

# TABLE OF CONTENTS

<i>Introduction to the 2018 Desk Edition</i> .....	v
<i>Introduction to the First Edition</i> .....	ix
<i>Table of Cases</i> .....	xxvii
<i>Table of Legislation</i> .....	lxxxi
<i>Table of Subsidiary Legislation</i> .....	lxxxix
<i>Table of Circulars, Practice Directions and Professional Codes and Guides</i> .....	xcv

## CHAPTER 1 INTRODUCTION TO THE LEGAL PROFESSION IN HONG KONG

1. The Legal Profession in Hong Kong.....	1
2. The Organisation and Administration of the Solicitors' Profession .....	1
2.1 The Law Society: objects and membership.....	1
2.2 Administration of the Law Society .....	3
3. The Organisation and Administration of the Bar.....	5
3.1 The Hong Kong Bar Association .....	5
3.2 The Bar Council .....	6
3.3 All barristers bound to comply with the Bar Code.....	6

## CHAPTER 2 THE SOURCES OF HONG KONG LAWYERS' LEGAL AND ETHICAL RESPONSIBILITIES

1. Solicitors .....	7
2. Barristers .....	7
3. The Role of the Profession in Guiding its Members in Cases of Doubt.....	8
4. Enforcement of the Law and Professional Codes .....	8
4.1 Breaches of the law and breaches of the Professional Codes are distinct and may be punished separately .....	8
4.2 The Professional Codes will not be enforced directly by the courts.....	9
4.3 Courts may take Professional Codes into account .....	10
4.4 Conflict between lawyers' duties under the law and their duties as prescribed by their Professional Codes.....	11

## CHAPTER 3 ADMISSION TO PRACTICE

1. Conditions Governing Eligibility for Admission.....	15
1.1 Admission based upon local qualifications .....	15
1.2 Admission based upon overseas qualifications .....	19
1.3 The Legal Practitioners (Risk Management Education) Rules .....	21
2. Suitability for Admission .....	22
3. The Procedure for Making Application for Admission.....	23
3.1 Application for certificate of eligibility for admission.....	23
3.2 Application for admission .....	24
3.3 Hearing of the motion .....	25
4. Entry on the Roll of Solicitors .....	25
4.1 Entry on the Roll .....	25
5. Practising Certificates .....	25
5.1 Application for a practising certificate.....	25
5.2 Effect of publication of names of practising solicitors in the Gazette .....	27

6. Solicitors' Professional Indemnity Scheme.....	27
6.1 The Solicitors' (Professional Indemnity) Rules and the Professional Indemnity Scheme.....	27
7. The Admission of Foreign Lawyers and Foreign Law Firms to Practice in Hong Kong.....	30
7.1 The trend towards the internationalisation (or globalisation) of legal practice.....	30
7.2 Provisions regulating the right of foreign lawyers and foreign law firms to practise in Hong Kong.....	30
7.3 Registration of foreign law firms.....	32
8. Hong Kong Law Firms and the People's Republic of China.....	32
8.1 The Closer Economic Partnership Agreement.....	32
8.2 Association of local and Mainland firms.....	34

#### CHAPTER 4 THE NATURE OF THE SOLICITOR'S PRACTICE AND THE SOLICITOR'S MANAGEMENT OF HIS OFFICE

1. The Nature of the Solicitor's Practice.....	35
1.1 What is permitted and what is forbidden; corporate and multi-disciplinary practices.....	35
1.2 Solicitor and foreign lawyer corporations; the provisions of the Legal Services Legislative (Miscellaneous Amendments) Ordinance.....	35
1.3 Prohibition on any separate business which offers services normally offered by a solicitor as part of his practice.....	36
1.4 No right to form multi-disciplinary practices.....	36
1.5 Solicitors may form a service company to carry out administrative functions.....	36
2. Limited Liability Partnerships.....	37
2.1 Introduction.....	37
2.2 Amending legislation.....	37
2.3 Liability of partners.....	38
2.4 Requirement for top-up insurance.....	38
2.5 Other matters.....	39
3. Associations of Firms and Group Practices.....	39
3.1 Associations of two or more Hong Kong firms.....	40
3.2 Group practices.....	40
4. New Firms Establishing a Practice in Hong Kong.....	42
4.1 Notification to the Law Society of particulars of firm and any service company.....	43
4.2 Notification to the Law Society of any changes in the particulars.....	43
4.3 Annual return of employees.....	43
4.4 Sole practitioners and partners must hold unconditional practising certificates.....	44
4.5 Membership of the Professional Indemnity Scheme.....	44
4.6 Office premises.....	44
4.7 Other prudent action which may be taken by a new law firm.....	44
5. Practising as a Sole Practitioner.....	45
5.1 The right to practise as a sole practitioner.....	45
5.2 Absence of sole practitioner from the office due to holidays, sickness etc.....	45
5.3 Sole practitioner retiring from practice or emigrating from Hong Kong so that his firm ceases to practise.....	46
5.4 The death of a sole practitioner.....	50
6. Practising by Way of a Partnership.....	52
6.1 All partners must hold current unconditional practising certificates.....	52
6.2 Salaried partners and equity partners.....	53

6.3 Names of all the principals on business letters.....	53
6.4 Cessation of partnership practice.....	54
7. Solicitors Employed in Private Practice.....	54
7.1 Solicitor employed in private practice must hold current practising certificate.....	54
7.2 Status of solicitor may be stated on professional stationery.....	54
7.3 Rights of solicitor employed in private practice to share profits etc.....	54
8. Solicitors Employed by Lay-Employers ('Employed' or 'In-House' Solicitors).....	55
9. Solicitors Leaving Their Firm to Take Up Employment with another Firm.....	55
9.1 Restraint of trade clauses.....	55
9.2 Fiduciary duties owed by solicitors leaving the firm.....	56
9.3 Soliciting staff leaving firm from another firm.....	57
9.4 Soliciting clients to leave the firm.....	57
10. Proper Management and Supervision of the Solicitor's Practice.....	57
10.1 Management and supervision of the practice.....	57
10.2 Sharing premises, staff and facilities.....	58
10.3 Control over the work carried out by unqualified employees and the liability of solicitors for the acts of their unqualified staff.....	59
10.4 Signatures on letters, pleadings etc.....	61
10.5 Privacy and corresponding with individual litigants via workplace fax numbers.....	62
10.6 Control over and use of electronic communications.....	63
10.7 Digital certificates.....	64
11. Avoidance of Involvement in Money Laundering.....	64
11.1 The substantive offence of money laundering.....	64
11.2 Money laundering and terrorist financing; precautions that must be taken and guidelines from the Law Society: Practice Direction P.....	67
12. Restriction upon Employment of Certain Prohibited Employees.....	73
12.1 The employment of competent staff and the duty to reject 'prohibited employees'.....	73
13. Limitation upon Number of Unqualified Employees.....	74
13.1 Restriction upon numbers of unqualified employees.....	74
13.2 Annual return of employees.....	74
14. Remuneration of Employees; Prohibition on Sharing Profit Costs with Unqualified Persons.....	75
15. The Solicitor's Duty to Keep the Client's Financial Affairs in Good Order.....	75
15.1 The regime for solicitors' accounts.....	75
15.2 The principles governing the handling of clients' money and the keeping of accounts.....	76
15.3 Duty to operate a client account.....	77
15.4 Receipt of client money and trust money.....	77
15.5 Client receipts.....	80
15.6 Drawings from the client account.....	80
15.7 Cases where money need not be paid, and cases where money must not be paid into the client account.....	83
15.8 Cheque received including both profit costs and disbursements.....	84
15.9 Misuse of client's money.....	85
15.10 Duty to keep proper accounts.....	86
15.11 Computerised client accounting systems.....	86
15.12 Records of all bills of costs.....	87
15.13 Meaning of 'book', 'ledger' and 'record'.....	87

