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THE CRIMINAL PROCEDURE OF HONG KONG

A DESCRIPTIVE TEXT



General Editor:
Derek Roebuck

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PREFACE

This is the fourth volume in the Chinese Digest of Hong Kong Law series, a project of the City University's Centre for Chinese and Comparative Law, which has been made possible by the generous support of the Royal Hong Kong Jockey Club. The first volume was *Digest of Hong Kong Contract Law*; the second and third were the English and Chinese versions of *The Criminal Law of Hong Kong: a Descriptive Text*. All have been published by Peking University Press and are distributed outside the People's Republic of China by Blackstone Press. The next volume is *Digest of Hong Kong Criminal Law*, to be followed by a Chinese version of this present volume and *Digest of Hong Kong Criminal Procedure*.

The objectives of this project and our methods of work were described in the prefaces and introductions of earlier volumes and further information is in the Introduction which follows.

Some conventions have been adopted which need to be explained. As in earlier volumes, cases are referred to by the name of the accused alone, where the other party is the Crown or the State. Gender specific language has been avoided, except in direct quotations. Punctuation has been omitted unless it serves a purpose. The definite article has been omitted before the names of Ordinances and other legislation, which are abbreviated, after their first appearance in a chapter, to their initial letters, and they are listed in the Abbreviations. The accused or defendant is usually referred to by the abbreviation D, the victim by V, and a witness by W.

Particularly in Chapter 8, on Sentencing, D includes an accused person who has been convicted.

Paragraph numbers are for ease of reference. Cross references to other parts of this volume are in bold type italicized; to parts of *The Criminal Law of Hong Kong; a Descriptive Text* by bold type, but not italicized. A problem has arisen from the nature of our endeavour. Our concern is constantly to expand and improve our coverage. Topics which we had omitted from the English version of *The Criminal Law of Hong Kong* were added to the text before it was published in Chinese. The Chinese version therefore has four chapters which do not appear in the English; XVII Perjury, XVIII Loitering, XIX Criminal Libel and Blasphemy, and XX Piracy. They are distinguished in cross-references in this volume by a C before the chapter number, for example C XVII is Perjury.

As before, we hope for criticism, which we can use to improve our future work. Already it is clear that new editions will soon be called for, not just because the original printings will have been exhausted but because there are improvements that must be made, from correcting simple errors to bringing the law up to date. We can expect the change of sovereignty in just over a year's time to make substantial as well as cosmetic changes. But, at that time, there will at least be the beginnings of a comprehensive statement of some of the most important parts of the common law of Hong Kong in Chinese; Contract, Criminal Law, Criminal Procedure and, we hope, Torts.

Special thanks for their encouragement are due to the Chief Justice, Sir TL Yang; the Attorney-General Mr Jeremy Mathews; the Law Draftsman Mr Tony Yen; and the Dean of the Faculty of Law, Professor Wang Guiguo.

The work is based on material supplied by the contributors whose names are listed below. The editorial team has been augmented to include Ms Zhao Yuhong, Mr Wong Kwok Yuen and

Mr Hui Chun Sing who took over as Project Co-ordinator from Zhao Yuhong on her appointment to a lectureship in January 1996. We have been helped at all stages by Professor Zhao Bingzhi of People's University, the leader of our Chinese Language team; by Professor Mark Findlay of the University of the South Pacific, who undertook a complete overhaul of earlier drafts; and by Dr Sin King Kui of our Department of Chinese, Translation and Linguistics, whose scholarship informs all our work.

Responsibility for the accuracy of all statements of law, as for all other aspects of the work, rests with me as General Editor.

We have tried to state the law as it was on 1 March 1996. We have not been able to give the new titles for the Crown, the Attorney General, Queen's Counsel and so on, which had not been determined at this date.

Derek Roebuck
Centre for Chinese and Comparative Law
City University of Hong Kong
April 1996

INTRODUCTION

The Basic Law, the Constitution of the Special Administrative Region of China, which Hong Kong will become on 1 July 1997, provides that the Common Law will remain one of the sources of law. It also provides that Chinese is the official language of the law, though English may also be used and is also an official language. It would be surprising if after that date a person accused of a criminal offence had no right to be tried in Chinese and already the courts of Hong Kong, from Magistrates to the High Court, are increasingly making that possible. It is therefore essential that all the law which may affect that trial be available in Chinese.

