

**Baker
McKenzie.**

Fighting Domestic Violence

Pro Bono Initiative

Asia

In association with



Hong Kong

Domestic Violence Legislation



“The police will get involved where a domestic dispute amounts to an incident that involves an assault, or breach of the peace.”

Hong Kong

1 Legal provisions

1.1 What are the relevant statutes and codes?

In Hong Kong, the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) (DCRVO) specifically addresses matters involving domestic violence.

Statutes such as the Offences against the Person Ordinance (Cap. 212) (OAPO) and the Crimes Ordinance (Cap. 200) (CO) are also relevant where criminal prosecution occurs.

1.2 What is the controlling case law?

Table 1: Controlling Hong Kong case law on domestic violence

Types of domestic violence offences recognized	
<i>Lau Tat Wai v. Yip Lai Kuen Joey</i> ¹	Tort of harassment is recognized.
<i>R v. R</i> ²	No marital exception to rape under common law.
Injunctions (ouster order and/or non-molestation injunction)	
<i>P v. C</i> ³	<ul style="list-style-type: none">Non-molestation order and ouster order granted due to continuing molestation and physical assault. However, it is not possible to oust an associated party from the matrimonial home under current law.Summarizes DV legislative framework and relevant case law in Hong Kong.
<i>P v. L</i> ⁴	Non-molestation order granted but ouster order refused. Court took into account the wife's 'callous and antagonistic' attitude towards the husband.
<i>D v. L</i> ⁵	Non-molestation and injunction order granted despite no physical violence caused to wife. Costs should follow the event for DCRVO applications.

YLS v. TL (Custody and Domestic Violence)⁶

Non-molestation order made following serious verbal threats to the victim.

Sentencing

HKSAR v. Fan Tak Wan (范德雲)⁷

Forgiveness by victim of serious domestic violence carried little weight in sentencing, particularly in the gravity of the offence.

HKSAR v. Cheung Cho-Fat (張祖發)⁸

Efforts by domestic violence victim to minimize the abuser's punishment carried little weight in sentencing; court emphasized need for deterrence in domestic violence cases.

HKSAR v. Chan Chun Tat⁹

Sentence reduced due to victim's desire for reconciliation; the spontaneous nature of the offence, and the abuser's 'abnormal' mental condition.

Secretary for Justice v. Lui Jiu¹⁰

Abuser's clear record was a relevant consideration during sentencing. See also Section 5.5.1.

Attorney General v. Lau Ching-yau¹¹

The court still increased the sentence despite defendant's guilty plea and previous clear record. See also Section 5.5.1.

HKSAR v. Yu Tim Hi¹²

The court can refuse to exercise its discretion to reduce the sentence even where the defendant has no criminal record or prior history of violence. See also Section 5.5.1.

For further case laws on sentencing, please see Section 5.5.

1.3 What are the specific parts of the court system that address domestic violence?

Domestic violence cases are generally dealt by the district court (DC),¹³ while the court of first instance (CFI) may also exercise the powers granted to the DC in urgent cases or in special circumstances.¹⁴

1.4 What are potential causes of action?

The cause of action under DCRVO is molestation by former spouse, relative or the other party of a cohabitation relationship.¹⁵

Where sexual violence is involved, there would also be causes of action in indecent assault and/or rape (including cases of non-consensual sex by a spouse).

An array of other potential criminal causes of action, ranging from common assault to wounding or causing grievous bodily harm to attempted murder, may also be relevant depending on the gravity of harm involved.

A civil cause of action also potentially arises in tort (i.e., wrongful infringement of rights) by virtue of assault, battery and/or false imprisonment.

2 Introduction: framework guiding domestic violence law

2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes. Civil remedies include court orders such as the non-molestation order and the ouster order, discussed in Section 4.1 below, as well as monetary compensation based on tort.

Abusers are subject to criminal liabilities and may be imprisoned if they are convicted.¹⁶

2.2 Is protection from domestic violence identified in national law as a human right?

Protection from domestic violence is not explicitly identified in national law as a human right. However, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law"), which incorporates the provisions of the International Covenant on Civil and Political Rights (ICCPR) by virtue of Article 39 and the Bill of Rights Ordinance (Cap. 383), generally prohibits torture, cruel, inhuman or degrading treatment or punishment. It follows that domestic violence may be recognized as a human rights violation if its severity meets the threshold.

2.3 Has your country signed and ratified the conventions?

On 14 October 1996, the Committee on the Elimination of Discrimination against Women (CEDAW) was extended to Hong Kong, at the consent of the People's Republic of China (PRC) and the United Kingdom of Great Britain and Northern Ireland. The CEDAW has continued to apply to the Hong Kong Special Administrative Region (HKSAR) (with the PRC as the relevant State Party) with effect since 1 July 1997. The HKSAR has implemented the CEDAW through the provisions of the Basic Law and local laws, as supplemented by the necessary administrative measures.

2.4 If it has ratified the Maputo Protocol, how has it been implemented into national law (African Union member states only)?

Not applicable.

2.5 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

The recommendations part of General Comment No. 35 have been implemented into various pieces of legislation in Hong Kong, including the following:

- Article 28 of the Basic Law, which prohibits the torture of any resident, or arbitrary or unlawful deprivation of the life of any resident.

- Article 3 of the Bill of Rights Ordinance (Cap. 383), which prohibits the torture and other cruel, inhuman or degrading treatment or punishment by giving direct effect in domestic law to Article 7 of the International Covenant on Civil and Political Rights.
- Crimes Ordinance (Cap. 200), which deals with sexual and related offences (amended in 1997 to increase penalties for certain sexual and related offences, such as incest with women aged between 13 and 16; and amended in 2002 to make it clear that marital rape is a criminal offence).
- Offences against the Person Ordinance (Cap. 212), which deals with, among other things, homicide, assaults, forcible taking or detention of persons and unlawful abortion.
- Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), which was enacted to deal with domestic violence, and was amended in 2008 to further strengthen the protection for victims of domestic violence by expanding the scope to cover former spouses/cohabitants, immediate and extended family members.
- Evidence Ordinance (Cap. 8), amended by the Evidence (Miscellaneous Amendments) Ordinance 2003 to remove the deficiencies in the rules relating to husbands and wives giving evidence for and against each other in criminal proceedings.

CEDAW has noted certain deficiencies in Hong Kong's implementation. On the second report submitted by the HKSAR government, the committee expressed concern about the low prosecution rate of domestic violence.¹⁷ They have urged the HKSAR government to enhance women's access to justice, including more effective responses to complaints and launching proactive investigations. On the third report by HKSAR, the committee encouraged the government to allocate more resources to support victims of domestic violence, through providing adequate shelters and strengthened enforcement of protection orders.¹⁸

2.6 If the conventions have not been ratified or signed, is it envisaged that your country will do so?

Not applicable.

3 Similarities and differences in terminology

Table 2: Key terms

Term	Defined in relevant statutes/ case law?	Definition
Domestic violence	No	<p>Described by the Department of Justice (DoJ)¹⁹ as "...a general term which describes a range of behavior often used by one person to control or dominate another with whom they have, or have had, a close or family relationship.²⁰ It is often a series of abusive incidents, whether physical or not, that has a cumulative effect on the victim. Domestic violence occurs irrespective of background and circumstance, sexuality, age, disability and gender, but the majority of abusers are male and victims female."</p> <p>Referenced in police procedural guidance as "any incident involving an assault, or breach of the peace between parties who could generally be described as married or having an intimate partner relationship, which also includes lovers having a lasting relationship or former lovers."²¹</p> <p>DCRVO requires that the court be satisfied that an applicant (or a minor, on whose behalf an application has been made) has been "molested" before certain injunction or relief can be granted. Apart from spouses and minors, persons in a "cohabitation relationship" and relatives²² are also eligible for injunctive relief. These terms are defined in Section 3.1</p>
Stalking	No	<p>Described by the Law Reform Commission (LRC) of Hong Kong²³ as "a series of acts directed at a specific person that, taken together over a period of time, causes him to feel harassed, alarmed or distressed." This may include "making unwelcome visits, making unwanted communications or silent telephone calls, repeatedly following the victim on the streets, watching or besetting the victim's home or place of work, persistently sending unwanted gifts or bizarre articles to the victim, disclosing intimate facts about the victim to third parties, making false accusations about the victim, damaging property belonging to the victim, and/or physical and verbal abuse."</p>
Harassment	Yes	<p>Defined in various sexual,²⁴ racial²⁵ and disability²⁶ harassment legislation. In 2000, the LRC recommended that harassment be criminalized to enable victims to claim damages and apply for injunctive relief.²⁷ This has not been implemented. Only certain forms of harassment (e.g., landlord against tenant and²⁸ grossly offensive, obscene or menacing telephone harassment)²⁹ are criminal offences.</p>

Term	Defined in relevant statutes/ case law?	Definition
		<p>The statutory definitions share similar elements, often referred to as "unwelcome conduct... in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated," or conduct that "creates a hostile or intimidating environment" for the other person.</p> <p>For conduct falling outside of these statutory prohibitions, victims may still make a claim on the basis of the tort of harassment, though whether such cause of action exists in the common law remains in doubt in Hong Kong. Victims can still bring claims for injunctions and/or damages with a reasonable likelihood of success based on the body of case law.³⁰</p>
Victim	No	<p>Defined by the DoJ as a "person who suffers physical or emotional harm, or loss or damage to property because of a criminal offence. This covers not only the person against whom the offence was committed but also anyone who has suffered directly from the commission of the offence."³¹</p> <p>More generally considered "the object of any wrong, including a crime or tort. For example, a person who suffers an assault, battery, or robbery is a victim of those wrongs. A victim of tort may bring a civil action against the tortfeasor (wrongdoer)."³²</p>
Abuser	No	<p>The Social Welfare Department (SWD) uses the term "batterer" in the domestic violence context, as a person who exercises a pattern of coercive control in a partner relationship, punctuated by one or more acts of intimidating physical violence, sexual assault or credible threat of physical violence. The pattern of control and intimidation may be predominantly psychological, economic, or sexual in nature, or may rely primarily on the use of physical violence.³³</p> <p>The SWD has also defined "intimate partner violence," "child maltreatment/abuse" and "elder abuse" in its respective procedural guides.</p> <p>Note these guides are reviewed by a task force consisting of members from the Labor and Welfare Bureau, the Education Bureau, the Department of Health, Hong Kong Police Force, Hospital Authority The Hong Kong Council of Social Service and various NGOs.</p>
Civil protection order	N/A	<p>Terminology not used in Hong Kong.</p> <p>DCRVO enables victims of domestic violence to apply for Hong Kong court orders to a similar effect, and is further</p>

