

# HONG KONG CASES

1987

Volume 2

*General Editor*  
Gerard McCoy, Barrister

*Butterworths Asia*  
Hong Kong • Singapore • Kuala Lumpur

## **The Butterworth Group of Companies**

<b>Singapore</b>	<b>BUTTERWORTHS ASIA</b> 10 Anson Road #32-01 International Plaza, Singapore 079903
<b>Hong Kong</b>	<b>BUTTERWORTHS ASIA (HONG KONG)</b> 19/F Eight Commercial Tower 8 Sun Yip Street, Chai Wan, Hong Kong Tel: 29651400 Fax: 29760840
<b>Malaysia</b>	<b>MALAYAN LAW JOURNAL SDN BHD</b> Suite 1001/02 10th Floor Wisma Hamzah Kwong Hing No 1 Leboh Ampang 50100 Kuala Lumpur
<b>Australia</b>	<b>BUTTERWORTHS</b> Sydney, Melbourne, Brisbane, Adelaide, Perth, Canberra
<b>Canada</b>	<b>BUTTERWORTHS CANADA LTD</b> Toronto and Vancouver
<b>Ireland</b>	<b>BUTTERWORTH (IRELAND) LTD</b> Dublin
<b>New Zealand</b>	<b>BUTTERWORTHS OF NEW ZEALAND LTD</b> Wellington and Auckland
<b>Puerto Rico</b>	<b>BUTTERWORTH OF PUERTO RICO, INC</b> San Juan
<b>UK</b>	<b>BUTTERWORTH &amp; Co (PUBLISHERS) LTD</b> London and Edinburgh
<b>USA</b>	<b>BUTTERWORTH LEGAL PUBLISHERS</b> Salem, New Hampshire and Carlsbad, California

©

**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.

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

ISSN 0218-7809

Typeset by Butterworths Asia, Superskill Graphics  
and Graphicraft Typesetters  
Produced by Mandarin Offset Ltd  
Printed and bound in Hong Kong

## *General Editor*

Gerard McCoy, Barrister

## *Associate Editors*

Grenville Cross QC

Ruy Barretto, Barrister

Michael Ozorio, Barrister

Mohan Bharwaney, Barrister

Susan Kwan, Barrister

Peter Garland, 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

Simon CK Chui, Barrister

Anne-Marie Gordon, Barrister

Victor T Gidwani, Barrister

Judith O'Hare, City University

Paul Harris, Barrister

Gary Kwan, Barrister

Christopher Lam, Barrister

Godfrey Lam, Barrister

Osmond Lam, Barrister

Julia Lau, Barrister

Rebecca MK Lee, Barrister

Raymond Leung, Barrister

PY Lo, Barrister

Herman LH Poon, Barrister

James Rice, Barrister

KW Tang, Barrister

Jennifer Tsang, Barrister

Raymond Tsui Wai Nam, Barrister

Dominic Yeung, Barrister

Hareed Zafrullah, City University

## **Butterworths Asia**

Managing Editor: Anthony P Kinnear

Deputy Managing Editor: Zarinah Marican

Editors: Noorunnisa Ibrahim Kutty, Teoh Swee Leng, Bala Shanmugam,  
Sharon Kaur

## 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):

A	High Court Action
ACJ	Acting Chief Justice
A-G	Attorney General
AR	Application for Review
Adm	Admiralty Action
App	Appendix
art	article
Aust	Australia
CA	Court of Appeal
CA	Civil Appeal Number in references to unreported cases (eg CA 2/92)
CC	High Court Criminal Case
CJ	Chief Justice
Cap	Chapter (as in Chapter Number of an Ordinance)
COL	Crown Office List
Crim App	Criminal Appeal
Comm L	Commercial List
Con L	Construction List
ch	chapter (as in chapter number of a book)
cl(l)	clause(s)
DC	District Court
DCA	District Court Action
DJ	District Judge
DPP	Director of Public Prosecutions
EC	European Communities
ECC	Economic Compensation Case
ECHR	European Court of Human Rights
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
HMSO	Her Majesty's Stationery Office
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
O	Order (of the Rules of the Supreme Court)

