
法官行為指引

Guide to Judicial Conduct

香港特別行政區司法機構
Judiciary
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Guide to Judicial Conduct

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PREFACE

1. An independent Judiciary, upholding the rule of law and safeguarding the rights and freedoms of the individual, is a cornerstone of our society. The Judiciary must be and must be seen to be independent. Everyone is equal before the law. Judges* resolve disputes between citizens and between citizen and government fairly and impartially without fear or favour.

2. It is of fundamental importance that judges must at all times observe the highest standards of conduct. This is essential for the maintenance of public confidence in the Judiciary and the administration of justice.

3. In September 2002, I appointed a Working Party to advise on the subject of developing a Guide to Judicial Conduct. It is chaired by the Chief Judge of the High Court ex officio and comprises judges from each level of court. In December 2002, after consultation with judges, the Working Party recommended that a Guide to Judicial Conduct should be drafted. Upon my acceptance of that recommendation, drafting work proceeded. In July 2004, after consultation with judges, the Working Party recommended that the Guide published in this document (“the Guide”) be adopted. I accepted that recommendation. The Guide was then translated into Chinese.

4. In developing a Guide which is appropriate for Hong Kong’s circumstances, the Working Party has drawn on the experience of a number of overseas jurisdictions which had adopted a Guide, including Australia, Canada and New Zealand and also the experience of England and Wales which had adopted Guidelines on outside interests and activities and is considering developing a full Guide.

Notes

* The reference to “judges” includes judicial officers.

5. The purpose of the Guide is to provide practical assistance to judges in dealing with matters relating to judicial conduct. I am confident that it will serve that purpose. As had been recommended by the Working Party, the Guide will be made available to the public to increase transparency and it will be reviewed from time to time.

6. I wish to express my deepest gratitude to the Working Party chaired by the Chief Judge for their dedicated efforts and contribution to this important task.

Andrew Li
Chief Justice
October 2004

GUIDE TO JUDICIAL CONDUCT

PART A : PURPOSE OF THE GUIDE

1. An independent Judiciary, upholding the rule of law and safeguarding the rights and freedoms of the individual, is a cornerstone of Hong Kong's society. Judges¹ are entrusted by the community with the exercise of independent judicial power; and liberty, property and reputation are at stake in the decisions they make when adjudicating cases between citizens and between citizen and government.
2. In order to maintain public confidence in the Judiciary and the administration of justice, it is of fundamental importance that judges observe the highest standards of conduct. Judges must do their utmost to uphold the independence and impartiality of the Judiciary and to maintain the dignity and standing of the judicial office. The community has a right to have the highest expectations of the Judiciary and judges.
3. Judges are of course part of the community which they serve. Maintaining the highest standards of conduct does not mean that judges should be divorced from society, living a "monastic" life on its fringes. In the modern world, a perception that judges are remote and out of touch with their community would not inspire and may undermine public confidence in the Judiciary and the administration of justice.

Notes

¹ The reference to "judges" in this Guide includes judicial officers.

4. The purpose of this Guide is to provide practical assistance to judges in dealing with matters relating to judicial conduct. Such matters may arise in many varied situations involving different circumstances requiring judges to decide on the proper course of action. This Guide obviously cannot be comprehensive. Its aim is to provide practical guidance for judges. It does not attempt to define judicial misconduct.
5. In situations of difficulty, different views might quite reasonably be taken as to the appropriate course of action. In such situations, judges may find it helpful to discuss the matter with colleagues. If in any doubt, it is recommended that judges should consult their Court Leaders and the Chief Justice, as Head of the Judiciary, may be consulted as appropriate. (Reference in this Guide to the Court Leader is to the Court Leader of the court where the judge concerned is sitting.)
6. Ultimately, the responsibility for deciding on the appropriate course of action in each case rests with the judge concerned. In matters concerning judicial conduct, it is important that judges exercise a high degree of alertness. Caution and commonsense are the surest guides. At the end of the day, the decision made must rest comfortably with the judicial conscience.
7. Guides similar to the present are a common feature of a number of common law jurisdictions. Inevitably it may contain propositions as to proper judicial conduct that are self-evident and of course judges are and have been alive to them.
8. It should be noted that this Guide does not extend to matters arising from the conditions of service of a judge (for example, as to when permission for outside work is required) or matters governed by law (for example, the Prevention of Bribery Ordinance, Cap. 201 and the Acceptance of Advantages (Chief Executive's Permission) Notice 2004, G.N. 252). This Guide does not affect the obligations of judges under their conditions of service or under the law.

