

Library of the Hong Kong Polytechnic University, for his help in keeping track of unreported judgments. Any errors or omissions are ours.

We have attempted to state the law as at 1 December 2001.

**Paul Kent**  
**Malcolm Merry**  
**Megan Walters**

December 2001

## Contents

	<i>Page</i>
<i>Preface</i>	v
<i>Checklist of questions</i>	xi
<i>Table of Cases</i>	xvii
<i>Table of Statutes</i>	xxxv
<b>Chapter 1 Introduction</b>	<b>1</b>
The objectives of building management in Hong Kong	1
Building management problems in Hong Kong	1
Some practical implications	6
The layout of building management in Hong Kong	9
The common structure of Chapters 2 to 9	11
An illustration	11
Part 1      A case study: life in a Hong Kong high-rise	11
Part 2      Practical questions	12
Part 3      Problem areas	13
<b>Chapter 2 Hong Kong's system of management of multi-storey buildings in private ownership</b>	<b>14</b>
Part 1      Summary of the main components of the system	14
Evolution	14
Implications of piece-meal development	21
Liability and remedies	25
Part 2      Practical questions	29
Part 3      Problem areas	38
<b>Chapter 3 The government and developer</b>	<b>40</b>
Part 1      The government grant and its effects	40
The government grant	40
The developer's rights as a purchaser/tenant	41
The developer's obligations	46
The government's rights as landlord	50
The government's obligations as landlord	52
Termination of the government grant	53
Part 2      Practical questions	55
Part 3      Problem areas	57

<b>Chapter 4</b>	<b>The developer and first purchaser</b>	<b>63</b>
Part 1	Formation and regulation of the community of owners	64
	The mechanics of land transfer in Hong Kong	64
	The purchaser's rights	68
	The developer's rights	69
	The contents of the Deed of Mutual Covenant ('DMC')	71
	Termination of the community of owners	83
Part 2	Practical questions	87
Part 3	Problem areas	96
	Shares	96
	Rights in respect of retained areas	98
	DMCs	103
	Liquidation of the development company	108
<b>Chapter 5</b>	<b>The manager and owners</b>	<b>110</b>
Part 1	The nature of the relationship between the manager and owners	110
	The sources of the manager's rights and obligations	110
	Who is the manager?	112
	Appointment of a manager	113
	Resignation	116
	Removal	117
	Remuneration	122
	Powers and duties of a manager appointed under the DMC — general	122
	Management funds, budgets and accounts	126
	Individual owners' contributions to the funds	139
	Enforcement of owners' obligations to contribute to the cost of managing the building	140
	Enforcement of covenants other than the duty to contribute to the cost of management	144
	Liability of the manager to the owners	156
	Avoidance of liability	175
Part 2	Practical questions	199
	Removal of a manager appointed under the DMC	199
	Remuneration and indemnity	201
	The manager's powers and duties in respect of the building	205
	Management charges	216
	Enforcement of covenants in the DMC	220
	Remedies for breach of covenant	227
Part 3	Problem areas	232
<b>Chapter 6</b>	<b>The owners' corporation and owners</b>	<b>244</b>
Part 1	Building management and owners' corporations	244
	The role of government in building management	244
	Formation and registration of the corporation	246
	The effects of incorporation	251
	Powers of the corporation	258
	Duties of the corporation	262
	The management committee of a registered corporation	268

	Mandatory appointment of a building management agent	279
	Meetings	281
	Resolutions	287
	Winding-up the corporation	288
	Penalties under the Building Management Ordinance (Cap 344) ('BMO')	289
	The relationship between the DMC and BMO	290
Part 2	Practical questions	291
Part 3	Problem areas	294
<b>Chapter 7</b>	<b>Owners</b>	<b>300</b>
Part 1	The boundaries of lawful action	300
Part 2	Practical questions	308
Part 3	Problem areas	314
<b>Chapter 8</b>	<b>Owners and government</b>	<b>325</b>
Part 1	The role of the Building Authority in building management	326
	Powers of entry and inspection	326
	Unauthorised building works	327
	Material change in the use of buildings	330
	Exempt works	331
	Dangerous buildings	332
	Defective buildings	334
	Dangerous slopes, earth-retaining structures, and leaking underground pipes	334
	Drainage works	336
	Projections on or over streets	337
	Closure orders	338
	Service of notices, orders and certificates	339
Part 2	Practical questions	340
Part 3	Problem areas	346
<b>Chapter 9</b>	<b>Third parties</b>	<b>349</b>
Part 1	Summary of third party rights and liabilities in respect of a privately-owned multi-storey building	349
	Relations with suppliers of services	350
	Liability of the third party supplier of services to the owners	352
	Actions for compensation by visitors to the building	353
	Actions by members of the public	359
Part 2	Practical questions	360
Part 3	Problem areas	363
<b>Chapter 10</b>	<b>Dispute resolution</b>	<b>369</b>
	Courts with original jurisdiction in civil cases	370
	Appeals	380
	Judicial review	383
	Do we need a building management tribunal?	383
	A larger question?	384

Appendix 1	Revised Guidelines for Deeds of Mutual Covenant	385
Appendix 2	Code of Practice on Building Management and Maintenance	395
Index		409

## Checklist of questions

	<i>Page</i>
1 What does an owner 'own'?	29
2 What can an owner do with what he owns?	30
3 What does a co-owner own?	31
4 Does a co-owner have the right to exclusive possession of any part of the land?	31
5 How does a co-owner acquire the right to exclusive possession of part of the land?	32
6 Can a co-owner sell a flat without shares?	33
7 How are common parts identified?	33
8 Can shares be attached to the common parts?	35
9 Can an exclusive use area become a common part?	35
10 Can one co-owner have exclusive use rights over the common parts?	36
11 Who has the right to sue in respect of wrongs committed before the owners incorporate?	38
12 Why should purchasers of undivided shares familiarise themselves with the terms of the government grant?	55
13 What are the main breaches of the government grant?	55
14 How can the developer determine whether to apply for or accept a modification of the government grant?	57
15 Can the government sue Lee Yuen and Hotpot and, if so, what are the effects for the other owners?	61
16 Can the developer section the land after the first sale of undivided shares?	62
17 Can the developer require the other owners or manager to pay for repairs to his exclusive use areas?	87
18 Does section 34H of the BMO apply to tenants and other occupiers who have a right to exclusive use of a unit?	89
19 Is the developer responsible for management and maintenance of the car park?	90
20 Are owners under any obligation to pay a deposit or other advance contribution to management funds?	90
21 Can an owner recover payments made for management and maintenance when he ceases to own undivided shares?	92