PC	Privy Council
PRC	People's Republic of China
PCA	Privy Council Appeal
Pt	Part
para	paragraph
RA	Rating Appeal
RSC	Rules of the Supreme Court
r(r)	rule(s)
reg	regulation
s	section
sub-s	subsection
Sch	Schedule
UN	United Nations
Uncitral	United Nations Commission on International Trade Law
VP(P)	Vice-President(s)
WCC	Workers' Compensation Case

List of abbreviations of law reports:

A Crim R	Australian Criminal Reports; since 1979
ABC	Australian Bankruptcy Cases, 20 vols, 1928–1964
AC	Law Reports, Appeal Cases (HL and PC); since 1890
ALJR	Australian Law Journal Reports; since 1958
ALR	Australian Law Reports; since 1973
All ER	All England Law Reports; since 1936
All ER Rep	All England Law Reports Reprint, 36 vols, 1843–1935
App Cas	Law Reports, Appeal Cases, House of Lords, 15 vols; 1875–1890
BWCC	Butterworths' Workmen's Compensation Cases, 41 vols; 1913–1937
Bing (NC)	Bingham's New Cases, Common Pleas, 6 vols, 1834–1840
Build LR	Building Law Reports
CB	Common Bench Reports, 18 vols, 1845–1856
CBNS	Common Bench Reports, New Series, 20 vols; 1856–1865
CCC	Canadian Criminal Cases, Annotated
CLJ	Cambridge Law Journal
CLP	Current Legal Problems
CLR	Commonwealth Law Reports; since 1903
Ch	Law Reports, Chancery Division; since 1890
Ch D	Law Reports, Chancery Division, 45 volumes; 1875–1890
Cl & Fin	Clark & Finnelly, House of Lords; 1831–1846
Const LJ	Construction Law Journal
Cox CC	EW Cox's Criminal Law Cases, 31 vols; 1843–1941
Cr App R	Criminal Appeal Reports (HL and CA(UK)); since

## Abbreviations

---

	1908
Crim LR	Criminal Law Review; since 1954
DLR	Dominion Law Reports
EG	Estates Gazette; since 1858
ER	English Reports, 178 volumes; 1220–1865
FSR	Fleet Street Reports
Fam	Law Reports, Family Division; since 1972
HKDCLR	Hong Kong District Court Law Reports
HKLR	Hong Kong Law Reports
Hare	Hare's Reports, Chancery, 11 vols, 1841–1853
ICR	Industrial Cases Reports; since 1975
IR	Irish Reports, since 1893
IR (vol) CL	Irish Reports, Common Law, 11 vols, 1866–1877
Imm AR	Immigration Appeal Reports; since 1972
JP	Justice of the Peace; since 1837
JPL	Journal of Planning Law, 1948–1953
KB	Law Reports, King's Bench Division, 53 vols, 1901–1952
LJQB	Law Journal Queen's Bench, 1831–1946
LRC (Const)	Law Reports of the Commonwealth (Constitution)
LRCP	Law Reports, Common Pleas, 10 vols, 1865–1875
LR Eq	Law Reports, Equity Cases, 20 vols, 1865–1875
LR Exch	Law Reports, Exchequer, 10 vols, 1865–1875
LRHL	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols, 1866–1875
LRPC	Law Reports, Privy Council, 6 vols, 1865–1875
LRQB	Law Reports, Queen's Bench, 10 vols, 1865–1875
LT	Law Times Reports, 177 vols, 1859–1947
Lloyd LR	Lloyd's List Law Reports; 1919–1950
Lloyd's Rep	Lloyd's List Law Reports; since 1951
M & W	Meeson and Welsby's Reports, Exchequer, 16 vols, 1836–1847
MLJ	Malayan Law Journal; 1932–1991 Malayan Law Journal; since 1992
Morr	Morrell's Reports, Bankruptcy, 10 vols 1884–1893
NLJ	New Law Journal; since 1965
NSWLR	New South Wales Law Reports; since 1971
NZLR	New Zealand Law Reports; since 1883
P	Law Reports, Probate, Divorce and Admiralty Division; 1891–1971
QB	Law Reports, Queen's Bench Division; 1891–1900, and since 1952
QBD	Law Reports, Queen's Bench Division; 1875–1890
Qd R	Queensland Reports; since 1958
RPC	Reports of Patent Cases; since 1884
RRC	Ryde's Rating Cases; since 1956
SALR	South Australian Law Reports, 1865–1920
SC	Court of Session Cases (Scotland); since 1906

