

**HONG KONG
DISTRICT COURT
PRACTICE**

**Seventh Edition
Volume 2**


P Y Lo

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**HONG KONG
DISTRICT COURT
PRACTICE**

**Seventh Edition
Volume 1**

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ISBN: 978-988-8932-12-2

eISBN: 978-988-8932-13-9

Printed in Hong Kong

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18. PLEADINGS

1. **Service of statement of claim (O. 18, r. 1)**
Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are 2 or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.
2. **Service of defence (O. 18, r. 2)**
 - (1) Subject to paragraphs (2) and (3), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on every other party to the action who may be affected thereby before the expiration of 28 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later. (L.N. 217 of 2000)
 - (2) If a summons under Order 14, rule 1, or under Order 86, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 28 days after the making of the order or within such other period as may be specified therein.
 - (3) Where an application is made by a defendant under Order 12, rule 8(1) or (2), paragraph (1) shall not have effect in relation to him unless the application is dismissed or no order is made on the application and, in that case, shall have effect as if it required him to serve his defence within 28 days after the final determination of the application or within such other period as may be specified by the Court. (L.N. 153 of 2008)
3. **Service of reply and defence to counterclaim (O. 18, r. 3)**
 - (1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8; and if no reply is served, rule 14(1) will apply.
 - (2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.
 - (3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.
 - (4) A reply to any defence must be served by the plaintiff before the expiration of 28 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 28 days after the service on him of the counterclaim to which it relates. (L.N. 153 of 2008)
4. **Pleadings subsequent to reply (O. 18, r. 4)**
No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

July 2010, HCA 198/2010) (CFI); *Resource Development Ltd v Swanbridge Ltd* (unreported, 31 May 2010, HCA 1873/2009) (CFI); *C Y Foundation Group Ltd v Yung & Ors* [2012] HKCU 781 (unreported, 13 April 2012, HCA 933/2011) (CFI). The Mediation Notice, Mediation Response and Mediation Minute shall be filed in court and these documents may be taken into account by the court on questions of costs: Practice Direction 31 'Mediation', para 15; and see *Bhana v Ocean Apex Trading Ltd* [2010] 6 HKC 209 (DC).

Discovery

In the meantime, the parties should proceed with discovery without the need to wait for an order of the court and try to agree on the directions for modifying discovery obligations or on the manner of their implementation with a view to achieving economies in respect of discovery: Practice Direction 5.2 'Case Management', para 5.

Case Management Summons

Following the filing and service of the timetabling questionnaires, a party is to take out a case management summons, which, like the summons for directions in the previous regime, serves as the mechanism for the continuing management of the case by the court and the umbrella under which interlocutory applications may be made. Registrar Au Yeung stressed the importance of including all proposed directions in the timetabling questionnaire in the case management summons: *Bank of China (Hong Kong) Ltd v Sze See & Ors* (unreported, 15 July 2009, HCA 2383/2008) (CFI). A sample form of a case management summons is provided at Practice Direction 5.2 'Case Management', Appendix B. In deciding what interlocutory applications to make under the case management summons, the parties are advised to bear in mind the following matters: (a) Parties should actively consider what interlocutory applications they will take out and endeavour to reach agreement on directions; (b) Parties should focus on the relevant issues. Proliferation of efforts on irrelevant factual or legal disputes should be avoided; (c) If they cannot reach agreement, the proper course is to take out the appropriate application as soon as possible. They should not send copies of correspondence to the court for adjudication on the papers and the court will not respond to it; (d) Unnecessary and disproportionate interlocutory applications should not be made and will not be entertained. The same applies to unnecessary and unreasonable opposition. They will be met with adverse costs orders summarily assessed; (e) Unnecessary hearings would be cut down. In circumstances where directions could fairly be given on paper without any oral hearing, the courts will do so: Practice Direction 5.2 'Case Management', para 6. Order 25 rule 6, which is designed to request parties at the case management summons stage of the proceedings to provide all information and produce all the documents as the court may reasonably require for the purposes of enabling it to properly deal with the case management summons is not designed for the purpose of striking out a defendant's defence for inaction or anticipated failure in turning up to a scheduled trial: *Hangzhou Lianluo Liaison Interactive Information Technology Co Ltd (杭州聯絡互動信息科技股份有限公司) v China Digital Culture (Group) Ltd (中國數碼文化(集團)有限公司)* [2024] 6 HKC 635, [2024] 4 HKLRD 701, [2024] HKCFI 2460 (10 September 2024).

Determining Timetable

The next substantive step will be on the part of the Court to determine a timetable for the steps to be taken up to the trial, having regard to the questionnaire and the needs of the case. The Court is encouraged to make orders nisi determining the timetable and the directions without a hearing of the case management summons, giving 'great weight' what the parties have agreed but retaining a discretion to override the agreement. See *Final Report*, para 376; Practice Direction 5.2 'Case Management', paras 19, 21. Any party who objects to one or more of the directions given in the order nisi should apply to the court for variation within 14 days after the order is made, failing which the order shall become absolute: Practice Direction 5.2 'Case Management', para 22. Where a hearing is necessitated due to the fault or default of a party (such as failure to comply with Practice Direction 5.2 'Case Management' or failure to co-operate), the court may consider ordering that party to pay the costs of any other party who has attended the hearing, summarily assess the amount of those costs, and/or order them to be paid forthwith: Practice Direction 5.2 'Case Management', para 47.

Registrar Lung set out the approach of the court in a case management summons hearing in *Faith Bright Development Ltd v Ng Kwok Kuen & Ors* (above), in order to assist the legal profession to prepare for the hearing:

The court will generally follow the spirit of the CJR in its approach. The more economical means for the resolution of the parties' disputes will be by way of mediation. If parties are agreeable to conduct mediation to resolve their disputes, the court will consider whether a short stay of the proceedings should be ordered. At that stage, there will be other outstanding matters such as discovery, preparation of the witness statements, expert evidence etc. It will therefore be costs saving if settlement can be reached without those preparations. This is a good reason for staying the proceedings pending the outcome of mediation. However, the court may refuse the application for a stay if the other party refuses and there is evidence that there have been delays on the part of the applicant. Much depends on the circumstances of each case. Whether the proceedings are stayed for mediation or not, the court will also, in the same case management summons hearing, make directions for the future conduct of the matter if mediation fails to reach settlement for the parties. A case management conference will be fixed for the parties. The court will give sufficient time to the parties for the preparations so that when they return to the court for the case management conference, the matter should be ready to be set down for trial. In giving the liberal allowance of time for the parties' preparations for the trial, the court will usually make it clear to the parties that it will not entertain any further application for adjournment at the case management conference without exceptional circumstances. The court will also be more ready to impose draconian order by way of 'unless orders' even if it entertains such application for adjournment. For obvious reasons, the court will be rather vigilant about cases which require expert evidence ... For such cases, the court will usually call upon the parties for oral hearing so that the solicitors may assist it to identify the issues on which expert evidence is required and to work out the appropriate directions by reference to paragraph 20 of Practice Direction and joint meeting between

the experts in order to compile a joint report for the trial [as discussed in the judgment of Lam J in *Chok Yick Interior Design & Engineering Co Ltd v Lau Chi Lun (t/a Chi Hung Construction Engineering Co)* (unreported, 5 May 2010, HCA 1480/2008). The parties should note that the court has the jurisdiction to disallow the party, whose expert has failed or refused to comply with its direction of having a joint meeting with the other party's expert, to adduce his evidence at trial. ... In summary, I set out the considerations the handling solicitors should take as the checklist for the preparation of the case management summons: (1) Mediation certificate — advise clients on costs and to seek information from the Mediation Information Centre at the High Court Building, which is free of charge; (2) Discussion with the solicitor of the other party or parties on the issues of disputes and the best course to take for the resolution of clients' disputes; (3) Timetable for parties to make arrangement for mediation; (4) Should there be a short stay of the proceedings, if so, for how long? If not, what are the reasons? (5) The further conduct of the proceedings and the best course to take in order to save time and costs if mediation fails; (6) Fill in the Timetabling Questionnaire with caution; (7) Where there is an application for leave to adduce expert evidence at the trial, beware that the Court will raise the following issues at the hearing: (a) the part of the pleadings on which expert evidence is required; (b) the names of the experts, the areas of expertise required with specific directions on the framing of the questions for the experts to answer for the resolution of the disputes; (c) Single joint expert to be appointed, if not, why not?; (d) Timetable for joint meeting of the experts on a without prejudice basis to work out the single joint report, in which the experts set out the issues agreed and the issues in dispute, with their respective reasons to support their views in dispute; (e) The time for the compilation of the single joint report; (f) If parties consider it is not appropriate to have joint meeting between the experts and to compile a single joint report, the reasons for it. The hearing of the case management summons may be shortened if the parties have considered the above and made the proposed directions for the court's approval at the hearing. If, on the other hand, the parties are totally unprepared for the hearing, the court may refuse to make any directions and adjourn the case management summons to another date with no order as to costs between the parties or from their respective clients. The Court cannot fix the Case Management Conference for the parties too. In passing, I will also like to express my own view on the timetabling questionnaire and listing questionnaire for the adjourned hearings subsequent to the first hearing. The timetabling questionnaire for the case management summons should set out all the outstanding matters. If the case management summons hearing is adjourned to another date, the parties may rely upon the first timetabling questionnaire unless there are drastic changes, for which, the first timetabling questionnaire is no longer applicable, then the parties should file and serve a fresh timetabling questionnaire, bringing the drastic changes to the court's attention. This applies the same to the case management conference where listing questionnaires are prepared in accordance with para 24 of *Practice Direction 5.2*. Under para 32(4) of the *Practice Direction*, the Court may

adjourn the case management conference to another date, which, in my view, is a continuation of the previous case management conference though it is called the second or the third case management conference. It can be seen that it requires substantial time for a solicitor to prepare the timetabling questionnaire or the listing questionnaire, with all the particulars to be verified. The court can rely upon the information in the first questionnaire and make directions, with a view to reducing and limiting the scope of outstanding matters. As such, it will be a waste of time for the solicitors to prepare a fresh questionnaire each time, simply to repeat what they had told the court in their previous questionnaire. The solicitors have the obligation to inform the court at the adjourned hearing such minor changes that have occurred during the adjourned period that may affect the progress of the proceedings. However, the court may, in appropriate cases, order that the parties should put in a fresh questionnaire for the adjourned hearing of either the case management summons or the case management conference.

Milestone Dates

The timetable the Court is to determine will be a firm one, with milestone dates (ie a date fixed for a case management conference, a pre-trial review or the trial, or a trial period fixed by the Court) not capable of variation by agreement between the parties. The Court is not going to vary a trial date or trial period save 'in very exceptional circumstances'. See *Final Report*, para 380. Parties have been advised that for the purpose of determining whether the most exceptional circumstances exist to justify varying a milestone date, late instructions from client, change in the team of lawyers and the absence of prejudice to the other party which cannot be compensated for by costs will not be treated as exceptional circumstances: *Practice Direction 5.2 'Case Management'*, para 42. For proceedings initiated by an originating summons, the substantive hearing of the application initiated under it is a milestone date; see *Lin Chien Hsiung v Lin Hsiu Fen* [2022] HKCU 52, [2022] HKCFI 340 (28 January 2022); *The Joint and Several Liquidators of Shanghai Huaxin Group (Hongkong) Ltd (in liq) v Huainan Mining Industry International Ltd (淮礦國際有限公司)* [2024] HKCU 3854, [2024] HKCFI 2542 (23 September 2024). The Court would therefore be vigilant against attempts to derail the timetable set. Where there is an order setting a deadline for making interlocutory applications, late applications require an explanation and should not be entertained without the Court being satisfied with the explanation for the delay. Further and in any event, a late application should not be entertained in the absence of a draft of the proposed application save for exceptional reasons: *Raytech Industries Co Ltd v Leung Wai Kit* [2014] HKCU 1186 (unreported, 16 May 2014, HCA 1360/2011) (CFI). An assessment of damages hearing is a milestone date: *Lee Priscilla Siok Ai v Wong Lok Him* [2023] HKCU 818, [2023] HKDC 295 (24 February 2023).

Failure to observe milestone dates, to adhere to the timetable laid down by the court, and case management orders in respect of the hearing of an assessment of damages can lead to the court striking out the plaintiff's claim and ordering the plaintiff's solicitors to bear all the costs thrown away on both sides as a result personally. Also, the court should not be taken hostage by the legal representatives of a party due to their own negligence, omission, inefficiency and/or sheer incompetence, whatever the case may be which have caused their failures in complying with the orders of

the court in the first place, in respect of the time available to read into documents filed and served completely out of time and at the very last minute: *Wong Fong Yuk v Wong Hing Sing & Anor* [2017] HKCU 1408 (unreported, 6 June 2017, DCPI 1694/2013) (DC).

Cases cannot 'go to sleep' after milestone dates have been set. If the plaintiff fails to appear at the case management conference or pre-trial review, the Court is to provisionally strike out the action, subject to the right of the plaintiff to apply for restoration of the action before the expiry of three months from the date of the case management conference or pre-trial review, as the case may be. The Court is not to restore the action unless good reasons have been shown to the satisfaction of the Court. On the other hand, it is to be noted that only the claim of the non-appearing party, and not his defence against the claim of the opposite party, would be provisionally struck out pursuant to the rules of court; see *Jindong Securities Ltd v Golden World Motors (International) Ltd* [2021] 5 HKC 87, [2021] HKDC 636 (28 May 2021).

