Do We Have a Contract?
Shaping the future by learning from the wisdom of the past

Do We Have a Contract? is a mini-course designed for bright and motivated senior high school students who are considering a law degree as the next chapter in their lives. It introduces students to a fundamental area of legal study while offering them a genuine feel for the classroom experience at CUHK.

By the end of this mini-course, students will understand the purpose of contracts and have a basic grasp of the legal rules and principles governing the formation of contracts. Students will also begin to appreciate the true character and genius of the common law and why it has endured for so many centuries.

Purpose of Contracts

Contracts are a cornerstone of every effective legal system. The earliest recorded contracts date back to the dawn of civilisation, and they remain indispensable today. Nowhere is this more evident than in Hong Kong, whose prosperity as a global hub of business and commerce rests largely on its reputation for the reliable enforcement of contractual obligations.

In *Do We Have a Contract?*, we will start by exploring the purposes contracts serve and their place within Hong Kong's broader legal framework. Students will see how contracts provide a reasonably reliable foundation for trust among strangers, enabling individuals—unconnected by family or personal friendship—to pursue private goals in ways that align with the public good. Indeed, contracts make a free civilisation possible.

Formation of Contracts

We then turn to the central question: *Do we have a contract?* In answering this question, we examine the 'three pillars' of contract formation in Hong Kong and other common law jurisdictions.

- Agreement: A contract cannot exist without a complete agreement. This requires an offer, an acceptance, and clarity in the essential terms.
- Contractual Intention: The parties must intend to be legally bound. While this is usually straightforward in commercial dealings, agreements among family or friends often raise difficulties.
- Consideration: The common law does not enforce bare promises. A contract must take the form of a bargain, with each party providing something of value in exchange. Consideration is the price that seals the deal and transforms an agreement into a binding legal obligation.

Nature and Character of the Common Law

Along the way, we will frequently pause to reflect on the deeper nature of the common law system that governs Hong Kong and many other jurisdictions on every inhabited continent. Students will discover that the common law is not a set of abstract theoretical rules imposed from above, but a living, practical and essentially customary system shaped by the wisdom of whole communities accumulated over more than 800 years. The customs, traditions and reasonable expectations of those communities are *recognised* by the courts in both the formulation of legal rules and in their application to particular facts.The result is a legal order that is highly stable yet remarkably adaptable to changing local conditions. The common law is also simultaneously democratic and conservative, because it both reflects who we are and refrains from any attempt to change us.

Indeed, the common law is one of humanity's most remarkable cultural achievements, and its study provides us with a foundation for shaping the future by learning from the wisdom of the past.