## Hong Kong Cases

---

SC(HL)	Court of Session Cases (Scotland) (House of Lords); since 1906
SLT	Scots Law Times; since 1893
SR (NSW)	New South Wales, State Reports; since 1901
TLR	The Times Law Reports, 71 volumes; 1884–1950
	The Times Law Reports; since 1951
VR	Victorian Reports, 1870–1872; since 1957
Ves	Vesey Jun's Reports, Chancery, 19 vols, 1789–1817
WAR	Western Australian Reports; since 1960
WLR	Weekly Law Reports; since 1953
WN	Law Reports, Weekly Notes, 1866–1952
Y & C Ex	Younge and Collyer's Reports, Exchequer in Equity, 4 vols, 1833–1841

---



# TABLE OF CASES REPORTED

The mode of citation of cases reported in this volume of *Hong Kong Cases* is [1987] 2 HKC (page).

	Page		Page
<b>A</b>		<b>B</b>	
Adhiguna Meranti, The ..... [CA]	126	Buildwell Construction Co Ltd v Mak Kwok Wai t/a Willey Construction & Engineering Co ..... [HC]	554
Andros, The ..... [PC]	48	<b>C</b>	
Arthur Anderson & Co v Tak Hing Lung Co Ltd ..... [Ld T]	440	CDCP International Ltd, Re .... [HC]	324
Attorney General v Lau Lai Fong ..... [HC]	369	Chan Chun Wah v Chan Chun Wai Patrick & Anor .... [HC]	397
Attorney General v Lee Ching Kwong ..... [CA]	563	Chan Chun Wai Patrick & Anor; Chan Chun Wah v ..... [HC]	397
Attorney General v Marples International Ltd .... [HC]	400	Chan Man Chon Madalena; L & D Associates v ..... [CA]	237
Attorney General v Nai Keung ..... [PC]	41	Chan Man Sin v Attorney General ..... [PC]	56
Attorney General v Nunns Esq, Magistrate) & Anor ..... [HC]	294	Chan Mei Ying & Ors; Yick Fung Garment Factory Ltd v ..... [HC]	392
Attorney General v Tsang Chu [CA]	106	Chan Pat t/a Hop Kwan Garment Factory v Lin Wan Garment Factory ..... [CA]	197
Attorney General v Tung Ying Chuen ..... [CA]	349	Chan Tsat Sam v Urban Council ..... [CA]	163
Attorney General v Wu Kam Ming & Ors ..... [CA]	108	Chan Yun Hung; R v ..... [CA]	228
Attorney General v Yeung Sun Shun & Anor ..... [CA]	92	Chase Manhattan Bank NA & Anor; Watanmal (Liberia) Inc v ..... [HC]	427
Attorney General; Chan Man Sin v ..... [PC]	56	Cheng Man To; R v ..... [CA]	261
Attorney General; Sun Tai Cheung Credits Ltd v ..... [PC]	13	Cheung Wai Shing & Anor v Ng Yat Ying ..... [CA]	206
Attorney General; Wong Shuk Ying & Anor v ..... [HC]	457	Choi Yin Bun; R v ..... [HC]	438
Attorney General; Yuen Kun Yeu & Ors v ..... [PC]	25	Chung Fat Mechanical Works Co & Anor; Lau Wing Shing v ..... [CA]	180
Au Chak Kwan; R v ..... [HC]	330	Citibank NA & Anor; Hayim & Anor v ..... [PC]	1
<b>B</b>		Consolidated Newspapers Ltd; Yu Kwong Chiu & Ors v ..... [HC]	351
Bayubay; Wyldbore v ..... [HC]	304	<b>D</b>	
Building Authority v Owners of Illegal Structures on the Roof of 9/F and Roof above Flats A1 & A2 on 10/F 105 Austin Road, Pak On Bldg, Kowloon (KIL 2302) ..... [DC]	413	Derochemont Societe Anonyme v Kent International Films Ltd & Ors ..... [HC]	271
		Detrick Ltd & Anor; Dow MBF Ltd v ..... [HC]	495

