HONG KONG CASES

1986

General Editor
Gerard McCoy, Barrister

Butterworths Asia Hong Kong • Singapore • Kuala Lumpur

The Butterworth Group of Companies

Hong Kong Butterworths Asia (Hong Kong)

19/F Eight Commercial Tower

8 Sun Yip Street, Chai Wan, Hong Kong

Tel: 29651400 Fax: 29760840

Singapore Butterworths Asia

10 Anson Road

#32-01, International Plaza, Singapore 0207

Malaysia Malayan Law Journal Son Bhd

Suite 1001/02 10th Floor Wisma Hamzah Kwong Hing

No I Leboh Ampang 50100 Kuala Lumpur

Australia BUTTERWORTHS

Sydney, Melbourne, Brisbane, Adelaide, Perth, Canberra

Canada Butterworths Canada Ltd

Toronto and Vancouver

Ireland BUTTERWORTH (IRELAND) LTD
Dublin

New Zealand Butterworths of New Zealand Ltd

Wellington and Auckland

Puerto Rico Butterworth of Puerto Rico, Inc.

San Juan

UK BUTTERWORTH & CO (PUBLISHERS) LTD

London and Edinburgh

USA BUTTERWORTH LEGAL PUBLISHERS

Salem, New Hampshire and Carlsbard, California

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

© Butterworths Asia, 1995

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

ISSN 0218-7869

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

General Editor Gerard McCoy, Barrister

Associate Editors

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

Reporters in this volume

Charles P Chiu, Barrister Edmund Cham, Solicitor TC Chong, Barrister Lindy Course, Barrister Victor T Gidwani, Barrister Gary Kwan, Barrister Osmond Lam, Barrister Julia Lau, Barrister Cindy Lee, Barrister Walter Lee, Solicitor Rebecca MK Lee, Barrister Raymond Leung, Barrister PY Lo, Barrister Victor Luk, Barrister Herman LH Poon, 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

Legal Editor: Angela Ho

ACKNOWLEDGMENT

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

TABLE OF ABBREVIATIONS

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

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

App Appendix 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)

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 Court Divorce Jurisdiction

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

J(J) Justice(s)

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

LC Lord Chancellor

Ld T(A)

MA

Magistracy Appeal

MP

Miscellaneous Proceedings

MD Marker of the Dell

MR Master of the Rolls

n note

NSW New South Wales

O Order (of the Rules of the Supreme Court)

PC Privy Council

Hong Kong Cases

PRC People's Republic of China PCA Privy Council Appeal

Pt Part

para(s) paragraph(s)

RSC Rules of the Supreme Court

 r(r)
 rule(s)

 reg(s)
 regulation(s)

 s(s)
 section(s)

 sub-s(s)
 subsection(s)

 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:

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

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

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

volumes; 1875–1890

Build LR Building Law Reports
BLR Business Law Review

CB(NS) Common Bench, New Series; 1856–1865

CCC Canadian Criminal Cases

Ch Law Reports, Chancery Division; since 1890

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

1890

CLR Commonwealth Law Reports; since 1903
CPD Common Pleas Division; 1875–1880

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

1908

Crim LR Criminal Law Review; since 1954
DLR Dominion Law Reports; since 1912

EG Estates Gazette; since 1858

F 2d Federal Reporter, second series (USA); since 1924

F & F Foster & Finlayson; 1858–1867 Fam Family Division; since 1971

FSR Fleet Street Patent Law Reports, since 1963 H & N Huristone & Norman, 7 volumes; 1856–1862

Hare, 11 volumes; 1841–1853

HKC Hong Kong Cases

HKDCLR Hong Kong District Court Law Reports

HKLR Hong Kong Law Reports

HKLTLR Hong Kong Lands Tribunal Law Reports
HL Cas House of Lords Cases, 11 volumes; 1847–1866

