

## Selected Updates on Hong Kong Health Law in the Year 2022

Prepared by Jane Or (with assistance from Paul Chow, Celine Cheng, Kason Lin, Selina Wu, Nancy Kwan and Jamie Lam) for the Seminar “Annual Review of Hong Kong Health Law 2023”, to be held by the Centre for Medical Ethics and Law of the University of Hong Kong on 31 March 2023 (Friday), 6:30 pm – 8:30 pm (HKT)

| No. | Type                          | Item   | Note  | Link   |
|-----|-------------------------------|--|---|--|
| 1   | Gross negligence manslaughter | <p><i>HKSAR v Chow Heung Wing, Stephen</i> [2022] HKCA 313;<br/> <i>HKSAR v Mak Wan Ling</i> [2022] HKCA 387</p> | <p>A customer who underwent an experimental treatment called CIK Therapy launched by the DR Group died as a result of the infusion of a contaminated blood product into her body.</p> <p>The first defendant (“D1”) was the owner and the person in control of the DR Group of companies. He happened to be a medical practitioner. The second defendant (“D2”) was the person responsible for the preparation of the blood product. The third defendant (“D3”) was the medical practitioner who administered the contaminated blood product to the customer.</p> <p>D1, D2 and D3 were convicted of manslaughter by gross negligence.</p> <p>In <i>HKSAR v Chow Heung Wing, Stephen and Chan Kwun Chung</i> [2021] HKCA 1655, the Court of Appeal:<br/>           (a) refused D1 and D2 leave to appeal against conviction and dismissed their appeal against conviction; and<br/>           (b) granted D1 and D2 leave to appeal against sentence and allowed their appeal against sentence.</p> <p>In <i>HKSAR v Chow Heung Wing, Stephen</i> [2022] HKCA 313, D1 applied to the Court of Appeal to certify five points of law of great and general importance, which were said to be involved in the decision of the Court of Appeal, pursuant to section 32(2) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). The Court of Appeal refused to grant a certificate on any of the questions advanced.</p> <p>In <i>HKSAR v Mak Wan Ling</i> [2022] HKCA 387, D3 sought leave to appeal against her conviction. The Court of Appeal refused leave to appeal where leave is required and otherwise dismissed D3’s appeal.</p> <p>Remark: In 2019, the Court of Final Appeal gave a landmark judgment on gross negligence manslaughter in <i>HKSAR v Mak Wan Ling</i> [2019] HKCFA 37 before the retrial of D3.</p> | <p><i>HKSAR v Chow Heung Wing, Stephen</i><br/>           [2022] HKCA 313</p> <p>Decision:<br/> <a href="https://legalref.judiciary.hk/lrs/co_mmon/ju/ju_frame.jsp?DIS=142508">https://legalref.judiciary.hk/lrs/co_mmon/ju/ju_frame.jsp?DIS=142508</a></p> <p>Summary:<br/> <a href="https://cmel.hku.hk/legal_update/hksar-v-chow-heung-wing-stephen-2022-hkca-313/">https://cmel.hku.hk/legal_update/hksar-v-chow-heung-wing-stephen-2022-hkca-313/</a></p> <p><i>HKSAR v Mak Wan Ling</i> [2022] HKCA 387</p> <p>Decision:<br/> <a href="https://legalref.judiciary.hk/lrs/co_mmon/ju/ju_frame.jsp?DIS=142824">https://legalref.judiciary.hk/lrs/co_mmon/ju/ju_frame.jsp?DIS=142824</a></p> <p>Summary:<br/> <a href="https://cmel.hku.hk/legal_update/hksar-v-mak-wan-ling-2022-hkca-387/">https://cmel.hku.hk/legal_update/hksar-v-mak-wan-ling-2022-hkca-387/</a></p> |

\*Please note that the law changes from time to time and that each case turns on its own facts. This document is for general reference only (not a complete statement of the law) and cannot be relied upon as legal/ professional advice in any individual case. No warranty is given to the accuracy of the information in this document. No liability shall arise from any errors or omissions in the information in this document. The seminar will not cover all the selected updates.

