

LW2903 Business and Law

Lecture 11

Hong Kong Legal System

Sources of Law

- 1) Basic Law
- 2) National laws
- 3) Legislation
- 4) Common law
- 5) Equity
- 6) Customary law

Sources of H.K. Law

Basic Law is the supreme law of Hong Kong enacted by the National People's Congress of the PRC.

National laws (Annex III of Basic Law)

Legislation

To create, alter, revoke, consolidate or implement law

Ordinances are passed by the Legislative Council within the scope of the Basic Law

Subsidiary legislation are made by authorised bodies (with power delegated by the Legislative Council) to create detailed orders, rules and regulations for the implementation of the laws

caselaw: leading cases

4) Common law

Common law was originally developed in England and then applied uniformly and evolved in HK and enriched in other common law jurisdictions.

The system was common to all people (so it was known as common law).

As the King was regarded as the “fountain of justice”, common law was very rigid.

types limited
要file a writ
先可以sue sb
no writ = no remedy

One case
↳ can have diff views

Ratio decidendi
↳ reason for decision
(Held = ratio)

↳ binding

obiter
↳ things said by the way
(by looking at news, internet...)

↳ for judge to find what should be the outcome

x binding (only refer to when we need it)
↳ persuasive

5) Equity

- Equity (just and fair) was originally a system of rules designed to **alleviate on moral grounds** particularly when people **could not obtain justice in common law due to its rigidity.**

fairness

傳統

6) Customary law

- Customary laws prevailing among the Chinese inhabitants have largely been repealed by legislation. (see Article 40 of Basic Law)
- In Section 13 of New Territories Ordinance (Cap. 97), the courts shall have the power to recognise and enforce any Chinese custom or customary right in relation to land in the New Territories.

The difference between...

起訴 (prosecuted) 起诉
↳ / punish

Civil Jurisdiction (private)

- Concerned with the rights and duties of **individual** towards each other
- **Compensation**
- Legal action begin by an individual to establish rights against another citizen or group of citizens
- Plaintiff v. Defendant
- **Burden of proof** is on the plaintiff to establish rights against the defendant based on a **balance of probabilities**
- Will be dealt with by different courts including Lands Tribunal, Small Claims Tribunal.

Worth suing? If defendant x money

A v B

Criminal Jurisdiction (gov)

- Concerned with the offences against the **state** and punishable by the state
- **Punishment**
- Enforced on behalf of the **state** against a citizen or group of citizens
- **Prosecutor v. Accused**
- **Burden of proof** is on the prosecutor to establish the case against the accused **beyond reasonable doubt**; every person is presumed to be innocent until the prosecutor proves that he/she is guilty
- Only dealt with by Magistrate Court, District Court and above.

✓ civil + criminal at the same time, 0
x conflict

Legal System

- Courts
- Judges
- Rule of law

Everyone is equal in front of law

- Know how the system works (content 唔洗太理)
- API (Main focus)