ICR Industrial Cases Reports; since 1972

Abbreviations

IR Irish Reports; since 1838

Industrial Tribunal Reports; since 1966 **ITR**

King's Bench KB

Law Journal, Magistrates Cases; 1831–1896 **LJMC**

Law Reports First Series; since 1865 LR

Common Pleas Cases, 10 volumes; 1865–1875 LR CP

Equity cases, 20 volumes; 1866-1875 LR Ea Exchequer Cases; 10 volumes; 1865–1875 LR Exch Lloyd's List Law Reports; 1919–1950 LI LR Lloyd's List Law Reports; since 1951 Lloyd's Rep Mylne & Craig, 5 volumes; 1835-1841 My & Cr North Eastern Reporter (USA); 1885-1936 NE Northern Ireland Law Reports; since 1925 NI New Zealand Law Reports; since 1883

NZLR Law Reports, Queen's Bench Division; 1891-1900, QB

and since 1952

Oueen's Bench Reports (Adolphus and Ellis, New OB

Series), 18 volumes; 1841–1852

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

RPC Reports of Patent Cases; since 1884 Ryde's Rating Cases; since 1956 RRC Road Traffic Reports; since 1970 RTR Schoales & Lefroy (Ir); 1802-1806 Sch & Lef

Select Cases in Chancery, 1 volume; 1724–1733 Sel Cas Ch Simons and Stuart's Reports, Chancery, 2 volumes; Sim & St

1822-1826

Victorian Reports; since 1957 VR Weekly Law Reports; since 1953 WLR Weekly Notes (Reports); 1866-1952 WN

TABLE OF CASES REPORTED

The mode of citation of cases reported in this volume of *Hong Kong Cases* is [1986] HKC (page).

	Page		Page
A		Chan Dai Shing; Leung	
Andros, The[CA]	277	Hei v[HC]	340
Attorney General v Chan		Chan Hon Piu; R v[HC]	422
Lee Kong[CA]	310	Chan Lee Kong; Attorney	
Attorney General v Chan		General v[CA]	310
Wing Sheung[HC]	648	Chan Ping & Anor; R v[CA]	414
Attorney General v Fung		Chan Ting Wai (t/a Wing Tai	
Si Tsou[CA]	567	International Co (HK)) v Both Good Co[CA]	375
Attorney General v Li	105		
Hok Ting[CA]	105	Chan Wai Hung; R v[HC]	26
Attorney General v Liu Ching Sun t/a Sun Lee Aircondition		Chan Wing Sheung; Attorney	648
Co[HC]	302	General v[HC]	
Attorney General v Ng	302	Chan Yip Kan; R v[CA]	35
Enterprises Ltd[HC]	484	Chan Yu Wai Ming v Chan Cheak Wing Raymond[HC]	16
Attorney General v Snen Bao		• •	10
Charng [HC]	85	Chan Yuet Hung & Anor; R v[CA]	290
Attorney General v Tse Hung		Chau Sau Suen; Chow Hak	
Lit & Anor[PC]	294	Sing v[HC]	133
Attorney General; TS Cheng		Cheng Cheung Wang v Lo	
& Sons Ltd v[HC]	607	Noi Yung & Ors[CA]	329
Attorney General; Yau Fook		Cheng Ching Kwong & Anor;	
Hong Co Ltd v[PC]	502	R v[CA]	109
Attorney General & Anor v		Cheng Pak Yan & Anor;	
Humphreys Estate (Queen's Gardens) Ltd[PC]	592	Wui Yip Asphalt Co v [HC]	487
	392	Cheung Chi Keung; R v[HC]	653
В		Cheung Donald & Ors; Fester	
Berthier Godown Ltd v E Wah	0	Corp Ltd & Ors v[CA]	458
Realty Ltd & Anor[HC]	8	Cheung Yuk Sai v Director of	
Both Good Co; Chan Ting Wai		Immigration[CA]	205
(t/a Wing Tai International Co (HK)) v[CA]	375	Chiu Ming Sun v Ma Wing	217
	375	Michael & Ors[HC]	217
C		Cho Campo Juan En Kui	636
Centro-Sound Ltd; Li Lai Fun	E 4.1	& Ors; R v[CA]	
& Ors v[HC]	541	Chow Cheuk Kin; R v[CA]	548
Champion Dragon Development		Chow Hak Sing v Chau Sau	122
Ltd; Toppan Printing Co Ltd v[HC]	371	Suen[HC]	
Chan Cheak Wing Raymond;	5,1	Chow Ng Lau & Anor; R v [HC]	518
Chan Yu Wai Ming v [HC]	16	Chow Shu Sun; Chow So	77
Chan Cho Nam & Anor; R v [CA]	603	Kam Lin v[CA]	72
Chan Chun Man; R v[CA]	261	Chow So Kam Lin v Chow Shu Sun[CA]	. 72
Chan Chun Man, K v[CA]	201	one out[CA]	1 /2