15.14 Reconciliations.....	88
15.15 Preservation of books of account.....	88
15.16 Production of books of account for inspection by council.....	88
15.17 The nature of the client account.....	89
15.18 Interest derived from clients' funds in the client account belong to the client.....	89
15.19 The opening of client accounts, payment into client accounts and solicitors' liability in the event of a bank failure.....	90
16. The Accountant's Report.....	90
16.1 Duty of solicitors to provide an accountant's report.....	90
16.2 Duties of the accountant.....	91
16.3 Accounting periods.....	91
17. The Annual Return.....	92
18. Preservation of Clients' Files.....	92
18.1 Storage of old physical files in Hong Kong.....	92
18.2 Ownership of documents on file.....	92
18.3 Closed files and client access.....	93
18.4 How long should clients' files be preserved?.....	93
19. Grounds for Intervention in a Solicitor's Practice by the Law Society.....	96
19.1 Grounds for intervention by Council of the Law Society.....	96
19.2 Guidance from the Court in Council's exercise of its powers following an intervention.....	99
19.3 Nothing to prevent solicitor suing for unpaid fees during an intervention into his practice.....	101
20. Other investigative powers of the Council.....	101
20.1 Council may examine documents if it considers that a solicitor may be unfit to practise.....	102
20.2 Appointment of an inspector.....	102
20.3 Privilege claim does not attach to documents required to be produced.....	102

## CHAPTER 5 PRACTICE PROMOTION AND THE OBTAINING OF BUSINESS

1. Practice Promotion.....	105
1.1 Introduction.....	105
1.2 General principles governing practice promotion.....	107
1.3 Extraterritorial practice promotion.....	114
1.4 Practice promotion on television and radio and in public places is permitted.....	114
1.5 Waivers.....	115
1.6 Person to person solicitation and the Promotion Code.....	115
1.7 Direct mailing: targeting or solicitation by fax, mail or e-mail.....	115
1.8 Other issues relating to practice promotion.....	116
2. Improper Obtaining of Business and Commission Sharing.....	119
2.1 'Touting' and commission sharing.....	119
2.2 Improper obtaining of business in the context of litigation.....	120
2.3 Improper distribution of advertising material.....	121
2.4 Improper obtaining of business in the context of non-contentious business.....	122
2.5 Remuneration of the agent.....	123
2.6 Action taken by the profession to deter the improper obtaining of business.....	123

## CHAPTER 6 THE RETAINER

1. Introduction.....	129
2. Should a Solicitor be Retained?.....	129
2.1 Non-contentious matters.....	129
2.2 Contentious matters.....	129
2.3 Cases where the litigant must be represented by a solicitor.....	130
3. The Duty to Act.....	130
3.1 Solicitor free to accept or reject instructions; 'cab-rank' principle not applicable.....	130
3.2 Circumstances where the solicitor should or must refuse to act or cease to act.....	131
4. Mandatory Initial Checks Before Conducting Any Transaction on Behalf of a Client.....	147
4.1 Check for conflicts of interest.....	147
4.2 The first meeting with the prospective client – Practice Direction P: mandatory requirements regarding anti-money laundering etc.....	148
5. The Form of the Retainer.....	148
5.1 Written retainers.....	148
5.2 Implied retainers and ratification.....	151
6. The Effect of the Retainer.....	156
7. Limited Retainers.....	156
8. Limiting Liability in the Retainer.....	156
8.1 Retainers to carry out contentious work.....	156
8.2 Retainers to carry out non-contentious work.....	157
9. Entering into the Retainer.....	158
9.1 Retainers by agents.....	158
9.2 Retainers by infants and persons of unsound mind.....	158
9.3 Retainers by corporations.....	159
9.4 Instructions from a third party.....	159
10. The Scope of the Solicitor's Authority Under the Retainer.....	159
10.1 Express authority.....	160
10.2 Implied authority.....	160
10.3 Ostensible authority.....	165
11. Solicitor Acting Without Authority.....	166
11.1 Contentious matters and subsequent ratification.....	166
11.2 Contentious matters and wasted costs.....	166
11.3 Non-contentious matters.....	166
12. Legal and Ethical Obligations Imposed Upon the Solicitor By Virtue of the Retainer.....	166
12.1 Principles underlying the relationship and the retainer with a client; loyalty and confidentiality.....	167
12.2 Duty to advise client on alternative dispute resolution procedures.....	168
12.3 Duty to give honest and candid advice.....	168
12.4 Duty to act expeditiously.....	169
12.5 Duty to act with due care and skill.....	170
12.6 Duty to obey instructions.....	170
12.7 Duty to keep matters confidential.....	171
12.8 Duty to keep one's client informed.....	171
12.9 Duty to charge reasonably.....	174

13. The Duration of the Retainer .....	174
13.1 The 'entire contract' rule.....	174
14. Termination of the Retainer .....	176
14.1 Automatic termination of retainer.....	176
14.2 Termination of retainer by the solicitor.....	178
14.3 Termination by the client .....	182
14.4 Solicitor's duty upon termination of the retainer .....	184
15. The Solicitor's Retaining Lien.....	185
15.1 Nature of the lien.....	185
15.2 Property over which the lien extends .....	186
15.3 Extent of the lien.....	186
15.4 Solicitor's right to a lien in the event of termination of the retainer .....	187
15.5 Termination of the lien.....	189
15.6 The solicitor's ethical duties.....	190
16. The Solicitor's Common Law Lien on Property or Funds Recovered.....	190

## CHAPTER 7 REMUNERATION

1. Providing Full Information to the Client or Prospective Client.....	193
1.1 Advice as to whether the likely outcome will justify the expense.....	193
1.2 Full information as to the likely cost of the matter .....	193
1.3 Agreed fees, estimates and information as to the solicitor's method of charging.....	194
1.4 Contentious matters: information as to costs where client is not legally aided.....	197
1.5 Special obligations for representation in criminal matters.....	199
1.6 Contentious matters: information as to the client's entitlement to legal aid.....	199
1.7 Information as to when client is expected to pay; payment on account of costs and disbursements .....	200
1.8 Client setting a limit on costs.....	202
1.9 Provision of regular information as to costs.....	203
2. Costs in Contentious Business .....	203
2.1 The meaning of 'contentious business'.....	203
2.2 Agreed fees and contentious business: section 58 of the Legal Practitioners Ordinance.....	203
2.3 Calculation of the fee .....	207
2.4 The solicitor's bill of costs .....	208
2.5 Challenging the fee: taxation of costs .....	213
3. Costs in Non-Contentious Business .....	215
3.1 Definition of 'non-contentious business' .....	215
3.2 The Costs Committee and its rule-making power.....	215
3.3 Non-contentious business remuneration agreements .....	216
3.4 Costs in matters for which a scale fee has been prescribed .....	218
3.5 Security for solicitor's costs.....	219
3.6 Recovery of costs: delivery of the bill and taxation of costs.....	219
4. Interest on Clients' Funds .....	220
5. Overcharging.....	220
5.1 Professional obligation not to overcharge.....	220
6. Maintenance, Champerty and Contingency Fees.....	221
6.1 Maintenance .....	221
6.2 Champerty .....	221