Term	Defined in relevant statutes/ case law?	Definition
		discussed in Section 4, i.e., those seeking to restrain an abuser from molesting the victim by, for instance, ordering the abuser to vacate the victim's home and workplace and forbidding any contact with the victim via mail, telephone or otherwise.
Causes of action	No	<p>Refers to the whole set of facts giving rise to legal claims that can be pursued by a legal action for judicial redress,³⁴ i.e., generally the reason for a person or an organization to commence a legal action against another. Examples include breach of contract, negligence that causes injury to another person or failure to repay a loan.³⁵</p> <p>For causes of action in the domestic violence context, see Section 1.4.</p>
Marital rape	Yes	<p>Marital rape (or spousal rape or partner rape) is non-consensual sexual intercourse in which the victim is the perpetrator's wife or female partner.³⁶</p> <p>It is important to note that under Hong Kong law, rape can only be committed by a man against a woman.³⁷ A government consultation paper from 2003 suggested that the gender of a party should rest on medical evidence of the person's biological assignment at birth.³⁸</p>

3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Table 3: Other key domestic violence terms

Terminology	Defined in relevant statutes/ case law?	Legal definition/accepted meaning in Hong Kong
Cohabitation relationship	Yes	Defined by DCRVO as "a relationship between two persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship." The court may consider eight factors in determining whether two persons are in a cohabitation relationship, including the stability and permanence in the relationship, existence of a sexual relationship, sharing of tasks, duties and expenses.
Molest/ molestation	Yes	Not defined in DCRVO, but necessary to establish that an applicant or minor has been molested by the spouse or former spouse of the applicant before a non-molestation order or ouster order can be granted under the statute.

Terminology	Defined in relevant statutes/ case law?	Legal definition/accepted meaning in Hong Kong
		<p>In <i>P v C</i>,³⁹ the court adopted the following definitions from English case law:</p> <p>"Molestation may take place without the threat or use of physical violence and still be serious and inimical to mental and physical health...⁴⁰ [applying] to any conduct which can properly be regarded as such a degree of harassment as to call for the intervention of the court."⁴¹</p> <p>Relevant cases have established that molestation captures a wide spectrum of intimidating or intrusive conduct that does not necessarily require an element of physical violence. Conduct constituting molestation can include verbal abuse;⁴² sweeping belongings to the floor and breaking furniture;⁴³ regular throwing of chattels; and shouting and threatening with knife.⁴⁴</p>
Specified minor	Yes	<p>Defined in DCRVO as a minor (under the age of 18 years)⁴⁵ who is either:</p> <ul style="list-style-type: none"> ▪ a natural child, adoptive child or stepchild of the applicant or the abuser ▪ any minor who is living with the applicant, if they have been molested by the applicant's spouse, former spouse, cohabiting partner or former cohabiting partner⁴⁶ <p>Minors who fall outside of this definition is still afforded protection and remedies under DCRVO if they are molested in a domestic violence context, i.e., where they are:</p> <ul style="list-style-type: none"> ▪ molested by a relative (as defined in DCRVO) ▪ in a cohabitation relationship with the applicant of the injunctive relief against the abuser <p>This distinction is relevant in the application process for relief under DCRVO; see Section 4.6 for further details. For example, where a minor resides with the abuser(s) (such as grandparents) and the parents are unwilling/unable to make an application, they can rely on a common law concept whereby the relevant applicant is a "next friend."</p> <p>Relevant references to minor(s) in this document generally mean those eligible for protection by DCRVO.</p> <p>For a DCRVO application made on behalf of the Specified Minor, please see <i>HKK v HCM</i>.⁴⁷</p>
Spouse	No	<p>Excludes partners in single-sex unions,⁴⁸ given marriage law in Hong Kong stipulates that marriage entered into on or after 7 October 1971 will imply "a voluntary union of one man and one woman to the exclusion of all others."⁴⁹</p>

Terminology	Defined in relevant statutes/ case law?	Legal definition/accepted meaning in Hong Kong
Intimate partner violence	No	Defined by SWD as battering that occurs in a relationship between a couple who live or have lived together intimately. ⁵⁰
Child maltreatment/ child abuse	No	Defined by SWD as any act of commission or omission that endangers or impairs the physical/psychological health and development of an individual under the age of 18. ⁵¹
Elder abuse	No	Defined by SWD as any act of commission or omission that harm the well-being or safety of elders. ⁵²
Relative	Yes	<p>Broadly defined in an exhaustive list in DCRVO, and includes grandparents/children, adoptive and other extended/blended families of the applicant as well as certain immediate and extended family members of the applicant's spouse.⁵³</p> <p><i>L v K</i>⁵⁴ is an example of DCRVO application involving domestic violence between relatives, where the mother-in-law of the abuser sought continuation of interim injunction order.</p>

4 Protection for domestic violence victims and relief granted

4.1 Civil protection orders

The DC and CFI has broad discretion conferred to it in granting injunctions of whatsoever nature in all cases in which it appears to the court to be just and convenient to do so.⁵⁵ However, in our responses below, we will focus on the protection statutorily provided.

4.1.1 Are there civil protection orders available to victims of domestic abuse?

There are three principal forms of injunctive relief under DCRVO⁵⁶ as set out in Table 3. Note that a juvenile court may also make orders in relation to the guardianship, custody and control of minors who are victims of domestic abuse, as discussed further in Section 4.3.

Table 4: Injunctive relief under Hong Kong domestic violence legislation

Available court orders pursuant to DCRVO	Remedy
Re-entry order	Requires abuser to allow applicant to re-enter and remain on the specified property. No cohabitation requirement but only available where applicant and/or minor resides with the abuser.
Ouster order	Restrains abuser from entering or remaining in the home of the applicant and/or minor, a specified part of that home or any other specified area (e.g., a specified school or workplace) for as long as the injunction remains in effect.
Non-molestation order	Restrains abuser from molesting the applicant and/or minor for as long as the injunction remains in effect and will usually broadly cover the abuser's actions and those done for them by any third party.

The court can also order mandatory counselling for the abuser under the SWD's Anti-Violence Program. Depending on the circumstances of the case, the court may attach an authorization of arrest to the injunction which offers the complainant immediate protection from the violence in question.⁵⁷

4.1.2 Who can petition for civil protection orders?

Remedies under DCRVO are available for a person who has been molested by the following:⁵⁸

- (i) his/her spouse or former spouse
- (ii) his/her partner or former partner in a cohabitation relationship
- (iii) a relative

The relief is not limited to spouses or former spouses of the abusers. DCRVO expressly provides that both heterosexual and homosexual cohabitation relationships fall within its scope. A person may also make an application for minors (e.g., a parent or "next friend").

The cohabitation requirement for partners or former partners is interpreted broadly. DCRVO does not require that the parties to the application cohabit, but rather use cohabitation as one of the markers of the nature of the relationship in question. If other relevant factors are present, such as a sexual relationship between the parties, sharing of expenses and financial dependence or interdependence, and shared care of a child, it may not be necessary to satisfy the court that the parties live together.⁵⁹

4.1.3 Are there temporary custody of a child or child support orders?

DCRVO

Relief under DCRVO (see Table 3) is available for minors.

In some situations, an applicant may apply for a custody or other such order that permits an abuser access to the minor to be varied or suspended as the court considers necessary.⁶⁰ Such variation/suspension will cease to have an effect upon the expiry of the validity period of the injunction.⁶¹

PCJO⁶²

Separately, a juvenile court may make orders in relation to guardianship, custody and control of children and juveniles⁶³ in need of care and protection. Notably, either on its own volition or upon the application of the director of social welfare ("SWD Director") or any police officer, the court may appoint the SWD Director to be the legal guardian of such child or juvenile. Alternatively, the court may commit the care to any person, whether a relative or not, who is willing to undertake the care of the child, or to any institution that is willing to do so.

The court can also order parents or guardians to enter into a recognizance to exercise proper care and guardianship or place the person for a specified period, not exceeding three years, under the supervision of a person appointed for the purpose by the court.⁶⁴ In respect of maintenance and support, the court may make an order on the parent or other person liable to maintain the child or juvenile to contribute to the maintenance during a certain period and such sums as the court may think fit, and may from time to time vary such orders.⁶⁵

PCJO also enables police officers and social workers to take action to protect a child or juvenile in need of care or protection (e.g., the child or juvenile has been or is being assaulted, ill-treated, neglected or sexually abused). Police officers and social workers authorized by the SWD Director have the responsibility to intervene to protect a child or juvenile in need of care or protection.

4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Yes. An ouster order is a remedy available under DCRVO. See Section 4.1.1.

4.1.5 Are there any other types of emergency, preventive and civil protection orders?

Court orders available are set out in Sections 4.1.1 and 4.1.3. Generally speaking, the DC⁶⁶ and the CFI may also grant injunctions of whatsoever nature in all cases in which it appears to the court to be just and convenient to do so.⁶⁷

4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Yes. A person may apply for injunctive relief under DCRVO on behalf of a Specified Minor.⁶⁸ For other minors who wish to make such an application against a relative, the application will be made by a "next friend" (see also Section 3.1).⁶⁹ No particular category of person is excluded from acting as "next friend" of a minor under Hong Kong laws. A "next friend" is normally a family member, guardian, or close acquaintance, who has no conflict of interest in the subject matter of the proceeding.⁷⁰

As set out in Section 4.1.3, the juvenile court may make a "care and protection" order on its own motion, or upon the application of SWD Director or of any policy officer.

