

TABLE OF CONTENTS

<i>Introduction to the 2019 Desk Edition</i>	v
<i>Introduction to the First Edition</i>	vii
<i>Table of Cases</i>	xxxiii
<i>Table of Legislation</i>	lxxvii
<i>Table of Subsidiary Legislation</i>	lxxxv
<i>Table of Circulars, Practice Directions and Professional Codes and Guides</i>	xc1

CHAPTER 1 INTRODUCTION TO THE LEGAL PROFESSION IN HONG KONG..... 1

1. The Legal Profession in Hong Kong.....	1
2. The Organisation and Administration of the Solicitors' Profession	1
2.1 The Law Society: Objects and membership.....	1
2.2 Administration of the Law Society	3
3. The Organisation and Administration of the Bar.....	5
3.1 The Hong Kong Bar Association	5
3.2 The Bar Council	6
3.3 All barristers bound to comply with the Bar Code	6

CHAPTER 2 THE SOURCES OF HONG KONG LAWYERS' LEGAL AND ETHICAL RESPONSIBILITIES..... 7

1. Solicitors	7
2. Barristers	7
3. The Role of the Profession in Guiding its Members in Cases of Doubt.....	8
4. Enforcement of the Law and Professional Codes	8
4.1 Breaches of the law and breaches of the Professional Codes are distinct and may be punished separately.....	8
4.2 The Professional Codes will not be enforced directly by the courts.....	9
4.3 Courts may take Professional Codes into account	10
4.4 Conflict between lawyers' duties under the law and their duties as prescribed by their Professional Codes	11

CHAPTER 3 ADMISSION TO PRACTICE — SOLICITORS..... 15

1. Conditions Governing Eligibility for Admission	15
1.1 Admission based upon local qualifications	15
1.2 Admission based upon overseas qualifications	19
1.3 The Legal Practitioners (Risk Management Education) Rules	21
2. Suitability for Admission	22
3. The Procedure for Making Application for Admission.....	23
3.1 Application for certificate of eligibility for admission.....	23
3.2 Application for admission	25
3.3 Hearing of the motion	25
4. Entry on the Roll of Solicitors	25
4.1 Entry on the Roll	25
5. Practising Certificates	25

5.1	Application for a practising certificate.....	25
5.2	Effect of publication of names of practising solicitors in the Gazette	27
6.	Solicitors' Professional Indemnity Scheme	28
6.1	The Solicitors' (Professional Indemnity) Rules and the Professional Indemnity Scheme.....	28
7.	The Admission of Foreign Lawyers and Foreign Law Firms to Practice in Hong Kong.....	30
7.1	The trend towards the internationalisation (or globalisation) of legal practice	30
7.2	Provisions regulating the right of foreign lawyers and foreign law firms to practise in Hong Kong.....	31
7.3	Registration of foreign law firms	32
8.	Hong Kong Law Firms and the People's Republic of China.....	33
8.1	The Closer Economic Partnership Agreement	33
8.2	Association of local and Mainland firms	33

CHAPTER 4 THE NATURE OF THE SOLICITOR'S PRACTICE AND THE SOLICITOR'S MANAGEMENT OF HIS OFFICE

1.	The Nature of the Solicitor's Practice.....	35
1.1	What is permitted and what is forbidden; corporate and multi-disciplinary practices.....	35
1.2	Solicitor and foreign lawyer corporations; the provisions of the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997	36
1.3	Prohibition on any separate business which offers services normally offered by a solicitor as part of his practice	36
1.4	No right to form multi-disciplinary practices.....	36
1.5	Solicitors may form a service company to carry out administrative functions.....	37
2.	Limited Liability Partnerships	37
2.1	Introduction	37
2.2	Amending legislation	37
2.3	Liability of partners.....	38
2.4	Requirement for top-up insurance.....	39
2.5	Other matters.....	39
3.	Associations of Firms and Group Practices	40
3.1	Associations of two or more Hong Kong firms	40
3.2	Group practices	40
4.	New Firms Establishing a Practice in Hong Kong.....	43
4.1	Notification to the Law Society of particulars of firm and any service company	43
4.2	Notification to the Law Society of any changes in the particulars.....	43
4.3	Annual return of employees	44
4.4	Sole practitioners and partners must hold unconditional practising certificates.....	44
4.5	Membership of the Professional Indemnity Scheme	44
4.6	Office premises.....	44
4.7	Other prudent action which may be taken by a new law firm.....	44
5.	Practising as a Sole Practitioner.....	45
5.1	The right to practise as a sole practitioner	45
5.2	Absence of sole practitioner from the office due to holidays, sickness etc.....	45
5.3	Sole practitioner retiring from practice or emigrating from Hong Kong	45

5.4	The death of a sole practitioner.....	51
6.	Practising by Way of a Partnership	53
6.1	All partners must hold current unconditional practising certificates	53
6.2	Salaried partners and equity partners	53
6.3	Names of all the principals on business letters	54
6.4	Cessation of partnership practice	54
7.	Solicitors Employed in Private Practice.....	54
7.1	Solicitor employed in private practice must hold current practising certificate	54
7.2	Status of solicitor may be stated on professional stationery	55
7.3	Rights of solicitor employed in private practice to share profits etc	55
8.	Solicitors Employed by Lay-Employers ('Employed' or 'In-House' Solicitors)	55
9.	Solicitors Leaving Their Firm to Take Up Employment with another Firm	55
9.1	Restraint of trade clauses	56
9.2	Fiduciary duties owed by solicitors leaving the firm	57
9.3	Soliciting staff leaving firm from another firm	57
9.4	Soliciting clients to leave the firm	57
10.	Proper Management and Supervision of the Solicitor's Practice.....	58
10.1	Management and supervision of the practice.....	58
10.2	Sharing premises, staff and facilities.....	58
10.3	Control over the work carried out by unqualified employees and the liability of solicitors for the acts of their unqualified staff	60
10.4	Signatures on letters, pleadings etc	62
10.5	Privacy and corresponding with individual litigants via workplace fax numbers	63
10.6	Control over and use of electronic communications.....	63
10.7	Digital certificates	64
11.	Avoidance of Involvement in Money Laundering and Terrorist Financing	65
11.1	The substantive offence of money laundering and terrorist financing and terrorist financing	65
11.2	Money laundering and terrorist financing; precautions that must be taken and guidelines from the Law Society: Practice Direction P.....	68
12.	Restriction upon Employment of Certain Prohibited Employees.....	74
12.1	The employment of competent staff and the duty to reject 'prohibited employees'	74
13.	Limitation upon Number of Unqualified Employees.....	75
13.1	Restriction upon numbers of unqualified employees	75
13.2	Annual return of employees	75
14.	Remuneration of Employees; Prohibition on Sharing Profit Costs with Unqualified Persons	76
15.	The Solicitor's Duty to Keep the Client's Financial Affairs in Good Order.....	76
15.1	The regime for solicitors' accounts.....	76
15.2	The principles governing the handling of clients' money and the keeping of accounts.....	77
15.3	Duty to operate a client account.....	78
15.4	Receipt of client money and trust money	78
15.5	Client receipts.....	81
15.6	Drawings from the client account	81
15.7	Cases where money need not be paid, and cases where money must not be paid into the client account.....	84
15.8	Cheque received including both profit costs and disbursements.....	85