	Page		Page
Chung Pun v Hsin Chong Construction Co Ltd & Ors[CA]	454	Fung Si Tsou; Attorney General v[CA]	567
Citibank NA v Lai Tat Cheung & Anor[HC]	155	G	
Collin Navigation Co SA v Perusahaan Pertambangan		ore considerable of the constraint of the constr	390
Minyak Dan Gas Bumi Negara (Pertamina)[CA]	78	Gilman Engineering Ltd v Ho Shek On Simon[HC]	523
Collin Navigation SA & Ors v Perushaan Pertambangan Minyak Dan Gas Bumi		Golden Harvest Co v JW International Co (a firm) [HC] H	118
Negara (Pertamina) [HC]	584		
Commissioner of Rating & Valuation; Wong Tak		Ho Shek On Simon; Gilman Engineering Ltd v[HC]	523
Woon v[LT] Commissioner of Rating and	190	Hong Kong Industrial and Commercial Bank Ltd	
Valuation; HongKong Canton Export Co Ltd v[LT]	41	v Wong Siu Leung Tommy & Ors[CA]	101
Computer Land Ltd v Registrar of Companies & Anor[HC]	49	Hong Kong Shanghai (Shipping) Ltd; MCY Finance Ltd SA	202
Computerland Corp v Yew	.,	& Ors v[HC]	323
Seng Computer (HK) Ltd [HC]	494	HongKong Canton Export Co Ltd v Commissioner of Rating and Valuation[LT]	41
D			41
Director of Immigration; Cheung Yuk Sai v[CA]	205	Hsin Chong Construction Co Ltd & Ors; Chung Pun v [CA]	454
E		Hsin Chong Construction Co Ltd v Yaton Realty Co Ltd [HC]	406
E Wah Realty Ltd & Anor; Berthier Godown Ltd v [HC]	8	Humphreys Estate (Queen's Gardens) Ltd; Attorney	100
Eng Bouy; R v[CA]	427	General & Anor v[PC]	592
European Asian Bank AG v Reicar Investments Ltd		I	
& Ors[HC]	350	Ip Kar Sui & Anor; R v[CA]	430
F		J	
Fan Ping Sun; R v[CA]	358	JW International Co (a firm); Golden Harvest Co v[HC]	118
Fan Siu Man; R v[HC]	474	Jentech Ltd & Anor; North	110
Fester Corp Ltd & Ors v Cheung Donald & Ors [CA]	458	Way Industrial Ltd v[HC]	443
Fok Shin Yee Cynthia & Ors		K	
v Wong Kimball & Ors[CA] Foreign Exchange & Investment	175	Kao Yu Kuei; Kincheng Banking Corp v[CA]	212
Ltd v Liu Chong Hing Bank Ltd[CA]	146	Kincheng Banking Corp v Kao Yu Kuei[CA]	212
Fuleekoo Co Ltd v Spiral Tubes International Ltd[CA]	269	King's Dyeing & Weaving Factory Ltd (No 2), Re[HC]	621
Fung Chi Wah; Li Hing	207	King's Dyeing and Weaving	021
	333	Factory Ltd (No 1), Re [HC]	382

