

(2) The trustee shall hold the fund upon the trusts and subject to the provisions contained in this Ordinance.

(3) The fund shall consist of—

- (a) the sum of three million dollars (hereinafter referred to as the original capital sum) being an anonymous donation made on the 5th day of January 1970 with the object of setting up the fund and presently held by the Accountant General in trust for the Sir David Trench Fund for Recreation;
- (b) such other assets as may have been acquired before the vesting day by the use of any moneys so donated;
- (c) such further moneys and assets as may, on or after the vesting day, be—
 - (i) donated, subscribed or bequeathed to, and accepted by, the trustee; or
 - (ii) otherwise acquired by the trustee.

4. (1) For the purposes of this Ordinance, the person for the time being performing the duties of the office of the Accountant General shall be the trustee of the fund and shall be a corporation sole (in this section referred to as the corporation) and shall have the name "The Trustee of the Sir David Trench Fund for Recreation", and in that name shall have perpetual succession and may sue and be sued in any court.

(2) The corporation shall have a common seal and the affixing of the seal shall be authenticated by the signature of the trustee.

(3) Any instrument purporting to be an instrument duly executed under the seal of the corporation shall be received in evidence and shall, unless the contrary is proved, be deemed to be an instrument so executed.

5. The trustee shall apply the fund in such manner as the Governor may direct for the following objects—

- (a) the provision of, or assistance in the provision of facilities for recreational, sporting, cultural and social activities;
- (b) such objects ancillary or incidental to the objects set out in paragraph (a) as the Governor may consider appropriate.

Incorporation of Accountant General as trustee.

Application and objects of the fund.

6. (1) Subject to the direction of the Governor, the fund, other than the original capital sum, may be expended, applied and used for any object specified in section 5 but no part of the original capital sum shall be expended, applied or used for any such purpose without the prior approval of the Legislative Council.

(2) The trustee may lend any moneys of the fund for any object specified in section 5 without any interest or at such a rate of interest as the Governor may direct.

7. (1) The trustee may invest any moneys of the fund in such investments, whether or not such investments are trust investments, as the Governor may direct, subject, in the case of investments which are not trust investments, to the prior approval of the Investment Advisory Committee, and may remit moneys comprised in the fund to the Crown Agents for investment in the name of the trustee.

(2) The Governor shall, for the purposes of subsection (1) appoint an Investment Advisory Committee, which shall consist of not less than three nor more than five persons.

8. (1) The trustee may, subject to the direction of the Governor, from time to time appoint, upon such salary and upon such terms as he may think proper, such officials as he may think necessary for the purpose of carrying out the trusts or for the proper administration and management of the fund.

(2) The trustee may employ any professional person to advise him on any matter arising out of or in connexion with his functions under this Ordinance.

(3) All salaries and fees of any person so appointed or employed shall be paid by the trustee out of the fund.

9. (1) The trustee shall cause proper accounts to be kept of all transactions of the fund and shall cause to be prepared, in respect of the period from the vesting day to the 31st day of March 1971, and thereafter in respect of every period of one year ending on the 31st day of March, a statement of the accounts of the fund, which statement shall include an income and expenditure account and balance sheet and shall be signed by the trustee.

(2) The accounts of the fund and the signed statement of the accounts shall be audited by an auditor appointed by the Governor and the auditor shall certify the statement subject to such report, if any, as he may think fit.

Special provisions relating to manner of application of fund.

Investment of moneys.

Appointment of officials and professional advisers.

Accounts.

(3) There shall be laid on the table of the Legislative Council, not later than the 30th day of September next following the end of each period in respect of which a statement of the accounts of the fund is required to be prepared under subsection (1) or so soon thereafter as the Governor may allow—

- (a) a copy of the signed and audited statement of accounts together with the auditor's report, if any;
- (b) a report of the trustee on the administration of the fund during such period; and
- (c) such other report, if any, as the Governor may see fit to make thereon.

Cost of
administering
the fund.

10. (1) The cost of the administration of the fund, other than the salaries and fees paid under subsection (3) of section 8, shall be a charge upon the general revenue of the Colony:

Provided that the Financial Secretary may direct that an annual supervision fee to be determined by him shall be charged against the income of the fund and paid into the general revenue of the Colony.

(2) The fee charged under the proviso to subsection (1) shall—

- (a) be in respect of the period from the vesting day to the 31st day of March 1971 and thereafter in respect of every period of one year ending on the 31st day of March; and
- (b) not exceed two and a half *per cent* of the income of the fund over the relevant period.

Saving.

11. Nothing in this Ordinance shall affect or be deemed to affect the rights of Her Majesty the Queen, Her Heirs or Successors, or the rights of any body politic or corporate or of any other persons except such as are mentioned in this Ordinance and those claiming by, from or under them.

Passed by the Hong Kong Legislative Council this 11th day of February, 1970.

Clerk of Councils.

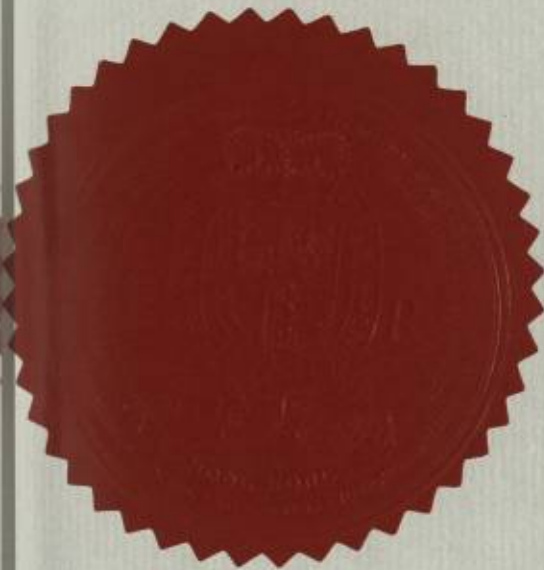
This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

Clerk of Councils.

HONG KONG

No. 21 OF 1970.

I assent.



Chichester

Governor.

26th February, 1970.

An Ordinance to revise the law as to theft and similar or associated offences, and in connexion therewith to make provision as to criminal proceedings by one party to a marriage against the other; and for other purposes connected therewith.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PRELIMINARY.

1. (1) This Ordinance may be cited as the Theft Ordinance 1970, and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title,
commencement
and application.
1968, c. 60,
s. 35(1).

(2) Save as otherwise provided by this Ordinance, this Ordinance shall have effect only in relation to offences wholly or partly committed on or after the commencement thereof.

Basic definition
of theft.
1968, c. 60, s. 1.

2. (1) A person commits theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

(3) Sections 3 to 7 shall have effect as regards the interpretation and operation of this section (and except as otherwise provided by this Ordinance shall apply only for purposes of this section).

"Dishonestly".
1968, c. 60, s. 2.

3. (1) A person's appropriation of property belonging to another is not to be regarded as dishonest—

- (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or
- (b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or
- (c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

"Appropriates".
1968, c. 60 s. 3.

4. (1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good

faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.

5. (1) "Property" includes money and all other property, real and personal, including things in action and other intangible property.

"Property".
1968, c. 60, s. 4.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that is to say—

- (a) when he is a trustee or personal representative, or is authorized by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or
- (b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or
- (c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

(3) For the purposes of subsection (2)—

"land" does not include incorporeal hereditaments;

"tenancy" means a tenancy for years or for any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession by virtue of any Ordinance or otherwise is to be treated as having possession under the tenancy, and "let" shall be construed accordingly.

(4) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose.

(5) For the purposes of subsection (4) "mushroom" includes any fungus, and "plant" includes any shrub or tree.

(6) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

"Belonging to another".
1968, c. 60, s. 5.

6. (1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) Where property is subject to a trust, the person to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.

(3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or its proceeds shall be regarded (as against him) as belonging to the other.

(4) Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or its proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

"With the intention of permanently depriving the other of it".
1968, c. 60, s. 6.

7. (1) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it, but only if, the

borrowing or lending of it is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without prejudice to the generality of subsection (1), where a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the property as his own to dispose of regardless of the other's rights.

8. (1) Subsection (1) of section 5 and subsection (1) of section 6 shall apply generally for the purposes of this Ordinance as they apply for the purposes of section 2.

Other definitions.
1968, c. 60, s. 34.

(2) For the purposes of this Ordinance—

"gain" and "loss" are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and—

(a) "gain" includes a gain by keeping what one has, as well as a gain by getting what one has not; and

(b) "loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has;

"goods" except in so far as the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing.

THEFT, ROBBERY, BURGLARY, ETC.

9. Any person who commits theft shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for ten years.

Theft.
1968, c. 60, s. 7.

10. (1) A person commits robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

Robbery.
1968, c. 60, s. 8.

(2) Any person who commits robbery, or an assault with intent to rob, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

11. (1) A person commits burglary if—

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2); or

Burglary.
1968, c. 60, s. 9.

- (b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.
- (2) The offences referred to in paragraph (a) of subsection (1) are—
- stealing anything in the building or part of a building in question;
 - inflicting on any person therein any grievous bodily harm or raping any woman therein; and
 - doing unlawful damage to the building or anything therein.
- (3) References in subsections (1) and (2) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.
- (4) Any person who commits burglary shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for fourteen years.

Aggravated burglary.
1968, c. 60, s. 10.

12. (1) A person commits aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive.

(2) For the purposes of subsection (1)—

“firearm” includes an airgun or air pistol;

“imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not;

“weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use;

“explosive” means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.

(3) Any person who commits aggravated burglary shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

13. (1) Subject to subsections (3) and (4), where the public have access to a building in order to view the building or part of it or a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or

Removal of articles from places open to the public.
1968, c. 60, s. 11.

part of any article displayed or kept for display to the public in the building or that part of it or in its grounds, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for five years.

(2) For the purposes of subsection (1)—

“collection” includes a collection got together for a temporary purpose, but references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(3) It is immaterial for the purposes of subsection (1) that the public's access to a building is limited to a particular period or particular occasion; but where anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless he removes it on a day when the public have access to the building as mentioned in subsection (1).

(4) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have it if the person entitled to give it knew of the removal and the circumstances of it.

14. (1) Subject to subsections (2) and (3), any person who, without having the consent of the owner or other lawful authority, takes any conveyance for his own or another's use, or knowing that any conveyance has been taken without such authority, drives it or allows himself to be carried on or in it, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for three years.

Taking conveyance without authority.
1968, c. 60, s. 12.

(2) Subsection (1) shall not apply in relation to pedal cycles or rickshaws, but, subject to subsection (3), any person who, without having the consent of the owner or other lawful authority, takes a pedal cycle or rickshaw for his own or another's use, or rides a pedal cycle or rickshaw knowing it to have been taken without such authority, shall be guilty of an offence and shall be liable on conviction to a fine of five hundred dollars.

(3) A person does not commit an offence under this section by anything done in the belief that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it.

(4) For the purposes of this section—

“conveyance” means any conveyance constructed or adapted for the carriage of a person whether by land, water or air, except

that it does not include a conveyance constructed or adapted for use only under the control of a person not carried in or on it, and "drive" shall be construed accordingly; and

"owner" in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement means the person in possession of the conveyance under that agreement.

Abstracting of electricity.
1968, c. 60, s. 13.

15. Any person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for five years.

Dishonest use of public telephone or telex system.
1968, c. 60, Sch. 2, Pt. I, Para. 8.

16. Any person who dishonestly uses a public telephone or telex system with intent to avoid payment shall be guilty of an offence and shall be liable on conviction to imprisonment for two years.

FRAUD AND BLACKMAIL.

Obtaining property by deception.
1968, c. 60, s. 15.

17. (1) Any person who by any deception (whether or not such deception was the sole or main inducement) dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for ten years.

(2) For the purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and "obtain" includes obtaining for another or enabling another to obtain or to retain.

(3) Section 7 shall apply for the purposes of this section, with the necessary adaptation of the reference to appropriating as it applies for the purposes of section 2.

(4) For the purposes of this section—

"deception" means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception relating to the past, the present or the future and a deception as to the intentions or opinions of the person using the deception or any other person.

Obtaining pecuniary advantage by deception.
1968, c. 60, s. 16.

18. (1) Any person who by any deception (whether or not such deception was the sole or main inducement) dishonestly obtains for himself or another any pecuniary advantage shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for ten years.

(2) The cases in which a pecuniary advantage within the meaning of this section is to be regarded as obtained for a person are cases where—

- (a) any debt or charge for which he makes himself liable or is or may become liable (including one not legally enforceable) is reduced or in whole or in part evaded or deferred; or
- (b) he is allowed to borrow by way of overdraft, or to take out any policy of insurance or annuity contract, or obtains an improvement on the terms on which he is allowed to do so; or
- (c) he is given the opportunity to earn remuneration or greater remuneration in an office or employment, or to win money by betting.

(3) For the purposes of this section, "deception" has the same meaning as in section 17.

19. (1) Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another—

- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
- (b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular,

he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for seven years.

(2) For the purposes of this section a person who makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

20. (1) Where an offence committed by a body corporate under section 17, 18 or 19 is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

False accounting.
1968, c. 60, s. 17.

Liability of company officers for certain offences by company.
1968, c. 60, s. 18.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connexion with his functions of management as if he were a director of the body corporate.

False statements
by company
directors, etc.
1968, c. 60, s. 19.

21. (1) Where an officer of a body corporate or unincorporated association (or person purporting to act as such) with intent to deceive members or creditors of the body corporate or association about its affairs, or with intent to induce persons to become members or creditors thereof by deceiving them about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for seven years.

(2) For the purposes of this section a person who has entered into a security for the benefit of a body corporate or association is to be treated as a creditor of it.

(3) Where the affairs of a body corporate or association are managed by its members, this section shall apply to any statement which a member publishes or concurs in publishing in connexion with his functions of management as if he were an officer of the body corporate or association.

Suppression,
etc. of
documents.
1968, c. 60, s. 20.

22. (1) Any person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court or any government department shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for seven years.

(2) Any person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable security shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for seven years.

(3) Subsection (2) shall apply in relation to the making, acceptance, indorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as a valuable security, as if that were the execution of a valuable security.

(4) For the purposes of this section—
“deception” has the same meaning as in section 17; and

“valuable security” means any document creating, transferring, surrendering, or releasing any right to, in or over property, or authorizing the payment of money or delivery of any property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

23. (1) A person commits blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief—

Blackmail.
1968, c. 60, s. 21.

- (a) that he has reasonable grounds for making the demand; and
- (b) that the use of the menaces is a proper means of reinforcing the demand.

(2) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

(3) Any person who commits blackmail shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for fourteen years.

(4) Any person who has in his possession or under his control any letter or writing making any unwarranted demand of any person with menaces shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for ten years.

(5) A person does not commit an offence under subsection (4) if he proves that he had the letter or writing in his possession or control otherwise than with intent to utter it.

OFFENCES RELATING TO GOODS STOLEN, ETC.

24. (1) A person handles stolen goods if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.

Handling stolen
goods.
1968, c. 60, s. 22.

(2) Any person who handles stolen goods shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for fourteen years.

Advertising
rewards for
return of goods
stolen or lost.
1968, c. 60, s. 23.

25. Where any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that no questions will be asked, or that the person producing the goods will be safe from apprehension or inquiry, or that any money paid for the purchase of the goods or advanced by way of loan on them will be repaid, the person advertising the reward and any person who prints or publishes the advertisement shall be guilty of an offence and shall be liable on conviction to a fine of two thousand dollars.

Scope of
offences
relating to
stolen goods.
1968, c. 60, s. 24.

26. (1) The provisions of this Ordinance relating to goods which have been stolen shall apply whether the stealing occurred in Hong Kong or elsewhere, and whether it occurred before or after the commencement of this Ordinance, provided that the stealing (if not an offence under this Ordinance) amounted to an offence where and at the time when the goods were stolen; and references to stolen goods shall be construed accordingly.

