

COMMON EXAMPLES OF ACCIDENTS THAT MAY CAUSE PERSONAL INJURIES II. COMMON EXAMPLES OF ACCIDENTS THAT MAY CAUSE PERSONAL INJURIES Claims can be made against a whole range of accidents, including injuries sustained from traffic accidents, wet and slippery floors, faulty work equipment and many more. Claims can also be made against medical negligence where a sub-standard level of care has resulted in misdiagnoses, further injury or even death. If you suffer a fatal injury, your dependents are also entitled to claim compensation. LET US BRIEFLY DISCUSS SOME COMMON EXAMPLES OF ACCIDENTS: A. ROAD TRAFFIC ACCIDENTS A. ROAD TRAFFIC ACCIDENTS For road traffic accidents, claims could be made against the driver and / or the vehicle owner. Usually these claims are passed on to the vehicle's insurer, who will investigate the claim and settle it if appropriate. You may obtain the particulars of the insurer concerned from the Police in most cases. All accidents in which bodily injuries occur must be reported to the Police, and all owners of motor vehicles are required by law to be insured against claims for bodily injury. Injuries resulting from road traffic accidents can range from whiplash and broken bones all the way up to paralysis, brain damage and even death. B. MEDICAL NEGLIGENCE B. MEDICAL NEGLIGENCE Personal injury can result from medical negligence. Common claims include birth injuries, wrong site surgery (e.g. surgery on the wrong organ), faulty medical apparatus, and illnesses resulting from a lack of hygiene. Please refer to the Medical Negligence section on this web site for more information. C. ACCIDENTS AT WORK C. ACCIDENTS AT WORK Industrial accidents are a common occurrence. It is an employer's duty to make the workplace safe for its employees, and to protect them from harmful accidents at work. However, accidents can and do happen, even in an office environment. Common examples include construction workers falling from a height or injuries caused by faulty equipment in the work place. Most of the matters and all legal procedures that apply to work-related injuries and their respective forms of compensation are governed by the Employees' Compensation Ordinance (Cap. 282 of the Laws of Hong Kong) ("the ECO"). The ECO applies to all full-time or part-time employees who are employed under contracts of employment or apprenticeship, including domestic helpers, agricultural employees, crewmembers of Hong Kong registered ships, and any persons who are employed in any capacity on board ships registered in Hong Kong or in Hong Kong waters. Employers are liable to pay compensation for injuries that are sustained by their employees as a result of accidents that arise out of and in the course of employment; or for occupational diseases that are specified in the ECO. An employer owes a duty to take reasonable care for the safety of its employees. The general duty owed by an employer includes the provision of competent staff adequate material, a proper system of work, and effective supervision. Where injury is caused to an employee by the negligence, the breach of statutory duty, or other wrongful act or omission of the employer together with any other person(s) or entity(ies), the injured employee may also bring a separate common law claim for damages against the other person(s) or entity(ies). Such a common law claim would be independent of the employee's compensation claim under the ECO. However, any damages awarded against an employer in an action under common law or under any enactment in respect of any such negligence, breach of statutory duty, or wrongful act or omission, shall be reduced by the value of any compensation that has been received by the injured employee under the employees' compensation claim. D. SLIP AND FALL ACCIDENT D. SLIP AND FALL ACCIDENT In all circumstances, an occupier (that is a person in possession of or enjoying the premises otherwise than as a mere servant) of any premises owes a duty to all his visitors to take such care as is reasonable to see that the visitor will be reasonably safe while using the premises for the purposes for which he is invited or permitted by the occupier to be there. An occupier must be prepared for children to be less careful than adults. The burden of proof lies with the injured person who must show on the balance of probability that the slip and fall accident happened due to negligence on the part of the occupier(s). An occupier does not have an absolute duty to ensure that the floor is clean and dry at all times. Occupiers cannot be expected to have members of staff permanently stationed at designated areas to watch out for any spillages and to clean it up immediately as it occurs. The law requires an occupier to set up a reasonable and proper system of cleaning the premises and to take reasonable care for the safety of visitors to the premises and take

reasonable steps to ensure that the cleaning work is done properly. For example, keeping the floor dry at the entrance of a shopping centre on a rainy day is not practicable, but so long as the occupiers are reasonable, then their duties would have been fulfilled e.g. placing warning signs to warn the passengers of slippery floors and organising their staff to mop the wet floor regularly (obviously that would depend on reasonableness and the facts of the case).

**E. ASSAULT** E. ASSAULT Assault can be established if the plaintiff can show that the defendant's act of assault was done intentionally or negligently.

**F. DOG BITE** F. DOG BITE The owners of domestic animals may be liable for damages if they have knowledge that the animal is likely to cause injuries to human beings. No liability exists where the damage was done wholly due to the fault of the person suffering it (e.g. the person was trespassing on private property) or had voluntarily assumed the risk (e.g. the person was voluntarily romping with a friend's dog, or had agreed to look after someone's dog). However, an owner of a domestic animal may also be liable for damage caused by the animal if particular circumstances exist which in themselves imposed a duty on the owner to take precautions, and the owner failed to do so. The owner of a tame dog may be liable for negligence if he puts it in such a position and in such circumstances as to render it likely to get excited, lose its temper, and cause a danger to people. There may be cases in which a defendant may be liable for a dog bite even if the dog does not belong to a ferocious breed. He may be liable if it can be proved that the dog was put in such a position that a reasonable man would have known that the dog was likely to cause a danger, and therefore the defendant ought to have regarded himself as under an obligation to take precautions to prevent the dog from biting someone.

