

High Court Ordinance

(Cap. 4)

Contents

Section		Page
	Part I	
	Preliminary	
1.	Short title	1-2
2.	Interpretation	1-2
	Part II	
	The High Court	
3.	High Court	2-2
4.	Constitution of Court of First Instance	2-2
5.	Constitution of Court of Appeal	2-4
6.	Appointment of judges	2-4
6A.	Appointment of recorders	2-6
6B.	Appointment of judges and recorders may be retrospective	2-6
7.	Precedence	2-8
8.	Acting appointments	2-10
9.	Professional qualifications of judges	2-10
10.	Appointment of deputy judges	2-18

Section	Page
11. Powers of recorders and deputy judges in cases which are part-heard on termination of appointment	2-20
11A. Term of office of judges	2-20
Part III	
Jurisdiction, Law, Practice and Powers	
12. Jurisdiction of Court of First Instance	3-2
12A. Admiralty jurisdiction of Court of First Instance	3-2
12B. Mode of exercise of Admiralty jurisdiction	3-16
12C. Restrictions on entertainment of actions in personam in collision and other similar cases	3-20
12D. Court of First Instance not to have jurisdiction in cases within Rhine Navigation Convention	3-24
12E. Supplementary provisions as to Admiralty jurisdiction	3-24
12F. Transfer of proceedings to the Lands Tribunal	3-28
13. Jurisdiction of Court of Appeal	3-30
14. Appeals in civil matters	3-32
14AA. Leave to appeal required for interlocutory appeals	3-40
14AB. Decision on leave to appeal final	3-42
14A. Appeal from order on application for judicial review in criminal cause or matter	3-42

Section		Page
15.	Application for new trial	3-42
16.	Law and equity to be administered in High Court	3-42
17.	Power to award damages as well as, or in substitution for, injunction or specific performance	3-44
18-19.	<i>(Repealed)</i>	3-46
20.	Power of Court of First Instance to impose charging order	3-46
20A.	Property which may be charged	3-48
20B.	Provisions supplementary to sections 20 and 20A	3-50
21.	Attachment of debts	3-52
21A.	No arrest or imprisonment without order	3-54
21B.	Prohibition on debtor leaving Hong Kong	3-56
21C.	Effect of writs of execution against goods	3-62
21D.	Sale of property in execution of judgment	3-64
21E.	Enforcement of fines and forfeited recognizances	3-68
21F.	Relief against forfeiture by action for non-payment of rent	3-68
21G.	Service of writ in lieu of demand	3-74
21H.	Interpretation and application of sections 21F, 21G and 21H	3-76

Section	Page
21I. Orders of mandamus, prohibition and certiorari	3-78
21J. Injunction to restrain persons acting in offices in which they are not entitled to act	3-80
21K. Application for judicial review	3-80
21L. Injunction and receiver	3-84
21M. Interim relief in the absence of substantive proceedings	3-88
21N. Supplementary provisions as to interim relief in the absence of substantive proceedings	3-90
22. <i>(Repealed)</i>	3-90
22A. Applications for, and issue of, writs of habeas corpus	3-90
23. Restriction on repeated applications for habeas corpus	3-98
24. Appeal in habeas corpus proceedings	3-98
25. Power of Court of First Instance to vary sentence on certiorari	3-98
25A. Execution of instruments by order of Court of First Instance	3-100
26. Wards of court	3-102
27. Restriction of vexatious legal proceedings	3-102
27A. Leave to institute or continue proceedings	3-104

Section		Page
Part IV		
Sittings and Distribution of Business		
28.	Sittings of High Court and distribution of business	4-2
29.	Vacations	4-2
30.	Business in vacations	4-2
31.	Computation of vacation period and validity of acts therein	4-4
32.	Proceedings in Court of First Instance to be disposed of by single judge	4-4
32A.	Proceedings in court and in chambers	4-6
33.	Powers of judge in chambers	4-6
33A.	Trial by jury in the Court of First Instance	4-8
34.	Sittings of Court of Appeal	4-10
34A.	Powers of single Justice of Appeal in Court of Appeal in its criminal jurisdiction	4-14
34B.	Composition of Court of Appeal in its civil jurisdiction	4-14
35.	Powers of single judge in Court of Appeal	4-18
36.	Acts required to be done by Chief Justice may also be done by any judge	4-20
Part V		
Registrar and Other Officers		
37.	Registrar of High Court	5-2

Section		Page
37AA.	Professional qualifications of Registrar, senior deputy registrars, deputy registrars and assistant registrars	5-2
37AB.	Appointment of temporary registrar	5-16
37AC.	Appointment of temporary senior deputy registrars	5-16
37A.	Appointment of temporary deputy registrars	5-18
37B.	Appointment of temporary assistant registrars	5-20
38.	Jurisdiction, powers and duties of Registrar	5-22
38A.	Bailiff	5-22
39.	Protection of Registrar	5-24
40.	Registrar may apply for order	5-24
40A.	Powers of temporary registrars, etc. in case which is part-heard on termination of appointment	5-24

Part VI
Discovery and Related Procedures

41.	Power of Court of First Instance to order disclosure, etc. of documents before commencement of proceedings	6-2
42.	Extension of powers of Court of First Instance to order disclosure of documents, inspection of property, etc.	6-4
43.	Provisions supplementary to sections 41 and 42	6-6

Section		Page
44.	Powers of Court of First Instance exercisable before commencement of action	6-8
44A.	Withdrawal of privilege against incrimination of self or spouse in certain proceedings	6-10
45.	Application to Government of sections 41 to 44	6-14

Part VII
Miscellaneous and Supplementary
Provisions

Writs

46.	Writs	7-2
47.	<i>(Repealed)</i>	7-2

Interest

48.	Interest on claims for debt and damages	7-2
49.	Interest on judgments	7-6

Contempt of Court

50.	Appeal in cases of contempt of court	7-8
-----	--------------------------------------	-----

Seal, Expenses and Costs

51.	Seal of High Court	7-10
52.	Expenses	7-10
52A.	Costs in Court of First Instance and Court of Appeal in its civil jurisdiction	7-10
52B.	Costs-only proceedings	7-14

Section		Page
52C.	Transfer of costs-only proceedings to District Court	7-16
52D.	Scale of costs on which costs awarded under section 52A or 52B are taxed	7-16
	Assessors	
53.	Assessors	7-18
	Rules	
54.	Rules of court	7-18
55.	Rules Committee	7-26
55A.	Rules concerning commencement of proceedings in respect of estates of deceased persons	7-28
55B.	Rules as to proof of facts and admission of statements in civil proceedings	7-28
55C.	Rules as to stop orders and notices	7-32
55D.	Rules as to costs and interest	7-36
56.	Orders for interim payment	7-36
56A.	Orders for provisional damages for personal injuries	7-40
57.	Suitors' Funds Rules	7-42
	Part VIII	
	General	
58.	<i>(Had its effect)</i>	8-2

High Court Ordinance

T-18

Cap. 4

Section	Page
59. Amendment of references in laws to Full Court and High Court	8-2
60-62. <i>(Omitted as spent)</i>	8-2
Schedule Writs	S-2

To amend and consolidate the law relating to the constitution, jurisdiction, practice and powers of the High Court and the administration of justice therein and for matters ancillary thereto and connected therewith.

(Amended 25 of 1998 s. 2)

[20 February 1976] *L.N. 50 of 1976*

(Format changes—E.R. 1 of 2017)

Editorial Note:

The title of this Ordinance was amended from “Supreme Court Ordinance” to “High Court Ordinance” — see 25 of 1998 s. 2.

Part I

Preliminary

1. Short title

This Ordinance may be cited as the High Court Ordinance.

(Amended 25 of 1998 s. 2)

2. Interpretation

In this Ordinance, unless the context otherwise requires—

action (訴訟) means a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by any law;

appeal (上訴) in the context of appeals to the Court of Appeal in its civil jurisdiction includes—

(a) an application for a new trial; and

- (b) an application to set aside a verdict, finding or judgment in any cause or matter in the Court of First Instance which has been tried, or in which any issue has been tried, by a jury; (*Added 52 of 1987 s. 2. Amended 25 of 1998 s. 2*)

cause (訟案) means any action or any criminal proceeding; (*Replaced 52 of 1987 s. 2*)

Court of First Instance (原訟法庭) means the Court of First Instance of the High Court; (*Added 25 of 1998 s. 2*)

defendant (被告人) includes any person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings;

deputy judge (暫委法官) means a deputy judge of the Court of First Instance appointed under section 10(1); (*Added 49 of 1983 s. 2. Amended 25 of 1998 s. 2*)

detention (羈留) includes every form of restraint of liberty of the person; (*Added 95 of 1997 s. 2*)

Government stock (政府證券) means any stock issued by the Government or any funds of or annuity granted by the Government; (*Added 52 of 1987 s. 2*)

judgment (判決) includes decree;

Justice of Appeal (上訴法庭法官) includes a judge of the Court of First Instance sitting as an additional judge of the Court of Appeal under section 5(2); (*Added 52 of 1987 s. 2. Amended 25 of 1998 s. 2*)

land (土地) includes—

- (a) land covered by water;
- (b) any estate, right, interest or easement in or over any land; and
- (c) things attached to land or permanently fastened to anything attached to land; (*Replaced 52 of 1987 s. 2*)

Master (聆案官) has the meaning given to it by sections 37, 37AC, 37A and 37B; (*Added 52 of 1987 s. 2. Amended 1 of 1997 s. 3; 10 of 2005 s. 164*)

matter (事宜) includes every proceeding not in a cause;

party (一方、方) includes every person served with notice of or attending any proceeding, although not named on the record;

plaintiff (原告人) includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;

prescribed (訂明) means prescribed by rules of court;

recorder (特委法官) means a recorder of the Court of First Instance appointed under section 6A; (*Added 80 of 1994 s. 2. Amended 25 of 1998 s. 2*)

Registrar (司法常務官) means the Registrar of the High Court; (*Amended 25 of 1998 s. 2*)

Registry (登記處) means any Registry of the High Court; (*Amended 25 of 1998 s. 2*)

writ of habeas corpus (人身保護令狀) means a writ of habeas corpus ad subjiciendum. (*Added 95 of 1997 s. 2*)

(*Amended 49 of 1983 s. 2; 95 of 1997 s. 2; 25 of 1998 s. 2; Amended E.R. 1 of 2017*)

Part II

The High Court

(Amended 25 of 1998 s. 2)

3. High Court

- (1) There shall be a High Court of the Hong Kong Special Administrative Region consisting of the Court of First Instance and the Court of Appeal.
- (2) Subject to the provisions of this Ordinance, the High Court shall be a court of unlimited civil and criminal jurisdiction.

(Replaced 110 of 1997 s. 8)

4. Constitution of Court of First Instance

- (1) The Court of First Instance shall consist of—
 - (a) the Chief Judge of the High Court; *(Amended 79 of 1995 s. 50)*
 - (b) such judges as the Governor may appoint; *(Amended 80 of 1994 s. 3)*
 - (ba) such recorders as the Governor may appoint; and *(Added 80 of 1994 s. 3)*
 - (c) such deputy judges as the Chief Justice may appoint. *(Added 52 of 1987 s. 4)*
- (2) A Justice of Appeal may sit in the Court of First Instance and act as a judge thereof whenever the business of the Court of First Instance so requires, in which case he shall have all the jurisdiction, powers and privileges of such a judge.
- (3) *(Repealed 52 of 1987 s. 4)*

(Amended 25 of 1998 s. 2)

5. Constitution of Court of Appeal

- (1) The Court of Appeal shall consist of—
 - (a) the Chief Judge of the High Court; and
 - (b) such Justices of Appeal as the Governor may appoint.
- (1A) The Chief Judge of the High Court may appoint one or more of the Justices of Appeal as vice-presidents of the Court of Appeal. *(Added 52 of 1987 s. 5)*
- (2) A judge of the Court of First Instance may, on the request of the Chief Justice, sit as an additional judge of the Court of Appeal, in which case he shall have all the jurisdiction, powers and privileges of a judge of the Court of Appeal.
- (3) The Chief Judge of the High Court shall be the president of the Court of Appeal and, in his absence for any cause, the presidency shall be determined in accordance with the order of precedence prescribed in section 7.

(Amended 79 of 1995 s. 50; 25 of 1998 s. 2)

6. Appointment of judges

- (1) A judge of the High Court, other than— *(Amended 25 of 1998 s. 2)*
 - (a) a judge appointed under section 8(1) or (2); *(Amended 80 of 1994 s. 4)*
 - (aa) a recorder; *(Added 80 of 1994 s. 4. Amended 26 of 1997 s. 2)*
 - (b) a deputy judge; and *(Amended 49 of 1983 s. 3; 26 of 1997 s. 2)*
 - (c) a judge appointed under section 11A(3)(a), *(Added 26 of 1997 s. 2)*

shall be appointed by Letters Patent under the Public Seal by the Governor, in accordance with such instructions as the Governor may receive through a Secretary of State.

(2) *(Repealed 80 of 1994 s. 4)*

6A. Appointment of recorders

- (1) The Governor may appoint a person who is eligible to be appointed to be a judge of the High Court under section 9(1) or (1A), to be a recorder of the Court of First Instance for such period as may be specified in the instrument by which the appointment is made. *(Amended 1 of 1997 s. 4)*
- (2) An appointment made under subsection (1) shall be made—
 - (a) in the case of the first appointment of a person as a recorder, by Letters Patent under the Public Seal;
 - (b) in the case of a reappointment or subsequent appointment of a person who has previously been appointed, by such other instrument under the hand of the Governor as the Governor thinks fit.
- (3) A recorder shall have and may exercise all the jurisdiction, powers and privileges and shall have and perform all the duties of a judge of the Court of First Instance, and any reference in any law to such a judge shall be construed accordingly.

(Added 80 of 1994 s. 5. Amended 25 of 1998 s. 2)

6B. Appointment of judges and recorders may be retrospective

- (1) Subject to subsection (2), any appointment made under section 6(1) or 6A(1) may be given effect from a date anterior to that of the Letters Patent by which it is made.
- (2) Nothing in subsection (1) shall be deemed to authorize the discharge of any judicial functions by any person so

appointed before the date of the Letters Patent or before the requirements of section 17 of the Oaths and Declarations Ordinance (Cap. 11) have been fulfilled.

(Added 80 of 1994 s. 5)

7. Precedence

(1) The judges of the High Court shall take precedence in the following order—

- (a) the Chief Judge of the High Court; *(Amended 79 of 1995 s. 50)*
- (aa) the vice-presidents of the Court of Appeal who among themselves shall rank according to the priority of their respective appointments as vice-presidents; *(Added 52 of 1987 s. 6)*
- (b) the Justices of Appeal (other than vice-presidents), who among themselves shall rank according to the priority of their respective appointments; *(Amended 52 of 1987 s. 6)*
- (c) the judges of the Court of First Instance, who among themselves shall rank according to the priority of their respective appointments;
- (ca) the recorders of the Court of First Instance, who among themselves shall rank according to the priority of their respective appointments:

Provided that, where the Governor is of the opinion that there are sufficient reasons for so doing, he may determine the precedence of recorders irrespective of the priority of their appointments; *(Added 80 of 1994 s. 6)*

- (d) deputy judges, who among themselves shall rank according to the priority of their respective appointments:

Provided that, where the Governor is of the opinion that there are sufficient reasons for so doing, he may

determine the precedence of deputy judges irrespective of the priority of their appointments. (*Amended 49 of 1983 s. 4*)

- (2) Notwithstanding subsection (1)(b) and (c), where the Secretary of State is of the opinion that there are sufficient reasons for so doing, he may determine the precedence of the Justices of Appeal or the judges of the Court of First Instance, as the case may be, irrespective of the priority of their appointments.

(*Amended 25 of 1998 s. 2*)

8. Acting appointments

- (1) If the office of Chief Judge of the High Court or any Justice of Appeal becomes vacant, by death or otherwise, the Governor may appoint another person, who is eligible to be appointed to be a judge of the High Court under section 9, to act in such office until the vacancy therein is filled.
- (2) If the Chief Judge of the High Court or a Justice of Appeal is temporarily ill or absent, the Governor may appoint another person, who is eligible to be appointed to be a judge of the High Court under section 9, to act in his office until he resumes the duties thereof.
- (3) Any appointment made under subsection (1) or (2) may be given effect from a date anterior to that of the instrument by which it is made. (*Added 80 of 1994 s. 7*)

(*Amended 52 of 1987 s. 7; 79 of 1995 s. 50; 25 of 1998 s. 2*)

9. Professional qualifications of judges

- (1) A person shall be eligible to be appointed to be a judge of the High Court if— (*Amended 25 of 1998 s. 2*)
 - (a) he is qualified to practise as a barrister or advocate in a court in Hong Kong or any other common law

jurisdiction having unlimited jurisdiction either in civil or criminal matters; or (*Amended 14 of 1997 s. 2*)

- (b) he is qualified as mentioned in paragraph (a) and prior thereto was qualified to practise as a solicitor in such a court,

and, in either case, he has for at least 10 years practised as a barrister, solicitor or advocate in such a court.

