

similar to that in jurisdictions with direct constitutional provisions. The Basic Law also confirms that all laws including common law developments remain in place, except for areas under the provision of the Central Government of the PRC. The University of Hong Kong Libraries and the Hong Kong University Centre for Comparative and Public Law have established a website called Basic Law Drafting History Online (<http://sunzi1.lib.hku.hk/bldho/>), which contains historical materials such as drafting material and news coverage of the developments.

## 1.2 COMPARING UK AND HONG KONG LEGISLATION

Legislation is generally in two main forms:

- Ordinances, Acts or Statutes. Laws that are passed by the Legislative Council of the Government of the HKSAR and the Parliament (UK) respectively in each jurisdiction.<sup>11</sup> In Hong Kong they are called Ordinances. In the UK Acts is the general term used when referring to the piece of legislation and Statute is the more formal term used.
- Subsidiary, secondary, subordinate or delegated legislation, also termed Statutory Instruments in the UK (regulations, statutory rules, by-laws, etc). These laws are made to support or flesh out the provisions of an Act of Parliament (UK) or Ordinance of the Government of the HKSAR

<sup>11</sup> See <http://www.doj.gov.hk/eng/legal/index.htm> for more details on the political structure of the HKSAR. The National People's Congress through the Basic Law authorises the HKSAR to exercise a high degree of autonomy directly under the Central People's Government. The HKSAR enjoys executive, legislative and independent judicial power, including that of final adjudication, in accordance with provisions of the Basic Law. Although foreign affairs relating to the HKSAR are the responsibility of the Central People's Government, the HKSAR is authorised to conduct relevant external affairs on its own in accordance with the Basic Law. The Central People's Government is also responsible for the defence of the HKSAR, but the responsibility of maintaining public order in the HKSAR is a matter for its government.

by bodies other than or given authority by Parliament (UK) or the Government of the HKSAR. For example the Road Tunnels (Government) Ordinance (Cap.368) outlines the broad areas related to control and regulation of traffic in government road tunnels while the Road Tunnels (Government) Regulation (Cap.368 sub.leg.A) outlines information on signage and road marking as well as penalties and offences that can be committed under the Ordinance.

### 1.2.1 Ordinances, Acts or Subsidiary Legislation

Principal Ordinances, Acts or principal subsidiary/statutory instruments are the Ordinance, Act or subsidiary legislation/statutory instrument as it was originally passed and enacted. In the UK and Hong Kong, principal Acts and Ordinances or subsidiary legislation/statutory instruments are sometimes repealed by new principal Acts or subsidiary legislation/statutory instruments when substantial changes to the law are made.

Amendment Ordinances, Acts and regulations/statutory instrument are a later Ordinance, Act or subsidiary legislation/statutory instrument whereby its sole purpose generally is to make changes to part or parts of the principal Ordinance, Act or subsidiary legislation/statutory instrument. The changes may be minor or quite substantial. For Hong Kong and UK legislation students may need to view both the principal and amendment Ordinance, Act or subsidiary legislation to see how the change(s) have been incorporated into the Ordinance, Act or subsidiary legislation, although available services provide updated copies of the legislation. Some amending Ordinances, Acts and subsidiary legislation/statutory instrument make changes to more than one Ordinance, Act or subsidiary legislation/statutory instrument.

In Hong Kong, once the amendment Ordinance has commenced, its provisions are inserted into the text of the principal Ordinance in the *Laws of Hong Kong*. This can be found in the *Laws of Hong Kong* print service where the pages are substituted as needed and also online with the amendment date next to the relevant legislation (see paragraph 1.5 on *Laws of Hong Kong* below).



### 1.3 PROCESS OF CREATING LEGISLATION

There are various ways that legislation comes about or is proposed. It is meaningful to consider legislation as the product of developments in society whether they are legal, political, social or economic. New legislation may be the result of political developments or appeals made to the government by individuals or groups through their local government organisations. Normally though, much new legislation, is the result of government activity whether it be at departmental level or as the result of the findings of statutory authorities such as Law Reform Commissions or Royal Commissions (in Hong Kong, the UK and Australia for example). Often government departments and the Law Reform Commissions will communicate to the public through consultation and discussion papers.<sup>12</sup>

Once the government has accepted the proposal the draft legislation is created. This is called a Bill. In this draft form the bill is not a primary source of law. Only the final enacted version, called an Ordinance in Hong Kong and an Act in the UK, is a primary source of law. Often, as is the case in many jurisdictions, quite substantial changes will be made to a bill as it passes through Parliament or, as is the case in Hong Kong, the Legislative Council (LegCo).<sup>13</sup>

In Hong Kong, bills are divided into two categories. Public bills, which are bills that will probably affect quite a large proportion of the community, eg: bills to do with motor traffic law, criminal law or employment law.<sup>14</sup>

