

# HONG KONG PUBLIC LAW REPORTS

Volume 4 – Part 3  
— 1994 —

Edited by  
Andrew Byrnes  
Johannes Chan  
George Edwards



Hong Kong University Press  
香港大學出版社

**Hong Kong University Press**  
139 Pokfulam Road, Hong Kong

© Hong Kong University Press  
and The University of Hong Kong 1996

ISBN 962 209 378 7

All rights reserved. No portion of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage or retrieval system, without permission in writing from the publisher.

Printed in Hong Kong by Prosperous Printing Co., Ltd.

## Contents

Cases Reported in Volume 4 Parts 1, 2 and 3	v
Cases and Other Materials Considered	xiii
Cases	xiii
Hong Kong Legislation	xxi
United Kingdom Legislation	xxiv
Foreign Legislation	xxiv
Treaties and International Instruments	xxiv
Hong Kong Public Law Reports	497
Subject Index	727
Words and Phrases	739

## Cases Reported in Volume 4 Parts 1, 2 and 3\*

Anastasius Chiu, R v (CA)	457
Apollonia Liu, ex parte Lau San-ching; R v (HCt)	400
Apollonia Liu, ex parte Lau San-ching; R v (CA)	415
<b>Attorney General v Cho Shu-wah (HCt)</b>	<b>514</b>
Attorney General v Fong Chin-yue (CA)	430
<b>Re a Minor (HCt)</b>	<b>667</b>
<b>Attorney General, ex parte Tsei Kwei-king and another, R v (HCt)</b>	<b>686</b>
Auburntown Ltd; R v Town Planning Board, ex parte (HCt)	194
Building Authority, Business Rights Ltd v (CA)	43
Business Rights Ltd v Building Authority (CA)	43
C, L v (HCt)	388
Chan Chak-fan, R v (CA)	285
Chan Po-ming, Eric; R v Thomas Chow Tat-ming, ex parte (HCt)	400
Chan Po-ming, Eric; R v Thomas Chow Tat-ming, ex parte (CA)	415
Chan Yat-fai and others, Re (HCt)	481
Cheng Kai-man, William (No 1); R v Panel on Takeovers and Mergers and another, ex parte (HCt)	274
Cheng Kai-man, William (No 2); R v Panel on Takeovers and Mergers and another, ex parte (HCt)	285

---

\* Cases whose names appear in bold are reported in this issue.

Cheng Kai-man, William (No 2); R v Panel on Takeovers and Mergers and another, ex parte (CA)	298
<b>Cheung Kuk-ching; R v Director of Immigration, ex parte (HCt)</b>	<b>542</b>
<b>China State Construction Engineering Corporation, R v (Mag)</b>	<b>716</b>
<b>Cho Shu-wah, Attorney General v (HCt)</b>	<b>514</b>
Choi Kai-on, R v (CA)	105
Chong Ah-choi and others, R v (CA)	375
<b>Chow Chai-sang and others, R v (DCt)</b>	<b>592</b>
Chow Tat-ming, Thomas, ex parte Chan Po-ming, Eric; R v (HCt)	400
Chow Tat-ming, Thomas, ex parte Chan Po-ming, Eric; R v (CA)	415
Chow Tat-ming, Thomas, ex parte Fung Chan-ki, Richard; R v (HCt)	400
Chow Tat-ming, Thomas, ex parte Fung Chan-ki, Richard; R v (CA)	415
Chiu, Anastasius; R v (CA)	457
<b>Chu Cheuk-hong, R v (CA)</b>	<b>651</b>
Chu Kam-to and another, R v (HCt)	472
<b>Chua, Anthony; Hong Kong Bar Association v (Bar-risters Discip Trib)</b>	<b>637</b>
Crawley, R v (HCt)	62
<b>Director of Immigration, ex parte Cheung Kuk-ching, R v (HCt)</b>	<b>542</b>
<b>Director of Immigration, ex parte Du Gui-fang; R v (HCt)</b>	<b>562</b>

Director of Immigration, ex parte Hai Ho-tak; R v (CA)	324
Director of Immigration, ex parte Le Tu Phuong and another; R v (CA)	430
Director of Immigration, ex parte Yin Xiang-jiang; R v (CA)	265
<b>Disciplinary Committee of the Stock Exchange of Hong Kong Limited, ex parte Onshine Securities Limited, R v (HCt)</b>	<b>523</b>
<b>Dragages et Travaux, R v (Mag)</b>	<b>601</b>
<b>Du Gui-fang; R v Director of Immigration, ex parte (HCt)</b>	<b>562</b>
Fong Chin-yue, Attorney General v (CA)	430
Fung Chan-ki, Richard; R v Thomas Chow Tat-ming, ex parte (HCt)	400
Fung Chan-ki, Richard; R v Thomas Chow Tat-ming, ex parte (CA)	415
Governor, ex parte Reid; R v (CA)	18
Hai Ho-tak; R v Director of Immigration, ex parte (CA)	324
<b>Hong Kong Bar Association v Anthony Chua (Barristers Discip Trib)</b>	<b>637</b>
<b>Hui Kin-hong, Harry R v (DCt)</b>	<b>581</b>
<b>Immigration Tribunal, ex parte Tsang Yau-chiu and others, R v (HCt)</b>	<b>500</b>
Ko Chi-yuen, R v (CA)	152
Kwok Hing-man, R v (CA)	186
L v C (HCt)	388
Lai Yiu-pui, R v (CA)	115
Lau San-ching; R v Apollonia Liu, ex parte (HCt)	400

Lau San-ching; R v Apollonia Liu, ex parte (CA)	415
Le Tu Phuong and another, Re (CA)	159
Le Tu Phuong and another; R v Director of Immigration, ex parte (CA)	337
Leung Kit-chun, R v (CA)	38
Lift Contractors Disciplinary Board, ex parte Otis Elevator Company (HK) Ltd; R v (HCt)	168
<b>Li Sum-Wo; R v Medical Council of Hong Kong, ex parte (HCt)</b>	<b>548</b>
Lo Chak-man (No 2), R v (HCt)	466
Loui Wai-po and Ming Pao Holdings Ltd; R v Obscene Articles Tribunal, ex parte (HCt)	5
<b>Lum Wai-ming, R v (CA)</b>	<b>497</b>
<b>Medical Council of Hong Kong, ex parte Li Sum-Wo, R v (HCt)</b>	<b>548</b>
<b>Ming Pao Newspapers Ltd and others, R v (Mag)</b>	<b>621</b>
Ming Pao Holdings Ltd; R v Obscene Articles Tribunal, ex parte Loui Wai-po and (HCt)	5
Nattrass, Re (Mag)	234
Ng Kit-yuen, R v (CA)	33
Obscene Articles Tribunal, ex parte Loui Wai-po and Ming Pao Holdings Ltd; R v (HCt)	5
<b>Obscene Articles Tribunal, ex parte Sum Mui-tai and another, R v (HCt)</b>	<b>711</b>
<b>Onshine Securities Limited; R v Disciplinary Committee of the Stock Exchange of Hong Kong Limited, ex parte (HCt)</b>	<b>523</b>
Otis Elevator Company (HK) Ltd; R v Lift Contractors Disciplinary Board, ex parte (HCt)	168

Panel on Takeovers and Mergers and another, ex parte Cheng Kai-man, William (No 1); R v (HCt)	274
Panel on Takeovers and Mergers and another, ex parte Cheng Kai-man, William (No 2); R v (HCt)	285
Panel on Takeovers and Mergers and another, ex parte Cheng Kai-man, William (No 2); R v (CA)	298
R v Anastasius Chiu (CA)	475
R v Apollonia Liu, ex parte Lau San-ching (HCt)	400
R v Apollonia Liu, ex parte Lau San-ching (CA)	415
<b>R v Attorney General, ex parte Tsei Kwei-king and another (HCt)</b>	<b>686</b>
R v Chan Chak-fan (CA)	115
<b>R v China State Construction Engineering Corpo- ration (Mag)</b>	<b>716</b>
R v Choi Kai-on (CA)	105
R v Chong Ah-choi and others (CA)	375
<b>R v Chow Chai-sang and others (DCt)</b>	<b>592</b>
R v Chow Tat-ming, Thomas, ex parte Chan Po-ming, Eric (HCt)	400
R v Chow Tat-ming, Thomas, ex parte Chan Po-ming, Eric (CA)	415
R v Chow Tat-ming, Thomas, ex parte Fung Chan-ki, Richard (HCt)	400
R v Chow Tat-ming, Thomas, ex parte Fung Chan-ki, Richard (CA)	415
<b>R v Chu Cheuk-hong (CA)</b>	<b>651</b>
R v Chu Kam-to and another (HCt)	472
R v Crawley (HCt)	62