(2) For the purposes of those provisions references to stolen goods shall include, in addition to the goods originally stolen and parts of them (whether in their original state or not)—

- (a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realization of the whole or part of the goods stolen or of goods so representing the stolen goods; and
- (b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realization of the whole or part of the stolen goods handled by him or of goods so representing them.

(3) No goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(4) For the purposes of the provisions of this Ordinance relating to goods which have been stolen (including subsections (1) to (3)) goods obtained in Hong Kong or elsewhere either by blackmail or in the circumstances described in subsection (1) of section 17 shall be regarded as stolen; and "steal", "theft" and "thief" shall be construed accordingly.

POSSESSION OF HOUSEBREAKING IMPLEMENTS, ETC.

27. (1) Any person who, when not at his place of abode, has with him any article for use in the course of or in connexion with any burglary, theft or cheat shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for three years.

(2) Where a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary, theft or cheat shall be evidence that he had it with him for such use.

(3) For the purposes of this section an offence under section 14 of taking a conveyance shall be treated as theft, and "cheat" means an offence under section 17.

ENFORCEMENT AND PROCEDURE.

28. (1) If it is made to appear by information on oath before a magistrate that there is reasonable cause to believe that any person has in his custody or possession or on his premises any stolen goods, the magistrate may grant a warrant to search for and seize the same.

(2) A police officer not below the rank of Superintendent may give any police officer written authority to search any premises for stolen goods—

- (a) if the person in occupation of the premises has been convicted within the preceding five years of handling stolen goods or of any offence involving dishonesty and punishable with imprisonment; or
- (b) if a person who has been convicted within the preceding five years of handling stolen goods has within the preceding twelve months been in occupation of the premises.

(3) Where under this section a person is authorized to search premises for stolen goods, he may enter and search the premises accordingly, and may seize any goods he believes to be stolen goods.

(4) Section 102 of the Criminal Procedure Ordinance (which makes provision for the disposal of property connected with offences) shall apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that section.

Going equipped
for stealing, etc.
1968, c. 60, s. 25.

Search for
stolen goods.
1968, c. 60, s. 26.

(Cap. 221.)

(5) This section is to be construed in accordance with section 26 and in subsection (2) of this section the references to handling stolen goods shall include any corresponding offence committed before the commencement of this Ordinance.

29. (1) Any number of persons may be charged in one indictment, information or charge with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.

(2) On the trial of two or more persons charged or indicted for jointly handling any stolen goods, the court or jury may find any one of the accused guilty if the court or jury is satisfied that he handled all or any of the stolen goods, whether or not he did so jointly with the other accused or any of them.

(3) Where a person is being proceeded against for handling stolen goods (but not for any offence other than handling stolen goods), then at any stage of the proceedings, if evidence has been given of his having or arranging to have in his possession the goods the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in, their retention, removal, disposal or realization, the following evidence shall be admissible for the purpose of proving that he knew or believed the goods to be stolen goods—

- (a) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realization of, stolen goods from any theft taking place not earlier than twelve months before the offence charged; and
- (b) (if seven days notice in writing has been given to him of the intention to prove the conviction) evidence that he has within the five years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

(4) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that he despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet, when despatched or received by him were in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration, subject to the following conditions—

- (a) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

Evidence and procedure on charge of theft, handling stolen goods, and obtaining by deception.

1968, c. 60, s. 27.

- (b) a statutory declaration shall only be admissible if at least seven days before the hearing or trial a copy of it has been given to the person charged, and he has not, at least three days before the hearing or trial or within such further time as the court may in special circumstances allow, given the prosecutor written notice requiring the attendance at the hearing or trial of the person making the declaration.

(5) This section is to be construed in accordance with section 26, and in paragraph (b) of subsection (3) of this section the reference to handling stolen goods shall include any corresponding offence committed before the commencement of this Ordinance.

(6) In any proceedings for obtaining property or pecuniary advantage by deception under section 17 or 18—

- (a) any person who obtains property or pecuniary advantage by means wholly or in part of a cheque or other bill of exchange which is refused payment upon presentation on or after becoming due shall, until the contrary is proved, be deemed to have obtained the property or pecuniary advantage with knowledge that such cheque or other bill of exchange would not be honoured;

(b) where—

(i) any cheque or other bill of exchange bears any writing purporting to be written by or on behalf of the bank or other person on whom the cheque or bill of exchange was drawn and indicating that payment of the cheque or bill of exchange was refused upon presentation on or after becoming due; or

(ii) any document purporting to be made by or on behalf of the bank or other person on whom any cheque or bill of exchange was drawn bears any writing indicating that payment of the cheque or bill of exchange was refused upon presentation on or after becoming due,

then payment of the cheque or bill of exchange shall, until the contrary is proved, be deemed to have been so refused;

- (c) the provisions of this subsection shall apply whether or not the bank or other person on whom the cheque or bill of exchange was drawn carries on business in Hong Kong and whether the writing was written on the cheque or bill of exchange or the document within or outside Hong Kong;

- (d) any document purporting to be a document of the kind specified in paragraph (b) or purporting to be a copy or reproduction of any such document shall be admitted in evidence on its production by the prosecution without further proof;
- (e) where any cheque or bill of exchange or any document of the kind specified in paragraph (b), or any copy or reproduction of such document, is to be adduced in evidence, a copy thereof shall be served on the defendant not less than fourteen days before the commencement of the trial;
- (f) if service is not effected in accordance with paragraph (e), the court may on application by the accused grant an adjournment for such period as it considers just.

Orders for
restitution.
1968, c. 60, s. 28.

30. (1) Where goods have been stolen, and a person is convicted of any offence with reference to the theft (whether or not the stealing is the gist of his offence), the court by or before which the offender is convicted may on the conviction exercise any of the following powers—

- (a) the court may order anyone having possession or control of the goods to restore them to any person entitled to recover them from him; or
- (b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the first-mentioned goods (as being the proceeds of any disposal or realization of the whole or part of them or of goods so representing them), the court may order those other goods to be delivered or transferred to the applicant; or
- (c) on the application of a person who, if the first-mentioned goods were in the possession of the person convicted, would be entitled to recover them from him, the court may order that a sum not exceeding the value of those goods shall be paid to the applicant out of any money of the person convicted which was taken out of his possession on his apprehension.

(2) Where under subsection (1) the court has power on a person's conviction to make an order against him both under paragraph (b) and under paragraph (c) with reference to the stealing of the same goods, the court may make orders under both paragraphs provided that the applicant for the orders does not thereby recover more than the value of those goods.

(3) Where under subsection (1) the court on a person's conviction makes an order under paragraph (a) for the restoration of any goods, and it appears to the court that the person convicted has sold the goods to a person acting in good faith, or has borrowed money on the security of them from a person so acting, then on the application of the purchaser or lender the court may order that there shall be paid to the applicant, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the applicant or, as the case may be, the amount owed to the applicant in respect of the loan.

(4) The court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connexion with any proposed exercise of the powers; and for this purpose "the available documents" means any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial, the depositions taken at any committal proceedings and any written statements or admissions used as evidence in those proceedings.

(5) Any order under this section shall be treated as an order for the restitution of property within the meaning of section 81 of the Criminal Procedure Ordinance.

(Cap. 221.)

(6) References in this section to stealing are to be construed in accordance with subsections (1) and (4) of section 26.

GENERAL AND CONSEQUENTIAL PROVISIONS.

31. (1) This Ordinance shall apply in relation to the parties to a marriage, and to property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

Husband and
wife.
1968, c. 60, s. 30.

(2) Subject to subsection (4), a person shall have the same right to bring proceedings against that person's wife or husband for any offence (whether under this Ordinance or otherwise) as if they were not married, and a person bringing any such proceedings shall be competent to give evidence for the prosecution at every stage of the proceedings.

(3) Where a person is charged in proceedings not brought by that person's wife or husband with having committed any offence with reference to that person's wife or husband or to

property belonging to the wife or husband, the wife or husband shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with any other person:

Provided that—

- (a) the wife or husband (unless compellable at common law) shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused; and
- (b) her or his failure to give evidence shall not be made the subject of any comment by the prosecution.

(4) Proceedings shall not be instituted against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's wife or husband, or for any attempt, incitement or conspiracy to commit such an offence, unless the proceedings are instituted by or with the consent of the Attorney General:

Provided that—

- (a) this subsection shall not apply to proceedings against a person for an offence—
 - (i) if that person is charged with committing the offence jointly with the wife or husband; or
 - (ii) if by virtue of any judicial decree or order (wherever made) that person and the wife or husband are at the time of the offence under no obligation to cohabit; and
- (b) this subsection shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or admission to bail of a person charged with an offence, where the arrest (if without a warrant) is made, or the warrant of arrest issues on an information laid, by a person other than the wife or husband.

32. (1) If on the trial of any information, charge or indictment for an offence specified in the first column of the First Schedule it is proved that the accused is not guilty of that offence but guilty of one of the offences specified opposite thereto in the second column of that Schedule or of attempting or being a party to an offence so specified, the accused shall be acquitted of the offence originally charged and shall be convicted of such other offence or of attempting or being a party to such other offence and be liable to be punished accordingly.

Verdict.
First Schedule.

(2) The references in the First Schedule to numbered sections and subsections shall be construed to include every offence under the section or subsection so numbered in this Ordinance.

(3) Nothing in this section or in the First Schedule shall exclude the application to any offence of any other law authorizing a person to be found guilty of an offence other than that with which he is charged.

33. (1) A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence under this Ordinance—

- (a) from answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or
- (b) from complying with any order made in any such proceedings,

but no statement or admission made by a person in answering a question put or complying with an order made as aforesaid shall, in proceedings for an offence under this Ordinance, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

(2) Notwithstanding any enactment to the contrary, where property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property shall not be affected by reason only of the conviction of the offender.

34. (1) The following offences at common law are hereby abolished for all purposes not relating to offences committed before the commencement of this Ordinance, that is to say, any offence at common law of larceny, robbery, burglary, receiving stolen property, obtaining property by threats, extortion by colour of office or franchise, false accounting by public officers, concealment of treasure trove and, except as regards offences relating to the public revenue, cheating.

(2) Except as regards offences committed before the commencement of this Ordinance, and except as the context otherwise requires—

- (a) references in any enactment passed before this Ordinance to an offence abolished or contained in any provision repealed by this Ordinance shall, subject to any express amendment or repeal made by this Ordinance, have effect as references to the corresponding offence

Effect on civil proceedings and rights.
1968, c. 60, s. 31.

Effect on existing law and construction of references to offences.
1968, c. 60, s. 32.

under this Ordinance, and in any such enactment "receive" (when the expression relates to an offence of receiving) shall mean handle, and "receiver" shall be construed accordingly; and

- (b) without prejudice to paragraph (a), references in any enactment, whenever passed, to theft or stealing (including references to stolen goods), and references to robbery, burglary, aggravated burglary or handling stolen goods, shall be construed in accordance with the provisions of this Ordinance, including those of section 26.

35. (1) The Larceny Ordinance is repealed.

(2) The enactments specified in the first column of the Second Schedule are amended to the extent and in the manner set out in the second column of that Schedule.

36. (1) Sections 29 and 30 shall apply in relation to proceedings for an offence committed before the commencement of this Ordinance as they would apply in relation to proceedings for a corresponding offence under this Ordinance and shall so apply in place of any corresponding enactment repealed by this Ordinance.

(2) Subject to subsection (1), no repeal or amendment by this Ordinance of any enactment relating to procedure or evidence, or to the jurisdiction or powers of any court, or to the effect of a conviction, shall affect the operation of the enactment in relation to offences committed before the commencement of this Ordinance or to proceedings for any such offence.

FIRST SCHEDULE.

[s. 32.]

ALTERNATIVE VERDICTS.

<i>Offences.</i>	<i>Other offences of which the defendant may be found guilty.</i>
1. Theft (section 9).	(i) Taking conveyance without authority (section 14). (ii) Obtaining property by deception (section 17). (iii) Obtaining pecuniary advantage by deception (section 18). (iv) False accounting (section 19). (v) Handling stolen goods (section 24). (vi) Going equipped for stealing (section 27).

Offences.

Other offences of which the defendant may be found guilty.

2. Robbery (section 10).	(i) Theft (section 9). (ii) Assault with intent to rob (section 10). (iii) Blackmail (section 23(1)). (iv) Handling stolen goods (section 24). (v) Common assault.
3. Assault with intent to rob (section 10).	(i) Theft (section 9). (ii) Robbery (section 10). (iii) Blackmail (section 23(1)). (iv) Common assault.
4. Burglary (section 11).	(i) Theft (section 9). (ii) Handling stolen property (section 24). (iii) Going equipped for stealing (section 27). (iv) Inflicting grievous bodily harm.
5. Aggravated burglary (section 12).	(i) Theft (section 9). (ii) Burglary (section 11). (iii) Handling stolen property (section 24). (iv) Going equipped for stealing (section 27). (v) Inflicting grievous bodily harm. (vi) Possession of arms. (vii) Possession of imitation firearm. (viii) Possession of explosive.
6. Taking conveyance without authority (section 14(1)).	Going equipped for stealing (section 27).
7. Obtaining property by deception (section 17).	(i) Theft (section 9). (ii) Obtaining pecuniary advantage by deception (section 18). (iii) Blackmail (section 23(1)). (iv) Handling stolen goods (section 24). (v) Going equipped for stealing (section 27).
8. Obtaining pecuniary advantage by deception (section 18).	(i) Theft (section 9). (ii) Obtaining property by deception (section 17). (iii) Blackmail (section 23(1)). (iv) Handling stolen goods (section 24).
9. Blackmail (section 23(1)).	(i) Obtaining property by deception (section 17). (ii) Obtaining pecuniary advantage by deception (section 18). (iii) Possession of blackmailing letter (section 23(4)). (iv) Common assault.

Repeal and amendments.
1968, c. 60, s. 33.
(Cap. 210.)
Second Schedule.

Transitional provisions.
1968, c. 60,
s. 35(2)(3).

SECOND SCHEDULE.

[s. 35.]

AMENDMENTS.

- (Cap. 6.) Bankruptcy Ordinance. 1. Section 129 is amended by deleting, in subsection (1), paragraphs (m) and (n).
2. Section 132 is amended by deleting paragraph (a).
3. Section 137 is repealed.
4. Section 141 is amended by deleting "in any proceedings in respect of any of the misdemeanors referred to in section 38 of the Larceny Ordinance (which section relates to frauds by agents, bankers and factors)" and substituting the following—
"or (unless they married after the making of the statement or admission) against the wife or husband of that person in any proceeding in respect of an offence under the Theft Ordinance 1970".
- (Cap. 26.) Sale of Goods Ordinance. Section 26 is repealed.
- (Cap. 32.) Companies Ordinance. 1. Section 74 is repealed.
2. Section 271 is amended in subsection (1)—
(a) by deleting paragraphs (m) and (n);
(b) by deleting "offences mentioned respectively in paragraphs (m), (n) and (o)" and substituting the following—
"offence mentioned in paragraph (o)"; and
(c) by deleting in the proviso " (n)".
3. Section 273 is amended by deleting paragraph (a).
- (Cap. 96.) Forestry Ordinance. The Schedule is amended by deleting "Cap. 210. Larceny Ordinance." and "S. 16(b); s. 17; s. 18; s. 19; s. 20 and s. 21." and substituting respectively the following—
"Theft Ordinance 1970." and "S. 9 in respect of anything forming part of land."
- (Cap. 98.) Post Office Ordinance. 1. Section 26 is repealed and replaced by the following—
"Destruction of postal packets, etc.
[cf. 1953, c. 36, s. 57.
1968, c. 60, Sch. 2, Pt. I, Para. 6.]
26. No person shall destroy any mail bag or postal packet or anything contained in or forming part of any mail bag or postal packet."
2. Section 36 is amended by—
(a) being renumbered as subsection (1) thereof; and

- (b) inserting the following new subsection—
"1968, c. 60, Sch. 2, Pt. I, Para. 11. (2) In any proceedings for an offence under section 27 of this Ordinance, subsection (4) of section 29 of the Theft Ordinance 1970 shall apply as it is expressed to apply to proceedings for the theft of anything in the course of transmission."