- (1A) A person shall also be eligible to be appointed to be a judge of the High Court if he is qualified to practise as a solicitor of the High Court and has for at least 10 years practised as such. (*Added 52 of 1995 s. 2. Amended 25 of 1998 s. 2*)

- (2) A person shall also be eligible to be appointed to be a judge of the High Court if— (*Amended 25 of 1998 s. 2*)

- (a) he is qualified to practise as a barrister or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; or (*Amended 14 of 1997 s. 2*)

- (b) he is qualified as mentioned in paragraph (a) and prior thereto was qualified to practise as a solicitor in such a court,

and, in either case, he has, subject to subsection (3), for at least 10 years—

- (i)-(iii) (*Repealed 14 of 1997 s. 2*)

- (iv) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);

- (iva) been the Registrar of the Hong Kong Court of Final Appeal appointed in accordance with section 42 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484); (*Added 10 of 2005 s. 132*)

- (ivb) been the Registrar or a senior deputy registrar, deputy registrar or assistant registrar appointed in accordance with section 37; (*Added 10 of 2005 s. 132*)
- (ivc) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336); (*Added 10 of 2005 s. 132*)
- (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
- (va) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504); (*Added 10 of 2005 s. 132*)
- (vb) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338); (*Added 10 of 2005 s. 132*)
- (vc) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25); (*Added 10 of 2005 s. 132*)
- (vi) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
- (vii) (*Repealed 8 of 1993 s. 6*)
- (viii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91); (*Added 50 of 1976 s. 2. Amended 24 of 1983 s. 7; 39 of 1992 s. 8; 60 of 1992 s. 3*)
- (ix) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or

(Added 39 of 1992 s. 8. Amended 60 of 1992 s. 3; 68 of 1995 s. 17)

- (x) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412). *(Added 60 of 1992 s. 3. Amended 26 of 2012 s. 34)*
- (2A) A person shall also be eligible to be appointed to be a judge of the High Court if— *(Amended 25 of 1998 s. 2)*
 - (a) he is a solicitor of a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; *(Amended 14 of 1997 s. 2)*
 - (b) he is and has been for the previous 2 years at least, and in aggregate for at least 5 years, employed in the service of the Crown in Hong Kong on judicial or legal work; and
 - (c) he has, subject to subsection (4), for at least 10 years either—
 - (i) practised as a barrister, solicitor or advocate in such a court; or
 - (ii) been employed in such service as is described in paragraph (b). *(Added 44 of 1982 s. 2)*
- (3) For the purposes of calculating the period of 10 years referred to in subsection (2), periods of less than 10 years falling within any of paragraphs (iv) to (x) of that subsection may be combined, and there may be included in such period, any period of practice as a barrister, solicitor or advocate in any of the courts referred to in subsection (2)(a). *(Amended 50 of 1976 s. 2; 39 of 1992 s. 8; 60 of 1992 s. 3; 14 of 1997 s. 2)*

- (4) For the purposes of calculating the period of 10 years referred to in subsection (2A)(c) there may be included any period of less than 10 years falling within any of paragraphs (iv) to (x) of subsection (2), and periods of less than 10 years falling within subparagraphs (i) and (ii) of subsection (2A)(c) may be combined. *(Added 44 of 1982 s. 2. Amended 39 of 1992 s. 8; 60 of 1992 s. 3; 14 of 1997 s. 2)*
- (5) For the purposes of calculating the period of 10 years under subsection (2), periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance. *(Added 8 of 1993 s. 6)*

(Amended 10 of 2005 s. 132)

10. Appointment of deputy judges

- (1) The Chief Justice may appoint a person, who is eligible to be appointed to be a judge of the High Court under section 9, to be a deputy judge of the Court of First Instance if— *(Amended 44 of 1982 s. 3; 25 of 1998 s. 2)*
 - (a) the office of any judge of the Court of First Instance becomes vacant for any reason; or *(Amended 25 of 1998 s. 2)*
 - (b) he considers that the interests of the administration of justice require that a deputy judge should be appointed temporarily.
- (1A) Subject to subsection (1B), any appointment made under subsection (1) may be given effect from a date anterior to that of the instrument by which it is made. *(Added 80 of 1994 s. 8)*
- (1B) Nothing in subsection (1A) shall be deemed to authorize the discharge of any judicial functions by any person so appointed before the date of the instrument or before the

requirements of section 17 of the Oaths and Declarations Ordinance (Cap. 11) have been fulfilled. (*Added 80 of 1994 s. 8*)

- (2) Subject to the terms of his appointment, a deputy judge shall have and may exercise all the jurisdiction, powers and privileges and shall have and perform all the duties of a judge of the Court of First Instance, and any reference in any law to such a judge shall be construed accordingly. (*Amended 25 of 1998 s. 2*)
- (3) Without prejudice to the powers conferred on him by subsection (1), the Chief Justice may appoint a deputy judge under that subsection—
 - (a) for the purposes of a specified case or class of cases only; or
 - (b) for a specified period only.
- (4) Notwithstanding subsection (2), the Chief Justice may terminate the appointment of a deputy judge at any time.

(*Amended 49 of 1983 s. 5*)

11. Powers of recorders and deputy judges in cases which are part-heard on termination of appointment

If the hearing of any proceedings before a recorder or deputy judge is adjourned or if he reserves judgment in any proceedings, the recorder or deputy judge shall have power to resume the hearing and determine the proceedings or deliver judgment, notwithstanding that his appointment as a recorder or deputy judge has expired or has been terminated.

(*Amended 49 of 1983 s. 5; 80 of 1994 s. 9*)

11A. Term of office of judges

- (1) A judge of the High Court shall vacate his office when he

attains the retiring age.

- (2) Notwithstanding the fact that he has attained the retiring age, a person holding the office of a judge of the High Court may continue in office for so long after attaining the retiring age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.
- (3) Notwithstanding subsection (1)—
 - (a) a person may be appointed to be a judge of the High Court (whatever his age and whether or not he has previously held office as such) for a specified period or periods not exceeding 5 years in the aggregate by the Governor acting in accordance with the recommendation of the Judicial Service Commission; and
 - (b) the term of office of a judge of the High Court (other than a person appointed to be a judge under paragraph (a)) may be extended for a specified period or periods not exceeding 5 years in the aggregate by the Governor acting in accordance with the recommendation of the Judicial Service Commission,and in any such case the judge shall accordingly be regarded as having attained the retiring age at the expiration of the specified period or periods.
- (4) A judge of the High Court may at any time resign his office by notice in writing addressed to the Governor.

(5) In this section—

judge of the High Court (高等法院法官) means a judge of the High Court other than a judge appointed under section 8(1) or (2), a recorder and a deputy judge;

retiring age (退休年齡) means the age of 65 years.

(Added 26 of 1997 s. 3. Amended 25 of 1998 s. 2)

Part III

Jurisdiction, Law, Practice and Powers

12. Jurisdiction of Court of First Instance

- (1) The Court of First Instance shall be a superior court of record.
- (2) The civil jurisdiction of the Court of First Instance shall consist of—
 - (a) original jurisdiction and authority of a like nature and extent as that held and exercised by the Chancery, Family and Queen's Bench Divisions of the High Court of Justice in England; and
 - (b) any other jurisdiction, whether original or appellate jurisdiction, conferred on it by any law.
- (3) The criminal jurisdiction of the Court of First Instance shall consist of—
 - (a) original jurisdiction of a like nature and extent as that held and exercised in criminal matters by the High Court of Justice and the Crown Court in England respectively; and
 - (b) any other jurisdiction, whether original or appellate jurisdiction, conferred on it by any law.
- (4) *(Repealed 81 of 1997 s. 59)*

(Amended 25 of 1998 s. 2)

12A. Admiralty jurisdiction of Court of First Instance

- (1) The Admiralty jurisdiction of the Court of First Instance shall consist of— *(Amended 25 of 1998 s. 2)*

- (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
 - (b) jurisdiction in relation to any of the proceedings mentioned in subsection (3);
 - (c) any other Admiralty jurisdiction which it had immediately before the commencement of the Supreme Court (Amendment) Ordinance 1989 (3 of 1989).
- (2) The questions and claims referred to in subsection (1)(a) are—
 - (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
 - (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
 - (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
 - (d) any claim for damage received by a ship;
 - (e) any claim for damage done by a ship;
 - (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of—
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the

embarkation, carriage or disembarkation of persons on, in or from the ship;

- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) any claim—
 - (i) under the Salvage Convention 1989;
 - (ii) under any contract for or in relation to salvage services; or
 - (iii) in the nature of salvage not falling within subparagraph (i) or (ii);
 or any corresponding claim in connection with an aircraft; (*Replaced 35 of 1997 s. 9*)
- (j) any claim in the nature of towage in respect of a ship or an aircraft;
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;
- (n) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry;
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty;
- (s) any claim arising under section 7 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413). *(Replaced 37 of 1990 s. 12(2))*
- (3) The proceedings referred to in subsection (1)(b) are—
 - (a) any application to the Court of First Instance under— *(Amended 25 of 1998 s. 2)*
 - (i) the Merchant Shipping Acts 1894 to 1979[#] in their application to Hong Kong;
 - (ii) the Merchant Shipping Ordinance (Cap. 281);
 - (iii) the Merchant Shipping (Safety) Ordinance (Cap. 369);
 - (iv) the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414); *(Amended 55 of 1993 s. 30)*
 - (v) the Merchant Shipping (Registration) Ordinance (Cap. 415); *(Replaced 74 of 1990 s. 104(3). Amended 55 of 1993 s. 30; 24 of 2005 s. 55)*
 - (vi) the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434); *(Added 55 of 1993 s. 30. Amended 24 of 2005 s. 55; 14 of 2009 s. 34)*

- (vii) the Merchant Shipping (Local Vessels) Ordinance (Cap. 548); or (*Added 24 of 2005 s. 55. Amended 14 of 2009 s. 34*)
- (viii) the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap. 605); (*Added 14 of 2009 s. 34*)
- (b) any action to enforce a claim for damage, loss of life or personal injury arising out of—
 - (i) a collision between ships;
 - (ii) the carrying out of or omission to carry out a manoeuvre in the case of 1 or more of 2 or more ships; or
 - (iii) non-compliance, on the part of 1 or more of 2 or more ships, with the collision regulations;
- (c) any action by shipowners or other persons under—
 - (i) the Merchant Shipping Acts 1894 to 1979[#] in their application to Hong Kong;
 - (ii) (*Repealed 24 of 2005 s. 55*)
 - (iii) the Merchant Shipping (Safety) Ordinance (Cap. 369); (*Amended 55 of 1993 s. 30*)
 - (iv) the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414); (*Amended 55 of 1993 s. 30; 24 of 2005 s. 55*)
 - (v) the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434); (*Added 55 of 1993 s. 30. Amended 24 of 2005 s. 55; 14 of 2009 s. 34*)
 - (vi) the Merchant Shipping (Local Vessels) Ordinance (Cap. 548); or (*Added 24 of 2005 s. 55. Amended 14 of 2009 s. 34*)

(vii) the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap. 605), (*Added 14 of 2009 s. 34*)

for the limitation of the amount of their liability in connection with a ship or other property. (*Replaced 38 of 1990 Sch. 2*)

- (4) The jurisdiction of the Court of First Instance under subsection (2)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit. (*Amended 25 of 1998 s. 2*)
- (5) Subsection (2)(e) extends to—
 - (a) any claim in respect of a liability incurred under Part II of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414); (*Amended 14 of 2009 s. 34*)
 - (b) any claim in respect of a liability incurred by the International Oil Pollution Compensation Fund under Part III of that Ordinance; and (*Replaced 38 of 1990 Sch. 2. Amended 14 of 2009 s. 34*)
 - (c) any claim in respect of a liability incurred under section 5 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap. 605). (*Added 14 of 2009 s. 34*)
- (6) In subsection (2)(i)—
 - (a) the ***Salvage Convention 1989*** (1989年救助公約) means the International Convention on Salvage 1989 as it has effect under section 9 of the Merchant Shipping (Collision Damage Liability and Salvage) Ordinance (Cap. 508);

- (b) the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services;
 - (c) the reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim mentioned in subsection (2)(i)(i) or (ii) which is available under section 9 of the Civil Aviation Ordinance (Cap. 448). (*Replaced 35 of 1997 s. 9*)
- (7) Subsections (1) to (6) apply—
 - (a) in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;
 - (b) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
 - (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.
- (8) Nothing in subsection (7) shall be construed as extending the cases in which money or property is recoverable under any of the provisions of—
 - (a) the Merchant Shipping Acts 1894 to 1979[#] in their application to Hong Kong;
 - (b) the Merchant Shipping Ordinance (Cap. 281);
 - (ba) the Merchant Shipping (Seafarers) Ordinance (Cap. 478); (*Added 44 of 1995 s. 143*)
 - (c) the Merchant Shipping (Safety) Ordinance (Cap. 369);

- (d) the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414); *(Replaced 38 of 1990 Sch 2. Amended 55 of 1993 s. 30)*
- (e) the Merchant Shipping (Registration) Ordinance (Cap. 415); *(Added 74 of 1990 s. 104(3). Amended 55 of 1993 s. 30; 24 of 2005 s. 55)*
- (f) the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434); *(Added 55 of 1993 s. 30. Amended 24 of 2005 s. 55; 14 of 2009 s. 34)*
- (g) the Merchant Shipping (Local Vessels) Ordinance (Cap. 548); or *(Added 24 of 2005 s. 55. Amended 14 of 2009 s. 34)*
- (h) the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap. 605). *(Added 14 of 2009 s. 34)*
(Added 3 of 1989 s. 2)
[cf. 1981 c. 54 s. 20 U.K.]

Editorial Note:

Please also see following—

- (a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap. 415 and s. 1 of Schedule 2 to Cap. 508;
- (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap. 281, s. 103 of Cap. 415 and s. 142 of Cap. 478.

12B. Mode of exercise of Admiralty jurisdiction

- (1) Subject to section 12C an action in personam may be brought in the Court of First Instance in all cases within the Admiralty jurisdiction of that court.
- (2) In the case of any such claim as is mentioned in section 12A(2)(a), (c) or (r) or any such question as is mentioned in section 12A(2)(b), an action in rem may be brought in the Court of First Instance against the ship or property in

connection with which the claim or question arises and such action shall be deemed to be brought by and upon the issue of the writ in rem.

- (3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the Court of First Instance against that ship, aircraft or property.
- (4) In the case of any such claim as is mentioned in section 12A(2)(e) to (q), where—
 - (a) the claim arises in connection with a ship; and
 - (b) the person who would be liable on the claim in an action in personam (*the relevant person*) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,
an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the Court of First Instance against—
 - (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
 - (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.
- (5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the Court of First Instance against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.

- (6) Where, in the exercise of its Admiralty jurisdiction, the Court of First Instance orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.
- (6A) The Court of First Instance may order a stay of Admiralty proceedings under section 20 of the Arbitration Ordinance (Cap. 609), subject to any conditions that it may impose, including the making of an order for the property arrested or the bail or security given in those proceedings to be retained as security for the satisfaction of any award made in the arbitration. *(Added 17 of 2010 s. 112)*
- (7) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within Hong Kong.
- (8) Where, as regards any such claim as is mentioned in section 12A(2)(e) to (q), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than 1 ship or of 2 or more writs each naming a different ship.

(Added 3 of 1989 s. 2. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 21 U.K.]