4.1.7 Are there different types of civil protection orders e.g., for a short-term period?

Orders available under DCRVO as set out in Section 4.1.1 are categorized by purpose rather than period of validity. The court will however consider the degree of urgency if a party makes an application by ex-parte summons.⁷¹ Orders granted under either DCRVO and PCJO may be subject to extension and/or variation as the court considers appropriate.⁷² For other injunctions granted by court, the validity period will depend upon the circumstances of the particular case and the circumstances and conduct of the parties involved.

As mentioned, the court has wide discretion to grant injunctions where it is just and convenient to do so, including the validity period as it thinks appropriate.

4.1.8 Are *ex parte* orders permitted without the aggressor being present?

Yes. For orders under DCRVO, in urgent cases an applicant may issue an *ex parte* summons either with or without notice to the abuser. Upon issue, the Family Court Registry can arrange for the applicant to see a judge as soon as practicable.

If the initial injunction has been obtained by way of an ex-parte summons (with or without notice), the applicant has to issue an *inter partes* (between the parties) summons shortly thereafter. This needs to be served on the abuser together with the injunction. There will be a return date for both the applicant and the abuser to appear before the court and the court will then decide whether the *ex parte* injunction should continue.⁷³

While the proper forum of a DCRVO application should be the District Court, in case of urgency, the CFI will still deal with the application.⁷⁴

4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Court orders available under DCRVO (see Section 4.1.1) do not include "emergency" orders as a distinct category, though victims may make *ex parte* applications in urgent cases (see Section 4.1.8).

Eligible family members may also apply for protection under DCRVO themselves under the usual procedure (see Section 4.1.2)

The DC and the CFI's broad discretion to grant injunctions (see Section 4.1.5) may include such extended protection to affected family members.⁷⁵ For example, in *YLS v TL*,⁷⁶ the wife had previously made an application of a non-molestation order and an ouster order. She then issued a fresh summons seeking a non-molestation order and an order restraining with slightly different

terms. The court eventually made an order in favor of both the wife and her children although the wife did not make an application on behalf of the children. However, it should be noted that the first half of the judgment was about a custody order, and the judge was of the view that the children were terrified from witnessing the domestic violence.

4.1.10 How long do the orders last?

The injunctive orders under DCRVO will have effect for a period not exceeding 24 months and can be extended, as the court considers appropriate.⁷⁷ Under PCJO, an order placing a child or juvenile under supervision of an appointed person will last for a period not exceeding three years.⁷⁸ Other orders available under PCJO do not have specific time limit.

4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any demographic information, e.g., police reports, convictions, etc.

Table 5: Sources of statistics on domestic violence cases in Hong Kong

Resources	Hyperlink
The Child Protection Registry (CPR) and the Central Information System on Spouse/Cohabitant Battering Cases and Sexual Violence Cases (CISSCBSV) (both managed by SWD) captures statistics on cases involving child protection, spouse/cohabitant battering and sexual violence cases.	https://www.swd.gov.hk/vs/index_e.html#s3
Crime Statistics Comparison provided by the Hong Kong Police Force (including domestic violence crimes)	https://www.police.gov.hk/pp_en/09_statistics/csc.html
Breakdown of domestic violence cases received by Family and Child Protective Services Units of Social Welfare Department between 2015-16 and 2019-20	https://gia.info.gov.hk/general/202004/29/P2020042900265_340257_1_1588147292135.pdf
Breakdown of "Domestic violence" cases handled by the Police between 2015 and March 2020	https://gia.info.gov.hk/general/202004/29/P2020042900265_340258_1_1588147292142.pdf
Breakdowns of the prosecution, conviction and sentence of "Domestic Violence (Crime)" cases between 2015 and 2019	https://gia.info.gov.hk/general/202004/29/P2020042900265_340259_1_1588147292150.pdf

4.2 Steps for receiving a protection order

4.2.1 What documentation is needed to obtain a civil protection order?

An applicant is required to file a supporting affirmation/affidavit at the same time when issuing the summons for the injunction application.

Table 6: Documentation required for protective orders under DCRVO⁷⁹

Injunctive relief	Required supporting documentation
Non-molestation orders	All details of the molestation and other relevant information, including any photographs, medical/ hospital reports or other documentary evidence.
Ouster/re-entry orders involving a spouse/former spouse/partner/former partner in a cohabitation relationship	<p>Same as above, including sufficient details to enable the court to consider:</p> <ul style="list-style-type: none"> the conduct of the parties, both in relation to each other and otherwise the parties' respective needs and financial resources the needs of minors all the circumstances of the case (including any evidence that helps satisfy the court that, having regard to the permanence of the relationship between the applicant and the abuser, it is appropriate in all the circumstances to grant that injunction) <p>It is common to also include:</p> <ul style="list-style-type: none"> evidence of the ownership and occupation of the common residence/matrimonial home reasons why it is not practical for the parties to remain living in the same place whether any alternative accommodation is available to the applicant, the specified minor or the abuser
Ouster/re-entry orders involving a relative	<p>Same as the documentation set out for non-molestation orders above, with additional details on:</p> <ul style="list-style-type: none"> the common residence of the applicant and the abuser (where the applicant resides with an abuser who has the legal or beneficial interest in, or the contractual or legal right to occupy, the residence) the impact of the injunction on the relationship between the applicant, the abuser and his/her other family members who reside with the applicant and the abuser (where the applicant resides with the abuser) the conduct of the parties, both in relation to each other and otherwise the respective needs and financial resources of the parties all other relevant circumstances of the case

4.2.2 Does the victim need to attend a hearing?

Yes. The applicant has to personally attend the Family Court Registry to file the injunction application.⁸⁰

If the prosecution initiates criminal proceedings against the abuser, vulnerable witnesses such as witnesses in fear,⁸¹ "mentally incapacitated persons" (as described in law) and children may opt for alternative means to give evidence.⁸² In general, more options are available for such individuals.

Table 7: Alternative means of providing evidence in criminal proceedings

Options	Eligible witnesses	How/when applicable
Evidence given by live feed within same court premises	Child ⁸³	In cases involving an offence of sexual abuse, cruelty or assault triable on indictment or either summarily or on indictment. May give evidence or be examined by way of a live television link. ⁸⁴ Courtroom and other room is linked by way of a closed circuit television system, so that persons at the courtroom can see and hear the witness, and the witness can also hear and/or see persons in the court room subject to conditions as the court considers appropriate in the circumstances.
	Mentally incapacitated person (as defined in law)	In respect of an offence triable on indictment or either summarily or on indictment. May give evidence or be examined as in the above.
	Witness in fear	In any circumstances. May be permitted by the court on application or on its own motion. May give evidence or be examined as in the above.
Video recorded evidence	Child ⁸⁵	In cases involving an offence of sexual abuse, cruelty, or assault triable on indictment or either summarily or on indictment. Video recordings may be played in court as part of the evidence. ⁸⁶
	Mentally incapacitated person (as defined by law)	In respect of an offence triable on indictment or either summarily or on indictment. Video recordings may be played in court as part of the evidence. ⁸⁷
Depositions ⁸⁸	Child or mentally incapacitated person (as defined by law), upon application in writing by a party to the proceedings	If it is unavoidable that trial cannot be heard without delay, or if exposure to a full trial would endanger the physical or mental health of the child.

4.2.3 Can you request remedies?

The victim may apply for the remedies set out in Sections 4.1.1 and 4.1.3. The victim may also sue for damages in tort in a separate proceeding.

4.2.4 Are there time limits?

There are no statutory time limits for the application of orders under DCRVO. However, as a general rule, the applications of injunctive relief should be made without delay. A delay may hinder the application as the court may consider that there is no "real necessity" to grant the order(s).

For actions in respect of personal injuries, the limitation period is three years.⁸⁹ For actions of tort (other than personal injuries), the limitation period is six years.⁹⁰

4.2.5 Are there different rules in emergencies?

In urgent cases, an applicant may issue an *ex parte* summons either with or without notice to the abuser under DCRVO. See also Section 4.1.8.

4.3 Judicial discretion

4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

DCRVO confers on DC a wide discretion in making orders, having regard to "all the circumstances of the case."⁹¹ For orders concerning a minor, the court will regard "the welfare of the minor as the first and paramount consideration" when considering a variation or a suspension of such an order.⁹²

The PCJO also confers upon the juvenile court a wide discretion regarding the order of care and protection.⁹³

In addition, any order that the CFI considers just or convenient to grant "may be made either unconditionally or on such terms and conditions as the court thinks just".⁹⁴ The DC also enjoys the same powers as the CFI in any proceedings before it "to grant the relief, redress or remedy or combination of remedies, either absolute or conditional."⁹⁵

4.3.2 Are there age limits on who can obtain orders?

Under the DCRVO, a person satisfying the requirements can make the application on behalf of minors as discussed in Sections 4.1.2 and 4.1.6. There is no statutory age limit for other applicants.

Protective orders over children or juveniles⁹⁶ in need of care and protection can only be initiated by the juvenile court on its own volition, or on application of the Department of Social Welfare or any police officer.⁹⁷

There is no statutory age limit for other orders pursuant to the inherent power of the court.

