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DCC COMMERCIAL DIGEST

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Chris is developing a broad civil and criminal practice. He is fluent in English, Cantonese, and Mandarin. He accepts instructions in all areas of work.

Prior to joining Chambers in 2024, Chris served as a Judicial Assistant at the Hong Kong Court of Final Appeal, where he assisted the judges with substantive appeals, leave applications, and other works of the Court generally.

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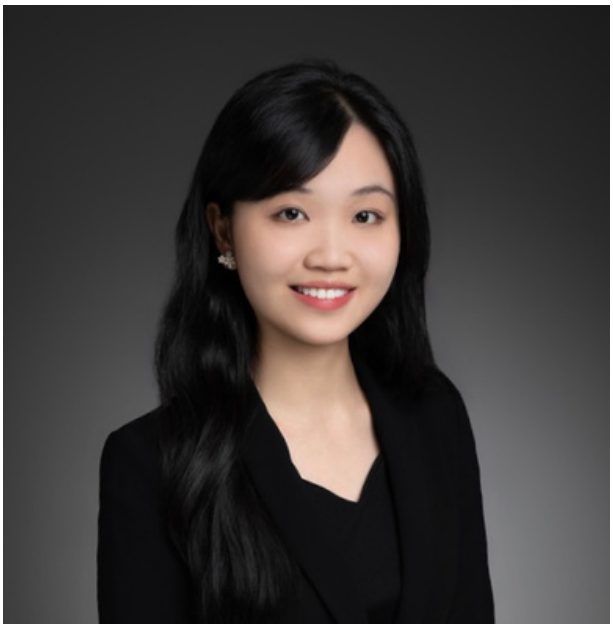

Eunice is developing a broad mixed practice, spanning over land, commercial, arbitration and public law matters, and accepts instructions in all areas of Chambers' work.

During her studies at the University of Hong Kong, she served as part of the Law Association, representing law students of her cohort. Prior to commencing pupillage, Eunice served as a Marshal to the Honourable Madam Justice Carlye Chu, Vice-President of the Court of Appeal.

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Case 1

Intermediary Fees Bite Back – s.27 Set-Off Can Turn a Loan Extortionate Under the MLO

Premier Capital Management Limited v So Wang Fung & Ors [2026] HKCA 601

Date of Judgment: 1 April 2026
Coram: Hon Kwan VP, Cheung JA and Barma JA

The Court of Appeal allowed the borrowers' appeal, holding that while a retained sum of HK$180,000 used to pay eight months' contractual interest could not be added on top of the interest without impermissible double counting, intermediary fees of HK$333,417 paid in collusion with the lender had to be set off under section 27(4) of the Money Lenders' Ordinance, Cap 163, and treated as not "actually lent", so that the true principal for calculating the Effective Rate of Interest was only HK$371,583 and the interest was HK$285,000, yielding an effective rate of 76.69% per annum and rendering the loan unenforceable under section 24.

Background

The Plaintiff, a registered moneylender, claimed against the Defendants on a 2014 loan agreement for a contractual principal of HK$900,000 with interest at 30% p.a., repayable by 12 monthly instalments. On drawdown, HK$15,000 in "fees" and HK$180,000 (for the first 8 interest instalments) were withheld by the lender's solicitors, and HK$333,417 was paid as "administrative and intermediary fees" to the intermediary, leaving HK$371,583 which was actually advanced to the Defendants.

The trial judge found collusion between the lender's manager and the intermediary within the meaning of section 27 of the Money Lenders' Ordinance ("MLO"), treated the intermediary fees paid in contravention of section 27(3) and set them off under section 27(4), but nonetheless calculated ERI using the higher principal figure of HK$705,000. The ERI was 40.43% and the loan was therefore enforceable.

The Defendants advanced two grounds of appeal:

1. The amount of HK$180,000 retained by the Plaintiff's solicitors should be regarded as "deemed interest" under section 2(1) of the MLO and added to the contractual interest for calculating the ERI (**Ground 1**);

2. The amount of HK$333,417 charged as intermediary fees should be deducted from the principal for calculating the ERI (**Ground 2**).

Decision

Appeal allowed. In relation to the Grounds of Appeal, Kwan VP for the Court of Appeal held as follows: -

1. Ground 1 was rejected. The amount retained by the Plaintiff's solicitors should not be regarded as interest on top of the contractual interest as this would amount to double counting. The Court of Appeal distinguished *Skyline Credit v Leung Hing Chung* [2022] 4 HKLRD 561 and *Gain Wealth Global Credit & Investment Ltd v Chan Suk Fong* [2020] 4 HKLRD 831 as cases where upfront or defrauded sums never went to the borrower and never discharged any obligation, and endorsed *Field Finance Ltd v Cheung Mo Ching* [2023] HKCFI 3311 in treating retained sums genuinely used to pay interest instalments as not forming an additional layer of interest.