<b>R v Disciplinary Committee of the Stock Exchange of Hong Kong Limited, ex parte Onshine Securities Limited (HCt)</b>	<b>523</b>
<b>R v Director of Immigration, ex parte Cheung Kuk-ching (HCt)</b>	<b>542</b>
<b>R v Director of Immigration, ex parte Du Gui-fang (HCt)</b>	<b>562</b>
R v Director of Immigration, ex parte Hai Ho-tak (CA)	324
R v Director of Immigration, ex parte Le Tu Phuong and another (CA)	337
R v Director of Immigration, ex parte Yin Xiang-jiang (CA)	265
<b>R v Dragages et Travaux (Mag)</b>	<b>601</b>
R v Governor, ex parte Reid (CA)	18
<b>R v Hui Kin-hong, Harry (DCt)</b>	<b>581</b>
<b>R v Immigration Tribunal, ex parte Tsang Yau-chiu and others (HCt)</b>	<b>500</b>
R v Ko Chi-yuen (CA)	152
R v Kwok Hing-man (CA)	186
R v Lai Yiu-pui (CA)	115
R v Leung Kit-chun (CA)	38
R v Lift Contractors Disciplinary Board, ex parte Otis Elevator Company (HK) Ltd (HCt)	168
R v Lo Chak-man (No 2) (HCt)	466
<b>R v Lum Wai-ming (CA)</b>	<b>497</b>
<b>R v Medical Council of Hong Kong, ex parte Li Sum-Wo (HCt)</b>	<b>548</b>
<b>R v Ming Pao Newspapers Ltd and others (Mag)</b>	<b>621</b>

R v Ng Kit-yuen (CA)	33
R v Obscene Articles Tribunal, ex parte Loui Wai-po and Ming Pao Holdings Ltd (HCt)	5
<b>R v Obscene Articles Tribunal, ex parte Sum Mui-tai and another (HCt)</b>	<b>711</b>
R v Panel on Takeovers and Mergers and another, ex parte Cheng Kai-man, William (No 1) (HCt)	274
R v Panel on Takeovers and Mergers and another, ex parte Cheng Kai-man, William (No 2) (HCt)	285
R v Panel on Takeovers and Mergers and another, ex parte Cheng Kai-man, William (No 2) (CA)	298
R v So Mun-fung (CA)	318
R v Tai Yiu-wah (CA)	56
R v To Kwan-hang (CA)	356
R v Town Planning Board, ex parte Auburntown Ltd (HCt)	194
R v Tsoi Yiu-cheong (CA)	356
R v Wang Shih-hung (CA)	430
R v Wong Sau-chuen (CA)	129
R v Wong Sik-ming (DCt)	488
R v Wong Wai (Mag)	245
R v Yau Chi-keung (CA)	453
<b>R v Yeung Chi-chiu and Fu Kam-wing (DCt)</b>	<b>677</b>
R v Yu Yem-kin (HCt)	75
Reid; R v Governor, ex parte (CA)	18
So Mun-fung, R v (CA)	318

<b>Sum Mui-tai and another; R v Obscene Articles Tribunal, ex parte (HCt)</b>	<b>711</b>
Tai Yiu-wah, R v (CA)	56
<b>Thanat Phaktiphat and the Government of the United States of America, Re (HCt)</b>	<b>652</b>
To Kwan-hang, R v (CA)	356
Town Planning Board, ex parte Auburntown Ltd; R v (HCt)	194
<b>Tsang Yau-chiu and others; R v Immigration Tribunal, ex parte (HCt)</b>	<b>500</b>
<b>Tsei Kwei-king and another; R v Attorney General, ex parte (HCt)</b>	<b>686</b>
Tsoi Yiu-cheong, R v (CA)	356
<b>United States of America, Re; Thanat Phaktiphat and the Government of the (HCt)</b>	<b>652</b>
Wang Shih-hung, R v (CA)	430
Wong Sau-chuen, R v (CA)	129
Wong Sik-ming, R v (DCt)	488
Wong Wai, R v (Mag)	245
Yau Chi-keung, R v (CA)	453
<b>Yeung Chi-chiu and Fu Kam-wing, R v (DCt)</b>	<b>667</b>
Yin Xiang-jiang; R v Director of Immigration, ex parte (CA)	265
Yu Yem-kin, R v (HCt)	75

## Cases and Other Materials Considered

### Cases

<i>Alexander Machinery (Dudley) Ltd v Crabtree</i> [1974] ICR120	500
<i>Amin; R v Immigration Appeal Tribunal, ex parte Mohd</i> [1992] Imm AR 367	500
<i>ARC Properties Ltd; R v Secretary of State for the Environment, ex parte</i> , CO/1837/89, Times Law Reports, 5 December 1991	562
<i>Associated Provincial Picture Houses Ltd v Wednesbury Corporation</i> [1948] 1 KB 223	562
<i>Attorney General v Fong Chin-yue</i> (1994) 4 HKPLR 430, [1995] 1 HKC 21	716
<i>Attorney General v Lee Kwong-kut; Attorney General v Lo Chak-man</i> (1993) 3 HKPLR 72, [1993] 2 HKCLR 186	581,592,601, 621,650,716
<i>Attorney General v Leung Hung-hang</i> (1984) CA, No 19 of 1983, 12 March 1983	621
<i>Attorney General v Lo Man-cheuk</i> [1980] HKLR 687	581
<i>Attorney General v Ma Chiu-keung</i> [1988] 2 HKLR 64	677
<i>Attorney General of the Gambia v Jobe</i> [1984] AC 689	601
<i>Attorney General, Cho Shu-wah v</i> (1994) 4 HKPLR 514	514
<i>Attorney General, Gammon (Hong Kong) Ltd v</i> [1985] AC1	601,621
<i>Attorney General, Lai Man-yau v</i> (No 2) [1978] HKLR 546	686
<i>Attorney-General v Melhado Investment Ltd</i> [1983] HKLR 327	686
<i>Belgian Linguistic Case (No 2)</i> , European Court of Human Rights, Judgment of 23 July 1968, Series A, No 6, 1 EHRR 252	601
<i>Bhatia; R v Immigration Appeal Tribunal, ex parte</i> [1985] Imm AR 50	562
<i>Borneman, Wiseman v</i> [1971] AC 297	562
<i>Bradshar, Re</i> CO/301/83, 28 February 1984 (unreported)	514
<i>Bukhari; R v Horsham Justices, ex parte</i> (1981) 74 Cr App R 291	514
<i>Burgess, Butcher and, R v</i> (1991) 7 CRNZ 407	652
<i>Bushell v Secretary of State for the Environment</i> [1981] AC 75	562
<i>Butcher and Burgess, R v</i> (1991) 7 CRNZ 407	652