15.10	Duty to keep proper accounts	86
15.11	Computerised client accounting systems	87
15.12	Records of all bills of costs	88
15.13	Meaning of 'book', 'ledger' and 'record'	88
15.14	Reconciliations	88
15.15	Preservation of books of account	89
15.16	Production of books of account for inspection by council	89
15.17	The nature of the client account	89
15.18	Interest derived from clients' funds in the client account belong to the client	90
15.19	The opening of client accounts, payment into client accounts and solicitors' liability in the event of a bank failure	90
16.	The Accountant's Report	91
16.1	Duty of solicitors to provide an accountant's report	91
16.2	Duties of the accountant	91
16.3	Accounting periods	92
17.	The Annual Return	92
18.	Preservation of Clients' Files	93
18.1	Storage of old physical files in Hong Kong	93
18.2	Ownership of documents on file	93
18.3	Closed files and client access	94
18.4	How long should clients' files be preserved?	94
19.	Grounds for Intervention in a Solicitor's Practice by the Law Society	96
19.1	Grounds for intervention by Council of the Law Society	97
19.2	Guidance from the Court in Council's exercise of its powers following an intervention	100
19.3	Nothing to prevent solicitor suing for unpaid fees during an intervention into his practice	102
20.	Other Investigative Powers of the Council	102
20.1	Council may examine documents if it considers that a solicitor may be unfit to practise	102
20.2	Appointment of an inspector	103
20.3	Privilege claim does not attach to documents required to be produced	103
CHAPTER 5 PRACTICE PROMOTION AND THE OBTAINING OF BUSINESS		105
1.	Practice Promotion	105
1.1	Introduction	105
1.2	General principles governing practice promotion	107
1.3	Extraterritorial practice promotion	114
1.4	Practice promotion on television and radio and in public places is permitted	114
1.5	Waivers	115
1.6	Person to person solicitation and the Promotion Code	115
1.7	Direct mailing: Targeting or solicitation by fax, mail or e-mail	115
1.8	Other issues relating to practice promotion	116
2.	Improper Obtaining of Business and Commission Sharing	119
2.1	'Touting' and commission sharing	119
2.2	Improper obtaining of business in the context of litigation	120
2.3	Improper distribution of advertising material	121

2.4	Improper obtaining of business in the context of non-contentious business	122
2.5	Remuneration of the agent	123
2.6	Action taken by the profession to deter the improper obtaining of business	123

CHAPTER 6 THE RETAINER..... 129

1.	Introduction.....	129
2.	Should a Solicitor be Retained?.....	129
2.1	Non-contentious matters	129
2.2	Contentious matters.....	129
2.3	Cases where the litigant must be represented by a solicitor.....	130
3.	The Duty to Act.....	130
3.1	Solicitor free to accept or reject instructions: ‘Cab-rank’ principle not applicable	130
3.2	Circumstances where the solicitor should or must refuse to act or cease to act.....	131
4.	Mandatory Initial Checks Before Conducting Any Transaction on Behalf of a Client.....	149
4.1	Check for conflicts of interest	149
4.2	The first meeting with the prospective client —Practice Direction P: Mandatory requirements regarding anti-money laundering etc	149
5.	The Form of the Retainer.....	149
5.1	Written retainers.....	150
5.2	Implied retainers and ratification	152
6.	The Effect of the Retainer.....	157
7.	Limited Retainers.....	158
8.	Limiting Liability in the Retainer	158
8.1	Retainers to carry out contentious work.....	158
8.2	Retainers to carry out non-contentious work	158
9.	Entering into the Retainer	159
9.1	Retainers by agents	159
9.2	Retainers by infants and persons of unsound mind.....	159
9.3	Retainers by corporations.....	160
9.4	Instructions from a third party.....	160
9.5	Representation of co-plaintiffs.....	161
10.1	Express authority.....	161
10.2	Implied authority.....	161
10.3	Ostensible authority	166
11.	Solicitor Acting Without Authority	167
11.1	Contentious matters and subsequent ratification.....	167
11.2	Contentious matters and wasted costs.....	167
11.3	Non-contentious matters	168
12.	Legal and Ethical Obligations Imposed Upon the Solicitor By Virtue of the Retainer	168
12.1	Principles underlying the relationship and the retainer with a client: Loyalty and confidentiality	168
12.2	Duty to advise client on alternative dispute resolution procedures.....	170
12.3	Duty to give honest and candid advice.....	170

12.4	Duty to act expeditiously	171
12.5	Duty to act with due care and skill.....	171
12.6	Duty to obey instructions	171
12.7	Duty to keep matters confidential	173
12.8	Duty to keep one's client informed	173
12.9	Duty to charge reasonably.....	175
13.	The Duration of the Retainer	175
13.1	The 'entire contract' rule.....	175
14.	Termination of the Retainer	178
14.1	Automatic termination of retainer.....	178
14.2	Termination of retainer by the solicitor.....	180
14.3	Termination by the client	183
14.4	Solicitor's duty upon termination of the retainer	186
15.	The Solicitor's Retaining Lien.....	187
15.1	Nature of the lien.....	187
15.2	Property over which the lien extends	187
15.3	Extent of the lien	188
15.4	Solicitor's right to a lien in the event of termination of the retainer	188
15.5	Termination of the lien	191
15.6	The solicitor's ethical duties.....	192
16.	The Solicitor's Common Law Lien on Property or Funds Recovered.....	192

CHAPTER 7 REMUNERATION..... 195

1.	Providing Full Information to the Client or Prospective Client.....	195
1.1	Advice as to whether the likely outcome will justify the expense.....	195
1.2	Full information as to the likely cost of the matter	195
1.3	Agreed fees, estimates and information as to the solicitor's method of charging.....	196
1.4	Contentious matters: Information as to costs where client is not legally aided	199
1.5	Special obligations for representation in criminal matters.....	201
1.6	Contentious matters: information as to the client's entitlement to legal aid	201
1.7	Information as to when client is expected to pay; payment on account of costs and disbursements.....	202
1.8	Client setting a limit on costs	204
1.9	Provision of regular information as to costs.....	205
2.	Costs in Contentious Business	205
2.1	The meaning of 'contentious business'	205
2.2	Agreed fees and contentious business: section 58 of the Legal Practitioners Ordinance	205
2.3	Calculation of the fee	209
2.4	The solicitor's bill of costs	210
2.5	Challenging the fee: Taxation of costs	215
3.	Costs in Non-Contentious Business.....	218
3.1	Definition of 'non-contentious business'	218
3.2	The Costs Committee and its rule-making power.....	218
3.3	Non-contentious business remuneration agreements	218
3.4	Costs in matters for which a scale fee has been prescribed	220
3.5	Security for solicitor's costs.....	221
3.6	Recovery of costs: delivery of the bill and taxation of costs.....	222