12C. Restrictions on entertainment of actions in personam in collision and other similar cases

- (1) This section applies to any claim for damage, loss of life or personal injury arising out of—
 - (a) a collision between ships;

- (b) the carrying out of, or omission to carry out, a manoeuvre in the case of 1 or more of 2 or more ships; or
 - (c) non-compliance, on the part of 1 or more of 2 or more ships, with the collision regulations.
- (2) The Court of First Instance shall not entertain any action in personam to enforce a claim to which this section applies unless—
 - (a) the defendant has his habitual residence or a place of business in Hong Kong;
 - (b) the cause of action arose within the waters of Hong Kong; or
 - (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.
- (3) The Court of First Instance shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside Hong Kong against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.
- (4) Subsections (2) and (3) shall apply to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the references to the plaintiff and the defendant being for this purpose read as references to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.
- (5) Subsections (2) and (3) shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.

- (6) Subject to subsection (3), the Court of First Instance shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in subsection (2)(a) to (c) is satisfied, and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the Rules Committee constituted under section 55 to be appropriate having regard to the provisions of this subsection.
- (7) Nothing in this section shall prevent an action which is brought in accordance with the provisions of this section in the Court of First Instance being transferred, in accordance with the enactments in that behalf, to some other court.
- (8) For the avoidance of doubt, it is hereby declared that this section applies in relation to the jurisdiction of the Court of First Instance not being Admiralty jurisdiction as well as in relation to its Admiralty jurisdiction.

(Added 3 of 1989 s. 2. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 22 U.K.]

12D. Court of First Instance not to have jurisdiction in cases within Rhine Navigation Convention

The Court of First Instance shall not have jurisdiction to determine any claim or question certified by the Governor to be a claim or question which under the Rhine Navigation Convention, falls to be determined in accordance with the provisions of that Convention; and any proceedings to enforce such a claim which are commenced in the Court of First Instance shall be set aside.

(Added 3 of 1989 s. 2. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 23 U.K.]

12E. Supplementary provisions as to Admiralty jurisdiction

- (1) In sections 12A to 12D and this section, unless the context

otherwise requires—

collision regulations (碰撞規例) means regulations made or deemed to have been made under Part IX of the Merchant Shipping (Safety) Ordinance (Cap. 369);

goods (貨物) includes baggage;

hovercraft (氣墊船) means a vehicle designed to be supported when in motion wholly, or partly, by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

master (船長) includes every person (except a pilot) having command or charge of a ship;

Rhine Navigation Convention (《萊茵河航行公約》) means the Convention of 7 October 1868 as revised by any subsequent convention;

ship (船舶) includes any description of vessel used in navigation and (except in subsection (2)(c) of this section) includes, subject to any regulations made by the Governor, a hovercraft;

towage (拖曳) and **pilotage** (領港) in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne.

(2) Nothing in sections 12A to 12D shall—

- (a) be construed as limiting the jurisdiction of the Court of First Instance to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a British ship or a ship registered in Hong Kong; (*Amended 74 of 1990 s. 104(3); 25 of 1998 s. 2*)
- (b) affect the provisions of section 552 of the Merchant Shipping Act 1894 (1894 c. 60 U.K.)[#] (power of a receiver of wreck to detain a ship in respect of a salvage claim) in its application to Hong Kong; or
- (c) authorize proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of

any of Her Majesty's ships or Her Majesty's aircraft or Her Majesty's hovercraft, or, subject to any regulations made by the Governor, of any ship, aircraft, hovercraft, cargo or other property belonging to the Crown or the Government of Hong Kong.

- (3) Droits of Admiralty or droits of or forfeitures to the Crown condemned by the Court of First Instance shall become the property of the Government of Hong Kong and the Court of First Instance may of its own motion or upon application order that such property be sold and the proceeds paid into the general revenue. (*Amended 25 of 1998 s. 2*)

- (4) In this section—

Her Majesty's hovercraft (女皇陛下的氣墊船) means hovercraft belonging to the Crown in right of Her Majesty's Government in the United Kingdom or Her Majesty's Government in Hong Kong;

Her Majesty's ships (女皇陛下的船舶) and ***Her Majesty's aircraft*** (女皇陛下的航空器) have the meanings given by section 38(2) of the Crown Proceedings Act 1947 (1947 c. 44 U.K.).

(*Amended E.R. 1 of 2017*)

(*Added 3 of 1989 s. 2*)

[*cf. 1981 c. 54 s. 24 U.K.*]

Editorial Note:

#Please also see following—

- (a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap. 415 and s. 1 of Schedule 2 to Cap. 508;
- (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap. 281, s. 103 of Cap. 415 and s. 142 of Cap. 478.

12F. Transfer of proceedings to the Lands Tribunal

The Court of First Instance may, either of its own motion or on

the application of any party, order at any stage the transfer to the Lands Tribunal of all or part of any action or proceedings before it which are within the jurisdiction of the Lands Tribunal.

(Added 3 of 2008 s. 43)

13. Jurisdiction of Court of Appeal

- (1) The Court of Appeal shall be a superior court of record.
- (2) The civil jurisdiction of the Court of Appeal shall consist of—
 - (a) appeals from any judgment or order of the Court of First Instance in any civil cause or matter; *(Amended 25 of 1998 s. 2)*
 - (b) appeals under section 63 of the District Court Ordinance (Cap. 336); and
 - (c) any other jurisdiction conferred on it by any law.
- (3) The criminal jurisdiction of the Court of Appeal shall consist of—
 - (a) appeals from the Court of First Instance or District Court under Part IV of the Criminal Procedure Ordinance (Cap. 221); *(Amended 25 of 1998 s. 2)*
 - (aa) appeals from a judgment or order of the Court of First Instance given or made in the exercise of the powers conferred on it under section 21I(1) and relating to a criminal cause or matter; *(Added 2 of 1993 s. 3. Amended 25 of 1998 s. 2)*
 - (b) the consideration of questions of law reserved under section 81(1) of the Criminal Procedure Ordinance (Cap. 221);
 - (c) the consideration of—

- (i) applications by the Secretary for Justice for the review of any sentence under section 81A(1) of the Criminal Procedure Ordinance (Cap. 221);
 - (ii) references by the Secretary for Justice of questions of law under section 81D of the Criminal Procedure Ordinance (Cap. 221); *(Replaced 20 of 1979 s. 10. Amended L.N. 362 of 1997)*
- (d) appeals by way of case stated from the District Court under section 84 of the District Court Ordinance (Cap. 336); and
- (e) any other jurisdiction conferred on it by any law.
- (4) For the purposes of and incidental to—
 - (a) the hearing and determination of any appeal to the Court of Appeal; and
 - (b) the amendment, execution and enforcement of any judgment or order made on such an appeal,
 the Court of Appeal shall have all the authority and jurisdiction of the court or tribunal from which the appeal was brought. *(Added 52 of 1987 s. 9) [cf. 1981 c. 54 s. 15 U.K.]*
- (5) Any provision in this or any other Ordinance which authorizes or requires the taking of any steps for the execution or enforcement of a judgment or order of the Court of First Instance applies in relation to a judgment or order of the Court of Appeal as it applies in relation to a judgment or order of the Court of First Instance. *(Added 52 of 1987 s. 9. Amended 25 of 1998 s. 2)*

14. Appeals in civil matters

- (1) Subject to subsection (3) and section 14AA, an appeal shall lie as of right to the Court of Appeal from every judgment

or order of the Court of First Instance in any civil cause or matter. (*Amended 25 of 1998 s. 2; 3 of 2008 s. 24*)

(2) (*Repealed 52 of 1987 s. 10*)

(3) No appeal shall lie—

(a) from an order of the Court of First Instance allowing an extension of time for appealing from a judgment or order; (*Amended 25 of 1998 s. 2*) [*cf. 1925 c. 49 s. 31 U.K.*]

(b) (*Repealed 52 of 1987 s. 10*)

(c) from a judgment or order of the Court of First Instance, where it is provided by any Ordinance or by rules of court that the same is to be final; (*Amended 25 of 1998 s. 2*)

(d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;

(e) without the leave of the court or tribunal in question or of the Court of Appeal, from an order of the Court of First Instance or any other court or tribunal made with the consent of the parties or relating only to costs which are by law left to the discretion of the court or tribunal; (*Replaced 52 of 1987 s. 10. Amended 25 of 1998 s. 2*) [*cf. 1981 c. 54 s. 18 U.K.*]

(ea) except as provided by the Arbitration Ordinance (Cap. 609), from any judgment or order of the Court of First Instance— (*Amended 25 of 1998 s. 2; 17 of 2010 s. 112*)

(i) under section 15(2) of that Ordinance refusing to direct an issue to be determined in accordance with

- an arbitration agreement; (*Replaced 17 of 2010 s. 112*)
- (ii) under section 20(1) or (2) of that Ordinance refusing to refer the parties to arbitration; (*Replaced 17 of 2010 s. 112*)
 - (iii) under section 60(1) of that Ordinance directing the sale of property; (*Added 17 of 2010 s. 112*)
 - (iv) under section 81 of that Ordinance to set aside an arbitral award; (*Added 17 of 2010 s. 112*)
 - (v) under section 84, 87 or 92 of that Ordinance to grant or refuse leave to enforce an arbitral award; (*Added 17 of 2010 s. 112*)
 - (vi) under section 3 of Schedule 2 to that Ordinance on a question of law arising in the course of arbitral proceedings; (*Added 17 of 2010 s. 112*)
 - (vii) under section 4 of Schedule 2 to that Ordinance on a challenge against an arbitral award on the ground of serious irregularity; (*Added 17 of 2010 s. 112*)
 - (viii) under section 5 or 6 of Schedule 2 to that Ordinance on a question of law arising out of an arbitral award; (*Added 17 of 2010 s. 112*)
 - (ix) under section 7(2) and (3) of Schedule 2 to that Ordinance for an arbitral tribunal to state the reasons for its award and on related costs; (*Added 17 of 2010 s. 112*)
 - (x) under section 7(4) and (6) of Schedule 2 to that Ordinance on the giving of security for the costs of an application to challenge an arbitral tribunal or an appeal on a question of law arising out of an arbitral award, and for the money payable

under the award pending the determination of the application or appeal; or (*Added 17 of 2010 s. 112*)

- (xi) under section 7(7) of Schedule 2 to that Ordinance to impose conditions on granting leave to appeal on a question of law arising out of an arbitral award; (*Added 17 of 2010 s. 112*)

(*Added 52 of 1987 s. 10*)

- (eb) from a decision of the Court of First Instance in respect of which a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and leave to appeal is granted under section 27D of that Ordinance in any proceedings; (*Added 11 of 2002 s. 6*)

- (f) without the leave of the Court of First Instance or the Court of Appeal, from a judgment or order of the Court of First Instance given or made in summarily determining under rules of court any question at issue in interpleader proceedings: (*Amended 25 of 1998 s. 2*)

Provided that this paragraph shall have no effect in relation to any interpleader issue which is tried by a judge whether with or without a jury; (*Amended 21 of 2001 s. 48*)

- (g) from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). (*Added 21 of 2001 s. 48*)

- (4) Rules of court made under section 54 may provide for orders or judgments of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or as interlocutory. (*Added 52 of 1987 s. 10*) [*cf. 1981 c. 54 s. 60 U.K.*]

- (5) No appeal shall lie from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected

with an appeal to that court, final or interlocutory. (*Added 52 of 1987 s. 10*)

14AA. Leave to appeal required for interlocutory appeals

- (1) Except as provided by rules of court, no appeal lies to the Court of Appeal from an interlocutory judgment or order of the Court of First Instance in any civil cause or matter unless leave to appeal has been granted by the Court of First Instance or the Court of Appeal.
- (2) Rules of court may specify a judgment or order of any prescribed description to which subsection (1) does not apply and accordingly an appeal lies as of right from the judgment or order.
- (3) Leave to appeal for the purpose of subsection (1) may be granted—
 - (a) in respect of a particular issue arising out of the interlocutory judgment or order; and
 - (b) subject to such conditions as the court hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.
- (4) Leave to appeal for the purpose of subsection (1) shall not be granted unless the court hearing the application for leave is satisfied that—
 - (a) the appeal has a reasonable prospect of success; or
 - (b) there is some other reason in the interests of justice why the appeal should be heard.
- (5) This section does not apply in relation to an interlocutory judgment or order of the Court of First Instance made before the commencement[#] of this section.

(*Added 3 of 2008 s. 25*)

Editorial Note:

Commencement day: 2 April 2009.

14AB. Decision on leave to appeal final

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.

(Added 3 of 2008 s. 25)

14A. Appeal from order on application for judicial review in criminal cause or matter

An appeal shall lie to the Court of Appeal from a judgment or order of the Court of First Instance given or made on an application for judicial review referred to in section 21K(1) and relating to a criminal cause or matter.

(Added 2 of 1993 s. 4. Amended 25 of 1998 s. 2)

15. Application for new trial

(1) Where any cause or matter or any issue in any cause or matter has been tried in the Court of First Instance, any application for a new trial thereof, or to set aside a verdict, finding or judgment therein, shall be heard and determined by the Court of Appeal.

(2) Nothing in this section shall alter the practice in bankruptcy.

(Replaced 52 of 1987 s. 11. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 17 U.K.]

16. Law and equity to be administered in High Court

(1) The Court of Appeal and the Court of First Instance, when exercising jurisdiction in any civil cause or matter, shall continue to administer law and equity on the basis that, wherever there is any conflict or variance between the rules

of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

(2) The Court of Appeal and the Court of First Instance shall give the same effect as hitherto—

(a) to all equitable estates, titles, rights, reliefs, defences and counterclaims, and to all equitable duties and liabilities; and

(b) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom or created by any Ordinance,

and shall so exercise its jurisdiction in every cause or matter before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of those matters is avoided.

(3) Nothing in this Ordinance shall affect the power of the Court of Appeal or the Court of First Instance to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person, whether or not a party to the proceedings.

(Replaced 52 of 1987 s. 11. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 49 U.K.]

17. Power to award damages as well as, or in substitution for, injunction or specific performance

Where the Court of Appeal or the Court of First Instance has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance.

(Replaced 52 of 1987 s. 11. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 50 U.K.]

18-19. *(Repealed 52 of 1987 s. 12)*

20. Power of Court of First Instance to impose charging order

- (1) Where, under a judgment or order of the Court of First Instance, a person (in this section and in sections 20A and 20B referred to as the **debtor**) is required to pay a sum of money to another person (in this section and in section 20A referred to as the **creditor**) then, for the purpose of enforcing that judgment or order, the Court of First Instance may make an order imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order. *(Replaced 52 of 1987 s. 13)*
- (2) An order under subsection (1) is referred to in this Ordinance as a **charging order**. *(Replaced 52 of 1987 s. 13)*
- (3) In deciding whether to make a charging order the Court of First Instance shall consider all the circumstances of the case and, in particular, any evidence before it as to—
 - (a) the personal circumstances of the debtor; and
 - (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order. *(Replaced 52 of 1987 s. 13)*
- (4) This section shall apply to a judgment, order, decree or award however called of any court or arbitrator or umpire, including any foreign court or foreign arbitrator or umpire, which is or has become enforceable, whether wholly or to a limited extent, as it applies to a judgment or order of the Court of First Instance. *(Amended 17 of 2010 s. 112)*

(Amended 25 of 1998 s. 2)

[cf. 1979 c. 53 s. 1 U.K.]

20A. Property which may be charged

- (1) Subject to subsection (3), a charge may be imposed by a charging order only on—
 - (a) an interest held by the debtor beneficially—
 - (i) in any asset of a kind mentioned in subsection (2) or
 - (ii) under any trust; or
 - (b) an interest held by a person as trustee of a trust (in this paragraph referred to as *the trust*), if the interest is in an asset of a kind mentioned in subsection (2) or is an interest under another trust and—
 - (i) the judgment or order in respect of which a charge is to be imposed was made against that person as trustee of the trust;
 - (ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for his own benefit; or
 - (iii) in a case where there are 2 or more debtors all of whom are liable to the creditor for the same debt, they together hold the whole beneficial interest under the trust unencumbered and for their own benefit.
- (2) The assets referred to in subsection (1) are—
 - (a) land;
 - (b) securities of any of the following kinds—
 - (i) Government stock;
 - (ii) stock of any body incorporated in Hong Kong;
 - (iii) stock of any body incorporated outside Hong Kong or of any state or territory outside Hong Kong,

being stock registered in a register kept at any place within Hong Kong;

- (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong; or

- (c) funds in court.