2. Ground 2 was allowed. The Court of Appeal held that construing section 27(4) of the MLO, where an amount is set off as having been received in contravention of section 27(3), "the amount actually lent" is "deemed to be reduced accordingly" and that deemed reduced figure must be used as principal for ERI calculation. On the facts, the intermediary fee engaged sections 27(3)-(4) and was not "actually lent" or "shown to have been lent" under sections 2(1) and (3), because the lender knew and implicitly authorised that a substantial portion of the cash cheque would be diverted to pay the intermediary and never reached the borrowers. Using HK$371,583 as principal and HK$285,000 as interest, the ERI was 76.69% per annum, rendering the loan irrefutably unenforceable.

Case 2

Mareva and Freezing Injunctions in aid of enforcement are not "enforcement" of Judgments — Scope of Undertaking and Anti-suit Injunctions

Beijing Songxianghu Architectural Decoration Engineering Co., Ltd v Kitty Kam also known as Wang Yu Zhi [2026] HKCFI 2449

Date of Decision: 1 April 2026
Coram: DHCJ Grace Chow

The Court held that both the Plaintiff's English freezing injunction and Singapore discovery proceedings were in breach of the Plaintiff's standard Mareva undertaking not to sue the defendant abroad without leave, with subsequent leave granted to (1) "enforce" the judgment in the UK and (2) commence third party discovery proceedings in Singapore. The court held that the English freezing

injunction brought under the English equivalent of section 21M of the High Court Ordinance in aid of enforcement is a freestanding interim measure and not itself "enforcement" of the judgment, so does not fall within the court's leave to "enforce" a Hong Kong judgment overseas. Further, the Singapore discovery proceedings in fact joined the Defendant as a third party and exceeded the leave to take out third-party discovery only. Thus, the foreign proceedings were oppressive and the Defendant was entitled to anti-suit relief.

Background

The Plaintiff obtained judgment and a domestic post-judgment *Mareva* injunction against the Defendant.

In the *Mareva* injunction, the Plaintiff gave an undertaking as per the standard form in Practice Direction 11.2, that "*the plaintiff will not without the leave of the court begin proceedings against the defendant in any other jurisdiction or use information obtained as a result of an order of the court in this jurisdiction for the purpose of civil or criminal proceedings in any other jurisdiction*".

The said undertaking was subsequently amended twice: (1) to allow the Plaintiff to commence third-party discovery proceedings in Singapore, and (2) to release the Plaintiff to the extent of enforcing the judgment against the Defendant.

The Plaintiff then applied for a freezing injunction in England ("the English Injunction Application"), and discovery proceedings in Singapore ("the Singapore Discovery Application"). The Defendant sought an order to restrain the Plaintiff from pursuing the two aforesaid proceedings, and a declaration that the English Injunction Application was in breach of the Plaintiff's undertaking.

Decision

1. Applying *Agritrade Resources Limited & Anor v Ashok Kumar Sahoo* [2021] HKCFI 685 and *Eastgate Partners Limited v Suthi Tejavibulya & Ors* (unreported, CACV 289/2005, 29 March 2006), the Court emphasised that *Mareva* undertakings must be construed in light of their origin and purpose: to prevent abuse of the exceptional freezing jurisdiction, to avoid harassment by multiple foreign proceedings on the same subject matter, and to enable Hong Kong courts to police circumstances in which the applicant sought to use the relief obtained as a means to obtain further or greater or oppressive relief against the defendant abroad.

2. In that context, the undertaking prohibited the commencement of any foreign proceedings against the defendant on the same subject matter without leave from the Hong Kong courts.

3. In relation to the English Injunction Application, it was not authorised by the amendment giving leave to the Plaintiff to "enforce" the Hong Kong Judgment — the English Injunction Application

was sought under the English equivalent of section 21M of the High Court Ordinance, Cap 4, and such an injunction is a freestanding interim measure in aid of enforcement.

4. As to the Singapore Discovery Application, the leave order only permitted discovery against third parties. The Defendant was plainly not a "third party", and joining her (even as a nominal respondent) in proceedings on the same underlying claim exposed her to time and cost burdens and was oppressive within the rationale of the undertaking.

5. On that basis, both the English Injunction Application and the Singapore Discovery Application were held to be in breach of the Plaintiff's undertaking, and the Defendant was held entitled to anti-suit relief in the terms of the amended summons.