9. This Guide will first discuss the Guiding Principles (Part B). It will then deal with various areas of judicial conduct : Discharge of judicial duties (Part C); Matters concerning disqualification (Part D); Professional activities outside court (Part E); and Non-judicial activities (Part F).
10. It may be appropriate to revise or supplement this Guide from time to time.

PART B : GUIDING PRINCIPLES

11. Three guiding principles are relevant to any consideration of judicial conduct. First, a judge must be independent. Secondly, a judge must be impartial. Thirdly, a judge must display integrity and propriety in all matters of conduct, both in and out of court.

Independence

12. Judicial independence is constitutionally guaranteed by the Basic Law which contains safeguards for its protection. Article 85 provides that the courts of Hong Kong shall exercise judicial power independently, free from any interference, and that judges shall be immune from legal action in the performance of their judicial functions.
13. Judicial independence is of course not conferred as a privilege enjoyed by judges. It imposes a responsibility on judges and is essential to enable them to perform their constitutional duty of adjudicating disputes impartially without fear or favour. Judicial independence is a fundamental guarantee of a fair trial and a fundamental safeguard of the rights and freedoms of Hong Kong residents. It is a prerequisite to the rule of law. Judges must ensure that their conduct, both in and out of court, does not undermine judicial independence or give the appearance of doing so.
14. The Judiciary must be and must be seen to be independent of the executive and legislative branches of government. The relationship between the Judiciary and the executive and legislative arms of government should be one of mutual respect, each recognizing and respecting the proper role of the others. The responsibility for dealing with the other branches of government on behalf of the Judiciary rests with the Chief Justice.

15. Judges must be aware that threats to their judicial independence may take the form of subtle attempts to influence how they should approach certain cases or to curry favour with them in some way. Judges must reject any extraneous attempt, direct or indirect, to influence them, by any means. If appropriate, any such attempt should be reported to the Court Leader who can consider any necessary action. In reaching their decisions, judges should be influenced solely by the matters properly before them in the case.
16. Cases will arise that have excited public controversy with extensive media publicity. Sometimes the weight of the publicity may tend considerably towards one desired result. However, in the exercise of the judicial function, the judge must be immune from the effects of such publicity. Judicial independence encompasses independence from all forms of outside influence. Judges should act fearlessly, irrespective of popular acclaim or criticism.
17. Judicial independence involves not only the independence of the Judiciary as an institution from the other branches of government. It also involves judges being independent from each other. A judge may sometimes find it helpful to “pick the brain” of colleagues. But it must be remembered that judicial decision-making is the responsibility of the individual judge, including each judge sitting in a collegiate appellate court.

Impartiality

18. Impartiality is the fundamental quality required of a judge. Judges should conduct themselves in and out of court in a way that maintains confidence in their impartiality and that of the Judiciary.
19. Justice must be done and must be seen to be done. Impartiality must exist both as a matter of fact and as a matter of reasonable perception. If partiality is reasonably perceived, that perception is likely to leave a sense of grievance and of injustice having been done, which is destructive of confidence in judicial decisions.

20. The perception of impartiality is measured by the standard of a reasonable, fair-minded and well-informed person, as discussed more fully in relation to questions of apparent bias.
21. A perception that a judge is not impartial may arise in a number of ways, for instance, by a perceived conflict of interest, by the judge's behaviour on the bench or by the judge's out-of-court associations and activities.

Integrity and Propriety

22. The conduct of judges is subject to public scrutiny. Judges should conduct themselves, both in and out of court, in a way that maintains the standing and dignity of the judicial office.
23. Judges enjoy the rights and freedoms of citizens generally. However, it must be recognized and accepted that there are proper constraints on a judge's activities imposed by the judicial office.
24. A judge must attempt to strike the right balance. The guide is for the judge to consider whether in the eyes of a reasonable, fair-minded and well-informed member of the community, the proposed conduct would be likely to call his or her integrity into question or to diminish respect for him or her as a judge. If so, the proposed course of conduct should be avoided.
25. It goes without saying that judges must have scrupulous respect for the law and its observance. What in others may be seen as a relatively minor transgression may well attract publicity, bringing the judge into disrepute, and raising questions regarding the integrity of the judge and the Judiciary.

