

DRIVING I. DRIVING Defendants in most traffic offences are caught while driving vehicles. But what exactly is “driving”? What constitutes “driving” may look plain and obvious. However, there are in fact many Court cases where defendants facing driving offences have tried to argue that they were not driving at the material time. Consider the following scenarios: Pushing and steering a vehicle? Pushing without steering a vehicle? Leaving a vehicle, with its engine running? Sitting at the driver’s seat of a vehicle, with its engine off? Releasing the handbrake of a vehicle and let it go downhill? Sitting in the driver’s seat of a vehicle while it was being towed? Controlling a vehicle that was stuck in a traffic jam and motionless at the time? Are the above acts “driving”? There is no statutory definition of the word “driving”; and there is no fixed rule governing what constitutes the act of “driving”. Each of the above scenarios will have to be considered in the light of its factual circumstances before one can decide whether or not there is “driving”. Generally speaking, the basic principles of what constitutes “driving” are: driving involves the driver having control over the movement of a vehicle, and driving happens when the driver deliberately sets the vehicle in motion. The following examples may serve to highlight the Court’s attitude towards what constitutes “driving”. Pushing a vehicle with occasional adjustment of the steering wheel was not driving. Pushing and steering a motorcycle was driving. Temporarily leaving a vehicle with its engine running amounts to driving because driving is a continuous act. A person in the driving seat of a vehicle, with its engine off but still warm, had driven the vehicle. A conviction of driving while disqualified was therefore justified. A person sitting in the driver seat of a stationary vehicle, with its engine running, was not driving, though he accidentally stepped on the accelerator and made the vehicle move forward. Releasing the handbrake of a vehicle and letting it go downhill amounts to driving. Sitting at the driver’s seat of a vehicle while it was being towed amounts to driving. A driver controlling a stationary vehicle in a traffic jam was driving. (However, it should be noted that the Court decides each case on its unique factual circumstances. The above examples should not be treated as general principles.)

CARELESS DRIVING II. CARELESS DRIVING A relatively serious but commonly seen offence involving driving is “careless driving”. But how carelessly has to be one drive in order to constitute “careless driving”? According to section 38(2) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), a person drives carelessly “if on a road he drives a vehicle without due care and attention or without reasonable consideration for other persons using the road”. Therefore, the essential question to ask is: what exactly is “without due care and attention” or “without reasonable consideration for other persons using the road”? 1. “WITHOUT DUE CARE AND ATTENTION” 1. “WITHOUT DUE CARE AND ATTENTION” When dealing with the question of whether a driver has driven “without due care and attention”, the Court will ask: whether the driver was exercising the degree of care and attention that a reasonable and prudent driver would exercise in the circumstances. So the next question will naturally be: what is “reasonable”? The Court will answer the above questions from an objective perspective. For example, if a driver went through a red light, it is almost certain from an objective point of view that such an act was not up to the standard of a reasonable and prudent driver. Personal and non-objective factors such as the driver’s driving experience or state of mind will not be taken into account. That is to say, if this driver was an experienced one, he could not argue: “I am an experienced driver of good record and have always been driving reasonably and prudently; that act was merely a momentary lapse of mind.” If this driver was an inexperienced one, he could not argue: “Sorry, I only obtained my driving licence two weeks ago; please excuse me for my inexperience”. Similarly, it does not matter whether the driver was going through the red light deliberately or absent-mindedly. The Court will simply ask itself whether the act of going through the red light amounts to an act below the standard of a reasonable and prudent driver. But of course the act of deliberately jumping a red light is definitely more serious and will likely constitute dangerous driving. 2. “WITHOUT REASONABLE CONSIDERATION FOR OTHER PERSONS USING THE ROAD 2. “WITHOUT REASONABLE CONSIDERATION FOR OTHER PERSONS USING THE ROAD” The phrase “without reasonable consideration” may sound similar to “without due care and

attention". However, one should note that the charge "without reasonable consideration for other persons using the road" is applicable only if other road users are affected. But one should also note that injury or damage is not an essential element in this offence. The Court has ruled that there could be a failure to show reasonable consideration for other persons using the road when a driver drove at a slow speed (that is, substantially below the speed limit for that road) and did not pull in to passing bays to allow faster traffic to pass by.

3. PROOF OF CARELESS DRIVING

3. PROOF OF CARELESS DRIVING Even though it may seem very obvious that a driver's act constitutes "carelessness", the Court cannot simply say: "the facts speak for themselves" and then convict a person of careless driving. The court must duly consider all the factual circumstances related to the incident and find evidence of carelessness. The facts may be so prevalent, however, that the Court can draw an irresistible inference that, in the absence of a reasonable explanation, there must have been careless driving. For example, in the absence of a reasonable explanation, the Court has drawn an inference of careless driving in the following cases: where a vehicle knocked down a pedestrian crossing the road; where a vehicle crossed the centre line, i.e. the single broken line in the middle of a road, and caused an accident; where a driver lost control of the vehicle and it led to a collision; and where a vehicle pulled out from a side road and collided with other vehicles on the main road. Of course, anybody being charged with a criminal offence has the right to remain silent. Nevertheless, if there is some basic evidence which may suggest carelessness, and the driver charged with the offence of careless driving has an explanation for the incident, this driver should be prepared to speak up and give evidence in Court to explain the circumstances and prove the absence of carelessness, otherwise the inference of careless driving can be inevitable.

4. SOME TYPICAL EXAMPLES OF CARELESS DRIVING

4. SOME TYPICAL EXAMPLES OF CARELESS DRIVING Since an objective perspective will be adopted when deciding whether or not there is "carelessness", it is not difficult, by objective standards, to provide some examples of acts that are unreasonable and would be considered careless. Drivers may find the Road Users' Code — published by the Transport Department — a useful and objective reference on "carelessness". Section 109(5) of the Road Traffic Ordinance (Cap. 374 of the Laws of Hong Kong) provides that while failure to observe provisions of the Code does not necessarily lead to criminal liability, such failure may be relied upon in legal proceedings "as tending to establish or negate any liability which is in question in those proceedings". Since a driver is supposed to comply with the Road Users' Code, a breach of the same may be considered *prima facie* (That is, evidence that looks sufficient to prove the case, unless substantial contradictory evidence is presented at trial) evidence of careless driving. While the above acts illustrate examples of careless driving, every case or accident is surrounded by its own facts and circumstances specific to that particular accident, and therefore those examples above are only for reference. Generally speaking, drivers are recommended to follow the advice set out in the Road Users' Code.

A. FAILING TO KEEP A SAFE DISTANCE AND REAR-END COLLISIONS

A. FAILING TO KEEP A SAFE DISTANCE AND REAR-END COLLISIONS Every driver knows that it is essential to keep a safe distance while driving. The Road Users' Code contains some discussion on stopping distances, which may be somewhat technical. If we skip the technical part, the plain advice is: "Leave a big enough gap between you and the vehicle in front - big enough for you to stop safely if the vehicle suddenly slows down or stops...If you have to take panic action because you have insufficient room to act smoothly, you are either going too fast or driving too close to the vehicle in front." The logical consequence of failing to keep a safe distance is of course a rear-end collision. While the mere fact of a rear-end collision cannot be irrefutable evidence of carelessness, the Court is entitled to infer carelessness from such a fact, and does so consistently. In other words, unless there are some exceptional circumstances, a driver who drives a vehicle into the one ahead would often be considered careless.

B. FAILING TO CHECK WHEN REVERSING

B. FAILING TO CHECK WHEN REVERSING The Road Users' Code contains plain and straight-forward advice on reversing: "Before you reverse make sure that there are no pedestrians — particularly children — behind you...You must not reverse unless it can be done in safety...Only reverse if you

can do so safely and without making other road users change speed or direction.” In other words, a driver is required to take special care when reversing. The fact that a vehicle causes an accident when reversing can be decisive regarding the “carelessness” of the driver.

C. UNSAFE OVERTAKING C. UNSAFE OVERTAKING Overtaking is generally allowed on a normal two lane road separated by a centre line, i.e. the single broken line in the middle of the road with short markings and long gaps. However, since there is always the possibility of vehicles coming towards you on the other lane, a driver must adopt extreme care while overtaking. The Road Users’ Code expressly stipulates: “Do not overtake unless you are sure you can do so without danger to others as well as yourself.” Drivers causing an accident during overtaking should be prepared to accept liability for careless driving (if not dangerous driving).