4. Interest on Clients' Funds	222
5. Overcharging.....	222
5.1 Professional obligation not to overcharge.....	222
6. Maintenance, Champerty and Contingency Fees.....	223
6.1 Maintenance	223
6.2 Champerty	224
6.3 No maintenance and champerty where maintainer or funding agency has a commercial interest in the outcome of the litigation.....	225
6.4 Contingency and conditional fees	226
7. Solicitors Sharing Profit Costs with Others	227
8. Responsibility for Paying the Fees of Counsel, Professional Agents, Witnesses and Overseas Lawyers.....	229
9. Method of Payment of the Bill of Costs	229
10. Failure by the Client to Pay the Solicitor's Bill of Costs; Enforcement Procedures.....	229
10.1 Enforcement by civil action	229
10.2 Indirect pressure through the solicitor's lien.....	232

CHAPTER 8 CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE

1. Introduction.....	233
2. The Duty of Confidentiality	233
2.1 The contractual duty.....	234
2.2 The duty in equity (or perhaps tort)	234
2.3 The ethical duty.....	235
2.4 The duration of the duty of confidentiality	239
2.5 Use of confidential information which comes into the solicitor's possession from another client or third party	240
2.6 Confidential information received by solicitor at a social occasion.....	241
2.7 Confidential information received from a 'quasi-client'	241
2.8 Confidential correspondence or documents disclosed to the other party or his solicitor as a result of fraud or mistake	242
2.9 Cases where the duty of confidentiality is inapplicable or is overridden.....	247
2.10 Waiver by the client and the solicitor's implied authority to disclose confidential information	250
2.11 Duty of solicitor to advise client promptly that disclosure has occurred.....	250
2.12 Fiduciary duty of solicitor not to profit from confidential information	250
3. Legal Professional Privilege.....	250
3.1 Purpose of legal professional privilege	250
3.2 The difference between confidentiality and legal professional privilege.....	251
3.3 Scope of legal professional privilege	252
3.4 Whether legal professional privilege applies is governed by the <i>lex fori</i>	255
3.5 Joint interest privilege and common interest privilege.....	256
4. Legal Advice Privilege: Communications Made for the Purpose of Giving or Receiving Legal Advice	256
4.1 The scope of legal advice privilege.....	256
4.2 'Once privileged, always privileged'	259
4.3 Limitations upon the scope of legal advice privilege.....	259

4.4	Legal advice privilege: Communications between client and third party for the purpose of obtaining legal advice from a lawyer.....	261
5.	Litigation Privilege: Communications between Third Persons and the Solicitor or His Client Where the Communication is made for the Dominant Purpose of Pending or Anticipated Litigation.....	262
5.1	Litigation must be pending or anticipated.....	262
5.2	The communication must be made for the dominant purpose of pending or anticipated litigation	263
5.3	Copy documents where the originals are not privileged	264
5.4	The duration of litigation privilege	265
6.	Legal Professional Privilege and	
	In-house Lawyers.....	265
6.1	'Commercial' in-house lawyers	265
6.2	Government in-house lawyers.....	266
7.	Waiver	267
7.1	Privilege may be waived by the client.....	267
7.2	Further examples of implied waiver.....	271
7.3	Waiver by way of exchange of witness statements	273
8.	Cases Where Legal Professional Privilege is Inapplicable or is Overridden	274
8.1	Communications made in furtherance of a crime or fraud	274
8.2	Order of the court overriding the privilege.....	282
8.3	Situations in which privilege is overridden by statute	284
8.4	The solicitor and search warrants in respect of clients' documents when client's affairs are the subject of investigation	289
9.	Without Prejudice Communications	294
9.1	Scope of the privilege.....	294
9.2	Cases in which the heading 'without prejudice' will be of no effect.....	295
9.3	Relationship of 'without prejudice communications' and legal professional privilege.....	296

CHAPTER 9 CONFLICTS OF INTERESTS AND DUTIES 297

1.	Introductory Matters and Underlying Principles	297
1.1	Situations in which a conflict of interest might arise	297
1.2	Solicitor's ethical duty to avoid conflict.....	297
1.3	Common conflict situations.....	300
2.	Conflict in Contentious Matters	300
2.1	Representing present clients as parties with opposing interests in the same action.....	300
2.2	Representing one client against another existing client in a related matter.....	301
2.3	Joint representation of co-defendants in criminal cases.....	303
2.4	Joint representation of co-plaintiffs and co-defendants	307
2.5	Representation of insured persons where subrogation clause in policy of insurance	310
2.6	Representing a client against a former client in litigation.....	312
2.7	Representing a client in litigation where the advocate becomes personally involved in the litigation or where the advocate has a personal interest in the outcome	331
2.8	Jurisdiction of the court to disqualify a solicitor or firm of solicitors from appearing in an action or representing a client.....	335

3.	Conflicts in Non-Contentious Matters	336
3.1	Representing parties with conflicting interests in the same transaction.....	336
3.2	Representing joint clients who are on the same side of a transaction: Undue influence and joint clients with conflicting interests	347
3.3	Conflict between solicitors and their own clients: Cases where solicitors have a personal interest in the matter	351

**CHAPTER 10 COMPETENCE, QUALITY OF SERVICE
AND NEGLIGENCE 371**

1.	Legal and Professional Liability for Poor Standard of Work; the Sources of the Solicitor's Duty	371
1.1	Introduction	371
1.2	Duty of care in contract under the retainer.....	371
1.3	Duty of care in tort	372
1.4	Breach of fiduciary duty	373
1.5	Ethical duty	373
2.	The Ethical Duty of Competence.....	373
2.1	Introduction	373
2.2	Seeking assistance to achieve competence.....	374
2.3	Excluding or limiting liability in negligence	374
2.4	No exclusion of liability for professional misconduct	375
2.5	Ethical duty to serve the client in a conscientious, diligent, prompt and efficient manner	375
2.6	Duty to reply to correspondence from clients	376
2.7	Duty to respond to correspondence from the Law Society and the Solicitors Disciplinary Tribunal.....	376
2.8	Duty of solicitor where his client makes a claim against him.....	376
3.	The Common Law Standard of Care Required of Solicitors: General Principles.....	379
3.1	Standard of care of the generalist practitioner	379
3.2	Standard of care of the specialist practitioner	382
3.3	Standard of care of the inexperienced practitioner.....	383
3.4	Standard of care will vary with the individual client	383
4.	Defences to Claims for Breach of Duty	384
4.1	Solicitor acting on counsel's advice	384
5.	Illustrations of Negligence in Contentious Matters	386
5.1	Introduction	386
5.2	Duty to advise as to the availability of legal aid	387
5.3	Duty to advise against hopeless litigation.....	387
5.4	Delay in prosecuting an action.....	389
5.5	Failure to issue process within the limitation period	390
5.6	A solicitor's duty in respect of pre-trial procedural aspects of the case.....	390
5.7	Duty to brief counsel properly and to exercise independent judgment even where counsel briefed	391
5.8	Duty in relation to the collection and presentation of evidence	392
5.9	General principles of ethical and legal responsibility regarding settlements.....	393
5.10	Failure to attend the hearing.....	394
5.11	Duty in respect of the conduct of the trial — Immunity for negligent acts?.....	394
6.	Illustrations of Negligence in Non-Contentious Matters	396

