liu Songshan, <i>1981: Embryonic but Inchoate Designs for a Constitutional Committee</i> , 33 U.C.L.A. PACIFIC BASIN L. J. 73 (2016). Yan Lin, <i>Constitutional Evolution through Legislation: The Quiet Transformation of China’s Constitution</i> , 13 I•CON 61 (2015). | |
| 【Assignments for this session (if any)】 Students are encouraged, but not required to read the reading materials listed above. | |