**WHEN CAN I MAKE A CLAIM FOR PERSONAL INJURY? III. WHEN CAN I MAKE A CLAIM FOR PERSONAL INJURY?** You may claim compensation for personal injury through legal action in Hong Kong when you have suffered injuries as the victim of an accident that was caused by the fault of a party other than yourself. A legal action for personal injury is a civil lawsuit that is directed at compensating a victim who suffers bodily injury due to an accident that is caused by a wrongdoer. It does not impose criminal liability for punishing the wrongdoer. The mere fact that an accident occurred is not by itself sufficient to prove that the defendant has been negligent. The burden of proof is on the plaintiff (in this case the person injured) to show that on the balance of probability, the accident was caused by the fault (negligence) of the defendant(s). The burden of proof of liability for a personal injury claim may be based on a number of causes of action. These "causes" include negligence, trespass on a person (such as physical attack), nuisance, breach of a statutory duty, and breach of a contractual duty. You can also claim for monetary compensation against a person who has deliberately injured you. However, if the accident did not involve someone's fault or negligence, then there is no cause of action under personal injury proceedings, and you will not be able to sue anyone for compensation.

**HOW TO MAKE A CLAIM FOR PERSONAL INJURIES? IV. HOW TO MAKE A CLAIM FOR PERSONAL INJURIES?** It is important to bear in mind that generally the time allowed for submitting a personal injury claim to the Court is limited to three years from the date of the accident. If you do not commence proceedings within the 3 year time limit, you will lose your right to sue. Here are some practical tips for preparing your claim for personal injuries:- After being involved in an accident in which you have suffered injuries, the first step required is to call the police and ambulance services. Tell the doctor about all the injuries that you have suffered. Keep a record of all ailments that occur following an accident. You should take a number of steps at the scene of the accident that caused your injury to gather evidence that can be used to substantiate your claim, as you will need to prove that the injury occurred as the result of someone else's action. Take a picture or draw a sketch of the scene if possible. Collect the contact details of any person who witnessed the accident and notify them that they will be contacted at a later date. A record of the accident, including the place where it occurred, the date and time, the personal details of any witnesses, and details of the parties involved, will all be required when filing a personal injury claim. If the personal injury has resulted in loss of work or has caused permanent personal damage like the loss of a limb, caused you to be confined to a bed or to require nursing services, these circumstances need to be taken into account. Get a

prognosis of your injury from a medical professional and keep all receipts relating to medical consultations. Collect payslips from before the accident, or other evidence of income that will prove a claim for loss of earnings if you are unable to work for a period as a result of your injuries. Maintain all records of the accident and any costs borne for medical care, and loss of work. Note that in the case of a motoring accident, if the car was a write off, even the loss of the fuel it contained can be claimed. If the amount of compensation that you want to claim is over HK\$3,000,000 you need to start your action in the Court of First Instance of the High Court. Claims for an amount under HK\$3,000,000 should be filed in District Court. Claims under HK\$75,000 should be pursued in Small Claims Tribunal. In all cases it is advisable to consult solicitors who are experienced in dealing with accident compensation claims, and they will advise whether or not your intended claims have any merit, that is, whether or not there are reasonable grounds for your claim. Your solicitor will be able to organise your evidence in order to present it to the party being held responsible and their insurers. Please note that if records of the accident have not been properly kept, or are incomplete, this can be a big drawback in substantiating your claim.

LEGAL PROCEDURES INVOLVED IN PERSONAL INJURY PROCEEDINGS

V. LEGAL PROCEDURES INVOLVED IN PERSONAL INJURY PROCEEDINGS

In all cases it is advisable to consult solicitors who are experienced in dealing with accident compensation claims and they will advise whether your intended claims have any merit. Your solicitors will also handle all the legal procedures involved in the personal injuries proceedings for you. Personal injury litigation is no different from any other form of litigation. The parties should present their case to the court for its determination. The judge will act as an umpire and make decisions after considering the evidence and hearing the arguments from the opposing parties. The losing party will normally be ordered to pay the costs to the winning party. The costs are the expenses that the winning party had to spend on the preparation and hearing of the matter, including their expenses for the solicitors and barristers representing them. The amount of these costs can be substantial, depending on the complexity of the case, the work required for preparation of hearing and the length of the hearing. Through the Personal Injury [Practice Directions], the courts now have increased authority to monitor the progress of personal injury litigation, and take an active role in case management and measures to control undue delay. Further, with the introduction of the Civil Justice Reform, effective from 2nd April 2009, the implementation of far stricter case management and pre-trial steps to promote mediation and settlement are in place. Strict timetables have to be adhered to at every step in the process, whilst a letter before action has become mandatory in personal injury litigation. The regime is now strict and those who fail to comply with each and every step of the process may face direct fines or other additional costs. For your general reference, in the following sections we briefly provide in a nutshell some of the legal procedures involved in typical personal injury proceedings. In general, personal injury proceedings are governed by Practice Direction 18.1 which can be downloaded from the Judiciary website. Litigation is the last resort in a dispute and the parties involved are always encouraged to explore ways to reach an amicable settlement of their cases by using methods such as without prejudice correspondence and mediation. Some important legal documents and procedures are highlighted as follows:

1. LETTER BEFORE ACTION (PLAINTIFF) AND CONSTRUCTIVE REPLY (DEFENDANT)
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Prior to the commencement of proceedings, the claimant should send to the proposed defendant(s) 2 copies of a letter of claim, which should follow the prescribed format of the specimen letter provided under Practice Direction 18.1. This letter of claim can be amended to suit the particular case. Where the identity of the insurer(s) concerned is known, a copy of such letter of claim should additionally be sent to them. It may be appropriate to make a proposal for arranging expert medical examination. The claimant shall give as much information and produce such documents as are reasonably required to enable the proposed defendant(s) to give a constructive reply. The letter of claim should be sent no later than 4 months prior to the commencement of proceedings, and the proposed defendant(s) should reply constructively to the letter of claim within one month. If the defendant makes no such reply, the claimant will be entitled to commence

proceedings forthwith without risk as to legal costs. If the plaintiff receives a reply within one month, the parties should over the next 3 months communicate constructively and provide mutual disclosure of information and documents with respect to issues of liability and the amount of compensation sought.

