

# BILINGUAL COMMON LAW

EXTRACTS FROM  
EMPLOYMENT CASES



僱傭案例摘錄

THOMSON



SWEET & MAXWELL ASIA

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**Mr Edmund Cham** received education at St Paul's Co-educational College and subsequently studied Law at the University of Hong Kong. He practised as a solicitor specialising in personal injuries litigation. In 1997 he turned to the legal publishing field and since then has been actively involved in various editing and translation projects. He was the Chinese Language Editor of *Hong Kong Lawyer*, the official publication of the Law Society of Hong Kong, from 1998 to 2003, and was also Editor of the official journal of the Inter-Pacific Bar Association. Since 2003 he has held the position of Senior Legal Editor of the *Hong Kong Law Reports & Digest* and, in this capacity, has been responsible for selecting and headnoting Chinese judgments to be included in the law reports. He is also responsible for translating headnotes of the *Hong Kong Court of Final Appeal Reports*. He is a co-author of *Legal Translation in Practice* (《法律翻譯：從實踐出發》), edited by Ms Angelina Luk and published by Chung Hwa Book Company in August 2002 and reprinted in March 2003.

Edmund has been closely involved in the *Bilingual Common Law Series*. He was a translator and in-house editor of the inaugural volume, *Extracts from Criminal Cases*. He is also Editor-in-Chief and a translator of the second volume, *Extracts from Land Cases*, and the present third volume.

## 主編簡介

湛樹基先生 畢業於聖保羅男女中學，隨後於香港大學修讀法律。曾任人身傷害訴訟事務律師。1997年投身法律出版界，曾參與多項編輯及翻譯工作。由1998至2003年出任香港律師會會刊《香港律師》中文編輯，並曾任泛太平洋律師協會會刊編輯。自2003年起擔任《香港法律彙報與摘錄》資深法律編輯，負責揀選載入法律彙報的本地案例判詞以及為判詞擬備撮要；同時負責翻譯《香港終審法院案例彙報》的所有案例撮要。曾為陸文慧小姐主編之《法律翻譯：從實踐出發》(中華書局，2002年8月初版，2003年3月再版)一書撰文，分享法律翻譯經驗和心得。

湛先生積極參與《雙語普通法》叢書的製作，擔任第一冊《刑事案例摘錄》翻譯員兼助理編輯，並且是第二冊《刑事案例摘錄》及本冊的翻譯員兼主編。

# THE GENESIS OF THIS BOOK

## *A Note from the Judiciary*

1. The Basic Law provides that in addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region (Article 9). In fact, however, the development of bilingualism in the law had commenced well before 1997. As early as 1974, the Official Languages Ordinance (Cap.5) was enacted to provide for the use of Chinese in the conduct of proceedings in the Magistrates' Courts. In 1987, bilingual legislation was introduced. In 1995, the Official Languages Ordinance was amended to provide for the use of Chinese in all levels of court.

2. The use of Chinese in legal proceedings has gradually increased over the years. Today, in the Magistrates' Courts and the Small Claims and Labour Tribunals, where the citizen is most likely to encounter the law in action, Chinese is extensively used. In the District Court and the Court of First Instance, the use of Chinese has steadily increased. Where the proceedings were conducted at first instance in Chinese, appeals to the Court of Appeal would usually also be dealt with in Chinese.

3. The common law was of course developed in the English language. Case law in common law jurisdictions outside Hong Kong is entirely in English. Case law developed in Hong Kong in the past has virtually all been in English. Where legal proceedings are conducted in Chinese, judgments in English may have to be cited and quoted. In this event, the courts, adopting a flexible approach, may conduct that part of the proceedings in English. But the courts may well wish to use Chinese for such part of the proceedings and it would obviously be helpful if there were a readily available translation of the judgments in English. That is why this employment law volume, which is the third in the Bilingual Common Law Series, would be of considerable assistance in facilitating the use of Chinese in legal proceedings.