3. Section 38 is amended in subsection (1) by deleting "14 years" in the third column of the table and substituting the following—
"7 years".

Gambling Ordinance.

The Ordinance is amended by adding, after section 21, the following new section—

"Cheating at gaming, etc.
[cf. 1845, c. 109, s. 17.]

21A. Any person who, by any fraud, unlawful device or ill practice, before or after or in the course of or in connexion with any gaming or gambling, wins or obtains from any other person for himself or for any other person any sum of money or valuable thing shall be guilty of an offence and shall be liable on conviction to imprisonment for two years."

(Cap. 148.)

Pawnbrokers Ordinance.

Section 28 is amended—

(Cap. 166.)

- (a) by deleting subsection (1) and substituting the following—

"(1) If in any proceedings before a court or magistrate it appears that any goods brought before such court or magistrate have been unlawfully pawned with a pawnbroker, the court or magistrate, on proof of the ownership of the goods, may order either the delivery or the non-delivery thereof to the owner—

- (a) on payment to the pawnbroker of the amount of the loan advanced by him thereon and the interest due; or
(b) on payment of any part of such loan or interest; or
(c) without payment of any part of such loan or interest,

as may seem just and fitting to the court or magistrate, according to the conduct of the owner and the pawnbroker and the other circumstances of the case."

- (b) by deleting subsection (3) and substituting the following—

"(3) Any such order made by the court or magistrate shall bar any civil

remedy which the owner would have had for the recovery of the goods, and the owner shall not be entitled to claim the return of the goods from the pawnbroker except in accordance with the terms of such order."

(Cap. 183.)

Married Women's Property Ordinance.

1. Section 9 is amended by deleting—
 - (a) ", and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings,";
 - (b) "indictment or other"; and
 - (c) the proviso thereto.
2. Section 12 is repealed.

(Cap. 207.)

False Personation Ordinance.

- Sections 3 and 4 are repealed.

(Cap. 208.)

Falsification of Documents Ordinance.

- Section 2 is repealed.

(Cap. 220.)

Road Traffic Ordinance.

1. Section 18 is repealed.
2. Section 23 is amended by deleting, in subsection (1), the paragraph beginning with "Without prejudice" and ending with "minimum period:" and substituting the following—

"Without prejudice to any other penalty, any court or magistrate before whom a person is convicted of—

 - (a) any offence under this Ordinance or under any regulations made thereunder in connexion with the driving of a motor vehicle;
 - (b) stealing a motor vehicle;
 - (c) an offence under subsection (1) of section 14 of the Theft Ordinance 1970, in respect of a motor vehicle; or
 - (d) an offence under section 27 of the Theft Ordinance 1970, committed with reference to the theft or taking of motor vehicles,

may order him to be disqualified from holding or obtaining a driving licence for such period as the court or magistrate thinks fit, and where any provision of this Ordinance requires him to be so disqualified for a minimum period, shall order him to be disqualified for a period which is not less than that minimum period:".

Criminal Procedure Ordinance.

1. Sections 98 and 99 are repealed. (Cap. 221.)
2. The Second Schedule is amended by deleting—

"Cap. The Married Women's ss. 9 and 183. Property Ordinance. 12."

Corporal Punishment Ordinance.

- The Schedule is amended by— (Cap. 222.)
- (a) deleting item 2 and substituting the following—

"2. Robbery.";
 - (b) deleting item 4 and substituting the following—

"4. The theft of any property from the person of any woman or child."

Police Supervision Ordinance.

- The First Schedule is amended by deleting item 9 and substituting the following— (Cap. 224.)
- "9. The Theft Ordinance 1970— sections 9, 10, 11, 12, 17, 18, 23 and 24."

Magistrates Ordinance.

1. Sections 45 and 46 are repealed. (Cap. 227.)
2. The Second Schedule is amended—
 - (a) in Part I, by deleting in item 2 "(except burglary and robbery)" and substituting the following—

"(except aggravated burglary, robbery and assault with intent to rob)";
 - (b) in Part II—
 - (i) by deleting item 7 and substituting the following—

"7. An offence against subsection (1) of section 22 of the Theft Ordinance 1970.";
 - (ii) by deleting items 8 and 9; and
 - (c) in Part III, by deleting in item 2 "an offence against section 40, 42 or 46 of the Larceny Ordinance" and substituting the following—

"an offence against section 10 or 12 of the Theft Ordinance 1970".

Summary Offences Ordinance.

- The Ordinance is amended by adding, after section 16, the following new section— (Cap. 228.)

"Taking or destroying fish.
1968, c. 60,
Sch. 1,
Para. 2(1).

16A. Any person who unlawfully and wilfully takes or destroys any fish in any water which is private property shall be guilty of an offence and shall be liable on conviction—

- (a) in the case of a first offence, to a fine of one thousand dollars; and

- (b) in the case of a second offence, to a fine of two thousand dollars and to imprisonment for three months."

(Cap. 235.)

Chinese Extradition Ordinance.

The First Schedule is amended by—

- (a) deleting item 6 and substituting the following—
"6. Theft.";
- (b) deleting item 7 and substituting the following—
"7. Handling stolen goods.";
- (c) deleting item 8 and substituting the following—
"8. Obtaining property by deception.";
- (d) deleting item 10;
- (e) deleting, in item 16, "housebreaking" and substituting the following—
"aggravated burglary";
- (f) deleting, in item 18, "with violence";
- (g) deleting item 19 and substituting the following—
"19. Blackmail.";
- (h) deleting paragraphs (b), (c) and (e) of item 26, and substituting for paragraph (e) the following—
"(e) The Theft Ordinance 1970;"

(Cap. 238.)

Arms and Ammunition Ordinance.

1. Section 31 is amended by deleting subsection (4).
2. The Fourth Schedule is amended by deleting—
"Larceny Ordinance.
Sections 4, 5, 6, 25, 26, 27, 40, 41,
42, 43, 44, 45, 46, 48."
and substituting the following—
"Theft Ordinance 1970.
Sections 9, 10, 11, 12, 14(1), 23, 27.";

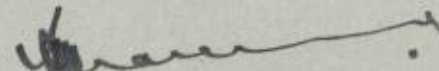
Provided that this amendment shall not apply in relation to a person's apprehension for an offence committed before the commencement of this Ordinance.

(42 of 1969.)

Disposal of Uncollected Goods Ordinance 1969.

Section 4 is amended by deleting, in subsection (3), "or who produces a document kept for the purposes thereof which is to his knowledge false in a material particular".

Passed by the Hong Kong Legislative Council this 25th day of February, 1970.



Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



Deputy Clerk of Councils.

HONG KONG

No. 22 OF 1970.



I assent.

[Handwritten signature]

Governor.

26th February, 1970.

An Ordinance to amend further the Importation and Exportation Ordinance.

[27th February, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Importation and Exportation (Amendment) Ordinance 1970.

Short title.

2. Section 14 of the principal Ordinance is amended—

Amendment of
section 14.
(Cap. 50.)

(a) in subsection (1) by—

(i) deleting the colon in paragraph (e) and substituting a semicolon;

(ii) deleting the proviso to paragraph (e); and

(iii) deleting paragraph (f) and substituting the following paragraphs—

“(f) imposing or providing for the imposition of a pecuniary penalty, recoverable civilly, on any

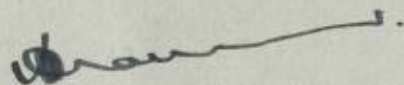
person who, being required under any regulation made under this section to lodge a declaration with the Director in connexion with the import or export of any article, fails to lodge such a declaration or fails to lodge such a declaration within a prescribed period of time;

- (g) empowering the Director to waive the payment of any pecuniary penalty imposed under any regulation made under paragraph (f) and to refund any such pecuniary penalty which has been paid;
- (h) empowering the Director to specify from time to time the form of any declaration required to be lodged with him under any regulation made under this section;
- (i) the protection from disclosure or production, whether in court or otherwise, of any particulars or other information furnished to or any document lodged with the Director or any other person under any regulation made under this section.”; and

(b) inserting the following subsection after subsection (2)—

“(3) No regulation made under paragraph (e), (f) or (g) of subsection (1) shall come into operation until it has been approved by resolution of the Legislative Council.”.

Passed by the Hong Kong Legislative Council this 25th day of February, 1970.



Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



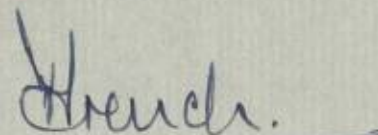
Deputy Clerk of Councils.

HONG KONG

No. 23 OF 1970.



I assent.



Governor.

26th February, 1970.

An Ordinance to amend further the Employment Ordinance.

[1st April, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Employment (Amendment) (No. 2) Ordinance 1970 and shall come into operation on the 1st day of April 1970.

Short title
and com-
mencement.

2. Section 2 of the principal Ordinance is amended by inserting, after the definition of “maternity leave”, the following new definition—

Amendment of
section 2.
(Cap. 57.)

““rest day” means a continuous period of not less than twenty-four hours during which an employee is entitled to abstain from working for his employer;”.

Addition of
new Part IIB.

3. The principal Ordinance is amended by adding, after Part IIA, the following new Part—

**"PART IIB.
REST DAYS.**

Application
of this Part.

(Cap. 59,
sub. leg.)

11D. This Part shall not apply—

- (a) to any employee to whom regulation 14 of the Factories and Industrial Undertakings Regulations (which provides for rest days for women and young persons employed in industrial undertakings) applies;
- (b) to an employer of any employee specified in paragraph (a) in relation to the employment of any such employee.

Grant of
rest days.

11E. (1) Subject to the provisions of this Part, every employee who has been employed by the same employer under a continuous contract shall be granted not less than four rest days in each month.

(2) Rest days shall be in addition to any statutory holiday, or a substituted holiday granted in lieu of such statutory holiday, to which an employee is entitled under the Industrial Employment (Holidays with Pay and Sickness Allowance) Ordinance.

(Cap. 333.)

Appointment
of rest days.

11F. (1) Rest days during a month shall be appointed by an employer and he may appoint different rest days for different employees.

(2) Subject to subsection (4), every employer shall, before the commencement of every month, inform each employee orally or in writing of his rest days in that month.

(3) The provisions of subsection (2) shall be deemed to be complied with if an employer exhibits in a conspicuous place in the place of employment and for so long as it applies a roster showing the days appointed to be rest days for each employee during the month.

(4) Subsection (2) shall not apply where rest days are appointed on fixed days in each month on a regular basis.

(5) An employer may, with the consent of his employee, substitute for any rest day appointed under this section some other rest day—

- (a) within the same month and before the rest day so appointed; or

- (b) within the period of thirty days next following the rest day so appointed.

Compulsory
work on
rest days.

11G. (1) Subject to subsection (2), no employer shall require an employee to work on any of his rest days.

(2) An employer may require an employee to work on his rest day if it is necessary to do so by reason of a breakdown of machinery or plant or other unforeseen emergency of any nature.

(3) An employer shall substitute for any rest day on which an employee is required to work under subsection (2) some other rest day within the period of thirty days next following, notice of which shall be given to the employee within forty-eight hours after the employee is so required to work.

Voluntary
work on rest
days.

11H. (1) An employee may, at his own request and if the employer agrees, work for his employer on a rest day.

(2) An employee may, at the request of his employer, work for his employer on a rest day.

Void con-
ditions.

11I. Any condition in a contract of employment which makes the payment of any annual bonus subject to working on rest days granted under this Part shall be void."

4. Section 31 of the principal Ordinance is amended by inserting, after subsection (1), the following new subsection—

Amendment of
section 31.

"(1A) Any employer who—

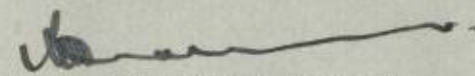
- (a) without reasonable excuse, fails—

- (i) to grant to any employee any rest day which he is required to grant under Part IIB; or

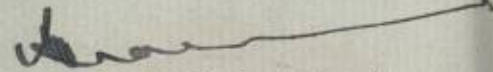
- (ii) to comply with any of the provisions of subsection (2) of section 11F; or

- (b) contravenes section 11G,
shall be guilty of an offence."

Passed by the Hong Kong Legislative Council this 25th day of February, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



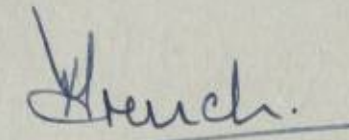
Deputy Clerk of Councils.

HONG KONG

No. 24 OF 1970.



I assent.



Governor.

26th February, 1970.

An Ordinance to amend further the Companies Ordinance.

[1st May, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Companies (Amendment) Ordinance 1970 and shall come into operation on the 1st day of May 1970.

Short title and commencement.

2. Section 2 of the principal Ordinance is amended in subsection (1) by inserting after the definition of "prospectus" the following new definition—

Amendment of section 2.
(Cap. 32.)

"recognized stock exchange in the Colony" means a body of persons corporate or unincorporate declared by an order under subsection (1) of section 2A for the time being in force to be a recognized stock exchange for the purposes of this Ordinance;"

Addition of
new section 2A.

3. The principal Ordinance is amended by adding after section 2 the following new section—

"Recognized
stock
exchange.

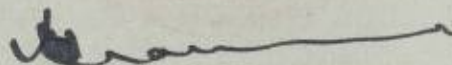
2A. (1) The Governor in Council may, by order published in the *Gazette*, declare any body of persons corporate or unincorporate carrying on in the Colony the business of dealing in shares to be a recognized stock exchange for the purposes of this Ordinance.

(2) The Governor in Council may at any time require a recognized stock exchange to comply with such conditions as he may think fit to impose.

(3) The Governor in Council may at any time, after giving a recognized stock exchange not less than fourteen days' notice of his intention so to do, revoke an order made under subsection (1).

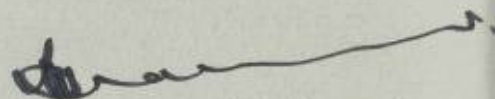
(4) An order under subsection (1) shall remain in force for such period as may be specified in the order unless earlier revoked under subsection (3)."

Passed by the Hong Kong Legislative Council this 25th day of February, 1970.



Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



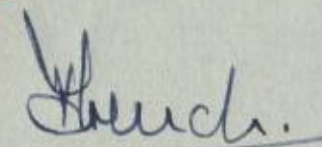
Deputy Clerk of Councils.

HONG KONG

No. 25 OF 1970.



I assent.



Governor.

26th February, 1970.

An Ordinance to amend further the Landlord and Tenant Ordinance.

[27th February, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Landlord and Tenant (Amendment) Ordinance 1970. Short title.

2. Section 33 of the principal Ordinance is amended in subsection (1) by deleting "Governor in Council" and substituting the following— Amendment of section 33. (Cap. 255.)

"Governor or Governor in Council, as the case may be."

3. Section 40 of the principal Ordinance is amended by deleting "Governor in Council" and substituting the following— Amendment of section 40.

"Governor or Governor in Council, as the case may be."

Amendment of
section 41.