Case Management Conference

A case management conference is a critical stage in the proceedings and for most of the cases virtually the only milestone event before trial. It is not a second opportunity for the parties to ask for directions which they could have sought after they have first filed their timetabling questionnaires: Practice Direction 5.2 'Case Management', para 28. A case management conference might be set with its date the first milestone date in a heavy case with complicated procedural matters, since such circumstances make it difficult to fix a realistic trial date or trial period at the summons for directions stage. The date of the case management conference will probably be set for a time when it is envisaged that most of the outstanding pending interlocutory disputes would have been dealt with. Directions will then be made setting out the steps to be taken up to the case management conference. See *Final Report*, para 385.

Parties are expected to have complied with the timetable laid down by the court by the time of the case management summons. Unless sufficient grounds have been shown to it, the court will not grant extensions of time for compliance. If it does, the grant of extension will most likely be on an unless order basis with self-executing sanctions: Practice Direction 5.2 'Case Management', para 29.

Not less than seven days before the date fixed for a case management conference, each party shall file and serve a listing questionnaire, which requires the party to provide information on the progress of trial preparation in terms of confirmation of steps or decision having been taken and give explanation for not being able to confirm the taking of particular steps or decisions. The party is also required to inform the court of his preferences in listing and give an estimate of the length of the trial and the earliest date that the case can be ready for trial. The party is further required to provide information on related proceedings, attempt(s) on mediation and a summary of the brief factual background of the case and the issue(s) to be tried. Practice Direction 5.2 'Case Management', Appendix C. The parties are also expected to indicate accurately and fully the extent of further interlocutory applications or appeals to be made. The later in time and the closer to a trial date an application is made, the less likely it is for the Court to entertain it: Practice Direction 5.2 'Case Management', paras 30, 31. See also *Bank of China (Hong Kong) Ltd v Sze See & Ors* (above). Even if the parties have agreed to attempt mediation, that does not mean that a case management conference will be adjourned. What the court will do is to take into account the time

needed for mediation and may give leave to set down for trial if there are no other outstanding directions, thus ensuring that mediation and, if necessary, litigation, will proceed at reasonable speed. Thus parties are expected to comply with all directions and Practice Direction 5.2 'Case Management' once a case management conference is fixed, including the filing of a listing questionnaire for the purpose of the case management conference, a useful tool to inform the court the outstanding directions to be complied with. The listing questionnaire also binds the parties so that if a party confirms that he has no further interlocutory applications, the court will him to that confirmation and set the case down for trial if appropriate: *Hui Ling Ling v Sky Field Development Ltd* [2009] HKCU 1216 (unreported, 22 July 2009, HCA 35/2007) (CFI). If a trial date is sought, the parties should lodge with court together with the listing questionnaire a certificate (preferably prepared by counsel who will handle the trial) giving time estimates of how long that legal representative proposes to conduct his case through the stages of opening submission, evidence-in-chief of each of his own witnesses, cross-examination of each of the other party's witnesses, and his own closing submissions, without taking into account the time estimates of other party: Practice Direction 5.2 'Case Management', para 25.

Parties to litigation should give careful and thorough consideration from an early stage of proceedings to the steps that will need to be taken leading up to and at the trial. In the context of documentation for use at the trial, parties should consider from the outset, and in any event, by the time that discovery is undertaken, whether or not it may be necessary to seek to obtain documentation from non-parties for use in the proceedings. Where this is thought necessary, consideration should be given to whether such documentation should be the subject of a non-party discovery application, or (where for example, the documents needed can be identified with some precision) the subject of a *subpoena duces tecum*. In either case, the need for the relevant application should be made known at the case management conference stage, so that any disputes can be resolved in good time before trial, thus avoiding any risk of disruption to the trial: *Waddington Ltd v Chan Chun Hoo Thomas & Ors* [2013] HKCU 1727 (unreported, 19 July 2013, CACV 136/2013) (CA) (endorsing the like-minded approach taken by Poon J in *Big Island Construction (HK) Ltd v Wu Yi Development Co Ltd & Anor* [2008] HKCU 563 (unreported, 29 January 2010, HCA 1957/2005) (CFI) with respect to witnesses). See also *Wong Wai Wing v Mang Fan Lin* [2019] HKCU 1686, [2019] HKCFI 1185 (6 May 2019). Active case management at the case management conference includes, inter alia, identifying the issues and giving directions to ensure that the trial of a case proceeds quickly and efficiently and this involves the court always paying attention to the pleaded case and ensuring the preparation has been done properly before leave is given to the plaintiff to set the case down for trial. In this context, the fact that the court raised an issue at the case management conference should not be taken as the court making any indication to any party; this was done in order to ensure that there would not be a last minute application on that matter before trial: *Lin Man Yuan v Kin Ming Holdings International Ltd & Anor* [2013] HKCU 1419 (unreported, 16 September 2013, HCA 216/2008) (CFI).

Parties and their legal representatives should be disabused of the notion that they do not need to prepare for a case management conference and that all that is required is their attendance and a statement of an intention to make a particular application. Case management conferences should be taken seriously, bearing in mind the

obligation imposed by O 1A r 3 to assist the court to further the underlying objectives: *Raytech Industries Co Ltd v Leung Wai Kit* [2014] HKCU 1186 (unreported, 16 May 2014, HCA 1360/2011) (CFI).

The court will at a case management conference:

- (a) review the steps which parties have taken in the preparation of the case, and in particular their compliance with any directions that the court may have given;
- (b) decide and fix a timetable for the steps which are to be taken by the parties to secure the progress of the case in accordance with the underlying objectives;
- (c) ensure as far as it can that all admissions that can be made and all agreements that can be reached between the parties about the matters in issue and the conduct of the claim are made and recorded;
- (d) adjourn the case management conference to an other date, fix a date for pre-trial review, or fix the trial date or a trial period; and
- (e) ascertain the parties' attempt or intention to undergo alternative dispute resolution: Practice Direction 5.2 'Case Management', para 32.

The court has power to provisionally strike out an action under r 4 where the plaintiff does not appear at a case management conference, subject to an application by the plaintiff for restoration of the claim. In the application, the plaintiff must first explain the absence to meet the threshold of showing 'good reasons'. Then the court will consider whether, as a matter of discretion, it should grant the restoration. If the court decides to restore the claim, the court may consider conditions to be imposed. The following are not good reasons:

- (a) the parties engaging in mediation;
- (b) complications in multiple actions.

While mistake or oversight by solicitors may constitute a good reason, it is incumbent upon the solicitor to explain how the fault came about. The plaintiff should also show that he has reasonable prospects of success. A defendant who wishes the court to impose conditions for the restoration should propose the conditions. Where payment of security or other conditions are required, details should be given to enable the court to come to a fair decision: *World Chinese Business Investment Foundation Ltd & Ors v Shine Rainbow Marketing Ltd & Ors* [2010] 2 HKC 294 (CFI). See also *Tang Kim Luen v Tam Wai Bing (t/a Tai O Seafood Restaurant)* [2011] HKCU 2124 (unreported, 3 November 2011, DCPI 1089/2010) (DC); *Wishing Star Ltd v Etrema Co Ltd & Anor* [2014] HKCU 263 (unreported, 29 January 2014, HCA 656/2010) (CFI); *曹雯娟 v 馬惠屏 & Anor* [2025] HKCU 5451, [2025] HKCA 868 (26 September 2025). The court has the power to order restoration of an action limited to the issue of costs: *Lee Yuk Tsan & Anor v So Kwai Chung & Anor* [2022] 6 HKC 117, [2022] HKCFI 2235 (22 July 2022). The court is entitled in an application for restoration of the claim to consider whether part of the claim not only lacks reasonable prospect of success but is actually hopeless, so that in a clear and obvious case, it may conclude that such part of the claim would have been liable to be struck out: *Wong Kar Gee Mimi v Applied Development Holdings Ltd* [2016] 1 HKC 350 (CFI). However, the court should not in such an application hear the merits on the matter unless it is so clear that there is no real answer to it: *The Real Estate Developers Association of Hong Kong v Building*

Authority [2015] HKCU 1176 (unreported, 14 May 2015, HCMP 1746/2014) (CA); and *Kharma Greater China Ltd v Kharma International BV* [2017] HKCU 734 (unreported, 17 March 2017, HCA 545/2013) (CFI). The court still has the power to allow the restoration of a claim under this rule notwithstanding the expiry of the three month period provided under r 3: *Leung Kwai Ying v Luk Man Yeung* [2016] 3 HKC 1 (DC) (following *Chau Ming Shuen v Moretide Investments Ltd (t/a Kai Bo Frozen Meat Supermarket and Kai Bo Food Supermarket)* [2012] HKCU 591 (unreported, 13 March 2012, DCEC 624/2010) (DC)). cf *Lei Tao v Yenhon (HK) Display Co Ltd & Anor* [2016] HKCU 2097 (unreported, 2 September 2016, HCA 1197/2012) (CFI); *Yeung Ka Hing v Lee Kwan Automation Technology (Hong Kong) Ltd* [2019] HKCU 1941, [2019] HKDC 671 (24 May 2019).

The Court may, taking a proactive role following Civil Justice Reform at the case management conference raise with the parties in the absence of an application whether there are real issues to be tried and striking out the defence on the basis that it is obviously unsustainable and enter interlocutory judgment on liability: *Yang Yee Man v Leung Hing Hung (No 2)* [2013] 1 HKLRD 843, [2013] HKCU 147 (CFI).

By setting milestone dates progressively, the Court retains substantial flexibility in the management of the case. See *Lo Shu Lam (t/a Lam Sing Machinery Engineering Co) v Kin Ming Construction Co Ltd* [2009] HKCU 1532 (unreported, 13 October 2009, HCA 191/2008) (CFI) (followed in *Huang Neeracha v Osim (HK) Co Ltd* [2010] HKCU 1442 (unreported, 28 June 2010, DCPI 1885/2009) (DC)).

The court must be vigilant against attempts to derail the timetable set. Where there is an order setting a deadline for making interlocutory applications, late applications require an explanation and should not be entertained without the court being satisfied with the explanation for the delay. Further and in any event, a late application should not be entertained in the absence of a draft of the proposed application save for exceptional reasons: *Raytech Industries Co Ltd v Leung Wai Kit* (above).

Failure to observe milestone dates, to adhere to the timetable laid down by the court, and case management orders in respect of the hearing of an assessment of damages can lead to the court striking out the plaintiff's claim and ordering the plaintiff's solicitors to bear all the costs thrown away on both sides as a result personally. Also, the court should not be taken hostage by the legal representatives of a party due to their own negligence, omission, inefficiency and/or sheer incompetence, whatever the case may be which have caused their failures in complying with the orders of the court in the first place, in respect of the time available to read into documents filed and served completely out of time and at the very last minute: *Wong Fong Yuk v Wong Hing Sing & Anor* [2017] HKCU 1408 (unreported, 6 June 2017, DCPI 1694/2013) (DC).

The procedural economy and efficiency encouraged by the Civil Justice Reform requires true speed and not mere haste. A case should not be set down for trial unless all procedural steps that may impact on the trial have been completed and realistic certificates of time estimates for trial have been filed. Otherwise it may lead to even more delay and more case management conferences: *Kam Lan Koon & Ors v Tong Cun Ming* [2014] HKCU 2334 (unreported, 9 October 2014, HCA 336/2012) (CFI).

The Trial

Trial dates are milestone dates which are immovable save in the most exceptional circumstances. In *Arko Ship Leasing Ltd v Winsmart International Shipping Ltd* [2013]

