

## **The High Court**

(Relevant to AAT Examination Paper 6 – Fundamentals of Business Law)

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### **Introduction**

Article 2 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR) provides that, among other things, the National People's Congress authorizes the HKSAR to enjoy an independent judicial power, including that of final adjudication. Article 81 continues to state that: "The Court of Final Appeal, the High Court, District courts, Magistrates' courts and other special courts shall be established in the Hong Kong Special Administrative Region". The High Court of the HKSAR consists of the Court of First Instance and the Court of Appeal. The present High Court Building is located on Queensway road.

Before 1 July 1997, the highest court of Hong Kong was the Supreme Court, which consisted of the Court of Appeal and the High Court. Thus, the former name of the present High Court was the "Supreme Court"; and the former name of the Court of First Instance was the "High Court of Justice".

### **Constitution of the High Court**

The Court of Appeal consists of the Chief Judge of the High Court and the Justices of Appeal. The Chief Judge of the High Court is the president of the Court of Appeal (Section 5 of the High Court Ordinance). A judge of the Court of First Instance may, at 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. In appeal cases, a Court of Appeal normally consists of an uneven number of 3 or more Justices of Appeal.

The Court of First Instance consists of the Chief Judge of the High Court; judges and recorders as appointed by the Chief Executive; and such deputy judges as the Chief Justice may appoint. A Justice of Appeal may sit in the Court of First Instance and act as a judge 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 (Section 4 of the High Court Ordinance). Usually, the proceeding in the Court of First Instance is heard and determined by a judge of the Court of First Instance sitting alone. However, the Chief Justice may direct that any proceeding in the Court of First Instance shall be heard and determined by 2 or more judges of the Court.

## **The jurisdiction**

The structure and jurisdiction of the Court of First Instance are governed by the High Court Ordinance (Cap. 4). The High Court is a court of unlimited civil and criminal jurisdiction.

### **Jurisdiction of the Court of Appeal**

The Court of Appeal is a superior court of record. The criminal jurisdiction of the Court of Appeal consists of appeals from the Court of First Instance and the District Court. In addition, the judge of the lower court of trial may reserve for the consideration of the Court of Appeal any question of law which may arise on the trial of any indictment. The Secretary for Justice may also apply to the Court of Appeal for the review of any sentence passed by any court on the grounds that the sentence is not authorized by law, is wrong in principle or is manifestly excessive or manifestly inadequate. Where a person tried on indictment has been acquitted, the Secretary for Justice may, if he desires the opinion of the Court of Appeal on a question of law which has arisen in the case, refer that question to the Court of Appeal, which shall consider the point and give its opinion on it (Criminal Procedure Ordinance). For criminal appeals cases from the Court of Appeal, the case type starts with prefix "CACC".

The civil jurisdiction of the Court of Appeal consists of (i) appeals from any judgment or order of the Court of First Instance in any civil cause or matter (normally, 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); (ii) appeals from the District Court; and (iii) appeals from the tribunals, such as the Lands Tribunal and the Competition Tribunal. It also hears appeals arising from the decision of professional bodies. For example, any registered medical practitioner who is aggrieved by any order made in respect of him by the Medical Council may appeal to the Court of Appeal (Medical Registration Ordinance). For civil appeals from the Court of Appeal, the case type starts with prefix "CACV".

For the purposes of the hearing and determination of any appeal to the Court of Appeal and the amendment, execution and enforcement of any judgment or order made on such an appeal, the Court of Appeal has all the authority and jurisdiction of the court or tribunal from which the appeal was brought.

### **Jurisdiction of the Court of First Instance**

#### *Appellate jurisdiction*

The Court of First Instance is a superior court of record. The Court of First Instance has appellate function in its own right and it hears appeals from the Magistrates' Courts (criminal appeals), Small Claims Tribunal, Obscene Articles Tribunal, Labour Tribunal and Minor Employment Claims Adjudication Board (civil appeals).

### *Original jurisdiction — criminal*

Under the High Court Ordinance, the criminal jurisdiction of the Court of First Instance shall consist of 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 any other jurisdiction, whether original or appellate jurisdiction, conferred on it by any law. In short, it tries cases such as homicide offences (murder and manslaughter), rape, armed robbery, trafficking of large quantities of drugs and serious commercial fraud.<sup>1</sup> The case type of criminal cases from the Court of First Instance starts with the prefix “HCCC”.

These cases are tried by a judge sitting with a jury of seven and in special cases, a judge can order that the case will be tried with a jury of nine. The jury, but not the judge, will decide whether the accused is guilty or not guilty.

In Hong Kong, the law relating to criminal procedure, evidence and practice is laid down in the Criminal Procedure Ordinance (Cap. 221). The cases tried in the Court of First Instance are considered to be the most serious criminal offences and are indictable offences. An offence triable upon indictment is an offence declared to be treasonous, or for which the words “upon indictment” or “on indictment” appear in the legislation that creates the offence. An indictment is a formal document specifying the charges against a defendant for the criminal proceedings. For example, under section 28 of the Offences against the Person Ordinance (Cap. 212), “any person who unlawfully and maliciously, by the explosion of gunpowder or any other explosive substance, burns, maims, disfigures, disables, or does any grievous bodily harm to any person shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for life.”

For these cases, there is a procedure called “committal proceedings”, which should be distinguished from the formal trial conducted in the Court of First Instance. Indictable offences commence in the Magistrates’ Courts, where the committal proceedings are heard. These proceedings are a method of preliminary screening done by the Magistrates to ensure that the prosecution has brought sufficient evidence against the accused and that a prima facie case has been established. The Magistrates’ Court will not determine whether the accused is guilty or not guilty. The cases will then be transferred to the Court of First Instance for a formal hearing after the conclusion of the committal proceedings.

### *Original jurisdiction — civil*

Under the High Court Ordinance, the civil jurisdiction of the Court of First Instance shall consist of 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 any other jurisdiction, whether original or appellate jurisdiction, conferred on it by any law. The case type of civil cases from the Court of First Instance starts with the prefix “HCA”.

In short, a large number of civil cases can first be heard in the Court of First Instance. These include, among others, Admiralty Action, Adoption Application, Bankruptcy Proceedings, Civil and Commercial Action (for claims in excess of \$1 million), Companies Winding-up Proceedings, Constitutional and Administrative Law Proceedings,

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<sup>1</sup> Judiciary, the High Court, [http://www.judiciary.hk/en/crt\\_services/pphlt/html/hc.htm#12](http://www.judiciary.hk/en/crt_services/pphlt/html/hc.htm#12)

Construction and Arbitration Proceedings, Matrimonial Causes and Personal Injuries Action.

*Probate actions*

The High Court also has jurisdiction in all matters relating to probate and administration of deceased's estates, with power to grant probates of wills and letters of administration to the estates of deceased persons and to alter or revoke such grants under the Probate and Administration Ordinance (Cap. 10). The Registrar of the High Court is the ex officio Official Administrator under the Ordinance.

**Conclusion**

The High Court of the HKSAR plays an important role in the judiciary of Hong Kong. It exercises a wide range of judicial powers and a large number of cases are heard in the High Court each year. The total case disposal of the Court of Appeal in 2017 was about 600 appeals. The total case disposal of the Court of First Instance in 2017 for appeal cases, criminal cases and civil cases in 2017 was about 800, 1,200 and 16,000 respectively. The High Court judges conduct difficult trials, adjudicate civil and criminal disputes and resolve important question of law.