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| 2 | Disability discrimination | <i>C v The Chinese University of Hong Kong</i> [2022] HKDC 77 | During the period in which the claimant was a postgraduate student in the Chinese University of Hong Kong (“the University”), she suffered from certain disabilities within the meaning of the Disability Discrimination Ordinance (Cap. 487). She claimed that the University had acted towards her in a manner that constituted, <i>inter alia</i> , direct and indirect disability discrimination, disability harassment and victimisation. The judge dismissed her claims.  | Decision:<br><a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=141809">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=141809</a><br><br>Summary 1:<br><a href="https://dcc.law/disability-discrimination-cuhk-depression/">https://dcc.law/disability-discrimination-cuhk-depression/</a><br><br>Summary 2:<br><a href="https://www.onc.hk/en_US/publication/is-it-against-the-law-for-an-employer-to-consider-an-employee-s-disability-in-making-a-decision-about-that-employee">https://www.onc.hk/en_US/publication/is-it-against-the-law-for-an-employer-to-consider-an-employee-s-disability-in-making-a-decision-about-that-employee</a> |
| 3 | Healthcare system reform  | Primary Healthcare Blueprint                                  | In 2022, the Government released the Primary Healthcare Blueprint.<br><br>The blueprint sets out recommendations for the future development of Primary Healthcare in Hong Kong.<br><br>Among those recommendations were the recommendations to: <ul style="list-style-type: none"> <li>• “require all family doctors and healthcare professionals participating in [primary healthcare] service provision to be enlisted on the Primary Care Register”; and</li> <li>• “transform the eHealth system from a basic health record sharing system into a comprehensive and integrated healthcare information infrastructure ... and explore the use of big data analytics to contribute to population health surveillance and individual health management”.</li> </ul> Please refer to the blueprint for the other recommendations. | Primary Healthcare Blueprint:<br><a href="https://www.primaryhealthcare.gov.hk">https://www.primaryhealthcare.gov.hk</a><br><br>Press Release:<br><a href="https://www.info.gov.hk/gia/general/202212/19/P2022121900561.htm">https://www.info.gov.hk/gia/general/202212/19/P2022121900561.htm</a>  |

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| 4 | Professional regulation (dissemination of professional service information and unsolicited promotion of services) | Amendments to the Code of Professional Conduct                            | Amendments to sections 5.2.3 - 5.2.5 of the Code of Professional Conduct for the Guidance of Registered Medical Practitioners issued by the Medical Council of Hong Kong with regard to the dissemination of professional service information and unsolicited promotion of doctors' services came into effect in 2022.  | Newsletter of the Medical Council of Hong Kong:<br><a href="https://www.mchk.org.hk/english/code/files/Newsletter2022.pdf">https://www.mchk.org.hk/english/code/files/Newsletter2022.pdf</a>   |
| 5 | Professional regulation (telemedicine)  | Telemedicine Q&A  | In 2022, the Medical Council of Hong Kong issued a set of Questions and Answers to the Ethical Guidelines on Practice of Telemedicine.  | Q&A:<br><a href="https://www.mchk.org.hk/files/Questions and Answers to the Ethical Guidelines on Practice of Telemedicine.pdf">https://www.mchk.org.hk/files/Questions and Answers to the Ethical Guidelines on Practice of Telemedicine.pdf</a><br><br>Press Release:<br><a href="https://www.info.gov.hk/gia/general/202203/16/P2022031600695.htm">https://www.info.gov.hk/gia/general/202203/16/P2022031600695.htm</a> |
| 6 | Professional regulation (practice promotion)  | <i>Dr Lee Yau Wing v The Medical Council of Hong Kong</i> [2022] HKCA 801 | This was an appeal by the defendant doctor against the decision of the Medical Council of Hong Kong in which the defendant was found guilty of misconduct as charged. The charge was: “[t]hat ... [he] ... sanctioned, acquiesced in or failed to take adequate steps to <i>prevent the use of the title '視網膜和黃斑點手術專家'</i> , which was not a quotable qualification approved by the Medical Council of Hong Kong and/or was misleading to the public, in an advertisement or article published on <i>Headline Daily</i> ....”. The defendant had been invited and agreed to give a talk at InnoTech Expo 2018 ("Event"). The advertisement was published to promote the Event. The Court of Appeal allowed the defendant's appeal.<br><br>Extracts from the judgment:<br><br>" 46. ...<br>(2) .. Dr Lee did not provide the Offending Title to [the contact person of the organizer of the Event]. On the contrary, he provided the PPT Slides to [the contact person] which did <i>not</i> contain the Offending Title but included the descriptions he had used to introduce himself. | Decision:<br><a href="https://legalref.judiciary.hk/lrs/comment/ju/ju_frame.jsp?DIS=144791">https://legalref.judiciary.hk/lrs/comment/ju/ju_frame.jsp?DIS=144791</a>   |