4.4 Restitution and remedies available to victims

4.4.1 Can victims ask for costs and restitution to be paid?

Costs for applications made pursuant to DCRVO should follow the event.⁹⁸ Unlike interlocutory injunctions for civil cases, the usual order of costs in the cause should not be made in the context of statutory injunctions granted under DCRVO. Therefore, if the application for injunction is successful, the victim will be able to recover costs for the proceedings.⁹⁹ Likewise, if the application fails, the applicant will have to bear their own costs.¹⁰⁰

It should be noted that a minor departure of the order granted from the order sought by the victim is unlikely to have any cost consequences against the victim as long as the application is "substantially successful."¹⁰¹

4.4.2 Can they recover wages and profits lost?

Yes, however relevant case law in Hong Kong at this time involves only domestic violence victims who are foreign domestic workers. As a general rule, victims of assault cases can claim for loss of earnings as part of pre-trial, post-trial financial loss, and loss of earning capacity (if the applicant is unable to work as a result of the abuse). Therefore, in theory, a DCRVO applicant may file a tort case against the abuser to make claims for loss of wages/profits.

In Hong Kong, foreign domestic workers are considered a special category of imported labor that is governed by a specific set of rules. Notably, foreign domestic workers are not eligible for the right of abode, and must work and reside in the employer's residence.¹⁰² Upon termination of contract, foreign domestic workers are only eligible to stay in Hong Kong for two weeks.¹⁰³ Foreign domestic workers are therefore an especially vulnerable group as they have very limited options to leave an abusive household and are less likely to report cases of abuse, as they would be required to return to their home country within two weeks of termination of contract unless they can find a new employer.

There have been a number of cases where loss of wages were successfully claimed by a foreign domestic worker.¹⁰⁴ This would include the pre-trial loss of earnings on the basis that but for the abuser's wrongful act, the foreign domestic worker would be able to complete the two-year employment contract. In addition, loss of earning capacity resulting from psychiatric injuries or impairment in social and occupational functioning can be claimed where the court is satisfied with the relevant expert evidence.¹⁰⁵

4.4.3 Is a separate civil process required?

Table 8: Separate civil processes for certain remedies

Legal process	Separate civil process required?
DCRVO orders (non-molestation, ouster and re-entry orders)	No, where orders are between spouses, former spouses, cohabiting partners, former cohabiting partners, or other relatives. This is the case whether or not any other relief is being sought in the same proceedings. ¹⁰⁶
Protective orders	For children or juveniles, can only be initiated by the juvenile court on its own volition, or on application of the Department of Social Welfare or any police officer. As domestic abuse cases are generally not decided in the juvenile court, a separate proceeding is usually required.
Other civil legal remedies	<p>Court generally has wide discretion to make various orders, including injunctions, depending on the circumstances.</p> <p>A court undertaking, as a voluntarily assumed obligation on the part of the respondent, can be a useful tool to prevent further domestic violence between parties, if the respondent is willing and unlikely to breach it. Generally viewed by the court as creating the same obligations as a court order.</p>

Legal process	Separate civil process required?
Civil prosecution	Where criminal prosecution may be underway, a victim would have to institute separate civil proceedings to obtain the other civil remedies not mentioned above (e.g., monetary compensation). In any civil proceedings, the fact that a person has been convicted of an offence will be admissible in evidence for the purpose of proving that they have committed that offence.

Victims may also reach out to the following organizations, amongst others, for help and support.

Table 9: Resources for victims of domestic violence

Organizations	Contact details
Social Welfare Department	Telephone: 2343 2255 (General enquiry) Website: https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_listofserv/id_VSPforVFV/
Harmony House	Telephone: 2522 0434 (24-hour hotline) Website: https://www.harmonyhousehk.org/eng/content/contact-us/
Family Crisis Support Center operated by the Caritas-HK	Telephone: 18288 (24 hour hotline) Website: http://fcsc.caritas.org.hk/
Po Leung Kuk Refuge Centers for Women (Including Wai On Home for Women, Sunrise Court and Dawn Court)	Telephone: 8100 1155 (24 hour hotline) Website: http://womenrefuge.poleungkuk.org.hk/en_about.php
Christian Family Service Centre — Serene Court	Telephone: 2381 3311 (24 hour hotline) Website: https://www.cfsc.org.hk/serenecourt/b5_aboutus1.php

5 Prosecutorial considerations

5.1 Police procedures

5.1.1 When do the police get involved in domestic disputes or legal actions?

The police will get involved where a domestic dispute amounts to an incident that involves an assault, or breach of the peace.¹⁰⁷

5.1.2 What circumstances affect law firm involvement?

If an accused in criminal proceedings cannot afford legal representation, they may seek representation for appearance in Magistrates Courts under Duty Lawyer Services for a small fee. Legal aid may also be available for appearance in higher courts.

Victims are not required to instruct a private legal practitioner for criminal proceedings. However, if they wish to seek an injunction or ouster order, or assistance for matrimonial problems, they may also apply for legal aid in person.¹⁰⁸

5.2 Standard of proof

5.2.1 Is proof required by any legal means?

Evidence admissible in law is required to establish criminal liability. See Section 5.2.3 for the standard of proof required.

5.2.2 Are there requirements for evidence and documents?

Table 9 outlines these requirements. The prosecution has a general duty to disclose all relevant evidence, including witness statements, photographs and materials that may assist the defense, such as previous convictions and discreditable conduct of the prosecution witness or a deceased victim.¹⁰⁹

Table 10: Evidence and documents in domestic violence proceedings

Requirements for use in criminal proceedings	
Evidence	<p>May include testimony, documentary evidence and real evidence (e.g., photographs and video recordings). Generally admissible if relevant though different weight may be given by the court.</p> <p>Oral or written assertions by a witness as to a particular fact made on the basis of what they have been told by another person are not generally admissible with a few exceptions. These include:</p> <ul style="list-style-type: none">▪ statements made spontaneously and closely associated with the event where there is no real opportunity of reflection or concoction▪ complaints made by the victim at the first reasonable opportunity for sexual offences¹¹⁰▪ statements made by a deceased person in relation to their proprietary interest or cause of imminent death

Requirements for use in criminal proceedings

- Documents** Exchange of documents between the prosecution and defendant are similar to that of usual criminal procedures. Parties are encouraged to seek assistance from their legal counsel regarding to particular documentation requirements.
- In criminal proceedings, oral testimony is usually required. A spouse can be compelled to testify for the prosecution for specified offences including assault, murder or sexual offences committed on a minor under the age of 16 years.¹¹¹ However, the prosecution will exercise decision to compel with caution and may, by consent, use the victim's statement in evidence without requiring the victim to testify orally.¹¹²

5.2.3 Is proof "beyond a reasonable doubt" required?

In general, the prosecution bears the legal burden to prove all elements of an offence are beyond reasonable doubt, including the absence of defense. If there is reasonable doubt regarding any elements of the offence against which the defendant is charged with, a defendant is entitled to an acquittal.¹¹³

However, defendants are required to prove on a balance of probabilities any defense of insanity and in other matters where burden of proof is expressly shifted by statute onto the defendant.

Defendants also have an obligation to produce or point to evidence that suggest a reasonable possibility that his/her claim (e.g., of automatism, duress etc.) exists. The prosecution will then have to prove otherwise beyond reasonable doubt.

5.2.4 Is the standard of proof different for *ex parte* orders?

No.

5.3 Affirmative defenses

5.3.1 Are affirmative defenses available to the accused?

Yes. Defenses that can result in a complete acquittal of the defendant include self-defense; crime prevention; duress; and involuntary intoxication. Some defenses would only result in partial acquittal, which include insanity, diminished responsibility and voluntary intoxication.

5.3.2 Is willful intent required?

For most crimes involving domestic violence, such as assault and rape, willful intent is not required. This is not the case for other crimes, such as wounding or inflicting grievous bodily harm with intent¹¹⁴ and indecent assault.¹¹⁵

5.3.3 Are false accusations punishable for the victim?

Yes. A victim may commit perjury if sworn as a witness and they make statements in a judicial proceeding that they know to be false or do not believe to be true.¹¹⁶ A conviction for perjury is punishable by a fine and an imprisonment up to seven years.

If the victim wishes to withdraw a complaint, the police will take a further statement from the victim setting out the reasons for the decision, including whether the original statement was true or not. If the complainant's new statement is inconsistent with any earlier statement and if the earlier

statement was false, a complainant who acted in bad faith may commit the offence of wasteful employment of the police,¹¹⁷ and be liable to a fine of HKD 2,000 and imprisonment for six months.¹¹⁸

5.3.4 How is consent discussed in the law?

Consent may be an express element of an offence or a common law defense. In either case, the burden of proof is on the prosecution.

Consent must be given by someone with capacity to consent. For example, a person with mental disability may not give valid consent, while a person under the age of 16 cannot give any consent to indecent assault.¹¹⁹ Consent must also be informed of the proposed conduct and its potential harm, and not be induced by fraud or duress. In addition, consent is invalid against assault causing injury of a certain threshold except for a list of limited exceptions.¹²⁰

5.3.5 Is self-defense or insanity a defense?

Yes. Self-defense that is "necessary" and "reasonable" results in complete acquittal, i.e., a "not guilty" verdict.

Insanity is a defense that leads to partial acquittal. Instead of a "not guilty" verdict, the defendant will receive a special verdict (i.e., "not guilty by reason of insanity").¹²¹ If a special verdict is given, the trial judge must then make one of four possible orders against the defendant:

- hospital order, i.e., an order authorizing the defendant's admission into a mental hospital for detention and treatment (mandatory where the offence carries a fixed sentence such as murder)
- guardianship order
- supervision and treatment order
- order for the defendant's absolute discharge, if the defendant's mental abnormality previously went undiagnosed but can be simply treated¹²²

5.4 Witness status

5.4.1 What is a witness' duty to testify honestly and completely?

See Section 5.1 regarding perjury. A false statement made through inadvertence or mistake may indicate that the maker did not make the statement intentionally, and would therefore not be found guilty of perjury.