D. KNOCKING DOWN PEDESTRIANS D. KNOCKING DOWN PEDESTRIANS It is probably a truism to say that a driver must keep a vigilant eye on other road users, especially pedestrians, when driving. The Road Users’ Code actually spells this out clearly: “Drivers have the legal and moral responsibility to take proper care to avoid accidents with pedestrians at all times and place—even if the pedestrian is jaywalking. Always try to give way to a pedestrian on the roadway.” The Court has repeatedly emphasized that a vehicle in the hands of an irresponsible driver can be an extremely lethal weapon. A driver should therefore always be careful when driving, so as to avoid injuring or even killing innocent citizens. Although a pedestrian could have suddenly dashed into the road giving the driver no practical chance to avoid hitting him the Court will need cogent (very convincing and compelling) evidence to prove that the pedestrian dashed out suddenly and that a collision was unavoidable, in order to exonerate the driver.

5. SENTENCES 5. SENTENCES Section 38 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) provides that the maximum penalty for careless driving shall be a fine of \$5,000 and imprisonment for 6 months. The Court is also empowered under section 69(1) of the same Ordinance to disqualify a driver from driving for such a period as the Court thinks fit. For cases where no casualty or serious injury is involved, the Court will usually impose a monetary fine instead of imprisonment or disqualification. There is no offence known as careless driving causing death or causing grievous bodily harm—contrary to dangerous driving charges, which do include dangerous driving causing death and grievous bodily harm, under section 36 and section 36A respectively of the of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong). However, if the act of careless driving results in casualty, the Court will certainly take this into account when deciding the sentence. It suffices to say that the Court has not hesitated to impose the maximum custodial sentence (or sentences close to the maximum) in careless driving cases where death occurred.

DANGEROUS DRIVING III. DANGEROUS DRIVING According to section 37(4) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) , a person drives dangerously if “the way he drives falls far below what would be expected of a competent and careful driver” and “it would be obvious to a competent and careful driver that driving in that way would be dangerous”. Therefore, the essential question to ask is: what exactly is “dangerous”? 1. “DANGEROUS” 1. “DANGEROUS” “Dangerous” is a simple word and its meaning should be obvious. However, what is dangerous to an ordinary driver may not be dangerous to a F1 racecar driver. In order to avoid doubt, section 37(6) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) defines the word “dangerous”, when used in the context of dangerous driving, as referring to “danger either of injury to any person or of serious damage to property”. 2. OBVIOUS TO A COMPETENT AND CAREFUL DRIVER THAT DRIVING IN THAT WAY WOULD BE DANGEROUS 2. OBVIOUS TO A COMPETENT AND CAREFUL DRIVER THAT DRIVING IN THAT WAY WOULD BE DANGEROUS Section 37(7) of the Road Traffic Ordinance (Cap.374) of the Laws of Hong Kong contains useful guidelines for determining what would be expected of, or obvious to, a competent and careful driver in a particular case: “regard shall be had to all the circumstances of the case including— the nature, condition and use of the road concerned at the material time; the amount of traffic which is actually on the road concerned at the material time or which might reasonably be expected to be on the road concerned at the material time; and the circumstances (including the physical condition of the accused) of which the accused could be expected to be aware and any circumstances (including the physical condition of the accused)

shown to have been within the knowledge of the accused.” Since “dangerous”, or the danger, has to be “obvious to a competent and careful driver”, the Court has to adopt an objective test by considering the facts of each case from the perspective of a competent and careful driver. Therefore, as in the case of careless driving, the subjective mindset of an individual driver is not important.

3. SOME TYPICAL EXAMPLES OF DANGEROUS DRIVING

A. RACING

A. RACING It is beyond dispute that racing is definitely an act which brings other road users into grave danger. Once proof of racing is established, the Court will not hesitate to convict a driver of dangerous driving. Apart from dangerous driving, a driver involved in racing should also be prepared to face the charge of racing under section 55 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), which provides that it shall be an offence for a person to promote or take part in a race between vehicles on any road. Further, section 33 of the Offences Against the Person Ordinance (Cap.212 of the Laws of Hong Kong) also provides that “Any person who, having the charge of any carriage or vehicle, by wanton or furious driving or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to imprisonment for 2 years.” However, sometimes it may be difficult to establish whether there is really a race among vehicles. Let’s assume that you were driving in the middle of the night at a speed well above the prescribed limit on a meandering road in a car which has been adapted for higher speed, together with a group of cars also adapted for higher speed. Some of the drivers in this group made some dangerous maneuvers by overtaking each other, but you did not. Are you racing? Well, even if you have not been caught overtaking, it is likely that you will still be considered to be racing because of all the circumstantial evidence: the time, the place, the high speed and the fact that your vehicle and the other vehicles have been adapted for high speed. These circumstances all objectively indicate the activity of racing; and therefore the Court will likely convict you of racing and dangerous driving.

B. JUMPING OR RUNNING RED LIGHTS

B. JUMPING OR RUNNING RED LIGHTS DELIBERATELY Jumping or running red lights represents an act which is obviously below the standard of what would be expected of a competent and careful driver. But is it so “far below” the standard as to constitute dangerous driving? If a driver jumps a red light only absentmindedly, could it be only careless driving instead of dangerous driving? The Court will look into the facts of each case to decide whether dangerous (or careless) driving is present. But if a case involves deliberately jumping a red light, the driver should not expect anything less than a dangerous driving conviction. While it may be difficult, if not impossible, to prove whether or not a driver has deliberately jumped a red light, the Court is entitled to draw inference from the way of driving. For example, if a driver drove through more than one red light, the Court would not find it difficult to draw an inference that such way of driving arose from a deliberate act.

C. EXCESSIVE SPEEDING

C. EXCESSIVE SPEEDING For most speeding cases, the driver will only receive a “speeding ticket”. If this driver promptly settles the “speeding ticket”, probably no charge of dangerous driving will be laid. Actually, even if a vehicle is driven in excess of the speed limit by 45 km per hour, the driver may probably face a deduction of 10 points under the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong), a fine of \$1,000 as prescribed by the Fixed Penalty (Criminal Proceedings) Ordinance (Cap.240 and a disqualification of 6 months under section 41(3) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong). But what about excessive speeding for an extended period of time? Such an act of driving is clearly not a momentary lapse of attention. Unless there were some special reasons for the excessive speed, the Court has, in various cases, treated this kind of driving as blatantly irresponsible behavior and convicted the driver of dangerous driving.

D. DRIVING AN OVERLOADED VEHICLE

D. DRIVING AN OVERLOADED VEHICLE The offence of dangerous driving may not be limited to the manner of driving. According to section 37(5) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), a person “is also to be regarded as driving dangerously...if it would be obvious to a competent and careful driver that driving the motor vehicle concerned in its current state would be dangerous”. That is to say, driving a vehicle

that is obviously unsuitable to be used on the road could amount to dangerous driving. For example, the Court has held in a number of cases that driving an overloaded vehicle in certain circumstances constitutes dangerous driving.

4. PROOF OF DANGEROUS DRIVING

As shown in the case of careless driving, the Court will adopt an objective test in deciding whether or not the act of driving in question is dangerous. It effectively means that each case before the Court will have to be scrutinized in the light of the factual circumstances related to the accident. The Court would take into account all relevant facts, (whether they are apparently dangerous or not) and all reasons given by the driver, to ascertain whether or not there is dangerous driving.

1. MS. R DROVE THROUGH 2 RED LIGHTS AT THE SPEED OF 100 KM PER HOUR AND THEN COLLIDED WITH A STATIONARY VEHICLE ON THE OPPOSITE SIDE OF THE ROAD. UPON BEING CHARGED WITH DANGEROUS DRIVING, MS. R ARGUED THAT TREES BLOCKED HER VIEW OF THE RED LIGHTS, AND THEN SHE LOST CONTROL OF THE VEHICLE AND IT DASHED INTO THE OTHER SIDE OF THE ROAD ALTHOUGH SHE HAD TRIED HER BEST TO KEEP IT ON THE RIGHT SIDE OF THE ROAD. ASSUMING THAT IS TRUE, WOULD MS. R BE ABLE TO GET AWAY WITH THE CHARGE?