<i>Calveley; R v Chief Constable of the Merseyside Police, ex parte</i> [1986] 1 QB 424	523,548
<i>Calvin v Brownlow Carr</i> [1980] AC 574	523
<i>Carr, Brownlow; Calvin v</i> [1980] AC 574	523
<i>Cavanagh, R v</i> [1972] 1 WLR 676	677
<i>Chan Chun-ming, R v</i> [1980] HKLR 785	592
<i>Chaulk, R v</i> [1990] 3 SCR 1303, 62 CCC (3d) 193	601
<i>Cheng Kin-ping, R v</i> [1982] HKLR 308	621
<i>Chief Constable of the Merseyside Police, ex parte Calveley; R v</i> [1986] 1 QB 424	523,548
<i>Cho Shu-wah v Attorney General</i> (1994) 4 HKPLR 514	514
<i>Cholodniuk, R v</i> (1991) 14 WCB 2d 628	592
<i>Chong Ah-choi, R v</i> (1994) 4 HKPLR 375	581,621
<i>Civil Service Appeal Board, ex parte Cunningham; R v</i> [1991] 4 All ER310	500
<i>Commissioner of Inland Revenue and Commissioner of Police, Lee Ma-loi v</i> [1992] 1 HKLR 200	562
<i>Conway, John Patrick; Re</i> (1990) 91 Cr App R 143	514
<i>Cooper; R v Derry Produces Quota Tribunal and Minister of Agriculture, Fisheries and Food, ex parte</i> [1993] COD 276	500
<i>Council of Civil Service Unions v Minister for the Civil Service</i> [1985] AC 374	562
<i>Crabtree, Alexander Machinery (Dudley) Ltd v</i> [1974] ICR120	500
<i>Cunningham; R v Civil Service Appeal Board, ex parte</i> [1991] 4 All ER310500	500
<i>Daganayasi v Minister of Immigration</i> [1980] 2 NZLR 130	562
<i>Dempsey, Lee Fan v</i> (1907) 5 CLR 310	581
<i>Derry Produces Quota Tribunal and Minister of Agriculture, Fisheries and Food, ex parte Cooper; R v</i> [1993] COD 276	500
<i>Director of Public Prosecutions, Myers v</i> [1965] AC 1001	592
<i>Director of Immigration v Ho Ming-sai and others</i> (1993) 3 HKPLR 157	542
<i>DPP, Woolmington v</i> [1935] AC 462	581,601,716
<i>Edwards, R v</i> [1975] QB 27	581,601
<i>Egan, R v</i> (1993) 3 HKPLR 277, [1993] 1 HKCLR 284	677
<i>Fong Chin-yue, Attorney General v</i> (1994) 4 HKPLR 430, [1995] 1 HKC 21	716
<i>Fox, Campbell and Hartley v United Kingdom</i> (1990) 13 EHRR 157	621

<i>France, Salabiaku v</i> , European Court of Human Rights, Judgment of 7 October 1988, Series A, No 141-A, 13 EHRR 379	601
<i>Fung Chuen-kan v Government of the United States</i> [1994] 1 HKLR 163	514
<i>Furnell v Whangarei High Schools Board</i> [1973] AC 660	562
<i>Gammon (Hong Kong) Ltd v Attorney General</i> [1985] AC 1	601,621
<i>Ginesi v Ginesi</i> [1948] 1 All ER 373	562
<i>Governor, ex parte Reid; R v</i> (1994) 4 HKPLR 18 (CA)	581
<i>Governor, ex parte Reid; R v</i> (1993) 3 HKPLR 430 (HC)	581
<i>Governor of Brixton Prison, ex parte Schtraks; R v</i> [1964] AC556	514
<i>Governor of Holloway Prison, ex parte Siletti; R v</i> (1902) 20 Cox CC 353	514
<i>Governor of Pentonville Prison, ex parte Voets; R v</i> [1986] 1 WLR 470	514
<i>Governor of Pentonville Prison and another, ex parte Lee; R v</i> [1993] 3 All ER 504	652
<i>Guinness Plc; R v Panel on Take-overs and Mergers, ex parte</i> [1989] 1 All ER 509	523
<i>Guinness Plc; R v Panel on Take-overs and Mergers, ex parte</i> [1990] 1 QB 146	562
<i>Handyside v The United Kingdom</i> (1976) 1 EHRR 737	621
<i>Harrer, R v</i> (1994) 89 CCC (3d) 276	652
<i>Hart, Pepper v</i> [1993] AC 593	601
<i>Ho Siu-fei and others, R v</i> [1976] HKLR 190	652
<i>Ho Ming-sai and others, Director of Immigration v</i> (1993) 3 HKPLR 157	542
<i>Ho Ming-sai, In re</i> [1993] 2 HKLR 29	562
<i>Horsham Justices, ex parte Bukhari; R v</i> (1981) 74 Cr App R 291	514
<i>Independent Television Commission, ex parte TSW Broad- casting Ltd; R v</i> , House of Lords, 26 March 1992	562
<i>Hunt, R v</i> [1974] HKLR 31	581
<i>Immigration Appeal Tribunal, ex parte Khan (Mahmud); R v</i> [1983] 1 QB 790	500,562
<i>Immigration Appeal Tribunal, ex parte Kumar; R v</i> [1987] 1 FLR 444	562
<i>Immigration Appeal Tribunal, ex parte Mohd Amin; R v</i> [1992] Imm AR 367	500
<i>Immigration Appeal Tribunal, ex parte Bhatia; R v</i> [1985] Imm AR 50	562

<i>Immigration Tribunal, Lau Tak-pui and others v</i> [1992] 1 HKLR 374	500,548,562
<i>Immigration Appeal Tribunal, Nadeem Tahir v</i> [1989] Imm AR 98	562
<i>Inland Revenue Commissioners, ex parte Preston; R v</i> [1985] 1 AC 835	523,548
<i>Ireland, Purcell v</i> (1991) 12 HRLJ 254	621
<i>Jobe, Attorney General of the Gambia v</i> [1984] AC 689	601
<i>John Patrick Conway, Re</i> (1990) 91 Cr App R 143	514
<i>Judge of the City of London Court, The; R v</i> [1892] 1 QB 273	601
<i>Khan; R v Immigration Appeal Tribunal, ex parte (Mahmud)</i> [1983] 1 QB 790	500,562
<i>Khawaja v Secretary of State for the Home Department</i> [1984] AC 74	562
<i>Kioa v Minister for Immigration and Ethnic Affairs</i> (1985) 159 CLR 550	562
<i>Kumar; R v Immigration Appeal Tribunal, ex parte</i> [1987] 1 FLR 444	562
<i>Lai Man-yau v Attorney General</i> (No 2) [1978] HKLR 546	686
<i>Lancashire County Council, ex parte Huddleston, R v</i> [1986] 2 All ER 941	500
<i>Lau Tak-pui and others v Immigration Tribunal</i> [1992] 1 HKLR 374	500,548,562
<i>Lee Fan v Dempsey</i> (1907) 5 CLR 310	581
<i>Lee Kwong-kut, Attorney General v; Attorney General v Lo Chak-man</i> (1993) 3 HKPLR 72, [1993] 2 HKCLR 186	581,592,601, 621,650,716
<i>Lee Ma-loi v Commissioner of Inland Revenue and Commissioner of Police</i> [1992] 1 HKLR 200	562
<i>Lee; R v Governor of Pentonville Prison and another, ex parte</i> [1993] 3 All ER 504	652
<i>Leung Hung-hang, Attorney General v</i> (1984) CA, No 19 of 1983, 12 March 1983	621
<i>Li Wing-tat and others, R v</i> [1991] 1 HKLR 731	677
<i>Liangsirprasert v Government of the United States of America and Another</i> [1990] 3 WLR 606	652
<i>Lloyd and others v McMahon</i> [1987] AC625	500,562
<i>Lo Chak-man, Attorney General v; Attorney General v Lee Kwong-kut</i> (1993) 3 HKPLR 72, [1993] 2 HKCLR 186	581,592,601, 621,650,716
<i>Lo Man-cheuk, Attorney General v</i> [1980] HKLR 687	581

