Bills Committee on
Land Registration (Amendment) Bill 2000

Information requested by Members
at the third meeting held on 6 March 2001

(1) To advise the particulars of deeds to be included under the "Deeds Pending Registration" column of the land register.

The particulars of the deeds included in the "Deeds Pending Registration" column of the land register are : the memorial number, the date of instrument, the date of delivery, the nature, [the party] in favour of and the consideration. A pamphlet titled "Understanding the Computerized Land Register" which contains a sample land register is annexed for reference.

(2) To explain the rationale behind the existing practice of not informing the property owner when a document is lodged for registration against the property.

I. A property owner is not informed when a document is lodged for registration against the property because it is not necessary, not justifiable and not in the interest of the Land Registry's customers.

(i) Not necessary

(a) The Land Registration Ordinance (Cap.128) and its subsidiary legislation provide for the establishment and operation of the land register. The Land Registry maintains a public register of land records. Instruments which may affect land may be submitted for registration and the land records are open for public search.

(b) Under the Land Registration Ordinance, an instrument is registrable if the instrument affects land. Such instrument is registrable whether or not the owner of the property knows of or consents to the registration. It is therefore not necessary to inform the owner when a document is submitted.

(ii) Not Justifiable

(a) The customers of the Land Registry are not only the owners of the properties but all users of the public land register. Users of the land register may include potential purchasers, tenants, mortgagees and any other persons who wish to register documents and to conduct searches. If the Land Registry is to serve a notice on the owner whenever a new instrument is lodged for registration, it will result in a huge administrative workload – there were 685,775 deeds lodged for registration in the year 2000 – and the Administration would have to increase the registration fees to cover the costs for the workload.

(b) It is not justifiable to increase the registration fees for all users of the Land Registry in order to send the notification of registration to the owner of the property.

(iii) Not in customer's interest

If the Land Registry is to serve a notice on the owners, the additional step may lead to delay in the registration process and this is not in the interest of the customers of the Land Registry.

II. An owner may conduct a search of his own property at a small fee of $15 to ascertain if there is any instrument registered against his property. If the owner is overseas, he may apply for land search by post or instruct agents to conduct the search.

(3) Instead of requiring owners to apply to the court, the Land Registry should consider separating withheld/stopped deeds into different categories so that those withheld/stopped due to unjustified reasons could be expeditiously removed in order not to affect future transactions.

Having reconsidered the matter, the Administration agree to the suggestion of reduction of time period for removal of stopped deeds. The Administration will propose the Committee Stage Amendment for the period to be reduced from 12 months to 6 months with power for the Land Registrar to extend the time in appropriate cases. With this new proposal, the Administration do not propose to separate the stopped deeds into different categories.

(4) To provide the legal advice as to why section 58(1)(d) of the Personal Data (Privacy) Ordinance is applicable to non-payment of loans due to the Agriculture, Fisheries and Conservation Department

Legal advice had been obtained from the Department of Justice. The advice is that –

To institute legal actions against the person concerned who has defaulted in repayment of loans under the loan funds administered by the Agriculture, Fisheries and Conservation Department amounts to remedying of civil wrongs which falls within the exemption 'remedying of unlawful or seriously improper conduct' in section 58(1) (d) of Personal Data (Privacy) Ordinance. According to the High Court decision in Lily Tse Lai Yin & others v The Incorporated Owners of Albert House & others [1999] 1HKC 386, the words 'unlawful or seriously improper conduct' in section 58(1)(d) includes civil wrongs.

TSE LAI YIN LILY & ORS v INCORPORATED OWNERS OF ALBERT HOUSE & ORS

COURT OF FIRST INSTANCE
PERSONAL INJURIES NO 828 OF 1997
SUFFIAD J
10 DECEMBER 1998

Civil Procedure – Discovery against non parties – Accident involving death and injuries – Police obtained statements from witnesses – Whether discovery of statements to plaintiffs of civil claims should be ordered – Whether contravened Personal Data (Privacy) Ordinance – Whether Personal Data (Privacy) Ordinance inconsistent with s 42 of High Court Ordinance – High Court Ordinance (Cap 4) s 42 – Rules of the High Court (Cap 4) O 24 r 7A – Personal Data (Privacy) Ordinance (Cap 486) s 58(1), (2), Sch 1 Principle 3