2 HKLRD 121, [2013] HKCU 254 (CFI), Godfrey Lam J set out a number of relevant matters to consider when approaching an application to vacate trial dates on the ground of unavailability of witnesses. Where an application for vacation of trial dates is based on the unavailability of a relevant witness, the appropriateness and feasibility of receiving oral evidence via videolink should be considered, on the understanding that although traditionally the adjudication of civil disputes usually requires the attendance of witnesses at a trial for adducing their evidence by the conventional mechanism of examination-in-chief and cross-examination, there is in contemporary litigation a greater willingness to receive certain evidence by other media, for example via videolink, in furtherance of the interests of promoting efficiency and expedition and avoiding unnecessary time, costs and complexity, so as to reach an evaluative judgment in exercise of its discretion that is not confined to bilateral inter partes considerations as the court will also be alert to material considerations on the administration of justice, ie, the court's ability to determine any claim in accordance with the interests of justice and fairness to both parties: *Skyrun Light Industry (Hong Kong) Co Ltd & Anor v Swift Resources Ltd & Ors* [2017] HKCU 2160 (unreported, 19 July 2017, HCA 1278/2014) (CFI). The solicitor has a positive duty to inform the court in a timely fashion that, due to his or her client's physical condition, he or she can no longer be able to give evidence in the usual way at the trial so that appropriate arrangements can be made and suitable adjustments to the length of the trial will be provided for: *Ho Yuk Yee v the S-J for and on behalf of Food and Environmental Hygiene Department* [2021] HKCU 3808, [2021] HKDC 910 (12 August 2021). When a medical disability is being relied on as a ground of adjournment, the court must, apart from taking into account all relevant circumstances including matters such as the nature of the claim and the antecedents of the litigation, examine the medical evidence the applying party has adduced for the purpose of considering the genuineness of the complaints; and if they were found to be genuine, their nature and the seriousness of the conditions: *Ma Yong Mei v Cheng Muk Lam* [2014] HKCU 2540 (unreported, 4 November 2014, DCPI 631/2012) (DC). Where it is sought in a personal injuries action for trial dates to be vacated on the basis that the plaintiffs were not in good health and condition to be able to prepare for and testify at trial, it would be more helpful if medical experts were made aware of the court's concerns about varying a milestone date and, when preparing reports in support of an application for an adjournment, the relevant experts should be asked to consider what ameliorative measures could be put in place if the party or witness were to have to give evidence and to explain, if this were the case, why such ameliorative measures might not be sufficient to address the perceived difficulties. This would assist the court in making an assessment on an informed basis as to whether an adjournment was warranted at that particular stage. An unexplained recommendation for an adjournment, even if accompanied by a diagnosis of the condition of the patient and the proposed course of treatment, does not serve the same purpose. Such experts must also be prepared to come to court to give evidence to support his or her opinion if necessary, although it is not intended that applications of this nature become mini-trials in themselves. The decision as to whether a trial should proceed due to the delicate state of a party's or witness' state of mind is one for the trial judge and not solely for a medical expert. If this were not the case, there would be a real danger of the pace of litigation being dictated by a party and his medical witnesses and this would be contrary to the spirit of the Civil Justice Reform and its underlying objectives. The court must seek to arrive at a determination

that is fair to both parties. It is not right, as the plaintiffs assert, that the adjournment of the trial will cause no prejudice whatsoever to the defendant. The defendant also has an interest and entitlement to the proceedings being brought to a conclusion as soon as reasonably and fairly practicable. The adjournment of the trial will inevitably increase the burden of anxiety on him: *Law Yin Pok Bosco v Dr Chan Yee Shing* [2012] HKCU 2647 (unreported, 2 November 2012, HCMP 2256/2012) (CA); *Elijah Saatori v Raffles Medical Group (Hong Kong) Ltd* [2017] HKCU 2331 (unreported, 13 September 2017, HCMP 3224/2016) (CA). Medical evidence sought to justify an adjournment of a milestone date must address the issue of whether the party concerned is unfit to attend the trial because of his medical condition: *PMCL also known as LMC also known as KLMC v AKK also known as KAK & Anor* [2024] HKCU 5617 (2 December 2024). A litigant who has complied with all orders of the court and who has shown himself manifestly ready for trial will be listened to sympathetically if illness or some other mishap requires him to ask for an adjournment: *Karla Otto Ltd v Bulent Eren Bayram & Anor* [2017] HKCU 504 (unreported, 24 February 2017, HCA 821/2011) (CFI). Giving leave to set a case down for trial is a judicial function. Fixing the trial dates is an administrative function. The expeditious dispatch of the court's business, namely that parties who come to court for resolution of their dispute expect a trial to take place once the case is ready (and in so far as judicial resources permit) so that the party who is eventually vindicated by such trial will be able to enjoy the fruits of any judgment in his favour as soon as possible is an aspect of the wider public interest. An application for vacation of trial dates must consider the nature of the proceedings and what is at stake in particular to the applying party the difficulty in having other senior and junior counsel in taking up the case (if applicable), and the risk of prejudice or other disadvantage to the other party if the trial is postponed, as well as the said wider public interest: *DBS Bank (Hong Kong) Ltd v Sit Pan Jit* [2013] HKCU 948 (unreported, 26 April 2013, HCA 382/2009) (CFI). Although the parties may have agreed to an adjournment of a trial, the court retains a wide discretion to decide whether to adjourn, even if it minded to do so, it may impose terms as it thinks expedient. The party seeking the adjournment has the primary responsibility to promptly inform the court of the reasons for adjournment in the first place. They must not simply assume that the court would just rubber stamp a consent application to adjourn: *World Asia Consultants Ltd v Gold Plaza Ltd* [2023] HKCU 76, [2023] HKDC 35 (4 January 2023).

As to whether permission should be given for using the Technology Court to receive evidence through video link, the matters set out in Practice Direction 29 'Use of the Technology Court' should be taken into account, with the question to be addressed being what course is best calculated to achieve a just result for both parties and this requires the court to consider the balance of prejudice as between the parties: *Mallorca v Ng Mei Shuen* [2019] 1 HKC 484, [2018] HKCFI 1642 (26 July 2018) (following *Daimler AG v Leiduck & Ors* [2013] 5 HKC 170, [2013] 2 HKLRD 822 (CA)); *Sarniti v Lee Suk Ling* [2019] 6 HKC 319, [2019] HKDC 495 (4 April 2019); *Re Nobility School Ltd* (貴族商學院有限公司) [2020] HKCU 1124, [2020] HKCFI 891 (20 May 2020); *Imperial Pacific International (CNMI) LLC v Chan Chi Hung* [2025] HKCU 1696, [2025] HKCFI 1512 (11 April 2025). The disadvantages brought by the witness giving evidence elsewhere should be carefully weighed against other facts such as the reason why such a witness could not come to testify in the court room: see *AD (also known as AT) v RT (Evidence*

via VCR) [2024] HKFLR 416, [2024] HKCFI 2329 (3 September 2024). The same considerations apply to the taking of evidence by deposition: *Ang Jimmy Tjun Min (suing for and on behalf of all shareholders of Banner (China) Investment Co Ltd) v Khoo Chun Kim & Ors* [2023] HKCU 4983, [2023] HKCFI 3047 (30 November 2023); and *Ang Jimmy Tjun Min (suing for and on behalf of all shareholders of Banner (China) Investment Co Ltd) v Khoo Chun Kim* [2025] HKCU 2395, [2025] HKCFI 2106 (20 May 2025). As to the additional considerations associated with the COVID-19 pandemic, see *Au Yeung Pui Chun v Cheng Wing Sang* [2020] HKCU 2838, [2020] HKCFI 2101 (10 August 2020); *Taishin International Bank Co Ltd v QFI Ltd* [2020] HKCU 1212, [2020] HKCFI 938 (25 May 2020); *Yeung Abraham v Sun King Kai* [2021] HKCU 3628, [2021] HKCFI 2224 (3 August 2021); *Seto Sha Li v Lai Jin Tong & Anor* [2021] HKCU 5820, [2021] HKCFI 3561 (1 December 2021). On the other hand, the potential of creating injustice in forum of the witness who gives evidence by video conferencing due to technological interruption and reduction of the formality of proceedings should be considered, see *Esports Business Development Ltd v Wong Chun Yee Christopher* [2022] HKCU 4093, [2022] HKCFI 2627 (23 August 2022); *Pacific Bulk Supramax Co Ltd v Wong Man Kam Patrick & Anor* [2023] 4 HKLRD 152, [2023] HKCU 3243, [2023] HKCFI 1973 (31 July 2023). The Court of Appeal has observed that the decision on refusal to take evidence of a highly controversial witness by video conferencing facilities is a case management decision, requiring a very high threshold for the Court of Appeal to disturb it: *Standard Chartered Bank (Hong Kong) Ltd v Lau Lai Wendy & Anor* [2021] 2 HKLRD 425, [2021] HKCU 1294, [2021] HKCA 380 (25 March 2021).

The Working Party envisaged that in the majority of cases a case management conference would not be needed and the Court should be able on the basis of the timetabling questionnaire to decide what directions are needed and to fix a timetable up to and including the date for the pre-trial review and the trial date. The pre-trial review should be fixed to occur after completion of discovery, exchange of expert reports and witness statements. It should be listed to take place two or three months before the trial date or the start of the trial period. At the pre-trial review, the judge or master would:

- (a) fix the starting date of the trial if trial period has been fixed at the case management summons or case management conference stage;
- (b) confirm or vary the estimated length of the trial in the light of completed interlocutory steps;
- (c) give any further directions needed (including any needed extensions of time for interlocutory tasks not yet completed, on any appropriate 'unless order' terms or terms as to costs) provided that such directions will not impinge upon the trial date. See paras 386 and 388 of the *Final Report*.

It must be remembered that milestone dates cannot be changed unless for exceptional reason; the Court refused to stay a personal injuries action in the running list pending a belated application for legal aid by the plaintiff since the stay would mean that the trial period, a milestone date, would be adjourned: *Chan Chun Shing v Chang Chen Chin (t/a Tong Tak Co)* [2009] HKCU 639 (unreported, 4 May 2009, HCPI 395/2008) (CFI) (followed in *Huang Neeracha v Osim (HK) Co Ltd* [2010] HKCU 1442 (unreported, 28 June 2010, DCPI 1885/2009) (DC)). See also *Tsang Chi Cheong*

v The Incorporated Owners of Mei King Mansion (Stage 1) [2014] HKCU 1712 (unreported, 22 July 2014, DCPI 23/2012) (DC). On the other hand, the requirement for exceptional circumstances does not exist under O 25 r 1B(1), which entitles the court, of its own motion, to vary any timetable fixed by it under O 25 r 1A. That power would include the power to adjourn a trial date: *Samuel Tak Lee v Tsang Chiu Wing Florence* [2012] 1 HKC 185 (CFI).

Personal Injuries Actions in the District Court: Automatic Directions, Review from time to time, and Measures to Ensure Compliance

Automatic directions, similar to those in The Rules of the High Court (Cap 4A), are to be provided in relation to personal injury actions. Guidance was given on case managing undefended personal injuries cases in *Chik Yuk Pui v Grace Mind Corp Ltd (t/a Tsuno Japanese Restaurant)* [2015] HKCU 1160 (unreported, 22 May 2015, HCPI 917/2014) (CFI). The case management approach in personal injuries cases, in light of a personal injury claim being one dealing with physical/mental injuries and their impact on the plaintiff, was reiterated in *Ravi Gidumal & Ors v Dr Richard Wing Chiu & Anor* [2019] 5 HKC 36, [2019] HKCFI 228 (31 January 2019) and *Chan Ying Wai v S-J (for and on behalf of Commissioner of Correctional Services)* [2019] HKCU 1470, [2019] HKCFI 988 (15 April 2019). A litigant, particularly in a personal injuries case in the District Court, should not be allowed to include unnecessary and irrelevant materials in their witness statements and/or disclosed documents. Their lawyers should not put in whatever their clients want them or instruct them to include in their witness statements and/or documents without taking into consideration of the underlying objectives, and without considering whether those contents or documents should be included in the first place. The PI Master is to refer to the PI judge a personal injuries action in which the parties have brought into matters that are totally irrelevant, trivial and petty at a relatively early stage of the proceedings for further case management to bring to an end disproportionate attempts on both sides to exaggerate the claim and the defence: *Kong Sau Hing Alice v Yip Yuen Yee Pamela* [2022] HKCU 1066, [2022] HKDC 216 (9 March 2022).

The pre-action protocol in Part B of the Practice Direction 18.1 'The Personal Injuries List' has often been neglected (and sometimes totally ignored) by practitioners in personal injuries claims in the District Court. The pre-action protocol encourages parties to disclose such documents in order to encourage early settlement or disposal of action without the plaintiff issuing proceedings or parties going to trial in appropriate cases. However, often no constructive reply was given by the proposed defendant after the letter of demand was issued by the proposed plaintiff. Sometimes when a constructive reply was given and request for information and documents was made by the proposed defendant, the proposed plaintiff would simply ignore them. Worse still, when discovery in relation to issues of liability or quantum was made by a defendant, for example like a CCTV footage which indisputably shows how the accident occurred, they are simply ignored and the proposed plaintiff would simply go ahead with issuing the proceedings, ignoring the possible dire consequences on costs: *Li Suk Yee v ParknShop (HK) Ltd* [2024] 1 HKLRD 146, [2023] HKCU 4929, [2023] HKDC 1670 (24 November 2023). The pre-action protocol is not meant to be just a 'go through the motions' exercise. It is to be taken seriously by both the claimant and the proposed defendant or insurer (and their legal representatives) so as to avoid any unnecessary litigation and to facilitate settlement before the issue of proceedings. The

pre-action protocol is self-contained and provides all that is needed for the parties to settle a case before the commencement of proceedings. The intent of a letter of claim is to provide the proposed defendant with sufficient information to begin to understand, investigate and assess liability and quantum aspects of the claim. If it is not properly drafted and does not enclose all information and documents 'reasonably required', it will not serve such a purpose. Failure to provide crucial information such as that of a parallel employees' compensation claim, particularly when the defendant was not the employer and hence would not have knowledge of the employees' compensation proceedings unless the plaintiff or his solicitors inform him, defeats one of the purposes of having the pre-action protocol. The disclosure of the fact that an accident occurred in the course of employment and that employees' compensation proceedings have already been brought by the proposed claimant will help the parties to focus on the medical and income evidence that might have already been discovered in the employees' compensation proceedings. This will certainly help the defendant or his insurer to make a constructive reply with the real possibility that the case can be settled without the need for the plaintiff issuing the common law proceedings. Also, the proposed defendant should give a constructive reply, one that is useful in the furtherance of the objects of para 19 of the Practice Direction, such as to provide mutual disclosure of information and documents for attempting to settle the claim in whole or in part. Ignoring the pre-action protocol will give rise to sanctions including adverse costs consequences and wasted costs order: *Mak Shiu Cheung v Luk Man Tai* [2024] 2 HKC 418, [2024] 1 HKLRD 391, [2023] HKDC 1801 (18 December 2023).

The court will from time to time review ongoing cases, particularly personal injuries cases put on the running list in the District Court without a prior case management conference or pre-trial review hearing before the PI judge or trial judge. This is to ensure that the cases are really ready for trial as presented by the parties and that there will be no last minute surprises or applications for adjournment of the trial; see *Ho Yuk Yee v the S-J for and on behalf of Food and Environmental Hygiene Department* [2021] HKCU 3808, [2021] HKDC 910 (12 August 2021).