<i>Lonrho Plc; R v Secretary of State for Trade and Industry, ex parte</i> [1989] 1 WLR525	500
<i>Ma Chiu-keung, Attorney General v</i> [1988] 2 HKLR 64	677
<i>Machiya, Takeshi; R v</i> [1990] 1 HKC 73	677
<i>Mahadervan v Mahadervan</i> [1963] 2 WLR 271	562
<i>Manchanda v Medical Eye Centre Assn</i> (1986) 131 Sol J 47	523
<i>McCarthy &amp; Stone (Developments) Ltd; R v Richmond Upon Thames London Borough Council, ex parte</i> [1991] 3 WLR 941	548
<i>McMahon, Lloyd and others v</i> [1987] AC625	500,562
<i>Medical Eye Centre Assn, Manchanda v</i> (1986) 131 Sol J 47	523
<i>Melhado Investment Ltd, Attorney-General v</i> [1983] HKLR 327	686
<i>Minister of Agriculture, Fisheries and Food and others, Padfield and others v</i> [1968] AC997	500
<i>Minister for the Civil Service, Council of Civil Service Unions v</i> [1985] AC 374	562
<i>Minister for Immigration and Ethnic Affairs, Kioa v</i> (1985) 159 CLR 550	562
<i>Minister of Immigration, Daganayasi v</i> [1980] 2 NZLR 130	562
<i>Mok Wei-tak, R v</i> [1990] 2 AC 333	581
<i>Mughal; R v Secretary of State for the Home Department, ex parte</i> [1974] 1 QB 313	562
<i>Myers v Director of Public Prosecutions</i> [1965] AC 1001	592
<i>Nadeem Tahir v Immigration Appeal Tribunal</i> [1989] Imm AR 98	562
<i>Ng Kam-fuk, R v</i> (1992) 2 HKPLR 456, [1993] HKDCLR 29	677
<i>Ngan Kai-shui, R v</i> [1973] HKLR 161	621
<i>Norton Tool Co Ltd v Tewson</i> [1973] 1 WLR45	500
<i>Number 1 Poultry Ltd and others, Save Britain's Heritage v</i> [1991] 1 WLR153	500
<i>Oakes, R v</i> [1986] 1 SCR 103, 24 CCC (3d) 321, 26 DLR (4th) 200	601
<i>Oakes, R v</i> [1959] 2 QB 350	601
<i>Osmond, Public Service Board of New South Wales v</i> (1985) 159 CLR 656	500,548,562
<i>Padfield and others v Minister of Agriculture, Fisheries and Food and others</i> [1968] AC997	500
<i>Panel on Take-overs and Mergers, ex parte Guinness Plc; R v</i> [1989] 1 All ER 509	523



<i>Panel on Take-overs and Mergers, ex parte Guinness Plc;</i>	
<i>R v</i> [1990] 1 QB 146	562
<i>Parsley, Sweet v</i> [1970] AC 132	621
<i>Pepper v Hart</i> [1993] AC 593	601
<i>Preston; R v Inland Revenue Commissioners, ex parte</i>	
[1985] 1 AC 835	523,548
<i>Preston-Jones v Preston-Jones</i> [1951] AC 391	562
<i>Public Service Board of New South Wales v Osmond</i> (1985)	
159 CLR 656	500,548,562
<i>Purcell v Ireland</i> (1991) 12 HRLJ 254	621
<i>R v Butcher and Burgess</i> (1991) 7 CRNZ 407	652
<i>R v Burgess, Butcher and</i> (1991) 7 CRNZ 407	652
<i>R v Cavanagh</i> [1972] 1 WLR 676	677
<i>R v Chan Chun-ming</i> [1980] HKLR 785	592
<i>R v Chaulk</i> [1990] 3 SCR 1303, 62 CCC (3d) 193	601
<i>R v Cheng Kin-ping</i> [1982] HKLR 308	621
<i>R v Chododniuk</i> (1991) 14 WCB 2d 628	592
<i>R v Chong Ah-choi</i> (1994) 4 HKPLR 375	581,621
<i>R v Edwards</i> [1975] QB 27	581,601
<i>R v Egan</i> (1993) 3 HKPLR 277, [1993] 1 HKCLR 284	677
<i>R v Harrer</i> (1994) 89 CCC (3d) 276	652
<i>R v Ho Siu-fei and others</i> [1976] HKLR 190	652
<i>R v Hunt</i> [1974] HKLR 31	581
<i>R v Judge of the City of London Court, The</i> [1892] 1 QB 273	601
<i>R v Lancashire County Council, ex parte Huddleston</i>	
[1986] 2 All ER941	500
<i>R v Li Wing-tat and others</i> [1991] 1 HKLR 731	677
<i>R v Mok Wei-tak</i> [1990] 2 AC 333	581
<i>R v Ng Kam-fuk</i> (1992) 2 HKPLR 456, [1993] HKDCLR 29	677
<i>R v Ngan Kai-shui</i> [1973] HKLR 161	621
<i>R v Oakes</i> [1959] 2 QB 350	601
<i>R v Oakes</i> [1986] 1 SCR 103, 24 CCC (3d) 321, 26 DLR	
(4th) 200	601
<i>R v Shun Shing Construction &amp; Engineering Co Ltd</i> [1993]	
1 HKCLR 69	601
<i>R v Sin Yau-ming</i> (1991) 1 HKPLR 88, [1992] 1 HKCLR 127	581,621
<i>R v Sykes</i> (1875) 1 QBD52	500
<i>R v Tran Viet Van</i> (1992) 2 HKPLR 237, [1992] 2 HKCLR	
184	497
<i>R v Watson</i> [1980] 2 All ER 293	592
<i>R v Whyte</i> [1988] 2 SCR 3, 51 DLR (4th) 481, 42 CCC	
(3d) 97	601
<i>R v Chief Constable of the Merseyside Police, ex parte</i>	
<i>Calvey</i> [1986] 1 QB 424	548

<i>R v Chief Constable, ex parte Calveley</i> [1986] 1 QB 424	523
<i>R v Civil Service Appeal Board, ex parte Cunningham</i> [1991] 4 All ER 310	500
<i>R v Derry Produces Quota Tribunal and Minister of Agriculture, Fisheries and Food, ex parte Cooper</i> [1993] COD 276	500
<i>R v Governor of Brixton Prison, ex parte Schtraks</i> [1964] AC 556	514
<i>R v Governor of Holloway Prison, ex parte Siletti</i> (1902) 20 Cox CC 353	514
<i>R v Governor of Pentonville Prison, ex parte Voets</i> [1986] 1 WLR 470	514
<i>R v Governor of Pentonville Prison and another, ex parte Lee</i> [1993] 3 All ER 504	652
<i>R v Governor, ex parte Reid</i> (1993) 3 HKPLR 430 (HCt)	581
<i>R v Governor, ex parte Reid</i> (1994) 4 HKPLR 18 (CA)	581
<i>R v Horsham Justices, ex parte Bukhari</i> (1981) 74 Cr App R 291	514
<i>R v Immigration Appeal Tribunal, ex parte Mohd Amin</i> [1992] Imm AR 367	500
<i>R v Immigration Appeal Tribunal, ex parte Bhatia</i> [1985] Imm AR 50	562
<i>R v Immigration Appeal Tribunal, ex parte Khan (Mahmud)</i> [1983] 1 QB 790	500, 562
<i>R v Immigration Appeal Tribunal, ex parte Kumar</i> [1987] 1 FLR 444	562
<i>R v Independent Television Commission, ex parte TSW Broadcasting Ltd</i> , House of Lords, 26 March 1992	562
<i>R v Inland Revenue Commissioners, ex parte Preston</i> [1985] 1 AC 835	523, 548
<i>R v Takeshi Machiya</i> [1990] 1 HKC 73	677
<i>R v Panel on Take-overs and Mergers, ex parte Guinness Plc</i> [1989] 1 All ER 509	523
<i>R v Panel on Take-overs and Mergers, ex parte Guinness Plc</i> [1990] 1 QB 146	562
<i>R v Richmond Upon Thames London Borough Council, ex parte McCarthy &amp; Stone (Developments) Ltd</i> [1991] 3 WLR 941	548
<i>R v Secretary of State for the Environment, ex parte ARC Properties Ltd</i> , CO/1837/89, Times Law Reports, 5 December 1991	562
<i>R v Secretary of State for the Home Department, ex parte Mughal</i> [1974] 1 QB 313	562
<i>R v Secretary of State for Trade and Industry, ex parte Lonrho Plc</i> [1989] 1 WLR 525	500