Tort – Personal injuries action – Discovery against non-parties – Accident involving death and injuries – Police obtained statements from witnesses – Whether discovery of statements to plaintiffs of civil claims should be ordered – Whether contravened Personal Data (Privacy) Ordinance – Whether Personal Data (Privacy) Ordinance inconsistent with s 42 of High Court Ordinance – High Court Ordinance (Cap 4) s 42 – Rules of the High Court (Cap 4) O 24 r 7A – Personal Data (Privacy) Ordinance (Cap 486) s 58(1), (2), Sch 1 Principle 3

Words and Phrases – 'Unlawful or seriously improper conduct' – 'Remedying' – Personal Data (Privacy) Ordinance (Cap 486) s 58(1)(d)

民事訴訟程序 – 針對非訴訟方的文件透露要求 – 意外涉及死亡及損傷 – 警方從證人中錄取陳述書 – 應否作出透露陳述書予民事訴訟案中的原告人的命令 – 是否違反《個人資料(私隱)條例》– 《個人資料(私隱)條例》是否與《高等法院條例》第 42 條互相抵觸 – 《高等法院條例》(第 4 章)第 42 條 – 《高等法院規則》(第 4 章)第 24 令第 7A 條 – 《個人資料(私隱)條例》(第 486 章)第 58(1), (2) 條, 附表 1 第 3 原則

侵權 – 人身傷害訴訟 – 針對非訴訟方的文件透露要求 – 意外涉及死亡及損傷 – 警方從證人中錄取陳述書 – 應否作出透露陳述書予民事訴訟案中的原告人的命令 – 是否違反《個人資料(私隱)條例》– 《個人資料(私隱)條例》是否與《高等法院條例》第 42 條互相抵觸 – 《高等法院條例》(第 4 章)第 42 條 – 《高等法院規則》(第 4 章)第 24 令第 7A 條 – 《個人資料(私隱)條例》(第 486 章)第 58(1), (2) 條, 附表 1 第 3 原則

詞彙 – 「不合法或嚴重不當的行為」 – 「糾正」 – 《個人資料(私隱)條例》(第 486 章)第 58(1)(d) 條

The plaintiffs commenced action against the defendants for damages for personal injuries or under Fatal Accidents Ordinance (Cap 22) in respect of an accident on 1 August 1994 when a canopy collapsed on the pavement causing injuries and deaths to the passers-by. One of the allegations by the plaintiffs was that a fish tank installed at one end of the canopy caused or contributed to the collapse of the canopy. At the pre-trial review, the third defendant was given leave to amend his defence to include, inter alia, reliance upon approval for the fish tank allegedly given by the Urban Services Department in consultation with the Buildings Department. The amendment resulted in the plaintiffs seeking an order for discovery to inspect files of these two departments particularly in relation to the installation of the fish tank. The plaintiffs also sought discovery from the police for the statements taken by them from a number of witnesses after the accident. There was opposition in particular from the police and the Buildings Department for the disclosure of the unedited witness statements on the ground that it was in contravention of the provisions of the Personal Data (Privacy) Ordinance (Cap 486) (the Ordinance). There was no dispute that the contents of the witness statements would contain personal data within the meaning of the Ordinance. The issue was whether the use of the data in a civil action claiming for damages resulting from the collapse of the canopy fell within the ambit of s 58(1)(d), the application of which would invoke s 58(2) to exempt the data from being subject to data protection principle 3, which prohibited the use of the data other than for the purpose for which the data were to be used at the time of the collection, or any other purpose directly related to that purpose.

Held, allowing the application:

(1) In personal injuries or fatal accident cases, the High Court had jurisdiction under s 42 of the High Court Ordinance (Cap 4) to order the disclosure by a non-party to the proceedings, documents in his possession, custody or power which were relevant to any issue arising out of that claim. Such power was not fettered except as provided by the relevant provisions of statute and the rules, and was to be exercised so as to further the proper administration of justice. *Wong Siu Hing & Anor (Administratrixes of the Estate of Yu Loi Lung, deceased) v Lo Che Keung & Anor* [1991] 1 HKC 412 applied; *Chan Tam Sze & Ors v Hip Hing Construction Co Ltd & Ors* [1990] 1 HKLR 473 considered (at 391D-F/G).

(2) In s 58(1)(d) of the Ordinance, the use of the words 'unlawful or seriously improper conduct' extended beyond criminal conduct to include civil wrongs. The use of the word 'remedying' in the same subsection was suggestive of the same meaning. Since tort was a civil wrong, the bringing of a civil claim for damages in tort amounted to the remedying of unlawful or seriously improper conduct. As such, s 58(1)(d) was sufficiently wide to cover claim for damages in a personal injuries and/or fatal accident case. The use of such data in respect of such a civil claim was therefore exempted from the provisions of the data protection principle 3 by s 58(2). *R v R* [1991] 4 All ER 481 considered (at 393D-G/H).