# Hong Kong Cases

	Page		Page
Dow MBF Ltd v		& Anor; Winland Investment	
Detrick Ltd & Anor .....	[HC] 495	Ltd v .....	[HC] 542
Dung Jak Sang v		Kishinchand Chellaram	
KK & Winston Chu .....	[HC] 471	(Hong Kong) Ltd v Hang	
<b>E</b>		Yuan Management Ltd .....	[CA] 257
Errol International Ltd v		KK & Winston Chu;	
Leighton (Asia) Ltd .....	[HC] 447	Dung Jak Sang v .....	[HC] 471
<b>F</b>		Kung Kit Shing v Star	
Fidus Co; Pan Asia Textiles		Synthetic Flower Factory	
Ltd v .....	[CA] 233	& Ors .....	[HC] 523
Fireman v Golden Rice		Kwai Chung Town Lot	
Bowl Ltd .....	[HC] 549	No 358, Re .....	[HC] 434
First Bangkok City Finance		Kwan Hang Ching & Anor;	
Ltd, Re .....	[HC] 335	So Ching t/a South Sea Co v [HC]	297
1st Management Consultants		Kwok Po Kong; R v .....	[CA] 149
Ltd & Anor v Mulpha		<b>L</b>	
(Hong Kong) Ltd & Anor ....	[HC] 560	L & D Associates v Chan	
Fong Chin Hung; R v .....	[CA] 203	Man Chon Madalena .....	[CA] 237
Fung Wai & Anor;		Lam Chi Wai; R v .....	[CA] 241
Lam Chun Kow v .....	[LD T]404	Lam Chun Kow v	
<b>G</b>		Fung Wai & Anor .....	[LD T]404
Golden Rice Bowl Ltd;		Lau Lai Fong;	
Fireman v .....	[HC] 549	Attorney General v .....	[HC] 369
<b>H</b>		Lau Wing Shing v Chung Fat	
Hang Yuan Management Ltd;		Mechanical Works Co	
Kishinchand Chellaram		& Anor .....	[CA] 180
(Hong Kong) Ltd v .....	[CA] 257	Lee Chi Wai; R v .....	[HC] 521
Harima, The .....	[CA] 118	Lee Ching Kwong;	
Hayim & Anor v		Attorney General v .....	[CA] 563
Citibank NA & Anor .....	[PC] 1	Lee Ka Fai; R v .....	[HC] 420
Ho Pui Wah & Anor; Overseas		Lee Wing Fu; R v .....	[CA] 154
Trust Bank Ltd v .....	[HC] 459	Leighton (Asia) Ltd; Errol	
Hui Wai Bun; R v .....	[CA] 200	International Ltd v .....	[HC] 447
<b>J</b>		Leong Kit Sun v	
Jiwa International (HK) Co;		Tsui Ching Kuen .....	[LD T]375
Pfizer Incorporated &		Leung Chi Wai; R v .....	[HC] 321
Anor v .....	[HC] 489	Leung Tak Yin; R v .....	[CA] 250
<b>K</b>		Li Chi Kwong; R v .....	[HC] 506
Kent International Films Ltd		Lin Wan Garment Factory;	
& Ors; Derochemont Societe		Chan Pat t/a Hop Kwan	
Anonyme v .....	[HC] 271	Garment Factory v .....	[CA] 197
King's Dyeing and Weaving		Liu Suet Un v Yu Man Fai	
Factory Ltd (in liquidation)		& Anor .....	[HC] 509
		Loong Choi Hing v Yam Kit	
		Ying & Anor .....	[HC] 482