<i>Reid, Re</i> (1991) 1 HKPLR 275	581
<i>Reid; R v Governor, ex parte</i> (1994) 4 HKPLR 18 (CA)	581
<i>Reid; R v Governor, ex parte</i> (1993) 3 HKPLR 430 (HCt)	581
<i>Richmond Upon Thames London Borough Council, ex parte McCarthy &amp; Stone (Developments) Ltd; R v</i> [1991] 3 WLR 941	548
<i>S, In re (A Barrister)</i> [1981] 1 QB 683	523
<i>Salabiaku v France</i> , European Court of Human Rights, Judgment of 7 October 1988, Series A, No 141-A, 13 EHRR 379	601
<i>Save Britain's Heritage v Number 1 Poultry Ltd and others</i> [1991] 1 WLR 153	500
<i>Schtraks; R v Governor of Brixton Prison, ex parte</i> [1964] AC 556	514
<i>Secretary of State for the Environment, Bushell v</i> [1981] AC 75	562
<i>Secretary of State for the Environment, ex parte ARC Properties Ltd; R v</i> , CO/1837/89, Times Law Reports, 5 December 1991	562
<i>Secretary of State for the Home Department, Khawaja v</i> [1984] AC 74	562
<i>Secretary of State for the Home Department, ex parte Mughal; R v</i> [1974] 1 QB 313	562
<i>Secretary of State for Trade and Industry, ex parte Lonrho Plc; R v</i> [1989] 1 WLR 525	500
<i>Shun Shing Construction &amp; Engineering Co Ltd, R v</i> [1993] 1 HKCLR 69	601
<i>Siletti; R v Governor of Holloway Prison, ex parte</i> (1902) 20 Cox CC 353	514
<i>Sin Yau-ming, R v</i> (1991) 1 HKPLR 88, [1992] 1 HKCLR 127	581, 621
<i>Smittachartch, Suthipong and the United States of America, Re</i> (1992) 2 HKPLR 249, [1993] 1 HKLR 93	652
<i>Sunday Times v The United Kingdom</i> (1979) 2 EHRR 245	621
<i>Suthipong Smittachartch and the United States of America, Re</i> (1992) 2 HKPLR 249, [1993] 1 HKLR 93	652
<i>Sweet v Parsley</i> [1970] AC 132	621
<i>Sykes, R v</i> (1875) 1 QBD 525	500
<i>Tam Hing-yee v Wu Tai-wai</i> (1991) 1 HKPLR 261, [1992] 1 HKLR 185	637
<i>Tewson, Norton Tool Co Ltd v</i> [1973] 1 WLR 45	500
<i>Sanguandikul, Re</i> (1992) 2 HKPLR 619, [1994] 1 HKCLR 1	652

<i>Tran Viet Van, R v</i> (1992) 2 HKPLR 237, [1992] 2 HKCLR 184	497
<i>TSW Broadcasting Ltd; R v Independent Television Commission, ex parte</i> , House of Lords, 26 March 1992	562
<i>United Kingdom; Fox, Campbell and Hartley v</i> (1990) 13 EHRR 157	621
<i>United Kingdom, Handyside v</i> (1976) 1 EHRR 737	621
<i>United Kingdom, Sunday Times v</i> (1979) 2 EHRR 245	621
<i>United States of America, Government of, and another; Liangsiriprasert v</i> [1990] 3 WLR 606	652
<i>United States of America, Suthipong Smittachartch and the; Re</i> (1992) 2 HKPLR 249, [1993] 1 HKLR 93	652
<i>United States, Government of; Fung Chuen-kan v</i> [1994] 1 HKLR 163	514
<i>Voets; R v Governor of Pentonville Prison, ex parte</i> [1986] 1 WLR 470	514
<i>Watson, R v</i> [1980] 2 All ER 293	592
<i>Wednesbury Corporation, Associated Provincial Picture Houses Ltd v</i> [1948] 1 KB 223	562
<i>Whangarei High Schools Board, Furnell v</i> [1973] AC 660	562
<i>Whyte, R v</i> [1988] 2 SCR 3, 51 DLR (4th) 481, 42 CCC (3d) 97	601
<i>Wiseman v Borneman</i> [1971] AC 297	562
<i>Woolmington v DPP</i> [1935] AC 462	581, 601, 716
<i>Wu Tai-wai, Tam Hing-yee v</i> (1991) 1 HKPLR 261, [1992] 1 HKLR 185	637

## Hong Kong Legislation

Criminal Procedure Ordinance (Cap 221)	
s 90	621
s 91	621
Dangerous Drugs Ordinance (Cap 134)	
s 7	497
s 7(1)	581
s 47(1)	497
s 47(2)	497
Dangerous Drug (Amendment) (No 2) Ordinance (No 52 of 1992)	
s 8	497

District Court Ordinance (Cap 336)	
s 60(1)	500
Dutiable Commodities Ordinance (Cap 109)	716
Evidence Ordinance (Cap 8)	
s 22A(1)	592
s 22A(2)	592
s 22A(3)	592
s 22A(7)	592
Hong Kong Bill of Rights Ordinance (Cap 383)	
s 2(3)	592
s 3	621
s 3(1)	592
s 3(2)	581,601,650
s 6	
s 7	637
s 7(1)	637
s 8 (Hong Kong Bill of Rights)	
art 10	581,637,677
art 11	601
art 11(1)	581,716
art 11(2)(e)	592,677
art 11(2)(g)	581
art 14	562
art 16	637
art 16(2)	621
art 16(3)	621
art 19	542,562
art 20	542
art 22	601
s 11	542,562
Immigration Ordinance (Cap 115)	562
s 13	542
s 13D	667
s 19(1)(b)	667
s 38A	716
s 38A(2)	601
s 38A(3)	601,716
ss 53A-53G	500
Independent Commission Against Corruption Ordinance (Cap 204), s 12(b)(i)	621
Legal Practitioners Ordinance (Cap 159), s 35A(3)	637

Magistrates Ordinance (Cap 227)	
s 118(1)(d)	601
Part III	
Medical Practitioners (Registration and Disciplinary Procedure)	
Regulations (Cap 161 sub leg), regs 11, 12, 16, 22	548
Medical Registration Ordinance (Cap 161)	548
Prevention of Bribery Ordinance (Cap 201)	
s 2	637
s 3	621
s 4	621
s 4(2)(a)	677
s 7	621
s 10(1)(a)	581
s 10(1)(b)	686
s 13	621
s 30	621
s 33	621
Rules of the Supreme Court (Cap 4 sub leg)	
O 3, r 5	562
O 53, r 3(2)(b)	562
O 53, r 6(2)	562
O 53, r 6(4)	562
O 42, r 5B(1)	500
O 42, r 5B	686
Summary Offences Ordinance (Cap 228)	
s 17	581,716
s 30	581,650
s 3	716
Town Planning Ordinance (Cap 131)	
s 3	686
s 16	686
s 17	686
s 17A	686
s 17B	686
s 20	686
s 23(1)	686
s 23(4)	686
s 23(4)(b)	686
s 26	686
Town Planning (Amendment) Ordinance (Ordinance No 4 of 1991)	
s 1(2)	686

s 6(b)	686
s 6(g)	686
s 6(h)	686
s 6(i) 686	
Town Planning Amendment Bill 1990	686

---

## United Kingdom Legislation

Extradition Act 1989 (UK)	
Schedule 1, clause 6(1)	652
Immigration Appeals (Procedure) Rules 1984 (UK)	
r 14(2)(a)	500
Police and Criminal Evidence Act 1984 (UK)	
s 78	652

---

## Foreign Legislation

### CANADA

Canadian Charter of Rights and Freedoms 1982	
s 7	592
s 11(d)	592

### NEW ZEALAND

New Zealand Bill of Rights Act 1990	
s 3(b)	637

### UNITED STATES OF AMERICA

United States of America Constitution, Amendment VI	592
---	-----

---

## Treaties and International Instruments

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, 213 UNTS 221	
art 6(3)(d)	592
International Covenant on Civil and Political Rights 1966, 999 UNTS 171	
art 14(3)e	592
International Covenant on Economic Social and Cultural Rights 1966, 999 UNTS 3	
art 10	542