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|  |  |  | <p>...</p> <p>(4) ... there is <i>nothing</i> in the evidence ... which suggests that it may be reasonably anticipated by Dr Lee that the organizer ... would not use the information about Dr Lee as provided in the PPT Slides but would instead use the Offending [Title] or any other objectionable descriptions to introduce him.</p> <p>...</p> <p>47. As for Mr Chan's contention that Dr Lee should have asked the organizer to inform him in advance as to how it was going to quote him, we take the view that such steps would be unduly onerous in the particular circumstances of this case:</p> <p>(1) ... what Mr Chan was submitting was that a registered medical practitioner is under a duty to monitor how he would be introduced by a third party to members of the public, even where (a) the practitioner himself has provided detailed descriptions of himself and taken care not to supply an unquotable title, and (b) there are no <i>other</i> circumstances that would indicate an unquotable title might be used by the third party to introduce him to members of the public.</p> <p>...</p> <p>(3) ... this cannot be the intent of the Code which only imposes a duty to take <i>reasonable</i> steps on a doctor to prevent the misuse of his professional title. Had there been any intent to impose an invariable requirement for advance confirmation, it would have been simple for the Council to state in the Code or issue a circular to the effect that doctors should invariably seek advance confirmation on how he would be introduced whenever he participates in <i>bona fide</i> health education activities ...</p> <p>...</p> <p>50. We would however wish to emphasize that our above conclusion is based on and is restricted to the particular circumstances ... and the way in which the Charge was formulated and prosecuted ... This should not be understood as laying down a general proposition as to what may or may not amount to adequate steps taken by a medical doctor as required under code 5.2.2.1. That would always be dependent on the particular circumstances ..."</p> |  |
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| 7 | Professional regulation (practice promotion)                                  | <i>Dr Wang I Sing Sandy v The Medical Council of Hong Kong</i> [2022] HKCA 1772 | <p>This was an appeal of the defendant doctor against a decision of the Medical Council of Hong Kong, in which the defendant was found guilty of misconduct of the following charge: “[t]hat ... she ... sanctioned, acquiesced in or failed to take adequate steps to prevent the use or appearance of her name, title and/or photograph in an article and/or advertisement [<b>“the Article”</b>] published ... on a blog ... promoting or endorsing the injection of ‘Restylane’ and/or ‘Botox’ [<b>“the Product(s)”</b>].”</p> <p>The Court of Appeal held that "it was open to the Council to hold that the Appellant should have taken proactive steps to ensure that the photographs would not be used for promotional purposes, and to find that it was inadequate to rely <i>solely</i> on" an “undertaking” purportedly signed by a manager of the Appellant’s partnership company, NuMe.</p> <p>The "undertaking" stated, <i>inter alia</i>, that, while the defendant is providing services to NuMe, it must comply with the Code of Professional Conduct of the Medical Council of Hong Kong. The "undertaking" included a term to the effect that "unless permitted under the Code, it must not in any manner ... use the [defendant]’s Chinese or English names and pictures for business promotion”. Since the blogger was not a staff member of NuMe, the "undertaking" would not apply. There was no evidence that the defendant had mistakenly believed that the blogger was a staff member of NuMe. The Court of Appeal dismissed the defendant’s appeal.</p> | <p>Decision:<br/> <a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=148992">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=148992</a></p>  |
| 8 | Professional regulation (sick leave certificates and adducing fresh evidence) | <i>Dr Ip David v The Medical Council of Hong Kong</i> [2022] HKCA 877           | Adducing fresh evidence at the hearing of a doctor’s appeal against sentence imposed on him in a decision of the Medical Council of Hong Kong   | <p>Decision:<br/> <a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=144971">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=144971</a></p> <p>Summary (p.57-58):<br/> <a href="https://www.hk-lawyer.org/sites/default/files/e-magazines/HKL-NOV-2022/viewer/desktop/index.html?doc=19D9D65E0DBFECB327086545E2C1CA5E#page/60">https://www.hk-lawyer.org/sites/default/files/e-magazines/HKL-NOV-2022/viewer/desktop/index.html?doc=19D9D65E0DBFECB327086545E2C1CA5E#page/60</a></p> |