6.3 No maintenance and champerty where maintainer or funding agency has a commercial interest in the outcome of the litigation.....	222
6.4 Contingency and conditional fees .....	223
7. Solicitors Sharing Profit Costs with Others .....	224
8. Responsibility for Paying the Fees of Counsel, Professional Agents, Witnesses and Overseas Lawyers .....	226
9. Method of Payment of the Bill of Costs .....	226
10. Failure by the Client to Pay the Solicitor's Bill of Costs; Enforcement Procedures .....	226
10.1 Enforcement by civil action .....	227
10.2 Indirect pressure through the solicitor's lien.....	229

## CHAPTER 8 CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE

1. Introduction.....	231
2. The Duty of Confidentiality .....	231
2.1 The contractual duty.....	232
2.2 The duty in equity (or perhaps tort) .....	232
2.3 The ethical duty .....	233
2.4 The duration of the duty of confidentiality .....	237
2.5 Use of confidential information which comes into the solicitor's possession from another client or third party.....	238
2.6 Confidential information received by solicitor at a social occasion.....	239
2.7 Confidential information received from a 'quasi-client' .....	239
2.8 Confidential correspondence or documents disclosed to the other party or his solicitor as a result of fraud or mistake.....	240
2.9 Cases where the duty of confidentiality is inapplicable or is overridden.....	244
2.10 Waiver by the client and the solicitor's implied authority to disclose confidential information.....	247
2.11 Duty of solicitor to advise client promptly that disclosure has occurred.....	247
2.12 Fiduciary duty of solicitor not to profit from confidential information .....	248
3. Legal Professional Privilege.....	248
3.1 Purpose of legal professional privilege .....	248
3.2 The difference between confidentiality and legal professional privilege.....	249
3.3 Scope of legal professional privilege .....	249
3.4 Whether legal professional privilege applies is governed by the lex fori .....	253
4. Legal Advice Privilege: Communications Made for the Purpose of Giving or Receiving Legal Advice .....	253
4.1 The scope of legal advice privilege.....	253
4.2 'Once privileged, always privileged'.....	255
4.3 Limitations upon the scope of legal advice privilege.....	255
4.4 Legal advice privilege: communications between client and third party for the purpose of obtaining legal advice from a lawyer .....	258
4.5 Litigation privilege: communications between third persons and the solicitor or his client where the communication is made for the dominant purpose of pending or anticipated litigation .....	258
4.6 Legal professional privilege and in-house lawyers .....	261
5. Waiver .....	263
5.1 Privilege may be waived by the client.....	263
5.2 Further examples of implied waiver .....	266
5.3 Waiver by way of exchange of witness statements .....	269

6. Cases Where Legal Professional Privilege is Inapplicable or is Overridden.....	269
6.1 Communications made in furtherance of a crime or fraud .....	270
6.2 Order of the court overriding the privilege.....	277
6.3 Situations in which privilege is overridden by statute .....	279
6.4 The solicitor and search warrants in respect of clients' documents when client's affairs are the subject of investigation.....	284
7. Without Prejudice Communications .....	289
7.1 Scope of the privilege.....	289
7.2 Cases in which the heading 'without prejudice' will be of no effect.....	290
7.3 Relationship of 'without prejudice communications' and legal professional privilege .....	291

## CHAPTER 9 CONFLICTS OF INTERESTS AND DUTIES

1. Introductory Matters and Underlying Principles .....	293
1.1 Situations in which a conflict of interest might arise .....	293
1.2 Solicitor's ethical duty to avoid conflict.....	293
1.3 Common conflict situations.....	295
2. Conflict in Contentious Matters .....	296
2.1 Representing present clients as parties with opposing interests in the same action .....	296
2.2 Representing one client against another existing client in a related matter.....	297
2.3 Joint representation of co-defendants in criminal cases.....	299
2.4 Joint representation of co-plaintiffs and co-defendants .....	303
2.5 Representation of insured persons where subrogation clause in policy of insurance .....	306
2.6 Representing a client against a former client in litigation.....	308
2.7 Representing a client in litigation where the advocate becomes personally involved in the litigation or where the advocate has a personal interest in the outcome.....	326
2.8 Jurisdiction of the court to disqualify a solicitor or firm of solicitors from appearing in an action or representing a client.....	330
3. Conflicts in Non-Contentious Matters .....	330
3.1 Representing parties with conflicting interests in the same transaction .....	331
3.2 Representing joint clients who are on the same side of a transaction; undue influence and joint clients with conflicting interests .....	342
3.3 Conflict between solicitors and their own clients; cases where solicitors have a personal interest in the matter .....	346

## CHAPTER 10 COMPETENCE, QUALITY OF SERVICE AND NEGLIGENCE

1. Legal and Professional Liability for Poor Standard of Work; the Sources of the Solicitor's Duty .....	365
1.1 Introduction .....	365
1.2 Duty of care in contract under the retainer.....	365
1.3 Duty of care in tort .....	366
1.4 Breach of fiduciary duty.....	367
1.5 Ethical duty .....	367
2. The Ethical Duty of Competence.....	367

2.1 Introduction .....	367
2.2 Seeking assistance to achieve competence.....	368
2.3 Excluding or limiting liability in negligence .....	368
2.4 No exclusion of liability for professional misconduct .....	369
2.5 Ethical duty to serve the client in a conscientious, diligent, prompt and efficient manner.....	369
2.6 Duty to reply to correspondence from clients .....	370
2.7 Duty to respond to correspondence from the Law Society and the Solicitors Disciplinary Tribunal.....	370
2.8 Duty of solicitor where his client makes a claim against him.....	370
3. The Common Law Standard of Care Required of Solicitors: General Principles .....	373
3.1 Standard of care of the generalist practitioner .....	373
3.2 Standard of care of the specialist practitioner .....	376
3.3 Standard of care of the inexperienced practitioner.....	377
3.4 Standard of care will vary with the individual client .....	377
4. Defences to Claims for Breach of Duty .....	378
4.1 Solicitor acting on counsel's advice.....	378
5. Illustrations of Negligence in Contentious Matters .....	380
5.1 Introduction.....	380
5.2 Duty to advise as to the availability of legal aid .....	381
5.3 Duty to advise against hopeless litigation.....	381
5.4 Delay in prosecuting an action.....	383
5.5 Failure to issue process within the limitation period .....	384
5.6 A solicitor's duty in respect of pre-trial procedural aspects of the case.....	384
5.7 Duty to brief counsel properly and to exercise independent judgment even where counsel briefed.....	385
5.8 Duty in relation to the collection and presentation of evidence.....	386
5.9 General principles of ethical and legal responsibility regarding settlements.....	386
5.10 Failure to attend the hearing.....	388
5.11 Duty in respect of the conduct of the trial – immunity for negligent acts? .....	388
6. Illustrations of Negligence In Non-Contentious Matters .....	390
6.1 Introduction.....	390
6.2 Failure to pass on to client relevant information that comes to solicitor's notice.....	390
6.3 Giving wrong advice on the law .....	392
6.4 Failure to give adequate advice or explanation .....	392
6.5 Failure to warn against significant risks.....	393
6.6 Failure to give adequate advice to unduly influenced clients.....	395
6.7 Advice as to necessary future action or continuing obligations.....	395
6.8 Failure to advise on matters falling outside the client's specific instructions.....	396
6.9 Advice on commercial and business aspects relating to the subject matter of the retainer.....	397
6.10 Checking title in conveyancing transactions; failure to make proper searches and advise as to encumbrances and other title defects.....	398
6.11 Failure to register deeds, cautions etc .....	400
6.12 Failure to protect client against fraud.....	400
6.13 Duty of solicitors who make wills for clients .....	401