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5. SENTENCES

A. THE STATUTORY SENTENCES

The statutory sentences in respect of dangerous driving can be grouped under 3 major categories: dangerous driving, causing death by dangerous driving, and causing grievous bodily harm by dangerous driving. The test for "dangerous" is the same under all 3 categories; but the sentences are different: Dangerous Driving, under section 37 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong): on conviction on indictment, to a fine of \$20,000 and to imprisonment for 3 years; on summary conviction, to a fine of \$10,000 and to imprisonment for 12 months; and disqualification for at least 6 months for a first conviction and for at least 2 years for a subsequent conviction. Causing death by dangerous driving, under section 36 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong): on conviction on indictment, to a fine of \$50,000 and to imprisonment for 10 years; on summary conviction, to a fine of \$20,000 and to imprisonment for 2 years; and disqualification for at least 2 years for a first conviction and of at least 5 years for a subsequent conviction. Causing grievous bodily harm by dangerous driving, under section 36A of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong): on conviction on indictment, to a fine of \$50,000 and to imprisonment for 7 years; on summary conviction, to a fine of \$20,000 and to imprisonment for 2 years; and disqualification for at least 2 years for the first conviction and of at least 5 years for a subsequent conviction.

B. DANGEROUS DRIVING INVOLVING ALCOHOL OR DRUGS

Due to the increasing number of cases involving driving under the influence of alcohol or drugs, the statutory sentence was enhanced in 2010 by expressly stating that the maximum fine and term of imprisonment for the offence of dangerous driving (including that of causing death and causing grievous bodily harm) shall be increased by 50% if: the proportion of alcohol in the driver's breath, blood or urine exceeds the following: for breath, 66

micrograms of alcohol in 100 millilitres of breath; for blood, 150 milligrams of alcohol in 100 millilitres of blood; or for urine, 201 milligrams of alcohol in 100 millilitres of urine; or any amount of certain specified drugs (including the most common ones such as heroin, ketamine, cannabis, cocaine, etc.) is present in the driver's blood or urine.

C. THE COURT'S ATTITUDE

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The sentence to be imposed by the Court would largely depend on the facts of each individual case. While facts may differ from case to case, the following words by the Honourable Mr. Justice Ma (now the Chief Justice of the Court of Final Appeal) can probably serve as an illustrative guide to the Court's attitude towards sentencing in dangerous driving cases: "In most cases of dangerous driving, it will be obvious to the offender that his driving was dangerous and he therefore deserves to be punished accordingly. This is important to bear in mind because, while it may be true in some instances not to treat violators of traffic laws as true criminals, nevertheless for offences such as dangerous driving causing death, the offender may not necessarily be seen in quite such a benevolent light...In assessing the overall seriousness of a crime, culpability is often the dominant factor. It is not a case of counting the number of aggravating or mitigating factors and then arriving by mechanical means at the relevant sentence. Sentencing is not quite that exact an exercise and courts must be sufficiently nimble to take into account the overall picture in order to arrive at an appropriate sentence....One major factor to be considered as an aggravating factor justifying a heavy sentence is where a person has driven with selfish disregard for the safety of other road users or of his passengers (or, we would add, of pedestrians) or with a degree of recklessness." (Court of Appeal Review Case No.2 of 2006)

In this same case, the Honourable Mr. Justice Ma also expressly approved certain aggravating factors as laid down in the UK case of *R v Cooksley* (2003): consumption of drugs (including legal medication known to cause drowsiness) or alcohol; excessive speed, racing, competitive driving or "showing off"; disregard of warnings from fellow passengers; a prolonged, persistent, and deliberate course of very bad driving; aggressive driving, e.g. driving much too close to the vehicle in front, persistent inappropriate attempts to overtake or cutting in after overtaking; driving while unavoidably distracted, e.g. by reading or by use of a mobile telephone (especially if hand-held); driving when knowingly suffering from a medical condition that significantly impairs driving skills; driving when knowingly deprived of adequate sleep or rest; driving a poorly maintained or dangerously loaded vehicle, especially where that has been motivated by commercial concerns; other offences committed at the same time, e.g. driving without ever holding a licence, driving while disqualified, driving without insurance, driving while a learner without supervision, taking a vehicle without consent, driving a stolen vehicle; previous convictions for motoring offences, particularly offences involving bad driving or the consumption of excessive alcohol before driving; more than one person killed as a result of the offence, especially if the offender knowingly puts more than one person at risk or the occurrence of multiple death is foreseeable; serious injury to one or more victims in addition to any death(s); behaviour at the time of the offence, e.g. failing to stop, falsely claiming that one of the victims was responsible for the crash or trying to throw the victim off the bonnet by swerving in order to escape; causing death in the course of dangerous driving in an attempt to avoid detection or apprehension; and committing the offence while on bail. Therefore, in cases where the Court finds any of the above aggravating factors, the Court will not hesitate to impose an immediate custodial sentence, even when there is no serious injury or death. The rationale is: citizens have to be protected from drivers whose way of driving poses a great risk of dire or even tragic consequences.

DRIVING UNDER THE INFLUENCE OF DRINK OR DRUGS

IV. DRIVING UNDER THE INFLUENCE OF DRINK OR DRUGS

1. ELEMENTS OF THE OFFENCE

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According to section 39 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), "A person who drives or attempts to drive or is in charge of a motor vehicle on any road while he is under the influence of drink or drugs to such an extent as to be incapable of having proper control of the motor vehicle commits an offence". According to section 39J of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), "A person who drives or attempts to drive, or is in charge of, a motor vehicle

on any road while he or she is under the influence of a specified illicit drug to such an extent as to be incapable of having proper control of the motor vehicle commits an offence". According to section 39L of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), "A person who drives or attempts to drive, or is in charge of, a motor vehicle on any road while he or she is under the influence of a drug other than a specified illicit drug (non-specified drug) to such an extent as to be incapable of having proper control of the motor vehicle commits an offence". That sounds simple and straight-forward. However, upon a detailed examination of the wording of the above sections, we may find certain elements of these offences problematic: A. "IN CHARGE OF A MOTOR VEHICLE" A. "IN CHARGE OF A MOTOR VEHICLE" Let's consider this hypothetical situation: your friend parked a car at the roadside, gave you the car key and asked you to keep an eye on it for a few minutes; well, it's true that you just had a few glasses of whisky and you might be at that moment arguably in charge of that car; but why should you be criminally liable simply for being in charge of a stationary vehicle? Section 39(4) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) may come to your rescue. It provides that "A person is deemed not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving the motor vehicle so long as he remained under the influence of drink or drugs to such an extent as to be incapable of having proper control of the motor vehicle". Sections 39J(8) and 39L(7) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) contain similar provisions which endorse the defence of "no likelihood" of driving under the influence of "specified illicit drug" and "non-specified drug" respectively. But well, in the above hypothetical situation, given the fact that you have the car key with you, you may have to provide more circumstantial evidence to show that there is no likelihood of you driving the car. B. "INCAPABLE OF HAVING PROPER CONTROL OF THE MOTOR VEHICLE" B. "INCAPABLE OF HAVING PROPER CONTROL OF THE MOTOR VEHICLE" This is probably the most difficult part in relation to offences involving driving under the influence of drink or drugs: how do we determine whether a person is "incapable of having proper control of the motor vehicle"? Of course, there can be objective evidence (usually supported by a medical report) such as an erratic manner of driving, the occurrence of an accident, the driver smelt of alcohol or was unable to walk in a straight line, etc. But all these require evidence to prove and can be subject to heated argument from the defendant. Sections 39A and 39K of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) attempted to overcome this unsatisfactory situation. For cases involving driving under the influence of drink, section 39A makes it an offence for any person "who drives or attempts to drive a motor vehicle, or is in charge of a motor vehicle, on any road with the proportion of alcohol in his breath, blood or urine exceeding the prescribed limit"; and "prescribed limit" is defined under section 2 of the same Ordinance as: 22 micrograms of alcohol in 100 millilitres of breath; 50 milligrams of alcohol in 100 millilitres of blood; or 67 milligrams of alcohol in 100 millilitres of urine. Once there is proof of the alcohol level by way of breath, blood or urine, the prosecution could simply lay a charge under section 39A instead of section 39 in most drunken driving cases and does not have to worry about how to prove whether the driver is "incapable of having proper control of the motor vehicle". For cases involving driving under the influence of specified illicit drugs (please refer to Schedule 1A for the definition of specified illicit drugs), section 39K makes it an offence for any person "who drives or attempts to drive a motor vehicle, or is in charge of, a motor vehicle on any road while any concentration of a specified illicit drug is present in the person's blood or urine (whether or not any other drug is also so present)". Therefore, again the prosecution does not need to prove whether the driver is "incapable of having proper control of the motor vehicle". But what about non-specified illicit drugs? Sections 39A and 39K deal only with alcohol and specified illicit drugs. For cases related to driving under the influence of non-specified illicit drugs, the prosecution would still have to produce sufficient evidence to show that the driver is "incapable of having proper control of the motor vehicle".

