HONG KONG CASES

1985

Volume 1

General Editor
Gerard McCoy, Barrister

The Butterworth Group of Companies

Singapore Butterworths Asia

10 Anson Road

#32-01

International Plaza, Singapore 0207

Hong Kong Butterworths Asia (Hong Kong)

19/F Eight Commercial Tower

8 Sun Yip Street, Chai Wan, Hong Kong

Tel: 29651400 Fax: 29760840

Malaysia Malayan Law Journal Son Bhd

Suite 1001/02 10th Floor Wisma Hamzah Kwong Hing

No 1 Leboh Ampang 50100 Kuala Lumpur

Australia Butterworths

Sydney, Melbourne, Brisbane, Adelaide, Perth, Canberra

Canada Butterworths Canada Ltd

Toronto and Vancouver

Ireland Butterworth (Ireland) Lti)

Dublin

New Zealand Butterworths of New Zealand Ltd

Wellington and Auckland

Puerto Rico Butterworth of Puerto Rico, Inc.

San Juan

UK BUTTERWORTH & CO (PUBLISHERS) LTD

London and Edinburgh

USA BUTTERWORTH LEGAL PUBLISHERS

Salem, New Hampshire and Carlsbard, California

Butterworths Asia is a division of Reed Elsevier (Singapore) Pte Ltd.

© Butterworths Asia, 1995

All rights reserved. No part of this publication may be reproduced or transmitted in any material form or by any means, including photocopying and recording, or storing in any medium by electronic means and whether or not transiently or incidentally to some other use of this publication, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

ISSN 0218-7809

Typeset by Butterworths Asia and Corporate Press (HK) Ltd Produced by Mandarin Offset Ltd Printed and bound in Hong Kong

General Editor Gerard McCoy, Barrister

Associate Editors

Grenville Cross OC Peter Garland OC Ruy Barretto, Barrister Michael Ozorio, Barrister Mohan Bharwaney, Barrister Susan Kwan, Barrister Malcolm Merry, Barrister Aarif Barma, Barrister Andrew Cheung, Barrister Peter Ng. Barrister Joseph Fok, Barrister Anderson Chow, Barrister Teresa Cheng, Barrister David Fitzpatrick, Barrister Patrick WS Cheung, Barrister Andrew Byrnes, Hong Kong University Johannes Chan, Hong Kong University

Reporters in this volume

Charles P Chiu, Barrister Danny Choi, Barrister TC Chong, Barrister Lindy Course, Barrister Michael T Darwyne, Barrister Victor T Gidwani, Barrister Godfrey Lam, Barrister Julia Lau. Barrister Rebecca MK Lee, Barrister Raymond Leung, Barrister PY Lo. Barrister Herman LH Poon, Barrister Alison Mary Thompson, Barrister Jennifer Tsang, Barrister Raymond Tsui Wai Nam, Barrister Dominic Yeung, Barrister Hareed Zafrullah, City University Anthony P Kinnear Angela Ho

Butterworths Asia

Managing Editor: Anthony P Kinnear Deputy Managing Editor: Zarinah Marican

Legal Editor: Angela Ho

ACKNOWLEDGMENT

The publishers are grateful to and acknowledge the significant contribution and support of the Hong Kong Superior Court Judgments Database project, directed by the four members of the Faculty of Law, whose names are mentioned below. The judgments database project (1989–1994) was funded primarily by the University of Hong Kong's Conference and Research Grants Committee with assistance from the Department of Professional Legal Education, at the Faculty of Law. The Faculty members responsible for the project are (in alphabetical order) Andrew Byrnes, Lecturer, Department of Law; Rick Glofcheski, Lecturer, Department of Law; Gary N Heilbronn, Senior Lecturer, Department of Professional Legal Education; and Sarah Nield, Senior Lecturer, Department of Professional Legal Education (until 1992). The project administrator is James Garritty, Research Officer, Faculty of Law.