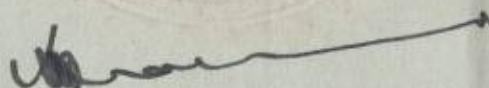
4. Section 41 of the principal Ordinance is amended in subsection (1)—

- (a) by deleting "Governor in Council" and substituting the following—
"Governor or Governor in Council, as the case may be,"; and
- (b) by deleting "Clerk of Councils" and substituting the following—
"Colonial Secretary".

Passed by the Hong Kong Legislative Council this 25th day of February, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

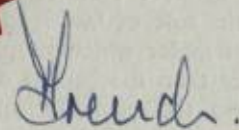

Deputy Clerk of Councils.

HONG KONG

No. 26 OF 1970.



I assent.



Governor.

12th March, 1970.

An Ordinance to modify the law relating to the avoidance of future interests in property on grounds of remoteness and governing accumulations of income from property.

[13th March, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PRELIMINARY AND GENERAL.

1. This Ordinance may be cited as the Perpetuities and Accumulations Ordinance 1970. Short title.

2. (1) In this Ordinance, unless the context otherwise requires— Interpretation.

"disposition" includes the conferring of a power of appointment and any other disposition of an interest in or right over property, and references to the interest disposed of shall be construed accordingly;

1964, c. 55,
s. 15(2), (3).

"in being" means living or *en ventre sa mere*;

"power of appointment" includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration;

"will" includes a codicil.

(2) For the purposes of this Ordinance a disposition contained in a will shall be deemed to be made at the death of the testator.

(3) For the purposes of this Ordinance a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

3. (1) Nothing in this Ordinance shall affect the operation of the rule of law rendering void for remoteness certain dispositions under which property is limited to be applied for purposes other than the benefit of any person or class of persons in cases where the property may be so applied after the end of the perpetuity period.

(2) This Ordinance shall apply (except as provided in subsection (2) of section 13 and section 18) only in relation to instruments taking effect after the commencement of this Ordinance, and in the case of an instrument made in the exercise of a special power of appointment shall apply only where the instrument creating the power takes effect after that commencement:

Provided that section 12 shall apply in all cases for construing the foregoing reference to a special power of appointment.

(3) This Ordinance shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

(4) This Ordinance binds the Crown.

PERPETUITIES.

4. The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

Application.
1964, c. 55,
s. 15(4)-(7).

Abolition of
the double
possibility rule.
[cf. 1925, c. 20,
s. 161.]

5. For removing doubts, it is hereby declared that the rule of law relating to perpetuities does not apply and shall be deemed never to have applied—

(a) to any power to distrain on or to take possession of land or the income thereof given by way of indemnity against a rent, whether charged upon or payable in respect of any part of that land or not; or

(b) to any grant, exception, or reservation of any right of entry on, or user of, the surface of land or of any easements, rights, or privileges over or under land for the purpose of—

(i) executing repairs, alterations, or additions to any adjoining land, or the buildings and erections thereon;

(ii) constructing, laying down, altering, repairing, renewing, cleansing, and maintaining sewers, watercourses, cesspools, gutters, drains, water-pipes, gas-pipes, electric wires or cables or other like works.

6. (1) Subject to subsection (2) of section 14 and subsection (2) of this section, where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, shall be of a duration equal to such number of years not exceeding eighty as is specified in that behalf in the instrument.

(2) Subsection (1) shall not have effect where the disposition is made in exercise of a special power of appointment, but where a period is specified under that subsection in the instrument creating such a power the period shall apply in relation to any disposition under the power as it applies in relation to the power itself.

7. (1) Where in any proceedings there arises on the rule against perpetuities a question which turns on the ability of a person to have a child at some future time, then—

(a) subject to paragraph (b), it shall be presumed that a male can have a child at the age of fourteen years or over, but not under that age, and that a female can have a child at the age of twelve years or over, but not under that age or over the age of fifty-five years; but

(b) in the case of a living person evidence may be given to show that he or she will or will not be able to have a child at the time in question.

Restrictions on
the perpetuity
rule.
[cf. 1925, c. 20,
s. 162.]

Power to
specify per-
petuity period.
1964, c. 55, s. 1.

Presumptions
and evidence
as to future
parenthood.
1964, c. 55, s. 2.

(2) Where any such question is decided by treating a person as unable to have a child at a particular time, and he or she does so, the Supreme Court may make such order as it thinks fit for placing the persons interested in the property comprised in the disposition, so far as may be just, in the position they would have held if the question had not been so decided.

(3) Subject to subsection (2), where any such question is decided in relation to a disposition by treating a person as able or unable to have a child at a particular time, then he or she shall be so treated for the purpose of any question which may arise on the rule against perpetuities in relation to the same disposition in any subsequent proceedings.

(4) In the foregoing provisions of this section references to having a child are references to begetting or giving birth to a child, but those provisions (except paragraph (b) of subsection (1)) shall apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her ability at that time to beget or give birth to a child.

8. (1) Where, apart from the provisions of this section and sections 9 and 10, a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time, the disposition shall be treated, until such time (if any) as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period, as if the disposition were not subject to the rule against perpetuities; and its becoming so established shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(2) Where, apart from the said provisions, a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time, the disposition shall be treated, until such time (if any) as it becomes established that the power will not be exercisable within the perpetuity period, as if the disposition were not subject to the rule against perpetuities.

(3) Where, apart from the said provisions, a disposition consisting of the conferring of any power, option or other right would be void on the ground that the right might be exercised at too remote a time, the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not subject to the rule against perpetuities, and, subject to the said provisions, shall be treated as void for remoteness only if, and so far as, the right is not fully exercised within that period.

Uncertainty as
to remoteness.
1964, c. 55, s. 3.

(4) Where this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 6 or subsection (2) of section 14, it shall be determined as follows—

(a) where any persons falling within subsection (5) are individuals in being and ascertainable at the commencement of the perpetuity period the duration of the period shall be determined by reference to their lives and no others, but so that the lives of any description of persons falling within paragraph (b) or (c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor;

(b) where there are no lives under paragraph (a) the period shall be twenty-one years.

(5) The said persons are as follows—

(a) the person by whom the disposition was made;

(b) a person to whom or in whose favour the disposition was made, that is to say—

(i) in the case of a disposition to a class of persons, any member or potential member of the class;

(ii) in the case of an individual disposition to a person taking only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;

(iii) in the case of a special power of appointment exercisable in favour of members of a class, any member or potential member of the class;

(iv) in the case of a special power of appointment exercisable in favour of one person only, that person or, where the object of the power is ascertainable only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;

(v) in the case of any power, option or other right, the person on whom the right is conferred;

(c) a person having a child or grandchild within subparagraphs (i) to (iv) of paragraph (b), or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those subparagraphs;

- (d) any person on the failure or determination of whose prior interest the disposition is limited to take effect.

Reduction of age and exclusion of class members to avoid remoteness.
1964, c. 55, s. 4.

9. (1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding twenty-one years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time—

- (a) that the disposition would, apart from this section, be void for remoteness, but
(b) that it would not be so void if the specified age had been twenty-one years,

the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to that age which would, if specified instead, have prevented the disposition from being so void.

(2) Where in the case of any disposition different ages exceeding twenty-one years are specified in relation to different persons—

- (a) the reference in paragraph (b) of subsection (1) to the specified age shall be construed as a reference to all the specified ages, and
(b) that subsection shall operate to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents the foregoing provisions of this section from operating to save a disposition from being void for remoteness, those persons shall thenceforth be deemed for all the purposes of the disposition to be excluded from the class, and the said provisions shall thereupon have effect accordingly.

(4) Where, in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time, that apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, would cause the disposition to be treated as void for remoteness, those persons shall, unless their exclusion would exhaust the class, thenceforth be deemed for all the purposes of the disposition to be excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 8 applies, the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

10. Where a disposition is limited by reference to the time of death of the survivor of a person in being at the commencement of the perpetuity period and any spouse of that person, and that time has not arrived at the end of the perpetuity period, the disposition shall be treated for all purposes, where to do so would save it from being void for remoteness, as if it had instead been limited by reference to the time immediately before the end of that period.

11. A disposition shall not be treated as void for remoteness by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so void, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

12. For the purposes of the rule against perpetuities, a power of appointment shall be treated as a special power unless—

- (a) in the instrument creating the power it is expressed to be exercisable by one person only, and
(b) it could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power:

Provided that for the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for remoteness, the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

13. (1) The rule against perpetuities shall not operate to invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any other act in the administration (as opposed to the distribution) of any property, and shall not prevent the payment to trustees or other persons of reasonable remuneration for their services.

Condition relating to death of surviving spouse.
1964, c. 55, s. 5.

Saving and acceleration of expectant interests.
1964, c. 55, s. 6.

Powers of appointment.
1964, c. 55, s. 7.

Administrative powers of trustees.
1964, c. 55, s. 8.

(2) Subsection (1) shall apply for the purpose of enabling a power to be exercised at any time after the commencement of this Ordinance notwithstanding that the power is conferred by an instrument which took effect before that commencement.

Options relating to land.
[cf. 1964, c. 55, s. 9.]

14. (1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary (whether directly or indirectly) on the term of a lease if—

- (a) the option is exercisable only by the lessee or his successors in title, and
- (b) it ceases to be exercisable at or before the expiration of one year following the determination of the lease.

This subsection shall apply in relation to an agreement for a lease as it applies in relation to a lease, and "lessee" shall be construed accordingly.

(2) In the case of a disposition consisting of the conferring of an option to acquire for valuable consideration any interest in land, the perpetuity period under the rule against perpetuities shall be twenty-one years, and section 6 shall not apply.

Avoidance of contractual and other rights in cases of remoteness.
1964, c. 55, s. 10.

15. Where a disposition *inter vivos* would fall to be treated as void for remoteness if the rights and duties thereunder were capable of transmission to persons other than the original parties and had been so transmitted, it shall be treated as void as between the person by whom it was made and the person to whom or in whose favour it was made or any successor of his, and no remedy shall lie in contract or otherwise for giving effect to it or making restitution for its lack of effect.

Possibilities of resulting trust, conditions subsequent, exceptions and reservations.
[cf. 1964, c. 55, s. 12.]

16. (1) In the case of a possibility of a resulting trust on the determination of any determinable interest in property, the rule against perpetuities shall apply in relation to the provision causing the interest to be determinable as it would apply if that provision were expressed in the form of a condition subsequent giving rise, on breach thereof, to a right of re-entry or an equivalent right in the case of property other than land, and where the provision falls to be treated as void for remoteness the determinable interest shall become an absolute interest.

(2) Where a disposition is subject to any such provision, or to any such condition subsequent, or to any exception or reservation, the disposition shall be treated for the purposes of this Ordinance as including a separate disposition of any rights arising by virtue of the provision, condition subsequent, exception or reservation.

ACCUMULATIONS.

17. (1) No person may by any instrument or otherwise settle or dispose of any property in such manner that the income thereof shall, save as hereinafter mentioned, be wholly or partially accumulated for any longer period than one of the following, namely—

General restrictions on accumulations of income.
[cf. 1925, c. 20, s. 164, & 1964, c. 55, s. 13.]

- (a) the life of the grantor or settlor; or
- (b) a term of twenty-one years from the death of the grantor, settlor or testator; or
- (c) the duration of the minority or respective minorities of any person in being at the death of the grantor, settlor or testator; or
- (d) the duration of the minority or respective minorities only of any person who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated; or
- (e) a term of twenty-one years from the date of the making of the disposition; or
- (f) the duration of the minority or respective minorities of any person or persons in being at the date of the making of the disposition.

(2) In every case where any accumulation is directed otherwise than as aforesaid, the direction shall (save as hereinafter mentioned) be void; and the income of the property directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to and be received by the person who would have been entitled thereto if such accumulation had not been directed.

(3) The restrictions imposed by subsection (1) apply in relation to a power to accumulate income whether or not there is a duty to exercise that power, and they apply whether or not the power to accumulate extends to income produced by the investment of income previously accumulated.

(4) This section does not extend to any provision—

- (a) for payment of the debts of any grantor, settlor, testator or other person;
- (b) for raising portions for—
 - (i) any child or remoter issue of any grantor, settlor or testator; or

(ii) any child or remoter issue of a person taking any interest under any settlement or other disposition directing the accumulations or to whom any interest is thereby limited,

and accordingly such provisions may be made as if no statutory restrictions on accumulation of income had been imposed.

Qualification of restrictions on accumulation.
[cf. 1925, c. 20, s. 165.]

18. Where accumulations of surplus income are made during a minority under any Ordinance or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Ordinance) to be taken into account in determining the periods for which accumulations are permitted to be made by section 17, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

Restriction on accumulation for the purchase of land.
[cf. 1925, c. 20, s. 166.]

19. No person may settle or dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for the purchase of land only, for any longer period than the duration of the minority or respective minorities of any person or persons who, under the limitations of the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income so directed to be accumulated.

Right to stop accumulations.
1964, c. 55, s. 14.

20. Section 7 shall apply to any question as to the right of beneficiaries to put an end to accumulations of income under any disposition as it applies to questions arising on the rule against perpetuities.

SUPPLEMENTAL.

Consequential amendment.
(Cap. 88.)

21. The Schedule to the Application of English Law Ordinance is amended by deleting item 46.

Passed by the Hong Kong Legislative Council this 14 day of March, 1970.

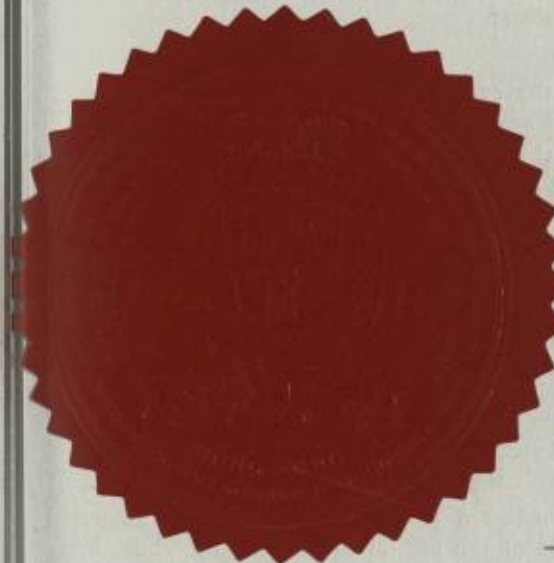

Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Deputy Clerk of Councils.

HONG KONG

No. 27 OF 1970.



I assent.

Governor.

12th March, 1970.

An Ordinance to amend further the Fatal Accidents Ordinance and to make amendments to related Ordinances.

[13th March, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Fatal Accidents (Amendment) Ordinance 1970. Short title.

2. Section 2 of the principal Ordinance is repealed and replaced by the following— Repeal and replacement of section 2.

“Interpretation. 2. (1) In this Ordinance, unless the context otherwise requires—

[*cf.* 1959, c. 65, s. 1(3).]
(Cap. 290.) “adopted” means adopted in pursuance of an adoption order made under the Adoption Ordinance or by any adoption recognized as valid by the law of the Colony;

“child” includes son and daughter, and grandson and granddaughter;

[cf. 1959, c. 65,
s. 1(1).]

"dependants" means wife, husband, parent, child and any person who is, or is the issue of, a brother, sister, uncle or aunt;

"parent" includes father and mother, grandfather and grandmother;

"wife" means—

- (a) in the case of a Christian marriage or its civil equivalent, the lawful wife; and
- (b) in the case of any other lawful marriage—
 - (i) the lawful wife of such marriage; or
 - (ii) if there is more than one lawful wife—
 - (aa) the lawful principal wife recognized as such by the personal law of the husband of such marriage; or
 - (bb) the lawful wives, if there is no lawful principal wife, so recognized as aforesaid.

1959, c. 65,
s. 1(2).

(2) In deducing any relationship for the purposes of this Ordinance—

- (a) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and, subject thereto,
- (b) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half-blood as a relationship of the whole blood, and the step child of any person as his child; and
- (c) an illegitimate child shall be treated as the legitimate child of his mother and reputed father."

