



The Employment Laws of Hong Kong and China

Rohan Price



LexisNexis®

The Employment Laws of Hong Kong and China

RBE Price

BA, LLB, LLM (University of Tasmania)
Assistant Professor of Law (Visiting)
City University of Hong Kong

with

Björn Ahl

Dr. iur. (Heidelberg University)
Assistant Professor of Law,
City University of Hong Kong

contributing a chapter, 'Employment Termination in the PRC'

LexisNexis

Hong Kong • Singapore • Malaysia
2009

The Members of the LexisNexis Group worldwide

Hong Kong	LexisNexis, Hong Kong 39/F, Hopewell Centre, 183 Queen's Road, East
Singapore	LexisNexis, Singapore 3 Killiney Road #08-08 Winsland House I Singapore 239519
Malaysia	LexisNexis Malaysia Sdn Bhd T1-6, Jaya 33 3, Jalan Semangat, Seksyen 13 46100 Petaling Jaya Selangor Darul Ehsan
India	Butterworths Wadhwa Nagpur 14th Floor, Building No 10, DLF Cyber City, Phase-II, Gurgaon, Haryana, India 122002
Argentina	LexisNexis Argentina, Buenos Aires
Australia	LexisNexis Butterworths, Chatswood, New South Wales
Austria	LexisNexis Verlag ARD Orac GmbH & Co KG, Vienna
Canada	LexisNexis Butterworths, Markham, Ontario
Chile	LexisNexis Chile Ltda, Santiago De Chile
Czech Republic	Nakladatelství Orac sro, Prague
France	Editions du Juris-Classeur SA, Paris
Ireland	Butterworths (Ireland) Ltd, Dublin
Italy	Giuffrè Editore, Milan
New Zealand	Butterworths of New Zealand, Wellington
PRC	LexisNexis Beijing Representative Office, Beijing
Poland	Wydawnictwo Prawnicze LexisNexis, Warsaw
South Africa	Butterworths SA, Durban
Switzerland	Stämpfli Verlag AG, Berne
United Kingdom	LexisNexis Butterworths Tolley, London and Edinburgh
USA	LexisNexis, Dayton, Ohio

© LexisNexis 2009

All rights reserved. No part of this publication may be reproduced, or transmitted in any form or by any means, including photocopying and recording, 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.

ISBN: 978-988-8016-81-5

Printed in China.

Publisher's Note

The publisher, authors, contributors and endorsers of this publication each excludes liability for loss suffered by any person resulting in any way from the use of, or reliance on, this publication.

Foreword

The Hon. Michael Kirby AC CMG*

Those who go before face the most challenging task. They must find the path that effectively decides the journey for most later travellers. They must see its beginning and ending; its chief features; its attractive and unattractive byways; and they must demonstrate why it is worth making the journey at all.

In this trail-blazing work on employment law, the author has achieved a great deal by these standards. His analysis of the employment laws of Hong Kong bears the marks of his academic scholarship and experience with the relatively developed legislative and common law principles applicable in the Hong Kong SAR. Taking as his text, the remarks of Yeung J in *Chow Wai Yee v Fong's National Engineering Co. Ltd.*¹, “In Hong Kong there is no collective bargaining. There are no ‘standard conditions’ set down by trade unions or enacted by legislation. There is no statutory meaning of ‘normal working hours’”, he observes that this is only part of the full story:

“... [E]mployees in Hong Kong do have a range of minimum standards of employment under the Ordinance from which no employer is free to depart. It need also be observed that standards in the Ordinance constitute bare minima and are not comprehensive in nature when compared with those in other developed economies”.

A careful reading of the first part of this text demonstrates that there are several Ordinances and other laws applicable in the Hong Kong SAR (including the *Basic Law* itself) which bear upon the employment conditions of employees (and the duties of employers) in Hong Kong. In fact, the network of such laws is actually quite extensive. And, as we all know, in a common law system, there is never ultimately a gap in the law. If no enacted law touches upon a controversy, a principle of the unwritten law will commonly be available to help resolve it. That principle will be derived from the common law: by processes of analogous reasoning from earlier decisions containing discussion of broadly stated rules, based on notions of fairness and reasonableness as perceived by succeeding generations of judges.

So that is what the first part of this book is about. The collection of statutory and case law that gives guidance to the rights and obligations of employees and employers in a jurisdiction which has flourished, in part, literally because of its frontier character. A jurisdiction, born of colonial rule, growing on the

* Justice of the High Court of Australia (Retd) 1996-2009; President of the Institute of Arbitrators & Mediators Australia 2009-

¹ [1996] 2 HKLR 52 at 55; [1996] HKCFI 33 at [13].

back of the enterprise, innovation and hard work of transient populations, which lacked some of the protections put in place elsewhere by more settled, assertive and questioning societies, such as my own.

The book bears witness to the growing impact on Hong Kong society of many protective notions derived from common law decisions in other jurisdictions, supplemented by an ever-increasing number of enacted laws aimed at stamping out the worst forms of abuse that can arise in the labour conditions of significantly unregulated economies.

The author takes us through the general Hong Kong law on employment conditions; on workplace safety; on the power to terminate employment; on remedies for wrongful dismissal; on special features of the law that have evoked specific legal responses (racial discrimination; sexual discrimination; victimisation and harassment) and the particular needs for protection of foreign domestic employees.