- (3) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (2)(b) or (c), the Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset. (*Amended 25 of 1998 s. 2*)

- (4) In this section—

dividend (派息) includes any distribution in respect of any unit of a unit trust; [*cf. 1979 c. 53 s. 6 U.K.*]

stock (證券) includes shares, debentures, loan stocks, funds, bonds, notes, any other securities issued by the body concerned, whether or not constituting a charge on the assets of that body and any rights or options to subscribe for or be allotted any of the foregoing; and

unit trust (單位信託) means any trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

(*Added 52 of 1987 s. 14*)

[*cf. 1979 c. 53 s. 2 U.K.*]

20B. Provisions supplementary to sections 20 and 20A

- (1) A charging order may be made either absolutely or subject to

conditions as to notifying the debtor or as to the time when the charge is to become enforceable, or as to other matters.

- (2) The Land Registration Ordinance (Cap. 128) shall apply in relation to charging orders as it applies in relation to other orders or writs issued or made for the purpose of enforcing judgments.
- (3) Subject to the provisions of this Ordinance, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand.
- (4) The Court of First Instance may at any time, on the application of the debtor or of any person interested in any property to which the order relates, make an order discharging or varying the charging order. (*Amended 25 of 1998 s. 2*)
- (5) In the case of a charging order registered pursuant to the Land Registration Ordinance (Cap. 128), if an order under subsection (4) discharging the charging order is made, the Land Registrar shall on the filing with him of a memorial and an office copy of such order, enter a discharge of such charging order on the register, and may issue certificates of such entry. (*Amended 8 of 1993 s. 3*)

(*Added 52 of 1987 s. 14*)

[*cf. 1979 c. 53 s. 3 U.K.*]

21. Attachment of debts

- (1) A sum standing to the credit of a person in a deposit account in an authorized financial institution shall, for the purposes of the jurisdiction of the Court of First Instance to attach debts for the purpose of satisfying judgments or orders for the payment of money, be deemed to be a sum due or accruing to that person and, subject to rules of court, shall

be attachable accordingly, notwithstanding that any of the following conditions applicable to the account, that is to say— (*Amended 52 of 1987 s. 15; 25 of 1998 s. 2*)

- (a) any condition that notice is required before any money is withdrawn;
 - (b) any condition that a personal application must be made before any money is withdrawn;
 - (c) any condition that a deposit book must be produced before any money is withdrawn;
 - (d) any condition that a receipt for money deposited must be produced before any money is withdrawn; or
 - (e) any other condition prescribed by rules of court, has not been satisfied.
- (2) In this section ***authorized financial institution*** (認可金融機構) means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155). (*Added 52 of 1987 s. 15. Amended 49 of 1995 s. 53*)

[*cf. 1956 c. 46 s. 38 U.K.*]

21A. No arrest or imprisonment without order

- (1) Subject to section 21B, a person shall not be arrested or imprisoned to enforce, secure or pursue a civil claim for the payment of money or damages except under an order of Court; and the Court shall have jurisdiction to make such an order for arrest or imprisonment only to enforce, secure or pursue a judgment for the payment of a specified sum of money.
- (2) An order for imprisonment under subsection (1) shall be for a period not exceeding 3 months.
- (3) The period mentioned in subsection (2) may be amended by resolution of the Legislative Council.

- (4) (a) The Court may, on application, discharge, vary or suspend an order for arrest or imprisonment made under this section, either absolutely or subject to such conditions as the Court thinks fit.
 - (b) The Court may make an order for arrest or imprisonment under this section subject to such conditions as it thinks fit, including conditions as to the time and place of execution of the order and the condition that the judgment debtor be released on the payment of the judgment debt and costs, the provision of security by him or on his behalf or on the surrender of his travel documents.
 - (5) In this section, **Court** (法庭) includes the Registrar or any Master. (*Amended 52 of 1987 s. 16*)
 - (6) This section shall not affect any jurisdiction of the Court to make orders of committal in relation to—
 - (a) contempt of court; or
 - (b) disobedience of a judgment or order of the Court.
- (*Added 1 of 1984 s. 2*)

21B. Prohibition on debtor leaving Hong Kong

- (1) The Court shall have jurisdiction to make an order prohibiting a person from leaving Hong Kong (a prohibition order) to facilitate the enforcement, securing or pursuance of—
 - (a) a judgment against that person for the payment of a specified sum of money;
 - (b) a judgment or order against that person—
 - (i) for the payment of an amount to be assessed; or
 - (ii) requiring him to deliver any property or perform any other act; or

- (c) a civil claim (other than a judgment)—
 - (i) for the payment of money or damages; or
 - (ii) for the delivery of any property or the performance of any other act.
- (2) The Court shall not make an order under subsection (1)(b) unless it is satisfied that there is probable cause for believing that—
 - (a) the person against whom the order is sought is about to leave Hong Kong; and
 - (b) by reason of paragraph (a), satisfaction of the judgment or order is likely to be obstructed or delayed.
- (3) The Court shall not make an order under subsection (1)(c) unless it is satisfied that there is probable cause for believing that—
 - (a) there is a good cause of action;
 - (b) the person against whom the order is sought—
 - (i) incurred the alleged liability, which is the subject of the claim, in Hong Kong while he was present in Hong Kong; or
 - (ii) carries on business in Hong Kong; or
 - (iii) is ordinarily resident in Hong Kong;
 - (c) that person is about to leave Hong Kong; and
 - (d) by reason of paragraph (c), any judgment that may be given against that person is likely to be obstructed or delayed.
- (4) (a) The Court may, on application, discharge a prohibition order, either absolutely or subject to such conditions as the Court thinks fit.

- (b) The Court may make a prohibition order subject to such conditions as it thinks fit, including the condition that the order shall have no effect if the judgment debtor or person against whom the claim is made satisfies the judgment or the claim or provides such security as the Court may order.
- (5)
 - (a) An order under subsection (1) shall lapse—
 - (i) on the expiry of one month but the Court may, on the application of the judgment creditor or claimant, extend or renew the order for a period which does not exceed, with the initial period of one month and any other period of extension or renewal, 3 months; and
 - (ii) on the service upon the Director of Immigration and the filing with the Registrar of a notice by the judgment creditor or claimant advising that the order is no longer required.
 - (b) The judgment creditor or claimant shall serve and file the notice mentioned in paragraph (a)(ii) as soon as reasonably possible after the order is no longer required.
- (6) A copy of an order under subsection (1) and any other order ancillary thereto shall be served on the Director of Immigration, the Commissioner of Police and, if he can be found, the judgment debtor or person against whom the claim is made.
- (7) Where the Court makes an order under subsection (1) prohibiting a person from leaving Hong Kong, any person who, having been served with a copy of the order or otherwise informed of its effect, attempts to leave Hong Kong in contravention of that order may be arrested by any immigration officer, police officer or bailiff.

- (8) (a) A person arrested under subsection (7) shall be brought before the Court before the expiry of the day after the day of arrest and the Court may—
- (i) in the case mentioned in subsection (1)(a), make such order, for the examination or imprisonment of that person, under rules of court, as is appropriate;
 - (ii) in the case of any other person, make an order for the imprisonment of that person until the lapse or discharge of the prohibition order; or
 - (iii) in any case, make an order discharging that person from arrest either absolutely or upon compliance with such conditions as the Court thinks fit.
- (b) Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to this subsection.
- (9) The Director of Immigration shall not be liable for any failure to prevent any person against whom an order is made under this section from leaving Hong Kong.
- (10) In this section, **Court** (法院、法庭) includes the Registrar or any Master. (*Amended 52 of 1987 s. 17*)
- (11) The form of order under this section may be prescribed by rules of court.

(*Added 1 of 1984 s. 2*)

21C. Effect of writs of execution against goods

- (1) Subject to subsection (2), a writ of fieri facias or other writ of execution against goods issued from the Court of First Instance shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the bailiff to be executed. (*Amended 25 of 1998 s. 2*)
- (2) A writ of a kind referred to in subsection (1) shall not prejudice the title to any goods of the execution debtor

acquired by a person in good faith and for valuable consideration unless he had, at the time when he acquired his title, notice that that writ or any other such writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the bailiff.

- (3) For the better manifestation of the time mentioned in subsection (1), it shall be the duty of the bailiff (without fee) on receipt of any such writ as is there mentioned to endorse on its back the hour, day, month and year when he received it.
- (4) In this section and in section 21D—
- (a) **property** (產權) means the general property in goods, and not merely a special property;
 - (b) **bailiff** (執達主任) includes any officer charged with the enforcement of a writ of execution;
 - (c) any reference to the goods of the execution debtor is to be deemed a reference to property liable to attachment and sale in execution of a judgment;
 - (d) an act shall be treated as done in good faith if it is in fact done honestly, whether it is done negligently or not.

(Added 52 of 1987 s. 18)

[cf. 1981 c. 54 s. 138 U.K.]

21D. Sale of property in execution of judgment

- (1) The following property is liable to attachment and sale in execution of a judgment, namely, land, goods, money, bank notes, cheques, bills of exchange, promissory notes, Government stock, bonds, or other securities for money, debts, shares in the capital or joint stock of any company or corporation, (other than a private company within the meaning

of section 11 of the Companies Ordinance (Cap. 622)) and all other property whatsoever, whether movable or immovable, belonging to the judgment debtor, and whether the same is held in his own name or by another person in trust for him or on his behalf: (*Amended 28 of 2012 ss. 912 & 920*)

Provided that the following property shall not be so liable, namely, the tools (if any) of the trade of the judgment debtor and the necessary wearing apparel and bedding of him and his family dependent on and residing with him, to a value, inclusive of tools and apparel and bedding, not exceeding \$10,000 in the whole.

- (2) Where any goods in the possession of an execution debtor at the time of seizure by the bailiff charged with the enforcement of a writ, warrant or other process of execution, are sold by such bailiff without any claim having been made to them, the purchaser of the goods so sold shall, subject to subsection (3), acquire a good title to such goods and no person shall be entitled to recover against the bailiff, or anyone lawfully acting under his authority, except as provided by section 46 of the Bankruptcy Ordinance (Cap. 6), for any sale of such goods or for paying over the proceeds thereof prior to the receipt of a claim to the said goods, unless it is proved that the person from whom recovery is sought had notice or might by making reasonable inquiry have ascertained that the goods were not the property of the execution debtor:

Provided that nothing in this subsection shall affect the right of any claimant who may prove that at the time of sale he had title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such bailiff or purchaser as aforesaid.

- (3) Notwithstanding the preceding provisions of this section the Court may, subject to rules of court, set aside the sale of any

immovable property in execution of a judgment on the ground of material irregularity in the conduct of the sale.

(Added 52 of 1987 s. 18)

21E. Enforcement of fines and forfeited recognizances

- (1) Payment of a fine imposed, or sum due under a recognizance forfeited, by the Court of Appeal in its civil jurisdiction or by the Court of First Instance may be enforced upon the order of the Court in like manner as a judgment of the Court of First Instance for the payment of money.
- (2) Where payment of a fine or other sum falls to be enforced upon an order of the Court of Appeal in its civil jurisdiction or of the Court of First Instance—
 - (a) the Court shall, if the fine or other sum is not paid in full forthwith or within such time as the Court may allow, certify to the Registrar the sum payable; and
 - (b) the Registrar shall thereupon proceed to enforce payment of that sum as if it were due to him as a judgment debt.
- (3) In this section, ***fine*** (罰款) includes a penalty imposed in civil proceedings.

(Added 52 of 1987 s. 18. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 140 U.K.]

21F. Relief against forfeiture by action for non-payment of rent

- (1) Subject to subsection (1A), this section has effect where a lessor is proceeding by action in the Court of First Instance to enforce against a lessee a right of re-entry or forfeiture in respect of any land for non-payment of rent. *(Amended 25 of 1998 s. 2; 32 of 2002 s. 40)*
- (1A) Where during the term of a lease the application of this section has prevented a lessor from enforcing against a lessee

a right mentioned in subsection (1), then during that term this section shall not be applicable again to prevent the lessor from exercising that right against the lessee unless the Court is satisfied that there is good cause why this section should apply in favour of the lessee. (*Added 32 of 2002 s. 40*)

(2) If, within the time prescribed by rules of court for acknowledging service of the writ by which the action was commenced, the lessee pays into court all the rent in arrear and the costs of the action, the action shall cease, and the lessee shall hold the land according to the lease without any new lease.

(3) If—

(a) the action does not cease under subsection (2); and

(b) the Court at the trial is satisfied that the lessor is entitled to enforce the right of re-entry or forfeiture,

the Court shall order possession of the land to be given to the lessor at the expiration of such period, but not being less than 7 days from the date of the order, as the Court thinks fit, unless within that period the lessee pays into court all the rent in arrear and such sum as the Court shall direct on account of the costs of the action. (*Amended 32 of 2002 s. 40*)

(3A) The Secretary for Development may, by notice published in the Gazette, amend the number of days specified in subsection (3) by substituting another number therefor. (*Added 32 of 2002 s. 40. Amended L.N. 130 of 2007*)

(4) The Court may extend the period specified under subsection (3) at any time before possession of the land is recovered in pursuance of the order under that subsection.

(5) Subject to subsection (6), if—

(a) within the period specified in the order; or

(b) within that period as extended under subsection (4),

the lessee pays into court—

- (i) all the rent in arrear; and
- (ii) the sum directed to be paid on account of the costs of the action,

he shall hold the land according to the lease without any new lease.

- (6) Subsection (2) shall not apply where the lessor is proceeding in the same action to enforce a right of re-entry or forfeiture on any other ground as well as for non-payment of rent, or to enforce any other claim as well as the right of re-entry or forfeiture and the claim for arrears of rent.
- (7) If the lessee does not—
 - (a) within the period specified in the order; or
 - (b) within that period as extended under subsection (4),pay into court—
 - (i) all the rent in arrear; and
 - (ii) the sum directed to be paid on account of the costs of the action,the order may be enforced and so long as the order remains unreversed the lessee shall be barred from all relief.
- (8) The extension under subsection (4) of a period fixed by the Court shall not be treated as relief from which the lessee is barred by subsection (7) if he fails to pay into court all the rent in arrear and the sum directed to be paid on account of the costs of the action within that period.
- (9) Where the Court extends a period under subsection (4) at a time when—
 - (a) that period has expired; and

(b) a writ of possession in respect of the land has been issued,

the Court shall suspend the writ for the extended period, and if, before the expiration of the extended period, the lessee pays into court all the rent in arrear and the sum directed to be paid on account of the costs of the action, the Court shall cancel the writ.

(10) Nothing in this section shall be taken to affect—

(a) the power of the Court to enter final judgment in a case where the defendant fails to give notice of intention to defend;

(b) the power of the Court to make any order which it would otherwise have power to make as respects a right of re-entry or forfeiture on any ground other than non-payment of rent; or

(c) section 58(4) of the Conveyancing and Property Ordinance (Cap. 219).

(Added 52 of 1987 s. 18)

[cf. 1984 c. 28 s. 138 U.K.]

Editorial Note:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

21G. Service of writ in lieu of demand

In a case where section 21F has effect, if—

(a) one-half-year's rent is in arrear at the time of the commencement of the action;

(b) the lessor has a right of re-entry for non-payment of that rent; and

- (c) no sufficient distress is to be found on the premises countervailing the arrears then due,

the service of the writ in the action in the prescribed manner shall stand in lieu of a demand and re-entry.

(Added 52 of 1987 s. 18)

[cf. 1984 c. 28 s. 139 U.K.]

21H. Interpretation and application of sections 21F, 21G and 21H

- (1) In this section and sections 21F and 21G—

lease (租契) includes—

- (a) an original or derivative under-lease; and
- (b) an agreement for a lease where the lessee has become entitled to have his lease granted;

lessee (承租人) includes—

- (a) an original or derivative under-lessee; and
- (b) the persons deriving title under a lessee;

lessor (出租人) includes—

- (a) an original or derivative under-lessor; and
- (b) the persons deriving title under a lessor;

trial (審訊) includes the hearing of an application for summary judgment;

under-lease (分租租契) includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

under-lessee (承轉租人) includes any person deriving title under an under-lessee.

- (2) Nothing in section 21F shall affect the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126). *(Amended 29 of 1998 s. 3)*

(Added 52 of 1987 s. 18)

[cf. 1984 c. 28 s. 140 U.K.]