Table of Cases Reported

	Page		Page
Kwan Ngar Yin; World Realty Ltd v[HC]	508	Lim Yiong Lin; New Japan Securities International	40.5
Kwong Lung Co Ltd; R v [HC]	199	(HK) Ltd v[HC]	435
L		Liu Ching Sun t/a Sun Lee	
_	432	Aircondition Co; Attorney General v[HC]	302
Lai Tai Kwong; R v[HC]	432	Liu Chong Hing Bank Ltd	502
Lai Tat Cheung & Anor; Citibank NA v[HC]	155	& Ors; Tai Hing Cotton	
Lam Chi Wai; R v[CA]	240	Mill Ltd v (No 2)[PC]	20
Lau Ming (t/a Hong Kong	2.0	Liu Chong Hing Bank Ltd;	
Packets Corp), ex p Sin Hua		Foreign Exchange & Investment Ltd v [CA]	146
Trust, Savings and		Liu Man Bun & Anor v Li	140
Commercial Bank Ltd [HC]	387	Yek Leung[CA]	183
Lee Fung Hing; R v[HC]	244	Lo Noi Yung & Ors; Cheng	
Lee Kam Chuen; R v[CA]	1	Cheung Wang v[CA]	329
Lee Siu Cheung; R v[CA]	656	Loh & Co; Survival	
Lee Yau Cheung v Leto King		Technology v[CA]	64
Tung & Ors (t/a Tung Lee		Loke Girdly; R v[CA]	209
Building Construction Co (a firm)) & Anor[HC]	246	Longo Construction Ltd	
Len Shing Construction	210	& Anor; Wong Kwok Chiang & Ors v[HC]	362
Co Ltd & Ors; Yeung			302
Kam Fuk v[HC]	160	M	
Leto King Tung & Ors (t/a		MCY Finance Ltd SA & Ors v Hong Kong Shanghai	
Tung Lee Building Construction		(Shipping) Ltd[HC]	323
Co (a firm)) & Anor;	246	Ma Wing Michael & Ors;	
Lee Yau Cheung v [HC]	340	Chiu Ming Sun[HC]	217
Leung Hei v Chan Dai Shing [HC]	340	Middle East Finance International	
Leung Wing Yin; Yu Tai Hing Land Agency Ltd v [CA]	574	Ltd (No 2); Sujanani v[CA]	93
Li & Fung (Trading) Ltd	5, ,	Mo Choi & Anor (Pacific Insurance Co Ltd, third party);	
v Wing Hing (Tangs) Fabrics		Tam Hing Wah & Anor v [HC]	553
Manufacturing Co Ltd [HC]	627	N N	
Li Hing Wan v Fung		New Japan Securities	
Chi Wah[CA]	333	International (HK) Ltd	
Li Hok Ting; Attorney	40#	v Lim Yiong Lin[HC]	435
General v[CA]	105	Ng Enterprises Ltd; Attorney	
Li Keung Tak; R v[HC]	69	General v[HC]	484
Li Kwai; R v[DC]	125	Ng Ping Lun & Ors; GTE	390
Li Lai Fun & Ors	541	Directories (HK) Ltd v [DC]	30
v Centro-Sound Ltd[HC]	541	Ng Wai Yuen & Anor; R v [HC]	.50
Li Yee Chung; R v [CA]	336	North Way Industrial Ltd v Jentech Ltd & Anor[HC]	443
Li Yek Leung; Liu Man Bun & Anor v[CA]	183	P	
Like Soon Co Ltd v Tsai Kut		Pang Cheung So; Yau Fook	
Kan & Ors[CA]	142	Hong Co Ltd & Ors v[CA]	313