PART C : THE DISCHARGE OF JUDICIAL DUTIES

Diligence

26. Judges should be diligent in the performance of their judicial duties. They should endeavour to be punctual and to perform their judicial duties with reasonable promptness.

Behaviour in court

27. Judges should conduct themselves with courtesy to all and require similar courtesy from those who appear before them. Unjustified reprimands of counsel, offensive remarks about litigants or witnesses and intemperate behaviour by a judge may undermine the perception of impartiality.
28. All who appear in court, legal practitioners, litigants and witnesses, are entitled to be dealt with in a way that respects their dignity. Judges must ensure that all who appear in court are protected from any display of prejudice based on racial, gender, religious or other discriminatory grounds.
29. Judges should at the same time be firm in maintaining the proper conduct of the proceedings and preventing unnecessary wastage of court time. A judge may have to intervene but should ensure that impartiality and the perception of impartiality are not adversely affected by the manner of intervention.

Communications concerning a case

30. There should be no communication concerning a case between the judge and any of the parties in the absence of the others unless the consent of those absent has been obtained. The principle of impartiality generally prohibits private communications between the judge and any of the parties, their legal representatives, witnesses or jurors. If the court receives such a private communication, it is important for it to ensure that the other parties concerned are fully and promptly informed.

Correction of oral judgments and jury summations

31. A judge may not alter the substance of reasons for a decision given orally. The correction of slips, poor expression, grammar or syntax and the inclusion of citations omitted at the time of delivery of oral judgments are acceptable.
32. The transcript of a summing up to a jury is, like a transcript of evidence, a true record of what was said in court. The transcript of a summing up should not be altered in any way unless it does not correctly record what the judge actually said.

Reserved Judgments

33. A judge should deliver reserved judgments within a reasonable time, taking into account the complexity of the matter and other work commitments. If a judge is in difficulty in completing a reserved judgment within a reasonable time, it is the responsibility of the judge to raise the matter with the Court Leader so that arrangements for making time available to complete the judgment can be considered.

Communication with appellate courts

34. A judge should not communicate privately with an appellate court or appellate judge in respect of any pending appeal from that judge's determination.

Letters of complaint

35. From time to time, after the conclusion of a case, judges may receive letters or other forms of communication from disappointed litigants and others, criticising their decisions or decisions made by their colleagues. A judge should not enter into contentious correspondence with the authors of such communications. If in doubt whether a response is required, or if their receipt becomes oppressive, or if they are of a threatening nature, the matter should be reported to the Court Leader who may take such steps as are appropriate.

Media criticism

36. There may be media criticism of a decision or criticism mounted by interested members of the public. A judge should refrain from answering such criticism, for example, by writing to the press or making incidental comments about such criticism when sitting on the bench. Judges should speak only through their judgments in dealing with the case being decided. It is generally inappropriate for judges to defend their judgments publicly.
37. If there is media misreporting of court proceedings or a judgment and a judge considers that the error should be corrected, the judge should consult the Court Leader and the Judiciary may issue a press release to state the factual position or take steps for an appropriate correction to be made.

PART D : MATTERS CONCERNING DISQUALIFICATION

38. The duty of judges is to hear and determine cases listed before them. However, occasions may arise when the fundamental principle requiring the court to be, and to be seen to be, impartial may operate to disqualify a judge from sitting.
39. Three classes of cases calling for disqualification have been dealt with in the case-law :
- (a) where there is actual bias;
 - (b) where bias is presumed and disqualification is automatic; and,
 - (c) where the circumstances give rise to apparent bias.
40. This continues to be a developing area of the law. Accordingly, while this Part seeks to distil the applicable principles, judges should be alert to possible developments.

Actual bias

41. Where a judge is affected by actual bias, disqualification must follow. Cases of actual bias are very rare².

Notes

² *Locabail Ltd v. Bayfield Properties ("Locabail")* [2000] QB 451 at 471G – 472B.