**2. WRIT OF SUMMONS**

2. WRIT OF SUMMONS Writ of summons is the appropriate mode by which to commence a personal injury action. Further, the prescribed Form 16C should accompany your writ. It is required for the admission of your claim. You may go to the website of the Judiciary to view these court forms.

**3. STATEMENT OF CLAIM**

3. STATEMENT OF CLAIM You must state the age and date of birth of the Plaintiff in the Statement of Claim. For claims under the Fatal Accidents Ordinance (Cap. 22), similar particulars of the deceased and the person(s) on whose behalf the action is being brought must be given. The following documents must be served with the Statement of Claim: (i) medical report(s) or a post-mortem report if one exists. At least one medical report must describe the Plaintiff's condition at a time preferably no earlier than 4 months prior to the service of the report; and (ii) Statement of Damages. In order to avoid unnecessary delay and costs, the Plaintiff should also serve the following documents: (i) a copy of any Statement of Facts and finding of guilt, arising out of any prosecution of any party in respect of the accident in which the Plaintiff was injured or the deceased was killed. This should be accompanied by a sketch plan prepared by and photographs taken by and / or on behalf of any investigating or prosecuting authority, and any statements made by any witnesses, including where available a Police Investigation Report or a report by an Occupational Safety Officer; (ii) in respect of any post-accident earnings, (a) where the Plaintiff has returned to work other than with his pre-accident employer and if such employer(s) is / are not Defendant(s) in the action, a record of earnings and allowances received by the Plaintiff contained reasonably sufficiently either in his pay slips, statement(s) obtained from his employer(s) or his bank account or other records; or (b) where the Plaintiff is self-employed, his profit and loss accounts, together with copies of his tax returns lodged with the Inland Revenue Department by him / her and, where appropriate, by his employer(s), and his ORSO and / or MPF Statements; (iii) in respect of pre-accident earnings, (a) where the Plaintiff was employed by employer(s) who is / are not Defendant(s) in the action, a record of earnings and allowances received by the Plaintiff for the 12-month period prior to the accident, contained reasonably sufficiently either in his pay slips, statement(s) obtained from his employer(s) or his bank account or other records; or (b) where the Plaintiff was self-employed, his profit and loss accounts for the 2 years prior to the accident, together with copies of his tax returns lodged with the Inland Revenue Department by him / her and, where appropriate, his ORSO and / or MPF statements for the 2 years prior to the accident; (iv) copies of any statements by the Plaintiff and any other person who was an eyewitness to the accident in question as to the circumstances of the accident, upon which the Plaintiff relies in support of his pleaded case, to the extent that this has not been fulfilled by (i) above; and (v) in all medical negligence cases, a copy of any expert medical report relied upon for proving liability and causation.

**4. STATEMENT OF DAMAGES**

4. STATEMENT OF DAMAGES The Statement of Damages sets out the full particulars of the types of damage claimed including a summary of the Plaintiff's injuries, the treatment received and the prognosis. A Statement of Damages should include the following information: "IN PERSONAL INJURIES CASES" (INCLUDING MEDICAL NEGLIGENCE CASES) "IN PERSONAL INJURIES CASES" (INCLUDING MEDICAL NEGLIGENCE CASES) (a) the Plaintiff's date of birth; (b) a summary of the Plaintiff's injuries, the treatment received, the permanent disability, if any, suffered by him / her and, where practicable, the prognosis in respect of such disability; (c) any special damages claimed for losses and expenses already incurred, including pre-trial loss of earnings with full particulars of the pre-accident employment income for 12 months preceding the accident; (d) an estimate of any future expenses and losses, including loss of earnings, pensions and MPF contributions, and, where practicable, the multiplier (an actuarial figure for calculating a lump sum amount to compensate the plaintiff for future loss of earnings, the loss of pension rights and to cover future expenses) or the range of multipliers claimed in respect of such future losses and expenses, and such estimate should give the full particulars of any credit