2. OBLIGATION TO SUBMIT TO SCREENING BREATH TESTS AND PROVIDE SPECIMENS FOR ANALYSIS

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SUBMIT TO SCREENING BREATH TESTS AND PROVIDE SPECIMENS FOR ANALYSIS A. OBLIGATION TO SUBMIT TO A SCREENING BREATH TEST A. OBLIGATION TO SUBMIT TO A SCREENING BREATH TEST The major statute governing the obligation to submit to a screening breath test is found in section 39B of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong). It basically provides that a police officer in uniform may require anyone who is driving or attempting to drive or is in charge of a motor vehicle to provide a specimen of breath for a screening breath test; and it shall be an offence if anyone without reasonable excuse fails to provide the specimen of breath when required. In other words, it empowers a police officer in uniform to conduct random breath testing whether or not there is any accident involved.

1. MR. D, WHILE DRIVING, WAS STOPPED BY THE POLICE FOR A RANDOM BREATH TEST. MR. D, WHO HAD JUST ATTENDED A RAVE PARTY, WAS PERFECTLY AWARE THAT THE ALCOHOL LEVEL IN HIS BODY DEFINITELY EXCEEDED THE STATUTORY PRESCRIBED LIMIT. IN THE HOPE OF GETTING AWAY WITH THE CHARGE OF DRINK DRIVING UNDER SECTION 39 OR 39A OF THE ROAD TRAFFIC ORDINANCE (CAP.374 OF THE LAWS OF HONG KONG), HE MADE UP AN EXCUSE: "THE BREATH TEST TOOLS MAY BE INFECTIOUS" AND REFUSED TO TAKE THE SCREENING BREATH TEST. WOULD HIS PLAN WORK?

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The answer here is yes and no at the same time. Mr. D's plan may enable him to get away with a drink driving charge. However, he would at the same time contravene section 39B, which provides that it shall be an offence if any person "without reasonable excuse, fails to provide a specimen of breath when required". The excuse of being afraid of infection would not work unless there is medical evidence to prove that Mr. D is suffering from some kind of obsessive phobia. As a matter of fact, the sentence for failing to provide a specimen of breath is equivalent to or even more serious than that for "driving a motor vehicle under the influence of drink or drugs" or "driving with alcohol concentration above prescribed limit". It is therefore really pointless for a driver to refuse to take a screening breath test. Note that according to section 39B(5), the police officer must "warn a person at the time of requiring a specimen for a screening breath test...that a failure to provide it may render him liable to prosecution". A failure to give the warning would therefore invalidate a charge under section 39B. If one refuses to provide the specimen, that of course constitutes failure. But the word "failure" here does not simply mean refusal. By section 39B(10), a person fails to provide the required breath specimen unless the specimen "is sufficient to enable the test to be carried out; and is provided in a way to enable the objective of the test to be satisfactorily achieved".

2. MS. D HAD A FEW DRINKS AT A BAR AND THEN DROVE HOME. SHE WAS STOPPED ON THE WAY BY THE POLICE FOR A RANDOM BREATH TEST. MS. D KNEW THAT SHE COULDN'T REFUSE TO DO THE TEST. BUT SHE DELIBERATELY BLEW AROUND THE MOUTH PIECE INSTEAD OF INTO IT. WOULD HER PLAN WORK?

2. MS. D HAD A FEW DRINKS AT A BAR AND THEN DROVE HOME. SHE WAS STOPPED ON THE WAY BY THE POLICE FOR A RANDOM BREATH TEST. MS. D KNEW THAT SHE COULDN'T REFUSE TO DO THE TEST. BUT SHE DELIBERATELY BLEW AROUND THE MOUTH PIECE INSTEAD OF INTO IT. WOULD HER PLAN WORK?

That wouldn't work. Ms. D's act of blowing around the mouth piece will not be "sufficient to enable the test to be carried out". She has therefore failed to provide the required breath specimen.

C. OBLIGATION TO PROVIDE SPECIMENS FOR ANALYSIS C. OBLIGATION TO PROVIDE SPECIMENS FOR ANALYSIS In addition to the power to require a person to submit to a screening breath test, a police officer may require a person to provide specimens of breath for analysis or to provide a specimen of blood or urine for a laboratory test; and it shall be an offence if anyone without reasonable excuse fails to provide the specimen when required. For analysis in relation to alcohol, section 39C of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) provides that "A police officer may require a person whose screening breath test indicates that the proportion of alcohol in that person's breath is likely to exceed the prescribed limit or who fails to provide a specimen for the screening breath test with reasonable excuse- to provide 2

specimens of breath for analysis by means of an approved breath analysing instrument; or to provide a specimen of blood or urine for a laboratory test.” While section 39B of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) caters primarily for the random breath testing that usually takes place on the road, this section 39C deals with the situation where the police may require a specimen of breath, blood or urine at a breath test centre, police station, or hospital. It should be noted that: 2 specimens of breath will be taken; and only the one with the lower alcohol level reading will be used as evidence against the accused person. (section 39D) If there is a medical reason why a specimen of breath cannot be provided, the police officer shall decide whether a specimen of blood or urine should be taken. (section 39C(2)) However, if specimen of blood is to be taken from a person, the consent of this person must be obtained. (section 39C(11)) It is an offence for a person to fail to provide a specimen of breath, urine or blood without reasonable excuse. (section 39C(15)) A warning given to the accused person by the police officer at the time a specimen is required is also essential for section 39C to be operative: “A police officer shall warn a person at the time of requiring a specimen under this section that a failure to provide it may render him liable to prosecution”. (section 39C(18)) The test for “failure” is similar to that under section 39B, i.e. a person fails to provide the required breath specimen unless the specimen “is sufficient to enable the analysis or laboratory test to be carried out; and is provided in a way to enable the objective of the analysis or laboratory test to be satisfactorily achieved”. (section 39C(19)) For test in relation to drugs, section 39P of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) provides that an authorized police officer may require a person “to provide a specimen of blood or urine, or specimens both of blood and urine, for a laboratory test, if the police officer is of the opinion that the results of the Impairment Test indicate that his or her ability to drive properly is for the time being impaired.” If a police officer has reasonable cause to suspect that a specified illicit drug is present in a person’s blood or urine, and a preliminary drug test could not be conducted due to medical reason or any other reasonable cause, the police officer may make the same requirement for the taking of specimen. It should also be noted that: The requirement to provide any specimen has to be made at a breath test centre, police station or hospital. (section 39P(4)) The police officer or authorized police officer must decide whether specimen of blood or urine or both are to be taken. (section 39P(5)) A person must provide the specimen of urine within 1 hour of being required to provide it. (section 39P(7)) It is an offence for a person to fail to undergo preliminary drug test (section 39Q) or fail to provide a specimen without reasonable excuse. (section 39S) Specimen of blood cannot be taken from a person unless he or she consents. (section 39P(9)) A warning given to the accused person by the police officer at the time a specimen is required is also essential for section 39P to be operative. (section 39P(8)) If it appears to a police officer that a person is incapable of giving a valid consent due to medical reason, the police officer may request a medical practitioner to take a specimen of blood from that person. (section 39Q(1)) Even if blood specimen is taken from a person, it shall not be subjected to laboratory test unless the person has been informed that it has been taken, and has given consent to the analysis of the specimen. (section 39Q(4))

1. MS. A’S VEHICLE HIT THE REAR OF THE VEHICLE IN FRONT. THE POLICE OFFICER WHO ARRIVED AT THE SCENE FOUND MS. A UNSTEADY ON HER FEET, HER VOICE SLURRED, AND HER BREATH SMELT OF ALCOHOL. DUE TO MS. A’S CONDITION AS SUCH, THE POLICE OFFICER FOUND THAT NO SCREENING BREATH TEST COULD BE CONDUCTED AT THE SCENE. MS. A WAS LATER TRANSFERRED TO A HOSPITAL WHERE SHE WAS STILL IN AN APPARENTLY DRUNKEN STATE. A POLICE OFFICER THEN REQUIRED HER TO PROVIDE A SPECIMEN OF URINE FOR A LABORATORY TEST. MS. A, SEEING THAT NO FEMALE POLICE OFFICER WAS PRESENT, REFUSED TO PROVIDE THE URINE SPECIMEN. THE POLICE OFFICER AND THE DOCTOR AT THE HOSPITAL THEN SOUGHT MS. A’S CONSENT TO PROVIDE A BLOOD SPECIMEN; SHE AGAIN REFUSED BY SAYING: “I DON’T TRUST YOUR DOCTOR AND YOUR EQUIPMENT. HOW DO I KNOW IF YOUR NEEDLE IS CONTAMINATED WITH AIDS OR NOT? I WON’T GIVE BLOOD TO YOU.” EVENTUALLY NO BREATH, URINE, NOR BLOOD SPECIMEN WAS TAKEN. WAS MS. A ENTITLED TO MAKE THE ABOVE REFUSALS?