Presumed bias : automatic disqualification

42. The Australian position differs from that in England and Wales in this context. The Australian High Court³ has held that there is no rule of automatic disqualification and subsumes all relevant cases under the general rule concerning apparent bias discussed below. The House of Lords has, on the other hand, not only confirmed the rule's existence, but extended it, as indicated below. The Court of Final Appeal has not yet had occasion to rule on the approach to be adopted in Hong Kong. Until it does, it would be prudent to assume that the stricter automatic disqualification approach is applicable in our jurisdiction. What follows in this section is therefore a distillation of the English rule.
43. Bias is presumed and the judge is automatically disqualified where the judge has a pecuniary or proprietary interest in the outcome of the case.⁴
- (a) This may be so, for example, where the judge has a substantial shareholding in one of the parties and the outcome of the case might be such as could realistically affect the judge's interest⁵.
 - (b) Where a publicly listed company is a party and the judge holds a relatively small part of its total shareholding, the automatic disqualification rule would usually not apply since the outcome of the case would usually not affect the judge's interest⁶. But it may be different where the litigation involves the viability and survival of the company itself in which case, depending on the circumstances, the outcome

Notes

³ *Ebner v Official Trustee ("Ebner")* (2000) 205 CLR 337 at 350, 356, 358.

⁴ *Locabail* at 472B – 473G; *R v. Bow Street Magistrate, Ex parte Pinochet (No.2)* ("*Pinochet No.2*") [2000] 1 AC 119 at 132 H.

⁵ *Dimes v. Proprietors of Grand Junction Canal* (1852) 3 HL Cas.759 at 793-4; *Pinochet No.2* at 133 B - G; *Locabail* at 472 B – 473 E.

⁶ *Locabail* at 473 B.

may be regarded as realistically affecting the judge's interest.

44. The automatic disqualification rule has been extended by the House of Lords to cover a limited class of non-financial interests, namely, where the judge's decision would lead to the promotion of a cause in which he is involved in promoting together with one of the parties. So a judge was held to be automatically disqualified where he was a director of a company which, although not a party in the case, was controlled by a party and carrying on associated work in promoting the same causes⁷.
45. The automatic disqualification rule is limited in scope. It has been observed that any extension is undesirable unless regarded as plainly required⁸.

Apparent bias

46. In practice, questions of disqualification are most likely to arise in relation to suggestions of apparent bias.

The apparent bias test

47. The apparent bias test may be stated as follows :

A particular judge is disqualified from sitting if the circumstances are such as would lead a reasonable, fair-minded and well-informed observer to conclude that there is a real possibility that the judge would be biased.

Notes

⁷

Pinochet No.2 at 135 B-F.

⁸

Locabail at 474H – 475B.

48. While this test has sometimes been formulated with slightly different wording so that, for instance, in some of the frequently cited passages in the leading English cases⁹, the word “reasonable” has sometimes been left out, it is clear on analysis that the test set out above is the operative test. It is the test for apparent bias adopted in Scotland, Australia, South Africa and in the European Court of Human Rights¹⁰. It is also applied in New Zealand¹¹ and Canada¹². After the English courts had made what was described as “a modest adjustment of the test”¹³ previously adopted¹⁴, it is now also in substance the test applied in England and Wales. It has effectively been adopted in Hong Kong by the Appeal Committee of the Court of Final Appeal¹⁵.

Applying the test

49. Consideration only needs to be given to the question of disqualification if the circumstances present a real possibility that the apparent bias rule may apply. Judges should not yield to tenuous, trivial or frivolous grounds and should not accede too readily to suggestions of apparent bias. If they do, this would place a burden on a judge’s colleagues and may encourage parties to believe that by seeking disqualification, they may be able to have their case transferred from a judge whom for one reason or another they may wish to avoid¹⁶.

Notes

⁹ *Locabail, Re Medicaments and Related Classes of Goods (No.2)* (“*Medicaments*”) [2001] 1 WLR 700 and *Porter v. Magill* (“*Porter*”) [2002] 2 AC 357.

¹⁰ See references cited in *Locabail* at 476G, para 17 and in *Porter* at 493, para 100.

¹¹ See the cases cited in *Webb v The Queen* (1994) 181 CLR 41 at 48-49.

¹² See e.g., *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)* [1992] 89 DLR (4th) 289; 1 SCR 623; and *R v Curragh Inc* [1997] 144 DLR (4th) 614; 1 S.C.R. 537.

¹³ *Medicaments* at 726, para 85 and *Porter* at 494, para 103.

¹⁴ In *R v Gough* [1993] AC 646 at 670.

¹⁵ *Deacons v White & Case* [2004] 1 HKLRD 291, [2003] 3 HKC 374, para 21.

¹⁶ *Locabail* at 479A – 480A; *Ebner* at 348 (para.20).