The District Court has directed that for all personal injuries cases, save and except the first couple of requests for adjournment by way of joint applications or consent summons, the parties requesting the adjournment must provide a detailed written explanations, within a specified time, such as seven days, as to the reason(s) of why any of the agreed or ordered directions or dates cannot be met; or if the case is not set down on time, or if either of the parties request for the adjournment of the checklist review hearing; that if a party fails to comply with the direction to provide the written explanations, appropriate orders including sanctions on costs will be made against the defaulting party; that if the delays are caused by the legal representatives, the court will request the legal representative to show cause as to why the costs caused by the delays or non-compliance should not be borne by them personally and on an indemnity basis; and that if the PI master is not satisfied there is justifiable grounds for any delays and/or good explanations for the non-compliance with the order made by the court at the checklist review hearing; or if there are repeated attempts to adjourn, the case will be referred to a PI judge for a case management conference with a view to 'fast track' the progress of the case by way of a strict timetable: *Ma Ching Wang (a minor) v Choy Yee Lim & Anor* [2021] 5 HKC 730, [2021] 4 HKLRD 219, [2021] HKDC 890 (20 August 2021).

The District Court has also directed that parties in personal injuries actions are required to report any non-compliance of any orders or directions given by the PI masters at the checklist review hearings, and such non-compliance would include failures on the part of their opponent in responding to their correspondence, and that any delay caused by the failure to respond to the requests/reminders from the opponent and/or inaction on the part of a solicitor to comply with the agreed directions and/or order of the court may be met with a costs order to be personally borne by the solicitor responsible on an indemnity basis and to be paid forthwith: *Lo King Hung v Eternal Richest Ltd* [2021] 6 HKC 537, [2021] 4 HKLRD 340, [2021] HKDC 1127 (3 September 2021).

The District Court has directed that in view of an unhealthy trend in recent years in personal injuries litigation that claimants issue parallel common law proceedings alongside with the employees' compensation proceedings when there is no sound factual or legal basis to support any breach of duties or not, and then have the common law action brought up for case management or trial, incurring in the process a lot of unnecessary (and often duplicated) costs, the parties should henceforth declare if they have any parallel/related common law proceedings arising out of the same work related accident at an early case management stage of the employees' compensation proceedings, in order to enable the court to bring up and deal with these claims by way of direction hearings, case management conferences or pre-trial review hearings in order to make sure that the employees' compensation and common law claims arising out of the same work accident will be dealt with expeditiously and without parties having the need to incur duplicated and unnecessary costs: *Chan Fung Yu Anji (陳豐裕) v Hong Kong Sheng Kung Hui Welfare Council Ltd (香港聖公會福利協會有限公司)* [2023] 5 HKC 519, [2023] 4 HKLRD 223, [2023] HKDC 934 (7 July 2023).

The District Court has put on record the usual practice of fixing a hearing date with the listing officer at the Registry in the District Court when parties try to obtain an earlier date(s) for hearing for reference for practitioners. Notwithstanding that a hearing date has been fixed, a party could write to the Personal Injuries judge or the judge assigned to hear the application to seek to fix an earlier date so as to avoid affecting the 'milestone date': *Sek Man Lai v William Engineering Ltd & Ors* [2023] HKCU 3761, [2023] HKDC 1251 (7 September 2023).

In personal injuries litigation, it is the usual case that a defendant will apply to set aside a default judgment against him, if the defendant wishes to argue that the late plaintiff was contributory negligent in causing his own injuries. It would be rather late in the proceedings for a defendant to raise a defence of contributory negligence in his answer to the plaintiff's revised statement of damages. By then, a personal injuries case is usually past the stage of evidence gathering. The reliance of such a defence at that stage will invariably stall the case in its quest towards setting down for trial: *Cheung King Ting v Yau Shuk Kuen & Anor* [2024] HKCU 5495, [2024] HKDC 2100 (23 December 2024).

A hearing for assessment of damages is a milestone date and considerations similar to those applicable regarding adjournment of a trial date apply: *Lee Priscilla Siok Ai v Wong Lok Him* [2023] HKCU 818, [2023] HKDC 295 (24 February 2023). Whilst the court can contemplate the need for proactive global case management of separate legal actions arising out of an incident causing injuries and damage to multiple victims where such actions involve common issues of fact or liability,

the situation of separate actions by the same plaintiff through different legal representatives against different defendants in respect of the same damage arising out of the same incident as well as the maintenance of such situation is not as conceivable for the court to guard against, and the court in this connection would stress that legal representatives must be alert to such cases: *Cheung Lik Hang S-J for and on behalf of the Commissioner of Police* [2024] 3 HKLRD 916, [2024] HKCU 2821, [2024] HKCFI 1855 (19 July 2024). The District Court has advised on the matters to take into account by assigned legal representatives in deciding whether there is a reasonable chance of success in a personal injuries case to justify the grant or the continuation of legal aid. And if counsel has been assigned to advise on a personal injuries claim at an early stage of the proceedings, he or she should be given the opportunity to provide an updated advice on the merits and evidence after discovery is complete and witness statements are exchanged but before the case is set down the trial. In experience, a view that counsel formed on merits at an early stage of proceedings may not hold good once full discovery has been made. The view has been expressed that it will be irresponsible for an assigned solicitor to simply rely on an old written advice of counsel, without making sure that proper discovery has been made and all the updated evidence are obtained, before advising the Director of Legal Aid to issue a certificate to cover the trial: *Cheung Pong Chun v Jasmine Cuisine Ltd* [2024] 3 HKLRD 140, [2024] HKCU 2042, [2024] HKDC 842 (28 May 2024).

Unlawful Detention Cases

The District Court has been managing the caseload of unlawful detention cases against the Government using measures and procedures that include adopting and issuing standardized time tables and template directions particularly those for Case Management Conference and for Pre-trial Review, identifying and singling out special individual cases and the categories of cases requiring oral hearing for case management and then arranging the hearings to be conducted *en bloc* as appropriate and then having all the other unlawful detention cases managed by routine paper disposals in batches according to which firm of solicitors represented the plaintiffs, in order to maximise costs and time effectiveness and to maintain proportionality; see *Kristanto Doni v S-J* [2025] 4 HKLRD 182, [2025] HKCU 3727, [2025] HKDC 1209 (18 July 2025).

Case Settlement Conference

Case Settlement Conference is an initiative introduced in the District Court for the holding of a conference presided by a master with experience in mediation on a without prejudice basis to facilitate settlement. During the Case Settlement Conference, the master may explore with the parties the cost-benefit analysis on the case (or a particular issue in dispute) or matters of case management and provide an opinion for reference of the parties. It is not biased on the part of the master to express a strong view or pre-judgment on the part of the master to provide a predictive view during the Case Management Conference. Whether the parties reach a settlement at the Case Management Conference is a matter of choice of the parties and not a decision by the master. In general, the master is not obliged to write a judgment in respect of a Case Settlement Conference. If a judgment is to be written, the parties' views should be sought via the mechanism set out in para 2 of Practice Direction

25.2 'Reports on Hearings Held in Chambers Not Open to the Public'. The master's powers at the Case Settlement Conference are limited to making an order to adjourn the conference (with procedural directions and provision on costs), a consent order disposing of the action (including one that narrows the issues in dispute) or a direction to advance the action to the next stage (such as a Case Management Conference). If a party to the proceedings does not wish to continue, the Case Settlement Conference should be terminated, and the relevant case should be advanced to the next stage with appropriate case management directions: see *The Hong Kong Settlers Housing Corp Ltd (香港平民屋宇有限公司) v Yan Kwok Yip (甄國業)* [2025] 1 HKC 1112, [2024] HKDC 1588 (26 September 2024).

Appeal against Case Management Decisions

Case management decisions are matters within the discretion of the master or the judge making that decision and are generally not susceptible to appeals: see para 38 of the Practice Direction 5.2 'Case Management'. The Court of Appeal has indicated that unmeritorious appeals against case management decisions, at least last minute urgent appeals, are to be deplored since not only are they satellite litigation increasing the costs of the judicial process, they also tend to disrupt the preparation for trial on the part of those representing the opposing party. It is wholly inconsistent with the spirit of the underlying objectives in O 1Ar 1, and the duties of the parties and their lawyers under O 1A r 3. To justify an interference with the judge's case management discretion, it is not enough that members of the appellate court may make a different decision had they been the primary judge who exercised the discretion. The appellant has to show that the judge has gone clearly wrong and made orders which will clearly involve an injustice or an inability for the trial court to carry out its task, or alternatively the judge erred in principle or the other was irrational having regard to the issues that had to be resolved. Unless there are good justifications, the unsuccessful appellant should normally be expected to face an order for indemnity costs: *Li Xiao Yun & Anor v China Gas Holdings Ltd* [2013] HKCU 558 (unreported, 11 March 2013, CACV 38/2013) (CA). See also *Mimi Kar Kee Wong Hung v Severn Villa Ltd & Ors* [2012] 1 HKLRD 887, [2012] HKCU 114 (CA); *Ng Wing Man v Everbest Port Services Ltd* [2013] HKCU 659 (unreported, 21 March 2013, HCPI 780/2012) (CA); *First Laser Ltd v Fujian Enterprises (Holdings) Co Ltd* [2016] 3 HKLRD 622, [2016] HKCU 1360 (CFI); *Atlantic Link Ltd v The Incorporated Owners of Yen Ying Building & Ors* [2019] 5 HKLRD 703, [2019] HKCU 4299, [2019] HKDC 1518 (15 November 2019).

Variation of Case Management Direction

The court has the jurisdiction to revisit and if thought appropriate, to vary a direction previously made in a case management conference, notwithstanding that that was a procedural order of a court of co-ordinate jurisdiction. The court in any event has the option of exercising the power under O 1B r 1(2) to take any other step, or make any other order for the purpose of managing the case and furthering the underlying objectives set out in O 1A. A judge assigned to try a lengthy and factually or legally complex case, should in principle always be able in appropriate circumstances to consider afresh signally important matters if the interests of justice demand it. The exigencies of case management may well call for a variation in planning from time to time in light of developments. There may possibly be examples of non-procedural

a master. In the appellate pipeline for judicial elucidation are issues of liability for contempt arising from breach of a prohibitory injunction by an alleged agent and of the capacity of a corporate plaintiff to commence a representative action based on the tort of harassment. Recently, the courts have been busied by relatively unusual applications for discovery and disclosures, such as specific discovery before the filing of a statement of claim and disclosure of trust documents to beneficiaries. And rarely, the Court of First Instance was asked to explain the jurisdictional grounds for stop orders and stop notices under Order 50 rules 11 to 15 of the rules of court over securities.

Turning to the District Court, on jurisdiction, there have been decisions observing on the inclusion of agreed interest in a claim founded on contract for the purpose of determining whether the claim falls within the monetary jurisdiction of the District Court and on the proper foundation of the court's jurisdiction to order *Norwich Pharmacal* relief. Costs have continued to be keenly contested, with the District Court having had to handle questions over the making of sanctioned payments in parallel claims of employees' compensation and common law personal injuries actions arising out of the same conduct, consequential orders for cases that settled upon acceptance of a sanctioned payment in an amount coming within the monetary jurisdiction of the Small Claims Tribunal, costs orders directing assessment in the 'Small Claims Tribunal scale', gross sum taxation for unlawful detention cases, the ambit of review of taxation by a taxing master and the approach of review of taxation by a judge, as well as the extent of a taxing master's jurisdiction under the Costs in Criminal Cases Ordinance (Cap 492).

I thank the editorial team at LexisNexis, led by Eleanor Chong, for their unstinting efforts in producing these two volumes.

This work states the law as it was in December 2025. Subsequent developments in the law are noted in *Hong Kong Cases* as well as the *Hong Kong Civil Court Practice* (Volume 2).

P Y Lo

Nanyang Chambers

6 January 2026

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Ordinance' and considered as catering for tenements which are exempted from assessment to rates, then the expression 'annual value of the land' might be considered as catering for tenements or pieces of land that have no rateable value. However, there is no indication, whether from caselaw, practice or otherwise, as to the proper meaning of this expression. One can suggest some possible meanings of this expression. It might mean 'annual net value', which was attributed as the primary meaning of the expression in *Dobbs v Grand Junction Waterworks Co* (1883) 9 App Cas 49 (HL). See also *Re Elwes* (1858) 28 LJ Ex 46. 'Annual net value' means, in common parlance, a rack-rent or the value of the gross produce of the land, minus all payments, expenses, interest, labour, and charges on the land or on the tenant: *Re Elwes* (above). It was held in *Elston v Rose* (1868) LR 4 QB 4 that the 'value' 'by the year' of lands, etc, for the purpose of giving county courts jurisdiction in ejectment under s 1 of the Parochial Assessment Act 1836 as 'the rent at which the same might reasonably be expected to let from year to year free of all usual tenants' rates and taxes and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain them in a state to command such rent'. See also *Smith v Birmingham Corp* (above), where the meanings of the expressions 'annual rent' and 'annual value' were discussed. But it was said in *Sheffield Waterworks Co v Bennett* (1872) LR 7 Exch 409 that the words 'rent' and 'annual value' were often used indiscriminately (per Cleasby B). 'Annual value' might even mean the 'annualised' value of the land (representing the annual return of the land) arrived through a process of 'decapitalisation' of the market or capital value of the land. This might require the adoption of a decapitalisation rate based on property yields.