**OTHER INTERNATIONAL SOURCES**

- Human Rights Committee, *General comment 18 (37)*, UN Doc CCPR/C/21/Rev 1/Add 1 (1989), paras 4, 6, 7, 8, 13 601

**OTHER SOURCES**

- Archbold: Criminal Pleading, Evidence and Practice 1994*, vol 2 (London: Sweet & Maxwell) Chapter 33 621
- Archbold: Pleading, Evidence and Practice in Criminal Cases* (London: Sweet & Maxwell, 1993 edition), vol 1, para 4–398 581
- Aronson, M and N Franklin, *Review of Administrative Action* (Sydney: Law Book Co, 1987), p 102 562
- Beloff, M, "Natural Justice — (The Audi Alteram Partem Rule) and Fairness" in M Supperstone and J Goudie (eds) *Judicial Review* (London: Butterworths, 1992), p152 500
- Bridge, J W, "The Duty to Give Reasons for Decisions as an Aspect of Natural Justice" in D Lasok (ed) *Fundamental Duties* (Oxford: Pergamon Press, 1980) 500
- deSmith, S A, *Judicial Review of Administrative Action* (London: Stevens & Sons Ltd, 4th ed 1980) 500
- Henkin, L (ed), *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981) 621
- Herberg, J, "The Right to Reasons: Palm Trees in Retreat?" [1991] *Public Law* 340 500
- Hong Kong Bar Association, Code of Conduct, paras 10(a), 101 637
- Hong Kong Bar Association, By-laws, art 2 637
- Jacob, J I H, *The Supreme Court Practice 1993* (London: Sweet & Maxwell, 1992), vol 1, p 862, ref 53/1–14/39 562
- Justice — All Souls Committee on the Review of Administrative Law in the United Kingdom, *Administrative Justice: Some necessary reforms* (Oxford University Press, 1988) 500
- Lewis, C, "The Exhaustion of Alternative Remedies in Administrative Law" (1992) 51 CLJ 138 562
- Official Record of the Proceedings of the Hong Kong Legislative Council: Session 1990/91*, at 65–67, 328–330, 333 601
- Official Record of Proceedings of the Hong Kong Legislative Council 1970–1971*, 21 October 1970 621
- Osborne, C, "Hearsay and the European Court of Human Rights" [1993] *Crim LR* 255 592



<i>Report of the ICAC Review Committee</i> (December 1994)	621
Richardson, G, "The Duty to Give Reasons: Potential and Practice" [1986] <i>Public Law</i> 437	500
Supperstone, M and J Goudie, <i>Judicial Review</i> (London: Butterworths, 1992), pp 211, 212, 369	562
Wade, H W R, <i>Administrative Law</i> (Oxford: Clarendon Press, 6th ed, 1988), pp 223, 533	500,562

# Subject Index

## Administrative law

### Judicial review

Application for leave to apply for judicial review — Application for judicial review out of time — No reasonable excuse for the delay and no good reason for extending time shown for application to be granted — Whether merit of case to be considered by court in the exercise of its discretion to grant an application for judicial review

*R v Director of Immigration, ex parte Cheung Kuk-ching* [HCt] 542

Application for leave to apply for judicial review — Test to be applied in deciding whether to grant leave — Whether applicant must show "potential arguability" — Whether material disclosed matters which on further consideration might demonstrate an arguable case for the grant of the relief claimed

*R v Director of Immigration, ex parte Cheung Kuk-ching* [HCt] 542

Availability — Alternative remedy — Not appropriate when alternative remedy available — Purpose of judicial review — Special circumstances

*R v The Disciplinary Committee of the Stock Exchange of Hong Kong Ltd, ex parte Onshine Securities Ltd* [HCt] 523

Availability — Alternative remedy — Exhaustion of other remedies required

*R v Medical Council of Hong Kong, ex parte Li Sum-wo* [HCt] 548

Availability — Alternative remedy — Practice and procedure — Whether applicant should exhaust other avenues of remedies

*R v Director of Immigration, ex parte Du Gui Fang* [HCt] 562

Practice and procedure — Jurisdiction of the court to admit additional affidavits from respondent out of time — Whether 56 day time limit should be rigorously enforced — Rules of the Supreme Court (Cap 4, sub leg), O 53, rr 3, 5 and 6

*R v Director of Immigration, ex parte Du Gui Fang* [HCt] 562

Validity of enforcement notice — Retrospective legislation — Town Planning Ordinance (Cap 131) — Town Planning (Amendment) Ordinance 1991 (Ordinance No 4 of 1991)

*R v Attorney General, ex parte Tsei Kwei-king and another* [HCt] 686

## Natural justice

Duty to act fairly — Whether general duty to give reasons for administrative decisions

*R v Immigration Tribunal, ex parte Tsang Yau-chiu and others* [HCt] 500

Duty to give reasons — When applicable

*R v Medical Council of Hong Kong, ex parte Li Sum-wo* [HCt] 548

Duty to give reasons — Duty to act fairly — Whether duty to confront the applicant with damaging material — Whether duty to make positive enquiry — Whether decision refusing an application for a change of status Wednesbury unreasonable

*R v Director of Immigration, ex parte Du Gui Fang* [HCt] 562

Nature of reasons where required to be given — Adequacy of reasons — Immigration Ordinance (Cap 115), s 53D

*R v Immigration Tribunal, ex parte Tsang Yau-chiu and others* [HCt] 500

## Right to be heard

Denial of legal representative before disciplinary tribunal — bias — Constitution of tribunal

*R v The Disciplinary Committee of the Stock Exchange of Hong Kong Ltd, ex parte Onshine Securities Ltd* [HCt] 523

## Bill of Rights

### Application

Consistency of legislation with the Bill of Rights — Whether court should look at the section creating the offence as a whole in assessing consistency — Whether appropriate to adopt rigid formalistic analysis in determining consistency with the Bill of Rights

*R v China State Construction Engineering Corporation* [Mag] 716

Extraterritorial reach — Whether Bill of Rights applies to actions taken outside of Hong Kong

*Re Thanat Phaktiphat* [HCt] 652

Government and public authorities — Whether the Hong Kong Bar Association in promulgating its Code of Conduct is acting as a public authority — “public authority” — Hong Kong Bill of Rights Ordinance, s 7(1)

*Re Anthony Chua* [Barristers’ Disciplinary Tribunal] 637

Immigration legislation — Whether Bill of Rights applicable to a decision of the Director of Immigration refusing an application for a change of status — Bill of Rights Ordinance (Cap 383), s 11

*R v Director of Immigration, ex parte Du Gui Fang* [HCt] 562

Pre-existing legislation — Repeal — Effect of repeal of legislation — Quashing of convictions and setting aside of sentences of defendants convicted of crimes under sections deemed to have been repealed by the Bill of Rights Ordinance

*R v Chu Cheuk-hong; R v Siu Hai-ka and others* [CA] 650

Retrospective operation — Amendments to legislation following declaration of repeal by courts — Application of amendments to proceedings concerning events prior to enactment of amending legislation — Bill of Rights, arts 10, 11(1), 12

*R v Lum Wai-ming* [CA] 497

Retrospective operation — Application to offences committed subsequent to the coming into the operation of the Bill of Rights Ordinance — Hong Kong Bill of Rights Ordinance (Cap 383), s 3(2)

*R v Chu Cheuk-hong; R v Siu Hai-ka and others* [CA] 650

Retrospective operation — Whether applicable to proceedings concerning events occurring prior to commencement of amending legislation — Drug trafficking offences — Presumptions — Presumptions as to possession — Amendments — Summing up — Dangerous Drugs (Amendment) (No 2) Ordinance (No 52 of 1992) — Dangerous Drugs Ordinance (Cap 134), s 47(2)

*R v Lum Wai-ming* [CA] 497

### **Permissible restrictions**

Freedom of expression — Objectives of restriction — Whether justification limited to original objectives — "necessary" — Bill of Rights, art 16(3)