The laws on these subjects may not be as detailed and developed as in jurisdictions such as the United Kingdom, Australia, Canada and New Zealand, whose cases are cited. But the principles expressed seem familiar enough. In part, this is because of the shared legacy of the common law of England.

It is the second part of the book that constitutes the truly major challenge for the author, when he turns to explain, and to outline, the major features of the emerging employment laws of the People's Republic of China. As he points out in his preface, those who examine the key laws on such subjects in the PRC "take both caution and heart: while the law is extremely formative, the rule of law is tentatively but unmistakably taking hold on the mainland". This book is fascinating both for the specialist and generalist lawyer because of the descriptions that are offered of the emerging employment laws of China. The difficulties are candidly acknowledged, including problems of translation; apparent inconsistencies of applicable rules; and seemingly haphazard application of those rules. Yet it is here that we feel somewhat like the poet Keats *On First Looking into Chapman's Homer*. Here is a realm of gold now undergoing an admirable process of replacing the unpredictable dictates of 'men of virtue', under the Confucian ethic, by the rule of objective laws upheld by freshly minted courts.

This new Chinese revolution is as astonishing and daring as its predecessor. In parallel with the amazing changes in the Chinese economy, in little more than a generation, it seeks to graft onto a somewhat alien landscape a rule of law notion that is in many ways novel, unexpected and still fragile. That there should be problems, difficulties and inconsistencies is unsurprising, given the novelty of the enterprise. However, as the author points out, the foundations for basic national laws on employment conditions, prohibited employment features, minimal protective contents, protection for workplace injuries, safeguards from discrimination and provisions for civil liability in the employment context are all growing up.

As well, detailed provisions are emerging in China with respect to the termination of employment, with quite specific enactments governing the entitlements of employees and the obligations of employers in the event of termination, including by dismissal. With the growth of the Chinese economy

has come widespread access to new technology. Millions of Chinese citizens now visit and admire countries that have replaced the rule of money, guns and power by the rule of law. Through the internet, and other means of telecommunications, most young citizens now have access to the world as it is. With the unstoppable ideas that come from such technological advances have come civic notions that lie deep in the hearts of most men and women. That arbitrariness shall be replaced by order. And that order shall normally be just, rational and impartial in the event of a dispute.

Whatever differences may arise about other attributes of human rights, it was virtually inevitable that those human rights concerned with employment would emerge fairly quickly, both in Hong Kong and the PRC, as a consequence of their rapid economic advancement. That advancement is the combined product of generally benign administration; skilful and adventurous entrepreneurship; and the committed activities of employed labour. The Chinese economic miracle, with its overflow and reflections in Hong Kong, could not have happened (and would not have been sustained) without the ongoing concurrence of this trinity of forces.

So this is where the subject matter of this book brings together the dual elements of economic advancement and fundamental human rights. At the beginning of the modern era of human rights, it was recognised that the respective entitlements of employers and employees were primary features of the core necessities of human existence, required for a successful and functioning modern nation state. It is no coincidence that the oldest agency of the United Nations, created originally by the *Treaty of Versailles* of 1919 in the League of Nations, was the International Labour Organisation (ILO). Amidst the many mistakes of that post-Great War settlement, at least the victors correctly understood that economic justice in the employment relationship, was central to the avoidance of civil unrest and perilous wars and the creation of a harmonious society whose people felt secure in one of the most essential activities of their lives: work.

In the efforts after the Second World War to establish universal principles of human rights initially in the form of the *Universal Declaration of Human Rights* (UDHR) of 1948, several key provisions recognised the importance of fundamental employment rights that now find their reflections in the laws of Hong Kong and China, described in this book. Thus, Article 23 of the UDHR provides a framework for the particular employment laws that are described in this book:

- “23.1 Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- 23.2 Everyone, without any discrimination, has the right to equal pay for equal work.
- 23.3 Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- 23.4 Everyone has the right to form and to join trade unions for the protection of his interests.”

Article 24 goes on to provide that:

“Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”.

The detailed laws described constitute an attempt, both by the procedures of enactment and of judicial elaboration (including in the PRC) to spell out, in greater detail, the foregoing fundamental rights. When the *International Covenant on Economic Social and Cultural Rights* (ICESCR) was adopted by the General Assembly of the United Nations in 1966, it too contained elaborations of the core principles of employment human rights, foreshadowed in the UDHR. Along with the rights to the equality of the sexes (Art 3), to a democratic society (Art 4), to social security (Art 9), to family support (Art 10), to food, clothing and shelter (Art 11), to health (Art 12), to education (Art 13) and to participation in cultural life (Art 15), the ICESCR specifically provided recognition of “the right of everyone to the enjoyment of just and favourable conditions of work”. This must include minimum remuneration, safe and healthy working conditions, equal opportunity for all workers, and rest leisure and reasonable limitation of working hours, with periodic and remunerated holidays (Art 7) and the right to join trade unions of choice (Art 8).

It is sometimes said that many countries of the Asia-Pacific region feel more comfortable with the notions of human rights as expressed in the ICESCR than in the companion document, the *International Covenant on Civil and Political Rights* (ICCPR). That latter is occasionally viewed as presenting more Western concepts of universal human rights. However that may be, it is not without significance that employment rights were amongst the fundamentals recognised at the beginning of the modern era of human rights. So it is unsurprising that they should be early recipients of legal attention, both in Hong Kong and China. This book spells out the detail of the applicable rights. And it shows the priority that has been given to them in each of the societies studied.