given for post-accident earnings; (e) where practicable, all material facts relied upon in support of a claim for damages for loss of earning capacity; and (f) where practicable, a statement of the range of damages claimed as general damages for pain, suffering and loss of amenities and damages for loss of earning capacity. "IN FATAL ACCIDENT CASES" (INCLUDING MEDICAL NEGLIGENCE CASES) "IN FATAL ACCIDENT CASES" (INCLUDING MEDICAL NEGLIGENCE CASES) (a) the name and date of birth of each dependant and their status e.g. student at university or nature of employment; (b) the deceased's date of birth, occupation and income on the date of the accident; (c) any special damages claimed for losses and expenses already incurred (including loss of dependency); (d) an estimate of any future expenses and losses, including loss of dependency, and, where practicable, the multiplier or range of multipliers claimed in respect of such future losses and expenses; (e) an estimate of the claim for loss of accumulation of wealth, including, where practicable, a statement of all material facts relied upon in support of the claim and a statement of how such claim has been calculated, including, where appropriate, the multiplier or range of multipliers used in the calculations; and (f) the amount claimed as damages for bereavement and / or loss of society. 5. DEFENCE 5. DEFENCE Within 28 days of filing the Acknowledgment of Service, the defendant must file a Defence (stating all the grounds for denying the alleged liability), together with other documents as required by the Practice Direction, including any statements of the defendant and other witnesses (Witness Statements). The defendant must explain in his defence why the defendant is disputing the Plaintiff's claim. 6. CERTIFICATE (FEE ARRANGEMENT) 6. CERTIFICATE (FEE ARRANGEMENT) The Court requires the Plaintiff and his Solicitor to sign a certificate stating that the action is not funded by any third party on the basis of a fee arrangement contingent upon the outcome of the litigation. This certificate must accompany the Writ. It is important to bear in mind that any fee arrangement contingent upon the outcome of the litigation (e.g. no-win-no-fee arrangement) are unlawful save for agreements entered into with the Legal Aid Department under the Supplementary Legal Aid Scheme established under the Legal Aid Ordinance (Cap. 91). 7. STATEMENT OF TRUTH 7. STATEMENT OF TRUTH The Statement of Claim and Statement of Damages should contain a Statement of Truth in compliance with The Rules of the High Court (Cap. 4A), Order 41A, rules 2 and 5 and also with Practice Direction 19.3 (Practice Direction on Statement of Truth). 8. PROTOCOL FOR COMMISSIONING EXPERT REPORTS 8. PROTOCOL FOR COMMISSIONING EXPERT REPORTS As a general rule, a leave of the Court or consent of the parties involved is required before any expert evidence can be presented at a trial. If you obtain expert evidence, other than from a single joint expert or pursuant to joint examination and joint expert report with the expert(s) of the other party, before the court agrees for you to do it, you do so at your own risk regarding costs and / or eventual refusal of leave to present such expert evidence. A party who unreasonably fails to cooperate in instructing or arranging a joint examination of the injured person, and / or in instructing or preparing a joint expert report, will risk sanctions being imposed on that party by the Court as it deems fit. These sanctions may include refusal of leave by the Court to present an expert report prepared singly by such party's own medical expert and / or refusal by the Court to allow costs for obtaining such report. 9. THE CHECK LIST REVIEW AND CASE MANAGEMENT QUESTIONNAIRE 9. THE CHECK LIST REVIEW AND CASE MANAGEMENT QUESTIONNAIRE A date for a Check List Review Hearing shall be given to the applicant on the date of the filing and issue of the Writ, and this date shall be not less than 5 months and not more than 6 months from the date of filing, and shall be indorsed upon the Check List Review Notice and the Writ. At the Check List Review Hearing, the PI (Personal Injury) Master will give directions relating to management of the case and to fix a timetable for the steps to be taken. The PI Master may also consider applications from the parties and make such orders on his own motion where it is appropriate for proper conduct of the case. 10. CASE MANAGEMENT CONFERENCE 10. CASE MANAGEMENT CONFERENCE A Case Management Conference may be arranged by the PI Master upon application or on his own motion by directions on paper or at the Check List Review Hearing. A Case Management Conference is a critical stage in the proceedings and for most cases virtually the only milestone event before trial. Parties are expected to have complied with the timetable laid down by the Court by the time of

the Case Management Conference. Unless sufficient grounds have been shown to it, the Court will not grant extensions of time for compliance. If it does, the grant of extension will most likely be on an unless order basis with self-executing sanctions.

11. PRE-TRIAL REVIEW 11. PRE-TRIAL REVIEW The Court may provide for and fix a date for hearing a Pre-Trial Review by directions on paper, at the Check List Review Hearing, or subsequently. By mutual consent, the parties may apply to the PI Master for a Pre-Trial Review by sending a letter explaining the reasons why they want to have the hearing. At the Pre-Trial Review, all parties must have the necessary information regarding the availability of their Counsel, witnesses and, where appropriate, experts, so that the Judge can fix a reasonable trial date. At the Pre-Trial Review, the Judge may consider applications for or make such orders as may be necessary and appropriate for the efficient resolution of all outstanding matters, in order to ensure that the action is tried justly, speedily and efficiently.

IS THERE A TIME LIMIT FOR FILING A PERSONAL INJURY CLAIM? VI. IS THERE A TIME LIMIT FOR FILING A PERSONAL INJURY CLAIM? Under section 27 of the Limitation Ordinance (Cap.347), where a plaintiff makes a claim for personal injury, the limitation period is three years from the date of the accrual of the cause of action (that is, the date of the accident / the date when the plaintiff was injured) or the date of knowledge (that is, knowing that the injury was significant and attributable to the defendant), whichever is later. According to section 28 of the Limitation Ordinance, where the claim is one of a fatal accident, the limitation period is three years from the date of death or the date of knowledge of the death by the deceased's dependent, whichever is later. Where the person injured is under a disability, the 3 years' limitation period is not applicable until the person ceases to be under the disability or dies, whichever is earlier (section 22(1) and 22(2) of the Limitation Ordinance). A person is considered to be under a disability if he/she is a child or a patient who is mentally incapacitated. Thus, for children, the limitation period is not applicable until the age of 18. However, the Court has discretion to extend the limitation periods where it is fair and reasonable.

HOW MUCH COULD MY CLAIM BE WORTH? VII. HOW MUCH COULD MY CLAIM BE WORTH? It is difficult to provide exact figures as regards how much compensation a successful claim for a personal injury would bring because each case is different in circumstances and no one case will be exactly the same as another. In general terms a compensation claim for personal injury will be calculated by taking into account the past and future financial cost caused by the injuries sustained in the accident, the pain and suffering that was caused as a result, and the interest that has accrued from the time that the proceedings were served. The court would also consider any amount payable from the financial loss attributable to the injuries caused by the accident and legal costs. The main objective of compensation is to place the claimant (person making the claim) in the position that they would have enjoyed had the accident not occurred, insofar as monetary compensation can achieve this. The usual remedies include :

For a non-fatal claim For a fatal claim It is recommended that you consult a lawyer for a detailed explanation of how to organize and proceed with a claim for damages.