# Table of Cases Reported

	Page		Page
Low Chung Song & Ors v Target Newspapers Ltd & Anor ..... [HC]	284	Owners of Illegal Structures on the Roof of 9/F and Roof above Flats A1 & A2 on 10/F 105 Austin Road, Pak On Bldg, Kowloon (KIL 2302); Building Authority v ..... [DC]	413
Luk Hon Sum Peter; R v ..... [HC]	390		
<b>M</b>		<b>P</b>	
Mak Kwok Wai t/a Willey Construction & Engineering Co; Buildwell Construction Co Ltd v ..... [HC]	554	PBI Publications (Hong Kong) Ltd v Marks Hundred Co Ltd ..... [CA]	157
Malahon Credit Co Ltd v Siu Chun Wah Alice ..... [CA]	79	Pan Asia Textiles Ltd v Fidus Co ..... [CA]	233
Malahon Credit Co Ltd; Siu Chun Wah Alice & Anor v .. [HC]	75	Pfizer Incorporated & Anor v Jiwa International (HK) Co .. [HC]	489
Manetta & Co Ltd v Yip Kwong Ying Rosetta ..... [HC]	454	Pioneer Concrete (HK) Ltd; Yeu Shing Construction Co Ltd v ..... [CA]	187
Marks Hundred Co Ltd; PBI Publications (Hong Kong) Ltd v ..... [CA]	157	Poon Hoi Tin v Melot Investment Ltd ..... [HC]	382
Marples International Ltd; Attorney General v ..... [HC]	400	<b>R</b>	
Melot Investment Ltd; Poon Hoi Tin v ..... [HC]	382	R v Au Chak Kwan ..... [HC]	330
Moore v Official Receiver ..... [CA]	244	R v Chan Yun Hung ..... [CA]	228
Mulpha (Hong Kong) Ltd & Anor; 1st Management Consultants Ltd & Anor v .... [HC]	560	R v Cheng Man To ..... [CA]	261
<b>N</b>		R v Choi Yin Bun ..... [HC]	438
Nai Keung; Attorney General v ..... [PC]	41	R v Fong Chin Hung ..... [CA]	203
Ng Kam Ha v Vincent Sina Traders (HK) Ltd ..... [HC]	517	R v Hui Wai Bun ..... [CA]	200
Ng Lok Ngai & Ors; R v ..... [HC]	463	R v Kwok Po Kong ..... [CA]	149
Ng Yat Ying; Cheung Wai Shing & Anor v ..... [CA]	206	R v Lam Chi Wai ..... [CA]	241
Nunns Esq, Magistrate & Anor; Attorney General v ..... [HC]	294	R v Lee Chi Wai ..... [HC]	521
<b>O</b>		R v Lee Ka Fai ..... [HC]	420
Official Administrator; Wong So Ching v ..... [CA]	213	R v Lee Wing Fu ..... [CA]	154
Official Receiver; Moore v ..... [CA]	244	R v Leung Chi Wai ..... [HC]	321
Oriental Peer Co Ltd v Terrian Ltd & Ors ..... [CA]	61	R v Leung Tak Yin ..... [CA]	250
Overseas Trust Bank Ltd v Ho Pui Wah & Anor ..... [HC]	459	R v Li Chi Kwong ..... [HC]	506
		R v Luk Hon Sum Peter ..... [HC]	390
		R v Ng Lok Ngai & Ors ..... [HC]	463
		R v Wong Muk Ping ..... [CA]	170
		R v Wong Pak Ki ..... [HC]	254
		R v Yeung Sun Wah & Anor . [CA]	173
		<b>S</b>	
		Siu Chun Wah Alice & Anor v Malahon Credit Co Ltd ..... [HC]	75