<sup>12</sup> In Hong Kong, UK and other jurisdictions such as Australia these consultation papers often take the form of "Green" papers and "White" papers when they are released by government departments. The colour refers to the colour of the paper used to print them on, even though more often than not these papers are electronically available across the internet. "Green" papers are discussion papers created by government setting out the relevant issues. "White" papers are position papers created by government after they take into account submissions made by interested parties based on the content of the "Green" papers and other sources. The terminology is still used to refer to the difference in the papers. Hong Kong posts their consultation papers at [http://www.info.gov.hk/policy\\_f.htm](http://www.info.gov.hk/policy_f.htm)

<sup>13</sup> For more detail on the Legislative Council see <http://www.legco.gov.hk/english/index.htm>

<sup>14</sup> In the UK legislation that fall into this category is called Public General Acts.

Others that may only affect the parties involved in them are categorised as private bills. For example: the Bank of East Asia Limited Bill 2005.

A bill has quite a life cycle through the Legislative Council in Hong Kong, the UK Parliament and generally in most countries that follow the English tradition of government. For Hong Kong specifically the bill will actually be submitted three times for consideration. The official terminology is readings of the bill. Before the bill is introduced to LegCo it is considered by the Executive Council (ExCo). A vote may be taken, but the final decision lies with the Chief Executive. If that decision is contrary to the majority the Chief Executive must outline for the record the reasons for not introducing the bill to LegCo. Assuming the bill is introduced the following cycle occurs:

- The draft bill may be sent to interested parties and published in the HKSAR Gazette (the official record of events and activities within government) in the Legal Supplement No 3 (See <http://www.gld.gov.hk/cgi-bin/gld/egazette/index.cgi?lang=e&agree=0> for further details on the content of the gazette).
- First reading. Only the title is read to alert the members of LegCo that it exists and what it is about in general terms. These recorded activities of LegCo deemed "Hansard" following the English tradition are available at [http://www.legco.gov.hk/general/english/counmtg/yr00-04/mtg\\_0304.htm](http://www.legco.gov.hk/general/english/counmtg/yr00-04/mtg_0304.htm)
- Second reading. The bill is read in full and debated. This may be a short process or over quite a few days depending on the content of the bill.
- After the second reading the bill is referred to the House (Bills) Committee for further drafting. [http://www.legco.gov.hk/general/english/bc/bc\\_0004.htm](http://www.legco.gov.hk/general/english/bc/bc_0004.htm)
- The bill is then returned to LegCo for further discussion. This is still deemed the second reading. It is voted on and if passed by a majority it is referred to the committee for further scrutiny. Generally, as most of the work has already been done by the Bills Committee, it is rechecked for accuracy etc unless it needs the attention of a select committee.
- Third reading. The bill as finalised is read a third time and voted on. It is not law until it is consented to by the Chief Executive (for reference, in the UK and Australia The Queen and the Governor General, (Queen's representative in Australia,) respectively must give their consent).



<b>Edited books</b>	Editors should be included in citation details.
<b>Chapter from textbook</b>	Authors may have written chapters in books which students use. The author and the book as a whole need to be identified. The title of the chapter can be put in single or double quotation marks.
<b>Looseleaf services</b>	A looseleaf service is a publication that is periodically updated. In print the service is in a ring binder format to allow pages to be replaced and updated. (Hence the name looseleaf service). Looseleaf services are generally on specific subjects and provide not only commentary on the area of law, but relevant cases and legislation. They are also available online and/or in CD format in most instances.
<b>Encyclopaedias</b> <i>Halsbury's Laws of</i> <i>Halsbury's Laws of England</i>	There are two legal encyclopaedias that students will use. <i>Halsbury's Laws of Hong Kong</i> and <i>Halsbury's Laws of Hong Kong England</i> . These encyclopaedias are available in print and electronic format (updated regularly) and provide very detailed commentary on major areas of the law. They are generally referenced with extensive footnotes to cases, legislation and secondary sources. Students should note most common law jurisdictions also have encyclopaedias.
<b>Dictionaries</b> <i>Hong Kong Legal Dictionary</i> <i>Hong Kong English-Chinese Legal Dictionary</i> (港英漢雙解法律)	A range of legal dictionaries is available in law libraries. It is best to use a Hong Kong legal dictionary so the terms and definitions are applicable to Hong Kong law unless you need definitions from other jurisdictions. While definitions in a dictionary are very authoritative they are not primary law. Dictionaries are cited in a similar format to textbooks.
<b>Journals</b> Main journals in Hong Kong are <i>Hong Kong Law Journal</i> <i>Hong Kong Lawyer</i> <i>Hong Kong Student Law Review</i>  Hong Kong coverage in: <i>Asia Pacific Law</i>	There is a large range of legal journals (some types of journals are called reviews, bulletins and newsletters) and collectively together with other sources such as annual reports from government departments they are called legal periodicals. These secondary sources generally have specialised commentary on a number of topics. There are journals for academic study and for the legal profession so

Speeches, conference papers, government reports, newspaper articles.	These secondary resources are generally specialised on particular topics and may be well referenced or not at all in the case of newspaper articles. Reports from the Hong Kong Law Reform Commission and other law reform commissions from around the world are invaluable research documents as they often discuss previous and current law with details of international developments and recommended changes.
Bills, parliamentary debates from parliament/legislative council	Bills are draft legislation and as such are secondary sources. Legislative Council debates include speeches given by members of parliament. The most important for research is the 2nd reading speech where the minister presents and discusses the bill.