(3) The bringing of the civil action for damages in relation to the collapse of the canopy was a purpose directly related to the initial purpose for which the witness statements were originally taken by the police, namely the police investigation into the collapse of the canopy. Therefore, para (b) of data protection principle 3 in Sch 1 of the Ordinance created a further exemption. There was no

need to obtain the consent of the data subject before such data could be used in the ensuing civil action (at 393G/H-J).

(4) On the true construction of the Peronal Data (Privacy) Ordinance, there was no inconsistency between the Ordinance with s 42 of the High Court Ordinance. It was never the intention of the legislature that the Ordinance would impede the administration of justice by restricting or eliminating the power of the High Court to order discovery under s 42 of the High Court Ordinance (at 393I-394A).

(5) The material sought by the plaintiffs in this application were highly relevant to the issues in the action. What evidence was or was not relevant to the issues in a personal injuries action was to be determined by the court and not by the data user. That was the purpose for the enactment of s 42 of the High Court Ordinance (at 394B-C).

Per curiam

Perhaps these Government departments would like to consider redrafting the standard forms of witness statements to be taken in future so as to include in those standard forms words which had the effect of making known to the witnesses that such statements, once given and signed by them, might be used in ensuing civil actions or in matters directly related to the purpose for which such statements were initially taken (at 394D/E-F).

Cases referred to

Chan Tam Sze & Ors v Hip Hing Construction Co Ltd & Ors [1990] 1 HKLR 473
R v R [1992] 1 AC 599, [1991] 4 All ER 481, [1991] 3 WLR 767
Wong Siu Hing & Anor (Administratrixes of the Estate of Yu Loi Lung, deceased) v Lo Che Keung & Anor [1991] 1 HKC 412

Legislation referred to

Factories and Industrial Undertakings Ordinance (Cap 59) s 5, repealed by s 48 of Occupational Safety and Health Ordinance (No 39 of 1997)
Fatal Accidents Ordinance (Cap 22)
High Court Ordinance (Cap 4) s 42
Personal Data (Privacy) Ordinance (Cap 486) ss 2(1), 4, 58(1), (2), Sch 1 Principle 3
Rules of the High Court (Cap 4) O 24 r 7A
Data Protection Act 1984 [Eng] s 34(5)

[*Editorial note*: as to discovery against non-parties in personal injuries and death actions generally see *Halsbury's Laws of Hong Kong* Vol 5, Civil Procedure [90.0493].]

Summonses

This was a hearing of three summonses taken out by the plaintiffs applying for discovery of documents from the Director of Buildings, the Director of Urban Services and the Commissioner of Police, who were all non-parties to the action for damages for personal injuries or under the Fatal Accidents Ordinance (Cap 22). The facts appear sufficiently in the following judgment.

Corinne Remedios (Wilkinson & Grist) for the plaintiffs.
Herbert Li (Law Officer (Civil Law)) for the Director of Urban Services, Director of Buildings and Commissioner of Police.
Vivien Lee (Gallant YT Ho & Co) for the second defendant.
Joseph Lai (J Chan Yip So & Partners) for the third defendant.
The first, fourth, fifth and sixth defendants absent.

Suffiad J: The plaintiffs took out three summonses, all under O 24 r 7A of the Rules of the High Court (Cap 4) for non-party discovery against the Director of Buildings, the Director of the Urban Services Department and the Commissioner of Police respectively, dated 1st, 2nd and 8th December 1998. After hearing the parties, I gave the orders sought by the plaintiffs in respect of all three summonses. I now give my reasons for the orders.

Background

This is a claim by seven plaintiffs for damages, either for personal injuries or under the Fatal Accidents Ordinance (Cap 22) in respect of a tragic accident which took place on 1 August 1994 when the canopy on the first floor of Albert House in Aberdeen collapsed, falling onto the pavement below and causing either the injuries or the death to the passers-by who were on that pavement at that time. The trial in respect of liability is scheduled for May 1999.