Hong Kong Cases

	Page		Page
Perusahaan Pertambangan		Reicar Investments Ltd	6-
Minyak Dan Gas Bumi		& Ors; European Asian	
Negara (Pertamina); Collin Navigation Co SA v[CA]	78	Bank AG v[HC]	350
	76	S	
Perushaan Pertambangan Minyak Dan Gas Bumi Negara		Shu Jaan Chang; R v[HC]	284
(Pertamina); Collin Navigation	504	Sin Hua Trust, Savings and	
SA & Ors v[HC]	584	Commercial Bank Ltd, ex p;	
.		Lau Ming (t/a Hong Kong Packets Corp)[HC]	207
R v Chan Cho Nam & Anor [CA]	603		387
R v Chan Chun Man[CA]	261	Snen Bao Charng; Attorney General v[HC]	85
R v Chan Hon Piu[HC]	422	Spiral Tubes International Ltd;	6.5
R v Chan Ping & Anor[CA]	414	Fuleekoo Co Ltd v[CA]	269
R v Chan Wai Hung[HC]	26	Sujanani v Middle East Finance	
R v Chan Yip Kan[CA]	35	International Ltd (No 2) [CA]	93
R v Chan Yuet Hung		Survival Technology	
& Anor[CA]	290	v Loh & Co[CA]	64
R v Cheng Ching Kwong		T	
& Anor[CA]	109	TS Cheng & Sons Ltd	
	653	v Attorney General[HC]	607
R v Cho Campo Juan En		Tai Hing Cotton Mill Ltd	
	636	v Liu Chong Hing Bank Ltd	
. ,	548	& Ors (No 2)[PC]	20
*	518	Tam Hing Wah & Anor	
	427	v Mo Choi & Anor (Pacific Insurance Co Ltd,	
	358	third party)[HC]	553
R v Fan Siu Man[HC]	474	Texuna International Ltd;	555
R v Ip Kar Sui & Anor[CA]	430	Wocom Commodities	
R v Kwong Lung Co Ltd [HC]	199	Ltd v[CA]	392
R v Lai Tai Kwong[HC]	432	Toppan Printing Co Ltd v	
R v Lam Chi Wai[CA]	240	Champion Dragon	
R v Lee Fung Hing[HC]	244	Development Ltd [HC]	371
R v Lee Kam Chuen[CA]	1	Trishul (UK) Ltd v Winnie Fung Tong (t/a Winda	
D 1 01 01	656	Product)[HC]	465
R v Li Keung Tak[HC]	69	Tsai Kut Kan & Ors; Like	
T	125	Soon Co Ltd v[CA]	142
D I'II GI	336	Tsang Hau Chung & Anor;	
T	209	Yue Pei Mei v[LT]	257
R v Ng Wai Yuen & Anor[HC]	30	Tse Hung Lit & Anor;	20.4
R v Shu Jaan Chang[HC]	284	Attorney General v[PC]	294
Registrar of Companies		W	
& Anor; Computer Land	,	Wan Ying Lam & Anor;	
Ltd v[HC]	49	Wayfoong Credit Ltd v [HC]	75