*R v Ming Pao Newspapers Ltd* [Mag] 621

Whether infringing provision can be justified and survive Bill of Rights challenge — Rationality, proportionality and minimal impairment — Whether rational and proportional to place the burden of taking practicable steps on the construction site controller to keep illegal immigrants off of construction sites — Hong Kong Bill of Rights, arts 11(1), 22 — Immigration Ordinance (Cap 115), s 38A

*R v Dragages et Travaux* [Mag] 601

*R v China State Construction Engineering Corporation* [Mag] 716

## **Remedies**

Whether court has the power and duty in extradition proceedings to exclude evidence of telephone conversations obtained allegedly in a manner inconsistent with the Bill of Rights — Bill of Rights Ordinance (Cap 383), s 6

*Re Thanat Phaktiphat*

[HCt] 652

## **Right to a fair hearing**

Disciplinary proceedings — Right to a fair and public hearing before an independent and impartial tribunal — Denial of legal representation — bias — Member of disciplinary Committee also members of Stock Exchange council — Existence of an appeal to Disciplinary Appeal board

*R v The Disciplinary Committee of the Stock Exchange  
of Hong Kong Ltd, ex parte Onshine Securities Ltd*

[HCt] 523

Whether right to fair hearing applies to extradition proceedings — Whether extradition proceedings involve “determination of a criminal charge” — Assumption that a fugitive will obtain a fair hearing in requesting state — Whether admission of inadmissible evidence a violation of right — Bill of Rights, arts 10, 11

*Re Thanat Phaktiphat*

[HCt] 652

## **Rights to protection of privacy and correspondence**

Telephone tapping — Whether interception of telephone communications a violation — Bill of Rights, art 14

*Re Thanat Phaktiphat*

[HCt] 652

## **Right to a fair hearing in the determination of a criminal charge**

Stay of prosecution where defendants deprived of opportunity to test evidence of missing witness — Hong Kong Bill of Rights, arts 10, 11(2)(e)

*R v Yeung Chi-chiu and another*

[DCt] 677

## **Right to be presumed innocent until proved guilty**

Maintaining a living standard not commensurate with official emoluments — Presumption of corruption in the absence of satisfactory explanation — Whether absence of satisfactory explanation an element of the offence — Whether reversal of onus reasonably imposed — Proportionality — Bill of Rights, art 11(1) — Prevention of Bribery Ordinance (Cap 201), s 10(1)(a)

*R v Hui Kin-hong Harry*

[DCt] 581

Offence of maintaining a standard of living above that commensurate with official emoluments — Requirement that defendant give a satisfactory explanation to the court — Whether consistent with presumption of innocence — Hong Kong Bill of Rights, arts 10, 11(1), 11(2)(g) — Prevention of Bribery Ordinance (Cap 201), s 10(1)(a)

*R v Hui Kin-hong Harry* [DCt] 581

Strict liability offence — Defence — Legal burden on the construction site controller charged with illegal immigrants being on the site — Whether consistent with the presumption of innocence — International Covenant on Civil and Political Rights, art 14(2) — Hong Kong Bill of Rights, art 11(1)

*R v China State Construction Engineering Corporation* [Mag] 716

Strict liability offence — Defence — Offence of being in charge of a construction site on which illegal immigrants are found — Defence that construction site controller took all practicable steps to prevent — Whether consistent with the presumption of innocence — International Covenant on Civil and Political Rights — Hong Kong Bill of Rights, art 11(1)

*R v Dragages et Travaux* [Mag] 601

### **Right to a fair and public hearing in the determination of one's rights and obligations in a suit at law**

Disciplinary proceedings — Public hearing — Mandatory prescription that disciplinary proceedings be conducted in camera — Discretion to conduct public hearing — Legal Practitioners Ordinance (Cap 159), s 35A(3) — Bill of Rights, art 10

*Re Anthony Chua* [Barristers' Disciplinary Tribunal] 637

### **Right to freedom of expression**

Whether restriction on disclosure of details of an ICAC investigation a restriction prescribed by law — Whether protection of rights and reputation of others an objective of the restriction on disclosure — Protection of public order (ordre public) — Pressing social need — Mandatory disqualification from public office for person convicted of offence — "necessary" — "ordre public" — "public order" — Prevention of Bribery Ordinance (Cap 201), ss 30, 33 — Bill of Rights, art 16(2)

*R v Ming Pao Newspapers Ltd* [Mag] 621

Whether restriction on personal advertisement by barristers a violation of the right to freedom of expression — Bill of Rights, art 16 — Bar's Code of Conduct, para 101

*Re Anthony Chua* [Barristers' Disciplinary Tribunal] 637

## **Right to examine or have examined witnesses against one**

Admission of computer records as prima facie evidence — Power of judge to order oral evidence to be given if good reason exists for doubting the truth and accuracy of the computer records — Evidence Ordinance (Cap 8), ss 22A(1), (7) — International Covenant on Civil and Political Rights, art 14(3)(e) — European Convention on Human Rights, art 6(3)(d) — Hong Kong Bill of Rights Ordinance (Cap 383), s 2(3) — Hong Kong Bill of Rights, art 11(2)(e)

*R v Chow Chai-sang* [DCt] 592

Whether right guaranteed — Opportunity to test the evidence of a crucial missing witness against other evidence — Whether relevant that the prosecution had been at fault regarding the missing witness — Whether relevant that the defendant would benefit from exercise of his right or exploitation of his opportunities to test the evidence of a missing witness — Hong Kong Bill of Rights, arts 10, 11(2)(e)

*R v Yeung Chi-chiu and another* [DCt] 677

## **Bribery**

Restriction on disclosure of details of an ICAC investigation — Whether mens rea required — Whether suspicion or allegation must be reasonable — Whether consistent with Bill of Rights — Freedom of expression — “alleged” — “suspected” — Prevention of Bribery Ordinance (Cap 201), s 30

*R v Ming Pao Newspapers Ltd* [Mag] 621

## **Courts**

Jurisdiction — Wardship jurisdiction — Wardship jurisdiction extending to aliens physically present in Hong Kong — Whether court should exercise wardship jurisdiction which might interfere with implementation of immigration decision

*Re a Minor* [HCt] 667

Magistrates Court — Procedure — Whether magistrate conducting committal under Part III of the Magistrate's Ordinance has jurisdiction to rule on the admissibility of evidence — Power of magistrate to exclude evidence — Whether there is a difference between committal proceedings and extradition proceedings — Magistrate's Ordinance (Cap 227), Part III — Extradition Act 1989 (UK), Schedule 1, clause 6(1)

*Re Thanat Phaktiphat* [HCt] 652

## Corruption

Maintaining a standard of living not commensurate with official emoluments — Whether consistent with presumption of innocence — Prevention of Bribery Ordinance (Cap 201), s 10(1)(a) — Bill of Rights, art 11(1)C

*R v Hui Kin-hong Harry* [DCt] 581

## Criminal law

Defences — Defence as element of strict liability offence — Statutory defence for strict liability offence — Whether element of the offence includes the defence that the controller took all practicable steps to prevent the illegal immigrants from being on the construction site — Hong Kong Bill of Rights, arts 11(1), 22 — Immigration Ordinance (Cap 115), s 38A

*R v Dragages et Travaux* [Mag] 601

*R v China State Construction Engineering Corporation* [Mag] 716

Evidence — Onus of proof — Presumptions — Mandatory presumptions of fact — Consistency with Bill of Rights — Possession of dangerous drugs for the purpose of trafficking — Presumption of possession — Presumption of innocence — Possession of key to motor vehicle — Presumption of knowledge — Physical possession — Dangerous Drugs Ordinance (Cap 134), ss 8, 47(1), 47(2)

*R v Lum Wai-ming* [CA] 497

## Offences

Offence of being a construction site controller of a site on which an illegal immigrant is found — Elements of the offence — Whether element of the offence includes the defence that the controller took all practicable steps to prevent the illegal immigrant from being on the construction site — Hong Kong Bill of Rights, arts 11(1), 22 — Immigration Ordinance (Cap 115), s 38A

*R v Dragages et Travaux* [Mag] 601

*R v China State Construction Engineering Corporation* [Mag] 716

Strict liability offences — Whether consistent with Bill of Rights — Hong Kong Bill of Rights, arts 11(1), 22 — Immigration Ordinance (Cap 115), s 38A