1. MS. A’S VEHICLE HIT THE REAR OF THE VEHICLE IN FRONT. THE POLICE OFFICER WHO ARRIVED AT THE SCENE FOUND MS. A UNSTEADY ON HER FEET, HER VOICE

SLURRED, AND HER BREATH SMELT OF ALCOHOL. DUE TO MS. A' S CONDITION AS SUCH, THE POLICE OFFICER FOUND THAT NO SCREENING BREATH TEST COULD BE CONDUCTED AT THE SCENE. MS. A WAS LATER TRANSFERRED TO A HOSPITAL WHERE SHE WAS STILL IN AN APPARENTLY DRUNKEN STATE. A POLICE OFFICER THEN REQUIRED HER TO PROVIDE A SPECIMEN OF URINE FOR A LABORATORY TEST. MS. A, SEEING THAT NO FEMALE POLICE OFFICER WAS PRESENT, REFUSED TO PROVIDE THE URINE SPECIMEN. THE POLICE OFFICER AND THE DOCTOR AT THE HOSPITAL THEN SOUGHT MS. A' S CONSENT TO PROVIDE A BLOOD SPECIMEN; SHE AGAIN REFUSED BY SAYING: "I DON' T TRUST YOUR DOCTOR AND YOUR EQUIPMENT. HOW DO I KNOW IF YOUR NEEDLE IS CONTAMINATED WITH AIDS OR NOT? I WON' T GIVE BLOOD TO YOU." EVENTUALLY NO BREATH, URINE, NOR BLOOD SPECIMEN WAS TAKEN. WAS MS. A ENTITLED TO MAKE THE ABOVE REFUSALS? Ms. A' s refusal to provide the urine specimen is probably justified under those circumstances. But given that she was being asked to provide her blood specimen in a hospital and in the presence of a medical practitioner, her refusal to provide a blood specimen probably would not stand up as a reasonable excuse. In such circumstances, Ms. A would likely be liable for failing to provide a specimen under section 39C of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong). If a police officer suspects that Ms. A was under the influence of drugs (instead of drink), the police officer can require her to conduct preliminary drug test and to provide specimen of blood or urine for analysis. As in the above hypothetical scenario relating to alcohol test, Ms. A' s refusal to provide blood specimen in a drug related case would probably render her liable for failing to provide a specimen under section 39S of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong).

3. SENTENCE 3. SENTENCE A. FINES AND IMPRISONMENT A. FINES AND IMPRISONMENT For the following offences under the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong): section 39 (i.e. driving a motor vehicle under the influence of drink), section 39A (i.e. driving a motor vehicle with an alcohol concentration above the prescribed limit), section 39B (i.e. failing to provide a specimen of breath for a screening breath test for alcohol), section 39C (i.e. failure to provide a specimen for analysis or laboratory test for alcohol), section 39J (i.e. driving motor vehicle without proper control under influence of specific illicit drug), section 39K (i.e. driving motor vehicle with any concentration of specified illicit drug), section 39L (i.e. driving motor vehicle without proper control under influence of drug other than specific illicit drug), section 39O (i.e. failure to undergo an Impairment Test), and section 39S (i.e. failure to provide specimen of blood or urine or failure to give the necessary consent to provide the specimen for test of drug) the penalties in respect of fines and imprisonment are largely the same, being: on conviction on indictment to a fine of \$25,000 and to imprisonment for 3 years; on summary conviction on a first offence to a fine of \$10,000 and to imprisonment for 6 months and on any subsequent conviction to a fine of \$25,000 and to imprisonment for 12 months. Note, however, that the penalty for failure to undergo a Drug Influence Recognition Observation is relatively mild: on conviction to a fine of \$2,000 and to imprisonment of 3 months (section 39O(3)).

B. DISQUALIFICATION B. DISQUALIFICATION Sections 39, 39A, 39B and 39C of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) make it mandatory for the Court to disqualify an offending driver from driving for a certain period of time. The disqualification period for offences under section 39 (driving a motor vehicle under the influence of drinks or drugs), section 39B (failing to provide a specimen of breath for a screening breath test) and section 39C (failure to provide a specimen for analysis or laboratory test) are the same, being: disqualification for at least 2 years for a first conviction and for at least 5 years for a subsequent conviction under any of sections 39, 39A, 39B and 39C. The disqualification period for the section 39A offence (i.e. driving a motor vehicle with an alcohol concentration above prescribed limit) is a bit complicated. In 2010, a 3-tier system was introduced to correlate the disqualification period with the alcohol level found in the offender. Section 39A(1A) specifies that the proportion of alcohol in a person' s breath, blood or urine be: tier 1 if it exceeds the prescribed limit but is less than- for breath, 35 micrograms of alcohol in 100 millilitres of breath; for blood, 80 milligrams of alcohol in 100 millilitres of blood; or for urine, 107 milligrams of alcohol in 100 millilitres of urine; tier 2 if it exceeds tier 1 but is less than- for breath, 66 micrograms of alcohol in 100 millilitres

of breath; for blood, 150 milligrams of alcohol in 100 millilitres of blood; or for urine, 201 milligrams of alcohol in 100 millilitres of urine; tier 3 if it exceeds tier 2. Section 39A(2A) further provides that the period for which an offender is to be disqualified will be: for a first conviction, a period of not less than- 6 months if the proportion of alcohol in the person's breath, blood or urine is tier 1; 12 months if the proportion of alcohol in the person's breath, blood or urine is tier 2; 2 years if the proportion of alcohol in the person's breath, blood or urine is tier 3; and for a second or subsequent conviction (regardless of the proportion of alcohol in the person's breath, blood or urine on any previous conviction), or a conviction subsequent to a conviction under section 39, 39B or 39C, a period of not less than- 2 years if the proportion of alcohol in the person's breath, blood or urine is tier 1; 3 years if the proportion of alcohol in the person's breath, blood or urine is tier 2; 5 years if the proportion of alcohol in the person's breath, blood or urine is tier 3. For drug-related driving offences, the law takes a more serious approach in terms of the disqualification period: section 39J (i.e. driving motor vehicle without proper control under influence of specific illicit drug): disqualification for at least 5 years for a first conviction and for at least 10 years for a subsequent conviction; and if the accused has been convicted for the same offence previously, the Court may even disqualify him for life. section 39K (i.e. driving motor vehicle with any concentration of specified illicit drug): disqualification for at least 2 years for a first conviction and for at least 5 years for a subsequent conviction. section 39L (i.e. driving motor vehicle without proper control under influence of drug other than specific illicit drug): disqualification for at least 6 months for a first conviction and for at least 2 years for a subsequent conviction. section 39O (i.e. failure to undergo preliminary drug test): disqualification for at least 5 years for a first conviction and for at least 10 years for a subsequent conviction. section 39S (i.e. failure to provide specimen of blood or urine or failure to give the necessary consent to provide the specimen for test of drug): disqualification for at least 5 years for a first conviction and for at least 10 years for a subsequent conviction.

C. DRINK DRIVING VS FAILURE TO PROVIDE A SPECIMEN

C. DRINK DRIVING VS FAILURE TO PROVIDE A SPECIMEN It should now be obvious that the penalty for failure to provide a specimen is equivalent to or more serious than that for drink driving. This arrangement is most sensible because it would be contrary to the intent of the law if a driver could avoid disqualification and/or imprisonment by refusing to give a sample of breath, urine or blood. The Court has pointed out in various cases that the penalty for failure to provide specimens of breath, urine or blood should have sufficient deterrent effect, so that no one can try to avoid the drink driving offence by deliberately failing to provide a specimen.

SOME OTHER OFFENCES V.

SOME OTHER OFFENCES 1. RELATED TO DRIVING LICENCES 1. RELATED TO DRIVING LICENCES A. GENERAL A. GENERAL For the purpose of the issue of driving licences, motor vehicles are divided into 13 classes, the most common ones being private cars, motorcycles and light goods vehicles. A person may drive a vehicle on the road only when holding a licence for the class to which such vehicle belongs. Driving without the right licence will commit the driver to a fine of \$5,000 and imprisonment for 3 months upon a first conviction, and to a fine of \$10,000 and imprisonment for 6 months upon the second or subsequent conviction (sections 42(1) and 42(4) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)). Even if one has obtained the relevant driving licence, one may commit another offence unless one has physical possession of the licence at the time of driving. According to section 42(2) of the Road Traffic Ordinance(Cap.374 of the Laws of Hong Kong), "no person shall drive a motor vehicle on a road unless he has with him at the time he is driving his driving licence". Persons contravening this section will be liable to a fine of \$1,000 upon a first conviction, and to a fine of \$2,000 upon the second or subsequent conviction (section 42(5) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)).

