

TABLE OF CONTENTS

<i>Foreword</i>	v
<i>Preface</i>	vii
<i>List of Diagrams</i>	xxiii
<i>Table of Cases</i>	xxv
<i>Table of Legislation</i>	xxxvii

CHAPTER 1 INTRODUCTION TO CRIMINAL PROCEDURE

1. Overview	1.001
2. Fundamental Principles of Defence	1.003
3. Relevant Legislation	1.010
4. Relevant Practice Directions	1.014
5. Books and Other References	1.016
6. Criminal Litigation Process in Brief	1.017

CHAPTER 2 CRIMINAL JURISDICTION OF COURTS IN HONG KONG

1. Territorial Jurisdiction of Criminal Courts in Hong Kong	2.001
(a) General territorial jurisdiction	2.001
(b) Exceptions to general territorial jurisdiction	2.005
2. Criminal Courts in Hong Kong	2.033
(a) Overview	2.033
(b) Magistrates' Courts 裁判法院	2.079
(c) Juvenile Court 少年法庭	2.110
(d) District Court 區域法院	2.134
(e) High Court — Court of First Instance 高等法院 — 原訟法庭	2.151
(f) High Court — Court of Appeal 高等法院 — 上訴法庭	2.173
(g) Court of Final Appeal 終審法院	2.183
3. Department of Justice 律政司	2.193
4. Investigation of Offences	2.197
(a) Hong Kong Police Force 香港警務處	2.197
(b) Independent Commission Against Corruption 廉政公署	2.206

(c) Customs and Excise Department 香港海關	2.212
(d) Immigration Department 入境事務處	2.218
(e) Securities and Futures Commission 證券及期貨事務監察委員會 (證監會)	2.226
(f) Labour Department 勞工處	2.235
(g) Other law enforcement agencies in Hong Kong	2.239

CHAPTER 3 INVESTIGATION PROCESS OF AN ALLEGED CRIME

1. Generally	3.001
2. Acceptance of Instructions by Solicitors and Barristers	3.012
3. General Powers of the Police	3.018
(a) To stop and search a person or conveyance without warrant	3.018
(b) Of entry, search and seizure with a warrant	3.028
(c) Of arrest	3.038
(d) Of detention	3.062
(e) Powers in relation to traffic offences	3.066
4. General Powers of the ICAC	3.083
(a) Of entry, search and seizure	3.083
(b) Of arrest	3.084
(c) Of detention	3.085
(d) To obtain information	3.087
(e) For restraint order	3.091
5. General Powers of the Customs and Excise	3.093
(a) Of search and arrest	3.093
(b) Of entry, search and seizure	3.096
(c) Of inspection of travel documents	3.098
(d) After arrest	3.099
6. General Powers of the Immigration Service	3.100
(a) Of search and arrest	3.100
(b) Of entry, search and seizure	3.103
(c) After arrest	3.104
(d) Powers of immigration officers exercisable by Customs and Excise and/or the Police	3.109
7. Powers of the Police and Customs and Excise under Dangerous Drugs Ordinance	3.110

8. Powers Conferred under Organized and Serious Crimes Ordinance and Drug Trafficking (Recovery of Proceeds) Ordinance	3.112
(a) Generally	3.112
(b) Order to require furnish of information or produce material	3.117
(c) Search warrant	3.120
(d) For restraint order	3.123
(e) Duty of disclosure by persons — knowing or suspecting property to be proceeds of an indictable offence	3.127
9. Citizen's Powers of Arrest	3.130
10. Covert Surveillance and Interception of Communication	3.135
11. Treatment and Interviewing of Arrested Persons	3.143
(a) Generally	3.143
(b) Process and detention of persons in police custody	3.157
(c) Items to bring to a legal visit	3.167
(d) Rules and Directions for the Questioning of Suspects and the Taking of Statements	3.176
(e) Verbal statement/admission uttered by the accused	3.197
(f) Written statement and/or video record of interview of the accused	3.207
(g) Access to legal representation and provisions to defence	3.212
(h) Antecedent statement (罪犯背景口供/身世背景口供)	3.216
12. Identification Parade	3.221
13. Fingerprints, Photographs and other Samples	3.230
(a) Generally	3.230
(b) Police	3.231
(c) Other law enforcement agencies	3.240
14. Treatment of Juvenile Offenders	3.247
15. Laying Information (Charge)	3.250
16. Bail, Detention or Release by Law Enforcement Agencies Pending First Court Appearance	3.253
17. Effects Where Accused and/or Legal Representatives Refuse and/or Fail to Cooperate	3.267
(a) Generally	3.267
(b) Perverting the course of public justice and/or obstructing	3.273
(c) Contempt of court	3.277
(d) Perjury/making false statements	3.281
(e) Dealing with proceeds of an indictable offence	3.284
(f) Disclosing identity, etc of persons being investigated	3.288