In *Woo Wai-ha v Woo Jack-ko* [1965] HKDCLR 115, annual value was assessed on the basis of rent received from tenants when the whole of the premises were let. In *Modern Market Management Ltd v Ma Wai Piu* [2007] 3 HKLRD 899, [2007] HKCU 1364 (DC), the annual value of a stall in a shopping centre was assessed by reference to the monthly licence fee.

As to methods of valuation of land, see, for example, the Landlord and Tenant (Consolidation) Ordinance (Cap 7), s 138 ('prevailing market rent') and in that connection, Merry, Domestic Tenancies, Ch 9; and the Government Rent (Assessment and Collection) Ordinance (Cap 515) and regulations made thereunder ('rateable value of land leased') and in that connection, Cruden, *Land Compensation and Valuation Law in Hong Kong* (2nd edn) 383–385; and *Commissioner for Rating and Valuation v Agrila Ltd* [2001] 2 HKLRD 36, [2001] HKCU 175 (CFA).

The plaintiff must substantiate by evidence the annual rent, rateable value or annual value of the land sought to be recovered: *Chan Siu Cheung Henry & Ors v Cheung Wing Keung Peter* [2017] HKCU 2144 (unreported, 24 August 2017, DCCJ 1500/2016) (DC); *Wing Wo Lung Co Ltd v Jam Moo Cheng* [2018] HKDC 17 (10 January 2019).

Where the plaintiff has made a positive averment in the statement of claim on the issue of jurisdiction based on annual rateable value (which is a factual issue), the defendant's general traverse in the defence cannot be taken as a denial of such an averment. If the defendant takes issue with the plaintiff on jurisdiction based on annual rateable value, the defence must contain a specific traverse of the plaintiff's positive averment in the statement of claim in this respect by a denial or a statement of non-admission. In the absence of such a specific traverse in the defence, such an averment as to jurisdiction in the statement of claim is deemed to be admitted. And where the defendant has raised a counterclaim for delivery of vacant possession of the land in question, this is conduct

admitting that the annual rateable value of the land comes within the monetary limit: *Lau Ying Yui v Verywell Investments Ltd* (unreported, 27 April 2017, DCCJ 4871/2015) (DC). Where the property concerned is exempt from assessment to rates (and hence there is no rateable value determined in accordance with the Rating Ordinance), that does not suggest that there is no annual rent determined in accordance with the Rating Ordinance and the annual value of the property is not something which is determined in accordance with the Rating Ordinance. If a challenge to jurisdiction is raised, the question of whether the annual rent, annual rateable value or the annual value of the property at the time of the commencement of the action was less than the prescribed monetary limit is a factual question, which could be determined by ruling on whether the defendant had by their conduct admitted that the least of the three criteria was less than that monetary limit: *Good Fortune Credit Ltd v Man Kwai Hing & Ors* [2025] 5 HKC 493, [2025] 4 HKLRD 104, [2025] HKDC 1240 (11 July 2025).

[35.07] Does not exceed

The premises to be valued are those actually in dispute: see *Stolworthy v Powell* (1885) 55 LJQB 228 (DC, Eng); *Bassano v Bradley* [1896] 1 QB 645.

[35.08] Definitions

For 'action', 'Court', and 'land', see s 2 above.

36. Jurisdiction where title in question

The Court has jurisdiction to hear and determine any action which would otherwise be within the jurisdiction of the Court and in which the title to an interest in land comes into question if—

- (a) for an easement or licence, the rateable value, determined in accordance with the Rating Ordinance (Cap. 116) or the annual value, whichever is the less, of the land, over which the easement or licence is claimed, does not exceed \$320,000; or
- (b) for any other case, the rateable value, determined in accordance with the Rating Ordinance (Cap. 116) or the annual value, whichever is the less, of the land, does not exceed \$320,000.

(Replaced 28 of 2000 s. 23. Amended L.N. 131 of 2018)

[36.01] Enactment history

This section was replaced pursuant to s 23 of the District Court (Amendment) Ordinance 2000 (28 of 2000), commencing on 1 September 2000. The monetary figures were amended by the Resolution of the Legislative Council dated 27 June 2018 under s 73A of the District Court Ordinance (Cap 336), which took effect from 3 December 2018.

[36.02] England

Section 51 of the County Courts Act 1959 [Eng] and subsequently s 21(2) of the County Courts Act 1984 [Eng] both provide for the jurisdiction of the county courts in respect of actions in which the title to any hereditament comes in question.

[36.03] Jurisdiction

Section 36 is a jurisdiction conferring provision on its true construction: *Ng Cho Chu Judy v Chan Wing Hung* [2017] 6 HKC 509, [2017] 4 HKLRD 396 (CA). The Court

of Appeal came to this view having considered the history of the amendments leading to the present language of this section. The Court of Appeal also held that the literal reading of this section, adopted in *Wong Kum Chi v Lee Tit Ying* [2002] 2 HKC 230, [2002] 1 HKLRD 420 (DC), is contrary to the legislative purpose and overall context of the Ordinance. See also *Ma Yu Cheung v Yu Wai Chun & Anor* (unreported, 22 November 2001, DCMP 268/2001) (DC); *Ng Cho Chu Judy* (吳楚珠) *v Chan Wing Hung* (陳永雄) [2016] 1 HKLRD 1073, [2016] HKCU 124 (DC); and *Lam Man Lau & Anor v S-J* [2016] HKCU 1740 (unreported, 25 July 2016, DCCJ 1682/2012) (DC).

An application can be made in the District Court for a declaration to clear the title of land from the encumbrance of a mortgage in the New Territories. Various bases have been put forward, such as that the mortgage is incapable of subsistence and is unenforceable pursuant to the Limitation Ordinance (Cap 347) or that the mortgage was a Chinese customary mortgage and the same was discharged upon recovery of the possession of the land by a predecessor in title. On the other hand, the District Court clearly has jurisdiction to declare land to be free from encumbrance following payment into court of a sum of money sufficient to redeem the encumbrance and any interest thereon, pursuant to s 12A of the Conveyancing and Property Ordinance (Cap 219): *Re Fung Chi Hon* [2018] HKCU 3137, [2018] HKDC 1080 (10 September 2018) (which followed *Re Cheung Chi Wang & Anor* [2002] 1 HKC 326, [2002] 1 HKLRD 409 (CFI)). See also *Harvest Development Ltd v Personal Representative of the Estate of Liu Wa Fuk* [2007] HKCU 1600 (unreported, 28 August 2007, DCMP 1367/2006) (DC); *Fu Sum & Ors v Fu San Fat* [2008] 5 HKLRD 271, [2008] HKCU 1257 (CFI); *Fu Kin Chow & Ors v Ip Kat Fan* [2008] HKCU 507 (unreported, 1 April 2008, DCMP 1314/2007) (DC); *Lau Chi Wan & Anor v Shing Kai Kwan* (unreported, 10 May 2010, DCMP 601/2010) (DC); *Re Light Time Investments Ltd* [2010] 4 HKC 64 (CFI).

Section 12 of the Conveyancing and Property Ordinance (Cap 219), which stipulates that vendor and purchaser summonses are to be heard and determined in the Court of First Instance unless the parties submit to the jurisdiction of the District Court, is not affected by the District Court (Amendment) Ordinance 2000. See *Mak Pui Ki v Ho Wing Ha* [2020] HKCU 4212, [2020] HKCFI 3027 (3 December 2020).

As to the meaning of 'jurisdiction', see [3.04] above. As to the jurisdiction of the District Court in relation to disputes involving land in the New Territories, see [33.03] above.

[36.04] Hear and determine

As to the meaning of 'hear', see [6.04] above. As to the meaning of 'determine', see [8.03] above.

[36.05] Otherwise be within the jurisdiction of the Court

The words 'which would otherwise be within the jurisdiction of the Court' should be construed in the context of s 32(1) of the District Court Ordinance (Cap 336). These words made sense when s 32(1) previously contained a proviso stipulating that 'the Court shall not, except as is provided in this Ordinance or by any other enactment, have jurisdiction to hear and determine ... any action in which the title to any hereditament is in question'. These words were to make clear there is an exception as referred to in the proviso of s 32(1). The removal of this proviso of s 32(1) by the District Court (Amendment) Ordinance 2000, however, did not serve any legislative purpose. On the other hand, there was material to suggest that it was not contemplated by the legislature that this section would cease to be 'jurisdiction-conferring' with the 2000 amendments.

This section should be understood as having the effect to confer jurisdiction on the District Court in land title cases that comes within the monetary limit: *Ng Cho Chu Judy v Chan Wing Hung* [2017] 6 HKC 509, [2017] 4 HKLRD 396 (CA) (endorsing *Ng Cho Chu Judy* (吳楚珠) *v Chan Wing Hung* (陳永雄) [2016] 1 HKLRD 1073, [2016] HKCU 124 (DC)).

See ss 32 and 33 above in respect of the monetary jurisdiction of the District Court.

[36.06] Title to an interest in land

The word 'title' in one sense may import whether a party has a right to a thing which is admitted to exist; or it may mean whether the thing claimed does in fact exist: see *R v Everett* (1852) 1 E & B 273, sub nom *Adey v Deputy Master of Trinity House* (1852) 22 LJQB 3 (per Coleridge J). See also *Felkin v Lord Herbert* (1861) 30 LJ Ch 798 at 799 (per Kindersley V-C).

Title is in question when either the existence of the interest in land or the right to it is in dispute (see *R v Everett* (above)), for example, where there is a dispute between landlord and tenant as to whether a demise was of the whole or part of a house (*Chew v Holroyd* (1852) 8 Exch 249); where a party sued as owner of land denies that he is owner (*R v Harden* (1853) 2 E & B 188, applied in *Lea v Moore* [1955] 1 All ER 65, [1955] 1 WLR 38 (CA, Eng)); where the very existence of a demise is in dispute (*Marwood v Waters* (1853) 13 CB 820); where damages are claimed on an easement and the plaintiff cannot succeed without proving his title to the easement, although the defendant pays sufficient money into court: *Howorth v Sutcliffe* [1895] 2 QB 358 (CA, Eng). The question of title must be material to the decision of the case: *Morton v Grand Junction Canal Co* (1858) 6 WR 543.

In order to raise the question of jurisdiction on the ground that title is in question, there must be a bona fide claim to an interest in land, and one which in point of law is capable of existence: *Lloyd v Jones* (1846) 6 CB 81. It must also be a substantial claim: *Lilley v Harvey* (1848) 5 Dow & L 648, 654n. The jurisdiction is ousted (where the limit mentioned in the section is exceeded) by the mere fact that the existence of a question as to title appears upon the face of the proceedings (*Cannon v Smalwood* (1684) 3 Lev 203; *Timothy v Farmer* (1849) 7 CB 814), even though no issue is taken on the part dealing with the title (*Tinniswood v Pattison* (1846) 3 CB 243). cf *Latham v Spedding* (1851) 17 QB 440, where the question of title appeared on the face of the pleadings, and it was held that the title was not in question unless the point actually arose in the course of the trial. A mere assertion of title is not sufficient to oust the jurisdiction where the limit of annual value is exceeded (*Lilley v Harvey* (above); *Re Emery and Barnett* (1858) 4 CBNS 423), though the court must inquire whether the question really arises.

A claim under s 60 of the Conveyancing and Property Ordinance (Cap 219), which does not in itself confer jurisdiction on the District Court, may be within the jurisdiction of the District Court under this section where it is sought to set aside of an assignment and thus brings into question title to the property: *Lau Hak Shing v Chan Kwok Hung & Anor* [2018] 5 HKLRD 783, [2018] HKCU 4065, [2018] HKDC 1448 (26 November 2018).

The District Court has no more jurisdiction over a remitted action than over an original action. Thus, where an action in the Court of First Instance for money had and received was remitted to the District Court, and where it was ascertained that title to land outside the jurisdiction would come into question, there was no means whereby the judge could obtain jurisdiction to hear the case: see *Toon v Stanbury-Eardly* (1906) 22 TLR 536 (DC, Eng); *General Estates Co v Beaver* [1912] 2 KB 398.

Where on the conclusion of the plaintiff's case, the defendant sets up title in a case where the limit of annual value is exceeded, the judge, having no jurisdiction in the subject matter, has no right to non-suit the plaintiff or to award costs. The court has merely power to declare its own incompetency: see *Lawford v Partridge* (1857) 1 H & N 621.

The word 'interest' may be used to refer to a life interest in property, a reversionary interest in property, a leasehold interest in property, or interest of an absolute owner of property: see *Minister of National Revenue v Shaw Estate* [1971] CTC 15 at 22 (per Jackett J).

An application for a declaration that the manager of a tso was presumed dead without there being any issue of the tso's ownership of land is not concerned with the title of any interest in land: *Re Wong Yuk Chun Kitty (黃玉珍) & Anor* [2019] 5 HKC 574, [2019] HKDC 1323 (8 October 2019).

