



EUGENE FUNG SC 馮庭碩資深大律師

Call: 1997 (HK); 1997 (England and Wales)
Inner Bar: 2012

PROFILE

Eugene Fung has a litigation and advisory practice, principally in the areas of trusts, wills, probate, tax, land law and professional negligence. He also undertakes general commercial litigation, with particular emphasis on disputes involving breach of fiduciary duty, restitution, agency and civil fraud. For trusts and probate work, he is regularly involved in applications for court directions on behalf of trustees, executors, administrators and committees of the estate. He also has considerable experience in tax litigation acting for the Inland Revenue Department and taxpayers on matters involving profits tax, salaries tax, stamp duty and (the now-abolished) estate duty.

CONTACT

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PRACTICE AREAS

- Equity / Trust
- Probate / Succession
- Tax / Revenue
- Commercial
- Civil Fraud / Asset Recovery
- Restitution / Unjust Enrichment
- Property & Conveyancing
- Banking / Finance
- Mental Health
- Charity
- Injunction / Contempt
- Professional Liability
- Company
- Insolvency

APPOINTMENTS AND PUBLIC OFFICE

- Recorder of the Court of First Instance of the High Court (2018, 2019, 2020, 2021)
- Deputy High Court Judge (2014, 2015 & 2016)

- Member of the Air Transport Licensing Authority (from 2020)
- Non-executive director of the Financial Reporting Council (from 2019)
- Chairman of the Process Review Panel in relation to the Regulation of Mandatory Provident Fund Intermediaries (from 2019)
- Chairman of the Process Review Panel for the Insurance Authority (from 2019)
- Chairman of the Banking Review Tribunal (from 2016)
- Member of Special Committee of Overseas Admissions of the Hong Kong Bar Association (from 2012)
- Member of the Examining Panels under the Higher Rights of Audience Rules (Cap 159) (from 2012)
- Member of the Special Committee on Discipline of the Hong Kong Bar Association (from 2012)
- Member of the Panel on Property Law, Conveyancing and Equity for Barristers Qualification Examination of the Hong Kong Bar Association (from 2005)
- Deputy Chairman of the Administrative Appeals Board (2014 to 2020)
- Member of the Law Reform Commission of Hong Kong (2012 to 2018)
- Member of the Payment Systems and Stored Value Facilities Appeals Tribunal (2012 to 2019)

EDUCATION

1994	MA, University of Cambridge
1995	LLM, University of Cambridge

PUBLICATIONS AND ARTICLES

- Reviewer to the Hong Kong *Civil Procedure 2012, 2013 and 2014* (Sweet & Maxwell)
- “The Scope of the Rule in *Shephard v Cartwright*” (2006) 122 *Law Quarterly Review* 651
- “Establishing Estoppel after Recognition of Change of Position” (2001) *Restitution Law Review* 52 (with Lusina Ho)
- “Change of Position and Estoppel” (2001) 117 *Law Quarterly Review* 16 (with Lusina Ho)
- Contributing editor to the *Hong Kong Civil Procedure 2001 & 2002* (Sweet & Maxwell)
- “Payment In and Out and the Quistclose Trust” (1998) 28 *Hong Kong Law Journal* 168
- “Spies, Traitors and Fiduciaries” (1998) 19 *The Company Lawyer* 219
- “Does Legal Set-Off Exist in Hong Kong?” (1998) 8 *Amicus Curiae* 31
- “Buy-out Order and Shareholders’ Agreement” (1997) 18 *The Company Lawyer* 59
- “The Legal Implications of Foreign Listings for PRC Enterprises with Particular Reference to Hong Kong” (1996) 17 *The Company Lawyer*, Part I at 40; Part II at 73

FURTHER INFORMATION

Instructed as expert on Hong Kong law:

(1) for a bank on the enforceability of a promissory note governed by Hong Kong law for an action in the High Court of Singapore (subsequently settled)

(2) for a commercial entity on the purpose and effect of the Transfer of Businesses (Protection of Creditors) Ordinance, Cap 49 (accepted by the High Court of Singapore in *Karaha Bodas Co LLC v Pertamina Trading Co Ltd* [2005] 2 SLR 568)