## 緣起

### 司法機構序言

1. 《基本法》訂明，香港特別行政區的行政機關、立法機關和司法機關，除使用中文外，還可使用英文，英文也是正式語文（見第九條）。但實際上，香港法律雙語化的發展，遠在1997年之前一段相當長的時間已經開始。當局早在1974年制定《法定語文條例》（香港法例第5章），就裁判法院如何使用中文進行法律程序訂定條文。1987年展開雙語立法的工作。至1995年修訂《法定語文條例》，為如何在各級法院使用中文訂定條文。

2. 多年來，在法律程序中使用中文的情況與日俱增。現時，在裁判法院、小額錢債審裁處和勞資審裁處這些市民最有可能接觸法律訴訟的法庭，中文的使用非常普遍。此外，在區域法院和高等法院原訟法庭，中文的使用亦已穩步增加。原訟法律程序若以中文進行，有關的上訴在上訴法庭一般亦會以中文進行。

3. 誠然，普通法是在英文的語言環境下發展的。香港以外的普通法適用地區，其案例全都以英文撰寫。過去香港的案例實際上亦全都以英文撰寫的。當案件以中文進行法律程序時，或許需要引述或援用以英文撰寫的判詞，在這個情況下，法庭或會彈性地以英文進行該部份的程序。但是，法庭也許更希望該部份的程序也能以中文進行。假如有關的英文判詞已備有中文譯本，就肯定更為理想。所以，由Sweet & Maxwell Asia出版之《雙語普通法》系列的第三冊——僱傭法合訂法，對促進在法律程序中使用中文會有莫大的幫助。

4. 本書內容既有本港和海外普通法適用地區的英文判詞摘錄及其中文譯本，也有一份中文判詞的摘錄及其英文譯本。書中所收錄的均是在僱傭案例上經常引用的判詞段落，而有關的譯文由Sweet & Maxwell Asia委託具備法律背景的資深翻譯人員提供。他們經驗豐富，各節錄的譯本正是他們共同努力的成果。



4. This Book contains excerpts from judgments in English in Hong Kong as well as common law jurisdictions outside Hong Kong and their Chinese translation. The Book also contains excerpts from one judgment in Chinese and their English translation. The excerpts included are among those which are often cited in employment law cases. The translation is the result of the hard work and dedicated efforts of a team of experienced translators with legal background commissioned by Sweet & Maxwell Asia.

5. When making use of this Book, it is important to bear in mind the following matters. First, the inclusion of judgments and excerpts therefrom does not give them any status, authority or weight which they do not otherwise have. Secondly, the authentic and the only authentic version of a judgment and excerpts therefrom is the language in which it was delivered, be it English or Chinese. The translated version is not part of the judgment and has no legal status.

6. This Book is a significant addition to the growing body of Chinese translations of common law judgments in English. Parties to legal proceedings, lawyers, judges and judicial officers will all find this work valuable and helpful in relation to the use of Chinese in proceedings involving employment law. This Book is an important contribution to the development of bilingualism in the law.

August 2006

5. 使用案例選輯時，必須謹記兩點：第一，這些判詞及其節錄部份不會因為收錄在本書內而得到本身並不具有的法律地位、權威或份量。第二，判詞及節錄段落的原文才是真確本，亦即是說，由法庭頒下的文本（不論是英文還是中文）才是唯一的真確本。翻譯本不是判詞的一部份，是沒有法律地位的。

6. 本書進一步豐富了我們在普通法英文判詞中譯方面日漸壯大的工作成果。相信法律訴訟各方、律師、法官及司法人員都會一致認同，本書是他們在關於僱傭法的法律程序中使用中文時一本非常寶貴及有用的參考工具書。本書的出版對雙語法制的發展實在有重大的貢獻。

2006年8月

# TABLE OF LEGISLATION

References are to the numbers assigned to the 34 cases in this volume, i.e. EM1, etc.