If the law on employment conditions (and on human rights more generally) is now undergoing much more fulsome elaboration and study, both in the Hong Kong SAR and in China, this should cause no surprise. A similar evolution has occurred in other major economic settings in the world. Most notably, it has occurred in the European Union. As Dr. Paul Kearns has remarked recently²:

“... [T]he EU began as a totally economically-oriented body of six states concerned with primarily coal and steel, and the enhancement of their trade in these areas. It was only very gradually that the EU moved towards political initiatives as well as economic ones, having made changes from the EEC to the EC to the EU. At its inception, therefore, the organisation did not have reason to believe that it would need to involve itself with human rights issues. Moreover, the Council of Europe, in Strasbourg, was specifically developed

² P. Kearns, “The EU and Human Rights: An Unlikely Evolution” (2009) 79 *Amicus Curiae* (Soc Advd L Studies) 3 at 3-4.

to regulate human rights in the contracting states ... So it was not self-evident that the EU would begin replicating this remit itself (all the EU states are now party to the Convention) ... Another reason why human rights did not feature as a EU concern at its beginning is that the founding states were disoriented after World War II and did not wish to give up significant power to an international body, such as the EU. Human rights ... are now a highly topical concern, but that was not the case in 1945, when the *Universal Declaration of Human Rights* had not even been born.

As Dr. Kearns explains, the foundation for human rights in Europe came through the early development of principles in the employment field concerned about labour discrimination, such as the principle of “equal pay for equal work”. From these early and special aspects of human rights protection, topical for a rapidly growing economic zone arising from conditions of serious disruption, the broader movement for the protection of a wider range of universal rights grew steadily, inexorably and with growing power.

The interesting question which is left by a reading of this book is whether a similar evolution is now occurring in Hong Kong (where a start was made in the fundamental rights expressed in the *Basic Law*) and in the PRC of China. Once it is recognised that individuals must enjoy enforceable local manifestations of universal rights in the employment sphere, it will become increasingly clear that the same people should enjoy such rights in other spheres of life, beyond employment.

That is why the journey that is begun in this book is at once prescient and important. In law, context is critical. And the context of the subject matter of this book is the way in which two disparate legal jurisdictions have been grappling with the detailed provision of laws to regulate, in a just way, the relations between their employees and employers.

I congratulate the author and the publisher on an innovative book, published in a world of global markets and trade. Its subject matter will be of interest far from China and Hong Kong. And the key to understanding that subject matter is provided by the context of the universal instruments of human rights. Those instruments insist that basic principles of justice must be observed in the employment relationship. And that relationship will itself be a paradigm for others, in respect of which still broader protections will eventually emerge.



MICHAEL KIRBY
Sydney
1 December 2009

Preface

This first edition of *Employment Laws of Hong Kong and China* is intended to find an audience among legal practitioners in Hong Kong who find themselves in need of a clear and up-to-date exposition of local employment law. There are chapters here on the legislative framework of Hong Kong employment law, the approaches to identifying employment, termination and wrongful dismissal. I have tried in this modestly sized work to capture something of the local flavour of Hong Kong laws on employment by raising reform options in many chapters. A large chapter on wrongful dismissal in Hong Kong has been included so that this most important aspect of local law is given its due recognition. There are also chapters discussing employment law as it is particularly experienced in Hong Kong and a notable one deals with confidential information. In addition, coverage is given of the numerous new statutory developments on employment law in the PRC and in this regard particular focus is given the emerging laws on termination, dispute resolution and workplace safety.

It is hoped that this book will encourage practitioners and the bench alike to reflect on the strengths and weaknesses of the law and to positively assist in the drive to reform it, or to give further thought to what is unique about it. It is also hoped that legal professionals in Singapore and Malaysia will see correspondences between Hong Kong and their law due to a common history of British colonialism. Above all, it is wished that the book assists in a shared endeavour to make the law clearer and more understandable to the people it regulates.

For those who are drawn to these pages for their coverage of key laws in the PRC take both caution and heart: while the law is extremely formative, the rule of law is tentatively but unmistakably taking hold on the mainland. We do, however, need to see beyond the present difficulties. The PRC's laws on employment are sometimes oddly translated or haphazardly applied. On occasions a law is repeated in two or more statutory instruments which are decades apart. The statutory material often has little or no easily available case law to offer interpretation and, where case law exists, the reported reasoning of judges can be slight. This is a function of how nascent the law is as well as the newness of judges to applying it. National and provincial laws appear to overlap. Enforcement of the old and new laws is a highly problematic area from the payment of wages on time to the effective prosecution of OSH transgressors. For all these shortcomings, a courageous start has been made on codifying individual employment rights and providing a meaningful system of employee remedies in the PRC. Much of it relies on a legislated combination of imported labour practices and a distinctively Chinese approach to the employment relationship.