7. Other Effects of Negligence.....	407
7.1 Solicitor will not be entitled to recover his profit costs and the client may recover any profit costs already paid.....	407
8. Concurrent Actions in Negligence and Disciplinary Proceedings.....	408
9. Who is to be Held Liable for the Negligence? The Solicitor, the Solicitor's Firm, or His Partners?.....	408
9.1 Solicitor personally liable in negligence where he fails to exercise proper control over his staff.....	408
9.2 The liability of the partners for the negligence of the firm's partners, employed solicitors and staff.....	409
9.3 Is the solicitor personally liable for his negligent actions when acting on behalf of his firm?.....	412

## CHAPTER 11 THE LITIGATION SOLICITOR

1. Introduction.....	413
1.1 Duties of solicitors as officers of the court.....	413
1.2 Scope of this chapter.....	414
2. The Litigation Solicitor's Professional and Common Law Duties to the Court and Client.....	415
2.1 First meeting with the prospective client.....	415
2.2 Duty to advise on alternative dispute resolution procedures.....	415
2.3 Authority to conduct litigation.....	416
2.4 Witnesses.....	416
2.5 Generally, no communication with the opposing party in the absence of his solicitor.....	424
2.6 Solicitor's duty when instructing counsel.....	425
2.7 Solicitor not to stand bail for his client or to agree to indemnify a surety for bail.....	431
2.8 Duty to make proper discovery.....	432
2.9 Duty in respect of affidavits.....	433
2.10 Duty to ensure that full and frank disclosure is made in ex parte applications.....	436
2.11 Duty not to waste the court's time and courtesy to the court.....	437
2.12 Duty not to abuse the process of the court.....	446
2.13 The solicitor as witness.....	448
2.14 The solicitor as litigant.....	451
3. Solicitor's Duties as an Solicitor Advocate in Presenting a Case during the Trial.....	453
4. Solicitors' Rights of Audience Where Not Solicitor-Advocates.....	453
4.1 Rights of audience may be regulated by the judges by collective decision.....	453
4.2 No general rights of audience in the Court of Final Appeal and High Court.....	454
4.3 Higher rights of audience for solicitor advocates.....	458
5. Exercise of Disciplinary Powers over Solicitors by the Court.....	462
5.1 The courts' jurisdiction over its officers.....	462
5.2 The summary nature of the courts' jurisdiction.....	463
5.3 The High Court's power to strike a solicitor off the roll or suspend him from practice has been abolished; however other penal sanctions are available.....	463
5.4 Committal for contempt of court.....	464

5.5 Power to order a solicitor and counsel personally to pay wasted costs ('wasted costs orders').....	468
5.6 Power to require solicitor to give undertaking not to charge client.....	475
5.7 Power to order a solicitor to perform an obligation incurred in his capacity as a solicitor.....	476
5.8 Power to order the solicitor to pay compensation.....	477

## CHAPTER 12 PROFESSIONAL UNDERTAKINGS

1. Introduction.....	479
1.1 Special care should be taken by solicitors before giving undertakings as they are binding.....	479
1.2 The important role of professional undertakings.....	479
2. What is a Professional Undertaking?.....	480
3. The Form of the Undertaking.....	482
4. Common Examples of Undertakings.....	482
4.1 Express undertakings.....	482
4.2 Implied undertakings.....	483
5. Construction of Undertakings.....	484
5.1 The ethical approach.....	484
5.2 The legal approach.....	484
6. Terms implied in Undertakings.....	486
6.1 Undertakings as to the payment of costs.....	486
6.2 Other terms implied in undertakings.....	487
7. Liability of Solicitors in Respect of Breach of Undertakings.....	488
7.1 Duty to honour undertakings.....	488
7.2 Undertakings to do something outside the solicitor's control.....	489
7.3 Undertaking generally binds giver and receiver only.....	490
7.4 Professional liability of solicitor for undertakings given on behalf of others.....	491
7.5 Responsibility of a law firm for undertakings given by the firm's employees.....	491
7.6 Liability of employed solicitors for their undertakings.....	492
7.7 Liability of all partners for an undertaking given by one partner.....	493
8. Release of Solicitors from Undertakings.....	493
8.1 Release by the court or by the recipient.....	493
8.2 No release by reason of change of solicitor by recipient.....	493
8.3 No release by reason of partner who gave undertaking leaving firm or firm being dissolved.....	494
8.4 No release by reason of lapse of time.....	494
8.5 Undertakings obtained by fraud or dishonesty.....	494
9. Enforcement of Undertakings.....	494
9.1 Enforcement by the courts.....	494
9.2 Breach of contract.....	495
9.3 The court's supervisory jurisdiction.....	496
9.4 Enforcement by the Council of the Law Society.....	498
10. Solicitor Must Not Demand Compensation for Failing to Report Breach of Undertaking.....	499
11. Undertakings Given by Officers of the Government.....	499

## CHAPTER 13 SOLICITORS' DUTIES AND THEIR RELATIONS WITH THE PROFESSION, THE PUBLIC AND THIRD PARTIES

1. Introduction.....	501
2. Solicitors' Relations With and Duties to the Legal Profession.....	501
2.1 Solicitors' duty not to engage in 'unbefitting' conduct.....	501
2.2 Relations with other solicitors.....	507
3. Relations with Clients of Other Solicitors: Duty Not to Interfere With Other Solicitor/Client Relations.....	510
3.1 Scope of the duty.....	510
3.2 Providing second opinions.....	510
3.3 Separate or distinct interest involved.....	511
4. Solicitors' Relations with Opposing Parties.....	511
4.1 Solicitors' ethical duties when communicating with the opposing party.....	511
4.2 Inquiries about the opponent by way of an inquiry agent.....	513
4.3 Who is the opposing party where instructions are given by a corporation etc?.....	514
4.4 Communication with a former client now represented by other solicitors.....	515
4.5 Offensive or threatening letters and letters of demand.....	515
4.6 Relations with unrepresented parties.....	516
5. Solicitors' Duties to Third Parties.....	517
5.1 Introduction: duty of fair dealing.....	517
5.2 Duty to provide true references.....	518
5.3 Duty when communicating with third parties.....	518
5.4 Relationship with witnesses.....	518
5.5 Recording telephone conversations.....	520
5.6 Relations with professional witnesses and other witnesses and agents.....	520
5.7 Duties in relation to the issuing and stopping of cheques.....	521
5.8 Solicitor's duty when administering oaths and affirmations.....	522