6.1	Introduction.....	396
6.2	Failure to pass on to client relevant information that comes to solicitor's notice.....	396
6.3	Giving wrong advice on the law.....	398
6.4	Failure to give adequate advice or explanation.....	398
6.5	Failure to warn against significant risks.....	400
6.6	Failure to give adequate advice to unduly influenced clients.....	401
6.7	Advice as to necessary future action or continuing obligations.....	401
6.8	Failure to advise on matters falling outside the client's specific instructions.....	402
6.9	Advice on commercial and business aspects relating to the subject matter of the retainer.....	403
6.10	Checking title in conveyancing transactions; failure to make proper searches and advise as to encumbrances and other title defects.....	404
6.11	Failure to register deeds, cautions etc.....	407
6.12	Failure to protect client against fraud.....	407
6.13	Duty of solicitors who make wills for clients.....	408
7.	Other Effects of Negligence.....	416
7.1	Solicitor will not be entitled to recover his profit costs and the client may recover any profit costs already paid.....	416
8.	Concurrent Actions in Negligence and Disciplinary Proceedings.....	417
9.	Who is to be Held Liable for the Negligence? The Solicitor, the Solicitor's Firm, or His Partners?.....	417
9.1	Solicitor personally liable in negligence where he fails to exercise proper control over his staff.....	417
9.2	The liability of the partners for the negligence of the firm's partners, employed solicitors and staff.....	418
9.3	Is the solicitor personally liable for his negligent actions when acting on behalf of his firm?.....	421
CHAPTER 11 THE LITIGATION SOLICITOR.....		423
1.	Introduction.....	423
1.1	Duties of solicitors as officers of the court.....	423
1.2	Scope of this chapter.....	424
2.	The Litigation Solicitor's Professional and Common Law Duties to the Court and Client.....	425
2.1	First meeting with the prospective client.....	425
2.2	Duty to advise on alternative dispute resolution procedures.....	425
2.3	Authority to conduct litigation.....	426
2.4	Witnesses.....	426
2.5	Generally, no communication with the opposing party in the absence of his solicitor.....	434
2.6	Solicitor's duty when instructing counsel.....	435
2.7	Solicitor not to stand bail for his client or to agree to indemnify a surety for bail.....	441
2.8	Duty to make proper discovery.....	442
2.9	Duty in respect of affidavits.....	443
2.10	Duty to ensure that full and frank disclosure is made in <i>ex parte</i> applications.....	446
2.11	Duty not to waste the court's time and courtesy to the court.....	447

2.12	Duty not to abuse the process of the court	456
2.13	The solicitor as witness	459
2.14	The solicitor as litigant.....	462
3.	Solicitor's Duties as a Solicitor Advocate in Presenting a Case during the Trial	464
4.	Solicitors' Rights of Audience Where Not Solicitor Advocates	464
4.1	Rights of audience may be regulated by the judges by collective decision	464
4.2	No general rights of audience in the Court of Final Appeal and High Court.....	465
4.3	Higher rights of audience for solicitor advocates.....	469
5.	Exercise of Disciplinary Powers over Solicitors by the Court.....	472
5.1	The courts' jurisdiction over its officers	472
5.2	The summary nature of the courts' jurisdiction	473
5.3	The High Court's power to strike a solicitor off the roll or suspend him from practice has been abolished; however other penal sanctions are available	474
5.4	Committal for contempt of court.....	475
5.5	Power to order a solicitor and counsel personally to pay wasted costs ('wasted costs orders')	479
5.6	Power to require solicitor to give undertaking not to charge client	486
5.7	Power to order a solicitor to perform an obligation incurred in his capacity as a solicitor.....	487
5.8	Power to order the solicitor to pay compensation	488

CHAPTER 12 PROFESSIONAL UNDERTAKINGS 489

1.	Introduction.....	489
1.2	The important role of professional undertakings	489
2.	What is a Professional Undertaking?.....	490
3.	The Form of the Undertaking.....	492
4.	Common Examples of Undertakings	492
4.1	Express undertakings	492
4.2	Implied undertakings.....	493
5.	Construction of Undertakings	494
5.1	The ethical approach	494
5.2	The legal approach	494
6.	Terms Implied in Undertakings.....	496
6.1	Undertakings as to the payment of costs.....	497
6.2	Other terms implied in undertakings.....	497
7.	Liability of Solicitors in Respect of Breach of Undertakings.....	498
7.1	Duty to honour undertakings.....	498
7.2	Undertakings to do something outside the solicitor's control	499
7.3	Undertaking generally binds giver and receiver only	500
7.4	Professional liability of solicitor for undertakings given on behalf of others.....	501
7.5	Responsibility of a law firm for undertakings given by the firm's employees.....	501
7.6	Liability of employed solicitors for their undertakings.....	502
7.7	Liability of all partners for an undertaking given by one partner	503

8.	Release of Solicitors from Undertakings	503
8.1	Release by the court or by the recipient	503
8.2	No release by reason of change of solicitor by recipient.....	504
8.3	No release by reason of partner who gave undertaking leaving firm or firm being dissolved.....	504
8.4	No release by reason of lapse of time	504
8.5	Undertakings obtained by fraud or dishonesty.....	504
9.	Enforcement of Undertakings	504
9.1	Enforcement by the courts	505
9.2	Breach of contract	506
9.3	The court's supervisory jurisdiction.....	506
9.4	Enforcement by the Council of the Law Society	508
10.	Solicitor Must Not Demand Compensation for Failing to Report Breach of Undertaking.....	509
11.	Undertakings Given by Officers of the Government	510

**CHAPTER 13 SOLICITORS' DUTIES AND THEIR RELATIONS
WITH THE PROFESSION, THE PUBLIC AND
THIRD PARTIES** 511

1.	Introduction.....	511
2.	Solicitors' Relations With and Duties to the Legal Profession.....	511
2.1	Solicitors' duty not to engage in 'unbefitting' conduct.....	511
2.2	Relations with other solicitors.....	517
3.	Relations with Clients of Other Solicitors: Duty Not to Interfere with Other Solicitor/Client Relations.....	520
3.1	Scope of the duty.....	520
3.2	Providing second opinions	520
3.3	Separate or distinct interest involved	521
4.	Solicitors' Relations with Opposing Parties	521
4.1	Solicitors' ethical duties when communicating with the opposing party	521
4.2	Inquiries about the opponent by way of an inquiry agent	523
4.3	Who is the opposing party where instructions are given by a corporation etc?.....	524
4.4	Communication with a former client now represented by other solicitors	525
4.5	Offensive or threatening letters and letters of demand.....	525
4.6	Relations with unrepresented parties	526
5.	Solicitors' Duties to Third Parties.....	527
5.1	Introduction: Duty of fair dealing	527
5.2	Duty to provide true references.....	528
5.3	Duty when communicating with third parties.....	528
5.4	Relationship with witnesses	528
5.5	Recording telephone conversations.....	530
5.6	Relations with professional witnesses and other witnesses and agents	530
5.7	Duties in relation to the issuing and stopping of cheques.....	531
5.8	Solicitor's duty when administering oaths and affirmations	532