A material statement is one that bears on an issue in the case. The requirement of materiality is established where it is shown that the false statement would or might affect the decision of the tribunal.¹²³

5.4.2 Who may abstain from testifying in certain situations?

A person in Hong Kong is generally required to testify if deemed necessary.¹²⁴ If it appears that a person within Hong Kong is likely to give material evidence on behalf of the plaintiff or the defendant, the court will issue a summons or a warrant to such person, requiring him/her to testify what he/she knows concerning the matter of the complaint.¹²⁵

As a general rule, a person may abstain from testifying in criminal proceedings, if to do so will expose that person's spouse to any criminal proceedings.¹²⁶ However, the privilege against

incrimination of one's spouse does not apply to relieve the victim's duty to testify in domestic violence cases. It is not considered a just cause for a victim not to answer questions or to lie in the witness box because the victim does not want the abuser to be convicted of the criminal offence with which the court is concerned.

5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

It is for the witness to establish on a balance of probabilities that he/she has a reasonable excuse not to testify.¹²⁷

Table 11: Refusal to testify

Potential reasons not to testify	When a witness may refuse to testify
Self-incrimination	While the privilege of husband and wife is not applicable in a domestic violence case, it is a just cause for not answering a question in court, where the answer would tend to imply or show that the witness has committed a criminal offence in Hong Kong for which they might be prosecuted based on the evidence they give from the witness box. ¹²⁸
No recollection	Not considered a refusal to be sworn or to give evidence, as long as the witness has arrived in the court at the time specified, has sworn and given evidence when duly required to do so. Even if the witness cannot recall step-by-step what has happened, this cannot make a witness liable for a contempt of court. ¹²⁹
Duress	Recognized as a defense to contempt of court. However, only applies if the threat faced by the witness is one that would have threatened a person of reasonable firmness to respond in the same way. Must be more than a mere assertion that the witness is frightened, otherwise they will still be liable for contempt of court. It is on the witness to establish on a balance of probabilities that they have a reasonable excuse not to testify.

5.4.4 What is the impact of domestic violence on witnesses who are children?

Child witnesses in cases of domestic violence may give evidence by live television link or by video or written evidence if permitted by the court (see Section 4.2.2). These options are available to persons under 17 years old in the case of an offence of sexual abuse and to persons under 14 years old in offences other than an offence of sexual abuse.

5.4.5 Can children be called upon to testify?

A child of any age can be a witness for the prosecution or for the defense, although whether they should be called as a prosecution witness is a matter for the judgment of the prosecution in each case.¹³⁰ If the prosecution decides that the child's evidence is necessary, the child can be brought to court under a witness summons in the same way as an adult witness. A child witness is to be regarded as a competent witness unless the contrary is shown, and the law requires that a child's unsworn evidence be received whether or not the child would otherwise have been competent.¹³¹

The corroboration rule has been expressly abolished in Hong Kong to ensure that the credibility of evidence given by a child witness would not be doubted without reasonable grounds.¹³²

Child witnesses may also provide evidence in alternative ways — see Section 4.2.2 — however, it should be noted that it is generally not desirable to call a child to be a witness due to concerns that the child may have conflicting loyalties, or a higher degree of loyalty towards one parent.¹³³

5.4.6 What is the effect of a child victim on the charges against the abuser?

The fact that the victim is a minor may affect the types of offences being charged and the strength of the case against the abuser.

Where the victim is a minor, the prosecution may charge the abuser with offences applicable only when the victim is a minor under a certain age. These offences include the offence of exposing a minor under the age of two whereby life is endangered and the offence of ill treatment or neglect by those in charge of child or young person under the age of 16.¹³⁴

A consultation paper released by LRC shows that the conviction rate of murder or manslaughter in child abuse cases are relatively low. The paper suggested that the low conviction rate stems from the difficulty of proving which member of the household caused the death and the inability of young children to give clear evidence.¹³⁵

5.5 Penalties and sentencing; penalty enhancements

5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

There is no criminal offence in Hong Kong that focuses specifically on domestic violence, not even under DCRVO. Criminal liabilities associated with domestic violence acts are governed under various ordinances relating to other criminal offences. Conviction would likely lead to imprisonment, while the term varies according to the seriousness of the underlying crime, with maximum penalties ranging from one year's imprisonment (common assault) to life imprisonment (murder, attempted murder, manslaughter, wounding with intent, rape and attempted rape).

This response therefore takes into consideration relevant sentencing practices and domestic violence cases involving defendants with no prior history of violence as acknowledged by the court or previous criminal convictions, whether arising from domestic violence or otherwise.

As a starting point, the prosecutor will advise the court during sentencing of the victim's perspective and circumstances, where an abuse of trust in a domestic context may be regarded as an aggravating factor. If the defendant has previously committed, and been convicted of, a "specified offence" (as defined in the Organized and Serious Crimes Ordinance (Cap. 455)), the prosecutor will provide the court with relevant materials and information regarding the nature and extent of harm caused, be it directly or indirectly, to any person, presumably including family members in a domestic violence context.

From a review of the relevant case law:

- Courts generally consider domestic violence as a serious offence that call for greater deterrence during sentencing,¹³⁶ particularly those involving serious injuries to the victim.¹³⁷
- Defendants with no criminal record or prior history of violence are taken into consideration during sentencing.¹³⁸ However, the court retains discretion in deciding whether or not to actually reduce sentences on this basis.¹³⁹
- Even where the court is willing to reduce the sentence, it will not be very significant.¹⁴⁰ A defendant may also run into the risk of receiving a higher sentence, even with a

clear record and guilty plea, if the higher court considers the lower court has erred in taking a starting point that is manifestly inadequate.¹⁴¹ Abusers are often charged with wounding with intent in domestic violence cases.¹⁴² While there are no sentencing guidelines for this offence and the appropriate sentence depends on all the circumstances of each case, the range of the imprisonment, namely three to 12 years, is not a sentencing tariff. The court is not obliged to impose three years' imprisonment as a minimum term.¹⁴³ Therefore, three years' imprisonment may serve as a reference point for the sentencing of a first-time offender in respect of wounding with intent.

5.5.2 Are there criminal penalties?

See Section 5.5.1.

5.5.3 What is the result of a violation of an existing order for protection?

Victims of domestic violence may apply for injunctive relief under DCRVO (see Section 4.1). Given such orders are made in civil proceedings, laws relating to the disobedience of court orders ("civil contempt") will apply when one violates an existing order for protection.

There is no case law at the time of writing regarding a violation of injunction orders granted under DCRVO. However, DCRVO itself provides that the court, when satisfied that the abuser either has caused actual bodily harm to the victim or is likely to do so, a power of arrest may be attached to the injunction.¹⁴⁴ This power of arrest allows the police to arrest the abuser when the abuser is reasonably suspected of breaching the injunction by reason of violence,¹⁴⁵ or by entering into or remaining in the area specified in the injunction. The arrested abuser will then be brought before either CFI or DC depending on the court making the injunction, to answer for the breach of the injunction, i.e., not abiding with the requirements stated in the injunction.¹⁴⁶ The injunctions would last for a maximum of 24 months and can be renewed once.¹⁴⁷

If any person prevents the children or juvenile under supervision orders from returning to the person or institution to whose care the children or juvenile is committed to, the person will be guilty of an offence and liable to a fine of HKD 5,000 and imprisonment of six years. Any person ordered by the court to contribute to the maintenance of such children or juvenile but fail to do so will also be guilty of an offence and liable to a fine of HKD 2,000.

5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

Apart from the penalties mentioned in Section 5.5.1, the defendant may also be ordered by a court to participate in an "Anti-Violence Program," such as the Batterer Intervention Program and the Educational Program on Stopping Domestic Violence under a Probation Order.¹⁴⁸ Probation services are provided by the SWD whereby the abuser will be subject to statutory supervision of a probation officer for a period of one to three years.

If the relevant parties reconcile, a bind over becomes an available option if there is no history of violence. Under a bind over, the abuser enters into a recognizance and agrees to behave properly in the manner as specified in the court order (e.g., not to engage in violent acts) for a certain period of time.¹⁴⁹ The bind over can be sought if the victim no longer supports the prosecution and decides to discontinue the case. The prosecution should only seek such an order when there is sufficient evidence to sustain the complaint. Nevertheless, the prosecution will not dispose of the case by a bind over when it is not in the public interest to do so, particularly when serious violence is involved.¹⁵⁰

5.6 Post-release restrictions

5.6.1 Does the law notify the victim of the abuser's release from custody?

According to the Victims Charter issued by the Hong Kong police, victims have the right to ask to be notified of the abuser's pending release or escape from penal custody, provided they have given the Commissioner of Correctional Services their current address and telephone number.¹⁵¹

6 Special issues

6.1 Battered woman syndrome

6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

In Hong Kong, there is no specific legislative or common law defense of Battered Woman Syndrome for a person charged with violent crimes such as attempted murder, manslaughter and wounding. General defenses, such as self-defense, are difficult to establish and have not been successful when relying solely on a history of abuse. Table 12 sets out some alternative defenses.

Table 12: Potential defenses for victims charged with a violent offence against their abuser

Defense	When it may be available
Provocation/ Diminished responsibility	<p>Partial defense only. Can reduce a charge of murder (which has a mandatory life sentence if convicted) to that of manslaughter. Judge can take into account at sentencing mitigating circumstances such as a history of abuse.</p> <p>Diminished responsibility is available to women suffering from such abnormality of mind (which could stem from abuse) as a substantial impairment of their mental responsibility.</p> <p>In cases involving provocation,¹⁵² courts have agreed that minor incidents in combination with a history of abuse can be considered provocation. Weight given to any history of abuse will be at the discretion of the court. If the offence is sufficiently serious, a history of abuse may have less weight as a mitigating factor.</p> <p>Hong Kong law does not otherwise expressly take into account a history of abuse as a mitigating factor relevant to the guilt or innocence.</p>
Self defense	<p>Severe bodily harm inflicted on a person, particularly one who was unable to defend themselves from prior attacks, would support such a defense.</p> <p>Full defense is more likely to succeed when the defendant's actions were committed during an abusive incident.</p>
Insanity	<p>Full defense is available if the defendant proves that they were suffering from a defect of reason, stemming from a disease of mind, at the time of the offence. Battered woman syndrome is not recognized as a sufficient cause for the defense of temporary insanity.</p> <p>See also Section 5.3.5.</p>

6.2 Domestic violence in the workplace

6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

DCRVO is only applicable to certain categories of relationships (see Section 4). Where the relationship between the abuser and the employee falls within the scope of DCRVO, the court may issue an ouster order to prohibit the abuser from entering the victim's workplace, which may include their place of residence.¹⁵³

If the relationship between the abuser and the employee does not fall within the scope of DCRVO (including foreign domestic workers who are required to reside with the employer under Hong Kong immigration laws), the court may still issue other orders pursuant to its inherent powers.