FOR A NON-FATAL CLAIM FOR A NON-FATAL CLAIM a) Damages for pain, suffering and loss of amenities ( "PSLA" ) In assessing a PSLA award, the Court takes into account previously decided cases of comparable injury as a guideline for the level of awards. The claimant's age, previous and current medical condition, length of hospitalization, the impact of the injuries, the kind and number of treatments or operations received, cosmetic or facial injuries, and psychological problems will be considered.

b) Loss of earnings Depending on the severity of the injuries sustained, the claimant is entitled to claim in full for loss of earnings during the sick leave period and for any subsequent loss of earnings (full or partial) that may be caused by disability resulting from the injuries sustained in the accident. The claimant's age and the earnings of comparable workers are also relevant in determining claims for loss of earnings. Any income that is earned by the claimant after the accident will be taken into account when assessing the claimant's entitlement to claim for loss of earnings.

c) Other special damages (miscellaneous expenses) The claimant is entitled to be compensated for other amounts that are reasonably incurred as a result of the accident. Common items include hospital fees, private doctor's expenses, tonic food expenses and

travelling expenses. On occasion, claims for other damages can be made based on the particular needs of the claimant, such as expenses for certain equipment, subject to their need and reasonableness being established. d) Interest on the above damages e) The claimant's legal costs Last revision date: 25 February, 2020 FOR A FATAL CLAIM FOR A FATAL CLAIM a) Funeral expenses b) Damages for bereavement, currently HK\$231,000 c) Loss of dependency by dependants (if any), such as the deceased's children, spouse and parents. This is calculated with reference to the actual income and expenditure of the deceased's household, taking into account the age of the dependants. d) Loss of accumulation of wealth This is assessed with reference to the value of the estate of the deceased as of his death and the value of the estate but for the accident had the deceased died naturally. The calculation is also made with reference to any savings plan, or the likelihood of savings, had the deceased died naturally. e) Loss of services This claim is principally made by the surviving spouse and is based on the surviving spouse's evidence that the deceased had assisted in the household work, such as cooking and taking care of the children. An award of this kind will be made if the surviving spouse can prove that the dependants (children or other family members) have suffered a financial loss of the gratuitous services rendered by the deceased spouse, which would have continued had he/she still been alive. An example would be having to spend money to hire a domestic worker to handle the household work formerly undertaken by the deceased. f) Other special damages (miscellaneous expenses) Other claims may include, for instance, damage to property such as the vehicle the deceased was driving at the time of the accident and any related medical expenses. g) Interest on the above damages h) The claimant's legal costs Last revision date: 25 February, 2020 CAN I APPLY FOR LEGAL AID FOR MY PERSONAL INJURY CLAIM? VIII. CAN I APPLY FOR LEGAL AID FOR MY PERSONAL INJURY CLAIM? Lay people may find it difficult to handle Personal Injury Claims, as they involve medical and legal issues that are beyond the grasp of ordinary citizens. Solicitors are usually engaged to advise on these cases. If you cannot afford to instruct a solicitor, then you can consider applying to the Legal Aid Department for legal aid, which will be granted subject to a test of your means (financial eligibility) and the merits of the case (whether or not you have substantial grounds for legal action).

1. LEGAL AID 1. LEGAL AID The Legal Aid Department provides legal representation for eligible applicants by providing you with a solicitor and, if necessary, a barrister, in civil or criminal proceedings. Legal aid is available for cases involving personal injury or death, as well as medical, dental or legal professional negligence. Any person, whether or not ordinarily resident in Hong Kong, who is involved in the circumstances described above: i.e. a personal injury, may apply for legal aid. Legal aid will be granted if the applicant is able to satisfy the statutory criteria as to their financial eligibility and the merits for taking or defending the legal proceedings. Means Test The purpose of the "means test" is to assess the financial resources of the applicant. Under the Ordinary Legal Aid Scheme, the upper financial eligibility limit is HK\$420,400. Financial resources of an applicant are his or her monthly disposable income multiplied by 12 plus his or her disposable capital. Merits Test The main purpose of the "merits test" is to determine whether an applicant has a reasonable claim or defence and whether or not the grant of legal aid to an applicant is justified. Apart from considering the prospect of success, the Director may refuse legal aid in cases where he would be unable to enforce a judgment e.g. the opposite party is uninsured and has no valuable assets. The Director will also give due weight to the importance of the case to the applicant in deciding whether to grant legal aid. For more details about legal aid, please click [here](#).

2. SUPPLEMENTARY LEGAL AID SCHEME 2. SUPPLEMENTARY LEGAL AID SCHEME The Legal Aid Scheme provides legal representation to the "sandwich class" whose financial resources are above the upper eligibility limit for the Ordinary Legal Aid Scheme (i.e. \$420,400) but do not exceed \$2,102,000. Under the Scheme, legal aid is available for cases involving personal injury or death, as well as medical, dental or legal professional negligence, where the claim for damages is likely to exceed \$75,000. It also covers claims under the Employees' Compensation Ordinance irrespective of the amount of the claim. The applicant must pay an initial application fee of \$1,000 plus an interim contribution of \$105,100 upon