18. Effects Where Accused's Rights Are Violated.....	3.291
(a) Generally.....	3.291
(b) Application to vary or set aside order and/or warrant.....	3.293
(c) Judicial review	3.295
(d) Stay of proceedings.....	3.299
(e) Exclusion of evidence obtained in breach of a person's constitutional rights at trial	3.302
(f) Exclusion of evidence of alleged confession and/or admission of accused at trial.....	3.304
(g) Criminal proceedings against the officers involved.....	3.307
(h) Formal complaint submitted to Complaints against the Police Office (CAPO)	3.308
(i) Formal complaint submitted to ICAC complaints committee	3.311
(j) Civil proceedings against law enforcement agencies	3.313

CHAPTER 4 COMMENCEMENT OF CRIMINAL PROCEEDINGS

1. Classification of Criminal Offences.....	4.001
(a) Generally	4.001
(b) Offences triable summarily	4.009
(c) Offences triable upon indictment.....	4.020
(d) Offences triable either way	4.029
(e) Relationship between classification of offences and sentencing jurisdiction of the courts	4.038
2. Functions of the SJ in Criminal Proceedings.....	4.046
(a) Institution of criminal proceedings	4.046
(b) Decision to prosecute	4.048
(c) Certain offences require consent of SJ to prosecute	4.059
(d) Decision as to venue of criminal proceedings	4.061
(e) Discontinuance of proceedings	4.067
3. Private Prosecution	4.070
4. Forms of Commencing Criminal Proceedings.....	4.075
(a) Generally.....	4.075
(b) Laying information before a Magistrate	4.079
(c) Filing a notice of prosecution (檢控通知書).....	4.102
(d) Issuing of fixed penalty notice (定額罰款通知書)	4.107
(e) After accused is served the charge sheet/summons/notice of prosecution/fixed penalty notice	4.115

5. Indictment (公訴書) and Charge Sheet (控罪書).....	4.118
(a) Generally	4.118
(b) Indictment — form and content.....	4.127
(c) Joinder of charges and/or defendants and rule against duplicity and misjoinder.....	4.146
(d) Alternative charges	4.158
(e) Defective indictment or charge	4.162
(f) Amendment to indictment or charge.....	4.165

CHAPTER 5 PRELIMINARY COURT APPEARANCES AND PROCEDURE PRIOR TO TRIAL

1. Taking of Instructions from the Accused	5.001
2. Disclosure of Documents and/or Exhibits by the Prosecution	5.017
(a) Preliminary documents served to Defence/Accused before first court appearance	5.017
(b) Other documents served to Defence/Accused	5.022
(c) List of witnesses and list of exhibits	5.029
(d) Unused material	5.038
3. Accused's First Appearances in Magistrates' Courts	5.056
(a) Procedure	5.056
(b) Selection of language to be used.....	5.076
(c) Application by the Prosecution to amend, withdraw, add charge or offer no evidence	5.081
(d) Application by the Prosecution for plea to be taken	5.087
(e) Application by the Prosecution for no plea.....	5.096
(f) Mention hearings in the Magistrates' Courts, before decision as to venue where case will be dealt	5.112
4. Court Bail Pending Trial	5.121
(a) Generally	5.121
(b) Powers of a Magistrate or District Judge to grant bail.....	5.134
(c) Application by SJ for review of Magistrate or District Judge's decision to allow bail or review of bail conditions	5.156
(d) Court bail granted by a CFI Judge	5.158
5. Transfer of Proceedings to the District Court	5.163
(a) Procedure of transfer	5.163
(b) Procedure after a case is transferred to the District Court	5.177
(c) Transfer of proceedings out of the District Court	5.189