21I. Orders of mandamus, prohibition and certiorari

- (1) The Court of First Instance shall have jurisdiction to make orders of mandamus, prohibition and certiorari in those classes of cases in which it had power to do so immediately before the commencement of the Supreme Court (Amendment) Ordinance 1987 (52 of 1987). *(Amended 25 of 1998 s. 2)*
- (2) Every such order shall be final, subject to any right of appeal therefrom.
- (3) The power of the Court of First Instance under any enactment to require, magistrates or a judge or officer of a District Court to do any act relating to the duties of their respective offices, or to require a magistrate to state a case for the opinion of the Court of First Instance, in any case where the Court of First Instance formerly had by virtue of any enactment jurisdiction to make a rule absolute, or an order, for any of those purposes, shall be exercisable by order of mandamus. *(Amended 47 of 1997 s. 10; 25 of 1998 s. 2)*
- (4) In any enactment—
 - (a) references to a writ of mandamus, of prohibition or of certiorari shall be read as references to the corresponding order; and
 - (b) references to the issue or award of any such writ shall be read as references to the making of the corresponding order.

(Added 52 of 1987 s. 18)

[cf. 1981 c. 54 s. 29 U.K.]

21J. Injunction to restrain persons acting in offices in which they are not entitled to act

- (1) Where a person not entitled to do so acts in an office to which this section applies, the Court of First Instance may— (*Amended 25 of 1998 s. 2*)
 - (a) grant an injunction restraining him from so acting; and
 - (b) if the case so requires, declare the office to be vacant.
- (2) This section applies to any public office or office which has been created by any enactment.

(Added 52 of 1987 s. 18)

[cf. 1981 c. 54 s. 30 U.K.]

21K. Application for judicial review

- (1) An application to the Court of First Instance for one or more of the following forms of relief—
 - (a) an order of mandamus, prohibition or certiorari;
 - (b) an injunction under section 21J restraining a person not entitled to do so from acting in an office to which that section applies,

shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.
- (2) An application for a declaration or an injunction (not being an injunction mentioned in subsection (1)) may be made in accordance with rules of court by way of an application for judicial review, and on such an application the Court of First Instance may grant the declaration or injunction claimed if it considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by orders of mandamus, prohibition or certiorari;
 - (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
 - (c) all the circumstances of the case,it would be just and convenient for the declaration to be made or the injunction to be granted, as the case may be.
- (3) No application for judicial review shall be made unless the leave of the Court of First Instance has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (4) On an application for judicial review the Court of First Instance may award damages to the applicant if—
 - (a) he has joined with his application a claim for damages arising from any matter to which the application relates; and
 - (b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he would have been awarded damages.
- (5) If, on an application for judicial review seeking an order of certiorari, the Court of First Instance quashes the decision to which the application relates, the Court of First Instance may remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the Court of First Instance.
- (6) Where the Court of First Instance considers that there has been undue delay in making an application for judicial review, the Court may refuse to grant—

- (a) leave for the making of the application; or
 - (b) any relief sought on the application,
- if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.
- (7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

(Added 52 of 1987 s. 18. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 31 U.K.]

21L. Injunction and receiver

- (1) The Court of First Instance may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court of First Instance to be just or convenient to do so.
- (2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.
- (3) The power of the Court of First Instance under subsection (1) or section 21M to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the Court of First Instance, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled or resident or present within that jurisdiction. *(Amended 3 of 2008 s. 9)*
- (4) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction

may be granted, if the Court of First Instance thinks fit, whether—

- (a) the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and
 - (b) the estates claimed by both or by either of the parties are legal or equitable.
- (5) The power of the Court of First Instance to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power—
- (a) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 20 for the purpose of enforcing the judgment, order, decree or award in question; and
 - (b) shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.
- (6) Where an order under section 20 imposing a charge for the purpose of enforcing a judgment, order, decree or award has been registered under section 2 of the Land Registration Ordinance (Cap. 128), section 3(2) of that Ordinance shall not apply to an order appointing a receiver made either—
- (a) in proceedings for enforcing the charge; or
 - (b) by way of equitable execution of the judgment, order, decree or award or, as the case may be, of so much of it as required payment of moneys secured by the charge.

(Added 52 of 1987 s. 18. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 37 U.K.]

21M. Interim relief in the absence of substantive proceedings

- (1) Without prejudice to section 21L(1), the Court of First Instance may by order appoint a receiver or grant other interim relief in relation to proceedings which—
 - (a) have been or are to be commenced in a place outside Hong Kong; and
 - (b) are capable of giving rise to a judgment which may be enforced in Hong Kong under any Ordinance or at common law.
- (2) An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court of First Instance thinks just.
- (3) Subsection (1) applies notwithstanding that—
 - (a) the subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court of First Instance would have jurisdiction; or
 - (b) the appointment of the receiver or the interim relief sought is not ancillary or incidental to any proceedings in Hong Kong.
- (4) The Court of First Instance may refuse an application for appointment of a receiver or interim relief under subsection (1) if, in the opinion of the Court, the fact that the Court has no jurisdiction apart from this section in relation to the subject matter of the proceedings concerned makes it unjust or inconvenient for the Court to grant the application.
- (5) The power to make rules of court under section 54 includes power to make rules of court for—
 - (a) the making of an application for appointment of a receiver or interim relief under subsection (1); and

- (b) the service out of the jurisdiction of an application or order for the appointment of a receiver or for interim relief.
- (6) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee considers necessary or expedient.
- (7) In this section, *interim relief* (臨時濟助) includes an interlocutory injunction referred to in section 21L(3).

(Added 3 of 2008 s. 10)

21N. Supplementary provisions as to interim relief in the absence of substantive proceedings

- (1) In exercising the power under section 21M(1), the Court of First Instance shall have regard to the fact that the power is—
 - (a) ancillary to proceedings that have been or are to be commenced in a place outside Hong Kong; and
 - (b) for the purpose of facilitating the process of a court outside Hong Kong that has primary jurisdiction over such proceedings.
- (2) The Court of First Instance has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under section 21M as if the order were granted under section 21L in relation to proceedings commenced in Hong Kong.

(Added 3 of 2008 s. 10)

22. *(Repealed 52 of 1987 s. 19)*

22A. Applications for, and issue of, writs of habeas corpus

- (1) An application may be made to the Court of First Instance—

- (a) alleging that a person named in the application is being detained without lawful justification; and
 - (b) requesting the issue of a writ of habeas corpus in respect of that person.
- (2) An application can be made by the person alleged to be detained, or by any other person on that person's behalf, and, in particular, can be made by or on behalf of a person who claims to be legally entitled to the custody of another person.
- (3) An application can be made ex parte.
- (4) As soon as practicable after receiving an application, the Court of First Instance must inquire into the allegation that the applicant is being unlawfully detained. All proceedings under this section are to be conducted in open court unless the Court, in exceptional circumstances specified by the Court, orders the proceedings, or a part of the proceedings, to be conducted in camera. All orders and decisions made in respect of those proceedings, and the reasons for those orders and decisions, are in every case to be announced in open court.
- (5) On considering the application, the Court of First Instance must, if satisfied that the application has substance, do either of the following—
 - (a) order the issue of a writ of habeas corpus directing the person having custody of the applicant to have the applicant brought before the Court at a specified time on a specified date and to certify to the Court the grounds for the applicant's detention;
 - (b) order the person having custody of the applicant to appear before the Court in order to justify the lawfulness of the applicant's detention.

- (6) The Court of First Instance may dismiss an application for a writ of habeas corpus if satisfied, on considering the application, that it has no substance.
- (7) The person to whom a writ of habeas corpus is directed must, not later than the time and on the date specified in the writ—
 - (a) produce before the Court of First Instance the person alleged to be detained; and
 - (b) make a formal return to the writ.

However, the Court of First Instance may extend the time within which a writ of habeas corpus must be complied with if it is satisfied that there is a good reason to do so.

- (8) If for any reason it is not possible for the person to whom a writ of habeas corpus is directed to comply with the writ, that person must nevertheless make a return to the Court of First Instance specifying the reason why it is not possible to comply with the writ.
- (9) When a person is brought before the Court of First Instance in accordance with a writ of habeas corpus, the Court must immediately inquire into the circumstances surrounding the detention of the person and must order the release of that person from detention unless satisfied that the detention is lawful.
- (10) If a person who has custody of a detained person appears before the Court in accordance with an order made under subsection (5)(b) but fails to satisfy the Court that the detention is lawful, the Court must order the detained person to be released from detention immediately.
- (11) If a writ of habeas corpus has been issued in respect of a detained person, the person having custody of the detained person must not, until the writ is discharged or the proceedings are concluded—

- (a) allow the detained person to be moved to another place of detention in Hong Kong otherwise than under the authority of the Prisons Ordinance (Cap. 234) or of any other enactment expressly providing for the detention of persons; or
 - (b) allow the detained person to be removed from Hong Kong.
- (12) If a person who was formerly held in detention on a particular ground is released because of the issue of a writ of habeas corpus, or in accordance with an order made under subsection (10), a person may redetain that person on the same or a similar ground only if there has been a material change in the relevant circumstances.
- (13) A person who—
 - (a) fails to comply with a writ of habeas corpus or with a requirement of this section; or
 - (b) contravenes subsection (12),
 is guilty of contempt of the Court of First Instance.
- (14) The right to obtain a writ of habeas corpus under the common law is preserved and is affected by this section only in so far as it is inconsistent with this section.
- (15) For the purposes of this section—
 - (a) a person has custody of another person not only when the person has actual custody over the body of that other person but also when the person has power or control over that other person's body; and
 - (b) in relation to an application made on behalf of a person, a reference to an applicant includes a reference to that person.

(Added 95 of 1997 s. 3. Amended 25 of 1998 s. 2)

23. Restriction on repeated applications for habeas corpus

- (1) Notwithstanding anything in any law or rule of court, where an application for habeas corpus has been made by or in respect of any person, no such application shall again be made to the Court of First Instance or any judge thereof by or in respect of that person on the same grounds, unless fresh evidence is adduced in support of the application. (*Amended 95 of 1997 s. 4; 25 of 1998 s. 2*)

- (2) (*Repealed 95 of 1997 s. 4*)

[cf. 1960 c. 65 s. 14 U.K.]

24. Appeal in habeas corpus proceedings

An appeal shall lie as of right to the Court of Appeal from any decision of the Court of First Instance on an application for habeas corpus, whether the Court of First Instance orders the release of the person detained or refuses to make such an order.

(Amended 95 of 1997 s. 5; 25 of 1998 s. 2)

[cf. 1960 c. 65 s. 15 U.K.]

25. Power of Court of First Instance to vary sentence on certiorari

- (1) Where a person who has been sentenced for an offence by a magistrate or the District Court applies to the Court of First Instance for an order of certiorari to remove the proceedings before the magistrate or the District Court into the Court of First Instance, and the Court of First Instance determines that the magistrate or the District Court had no power to pass the sentence, the Court of First Instance may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence which the magistrate or the District Court had power to impose.

- (2) Any sentence passed by the Court of First Instance by virtue of this section in substitution for the sentence passed by a magistrate or the District Court shall, unless the Court of First Instance otherwise directs, begin to run from the time when it would have begun to run if passed by the magistrate or the District Court.
- (3) This section shall apply, with the necessary modifications, in relation to any order of a magistrate or the District Court which is made on, but does not form part of, the conviction of an offender as it applies in relation to a conviction and sentence.

(Amended 25 of 1998 s. 2)

[cf. 1960 c. 65 s. 16 U.K.]

25A. Execution of instruments by order of Court of First Instance

- (1) Where the Court of First Instance has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to endorse any negotiable instrument, then, if that person—
 - (a) neglects or refuses to comply with the judgment or order; or
 - (b) cannot after reasonable inquiry be found,the Court of First Instance may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed, or that the negotiable instrument shall be endorsed, by such person as the Court may nominate for that purpose.
- (2) A conveyance, contract, document or instrument executed or endorsed in accordance with subsection (1) shall have the same effect as if it had been executed or endorsed by the person originally directed to execute or endorse it.

- (3) Nothing herein shall be held to abridge the powers of the Court of First Instance to proceed by attachment against any person neglecting or refusing to execute or endorse any such instrument.

(Added 52 of 1987 s. 20. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 39 U.K.]

26. Wards of court

- (1) Subject to the provisions of this section, no infant shall be made a ward of court except by virtue of an order to that effect made by the Court of First Instance.
- (2) Where application is made for such an order in respect of an infant, the infant shall become a ward of court on the making of the application, but shall cease to be a ward of court at the expiration of such period as may be prescribed by rules of court unless within that period an order has been made in accordance with the application.
- (3) The Court of First Instance may, either upon an application in that behalf or without such an application, order that any infant who is for the time being a ward of court shall cease to be a ward of court.

(Amended 25 of 1998 s. 2)

[cf. 1949 c. 100 s. 9 U.K.]

27. Restriction of vexatious legal proceedings

- (1) The Court of First Instance may, on the application of the Secretary for Justice or an affected person, make an order that—
- (a) no legal proceedings shall without the leave of the Court of First Instance be instituted by the person against whom the order is made; and

- (b) any legal proceedings instituted by that person in any court before the making of the order shall not be continued by him without the leave of the Court of First Instance.
- (2) The Court of First Instance may not make an order under subsection (1) unless—
 - (a) it is satisfied that the person against whom the order is to be made has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons; and
 - (b) it has heard the person against whom the order is to be made or given him an opportunity of being heard.
- (3) An order made under subsection (1)—
 - (a) may be made on such terms and conditions as the Court of First Instance thinks just; and
 - (b) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
- (4) A copy of an order made under subsection (1) shall be published in the Gazette.
- (5) In subsection (1), ***affected person*** (受影響的人) means a person who—
 - (a) is or has been a party to any of the vexatious legal proceedings; or
 - (b) has directly suffered adverse consequences resulting from such proceedings.

(Replaced 3 of 2008 s. 13)

27A. Leave to institute or continue proceedings

- (1) Leave for the institution or continuance of any legal proceedings by a person who is the subject of an order for the time being in force under section 27(1) shall not be given unless the Court of First Instance is satisfied that—
 - (a) the proceedings are not an abuse of the process of the court in question; and
 - (b) there are reasonable grounds for the proceedings.
- (2) No appeal lies from a decision of the Court of First Instance granting or refusing leave required under this section, unless leave to appeal has been granted by the Court of First Instance.

(Added 3 of 2008 s. 13)

Part IV

Sittings and Distribution of Business

28. Sittings of High Court and distribution of business

- (1) The High Court shall sit at such times and at such places as the Chief Justice shall appoint.
- (2) The distribution of business of the High Court shall be made in accordance with directions given by the Chief Justice.

(Amended 25 of 1998 s. 2)

29. Vacations

- (1) The following vacations shall be observed in each year in the High Court and the Registries— *(Amended 25 of 1998 s. 2)*
 - (a) the Summer vacation; *(Amended 52 of 1987 s. 22)*
 - (b) the Christmas vacation; and
 - (c) the Easter vacation.
- (2) The dates of the vacations referred to in subsection (1) shall be prescribed by rules of court.
- (3) The days of the commencement and termination of each vacation shall be included in such vacation.

30. Business in vacations

- (1) The High Court and the Registries shall be open during any vacation for the purpose of— *(Amended 25 of 1998 s. 2; 18 of 2016 s. 4)*
 - (a) holding criminal trials and determining criminal appeals and the transaction of all business incidental thereto; and

(b) the transaction of such other business as may be prescribed by rules of court. *(Replaced 49 of 1983 s. 6)*

(2)-(3) *(Repealed 49 of 1983 s. 6)*

(4) However, subsection (1) does not require the High Court or the Registries to be open on Saturdays, general holidays, or other days as directed by the Registrar or the Chief Justice. *(Added 18 of 2016 s. 4)*

(5) In subsection (4)—

Registrar (司法常務官) includes a Senior Deputy Registrar, Deputy Registrar, or Assistant Registrar, of the High Court. *(Added 18 of 2016 s. 4)*

31. Computation of vacation period and validity of acts therein

(1) Where by any law regulating civil procedure, or by any special order of the High Court, any period not exceeding one month is appointed or allowed for the doing of any act or the taking of any proceeding, no days included in the Summer vacation shall be reckoned in the computation of such time, unless the Court otherwise directs: *(Amended 52 of 1987 s. 23; 25 of 1998 s. 2)*

Provided that nothing in this section shall be deemed to extend the time for entering appearance to any writ endorsed with a statement of claim. *(Amended 79 of 1979 s. 2)*

(2) Every act, matter or thing done during any vacation shall be as valid to all intents and purposes as if done out of vacation.

32. Proceedings in Court of First Instance to be disposed of by single judge

(1) Subject to sections 41 and 42 of the Criminal Procedure Ordinance (Cap. 221), to subsection (3) of this section and to rules of court, every proceeding in the Court of First Instance and all business arising therefrom shall be heard and

determined by a judge of the Court of First Instance sitting alone.