TABLE OF ABBREVIATIONS

List of abbreviations used in this volume (excluding reports):

Α **High Court Action ACJ** Acting Chief Justice A-G Attorney General AR Application for Review Adm Admiralty Action

Appendix App article art Aust Australia

CA Court of Appeal

CA Civil Appeal Number in references to unreported cases

(eg CA 2/92)

CC High Court Criminal Case

CIChief Justice

Cap Chapter (as in Chapter Number of an Ordinance)

Crim App Criminal Appeal Comm L Commercial List Con L. Construction List

ch chapter (as in chapter number of a book)

cl(1) clause(s) DC District Court **DCA**

District Court Action

DJ District Court Divorce Jurisdiction

DI District Judge

Director of Public Prosecutions DPP

EC **European Communities**

ECC Economic Compensation Case European Court of Human Rights **ECHR**

ECJ Court of Justice of the European Communities

EEC European Economic Communities

Ed Edition

Ex Ch Court of Exchequer Chamber

exh exhibit fn footnote HC High Court HL House of Lords

J(J)Justice(s)

J(J)A Justice(s) of Appeal LT(A) Labour Tribunal (Appeal)

LC Lord Chancellor

Ld T(A) Lands Tribunal (Appeal) MA Magistracy Appeal MP Miscellaneous Proceedings

MR Master of the Rolls

n note

NSW New South Wales

0 Order (of the Rules of the Supreme Court)

PC: Privy Council

Abbreviations

PRC People's Republic of China PCA Privy Council Appeal

Pt Part

para(s) paragraph(s)

RSC Rules of the Supreme Court

 $\begin{array}{lll} r(r) & rule(s) \\ reg(s) & regulation(s) \\ s(s) & section(s) \\ sub\text{-}s(s) & subsection(s) \\ Sch & Schedule \\ UN & United Nations \\ \end{array}$

Uncitral United Nations Commission on International Trade

Law

VP(P) Vice-President(s)

WCC Workers' Compensation Case

List of abbreviations of law reports:

AC Law Reports, Appeal Cases (HL and PC); since 1890

Ad & E Adolphus & Ellis, 12 volumes; 1834–1840

AIR All Indian Reporter

All ER All England Law Reports; since 1936
All ER Rep All England Law Reports Reprint

ALR Australian Law Reports

App Cas Law Reports, Appeal Cases, House of Lords, 15

volumes; 1875-1890

Beavan's Reports, Rolls Court, 36 volumes; 1838-

.866

C & K Carrington & Kirwan, 3 volumes; 1843–1853
CCC Cox's Criminal Cases, 31 volumes; 1843–1941
Ch Law Reports, Chancery Division; since 1890

Ch D Law Reports, Chancery Division, 45 volumes; 1875–

1890

CLR Commonwealth Law Reports; since 1903

Cr App R Criminal Appeal Reports (HL and CA(UK)); since

1908

Crim LR Criminal Law Review; since 1954 EG Estates Gazette: since 1858

FSR Fleet Street Patent Law Reports, since 1963

HKC Hong Kong Cases

HKDCLR Hong Kong District Court Law Reports

HKLR Hong Kong Law Reports

HL Cas House of Lords Cases, 11 volumes: 1847–1866

IR Irish Reports; since 1838

IRLR Industrial Relations Law Reports; since 1972

KB King's Bench

LJ Law Journal Reports, New Series, 118 volumes; 1831–

1949

LR A & E Admiralty and Ecclesiastical cases, 4 volumes; 1865–

Hong Kong Cases

1875

LR Eq Equity cases, 20 volumes; 1866–1875
LR Ex Exchequer Cases; 10 volumes; 1865–1875
LR QB Queen's Bench; 10 volumes; 1865–1875
Lloyd LR Lloyd's List Law Reports; 1919–1950
Lloyd's Rep Lloyd's List Law Reports; since 1951
M & W Meeson & Welsby, 16 volumes; 1836–1847

Manson Manson; 1894–1914 MLJ Malayan Law Journal

NI Northern Ireland Law Reports; since 1925 NSWLR New South Wales Law Reports; since 1971

NYS New York State Reports

NZLR New Zealand Law Reports; since 1883

QB Law Reports, Queen's Bench Division; 1891–1900.

and since 1952

QB Queen's Bench Reports (Adolphus and Ellis, New

Series), 18 volumes; 1841-1852

QBD Law Reports, Queen's Bench Division; 1875–1890

RTR Road Traffic Reports; since 1970

SASR South Australian State Reports; since 1921

SC (HL) Sessions Cases (House of Lords)

TLR The Times Law Reports, 71 volumes; 1884–1950

The Times Law Reports; since 1951

WIR West Indian Reports; since 1959
WLR Weekly Law Reports; since 1953
WN Weekly Notes (Reports); 1866–1952

WN(NSW) Weekly Notes, New South Wales; since 1884

WR Weekly Reporter; 1853–1906

TABLE OF CASES REPORTED

The mode of citation of cases reported in this volume of *Hong Kong Cases* is [1985] 1 HKC (page).