50. Where the circumstances do raise a question of apparent bias, a judge may wish to consult colleagues and the Court Leader for their views, and should do so when in doubt. However, it is the ultimate responsibility of the judge to decide for himself or herself whether disqualification is required. That decision is made applying the apparent bias test. The judge must consider the position objectively from the viewpoint of the reasonable, fair-minded and well-informed individual and ask whether such individual would conclude that there is a real possibility that the judge would be biased if he or she were to proceed to hear the case.

Disclosure to the parties prior to commencement of the hearing

51. Three situations may arise :
- (a) Where, having taken into account all known material circumstances and applied the apparent bias test, the judge is satisfied that disqualification is not required, no disclosure to the parties is required. The judge should proceed to hear the case. If, however, someone objects, that objection should obviously be heard and resolved with an open mind.
 - (b) Conversely, where, having applied the apparent bias test, the judge is satisfied that disqualification is necessary, steps should immediately be taken to inform the Court Leader so as to have the case re-assigned to a different judge. Again, no disclosure is required and the case will simply proceed before the replacement judge.
 - (c) Where a judge wishes to have the assistance of submissions from the parties, whether on the facts or the law, before deciding whether disqualification is required, disclosure of the relevant circumstances should be made to the parties, inviting them to make any submissions desired in the light of such circumstances. Having heard such submissions, the judge should decide whether to proceed applying the apparent bias test.

52. Such questions should be dealt with at as early a stage as possible before the hearing to obviate the inconvenience of an adjournment.

Disclosure after commencement of the hearing

53. There are times when a question of apparent bias may arise for the first time after the hearing has begun. For instance, a witness with whom the judge has a potentially relevant relationship may be unexpectedly called; or the judge may discover that someone relevant owns a company which is a named party to the litigation, and so forth.
54. Where this occurs, the abovementioned approach to pre-hearing apparent bias questions should equally be adopted in the first and third situations discussed: where satisfied that the test does not require disqualification, no disclosure is required; and where assistance of the parties' submissions is desired, disclosure should be made for that purpose.
55. The approach to the second situation discussed is different. If, applying the test, disqualification is considered necessary (a conclusion that should not lightly be reached given its implications in terms of expense and disruption), the judge must inform the parties of his decision, disclosing its basis. In this context, questions of waiver may require consideration, but, as discussed below, care must be taken to avoid any impression of pressurising the parties to consent to the judge hearing the matter.

Some practical illustrations

56. Questions of apparent bias may arise in an infinite variety of situations¹⁷. In each case, the judge must resolve them applying the apparent bias test, taking all material facts into account. Some practical illustrations are considered below.

Relationships

57. Litigant or witness : Applying the test, it would appear inevitable that a judge should disqualify himself or herself where the relationship between the judge and the litigant or a material witness¹⁸ is one of : (i) spouse (or domestic partner) or (ii) close relative, which in this context refers to a parent, brother or sister, child or son-in-law or daughter-in-law.
58. Counsel¹⁹ or solicitor-advocate in the case : Similarly, the test would appear to necessitate disqualification where a judge has one of the abovementioned relationships with counsel or a solicitor appearing as advocate in the case.
59. Apart from the solicitor-advocate, the position in relation to solicitors is less clear-cut. Solicitors may play large or small roles in relation to a piece of litigation, ranging from a small, temporary, behind-the-scenes involvement to a primary role as instructing solicitor, as the main correspondent in letters to the other parties or as the main adviser to the client in the litigation. Applying the test, disqualification may well be necessary where a solicitor having a relevant relationship with the judge, is or has been playing a major

Notes

¹⁷ *Locabail* at 480 where a number of situations were referred to and commented on.

¹⁸ In this context, a material witness includes both a witness of disputed fact and an expert witness whose evidence is challenged, but not a witness giving formal or undisputed evidence.

¹⁹ Counsel in the case refers to counsel appearing in the case, whether senior or junior counsel and whether appearing alone or together with other counsel.

role in the proceedings. Conversely, the test may permit a minor, transient or unimportant role in the litigation to be safely ignored.

60. Friendships, including a close friendship or a past professional association with counsel or solicitor in the case, such as former pupils, members of the same chambers or partners in the same firm, usually would not require disqualification.
61. It is in each case a question of conscientiously applying the test to the particular facts. For example, the fiancée of a judge, may well be regarded as in a position similar to that of a judge's spouse; as may also be the case regarding individuals having an intimate personal relationship of a less formal nature with the judge. On the other hand, different considerations are likely to apply, for example, to a distant relative.