6.	Committal or Transfer of Proceedings to the Court of First Instance.....	5.190
(a)	Introduction.....	5.190
(b)	Committal proceedings	5.195
(c)	Transfer of proceedings involving complex commercial crimes.....	5.216
(d)	Transfer of proceedings to the CFI under CPO s.79F.....	5.224
(e)	Voluntary bill to the CFI	5.228
(f)	Procedure after a case is committed to the CFI	5.231
(g)	Transfer of proceedings out of the CFI.....	5.241
7.	Plea Bargaining.....	5.243
(a)	Generally.....	5.243
(b)	Offer no evidence and bind over.....	5.259
8.	Case Management and Pre-Trial Review.....	5.274
(a)	Generally.....	5.274
(b)	PD 9.3: Criminal Proceedings in the Court of First Instance	5.284
(c)	Vulnerable witness	5.296
9.	Issues Which Defendant Should Give Proper Notice before Commencement of Trial	5.308
(a)	Generally.....	5.308
(b)	Stay of proceedings.....	5.312
(c)	Alibi evidence of the defendant.....	5.317
(d)	Expert evidence.....	5.322
10.	Witness Summons/Warrant to Secure Witness' Attendance at Trial.....	5.326

CHAPTER 6 TRIALS IN THE MAGISTRATES' COURTS AND DISTRICT COURT

1.	Conduct of Defence Counsel in Criminal Proceedings	6.001
2.	Introduction to Trials in the Magistrates' Courts and District Court	6.007
(a)	Generally.....	6.007
(b)	Swearing in of interpreter (if applicable).....	6.021
(c)	Taking of plea from the defendant	6.026
(d)	Possible reversal of plea by a defendant	6.037
3.	Determination of Preliminary Issues before Trial Judge	6.044
(a)	Introduction.....	6.044
(b)	Severance of trial	6.045
(c)	Stay of proceedings.....	6.054
(d)	Admissibility of alleged admission and/or confession <i>(voir dire/alternative procedure)</i>	6.061
(e)	Transfer of proceedings from District Court.....	6.109

4.	Prosecution's Case	6.114
(a)	Prosecution's opening	6.114
(b)	Procedure of calling a witness	6.119
(c)	Close of Prosecution's case.....	6.199
5.	General Matters on Evidence.....	6.203
(a)	Real or documentary evidence.....	6.203
(b)	CPO s.65C admissions	6.216
(c)	Expert evidence.....	6.226
(d)	Alibi evidence	6.234
(e)	Identification evidence	6.236
6.	Determination of whether Defendant Has Case to Answer	6.257
7.	Defence's Case.....	6.265
(a)	Generally.....	6.265
(b)	Defendant as witness.....	6.268
(c)	Other Defence evidence	6.287
(d)	Alibi notice and/or expert evidence	6.292
(e)	Close of Defence's case	6.295
8.	Closing Submissions.....	6.296
(a)	Generally	6.296
(b)	Closing speech of the Prosecution	6.298
(c)	Closing speech of the Defence.....	6.306
9.	Verdict and Reasons for Verdict.....	6.310
10.	Mitigation and Sentencing	6.317
11.	Outstanding Issues	6.319
(a)	Generally	6.319
(b)	Disposal of exhibits.....	6.325
(c)	Forfeiture proceedings and confiscation orders	6.331
CHAPTER 7 TRIAL ON INDICTMENT IN THE COURT OF FIRST INSTANCE BEFORE A JUDGE AND JURY		
1.	Introduction.....	7.001
(a)	Generally	7.001
(b)	Transfers from the CFI to District Court or Magistrates' Courts	7.013
2.	Arraignment (before Judge only).....	7.017
(a)	Generally	7.017
(b)	Pleading guilty to a lesser offence	7.027
3.	Determination of Preliminary Issues (before Judge only)	7.032

4. Empanelling of Jury	7.036
(a) Generally	7.036
(b) Jury eligibility	7.038
(c) Empanelling of jury	7.043
(d) Selection of jury foreman.....	7.059
(e) Non-attendance of juror	7.061
(f) Discharge of juror or jury.....	7.065
5. Putting the Defendant into the Charge of the Jury	7.071
(a) Generally	7.071
(b) Duties of jury	7.073
6. Prosecution's Case	7.085
7. Determination of whether Defendant Has Case to Answer (before Judge only)	7.093
8. Defence's Case.....	7.098
9. Closing Submissions.....	7.103
10. Summing Up by the Judge.....	7.110
11. Retirement of Jury until Verdict.....	7.124
12. Verdict of Jury.....	7.132
13. Discharge of Jury after Verdict	7.143
14. Mitigation and Sentencing (before Judge only).....	7.146
15. Outstanding Issues (before Judge only).....	7.148