Already the project from which the present work emanates has produced texts in English and Chinese which describe the criminal law of Hong Kong, *The Criminal Law of Hong Kong: a Descriptive Text*. At about the same time as this volume, Peking University Press will have published *Digest of Hong Kong Criminal Law*. When the Chinese translation of this present work appears, and is followed by the *Digest of Hong Kong Criminal Procedure*, the courts, professions, police and parties to criminal prosecutions will have what aspires to be a comprehensive statement of the law relevant to their concerns. And we shall have started to work on revising them and providing them in electronically readable forms.

As we stated in the introduction to earlier volumes, there are three stages in our work: first a team of expert contributors provides a description, as comprehensive as possible, of the law of Hong Kong; then a team of Chinese experts, at the People's

University of China led by Professor Zhao Bingzhi, translates that into Chinese. From that translation the Chinese team creates a first draft of a digest or restatement, which is then worked on by them and their colleagues in Hong Kong to produce a definitive digest of the Hong Kong law. Our experience has shown that procedure to be effective. Its scientific underpinnings have been described and defended in:

Derek Roebuck and Sin King-kui 'The Ego and I and Ngo: Theoretical Problems in the Translation of the Common Law into Chinese' in Raymond Wacks (ed) *Hong Kong, China and 1997: Essays in Legal Theory* Hong Kong University Press 1993 185-210. Derek Roebuck 'Law as a Foreign Language: Chinese and English in Hong Kong's Legal System' (1994) 5; 4 *Journal of Asian Pacific Communication* 189-200.

Sin King-kui and Derek Roebuck 'Language Engineering for Legal Transplant: Conceptual Problems in Creating Common Law Chinese' (1996) 16; 3 *Language and Communication Special Issue Language, Society and Law*.

We hope that a Chinese translation of this text will be published a few months after this volume and the *Digest of Hong Kong Criminal Procedure* before the end of 1996.

There has been some suggestion that the Bill of Rights Ordinance will be repealed upon the change of sovereignty, or at least that it will suffer substantial amendment. There is no way in which we can forecast those or other changes. We have assumed that they will not entail any revision of the amendments to specific legislation which enacted consequential reforms.

The experts who contributed the drafts upon which this text is based are:

Mr Bruce on Trial Practice and Appeals

Mr Casewell on Bail

Dr Fu on Police and Independent Commission Against

Corruption

Mr Justice Leonard on Sentencing

Mr Upham on Jurisdiction and Commencement of Proceedings

Mr Wright on Juveniles

But it is the General Editor, not the contributors, who takes responsibility for all opinions and for the accuracy of the law in this volume.

TABLE OF LEGISLATION

ABBREVIATIONS

BORO	Hong Kong Bill of Rights Ordinance Cap 383
CAIPO	Corrupt and Illegal Practices Ordinance Cap 288
CCCO	Complex Commercial Crimes Ordinance Cap 394
CESO	Customs and Excise Service Ordinance Cap 342
CFAO	Hong Kong Court of Final Appeal Ordinance (No 79 of 1995)
CJO	Criminal Jurisdiction Ordinance Cap 461
CO	Crimes Ordinance Cap 200
CorO	Coroners Ordinance Cap 14
CP(A)O	Criminal Procedure (Amendment) Ordinance 1994 (No 56 of 1994)
CPO	Criminal Procedure Ordinance Cap 221
CSOO	Community Service Orders Ordinance Cap 378
DATC	Drug Addiction Treatment Centre
DATCO	Drug Addiction Treatment Centres Ordinance Cap 244
DCO	District Court Ordinance Cap 336
DDO	Dangerous Drugs Ordinance Cap 134
DeCO	Detention Centres Ordinance Cap 239
DTRPO	Drug Trafficking (Recovery of Proceeds) Ordinance Cap 405
HO	Housing Ordinance Cap 283