Financial interests

62. The automatic disqualification rule has already been discussed. It requires disqualification of a judge having a pecuniary or proprietary interest in the outcome of the case or who is involved in a shared cause with one of the parties. Situations may however arise where the automatic disqualification rule is not engaged but where deciding the case heard may nevertheless be seen to have financial implications for the judge in question. In such cases, the apparent bias test must be employed to decide whether the judge should sit.
63. A few examples of this latter situation may assist.
 - (a) A judge owns a mortgaged flat and, with falling interest rates, has made an application to the mortgagee bank to refinance the loan at a lower interest rate. If, while the application is pending, the same bank were to come before the judge seeking, say, to recover a loan made to some other customer, there is no question of the automatic disqualification rule applying since the judge is not

interested in the outcome of the bank's action against that other customer. Nonetheless, because of the judge's pending application to the plaintiff bank regarding his mortgage interest rate, the apparent bias test would have to be applied.

- (b) To vary the above example, the bank's action against the other customer comes before the judge when his son or daughter has just applied for employment by that bank. Again, automatic disqualification is not required but the apparent bias test would have to be applied.
- (c) A judge has a pending claim against an insurance company arising out of say, theft of the judge's car. If that insurance company is a party in a case listed before the judge, automatic disqualification is similarly not required but the apparent bias test would have to be applied.

- 64. These examples illustrate the point that the apparent bias test may be applicable in a case with possible financial implications for the judge where the automatic disqualification rule is not engaged. Whether the judge applying the test would rule in favour of disqualification in the examples just given would depend on all the circumstances.
- 65. One would generally expect the apparent bias rule not to require disqualification where a judge is merely involved as a customer, dealing in the ordinary course of business with a bank, insurance company, credit card company, mutual fund or unit trust, or the like, which happens to be a party in a case, without there being pending any dispute or special transaction involving the judge.
- 66. In cases involving financial implications which are highly contingent and remote at the time of the decision, one would expect application of the test generally not to result in disqualification.

Other situations

67. Where a judge has, before appointment, acted as a lawyer for or against a person, one would expect that this, by itself, would usually not result in disqualification. But everything depends on the particular circumstances.
68. Similarly, where a judge in a previous case has held against a person, whether as a witness or a litigant, this by itself would usually not be expected to result in disqualification. But the circumstances may be such that the question of disqualification has to be considered. For example, this may arise if the credibility of that person is in issue and the judge had in a previous case rejected his or her evidence in such strong terms as to throw doubt on the judge's ability to approach such person's evidence in the current case impartially.

Waiver in presumed bias and apparent bias situations

69. In a situation where bias is presumed and the automatic disqualification rule applies²⁰ and in a situation where there may be apparent bias²¹, a party may waive his right to object. Any waiver must be clear and unequivocal and made with full knowledge of all relevant facts. However, although a party may waive his right to object, it would be undesirable for a judge to give any impression of exerting any pressure on the parties to consent to the judge hearing the matter as this would put the parties in an invidious position. Further, even if there is a waiver, it is ultimately for the judge to decide whether to sit.

Notes

²⁰ *Locabail* at 475C; *Pinochet No.2* at 136H.

²¹ *Locabail* at 481 A-B.

Necessity

70. The law recognizes a doctrine of necessity in this area. In other words, the situation could arise where, notwithstanding the judge's conclusion in favour of disqualification, whether because of presumed bias and the application of the automatic disqualification rule or because of apparent bias, the judge should nevertheless sit. However, such cases would only rarely arise and the scope of that doctrine is debateable²².

Notes

²² *Ebner* at 359 (para.64) for the majority view on the scope of the doctrine of necessity. Cf a narrower view at 368 (paras.101-3) per Gaudron J.

PART E : PROFESSIONAL ACTIVITIES OUTSIDE COURT

71. The contents of this Part do not affect judges' obligations to seek permission for outside work as required by their conditions of service or under the Acceptance of Advantages (Chief Executive's Permission) Notice 2004, given under section 3 of the Prevention of Bribery Ordinance, Cap. 201.
72. There is no objection to judges contributing to legal and professional education such as by delivering lectures, teaching, participating in conferences and seminars, judging moots and acting as honorary examiners. Nor is there any objection to judges contributing to legal texts as authors, writers of forewords, editors and the like. On the contrary, such professional activities by judges are in the public interest and are to be encouraged.
73. Judges should of course ensure that such professional activities do not affect the discharge of their judicial duties.
74. A judge should avoid expressing views on controversial legal issues which are likely to come before the courts in a way which may impair the judge's ability to sit.