CHAPTER 14 'EMPLOYED' (IN-HOUSE) SOLICITORS 537

1.	Introduction: The Role of Employed ('In-House') Solicitors.....	537
----	---	-----

2. Employed Solicitors Admitted to Practise in Hong Kong are Subject to the Profession's Rules of Professional Conduct	538
3. Independence	538
4. Legal Professional Privilege and Employed Lawyers.....	539
5. Permitted Activities of Employed Solicitors.....	541
5.1 Services that may be performed by employed solicitors holding practising certificates	541
5.2 Restrictions upon employed solicitors' right to practise.....	542
6. Liability of Employed Solicitors in Respect of Their Undertakings.....	543
6.1 Employed solicitors, their fees and their employer.....	544
7. Some Ethical Problems for Employed Solicitors.....	544
7.1 Conflict of interest.....	544
7.2 Knowledge of improper dealings	545
8. Employed Solicitors Who also Maintain a Private Practice.....	545
8.1 Employed solicitors may establish private practices.....	545
8.2 Practising from an office in the employer's workplace: Independence and confidentiality may be in jeopardy	546
8.3 Conflict of interest and the private practice of employed solicitors.....	547

CHAPTER 15 SOLICITORS AND THE DISCIPLINARY PROCESS..... 549

1. Introduction: Disciplinary Powers Exercised by the Profession.....	549
1.1 The role of the profession in the disciplinary process.....	549
1.2 The purpose of disciplinary proceedings	550
1.3 Importance of powers of early investigation by the Council of the Law Society.....	551
2. The Solicitors Disciplinary Tribunal Panel.....	552
3. Manner of Making a Complaint to the Law Society.....	553
4. Whether Disciplinary Proceedings Should be Stayed Pending the Outcome of Related Criminal or Civil Proceedings against the Solicitor	553
4.1 Criminal proceedings	553
4.2 Civil proceedings.....	554
5. Investigation of the Complaint by the Law Society's Investigation Committee and Standing Committee on Compliance.....	555
5.1 The Law Society can make inquiries of a solicitor under investigation.....	555
5.2 In responding to the inquiry, the solicitor may not rely upon the privilege against self-incrimination.....	555
5.3 Consideration of the complaint and possible consequences	556
5.4 Swift submission of a complaint to the Convenor of the Solicitors Disciplinary Tribunal.....	556
5.5 Summary disposal	557
6. What Misconduct is Subject to the Disciplinary Process?.....	557
6.1 Matters referred to the Solicitors' Disciplinary Tribunal	557
6.2 Rule 2 of the Solicitors' Practice Rules is the touchstone of professional misconduct	558
7. Submission of Complaint to the Solicitors Disciplinary Tribunal Panel and Appointment of a Solicitors Disciplinary Tribunal.....	559
7.1 Decision of Council on action to be taken	559
7.2 Suspension of solicitor pending outcome of disciplinary proceedings.....	560
7.3 Appointment of a Tribunal	561

8.	Compliance with the Rules of Natural Justice in the Disciplinary Process	562
8.1	The Disciplinary Tribunal is not a court but still must abide by the rules of natural justice	562
9.	Application of the Doctrine of <i>Res Judicata</i> to Disciplinary Proceedings	564
10.	Investigation as to Whether There is a Prima Facie Case	565
11.	Fixing a Date for the Hearing and Drawing up the Charges.....	565
12.	Discovery, Inspection of Documents and Notice to Admit.....	566
13.	The Hearing Before the Disciplinary Tribunal	566
13.1	The standard of proof for disciplinary hearings	566
13.2	The conduct of the hearing.....	567
13.3	The statement of findings of the Disciplinary Tribunal.....	568
14.	The Orders That may be Made by the Disciplinary Tribunal	570
14.1	Striking the solicitor off the Roll of Solicitors.....	571
14.2	Suspending the solicitor from practice.....	571
14.3	Cancelling or suspending the registration of a foreign lawyer.....	571
14.4	Permitting the solicitor to continue to practise subject to conditions	571
14.5	Imposing conditions upon the registration of a foreign lawyer	572
14.6	Order for solicitor or foreign lawyer to repay fees to client.....	572
14.7	Payment by solicitor into the Solicitors' Indemnity Fund	572
14.8	Payment by solicitor or foreign lawyer of a financial penalty	573
14.9	Censuring the solicitor, foreign lawyer etc	573
14.10	Ordering the solicitor or the foreign lawyer etc to pay costs	573
15.	Filing and Notice of the Order	574
16.	Determining the Appropriate Penalty	574
16.1	Cases where a mandatory penalty has been provided by statute.....	574
16.2	The disparity in seriousness between striking off or suspension on the one hand and a fine or censure on the other	575
16.3	Striking off the roll or suspension	576
17.	Summary Disposal of Fixed Penalty Offences by the Tribunal Convenor	580
17.1	Provision for disposal of summary offences by panel convenor.....	580
17.2	Complaints covered by the summary procedure	581
17.3	Fixed penalty to be imposed	581
17.4	Procedure for the disposal of summary complaints	581
17.5	No double jeopardy rule.....	582
18.	Discipline of Trainee Solicitors and Solicitors' Employees	583
19.	Costs.....	583
19.1	The Tribunal has discretion to award costs on a lesser basis than full indemnity	583
19.2	A solicitor should not be ordered to pay costs where the complaint against solicitor is dismissed	585
20.	Appeals to the Court of Appeal from Decisions of the Disciplinary Tribunal.....	585
20.1	Who may appeal?.....	585
20.2	Procedural aspects of the appellate process	586
20.3	Grounds upon which the appellate court may interfere with the decision.....	587
21.	Discipline over Employed and Government Lawyers	588
22.	Publication of the Names of Solicitors Found Guilty of Professional Misconduct.....	589
23.	Restoration to the Roll of Solicitors.....	589
23.1	Power to order the name of a solicitor to be restored to the roll	589
23.2	The principles upon which restoration may be ordered	589
24.	Financing the Disciplinary Process.....	590