ICACO	Independent Commission Against Corruption Ordinance Cap 204
IGCO	Interpretation and General Clauses Ordinance Cap 1
IO	Immigration Ordinance Cap 115
IR	Indictment Rules Cap 221 Sub Leg C
ISO	Immigration Service Ordinance Cap 331
JO	Jury Ordinance Cap 3
JOO	Juvenile Offenders Ordinance Cap 226
LOO	Legal Officers Ordinance Cap 87
MHO	Mental Health Ordinance Cap 136
MO	Magistrates Ordinance Cap 227
OAPO	Offences Against the Person Ordinance Cap 212
OSCO	Organized and Serious Crimes Ordinance Cap 455
PFO	Police Force Ordinance Cap 232
POBO	Prevention of Bribery Ordinance Cap 201
POCAJO	Protection of Children and Juveniles Ordinance Cap 213
POO	Public Order Ordinance Cap 245
ProbOO	Probation of Offenders Ordinance Cap 298
RTO	Road Traffic Ordinance Cap 374
SCO	Supreme Court Ordinance Cap 4
SOO	Summary Offences Ordinance Cap 228
TCO	Training Centres Ordinance Cap 280
TO	Theft Ordinance Cap 210

TABLE OF LEGISLATION

Administration of Justice (Felonies and Misdemeanours)
Ordinance Cap 328

Appellate Jurisdiction Act 1876, **28**

Bail Act 1976

s6, **104**

Commissions of Inquiry Ordinance Cap 86

s10, **93**

Community Service Orders Ordinance Cap 378, **310**

s4(1), **283**

s4(2), **283**

s4(3), **283**

s4(4), **283**

s4(5), **284**

s6, **284**

s6(2), **284**

s6(3), **284**

s7, **285**

s8, **98 285**

s9, **98 285**

Companies Ordinance Cap 32, **111**

Complex Commercial Crimes Ordinance Cap 394

Part II, **169**

s4, **175**

s6, **169**

s8, **169**

s9(3)(b), **170**

s9(3)(c), **170**

s11, **170**

s12, **170 178**

s13(1), **170**

s13(13), **213**

s13(6), **170**

s14(1), **170**

s15, **170**

s16, **171**

s17, **213**

s17(1), **171**
 s17(2), **171**
 s18, **171 213**
 s22, **340**
 s24(1), **213**
 s24(2), **213**
 s26, **213**

Coroners Ordinance Cap 14

s2, **40 223**
 s3, **40**
 s3(1), **223**
 s6, **40**
 s6(2), **41**
 s7, **40**
 s7(3), **41**
 s8, **41**
 s12A(1), **41**
 s12A(3), **41**
 s12B(1), **43**
 s12B(2), **43**
 s13(1), **43**
 s14(1), **44**
 s14(2), **44**
 s14(3), **45**
 s14(4), **45**
 s15, **40**
 s16, **45 92**
 s17(1), **45 92**
 s17(2), **92**
 s20, **41**
 s22, **42**

Crimes Ordinance Cap 200

Part III, **3**
 Part VIII, **12**

Part XII, 218**s23(c), 110****s47, 111****s122, 292****s126, 218****s147A, 218****s147F, 218****s152, 58****s154, 236****s160, 52****Criminal Jurisdiction Ordinance Cap 461****s2, 4****s3, 5****s3(2), 5****s3(3), 4-5****s4(1)(a), 4****s4(1)(b), 4****s4(2), 6****s4(3), 7****s4(4), 7****s4(5), 4****s5, 6****s5(a), 5****s5(b), 5****s6(1), 6 7****s6(1)(a), 7****s6(1)(b), 7****s6(1)(c), 7****s6(2), 7****s7(1), 6****s7(2), 7****s8, 7-8****s8(1), 8****s8(3), 8**

s8(4), **8**

s9, **4**

Criminal Procedure Ordinance Cap 221

Part 1A, **89 93 369**

Part IIIA, **216**

Part IV, **25 26 27 316 355**

s2, **165 324 359**

s9, **212 353**

s9(3), **21 166 176 238**

s91, **52**

s9C, **94 101**

s9D, **93 94 271 369 372**

s9D(1), **94**

s9D(2), **94**

s9D(2)(a), **97**

s9D(2)(b), **97**

s9D(2)(c), **97**

s9D(3), **94 96**

s9D(3)(a), **94 95 102**

s9D(3)(b), **96**

s9D(3)(b)(viii), **102**

s9D(4), **95**

s9E(1), **95**

s9E(2), **95**

s9F, **94**

s9F(1), **96**

s9F(2), **96**

s9G, **95 97 98 369 372**

s9G(1), **97**

s9G(10), **98**

s9G(11), **98**

s9G(11)(a), **98**

s9G(11)(b), **98**

s9G(2), **97**