CHAPTER 8 MITIGATION AND SENTENCING

1. Overview	8.001
(a) General aspects of sentencing	8.001
(b) Duties of the Prosecution in sentencing.....	8.009
(c) Role of the Defence in sentencing	8.011
(d) General procedure	8.020
2. Factual Basis for Sentencing.....	8.031
(a) Generally	8.031
(b) Guilty plea of defendant	8.039
(c) <i>Newton</i> inquiry	8.047
3. Background of the Accused	8.054
(a) Antecedent statement	8.054
(b) Previous convictions	8.058

4. Sentencing Options Generally	8.060
(a) Sentencing jurisdiction of the court for the convicted offence	8.060
(b) Custodial sentences.....	8.063
(c) Other forms of custodial sentences for young offender under 25 years old	8.067
(d) Suspended sentence	8.087
(e) Community service order.....	8.092
(f) Probation order.....	8.097
(g) Fine	8.099
(h) Bind over.....	8.106
(i) Absolute and conditional discharge	8.107
(j) Other orders	8.111
5. Applying Sentencing Principles to Mitigation	8.129
(a) Generally	8.129
(b) Sentencing options for particular offence and/or defendant	8.131
(c) Starting point.....	8.149
(d) Mitigating factors.....	8.152
(e) Aggravating factors.....	8.170
(f) Enhancement of sentence	8.173
(g) Other reports of defendant	8.179
(h) Totality principle and concurrent/consecutive sentences	8.190
(i) Judge's duty to give reasons	8.195
6. Remission and Rehabilitation of Offenders.....	8.198

CHAPTER 9 FUNDING AND COSTS

1. Funding Criminal Litigation.....	9.001
(a) Generally	9.001
(b) Private funding.....	9.004
(c) Money laundering issues.....	9.016
(d) Duty Lawyer Scheme.....	9.022
(e) Legal aid.....	9.033
(f) Bar Free Legal Service Scheme.....	9.038
2. Costs Orders in Criminal Proceedings	9.042
(a) Generally	9.042
(b) Costs orders to the defendant.....	9.045
(c) Costs orders to the Prosecution.....	9.064
(d) Wasted costs order	9.069

(e) Appeal against costs order	9.073
(f) Costs in the CFA	9.075
(g) Taxation.....	9.078

CHAPTER 10 CRIMINAL APPEAL

1. Generally	10.001
2. Appeal of an Order, Determination, Conviction and/or Sentence of a Magistrate.....	10.011
(a) Generally.....	10.011
(b) Self-review of a Magistrate under MO s.104.....	10.018
(c) Appeal by defendant on conviction and/or sentence to the CFI under MO s.113	10.023
(d) Appeal by way of case stated on point of law under MO s.105	10.042
(e) Review of sentence by SJ under CPO s.81A	10.047
(f) Judicial review to a Judge of the CFI.....	10.054
3. Appeal of an Order, Determination, Conviction and/or Sentence of a Magistrate Sitting in the Juvenile Court.....	10.058
4. Appeal of an Order, Determination, Conviction and/or Sentence of a District Judge or Jury and CFI Judge	10.060
(a) Generally.....	10.060
(b) Appeal by defendant on conviction and/or sentence to the CA	10.066
(c) Appeal/reference by SJ on point of law.....	10.105
(d) Other appeals by SJ.....	10.110
(e) Reserve question of law to the CA.....	10.112
5. Bail Pending Appeal.....	10.113
(a) General principles	10.113
(b) By a Magistrate pending self-review of a Magistrate or Magistracy appeal	10.117
(c) By a CFI Judge pending self-review of a Magistrate or Magistracy appeal	10.119
(d) By CA.....	10.123
(e) By CFA.....	10.128
6. Matters During Appeal Hearing	10.133
(a) Application for leave to appeal out of time	10.133
(b) Fresh evidence on appeal	10.139
(c) Order for retrial	10.144
(d) Order for loss of time.....	10.155