## Employment Ordinance (Cap.57)

Generally	EM5, EM9, EM11, EM21, EM23
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s.2(1)	EM11, EM24, EM26, EM27
s.3	EM4
s.3(1)	EM5
s.6	EM14
s.7	EM14
s.8A(1)	EM14, EM22
s.9	EM16, EM19
s.9(1)(a)(ii)	EM16
s.17	EM26
s.20	EM26
s.23	EM27
s.25A	EM27
s.26	EM27
s.31B	EM5
s.31B(1)	EM6, EM22
s.31C	EM8
s.31D(1)(c)	EM7
s.31E(1)	EM22
s.31J	EM4
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Sch.1	EM5, EM6
Sch.1, para.2	EM5
Sch.1, para.3	EM5
Sch.1, para.3(2)	EM6
Sch.1, para.3(2)(b)	EM5
Sch.1, para.4	EM6

# 法例表

本索引乃根據每項法例英文名稱的首個字的字母順序排列。  
 法例條文右方的號碼為提述該條文的案例在本書中的參考號碼，即EM1等。

## 僱傭條例 (第57章)

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第2(1)條	EM11, EM24, EM26, EM27
第3條	EM4
第3(1)條	EM5
第6條	EM14
第7條	EM14
第8A(1)條	EM14, EM22
第9條	EM16, EM19
第9(1)(a)(ii)條	EM16
第17條	EM26
第20條	EM26
第23條	EM27
第25A條	EM27
第26條	EM27
第31B條	EM5
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第31D(1)(c)條	EM7
第31E(1)條	EM22
第31J條	EM4
第31K條	EM4
第31R條	EM5
第31T(1)(c)條	EM7
第31T(2)條	EM8
第40條	EM5
第41條	EM27
第41AA條	EM5
第41C條	EM27
第65條	EM27
第70條	EM6, EM11, EM26
第VA部	EM8
第VB部	EM8
第XI部	EM4
附表1	EM5, EM6
附表1，第2段	EM5
附表1，第3段	EM5
附表1，第3(2)段	EM6
附表1，第3(2)(b)段	EM5
附表1，第4段	EM6

Sch.1, para.5	EM4
Sch.1, para.6	EM5

**Labour Tribunal Ordinance (Cap.25)**

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s.7(1)	EM28, EM29, EM30
s.10	EM30
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s.21	EM32, EM33, EM34
s.21A	EM32, EM34
s.27	EM31
s.30	EM33
s.31(4)	EM34
Sch., para.1	EM28
Sch., para.1(a)	EM29, EM30
Sch., para.1(b)	EM30
Sch., para.3	EM28, EM30
Sch., para.6	EM30

**Small Claims Tribunal Ordinance (Cap.338)**

Generally	EM30
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s.7	EM30
s.10(1)	EM30

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第14條	EM31
第21條	EM32, EM33, EM34
第21A條	EM32, EM34
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附表，第1(a)段	EM29, EM30
附表，第1(b)段	EM30
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小額錢債審裁處條例 (第338章)

總論	EM30
第5(1)條	EM30
第7條	EM30
第10(1)條	EM30

## TABLE OF CASES 案例表

This Table comprises: (1) in **bold type**, the 34 cases extracted in this volume; and (2) cases referred to in the extracts.

Names of both parties to each case are indexed. Therefore, for example, *Umar v Pliastar Ltd* is referred to under both “U” and “P”.

References are to the numbers assigned to the 34 cases, ie EM1, etc.

At the end of this Table is a separate section setting out the available Chinese names of a few of the 34 cases extracted in this volume. These names are provided by the Judiciary of the Hong Kong SAR.