Hong Kong Cases

	Page		Page
Siu Chun Wah Alice; Malahon Credit Co Ltd v ..... [CA]	79	Wong Muk Ping; R v ..... [CA]	170
So Ching t/a South Sea Co v Kwan Hang Ching & Anor .. [HC]	297	Wong Pak Ki; R v ..... [HC]	254
Star Synthetic Flower Factory & Ors; Kung Kit Shing v ..... [HC]	523	Wong Shuk Ying & Anor v Attorney General ..... [HC]	457
Sun Tai Cheung Credits Ltd v Attorney General ..... [PC]	13	Wong So Ching v Official Administrator ..... [CA]	213
<b>T</b>		Wu Kam Ming & Ors; Attorney General v ..... [CA]	108
Tak Hing Lung Co Ltd; Arthur Anderson & Co v ..... [LD T]	440	Wyldbore v Bayubay ..... [HC]	304
Target Newspapers Ltd & Anor; Low Chung Song & Ors v ..... [HC]	284	<b>X</b>	
Terrian Ltd & Ors; Oriental Peer Co Ltd v ..... [CA]	61	Xiamen International Finance Co Ltd v Tsui Tai Yan & Anor ..... [HC]	422
Tsang Chu; Attorney General v ..... [CA]	106	<b>Y</b>	
Tsui Ching Kuen; Leong Kit Sun v ..... [LD T]	375	Yam Kit Ying & Anor; Loong Choi Hing v ..... [HC]	482
Tsui Tai Yan & Anor; Xiamen International Finance Co Ltd v ..... [HC]	422	Yam Yuk Bing & Anor; Ying Cheong Shoe Mfy v ..... [HC]	310
Tung Ying Chuen; Attorney General v ..... [CA]	349	Yeu Shing Construction Co Ltd v Pioneer Concrete (HK) Ltd ..... [CA]	187
<b>U</b>		Yeung Sun Shun & Anor; Attorney General v ..... [CA]	92
Urban Council; Chan Tsat Sam v ..... [CA]	163	Yeung Sun Wah & Anor; R v [CA]	173
<b>V</b>		Yick Fung Garment Factory Ltd v Chan Mei Ying & Ors [HC]	392
Vincent Sina Traders (HK) Ltd; Ng Kam Ha v ..... [HC]	517	Ying Cheong Shoe Mfy v Yam Yuk Bing & Anor ..... [HC]	310
<b>W</b>		Yip Kwong Ying Rosetta; Manetta & Co Ltd v ..... [HC]	454
Watanmal (Liberia) Inc v Chase Manhattan Bank NA & Anor ..... [HC]	427	Yu Kwong Chiu & Ors v Consolidated Newspapers Ltd ..... [HC]	351
Winland Investment Ltd v King's Dyeing and Weaving Factory Ltd (in liquidation) & Anor ..... [HC]	542	Yu Man Fai & Anor; Liu Suet Un v ..... [HC]	509
		Yuen Kun Yeu & Ors v Attorney General ..... [PC]	25

# SUBJECT INDEX

## ADMINISTRATIVE LAW

### Judicial review

Urban council – Natural justice – Decision of Urban Council to relocate food stall – Whether decision failed to observe rules of natural justice – Whether matter genuinely considered

*Chan Tsat Sam v Urban Council* CA 163

## AGENCY

### Capacity

Whether party contracted as principal – Contract to be interpreted in its entirety

*Pan Asia Textiles Ltd v Fidus Co* CA 233

### ‘Double agency’

Estate agent acting for vendor and purchaser – Double commission – Conflict of interest – Agent to show double agency permissible

*L & D Associates v Chan Man Chon Madalena* CA 237

### Power of attorney

Validity – Presumption that purchaser had no knowledge of revocation – Lost powers of attorney – Powers of Attorney Ordinance (Cap 31) s 5(2) & (4)

*Xiamen International Finance Co Ltd v Tsui Tai Yan & Anor* HC 422

### Scope of agency

Money invested in film production – Obligation of agent in relation to money – Whether obligation extended to ensuring that money was actually spent upon the production of the film – Duty to disclose

*Derochemont Societe Anonyme v Kent international Films Ltd & Ors* HC 271

## BANKING AND FINANCE

### Guarantee

Dispute as to manner in which loan was to be repaid – Injunction to restrain payment by bank when request made – Principles for granting ex parte injunctions in such a case – Must be clear evidence of fraud

*Watanmal (Liberia) Inc v Chase Manhattan Bank NA & Anor* HC 427

## BANKRUPTCY

### Charge

Grant of credit facilities to debtor – Whether loan made under charge recoverable – Whether chargee a money lender within meaning of s 2(1) of Money Lenders Ordinance – Money Lenders Ordinance (Cap 163) ss 2(1) & 23

*Re Kwai Chung Town Lot No 358* HC 434

### Proof of debt

Rejection by Official Receiver as trustee of bankrupt’s estate – Rejection nine years after proof of debt submitted – ‘Reasonable time’ within which to

formally reject proof – Power of court to expunge proof wrongly admitted – Interpretation and General Clauses Ordinance (Cap 1) s 70 – Bankruptcy Ordinance (Cap 6) s 84(1) – Proof of Debts Rules rr 22, 23