	Page		Page
A		Chan Cheuk Hing; Attoney	499
Acada Developments Co Ltd v		General & Anor v[CA]	
Epco Industrie-Ausruestungen GMBH[CA]	465	Chan Chun Chung; R v[HC] Chan Kam Sam; R v[CA]	158 396
Aik San Realty Ltd; The Bank			544
of Tokyo Ltd v[HC]	380	Chan Tung Hoi; R v[CA]	344
American International	1	Chan Wai Man (formerly t/a Shanghai Night Club) v	
Assurance Co Ltd; Hang Seng		Kong Wing Fung & Ors [HC]	411
Goldsmith Co (a firm) v [HC]	146	Chan Yam Fai & Anor; R v [HC]	108
Atari International (HK) Ltd &		Chan Yam Yick; R v[CA]	291
Anor; United Technology Products Co Ltd v[HC]	33	Chang Din Hung & Anor; Ho	
Athenian Zoe, The (No 1)[HC]	362	Chung Yen, executor of the	
		estate of Madam Wong Yuet	
Athenian Zoe, The (No 2)[HC]	367	Wan, deceased v[DC]	628
Attorney General & Anor v Chan Cheuk Hing[CA]	499	Chau Kau v Sanfield Building	
	422	Contractors Ltd[CA]	419
Attorney General v B Paterson- Todd Esq[HC]	416	Cheng Ah Hung Bernard v	210
Attorney General v Chiu Kwok		Chintung Commodities Ltd [CA]	318
Chun Stephen[CA]	199	Cheng Ah Hung Bernard; Chintung Commodities Ltd v[HC]	313
Attorney General v Fung		Cheng Pak Hoi; R v[HC]	472
Chung Ping & Anor[CA]	429	Cheng Sung Hin; R v[HC]	331
Attorney General v Helena Restaurant (1981) Ltd[HC]	491	Cheung Donald Quintin v	
Attorney General v Ho Chun	471	Wang Teh Huei & Ors [HC]	403
Chau[CA]	40	Cheung Yiu Man; R v[HC]	482
Attorney General v Lam Yick		Chintung Commodities Ltd v	242
Kwan & Ors[HC]	208	Cheng Ah Hung Bernard [HC]	313
Attorney General v Tam Kin		Chintung Commodities Ltd;	216
Hung[CA]	606	Cheng Ah Hung Bernard v [CA]	318
Attorney General v Yung Yuk [HC]	521	Chiu Kwok Chun Stephen; Attorney General v[CA]	199
Attorney General; Chung Lai		Chow Kum Wing; Lam Wing	.,,
Yung Anna v[CA]	559	Ching & Ors v[CA]	189
Axona International Credit and		Chu Mei Kam; Maidstone	
Commerce Ltd (in liq) v PT	452	Investment Ltd v[DC]	475
Susukan Agung & Ors [HC]	452	Chung Lai Yung Anna v	
В		Attorney General[CA]	559
B Paterson-Todd Esq; Attorney		Chung Shi Shun; R v[CA]	50
General v[HC]	416	Cic-Union Europeenne Inter-	
Bank of Tokyo Ltd, The v Aik	200	national Et Cie v Wing Sun	
San Realty Ltd[HC]	380	& Co (a firm) & Anor [HC]	568
C		Comr of Inland Revenue; Wong	
CC Orient, The[HC]	115	Wing Biu (t/a Tai Yip Glass	422
		Co) v[HC]	433