acceptance of their legal aid. If your case is successful, you have to pay any expenses and costs incurred in the case that are not recovered from the opposite party to the Director of Legal Aid out of the damages / compensation recovered. In addition, you will have to pay 20% of the damages recovered into the Supplementary Legal Aid Fund. If your case is settled before counsel is briefed to attend trial, this percentage will be reduced to 15%. For more details about Supplementary Legal Aid Scheme, please click [here](#). **LAW SOCIETY FREE LEGAL HELPLINE IX.** **LAW SOCIETY FREE LEGAL HELPLINE** The Law Society Free Legal Helpline provides assistance to members of the general public who have suffered personal injuries in accidents and need help to make a claim for compensation. This Helpline was established in May 2013. A Panel of solicitors will provide telephone consultation to accident victims for up to 45 minutes free of charge. You can call the Helpline yourself (telephone no: 8200 8002), or a relative or a friend (who must be aged 18 or over) can make enquiries on your behalf. The helpline operates from 9 a.m. to 5:30 p.m., Monday to Friday. A voice mail service is active after business hours and during public holidays. **TRAFFIC ACCIDENT VICTIMS ASSISTANCE SCHEME X.** **TRAFFIC ACCIDENT VICTIMS ASSISTANCE SCHEME** The Traffic Accident Victims Assistance Scheme provides financial assistance to those injured in road traffic accidents or for dependants of those killed in a traffic accident. It does not require a means test, and does not take into account any element of fault leading to the occurrence of the accident. Damage to property is not covered. The accident must fall within the scope of the Traffic Accident Victims (Assistance Fund) Ordinance, Cap.229 of the Laws of Hong Kong, and must have been reported to the Police. Application must be made within 6 months after the date of the accident. The applicant is required to attend an interview to provide relevant information and documentary proof. It is important to bear in mind that, under this scheme, the applicant is obligated to notify the Director of Social Welfare if he makes any claim or brings any legal proceedings in respect of the traffic accident, and to notify any person against whom he makes a claim of the amount of money he has received from the fund. Those who receive compensation in respect of the same accident are obligated to repay the sum they received under the fund. Any person who wilfully fails to comply with the above requirement commits an offence and is liable on conviction to a fine of \$2,000 and to imprisonment for 6 months. The paying party, who has been notified under the requirements of this scheme by the applicant in respect such funds, shall not less than 72 hours before they make payment notify the Director of Social Welfare in writing of the name and address of the person to whom or for whose benefit the payment is to be made and the amount of the payment. Any person who wilfully fails to comply with the above requirement commits an offence and is liable on conviction to a fine of \$2,000. **Traffic Accident Victims Assistance Section Address:** Unit A-D, 8/F, China Overseas Building, 139 Hennessy Road, Wan Chai, Hong Kong **Telephone:** 2832 4615-6 **Email:** tavaenq@swd.gov.hk **DO NOT ENGAGE RECOVERY AGENTS TO HANDLE YOUR CLAIMS XII.** **DO NOT ENGAGE RECOVERY AGENTS TO HANDLE YOUR CLAIMS** Recovery agents are neither professionally qualified nor subject to any code of professional conduct. A recovery agent will finance the claim by paying the legal fees and other disbursements, and then the accident victim has to hand over a share of his compensation to the recovery agent. There is no compulsory insurance covering any claims directed at recovery agents and they are of unknown financial backing. Since accident compensation in Hong Kong is assessed on the basis of actual loss, victims using recovery agents will not be adequately compensated as part of their compensation has to be paid to the recovery agents. The more seriously injured victims may then not have sufficient means to maintain their livelihood. Recovery agency contracts are generally champertous in nature and are unenforceable. Maintenance (of which champerty is a more serious form) remains a criminal offence in Hong Kong and recovery agents are liable to be prosecuted. Accident victims relying on recovery agents are likely to jeopardize their chances of getting the best possible redress. Accident victims should approach solicitors or the Legal Aid Department directly. It is important that you seek the services of a qualified, reputable and specialist firm of solicitors that have a strong background in the area of personal injury litigation. Such a firm should be able to provide you with expert advice on whether you are qualified to make a claim, and how to collate and



present the supporting documentation. They will start the claim for compensation for you by acting on your behalf if they believe you have a strong case.

QUESTIONS AND ANSWERS

XIII. QUESTIONS AND ANSWERS

1. I WAS INJURED AT WORK. IS THE LEGAL PROCEDURE FOR MY CLAIM AGAINST MY EMPLOYER FOR EMPLOYEES' COMPENSATION DIFFERENT FROM THE PROCEDURE FOR A PERSONAL INJURY CLAIM IN RESPECT OF THE SAME INJURY?

1. I WAS INJURED AT WORK. IS THE LEGAL PROCEDURE FOR MY CLAIM AGAINST MY EMPLOYER FOR EMPLOYEES' COMPENSATION DIFFERENT FROM THE PROCEDURE FOR A PERSONAL INJURY CLAIM IN RESPECT OF THE SAME INJURY? For work-related injuries, the legal procedure for employees' compensation is governed by the Employees' Compensation Ordinance (Cap. 282) which is not the same as in personal injury cases, as described above. Where any injury is caused to an employee by the negligence, breach of statutory duty or other wrongful act or omission of the employer and any other person or entity, the injured employee may also bring separate common law claims for damages independently from an employee's compensation claim under the ECO.

2. FURTHER TO THE ABOVE QUESTION, CAN I SIMULTANEOUSLY MAKE TWO CLAIMS - ONE FOR WORK-RELATED INJURIES AND THE OTHER FOR PERSONAL INJURIES - AGAINST MY EMPLOYER AND OTHER RELEVANT PARTIES?

2. FURTHER TO THE ABOVE QUESTION, CAN I SIMULTANEOUSLY MAKE TWO CLAIMS - ONE FOR WORK-RELATED INJURIES AND THE OTHER FOR PERSONAL INJURIES - AGAINST MY EMPLOYER AND OTHER RELEVANT PARTIES? Yes, an employee can simultaneously make two separate claims to claim for employees' compensation and also common law damages in respect of the same work-related accident. However, any damages that are awarded against an employer in an action under common law or under any enactment in respect of any such negligence, breach of statutory duty, or wrongful act or omission, shall be reduced by the value of any compensation that has been received by the injured employee under their employees' compensation claims.