B. PERMITTING A VEHICLE TO BE DRIVEN BY AN UNLICENSED PERSON B. PERMITTING A VEHICLE TO BE DRIVEN BY AN UNLICENSED PERSON Obviously, no person may drive a motor vehicle on a road without holding the relevant driving licence. But it is also a criminal offence to allow someone without the right licence to drive. Under section 42(3) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), "no person

shall suffer or permit a motor vehicle to be driven by a person who is not the holder of a driving licence of the class to which such vehicle belongs". Therefore, before you lend your car to a friend, make sure this friend has the right licence. C. DRIVING WHILE DISQUALIFIED C. DRIVING WHILE DISQUALIFIED A more serious offence related to driving licences is "driving while disqualified". A person committing this offence "is liable to a fine of \$10,000 and to imprisonment for 12 months"; and unless there is any special reason for committing the offence, the Court shall order a further disqualification of at least 12 months in the case of a first conviction, and at least 3 years in the case of the second or subsequent conviction (section 44 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)).

2. RELATED TO REGISTRATION MARKS AND VEHICLE LICENCES

2. RELATED TO REGISTRATION MARKS AND VEHICLE LICENCES A. REGISTRATION MARKS A. REGISTRATION MARKS Every motor vehicle is given a registration mark (vehicle licence plates); and that mark must be displayed on the vehicle. The mark must also comply with certain requirements in respect of its display, colours, construction, fitting and illumination. Details of such requirements can be found in Schedule 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap.374E of the Laws of Hong Kong). General requirements include: The letters and numerals of a registration mark (not being a personalized registration mark) shall be displayed in either one or two rows; All letters and numerals shall be not less than 8 cm and not more than 11 cm high; The registration mark shall be displayed on a reflex-reflecting number plate; The registration mark shall be displayed on the front and on the back of a motor vehicle in a vertical position, so that every letter and numeral of the registration mark is vertical, and is easily distinguishable; and No letter or numeral of a registration mark shall be capable of being detached.

1. THE OWNER OF A VEHICLE DISPLAYED ITS REGISTRATION MARK "HE 1107" AS "HE110 7", HAVING THE IMPLICATION OF "HELLO 7". WAS THAT A CONTRAVENTION OF THE LAW?

1. THE OWNER OF A VEHICLE DISPLAYED ITS REGISTRATION MARK "HE 1107" AS "HE110 7", HAVING THE IMPLICATION OF "HELLO 7". WAS THAT A CONTRAVENTION OF THE LAW?

There was a real legal case where the Court ruled that to present "HE 1107" as "HE110 7" would contravene the requirement that a registration mark is to be "easily distinguishable".

B. VEHICLE LICENCES B. VEHICLE LICENCES No motor vehicle is allowed to be driven or used on a road unless it is registered and licensed. Regulation 25 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap.374E of the Laws of Hong Kong) prescribe that "no motor vehicle shall be upon or used on any road unless a valid vehicle licence in respect of the vehicle is displayed". Regulation 60(3) prescribes that persons contravening Regulation 25 will be liable to a fine of \$2,000 and imprisonment for 3 months upon a first conviction, and to a fine of \$5,000 and imprisonment for 6 months upon the second or subsequent conviction. By comparing this against the penalties for other offences in the same Regulations, most of which impose a fine of \$2,000, one can easily see that the law takes a serious view of this offence.

Q1. I FORGOT THAT THE VEHICLE LICENCE OF MY CAR HAD EXPIRED AND I RENEWED IT A FEW DAYS LATER. I LEFT THE CAR IN MY OWN PARKING LOT AND HAD NOT DRIVEN IT IN THOSE FEW DAYS. DID I COMMIT ANY OFFENCE?

Q1. I FORGOT THAT THE VEHICLE LICENCE OF MY CAR HAD EXPIRED AND I RENEWED IT A FEW DAYS LATER. I LEFT THE CAR IN MY OWN PARKING LOT AND HAD NOT DRIVEN IT IN THOSE FEW DAYS. DID I COMMIT ANY OFFENCE?

Probably no one would have noticed in that few days that the Vehicle Licence of your car had expired. But from a strictly legal perspective, Regulation 25 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap.374E of the Laws of Hong Kong) prescribes that "no motor vehicle shall be upon...any road unless a valid vehicle licence in respect of the vehicle is displayed". The word "upon" means that mere parking—not necessarily driving—of a vehicle without a valid licence on a road would give rise to the offence. Further, the word "road" is given a broad definition in the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) as to comprising almost any place—including a parking lot; and section 118 of the same Ordinance prescribes that virtually all regulations made under the Ordinance shall apply to private roads as they apply to roads. In such circumstances, you have committed an offence under Regulation 25 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap.374E of the Laws of Hong Kong).

3. RELATED TO TRAFFIC LIGHTS AND SIGNS 3. RELATED TO TRAFFIC LIGHTS AND

SIGNS It is probably superfluous to emphasize that a driver must comply with traffic lights and signs. However, it is worth noting that there is a major but common misconception among drivers in Hong Kong that it is okay to go through an amber light. That is simply not true. Regulation 17(1)(e) of the Road Traffic (Traffic Control) Regulations (Cap.374G of the Laws of Hong Kong) expressly stipulates that “where an amber light signal is provided it shall, when shown alone, indicate the prohibition that vehicular traffic shall not proceed beyond the stop line or, if the stop line is not for the time being visible or there is no stop line, beyond the light signals, except in the case of any vehicle which when the light signal first appears is so close to the stop line or light signals that it cannot safely be stopped before passing the stop line or light signals”. Hence, one should stop before the light signals upon seeing the amber light unless it is not safe to do so. Another common mistake frequently committed by drivers is the disregard of the “Stop” sign. Octagonal “Stop” signs are usually placed on minor roads at their junction with major roads; and drivers are supposed to stop completely at the “Stop” sign before they enter the junction. However, drivers tend to slow down before the sign and then proceed forward, thereby ignoring the rule that they are compelled to bring the vehicle to a complete standstill. The maximum penalty for failure to comply with traffic lights and signs is a fine of \$5,000 and imprisonment for 3 months for a first conviction, and a fine of \$10,000 and imprisonment for 6 months for a subsequent conviction (Regulation 61(1) of the Road Traffic (Traffic Control) Regulations (Cap.374G of the Laws of Hong Kong)). However, it would normally be the case that a penalty under the Fixed Penalty System would be imposed unless the incident leads to serious injury or damage.

4. RELATED TO SPEED LIMITS Again, it is probably superfluous to emphasize that a driver must drive within the relevant speed limit, which is 50 km/hour on any road except where otherwise specified. While section 41 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) provides that the offence of speeding be subject to a penalty of \$4,000, the offence is in most cases dealt with under the Fixed Penalty System, except where the extent of the excess speed would lead to a different monetary penalty: \$320: speeding of up to 15 km/hour over the speed limit; \$450: speeding of more than 15 km/hour but not more than 30 km/hour over the speed limit; \$600: speeding of more than 30 km/hour but not more than 45 km/hour over the speed limit; and \$1,000: speeding of more than 45 km/hour over the speed limit. Drivers should note that for speeding of more than 45 km/hour, the driver will face not just fiscal penalty, but also disqualification for at least 6 months unless there is a special reason (sections 41(3) and 41(4) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)).

5. RELATED TO ALTERATION OF VEHICLES The Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap.374A of the Laws of Hong Kong) contain various requirements for the construction and maintenance of vehicles, including dimensions, weight, power, braking efficiency, tyres, etc. Section 53(2) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) provides that “no person shall alter or cause or permit to be altered a motor vehicle or trailer so as to render its condition such that the use thereof on a road would contravene any provision of this Ordinance as to the construction, weight, equipment, brakes, steering gear or tyres thereof”. The maximum penalty for contravening this provision is a fine of \$20,000. Reading these 2 provisions together, one can clearly see that the Government takes a serious view of the alteration of motor vehicles. Probably most drivers will not consider altering or modifying the engines of their vehicles so as to turn them into powerful racecars. But drivers may be tempted to add some fanciful fittings to their beloved vehicles. Since this subject can be substantially technical, the Transport Department has published guidelines for the general public’s reference, being: “Alterations and Modifications to Vehicles: Do’s and Don’ts”; and “Guide to Notifiable Alteration – Motor Vehicle”. Drivers who intend to alter or modify their vehicles are advised to read these 2 guidelines and to consult the vehicle manufacturer or agent for their advice / endorsement before carrying out any alterations.