Amendment of
section 4.

3. Section 4 of the principal Ordinance is amended in subsection (1) by deleting "wife, husband, parent and child" and substituting the following—
"dependants".

Addition of
new section 9.

4. The principal Ordinance is amended by adding the following new section at the end thereof—

"Assessment
of damages.
[cf. 1959, c. 65,
s. 2.]
(Vol. 15,
App. III,
p. CG 1.)

9. (1) In assessing damages in respect of a person's death in any action under this Ordinance or under the Carriage by Air (Overseas Territories) Order 1967 there shall not be taken into account any insurance money, benefit, pension or gratuity which

has been or will or may be paid as a result of the death.

(2) In subsection (1)—

"benefit" means any payment by a friendly society or trade union for the relief or maintenance of a member's dependants;

"insurance money" includes a return of premiums; and

"pension" includes a return of contributions and any payment of a lump sum in respect of a person's employment.

(3) In assessing damages in any action brought under this Ordinance the funeral expenses of the deceased person, if such expenses have been incurred by the parties for whose benefit the action is brought, shall be taken into account."

5. Section 2 of the Tortfeasors Ordinance is amended by—

- (a) deleting "wife, husband, parent or child" in paragraph (b) of subsection (1) and substituting the following—
"dependants"; and

- (b) deleting paragraph (a) of subsection (3) and substituting the following—

"(a) "dependants" has the same meaning as in the Fatal Accidents Ordinance; and".

(Cap. 22.)

6. Section 3 of the Law Reform (Miscellaneous Provisions) Ordinance is repealed.

7. This Ordinance shall apply only to actions brought in respect of deaths occurring after the commencement of this Ordinance.

Passed by the Hong Kong Legislative Council this 11th day of March, 1970.

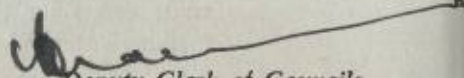

Deputy Clerk of Councils.

Amendment of
Tortfeasors
Ordinance.
[cf. 1959, c. 65,
s. 1(4).]
(Cap. 28.)

Amendment of
Cap. 271.

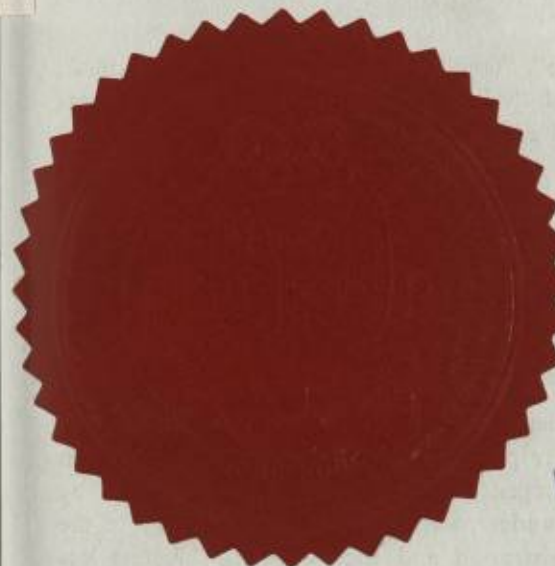
Application.
[cf. 1959, c. 65,
s. 3(4).]

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

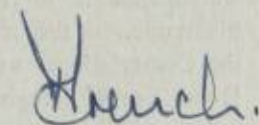

Deputy Clerk of Councils.

HONG KONG

No. 28 OF 1970.



I assent.


Governor.

12th March, 1970.

An Ordinance to provide for a fixed penalty to be payable for various contraventions of the law; for the recovery of the fixed penalty summarily as a civil debt, and for matters incidental thereto or connected therewith.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Fixed Penalty (Traffic Contraventions) Ordinance 1970 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. In this Ordinance, unless the context otherwise requires—
"Commissioner" means the Commissioner for Transport;

Interpretation.

"contravention" means any contravention of the provisions of this Ordinance;

(Cap. 220, sub. leg.)

"crossing" and "uncontrolled crossing" have the respective meanings assigned to them by the Road Traffic (Road Crossing) Regulations;

(Cap. 220.)

"driver", "motor vehicle", "omnibus", "personal effects", "public", "road", "taxi" and "vehicle" have the respective meanings assigned to them by the Road Traffic Ordinance;

(Cap. 220, sub. leg.)

"fixed penalty" means the penalty prescribed by section 13;

"parking meter" and "parking place" have the respective meanings assigned to them by the Road Traffic (Parking and Waiting) Regulations;

"proceedings" means proceedings by complaint before a magistrate for recovery of the fixed penalty;

(Cap. 220, sub. leg.)

"registered address" means the address of a registered owner which appears, in respect of any motor vehicle registered in his name, in the register of motor vehicles maintained by the Commissioner under paragraph (1) of regulation 8 of the Road Traffic (Registration and Licensing of Vehicles) Regulations;

"registered owner" means the person in whose name a motor vehicle is registered under the Road Traffic (Registration and Licensing of Vehicles) Regulations;

"sum adjudged to be paid" means any sum ordered by a magistrate to be paid in any proceedings and any costs awarded against the defendant under section 22.

Application to the Crown.

3. (1) This Ordinance shall apply to motor vehicles owned by the Crown and to persons in the public service of the Crown.

(2) Where a contravention is committed in respect of a motor vehicle owned by the Crown the person liable for the fixed penalty shall be the driver of the motor vehicle at the time the contravention is committed.

Obstruction on roads by motor vehicles.

4. No person shall cause or permit any motor vehicle to stand on a road in such a position or in such condition or in such circumstances as to be likely to cause any unnecessary obstruction of such road or danger to other persons using the road.

5. No person shall cause any motor vehicle or any part thereof to stop within the limits of a crossing unless either he is prevented from proceeding by circumstances beyond his control or it is necessary for him to stop in order to avoid an accident.

Stopping of motor vehicles at crossings.

6. No person shall cause any motor vehicle or any part thereof to stop within forty-five feet, or such lesser distance as shall be indicated by a line drawn in accordance with paragraph 3 of the First Schedule to the Road Traffic (Road Crossing) Regulations, of an uncontrolled crossing, on the side of the road on which such line is placed or if the road is a one way street on either side of the road:

Stopping of motor vehicles at uncontrolled crossings.

(Cap. 220, sub. leg.)

Provided that a motor vehicle shall not be prevented from stopping by this section—

- (a) to give precedence to a pedestrian within the limits of an uncontrolled crossing in compliance with the provisions of regulation 4 of the Road Traffic (Road Crossing) Regulations;
- (b) if the driver is prevented from proceeding by circumstances beyond his control;
- (c) if it is necessary for the driver to stop in order to avoid an accident; or
- (d) for so long as may be necessary to enable the motor vehicle, if it cannot be used for such purpose without stopping on that part of the road, to be used for fire services, ambulance or police purposes or for defence purposes, including civil defence purposes, or in connexion with any building operation, demolition or excavation, the removal of any obstruction to traffic, the maintenance, improvement or reconstruction of that part of the road, or the laying, erection, alteration or repair in or near to that part of the road of any sewer or main, pipe or apparatus for the supply of gas, water or electricity, or of any tramway, telegraph, telephone, television or wired-vision wires, cables, posts or supports.

Parking or waiting at unauthorized places.

7. (1) No person shall park any motor vehicle, or cause or permit any vehicle to wait, in any place on a road or length of road on which there is a parking place and a system of street lighting furnished by means of lamps not more than two hundred yards apart other than in such parking place:

Provided that if in any proceedings for a contravention of this subsection it is proved to the satisfaction of the magistrate that on a road there is a system of street lighting, the system of street lighting shall be presumed to be furnished by means of lamps not more than two hundred yards apart unless the contrary is proved.

(Cap. 220, sub. leg.)

(2) No person shall park any motor vehicle, or cause or permit any motor vehicle to wait, in any place which is designated under regulation 5 of the Road Traffic (Parking and Waiting) Regulations for the exclusive use of vehicles used for any particular purpose including fire services vehicles, vehicles used solely for the conveyance of public mail, vehicles used solely by the armed forces of the Crown or ambulances, unless the motor vehicle is of the kind for which such place is designated.

Parking or waiting in parking places.

8. (1) No person shall park any motor vehicle, or cause or permit any motor vehicle to wait, in any parking place in contravention of any sign or signal lawfully erected at or near such parking place for the direction of vehicles in the parking place or for the designation of the type or class of vehicle which may be parked in the parking place.

(2) No person shall park any motor vehicle, or cause or permit any motor vehicle to wait, in a parking place in such a manner that the motor vehicle unnecessarily projects over any line which divides the space in which the vehicle is parked or waiting from any other space.

(3) No person shall without reasonable cause park any taxi, or cause or permit any taxi to wait, in any place other than a place set aside as a place in which taxis may be parked or may wait.

(Cap. 220, sub. leg.)

(4) No person shall park any motor vehicle, or cause or permit any motor vehicle to wait, in any parking place the operation of which is suspended under paragraph (1) of regulation 4 of the Road Traffic (Parking and Waiting) Regulations.

9. (1) Where any sign in accordance with diagram 3, 4, 5, 6, 7 or 9 in the First Schedule to the Road Traffic (Parking and Waiting) Regulations is erected in a road, no person shall park any motor vehicle, or cause or permit any motor vehicle to wait, on the side of the road on which the sign is erected, during such days and hours as are indicated in the sign or, if none are prescribed, at any time:

Provided that this subsection shall not apply if the person in charge of the motor vehicle is prevented from proceeding by circumstances beyond his control.

(2) Where a sign in accordance with diagram 8 in the First Schedule to the Road Traffic (Parking and Waiting) Regulations is erected in a road, no person shall park any motor vehicle, or cause or permit any motor vehicle to wait, on that road—

- (a) except on the side of the road on which such sign indicates that waiting is permitted and in any case for not longer than such time as is indicated in the sign; or
- (b) if a period of less than forty minutes has elapsed since the termination of the last period of waiting, if any, of the motor vehicle on the road or part of a road the use of which is so restricted.

10. (1) Any person who parks a motor vehicle, or causes or permits a motor vehicle to wait, in a parking place in respect of which there is a parking meter shall as soon as possible after the motor vehicle is driven into the parking place insert or cause to be inserted in the parking meter a coin of a denomination shown on the parking meter (hereinafter referred to as an appropriate coin) and shall comply with such directions as are exhibited on the parking meter.

(2) The insertion of the appropriate coin in a parking meter shall be payment for the use of the parking place for the motor vehicle then in it for the period, from the time of such insertion, shown on the parking meter:

Provided that nothing in this Ordinance shall entitle any person to park any motor vehicle, or to cause or permit any motor vehicle to wait, in a parking place in respect of which there is a parking meter whilst the designation of such parking place is temporarily suspended by the Commissioner under regulation 4 of the Road Traffic (Parking and Waiting) Regulations.

Parking or waiting at parking and waiting signs.
(Cap. 220, sub. leg.)

Parking or waiting at parking meters.

(Cap. 220, sub. leg.)

11. (1) No person shall park any motor vehicle, or cause or permit any motor vehicle to wait, in a parking place in respect of which there is a parking meter, during the period prescribed in the plate affixed to the parking meter under paragraph (2) of

Parking without payment of meter charge.

(Cap. 220, sub. leg.)

regulation 13 of the Road Traffic (Parking and Waiting) Regulations, unless the parking meter is exhibiting a sign indicating that payment has been made for the use of the parking place:

Provided that this subsection shall not apply to a motor vehicle while it is being driven into the parking place and for such period thereafter as shall be necessary to enable the person in charge of the motor vehicle to comply with subsection (1) of section 10.

(2) In any proceedings for recovery of the fixed penalty for a contravention of subsection (1) it shall be a good defence to prove that an appropriate coin was inserted in the relevant parking meter and, if that parking meter had been working satisfactorily the indication referred to in subsection (1) would have been displayed but that owing to a defect in the parking meter, no such indication was displayed.

Exemption from restrictions.

12. (1) Nothing in subsection (1) of section 7 or subsections (1) and (2) of section 9 shall apply—

- (a) so as to restrict the use of any motor vehicle in connexion with any building operation, demolition, or excavation, the removal of any obstruction to traffic, the maintenance, improvement or reconstruction of any road or the laying, erection, alteration or repair in or near to any road of any sewer or main, pipe or apparatus for the supply of gas, water or electricity, or of any tramway, telegraph, telephone, television or wired-vision wires, cables, posts or supports if the vehicle cannot be conveniently put to such use outside the period of restriction;
- (b) to any fire services motor vehicle, ambulance, police motor vehicle, motor vehicle used for the conveyance of public mail, or motor vehicle used for defence purposes, including civil defence purposes, when such motor vehicle is being used as a matter of urgent necessity in any road so restricted;
- (c) to any public omnibus, being an omnibus which is being used or is intended to be used to carry passengers at separate and distinct fares within the Colony on a recognized and predetermined route or for a recognized and predetermined purpose in accordance with a right or licence granted by or under any enactment,—
 - (i) while waiting at an authorized stopping place or at a turning or terminal point for such time as is necessary to enable any person to board or alight or to load or unload his personal effects; or

(ii) when parked temporarily at any place at or near a turning or terminal point provided for that purpose under subsection (2) of section 26 of the Public Transport Services (Hong Kong Island) Ordinance or subsection (2) of section 24 of the Public Transport Services (Kowloon and New Territories) Ordinance;

(Cap. 317.)

(Cap. 318.)

- (d) to any motor vehicle parked in a parking place;
- (e) to any taxi waiting in a part of a road set aside for taxis;
- (f) to anything done with the permission of a police officer in uniform; or
- (g) so as to prevent any person from causing or permitting a motor vehicle to wait for the purpose of—

(i) enabling any person to board or alight or to load or unload his personal effects; or

(ii) delivering or collecting goods or merchandise or loading or unloading the motor vehicle at premises situate within the road if it is not reasonably practicable to load or unload the motor vehicle in any neighbouring road, not being a restricted road:

Provided that no motor vehicle shall wait for any longer period than may be necessary for such purpose.

(2) Nothing in subsection (1) of section 10 or subsection (1) of section 11 shall apply—

- (a) to any fire services motor vehicle, ambulance, police motor vehicle, motor vehicle used for the conveyance of public mail, or motor vehicle used for defence purposes, including civil defence purposes, when such motor vehicle is being used as a matter of urgent necessity;
- (b) so as to prevent any person from causing or permitting a motor vehicle to wait for the purpose of—
 - (i) enabling any person to board or alight or to load or unload his personal effects; or
 - (ii) delivering or collecting goods or merchandise or loading or unloading the motor vehicle at premises situate within the road if it is not reasonably practicable to load or unload the motor vehicle in any neighbouring road:

Provided that no motor vehicle shall wait for any longer period than may be necessary for such purpose.

13. There shall be a fixed penalty for a contravention of any of the provisions of section 4, 5, 6, 7, 8, 9 or 10 or of subsec-

Fixed penalty.

tion (1) of section 11 which shall be thirty dollars or such larger amount as may be prescribed by the Legislative Council by resolution.

Liability of
registered
owner.

14. (1) Subject to subsection (2) of section 3, the person liable for the fixed penalty under section 13 shall be the registered owner for the time being of the motor vehicle when the contravention is committed.

(2) In any proceedings for recovery of the fixed penalty it shall be no defence—

- (a) that the contravention was committed without the knowledge or consent of the registered owner; or
- (b) that at the time the contravention was committed the motor vehicle was driven by or was in charge of a person other than the registered owner:

Provided that it shall be a good defence for the registered owner to prove that, at the time the contravention was committed, the motor vehicle was taken and driven away without his consent by a person other than a driver employed by him or was stolen.