The author also hopes that this book's audience will lend a hand in shaping its direction and content in future editions. In this way it will be able to

celebrate what is distinctive in Hong Kong and PRC law as well as maintain a commentary on those matters which are the most practically useful. Much of Hong Kong's employment law provides only what is absolutely necessary and much of the PRC's is focused on what is ideal. In a small way, the author hopes that by taking the step of writing on these legal systems what is deemed necessary in Hong Kong can be enlarged and what currently aspirational in the PRC can one day result in consistent outcomes for those who the law tries to protect. Particular thanks go to Professor Charles Rickett (University of Queensland) for his review of the chapter on confidential information, Assistant Professor Bjorn Ahl (City University of Hong Kong) for supplying a chapter on employment termination in the PRC and Ms Holly Allan (the Helpers for Helpers Legal Service) for her efforts on the chapter concerning employing foreign domestic helpers. Finally Ms Sasha Thomas-Nuruddin and Ms Surinder Kaur deserve particular credit for propelling the book along the path to publication with such efficiency. The law stated here was current on 25 November 2009.

RBE PRICE
Hong Kong,
25 November 2009.

TABLE OF CASES

[1959] 1 WLR 100	[3-023]
Abrahams v Performing Rights Society [1995] EWCA Civ 35	[5-012]
Adams v Charles Zub Associates Ltd [1978] IRLR 551	[1-016]
Adamson v B & L Cleaning Services [1995] IRLR 193	[8-006]
Addis v Gramophone Co Ltd [1909] AC 488	[5-005], [5-006], [5-040]
Aldersea v Public Transport Corp (2001) 183 ALR 545	[5-040]
Allen v Johar Inc 823 SW 2d 824 (Ark 1992)	[8-014]
Allidem Mae G v Kwong Si Lin [2005] HKEC 2170; HCLA 0004A of 2004; [2005] HKCFI 1254 (29 December 2005)	[7-026]
American Cyanamid Co v Ethicon Ltd [1975] AC 396	[8-017]
Andayani v Chan Oi Ling [2001] 1 HKC 252	[2-008]
Ansell Rubber Co Pty Ltd v Allied Rubber Industries Pty Ltd [1967] VR 37	[8-015], [8-016]
Antonacci v Great Atlantic and Pacific Co of Canada (1998) 35 CCEL (2d) 1 (Ont CJ)	[4-045]
Aquina Celestina Valdez v So Mei Ngor Betty [2005] HKEC 1407; DCEO 0003 of 2004 [2005] HKDC 154 (12 September 2005)	[6-028], [7-005]
Archer v Organization Search Ltd [1998] HKEC 109, [14]	[4-061]
Au Kwai Fun Judy v Cathay Pacific [2008] HKEC 30; DCEO 0004 of 2007 [2008] HKDC 6 (7 January 2008) at [24]	[6-016]
Australian Mutual Provident Society v Chaplin (1986) 18 ALR 385	[2-008]
Avilina C Davit v Leung Cheung Yuk Ying [1996] HKEC 603; HCLA 0048 of 1996 [1996] HKCFI 315 (12 July 1996)	[7-027]
Bachicha v Poon Shiu Man Henry [2000] 3 HKLRD 833	[7-022]
Balston Limited v Headline Filters [1987] FSR 330	[8-012]
Bank voor Handel en Scheepvaart NV v Slatford [1953] 1 QB 248	[2-014]
Barcock v Brighton Corp [1949] 1 KB 339	[3-008]
Bayubay v Wyldbore [1987] HKLY 457; HCLA 0044 of 1987 [1987] HKCFI 52 (15 October 1987)	[7-026]
Beeston v Collyer (1827) 4 Bing 309,	[5-001]
Beever v BM Fabrications Ltd [1996] UKEAT 383	[5-003]
Bettini v Gye (1876) 1 QBD 183	[4-046]
Birch v University of Liverpool [1985] ICR 470	[4-052]
BMI Healthcare Ltd v Spaulding 2007 WL 919447 (EAT)	[4-015]
Board of Governors of St Matthias Church of England School v Crizzle [1993] IRLR 472	[6-020]
Bolton v Stone [1961] AC 850	[3-010]
Boston Deep Sea Fishing & Ice Co v Ansell (1888) 39 Ch D 339	[5-019]

