

# Syllabus for Criminal Procedure

## 1. An introduction to criminal procedure in Hong Kong

- An overview of the criminal courts
  - Magistrates' Court (including Juvenile Court)
  - District Court
  - Court of First Instance ("CFI")
  - Court of Appeal
  - Court of Final Appeal
- Classification of offences
  - Summary offences
  - Indictable offences
  - Excepted offences

## 2. Police Powers

- Stop, detain and search
- Search warrants
- Arrest powers
- Rules and directions for the questioning of suspects
- Identification parades
- Cautioned statements and post-recorded statements
- Other law enforcement agencies (e.g. the "ICAC", Customs and Excise, Commercial Crime Bureau etc.)

## 3. Commencement of Proceedings

- Functions of the Secretary for Justice
- Department of Justice's prosecution policy and practice
- Arrest and Charge
- Summonses
- Fixed Penalty Offences

## 4. Bail

- The right to bail
- Police bail
- Magistrates Court bail
- Applications to CFI for bail
- Offences relating to bail

## 5. Indictments, Charges and Summonses

- Form of summonses and charges
- Indictment rules
- Rule against duplicity
- Joinder of defendants and charges
- Severance
- Alternative charges and amendments

**6. Procedure before and at Trial**

Magistrates Court

Pleas of guilty and trials of not-guilty pleas

Transfer to the District Court

Committals and preliminary inquiries

Review and appeals

District Court

Trials, transfers to CFI and appeals

Court of First Instance (“CFI”)

Voluntary bills and pre-trial procedures

Juries

Verdicts

Appeals from the Magistrates Court

Court of Appeal

Appeals from District Court and CFI to Court of Appeal

Court of Final Appeal

Appeals from Court of Appeal to Court of Final Appeal

Particular issues at trial

Applications to stay proceedings

Submissions of no case

**7. Sentencing - Theory and Practice**

Pleas of guilty

Conviction after trial

Pre-sentence reports

Sentencing guidelines, totality and starting points

Deterrent sentences

Suspended sentences

Non-custodial sentences

Special sentences e.g. treatment orders, hospital orders

Pleas of mitigation

**8. Funding Criminal Litigation**

Private funding

Legal Aid

Duty Lawyer Service

Costs in Criminal Cases Ordinance (Cap.492)

Costs against convicted defendants

Assessment of costs

Wasted costs orders

## Recommended Reading List for Criminal Procedure

### Texts and Materials

*Archbold Hong Kong 2017: Criminal Law Pleadings Evidence and Procedure*, Sweet and Maxwell

*Criminal Litigation in Hong Kong*, Christopher Knight and Anthony Upham (3<sup>rd</sup> Ed), Thomson Sweet & Maxwell Asia. ISBN 9789626614211

*Criminal Procedure in Hong Kong - A Guide for Students and Practitioners*, Amanda Whitfort, 2<sup>nd</sup> Ed, LexisNexis – Butterworths

*Criminal Procedure - Trial on Indictment*, Andrew Bruce S.C., Butterworths

*Criminal Procedure Handbook*, Butterworths

*Magistrates Court Manual*, Audrey Campbell-Moffat, Sweet and Maxwell

*Sentencing in Hong Kong*, Cross and Cheung, Butterworths (7<sup>th</sup> Ed), Lexis Nexis

The “*Prosecution Code*”, issued by the Department of Justice, should be read for an insight on the criteria for prosecutions.

A working knowledge of the “*Rules and Directions for the Questioning of Suspects and Interviewing Witnesses*” is also necessary.

### Sources

Hong Kong Court of Final Appeal Ordinance (Cap.484)

Criminal Procedure Ordinance (Cap.221)

Magistrates Ordinance (Cap.227)

The websites of The Department of Justice, The Hong Kong Police Force and the ICAC (Independent Commission Against Corruption) are also useful sources of background information.