25. Applications by Solicitors to have Their Names Struck off the Roll	591
--	-----

CHAPTER 16 ADMISSION TO PRACTICE — BARRISTERS 593

1. Requirements for Admission to the Hong Kong Bar	593
1.1 Power of the court to admit barristers	593
1.2 Eligibility requirements laid down by the Bar Council for local admission.....	593
1.3 No admission where applicant in practice as a solicitor	594
1.4 Eligibility requirements laid down by the Bar Council for overseas admission.....	594
1.5 Service of minimum period of six months' pupillage before person eligible for admission.....	595
1.6 Lawyers employed in the Department of Justice	595
2. Pupillage and Limited Practice	596
2.1 Length of period of pupillage.....	596
2.2 Method of application for pupillage.....	597
2.3 Qualifications to serve as pupil masters	598
2.4 Approval of pupillage by the Bar Council and ineligibility for pupillage.....	598
2.5 No pupillage fees.....	600
2.6 Acceptance of instructions and the period of limited practice.....	600
2.7 The duties of pupil masters, pupils and judges taking on pupils as judges' marshalls	601
2.8 Minimum pupillage requirements	607
2.9 Termination and revocation of pupillage.....	607
2.10 Review and appeal from order of Bar Council.....	608
2.11 The certificate of successful completion of pupillage.....	608
3. Application for Admission as a Barrister.....	609
3.1 The manner of making the application.....	609
3.2 The hearing of the application.....	610
4. Suitability for Admission	611
5. The Roll of Barristers.....	615
6. The Issue of a Practising Certificate	615
6.1 Application to be made to the Bar Council.....	615
6.2 Applicant must have paid his subscription to the Bar Association	616
6.3 Applicant must have indemnity insurance	616
6.4 Publication of list of barristers holding practising certificates.....	616
6.5 Barrister's name being struck from the Roll	616
7. Qualifications for Practising as a Barrister	616
7.1 Requirements of the Legal Practitioners Ordinance	616
7.2 Requirements of the Bar Code	617
8. Admission of Overseas Counsel for a Particular Case or Cases.....	618
8.1 Rules governing the admission of overseas counsel for a particular case or cases	618
8.2 Principles upon which admission may be granted	618
8.3 Procedure for making the application	631
8.4 Overseas barrister admitted for particular case may not accept instructions in any other case	633
9. Unqualified Person Practising as a Barrister.....	633
10. Legal Representation in Arbitration Proceedings	634

CHAPTER 17 THE ORGANISATION OF CHAMBERS..... 635

1. Barristers must Practise from Professional Chambers635
2. Formal Organisation of Chambers637
3. Administration of Chambers.....637
 - 3.1 Duty to ensure practice is efficiently and properly administered.....637
 - 3.2 Duty to ensure confidentiality638
 - 3.3 Duty to keep and preserve proper records.....640
4. Remuneration of and Responsibility for Barrister’s Clerks641
 - 4.1 Remuneration of barristers’ clerks641
 - 4.2 Responsibility for acts of barristers’ clerks.....641

CHAPTER 18 COUNSEL’S RELATIONSHIP WITH INSTRUCTING SOLICITOR: TAKING INSTRUCTIONS AND THE SCOPE OF COUNSEL’S AUTHORITY 643

1. Taking Instructions643
 - 1.1 The general rule: A barrister may only act on the instructions of a solicitor643
 - 1.2 Breach of the rule prohibiting the taking of instructions without the intervention of a solicitor will constitute professional misconduct653
 - 1.3 Taking instructions directly from a solicitor client is ethically proper654
 - 1.4 Solicitor assigned to act for litigant on Legal Aid has no right to brief counsel without approval of Director of Legal Aid.....654
2. The Requirement of a Brief and Backsheet655
 - 2.1 The brief655
 - 2.2 The backsheet.....656
3. Appointment and Role of Senior Counsel657
 - 3.1 Appointment as Senior Counsel.....657
 - 3.2 The decision to instruct Senior Counsel.....658
 - 3.3 Abolition of the ‘two-counsel’ rule.....658
 - 3.4 Respective roles where Senior Counsel and junior counsel instructed659
 - 3.5 Fees for junior counsel where Senior Counsel is instructed659
4. Effect of Marking of Counsel’s Diary and Right to Accept Brief from Another Solicitor.....659
5. Collection of the Brief.....660
6. The Duty to Accept Instructions: The ‘Cab-Rank’ Rule.....660
 - 6.1 The rule660
 - 6.2 The cab-rank rule does not apply to non-litigious matters.....661
 - 6.3 The rationale for the rule.....661
 - 6.4 Even when instructed counsel may be unable to represent the client on the day661
 - 6.5 Special considerations where counsel is instructed in child custody cases662
7. Exceptions to the ‘Cab-Rank’ Rule — Refusal of Brief.....662
 - 7.1 Case outside counsel’s expertise662
 - 7.2 Client unable to afford counsel’s usual fee663
 - 7.3 Conflict of interest.....663
 - 7.4 Situations where the impartial administration of justice may be impaired.....665
 - 7.5 Cases in which counsel is likely to be a witness667
 - 7.6 Instructions which limit counsel’s ordinary authority or discretion.....667

7.7	Cases in which counsel has been previously concerned in the course of another profession.....	667
8.	Withdrawal by Counsel and Return of Brief.....	668
8.1	Counsel unable to perform the required work within a reasonable time or within a specified time limit.....	668
8.2	Justification for return of brief on the grounds of counsel's relationship with his client.....	668
8.3	Client refusing to accept counsel's advice.....	669
8.4	Client having committed perjury to the knowledge of counsel.....	669
8.5	Client insisting that counsel conducts the case in breach of his professional duties.....	670
8.6	Conflicting commitments of counsel.....	671
8.7	Conflict of interest arising.....	672
8.8	Legally aided cases where unjustifiable expense involved.....	673
9.	Special Situations Not Entitling Counsel to Withdraw.....	673
9.1	Inability of client to pay.....	673
9.2	Inadequate brief fee or refresher.....	674
9.3	Client absconding during the trial.....	675
10.	Barrister Not Permitted to Give a Gift or Loan to a Person Instructing Him.....	676
11.	The Legal Effect of the Brief.....	676
12.	The Scope of Counsel's Authority.....	677
12.1	Express authority.....	677
12.2	Implied authority.....	677
12.3	Ostensible authority.....	678
12.4	Limitations upon counsel's authority.....	678
12.5	Illustrations of counsel's implied and ostensible authority.....	679
13.	Delegation of Work by Counsel.....	685
13.1	Delegation of the duty of representing the client in court.....	685
13.2	Delegation of non-contentious work.....	686
13.3	Payment for work properly delegated.....	686
14.	Conferences with Instructing Solicitor and the Client.....	687

CHAPTER 19 NEGOTIATION AND RECOVERY OF FEES..... 689

1.	Negotiation of the Fee.....	689
1.1	Counsel must either negotiate the fee personally or through his clerk with the person instructing him.....	689
1.2	When instructed by a solicitor, counsel should negotiate the fee directly with instructing solicitor and not the solicitor's clerk.....	689
1.3	Professional misconduct for counsel to negotiate the fee directly with the client.....	690
1.4	Acceptance of the brief fee.....	690
2.	The Brief Fee and Refreshers.....	690
2.1	The brief fee.....	690
2.2	Refreshers.....	691
2.3	Prudent to make clear agreement as to what services are covered by brief fee and refreshers and what fees are payable if counsel unable to attend trial.....	692
2.4	The quantum of the fee and overcharging.....	693
2.5	Taxation of counsel's fees.....	693