Table of Cases Reported

	Page		Page
Wayfoong Credit Ltd v Wan Ying Lam & Anor[HC]	75	World Realty Ltd v Kwan Ngar Yin[HC]	508
Wing Hing (Tangs) Fabrics Manufacturing Co Ltd; Li & Fung (Trading) Ltd v [HC]	627	Wui Yip Asphalt Co v Cheng Pak Yan & Anor[HC]	487
Winnie Fung Tong (t/a Winda Product); Trishul (UK) Ltd v[HC]	465	Yaton Realty Co Ltd; Hsin Chong Construction	406
Wocom Commodities Ltd v Texuna International Ltd [CA]	392	Co Ltd v[HC] Yau Fook Hong Co Ltd	
Wong Kimball & Ors; Fok Shin Yee Cynthia & Ors v[CA]	175	& Ors v Pang Cheung So [CA] Yau Fook Hong Co Ltd	
Wong Kwok Chiang & Ors v Longo Construction Ltd & Anor[HC]	362	v Attorney General[PC] Yeung Kam Fuk v Len Shing Construction Co Ltd & Ors [HC]	502 160
Wong Pe Wun & Ors; Yu Jing Jenn v[HC]	624	Yeung Yu, ex parte; Re Wong Yung[HC]	5
Wong Siu Leung Tommy & Ors; Hong Kong Industrial and Commercial Bank		Yew Seng Computer (HK) Ltd; Computerland Corp v[HC]	494
Ltd v[CA] Wong Tak Woon	101	Yu Jing Jenn v Wong Pe Wun & Ors[HC]	624
v Commissioner of Rating & Valuation[LT]	190	Yu Tai Hing Land Agency Ltd v Leung Wing Yin[CA]	574
Wong Yung, Re, ex parte Yeung Yu[HC]	5	Yue Pei Mei v Tsang Hau Chung & Anor[LT]	257

SUBJECT INDEX

ADMINISTRATIVE LAW

Bias

Judge's friendship with party to action - Whether judge should disqualify himself - Test

Fester Corp Ltd & Ors v Cheung Donald & Ors

CA 458

Judicial review

Immigration Appeals Tribunal - Removal order - Delegation of duties by Director to a 'specified officer' - Whether applicant had prospect of success -Interpretation and General Clauses Ordinance (Cap 1) s 43 – Immigration Ordinance (Cap 115) s 53C

Cheung Yuk Sai v Director of Immigration

CA 205

Registrar of Companies - Permission for incorporation of companies -Name - Close resemblance with existing company - Intent to deceive - Passingoff - Legislation declaratory of common law - Reasonableness - Companies Ordinance (Cap 32) ss 20(1)(a), 337B

Computer Land Ltd v Registrar of Companies & Anor

HC 49

AGENCY

Liability of principal

Fraudulent misrepresentation by agent - Authority of agent - Express -Implied - Whether injured party misguided to believe in agent

Wocom Commodities Ltd v Texuna International Ltd

CA 392

ARBITRATION

Interim injunction

Power of court - No need for separate action - Arbitration Ordinance (Cap 341) s 14(6)(h)

Hsin Chong Construction Co Ltd v Yaton Realty Co Ltd

HC 406

BANKING AND FINANCE

'Letter of authority'

Assignment by way of charge - Notice of prior charge - Whether finance company had notice of bank's interest under letter of authority - Whether 'confirmation' issued by finance company amounted to notice of charge

Foreign Exchange & Investment Ltd v Liu Chong Hing Bank Ltd CA 146

Moneylenders

Loans rolled over - Interest on loans accrued but unpaid - Whether compound interest - Whether enforceable - Money Lenders Ordinance (Cap 163) ss 18 & 22 New Japan Securities International (HK) Ltd v Lim Yiong Lin HC 435

Margin account - Primary business that of stock-broking - Loans made in ordinary course of that business - Whether loans exempted - Money Lenders Ordinance (Cap 163) s 22 & First Schedule, Pt II, para 5

New Japan Securities International (HK) Ltd v Lim Yiong Lin HC 435

BANKRUPTCY

Bankruptcy notice

Bankruptcy notice based upon judgment against deceased's estate – Administratrixes had sold and transferred assets of estate out of jurisdiction – Whether amounted to act of bankruptcy – Whether administratrixes were personally liable

Re Wong Yung, ex parte Yeung Yu

HC

5

Whether bankruptcy notice incurably bad because founded on two judgment debts – Injustice suffered by debtor – Whether relevant – Bankruptcy Ordinance (Cap 6) s 4 $\,$

Lau Ming (t/a Hong Kong Packets Corp), ex p Sin Hua Trust,

Savings and Commercial Bank Ltd

HC

387

Dismissal of petition

Lack of present or future assets - 15% rule - General principles - Public interest - Bankruptcy Ordinance (Cap 6) s 9(3)