## CHAPTER 14 'EMPLOYED' (IN-HOUSE) SOLICITORS

1. Introduction: The Role of Employed ('In-House') Solicitors.....	527
2. Employed Solicitors Admitted to Practise in Hong Kong are Subject to the Profession's Rules of Professional Conduct.....	528
3. Independence.....	528
4. Legal Professional Privilege and Employed Lawyers.....	529
5. Permitted Activities of Employed Solicitors.....	531
5.1 Services that may be performed by employed solicitors holding practising certificates.....	531
5.2 Restrictions upon employed solicitors' right to practise.....	532
6. Liability of Employed Solicitors in Respect of Their Undertakings.....	534
6.1 Employed solicitors, their fees and their employer.....	534
7. Some Ethical Problems for Employed Solicitors.....	535
7.1 Conflict of interest.....	535
7.2 Knowledge of improper dealings.....	535
8. Employed Solicitors Who Also Maintain a Private Practice.....	536
8.1 Employed solicitors may establish private practices.....	536
8.2 Practising from an office in the employer's workplace; independence and confidentiality may be in jeopardy.....	536
8.3 Conflict of interest and the private practice of employed solicitors.....	537

## CHAPTER 15 SOLICITORS AND THE DISCIPLINARY PROCESS

1. Introduction: Disciplinary Powers Exercised By the Profession.....	539
1.1 The role of the profession in the disciplinary process.....	539
1.2 The purpose of disciplinary proceedings.....	540
1.3 Importance of powers of early investigation by the Council of the Law Society.....	541
2. The Solicitors Disciplinary Tribunal Panel.....	542
3. Manner of Making a Complaint to the Law Society.....	543
4. Whether Disciplinary Proceedings Should Be Stayed Pending the Outcome of Related Criminal or Civil Proceedings against the Solicitor.....	543
4.1 Criminal proceedings.....	543
4.2 Civil proceedings.....	544
5. Investigation of the Complaint by the Law Society's Investigation Committee and Standing Committee on Compliance.....	545
5.1 The Law Society can make inquiries of a solicitor under investigation.....	545
5.2 In responding to the inquiry, the solicitor may not rely upon the privilege against self-incrimination.....	545
5.3 Consideration of the complaint and possible consequences.....	546
5.4 Swift submission of a complaint to the Convenor of the Solicitors Disciplinary Tribunal.....	546
5.5 Summary disposal.....	547
6. What Misconduct is Subject to the Disciplinary Process?.....	547
6.1 Matters referred to the Solicitors' Disciplinary Tribunal.....	547
6.2 Rule 2 of the Solicitors' Practice Rules is the touchstone of professional misconduct.....	548
7. Submission of Complaint to the Solicitors Disciplinary Tribunal Panel and Appointment of a Solicitors Disciplinary Tribunal.....	548
7.1 Decision of Council on action to be taken.....	548
7.2 Suspension of solicitor pending outcome of disciplinary proceedings.....	550
7.3 Appointment of a Tribunal.....	551
8. Compliance with the Rules of Natural Justice in the Disciplinary Process.....	552
8.1 The Disciplinary Tribunal is not a court but still must abide by the rules of natural justice.....	552
9. Application of the Doctrine of Res Judicata to Disciplinary Proceedings.....	553
10. Investigation as to Whether There is a Prima Facie Case.....	554
11. Fixing a Date for the Hearing and Drawing Up the Charges.....	555
12. Discovery, Inspection of Documents and Notice to Admit.....	555
13. The Hearing Before the Disciplinary Tribunal.....	556
13.1 The standard of proof for disciplinary hearings.....	556
13.2 The conduct of the hearing.....	556
13.3 The statement of findings of the Disciplinary Tribunal.....	557
14. The Orders That May Be Made By the Disciplinary Tribunal.....	560
14.1 Striking the solicitor off the Roll of Solicitors.....	560
14.2 Suspending the solicitor from practice.....	560
14.3 Cancelling or suspending the registration of a foreign lawyer.....	560
14.4 Permitting the solicitor to continue to practise subject to conditions.....	560
14.5 Imposing conditions upon the registration of a foreign lawyer.....	561
14.6 Order for solicitor or foreign lawyer to repay fees to client.....	561
14.7 Payment by solicitor into the Solicitors' Indemnity Fund.....	562
14.8 Payment by solicitor or foreign lawyer of a financial penalty.....	562
14.9 Censuring the solicitor, foreign lawyer etc.....	562
14.10 Ordering the solicitor or foreign lawyer etc to pay costs.....	562

14.11	Cancelling or suspending the trainee solicitor contract .....	563
14.12	Prohibiting the employment of an employee of a solicitor or a trainee solicitor.....	563
15.	Filing and Notice of the Order .....	563
16.	Determining the Appropriate Penalty .....	563
16.1	Cases where a mandatory penalty has been provided by statute.....	564
16.2	The disparity in seriousness between striking off or suspension on the one hand and a fine or censure on the other .....	564
16.3	Striking off the roll or suspension .....	565
17.	Summary Disposal of Fixed Penalty Offences by the Tribunal Convenor .....	569
17.1	Provision for disposal of summary offences by panel convenor.....	569
17.2	Complaints covered by the summary procedure .....	570
17.3	Fixed penalty to be imposed .....	570
17.4	Procedure for the disposal of summary complaints .....	570
17.5	No double jeopardy rule.....	571
18.	Discipline of Trainee Solicitors and Solicitors' Employees .....	572
19.	Costs.....	572
19.1	The Tribunal has discretion to award costs on a lesser basis than full indemnity .....	572
19.2	A solicitor should not be ordered to pay costs where the complaint against solicitor is dismissed .....	574
20.	Appeals to the Court of Appeal from Decisions of the Disciplinary Tribunal.....	574
20.1	Who may appeal?.....	574
20.2	Procedural aspects of the appellate process .....	575
20.3	Grounds upon which the appellate court may interfere with the decision.....	576
21.	Discipline Over Employed and Government Lawyers .....	577
22.	Publication of the Names of Solicitors Found Guilty of Professional Misconduct.....	577
23.	Restoration to the Roll of Solicitors.....	578
23.1	Power to order the name of a solicitor to be restored to the roll .....	578
23.2	The principles upon which restoration may be ordered.....	578
24.	Financing the Disciplinary Process.....	579
25.	Applications by Solicitors to Have Their Names Struck Off the Roll .....	579

## CHAPTER 16 ADMISSION TO PRACTICE

1.	Requirements for Admission to the Hong Kong Bar .....	581
1.1	Power of the court to admit barristers .....	581
1.2	Eligibility requirements laid down by the Bar Council for local admission .....	581
1.3	No admission where applicant in practice as a solicitor .....	582
1.4	Eligibility requirements laid down by the Bar Council for overseas admission .....	582
1.5	Service of minimum period of six months' pupillage before person eligible for admission .....	583
1.6	Lawyers employed in the Department of Justice .....	583
2.	Pupillage and Limited Practice .....	584
2.1	Length of period of pupillage.....	584
2.2	Method of application for pupillage.....	585
2.3	Qualifications to serve as pupil masters .....	586