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| 9  | Professional regulation (collection of sample and diagnosis) | MCHK Judgment No. MC 18/605 | <p>The defendant was found guilty of misconduct under the following charges:</p> <p>(a)(i) “failed to properly collect urine samples ... for the urine culture tests”;</p> <p>(a)(ii) “failed to recognize the possibility of sample contamination ... and order for a proper urine collection to confirm the diagnosis ...”</p> <p>(b) “improperly made a diagnosis of urinary tract infection ...”; and</p> <p>(c) “prescribed antibiotics ... without proper justifications and/or clinical presentation”.</p> <p>Extracts from the judgment:</p> <p>“20. ... the diagnosis of UTI [urinary tract infection] should be proven by both positive urinalysis results indicating inflammation (i.e. pyuria), and a positive bacterial culture from a properly collected urine sample ... Culture of bag urine has high contamination rates and should not be used for confirming UTI ...</p> <p>...<br/>25. ... The culture results in this case, which showed significant counts of 2 organisms, pointed that there was the possibility of contamination ...”</p> | <p>Decision:</p> <p><a href="https://www.mchk.org.hk/english/complaint/PDF/DISCIPLINARY_INQUIRY_of_Dr_KONG_Chun_Tat.pdf">https://www.mchk.org.hk/english/complaint/PDF/DISCIPLINARY_INQUIRY_of_Dr_KONG_Chun_Tat.pdf</a></p>                           |
| 10 | Professional regulation (consent)                            | MCHK Judgment No. MC 17/152 | <p>The inquiry panel of MCHK applied <i>Montgomery v Lanarkshire Health Board</i> [2015] UKSC 11 in this case and found the defendant guilty of misconduct.</p> <p>Extracts from the judgment:</p> <p>"26. ... as the majority of the House of Lords said in <i>Montgomery v Lanarkshire Health Board</i> [2015] UKSC 11 [at 55]:- '...The obligation of the doctor “to have regard to the best interests of the patient but at the same time to make available to the patient sufficient information to enable the patient to reach a balanced judgment”... also arose as a matter of duty of care...'</p> <p>...<br/>31. ... the Patient’s consent to treatment was given following incomplete and unsatisfactory advice by the Defendant. On this ground alone, the Patient’s consent to treatment was vitiated."</p>  | <p>Decision:</p> <p><a href="https://www.mchk.org.hk/english/complaint/PDF/Judgment_for_uploading_to_website_Dr_CHEUNG_Chi_Peter.pdf">https://www.mchk.org.hk/english/complaint/PDF/Judgment_for_uploading_to_website_Dr_CHEUNG_Chi_Peter.pdf</a></p> |

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| 11 | Expunging medical reports in the context of a medical negligence case | <i>Mak Mei Ling v Dr. Poon Nai Yun</i> [2022] HKDC 247 | <p>This is a medical negligence case. The defendant dentist allegedly failed to provide active periodontal treatment.</p> <p>The judge ordered the plaintiff to file and serve “medical reports” within the meaning of Order 18, rule 12(1C) of the Rules of the District Court (“RDC”) and expert medical reports as to liability and causation. The plaintiff filed and served a report by a specialist in prosthodontics and a report by a specialist in psychiatry purportedly in compliance with the order.</p> <p>Under Order 18 Rules 12(1A) and 12(1C) of RDC, a plaintiff in an action for personal injuries was obliged to serve a “medical report”, which had to be a report “substantiating all the personal injuries alleged in the statement of claim” which the plaintiff proposed to “adduce in evidence as part of his case at the trial”. What is required is a report that substantiated all the injuries with sufficient particularity that one was not left in any doubt what was and what was not attributed to the accident or other event”.</p> <p>The report by the specialist in prosthodontics stated, <i>inter alia</i>, that it was “clearly unprofessional for (the defendant) to submit the two radiographs ... in wrong orientation”. The specialist in prosthodontics stated in a letter that his report “[was] not to criticize the manner in which Defendant firm provided the radiographs to the Plaintiff’s solicitors, but it [was] an opinion that the radiographic records was (sic) kept by Defendant in a negligent manner”. The judge, however, noted that the statement of claim did not make any reference to the manner in which the X-rays were provided by the defendant’s solicitors to the plaintiff’s solicitors or the manner in which the defendant had allegedly “kept” his X-rays. The judge held that there was no causative link between what the specialist in prosthodontics would call “clearly unprofessional” act and the plaintiff’s alleged injuries.