6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

Yes. In Hong Kong, employers have a common law duty to take reasonable care of its employees' safety and to provide and maintain a reasonably safe place of work for employees. Employers are also required to reasonably maintain the health and safety of its employees in the workplace.¹⁵⁴

If the abuser threatens an employee in the workplace, including at home in a work-from-home arrangement, the employer has an obligation to take reasonably practicable steps to prevent the employee from those threats. This may include providing an alternative working facility for that employee if practicable. An employee may terminate the employment contract without notice or payment in lieu if, among other things, "he reasonably fears physical danger by violence or disease such as was not contemplated by his contract of employment expressly or by necessary implication" or "he is subjected to ill-treatment by the employer."¹⁵⁵ This also applies to foreign domestic workers.¹⁵⁶

6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

There is no statutory entitlement but the Labor Department encourages employers to adopt family-friendly employment practices.¹⁵⁷

As a matter of market practice, Hong Kong employers are starting to pay more attention to employee's well-being, with some including "domestic and family violence support leave" in employment handbooks. Many employers also allow employees to take paid or unpaid leave to take care of their close family members.¹⁵⁸

Employers are also careful not to discriminate against employees who have responsibility to care for an immediate family member (i.e., related by blood, marriage, adoption, or affinity¹⁵⁹). It is unlawful to discriminate on the ground of family status in the terms and conditions of employment or access to benefits (including annual leave or other types of leaves), facilities or services.¹⁶⁰

6.3 Immigration

6.3.1 Does the law include provisions which are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?

No. In Hong Kong, the spouse/other party to a recognized civil partnership may apply to join the sponsor for residence as a dependent. An application for extension of stay will be considered only

when the applicant continues to meet this eligibility criteria, as dependents and the sponsor remains a bona fide Hong Kong resident living in the HKSAR. However, the director of immigration (and immigration officers) also have wide discretion¹⁶¹ over the assessment of all visa applications. Each application is assessed based on its own merits and background, so it is possible that this could be exercised in cases of domestic violence.

For visa extensions, if the abuser is willing to continue sponsorship of the victim's dependent visa, the immigration officer may still approve the application even if they are living apart or in the process of getting a divorce.

6.3.2 If battered immigrants cooperate with law enforcement in domestic violence can they obtain immigration remedies?

There are no immigration remedies available. Spouses and foreign domestic workers are not eligible for visa extensions given their visa categories, however they may be able to extend their legal stay in Hong Kong as a visitor if the immigration officer decides to exercise their discretion.

The statutory regime is not favorable to foreign domestic workers. They are unable to obtain immigration remedies even if they suffer from domestic violence in the workplace. The default position is that foreign domestic helpers are not entitled to become permanent residents after the usual eligibility criteria, which is seven years of residence. Foreign domestic workers are normally admitted for a period of two years or until two weeks after termination of contract, whichever is earlier. If an abused foreign domestic worker wishes to remain in Hong Kong to settle any legal disputes, they may be able to extend their stay as a visitor but there would be no working rights. They will also need to pay for the visa extension, as well as food and shelter during the period. See also Section 4.4.2.

6.3.3 Does domestic violence law discuss asylum accessibility?

No. There do not appear to be any relevant case law or such applications involving domestic violence.

6.4 Armed forces

6.4.1 Can a victim seek a military protective order if the abuser is in active military?

Not applicable. As Hong Kong does not have its own military, The Central People's Government is responsible for the defense of the HKSAR.¹⁶²

6.5 Child custody and child/spousal support

6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Yes. When an injunctive order is made under DCRVO that concerns a specified minor, the court may vary any existing custody or access order made in relation to the abuser and that specified minor. The court should have regard to the welfare of the minor as the first and paramount consideration. This includes taking into account the wishes of the minor where practical (having regard to the age and understanding of the minor and to the circumstances of the case) and any material information, including any report of the director of social welfare available to the court at the hearing.¹⁶³

6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

Yes; see Section 6.5.1. The court should give due consideration to the wishes of the minor, as well as the testimony of the other spouse if this constitutes material information. In any event, the welfare of the minor is of first and paramount consideration.

6.6 Housing rights of domestic violence victims

6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

No. The current land law regime in Hong Kong does not provide specific protection for domestic violence victims. However, in usual circumstances, both the landlord and the tenant cannot terminate the tenancy before its expiration unless either has breached the vital terms of the agreement that entitles the other party to forfeit or terminate the tenancy.

Early termination may be possible with the existence of a valid break clause, which may be exercisable by either party by giving prior notice at a certain time during the tenancy. Where any nuisance or annoyance has been caused, for example by domestic violence, the landlord may bring an action against the tenant for nuisance or breach of express covenants (if any).

A landlord would only be prevented from terminating a tenancy lawfully where they have unlawfully deprived a tenant of occupation of any premises or intentionally interfered with the peace or comfort of the tenant.¹⁶⁴

6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

No. A tenant cannot terminate the tenancy before its expiration, unless in the following circumstances:

- there is a valid break clause that may be exercisable by either party by giving prior notice at a certain time during the term of the tenancy
- the landlord interferes with the tenant's quiet enjoyment¹⁶⁵
- the landlord derogated from his grant¹⁶⁶
- there is a breach of express covenants by the landlord (if any)

6.6.3 Can an order exclude the abuser from the residence?

Yes. See Section 4.1.1 regarding ouster orders.

6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

No. However, where a re-entry order has been granted requiring the abuser to allow the applicant to re-enter and remain in a specified property, the abuser has to comply with the terms.¹⁶⁷ If the sale/mortgage subsequently fails to permit the victim to continue residing in the property, it would result in a breach of the injunction. This only means that the abuser will be personally liable, but the victim still would not have a remedy in respect of that property.¹⁶⁸

Endnotes

- ¹ [2013] 2 HKLRD 1197.
- ² [1991] 4 All ER 481 (HL).
- ³ [2007] HKFLR 195.
- ⁴ [2007] 1 HKLRD 26.
- ⁵ [2014] HKFC 26; FCMC 8507/2013.
- ⁶ [2009] HKFLR 19.
- ⁷ [2007] 5 HKC 50.
- ⁸ [2010] 5 HKC 400.
- ⁹ (11 April 2013, CACC317/2012).
- ¹⁰ (14 December 1999, CAAR6/1999) [1995-2000] HKCLRT 322.
- ¹¹ CAAR 11/1991.
- ¹² (2 December 2013, CACC170/2013).
- ¹³ Sections 3, 3A, 3B of DCRVO.
- ¹⁴ Section 4 of DCRVO.
- ¹⁵ Sections 3, 3A, 3B of DCRVO.
- ¹⁶ For example, a person convicted of common assault may be liable to imprisonment of up to one year. A person convicted of murder/manslaughter may be liable for life imprisonment.
- ¹⁷ Concluding comments of the Committee on the Elimination of Discrimination against Women: China, (2006), Committee on the Elimination of Discrimination against Women, https://www.lwb.gov.hk/CEDAW/documents/CEDAW_2nd_comment_full_E.pdf.
- ¹⁸ Concluding observations on the combined seventh and eighth periodic reports of China, (2014), Committee on the Elimination of Discrimination against Women, [https://www.lwb.gov.hk/CEDAW/documents/CEDAW%20Concluding%20Comments%203rd%20Hearing%20\(Full\).pdf](https://www.lwb.gov.hk/CEDAW/documents/CEDAW%20Concluding%20Comments%203rd%20Hearing%20(Full).pdf).
- ¹⁹ Policy for Prosecuting Cases Involving Domestic Violence (2009), Department of Justice, <https://www.doj.gov.hk/eng/public/pubppcdv.html>.
- ²⁰ This includes "any criminal offence which arises out of violence, threatening behaviour or physical, sexual or emotional abuse, between adults who are or have been intimate partners, or else between family members. An adult is any person aged 18 years and over, and family members include mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family."
- ²¹ Procedural Guide for Handling Intimate Partner Violence Cases (Revised 2011), [https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Acrobat%20Document%20\(updated%20in%20August%202014\).pdf](https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Acrobat%20Document%20(updated%20in%20August%202014).pdf).
- ²² "Relative" is defined in Section 3A of DCRVO.
- ²³ Report on Stalking (2000), the Law Reform Commission of Hong Kong, <https://www.hkreform.gov.hk/en/docs/rstalks-e.pdf>.
- ²⁴ Section 2(5) of the Sex Discrimination Ordinance (Cap. 480).
- ²⁵ Sections 2(1) and 2(7) of the Race Discrimination Ordinance (Cap. 602).
- ²⁶ Sections 2(1) and 2(6) of the Disability Discrimination Ordinance (Cap. 487).
- ²⁷ See footnote 15.
- ²⁸ Section 70B of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).
- ²⁹ Section 20 of the Summary Offences Ordinance (Cap. 228).
- ³⁰ *Lau Tat Wai v. Yip Lai Kuen Joey* [2013] 2 HKLRD 1197. This leading decision has been accepted and applied in a number of recent cases, including: *Shen Xing v. Li Jun* [2014] HKEC 634; *Lin Man Yuan v. Kin Ming Holdings International Ltd* [2015] HKEC 1012; *Lam Yuk Wing v. Yu Lai Wa* [2015] HKEC 2777; *Law Ka Yan Thompson v. Ho Kang Wing* [2016] HKEC 438; *Michaels v. Citybase Property Management Ltd* [2017] HKEC 162; *Law Lai Kwan v. Intrend Finance Ltd* [2017] HKEC 1098.
- ³¹ The Victims of Crime Charter (2000), Department of Justice, https://www.doj.gov.hk/en/publications/pdf/vcc_e.pdf.
- ³² Hong Kong Bilingual Legal Dictionary, LexisNexis Hong Kong.
- ³³ Procedural Guide for Handling Intimate Partner Violence Cases (Revised 2011), [https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Acrobat%20Document%20\(updated%20in%20August%202014\).pdf](https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Acrobat%20Document%20(updated%20in%20August%202014).pdf).
- ³⁴ Hong Kong Bilingual Legal Dictionary states that "The whole set of facts giving rise to a legal claim which can be pursued by a legal action for judicial redress. The cause of action may be a wrongful act or the harm resulting from a wrongful act. In a cause of action, the plaintiff has the burden to prove every fact which is challenged in order to obtain judgment: *Bennett v. White* [1908-10] All ER Rep 704, [1910] 2 KB 643. A plaintiff must plead a reasonable cause of action. Failing which the pleading can be struck out by the court: The Rules of the High Court (Cap 4A) O 18 r 19."
- ³⁵ Community Legal Information Centre Glossary & Annotation, https://www.clc.org.hk/glossary.html#cause_of_action.
- ³⁶ *R v. R* [1991] 4 All ER 481 (HL).
- ³⁷ Section 118 of the CO.
- ³⁸ Inter-departmental working group on gender recognition (June 2017) Consultation Paper: Part 1 Gender Recognition, paragraph 3.29 <<https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718-cppr20170626-e.pdf> >.