Case 3

Court of Final Appeal adopts the approach in *Patel v Mirza* on foreign illegality and upholds unjust enrichment claim despite unenforceable cross-border currency exchange agreement

Wong Chi Hung v Lo Win Pun & another [2026] HKCFA 14

Date of judgment: 15 April 2026
Coram: Chief Justice Cheung, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Lam PJ and Lord Hoffmann NPJ

The Court of Final Appeal has handed down a significant decision which clarifies the proper approach in Hong Kong to the defence of foreign illegality in the context of an unjust enrichment claim. The Court unanimously dismissed the appeal and upheld the plaintiff's restitution claim arising out of an unenforceable currency exchange agreement tainted by illegality in the Mainland China.

Background

The plaintiff entered into a currency exchange agreement with the defendants. Under the agreement, the plaintiff was to cause RMB 1 million to be deposited into a designated Mainland account, whereas the defendants were to pay the Hong Kong dollar equivalent into the plaintiff's Hong Kong bank account at an agreed exchange rate.

Such an agreement is unlawful under the Mainland law as it involved unlicensed currency exchange transaction. Although the RMB was duly paid by the plaintiff to the designated bank account as agreed, the defendants never made the corresponding Hong Kong dollar payment. The funds were

later frozen and confiscated in unrelated Mainland criminal proceedings concerning a pyramid selling scheme unrelated to the parties' exchange agreement.

Procedural history

The plaintiff sued in the District Court for breach of the exchange agreement, or alternatively for unjust enrichment. At first instance, the trial judge held that the contract was unenforceable because of illegality under the Mainland law, but allowed the unjust enrichment claim. The Court of Appeal upheld the restitution claim, while rejecting the trial judge's attempt to recast the contractual illegality principles as principles governing unjust enrichment. The defendant further appealed the decision to the Court of Final Appeal.

The core dispute concerns where a contract governed by Hong Kong law is unenforceable because of illegality under foreign law, whether the plaintiff's claim in Hong Kong for restitution in respect of the defendants' unjust enrichment is defeated by the defence of foreign illegality.

The case also raised broader questions concerning the proper approach to *stare decisis* in Hong Kong and the extent to which Hong Kong courts should follow overseas common law authorities.

Illegality

The Court unanimously agreed that the plaintiff's restitution claim should be upheld. Ribeiro PJ, giving the main judgment, answered the leave question by emphasising the sharp distinction between a claim to enforce an illegal contract and a claim to unwind the transaction by restitution. An unjust enrichment claim based on total failure of consideration is separate and distinct from a contractual claim under Hong Kong law, even where the underlying contract is unenforceable for foreign illegality. The Court rejected the argument that allowing restitution would amount to enforcement of the illegal contract "by the backdoor". It also rejected the contention that allowing restitution would amount to an "identical yield" or be "functionally indistinguishable" from enforcement of the illegal bargain.

The Court adopted the "range of factors" approach in *Patel v Mirza* [2017] AC 467 (over *Tinsley v Milligan* [1994] 1 AC 340), and confirmed that it applies in Hong Kong to both domestic and foreign illegality. Under this approach, the Court must consider the policy of comity, the seriousness and centrality of the illegality, and whether granting relief would stultify the foreign law. In the foreign illegality context, the key concern is comity. The Court held that comity was not offended here because the plaintiff's claim did not seek to enforce the unlawful exchange contract, and Mainland law itself also provides for restitutionary relief.

Stare decisis

Chief Justice Cheung further corrected the observations made in *Monat Investment Ltd v All Person(s)*

in *Occupation of Part of No 16 Ma Po Tsuen* [2023] 2 HKLRD 1311 concerning the operation of the doctrine of *stare decisis* in Hong Kong. The Court reaffirmed that, after 1 July 1997, overseas authorities, including decisions of the House of Lords and the UK Supreme Court, are not binding on Hong Kong courts. Their value is purely persuasive and the weight to be attached depends on their merits and relevant circumstances.

The Court emphasises that law that applies in Hong Kong is the common law of Hong Kong, and not that of England or any other common law jurisdiction. Whether to follow an overseas decision is always a matter for the local court's judgment, taking into account the issue, the quality of the reasoning, and the relevant legal and commercial context.

Case 4

Court of Final Appeal clarifies the bases of contempt liability in respect of the acts of third parties in the context of breach of negative injunction

High Fashion New Media Corporation Ltd (suing on behalf of itself and also in its capacity as the sole shareholder of Longford Information and Technology Co., Limited) v Leong Ma Li [2026] HKCFA 18

Date of judgment: 21 April 2026
Coram: Chief Justice Cheung, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Lam PJ and Lord Hoffmann NPJ

This case concerns whether in the context of a commercial joint venture the appellant could be held in contempt for transactions carried out by a third party being the company's employee. The Court of Final Appeal unanimously allowed the appeal, clarifying that contempt liability may arise either where the acts of servants or agents are properly imputable to the defendant because they were done within the scope of their authority (Imputation Basis), or in limited cases where a positive obligation to prevent third-party breaches can properly be implied into the injunction (Implied Term Basis); whilst "vicarious liability" for the acts of others has no application to establishing contempt liability for breaches of court orders.