</p> <p>The judge held that the other report, a psychiatric report, did not express any expert opinion and did not contain any references to causation (i.e. “no causative link was established between the defendant’s dental treatments and the psychiatric symptoms” from which the plaintiff was allegedly suffering from).</p> <p>The judge concluded that the two reports did not constitute “medical reports” as defined in Order 18 Rule 12(1C) of RDC or constitute “expert reports as to liability and causation” required under paragraph 66(5) of Practice Direction 18.1. Accordingly, the judge ordered, <i>inter alia</i>, that the two reports be expunged from the case.</p> | <p>Decision:<br/> <a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=143003">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=143003</a></p> |
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| 12 | Causation in a personal injuries case | <i>Chiu Kwa Yuk for herself and on behalf of members of the family of Lee Chi Wai, deceased v Lee Tak Wa, Ascent Exhibition Design (Hong Kong) Limited and Employees Compensation Assistance Fund Board</i> [2022] HKDC 59 | This case illustrated the problem of attempting to apply the medical evidence from the study of aetiology to the issue of causation in law. The issue in this case was one of causation, namely, whether the Acute Myocardial Infarction of the deceased was caused by an accident, and whether this accident arose out of and in the course of the employment.   | Decision:<br><a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=142078">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=142078</a><br><br>Summary:<br><a href="https://cmel.hku.hk/legal_update/applying-medical-evidence-from-the-study-of-aetiology-to-causation-in-law-chiu-kwai-yuk-v-lee-tak-wah-and-others-2022-hkdc-59/">https://cmel.hku.hk/legal_update/applying-medical-evidence-from-the-study-of-aetiology-to-causation-in-law-chiu-kwai-yuk-v-lee-tak-wah-and-others-2022-hkdc-59/</a>  |
| 13 | Mental health                         | <i>Re CA (Mental Health)</i> [2022] HKCFI 1294   | <p>This was an application by the committee of the estate of a mentally incapacitated person ("MIP") for, among other things, leave for the balance of the damages in a personal injuries action to be paid into the MIP's deputyship account in the United Kingdom ("UK").</p> <p>The judge was satisfied that the MIP had moved from Hong Kong to the UK with her parents and that the intention was that she would live there permanently. It was sensible and reasonable for the damages received by the MIP to be transferred to the account of the professional deputy in the UK.</p> <p>The judge was satisfied that the UK mental health regime provided for "an elaborate mechanism to achieve the following: (a) deputies who are appointed are suitable for the purpose, and (b) proper safeguards are built in to monitor that deputies make decisions in the best interests of the MIPs". Accordingly, the judge granted the leave sought.</p> | <p>Decision:<br/><a href="https://legalref.judiciary.hk/lrs/comm/ju/loadPdf.jsp?url=https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2017/HCMH000051_2017.docx&amp;mobile=N">https://legalref.judiciary.hk/lrs/comm/ju/loadPdf.jsp?url=https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2017/HCMH000051_2017.docx&amp;mobile=N</a></p> <p>Summary (p. 58):<br/><a href="https://www.hk-lawyer.org/sites/default/files/e-magazines/HKL-SEP-2022/2FFCFD6F92218C708E465E6F2C2CAAAC/HKL_SEP2022_Final_compressed3.pdf">https://www.hk-lawyer.org/sites/default/files/e-magazines/HKL-SEP-2022/2FFCFD6F92218C708E465E6F2C2CAAAC/HKL_SEP2022_Final_compressed3.pdf</a></p> |
| 14 | Mental health                         | <i>Fine Talent Finance Limited v The Estate of Leung Pak Wai, Deceased and Liu Wanwei</i> [2022] HKCFI 1482  | Two of the issues in this case were (a) whether the deceased, Mr Leung Pak Wai, had the requisite mental capacity at the time when he signed the loan documents and (b) if not, whether the lender had actual or constructive notice of Mr Leung's mental incapacity. The judge considered the legal principles applicable to the assessment of the mental capacity of the deceased in paragraphs 29-43.  | Decision:<br><a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=144333">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=144333</a>   |