	Page	1	Page
Dickson Watch & Jewellery Co Ltd v Mow Tai Insurance		Ho Chung Yen, executor of the estate of Madam Wong Yuet Wan, deceased v Chang	Ü
& Reinsurance Co Ltd[HC]	505	Din Hung & Anor[DC]	628
_		Ho Kwai Yeung; R v[HC]	180
E Epco Industrie-Ausruestungen GMBH; Acada Developments		Ho Wei Yiu & Anor; Ho Yiu Chuen Fong v[CA]	334
Co Ltd v[CA]	465	Ho Yiu Chuen Fong v Ho Wei	224
Euro Treasure Ltd; Kao, Lee		Yiu & Anor[CA]	334
& Yip v[CA]	46	Hor Wai Ming & Anor; R v [CA]	30
F		Hung Hing Tong; R v[HC]	172
Fabrique Ebel Societe Anonyme v MBO Far East (HK) Ltd[HC]	166	Hwang Yiou Kwa Victor & Anor v Morgan Guaranty Trust Co of New York[CA]	294
Format Ltd v Urban Council [HC]	609	I	
Fung Chung Ping & Anor;		Ip Siu Man; R v[CA]	122
Attorney General v[CA]	429	J	
Fung Sik Chung; R v[HC]	194	Jaguar Shipping Corp Ltd; Uni- Ocean Lines Private Ltd v [HC]	25
Glory Garment Factory, Re [CA]	154	Jardine Engineering Corp Ltd v	
GTE Directories (HK) Ltd v	157	Wharf Properties Ltd[CA]	135
Mo Yung Kwok Wah		K	
(t/a Sun Hing Co)[DC]	485	Kam Tin Po; R v[CA]	281
Guangdong Water Conservancy and Hydro Power Engineering		Kao, Lee & Yip v Euro Treasure Ltd[CA]	46
Development Co Ltd v The		Kit Wing Wo; R v[HC]	204
Ming An Insurance Co	177	Kong Wing Fung & Ors;	204
(Hong Kong) Ltd[HC]	177	Chan Wai Man (formerly t/a Shanghai Night Club) v [HC]	411
Hang Lung Bank Ltd v World- Wide Properties Corp Ltd [HC]	444	Kowloon Motor Bus Co (1933) Ltd & Anor v Wu	
Hang Seng Goldsmith Co (a firm) v American		Kam Wing[CA] Kwangtung Provincial Bank v	539
International Assurance		Tang Chik Leung[CA]	93
Co Ltd[HC]	146	Kwok Chi Leung; R v[CA]	603
Helena Restaurant (1981) Ltd; Attorney General v[HC]	491	L	
Hemandas, Re, ex p Bank of Credit and Commerce (Hong		Lai Foon Yung v Tin Sum Valley Public Primary	255
Kong) Ltd[HC]	387	School[HC]	372
Ho Chi Fai & Ors; R v[HC] Ho Chun Chau;	242	Lam Ching Yee & Anor v Lam Man Kwong & Anor [HC]	56
Attorney General v [CA]	40	Lam Hing Nam & Ors: R v [CA]	376