There are six defendants altogether being sued. One of the issues in the case is the allegation by the plaintiffs that a fish tank installed at one end of this canopy caused or contributed to the collapse of the canopy either because of its weight, or due to the fact that at the time of the accident, this fish tank was being dismantled. This fish tank was being used at the time of the accident by the fourth defendant, the New Best Restaurant Ltd, the licensee of which is the third defendant, Ho Wing Hang. At the pre-trial review of this action on 30 November 1998, the third defendant was given leave to amend his defence to include, inter alia, reliance upon advice given by alleged professionals and/or contractors in so far as the installation of the fish tank was concerned, and also reliance upon approval for the fish tank allegedly given by the Urban Services Department in consultation with the Buildings Department. This amendment has obviously opened up new avenues and therefore the necessity to follow this up with the Urban Services Department and the Buildings Department. It is for this reason that the plaintiff now wish to inspect the files of these two departments particularly in relation to the installation of the fish tank.

After the accident, the police took statements from a number of witnesses for the purpose of investigation into this accident and no doubt to see whether any person should be prosecuted as a result of this accident.

At the hearing of these summonses, I was informed by Ms Remedios that the Buildings Department and the Urban Services Department have

already supplied to the plaintiffs some documents but not all the documents in the relevant files have been disclosed, in particular, those relating to the canopy, including the application by the third and fourth defendants for approval of the fish tank and any material bearing upon the accident. Ongoing attempts to obtain such material first from the Buildings Department and subsequently from the police met eventually with opposition, particularly in relation to unedited witness statements taken by both the police and the Buildings Department after the accident.

Stance taken by the Department of Justice

Mr Li appears on behalf of the Department of Justice, who in turn represents the Director of Buildings, the Director of Urban Services Department and the Commissioner of Police. I was informed by Mr Li that whilst the Director of Buildings does not oppose the disclosure of unedited statements of witnesses because consent from those witnesses have already been obtained, however, the main opposition comes from the Commissioner of Police on the grounds that indiscriminate disclosure of the personal data of data subjects as contained in the witness statements taken by the police will contravene the provisions of the Personal Data (Privacy) Ordinance (Cap 486) (the Ordinance).

Reliance is placed on Principle 3 set out in Sch 1 of the Ordinance which principle relates to the use of personal data, and that s 4 of the Ordinance provides that a data user shall not do an act or engage in a practice that contravenes a data protection principle unless it is required and permitted under the Ordinance. There is no dispute that, for the purpose of the Ordinance, the Hong Kong Police Force is the data user and the witnesses who gave those statements are the data subjects. It can also be safely presumed that the contents of those witness statements would contain personal data of the relevant data subjects.

It was submitted by Mr Li that Principle 3 requires that the personal data of a data subject shall not, without the written consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of the collection of the data, or any other purpose directly related to that purpose. In the present case, Mr Li submits that the sole purpose for the taking of those witness statements which contain the personal data of the data subjects, was for police investigations into the accident with a view to possibly prosecuting any person who may be found criminally responsible for the accident, and did not include the disclosure of such data to the plaintiffs in the civil action herein. Mr Li further highlights in his argument the fact that there is no specific provision under the Ordinance whereby compliance with a court order may be exempted from Principle 3, unlike s 34(5) of the Data Protection Act 1984 in the United Kingdom whereby personal data are exempted from the non-disclosure provisions in the Act in any case in which the disclosure is

required by the order of a court made in the course of legal proceedings.

A further point relied on by Mr Li is that he seeks to rely on common law principles that where a subsequent statute is inconsistent with any earlier statute and the conflicts cannot be reconciled, the legislature is taken to intend that the subsequent statute should prevail over the earlier statute. Whilst acknowledging that s 42 of the High Court Ordinance (Cap 4) gives the court power to order non-party discovery, he argues that the Ordinance is subsequent in time to the High Court Ordinance, therefore any inconsistency between the Ordinance and s 42 of the High Court Ordinance, where the conflict cannot be reconciled, the provisions of the Ordinance should prevail.

For these reasons, Mr Li submits that the plaintiff's summonses for unedited statements should be dismissed.

Law and practice in respect of non-party discovery

In personal injuries or fatal accident cases, there is a long standing jurisdiction of the High Court to order the disclosure by a non-party to the proceedings, documents in his possession, custody or power which are relevant to any issue arising out of that claim. This jurisdiction of the High Court is derived from s 42 of the High Court Ordinance (Cap 4) with rules enacted under O 24 r 7A to carry into practice what is provided for in s 42 of the High Court Ordinance. In the case of *Wong Siu Hing & Anor (Administratrixes of the Estate of Yu Loi Lung, deceased) v Lo Che Keung & Anor* [1991] 1 HKC 412, it was held by Kaplan J that the power of the court to order a non-party to produce relevant documents was not fettered except as provided by the relevant provisions of statute and the rules, and was to be exercised so as to further the proper administration of justice.