Notice and
payment of
fixed penalty.

15. (1) If a police officer reasonably suspects that a contravention is being or has been committed, he may give the registered owner of the vehicle concerned or, where subsection (2) of section 3 applies, the driver liable an opportunity to discharge his liability in respect of that contravention by payment of a fixed penalty.

(2) For the purposes of subsection (1) notice in the prescribed form shall be delivered personally to the person in charge of the vehicle or fixed on the vehicle.

(3) If the fixed penalty is not paid within seven days after the date of a contravention, then, whether or not a notice was delivered or fixed under subsection (2), a notice demanding payment of the fixed penalty for the contravention shall be served on the person liable:

Provided that no notice shall be served under this subsection—

- (a) if the Commissioner of Police is of the opinion that no further proceedings should be taken in respect of a contravention; or
- (b) after the expiry of six months from the date of a contravention.

(4) A notice under subsection (3) may be served by sending it by post—

- (a) where it is directed to a registered owner, to his registered address; or
- (b) where it is directed to a driver under subsection (2) of section 3, to the address where the driver normally works.

(5) A notice under subsection (3) shall be in such form as may be prescribed and shall require the payment of the fixed penalty within twenty-one days after the date of the contravention or within ten days after the date of the notice, whichever is the later.

(6) A notice under subsection (3) shall be presumed to have been duly served on the production by the complainant to the magistrate of a certificate of posting in the prescribed form purporting to be signed by the Commissioner of Police.

16. (1) If the fixed penalty is not paid in accordance with a notice served under subsection (3) of section 15 the fixed penalty shall be recoverable summarily as a civil debt by complaint made to a magistrate.

Recovery of
fixed penalty
as civil debt.

(2) In proceedings under subsection (1) the complaint shall be in the name of the Attorney General, who may appoint any person or class of persons to conduct the proceedings.

17. (1) A summons issued in any proceedings may, notwithstanding subsection (2) of section 8 of the Magistrates Ordinance, be served by sending it by post—

Service of
summons.
(Cap. 227.)

- (a) where it is directed to a registered owner, to his registered address; or
- (b) where it is directed to a driver under subsection (2) of section 3, to the address where the driver normally works.

(2) Subject to subsection (2) of section 18, a summons under subsection (1) shall be presumed to have been duly served on the production by the complainant to the magistrate of a certificate of posting in the prescribed form purporting to be signed by the Commissioner of Police.

18. (1) If in any proceedings a person served with a summons under subsection (1) of section 17 does not appear before a magistrate at the time and place required in the summons, and service is proved under subsection (2) of that section, the magistrate shall proceed *ex parte* to the hearing of

Ex parte
proceedings.

the complaint and adjudicate thereon as fully and effectually to all intents and purposes as if such person had personally appeared before him in obedience to the summons.

(2) Notwithstanding subsection (2) of section 17, for the purposes of subsection (1) a summons shall be deemed not to have been served unless service was effected within what is deemed by a magistrate to be a reasonable time before the time appointed in the summons for appearing thereto.

19. Notwithstanding any provisions of the Magistrates Ordinance, in any *ex parte* proceedings under section 18 the substance of a complaint may be proved by the production by the complainant to the magistrate of—

- (a) a copy of the notice served under subsection (3) of section 15 together with a certificate of posting under subsection (6) of that section;
- (b) a certificate under paragraph (a) of subsection (1) of section 21; and
- (c) a certificate under paragraph (b) of subsection (1) of section 21.

20. (1) A defendant shall, if he is present at a hearing and does not admit the truth of a complaint, be forthwith required to state the nature of his defence and if he does not at that stage expressly put in issue any allegation of fact contained in a certificate produced under paragraph (a) or (b) of subsection (1) of section 21 he shall not thereafter be permitted to dispute or adduce evidence to contradict any such fact contained in the certificate.

(2) If a defendant has put in issue any allegation of fact in accordance with subsection (1), a magistrate may proceed to the hearing of the complaint and adjudicate thereon or may adjourn the proceedings and may issue a summons for the appearance of any witness.

21. (1) In any proceedings a certificate purporting to be signed by the Commissioner and stating—

- (a) that the person specified in it was at any particular time the registered owner of a particular motor vehicle; or
- (b) that payment of the fixed penalty in respect of the contravention specified in any particular notice was not made before the date specified in the certificate,

shall be *prima facie* evidence of the facts stated therein.

Proof of
complaint in
ex parte
proceedings.
(Cap. 227.)

Hearing of
complaint.

Evidence by
certificate and
presumptions.

(2) In any proceedings in respect of a contravention of section 5 or 6 the crossing in question shall be presumed at the relevant time to have been established and delineated in accordance with the provisions of the Road Traffic (Road Crossing) Regulations unless the contrary is proved.

(Cap. 220, sub. leg.)

(3) In any proceedings in respect of a contravention of section 10 or 11 the parking meter in question shall be presumed at the relevant time to have been of such design and construction as shall have been approved by the Commissioner and to have been maintained to his satisfaction unless the contrary is proved.

22. (1) If at the conclusion of any proceedings a complaint is dismissed, the magistrate may at the same time make an order for the payment of costs by the complainant of not less than twenty dollars or more than four hundred dollars.

Other orders
at conclusion
of proceedings.

(2) If at the conclusion of any proceedings an order for payment of the fixed penalty is made, the magistrate shall at the same time make—

- (a) an order for the payment of costs by the defendant of not less than twenty dollars or more than four hundred dollars; and
- (b) an order, in respect of the motor vehicle of which the defendant is the registered owner and which is the subject matter of the complaint, directing the Commissioner, so long as the defendant fails to pay the sum adjudged to be paid on expiry of twenty-four hours from the making of the order,—

(i) to take no action under paragraph (3), (4) or (5) of regulation 13 of the Road Traffic (Registration and Licensing of Vehicles) Regulations on receipt of any notice of transfer of ownership of the motor vehicle; and

(Cap. 220, sub. leg.)

(ii) to refuse to license the motor vehicle under paragraph (2A), (7) or (8) of regulation 19 of the Road Traffic (Registration and Licensing of Vehicles) Regulations.

(3) An order under paragraph (b) of subsection (2)—

- (a) shall specify—
 - (i) the name of the defendant;
 - (ii) the registration mark of the motor vehicle; and
 - (iii) the sum adjudged to be paid; and
- (b) shall be served on the Commissioner if the sum adjudged to be paid is not paid within twenty-four hours of the making of the order.

(4) An order under paragraph (b) of subsection (2) which is served on the Commissioner shall cease to have effect if—

- (a) the defendant produces to the Commissioner a receipt or other evidence to prove that the sum adjudged to be paid has been paid;
- (b) the defendant sells or otherwise disposes of the motor vehicle and the new owner of the motor vehicle is, at the time of delivery of notice of transfer of ownership under regulation 13 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, in possession of a valid certificate in the prescribed form issued by the Commissioner to the effect that no valid order under paragraph (b) of subsection (2) appears in the records of the Commissioner in respect of the motor vehicle.

(5) A certificate issued under paragraph (b) of subsection (4) shall be valid for not more than seventy-two hours from the time of issue:

Provided that no day which is a general holiday shall be taken into account in computing any such period of seventy-two hours.

23. (1) If a defendant fails within one month to pay any sum adjudged to be paid, a magistrate may, if satisfied that reasonable efforts to recover such sum have been made, on application made *ex parte* by the complainant, make an order empowering the Commissioner of Police to seize the motor vehicle in respect of which the defendant is the registered owner and which was the subject matter of the complaint.

(2) An order under subsection (1)—

- (a) shall specify—
 - (i) the name of the defendant;
 - (ii) the registration mark of the motor vehicle;
 - (iii) the sum adjudged to be paid, or where an application for an order under subsection (1) is in respect of more than one sum adjudged to be paid, the total of such sums; and
 - (iv) any subsequent costs in the proceedings, or where an application for an order under subsection (1) is in respect of more than one sum adjudged to be paid, the total of the subsequent costs in all the proceedings; and
- (b) shall be served on the Commissioner of Police and the defendant.

Recovery of
payment in
cases of
default.

(3) An order under subsection (1)—

- (a) may be made notwithstanding that the value of the motor vehicle exceeds any sum adjudged to be paid; and
- (b) shall remain in force so long as—
 - (i) any amounts, charges or fees which the defendant is liable to pay under subsection (5) remain unpaid; and
 - (ii) the motor vehicle remains registered in the name of the defendant notwithstanding that the motor vehicle may have been sold or otherwise disposed of by the defendant.

(4) An order under subsection (1) or any notice under subsection (6) shall be served on the defendant by sending it by post to his registered address.

(5) A motor vehicle in respect of which an order under subsection (1) is made may be seized by the Commissioner of Police and detained, subject to subsection (6), until the defendant pays—

- (a) the amounts specified in the order under sub-paragraphs (iii) and (iv) of paragraph (a) of subsection (2);
- (b) such charges, as may be prescribed, incurred in respect of the motor vehicle in carrying out the provisions of this or any other Ordinance; and
- (c) any motor vehicle licence fees which may be due in respect of the motor vehicle.

(6) If a motor vehicle is detained under subsection (5), the Commissioner of Police with all reasonable dispatch shall serve on the defendant notice of the detention and if the motor vehicle is not claimed by the defendant within three months of the date of its detention the Commissioner of Police may publish in the *Gazette* a notice in the prescribed form of his intention to apply for a warrant of distress under subsection (7).

(7) The Commissioner of Police may, after one month has elapsed since the publication of a notice under subsection (6), apply to a magistrate for a warrant of distress under section 51 of the Magistrates Ordinance to enforce payment of any amounts, charges or fees which the defendant is liable to pay under this Ordinance.

(Cap. 227.)

(8) For the purposes of section 51 of the Magistrates Ordinance any amounts, charges or fees which a defendant is liable to pay under this Ordinance shall be deemed to be a sum of money required to be paid under an order.

Recovery of sums paid by registered owner.

24. When a registered owner has paid a fixed penalty, or costs under paragraph (a) of subsection (2) of section 22, such fixed penalty or costs may be recovered summarily as a civil debt by the registered owner from the person who was driving or in charge of the motor vehicle at the time the contravention was committed.

Power to make regulations.

25. The Governor in Council may make regulations—

- (a) prescribing anything which under this Ordinance is to be or may be prescribed;
- (b) specifying the persons to whom and the places at which a fixed penalty may be paid;
- (c) specifying the manner of payment of a fixed penalty and the receipt therefor;
- (d) specifying the duties of a person to whom a fixed penalty is payable and the information to be supplied to him;
- (e) specifying the procedure for the application for and issue of a certificate under paragraph (b) of subsection (4) of section 22; and
- (f) generally for the better carrying out of the provisions of this Ordinance.

Consequential amendments. Schedule.

26. The enactments specified in the first column of the Schedule are amended to the extent and in the manner set out in the second column of that Schedule.

SCHEDULE.

[s. 26.]

CONSEQUENTIAL AMENDMENTS.

	<i>Short Title.</i>	<i>Amendment.</i>
(Cap. 220, sub. leg.)	Road Traffic (Construction and Use) Regulations.	Regulation 111 is amended by deleting "motor vehicle or" wherever it occurs.
(Cap. 220, sub. leg.)	Road Traffic (Road Crossing) Regulations.	(1) Regulation 5 is amended— (a) by being renumbered as paragraph (1) thereof; and (b) by inserting the following new paragraph— "(2) Paragraph (1) shall not apply to a motor vehicle."

Short Title.

Amendment.

(2) Regulation 6 is amended—

- (a) by being renumbered as paragraph (1) thereof; and
 - (b) by inserting the following new paragraph—
- "(2) Paragraph (1) shall not apply to a motor vehicle."

Road Traffic (Parking and Waiting) Regulations.

(1) Regulation 3 is amended by inserting, after paragraph (4), the following new paragraph—

"(5) Paragraph (1) shall not apply to a motor vehicle."

(2) Regulation 5 is amended by inserting, after paragraph (2), the following new paragraph—

"(3) Paragraph (2) shall not apply to a motor vehicle."

(3) Regulation 6 is amended—

- (a) by deleting paragraph (3); and
- (b) by inserting, after paragraph (4), the following new paragraph—

"(5) This regulation shall not apply to a motor vehicle."

(4) Regulation 7 is amended—

- (a) in paragraph (1)—
- (i) by inserting after "29" the following—

"or section 7, 9 or 11 or subsection (4) of section 8 of the Fixed Penalty (Traffic Contraventions) Ordinance 1970";

(ii) in the proviso, by deleting "regulation 15" in the first place where it occurs and substituting the following—

"section 11 of the Fixed Penalty (Traffic Contraventions) Ordinance 1970"; and

(iii) in the proviso, by deleting "regulation 15" in sub-paragraph (a) and substituting the following—

"that section"; and

- (b) in paragraph (3), by deleting "offence" and substituting the following—

"contravention of the provisions of these regulations or of the Fixed Penalty (Traffic Contraventions) Ordinance 1970".

(5) Regulation 9 is amended by inserting, after paragraph (3), the following new paragraph—

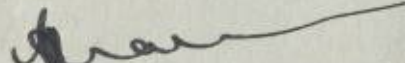
"(4) This regulation shall not apply to a motor vehicle."

(Cap. 220, sub. leg.)

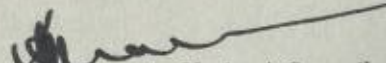
*Short Title.**Amendment.*

- (6) Regulation 12 is amended—
- (a) in paragraph (a), by deleting "motor";
 - (b) by deleting paragraph (c);
 - (c) in paragraph (d), by inserting after "place;" the following—
"or";
 - (d) by deleting paragraph (e);
 - (e) in paragraph (f), by deleting "; or" and substituting a full stop; and
 - (f) by deleting paragraph (g).
- (7) Regulation 13 is amended by inserting, after paragraph (3), the following new paragraph—
"(4) All moneys collected from parking meters shall be paid into the general revenue of the Colony."
- (8) Regulation 14 is revoked.
- (9) Regulation 15 is revoked and replaced by the following—
- "Prohibition of parking at parking meters.
15. No person shall park any vehicle, other than a motor vehicle, or cause or permit such vehicle to wait, in a parking place in respect of which there is a parking meter."
- (10) Regulation 34 is amended by deleting "paragraph (1) of regulation 14,".

Passed by the Hong Kong Legislative Council this ~~11th~~ day of March, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

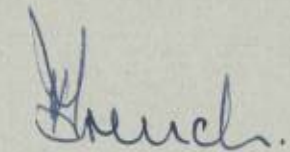

Deputy Clerk of Councils.

HONG KONG

No. 29 OF 1970.



I assent.


Governor.

12th March, 1970.

An Ordinance to amend further the Estate Duty Ordinance.

[13th March, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Estate Duty (Amendment) Ordinance 1970. Short title.

2. Section 6 of the principal Ordinance is amended by inserting after subsection (6) the following new subsection—

"(7) Notwithstanding paragraphs (b), (c) and (h) of subsection (1) and notwithstanding subsection (4), property passing on the death of the deceased shall not be deemed to include property the subject of any surrender, assurance, divesting, disposition, forfeiture, disposal, *donatio mortis causa*, gift *inter vivos* or determination of an interest made, effected or suffered to or for the benefit in the Colony of any charitable institution or trust of a public character, or to the Government for charitable purposes."

Amendment of
section 6.
(Cap. 111.)

Amendment of
section 10.

3. Section 10 of the principal Ordinance is amended—

- (a) in paragraph (c), by deleting "local register" and substituting the following—

"local or branch register kept out of the Colony";

- (b) by deleting the full stop at the end of paragraph (f), substituting therefor a semicolon and adding the following new paragraph—

"(g) property devised or bequeathed by the deceased or otherwise passing on the death of the deceased to or for the benefit in the Colony of any charitable institution or trust of a public character, or to the Government for charitable purposes."