Table of Cases Reported

	Page		Page
Lam Kin Yiu & Ors; R v [HC]	232	Ming An Insurance Co (Hong	
Lam Man Kwong & Anor; Lam Ching Yee & Anor v [HC]	56	Kong) Ltd, The; Guangdong Water Conservancy and Hydro Power Engineering	
Lam Po & Anor; Tang Siu Kit (an infant) v[HC]	391	Development Co Ltd v [HC]	177
Lam Shing Chow; R v[HC]	162	Mo Yung Kwok Wah (t/a Sun Hing Co); GTE Directories	
Lam Siu Hung; R v[HC]	359	(HK) Ltd v[DC]	485
Lam Wing Ching & Ors v Chow Kum Wing[CA]	189	Morgan Guaranty Trust Co of New York; Hwang Yiou	294
Lam Yick Kwan & Ors;	200	Kwa Victor & Anor v [CA] Mow Tai Insurance &	274
Attorney General v[HC]	208 578	Reinsurance Co Ltd; Dickson	
Lee Yi Choi; R v[CA] Leung Kim Hung; R v[HC]	84	Watch & Jewellery Co Ltd v [HC]	505
Leung Mun Lam; R v[CA]	535	. N	
Li Kin Wai & Anor; R v [HC]	249	Ng Cho Shing, Re, ex p The	200
Like Soon Co Ltd v Tsai	247	Far East Bank Ltd[HC]	309
Kui Kan & Ors[HC]	619	Ng Chung Sang; R v[HC]	311
Lo Brothers Ltd v Mak Kwan		Ng Yee May; Sin Hua Trust, Savings & Commercial	
Ting[CA]	427	Bank Ltd v[CA]	1
Lo Hon Yiu Henry; R v [HC]	183	P	
Lo Ka Chun v Lo To & Anor. [CA]	527	Peter Leung Construction	
Lo To & Anor; Lo Ka Chun v [CA]	527	Co Ltd v Tai Poon Co Ltd [CA]	285
Lo Yau Wai; R v[CA]	150	Poon Wah Sang & Ors; R v [HC]	556
Lo Yung Kan; R v[CA]	302	Provident Centre Development	
Lui Po Keung v Tam Kwok		Ltd; Woomera Co Ltd &	257
Hung[HC]	224	Anor v[CA]	257
M Ma Shing & Anor; R v[CA]	561	PT Susukan Agung & Ors; Axona International Credit and Commerce Ltd (in liq) v [HC]	452
Maidstone Investment Ltd v		R	
Chu Mei Kam[DC]	475	R v Chan Chun Chung[HC]	158
Mak Kwan Ting; Lo Brothers	407	R v Chan Kam Sam[CA]	
Ltd v[CA]	427	R v Chan Tung Hoi[CA]	
Man Lim Ping; R v[CA]	61	R v Chan Yam Fai & Anor[HC]	
MBO Far East (HK) Ltd; Fabrique Ebel Societe		R v Chan Yam Yick[CA]	
Anonyme v[HC]	166	R v Chan Pain Flori[HC]	
Miller v Miller[HC]		R v Cheng Sung Hin[HC]	
Millie's Shoes Factory Ltd &		R v Cheung Yiu Man[HC]	
Ors (in liq) (No 1), Re[HC]	548	R v Chung Shi Shun[CA]	
Millie's Shoes Factory Ltd		R v Fung Sik Chung[HC]	
& Ors (in liq) & Ors	550	R v Ho Chi Fai & Ors[HC]	
(No 2), Re[HC]	552	K v Ho Chi Pai & Ols[HC]	272

	Page		Page
R v Ho Kwai Yeung[HC]	180	Sino-British (HK) Ltd;	
R v Hor Wai Ming & Anor [CA]	30	Taxation & Financial	
R v Hung Hing Tong[HC]	172	Services Ltd & Anor v[DC]	227
R v Ip Siu Man[CA]	122	Sizto Yuk Hing; R v[HC]	138
R v Kam Tin Po[CA]	281	Sun Hung Kai Credit Ltd v Szeto Yuk Mei & Ors[DC]	245
R v Kit Wing Wo[HC]	204	Syed Ahmad Noh; R v[HC]	345
R v Kwok Chi Leung[CA]	603	Szeto Yuk Mei & Ors; Sun	424
R v Lam Hing Nam & Ors [CA]	376	Hung Kai Credit Ltd v[DC]	345
R v Lam Kin Yiu & Ors [HC]	232	T	
R v Lam Shing Chow[HC]	162	Tai Poon Co Ltd; Peter Leung	
R v Lam Siu Hung[HC]	359	Construction Co Ltd v [CA]	285
R v Lee Yi Choi[CA]	578	Tam Kin Hung; Attorney	
R v Leung Kim Hung[HC]	84	General v[CA]	606
R v Leung Mun Lam[CA]	535	Tam Kwok Hung; Lui Po	
R v Li Kin Wai & Anor[HC]	249	Keung v[HC]	224
R v Lo Hon Yiu Henry[HC]	183	Tang Chik Leung; Kwangtung	0.0
R v Lo Yau Wai[CA]	150	Provincial Bank v[CA]	93
R v Lo Yung Kan[CA]	302	Tang Siu Kit (an infant) v Lam Po & Anor[HC]	391
R v Ma Shing & Anor[CA]	561	Taxation & Financial Services	371
R v Man Lim Ping[CA]	61	Ltd & Anor v Sino-British	
R v Ng Chung Sang [HC]	311	(HK) Ltd[DC]	227
R v Poon Wah Sang & Ors [HC]	556	Thiam Joc (HK) Ltd & Ors v	
R v Sizto Yuk Hing[HC]	138	Sanday Investment Ltd [CA]	298
R v Syed Ahmad Noh[HC]	424	Tin Sum Valley Public Primary School; Lai Foon Yung v [HC]	272
R v Tsang Koon Ah[HC]	5	To Kin Wah & Anor v Shui	372
R v Tse Hung Lit & Anor [CA]	216	Hing Co Ltd[HC]	239
R v Tung Koon Ming[HC]	4	Tsai Kui Kan & Ors; Like	
R v Wong Chi Yung & Ors [CA]	436	Soon Co Ltd v[HC]	619
R v Wong Chung Ming[CA]	625	Tsang Koon Ah; R v[HC]	5
R v Yeu Chui Fook[HC]	462	Tse Hung Lit & Anor; R v [CA]	216
R v Zee Kim Hung[CA]	615	Tung Koon Ming; R v[HC]	4
S		U	
Sanday Investment Ltd; Thiam		Uni-Ocean Lines Private Ltd	
Joe (HK) Ltd & Ors v[CA]	298	v Jaguar Shipping Corp Ltd . [HC]	25
Sanfield Building Contractors		United Technology Prodcuts	
Ltd; Chau Kau v[CA]	419	Co Ltd v Atari International	22
Shui Hing Co Ltd; To Kin		(HK) Ltd & Anor[HC]	33
	239	Urban Council; Format Ltd v . [HC]	609
Sin Hua Trust, Savings &		W	
Commercial Bank Ltd v Ng Yee May[CA]	1	Wang Teh Huei & Ors;	402
[C/I]	1	Cheung Donald Quinton v [HC]	403