3. I WAS INJURED BY A RESTAURANT WAITER WHO CARELESSLY SPILLED HOT SOUP ON ME. SHOULD I SUE THE WAITER AND THE RESTAURANT OWNER AND CLAIM COMPENSATION FROM BOTH OF THEM?

3. I WAS INJURED BY A RESTAURANT WAITER WHO CARELESSLY SPILLED HOT SOUP ON ME. SHOULD I SUE THE WAITER AND THE RESTAURANT OWNER AND CLAIM COMPENSATION FROM BOTH OF THEM? In many personal injury cases, there may be more than one potential defendant depending on the inter-relationship among the parties and the circumstances of the accident. In this scenario, it would be advisable for the claimant to commence proceedings against the waiter and the employer of the waiter. Generally, the employer would be vicariously liable for a negligent act of the waiter that was performed in the course of the waiter's normal employment duties. You are advised to consult a lawyer before deciding on the appropriate parties to sue.

4. A MAN INTENTIONALLY WOUNDED ME AND WAS CONVICTED OF CRIMINAL ASSAULT. CAN I MAKE A CLAIM AGAINST HIM FOR CIVIL DAMAGES THROUGH PERSONAL INJURY LITIGATION? WHAT HAPPENS IF THE DEFENDANT DOES NOT HAVE ANY MONEY TO PAY COMPENSATION?

4. A MAN INTENTIONALLY WOUNDED ME AND WAS CONVICTED OF CRIMINAL ASSAULT. CAN I MAKE A CLAIM AGAINST HIM FOR CIVIL DAMAGES THROUGH PERSONAL INJURY LITIGATION? WHAT HAPPENS IF THE DEFENDANT DOES NOT HAVE ANY MONEY TO PAY COMPENSATION? Yes, a personal injury claim can be made against a person who has criminally assaulted you. If the defendant has no money to pay compensation under a personal injury claim, the plaintiff may choose to commence bankruptcy proceedings or other appropriate enforcement proceedings against the defendant to recover the judgement sum.

5. I WAS A PASSENGER AND I WAS INJURED AS A RESULT OF AN ACCIDENT THAT HAPPENED ON A RAILWAY PLATFORM. DO I HAVE ANY GROUNDS TO CLAIM AGAINST THE RAILWAY COMPANY?

5. I WAS A PASSENGER AND I WAS INJURED AS A RESULT OF AN ACCIDENT THAT HAPPENED ON A RAILWAY PLATFORM. DO I HAVE ANY GROUNDS TO CLAIM AGAINST THE RAILWAY COMPANY? It depends on the circumstances of the accident and the burden of proof lies on the plaintiff (that is you, in this case) to establish that the railway company had failed to take such care as in all circumstances of the case to see that you were reasonably safe in using the platform as a passenger. In determining whether or not the occupier of a premises has discharged the common duty of care to a visitor, regards must be given to all the circumstances, so that where damage is caused to a visitor by a danger of which the visitor had been warned by the occupier, the warning is not to be treated by itself as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe. In other words, the occupier may not be able to escape from liability if the relevant warning sign / warning notice / verbal warning

announcement was not clear and adequate with regard to the whole situation. 6. IF MY INJURY WAS PARTLY CAUSED BY MY OWN NEGLIGENCE AND PARTLY ANOTHER PERSON'S FAULT, WOULD THE COMPENSATION BE REDUCED? HOW WOULD THE LEVEL OR PERCENTAGE OF SUCH A REDUCTION BE DECIDED? 6. IF MY INJURY WAS PARTLY CAUSED BY MY OWN NEGLIGENCE AND PARTLY ANOTHER PERSON'S FAULT, WOULD THE COMPENSATION BE REDUCED? HOW WOULD THE LEVEL OR PERCENTAGE OF SUCH A REDUCTION BE DECIDED? Contributory negligence is negligence in which the Plaintiff "contributes to the cause" of the accident. Contributory negligence is a point for the defendant to raise, not you, and the burden is on the defendant to establish the existence of your contributory negligence. Where any person suffers damage partly due to his own fault and partly due to the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just having regard to the claimant's share of the responsibility for the damage. Contributory negligence is often expressed as a percentage based on the plaintiff's share of the responsibility for the injury. 7. A MEMBER OF MY FAMILY DIED IN AN ACCIDENT. CAN I INITIATE PERSONAL INJURY PROCEEDINGS ON BEHALF OF MY FAMILY MEMBER? WHAT IS THE PROCEDURE THAT I HAVE TO FOLLOW BEFORE SUING THE WRONGDOER? 7. A MEMBER OF MY FAMILY DIED IN AN ACCIDENT. CAN I INITIATE PERSONAL INJURY PROCEEDINGS ON BEHALF OF MY FAMILY MEMBER? WHAT IS THE PROCEDURE THAT I HAVE TO FOLLOW BEFORE SUING THE WRONGDOER? In case of a fatal accident, a claim may be made by the deceased's estate (i.e. the claim is made under the deceased's name but handled by his/her representative). Where a Grant of Letters of Administration or Probate has been issued, particulars, such as the date of the Grant, the Grant number and the details of the executor/administrator of the deceased's estate must also be provided in the Statement of Claim. Non-financial losses and financial losses that have been incurred between the date of the accident and the date of death can be claimed against the defendant. Financial losses include medical expenses, funeral expenses and loss of future accumulation of wealth. A claim may be made by the deceased's dependents (such as the children or the spouse) for loss of dependency. A claim for non-financial losses, such as bereavement (mental depression/suffering due to the death of a relative), may also be brought by the deceased's relatives. The names and dates of birth of the deceased and the person who wants to seek compensation must be written in the Statement of Claim. Other particulars to be mentioned in the Statement of Claim and the Statement of Damages include: the extent of dependency of each dependent, the income and occupation of the deceased, a summary of the injuries, the medical treatment received, and medical and funeral expenses. 8. MY SON WAS INJURED IN AN ACCIDENT. HE WANTS TO MAKE A PERSONAL INJURY CLAIM BUT HE IS UNDER 18 YEARS OF AGE. CAN HE COMMENCE THE LEGAL ACTION BY HIMSELF, OR SHOULD I TAKE UP THE PROCEEDINGS ON HIS BEHALF? 8. MY SON WAS INJURED IN AN ACCIDENT. HE WANTS TO MAKE A PERSONAL INJURY CLAIM BUT HE IS UNDER 18 YEARS OF AGE. CAN HE COMMENCE THE LEGAL ACTION BY HIMSELF, OR SHOULD I TAKE UP THE PROCEEDINGS ON HIS BEHALF? A person who is under the age of 18 and wishes to make a claim must do so through his next friend. When an individual is unable to look after his own interests or manage his own lawsuit, the court would appoint a person to represent that individual's legal interests. In court terminology this person is called a next friend. A next friend is not a party to a lawsuit but an officer of the court. When the lawsuit is concluded, the next friend's duty ends. A next friend is required to act in the best interest of the minor Plaintiff at all times in the course of the legal proceedings. 9. WHAT IS THE FUNCTION OF A CORONER'S COURT? 9. WHAT IS THE FUNCTION OF A CORONER'S COURT? The function of the Coroner's Court is to inquire into the causes and circumstances of death where such death seems suspicious. Family members of the deceased often have the mis-conception that the culprit could be identified and be punished in the same court; however this is not the case. A Coroner's Court is a Court of enquiry and not a Criminal or a Civil Court. Its finding of the cause of death could be natural causes, industrial / occupational disease, dependency on drugs / non-dependant abuse of drugs, want of attention at birth, suicide, attempted abortion, accident, misadventure, self-neglect, lawful killing, unlawful killing, still birth and possibly an open verdict (An open verdict means the court was unable to reliably establish a cause of death).