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| 15 | End of life and carer | <i>HKSAR v Kwok Wai-yin</i> [2022] HKCFI 2989   | <p>The accused had resigned from his job to take care of his wife, who was diagnosed with cancer. He killed his very sick wife, while he himself suffered from a major depressive disorder. Under caution he said he had killed his wife to lessen her pain. He pleaded guilty to the offence of manslaughter. He was convicted and sentenced to a probation order of 12 months.</p> <p>In response to the heated debate arising from <i>HKSAR v Kwok Wai-yin</i> [2022] HKCFI 2989, CMEL organised a seminar entitled "Preservation of Dignity in the Terminally Ill". The video recording is available on the <a href="#">CMEL website</a>.</p>   | <p>Decision: <a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=147530">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=147530</a></p> <p>Recording of CMEL Seminar "Preservation of Dignity in the Terminally Ill": <a href="https://cmel.hku.hk/events/preservation-of-dignity-in-the-terminally-ill/">https://cmel.hku.hk/events/preservation-of-dignity-in-the-terminally-ill/</a></p> |
| 16 | Privacy               | PCPD Guidance                                   | The Office of the Privacy Commissioner for Personal Data ("PCPD") issued Guidance for Employers on Collection and Use of Personal Data of Employees during the Fifth Wave.  | <a href="https://www.pcpd.org.hk/english/news_events/media_statements/press_20220325.html">https://www.pcpd.org.hk/english/news_events/media_statements/press_20220325.html</a>  |
| 17 | Privacy               | PCPD Guidance                                   | PCPD issued Guidance on Recommended Model Contractual Clauses for Cross-border Transfers of Personal Data.  | <a href="https://www.pcpd.org.hk/english/news_events/media_statements/press_20220512.html">https://www.pcpd.org.hk/english/news_events/media_statements/press_20220512.html</a>  |
| 18 | Privacy               | Privacy Measures of Mainland China              | The Security Assessment Measures on Cross-border Transfers of Data promulgated by the Cyberspace Administration of China came into operation in 2022.   | <a href="https://www.pcpd.org.hk/english/news_events/media_statements/press_20220901.html">https://www.pcpd.org.hk/english/news_events/media_statements/press_20220901.html</a>  |
| 19 | Privacy               | Privacy Breach of a Healthcare Service Provider | <p>"EC Healthcare's Sharing of Clients' Personal Data among its Various Brands through an Integrated System" (Investigation Report Published by PCPD)</p> <p>Extracts from the PCPD Media Statement:</p> <p>"The Office of the Privacy Commissioner for Personal Data (PCPD) published ... investigation reports today, namely (1) EC Healthcare's Sharing of Clients' Personal Data among its Various Brands through an Integrated System and (2) ... the personal data originally provided by the complainants to a single brand was disclosed and transferred, without their knowledge, to the staff of some other brands ... the above arrangement was plainly inconsistent with the original purpose of collection of the complainants' personal data, and also fell short of their reasonable expectation for personal data privacy."</p> | <a href="https://www.pcpd.org.hk/english/news_events/media_statements/press_20221114.html">https://www.pcpd.org.hk/english/news_events/media_statements/press_20221114.html</a>  |
| 20 | Privacy               | Privacy Breach of a Healthcare Service Provider | "Accidental Disposal of Medical Records of Patients by Town Health Medical & Dental Services Limited" (Investigation Report Published by PCPD)  | <a href="https://www.pcpd.org.hk/english/news_events/media_statements/press_20220613.html">https://www.pcpd.org.hk/english/news_events/media_statements/press_20220613.html</a>  |

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| 21 | Emergency regulations     | Emergency (Exemption from Statutory Requirements) (COVID-19) Regulation (Cap. 241N) | <p>In 2022, the Emergency (Exemption from Statutory Requirements) (COVID-19) Regulation (Cap. 241N) were made pursuant to the Emergency Regulations Ordinance (Cap. 241).</p> <p>Section 2(1) of Cap. 241N provides that "[f]or preventing, protecting against, delaying or otherwise controlling the incidence or transmission of the specified disease or treating patients with the specified disease ... the Chief Secretary for Administration ... may ... grant an exemption in writing from any requirement under any enactment (including a requirement for licence, authority, approval, exemption, permit, registration, standard or specification)".</p> <p>The Chief Secretary for Administration exercised the power to grant, <i>inter alia</i>, an exemption in 2022 for the Mainland medical support personnel who had come to Hong Kong from the relevant legal requirements on registration.</p>   | <p>Press releases:<br/> <a href="https://www.info.gov.hk/gia/general/202202/24/P2022022400021.htm">https://www.info.gov.hk/gia/general/202202/24/P2022022400021.htm</a><br/><br/> <a href="https://www.info.gov.hk/gia/general/202203/23/P2022032300532.htm">https://www.info.gov.hk/gia/general/202203/23/P2022032300532.htm</a></p> |