7. RELATED TO THE USE OF MOBILE PHONES The use of mobile phone in Hong Kong is very common. Yet common sense dictates that driving while using a

mobile phone can be dangerous. It is therefore essential to have statutory control over a driver's use of a mobile phone while driving. The relevant law is found in Regulation 42(1)(g) of the Road Traffic (Traffic Control) Regulations (Cap.374G of the Laws of Hong Kong). It provides that if a motor vehicle is in motion, the driver shall not "use a mobile telephone while holding it in his hand or between his head and shoulder" nor "use, while holding it in his hand, any accessory to a mobile telephone". The penalty for contravening this Regulation is a fine of \$2,000.

Q1. MS. M UNDERSTANDS THAT IT IS ILLEGAL TO HOLD AND TALK ON A MOBILE PHONE WHILE DRIVING. BUT SHE IS UNSURE ABOUT USING THE SPEAKER-PHONE FUNCTION? AND WHAT ABOUT USING A HAND-FREE DEVICE? DOES THE LAW PROHIBIT THE USE OF SUCH FUNCTION OR DEVICE? Q1. MS. M UNDERSTANDS THAT IT IS ILLEGAL TO HOLD AND TALK ON A MOBILE PHONE WHILE DRIVING. BUT SHE IS UNSURE ABOUT USING THE SPEAKER-PHONE FUNCTION? AND WHAT ABOUT USING A HAND-FREE DEVICE? DOES THE LAW PROHIBIT THE USE OF SUCH FUNCTION OR DEVICE? The gist of this offence is the "holding" of the mobile phone or its accessory. Therefore, if Ms. M uses her hand to hold and use her mobile phone (even while using the speaker phone function) or hold and use its accessory (which includes a hand-free device) while driving, she has committed the offence. But even if she does not "hold" the phone or the hand-free device and talks while driving, there must be a moment—no matter how short that moment is—that Ms. M will have to touch the phone or the hand-free device to activate it. For example, she may have to pick up the phone (thus holding it) to key in numbers for an outgoing call or to press the "Answer" key to receive incoming calls. Hence, at that moment, Ms. M might be contravening Regulation 42(1)(g). Well, in the case of answering a call by pressing the "Answer" key on a phone without actually picking it up and then using the hand-free device to communicate, this is unlikely to constitute "holding". Such strict interpretation of this Regulation is probably not what the lawmakers intend. Instead, this Regulation was enacted to allow drivers to use a hand-free device. Ms. M should not worry too much about this. However, picking up a mobile phone and keying in numbers to make an outgoing call certainly amounts to "holding", even though the keying process may take only a very short while.

8. RELATED TO PRIVATE ROADS 8. RELATED TO PRIVATE ROADS Private roads can be quite common in Hong Kong. For example, roads inside university campuses and housing estates are private roads. The distinction between "road" and "private road", however, is somewhat meaningless in the context of a traffic offence. The reason is: sections 117 and 118 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) make it clear that all major traffic offences are applicable to private roads as well as roads. Section 119 of the same Ordinance also expressly provides that in criminal proceedings involving a traffic offence, it shall be sufficient for the prosecution "to show that the place where that offence was committed was either a road or private road, without showing that the place was one or the other".

1. MR. R IS A VERY RICH MAN OWNING A LARGE PIECE OF LAND AND SEVERAL LUXURIOUS SPORT CARS. CAN HE LET HIS 10-YEAR OLD SON DRIVE ONE OF HIS SPORT CARS ON THAT PIECE OF PRIVATE LAND? LET'S ASSUME FURTHER THAT THAT PIECE OF LAND IS COMPLETELY BARREN AND THERE IS VIRTUALLY NO ROAD AT ALL. CAN HE ARGUE THAT HE HAS NOT DONE ANYTHING WRONG ON ANY ROAD (IRRESPECTIVE OF WHETHER IT IS A PRIVATE ROAD) BECAUSE THERE IS NO ROAD? 1. MR. R IS A VERY RICH MAN OWNING A LARGE PIECE OF LAND AND SEVERAL LUXURIOUS SPORT CARS. CAN HE LET HIS 10-YEAR OLD SON DRIVE ONE OF HIS SPORT CARS ON THAT PIECE OF PRIVATE LAND? LET'S ASSUME FURTHER THAT THAT PIECE OF LAND IS COMPLETELY BARREN AND THERE IS VIRTUALLY NO ROAD AT ALL. CAN HE ARGUE THAT HE HAS NOT DONE ANYTHING WRONG ON ANY ROAD (IRRESPECTIVE OF WHETHER IT IS A PRIVATE ROAD) BECAUSE THERE IS NO ROAD? Sections 117 and 118 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) expressly stipulate that all major traffic offences shall apply to private roads as they apply to roads. If Mr. R thinks he can do anything he wants with his sport cars on his private land (or private road), he is wrong. Further, under section 2 of the same Ordinance, both "road" and "private road" are given such wide definitions that they include almost all kinds of places where a vehicle can be used. As a matter of fact, definitions of both "road" and "private road" include "place". Therefore, the "no-road" argument cannot work.

9. RELATED TO EXPRESSWAYS 9. RELATED TO EXPRESSWAYS Even though Hong Kong is a small place, there are quite a number of expressways designed to carry

high volumes of traffic at a higher speeds. Due to this specific nature, the Road Traffic (Expressway) Regulations (Cap. 374Q of the Laws of Hong Kong) expressly spell out certain laws governing the use of vehicles on expressways. Generally speaking: Only those vehicles with engine cylinder capacity of at least 125 cubic centimeters are allowed on an expressway (Regulation 4 of the Road Traffic (Expressway) Regulations (Cap. 374Q of the Laws of Hong Kong)). Drivers holding only a learner's driving licence shall not drive on an expressway (Regulation 5 of the Road Traffic (Expressway) Regulations (Cap. 374Q of the Laws of Hong Kong)). No driver shall stop a motor vehicle or cause it to remain at rest on an expressway except in the case of breakdown, mechanical defect, lack of fuel, accident, illness or other emergency, or to permit a person to help another in view of the above circumstances (Regulation 9 of the Road Traffic (Expressway) Regulations (Cap. 374Q of the Laws of Hong Kong)). Under normal circumstances, a medium goods vehicle, a heavy goods vehicle, a private bus, a public bus, a motor vehicle towing a trailer or another vehicle, and a motor cycle, motor tricycle, private car or light goods vehicle driven by a person holding a probationary driving licence may not use the offside lane of the carriageway of an expressway where 3 or more traffic lanes are open for use by traffic proceeding in the same direction (Regulation 11 of the Road Traffic (Expressway) Regulations (Cap. 374Q of the Laws of Hong Kong)). The driver of a motor vehicle on an expressway shall drive the vehicle only in the nearside lane except when the vehicle is overtaking another vehicle (Regulation 12 of the Road Traffic (Expressway) Regulations (Cap. 374Q of the Laws of Hong Kong)). A driver of a motor vehicle on an expressway shall not, without reasonable excuse, overtake another vehicle on this other vehicle's nearside (Regulation 13 of the Road Traffic (Expressway) Regulations (Cap. 374Q of the Laws of Hong Kong)). Persons committing the above offence(s) will be liable to a fine of \$5,000 and imprisonment for 3 months upon a first conviction, and to a fine of \$10,000 and imprisonment for 6 months upon the second or subsequent conviction.

10. RELATED TO PARKING

10. RELATED TO PARKING

Parking offences are probably the most common offence to be committed by a driver. To put it simply, in general a driver cannot park on any road unless parking meters are present. But what exactly is "parking"? Regulation 2(1) of the Road Traffic (Parking) Regulations (Cap. 374C of the Laws of Hong Kong) defines parking as "the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading or picking up or setting down passengers". The key word here is of course "temporarily". The Court will consider factual circumstances such as the flow of the traffic at the material time, to decide whether or not the vehicle is standing "temporarily". One further note: most drivers probably believe that they can continue to park a vehicle at a parking space as long as they continue to feed the meter. Well, that is not true. Drivers should be reminded of regulation 8 of the Road Traffic (Parking) Regulations (Cap. 374C of the Laws of Hong Kong), which provides that "Any person who parks a vehicle in a parking place for a continuous period of more than 24 hours commits an offence and is liable to a fine of \$2,000".

