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中國山水投資有限公司 訴 張才奎 [2015] HKCU 1068 (HCA 1661, 1766 & HCA 2191/2014, 13 May 2015, unreported)	6.109
張才奎所託管中國山水投資有限公司股份相關員工 訴 張才奎 [2015] HKCU 1126 (HCA 1661/2014, 20 May 2015, unreported)	6.92
朱祖永 訴 香港警務處 [2002] HKCU 1660 (HCMP 1676/2002, 27 September 2002, unreported)	2.380, 2.385
顏小明 訴 多福大廈業主立案法團 (LDBM 79/2007, 27 August 2012, unreported)	3.41
1-800 Flowers Inc v Phonenames Ltd [2000] ETMR 369	7.11

A

A v B [2007] 1 Lloyd's Rep 358	8.57
A v C (No 1) [1981] QB 956	4.56, 4.57, 14.3, 14.23
A v United Kingdom (2009) 49 EHRR 625	10.112
A Co v B Co [2002] 3 HKLRD 111	4.64
A Company, Re [1985] BCLC 80	6.8
AB v South West Water Services Limited [1993] QB 507	2.76
AO Smith Holdings (Barbados) SRL v Zhang Dacheng HCMP 1132/2011, 1 June 2012, unreported	4.76, 4.77, 13.31
Abbot GmbH & Co KG v Pharmareg Consulting Co Ltd [2009] 3 HKLRD 524	2.249, 4.14
Abingdon v James [1940] Ch 287	3.14
Able Success Asia Ltd v China Packaging Group Co Ltd [2014] HKCU 1316 (HCMP 1091/2014, 15 May 2014, unreported)	2.190, 6.26, 6.97
Able Success Asia Ltd v China Packaging Group Co Ltd [2015] HKCU 2875 (HCA 1120/2014, 25 November 2015, unreported)	2.53
Abu Dhabi National Tanker Co v Lam Ming Chi [1998] 4 HKC 320	13.31
Accent Delight International Ltd v Yves Bouvier [2015] HKCU 1692 (HCMP 573/2015, 23 July 2015, unreported)	2.45, 2.46, 2.50, 4.99
Achieve Goal Holdings Ltd v Zhong Xie Ore-Mineral Holding Co Ltd HCA 1987/2005, 3 July 2009, unreported	12.125
Achieve Goal Holdings Ltd v Zhong Xin Ore-Material Holding Co Ltd & Ors [2014] HKCU 2044 (HCA 1987/2005, 1 September 2014, unreported)	12.112
AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC [2013] 1 WLR 1889	8.25