本案例表載有：(1)本書所載的三十四宗案例(以**粗體**顯示)；及(2)各份判詞摘錄所提述的所有案例。

本索引乃根據每宗案例的雙方英文名稱的字母順序排列。例：*Umar v Pliastar Ltd*一案在“U”欄及“P”欄均有索引。

案例右方的號碼為該案本身在本書中之參考號碼(以**粗體**顯示)或引述該案的判詞摘錄在本書中之參考號碼，即EM1等。

本案例表末部另行列出本書所載的三十四宗案例其中數個案例的中文名稱。所有中文名稱均由香港特別行政區司法機構提供。

Adam; City Construction Contracts (London) Ltd v (unrep., The Times, 4 January 1988)	EM32
Ahmed and Elkamah; Newcastle Catering Ltd v [1991] IRLR 473	EM10
<b>Ansell; Boston Deep Sea Fishing and Ice Co v (1888) LR 39 Ch D 339</b>	<b>EM16, EM18</b>
Associated Fire Alarms Ltd; O'Brien v [1969] 1 All ER 93	EM8
Associated Tunnelling Co Ltd; Jones v [1981] IRLR 477	EM7
A-G of Canada; Hills v (1988) 48 DLR (4th) 193	EM27
B & B Viennese Fashions v Losane [1952] 1 All ER 909	EM10
Bachicha v Poon Shiu Man [2000] 3 HKC 452	EM30
Bank of Credit and Commerce International SA; Malik v [1998] AC 20	EM30
Bank voor Handel en Scheepvaart NV v Slatford [1953] 1 QB 248	EM2
Barclays Bank Plc; Thackwell v [1986] 1 All ER 676	EM10
Bartlam; Evans v [1937] AC 473	EM32
Baster v London & County Printing Works [1899] 1 QB 901	EM17
<b>Bayubay v Wyldbore (unrep., LTA No 44 of 1987)</b>	<b>EM19</b>
Bhatnagar; National Ebauch Ltd v [1981] HKLR 114	EM30
<b>Boston Deep Sea Fishing and Ice Co v Ansell (1888) LR 39 Ch D 339</b>	<b>EM16, EM18</b>
British India Steam Navigation Co Ltd; Savage v 46 TLR 294	EM17
<b>Cabaya v Kwan So Han [2004] 2 HKLRD 658</b>	<b>EM30</b>
Camden London Borough Council; Pedersen v [1981] ICR 674	EM13
<b>Canton Fitzgerald (HK) Ltd; Ireland &amp; Others v [1988] 1 HKC 493</b>	<b>EM28, EM30</b>
<b>Carmichael &amp; Another v National Power Plc [1999] 1 WLR 2042</b>	<b>EM3</b>

<b>Chan Pak Sang &amp; Others v Kin Yen Lung Trading Co Ltd</b> (unrep., LTA No 42 of 1987)	EM32
<b>Charmine Beauty Spa; Ma Po Ching v (unrep., LTA No 110 of 1999)</b>	EM34
Cheng Yuen v The Royal Hong Kong Golf Club [1997] HKLRD 1132	EM6
<b>Cheuk Kam Wan; Ciano v (unrep., LTA No 78 of 1995)</b>	EM10
<b>Cheung Chun Chu; Flying Goose Garment Factory Ltd v</b> [1989] 2 HKC 388	EM4
<b>Cheung For (t/a Sheung Mei Knitting &amp; Garment Factory) v</b> Tsoi Lai Hung & Others [1988] 1 HKC 768	EM33
<b>China Wall Ltd; Tsang Tak Chi v [1999] 1 HKC 366</b>	EM21
<b>Choi Tze Keung v Green Club (unrep., LTA No 77 of 1996)</b>	EM23
<b>Chong Hau Sai v Mok Kuen Shing &amp; Others (unrep., LTA No 75 of</b> 1995)	EM20
Chow; Medical Council of Hong Kong v (2000) 3 HKCFAR 144	EM27
<b>Chun Shing Holdings Ltd; Wong Man Kwan &amp; Others v</b> [2003] 3 HKLRD 403	EM5
<b>Ciano v Cheuk Kam Wan (unrep., LTA No 78 of 1995)</b>	EM10
City Construction Contracts (London) Ltd v Adam (unrep., The Times, 4 January 1988)	EM32
Clark v Nomura International Plc [2000] IRLR 766	EM25
Clark v Oxfordshire Health Authority [1998] IRLR 125	EM5
Clouston and Co Ltd v Corry [1906] AC 122	EM17
Collins; Southern Electricity Board v [1970] 1 QB 83	EM4
Construction Training Board v Labour Force Ltd [1970] 3 All ER 220	EM2
Coronation Electronics Ltd v Tharoomals (Hong Kong) Ltd [1986] HKLR 1168	EM32
Corry; Clouston and Co Ltd v [1906] AC 122	EM17
<b>Courtaulds Northern Spinning Ltd v Sibson &amp; Another [1988] ICR 451</b>	EM7
<b>Cruz v Yu Wai Sam [1996] 2 HKC 485</b>	EM14
Davidson v Pillay [1979] IRLR 275	EM10
Davis (Inspector of Taxes); Floor v [1980] AC 695	EM27
Edwards; MV Yorke Motors v [1982] 1 WLR 444	EM34
<b>El Grande Holdings Ltd; Yeung Kin Ha v (unrep., LTA No 158 of 2003)</b>	EM9
Evans v Bartlam [1937] AC 473	EM32
<b>First Fit Co Ltd v Lam Yau &amp; Another (unrep., LTA No 4 of 1990)</b>	EM31
Floor v Davis (Inspector of Taxes) [1980] AC 695	EM27
<b>Flying Goose Garment Factory Ltd v Cheung Chun Chu</b> [1989] 2 HKC 388	EM4
<b>Globe Dyeing Factory Ltd; Ng Chi Leung &amp; Others v</b> (unrep., LTA No 9 of 1988)	EM8
<b>Green Club; Choi Tze Keung v (unrep., LTA No 77 of 1996)</b>	EM23
Haldemann; Panalpina (Hong Kong) Ltd v [1983] HKLR 275	EM28, EM30
Hellyer Brothers Ltd v McLeod [1987] IRLR 232	EM5
<b>Herald Houseware Ltd v Wong Hin Bong (unrep., LTA No 60 of</b> 1989)	EM13
Hills v A-G of Canada (1988) 48 DLR (4th) 193	EM27
<b>Ho Wai Ling (t/a Windsor Sauna); Li Shuk Man &amp; Others v</b> (unrep., HCA No 5446 of 1996)	EM24