Amendment of
section 14.

4. Section 14 of the principal Ordinance is amended—

- (a) by inserting, after subsection (7), the following new subsection—

"executors and
surviving joint
tenants
accountable for
estate duty on
joint interests;

(7A) Notwithstanding subsections (6) and (7), where a beneficial interest in property vested in the deceased and another person jointly passes or accrues by survivorship on the death of the deceased—

(a) the executor; and

(b) the person to whom the beneficial interest so passes or accrues,

shall be accountable for the estate duty in respect of such property and shall, within the time required by this Ordinance, or such later time as the Commissioner allows, deliver to the Commissioner an appropriate account specifying the property in question to the best of his (or their) knowledge and belief."

- (b) in subsection (8), by inserting after "estate duty" where it first occurs the following—

"or any person who is, in the opinion of the Commissioner, so accountable";

- (c) by deleting subsection (13) and substituting the following—

"repayment;

(13) In every case in which the Commissioner is satisfied that too much estate duty has been paid, the excess, together with

any interest which has been paid in accordance with subsection (6) of section 12, shall be repaid by the Commissioner."

- (d) by deleting subsection (15) and substituting the following—

"power to
assess estate
duty in certain
circumstances;

(15) Notwithstanding subsection (12) and section 12, if—

(a) the Commissioner is not satisfied with the affidavit or accounts delivered by any person; or

(b) a person has not delivered an affidavit or accounts within six months after the death, whether or not he has been required by the Commissioner so to do, and the Commissioner is of the opinion that such person is accountable for estate duty,

the Commissioner may, according to the best of his judgment, assess the amount of estate duty which is in his opinion payable and he shall thereupon notify the person who is in his opinion accountable and call upon him to pay such estate duty.

payment of
estate duty
assessed under
s.s. (15);

(15A) Notwithstanding subsection (12) and section 12, the amount of estate duty assessed under subsection (15) shall be paid within one month after the giving of notice by the Commissioner."

- (e) by deleting subsection (17) and substituting the following—

"penalties for
non-compliance
with this
section.

(17) Every person or company who without lawful authority or reasonable cause fails to comply with any of the provisions of this section shall be liable to pay to the Commissioner, in addition to the estate duty (if any)—

(a) a penalty of one thousand dollars or, in the case of such a company as is referred to in subsection (9) or an officer or auditor of such a company, five thousand dollars; or

- (b) a penalty equal to the amount of the estate duty (if any) at the rate set out in the applicable Schedule remaining unpaid for which he or the company is accountable,

according as the Commissioner elects.”.

Amendment of
section 22.

5. Section 22 of the principal Ordinance is amended—

- (a) by deleting subsections (1) and (2) and substituting the following—

“Appeal to
Supreme
Court;

(1) Any person who is aggrieved by a decision of the Commissioner under subsection (12) of section 14 or by an assessment of the Commissioner under subsection (15) of section 14 as to the amount of estate duty payable and whether he is aggrieved on the ground of—

- (a) property being considered to be property in respect of which estate duty is payable and for which he is considered accountable;
- (b) the valuation of any property; or
- (c) the rate of duty charged,

may, subject to subsection (1A), on payment of or giving security for as hereinafter mentioned, the duty claimed by the Commissioner or such portion of it as is then payable by him, appeal to the Supreme Court within three months from the date of notification of the decision or assessment and his accountability or the amount of duty payable shall be determined by the Supreme Court and if the duty is less than that paid to the Commissioner or if no duty is payable the excess shall be repaid.

postponement
of payment
of duty;

(1A) The Commissioner may, where satisfied that a person proposes to appeal under subsection (1), allow payment of the duty claimed by him to be postponed for such period, to such extent and on payment of such interest (if any) not exceeding eight *per centum per annum* and on such terms as the Commissioner may think fit.

appeal to
District Court;

(1B) Where the value of the property as alleged by the Commissioner in respect of which the dispute arises does not exceed one hundred thousand dollars the appeal under this section shall be to the District Court.

no appeal
without leave;

(2) No appeal shall be allowed from any order, direction, determination or decision of the Supreme Court or the District Court under any appeal under this section except with the leave of the Supreme Court or the District Court, as the case may be, or of the Full Court.”;

- (b) in subsection (4), by inserting after “Supreme Court” the following—

“or the District Court, as the case may be.”.

6. Section 25 of the principal Ordinance is repealed and replaced by the following—

“Notifica-
tion of
interest of
deceased
person in
bank or
business
undertaking.

25. (1) Where a deceased person had at the date of his death any interest, whether as partner, depositor or creditor, in any bank or business undertaking within the Colony, the bank or business undertaking, or, in the case of a bank or business undertaking which is not a body corporate, the person having the management thereof, shall, within one month from the date of first receiving information of either his interest or the death of such deceased person, whichever shall be the later, notify the Commissioner of such death and of the extent of the interest of the deceased in the bank or business undertaking, and in default of such notification as aforesaid a penalty of one thousand dollars shall be recoverable from the bank or business undertaking, or the owner thereof in the case of an unincorporated body.

(2) Where any business undertaking is carried on in a firm name the penalty prescribed by this section shall also be deemed to be due from the firm and may be recovered in an action against the firm in the firm name.

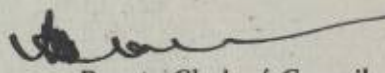
(3) In any proceedings for the recovery of the penalty prescribed by this section, the onus of proving that he has not rendered himself liable to the penalty shall be on the person, company or firm from whom it is sought to recover it.”.

Repeal and
replacement of
section 25.

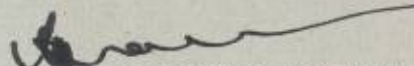
Amendment of
section 29.

7. Section 29 of the principal Ordinance is amended in subsection (1) by deleting "legal personal representative" and substituting the following—
"executor".

Passed by the Hong Kong Legislative Council this 11th day of March, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

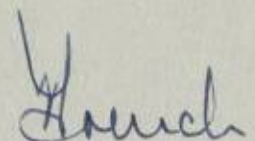

Deputy Clerk of Councils.

HONG KONG

No. 30 OF 1970.



I assent.



Governor.

12th March, 1970.

An Ordinance to amend further the Sedition Ordinance.

[13th March, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Sedition (Amendment) Ordinance 1970.

Short title.

2. Section 3 of the principal Ordinance is amended in subsection (1)—

Amendment of
section 3.
(Cap. 217.)

(a) by deleting the comma at the end of paragraph (e) and substituting the following—

“; or”;

(b) by adding after paragraph (e) the following new paragraphs—

“(f) to incite persons to violence; or

(g) to counsel disobedience to law or to any lawful order.”.

Amendment of
section 4.

3. Section 4 of the principal Ordinance is amended in paragraph (c) of subsection (1) by inserting, after "distributes", the following—

" , displays".

Addition of
new section 8.

4. The principal Ordinance is amended by adding, after section 7, the following new section—

"Power to
remove
seditious
publica-
tions.

8. (1) Any police officer or public officer may—

- (a) enter any premises or place;
- (b) stop and board any vehicle, tramcar, train or vessel,

and remove therefrom or obliterate any seditious publication.

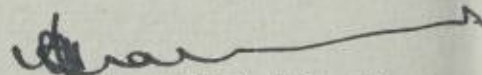
(2) Any police officer or public officer may—

- (a) break open any outer or inner door of any premises or place which he is empowered by this section to enter;
- (b) remove by force any person or thing obstructing any removal or obliteration which he is empowered by this section to make;
- (c) detain any vehicle, tramcar, train or vessel until any seditious publication has been removed or obliterated therefrom;
- (d) remove any person from any vehicle, tramcar, train or vessel while any seditious publication is removed or obliterated.

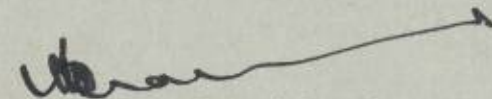
(3) Notwithstanding anything contained in paragraph (a) of subsection (1), the powers conferred thereby shall, if the seditious publication is not visible from a public place, only be exercised—

- (a) with the prior permission of the occupier of the premises or place; or
- (b) under and in accordance with a warrant issued by a magistrate for such purpose."

Passed by the Hong Kong Legislative Council this 11th day of March, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Deputy Clerk of Councils.

HONG KONG

No. 31 OF 1970.



I assent.

French.

Governor.

12th March, 1970.

An Ordinance to amend the Public Order Ordinance and to make consequential amendments to the City Hall Ordinance.

[13th March, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Public Order (Amendment) Ordinance 1970. Short title.

2. Section 2 of the principal Ordinance is amended by deleting the definition of "meeting" and substituting the following— Amendment of section 2.
(Cap. 245.)

"meeting" means—

- (a) any gathering or assembly of persons convened or organized for any purpose; and
- (b) any gathering or assembly of persons, whether or not previously convened or organized, at which any person assumes or attempts to assume control or leadership thereof,

but does not include any gathering or assembly of persons convened or organized exclusively—

- (i) for the purposes of any public body; or
- (ii) for the purpose of carrying out any duty or exercising any power imposed or conferred by any Ordinance;”.

Amendment of
section 3.

3. Section 3 of the principal Ordinance is amended by deleting subsections (1) and (2) and substituting the following—

“(1) Any police officer of or above the rank of inspector may—

- (a) prohibit the display at a public gathering of any flag, banner or other emblem;
- (b) prohibit the owner, tenant, occupier or person in charge of any premises or place, and the owner or person in charge of any vehicle, tramcar, train or vessel from permitting the display of any flag, banner or other emblem on or at the premises, place, vehicle, tramcar, train or vessel,

if such police officer reasonably believes that the display of any flag, banner or emblem is likely to cause or lead to a breach of the peace.

(2) Where a prohibition is issued under subsection (1), any police officer may seize and detain any flag, banner or emblem, and may if reasonably necessary—

- (a) enter any premises or place; and
- (b) stop and board any vehicle, tramcar, train or vessel,

using such force as may be necessary for these purposes.”.

Amendment of
section 7.

4. Section 7 of the principal Ordinance is amended—

- (a) in subsection (2), by inserting after “procession” in the second place where it occurs the following—

“(or twenty-four hours before a public procession solely for the purposes of a funeral in the case of a procession at which the body is present)”;

- (b) in subsection (4), by inserting after “may” the following—

“, except in the case of a public procession solely for the purposes of a funeral.”;

- (c) in subsection (5)—

- (i) by deleting “or” at the end of paragraph (b);

- (ii) by deleting the full stop at the end of paragraph (c) and substituting a semicolon; and

- (iii) by inserting thereafter the following new paragraphs—

“(d) any public meeting held exclusively for social or business purposes in any restaurant licensed under the Public Health and Urban Services Ordinance; or

(e) any public meeting solely for the purpose of a funeral.”.

(Cap. 132.)

5. Section 9 of the principal Ordinance is amended—

Amendment of
section 9.

- (a) by inserting after “to the final dispersal thereof” the following—

“, unless he is prevented from being so present by reason of illness or other unavoidable cause”;

- (b) by deleting “and the period of one hour immediately following the final dispersal thereof”.

6. Section 11 of the principal Ordinance is amended in subsection (2) by deleting “if the same is causing or is in his opinion” and substituting the following—

Amendment of
section 11.

“if he reasonably believes that the same is”.

7. Section 12 of the principal Ordinance is amended—

Amendment of
section 12.

- (a) in subsection (2), by deleting paragraph (a) and substituting the following—

“(a) any public meeting or public procession for which a licence is required under section 7 takes place without such a licence”;

- (b) in subsection (3), by inserting in paragraph (a) after “who” the following—

“, without lawful authority or reasonable excuse.”.

8. Section 13 of the principal Ordinance is amended in subsection (2) by inserting, after “uses”, the following—

Amendment of
section 13.

“, or distributes or displays any writing containing.”.

9. Section 14 of the principal Ordinance is amended in subsection (1) by deleting “otherwise than in pursuance of lawful authority” and substituting the following—

Amendment of
section 14.

“without lawful authority or reasonable excuse”.

Amendment of
section 15.

10. Section 15 of the principal Ordinance is amended in subsection (3) by inserting after "Any person who" the following—
"after notice of a prohibition under subsection (1) has been given,".

Amendment of
section 18.

11. Section 18 of the principal Ordinance is amended—
- (a) in subsection (1)—
 - (i) by inserting, before "manner", the following—
"disorderly, intimidating, insulting or provocative";
 - (ii) by deleting "such assembly" and substituting the following—
"such conduct";
 - (b) in subsection (3), by deleting "unlawful assembly" in the first place where it occurs and substituting the following—
"assembly which is an unlawful assembly by virtue of subsection (1)".

Amendment of
section 19.

12. Section 19 of the principal Ordinance is amended in subsection (1) by deleting "unlawful assembly" and substituting the following—
"assembly which is an unlawful assembly by virtue of subsection (1) of section 18".

Amendment of
section 23.

13. Section 23 of the principal Ordinance is amended by deleting subsection (2) and substituting the following—
"(2) Nothing in this section shall make it an offence for a person to enter upon his own premises if they are in his possession or in the custody of his servant or agent."

Amendment of
section 25.

14. Section 25 of the principal Ordinance is amended by deleting "a fight" and substituting the following—
"an unlawful fight".

Amendment of
section 26.

15. Section 26 of the principal Ordinance is amended by deleting "or is likely" and substituting the following—
"or which he knows or ought to know is likely".

Amendment of
Part V.

16. Part V of the principal Ordinance is amended in the heading by deleting "AND INTIMIDATING ASSEMBLIES".

Repeal and
replacement of
section 27.

17. Section 27 of the principal Ordinance is repealed and replaced by the following—
"Intimidation. 27. (1) Any person who, without lawful authority or reasonable excuse, does or says anything, or

behaves in a manner, or utters or distributes any publication, which is likely to make some other person apprehensive as to what may happen—

- (a) to such other person or to any member of the family or any dependant of such other person;
- (b) to any property, business, undertaking or interest of such other person or of any member of the family or any dependant of such other person;
- (c) to any building or place occupied by such other person or by any member of the family or any dependant of such other person; or
- (d) to any business or undertaking in which such other person or any member of the family or any dependant of such other person is employed,

shall be guilty of an offence.

- (2) Any person guilty of an offence under this section shall be liable—
 - (a) on conviction on indictment, to imprisonment for five years; and
 - (b) on summary conviction, to a fine of five thousand dollars and to imprisonment for two years."

18. Section 28 of the principal Ordinance is repealed.

Repeal of
section 28.

19. Section 30 of the principal Ordinance is repealed.

Repeal of
section 30.

20. Section 31 of the principal Ordinance is amended in subsection (2) by inserting, after paragraph (b), the following new paragraph—

Amendment of
section 31.

- "(c) Upon cancellation of a permit under paragraph (b), the Commissioner of Police shall serve on the permit holder, either personally or by registered post, notice in writing of the cancellation, and upon receipt of the notice the permit holder shall forthwith surrender his permit."

21. Section 32 of the principal Ordinance is amended in subsection (1) by inserting, after "without lawful authority", the following—

Amendment of
section 32.

"or reasonable excuse".

Repeal and
replacement of
section 36.

22. Section 36 of the principal Ordinance is repealed and replaced by the following—

"Closed
areas.

36. (1) The Governor may by order declare any area or place to be a closed area.

(2) An order made under subsection (1) shall come into force at such time as may be specified therein or, if no time is so specified, immediately upon the making thereof by the Governor and shall be published in the *Gazette* as soon as may be reasonably practicable after the making thereof.

(3) The Commissioner of Police and such other person as may be authorized in any order made under subsection (1) may cause a closed area to be closed by the erection of barriers or otherwise."

Amendment of
section 37.