[36.07] Easement or licence

An easement is a right which one person has over the land of another by which the latter (the owner of the servient tenement) is forced to suffer something on his own land or not to do something on his own land for the advantage of the former (the owner of the dominant tenement), for example, the former may have a right of way of the servient tenement. The expression 'easement' means in this section the strict legal sense of the term, ie there must be a dominant and a servient tenement: *Hawkins v Rutter* [1892] 1 QB 668. The District Court has jurisdiction to try an action relating to an easement where the rateable value of neither the dominant nor the servient tenement exceeds the monetary limit (*Wong v Beaumont Property Trust Ltd* [1965] 1 QB 173, [1964] 2 All ER 119 (CA, Eng)), but not an action for interference with an easement where proof of title to the easement is essential to the case and the rateable value of either the dominant or the servient tenement exceeds the monetary limit: *Howorth v Sutcliffe* [1895] 2 QB 358 (CA, Eng); *R v Judge Drucquer* [1939] 2 KB 588, [1939] 2 All ER 473 (DC, Eng). The Court of Appeal confirmed, by application of *Ng Cho Chu Judy v Chan Wing Hung* [2017] 6 HKC 509, [2017] 4 HKLRD 396 (CA), that the District Court has jurisdiction under this section to determine a claim based on 'quasi-easement': *Incorporated Owners of Triumph Court v Law Ping Patsy* [2020] 4 HKC 100, [2020] HKCA 272. When the interest in land for the purpose of this section is an easement or quasi-easement, the easement is 'the land' to which the title is called into question and therefore it is the value of the land over which the easement is claimed that matters. This literal interpretation is consistent with a liberal and purposive interpretation furthering the purpose of this Ordinance: see *Sino Union Development Ltd (中華發展有限公司) & Anor v Incorporated Owners of Chip Lee Building (捷利大廈業主立案法團)* [2025] 2 HKLRD 1138, [2025] HKCU 2114, [2025] HKCFI 1775 (7 May 2025).

A licence is merely personal, and is not an interest in land, as is an easement. It differs from an easement also in that it is generally revocable at the will of the licensor and never requires a deed for its creation. See further, *Halsbury's Laws of England* (4th edn) vol 14, para 36.

[36.08] Rateable value determined in accordance with the Rating Ordinance (Cap 116), or the annual value, whichever is the less, of the land

The meaning of 'the land' in para (b) of this section does not include an interest in the land expressed as a fraction. Rather the contention that the annual value of 'the land' refers, in the case of a multi-storey building, to the building as a whole

is correct and accords well within the plain meaning of the wording in the statute: *Chan Chi Wai v Chan Sau Wah & Ors* [2017] 4 HKC 17, [2016] 4 HKLRD 524 (DC). But in relation to common areas of a building, which are not and are not expected not to be leased out, there is no rateable value: *The Incorporated Owners of Affluence Garden v Guardian Management Services Ltd* [2023] 2 HKC 143, [2023] 1 HKLRD 910, [2023] HKCFI 116 (10 January 2023). cf *Soshila Keswani v Motiram Keswani* [2019] HKCU 3314, [2019] HKDC 1166 (30 August 2019) (where it appears to be suggested that in a case claiming a declaration in relation to interest under a deed and an assignment as between the plaintiff executor and the defendant beneficiary regarding land, the relevant rateable value is that of the share of the land in question).

As to 'rateable value' under the Rating Ordinance (Cap 116) and 'annual value', see [35.06] above.

[36.09] Does not exceed

Where in an action for damage to a wall which was structurally part of the plaintiff's house, the ownership of the wall was in dispute between the parties, and the value of the wall was within the jurisdiction, but that of the house was not, it was held that the question of jurisdiction should be decided by the value of the disputed part only: *Rutherford v Wilkie* (1879) 41 LT 435 (DC, Eng). See also *Stolworthy v Powell* (1885) 55 LJQB 228 (DC, Eng).

[36.10] Definitions

For 'action', 'Court' and 'land', see s 2 above.

37. Equity jurisdiction

(1) Subject to the maximum limits in amount or value set out in subsection (2), the Court has the jurisdiction of the Court of First Instance to hear and determine the following proceedings—

- (a) proceedings relating to or for the administration of the estate of a deceased person;
- (b) proceedings for the execution of a trust or for the declaration that a trust subsists or proceedings under section 3 of the Variation of Trusts Ordinance (Cap. 253);
- (c) proceedings for the foreclosure or redemption of a mortgage or for enforcing a charge or lien;
- (d) proceedings for the specific performance, or for the rectification, rescission or delivery up or cancellation of an agreement for the sale, purchase or lease of property;
- (e) proceedings for the maintenance or advancement of an infant;
- (f) proceedings for the dissolution or winding up of a partnership, whether or not the existence of the partnership is in dispute;
- (g) proceedings for relief against fraud or mistake.

(2) The maximum limits in amount or value referred to in subsection (1) for—

- (a) in the case of subsection (1)(a), an estate of a deceased person;
- (b) in the case of subsection (1)(b), an estate or fund subject or alleged to be subject to the trust;

- (c) in the case of subsection (1)(c), the amount owing under the mortgage, charge or lien;
- (d) in the case of subsection (1)(d), for an agreement for sale or purchase, the purchase money or, for an agreement for lease, the value of the property;
- (e) in the case of subsection (1)(e), the property of the infant;
- (f) in the case of subsection (1)(f), the assets of the partnership;
- (g) in the case of subsection (1)(g), the damage sustained or the estate or fund for which relief is sought, are—
 - (i) \$3,000,000, where the proceedings do not involve or relate to land; (*Amended L.N. 241 of 2003; L.N. 131 of 2018*)
 - (ii) \$3,000,000, where the proceedings partly involve or partly relate to land and the part that does not so involve or does not so relate exceeds \$3,000,000 in amount or value; (*Amended L.N. 241 of 2003; L.N. 131 of 2018*)
 - (iii) \$7,000,000, where the proceedings wholly involve or wholly relate to land; (*Amended L.N. 131 of 2018*)
 - (iv) \$7,000,000, where the proceedings partly involve or partly relate to land and the part that does not so involve or does not so relate does not exceed \$3,000,000 in amount or value. (*Amended L.N. 241 of 2003; L.N. 131 of 2018*)

(3) A judge has in proceedings authorized by this section in addition to his other powers and authority the powers and authorities of a judge of the Court of First Instance acting in the exercise of the equitable jurisdiction of the Court of First Instance.

(4) Nothing in this section gives jurisdiction to the Court in proceedings for the recovery of land or relating to the title to land, where the annual rent or the rateable value of the land, determined in accordance with the Rating Ordinance (Cap. 116), or the annual value of the land, whichever is the least, exceeds \$320,000. (*Amended L.N. 131 of 2018*)

(*Replaced 28 of 2000 s. 23*)

[37.01] Enactment history

This section was replaced pursuant to s 23 of the District Court (Amendment) Ordinance 2000 (28 of 2000), commencing on 1 September 2000.

The monetary figure in sub-ss (2)(i)–(iv) and (4) were amended by the Resolution of the Legislative Council dated 29 October 2003 under s 73A of the District Court Ordinance (Cap 336), which took effect from 1 December 2003; and by the Resolution of the Legislative Council dated 27 June 2018 under s 73A, which took effect from 3 December 2018.

[37.02] General

It is advisable to adopt a two-step approach in considering whether the proceeding in question exceeds the maximum limits in amount or value prescribed in this section. First, one should consider which of the four limbs under sub-s (2) does the proceedings in question fall within. This involves considering whether the proceedings in question involve or relate to land or not and if so, whether the proceedings in question wholly involve or wholly relate to land or partly involve or partly relate to land. After

ascertaining the particular limb of the four limbs under sub-s (2) that the proceedings in question belongs to, one then consider whether the amount or value of the subject matter of the proceedings in question comes within the maximum limit in amount or value related to that particular limb.

[37.03] England

Section 52 of the County Courts Act 1959 [Eng] and s 23 of the County Courts Act 1984 [Eng] both provide for the equity jurisdiction of the county courts in respect of the same kinds of the proceedings set out in the section above.

[37.04] Jurisdiction of the Court of First Instance

As to the jurisdiction of the Court of First Instance, see High Court Ordinance (Cap 4), s 12. The civil jurisdiction of the Court of First Instance consists 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. On the other hand, a judge may amend or even reverse his judgment or order before it is perfected without any need to show exceptional circumstances: *Re L and B (children) (care proceedings; power to revise judgment)* [2013] 2 All ER 294, [2013] 1 WLR 634 (UKSC). It has been held in England that the High Court of Justice possesses a residual jurisdiction, inherent in its function as a court of justice, to avoid real injustice in exceptional circumstances, so that proceedings, once closed, may be reopened where there is a real requirement for this to happen: *Seray-Wurie v Hackney London Borough Council* [2002] 3 All ER 448, [2003] 1 WLR 257 (CA, Eng). As to the Court of First Instance, see [10.04] above.

[37.05] Hear and determine

As to the meaning of 'hear', see [6.04] above. As to the meaning of 'determine', see [8.03] above.

[37.06] Proceedings

As to meaning, see [2.06] above.

[37.07] Relating to

As to meaning, see [9.07] above.

[37.08] Administration of the estate of a deceased person

The jurisdiction under this section extends to the assignees, whether by act of law or for value, of the persons specified in the section: *Turner v Rennoldson* (1873) LR 16 Eq 37; but the fact that a person is interested in the estate of the deceased person does not entitle him as of right to the jurisdiction of the court, the judge having a discretion on the matter: *Pearson v Pearson* (1887) 56 LT 445. If a creditor commences an action against an executor de son tort, he cannot be restrained from prosecuting it because a statement of claim has been filed for administration under this section: *Nokes v Gandy* (1874) LR 17 Eq 297, nor can the court, before which an administration suit is pending, stay by injunction proceedings in the Court of First Instance in respect of claims provable in the administration suit: *Cobbold v Pryke* (1879) 4 Ex D 315. The court might be able to conclude after investigation the issue of presumption of death

of a person, with the Court of First Instance accepting the conclusion without further inquiry: see *In the goods of Rishton* (1921) 90 LJP 374. The court is not bound to order that the plaintiff in an administration action, properly brought, must have his costs out of the estate. He may order the plaintiff to pay the costs: see *Plumb v Craker* (1885) 16 QBD 40. For the practice when an estate is insolvent, see *Pain v Bowden* [1896] 2 QB 301.

RDC, O 85 makes provision for administration and similar actions in respect of the estate of a deceased person. See also s 72A below.

[37.09] Execution of a trust, or for the declaration that a trust subsists or proceedings under section 3 of the Variation of Trusts Ordinance (Cap 253)

Section 2 of the Trustee Ordinance (Cap 29) defines a trust as not including the duties incident to an estate conveyed by way of mortgage, but with this exception the expression 'trust' and 'trustee' extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incidental to the office of a personal representative. As to the different kinds of trusts, see *Halsbury's Laws of England* (4th edn) vol 48, paras 523–530.

Section 3 of the Variation of Trusts Ordinance empowers the court to approve on behalf of certain classes of beneficiaries arrangements varying or revoking a trust, or enlarging the powers of the trustees of managing or administering any of the property subject to a trust. RDC, O 93 makes provision for regulating the procedure for applications under this Ordinance.

This section gives jurisdiction in all cases of trusts and therefore applies to constructive, as well as to express trusts: *Clayton v Renion* (1867) LR 4 Eq 158. The ordinary meaning of 'execution' is the due performance of all formalities, as signing, sealing, etc, necessary to give validity to a legal transaction: see *J & S Holdings Pty Ltd v NRMA Insurance Ltd* (1981) 57 FLR 385 at 401 (per Kelly J).

The District Court has jurisdiction to hear and determine proceedings to deal with unclaimed securities held by a trader of stocks, subject to the relevant monetary jurisdiction: *Re Everhot Securities Ltd* [2019] HKCU 4088, [2019] HKDC 1464 (30 October 2019); *Re Grand Securities Co Ltd* [2021] HKCU 2085, [2021] HKDC 545 (6 May 2021); *Re Quasar Securities Co Ltd* [2023] HKCU 609, [2023] HKDC 196 (10 February 2023).

[37.10] Foreclosure or redemption of a mortgage

The jurisdiction depends on the amount of the charge at the time the action is brought, so that where the original amount advanced exceeded the monetary limit, its reduction by payment or otherwise below the amount will bring the action within jurisdiction: *Shields, Whitley and District Amalgamated Model Building Society v Richards* (1901) 84 LT 587. See also [35.05] above. A suit for redemption in which the right to redeem is resisted and a sale of the mortgaged interest in land is sought to be set aside, is within jurisdiction: *Powell v Roberts* (1869) LR 9 Eq 169. The fact that the person who gave the charge has gone bankrupt does not oust the jurisdiction: *Medhurst v Golder* (1867) 16 LT 50. See also *Godfrey v Lazarus* (1887) 4 TLR 101 (DC, Eng), where a claim for an amount not repaid in respect of a loan secured by an equitable mortgage, though outside the common law jurisdiction, was entertained because it was not outside the equitable jurisdiction.

This section does not cover the jurisdiction of the court for monetary claims under a mortgage, or mortgage actions where the relief sought was not foreclosure

or redemption of a mortgage or for enforcing the equitable rights under a charge: *Hongkong and Shanghai Banking Corp Ltd v Hui Lai Kai* [2000] 4 HKC 597 (DC); *Overseas Trust Bank Ltd v Ngai Yiu Ming* (unreported, 28 November 2000, DCMP 2780/2000) (DC).

An action for possession under a mortgage is an action for the recovery of land under s 35 above: *West Penwith Rural District Council v Gunnell* [1968] 2 All ER 1005, [1968] 1 WLR 1153 (CA, Eng).

As to whether a claim for a declaration that a mortgage had been redeemed came within this section, see *Wan Tai Tai (Administratrix of Tse Lin (decd)) v Chan Tse Shi* [1963] 1 HKDCLR 14, [1963] HKCU 12 (HC).