Hong Kong Philharmonic Society Ltd; Steward & Others v (unrep., HCA No 3031 of 1979)	EM28
<b>Hui Lai Ying v Kwong Wai Tai Sports Wear Factory Ltd (unrep., LTA No 8 of 2001)</b>	<b>EM11</b>
Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd [1991] 1 WLR 589	EM30
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<b>Industries Polytex Ltd; Preen v (unrep., LTA No 171 of 1995)</b>	<b>EM29</b>
<b>Ireland &amp; Others v Canton Fitzgerald (HK) Ltd [1988] 1 HKC 493</b>	<b>EM28, EM30</b>
Jacobs; Meux v (1875) LR 7 HL 481	EM27
<b>Jardine Fleming Holdings Ltd; Wood v [2001] 2 HKC 735</b>	<b>EM25</b>
<b>Johnatham's Fashion Manufacturing Ltd &amp; Another; Leung Kam Fat &amp; Others v (unrep., LTA No 14 of 1988)</b>	<b>EM2</b>
Jones v Associated Tunnelling Co Ltd [1981] IRLR 477	EM7
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<b>Kwan So Han; Cabaya v [2004] 2 HKLRD 658</b>	<b>EM30</b>
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<b>Lam Yau &amp; Another; First Fit Co Ltd v (unrep., LTA No 4 of 1990)</b>	<b>EM31</b>
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<b>Leung Kam Fat &amp; Others v Johnatham's Fashion Manufacturing Ltd &amp; Another (unrep., LTA No 14 of 1988)</b>	<b>EM2</b>
<b>Lewis v Motorworld Garages Ltd [1986] ICR 157</b>	<b>EM12, EM30</b>
<b>Li Shuk Man &amp; Others v Ho Wai Ling (t/a Windsor Sauna) (unrep., HCA No 5446 of 1996)</b>	<b>EM24</b>
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<b>Lui Lin Kam &amp; Others v Nice Creation Development Ltd (t/a Fu On Seafood Restaurant) (unrep., CACV No 205 of 2003)</b>	<b>EM6</b>
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