Bower v Peate (1875-76) LR 1 QBD 321.....	[2-005]
Boyo v London Borough of Lambeth [1995] IRLR 50	[5-035]
British Bakeries Ltd v O'Brien [2002] UKEAT 1479, [30].....	[5-020]
British Columbia Government and Service Employees' Union v Public Service Employee Relations Commission; British Columbia Human Rights Commission (1999) 176 DLR (4th) 1, 24-25	[6-026]
British Labour Pump Co Ltd v Byrne [1979] ICR 347	[4-055]
Brown v Southall and Knight [1980] ICR 617	[4-054]
Burazin v Blacktown City Guardian (1996) 142 ALR 144	[5-040]
Burdett-Coutts v Hertfordshire County Council [1984] IRLR 91	[4-051]
Carmichael v National Power [1999] 1 WLR 2042.....	[2-017]
Cassidy v Ministry of Health [1951] 2 KB 343.....	[2-013]
Castro Evelyn Dimalanta v Wong Choi Wah [2002] HKEC 1114; HCLA 0009 of 2002 [2002] HKCFI 1244 (4 September 2002) at [17]	[7-009]
Cathay Pacific Airways v Wong Sau Lai [2006] 2 HKLRD 586.....	[3-010]
Cathay Pacific Airways Ltd v Wong Sau Lai [2006] HKCU 810; (2006) 9 HKCFAR 371	[3-002]
Cathy Pacific Airways v Wong Sau Lai [2006] 2 HKLRD 586, 596; FACV 0001 of 2006 [2006] HKCFA 58 (23 May 2006)	[1-025]
Cavanagh v Ulster Weaving Co Ltd [1960] AC 145	[3-008]
Cawley v South Wales Electricity Board [1985] IRLR 89	[4-053]
Chak Chong Chi v Maxim's Caterers Ltd [1992] HKLY 478; HCLA 0025 of 1992 [1992] HKCFI 7 (21 September 1992) at [10]	[7-026]
Chan Chi Loi v Cheng For [2006] HKEC 1567; HCA 22136 of 1998 [2003] HKCFI 516 (17 June 2003)	[1-015]
Chan Choi Yin Janice v Toppan Forms (Hong Kong) [2006] HKEC 415; DCE 00006 of 2002 [2006] HKDC 51 (3 March 2006)	[4-035], [5-040], [6-025]
Chan Kam Lau v Hong Kong University of Science & Technology [2007] HKDC 403; DCCJ 4016 of 2006 (21 December 2007)	[4-023]
Chan Kam Yau v Hong Kong University of Science & Technology [2007] HKEC 2304	[4-011]
Chan Kwok Kin v Mok Kwan Hing [1991] HKLR 631; CACV 0078 of 1990; [1990] HKCA 355 (11 October 1990).....	[2-007], [2-009]
Chan Noi Heung v Chief Executive in Council [2007] HKEC 885 (16 May 2007) (CFI)	[1-017]
Chan Noi Heung v Chief Executive in Council [2009] 3 HKLRD 362 (16 March 2009) (CA)	[1-017]
Chan Noi Heung v Chief Executive in Council [2009] HKEC 459 (24 March 2009) (CFA)	[1-017]
Chan Shui Man v Tsang Hing Shan [1991] HKLY 480; CACV 0098 of 1991 [1991] HKCA 319 (19 November 1991).....	[2-008]
Chan Yau Wing v Hyundai Engineering & Construction Co Ltd [2005] HKEC 1493; DCEC 0672 of 2003; [2005] HKDC 169 (26 September 2005).....	[2-026]

Chan Yin Ping v Pome Ltd [1989] HKLY 524; HCLA 0018 of 1989	
[1989] HKCFI 47 (7 November 1989)	[4-029], [5-023]
Chang Ying Kwan v Wyeth (HK) Ltd 108.....	[6-025]
Charles R Davidson & Co v M'Robb [1918] AC 304	[2-026]
Chen v Tamara Rus [2001] 3 HKLRD 541.....	[6-023]
Cheng Tai Lok v Tai Lee Transportation Co [1995] 2 HKC 169.....	[2-007]
Cheng Yuen v Royal Hong Kong Golf Club [1997] HKLRD 1132;	
CACV 0416 of 1996; [1997] HKCA 655 (7 January 1997)	[1-006]
Cheng Yuen v Royal Hong Kong Golf Club [1997] HKLRD 219, 223;	
CACV 0146 of 1996; [1997] HKCA 655 (7 January 1997)	[2-012]
Cheng Yuen v The Royal Hong Kong Gold Club	
[1997] HKLRD 1132	[2-007], [2-016], [2-018]
Cheng Yuen v The Royal Hong Kong Golf Club [1996] 2 HKLR 302	[2-014]
Cheung Chi Keung v The Hospital Authority [2006] 2 HKLRD 46, 54;	
HCA 3838 of 2003 (15 February 2006) at [21]	[4-006]
Chief Constable of the West Yorkshire Police v Khan [2001]	
1 WLR 1947.....	[6-010]
Chief Constable of West Yorkshire Police v Khan [2000] ICR 1065	[4-036]
Chong Hau Sai v Mok Kuen Shing [1995] HKEC 287;	
HCLA 00075 of 1995; [1995] HKCFI 456 (14 November 1995)	[7-023]
Chow Wai Yee v Fong's National Engineering Co Ltd [1996]	
2 HKLR 52, 55; HCLA 0065 of 1995 [1996] HKCFI 33	
(19 January 1996)	[1-014], [1-018]
Chow Yin Chun v Fang Brothers Knitting Ltd HCLA 0055 of	
1987 [1988] HKCFI 46 (21 April 1988) at [7]	[5-017]
Chung Chi Keung v The Hospital Authority [2006]	
2 HKLRD 46; HCA 3838 of 2003 [2006] HKCFI 161	
(15 February 2006)	[4-024], [5-007], [5-037], [7-020]
Chung King Fung v Faith Dental Supplies Co Ltd [2000] HKEC 1317;	
DCEC 0427X of 1999 [2000] HKDC 23 (26 September 2000).....	[2-008]
Clark v Oxfordshire Health Authority [1998] IRLR 125.....	[2-017], [2-019]
Clayton & Waller v Oliver [1930] AC 209	[1-023]
Cleveland Ambulance NHS Trust v Blane [1997] ICR 851	[5-040]
Coco v A H Clark (Engineers) Ltd [1969] RPC 41	[8-011]
Coinopexpress.com Ltd v Cheuk Chun Fai [2007] HKEC 1872.....	[8-009]
Colfar v Coggins & Griffith (Liverpool) Ltd [1945] AC 197.....	[3-006]
Collier v Sunday Referee Publishing Co Ltd [1940] 2 KB 647	[1-023]
Colonial Mutual Life Assurance Society Ltd v The Producers	
and Citizens Co-operative Assurance Co of Australia Ltd (1931)	
46 CLR 41.....	[2-004], [2-021]
Cooper v Henderson (1825) 3 S 619.....	[5-002]
Coordinated Industries Pty Ltd v Elliott (1998) 43 NSWLR 282	[8-021]
Corrs Pavey Whiting & Byrne v Collector of Customs (Vic) (1987)	
14 FCR 434.....	[8-011]
Cruz v Yu Wai Sam [1996] 2 HKC 485; CACV 0259 of 1995 [1996]	
HKCA 610 (13 March 1996)	[5-024], [7-020]
Cutter v Powell (1795) 6 TR 320.....	[5-001]