In the case of *Chan Tam Sze & Ors v Hip Hing Construction Co Ltd & Ors* [1990] 1 HKLR 473, it was ordered against the Commissioner of Labour a non-party to that action, the discovery of files relating to construction sites at which the plaintiffs had been injured at work despite the objection by the Commissioner of Labour that such an order for discovery against him may contravene s 5 of the Factories and Industrial Undertakings Ordinance (Cap 59) by disclosing either the name or identity of a complainant under that Ordinance, or by disclosing any manufacturing or commercial secret or working process. It was further held by Bokhary J (as he then was) that such order for discovery would be accompanied by an order made on the undertaking of the solicitors for the plaintiffs not to disclose the name or identity of a complainant, or any secret process contained in the discovered material other than to the plaintiff, his counsel, secretarial and clerical staff and experts.

These two cases underline not only the importance of the power given to the court under s 42 of the High Court Ordinance for ordering disclosure by non-parties, but also the extent to which that power relates.

Personal Data (Privacy) Ordinance

Generally speaking, this Ordinance came into effect on 20 December 1996, although Pt II of that Ordinance dealing with administration came into effect on 1 August 1996. As stated in the Ordinance, this is an Ordinance to protect the privacy of individuals in relation to personal data and to provide for matters incidental thereto, or connected therewith. 'Personal data' is defined in s 2(1) of the Ordinance to mean any data —

(a) relating directly or indirectly to a living individual;
(b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
(c) in a form in which access to or processing of the data is practicable.

'Data user' is also defined in s 2(1) of the Ordinance as

> in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data.

'Use' is defined in s 2(1) of the Ordinance in this way:

> in relation to personal data, includes disclose or transfer the data.

Section 4 of the Ordinance provides that

> A data user shall not do an act, or engage in a practice, that contravenes a data protection principle unless the act or practice, as the case may be, is required or permitted under this Ordinance.

Schedule 1 of the Ordinance contains data protection principles and Principle 3 thereof, in relation to use of personal data, provides that:—

> Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than —
>
> (a) the purpose for which the data were to be used at the time of the collection of the data; or
> (b) a purpose directly related to the purpose referred to in paragraph (a).

Part VIII of the Ordinance deals with exemption and s 58 provides as follows:

> (1) Personal data held for the purposes of —
>
> ...
>
> (d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
>
> ...
>
> are exempt from the provisions of data protection principle 6 and section 18(1)(b) where the application of those provisions to the data would be likely to
>
> (i) prejudice any of the matters referred to in that subsection; or
> (ii) directly or indirectly identify the person who is the source of the data.
>
> (2) Personal data are exempted from the provisions of data protection principle 3 in any case in which —
>
> (a) the use of the data is for any of the purposes referred to in subsection (1) (and whether or not the data are held for any of those purposes); and
> (b) the application of those provisions in relation to such use would be likely to prejudice any of the matters referred to in that subsection ...

It is clear from s 58(2) that personal data are exempted from the provisions of data protection principle 3 where the use of the data is for any of the purposes referred to in s 58(1), and whether or not the data are held for any of those purposes. What I have to decide, therefore, is whether the use of such data in a civil action claiming for damages resulting from the collapse of this canopy falls within the ambit of s 58(1)(d) of the Ordinance which provides for, inter alia, the remedying of unlawful conduct.

Firstly, I note that in s 58(1), the use of the word 'crime' in para (a) [1] and the word 'offender' in para (b) [2]. This to my mind suggest, therefore, that the use of the words 'unlawful or seriously improper conduct' in para (d) extend beyond criminal conduct to include civil wrongs. Secondly, the use of the word 'remedying' in para (d) is again suggestive of the same thing. The most natural meaning that can be given to the word 'unlawful' is that it normally describes something which is contrary to some law or enactment or is done without lawful justification or excuse. (See *R v R* [1991] 4 All ER 481 per Lord Keith of Kinkel at 488d.)

Since tort is a civil wrong, the bringing of a civil claim for damages in tort amounts to the remedying of unlawful or seriously improper conduct. For these reasons, I have no hesitation in coming to the conclusion that the words contained in s 58(1)(d) of the Personal Data (Privacy) Ordinance is sufficiently wide to cover claim for damages in a personal injuries and/or fatal accident case. That being the case, the use of such data in respect of such a civil claim is therefore exempted from the provisions of data protection principle 3 by s 58(2) of the Ordinance.