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- ³⁹ *P v C* [2007] HKFLR 195. See Case 1 in **Appendix A**.
- ⁴⁰ *Davis v. Johnson* [1979] AC 264. (quoted in paragraph 22 of *P v C*).
- ⁴¹ *Horner v. Horner* [1982] Fam 90. (quoted in paragraph 22 of *P v C*).
- ⁴² *Chan Chun Hon v. Chan Lam Lai Bing* [1994] HKLY 629.
- ⁴³ *L v. T* FCMC 3039/1995.
- ⁴⁴ *L v. N* [2003] HKEC 272.
- ⁴⁵ Section 2 of DCRVO.
- ⁴⁶ Sections 2, 3, 3A and 3B of DCRVO.
- ⁴⁷ [2020] HKCU 1743.
- ⁴⁸ Annotated Ordinance of DCRVO, paragraph 2.07.
- ⁴⁹ Section 4 of the Marriage Reform Ordinance (Cap. 178).
- ⁵⁰ Procedural Guide for Handling Intimate Partner Violence Cases (Revised 2011), [https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Acrobat%20Document%20\(updated%20in%20August%202014\).pdf](https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Acrobat%20Document%20(updated%20in%20August%202014).pdf).
- ⁵¹ Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020), [https://www.swd.gov.hk/storage/asset/section/1447/en/Procedural_Guide_Core_Procedures_\(Revised_2020\)_Eng_12May2020.pdf](https://www.swd.gov.hk/storage/asset/section/1447/en/Procedural_Guide_Core_Procedures_(Revised_2020)_Eng_12May2020.pdf).
- ⁵² Procedural Guidelines for Handling Elder Abuse Cases (Revised 2019), [https://www.swd.gov.hk/storage/asset/section/3119/en/Procedural_Guidelines_for_Handling_Elder_Abuse_Cases_\(Revised_2019\)_ch_20200901.pdf](https://www.swd.gov.hk/storage/asset/section/3119/en/Procedural_Guidelines_for_Handling_Elder_Abuse_Cases_(Revised_2019)_ch_20200901.pdf).
- ⁵³ Section 3A of DCRVO.
- ⁵⁴ [2015] HKEC 31.
- ⁵⁵ Halsbury's Laws of Hong Kong at 90.0834 and 125.238. Section 21L of the High Court Ordinance (Cap. 4) (HCO) gives the CFI a very wide statutory jurisdiction to grant injunctions where the justice of the case requires. Section 52(1) of the District Court Ordinance (Cap. 336) (DCO) gives the DC wide powers to grant injunctions with certain limitations e.g., a monetary limit of HKD 3 million.
- ⁵⁶ Sections 3, 3A and 3B of DCRVO.
- ⁵⁷ Section 5 of DCRVO.
- ⁵⁸ Sections 3, 3A and 3B of DCRVO.
- ⁵⁹ Sections 3B(2) of DCRVO.
- ⁶⁰ An applicant may do so if the court grants an injunction containing an ouster order that concerns a minor, and at the time when the court determines the application, there is in force (i) an order which grants custody of the minor to the abuser; or (ii) an order that allows the abuser to have access to the minor.
- ⁶¹ Section 7A of DCRVO.
- ⁶² Protection of Child and Juvenile Ordinance (Cap. 213) (PCJO).
- ⁶³ "Child" refers to a person under the age of 14 while "juvenile" means a person who is 14 years of age or upwards and under the age of 18 (Section 2 of PCJO).
- ⁶⁴ Section 34(1) of PCJO.
- ⁶⁵ Section 34(4) of PCJO.
- ⁶⁶ Subject to the limitations under Section 52(1) of DCO.
- ⁶⁷ Halsbury's Laws of Hong Kong at 90.0834 and 125.238.
- ⁶⁸ Sections 3(1) and 3B(1) of DCRVO.
- ⁶⁹ Section 3A(3) of DCRVO.
- ⁷⁰ Bills Committee on Domestic Violence (Amendment) Bill 2007 Supplementary information (LC Paper No. CB(2)677/07-08(01)).
- ⁷¹ For example, the applications were made on an ex-parte basis in *L v. K* (2014) FCMP 230/2014 and *YLS v. TL* (Custody and Domestic Violence) [2009] HKFLR 19.
- ⁷² Sections 7 and 7A of DCRVO and Section 34C of PCJO.
- ⁷³ How to Apply for Injunctions under the Domestic and Cohabitation Relationships Violence Ordinance issued by the Hong Kong Judiciary <https://www.judiciary.hk/en/court_services_facilities/dov.html> (last accessed 26 November 2020).
- ⁷⁴ *Luk Suet Shi Cissy v. Woo Chin Man* [1999] HKCU 115.
- ⁷⁵ Subject to the limitations under Section 52(1) of DCO.
- ⁷⁶ *YLS v. TL* [2009] HKCU 28. See Case 4 of **Appendix A**.
- ⁷⁷ Sections 6 and 7 of DCRVO.
- ⁷⁸ Section 34(1) of PCJO.
- ⁷⁹ "How to Apply for Injunctions Under the Domestic and Cohabitation Relationships Violence Ordinance (Cap 189)" https://www.judiciary.hk/en/court_services_facilities/dov.html#9.
- ⁸⁰ https://www.judiciary.hk/en/court_services_facilities/dov.html.
- ⁸¹ "Witness in fear" is defined in Section 79B of the Criminal Procedure Ordinance (Cap 221) as a witness whom the court hearing the evidence is satisfied, on reasonable grounds, is apprehensive as to the safety of himself or any member of his family if he gives evidence.
- ⁸² Part IIIA of Criminal Procedure Ordinance.
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- ⁸³ For the purposes of evidence given by live television link or depositions, a "child" is defined in section 79A of Criminal Procedure Ordinance, as under 17 years of age for cases concerning an offence of sexual abuse; and as under 14 years of age for other offences.
- ⁸⁴ Section 79B of Criminal Procedure Ordinance.
- ⁸⁵ For the purposes of video recorded evidence, a "child" is defined in Section 79A(a)(ii) and (b)(ii) of CO, as under 17 years of age when the video was made and under 18 years of age at the time when the video is given in evidence for cases concerning an offence of sexual abuse. For offences other than sexual abuse, a "child" is defined as under 14 years of age when the video was made and under 15 years of age at the time when the video is given in evidence.
- ⁸⁶ Section 79C of CO.
- ⁸⁷ Section 79C of CO.
- ⁸⁸ Section 79E of CO. A deposition means an out of court oral testimony of a witness that is reduced to writing for the later use in court. A party to the proceedings may apply for leave for deposition in writing to be taken from the child by a magistrate.
- ⁸⁹ Section 27 of Limitation Ordinance (Cap. 347) (LO).
- ⁹⁰ Sections 4 and 27(2) of LO.
- ⁹¹ Other factors to be taken into account are set out in Sections 3(2), 3A(6) and 3B(4).
- ⁹² Section 7A(3)(a) of DCRVO.
- ⁹³ Section 34. Annotated Ordinance of PCJO, paragraph 34.02.
- ⁹⁴ Section 21L(2) of HCO.
- ⁹⁵ Section 48(1) of DCO.
- ⁹⁶ "Child" refers to a person under the age of 14 while "juvenile" means a person who is 14 years of age or upwards and under the age of 18, Section 2 of PCJO.
- ⁹⁷ Section 34 of PCJO.
- ⁹⁸ *D v. L* [2014] HKCU 1076.
- ⁹⁹ See *P v. C* [2007] HKFLR 195 and *YLS v. TL* (Custody and Domestic Violence) [2009] HKFLR 19 for cost orders made in favour of the petitioner.
- ¹⁰⁰ *莫 v. 李* [2017] HKCU 2594.
- ¹⁰¹ *D v. L* [2014] HKCU 1076.
- ¹⁰² Labor Department (2019) Practical Guide For Employment of Foreign Domestic Helpers, p, 5 Question 1.7, url = <<https://www.fdh.labour.gov.hk/res/pdf/FDHguideEnglish.pdf>> (last accessed 16 October 2020).
- ¹⁰³ Immigration Department (2019) Standard Employment Contract and Terms of Employment for Helpers url = <<https://www.immd.gov.hk/eng/forms/forms/fdhcontractterms.html>> (last accessed 16 October 2020).
- ¹⁰⁴ *Erwiana Sulistyaningsih v. Law Wan Tung* DCPI 569B/2015, DCPI 569/2015; *Faridha Sulistyoningsih v. Mak Oi Ling Karen* DCPI 1575/2005.
- ¹⁰⁵ *Erwiana Sulistyaningsih v. Law Wan Tung* DCPI 569B/2015.
- ¹⁰⁶ Sections. 3, 3A and 3B of DCRVO.
- ¹⁰⁷ Chapter 5 Hong Kong Police Force, Procedural Guide for Handling Intimate Partner Violence Cases (Revised 2011), Social Welfare Department HKSAR, at para 5.1 [https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Chapter%205%20\(Eng\)%2024042013.pdf](https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Chapter%205%20(Eng)%2024042013.pdf).
- ¹⁰⁸ Chapter 6 Legal Aid Department, Procedural Guide for Handling Intimate Partner Violence Cases (Revised 2011), Social Welfare Department HKSAR, at para 6.1 [https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Chapter%206%20\(Eng\)%2024042013.pdf](https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Chapter%206%20(Eng)%2024042013.pdf).
- ¹⁰⁹ Chapter 12 of Prosecution Code of Department of Justice, at para 12.3 <https://www.doj.gov.hk/en/publications/pdf/pdcode1314e.pdf>.
- ¹¹⁰ *HKSAR v. Hung Wai Tak* (unrep. CACC 308/1999, 30 October 2000).
- ¹¹¹ Section 57(3) and (4) of CPO.
- ¹¹² Chapter 17 of Prosecution Code of Department of Justice at para 17.5 https://www.doj.gov.hk/en/publications/prosecution_ch17.html.
- ¹¹³ *HKSAR v. Ng Po On* [2008] 11 HKCFAR 91.
- ¹¹⁴ Section 17 of OAPO.
- ¹¹⁵ Section 122 of CO.
- ¹¹⁶ Section 31 of CO.
- ¹¹⁷ Paragraphs 7.7 and 7.9(a) at [https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Acrobat%20Document%20\(updated%20in%20August%202014\).pdf](https://www.swd.gov.hk/doc/fcw/proc_guidelines/battered_spouse/Acrobat%20Document%20(updated%20in%20August%202014).pdf).
- ¹¹⁸ Section 91(2) of CPO.
- ¹¹⁹ Section 122(2) of CO.
- ¹²⁰ It is an essential element for the prosecution to prove the absence of consent in a charge of common assault but not for cases of assault occasioning actual bodily harm and wounding or grievous bodily harm: *R v. Brown* [1994] 1 A.C. 212 adopted by the Hong Kong Court of Appeal in *R v. Yuen Chong & Another* [1996] HKEC 204, the CFI in 香港特別行政區 訴 鄧永義 [2015] CHKEC 607, save for the exceptions listed in Attorney General's Reference (No. 6 of 1980) [1981] QB 715; 73 Cr App R 63 and subsequent case
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laws. Exceptions include properly conducted lawful games and sports, lawful chastisement or correction, reasonable surgical interference and dangerous exhibitions etc.