*Moore v Official Receiver*

CA 244

## BUILDING AND CONSTRUCTION

### ‘Illegal roof-top structure’

Closure order – Whether a ‘building’ or separate units or dwellings – Whether demolition order can be challenged at hearing of application for closure order – Notice requirements – Posting of notices in conspicuous parts of building – Whether sufficient – Buildings Ordinance (Cap 123) s 27

*Building Authority v Owners of Illegal Structures on the Roof of 9/F and Roof above Flats A1 & A2 on 10/F 105 Austin Road, Pak On Bldg, Kowloon (KIL 2302)*

DC 413

### Quotation acceptance

Interpretation and effect of – Notation ‘subject to tender awarded’ on quotation – Whether a condition precedent to liability of parties – Whether parties precluded from going to alternative source

*Yeu Shing Construction Co Ltd v Pioneer Concrete (HK) Ltd*

CA 187

## CIVIL PROCEDURE

### Costs

Action brought in High Court although damages would have been lower than District Court ceiling – Whether award of costs on District Court scale correct

*PBI Publications (Hong Kong) Ltd v Marks Hundred Co Ltd*

CA 157

### Declaratory judgment

Principles for granting – Whether declaratory relief could be granted when the applicant had no interest in the subject matter of the declaration – Rules of the Supreme Court O 15 r 16

*Oriental Peer Co Ltd v Terrian Ltd & Ors*

CA 61

### Default judgment

Setting aside – Judge’s discretion – Whether case arguable with reasonable prospect of success – Factors to consider in exercising discretion

*Yeu Shing Construction Co Ltd v Pioneer Concrete (HK) Ltd*

CA 187

### Discovery

Discovery before pleadings – Discretion of court to order discovery before pleadings in exceptional circumstances

*Buildwell Construction Co Ltd v Mak Kwok Wai t/a Willey Construction & Engineering Co*

HC 554

Libel – Discretion to allow discovery before particulars – Whether application a ‘fishing expedition’

*Low Chung Song & Ors v Target Newspapers Ltd & Anor*

HC 284

### Further and better particulars

Application made before filing of defence – Whether order desirable or necessary to enable defendant to plead or other special reason

*Buildwell Construction Co Ltd v Mak Kwok Wai t/a Willey Construction & Engineering Co* HC 554

### Pleadings

Extension of time for filing defence – Order extending time for filing defence – Order not complied with – Whether court had power to extend time further

*Buildwell Construction Co Ltd v Mak Kwok Wai t/a Willey Construction & Engineering Co* HC 554

Further and better particulars – Libel – Rolled up plea included in defence – Striking out of defence – Whether sufficient replies made to request for further and better particulars – Rules of the Supreme Court O 82 r 3(2)

*Low Chung Song & Ors v Target Newspapers Ltd & Anor* HC 284

Particulars of defence and counterclaim – Whether subject matter of defence and counterclaim substantially identical – Whether particulars should be ordered

*1st Management Consultants Ltd & Anor v Mulpha (Hong Kong) Ltd & Anor* HC 560

Striking out – Application to be allowed only in plain and obvious cases – Whether necessity for trial obviated or burden of preparing for trial substantially reduced – Application should not involve prolonged or serious argument on issue

*Winland Investment Ltd v King's Dyeing and Weaving Factory Ltd (in liquidation) & Anor* HC 542

### Stay of proceedings

Whether application should be granted – Agreement between parties that dispute arising in relation to matters stated in agreement to be resolved by independent review body – Court not prevented from hearing matters relating to allegations of breach or construction of terms of agreement

*Errol International Ltd v Leighton (Asia) Ltd* HC 447

### Summary judgment

Dispute as to whether deed of mutual covenant had been breached – Defence that other owners had also breached covenant – View of site necessary and photographs not decisive – Whether summary judgment appropriate – Rules of the Supreme Court O 14

*Kishinchand Chellaram (Hong Kong) Ltd v Hang Yuan Management Ltd* CA 257

### Vesting order

Property owned by dissolved company – Whether Attorney General a necessary party – Capacity of Attorney General in such proceedings – Costs of Attorney General