2.4	Approval of pupillage by the Bar Council and ineligibility for pupillage.....	586
2.5	No pupillage fees.....	587
2.6	Acceptance of instructions and the period of limited practice.....	588
2.7	The duties of pupil masters, pupils and judges taking on pupils as judges' marshalls.....	588
2.8	Minimum pupillage requirements .....	595
2.9	Termination and revocation of pupillage.....	595
2.10	Review and appeal from order of Bar Council.....	595
2.11	The certificate of successful completion of pupillage.....	596
3.	Application for Admission as a Barrister.....	596
3.1	The manner of making the application.....	596
3.2	The hearing of the application.....	597
4.	Suitability for Admission .....	598
5.	The Roll of Barristers.....	601
6.	The Issue of a Practising Certificate .....	601
6.1	Application to be made to the Bar Council.....	601
6.2	Applicant must have paid his subscription to the Bar Association .....	601
6.3	Applicant must have indemnity insurance .....	601
6.4	Publication of list of barristers holding practising certificates.....	602
6.5	Barrister's name being struck from the Roll .....	602
7.	Qualifications for Practising as a Barrister .....	602
7.1	Requirements of the Legal Practitioners Ordinance .....	602
7.2	Requirements of the Bar Code .....	603
8.	Admission of Overseas Counsel for a Particular Case or Cases .....	604
8.1	Rules governing the admission of overseas counsel for a particular case or cases .....	604
8.2	Principles upon which admission may be granted .....	604
8.3	Procedure for making the application .....	617
8.4	Overseas barrister admitted for particular case may not accept instructions in any other case.....	619
9.	Unqualified Person Practising as a Barrister.....	619
10.	Legal Representation in Arbitration Proceedings .....	619

## CHAPTER 17 THE ORGANISATION OF CHAMBERS

1.	Barristers Must Practise From Professional Chambers.....	621
2.	Formal Organisation of Chambers .....	623
3.	Administration of Chambers.....	623
3.1	Duty to ensure practice is efficiently and properly administered.....	623
3.2	Duty to ensure confidentiality .....	624
3.3	Duty to keep and preserve proper records.....	626
4.	Remuneration of and Responsibility for Barrister's Clerks .....	627
4.1	Remuneration of barristers' clerks .....	627
4.2	Responsibility for acts of barristers' clerks.....	627

## CHAPTER 18 COUNSEL'S RELATIONSHIP WITH INSTRUCTING SOLICITOR: TAKING INSTRUCTIONS AND THE SCOPE OF COUNSEL'S AUTHORITY

1.	Taking Instructions.....	629
1.1	The general rule: a barrister may only act on the instructions of a solicitor .....	629

1.2	Breach of the rule prohibiting the taking of instructions without the intervention of a solicitor will constitute professional misconduct .....	639
1.3	Taking instructions directly from a solicitor client is ethically proper .....	640
1.4	Solicitor assigned to act for litigant on Legal Aid has no right to brief counsel without approval of Director of Legal Aid .....	640
2.	The Requirement of a Brief and Backsheet .....	640
2.1	The brief .....	641
2.2	The backsheet .....	641
3.	Appointment and Role of Senior Counsel .....	643
3.1	Appointment as Senior Counsel .....	643
3.2	The decision to instruct Senior Counsel .....	644
3.3	Abolition of the 'two-counsel' rule .....	644
3.4	Respective roles where Senior Counsel and junior counsel instructed .....	644
3.5	Fees for junior counsel where Senior Counsel is instructed .....	645
4.	Effect of Marking of Counsel's Diary and Right to Accept Brief from Another Solicitor .....	645
5.	Collection of the Brief .....	645
6.	The Duty to Accept Instructions: The 'Cab-Rank' Rule .....	646
6.1	The rule .....	646
6.2	The cab-rank rule does not apply to non-litigious matters .....	646
6.3	The rationale for the rule .....	646
6.4	Even when instructed counsel may be unable to represent the client on the day .....	647
6.5	Special considerations where counsel is instructed in child custody cases .....	647
7.	Exceptions to the 'Cab-Rank' Rule – Refusal of Brief .....	648
7.1	Case outside counsel's expertise .....	648
7.2	Client unable to afford counsel's usual fee .....	648
7.3	Conflict of interest .....	649
7.4	Situations where the impartial administration of justice may be impaired .....	651
7.5	Cases in which counsel is likely to be a witness .....	652
7.6	Instructions which limit counsel's ordinary authority or discretion .....	653
7.7	Cases in which counsel has been previously concerned in the course of another profession .....	653
8.	Withdrawal by Counsel and Return of Brief .....	653
8.1	Counsel unable to perform the required work within a reasonable time or within a specified time limit .....	654
8.2	Justification for return of brief on the grounds of counsel's relationship with his client .....	654
8.3	Client refusing to accept counsel's advice .....	655
8.4	Client having committed perjury to the knowledge of counsel .....	655
8.5	Client insisting that counsel conducts the case in breach of his professional duties .....	656
8.6	Conflicting commitments of counsel .....	656
8.7	Conflict of interest arising .....	658
8.8	Legally aided cases where unjustifiable expense involved .....	658
9.	Special Situations Not Entitling Counsel to Withdraw .....	659
9.1	Inability of client to pay .....	659
9.2	Inadequate brief fee or refresher .....	659
9.3	Client absconding during the trial .....	661

10.	Barrister Not Permitted to Give a Gift or Loan to a Person Instructing Him .....	661
11.	The Legal Effect of the Brief .....	662
12.	The Scope of Counsel's Authority .....	663
12.1	Express authority .....	663
12.2	Implied authority .....	663
12.3	Ostensible authority .....	663
12.4	Limitations upon counsel's authority .....	664
12.5	Illustrations of counsel's implied and ostensible authority .....	664
13.	Delegation of Work by Counsel .....	670
13.1	Delegation of the duty of representing the client in court .....	670
13.2	Delegation of non-contentious work .....	671
13.3	Payment for work properly delegated .....	672
14.	Conferences with Instructing Solicitor and the Client .....	672

## CHAPTER 19 NEGOTIATION AND RECOVERY OF FEES

1.	Negotiation of the Fee .....	675
1.1	Counsel must either negotiate the fee personally or through his clerk with the person instructing him .....	675
1.2	When instructed by a solicitor, counsel should negotiate the fee directly with instructing solicitor and not the solicitor's clerk .....	675
1.3	Professional misconduct for counsel to negotiate the fee directly with the client .....	676
1.4	Acceptance of the brief fee .....	676
2.	The Brief Fee and Refreshers .....	676
2.1	The brief fee .....	676
2.2	Refreshers .....	677
2.3	Prudent to make clear agreement as to what services are covered by brief fee and refreshers and what fees are payable if counsel unable to attend trial .....	678
2.4	The quantum of the fee and overcharging .....	679
2.5	Taxation of counsel's fees .....	679
2.6	Recovery of counsel's fee on taxation even if fee not marked on the brief .....	681
3.	Prohibition of Gifts of Money to Counsel .....	681
4.	Contingency Fees and Conditional Fees .....	681
4.1	The rationale for prohibiting contingency fees .....	681
4.2	Prohibition of contingency fees in Hong Kong .....	682
5.	Counsel May Not Demand an Increase in Fees During the Trial or After the Litigation has Ended .....	683
5.1	The fee must be fixed before the trial begins .....	683
5.2	It is improper to fix or increase the fee during the trial .....	683
6.	Recovery of Fees by Counsel .....	684
6.1	Issuance of fee note and mode of payment of fees .....	685
6.2	Counsel instructed by a solicitor .....	685
6.3	Counsel instructed by member of recognised professional body .....	687
6.4	Payment of counsel's fees by instalments and interest on counsel's fees .....	688
7.	Record Keeping .....	688