Daquiz v Wai [2000] HKCFI 634	[4-050]
Davidson v Handley Page Ltd [1945] 1 All ER 235	[3-003]
Davys v Richardson (1888) 21 QBD 202	[5-013]
De Nicolas v Lee Fung Lan [1997] HKEC 444; HCLA 0015 of 1997 [1997] HKCFI 786 (9 October 1997) at [43]	[4-031], [5-039], [7-008], [7-022]
De Silva Samarasingh Balage AA v John Alan Brodie DCCJ 0229 of 2001 [2001] HKDC 249 (2 November 2001) at [26]	[7-013]
Deacons v White & Case Ltd Liability Partnership (2003) 6 HKCFAR 322; HCA 2433B of 2002 [2003] HKCFI 401 (24 October 2003)	[1-023]
Deacons v White Limited Liability Partnership [2003] 3 HKLRD 670	[8-013]
Delaney v [1992] 1 AC 687	[5-012]
Denham v Midland Employers' Mutual Assurance Ltd [1955] 2 QB 437	[2-021]
Denise Billion Ltd v Hui Ting Sung [1996] 2 HKLR 107; CACV 0135 of 1995; [1996] HKCA 519 (28 February 1996)	[2-025]
Devonald v Rosser & Sons [1906] 2 KB 728	[1-023], [5-027]
Dietman v London Borough of Brent [1988] 1RLR 299	[4-051]
Dixon v Cementation Co Ltd [1960] 3 All ER 417	[3-006]
Dixon v Stenor Ltd [1973] 1RLR 28	[5-008]
Dubai Aluminium Co Ltd v Salaam [2002] UKHL 48	[2-022]
Dutton & Clarke Ltd v Daly [1985] ICR 780	[7-022]
Eastwood v Magnox Electric plc [2004] 3 WLR 322	[5-036]
Edwards v National Coal Board [1949] 1 KB 704	[3-024]
Elvira Vergara v The Attorney General [1989] 1 HKLR 233; CACV 00120 of 1987 [1987] HKCA 21 (14 October 1987) at [19]	[7-018]
Elvira Vergara v The Attorney General HCMP 1409 of 1987; [1987] HKCFI 196 (17 August 1987) at [21]	[7-022]
Evelyn Semana Bachicha [2000] 2 HKLRD 833; CACV 0055 of 2000; [2000] HKCA 493 (18 July 2000)	[4-025], [4-030], [5-008], [5-015], [5-036], [5-038], [5-039]
Evelyn Semana Bachicha v Poon Shiu Man Henry [2002] HKEC 1270; DCCJ 1546 of 1999 [1999] HKDC 17 (10 September 1999) at [47]	[7-007]
Faberlan v Mckay (1920) WLD 23	[5-013]
Faccenda Chicken Ltd v Fowler [1987] 1 Ch 117	[8-012], [8-016], [8-018]
Faridha Sulistyoningsih v Mak Oi Ling Karen [2007] 3 HKLRD H12; DCPI 1575 of 2005 [2007] HKDC 110 (4 April 2007)	[7-008]
Farley v Skinner [2001] 3 WLR 899	[5-006]
FC Gardner Ltd v Berisford [1978] 1RLR 63	[5-026]
Ferandez Melecia T v Kwan Joseph Chi Hung DCEC 00729 of 2006 [2007] HKDC 23 (22 January 2007) at [46]	[7-018]
Ferguson v John Dawson and Partners (Contractors) Ltd [1976] 1 WLR 1213	[2-012]
Finch v Sayers [1976] 2 NSWLR 540	[4-044]