- (2) The proceedings in every action or matter subsequent to the trial or hearing, down to and including the final judgment or order, and any application for leave to appeal or for a stay of execution shall, so far as is practicable and convenient, be taken before the judge of the Court of First Instance before whom the trial or hearing took place.
- (3) The Chief Justice may direct that any proceeding, or class of proceeding, in the Court of First Instance shall be heard and determined by 2 or more judges of the Court.

(Amended 25 of 1998 s. 2)

32A. Proceedings in court and in chambers

Business in the Court of First Instance shall be heard and disposed of in court except insofar as it may, under this or any other enactment or in accordance with the practice of the Court, be dealt with in chambers.

(Added 52 of 1987 s. 24. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 67 U.K.]

33. Powers of judge in chambers

- (1) A judge of the Court of First Instance may, subject to rules of court, exercise in chambers all or any part of the jurisdiction vested in the Court of First Instance, in all such causes and matters and in all such proceedings in any causes or matters as may be heard in chambers by a judge of the High Court in England or as may be directed or authorized to be so heard by rules of court.
- (2) A judge of the Court of First Instance sitting in court shall be deemed to constitute a court of the Court of First Instance.

(Amended 25 of 1998 s. 2)

[cf. 1925 c. 49 s. 61 U.K.]

33A. Trial by jury in the Court of First Instance

- (1) Where, on the application of any party to an action the Court of First Instance is satisfied that there is in issue—
 - (a) a claim in respect of libel, slander, malicious prosecution, false imprisonment or seduction; or
 - (b) any question or issue of a kind prescribed for the purposes of this paragraph by rules of court,the action shall be tried with a jury, unless the Court is of the opinion that the trial requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury.
- (2) An application under subsection (1) must be made not later than such time before the trial as may be prescribed by rules of court.
- (3) An action to be tried in the Court of First Instance which does not by virtue of subsection (1) fall to be tried with a jury shall be tried without a jury unless the Court in its discretion orders it to be tried with a jury.
- (4) Nothing in subsections (1) to (3) shall affect the power of the Court to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial; and where any such order is made, subsection (1) shall have effect only as respects questions relating to any such claim, question or issue as is mentioned in that subsection.
- (5) Where for the purpose of disposing of any action or other matter which is being tried in the Court of First Instance by a judge with a jury it is necessary to ascertain the law of any

other place which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone.

(Added 52 of 1987 s. 25. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 69 U.K.]

34. **Sittings of Court of Appeal**

- (1) This section relates to the Court of Appeal in the exercise of its criminal jurisdiction; and in this section **Court** (法院) means the Court of Appeal exercising such jurisdiction.
(Replaced 52 of 1987 s. 26)
- (2) The Court shall be duly constituted for the purpose of determining any appeal—
 - (a) by way of application for a new trial or to set aside a verdict, finding or judgment in any cause or matter in the Court of First Instance in which there has been a trial thereof or of any issue therein with a jury; or
(Amended 25 of 1998 s. 2)
 - (b) under Part IV of the Criminal Procedure Ordinance (Cap. 221),
if it consists of an uneven number of Justices of Appeal not less than 3. *(Replaced 52 of 1987 s. 26)*
- (2A) The Court shall be duly constituted for the purpose of determining an appeal against sentence only under sections 83G and 83H of the Criminal Procedure Ordinance (Cap. 221) if it consists of 2 Justices of Appeal. *(Added 52 of 1987 s. 26)*
- (3) No judge shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to—
 - (a) an appeal from a judgment or order made by him; or

- (b) an appeal against a conviction before him or a sentence passed by him.
- (4) Subject to subsection (6), where a Court of Appeal consisting of 3 or more Justices of Appeal sits, the judgment or order which is that of the majority of the Justices of Appeal sitting shall be deemed to be the judgment or order of the Court of Appeal, but if there is no judgment or order which is that of a majority of the Justices of Appeal sitting, the judgment or order appealed from shall be deemed to be the judgment or order of the Court of Appeal.
- (5) Where a Court of Appeal consisting of 2 Justices of Appeal only sits and the 2 Justices of Appeal differ, then the judgment or order appealed from shall be disturbed only in so far as it may be modified or affected by any order they make as to which they do not differ:
Provided that—
 - (a) if the judgment or order appealed from is not so modified or affected, it shall be deemed to be the judgment or order of the Court of Appeal; or
 - (b) if the judgment or order appealed from is so modified or affected, it shall, as so modified or affected, be deemed to be the judgment or order of the Court of Appeal.
- (6) In the case of an appeal under Part IV of the Criminal Procedure Ordinance (Cap. 221), if no 2 of the Justices of Appeal agree as to the judgment or order to be made—
 - (a) the judgment or order of the trial judge; or
 - (b) where there is no such judgment or order, the judgment or order of the President,shall be deemed to be the judgment of the Court of Appeal.
- (7) For the purposes of this section and section 34A, an appeal under Part IV of the Criminal Procedure Ordinance (Cap. 221)

includes the consideration of a question of law reserved for the consideration of the Court of Appeal, the consideration of an application by the Secretary for Justice for the review of any sentence, and the consideration of a reference by the Secretary for Justice of a question of law, under sections 81, 81A and 81D respectively of that Ordinance. (*Amended 20 of 1979 s. 10; L.N. 362 of 1997*)

(*Amended 52 of 1987 s. 26*)

34A. Powers of single Justice of Appeal in Court of Appeal in its criminal jurisdiction

- (1) Subject to subsection (2), in pursuance of the criminal jurisdiction of the Court of Appeal, any power of the Court of Appeal not involving the determination of the appeal may be exercised by a single Justice of Appeal in the same manner as it may be exercised by the Court of Appeal and subject to the same provisions.
- (2) Where a single Justice of Appeal refuses an application to exercise any power of the Court of Appeal in pursuance of subsection (1), the applicant shall be entitled to have the application determined by the Court of Appeal.

(*Added 52 of 1987 s. 27*)

34B. Composition of Court of Appeal in its civil jurisdiction

- (1) This section relates to the Court of Appeal in the exercise of its civil jurisdiction; and in this section **Court** (法庭) means the Court of Appeal exercising such jurisdiction.
- (2) The Court shall be duly constituted for the purpose of exercising any of its jurisdiction if it consists of an uneven number of Justices of Appeal not less than 3.
- (3) Where—

- (a) part of any proceedings before the Court has been heard by an uneven number of Justices of Appeal greater than 3; and
- (b) one or more members of the Court is or are unable to continue,

the Court shall remain duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than 3.

- (4) The Court shall, if it consists of 2 Justices of Appeal, be duly constituted for the purpose of—

- (a) hearing or determining any appeal against an interlocutory order or interlocutory judgment;
- (aa) hearing or determining any application for leave to appeal (except an application for leave to appeal to the Court of Final Appeal); (*Added 3 of 2008 s. 26*)
- (ab) hearing or determining any interlocutory application in relation to a cause or matter pending before it; (*Added 3 of 2008 s. 30*)
- (b) hearing or determining any appeal against a decision of a single Justice of Appeal acting by virtue of section 35(1);
- (c) hearing or determining any appeal where all the parties have before the hearing filed a consent to the appeal being heard and determined by 2 Justices of Appeal;
- (d) hearing the remainder of, and determining, any appeal where part of it has been heard by 3 or more Justices of Appeal of whom one or more are unable to continue and all the parties have consented to the remainder of the appeal being heard, and the appeal being determined, by 2 remaining Justices of Appeal; or

- (e) hearing or determining an appeal of any such description or in any such circumstances not covered by paragraphs (a) to (d) as may be prescribed for the purposes of this subsection by an order made by the Chief Justice.
(Amended 3 of 2008 s. 26)
- (5) Where—
 - (a) an appeal has been heard by the Court consisting of an even number of Justices of Appeal; and
 - (b) the members of the Court are equally divided,

the case shall, on the application of any party to the appeal, be re-argued before and determined by an uneven number of Justices of Appeal not less than 3, before any appeal to the Court of Final Appeal. *(Amended 79 of 1995 s. 50)*
- (6) In any cause or matter pending before the Court a single Justice of Appeal may at any time during any vacation make an interim order to prevent prejudice to the claims of any parties pending an appeal.
- (7) Section 53 shall apply in relation to causes and matters before the Court as it applies in relation to causes and matters before the Court of First Instance.

(Added 52 of 1987 s. 27. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 54 U.K.]

35. Powers of single judge in Court of Appeal

- (1) Subject to subsection (3), in pursuance of the civil jurisdiction of the Court of Appeal, any order or direction not involving the determination of an appeal to the Court of Appeal (including an order or direction giving leave to appeal to the Court of Appeal) may be made or given by a single judge sitting in court or in chambers, and a single judge may likewise make any interim order which he may think fit

to prevent prejudice to the claims of any party pending an appeal. (*Amended 3 of 2008 s. 27*)

(2) (*Repealed 52 of 1987 s. 28*)

(3) Every order or direction made or given by a single judge under subsection (1) may be discharged or varied by the Court of Appeal.

(4) (*Repealed 52 of 1987 s. 28*)

36. Acts required to be done by Chief Justice may also be done by any judge

Where by or under any law any judicial or other act is required or authorized to be exercised or performed by the Chief Justice or by the Chief Judge of the High Court, such act other than an act in the performance of or relating to the performance of a function under the Hong Kong Court of Final Appeal Ordinance (Cap. 484) may be exercised or performed by any judge of the High Court.

(*Amended 79 of 1995 s. 50; 25 of 1998 s. 2*)

Part V

Registrar and Other Officers

37. Registrar of High Court

- (1) There shall be attached to the High Court a Registrar and such senior deputy registrars, deputy registrars and assistant registrars as may be appointed. *(Amended 25 of 1998 s. 2)*
- (2) The senior deputy registrars, deputy registrars and assistant registrars may be called Masters. *(Added 52 of 1987 s. 29)*
(Amended 10 of 2005 s. 133)

37AA. Professional qualifications of Registrar, senior deputy registrars, deputy registrars and assistant registrars

- (1) A person shall be eligible to be appointed as the Registrar if—
 - (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
 - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years—
 - (i) practised as a barrister, solicitor or advocate in such a court;
 - (ii) been a senior deputy registrar, deputy registrar or assistant registrar appointed in accordance with section 37;
 - (iii) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);

-
- (iv) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
 - (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
 - (vi) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
 - (vii) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
 - (viii) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
 - (ix) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
 - (x) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
 - (xi) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
 - (xii) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of

Intellectual Property (Establishment) Ordinance
(Cap. 412). (*Amended 26 of 2012 s. 35*)

- (2) A person shall be eligible to be appointed as a senior deputy registrar if—
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
 - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years—
 - (i) practised as a barrister, solicitor or advocate in such a court;
 - (ii) been a deputy registrar or assistant registrar appointed in accordance with section 37;
 - (iii) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);
 - (iv) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
 - (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
 - (vi) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
 - (vii) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);

-
- (viii) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
 - (ix) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
 - (x) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
 - (xi) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
 - (xii) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412). (*Amended 26 of 2012 s. 35*)
- (3) A person shall be eligible to be appointed as a deputy registrar if—
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
 - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years—
 - (i) practised as a barrister, solicitor or advocate in such a court;

- (ii) been an assistant registrar appointed in accordance with section 37;
- (iii) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);
- (iv) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
- (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
- (vi) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
- (vii) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
- (viii) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
- (ix) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
- (x) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
- (xi) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed

- in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
- (xii) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412). (*Amended 26 of 2012 s. 35*)
- (4) A person shall be eligible to be appointed as an assistant registrar if—
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
- (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years—
- (i) practised as a barrister, solicitor or advocate in such a court;
- (ii) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);
- (iii) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
- (iv) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
- (v) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);

- (vi) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
 - (vii) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
 - (viii) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
 - (ix) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
 - (x) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
 - (xi) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412). (*Amended 26 of 2012 s. 35*)
- (5) For the purposes of calculating the period of 5 years referred to in subsections (1)(b), (2)(b), (3)(b) and (4)(b)—
- (a) periods of less than 5 years falling within any of the subparagraphs of subsection (1)(b), (2)(b), (3)(b) or (4)(b), as the case may be, may be combined;
 - (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General

(Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.

(Added 10 of 2005 s. 134)

37AB. Appointment of temporary registrar

- (1) The Chief Justice may appoint a person who is eligible under section 37AA(1) to be appointed as the Registrar to be a temporary registrar if—
 - (a) the office of the Registrar becomes vacant for any reason; or
 - (b) he considers that the interest of the administration of justice requires that a temporary registrar should be appointed.
- (2) Without prejudice to the generality of the power conferred on him by subsection (1), the Chief Justice may appoint a temporary registrar for a specified period only.
- (2A) A temporary registrar has, during the period for which he or she is appointed, all the jurisdiction, privileges, powers and duties of the Registrar and a reference in any law to the Registrar is to be construed accordingly. *(Added 17 of 2018 s. 6)*
- (3) The Chief Justice may terminate the appointment of a temporary registrar at any time.
- (4) In this section and section 40A, **temporary registrar** (暫委司法常務官) means a person appointed under subsection (1) to be a temporary registrar.

(Added 10 of 2005 s. 134)

37AC. Appointment of temporary senior deputy registrars

- (1) The Chief Justice may appoint a person who is eligible under section 37AA(2) to be appointed as a senior deputy registrar

to be a temporary senior deputy registrar if—

- (a) the office of any senior deputy registrar becomes vacant for any reason; or
 - (b) he considers that the interest of the administration of justice requires that a temporary senior deputy registrar should be appointed.
- (2) Without prejudice to the generality of the power conferred on him by subsection (1), the Chief Justice may appoint a temporary senior deputy registrar for a specified period only.
- (2A) A temporary senior deputy registrar has, during the period for which he or she is appointed, all the jurisdiction, privileges, powers and duties of a senior deputy registrar and a reference in any law to a senior deputy registrar of the High Court is to be construed accordingly. *(Added 17 of 2018 s. 7)*
- (3) The Chief Justice may terminate the appointment of a temporary senior deputy registrar at any time.
- (4) A temporary senior deputy registrar may be called Master.
- (5) In this section and section 40A, **temporary senior deputy registrar** (暫委高級副司法常務官) means a person appointed under subsection (1) to be a temporary senior deputy registrar.

(Added 10 of 2005 s. 134)

37A. Appointment of temporary deputy registrars

- (1) The Chief Justice may appoint a person who is eligible under section 37AA(3) to be appointed as a deputy registrar to be a temporary deputy registrar if— *(Amended 10 of 2005 s. 135)*
- (a) the office of any deputy registrar becomes vacant for any reason; or
 - (b) he considers that the interest of the administration of justice requires that a temporary deputy registrar should be appointed.

- (2) Without prejudice to the generality of the power conferred on him by subsection (1), the Chief Justice may appoint a temporary deputy registrar for a specified period only.
- (2A) A temporary deputy registrar has, during the period for which he or she is appointed, all the jurisdiction, privileges, powers and duties of a deputy registrar and a reference in any law to a deputy registrar of the High Court is to be construed accordingly. (*Added 17 of 2018 s. 8*)
- (3) The Chief Justice may terminate the appointment of a temporary deputy registrar at any time.
- (4) A temporary deputy registrar may be called Master.
- (5) In this section and section 40A, **temporary deputy registrar** (暫委副司法常務官) means a person appointed under subsection (1) to be a temporary deputy registrar.

(*Added 1 of 1997 s. 5*)

37B. Appointment of temporary assistant registrars

- (1) The Chief Justice may appoint a person who is eligible under section 37AA(4) to be appointed as an assistant registrar to be a temporary assistant registrar if— (*Amended 10 of 2005 s. 136*)
 - (a) the office of any assistant registrar becomes vacant for any reason; or
 - (b) he considers that the interest of the administration of justice requires that a temporary assistant registrar should be appointed.
- (2) Without prejudice to the generality of the power conferred on him by subsection (1), the Chief Justice may appoint a temporary assistant registrar for a specified period only.
- (2A) A temporary assistant registrar has, during the period for which he or she is appointed, all the jurisdiction, privileges,

powers and duties of an assistant registrar and a reference in any law to an assistant registrar of the High Court is to be construed accordingly. (*Added 17 of 2018 s. 9*)

- (3) The Chief Justice may terminate the appointment of a temporary assistant registrar at any time.
- (4) A temporary assistant registrar may be called Master.
- (5) In this section and section 40A, ***temporary assistant registrar*** (暫委助理司法常務官) means a person appointed under subsection (1) to be a temporary assistant registrar.