23. Section 37 of the principal Ordinance is amended—

(a) by deleting subsection (2) and substituting the following—

"(2) In the case of any closed area, other than a closed area referred to in subsection (1), a permit may be issued—

(a) by the Commissioner of Police; or

(b) by such authority or person as may be specified for that purpose by the Governor in any order made under section 36,

to any person allowing that person to enter or leave the closed area.";

(b) by inserting, after subsection (3), the following new subsection—

"(4) Upon cancellation of a permit under this section, the person cancelling the permit shall serve on the permit holder, either personally or by registered post, notice in writing of the cancellation, and upon receipt of the notice the permit holder shall forthwith surrender his permit."

Amendment of
section 39.

24. Section 39 of the principal Ordinance is amended by—

(a) deleting subsection (1) and substituting the following—

"(1) Without prejudice to the provisions of this Ordinance or of any other law, any member of Her Majesty's forces, or any guard, may arrest—

(a) any person whom he finds in a closed area if he has reason to suspect that such

person has committed or is about to commit any offence;

(b) any person whom he finds committing any offence in a closed area;

(c) any person whom he finds attempting to enter a closed area, if he has reason to suspect that such person has not been issued with a permit under section 37,

and may use such force as may be necessary for the purpose.";

(b) inserting, after subsection (2), the following new subsections—

"(3) Any police officer of or above the rank of inspector, with the assistance of such other police officers as may be necessary, may—

(a) detain any person who is in a closed area without permission or authority for such time as may be necessary to ensure his orderly removal therefrom; and

(b) remove therefrom any person who is in a closed area without permission or authority.

(4) In this section, "guard" means—

(a) any member of the Essential Services Corps;

(b) any person appointed to guard a closed area by the Governor or the Commander British Forces; and

(c) any person appointed to guard a closed area by such authority or person as may be specified for that purpose by the Governor in any order made under section 36."

25. Section 40 of the principal Ordinance is amended—

(a) by deleting "any magistrate" and substituting the following—

"the Commissioner of Police";

(b) by inserting after "to appoint" the following—
"in writing".

Amendment of
section 40.

Amendment of
section 44.

26. Section 44 of the principal Ordinance is amended—

- (a) by deleting subsection (1) and substituting the following—

“(1) When a person is required to show cause under section 43, the magistrate shall set forth in writing the order proposed to be made (hereinafter in subsections (2), (4), (6) and (7) referred to as the proposed order) in which shall be stated—

- (a) the substance of the information received;
- (b) the amount of the bond to be executed;
- (c) the date of commencement and expiry of bond;
- (d) the number, character and class of sureties, if any, required.”;

- (b) in subsection (2), by deleting “the order” and substituting the following—

“the proposed order”;

- (c) in subsection (4), by deleting “the order” and substituting the following—

“the proposed order”;

- (d) in subsection (5), by deleting “in pursuance of an order as aforesaid” and substituting the following—

“in accordance with subsection (3)”;

- (e) in subsection (6), by deleting “the order” and substituting the following—

“the proposed order”;

- (f) in subsection (7), by deleting “the order” and substituting the following—

“the proposed order”;

- (g) in subsection (8), by inserting after “A bond executed” the following—

“under this section”;

- (h) in subsection (12), by deleting “accordingly” and substituting the following—

“in accordance with subsection (10)”.

27. Section 49 of the principal Ordinance is repealed and replaced by the following—

“Power to
require
identifica-
tion.

49. A member of Her Majesty’s forces acting in the course of his duty and a police officer, for the purpose of preventing or detecting any offence, may

Repeal and
replacement of
section 49.

require any person to give his correct name and address and produce any paper in his possession by which he can be identified, and any person who fails to comply with any such requirement shall be guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.”.

28. Section 50 of the principal Ordinance is amended in subsection (4) by deleting “and subsection (1) of section 49”.

Amendment of
section 50.

29. The principal Ordinance is amended by adding, after section 50, the following new section—

Addition of
new section
50A.

“Obstruc-
tion.

50A. Any person who obstructs—

- (a) any member of Her Majesty’s forces;
- (b) any member of the Royal Hong Kong Defence Force; or
- (c) any other person,

exercising any powers or performing any duties conferred or imposed on him by this Ordinance or by any orders, directions, requirements or notices made thereunder shall be guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.”.

30. Section 2 of the City Hall Ordinance is amended by deleting the definition of “public meeting” and substituting the following—

Amendment of
Cap. 328.

““public meeting” means—

- (a) any gathering or assembly of persons convened or organized for any purpose; and
- (b) any gathering or assembly of persons, whether or not previously convened or organized, at which any person assumes or attempts to assume control or leadership thereof,

but does not include any gathering or assembly of persons convened or organized exclusively—

- (i) for the purposes of any public body; or
- (ii) for the purposes of carrying out any duty or exercising any power imposed or conferred by any Ordinance.”.

Passed by the Hong Kong Legislative Council this 11th day
of March, 1970.


Deputy Clerk of Councils.

*This printed impression has been carefully compared
by me with the bill, and is found by me to be a true and
correctly printed copy of the said bill.*


Deputy Clerk of Councils.

HONG KONG

No. 32 OF 1970.



I assent.

Hutch.

Governor.

12th March, 1970.

An Ordinance to consolidate and amend the law relating to wills.

[13th March, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I.

PRELIMINARY.

1. This Ordinance may be cited as the Wills Ordinance 1970. Short title.
2. In this Ordinance, unless the context otherwise requires— Interpretation.
 - "disposition" means any devise, bequest, gift or appointment, or the giving of any estate or interest;
 - "internal law" in relation to any territory or state means the law which would apply in a case where no operation of the law in force in any other territory or state arose; 1963 c. 44, s. 6(1).

1925 c. 23, s. 53.

"personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person;

"property" includes all property both real and personal;

1963 c. 44, s. 6(1).

"state" means a territory or group of territories having its own law of nationality;

1963 c. 44, s. 6(1).

"will" includes a codicil and any other testamentary instrument or act, and "testator" shall be construed accordingly.

PART II.

WILLS.

All property may be disposed of by will.
[cf. 1837 c. 26, s. 3.]

No will of a person under age valid.
1837 c. 26, s. 7.

Signing and witnessing will.
[cf. 1837 c. 26, s. 9 and 1852 c. 24, s. 1.]

3. A person may by his will, executed in accordance with this Ordinance, dispose of all property which he is beneficially entitled to at the time of his death and which on his death devolves upon his personal representatives.

4. Subject to section 6, no will made by any person under the age of twenty-one years shall be valid.

5. (1) Subject to subsection (2), no will shall be valid unless it is in writing and executed in accordance with the following rules:

Rule 1. It shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction.

Rule 2. Such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and each witness shall attest by his signature the signature of the testator, or of the person signing for him, in the presence of the testator, but no form of attestation shall be necessary.

Rule 3. It is sufficient if the signature of the testator, or of the person signing for him, is so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

Rule 4. Without prejudice to the generality of Rule 1, a will shall not be affected if—

- (a) the signature does not follow or is not immediately after the foot or end of the will; or
- (b) a blank space intervenes between the concluding word of the will and the signature; or
- (c) the signature—
 - (i) is placed among the words of the testimonium clause or of the clause of attestation; or
 - (ii) follows or is after or under the clause of attestation, either with or without a blank space intervening; or
 - (iii) follows or is after, or under, or beside the names or one of the names of the attesting witnesses; or
- (d) the signature is on a side or page or other portion of the papers containing the will on which no clause or paragraph or disposing part of the will is written above the signature; or
- (e) there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature.

Rule 5. A signature shall not be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature is made.

(2) Any will of a Chinese testator written wholly or substantially in Chinese and signed by the testator shall be valid and duly executed although not executed in accordance with the rules set out in subsection (1).

6. (1) Any member of Her Majesty's Forces being in actual naval military or air force service, and any mariner or seaman being at sea, may—

- (a) dispose of any of his property;
- (b) exercise any power of appointment; or
- (c) appoint a person as guardian of his infant children by will,

without complying with any of the rules specified in subsection (1) of section 5.

Privileged wills.
[cf. 1837 c. 26, s. 11, and 1918 c. 58.]

(2) For the avoidance of doubt it is hereby declared that a person referred to in this section is authorized to dispose of his property by will though he is under the age of twenty-one years.

7. (1) No appointment made by will, in exercise of any power, shall be valid unless it is executed in accordance with section 5.

(2) Every will so executed shall, so far as concerns its execution and attestation, be a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity.

8. Every will executed in accordance with section 5 shall be valid without any other publication thereof.

9. If a person who attests the execution of a will is, at the time of execution or at any time afterwards, incompetent to be admitted a witness to prove the execution, the will shall not on that account be invalid.

10. (1) If a person attests the execution of a will, and any disposition of or affecting any property (other than charges and directions for the payment of any debt) is given or made by the will to that person or his spouse, that disposition shall, so far only as concerns the person attesting the execution of the will, or the spouse of that person, or any person claiming under that person or spouse, be void.

(2) The person so attesting shall be admitted as a witness to prove the execution of the will, or to prove the validity or invalidity thereof, notwithstanding such disposition.

(3) For the purposes of subsection (1) of this section the attestation of a will by a person to whom or to whose spouse there is given or made any such disposition as is described in that subsection shall be disregarded if the will is duly executed without his attestation and without that of any other such person.

11. If by will any property is charged with any debt and a creditor, or the spouse of a creditor, whose debt is so charged, attests the execution of the will, the creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of the will, or to prove the validity or invalidity thereof.

Appointment by will.
[cf. 1837 c. 26, s. 10.]

Publication of will not necessary.
1837 c. 26, s. 13.

Will not void on account of incompetency of witness.
1837 c. 26, s. 14.

Avoidance of gifts to attesting witnesses and their spouses.
[cf. 1837 c. 26, s. 15.]

1968 c. 28, s. 1.

Creditor attesting will charging estate with debts admissible as witness.
1837 c. 26, s. 16.

12. A person shall not, by reason only of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

13. (1) A will shall be revoked by the subsequent marriage of the testator except a will expressed to be made in contemplation of that marriage.

(2) This section shall not apply to a will made in exercise of a power of appointment when the property thereby appointed would not, in default of the appointment, pass to the personal representative of the testator.

14. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

15. No will or any part thereof shall be revoked otherwise than—

- (a) by marriage as provided by section 13; or
- (b) by another will executed in accordance with section 5; or
- (c) by a written revocation executed in the manner in which the will was executed; or
- (d) by the burning, tearing or otherwise destroying of it by the testator, or by some person in his presence and by his direction, with the intention of revoking it.

16. (1) No obliteration, interlineation, or other alteration made in a will after execution shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration is executed in the manner in which the will was executed.

(2) The will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator, and the signature of each witness if any is required, is made—

- (a) in the margin or on some other part of the will opposite or near to such alteration; or
- (b) at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

Executor admissible as witness.
[cf. 1837 c. 26, s. 17.]

Revocation of will by marriage.
[cf. 1837 c. 26, s. 18, and 1925 c. 20 s. 177.]

No revocation by presumption from altered circumstances.
1837 c. 26, s. 19.

Modes of revocation of will.
[cf. 1837 c. 26, s. 20.]

Alterations in will after execution.
1837 c. 26, s. 21.

Revoked will not revived otherwise than by re-execution or codicil.
1837 c. 26, s. 22.

17. (1) No will or any part thereof, which is in any manner revoked, shall be revived otherwise than by the re-execution thereof or by a codicil executed in accordance with section 5 and showing an intention to revive it.

(2) When any will which is partly revoked, and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

Subsequent conveyance or other act not to prevent operation of will.
1837 c. 26, s. 23.

18. No conveyance or other act made or done subsequently to the execution of a will of or relating to any property comprised therein, except an act by which the will is revoked in accordance with section 15, shall prevent the operation of the will with respect to any estate or interest in such property which the testator has power to dispose of by will at the time of his death.

Will to speak from death of testator.
1837 c. 26, s. 24.

19. Every will shall, with reference to the property comprised in it, be construed to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears from the will.

General disposition of land to include leasehold.
[cf. 1837 c. 26, s. 26.]

20. A general disposition of land shall be construed to include leasehold interests, unless a contrary intention appears from the will.

General disposition of property to include property over which testator has a general power of appointment.
[cf. 1837 c. 26, s. 27.]

21. A general disposition of property shall be construed to include any property which the testator may have power to appoint in any manner he may think proper and shall operate as an execution of such power, unless a contrary intention appears from the will.

Meaning of "die without issue" etc.
[cf. 1837 c. 26, s. 29.]

22. In a disposition of property, the words "die without issue", or "die without leaving issue", or "have no issue", or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in his lifetime or at the time of his death, and not an indefinite failure of issue unless a contrary intention appears from the will.

23. Where a person, being a child or other issue of the testator to whom any property is given for any estate or interest not determinable at or before the death of that person, dies in the lifetime of the testator leaving issue, and any such issue of that person is living at the time of the death of the testator, the gift shall not lapse but shall take effect as if the death of that person had happened immediately after the death of the testator, unless a contrary intention appears from the will.

Gifts to children or other issue who leave issue living at the testator's death.
[cf. 1837 c. 26, s. 33.]

PART III.

CONFLICT OF LAWS RELATING TO TESTAMENTARY DISPOSITIONS.

24. A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national.

General rule as to formal validity.
1963 c. 44, s. 1.

25. (1) Without prejudice to section 24, the following shall be treated as properly executed—

Additional rules.
1963 c. 44, s. 2.

- (a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the territory with which, having regard to its registration (if any) and other relevant circumstances the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated;
- (c) a will so far as it revokes a will which under this Part would be treated as properly executed or revokes a provision which under this Part would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;
- (d) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

Certain requirements to be treated as formal.
1963 c. 44, s. 3.

26. Where (whether in pursuance of this Part or not) a law in force outside Hong Kong falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Construction of wills.
1963 c. 44, s. 4.

27. The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

Application where two or more systems of law in force in territory or state.
1963 c. 44, s. 6(2).

28. Where under this Part the internal law in force in any territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows—

- (a) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or
- (b) if there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time, and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case.

Determination of conformity of execution of will to particular law.
1963 c. 44, s. 6(3).

29. In determining for the purposes of this Part whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

PART IV.

MISCELLANEOUS.

Application.

30. (1) This Ordinance shall not apply to a will of a testator who died before the commencement of this Ordinance and shall apply to a will of a testator who dies after its commencement whether the will was executed before or after its commencement,

but so that a will which was executed before its commencement and which, but for the provisions of this Ordinance, would be valid shall not thereby be invalidated.

(2) The validity of a will which was valid under section 3 of the Wills Ordinance repealed by this Ordinance shall not be affected by any thing in Part III, except insofar as the will may be revoked or altered by any subsequent will valid under this Ordinance.

(Cap. 30.)

(3) Without prejudice to the general application of section 23 of the Interpretation and General Clauses Ordinance, the enactments referred to in section 31 shall continue to apply to the will of any person dying before the commencement of this Ordinance, as if this Ordinance had not been passed.

(Cap. 1.)

31. (1) The Wills Ordinance is repealed.

Repeals and amendments.

(2) The Wills (Formal Validity) Ordinance is repealed.

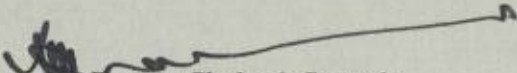
(Cap. 30.)

(3) The Schedule to the Application of English Law Ordinance is amended by deleting item 66.

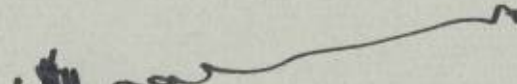
(Cap. 350.)

(Cap. 88.)

Passed by the Hong Kong Legislative Council this 11th day of March, 1970.


Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Deputy Clerk of Councils.