#### 4.4.2 How to Cite them?

Secondary Sources	How to Cite
	(Citation styles vary depending on where you study and what style guide is followed. Some of the most common forms are detailed below.) <sup>39</sup>
<b>Textbooks</b>	Authors name, <i>Book title</i> , Place of publication (may not be included in some styles), Publisher, year of publication (these may be enclosed in parentheses)  Eg (for a Bibliography): Glofcheski, Rick <i>Tort Law in Hong Kong</i> Hong Kong Thomson/Sweet & Maxwell Asia 2002 or Glofcheski, Rick <i>Tort Law in Hong Kong</i> (Thomson/Sweet & Maxwell Asia 2002)

<sup>39</sup> Some major publications in this area are listed at the end of the chapter. They detail even more secondary sources and how to cite them.



For a footnote:

Glofcheski, Rick *Tort Law in Hong Kong* Hong Kong Thomson/Sweet & Maxwell Asia 2002, 32

or

Glofcheski, Rick *Tort Law in Hong Kong* Hong Kong Thomson/Sweet & Maxwell Asia 2002 at 32

Another style leaves the publishing information out<sup>40</sup>

Eg:

Glofcheski, Rick *Tort Law in Hong Kong* (2002)

In footnotes if using this style the authors name appears with their first name first

Eg:

Rick Glofcheski *Tort Law in Hong Kong* (2002) 39

#### Edited books

Antons, Christoph (ed) *Law and Development in East and Southeast Asia* New York, RoutledgeCurzon 2003.

#### Chapter from textbook

Bishop, Bernard "APEC, Industry Policy and the Role of Law" in Antons, Christoph (ed) *Law and Development in East and Southeast Asia* New York, RoutledgeCurzon 2003

#### Looseleaf services

Publisher *Title* vol chapter and Chapter title (if relevant), Title of paragraph, paragraph number

Eg:

LexisNexis/Butterworths *Securities Law: Hong Kong and the Peoples Republic of China* Vol 1 Chapter 1 Regulatory Authorities. Functions of the SFC [53]

#### Encyclopaedias

*Halsbury's Laws of*

*Halsbury's Laws of England*

Publisher, *Encyclopaedia title*, volume (if relevant), date of publication or date of retrieval if using electronic format, Title number, Name of title, paragraph number, Name of paragraph, page number(s)

<sup>40</sup> Melbourne University Law Review Association *Australian Guide to Legal Citation* (Melbourne, Melbourne University Law Review Association, 2nd edn, 2002) p 52.

Eg:

LexisNexis/Butterworths *Halsbury's Laws of Hong Kong*, Volume 5(1) 2003, [90], Civil Procedure, [90.0053], Extension of time by consent, 55 secondary sources.

#### Dictionaries

*Hong Kong Legal Dictionary*

*Hong Kong English-Chinese*

*Legal Dictionary*

(港英漢雙解法律)

Dictionary name, Place of publication, Publisher, year of publication

Eg:

*Hong Kong Legal Dictionary*, Hong Kong, LexisNexis/Butterworths, 2004

Depending on citation style, place of publication and publisher may be omitted and/or editors' names included. See above under textbooks.

#### Journals

Main journals in Hong Kong are

*Hong Kong Law Journal*

*Hong Kong Lawyer*

*Hong Kong Student Law Review*

As with textbooks depending on the style format used and whether it is footnote reference or a reference in a bibliography, author's names can be first name first or surname first and include all page ranges or just the first page the article is printed on.

Hong Kong coverage in:  
*Asia Pacific Law*

Authors name, Title of article, year of journal, volume, issue if noted, *Title of journal (in some style guides may be abbreviated)*, page details

Eg: (for a bibliography-for footnotes add page details as per books above)

Chan, Lydia Hong Kong Land Titles Ordinance: The Shape of Things to Come. (2005) 35(3) *Hong Kong Law Journal* 627

Chan, Lydia Hong Kong Land Titles Ordinance: The Shape of Things to Come. (2005) 35(3) *Hong Kong Law Journal* 627-650

Chan, Lydia Hong Kong Land Titles Ordinance: The Shape of Things to Come. (2005) 35 *HKLJ* 627