Table of Cases Reported

Page		Page
135	Woomera Co Ltd & Anor v Provident Centre	257
68	World-Wide Properties Corp	
68	Wu Kam Wing; Kowloon	444
5 40	& Anor v[CA]	539
	Y	
436	Yeu Chui Fook; R v[HC]	462
625	Yung Yuk; Attorney General v[HC]	521
433	Z Zee Kim Hung; R v[CA]	615
	135 68 68 568 436	Woomera Co Ltd & Anor v Provident Centre Development Ltd

SUBJECT INDEX

AGENCY

Power of attorney

Execution – Illiterate grantor – Two witnesses only required where grantor physically unable to sign – Powers of Attorney Ordinance (Cap 31) s 2(2) R v Tsang Koon Ah [HC] 5

ARBITRATION

Application for stay of action

Alleged admission made after expiry of contractual limitation period – Whether time bar avoided – Whether waiver or estoppel – Whether prejudice established – Arbitration Ordinance (Cap 341) s 6A

Uni-Ocean Lines Private Ltd v Jaguar Shipping Corp Ltd [HC]

Arbitration clause

Stay of action – Whether there was dispute between the parties at the time writ was issued – Arbitration Ordinance (Cap 341) s 6

Peter Leung Construction Co Ltd v Tai Poon Co Ltd

[CA] 285

[HC]

452

25

Scott v Avery clause

Whether clause was a condition precedent – Whether court had discretion to stay proceedings – Arbitration Ordinance (Cap 341) s 6

Guangdong Water Conservancy and Hydro Power Engineering Development Co Ltd v The Ming An Insurance (Hong Kong) Ltd [HC] 177

BANKING AND FINANCE

Deposit taking company

Deposit taking company ceased to be creditworthy – Whether a breach of contract – Whether failure of consideration

Axona International Credit and Commerce Ltd (in liq) v

PT Susukan Agung & Ors

Loans made in excess of statutory limit – Whether loans recoverable – Calculation of reserves – Effect of mortgage of property on calculation – Whether general loan agreement a contract of loan – Deposit-taking Companies Ordinance (Cap 328) ss 22, 24

Whitehall Finance Ltd v Win and Fair Securities Co Ltd [CA] 68

Futures contract

Contract notes – Failure to comply with statutory requirements – Whether a prima facie defence of illegality – Commodities Trading Ordinance (Cap 250) s 45A

Chintung Commodities Ltd v Cheng Ah Hung Bernard [HC] 313

Whether illegal – Whether illegal secondary markets – Effect of deficient contract notes – Whether dealer unregistered – Whether inference that dealer remained accredited – Commodity Exchanges (Prohibition) Ordinance (Cap 82) ss 3, 4 – Commodities Trading Ordinance (Cap 250) ss 26, 45A

Cheng Ah Hung Bernard v Chintung Commodities Ltd [CA] 318

BANKRUPTCY

Petition for receiving order

Amendment out of time – Incorrect dates – Whether defect one of substance or one of form

Re Ng Cho Shing, ex p The Far East Bank Ltd

[HC]