2.6	Recovery of counsel's fee on taxation even if fee not marked on the brief	695
3.	Prohibition of Gifts of Money to Counsel	695
4.	Contingency Fees and Conditional Fees	695
4.1	The rationale for prohibiting contingency fees	695
4.2	Prohibition of contingency fees in Hong Kong.....	696
5.	Counsel May Not Demand an Increase in Fees During the Trial or After the Litigation has Ended	697
5.1	The fee must be fixed before the trial begins	697
5.2	It is improper to fix or increase the fee during the trial.....	697
6.	Recovery of Fees by Counsel.....	698
6.1	Issuance of fee note and mode of payment of fees	698
6.2	Counsel instructed by a solicitor	699
6.3	Counsel instructed by member of recognised professional body.....	701
6.4	Payment of counsel's fees by instalments and interest on counsel's fees	702
7.	Record Keeping.....	702

CHAPTER 20 THE DUTIES OF THE BARRISTER TO THE PUBLIC AND TO HIS PROFESSION 703

1.	The Barrister's Duty to the Public and to the Administration of Justice.....	703
2.	The Barrister's Duty to His Profession	704
2.1	The barrister's duty to his profession	704
2.2	The barrister's duty to uphold his code of professional conduct	704
2.3	Duty not to engage in conduct which will bring the profession into disrepute	704
2.4	Unprofessional conduct by barrister falling short of criminality	709
2.5	Duty to observe the ethics and etiquette of the profession.....	711
2.6	Barristers' duty to make their practice their primary occupation	712

CHAPTER 21 PRACTICE PROMOTION, ADVERTISING AND PUBLICITY 721

1.	Introduction.....	721
1.1	Before 2009 self-promotion by barristers was severely restricted	721
1.2	The lifting of restrictions in 2009.....	721
2.	Practice Promotion by Barristers	722
2.1	The new provisions governing advertising by barristers.....	722
2.2	Policing and enforcing the advertising provisions	724
2.3	Application of the provisions	724
3.	Advertising and Practice Promotion: Specifics.....	724
3.1	Use of e-mail.....	724
3.2	Contributing to blogs and Facebook	724
3.3	Occasions on which a barrister may describe himself as 'barrister'	725
3.4	Photographs or other illustrations of barristers and appearance in wig and gown outside court precincts.....	726
3.5	Visiting cards.....	727
3.6	Notice of change of address of chambers and notice of return to practice	727
3.7	Social visits to persons instructing counsel.....	727
4.	Improper Obtaining of Business	727
4.1	Prevention of improper obtaining of business via commission payments and 'kick-backs'	728

CHAPTER 22 THE BARRISTER'S DUTY TO THE LAY CLIENT	731
1. Introduction.....	731
1.1 The interrelationship between the barrister's duties to the lay client and to the court: Overriding duty to the court.....	731
1.2 The nature of counsel's duties to the client: Counsel's legal and ethical duties.....	732
2. Counsel's Duty to Act Competently and with Reasonable Care and Skill	732
2.1 Introduction	
2.2 The scope of counsel's common law duty of care	732
2.3 A criminal conviction may be set aside on the grounds of counsel's flagrantly incompetent advocacy.....	741
3. Counsel's Duty to Obey Client's Instructions.....	743
4. Counsel's Duty of Confidentiality to the Client and Legal Professional Privilege.....	743
4.1 The ethical duty of confidentiality	743
4.2 The common law duty of confidentiality	745
4.3 Legal professional privilege.....	746
5. Counsel's Duty to Uphold the Interests of His Client and Avoid Any Conflict of Interest	747
5.1 The professional duty to uphold the interests of the client	747
5.2 Counsel's duty to avoid a conflict of interest	748
6. Counsel's Duty When Defending a Person Accused of a Crime	751
6.1 Introduction.....	751
6.2 Duty not to leave client unrepresented during criminal trial.....	751
6.3 Advice on the plea.....	752
6.4 Right of the accused to decide whether to testify and duty of counsel where client elects not to testify	753
6.5 Duties in respect of laying blame upon others or insulting others.....	754
6.6 Counsel suspecting that client is not telling the truth.....	754
6.7 Client making inconsistent statements to counsel.....	755
6.8 Client confessing his guilt to his counsel.....	755
6.9 Counsel's duty in respect of client's previous convictions.....	758
6.10 Duty to see client after conviction and sentence	758
6.11 Duty of counsel where client absconds.....	758
7. Immunity of Counsel and Solicitor Advocates	759
7.1 Introduction.....	759
7.2 The scope of the advocate's immunity.....	761
CHAPTER 23 THE ADVOCATE'S CONDUCT BEFORE TRIAL AND IN COURT	731
1. Introduction.....	769
2. The Advocate Owes Duties to the Client, the Court, His Professional Standards and to the Public.....	769
2.1 What is 'the Court'?.....	769
2.2 Barristers and solicitors are 'officers of the court'	770
2.3 The duty to the court in particular is an <i>overriding</i> duty	771
3. Advocates' Duties before Trial	771
3.1 Introduction.....	771
3.2 Duty to consider mediation	771

3.3	Barrister's duties in respect of interviewing the client and witnesses.....	772
3.4	Counsel's duties when settling pleadings in civil cases and grounds of appeal in criminal cases	774
3.5	Advocates' duty in respect of affidavits	775
3.6	Advocates' duty to take procedural steps to facilitate a speedy hearing: Skeleton arguments, lists of authorities, chronologies of events and <i>dramatis personae</i>	775
3.7	Advocate's duty to ensure legibility of documents	777
3.8	Advocates' duty not to waste the court's time	777
3.9	Duty in respect of appeals	779
3.10	Duty to inform court once settlement reached	782
3.11	Duty not to pursue hopeless cases.....	782
3.12	Barristers' duty when document belonging to the other side comes into their possession	784
4.	Advocates' Duty to Observe Court Ethics and Etiquette.....	784
4.1	Court dress	784
4.2	Use of information technology and text-based communications in courtrooms.....	786
4.3	Courtroom manner and the presentation of the case.....	788
4.4	Improper allegations of bias and rudeness to the court.....	788
4.5	Proper conduct when cross-examining witnesses	791
4.6	Impugning the character of third parties	793
4.7	Inflammatory or emotive language to the jury	794
5.	The Advocate's Duties When Presenting His Case in Court	794
5.1	Advocates must never express their own opinion of the case being tried.....	795
5.2	Advocates must never give evidence in the case whilst conducting the case from the Bar	795
5.3	Advocate's duty to provide independent and objective representation of client.....	796
5.4	Advocate's duty not to waste the time of the court	797
5.5	Advocates' duty not to abuse the process of the court	797
5.6	Advocates' duty to provide the court with all necessary assistance	798
5.7	Duty to ensure that court acts within its jurisdiction.....	799
5.8	Duties of prosecuting and defence counsel during the summing-up	800
5.9	Advocates' duty not to knowingly deceive or mislead the court	803
5.10	Advocate's duty not to leave his client unrepresented in criminal trial	813
5.11	Advocate's duty not to communicate with witnesses during their testimony or with jurors during or after the trial.....	813
5.12	Advocate's duty in the plea bargaining process	814
5.13	Advocate in case required to testify during trial	819
6.	Barristers' Rights of Audience.....	821
6.1	Barristers have rights of audience in all courts save where excluded by statute	821
7.	Solicitor Advocates' Rights of Audience.....	822
8.	The Disciplinary Jurisdiction of the High Court over Barristers	823
8.1	The inherent jurisdiction of the High Court over barristers	823