Firm of Solicitors, In Re a [1997] Ch 1	[8-012]
Fleming Sales Co v Bailee 611 F Supp 507 (ND Ill 1985).....	[8-014]
Flowerday v Visionhire Ltd Unreported, English Court of Appeal, 16 October 1987.....	[3-023]
Fong Mung Yan v ISS Hong Kong Services Ltd [2008] 1 HKLRD 63.....	[1-004]
Fong's National Engineering Co Ltd v Wong Wai Yuk [2003] HKCFI 301, [51].....	[8-013]
Freedom Motors Australia Pty Ltd v Vaupotic [2003] NSWSC 506, [50]	[8-011]
French v Brockes (1830) 6 Bing 354.....	[5-013]
FSS Travel & Leisure Systems Ltd v Johnson & Chantry Corp Ltd [1997] EWCA Civ 2759	[8-013]
Fu v Chau [1992] HKDC 10, [6]	[4-049]
Gaffney v Aviation & Shipping Co Ltd [1966] 1 Lloyds Reports 249	[3-028]
Garner v Grange Furnishing Ltd [1977] IRLR 206	[7-018]
General Cleaning Contractors Ltd v Christmas [1953] AC 180	[3-007], [3-008], [3-009], [3-010], [3-035]
Gillespie v Commonwealth of Australia (1991) ACTR 1.....	[3-011]
Gilman Engineering v Simon Ho (1986) 8 IPR 313.....	[8-018]
Glasgow Corp v Muir [1943] AC 448	[3-010]
Globe Silver Ltd v Wong Chun Pong [2005] HKEC 40; DCCJ 5876 of 2003 [2005] HKDC 2 (11 January 2005)	[5-026]
Gloria Villaman v Durga Devi Tillani [1996] HKEC 1051; HCLA 0035 of 1997; [1997] HKCFI 603 (17 December 1997) at [5].....	[7-025]
GNT Holdings (UK) Ltd v Barter [2004] UKEAT 0877 at [16]	[5-020]
Godagan Deniyalage Premac v Cheung Kwan Fong [2004] HKEC 1551; DCCJ 02488 of 2003 [2004] HKDC 176 (20 December 2004)	[7-023]
Gogay v Hertfordshire County Council [2000] IRLR 703	[5-006]
Gordon Employment, Inc. v Jewell 356 NW 2d 738 (Minn App 1984)....	[8-013]
Gothard v Mirror Group Newspapers Ltd [1988] IRLR 396.....	[5-008]
Grace v David Evan Real Estate (1998) 78 WAIG 1410.....	[4-052]
Graham Oxley Tool Steels Ltd v Firth [1980] IRLR 135	[7-022]
Graves v Cohen (1970) 46 TLR 121	[4-044]
Grehan v North Eastern Health Board [1989] IR 422	[5-004]
Gunton v London Borough of Richmond upon Thames [1980] ICR 755	[4-029], [5-033], [5-034], [5-037]
Gurung Tiki Maya v Shum Shing Cheung [2009] HKEC 280	[3-009]
Hadley v Baxendale (1854) 9 Ex 341	[5-008], [5-009]
Hall v Wright (1858) EB & E 746-793	[4-044]
Halliday and Nicholas Insurance Brokers Pty Ltd v Corsiatto (2001) 11 ANZ Insurance Cases 61-505	[8-016]
Han Yuet Lui Rebecca v Ritz-Carlton Ltd [2001] HKCU 55	[2-021]
Hang Fook Lau Seafood Restaurant v Kwok Sik Yuen [2000] HKLRD (Yrbk) 416; HCLA 0002 of 2000 [2000] HKCFI 350 (18 April 2000).....	[1-008], [7-012]
Hare v Murphy Bros [1974] IRLR 342.....	[4-044]

Harrington Lynch v Cap Gemini Ernst & Young Hong Kong Ltd [2004] HKEC 581; HCCL 0061A of 2000; [2004] HKCFI 528 (17 May 2000) at [106]; upheld [2005] HKEC 1022 (CA)	[4-029], [5-023]
Hart v A&R Marshall & Sons [1978] 2 All ER 413	[4-044]
Hartley v Harman (1840) 11 A & E 728	[5-013]
Harvard Addhair Technologies Ltd v Samson Professional Hairweave Centre [1999] HKEC 579	[8-013]
Helen Tsang v Cathay Pacific Airways Ltd [2002] 2 HKLRD 677; CACV 0043A of 2001 [2001] HKCA 367 (1 November 2001) at [28] and [29]	[6-012], [6-016]
Hellyer Brothers Ltd v McLeod [1987] IRLR 232	[2-019]
Helmet Integrated Systems Ltd v Tunnard [2006] EWCA Civ 1735	[8-001]
Helmut Integrated Systems Ltd v Tunnard [2007] IRLR 126, [37]	[8-019]
Hill v CA Parsons & Co Ltd [1972] Ch 305	[5-007]
Hivac Ltd v Park Royal Scientific Instruments Ltd [1946] Ch 169	[8-004]
HKSAR v Gold Ram Engineering & Development Ltd [2002] HKEC 628; HCMA 0912 of 2001 [2002] HKCFI 517 (17 May 2002) at [44]	[3-024]
HKSAR v Sun Fook Kong Holdings [2003] HKCFI 440; HCMA 0140 of 2003 (3 September 2003)	[3-025]
Hogg v Dover College [1990] ICR 39	[5-003], [5-028]
Honeywill and Stein Ltd v Larkin Bros (London's Commercial Photographers) Ltd [1934] 1 KB 191	[2-003], [2-005]
Hong Kong Ming Wah Shipping v Sun Min [2006] HKEC 106; FAMV 0030 of 2005 [2006] HKCFA 21 (12 January 2006)	[4-033]
Horn v Voluntary Hostels Group 2003 WL 116681 (EAT)	[4-015]
HSBC Bank Plc v Wallace [2008] 1 HKLRD 613	[8-008], [8-009], [8-010]
Hsu Li Yun v The Incorporated Owners of Yuen Fat Building [2000] 1 HKLRD 900	[3-027]
Hsu Shu Chiao v Lung Cheong Toys Ltd [2002] 1 HKC 479	[2-028]
Hsu Shu Chiao v Lung Cheong Toys Ltd [2002] HKEC 188; CACV 0754 of 2001 [2002] HKCA 435 (7 February 2002)	[2-027]
Hu Yi Global Information Resources (Holding) Co Hong Kong Ltd v Hai Wai Ying [2008] HKEC 1840	[8-007], [8-008]
Hughes v Percival (1883) 8 AC 443	[2-005]
Hutchinson v London & North Eastern Railway Co [1942] 1 KB 481	[2-006]
Huttman v Boulnois 2 Car & P 509; (1826) 172 ER 231	[5-001]
Iceland Frozen Foods Ltd v Jones [1983] ICR 17	[4-012], [4-013]
Ip Kai Sang v Federal Elite Ltd [2008] 2 HKLRD 563	[6-034]
Item Software UK Ltd v Fassihi [2005] ICR 450	[1-023]
J Lauritzen AS v Wijsmuller BV [1990] 1 Lloyd's Rep 1	[4-043]
James v Eastleigh Borough Council [1990] 2 AC 751	[4-036]
James v Thomas H Kent & Co Ltd [1951] 1 KB 551	[5-004]
Jarmain and Son Ltd v Mannion [1999] UKEAT 240	[5-017]
Jerry Chen v Whirlpool (Hong Kong) Ltd [2007] HKEC 1908; FACV 0023 of 2006; [2007] HKCFA 70 (26 October 2007) at [2]	[3-002]
Johnson v Unisys [2003] 1 AC 518	[5-030]