309

Proof of act of bankruptcy

Affirmation filed pursuant to s 9(1) of Bankruptcy Ordinance – Whether such affirmation sufficient for the purpose of s 9(2) - Further evidence required in support at hearing of petition – Bankruptcy Ordinance (Cap 6) s 9(1), (2) Re Glory Garment Factory 154

Receiving order

Defence of 15% provision - Burden of proof and evidence required in establishing the defence - Uncorroborated evidence of debtor unsatisfactory -Bankruptcy Ordinance (Cap 6) s 9(3)

Re Hemandas, ex p Bank of Credit and Commerce (Hong Kong) [HC]

387

BETTING, GAMBLING AND LOTTERIES

Bookmaking

Aiding and abetting in receiving bets – Assisting in bookmaking a separate offence - Whether liable to conviction under Gambling Ordinance (Cap 148) s 7(1)(a) – Gambling Ordinance (Cap 148) s 7(1)(a), (c)

R v Fung Sik Chung

(HC) 194

Whether presumption in s 19 can be used in a s 7(1)(a) prosecution – Mere presence in premises insufficient - Prosecution failed to prove which offences under s 7(1)(a) or (c) the defendant had committed – Gambling Ordinance (Cap 148) ss 7(1)(a), (c), 19

R v Lam Kin Yiu & Ors

[HC] 232

Gambling

Presumption of gambling - Whether defendant required to give evidence to rebut presumption - Gambling Ordinance (Cap 148) s 19 208

Attorney General v Lam Yick Kwan & Ors

[HC]

Knowingly suffering premises to be used as a gambling establishment

Use of presumption in s 19 - Proof of knowledge - Gambling Ordinance (Cap 148) ss 15(1)(a), 19

R v Lam Kin Yiu & Ors

(HC) 232

BILLS OF EXCHANGE AND OTHER NEGOTIABLE **INSTRUMENTS**

Consideration

Dishonoured cheque - Giving of receipts in return for cheque constituted valuable consideration - Whether consideration satisfied where a promisee suffers detriment at the promisor's request even though no benefit conferred on the promisor - Bills of Exchange Ordinance (Cap 19) s 27

Kao. Lee & Yip v Euro Treasure Ltd

[CA]

46

Letter of Credit

Draft duly accepted - Bank had no knowledge of pledge under underlying contract - Whether pledgee could restrain bank from paying on the draft Cic-Union Europeenne International Et Cie v Wing Sun & Co (a firm) & Anor [HC] 568

CIVIL PROCEDURE

Affidavit

Application to remove own solicitor's affidavit - Whether any justification for granting application

Axona International Credit and Commerce Ltd (in liq) v PT

Susukan Agung & Ors

[HC] 452

Appeal

Appeal against orders for unconditional leave to defend and stay of action - Whether there was a right of appeal under Supreme Court Ordinance (Cap 4) s 14(3)(b)

Jardine Engineering Corp Ltd v Wharf Properties Ltd

[CA]

135

Charging orders on shares

Whether such orders should be discharged - Whether O 50 r 2 of Rules of Supreme Court ultra vires - Charging order a method of enforcing judgment creditor's right - Supreme Court Ordinance (Cap 4) s 54(1)(h), (i)

The Bank of Tokyo Ltd v Aik San Realty Ltd

[HC]

380

Committal

Imposition of condition for security for costs - Circumstances in which condition will be imposed - Whether ill-founded or oppressive - Rules of the Supreme Court O 52 r 2(7)

Fabrique Ebel Societe Anonyme v MBO Far East (HK) Ltd

(HC)

166

Non-compliance with rules - Leave not sought before commencing proceedings - Whether court could grant leave under O 2 r l - Test to be applied - Whether conduct of respondents constituted waiver - Rules of the Supreme Court O 2 r 1

Fabrique Ebel Societe Anonyme v MBO Far East (HK) Ltd

[HC]

166

Costs

Action transferred from High Court to District Court – Whether pre-transfer costs to be taxed on the High Court scale – District Court Ordinance (Cap 336) s 43(1)

Ho Chung Yen, executor of the estate of Madam Wong Yuet Wan, deceased v Chang Din Hung & Anor [DC] 628

Contractual entitlement to claim - Damages representing costs incurred on an indemnity basis - Whether permissible - 'Costs' and 'damages' distinguished - Principles to apply - Impermissible fetter on court's discretion to award costs GTE Directories (HK) Ltd v Mo Yung Kwok Wah [DC] 485