**CHAPTER 24 EMPLOYED BARRISTERS AND
NON-PRACTISING BARRISTERS 825**

1. Employed Barristers.....	825
2. An Employed Barrister is not a Practising Barrister.....	825
3. Application of the Provisions of the Bar Code to Employed Barristers	826
4. Employed Barristers and Legal Professional Privilege.....	827
5. Barristers Employed In-House as Corporate Lawyers.....	827
5.1 Services that may be provided by barristers privately employed as in-house lawyers.....	827
6. Non-Practising Barristers.....	829
6.1 Application of the Bar Code to non-practising barristers.....	829
6.2 Restrictions upon work that may be done by non-practising barristers	830

**CHAPTER 25 BARRISTERS AND THE DISCIPLINARY
PROCESS..... 831**

1. Introduction.....	831
1.1 Jurisdiction over the conduct of barristers	831
2. Supervision by the Court	831
2.1 The disciplinary process.....	831
3. Professional Misconduct Under the Bar Code and the Laying of a Complaint.....	832
3.1 Barristers' professional duties.....	832
3.2 Laying a complaint.....	834
4. Investigation by the Bar Council.....	834
5. The Barristers Disciplinary Tribunal.....	835
5.1 Appointment of members of a Barristers Disciplinary Tribunal panel by the Chief Justice	835
5.2 Appointment of members of a Barristers Disciplinary Tribunal panel to inquire into the matter	836
5.3 Sittings of the Disciplinary Tribunal	837
5.4 Powers and privileges of the Disciplinary Tribunal	837
5.5 Procedure in respect of hearings before the Disciplinary Tribunal	838
5.6 Disciplinary powers of the Disciplinary Tribunal	841
5.7 The Disciplinary Tribunal must comply with the rules of natural justice	842
5.8 Names of tribunal members and lawyers involved in disciplinary hearings not protected from disclosure to public	843
6. Findings of the Disciplinary Tribunal	844
6.1 Order as to costs	844
7. Enforcement of the Order	846
7.1 Enforcement of the order by the court	846
7.2 Application for payment by instalments	846
8. Appeal to the Court of Appeal	847
8.1 Jurisdiction and procedure	847
8.2 Grounds on which the Court of Appeal will interfere with the decision of the Disciplinary Tribunal	847
9. Variation of the Order of Suspension or Striking Off	847
9.1 Jurisdiction of the Disciplinary Tribunal.....	847
9.2 Matters to be taken into account	848

10. The Standard of Proof of Misconduct.....	849
11. Fixing the Appropriate Penalty	849
11.1 Striking off	849
11.2 Censure.....	850
11.3 Penalty for unprofessional conduct.....	851
12. Government Legal Officers and the Disciplinary Process	852
13. Application of the Doctrine of <i>Res Judicata</i> to Disciplinary Proceedings	852
14. Interrelationship Between Criminal Proceedings and Disciplinary Action — No Double Jeopardy	853
15. Expenses of the Disciplinary Tribunal	853
16. Applications by Barristers to Have Their Names Struck Off the Roll.....	853
16.1 The inherent power of the court to strike a barrister off the Roll.....	853
16.2 Restoration of barrister to the Roll.....	854

CHAPTER 26 THE DUTIES OF COUNSEL FOR THE PROSECUTION

1. Introduction.....	855
2. The Department of Justice's Prosecution Code	856
2.1 The independence of the Department of Justice in the conduct of criminal proceedings	856
2.2 The roles of the Secretary for Justice and Director of Public Prosecutions	856
2.3 The ethical standards and duties of prosecuting counsel	857
3. The Duties of the Prosecution in the Investigation of the Case	858
3.1 The interdependence of the roles of the prosecutor and the investigative authorities.....	858
3.2 Communications between the investigative authorities and the Department of Justice may be protected from disclosure by legal professional privilege.....	859
3.3 Entrapment	859
3.4 Bringing the accused within the court's jurisdiction by improper means.....	860
3.5 Evidence improperly obtained	860
3.6 Loss of important evidence	861
3.7 Suppression of relevant evidence	861
3.8 Other grounds constituting an abuse of process.....	862
4. The Decision Whether or Not to Prosecute.....	863
4.1 The decision to prosecute.....	863
4.2 Prosecution taking over a private prosecution.....	865
4.3 Review and discontinuation of prosecution	869
4.4 Determining the appropriate venue for the trial	869
4.5 The duty of prosecuting counsel to the court	870
5. The Duty of Disclosure to the Defence	872
5.1 Introduction	872
5.2 Requirements of disclosure in the Prosecution Code.....	872
5.3 The common law duty of disclosure	873
5.4 Provision of copies of all original statements made by an accused and copies of statements of all prosecution witnesses that the prosecution intends to call	875
5.5 Extent of prosecution's duty to call witnesses	876
5.6 Names and addresses of witnesses whom the prosecution does not intend to call.....	876

5.7	Statements of witnesses whom the prosecution does not intend to call.....	876
5.8	Other unused material in the possession of the prosecution	877
5.9	Prior inconsistent statements of prosecution witnesses	880
5.10	Information of prior failure by witness to identify accused.....	881
5.11	Discrepancies between eye-witness descriptions and actual appearance of the accused	881
5.12	List of accused's known previous convictions	881
5.13	Known convictions of prosecution witnesses and other factors affecting their credibility	881
5.14	Copies of documents seized from the defendant.....	883
5.15	Forensic evidence supporting defence case.....	883
5.16	Copies of exhibits.....	884
5.17	Samples of substances.....	884
5.18	Disclosure of terms of offer of immunity from prosecution to a prosecution witness	884
5.19	Disclosure of use of undercover agents and identity of informers.....	885
6.	Prosecuting Counsel Interviewing Witnesses	887
6.1	Coaching prosecution witnesses	888
7.	The Duty of the Prosecution in Procedural Matters.....	888
7.1	Duty not to abuse the court process	888
7.2	Abuse of process in the decision to prosecute.....	888
8.	Victims of Crime and Vulnerable Witnesses.....	890
9.	Communications Between Prosecuting Counsel and the Media	892
10.	Unrepresented Accused Persons	894
11.	The Duty of the Prosecution in the Presentation of Evidence During the Trial.....	895
11.1	Introduction	895
11.2	The opening speech for the prosecution.....	896
11.3	Calling of witnesses and examination-in-chief by the prosecution.....	896
11.4	Cross-examination by the prosecution	897
11.5	Duty of prosecuting counsel during his closing address	898
11.6	Duty of prosecuting counsel during the summing-up	899
12.	The Duty of Prosecuting Counsel to Attend Throughout the Trial	900
13.	The Duty of the Prosecution on Appeals Against Conviction.....	900
14.	The Role of the Prosecution in the Sentencing Process.....	901
14.1	Guidance from the Prosecution Code	901
14.2	Guidance from the court.....	903
14.3	Appeals against sentence and review of sentence.....	904
15.	Discipline and Immunity from Disciplinary Action	905
	<i>Index</i>	909