## CHAPTER 20 THE DUTIES OF THE BARRISTER TO THE PUBLIC AND TO HIS PROFESSION

1. The Barrister's Duty to the Public and to the Administration of Justice.....689
2. The Barrister's Duty to His Profession .....690
  - 2.1 The barrister's duty to his profession .....690
  - 2.2 The barrister's duty to uphold his code of professional conduct .....690
  - 2.3 Duty not to engage in conduct which will bring the profession into disrepute .....690
  - 2.4 Unprofessional conduct by barrister falling short of criminality .....695
  - 2.5 Duty to observe the ethics and etiquette of the profession.....697
  - 2.6 Barristers' duty to make their practice their primary occupation .....698

## CHAPTER 21 PRACTICE PROMOTION, ADVERTISING AND PUBLICITY

1. Introduction.....707
  - 1.1 Before 2009 self-promotion by barristers was severely restricted .....707
  - 1.2 The lifting of restrictions in 2009.....707
2. Practice Promotion by Barristers .....708
  - 2.1 The new provisions governing advertising by barristers.....708
  - 2.2 Policing and enforcing the advertising provisions .....710
  - 2.3 Application of the provisions .....710
3. Advertising and Practice Promotion: Specifics.....710
  - 3.1 Use of e-mail .....710
  - 3.2 Contributing to blogs and Facebook .....710
  - 3.3 Occasions on which a barrister may describe himself as 'barrister' .....711
  - 3.4 Photographs or other illustrations of barristers and appearance in wig and gown outside court precincts.....712
  - 3.5 Visiting cards.....713
  - 3.6 Notice of change of address of chambers and notice of return to practice.....713
  - 3.7 Social visits to persons instructing counsel.....713
4. Improper Obtaining of Business .....713
  - 4.1 Prevention of improper obtaining of business via commission payments and 'kick-backs' .....714

## CHAPTER 22 THE BARRISTER'S DUTY TO THE LAY CLIENT

1. Introduction.....717
  - 1.1 The interrelationship between the barrister's duties to the lay client and to the court: overriding duty to the court.....717
  - 1.2 The nature of counsel's duties to the client: counsel's legal and ethical duties .....718
2. Counsel's Duty to Act Competently and with Reasonable Care and Skill .....718
  - 2.1 Introduction .....718
  - 2.2 The scope of counsel's common law duty of care .....718
  - 2.3 A criminal conviction may be set aside on the grounds of counsel's flagrantly incompetent advocacy .....727
3. Counsel's Duty to Obey Client's Instructions.....728
4. Counsel's Duty of Confidentiality to the Client and Legal Professional Privilege.....729
  - 4.1 The ethical duty of confidentiality .....729

- 4.2 The common law duty of confidentiality .....731
- 4.3 Legal professional privilege .....731
5. Counsel's Duty to Uphold the Interests of His Client and Avoid Any Conflict of Interest.....732
  - 5.1 The professional duty to uphold the interests of the client .....732
  - 5.2 Counsel's duty to avoid a conflict of interest .....734
6. Counsel's Duty When Defending a Person Accused of a Crime .....736
  - 6.1 Introduction .....736
  - 6.2 Duty not to leave client unrepresented during criminal trial.....737
  - 6.3 Advice on the plea.....738
  - 6.4 Right of the accused to decide whether to testify and duty of counsel where client elects not to testify .....739
  - 6.5 Duties in respect of laying blame upon others or insulting others.....739
  - 6.6 Counsel suspecting that client is not telling the truth .....740
  - 6.7 Client making inconsistent statements to counsel.....740
  - 6.8 Client confessing his guilt to his counsel.....741
  - 6.9 Counsel's duty in respect of client's previous convictions.....743
  - 6.10 Duty to see client after conviction and sentence .....744
  - 6.11 Duty of counsel where client absconds .....744
7. Immunity of Counsel and Solicitor Advocates .....744
  - 7.1 Introduction.....744
  - 7.2 The scope of the advocate's immunity .....746

## CHAPTER 23 THE ADVOCATE'S CONDUCT BEFORE TRIAL AND IN COURT

1. Introduction.....753
2. The Advocate Owes Duties to the Client, the Court, His Professional Standards and to the Public.....753
  - 2.1 What is 'the Court'? .....753
  - 2.2 Barristers and solicitors are 'officers of the court' .....754
  - 2.3 The duty to the court in particular is an *overriding* duty .....755
3. Advocates' Duties before Trial .....755
  - 3.1 Introduction.....755
  - 3.2 Duty to consider mediation .....755
  - 3.3 Barrister's duties in respect of interviewing the client and witnesses.....756
  - 3.4 Counsel's duties when settling pleadings in civil cases and grounds of appeal in criminal cases .....758
  - 3.5 Advocates' duty in respect of affidavits.....759
  - 3.6 Advocates' duty to take procedural steps to facilitate a speedy hearing: skeleton arguments, lists of authorities, chronologies of events and *dramatis personae* .....759
  - 3.7 Advocate's duty to ensure legibility of documents .....760
  - 3.8 Advocates' duty not to waste the court's time .....761
  - 3.9 Duty in respect of appeals .....762
  - 3.10 Duty to inform court once settlement reached .....765
  - 3.11 Duty not to pursue hopeless cases.....765
  - 3.12 Barristers' duty when document belonging to the other side comes into their possession .....767

4. Advocates' Duty to Observe Court Ethics and Etiquette.....	767
4.1 Court dress .....	767
4.2 Use of information technology and text-based communications in courtrooms .....	769
4.3 Courtroom manner and the presentation of the case.....	771
4.4 Improper allegations of bias and rudeness to the court.....	771
4.5 Proper conduct when cross-examining witnesses .....	774
4.6 Impugning the character of third parties .....	776
4.7 Inflammatory or emotive language to the jury .....	776
5. The Advocate's Duties When Presenting His Case in Court .....	777
5.1 Advocates must never express their own opinion of the case being tried.....	777
5.2 Advocates must never give evidence in the case whilst conducting the case from the Bar.....	778
5.3 Advocate's duty to provide independent and objective representation of client.....	779
5.4 Advocate's duty not to waste the time of the court.....	779
5.5 Advocates' duty not to abuse the process of the court.....	780
5.6 Advocates' duty to provide the court with all necessary assistance .....	780
5.7 Duty to ensure that court acts within its jurisdiction.....	781
5.8 Duties of prosecuting and defence counsel during the summing-up .....	782
5.9 Advocates' duty not to knowingly deceive or mislead the court .....	785
5.10 Advocate's duty not to leave his client unrepresented in criminal trial .....	795
5.11 Advocate's duty not to communicate with witnesses during their testimony or with jurors during or after the trial.....	796
5.12 Advocate's duty in the plea bargaining process .....	797
5.13 Advocate in case required to testify during trial .....	801
6. Barristers' Rights of Audience.....	804
6.1 Barristers have rights of audience in all courts save where excluded by statute.....	804
7. Solicitor-Advocates Rights of Audience.....	804
8. The Disciplinary Jurisdiction of the High Court over Barristers .....	805
8.1 The inherent jurisdiction of the High Court over barristers .....	805