High Court action settled - Damages recovered below limit of jurisdiction of District Court - Whether to be taxed on High Court or District Court scale -District Court Ordinance (Cap 336) s 43(2)

Lui Po Keung v Tam Kwok Hung

[HC]

224

Meaning of 'all costs to follow the event' - Final outcome of case - Rules of the Supreme Court O 62 r 3(3)

Like Soon Co Ltd v Tsai Kui Kan & Ors

[HC] 619

District Court

Application to strike out defence – Omnibus traverse – Whether general denial a sufficient defence – Whether application should be made pursuant to r 27(1)(b) or r 38A of District Court Civil Procedure (General) Rules 93

Kwangtung Provincial Bank v Tang Chik Leung

fCA1

Mareva injunction

Application for leave to administer interrogatories – Whether interrogatories necessary to make Mareva injunction effective - Ancillary orders not to be used for purpose of policing Mareva injunction

United Technology Products Co Ltd v Atari International Ltd

33 [HC]

Maritime Law

Warrant for arrest of sister ship – Application to set aside arrest – Failure to comply with O 75 r 5(8)(b) of the Rules of Supreme Court - Whether defect produced a void which could not be filled - Technical irregularity curable under O 2 r 1

The Athenian Zoe (No 1)

[HC] 362

Pleadings

Striking out statement of claim - Whether a much amended statement of claim that still revealed no cause of action should be struck out as an abuse of the court's process - Undue influence - Late allegation not permitted without good reason for delay

Lo Ka Chun v Lo To & Anor

[CA] 527

609

Request for further and better particulars

Copyright action - Whether sufficient assertion of fact - Publication not identified - Identity of supplier of publications a matter of evidence to which plaintiff not entitled

Format Ltd v Urban Council

[HC]

Summary judgment

Conditional leave to defend – Financial condition impossible for defendant to fulfil

Hwang YJ Victor v Morgan Guaranty Trust Co of New York

294 [CA]

COMPANIES AND CORPORATIONS

Accounts

Failure to lay accounts at general meeting - Whether all reasonable steps

taken - Delegation of duty by director - Companies Ordinance (Cap 32) s 122 R v Lo Hon Yiu Henry [HC]

Auditor's remuneration

Whether amount charged reasonable in the absence of agreement - Whether court bound by time-cost formula – Whether company estopped from raising issue of reasonableness of fee after directors signed tax return showing auditor's fees – Companies Ordinance (Cap 32) s 131(8)

Taxation & Financial Services Ltd v Sino-British (HK) Ltd

[DC]

227

Directors

Delegation of duties – Duties may be delegated to employees but not to professional advisors

R v Lo Hon Yiu Henry

[HC]

183

Winding up

Provisional liquidator's fees - Allegation of fraud by Official Receiver not particularized - Companies Ordinance (Cap 32) ss 255, 276 - Companies (Windingup) Rules r 6

Re Millie's Shoes Factory Ltd & Ors (in liq) (No 1)

[HC]

548

Provisional liquidators' fees – Meaning of adequate remuneration – Whether fees should be assessed on time-cost basis or percentage of realisation - Fees to be assessed after full and proper investigation by Taxing Master

Re Millie's shoes factory Ltd & Ors (in lig) & Ors (No 2)

[HC]

552

Winding-up petition

Dispute as to ownership of shares the subject of related proceedings -Whether petition should be struck out or stayed pending outcome of proceedings Relevant considerations

Cheung Donald Quintin v Wang Teh Hui & Ors

[HC]

403

CONFLICT OF LAWS

Contract

Assignment of debt by Macau bank to Hong Kong bank – Whether Macau law applied - Proper law of the contract - Closest and most real connection -Whether assignment of debt a 'banking activity'

Hang Lung Bank Ltd v World-Wide Properties Corp Ltd

[HC]

444

CONTRACT

Breach

Rectification - Allegation of prior agreement between the parties with which the written instrument did not accord necessary

Thiam Joc (HK) Ltd & Ors v Sanday Investment Ltd

[CA]

298

Consideration

Hire purchase agreement Consideration for guarantee - Agreement to deliver vehicle to hirer

Sun Hung Kai Credit Ltd v Szeto Yuk Mei & Ors

[DC]

345