RDC, O 88 makes provision for regulating mortgage actions, including claims for foreclosure or redemption.

[37.11] Enforcing a charge or lien

As to the meaning of 'enforce', see [22.05] above.

For meaning of 'charge', see *Hartley v Hudson* (1879) 4 CPD 367; *Burlinson v Hall* (1884) 12 QBD 347 (DC, Eng); *Tancred v Delagoa Bay and East Africa Railway Co* (1889) 23 QBD 249 at 242 (per Denman J); *Re Price, ex p Tinning* (1931) 26 Tas LR 158 at 160 (per Nicholls CJ); and *Davison v Bathurst City Council* [1966] 1 NSWLR 61 at 64.

Section 37 of the District Court Ordinance (Cap 336) does confer jurisdiction to enforce a charging order, subject only to the monetary jurisdictional limits set out therein. Enforcement of a charging order falls within the scope of a mortgage action under RDC, O 88 r 1 as the charging order imposes a charge that 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. The reference to courts in the plural suggests that charging orders could be enforced in different courts: *Incorporated Owners of Creative Mansion v Cheung Sai Mui* [2006] 4 HKLRD 181, [2006] HKCU 1272 (CFI) (where Lam J disagreed with the judgment of Judge Li in *Standard Chartered Bank v Kwok Fat* [2001] 4 HKC 553 (DC), which held that the court that made the charging order is the court that ought to enforce it and accordingly a charging order made in the Court of First Instance ought to be enforced in that court and not in the District Court).

A lien is a right in one man to retain that which is in his possession belonging to another, till certain demands of him the person in possession are satisfied: *Hammonds v Barclay* (1802) 2 East 227 at 235 (per Grose J). Liens are now variously described as legal, non-possessory, equitable, general, particular, statutory, contractual, judicial and subrogatory. In its primary and legal sense 'lien' means a right at common law in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims of the person in possession are satisfied. In its secondary sense, 'lien' may be applied to a right subsisting in a person who has no possession of the property concerned but who nevertheless has a right against the owner analogous to a legal lien. Such a right may arise in equity, by statute, or under a court order. An equitable lien is a species of equitable charge arising by operation of law independent of possession and can arise in contexts such as from contractual dealings in property, on the basis of general considerations of justice or upon the principle that he who seeks the aid of equity in enforcing some claim must admit the equitable rights of others associated with the subject matter.

Halsbury's Laws of England (4th edn) vol 28, paras 701–704. See also *Chassey v May* [1925] 2 WWR 199 at 201 (per Martin JA).

A *lis pendens* does not create a charge or lien: *Advance Pacific Investments Ltd v Zen Chung Hei Hayley & Ors* (unreported, 18 November 2008, DCCJ 5975/2005) (DC).

[37.12] Specific performance

Specific performance is an equitable relief, given by the court to enforce against a defendant the duty of doing what he agreed by contract to do; a plaintiff may, therefore, obtain judgment for specific performance even though there has not, in the strict sense, been any default by the defendant before the issue of the writ: *Halsbury's Laws of England* (4th edn) vol 44(1), para 801.

Agreements for leases come equally within this section: *Wilcox v Marshall* (1867) LR 3 Eq 270. In the case of a sale the test as to the jurisdiction is the actual purchase money and not the value of the property: *R v Judge Whitehorne* [1904] 1 KB 827. A vendor cannot mask a claim for specific performance of an agreement for sale where the purchase money exceeds the monetary limit by claiming a declaration that the purchaser has forfeited the deposit paid under the contract of sale to stakeholders: *De Vries v Smallridge* [1928] 1 KB 482 (CA, Eng). By virtue of s 48 below, a defendant is entitled to maintain by way of defence, as distinct from counterclaim, an equitable plea based on a right to specific performance, notwithstanding that the court would have had no jurisdiction to entertain a claim for specific performance by reason of the value of the property exceeding the monetary limit: *Kingswood Estate Co Ltd v Anderson* [1963] 2 QB 169, [1962] 3 All ER 593 (CA, Eng). The jurisdiction is not limited to land transactions but does not cover the enforcement of an undertaking to re-erect a boundary fence, which rests on the powers under s 48 below: *Bourne v McDonald* [1950] 2 KB 422, [1950] 2 All ER 183 (CA, Eng). In *De Vries v Smallridge* (above), it was held that an action for a declaration that a deposit was forfeited was, in effect, an action for partial specific performance. No order for a specific performance may be made against the Government, but the court may make a declaration of the rights of the parties in lieu: Crown Proceedings Ordinance (Cap 300), s 16(1) proviso (a). See also *ibid* s 19.

RDC, O 86 makes provision for applications for summary judgment in actions indorsed with a claim for specific performance of an agreement for the sale, purchase, charge or lease of property.

[37.13] Rectification, rescission or delivery up or cancellation

The essence of rectification is to bring the document which was expressed and intended to be in pursuance of a prior agreement into harmony with that prior agreement: see *Lovell & Christmas Ltd v Wall* (1911) 104 LT 85 at 88 (CA, Eng) (per Cozens-Hardy MR). In ordering rectification the court does not rectify contracts, but what it rectifies is the erroneous expression of contracts in documents: see *Lovell & Christmas Ltd v Wall* (above) at 93 (per Buckley LJ). See also *Joscelyn v Nissen* [1970] 2 QB 86, [1970] 1 All ER 1213 (CA, Eng).

Rescission is the name given to a process whereby an existing contract is brought to an end and the effects of its existence are cancelled or terminated. The word 'rescission' is so commonly used that it has been used to describe a number of different situations, some of which give rise to a right to treat the contract as discharged at common law and some of which lead only to the contract being set aside in equity. A contract may

be rescinded on account of a breach of contract, for misrepresentation or for mistake: see *Halsbury's Laws of England* (4th edn) vol 9(1), paras 986–988. See *Horsler v Zorro* [1975] Ch 302 at 310–311, [1975] 1 All ER 584 at 591 (per Megarry J).

No order for delivery of property may be made against the Government in proceedings for the recovery of such property, but the court may make a declaration that the plaintiff is entitled as against the Government to the property or to the possession of that property in lieu: Crown Proceedings Ordinance (Cap 300), s 16(1) proviso (b). See also *ibid*, s 19.

For cases on the meaning of 'cancel', see *R v Linthwaite (Inhabitants)* (1849) 13 LTOS 116; *Re Jamieson and Newcastle Steamship Freight Insurance Association* [1895] 2 QB 90 (CA, Eng); *Re Standard Insurance Co Ltd and Macfarlan's Arbitration* [1940] VLR 74; and *Willecocks v New Zealand Insurance Co* [1926] NZLR 805.

RDC, O 86 makes provision for applications for summary judgment in actions indorsed with a claim for rescission of an agreement for the sale, purchase, charge or lease of property, or for the forfeiture or return of any deposit made under such an agreement.

[37.14] Agreement for the sale, purchase or lease of property

An 'agreement' signifies a mutual contract on consideration between two or more parties, and is not understood to be synonymous to promise or undertaking: see *Wain v Warlters* (1804) 5 East 10 at 16 (per Lord Ellenborough CJ). See also *Goldsack v Shore* [1950] 1 KB 708; and *Ducker v Ducker* [1951] NZLR 583 (CA, NZ).

Section 3 of the Interpretation and General Clauses Ordinance (Cap 1) defines 'sell' to include exchange and barter. Prima facie, the word 'sell' and its noun should be given its ordinary commercial meaning of to transfer for money unless the context in which they occur so require: see *Re Yun Jip Auto Services Ltd* [1992] 1 HKC 234. An agreement to sell does not constitute a sale, as by s 3(3) and (4) of the Sale of Goods Ordinance (Cap 26), the property in the goods must first pass. See in general, eg *Mischeff v Springett* [1942] 2 KB 331, [1942] 2 All ER 349 (DC, Eng), and *Watson v Coupland* [1945] 1 All ER 217 (DC, Eng). See, in particular, *R v Chan Chiu-cheung* [1989] 2 HKLR 446. On the other hand, a person who appropriates or transfers goods under an agreement for the sale of unascertained goods 'sells' within the meaning of the Sale of Goods Ordinance: see *Preston v Albuery* [1964] 2 QB 796, [1963] 3 All ER 897 (DC, Eng). See also, in particular, *Doak v Bedford* [1964] 2 QB 587, [1964] 1 All ER 311 (DC, Eng).

'Purchase' has the technical legal meaning of acquisition otherwise than by descent of escheat: see *H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd* [1957] 1 QB 159, [1956] 3 All ER 624 (CA, Eng). See also *Doe d Meyrick v Meyrick* (1833) 1 Cr & M 820; and *Weeks v Birch* (1893) 69 LT 759 (DC, Eng). In a more popular sense, 'purchase' means giving a quid pro quo or buying: *Re Pumphrey, ex p Hillman* (1879) 10 Ch D 622 (CA, Eng); and *Macintosh v Pogose* [1895] 1 Ch 505; and *Hance v Harding* (1888) 20 QBD 732 (CA, Eng); transfer for money (*Re Yun Jip Auto Services Ltd* [1992] 1 HKC 234); or agreement to purchase (*Long v Millar* (1879) 4 CPD 450).

An instrument in proper form by which the conditions of a contract of letting are finally ascertained, and which is intended to vest the right of exclusive possession in the tenant, either at once or at a future date, is a lease which takes effect from the date fixed for the commencement of the term without the necessity of actual entry

by the tenant. An instrument is usually construed as a lease if it contains words of present demise. Even where the instrument is called an 'agreement', and contains a stipulation for the subsequent granting of a formal lease, it may be construed as a lease if the essential terms are fixed, especially if possession is to be taken under it and if the covenants which would be inserted in the lease are to be binding at once: *Halsbury's Laws of England* (4th edn) vol 27(1), para 50. See also *Earl St Germans v Willan* (1823) 2 B & C 216 at 220 (per Bayley J); *Camberwell and South London Building Society v Holloway* (1879) 13 Ch D 754 at 759 (per Jessel MR); *Lewin v American and Colonial Distributors Ltd* [1945] Ch 225 at 231, [1945] 1 All ER 592 at 596 (per Vaisey J).

'Property' is that which belongs to a person exclusively of others, and can be the subject of bargain and sale: *Halsbury's Laws of England* (4th edn) vol 44(1), para 1032. Section 3 of the Interpretation and General Clauses Ordinance (Cap 1) defines 'property' to include money, goods, choses in action and land; and obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to money, goods, choses in action or land. For other statutory definitions of property, see s 59(1) of the Crimes Ordinance (Cap 200); and s 5 of the Theft Ordinance (Cap 210). See also *Queensbury Industrial Society v Pickles* (1865) LR 1 Exch 1 at 4 (per Bramwell B); *Minister of State for the Army v Dalziel* (1944) 68 CLR 261; *McCaughy v Commissioner of Stamp Duties* (1945) 46 SR(NSW) 192 at 201 (per Jordan CJ); and *Bailey v Uniting Church in Australia Property Trust (Qld)* (1984) 1 Qd R 42 at 58 (per McPherson J).

[37.15] Maintenance or advancement of an infant

A trust instrument may contain express powers for providing maintenance or education for, or otherwise benefiting, a beneficiary who is a minor. Apart from any such express powers and subject to any contrary intention expressed in the trust instrument, where a trustee holds property in trust for any person for any interest whatsoever, whether vested or contingent, he has statutory power under s 33 of the Trustee Ordinance (Cap 29) during the minority of that person, subject to any prior interests or charges affecting that property, at his discretion to pay to that person's parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit the whole or such part, if any, of the income of the property as may in all the circumstances be reasonable, and must accumulate any surplus income. Once the beneficiary attains majority, the trustees must pay his share of income to him even if his interest is still contingent under the terms of the trust (*Re Jones' Will Trusts, Soames v A-G* [1947] Ch 48, [1946] 2 All ER 281); *Halsbury's Laws of England* (4th edn) vol 48, para 909.

'Advancement' is for placing the minor out in life, or otherwise for some special benefit to him, as distinct from ordinary maintenance and education. The court has no power to charge the real estate of an infant for the purpose of his advancement: *Re De Teissier's Settled Estate, De Teissier v De Teissier* [1893] 1 Ch 153.

Section 3 of the Interpretation and General Clauses Ordinance (Cap 1) defines 'infant' to mean a person who has not attained the age of 18 years.

[37.16] Dissolution or winding up of a partnership

Partnership involves a contract between the partners to engage in a business with a view to profit. As a rule, each partner contributes either property, skill or labour, but this is not essential. A person who contributes property without labour, and has the rights

of a partner, is usually termed a sleeping or dormant partner. A sleeping partner may, however, contribute nothing: *Halsbury's Laws of England* (4th edn) vol 35, para 2.

Section 3 of the Partnership Ordinance (Cap 38) defines a partnership as a relation which subsists between persons carrying on a business in common with a view of profit, excluding companies and associations which are either registered as a company under any Ordinance relating to the registration of joint-stock companies; or formed or incorporated by or in pursuance of any other Ordinance, or any Act of Parliament, or letters patent, or Royal Charter. Section 4 of the Partnership Ordinance also sets out rules for determining whether a partnership does or does not exist. See also the Limited Partnerships Ordinance (Cap 37) for provisions in respect of partnerships with partners limited both in contribution and in liability.

Section 37 of the Partnership Ordinance empowers the court to dissolve a partnership on application by a partner in certain circumstances. The Partnership Ordinance also makes provision for the consequences of dissolution.