7. Appeal of HCMA/CACC Judgment to the CFA	10.166
(a) Generally.....	10.166
(b) Leave to appeal	10.174
(c) Substantive appeal	10.203
Appendix 1 Interpretation and General Clauses Ordinance (Cap.1) Section 3 Interpretation of Words and Expressions	645
Appendix 2 Criminal Procedure Ordinance (Cap.221) Section 2 Interpretation.....	652
Appendix 3 Criminal Procedure Ordinance (Cap.221) Schedule 3 Excepted Offences	654
Appendix 4 Criminal Procedure Ordinance (Cap.221) Schedule 8 Levels for Fines for Offences.....	655
Appendix 5 Criminal Appeal Rules (Cap.221A, Sub.Leg.) Form XI Notice of Appeal to Judge against Conviction.....	656
Appendix 6 Record of Bail Proceedings (Cap.221I, Sub.Leg.) Schedule	658
Appendix 7 Magistrates' Ordinance (Cap.227) Section 2 Interpretation.....	660
Appendix 8 Magistrates' Ordinance (Cap.227) Second Schedule.....	662
Appendix 9 Magistrates' Ordinance (Cap.227) Third Schedule.....	664
Appendix 10 Magistrates (Forms) Rules (Cap.227C, Sub.Leg.) Form 1 Summons for the Defendant upon an information or complaint	667
Appendix 11 Magistrates (Forms) Rules (Cap.227C, Sub.Leg.) Form 1A Notice to Appear before a Magistrate	668
Appendix 12 Magistrates (Forms) Rules (Cap.227C, Sub.Leg.) Form 101 Notice of Appeal to Judge against Conviction.....	669
Appendix 13 Magistrates (Forms) Rules (Cap.227C, Sub.Leg.) Form 102 Notice of Appeal to Judge against Sentence	670
Appendix 14 ICAC (Treatment of Detained Persons Order) (Cap.204A, Sub.Leg.)	671
Appendix 15 Police Force Ordinance (Cap.232) Schedule 2	676
Appendix 16 Practice Direction 2.2 Criminal Appeals to the Court of Final Appeal.....	677
Appendix 17 Practice Direction 2.4 Court of Final Appeal — Time Management	678

Appendix 18	Practice Direction 4.2 Criminal Appeals to the Court of Appeal.....	681
Appendix 19	Practice Direction 9.3 Criminal Proceedings in the Court of First Instance	688
Appendix 20	Practice Direction 9.4 Criminal Proceedings in the District Court	706
Appendix 21	Practice Direction 9.6 Magistracy Appeals in the Court of First Instance	710
Appendix 22	Practice Direction 9.10 Use of Screens in Sexual Offence Cases in the Magistrates' Courts.....	713
Appendix 23	Practice Direction 10.2 Chinese Translations	715
Appendix 24	Rules and Directions for the Questioning of Suspects and the Taking of Statements	716
Appendix 25	Notice to Persons in Custody (Pol.153).....	723
Appendix 26	Custody Search Form (Pol.1123).....	725
Appendix 27	Sample of Police Notebook Entries	728
Appendix 28	Sample of Record of Interview (Pol.857).....	730
Appendix 29	Sample of Witness Statement (Pol.154).....	731
Appendix 30	Sample of Charge Sheet.....	732
Appendix 31	Sample of Brief Facts.....	736
Appendix 32	Sample of Extract of Duty Lawyer Service Form	737
Appendix 33	Sample of Attendance Form (Criminal Proceedings)	741
Appendix 34	Sample of Notice of Bail Application or Request for Variation of Bail Conditions to Court of First Instance	742
Appendix 35	Sample of Indictment — Cap.221C — Schedule (Rule 2).....	743
Appendix 36	Sample of Grounds of Objection Regarding Admissibility of Alleged Confession.....	745
Appendix 37	Sample of Admitted Facts Pursuant to Criminal Procedure Ordinance (Cap.221) Section 65C.....	746
Appendix 38	Sample of Criminal Record Summary (Pol.543).....	747
Appendix 39	Suggested Translations of Commonly Used Expressions.....	748

Table 1	Issues which Defendant should give Proper Notice before Commencement of Trial.....	751
Table 2	Trial in the CFI PD 9.3 Criminal Proceedings in the CFI Standard Procedural Timetable (Fixture List).....	752
Table 3	Trial in the CFI PD 9.3 Criminal Proceedings in the CFI Standard Procedural Timetable (Expedited List).....	753
Table 4	Appeal of an Order, Determination, Conviction and/or Sentence of a Magistrate Timetable to lodge appeal/application.....	754
Table 5	Appeal of an Order, Determination, Conviction and/or Sentence of a Magistrate Timetable before HCMA Hearing.....	755
Table 6	Appeal of an Order, Determination, Conviction and/or Sentence of a District Judge or CFI Judge and Jury Timetable to lodge appeal/application.....	756
Table 7	Appeal of an Order, Determination, Conviction and/or Sentence of a District Judge or CFI Judge and Jury Timetable before CACC Hearing.....	757
Table 8	Appeal of HCMA/CACC Judgment to CFA Timetable to lodge appeal/application	758
Table 9	Appeal of HCMA/CACC Judgment to CFA Timetable before FACC Hearing	759
	<i>Index.....</i>	761