

## Hong Kong Administrative Law, 2nd edition

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The time when administrative law was simply an area of concern for a few specialist lawyers has long gone. Since 1988, the number of judicial review applications has increased five-fold — their scope covering almost any field of legal practice including civil, criminal, and commercial law. In this sense alone, this timely second edition should be highly commended. Indeed, it is more than an update. Apart from preserving the high standard of scholarly work in the first edition, the second edition has included a number of new chapters. There is a finely written new chapter on the “Commissioner for Administrative Complaints”, a subject which has surprisingly escaped academic scrutiny so far. *Habeas corpus*, another area which has attracted little academic analysis in Hong Kong, finds its place in this new edition. Apart from these new chapters, many old chapters have been extensively re-written. A lot more comment and analysis has been added. There is a useful section on public office and a perceptive analysis of the notoriously difficult doctrines of *de facto officer* and of *functus officio*. The sections on abuse of process, the duty to give reasons, and restitution have also been extensively rewritten. The updated and comprehensive bibliography at the end of the book is particularly helpful.

Perhaps the major shortcoming of this second edition, which is not the fault of the authors at all, is the ceaseless flow of case law which has rendered some parts of the book already out of date. For example, the test of granting leave for judicial review is no longer the test of an arguable case (at p485) but one of potential arguability — *R v Director of Immigration ex parte Ho Ming-sai* (1993) 3 HKPLR 157. That is, whether the materials before the trial judge disclose matters which might, on further consideration, demonstrate an arguable case for the grant of the relief claimed. The Court of Appeal held that requiring the applicant to show an arguable case at the leave stage is setting too high a threshold.

In the same case the Court of Appeal also held that the

Director of Immigration has no duty to give reasons for his refusal to exercise his discretion to permit an illegal immigrant to stay in Hong Kong. The section on the duty to give reasons (pp262–267) should, at least in the context of the exercise of the discretion of the Director of Immigration, be considered in light of this new development.

The public/private distinction has received consideration again, in the recent decision of *R v Mass Transit Railway Corporation ex parte Hong Kong Standard Newspapers Ltd* (1993) 3 HKPLR 419, though this decision does not in any way detract from the excellent analysis and the forceful arguments of the learned authors on the abolition of this distinction (pp515–529).

The authors have also included an addendum summarising the major decisions handed down after the manuscript went to print. Yet even this has been overtaken by events. The decision of Liu J in *Le Tu Phuong* (at p 1xxxvi) has now been reversed by the Court of Appeal, while *Mirchandani v Attorney General* (at p1xxxvii), reviewing the decision of the Director of Legal Aid, when she refused to exercise her discretion to grant legal aid on financial grounds, has been upheld by the Court of Appeal in *R v Mirchandani* [1992] 2 HKCLR 174. This has, however, left new unanswered questions.

Having said that, Clark and McCoy must still be commended for their scholarly and meticulous efforts in bringing together the vast amount of materials, including a large number of unreported judgments and other primary material. They have approached the subject in an unconventional manner, putting administrative law in a proper context rather than merely treating it as a bunch of case law. Their analysis is clear, perceptive and enlightening. Weaknesses in the existing system have been identified, and proposals for future development suggested. This is a book which combines a high quality of academic research with practical insights into the system. It is an essential addition to the library of any lawyer, and an important reference work for administrators, political scientists, and indeed, any serious researcher in the area. There is no doubt that this book will soon establish itself as one of the leading authoritative works in administrative law.

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