An action in which the plaintiff claims a declaration of partnership and an account of his share of the profits is in substance an action for the dissolution or winding up of a partnership: *R v Judge Lailey, ex p Koffman* [1932] 1 KB 568 (CA, Eng). See also *Smith v Anderson* (1880) 15 Ch D 247 (CA, Eng); and *R v Robson* (1885) 16 QBD 137 (CCR).

As to the procedure and practice in respect of proceedings involving partnerships and partners, see RDC, O 81.

[37.17] Relief against fraud or mistake

The court has never ventured to lay down as a general proposition as to what constitutes fraud. Actual fraud arises from acts and circumstances of imposition. It usually takes the form of a statement of what is false or a suppression of what is true. The withholding of information (*suppressio veri*) is not in general fraudulent unless there is a special duty to disclose it. The obligation of disclosure may arise from the relation of the parties, as where they are agent and principal; or from the nature of the contract, as where it is *uberrimae fidei*; or in ordinary contracts from circumstances occurring during the negotiation, as where a statement made with honest belief is subsequently discovered to be false. The partial statement of fact, and the withholding of essential qualifications may make that which is stated absolutely false and bring it under the head of *suggestio falsi*: *Halsbury's Laws of England* (4th edn) vol 16, para 663. See, in particular, *Derry v Peek* (1889) 14 App Cas 337 at 374 (HL) 374 (per Lord Herschell); *Barclays Bank Ltd v Cole* [1967] 2 QB 738 at 744, [1966] 3 All ER 948 at 950 (CA, Eng) (per Lord Denning MR); *R v Sinclair* [1968] 3 All ER 241 at 246, [1968] 1 WLR 1246 at 1249-1250 (per James J); *Stafford Winfield Cook & Partners Ltd v Winfield* [1980] 3 All ER 759, 766, [1981] 1 WLR 458 at 466-467 (per Megarry VC); *Farley (Aust) Pty Ltd v J R Alexander & Sons (Queensland) Pty Ltd* (1946) 75 CLR 487 at 493 (per Williams J); and *Blomley v Ryan* (1956) 99 CLR 362 at 385 (per McTiernan J).

In equity, money paid under mistake of fact is recoverable. Although money paid under mistake of law is not in general recoverable in equity, the plaintiff might obtain relief if there were circumstances which made it inequitable that the party who had received the money should retain it: *Halsbury's Laws of England* (4th edn) vol 16, para 681.

The equitable jurisdiction extends to setting aside a deed of release of a judgment debt obtained by fraud: *Stephenson v Garnett* [1898] 1 QB 677 (CA, Eng).

The Court of Appeal confirmed in *GM-SA v DDPJ (No 2)* [2020] 6 HKC 360, [2020] HKCA 488 (17 June 2020) that the District Court has jurisdiction to set aside a consent order for fraud or mistake, so long as the subject matter comes within the monetary limits set by this provision. In *A v B* [2021] 1 HKC 658, [2021] HKCFI 77 (8 January 2021), the Court of First Instance confirmed that a Family Judge sitting in the Family Court (who is ex officio a District Judge) has jurisdiction to entertain such an action.

[37.18] Purchase money

As to the meaning of 'money', see [2.17] above.

[37.19] Assets

'Assets' of a company includes free assets, assets which can be dealt with by the company in payment of their debts without regard to those who have a mortgage on this portion of the property of the company: see *Re Pyle Works* (1890) 44 Ch D 534 (CA, Eng) (per Cotton LJ). 'Assets' must include uncalled capital: see *Page v International Trust Agency and Industrial Trust Ltd* (1893) 62 LJ Ch 610 at 612 (per Kekewich J). See also *Lever Brothers and Unilever Ltd v Inland Revenue Commissioners* [1945] 1 All ER 145 at 150 (CA, Eng) (per Lord Greene MR).

[37.20] Damage sustained

The damage sustained by the plaintiff as a result of a mistake is the damage actually sustained; see *Kenon Engineering Ltd v Ultra Mill Ltd* (unreported, 13 January 2006, DCCJ 4630/2003) (DC).

[37.21] Involve or relate to land

The words 'involve or relate to land' in the present context must mean that the claim is directly connected with the land, that it must seek relief in relation to the land itself: *Advance Pacific Investments Ltd v Zen Chung Hei Hayley & Ors* (unreported, 18 November 2008, DCCJ 5975/2005) (DC).

As to whether land is involved, see *Davies v Games* (1879) 12 Ch D 813; *Jackson v Jackson* (1804) 7 Ves 535, 9 Ves 591; *Waterer v Waterer* (1873) LR 15 Eq 402. See also *Murtagh v Costello* (1881) 7 LR Ir 428; *Morris v Barrett* (1829) 3 Y & J 384; *Houghton v Houhton* (1841) 10 LJ Ch 310; *Montgomery v Foy, Morgan & Co* [1895] 2 QB 321 (CA, Eng).

As to 'relate to', see [9.07] above.

[37.22] Wholly, partly

For cases on the meaning of 'wholly or partially' in different contexts, see *Re Baroness Llanover, Herbert v Freshfield (2)* [1903] 2 Ch 330; and *Lord Advocate v Fleming* [1897] AC 145 (HL).

For a case on the meaning of 'partial', see *R v Evans* [1957] NZLR 1128 at 1130 (per McGregor J).

[37.23] Authorized

As to meaning, see [4.06] above.

[37.24] **In addition to**
As to meaning, see [14.07] above.

[37.25] Powers and authorities of a judge of the Court of First Instance acting in the exercise of the equitable jurisdiction of the Court of First Instance

As to the powers and authorities of a judge of the Court of First Instance acting in the exercise of the equitable jurisdiction of the Court of First Instance, see the High Court Ordinance (Cap 4), s 16 and *Halsbury's Laws of Hong Kong* (2nd edn) vol 26, paras 165.086–165.090.

[37.26] Recovery of land

As to action for recovery of land, see [35.05] above.

[37.27] Relating to the title to land

As to action in which the title to an interest in land comes into question, see [36.06] above.

[37.28] Annual rent or rateable value of the land, determined in accordance with the Rating Ordinance (Cap 116)

As to the meaning of these expressions, see [35.06] above.

[37.29] Definitions

For 'Court', 'judge' and 'land', see s 2 above.

37A. (Repealed 28 of 2000 s. 23)

(Heading repealed 28 of 2000 s. 23)

[37A.01] Enactment history

This section was added by s 40 of the Small Claims Tribunal Ordinance 1975 (79 of 1975), commencing on 1 October 1976 and repealed pursuant to s 23 of the District Court (Amendment) Ordinance 2000 (28 of 2000), commencing on 1 September 2000.

38. Jurisdiction under the Married Persons Status Ordinance

The Court has the jurisdiction and powers of the Court of First Instance conferred by section 6 of the Married Persons Status Ordinance (Cap. 182).

(Replaced 28 of 2000 s. 23)

[38.01] Enactment history

This section was replaced pursuant to s 23 of the District Court (Amendment) Ordinance 2000 (28 of 2000), commencing on 1 September 2000.

[38.02] Jurisdiction and powers of the Court of First Instance conferred by section 6 of the Married Persons Status Ordinance (Cap 182)

Section 6 of the Married Persons Status Ordinance (Cap 182) makes provision for questions between husband and wife as to the title to or possession of property to be determined by a judge upon application by either the husband or the wife by summons or otherwise in a summary way. The right of application under s 6 of this

be found. Proceedings under this section should, in principle, be inter partes even though the person concerned has all along been uncooperative. If it is a situation where the person concerned cannot be found, then a proper application should be made to the court for substituted service or, if appropriate, to dispense with service. There is generally no urgency that would justify handling this kind of application by a duty judge or on an ex parte basis: *Fang Man Ming v Fang Wan Li Yan* [2020] 4 HKLRD 864, [2020] HKCU 3120, [2020] HKCFI 2353 (7 September 2020). See also *Ke Zunjie v Ke Yonghe* [2021] HKCU 3222, [2021] HKCFI 1955 (12 July 2021); *Ho Wai Kwong* (何偉光), executor of the estate of Yu King (余球), deceased v *Ho Kam Chui* (何錦翠) [2024] HKCU 2700, [2024] HKCFI 1844 (12 December 2023); *Kwok Kin Fai v Chan Ping Yi* [2024] HKCU 3042, [2024] HKDC 1272 (1 August 2024).

An alternative approach, which may save time and costs, is to incorporate in the judgment the obligation on the unsuccessful party to execute the subject document in the first instance and the identification and authorisation of a third person to do so in place of the unsuccessful party in the event of default, provided that the unsuccessful party has had an opportunity to address the court on the inclusion of a direction under this section and it is made clear that the third party can and should be called upon to execute the document only on proof, whether on oath or otherwise, of the neglect by the party primarily obligated to do so: *Capital Century Textile Co Ltd v Li Diantao & Anor* [2023] 2 HKC 433, [2023] HKCFI 320 (3 February 2023). See also *Kwok Kin Fai v Chan Ping Yi* [2024] HKCU 3042, [2024] HKDC 1272 (1 August 2024).

In *Tokic DOO v Hongkong Shui Fat Trading Ltd & Ors* [2020] 5 HKC 154, [2020] 4 HKLRD 189, [2020] HKCFI 1822 (4 August 2020), Deputy Judge Douglas Lam SC held that this section may apply to as relief to a plaintiff who had been defrauded to recover from a defendant funds standing as a credit balance in the defendant's bank account which represented the funds transferred due to the fraud or any part thereof. On the other hand, in *Kuo Benjamin Yung-Hsiang v Xu Meiyi* [2022] 6 HKC 796, [2022] 5 HKLRD 111, [2022] HKCFI 3007 (27 September 2022), Deputy Judge Jonathan Chang SC was of the opinion that the court should make an order under this section on a contingent basis, namely in the event that the sums sought to be recovered or their traceable proceeds still remain in the defendant's bank account. In *Amidas Hong Kong Ltd v Che Si Lid* [2025] 3 HKC 977, [2025] 5 HKLRD 288, [2025] HKCFI 1128 (25 March 2025), Au-Yeung J agreed with Deputy Judge Jonathan Chang SC on the issue, stating that the powers were entirely statutory and thus the strict wording of the section must be followed. In *Orion Engineered Carbons GMBH v Universal All Ltd & Ors* [2025] 4 HKC 726, [2025] HKCFI 2370 (30 May 2025), K Yeung J followed *Amidas Hong Kong Ltd v Che Si Lid* (above).

Applications can be made for appointment of the Registrar of the District Court to execute a confirmatory assignment in favour of the plaintiff where the defendant cannot be found, such as where the defendant is a foreign company that was struck off from the register and where the defendant is a company that has been wound up; see *Li Kwan Chuen v Vector Development Ltd* [2009] 3 HKC 442, [2009] 3 HKLRD 511 (CFI); *Chu Po Chuen v Kwong Yip Co Ltd & Anor* [2015] HKCU 1674 (unreported, 3 July 2015, DCMF 1062/2015) (DC); *Sin Tai Kong & Ors v Tang Kam Ming Keith* [2019] HKCU 2137, [2019] HKDC 781 (6 June 2019). However, where the defendant is a company that is and remains dissolved, the property is *bona vacantia* and belongs to the Government, with the consequence that the proper defendant should have been the Government: *Lau Yun Lin v Kwan Tsung Co Ltd* [2017] 5 HKC 500, [2017]

Ordinance is extended and further extended by ss 7 and 8 of the same. However, it is not clear if the jurisdiction under this section is subject to the monetary limits set out in ss 35 and 36 above.

RDC, O 89 makes provision for such proceedings between husband and wife, which must be begun by originating summons.

As to 'jurisdiction', see [3.04] above. As to 'power', see [2.27] above. As to the Court of First Instance, see [10.04] above.

[38.03] Definitions

For 'Court', see s 2 above.

38A. Execution of instruments by order of the Court

(1) Subsection (2) applies where—

(a) the Court has given or made a judgment or order directing a person to—

(i) execute any conveyance, contract or other document; or

(ii) endorse any negotiable instrument; and

(b) that person—

(i) neglects or refuses to comply with the judgment or order;

or

(ii) cannot, after reasonable inquiry, be found.

(2) The Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document is to be executed, or that the negotiable instrument is to be endorsed, by such person as the Court may nominate for that purpose.

(3) A conveyance, contract, document or instrument executed or endorsed in accordance with subsection (2) has the same effect as if it had been executed or endorsed by the person originally directed to execute or endorse it.

(4) Nothing in this section abridges the powers of the Court to proceed by attachment against any person neglecting or refusing to execute or endorse any such instrument.

(Added 3 of 2008 s. 35)

[38A.01] Enactment history

This section was added pursuant to s 35 of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008), commencing on 2 April 2009.

[38A.02] General

This section was added to empower the District Court with the power the High Court has under the High Court Ordinance (Cap 4), s 25A(1). For the exercise of that power, see *Goldsteady Investment Ltd v Fatima Estates Ltd* [2000] 1 HKC 819 (CFI) (execution of assignment by Registrar of the High Court); *Leader Screws Manufacturing Co Ltd v Huang Shunkui* [2021] HKCU 4616, [2021] HKCFI 2828 (24 September 2021) (ensuring the effectiveness of an order of receivership). The applicant must prove to the court that there was a pre-existing judgment (which should usually be a final judgment) directing a person to execute a conveyance or other document and that person neglected to comply or could not