¹²¹ Section 74 of CPO.

¹²² Section 76 of CPO.

¹²³ *HKSAR v. Wong Kam Ching* (CACC 74/2016).

¹²⁴ Sections 21(1) and (3) of Magistrates Ordinance (Cap. 227); Section 34 of CPO.

¹²⁵ If a person refuses to appear in the court as required by the summons or warrant without a reasonable cause, or if the person appears in the court, but refuses to be sworn or refuses to give evidence without a reasonable cause, they may be liable for contempt of court, and subject to a fine and imprisonment: Section 21(5), Magistrates Ordinance (Cap. 227); Section 36, Criminal Procedure Ordinance (Cap. 221).

¹²⁶ Section 65A of Evidence Ordinance (Cap. 8).

¹²⁷ *R v. Lam Yih Jiun Michael* [1996] 2 HKC 499 at 510I-511A.

¹²⁸ Section 65(1) of EO.

¹²⁹ *Lam Ngok Yeung v. Director of Immigration & Anor* [1985] 2 HKC 725 at 732D-E.

¹³⁰ Pursuant to the Magistrates Ordinance or Criminal Procedure Ordinance.

¹³¹ *R v. Lam Chi Keung* [1997] 2 HKC 250 at 255D, 256B-C, endorsed by the CFA in *Lam Chi Keung v. HKSAR* [1998] 1 HKC 499 at 502F-G; Section 4 of Evidence Ordinance.

¹³² Evidence Ordinance. The corroboration rule provided that a judge needs to warn himself or the jury of the danger of convicting on the uncorroborated evidence of a child. This warning potentially undermines the reliability of evidence given by child witnesses.

¹³³ Family Community Legal Information Centre, <https://familycllc.hk/en/topics/Daily-lives-legal-issues/Domestic-violence-and-assistance/Victims-of-domestic-violence-might-be-required-to-give-evidence/#content>.

¹³⁴ Both offences are under the Offences against the Person Ordinance.

¹³⁵ The Law Reform Commission of Hong Kong (2019) Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult (HKLRC Consultation Paper), p.5-7, https://www.hkreform.gov.hk/en/docs/cadcva_e.pdf.

¹³⁶ *HKSAR v. Chan Chun Tat* (11/04/2013, CACC317/2012), paragraph 50.

¹³⁷ *HKSAR v. Liang Yaoqiang* [2020] HKCA 941, paragraph 156.

¹³⁸ *HKSAR v. Fan Tak Wan* (4 October 2007, CACC10/2007) paragraphs 19-20; *Secretary for Justice v. Lui Jiu* (14 December 1999, CAAR6/1999) [1995-2000] HKCLR 322, paragraphs 10-11.

¹³⁹ *HKSAR v. Yu Tim Hi* (2 December 2013, CACC170/2013).

¹⁴⁰ *Secretary for Justice v. Lui Jiu*.

¹⁴¹ *Attorney General v. Lau Ching-yau*, CAAR 11/1991.

¹⁴² *HKSAR v. Chan Chun Tat*, *HKSAR v. Fan Tak Wan*; *Secretary for Justice v. Lui Jiu*; *Attorney General v. Lau Ching-yau*; *HKSAR v. Chou Hsing-kuo*, CACC 79/1999; *HKSAR v. Un Sut Ha* (7 March 2017, DCCC 1112/2016) [2017] HKCU 941.

¹⁴³ See *HKSAR v. Un Sut Ha* citing *HKSAR v. Wong Luk Sau* [2013] 2 HKLRD 201.

¹⁴⁴ Section 5(1) of DCRVO.

¹⁴⁵ Sections 5(1A) and 5(1B) of DCRVO.

¹⁴⁶ Section 5(3) of DCRVO. See also <https://familycllc.hk/en/topics/Daily-lives-legal-issues/Domestic-violence-and-assistance/Domestic-and-Cohabitation-Relationships-Violence-Ordinance/>.

¹⁴⁷ Section 7 of DCRVO.

¹⁴⁸ See Probation of Abusers Ordinance (Cap. 298).

¹⁴⁹ *Lau Wai Wo v. HKSAR* [2004] 1 HKLRD 372.

¹⁵⁰ Department of Justice, https://www.doj.gov.hk/en/publications/domesticviolence_11.html.

¹⁵¹ Hong Kong Police Force, https://www.police.gov.hk/ppp_en/04_crime_matters/vic_charter.html.

¹⁵² *HKSAR v. Coady* (No 2) [2000] 3 HKC 570; *HKSAR v. Li So-Man* CACC 609/1999; *HKSAR v. Nancy Ann Kissel* CACC 66/2012.

¹⁵³ During the COVID-19 pandemic, there have been a surge in domestic violence cases reported during the lockdown period: <https://news.rthk.hk/rthk/en/component/k2/1526544-20200516.htm>; <https://www.chinadailyhk.com/article/145062#Pain-in-proximity-as-pandemic-pushes-up-domestic-abuse-in-HK>; <https://www.scmp.com/news/hong-kong/society/article/3084565/isolated-during-covid-19-hong-kongs-victims-sexual-violence>; <https://www.scmp.com/news/hong-kong/health-environment/article/3079338/stuck-home-monster-more-reports-violence-against>.

¹⁵⁴ Occupational Safety and Health Ordinance (Cap 509) (OSHO).

¹⁵⁵ Section 10, Employment Ordinance (Cap. 57) (EO).

¹⁵⁶ Section 10, EO, which is also incorporated into Standard Employment Contract (ID 407).

¹⁵⁷ Friendly Employment Practices for Mature Persons and Families <https://www.labour.gov.hk/eng/public/Friendly_Employment_Practices_for_Mature_Persons_and_Families_ENG.pdf>; Good People Management and Family-Friendly Employment Practices <<https://www.labour.gov.hk/eng/public/wcp/FamilyCasebook.pdf>>.

¹⁵⁸ Lexology (2020) "Employment and employee benefits in Hong Kong," Page 16.

¹⁵⁹ Section 2 of the Family Status Discrimination Ordinance (Cap 527) (FSDO).

¹⁶⁰ FSDO.

¹⁶¹ Immigration Department, Dependants (2021)

< https://www.immd.gov.hk/eng/services/visas/residence_as_dependant.html > (last accessed 29 January 2021).

¹⁶² Article 14, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

¹⁶³ Section 7A of DCRVO.

¹⁶⁴ Section 119V of Landlord and Tenant (Consolidation) Ordinance regarding Harassment.

¹⁶⁵ *Union Assurance Society of Canton v. The Hong Kong Land Co Ltd* (05/12/1977), HCA 386/1977.

¹⁶⁶ *Lam Kwok-leung v. AG* [1979] HKLR 145.

¹⁶⁷ There is currently no relevant case law.

¹⁶⁸ An injunction affecting land does not run with the land but is against a particular person (Halsbury's Laws of England (5th Edn) Vol 12). Further, such injunction is neither capable of creating any interest in land nor registrable under the Land Registration Ordinance (Cap. 128) (Section 10 of DCRVO).

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