PART F : NON-JUDICIAL ACTIVITIES

75. In the area of non-judicial activities, the appropriate guide for judges is to consider whether a reasonable, fair-minded and well-informed member of the community would consider that the conduct in question would be likely to undermine judicial independence or impartiality or to affect the dignity and standing of the judicial office. If so, the conduct should be avoided. The following are some of the more common situations. They are of course not exhaustive.

Political organizations or activities

76. Judges should refrain from membership in or association with political organizations or activities. For example, a judge should refrain from attendance at political gatherings or demonstrations. But a judge is of course free to exercise his or her electoral rights.
77. Where a close member of a judge's family is politically active, the judge should bear in mind that in some cases, the question of disqualification may arise for consideration as concerns may exist as to the perception of the judge's impartiality.

Use of judicial office

78. Judges should not use the judicial office for personal advantage or for the benefit of family and friends or so conduct themselves that their actions might reasonably be so perceived.
79. Judges should not use the fact of holding judicial office in any attempt or what may reasonably be seen to be an attempt to extricate themselves from legal or bureaucratic difficulties. For example, if stopped for an alleged traffic offence, a judge should

not volunteer his or her judicial status to the law enforcement officer.

80. However, in private dealings, judges need not conceal the fact of holding judicial office. But a judge should take care to avoid giving any impression that the status of judge is being used in order to obtain some form of preferential treatment.

Use of judicial stationery

81. In general, judicial stationery is intended for use when a judge wishes to write in an official capacity. Care should be taken in the use of judicial stationery when writing in a private capacity. For example, it would not be objectionable to send a thank you note after a social occasion using such stationery. On the other hand, it would not be appropriate to use judicial stationery where there may be a reasonable perception that the judge is seeking to draw attention to the fact of his or her being a judge in order to influence the recipient of the letter, for example, generally when writing to complain or regarding, for instance, a disputed claim on an insurance policy.

Letters of reference

82. Although there is no objection to a judge providing a letter of reference, caution should be exercised. A person seeking such a letter may do so not because he or she is well known to the judge but solely to benefit from the judge's status. In relation to letters of reference, judicial stationery should generally only be used when the judge's personal knowledge of the individual has arisen in the course of judicial work; for example, when writing for a judicial clerk or a judge's marshal. In other cases, for example, when writing for a domestic helper, a private letterhead should be used.

Giving character evidence

83. A judge should not volunteer to give character evidence in court. If requested, a judge, after consultation with the Court Leader, should only agree to do so when to refuse would be manifestly unfair to the person seeking that character evidence.

Giving legal advice

84. A judge should not give legal advice. However, in the case of close family members or close friends, he or she may offer personal advice on a friendly, informal basis, without remuneration, even on a matter having legal implications, but making it clear that he or she must not be treated as giving legal advice and that any legal advice needed should be professionally sought.

Participation in organizations

85. Judges are free to participate in community non-profit-making organizations of various types by becoming members of the organization and their governing bodies. Examples include, charitable organizations, university and school councils, church councils, hospital boards, social clubs, sporting organizations, and organizations promoting cultural or artistic interests.
86. However, in relation to such participation, the following matters should be borne in mind :
- (a) It would not be appropriate for a judge to participate in an organization if its objects are political or if its activities are likely to expose the judge to public controversy or if the organization is likely to be regularly or frequently involved in litigation.

- (b) A judge should ensure that it does not make excessive demands on his or her time.
- (c) A judge should not serve as legal adviser. This does not prevent a judge from expressing a view, purely as a member of the body in question, on a matter which may have legal implications; but it should be made clear that such views must not be treated as legal advice. It should be made clear that in so far as legal advice is required by the body in question, this should be professionally sought.
- (d) Organizations such as charitable organizations may appeal to the public for funds. But a judge should not personally become involved in or lend his or her name to any fund raising activities.

Commercial activities

- 87. Judges should not hold directorships in commercial companies; that is, companies whose objects are profit-related. This applies to both public and private companies, whether the directorship is executive or non-executive and whether it is remunerated or not. Accordingly, upon appointment, judges should resign from all such directorships.
- 88. Judges, however, can hold directorships in “family companies”; that is, companies owned and controlled by a judge and his or her family. It is common for matrimonial homes or other family assets such as investment properties to be owned and controlled by family companies. However, the directorship of such a company should not require the judge to devote excessive time to the company’s affairs and its activities should not involve commercial trading or expose the judge to public controversy.