*R v Dragages et Travaux* [Mag] 601



## **Criminal procedure**

Witnesses — Missing witnesses

*R v Yeung Chi-chiu and another*

[DCt] 677

## **Evidence**

Admissibility of computer records — Conditions of admissibility — Power of trial judge to order oral evidence to be given — Whether provision inconsistent with right to examine or have examined witnesses against one — “prima facie” — Evidence Ordinance (Cap 8), ss 22A(1), (7) — Hong Kong Bill of Rights, art 11(2)(e)

*R v Chow Chai-sang*

[DCt] 592

Admissibility — Judge’s power to reconsider admissibility of evidence at the stage of closing speech

*R v Chow Chai-sang*

[DCt] 592

Committal proceedings — Admissibility — Power of magistrate to exclude evidence

*R v Cho Shu-wah*

[HCt] 514

## **Extradition**

Admissibility of evidence in extradition proceedings — Admissibility of photograph containing prejudicial and unnecessary information — Relevance of photograph — Whether photograph of suspect wrongly admitted as evidence where without such photograph there would have been no evidence to link the applicant to the two charges in question

*R v Cho Shu-wah*

[HCt] 514

Whether appropriate to apply exactly the same rules of evidence as would be applied in a committal proceeding — Application of Bill of Rights to extradition proceedings — Extradition Act 1989 (UK), Schedule 1, clause 6(1)

*Re Thanat Phaktiphat*

[HCt] 652

Whether duty of magistrate in an extradition proceedings to exclude relevant evidence because of certain prejudicial effect — Whether appropriate to use photograph to establish prima facie identity at an extradition hearing

*R v Cho Shu-wah*

[HCt] 514

## Habeas corpus

Extradition proceedings — Function of the judge in habeas corpus application

*R v Cho Shu-wah* [HCt] 514

## Immigration

Application for a change of status on the basis of marriage — Whether genuine relationship of man and wife existed — Burden of proof on the applicant to satisfy the immigration officer of the existence of a genuine marriage — Standard of proof that of balance of probabilities

*R v Director of Immigration, ex parte Du Gui Fang* [HCt] 562

Director of Immigration — Discretion to permit illegal immigrant to remain in Hong Kong on humanitarian grounds — “humanitarian grounds” — Immigration Ordinance (Cap 115), s 13

*R v Director of Immigration, ex parte Cheung Kuk-ching* [HCt] 542

Immigration Tribunal — Duty to give reasons — Adequacy of reasons given — Requirement to consider all the material evidence — Immigration Ordinance (Cap 115), s 53D

*R v Immigration Tribunal, ex parte Tsang Yau-chiu and others* [HCt] 500

Presence of illegal immigrants on construction site — Liability of construction site controller when illegal immigrant found on construction site — Whether offence consistent with Bill of Rights — Hong Kong Bill of Rights, arts 11(1), 22 — Immigration Ordinance (Cap 115), s 38A

*R v Dragages et Travaux* [Mag] 601

*R v China State Construction Engineering Corporation* [Mag] 716

Refugees — Minor — Unaccompanied minor — Ward of court — Removal order — Vietnamese refugee — Decision of Director of Immigration to remove unaccompanied minor — Wardship application conflicting with Immigration decisions — Immigration Ordinance (Cap 115), s 13D

*Re a Minor* [HCt] 667

## Legal Aid

Whether applicant justified in rejecting offer of Legal Aid legal assistance — Leave to apply for judicial review out of time where delay caused by applicant’s rejection of offer of Legal Aid

*R v Director of Immigration, ex parte Cheung Kuk-ching* [HCt] 542

## Legal profession

Disciplinary action — Personal advertising — Failure to discharge duty of a barrister by failing to respond to requests from the Bar Council for comments on a complaint — Whether the Hong Kong Bar Association in promulgating its Code of Conduct is acting as a “public authority” within the meaning of the Hong Kong Bill of Rights Ordinance — Bar’s Code of Conduct, paras 10(a), 101 — Bill of Rights Ordinance, s 7(1)

*Re Anthony Chua* [Barristers’ Disciplinary Tribunal] 637

## Medical Council

Whether power to proceed with disciplinary proceedings when the complainant had withdrawn the complaints — Whether duty to give reasons — Whether Crown Counsel can be appointed to prosecute in the absence of the complainant — Medical Practitioners (Registration and Disciplinary Procedure) Rules (Cap 161 sub leg), r 22

*R v Medical Council of Hong Kong, ex parte Li Sum-wo* [HCt] 548

## Obscene Articles Tribunal

Jurisdiction — Duty of magistrate to refer to tribunal precisely the question which the tribunal has to decide — Duty to have regard to the dominant effect of matter as a whole — Control of Obscene and Indecent Articles Ordinance (Cap 390), ss 29

*R v Obscene Articles Tribunal, ex parte Sum Mui-tai and another* [HCt] 711

## Obscene and indecent articles

Public display of indecent matter — Precise question of referral to be made by magistrate, not by prosecuting officer — Duty on Tribunal to have regard to the dominant effect of matter as a whole — “matter” — Control of Obscene and Indecent Articles Ordinance (Cap 390), ss 1, 10, 23, 29

*R v Obscene Articles Tribunal, ex parte Sum Mui-tai and another* [HCt] 711

## Originating summons

Practice and procedure — Striking out originating summons —

Scandalous, frivolous, vexatious — Originating summons as an abuse of process — Rules of the Supreme Court s 18, r 9

*Re a Minor*

[HCt] 667

## Securities

Securities regulation — Breaches of Securities Ordinance — Stock Exchange disciplinary proceedings Stock Exchange — Disciplinary proceedings — Fair and impartial hearing — Right to legal representation — Failure to reveal identity of principal witness and failure to supply witness statement prior to hearing — Members of Disciplinary committee also members of Stock Exchange Council did not constitute bias — Bill of Rights, article 10

*R v The Disciplinary Committee of the Stock Exchange of Hong Kong Ltd, ex parte Onshine Securities Ltd*

[HCt] 523

## Stare decisis

Precedent — Whether Hong Kong High Court bound to follow English Court of Appeal where Hong Kong law does not materially differ

*Re a Minor*

[HCt] 667

## Statutes (see also Bill of Rights (Application))

Interpretation — Reference to Hansard Proceedings of the Legislative Council

*R v Dragages et Travaux*

[Mag] 601

Commencement — Retrospective effect — Application to proceedings involving events prior to commencement of statute — Dangerous Drugs Ordinance (Cap 134), s 47(2)

*R v Lum Wai-ming*

[CA] 497

Validity of enforcement notice — Retrospective legislation — Town Planning Ordinance (Cap 131) — Town Planning (Amendment) Ordinance 1991 (Ordinance No 4 of 1991)

*R v Attorney General, ex parte Tsei Kwei-king and another*

[HCt] 686

## Town planning

Interim development permission area — Development permission area plan — Unspecified use — Unauthorized development — Agricultural land — Open storage of building materials and containers — Existing uses — Enforcement actions — Town Planning Ordinance (Cap 131), ss 3, 20, 23, 26 — Town Planning (Amendment) Ordinance 1991 (Ordinance No 4 of 1991)

*R v Attorney General, ex parte Tse Kwei-king and another*

[HCt] 686

## Words and Phrases

"determination of any criminal charge" — Bill of Rights, arts 10, 11	667
"humanitarian grounds" — Immigration Ordinance (Cap 115), s 13	542
"matter" — Control of Obscene and Indecent Articles Ordinance (Cap 390), ss 1, 10, 23, 29	711
"necessary" — Bill of Rights, arts 16(2), 16(3)	621
"ordre public" — Bill of Rights, art 16(2)	621
"potential arguability"	542
"prima facie" — Evidence Ordinance (Cap 8), ss 22A(1), (7) — Hong Kong Bill of Rights, art 11(2)(e)	592
"public authority" — Bar's Code of Conduct, paras 10(a), 101 — Bill of Rights Ordinance, s 7(1)	637
"public order" — Bill of Rights, art 16(2)	621