Fighting Domestic Violence - Hong Kong

7. Endnotes

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[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>.

[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>.

[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>.

[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.clic.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> >.

[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>.

[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>.

[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>.

[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.

[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>.

[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>.

[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>.

[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 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://familyclic.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] HKCLRT 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://familyclic.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](https://www.labour.gov.hk/eng/public/Friendly_Employment_Practices_for_Mature_Persons_and_Families_ENG.pdf%20)>; 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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