#### CHAPTER 24 EMPLOYED BARRISTERS AND NON-PRACTISING BARRISTERS

1. Employed Barristers.....	807
2. An Employed Barrister is not a Practising Barrister.....	807
3. Application of the Provisions of the Bar Code to Employed Barristers .....	808
4. Employed Barristers and Legal Professional Privilege.....	809
5. Barristers Employed In-House as Corporate Lawyers.....	809
5.1 Services that may be provided by barristers privately employed as in-house lawyers.....	809
6. Non-Practising Barristers.....	811
6.1 Application of the Bar Code to non-practising barristers .....	811
6.2 Restrictions upon work that may be done by non-practising barristers .....	812

#### CHAPTER 25 BARRISTERS AND THE DISCIPLINARY PROCESS

1. Introduction.....	813
1.1 Jurisdiction over the conduct of barristers .....	813

2. Supervision by the Court .....	813
2.1 The disciplinary process.....	814
3. Professional Misconduct Under the Bar Code and the Laying of a Complaint .....	814
3.1 Barristers' professional duties.....	814
3.2 Laying a complaint.....	816
4. Investigation by the Bar Council.....	816
5. The Barristers Disciplinary Tribunal.....	817
5.1 Appointment of members of a Barristers Disciplinary Tribunal panel by the Chief Justice .....	817
5.2 Appointment of members of a Barristers Disciplinary Tribunal panel to inquire into the matter .....	818
5.3 Sittings of the Disciplinary Tribunal .....	819
5.4 Powers and privileges of the Disciplinary Tribunal .....	819
5.5 Procedure in respect of hearings before the Disciplinary Tribunal .....	820
5.6 Disciplinary powers of the Disciplinary Tribunal .....	823
5.7 The Disciplinary Tribunal must comply with the rules of natural justice .....	824
5.8 Names of tribunal members and lawyers involved in disciplinary hearings not protected from disclosure to public .....	825
6. Findings of the Disciplinary Tribunal .....	826
6.1 Order as to costs .....	826
7. Enforcement of the Order .....	828
7.1 Enforcement of the order by the court .....	828
7.2 Application for payment by instalments .....	828
8. Appeal to the Court of Appeal .....	828
8.1 Jurisdiction and procedure .....	828
8.2 Grounds on which the Court of Appeal will interfere with the decision of the Disciplinary Tribunal .....	829
9. Variation of the Order of Suspension or Striking Off .....	829
9.1 Jurisdiction of the Disciplinary Tribunal.....	829
9.2 Matters to be taken into account .....	830
10. The Standard of Proof of Misconduct.....	830
11. Fixing the Appropriate Penalty .....	831
11.1 Striking off .....	831
11.2 Censure.....	832
11.3 Penalty for unprofessional conduct.....	833
12. Government Legal Officers and the Disciplinary Process .....	833
13. Application of the Doctrine of Res Judicata to Disciplinary Proceedings .....	834
14. Interrelationship Between Criminal Proceedings and Disciplinary Action – No Double Jeopardy .....	834
15. Expenses of the Disciplinary Tribunal .....	834
16. Applications by Barristers to Have Their Names Struck Off the Roll.....	835
16.1 The inherent power of the court to strike a barrister off the Roll.....	835
16.2 Restoration of barrister to the Roll.....	835

#### CHAPTER 26 THE DUTIES OF COUNSEL FOR THE PROSECUTION

1. Introduction .....	837
2. The Department of Justice's Prosecution Code.....	838
2.1 The independence of the Department of Justice in the conduct of criminal proceedings.....	838

2.2	The roles of the Secretary for Justice and Director of Public Prosecutions.....	838
2.3	The ethical standards and duties of prosecuting counsel.....	838
3.	The Duties of the Prosecution in the Investigation of the Case.....	840
3.1	The interdependence of the roles of the prosecutor and the investigative authorities.....	840
3.2	Communications between the investigative authorities and the Department of Justice may be protected from disclosure by legal professional privilege.....	841
3.3	Entrapment.....	841
3.4	Bringing the accused within the court's jurisdiction by improper means.....	842
3.5	Evidence improperly obtained.....	842
3.6	Loss of important evidence.....	843
3.7	Suppression of relevant evidence.....	843
3.8	Other grounds constituting an abuse of process.....	844
4.	The Decision Whether or Not to Prosecute.....	845
4.1	The decision to prosecute.....	845
4.2	Prosecution taking over a private prosecution.....	847
4.3	Review and discontinuation of prosecution.....	850
4.4	Determining the appropriate venue for the trial.....	851
4.5	The duty of prosecuting counsel to the court.....	852
5.	The Duty of Disclosure to the Defence.....	853
5.1	Introduction.....	853
5.2	Requirements of disclosure in the Prosecution Code.....	854
5.3	The common law duty of disclosure.....	855
5.4	Provision of copies of all original statements made by an accused and copies of statements of all prosecution witnesses that the prosecution intends to call.....	856
5.5	Extent of prosecution's duty to call witnesses.....	857
5.6	Names and addresses of witnesses whom the prosecution does not intend to call.....	858
5.7	Statements of witnesses whom the prosecution does not intend to call.....	858
5.8	Other unused material in the possession of the prosecution.....	859
5.9	Prior inconsistent statements of prosecution witnesses.....	862
5.10	Information of prior failure by witness to identify accused.....	862
5.11	Discrepancies between eye-witness descriptions and actual appearance of the accused.....	862
5.12	List of accused's known previous convictions.....	862
5.13	Known convictions of prosecution witnesses and other factors affecting their credibility.....	863
5.14	Copies of documents seized from the defendant.....	864
5.15	Forensic evidence supporting defence case.....	864
5.16	Copies of exhibits.....	865
5.17	Samples of substances.....	865
5.18	Disclosure of terms of offer of immunity from prosecution to a prosecution witness.....	866
5.19	Disclosure of use of undercover agents and identity of informers.....	866

6.	Prosecuting Counsel Interviewing Witnesses.....	869
6.1	Coaching prosecution witnesses.....	869
7.	The Duty of the Prosecution in Procedural Matters.....	869
7.1	Duty not to abuse the court process.....	869
7.2	Abuse of process in the decision to prosecute.....	870
8.	Victims of Crime and Vulnerable Witnesses.....	871
9.	Communications Between Prosecuting Counsel and the Media.....	873
10.	Unrepresented Accused Persons.....	875
11.	The Duty of the Prosecution in the Presentation of Evidence During the Trial.....	876
11.1	Introduction.....	876
11.2	The opening speech for the prosecution.....	877
11.3	Calling of witnesses and examination-in-chief by the prosecution.....	878
11.4	Cross-examination by the prosecution.....	878
11.5	Duty of prosecuting counsel during his closing address.....	880
11.6	Duty of prosecuting counsel during the summing-up.....	881
12.	The Duty of Prosecuting Counsel to Attend Throughout the Trial.....	881
13.	The Duty of the Prosecution on Appeals Against Conviction.....	881
14.	The Role of the Prosecution in the Sentencing Process.....	882
14.1	Guidance from the Prosecution Code.....	882
14.2	Guidance from the court.....	884
14.3	Appeals against sentence and review of sentence.....	886
15.	Discipline and Immunity From Disciplinary Action.....	887
	Index.....	889