Secretary to Lincoln’s Inn Society of Hong Kong (2004 – present)

Honorary Associate Professor at the University of Hong Kong (LLB Equity & Trusts and LLB Restitution in 2000 to 2007)

Guest lecturer at the University of Hong Kong (LLB Equity & Trusts and LLB Restitution in 1998 to 2000)

SELECTED CASES

EQUITY / TRUST

- *Tao Soh Ngun (aka Lo To Li Kwan) v HSBC International Trustee Ltd* [2019] HKCFI 1268 (CFI) (Whether trustee has failed to comply with the wishes of a de-facto settlor of a discretionary trust and has breached its duties as trustee)
- *Li Shiu To v Cheung Pik Ng et al* [2018] 1 HKLRD 934 (CFI) (Construction of Civil Liability (Contribution) Ordinance in a case involving allegations of dishonest assistance)
- *HSBC Trustee (Hong Kong) Ltd v Alexander Laufer et al* [2017] 2 HKC 17 (CFI) (Whether trustee should pay foreign tax and how such tax should be borne as between the beneficiaries)
- *HSBC Institutional Trust Services (Asia) Ltd v Tin Lik et al* [2012] 1 HKLRD 702 (CA) (Administration of trust - trustee seeking approval of court in exercise of fiduciary duty)
- *Law Shuk Hoi v Law Lok Fung Kenneth et al* [2010] 4 HKLRD 316 (CFI), [2011] 5 HKLRD 23 (CA) (Construction of a letter of wishes - whether trust power or mere power)
- *Luo Xing Juan Angela v Estate of Hui Shui See et al* (2009) 12 HKCFAR 1 (CFA) (Common intention constructive trust - promissory estoppel)
- *Ip Man Shan Henry v Ching Hing Construction Ltd* [2003] 1 HKC 256 (CFI) & (CACV 185 & 186 of 2003, 04.02.05) (CA) (Beneficial ownership - whether land should be held on resulting trust or constructive trust)

PROBATE / SUCCESSION

- *Re WSY* [2021] (judgment pending) (Mental Health – making of a statutory will for a mentally incapacitated person (MIP) and setting up of a discretionary trust for the MIP's son)
- *Stella Maria Da Silva v HSBC Trustee (Hong Kong) Ltd* [2010] 1 HKLRD 340 (CFI) (Wills - entitlement to remainder interest in deceased's estate - whether class intended to close upon acceleration of subsequent interest - construction of will)
- Advising and appearing in court for the administrators *pendente lite* in the Estate of the late Nina Wang, including obtaining a *Mareva* injunction to preserve the assets of the Estate: *Chinachem Charitable Foundation Ltd v Chan Chun Chuen* [2012] 1 HKC 587

TAX / REVENUE

- *China Mobile Hong Kong Co Ltd v CIR* [2020] HKCFI 1649 (CFI) (Profits tax – whether spectrum utilisation fees paid are revenue or capital in nature)
- *Ho Kwok Tai v Collector of Stamp Revenue* [2016] 5 HKLRD 713 (CA) (Stamp duty – partial refund of ad valorem duty – proper construction of s 29DF of the Stamp Duty Ordinance)
- *CIR v Church Body of the Hong Kong Sheng Kung Hui* (2016) 19 HKCFAR 54 (CFA) (Profits tax – intention to trade – whether “enhancement for realisation” principle exists)
- *Turner Entertainment Networks Asia Inc v CIR* [2015] 3 HKLRD 295 (CA) (Profits tax – proper construction of ss 15(1)(a), (b) and (ba) of the Inland Revenue Ordinance)
- *CIR v Nice Cheer Investment Ltd* (2013) 16 HKCFAR 813 (CFA) (Profits tax - proper construction of “profits” in s 14 of the Inland Revenue Ordinance - whether unrealised profits are subject to profits tax)
- *Braitrim (Far East) Ltd v CIR* [2013] 4 HKLRD 329 (CA); (2013) 16 HKCFAR 519 (CFA) (Profits tax - proper construction of s 16G of the Inland Revenue Ordinance - whether statutory definition of “lease” is applicable)
- *CIR v Li & Fung (Trading) Ltd* (HCIA 3/10, 18.04.11) (CFI); [2012] 3 HKLRD 8 (CA) (Profits tax - source of profits)
- *Tungtex Trading Co Ltd v CIR* [2012] 2 HKLRD 456 (CFI) (Profits tax - whether case stated should be remitted back to the Board of Review for amendment)
- *CIR v CG Lighting Ltd* [2010] 3 HKLRD 110 (CFI), [2011] 2 HKLRD 763 (CA) (Profits tax - source of profits - apportionment of tax)
- *CIR v Datatronic Ltd* (HCIA 3 & 4/07 13 06 08) (CFI); [2009] 4 HKLRD 675 (CA) (Profits tax - source of