*Wong Shuk Ying & Anor v Attorney General* HC 457

## COMPANIES AND CORPORATIONS

### Book debts

Assignment – Whether assignment was an outright sale that did not require registration under s 80 of Companies Ordinance or was a charge – Reality of transaction to be determined – Non-registration of charge on the book debts of a company – Whether void against Official Receiver – Applicability of s 80(5) of Companies Ordinance – Companies Ordinance (Cap 32) s 80

*Re First Bangkok City Finance Ltd* HC 335

### Charge

Registration – Mortgage by deposit of title deeds – Application for registration – Statutory requirements as to registration not complied with – Registrar's refusal to register – Duty to provide prescribed particulars – Companies Ordinance (Cap 32) ss 80, 83 – Companies (Forms) Orders

*Sun Tai Cheung Credits Ltd v Attorney General* PC 13

### Lifting the corporate veil

Plaintiff not able to bring its case directly within exceptions in which veil of corporateness had been lifted – No evidence showing that company was a sham or mask to avoid recognition by the eye of equity

*Derochemont Societe Anonyme v Kent International Films Ltd & Ors* HC 271

### Rectification of register

Transfer of shares in private company – Refusal to register by the company – Court's discretion to disallow such refusal – Articles of association of private company gave discretion to directors to refuse to register a transfer of shares – Transfer of shares would change character of company – Court must be satisfied that discretion was exercised bona fide and honestly – Court not entitled to interfere with a decision with which it merely disagreed – Companies Ordinance (Cap 32) s 69(1B)

*Fireman v Golden Rice Bowl Ltd* HC 549

### Winding-up

Affirmation verifying petition – Capacity of affirmant – Failure to state capacity on affirmation – Effect – Companies (Winding-up) Rules r 26

*Re CDCP International Ltd* HC 324

Inability of company to pay debts – Mortgage debenture – Sale of goods seized – Whether sale properly conducted – Whether sale at undervalue

*Re CDCP International Ltd* HC 324

Inability of company to pay debts – Whether liability for debt disputed – Company not entitled to resist winding up if only quantum in dispute

*Re CDCP International Ltd* HC 324

Receiver – Receiver agent of borrower – Whether petitioner interfered with conduct of receivership – Whether receiver acted independently

*Re CDCP International Ltd* HC 324



## CONFLICT OF LAWS

### Forum conveniens

Action by cargo owners brought in Hong Kong – Whether Indonesian court appropriate forum – Applicable principles – Applicability of damages limit in Merchant Shipping Act 1894 – Juridical advantages to plaintiffs – Balancing process

*The Adhiguna Meranti* CA 126

### Torts

Tort committed abroad – Choice of law – Relevance of *lex loci delicti*

*The Adhiguna Meranti* CA 126

## CONTRACT

### Breach

Damages – Loss of bargain – Plaintiff bought a more expensive flat after failing to purchase defendant's flat – Mitigation of loss – Whether difference in costs between two flats recoverable – Whether expenses incurred in buying another flat recoverable

*Poon Hoi Tin v Melot Investment Ltd* HC 382

### Consideration

Whether consideration past – Whether act done at request of promisor in return for benefit

*L & D Associates v Chan Man Chon Madalena* CA 237

### Time

No express terms making time of the essence of the contract – Mercantile contract – Intention of parties – Fact that prices of contracted goods varied from day to day made time of the essence

*Pan Asia Textiles Ltd v Fidus Co* CA 233

## CRIMINAL LAW AND PROCEDURE

### Admissibility of documents

Conspiracy to traffic in dangerous drugs – Records of transactions relating to dangerous drugs – Whether document made in furtherance of a conspiracy by persons other than the defendant admissible – Whether common purpose

*R v Hui Wai Bun* CA 200

### Appeal

Fresh evidence – Matter uncovered after application for leave to appeal refused – Reference by governor – Criminal Procedure Ordinance (Cap 221) s 83P

*R v Lam Chi Wai* CA 241

Powers of Court of Appeal on appeal from District Court – Legislation unsatisfactory – District Court Ordinance (Cap 336) s 84(c)

*Attorney General v Yeung Sun Shun & Anor* CA 92