If I should be wrong on the above, I further hold that para (b) of data protection principle 3 in Sch 1 of the Ordinance creates a further exemption in that the bringing of this civil action for damages in relation to the collapse of the canopy is a purpose directly related to the initial purpose for which the witness statements were originally taken by the police, namely, the police investigation into the collapse of this canopy, and, therefore, there is no need to obtain the consent of the data subject before such data can be used in the ensuing civil action. The nexus of that relationship is the collapse of the canopy.

In the way that I have construed the Personal Data (Privacy) Ordinance, there is therefore no inconsistency between it and s 42 of the High Court

(1) 'the prevention or detection of crime;', s 58(1)(a).
(2) 'the apprehension, prosecution or detention of offenders;', s 58(1)(b).

Ordinance. It should also be noted that it was never the intention of the legislature that the Personal Data (Privacy) Ordinance would impede the administration of justice by restricting or eliminating the power of the High Court to order discovery under s 42 of the High Court Ordinance and it would be a very sad day for the administration of justice in Hong Kong if that consequence came about, whether intended or not.

Moreover, I have not the slightest hesitation to hold that the material sought by the plaintiffs in this application are highly relevant to the issues in this case. I should just add here that what evidence is or is not relevant to the issues in a personal injuries action is to be determined by the court and not by the data user as seems to have been suggested by Mr Li in his submission. That no doubt is the raison d'etre for s 42 of the High Court Ordinance.

Hopefully with this ruling, those involved in the administration of Government departments will no longer have to live with the shadow previously cast over them by the Personal Data (Privacy) Ordinance when being requested for witness statement by parties involved in personal injuries litigation arising out of the same accident, in respect of which those witness statements were taken initially. Secondly, perhaps these Government departments would like to consider redrafting the standard forms of witness statements to be taken in future so as to include in those standard forms words which have the effect of making known to the witnesses that such statements, once given and signed by them may be used in ensuing civil actions or in matters directly related to the purpose for which such statements were initially taken.

Reported by James Ding

HKSAR v KONG YUNG & ANOR

COURT OF APPEAL
CRIMINAL APPEAL NO 389 OF 1998
POWER VP AND LEONG JA
18 DECEMBER 1998

Criminal Law and Procedure – Sentencing – Illegal entrants – Robbery involving invasion of private premises at night with use of violence – Whether appropriate for sentences on robbery to run consecutively to sentences on illegal entry – Whether sentences manifestly excessive

刑法與刑事訴訟程序 – 判刑 – 非法入境者 – 涉及夜間闖入私人處所並使用暴力的搶劫 – 搶劫的刑期與非法入境的刑期分期執行是否適當 – 刑期是否明顯地過重

The applicants were illegal entrants. They each pleaded guilty to one charge of burglary and one charge of robbery. The prosecution case was that in one night, the applicant burgled into certain domestic premises and ransacked one of the rooms. On the following night, they broke into another domestic premises and alerted the householders in the course. They used a fruit knife to menace the householders, tied them up, cut the telephone lines and proceeded to ransack the premises. By the time of sentencing, the applicants had already served seven months of imprisonment out of a 15 months' term imposed on them by a magistrate for their illegal entry. The trial judge took a starting point of eight to nine years on the robbery charge and reduced it to five years taking into account the plea. For the burglary charge, he took a starting point of three years and reduced it to one of two years. Considering the totality principle, he ordered that one year of the sentences for burglary was to run concurrently with the sentences for robbery, thus making a total of six years' imprisonment. He further ordered that the sentences were to be consecutive to the sentences that they had been serving for illegal entry. The applicants sought leave to appeal against sentence.

Held, dismissing the application:

(1) It was a proper order that the sentences for the present offences were to be consecutive to the earlier sentences imposed for the illegal entry. It was the kind of order that was made in all such cases (at 397B).

(2) While the starting point taken for the robbery charge was at the top of the range, the eventual figure of five years arrived at by the judge was an entirely proper sentence after plea for a charge of robbery of such seriousness. The final sentence imposed was neither manifestly excessive nor severe. *R v Mo Kwong Sang* [1981] HKLR 610 and *A-G v Chan Fat Keung* [1988] HKC 461 considered (at 397G-H, 398B).

Obiter

Illegal entrants were continually entering Hong Kong and preying upon residents, particularly those who resided in border areas. It was the duty of the courts to pass sentences that would bring home to the offenders that the conduct was viewed with the utmost seriousness and would be met with severe punishment (at 396I).