(*Added 1 of 1997 s. 5*)

38. Jurisdiction, powers and duties of Registrar

- (1) The Registrar shall have and may exercise and perform—
 - (a) the same jurisdiction, powers and duties as the Masters, Registrars and like officers of the Supreme Court of England and Wales; and
 - (b) such other jurisdiction, powers and duties as may be conferred or imposed on him by or under rules of court or any other law.
- (2) Subject to rules of court, all the jurisdiction, powers and duties conferred or imposed on the Registrar may be had, exercised or performed by a Master.

(*Amended 52 of 1987 s. 30*)

38A. Bailiff

There shall be a bailiff of the High Court together with such assistant bailiffs as may be appointed, to effect, in accordance with rules of court, orders for committal and for service and execution of the process of the Court.

(*Added 52 of 1987 s. 31. Amended 25 of 1998 s. 2*)

39. Protection of Registrar

- (1) No action shall be brought against the Registrar for—
 - (a) any act done or omitted to be done by any bailiff without directions from the Registrar; or
 - (b) any direction given to any bailiff with regard to the execution or non-execution of process if—
 - (i) such directions are in accordance with an order from the Court of First Instance under section 40; and (*Amended 25 of 1998 s. 2*)
 - (ii) no material fact is wilfully misrepresented or suppressed by the Registrar.

- (2) In this section—

Registrar (司法常務官) includes a Master. (*Amended 52 of 1987 s. 32*)

40. Registrar may apply for order

The Registrar may, in case of doubt or difficulty, apply summarily to the Court of First Instance for an order for the direction and guidance of a bailiff, and the Court of First Instance may make such order in the matter as may seem just and reasonable.

(*Amended 25 of 1998 s. 2*)

40A. Powers of temporary registrars, etc. in case which is part-heard on termination of appointment

- (1) If the hearing of any proceedings before a temporary registrar is adjourned or he reserves judgment in any proceedings, the temporary registrar shall have power to resume the hearing and determine the proceedings or deliver judgment, notwithstanding that his appointment as a temporary registrar has expired or has been terminated.

- (2) Subsection (1) shall apply to a temporary senior deputy registrar, temporary deputy registrar or temporary assistant registrar as it applies to a temporary registrar.

(Added 1 of 1997 s. 6. Amended 10 of 2005 s. 137)

Part VI

Discovery and Related Procedures

41. Power of Court of First Instance to order disclosure, etc. of documents before commencement of proceedings

- (1) On the application, in accordance with rules of court, of a person who appears to the Court of First Instance to be likely to be a party to subsequent proceedings in that Court in which a claim is likely to be made, the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the Court of First Instance to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are directly relevant to an issue arising or likely to arise out of that claim— (*Amended 25 of 1998 s. 2; 3 of 2008 s. 14*)
- (a) to disclose whether those documents are in his possession, custody or power; and
 - (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order—
 - (i) to the applicant's legal advisers;
 - (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.
(*Replaced 52 of 1987 s. 33*) [*cf. 1981 c. 54 s. 33 U.K.*]

- (2) For the purposes of subsection (1), a document is only to be regarded as directly relevant to an issue arising or likely to arise out of a claim in the anticipated proceedings if—
- (a) the document would be likely to be relied on in evidence by any party in the proceedings; or
 - (b) the document supports or adversely affects any party's case. (*Added 3 of 2008 s. 14*)

[cf. 1970 c. 31 s. 31 U.K.]

42. Extension of powers of Court of First Instance to order disclosure of documents, inspection of property, etc.

- (1) On the application, in accordance with rules of court, of a party to any proceedings in which a claim is made, the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the Court of First Instance to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising out of that claim— (*Amended 3 of 2008 s. 17*)
- (a) to disclose whether those documents are in his possession, custody or power; and
 - (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order—
 - (i) to the applicant's legal advisers;
 - (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.

(Replaced 52 of 1987 s. 34) [cf. 1981 c. 54 s. 34 U.K.]

- (2) On the application, in accordance with rules of court, of a party to any such proceedings as are referred to in subsection (1), the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters—
 - (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject matter of the proceedings or as to which any question arises in the proceedings;
 - (b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.
- (3) Subsections (1) and (2) are without prejudice to the exercise by the Court of First Instance of any power to make orders which is exercisable apart from those provisions.
- (4) In this section—
property (財産) includes any land, chattel or other corporeal property of any description.

(Amended 25 of 1998 s. 2)
[cf. 1970 c. 31 s. 32 U.K.]

43. Provisions supplementary to sections 41 and 42

- (1) The power to make rules of court under section 54 shall include power to make rules of court as to the circumstances in which an order under section 41 or 42 can be made; and any such rules may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(2) Without prejudice to the generality of subsection (1), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under sections 41 and 42 incurred by the person against whom the order is sought shall be awarded to that person unless the Court of First Instance otherwise directs. (*Amended 25 of 1998 s. 2*)

(3) (*Repealed 3 of 2008 s. 18*)

[*cf. 1970 c. 31 s. 33 U.K.*]

44. Powers of Court of First Instance exercisable before commencement of action

(1) On the application of any person in accordance with rules of court, the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters— (*Amended 25 of 1998 s. 2*)

(a) the inspection, photographing, preservation, custody and detention of property which appears to the Court to be property which may become the subject matter of subsequent proceedings in the Court, or as to which any question may arise in any such proceedings; and

(b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

(2) The power to make rules of court shall include power to make rules of court as to the manner in which an application for such an order can be made, and as to the circumstances in which such an order can be made; and any such rules may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(3) In this section—

property (財産) includes any land, chattel or other corporeal property of any description.

[*cf. 1969 c. 58 s. 21 U.K.*]

44A. Withdrawal of privilege against incrimination of self or spouse in certain proceedings

- (1) In any proceedings to which this subsection applies a person shall not be excused, by reason that to do so may tend to expose that person, or the wife or husband of that person, to proceedings for a related offence or for the recovery of a related penalty—
 - (a) from answering any question put to that person in the first mentioned proceedings; or
 - (b) from complying with any order made in those proceedings.
- (2) Subsection (1) applies to the following civil proceedings in the Court of First Instance, namely— (*Amended 25 of 1998 s. 2*)
 - (a) proceedings for infringement of rights pertaining to any intellectual property or for passing off;
 - (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights or to any passing off; and
 - (c) proceedings brought to prevent any apprehended infringement of such rights or any apprehended passing off.
- (3) Subject to subsection (4), no statement or admission made by a person on or after the commencement of the Supreme Court (Amendment) (No. 3) Ordinance 1982 (52 of 1982)—
 - (a) in answering a question put to him in any proceedings to which subsection (1) applies; or

(b) in complying with any order made in any such proceedings,

shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

(4) Nothing in subsection (3) shall render any statement or admission made by a person as there mentioned inadmissible in evidence against that person in proceedings for perjury or contempt of court.

(5) In this section—

intellectual property (知識產權) means any patent, trade mark, copyright, registered design, technical or commercial information or other intellectual property;

related offence (相關罪行), in relation to any proceedings to which subsection (1) applies, means—

(a) in the case of proceedings within subsection (2)(a) or (b)—

(i) any offence committed by or in the course of the infringement or passing off to which those proceedings relate; or

(ii) any offence not within sub-paragraph (i) committed in connection with that infringement or passing off, being an offence involving fraud or dishonesty;

(b) in the case of proceedings within subsection (2)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;

related penalty (相關罰金), in relation to any proceedings to which subsection (1) applies, means—

- (a) in the case of proceedings within subsection (2)(a) or (b), any penalty incurred in respect of any thing done or omitted in connection with the infringement or passing off to which those proceedings relate;
 - (b) in the case of proceedings within subsection (2)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the plaintiff relies in those proceedings.
- (6) Any reference in this section to civil proceedings in the Court of First Instance of any description includes a reference to proceedings on appeal arising out of civil proceedings in the Court of First Instance of that description. *(Amended 25 of 1998 s. 2)*

(Added 52 of 1982 s. 2)

[cf. 1981 c. 54 s. 72 U.K.]

45. Application to Government of sections 41 to 44

- (1) Section 44 shall bind the Government so far as it relates to property (within the meaning of that section) as to which it appears to the Court of First Instance that it may become the subject matters of subsequent proceedings. *(Amended 3 of 2008 s. 19)*
- (2) Sections 41, 42 and 43 shall bind the Government.
- (3) The Court of First Instance shall not make an order under section 41, 42 or 44 if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.

(Amended 25 of 1998 s. 2; 29 of 1998 s. 105)

[cf. 1970 c. 31 s. 35 U.K.]

Part VII

Miscellaneous and Supplementary Provisions

Writs

(Replaced 52 of 1987 s. 35)

46. Writs

- (1) All writs other than the writs listed in the Schedule are abolished.
- (2) The writs listed in the Schedule shall be issued according to the common law except to the extent that the common law is modified by any enactment.

(Replaced 52 of 1987 s. 36)

47. *(Repealed 47 of 1997 s. 10)*

Interest

48. Interest on claims for debt and damages

- (1) Subject to rules of court, in proceedings (whenever instituted) before the Court of First Instance for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the Court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and— *(Amended 25 of 1998 s. 2)*

- (a) in the case of any sum paid before judgment, the date of the payment; and
 - (b) in the case of the sum for which judgment is given, the date of the judgment.
 - (2) In relation to a judgment given for damages for personal injuries or death which exceed \$30,000 subsection (1) shall have effect—
 - (a) with the substitution of “shall be included” for “may be included”; and
 - (b) with the addition of “unless the Court is satisfied that there are special reasons to the contrary” after “given”, where it first occurs.
 - (3) Subject to rules of court, where—
 - (a) there are proceedings (whenever instituted) before the Court of First Instance for the recovery of a debt; and
(Amended 25 of 1998 s. 2)
 - (b) the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings),

the defendant shall be liable to pay the plaintiff interest at such rate as the Court thinks fit or as rules of court may provide on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.
 - (4) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.
 - (5) Interest under this section may be calculated at different rates in respect of different periods.
 - (6) For the avoidance of doubt it is declared that in determining, for the purposes of any enactment contained in Part 4 of the

District Court Ordinance (Cap. 336), whether an amount exceeds, or is less than, a sum specified in that Part, no account shall be taken of any power exercisable by virtue of this section or of any order made in the exercise of such a power.

(7) Nothing in this section affects the damages recoverable for the dishonour of a bill of exchange.

(8) In this section—

defendant (被告人) means the person from whom the plaintiff seeks the debt or damages;

personal injuries (人身傷害) includes any disease and any impairment of a person's physical or mental condition; and

plaintiff (原告人) means the person seeking the debt or damages.

(Replaced 52 of 1987 s. 37. Amended E.R. 1 of 2013)

[cf. 1981 c. 54 s. 35A U.K.]

49. Interest on judgments

(1) Judgment debts shall carry simple interest—

(a) at such rate as the Court of First Instance may order; or
(Amended 25 of 1998 s. 2)

(b) in the absence of such order, at such rate as may be determined from time to time by the Chief Justice by order,

on the aggregate amount thereof, or on such part thereof as for the time being remains unsatisfied from the date of the judgment until satisfaction.

(2) Interest under this section may be calculated at different rates in respect of different periods.

(Replaced 52 of 1987 s. 38)

Contempt of Court

50. Appeal in cases of contempt of court

- (1) Subject to this section, an appeal shall lie from any order or decision of a court, other than the Court of Appeal, in the exercise of jurisdiction to punish for contempt of court, including criminal contempt; and in relation to any such order or decision this section shall have effect in substitution for any other law relating to appeals in civil or criminal proceedings.
- (2) An appeal under this section shall lie to the Court of Appeal in any case at the instance of the person against whom the proceedings for contempt of court were brought or the order was made and, in the case of an application for committal or attachment, at the instance of the applicant.
- (3) The Court of Appeal may on appeal reverse or vary the order or decision of a court, and make such other order as may be just; and without prejudice to the powers of any court to grant bail, provision may be made by rules of court for authorizing the release on bail of an appellant under this section.
- (4) In this section—
 - (a) **court** (法庭) includes any tribunal or person having power to punish for contempt; and
 - (b) references to an order or decision of a court in the exercise of jurisdiction to punish for contempt of court include references to an order or decision of any court under any law enabling the court to deal with an offence as if it were contempt of court.
- (5) This section does not apply to a conviction or sentence in respect of which an appeal lies under the Criminal Procedure Ordinance (Cap. 221), or to a decision of the Court of Appeal

under that Ordinance; and for the purposes of that Ordinance and of this subsection an order for the punishment of any person for contempt of court in proceedings in which he has a right of appeal against his sentence shall be treated as part of that sentence.

[cf. 1960 c. 65 s. 13 U.K.]

Seal, Expenses and Costs

(Replaced 52 of 1987 s. 35)

51. Seal of High Court

- (1) The High Court shall use such seal as the Chief Justice may direct. *(Amended 25 of 1998 s. 2)*
- (2) All writs, judgments, orders, documents and exemplifications or copies thereof, shall be sealed with such seal.
- (3) Any writ, judgment, order, document and any exemplification or copy thereof, shall, when purporting to be so sealed, be admitted in evidence in any criminal or civil proceedings before any court on its production without further proof.

(Replaced 44 of 1982 s. 4)

52. Expenses

In any proceedings in the High Court, a judge may order the reimbursement of a witness in respect of any expenses reasonably and properly incurred by that witness.

(Amended 25 of 1998 s. 2)

52A. Costs in Court of First Instance and Court of Appeal in its civil jurisdiction

- (1) Subject to the provisions of rules of court, the costs of and

incidental to all proceedings in the Court of Appeal in its civil jurisdiction and in the Court of First Instance, including the administration of estates and trusts, shall be in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid. (*Amended 25 of 1998 s. 2*)

- (2) Without prejudice to the generality of subsection (1), the Court of Appeal or the Court of First Instance may, in accordance with rules of court, make an order awarding costs against a person who is not a party to the relevant proceedings, if the Court of Appeal or the Court of First Instance, as the case may be, is satisfied that it is in the interests of justice to do so. (*Replaced 3 of 2008 s. 31*)
- (3) Nothing in subsection (1) shall alter the practice in any criminal cause or matter, or in bankruptcy.
- (4) In any civil proceedings before it, the Court of Appeal or the Court of First Instance may, in accordance with rules of court, by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs. (*Added 3 of 2008 s. 22*)
- (5) When determining whether or not to make an order under subsection (4), the Court of Appeal or the Court of First instance shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice. (*Added 3 of 2008 s. 22*)
- (6) In subsection (4), **wasted costs** (虛耗訟費) means any costs incurred by a party as a result of—
 - (a) an improper or unreasonable act or omission; or
 - (b) any undue delay or other misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative. *(Added 3 of 2008 s. 22)*

- (7) In this section, ***legal representative*** (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party. *(Added 3 of 2008 s. 22)*

(Added 52 of 1987 s. 39)

[cf. 1981 c. 54 s. 51 U.K.]

52B. Costs-only proceedings

- (1) This section applies where—
- (a) the parties to a dispute have agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute;
 - (b) the agreement has been made or confirmed in writing;
 - (c) no proceedings relating to the dispute have been commenced; and
 - (d) the parties have failed to agree on the amount of the costs of and incidental to the dispute.
- (2) Subject to any other Ordinance, either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute, in accordance with rules of court.
- (3) In any proceedings commenced under subsection (2) or transferred to the Court of First Instance under section 53B of the District Court Ordinance (Cap. 336), the Court of First Instance may—
- (a) make an order for the costs of and incidental to the dispute to be taxed or assessed;

- (b) make an order awarding costs to or against any party to the proceedings; and
 - (c) make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so.
- (4) A reference to costs in subsection (3)(b) and (c) is a reference to the costs of and incidental to the proceedings commenced under subsection (2) or transferred to the Court of First Instance under section 53B of the District Court Ordinance (Cap. 336).
- (5) In subsection (3), *Court of First Instance* (原訟法庭) includes the Registrar and a Master.

(Added 3 of 2008 s. 3)

52C. Transfer of costs-only proceedings to District Court

- (1) The Court of First Instance may, either of its own motion or on the application of any party, order the transfer of proceedings commenced under section 52B(2) to the District Court.
- (2) An order may be made under this section at any stage of the proceedings.