Sujanani v Middle East Finance International Ltd (No 2)

CA 93

BILLS OF EXCHANGE AND OTHER NEGOTIABLE INSTRUMENTS

Cheques

Indorsement – Whether person signed as indorser of cheques – Whether intention to become party to cheques – Whether cheques presented prematurely – Whether defendant a 'backer' of cheque – Whether consideration passed – Bills of Exchange Ordinance (Cap 19) ss 28, 56

Chow Hak Sing v Chau Sau Suen

HC

133

Letters of credit

Restraining payment by bank – Whether sufficient evidence of clear fraud

North Way Industrial Ltd v Jentech Ltd & Anor HC 443

BRIBERY AND CORRUPTION

Time bar

'Complaint being made or information laid' – Complaint must be made to or information laid before court – Complaint to investigating authorities insufficient – Time bar cannot be avoided by convicting on alternative charge – Prevention of Bribery Ordinance (Cap 201) s 31A

Attorney General v Fung Si Tsou

CA 567

Trial

Discretion of trial judge – Whether leave should have been given to amend particulars of offences – Whether witness given immunity ought to have been recalled for cross-examination by defence – Whether statutory presumption correctly considered and applied – Prevention of Bribery Ordinance (Cap 201) ss 25, 32 Attorney General v Fung Si Tsou

CA 567

CIVIL PROCEDURE

Abuse of process

Estoppel – Vesting order made in earlier proceedings – Party seeking to raise new matter contradictory to assumption behind vesting order proceedings in separate proceedings – Whether separate proceedings an abuse of process – Rules of the Supreme Court O 18 r 19

Berthier Godown Ltd v E Wah Realty Ltd & Anor

HC

8

Appeal

Interim order – Whether appeal can be brought from an order made expressly on an interim basis

Cheng Cheung Wang v Lo Noi Yung & Ors

CA 329

Application to amend statement of claim

Claim in writ not incorporated in statement of claim - Whether delay or prejudice

Collin Navigation SA & Ors v Perushaan Pertambangan Minyak

Dan Gas Bumi Negara (Pertamina)

HC

584

Contractual claim for costs

Nature of claim – Whether it was a claim in the nature of damages – Whether considered an unliquidated claim

GTE Directories (HK) Ltd v Ng Ping Lun & Ors

DC

390

Costs

Meaning of 'costs to follow the event' – Whether means outcome of litigation rather than interlocutory appeal – Whether inconsistent for word 'event' to have different meanings in different contexts – 'Costs in any event'

Like Soon Co Ltd v Tsai Kut Kan & Ors

CA 142

Privy Council appeal – Whether travelling expenses of Hong Kong counsel allowable – Jurisdiction of Registrars in Hong Kong and Privy Council with regard to costs incurred in two countries – Hong Kong (Appeal to Privy Council) Order in Council of 10 August 1909 r 25 – Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, Sch 2, r 76

Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd (No 2)

PC

20

Default judgment

District Court – Application to be made to Registrar unless mixed claim – District Judge has no jurisdiction to entertain default judgment where mixed claim – District Court Civil Procedure (General) Rules r 22

GTE Directories (HK) Ltd v Ng Ping Lun & Ors

DC 390

Examination of judgment debtor

Examination of 'officer' of company – Whether includes officer who has resigned – Rules of the Supreme Court O 48 r 1

Toppan Printing Co Ltd v Champion Dragon Development Ltd HC 371

Mareva injunction

Whether good arguable case - Injunction sought pending arbitration -Whether sufficient to exhibit pleadings only - Burden not discharged - No need for separate action - Arbitration Ordinance (Cap 341) s 14(6)(h)

Hsin Chong Construction Co Ltd v Yaton Realty Co Ltd

HC

406

64

Parties

Whether 'individual' included a body corporate - Rules of the Supreme Court O 81 r 9