| 22 | Public health regulations | 吳振權 v 香港特別行政區政府 (Ng Chun Kuen v The Government of Hong Kong SAR) [2022] HKCFI 3159  | <p>The applicant applied for leave to apply for judicial review. He sought to challenge the Government's regulations, policies and measures on epidemic prevention. The judge dismissed his application.</p> <p>Extracts from the judgment:</p> <p>"2. ... the Applicant seeks to challenge "the Government's current regulations, policies and measures on epidemic prevention" (香港特別行政區政府現時的防疫規例，政策措施). The relief sought as set out in the supporting affirmation is an order ... to "cancel all or most of such regulations, policies and measures"</p> <p>...</p> <p>7. ... The Applicant does not seek to particularize any specific regulations, policies or measures he says are public law non-compliant or that he seeks to "cancel".</p> <p>8. ... the Government has imposed an array of anti-epidemic regulations, policies and measures. Some of them are implemented by way of enacting subsidiary legislation – the "regulations" under section 8 of the Prevention and Control of Disease Ordinance Cap 599 ("Cap 599") ...</p> <p>...</p> <p>12. The Applicant acts in person and the Form 86 is homemade.</p> | <p>Decision:<br/> <a href="https://legalref.judiciary.hk/lrs/comment/ju/ju_frame.jsp?DIS=148426">https://legalref.judiciary.hk/lrs/comment/ju/ju_frame.jsp?DIS=148426</a></p>   |

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|  |  |  | <p>13. The key to the Applicant’s case seems to be the assertion that the “Covid-19 epidemic” no longer exists ...</p> <p>C.2 The Legality Ground</p> <p>...</p> <p>18. Reference was made to section 8 of Cap 599, the first part of which provides as follows:</p> <p><b>8. Public health emergency regulation</b></p> <p>(1) On any occasion which the Chief Executive in Council considers to be an occasion of a public health emergency, he may make regulations (the regulation) for the purposes of preventing, combating or alleviating the effects of the public health emergency and protecting public health.</p> <p>(2) The Chief Executive in Council shall review from time to time, or cause to be reviewed from time to time, the public health emergency in respect of which the regulation is made.</p> <p>19. Reading the Form 86 and supporting affirmation favourably to the Applicant, his Legality Ground may perhaps run as follows:</p> <p>(1) The Government’s powers to implement the anti-epidemic regulations come from section 8(1). Such powers are premised on the existence of a “public health emergency”. Covid-19 has ceased to be such a public health emergency since June 2022, and so has the legal basis for the exercise of such powers.</p> <p>(2) Section 8(2) imposes a duty on the Government to review the public health emergency from time to time. In view of the latest developments since June 2022, the Government in complying with its duty should have cancelled all or most of the anti-epidemic regulations.</p> <p>...</p> <p>26. The trigger for the powers under section 8(1) is not the existence of a public health emergency (as the Applicant seems to have suggested), but that there is an occasion which the Chief Executive in Council (“CEIC”) considers to be an occasion of a public health emergency.</p> <p>...</p> |  |
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|  |  | <p>28. If it is assumed that the CEIC has indeed been holding the view necessary for triggering the powers under section 8(1), the only available conventional ground of challenge would be an assertion of irrationality as to that view. Such a challenge has not been raised ...</p> <p>29. The second strand to the Legality Ground – premised on the duty to review under section 8(2) – is also without merit. There is no basis to suggest that the Government has been not reviewing the situation ...</p> <p>30. The Legality Ground as apparently raised ... is not reasonably arguable.</p> <p>31. But, before leaving this ground, I might make the following points:</p> <p>...</p> <p>(5) The regulations which might be issued under section 8 are for the twin purposes of (a) preventing, combating or alleviating the effects of the public health emergency and (b) protecting public health.</p> <p>...</p> <p>(9) Therefore, if a measure taken to prevent, combat or alleviate the effects of a “public health emergency” fails to protect “public health” ... it can be argued that measure is not lawful.</p> <p>(10) A proper balance must be made between the two purposes of combatting one disease and protecting public health overall.</p> <p>(11) It can also be argued that the proper balance must take account of the possibility that vast public expenditure on certain public health measures arising from one disease will divert energy and resources away from far greater, wider and longer-term public health issues.</p> <p>...</p> <p>C.3 Rationality Ground</p> <p>32. It appears that this ground primarily might rely on the point that the regulations, [policies] and measures were made on what is now said to be the incorrect basis that Covid-19 continues to cause an epidemic in Hong Kong. There are also references to the fact that the regulations and measures greatly restrict individuals’ fundamental rights and freedoms, as well as hampering the overall interest of Hong Kong.</p> <p>33. ... no specific rights are identified ... and no elaboration is given on how the</p> |  |