However, the evidence presented to the court may be useful in subsequent civil claims for negligence. CASE ILLUSTRATION XIV. CASE ILLUSTRATION SCENARIO SCENARIO One day Mr. Lee was walking along the street when suddenly, an aluminum window fell from a residential flat above and struck him. Fortunately he only sustained minor injuries on his arm. He was hospitalized for a few days and discharged and was able to resume work. Before the commencement of the personal injury proceedings, he received \$10,000 as compensation from the elderly flat owner, Mr. Wong. Mr. Lee had already commenced legal proceedings, but Mr. Wong passed away shortly afterwards. Mr. Lee is worried about his claim. DISCUSSION DISCUSSION Legal Rights The loss of the right to sue depends on whether or not the payment of \$10,000 was made as a full and final settlement of the dispute between the parties. If Mr. Wong had specifically indicated that such payment was for settlement purposes and the same was accepted by Mr. Lee, it is likely that Mr. Lee has agreed under the terms of the settlement to forego any rights to seek further compensation. One should inquire whether there is any written proof to the same effect. This is a question of fact. Death of the Defendant (Mr. Wong) If Letters of Administration or a Grant of Probate has been granted, then the legal action survives and continues against the administrators or executors of the defendant's estate as normal. If there is no grant of probate or letters of administration, then the plaintiff, Mr. Lee, may commence legal action against the estate of the defendant. He must apply to the Court for an order that appoints someone to represent the defendant's estate (for the purpose of the legal proceedings) and an order that proceedings be carried out against the representative. A subsequent court judgment or order in such proceedings is binding upon the defendant's estate to the same extent and in the same way as if the grant of probate or letters of administration had been made. THE MOTOR INSURERS' BUREAU XI. THE MOTOR INSURERS' BUREAU The Motor Insurers' Bureau commenced operations on 1st February, 1981. All insurance companies in Hong Kong are required to be members of the Bureau. The principal objective of the Bureau is to secure the satisfactory settlement of claims in respect of liability for death or bodily injury that arises from the use of motor vehicles on the road. Under the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), all vehicles must be insured against claims for third party bodily injuries resulting from an accident involving the use of the vehicle on a road. However, there have been occasions where victims of accidents have been unable to recover the damages awarded to them because of the lack of valid insurance or where some breach of the insurance policy conditions allowed the insurer to repudiate his liability. In addition, it may happen that insurers might fail to meet their obligations under their policies due to insolvency. The Motor Insurers' Bureau of Hong Kong can help you obtain settlement if you have difficulty securing the payment of your claim, due to: - insolvency of an insurance company - no insurance - an untraceable vehicle The Bureau does not accept liability for any claims relating to property damage. Motor Insurers' Bureau of Hong Kong Address: Room 902, Bank of East Asia Harbour View Centre, 56 Gloucester Road, Wanchai, Hong Kong Telephone: 2866 9681 E-mail: mib@mibhk.com.hk Website: <http://www.mibhk.com.hk> WHAT ARE PERSONAL INJURIES? I. WHAT ARE PERSONAL INJURIES? Accidents can happen to anyone and at any time. A personal injury occurs when a person suffers bodily injuries during an accident. Personal injuries refer not only to physical damage; they can refer to psychological damage as well. For example, an accident victim might suffer from Post Traumatic Stress Disorder (PTSD) caused by the particularly distressing experience of the accident. Accidents and injuries can have a major impact on one's life and may lead to permanent disabilities and financial problems. One may require ongoing medical treatment and suffer from long-term pain. One might be forced to change jobs in the aftermath of the accident, or even be made unemployed. Personal injury claims vary immensely in nature and circumstances as no two accidents are ever the same. When a person's injury or death is caused solely or partly by the fault of another person or agent, the injured victim can institute legal action for personal injuries to obtain compensation from the wrongdoer.