Survival Technology v Loh & Co

CA

Pleadings

Striking out – Action frivolous, vexatious and an abuse of the process of the court - Previous actions based on substantially the same circumstances and transactions - Rules of the Supreme Court (Cap 4) O 18 r 19

Chiu Ming Sun v Ma Wing Michael & Ors

HC 217

Proceedings begun by originating summons

Whether there were genuine issues of fact — Whether proceedings should have been allowed to go to trial — Claim for moneys due under mortgage on land — Whether plaintiff had notice of irregularities

European Asian Bank AG v Reicar Investments Ltd & Ors

HC 350

Prohibition order

Application for fresh order - Whether justified in making application -Supreme Court Ordinance (Cap 4) s 21B

Hong Kong Industrial and Commercial Bank Ltd v Wong Siu

Leung Tommy & Ors

CA 101

Security for costs

Power of court to make costs order against legal aided persons - Whether respondent financially prejudiced as against legal aided persons - Legal Aid Ordinance (Cap 91) ss 16C(1)(a)(ii), (1)(b)(i), 19 – Rules of the Supreme Court O 59 r 10(5)

Li Hing Wan v Fung Chi Wah

CA 333

Service of process

Whether defendant had place of business in Hong Kong – Relevant test – Companies Ordinance (Cap 32) s 341 - Rules of the Supreme Court O 11 MCY Finance Ltd SA v Hong Kong Shanghai (Shipping) Ltd HC 323

Service of writ out of jurisdiction

Setting aside - Whether good arguable case - Whether claim brought in second action barred by reason of cause of action estoppel or issue estoppel -Whether second action vexatious - Rules of the Supreme Court O 12 r 8 Collin Navigation Co SA v Perusahaan Pertambangan Minyak

Dan Gas Bumi Negara (Pertamina)

CA

78

Striking out

Originating summons seeking injunction restraining use of documents – Information obtained as result of Anton Piller order in earlier action – Whether vexatious and abuse of process of court

Computerland Corp v Yew Seng Computer (HK) Ltd

HC 494

Summary judgment

Rescission of agreement for sale of property – Scope of O 86 of Rules of the Supreme Court – Whether weight should be attached to 'etc' appearing in heading of O 86 – Whether scope of word 'rescission' restricted – Rules of the Supreme Court O 86 r 1(1)

Yau Fook Hong Co Ltd & Ors v Pang Cheung So

CA 313

Third party claim

Judgment by consent between plaintiffs and defendants – No trial of issues between plaintiffs and defendants – Defendants raising issue inconsistent with admission in defence to main claim in third party proceedings – Whether res judicata – Whether permissible

Tam Hing Wah & Anor v Mo Choi & Anor (Pacific Insurance Co Ltd, third party)

553

HC

Trial

Interpretation – Duty of interpreter where party did not understand the language of the proceedings – Whether party entitled to relief Chan Ting Wai (t/a Wing Tai International Co (HK)) v Both Good Co

CA 375

COMPANIES AND CORPORATIONS

Directors

Powers – Whether including execution of mortgage – Whether resolution on mortgages passed by shareholders during EGM valid European Asian Bank AG v Reicar Investments Ltd & Ors HC 350

Receiver

Powers – Whether includes power or duty to defend proceedings brought against company – Whether power in debenture deed to get in property and assets includes defending actions – Difference between interest of debenture holder and wider interests of company – Companies Ordinance (Cap 32) ss 79, 265

Li Lai Fun & Ors v Centro-Sound Ltd

HC 541

Registration of company name

Registrar of Companies – Close resemblance with existing company – Intent to deceive – Passing-off – Legislation declaratory of common law – Judicial review of Registrar's decision – Companies Ordinance (Cap 32) ss 20(1)(a), 337B Computer Land Ltd v Registrar of Companies & Anor HC 49

Rights of shareholders

Right to vote at meetings – Whether right remained even if shareholder had given proxy to third party – Need to give notice to such shareholders

European Asian Bank AG v Reicar Investments Ltd & Ors HC 350