Johnson v Unisys Ltd [2003] 1 AC 518.....	[5-040]
Julita Raza v Chief Executive in Council [2006] HKEC 1339; CACV 0218 of 2005 [2006] HKCA 296 (19 July 2006) at [5].....	[7-001], [7-003], [7-007]
Jupiter General Insurance Co v Shroff [1937] 3 All ER 67	[5-017]
K v Secretary for Justice DCEO 0003 of 1999 [2000] HKDC 15 (27 September 2000) at [31]	[6-026]
Kam Hung Industries Co Ltd v Lam Ming Sun [1987] HKEC 339; HCLA 0061 of 1986 [1987] HKCFI 36 (23 January 1987).....	[1-009]
Kao, Lee & Yip v Lau [2007] 3 HKLRD 365; CACV 0121 of 2006; [2007] HKCA 275 (4 July 2007)	[4-029], [4-031], [5-022], [5-023], [5-033], [5-039]
Karchoud v Incorporated Trustees of the Islamic Community Fund of Hong Kong [2003] HKEC 818, [34]	[4-009]
Karchoud v Incorporated Trustees of the Islamic Community Fund of Hong Kong [2003] HKCFI 270.....	[4-015]
Keung Man Lan v Oceanic Universal Garment Manufacturers Ltd [1986] HKEC 232; HCLA 0043 of 1986 [1986] HKCFI 211 (26 September 1986).....	[1-023]
Ko Hon Yue v Liu Ching Leng [2008] HKEC 1314; HCA003494 of 2003 [2008] HKCFI 660 (4 August 2008)	[5-036]
Koehler v Cerebos (Aust) Ltd (2005) 79 ALJR 845.....	[3-011]
Kuoni Travel (China) Ltd v Kelly Frances Richards [2006] HKCFI 1373, [9].....	[8-013]
Kuoni Travel (China) Ltd v Kelly Frances Richards [2006] HKEC 2201.....	[8-013]
Kwan Chu Kwong v Cheng Shui Hung [2005] HKEC 1235; DCPI000164/2004 [2005] HKDC 103 (11 August 2005) at [11]	[3-027]
Kwan Hang Ching v So Ching [1988] HKLY 480; [1987] 2 HKC 297	[7-021]
Kwan Yu Biu v Nip Chung On HCA 0844 of 1969 [1970] HKCFI 12 (26 November 1970) at [13]	[3-027]
Lai Chi Pon v Toto Steel & Iron Works Ltd [1997] 2 HKC 195; HCPI 1149A of 1995 [1997] HKCFI 562 (12 March 1997).....	[3-009]
Lai Kam Wah v Wing & Kwong Co Ltd [2003] 3 HKLRD L11; HCPI 1131 of 2002 [2003] HKCFI 489 (28 November 2003) at [15].....	[3-005]
Lai Sing Ping v Kwong Wan Kai Transportation Co Ltd [1999] HKEC 260; HCPI 01084 of 1997 [1999] HKCFI 1258 (25 February 1999)	[2-008]
Lai Wah Wai v Castco Testing Centre Ltd [1996] 2 HKC 44.....	[3-008]
Laing Agnes v Lisbeth Enterprises Ltd [2005] 2 HKLRD 150; HCLA 0133 of 2003 [2004] HKCFI 423 (28 June 2004).....	[1-008]
Lam Min v Yau On Construction Co [1981] HKLR 646; CACV 0095 of 1981 [1981] HKCA 189 (5 October 1981).....	[2-025]
Lam Pik Shan v Hong Kong Wing On Travel Service Ltd [2007] HKEC 1383.....	[4-010]
Lam Wing Lai v YT Cheng (Chintai) Ltd [2006] 1 HKLRD 639; DCEO 0006 of 2004 [2005] HKDC 276 (23 December 2005).....	[4-035], [6-037]