Leong's case was that ICBC refused to implement that arrangement, and it was instead agreed that she alone would operate the account using Longford's chop and her own seal.

Background

The dispute arose out of a joint venture between the Lam family and Appellant, Leong Ma Li ("Leong"). High Fashion Apparel Ltd ("HFA"), owned by the Lam family, held 65% of High Fashion

New Media Corporation Ltd ("New Media"), while Hansen, owned by Leong, held 35%. New Media in turn wholly owned Longford Information and Technology Co Ltd ("Longford"), through which the joint venture's Mainland operations were conducted.

Longford maintained a capital account with ICBC Shanghai into which the parties' capital contributions were paid. The core dispute lies in who was entitled, and on what terms, to control the transfers from that account in the context of a breakdown in the joint venture.

According to the Lam family, the parties had agreed a "Protocol" in April 2014 for account operation, which requires specified combinations of Longford's chop and the personal seals of Leong, Angela Yau (New Media's CFO) and Will Lam before transactions could be effected, depending on the transaction amount.

Leong's case was that ICBC refused to implement that arrangement, and it was instead agreed that she alone would operate the account using Longford's chop and her own seal.

Procedural history

In 2014, HFA obtained leave to bring a purported derivative action against Leong, and New Media obtained an interlocutory injunction restraining Leong from dealing with Longford's ICBC capital account except in accordance with the Protocol. The substantive action was left dormant for years since 2015, but New Media later used the injunction as the foundation for the contempt proceedings.

The first contempt proceedings resulted in findings against Leong in 2017. A second contempt application followed in 2020 in respect of the later transactions carried out by one Madam Tong ("Tong"), Longford's accountant and financial controller.

The Court of First Instance and the Court of Appeal both held Leong liable for contempt. The reasonings were that by handing her seal to Tong while remaining the authorised signatory on the bank mandate, Leong had authorised Tong to act as her agent and had failed to take all reasonable steps to ensure compliance with the injunction, applying the principle in *Hone v Page* [1980] FSR 500.

Decision

The Court of Final Appeal reversed the lower courts' findings and held that it would be inappropriate to regard liability for contempt as "vicarious liability", as it is not necessary to establish that the agent or servant is liable for contempt before his acts can be imputed to the defendant.

In delivering the main judgment, Lam PJ held that there are two distinct bases for establishing liability for contempt involving third-party acts. First, there is an **imputation basis**, under which a

liability for contempt involving third-party acts. First, there is an **imputation basis**, under which a defendant may be liable for acts done by servants or agents within the scope of their authority, thereby those acts would be treated as the defendant's own. Secondly, there is an **implied term basis**, under which a negative injunction may in some circumstances carry an implied positive obligation to take reasonable steps to prevent certain third parties from committing acts that would breach the injunction if done by the defendant.

On the facts, the imputation basis did not apply. Tong was acting as Longford's employee and financial controller, not as Leong's agent. The prohibited act under the injunction concerned the operation of the joint venture's account contrary to the Protocol. Once Leong had withdrawn from management and the Lams retained majority control over Longford and its board, Tong's acts in operating the account were acts done for Longford within its own corporate governance structure and could not be attributed to Leong personally.

The Court further found no proper basis for implying into this injunction a positive duty requiring Leong to continue monitoring Tong or ensuring Tong's compliance after her resignation. The injunction was framed in negative terms only. Lam PJ emphasised that the courts should be slow to imply positive duties into standard form prohibitory injunctions due to the punitive nature of contempt and the defendant needs to know exactly what he or she is required to do or not do. If an applicant seeks to impose a duty to procure compliance by others, that obligation should generally be stated expressly in the injunction. In the present case, the Court found no justifiable basis for implying into the injunction a continuing duty on Leong to supervise Tong after she had stepped away from the company.

Lord Hoffmann further explained in his concurring judgment that contempt liability is not truly "vicarious" in nature, but depends on whether the defendant herself omitted to do something she ought reasonably to have done.

Ribeiro PJ also delivered a separate judgment reaffirming the rule against collateral attack in contempt proceedings: the validity of an order is irrelevant in determining liability for contempt. Even if an order is arguably defective or liable to be set aside, it must still be obeyed unless and until discharged. Nevertheless, the underlying proceedings had been pursued in an oppressive manner, hence an abuse of process objection might well have succeeded, had it been raised below, although it was not.

The Court of Final Appeal therefore unanimously allowed the appeal and set aside the finding of contempt and consequential penalty.

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