(Added 3 of 2008 s. 3)

52D. Scale of costs on which costs awarded under section 52A or 52B are taxed

- (1) Where the Court of Appeal or the Court of First Instance has made an award of costs under section 52A(1) or (2) or 52B(3), it may order that those costs be taxed in accordance with—
 - (a) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A); or

- (b) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H).
- (2) Where an award of costs under section 52B(3) is made by the Registrar or a Master, the power of the Court of First Instance under subsection (1) in relation to those costs may be exercised by the Registrar or that Master (as the case may be).

(Added 3 of 2008 s. 3)

Assessors

53. Assessors

- (1) In any civil proceedings, the Court of First Instance may call to its aid one or more assessors specially qualified and may dispose of such proceedings, wholly or in part, with the aid of such assessor or assessors, but the decision of the judge shall be the decision of the Court of First Instance.
- (2) The Court of First Instance may determine the remuneration, if any, to be paid to an assessor in respect of his services:
- Provided that nothing in this subsection shall authorize the payment of remuneration to any person employed full time in any office of emolument under the Crown.

(Amended 25 of 1998 s. 2)

Rules

54. Rules of court

- (1) The Rules Committee constituted under section 55 may make rules of court regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the High Court in all causes and matters whatsoever in or with respect to which the High Court

has jurisdiction (including the procedure and practice to be followed in the Registries of the High Court) and any matters incidental to or relating to that procedure or practice. *(Amended 25 of 1998 s. 2)*

- (2) Without prejudice to the generality of subsection (1), rules of court may be made for the following purposes—
 - (a) prescribing the procedure in connection with the transfer of proceedings between the Court of First Instance and the District Court, between the Court of First Instance and the Lands Tribunal, and between the Court of First Instance and the Competition Tribunal; *(Amended 25 of 1998 s. 2; 3 of 2008 s. 44; 15 of 2014 s. 12)*
 - (b) prescribing the jurisdiction of the High Court which may be exercised by the Registrar or a Master (including provision for appeal against decisions in the exercise of such jurisdiction); *(Amended 52 of 1987 s. 40; 25 of 1998 s. 2)*
 - (c) regulating matters relating to the fees and costs of proceedings (including proceedings in connection with the administration of estates and trusts) in the Court of Appeal in its civil jurisdiction and in the Court of First Instance; *(Replaced 52 of 1987 s. 40. Amended 25 of 1998 s. 2)*
 - (d) *(Repealed 52 of 1987 s. 40)*
 - (e) prescribing in what cases persons absent, but having an interest in a cause or matter, shall be bound by any order made therein;
 - (f) prescribing in what cases and in what manner there may be submissions and references to special referees, how parties shall be bound thereby, and to what extent and with what consequences, and for the appointment,

- powers and duties of special referees and for proceedings before such special referees;
- (g) regulating the appointment and duties of commissioners for oaths, the revocation of such appointments, and matters incidental thereto;
 - (h) regulating the execution of the process of the High Court, including— (*Amended 25 of 1998 s. 2*)
 - (i) the prohibition of judgment debtors and persons against whom civil claims are made from leaving Hong Kong and ordering the payment of compensation to them in prescribed circumstances;
 - (ii) ordering the appearance of judgment debtors or officers of corporate judgment debtors for examination and their examination; and
 - (iii) the arrest and imprisonment of judgment debtors; (*Amended 1 of 1984 s. 3*)
 - (i) regulating matters which could heretofore be or which have heretofore been provided for or regulated by rules of court;
 - (j) prescribing the procedure for the payment of money into the Court of First Instance by any party to arbitral proceedings; (*Added 43 of 1982 s. 2. Amended 25 of 1998 s. 2; 17 of 2010 s. 112*)
 - (k) providing that, in any case where a document filed in, or in the custody of, any Registry is required to be produced to any court or tribunal (including an umpire or arbitrator) sitting elsewhere than at the High Court— (*Amended 25 of 1998 s. 2*)
 - (i) it shall not be necessary for any officer, whether served with a subpoena in that behalf or not, to

attend for the purpose of producing the document;
but

- (ii) the document may be produced to the court or tribunal by sending it to the court or tribunal, in the manner prescribed in the rules, together with a certificate, in the form so prescribed, to the effect that the document has been filed in, or is in the custody of, the Registry,

and any such certificate shall be prima facie evidence of the facts stated in it; and (*Added 52 of 1987 s. 40*) [*cf. 1981 c. 54 s. 136 U.K.*]

- (l) prescribing the procedure in cases where an order of mandamus, prohibition or certiorari is sought, or proceedings are taken for an injunction under section 21J including a requirement that—

- (i) except in such cases as may be specified in the rules, leave shall be obtained before an application is made for any such order or before any such proceedings are commenced; and

- (ii) where leave is so obtained, no other relief shall be granted and no ground relied upon, except with the leave of the Court, other than the relief and grounds specified when the application for leave was made. (*Added 52 of 1987 s. 40*)

- (2A) Rules providing for the matters referred to in subsection (2)(k) may contain—

- (a) provisions for securing the safe custody and return to the Registry of any document sent to a court or tribunal in pursuance of the rules; and
- (b) such incidental and supplementary provisions as appear to the Rules Committee to be necessary or expedient. (*Added 52 of 1987 s. 40*) [*cf. 1981 c. 54 s. 136 U.K.*]

- (3) *(Repealed 3 of 1989 s. 3)*
- (4) The power to make rules of court under this section shall include power to make rules as to proceedings by or against the Crown.
- (5) Rules of court made under this section shall apply to all proceedings by or against the Crown insofar as they expressly purport so to do.

55. Rules Committee

- (1) The rules of court shall be made by a Rules committee which shall consist of—
 - (a) the Chief Judge of the High Court, who shall be chairman; *(Amended 10 of 2005 s. 8)*
 - (b) 2 judges of the High Court appointed by the Chief Judge of the High Court; *(Replaced 52 of 1982 s. 3. Amended 52 of 1987 s. 41; 25 of 1998 s. 2; 10 of 2005 s. 8)*
 - (c) the Registrar or a Master appointed by the Chief Judge of the High Court to represent the Registrar; *(Replaced 52 of 1982 s. 3. Amended 52 of 1987 s. 41; 10 of 2005 s. 8)*
 - (d) 2 barristers nominated by the Hong Kong Bar Association;
 - (e) 2 solicitors nominated by The Law Society of Hong Kong;
 - (f) the Secretary for Justice or a legal officer appointed by him. *(Added 53 of 1980 s. 2. Amended L.N. 362 of 1997)*
- (1A) The Registrar or such Master as the Chief Judge of the High Court may appoint under subsection (1)(c) shall be the secretary of the Rules Committee. *(Added 52 of 1982 s. 3. Amended 52 of 1987 s. 41; 10 of 2005 s. 8)*

(2) 5 members of the Rules Committee shall constitute a quorum if both a barrister and a solicitor are present.

(3) *(Repealed 52 of 1987 s. 41)*

55A. Rules concerning commencement of proceedings in respect of estates of deceased persons

The power to make rules of court under section 54 shall include power by any such rules to make provision—

- (a) for enabling proceedings to be commenced in the Court of First Instance against the estate of a deceased person (whether by the appointment of a person to represent the estate or otherwise) where no grant of probate or administration has been made;
- (b) for enabling proceedings purporting to have been commenced in the Court of First Instance by or against a person to be treated, if he was dead at their commencement, as having been commenced by or against, as the case may be, his estate whether or not a grant of probate or administration was made before their commencement; and
- (c) for enabling any proceedings commenced or treated as commenced in the Court of First Instance by or against the estate of a deceased person to be maintained (whether by substitution of parties, amendment or otherwise) by or against, as the case may be, a person appointed to represent the estate or, if a grant of probate or administration is or has been made, by or against the personal representatives.

(Added 52 of 1987 s. 42. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 87(2) U.K.]

55B. Rules as to proof of facts and admission of statements in civil

proceedings

- (1) The power to make rules of court under section 54 shall include power to make rules regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given in any proceedings in the Court of Appeal in its civil jurisdiction or in the Court of First Instance or on any application in connection with or at any stage of such proceedings. (*Amended 25 of 1998 s. 2*)
- (2)-(5) (*Repealed 2 of 1999 s. 6*)
- (6) In deciding for the purposes of any rules made by virtue of this section whether or not a person is fit to attend as a witness, the Court may act on a certificate purporting to be a certificate of a registered medical practitioner.
- (7) (*Repealed 2 of 1999 s. 6*)
- (8) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings or in connection with the obtaining or giving of legal advice are in certain circumstances privileged from disclosure, provision may be made by rules made by virtue of this section—
 - (a) for enabling the Court in any civil proceedings to direct, with respect to medical matters or matters of any other class which may be specified in the direction, that the parties or some of them shall each by such date as may be so specified (or such later date as may be permitted or agreed in accordance with the rules) disclose to the other or others in the form of one or more expert reports the expert evidence on matters of that class which he proposes to adduce as part of his case at the trial; and
 - (b) for prohibiting a party who fails to comply with a direction given in any such proceedings under rules made in pursuance of paragraph (a) from adducing

in evidence by virtue of Part IV of the Evidence Ordinance (Cap. 8) except with the leave of the Court, any statement (whether of fact or opinion) contained in any expert report whatsoever in so far as that statement deals with matters of any class specified in the direction.
(Amended 2 of 1999 s. 6)

- (9) Provision may be made by rules made by virtue of this section as to the conditions subject to which oral expert evidence may be given in civil proceedings.
- (10) Without prejudice to the generality of subsection (9) rules made in pursuance of that subsection may make provision for prohibiting a party who fails to comply with a direction given as mentioned in subsection (8)(b) from adducing, except with the leave of the Court, any oral expert evidence whatsoever with respect to matters of any class specified in the direction.
- (11) Any rules made by virtue of this section may make different provision for different classes of cases, for expert reports dealing with matters of different classes, and for other different circumstances.
- (12) In this section references to an expert report are references to a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

(Added 52 of 1987 s. 42)

55C. Rules as to stop orders and notices

- (1) In this section—

stop order (停止令) means an order of the Court of First Instance prohibiting the taking, in respect of any of the securities specified in the order, of any of the steps mentioned in subsection (4); (Amended 25 of 1998 s. 2)

stop notice (停止通知書) means a notice requiring any person on whom it is duly served to refrain from taking, in respect of any of the securities specified in the notice, any of the steps mentioned in subsection (4) without first notifying the person by whom, or on whose behalf, the notice was served; and

prescribed securities (訂明的保證物) means securities (including funds in court) of a kind prescribed by rules of court made by virtue of this section.

- (2) The power to make rules of court under section 54 shall include power by any such rules to make provision—
 - (a) for the Court to make a stop order on the application of any person claiming to be entitled to an interest in prescribed securities; and
 - (b) for the service of a stop notice by any person claiming to be entitled to an interest in prescribed securities.
- (3) Rules of court made by virtue of this section shall prescribe the person on whom a copy of any stop order or stop notice is to be served.
- (4) The steps mentioned in subsection (1) are—
 - (a) the registration of any transfer of the securities;
 - (b) in the case of funds in court, the transfer, sale, delivery out, payment or other dealing with the funds, or of the income thereon;
 - (c) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and
 - (d) in the case of a unit trust, any acquisition of or other dealing with the units by any person or body exercising functions under the trust.
- (5) Any rules of court made by virtue of this section may include such incidental, supplemental and consequential provisions as the Rules Committee considers necessary or expedient, and

may make different provision in relation to different cases or classes of case.

(Added 52 of 1987 s. 42)

[cf. 1979 c. 53 s. 5 U.K.]

55D. Rules as to costs and interest

- (1) Notwithstanding sections 49 and 52A, the power to make rules of court under section 54 includes power to make provision for enabling the Registrar, in such circumstances as may be specified in the rules, to—
 - (a) disallow all or part of any costs to be taxed pursuant to a costs order made by the Court of First Instance or the Court of Appeal;
 - (b) disallow all or part of any interest otherwise payable under section 49 on taxed costs, or reduce the period for which such interest is payable or the rate prescribed in section 49 at which such interest is payable; and
 - (c) increase the rate prescribed in section 49 at which interest on taxed costs or costs of taxation is payable.
- (2) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(Added 3 of 2008 s. 33)

56. Orders for interim payment

- (1) The power to make rules of court under section 54 shall include power to make provision for enabling the High Court in such circumstances as may be specified to make an order requiring a party to pending proceedings to make an interim payment of such amount as may be specified in the order, either by payment into court or (if the order so provides) by

paying it to another party to the proceedings. (*Amended 25 of 1998 s. 2*)

- (2) Where any such rules make provision in accordance with subsection (1), the rules may include provision for enabling a party to any proceedings who, in pursuance of such an order, has made an interim payment to recover the whole or part of the amount of the payment in such circumstances, and from such other party to the proceedings, as may be determined in accordance with the rules.
- (3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.
- (4) Nothing in this section shall be construed as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs.
- (5) In this section—
 - (a) ***interim payment*** (中期付款), in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the Court in the proceedings is given or made in favour of that other party; and
 - (b) any reference to a party to any proceedings includes a reference to any person who for the purposes of the proceedings acts as next friend or guardian of a party to the proceedings.
- (6) This section shall bind the Crown so far as any proceedings to which the section is applicable can be brought by or against the Crown in accordance with the Crown Proceedings Ordinance (Cap. 300).

[*cf. 1969 c. 58 s. 20 U.K.*]

56A. Orders for provisional damages for personal injuries

- (1) This section applies to an action for damages for personal injuries in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration in his physical or mental condition.
- (2) Subject to subsection (4), as regards any action for damages to which this section applies in which a judgment is given in the Court of First Instance, provision may be made by rules of court for enabling the Court, in such circumstances as may be prescribed, to award the injured person— (*Amended 25 of 1998 s. 2*)
 - (a) damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition; and
 - (b) further damages at a future date if he develops the disease or suffers the deterioration.
- (3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient, and may provide for the injured person to elect whether or not to accept an award of damages assessed in accordance with such rules.
- (4) Nothing in this section shall be construed—
 - (a) as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs; or
 - (b) as prejudicing any duty of the Court under any enactment or rule of law to reduce or limit the total

damages which would have been recoverable apart from any such duty.

(Added 40 of 1986 s. 5)

[cf. 1982 c. 53 s. 6 U.K.]

57. Suitors' Funds Rules

(Replaced 20 of 2014 s. 23)

- (1) The Chief Judge of the High Court may make rules for regulating— *(Amended 10 of 2005 s. 11)*
 - (a) the deposit, payment, delivery, and transfer in, into, and out of the High Court of money, securities, and movable property of suitors; *(Amended 25 of 1998 s. 2)*
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities, and movable property in court;
 - (c) the execution of the orders of the High Court; and *(Amended 25 of 1998 s. 2)*
 - (d) the powers and duties of the Registrar with reference to such money, securities, and property.
- (2) Without prejudice to the generality of the foregoing, rules made under this section may provide for—
 - (a) regulating the placing on and withdrawal from deposit of money in court, and the payment or crediting of interest on money placed on deposit;
 - (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;

- (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (e) determining the cases in which interest on money placed on deposit and the dividends on any securities standing in the name of the Registrar is or are to be placed on deposit; and
- (f) disposing of money remaining unclaimed in court.
(Amended 20 of 2014 s. 23)

(3) In this section—

securities (證券) includes shares;

suitors (訴訟人) includes any party to arbitral proceedings who makes payment of money into the Court of First Instance in accordance with rules of court. *(Replaced 20 of 2014 s. 23)*

Part VIII

General

58. *(Had its effect)*

59. Amendment of references in laws to Full Court and High Court

In any law, unless the context otherwise requires—

- (a) for any reference to the Full Court, there shall be substituted a reference to the Court of Appeal;
- (b) for any reference to the High Court, there shall be substituted a reference to the Court of First Instance; and
- (c) any reference to a judge or officer of the Full Court or the High Court shall be construed as a reference to a judge or officer of the Court of Appeal and the Court of First Instance, respectively.

(Amended 25 of 1998 s. 2)

60-62. *(Omitted as spent—E.R. 2 of 2017)*

Schedule

[s. 46]

Writs

- (1) Writ of Summons
- (2) Writ of Subpoena
- (3) Writ of Fieri Facias
- (4) Writ of Possession
- (5) Writ of Delivery
- (6) Writ of Sequestration
- (7) Writ of Assistance
- (8) Writ of Restitution
- (9) Writ of Habeas Corpus ad subjiciendum
- (10)-(11) *(Repealed 95 of 1997 s. 6)*

(Added 52 of 1987 s. 43)