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|    |   |   | <p>interests of Hong Kong are impacted.</p> <p>...</p> <p>35. Some news reports featuring experts and others calling for a certain general direction in which the Government policies should go is far from sufficient to raise a reasonably arguable ground to trigger wholesale judicial scrutiny ...</p> <p>36. The Rationality Ground is not reasonably arguable.<br/>..."</p>  |  |
| 23 | Public health: challenge to vaccine pass system                                 | <i>Law Yee Mei v Chief Executive of Hong Kong SAR, Secretary for Food and Health and Secretary for Innovation and Technology</i> [2022] HKCFI 688 | <p>A person who was unvaccinated against COVID-19 ("the Applicant") applied for leave to apply for judicial review to challenge:</p> <p>(a) the legislation and commencement of the Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599L) ("VP Regulation"); and</p> <p>(b) announcements and decisions made pursuant to the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) to add venues such as markets, supermarkets, malls and restaurants to a Vaccine Pass.</p> <p>Her application for leave to apply for judicial review was dismissed by the judge.</p> | <p>Decision: <a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=143255">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=143255</a></p> <p>Summary: <a href="https://www.hk-lawyer.org/content/law-yee-mei-v-chief-executive-hksar">https://www.hk-lawyer.org/content/law-yee-mei-v-chief-executive-hksar</a></p> |
| 24 | Public health: invalidating COVID-19 vaccination medical exemption certificates | <i>Kwok Cheuk Kin v Secretary for Health</i> [2022] HKCFI 3225  | <p>This was a case concerning COVID-19 Vaccination Medical Exemption Certificates issued by doctors. The judge declared that there was no power for the Secretary for Health to overturn or invalidate a specified medical exemption certificate as defined in the Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599L) or a selection of such certificates.</p>   | <p>Decision: <a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=148141">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=148141</a></p> <p>Summary: <a href="https://www.hk-lawyer.org/node/17546">https://www.hk-lawyer.org/node/17546</a></p>   |
| 25 | Public health: invalidating COVID-19 vaccination medical exemption certificates | <i>Kwok Cheuk Kin v Ms Ip Lau Suk-ye, Exco Convenor and Exco Members and Professor Chung-mau Lo, Secretary for Health</i> [2022] HKCFI 3341       | <p>Following the decision in <i>Kwok Cheuk Kin v Secretary for Health</i> [2022] HKCFI 3225 above, Cap. 599L was amended to provide a legal basis for handling specified medical exemption certificates. Cap. 599L as amended empowered the Secretary for Health to declare specified exemption certificates as invalidated where the requirements were met.</p> <p>The Applicant sought to challenge the amendments to Cap 599L. He sought leave to apply for judicial review and an order that Cap 599L was "invalid legislation". His application for leave was dismissed by the judge.</p>  | <p>Decision: <a href="https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=148425">https://legalref.judiciary.hk/lrs/comm/ju/ju_frame.jsp?DIS=148425</a></p>   |

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| 26 | Public health: smoking | The Smoking (Public Health) (Amendment) Ordinance 2021 | The Smoking (Public Health) (Amendment) Ordinance 2021, which came into effect in 2022, prohibits the import, promotion, manufacture, sale and possession for commercial purposes of alternative smoking products (“ASPs”).   | <a href="https://www.info.gov.hk/gia/general/202204/28/P2022042600489.htm">https://www.info.gov.hk/gia/general/202204/28/P2022042600489.htm</a> |
| 27 | Dangerous drugs        | Cannabidiol listed as a dangerous drug                 | The Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2022 was published in the Gazette in 2022. Cannabidiol (“CBD”) has been listed as a dangerous drug under the Dangerous Drugs Ordinance (“DDO”) (Cap. 134) since 1 February 2023. Anyone who engages in trafficking (including importing and exporting) or illicit manufacturing of CBD or possesses or consumes CBD in contravention of the DDO is liable to be prosecuted. | <a href="https://www.nd.gov.hk/en/CBD.html">https://www.nd.gov.hk/en/CBD.html</a>   |