Owners' Corporations

89. Where a judge owns or occupies premises in a building which has an Owners' Corporation, then he or she may serve on its management committee but should not give legal advice. However, this does not prevent a judge from expressing a view, purely as a member of the body in question, on a matter which may have legal implications; but it should be made clear that such views must not be treated as legal advice. It should be made clear that in so far as legal advice is required by the body in question, this should be professionally sought.

Management of personal investments

90. Judges are entitled to manage their own investments and those of their immediate families, including acting as trustees of family trusts and the like. However, the caution necessary in relation to acting as a director of a family company similarly applies.

Judges acting as executors

91. There is no objection to judges acting as executors or trustees of the estates of family members or close friends provided they do so without remuneration (whether or not they are beneficiaries of the estate).

Personal litigation

92. Judges have the right to act in the protection of their rights and interests, including by litigating in the courts. However, judges should be circumspect about becoming involved in personal litigation. If contemplating legal action, the judge should consult

the Court Leader. A judge, as a litigant, runs the risk of appearing to take advantage of his or her office and, conversely, of having his or her credibility adversely judged by judicial colleagues.

Acceptance of legal services

93. A judge should not accept free legal services and should pay at a proper rate for legal services except for services provided by a spouse or close relative, referring, in this context, to a parent, brother or sister, child or son-in-law or daughter-in-law.

Social contact with the legal profession

94. Social contact between members of the Judiciary and members of the legal profession is a long-standing tradition and is proper. However, as a matter of common sense, judges should exercise caution.
 - (a) Care should be taken to avoid direct social contact with members of the profession who are currently appearing or are in cases due imminently to be heard before them. For example, it would generally not be appropriate for a judge to attend a dinner party for say, 12 persons including counsel then appearing before the judge. However, it would be unobjectionable for a judge to attend a large cocktail party given, for example, by newly appointed Senior Counsel to celebrate their appointment. At such a function, although counsel appearing before the judge are likely to be present, direct social contact can readily be avoided.
 - (b) If such contact does take place, talk of the case should be avoided and the other parties to the hearing should be informed of the contact at the earliest opportunity.

- (c) Care should be taken in assessing the appropriate degree to which social visits to their old chambers or firm should be made. For example, it would be appropriate for a judge to visit his or her old chambers or firm to attend a function, such as a Christmas party or an anniversary party or a party to celebrate the appointment of a member of chambers as Senior Counsel or his or her elevation to the Bench. However, excessively frequent visits by a judge to his or her old chambers in order to socialize with former colleagues would not be appropriate.

Using clubs and social facilities for certain organizations

- 95. Judges should exercise care in relation to using clubs and other social facilities run by or for members of organizations such as the Police, the ICAC and Customs and Excise Department, which are, or whose members are, likely to appear frequently before the courts. Thus, while there is no objection to a judge occasionally accepting an invitation say, to dine at a police mess, it would be undesirable for him or her to frequent or become a member of such clubs or to be a regular user of such facilities.

Visiting bars, karaoke lounges and the like

- 96. There is no prohibition against judges visiting pubs, bars, karaoke lounges or similar venues. But discretion should be exercised. Judges should consider how such visits are likely to be perceived by reasonable, fair-minded and well-informed members of the community in the light, for example, of the reputation of the place visited, the persons likely to frequent it and any concern that may exist as to the place not being operated in accordance with law.

Membership of syndicates

97. Whether it is appropriate for judges to join a syndicate engaged in a leisure activity such as owning a racehorse or a leisure boat depends on the circumstances. These include considerations such as the syndicate's object, the nature of a member's involvement, the extent of dealings (particularly financial dealings) between members, the identity of the other members, whether they are likely to appear regularly before the judge so that questions of apparent bias might often arise.

Gambling

98. There is no prohibition against judges engaging in occasional gambling as a leisure activity. But discretion should be exercised, bearing in mind the perception of a reasonable, fair-minded and well-informed member of the community. It is one thing to have a flutter at the horse races or at soccer betting or to pay an occasional visit to a casino outside Hong Kong for fun during a holiday or to play cards or mahjong with friends and family. It is quite another for a judge to be extensively involved in gambling activities or to play for high stakes or to attend establishments which have a questionable reputation.