profits)

- *CIR v Tai Hing Cotton Mill (Development) Ltd* [2006] 2 HKLRD 325 (CFI); [2007] 2 HKLRD 380 (CA); (2007) 10 HKCFAR 704 (CFA) (Profits tax - whether scheme caught by s 61A)
- *Lam Soon Trademark Ltd v CIR* [2005] 4 HKLRD 652 (CA); (2006) 9 HKCFAR 391 (CFA) (Profits tax - whether the issue of additional assessment was valid)
- *Arrowtown Assets Ltd v Collector of Stamps* (2003) 6 HKCFAR 517 (CFA) (Stamp duty - tax avoidance - application of s 45 of Stamp Duty Ordinance and the *Ramsay* principle)
- *Shiu Wing Ltd v Commissioner of Estate Duty* [1999] 1 HKLRD 367 (CFI); [1999] 3 HKLRD 162 (CA); (2000) 3 HKCFAR 215 (CFA) (Estate duty - tax avoidance - application of *Ramsay* principle)

COMMERCIAL

- *Tin Lik v Deutsche Bank AG et al* (HCCL 17/11, 15.02.16) (CFI); (CACV 145/2016, 23.06.2017) (CA) (Breach of contract - whether a commercial trustee is liable to beneficiary for money retained by the trust - set-off)
- *De Krassel v Chu et al* [2010] 2 HKLRD 937 (CFI) (Conspiracy to defraud by unlawful means - conspiracy to injure - unlawful interference - inducement of breach of contract)
- *Esquire (Electronics) Ltd v HSBC* [2005] 3 HKLRD 358 (CFI); [2007] 3 HKLRD 439 (CA) (Banking - undue influence - economic duress - breach of fiduciary duty)

CIVIL FRAUD / ASSET RECOVERY

- *Pacific Electric Wire & Cable Co Ltd v Hu Hung Chiu et al* (CACV 90-96/2013, 17.09.13) (CA); (2014) 17 HKCFAR 710 (CFA) (Breach of fiduciary duties – whether findings of fact should be overturned on appeal)
- *Akai Holdings Ltd (in liq) v Kasikornbank PLC* (HCCL 59/04, 26.05.08) (CFI); [2010] 3 HKC 153 (CA); (2010) 13 HKCFAR 479 (CFA) (Authority of director - knowing receipt - dishonest assistance)

PROPERTY & CONVEYANCING

- *Wui Fung Lee Investment Co Ltd v The Incorporated Owners of Hong Kong Mansion* [2021] 1 HKLRD 408 (CA) (Land law – whether a space in a building is part of the common areas)
- *Uni-creation Investment Ltd v Secretary for Justice* [2017] 2 HKLRD 139 (Land law – construction of an offensive trade clause in a Government Lease)
- *United Bright Ltd v Secretary for Justice* [2015] 2 HKLRD 633 (Land law – construction of Conditions of Sale – admissibility of extrinsic evidence in private correspondence or minutes in interpretation of document registered in Land Registry)

PROFESSIONAL LIABILITY

- *Bright Gold Ltd v Mega Well Development Ltd* [2019] 5 HKC 164 (CFI) (Whether solicitors were negligent in representing its clients in a conveyancing transaction in relation to the size of the property)
- Also representing/advising a number of solicitors to defend professional negligence claims involving mortgage fraud