Q2. MR. P, HAD A HEATED QUARREL WITH HIS WIFE WHILE DRIVING ALONG QUEEN'S ROAD CENTRAL. HE BECAME SO AGITATED THAT HE STOPPED THE VEHICLE IN THE MIDDLE OF THE ROAD AND JUST LEFT THE SCENE (AND ALSO HIS POOR WIFE ALONE IN THE VEHICLE).

Q2. MR. P, HAD A HEATED QUARREL WITH HIS WIFE WHILE DRIVING ALONG QUEEN'S ROAD CENTRAL. HE BECAME SO AGITATED THAT HE STOPPED THE VEHICLE IN THE MIDDLE OF THE ROAD AND JUST LEFT THE SCENE (AND ALSO HIS POOR WIFE ALONE IN THE VEHICLE). WHAT HE HAD IN HIS MIND WAS: I DON'T CARE; I DON'T MIND BEING GIVEN A PARKING TICKET; AFTER ALL, IT COSTS ONLY A FEW HUNDRED DOLLARS. What Mr. P has done could amount to the more serious offence of leaving a vehicle in dangerous position under regulation 9 of the Road Traffic (Parking) Regulations (Cap. 374C of the Laws of Hong Kong), which provides that "Any person who causes or permits a vehicle to remain at rest on a road in such a position or in such condition or in such circumstances as to be likely to cause danger to other persons using the road commits an offence and is liable to a fine of \$2,000". The police are also empowered under section 103 of the Road Traffic Ordinance (Cap. 374 of the Laws of Hong Kong) "to remove or cause to be removed, and where necessary may provide for the safe custody of, any vehicle which...remains at rest on a road in such conditions or in

such circumstances as to be likely to cause danger to other persons using the road or to interfere with the use of the road". The costs of such removal and custody are of course to be borne by Mr. P.

11. RELATED TO INSURANCE

Section 4(1) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272 of the Laws of Hong Kong) expressly specifies that "it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Ordinance". The statutory maximum penalty for this offence, as stated under section 4(2)(a) of the same Ordinance, is a fine of \$10,000, imprisonment for 12 months and disqualification for at least 12 months and at most 3 years. The rationale for compulsory insurance is simple: if a person is injured by a motor vehicle but the driver of that vehicle does not have the financial means to pay the damages, the injured person would be left in a dire and helpless condition. Trying to make sure that all vehicles running on the road are covered by compulsory insurance offers a solution to this problem.

12. RELATED TO PEDESTRIANS

Traffic offences do not necessarily involve vehicles. A pedestrian can also be subject to criminal liability under the Road Traffic Ordinance (Cap. 374 of the Laws of Hong Kong).

A. JAYWALKING

The most common traffic offence to be committed by a pedestrian is probably jaywalking, i.e. crossing a road without regard to the traffic light signal. Regulation 33(6) of the Road Traffic (Traffic Control) Regulations (Cap. 374G of the Laws of Hong Kong) prescribes that every pedestrian at a crossing that has traffic lights shall comply with the prevailing light signal; and regulation 61(2) of the same Regulations stipulates that any person contravening regulation 33(6) "without reasonable excuse" is liable to a fine of \$2,000.

Q1. MR. J CROSSED A ROAD IRRESPECTIVE OF THE RED LIGHT SIGNAL. HE ARGUED THAT DESPITE THE RED LIGHT SIGNAL, HE HAD CAREFULLY CHECKED THAT THERE WAS NO VEHICLE APPROACHING. HE THEREFORE BELIEVED THAT IT WAS SAFE TO CROSS THE ROAD AND PROCEEDED TO DO SO. DID MR. J' S ARGUMENT AMOUNT TO A "REASONABLE EXCUSE", SO THAT HE WAS NOT LIABLE UNDER REGULATION 33(6) OF THE ROAD TRAFFIC (TRAFFIC CONTROL) REGULATIONS (CAP. 374G OF THE LAWS OF HONG KONG)?

Q1. MR. J CROSSED A ROAD IRRESPECTIVE OF THE RED LIGHT SIGNAL. HE ARGUED THAT DESPITE THE RED LIGHT SIGNAL, HE HAD CAREFULLY CHECKED THAT THERE WAS NO VEHICLE APPROACHING. HE THEREFORE BELIEVED THAT IT WAS SAFE TO CROSS THE ROAD AND PROCEEDED TO DO SO. DID MR. J' S ARGUMENT AMOUNT TO A "REASONABLE EXCUSE", SO THAT HE WAS NOT LIABLE UNDER REGULATION 33(6) OF THE ROAD TRAFFIC (TRAFFIC CONTROL) REGULATIONS (CAP. 374G OF THE LAWS OF HONG KONG)?

The Regulation 33(6) offence is a strict-liability offence. That is to say, once the act is done, the offence is committed; the mindset of the defendant is irrelevant. Therefore, it does not matter what a pedestrian believes, otherwise everyone is entitled to jaywalk if he "believes" it is safe to do so. Mr. J' s "reasonable excuse" must fail. However, if Mr. J was directed by a police officer in uniform or a traffic warden in uniform to proceed against the red light signal, he would have the reasonable excuse to do so.

B. THE NEGLIGENT PEDESTRIAN

Section 48 of the Road Traffic Ordinance (Cap. 374 of the Laws of Hong Kong) prescribes that a pedestrian who "negligently endangers his own safety or that of any other person commits an offence and is liable to a fine of \$2,000". In other words, pedestrians may commit this offence even though they suffer injury in the incident.

Q1. MS. N CROSSED A ROAD WHILE TALKING ON HER MOBILE PHONE. SHE DID NOT LOOK PROPERLY UP AND DOWN THE ROAD AND DID NOT NOTICE AN APPROACHING VEHICLE. THE VEHICLE FAILED TO STOP IN TIME AND KNOCKED DOWN MS. N. WOULD MS. N BE LIABLE UNDER SECTION 48 OF THE ROAD TRAFFIC ORDINANCE (CAP. 374 OF THE LAWS OF HONG KONG)?

Q1. MS. N CROSSED A ROAD WHILE TALKING ON HER MOBILE PHONE. SHE DID NOT LOOK PROPERLY UP AND DOWN THE ROAD AND DID NOT NOTICE AN APPROACHING VEHICLE. THE VEHICLE FAILED TO STOP IN TIME AND KNOCKED DOWN MS. N. WOULD MS. N BE LIABLE UNDER SECTION 48 OF THE ROAD TRAFFIC ORDINANCE (CAP. 374 OF THE LAWS OF HONG KONG)?

Ms. N' s behaviour amounted to negligently endangering her own safety. It actually might also endanger other road users because the approaching vehicle could, in an attempt to avoiding knocking down Ms. N, run into other vehicles or pedestrians. (Note: even though the

driver of the approaching vehicle might be driving carelessly — or even dangerously — that is another matter and it will not negate Ms. N' s negligence.) 13. RELATED TO CYCLING 13. RELATED TO CYCLING A bicycle or tricycle basically has the same right to use a road as a motor vehicle. Needless to say, the rider of a bicycle or tricycle also has the duty to exercise due care when using the road and to comply with all traffic regulations (e.g. to comply with all traffic signs, traffic lights and road markings) as if he/she is the driver of a motor vehicle. Major offences related to cycling include: Reckless cycling under section 45 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), where the maximum sentence is: a fine of \$500 for a first conviction, and a fine of \$1,000 and imprisonment for 3 months for the second or subsequent conviction; Careless cycling under section 46 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), where the maximum sentence is a fine of \$500; Cycling under the influence of drink or drugs under section 47 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), where the maximum sentence is: a fine of \$500 for a first conviction, and a fine of \$1,000 for the second or subsequent conviction and imprisonment for 3 months; and Regulation 87 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap.374A of the Laws of Hong Kong), which provides that every bicycle/tricycle shall be equipped with at least one braking system which is efficient and in proper working order. The maximum sentence is a fine of \$10,000 and imprisonment for 6 months; Regulation 88 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap.374A of the Laws of Hong Kong), which provides that every bicycle/tricycle shall be fitted with a bell capable of giving sufficient warning of its approach or presence. The maximum sentence is a fine of \$10,000 and imprisonment for 6 months Regulation 51 of the Road Traffic (Traffic Control) Regulations (Cap.374G of the Laws of Hong Kong), which provides that no person riding a bicycle or tricycle on a road shall carry any other person, a person riding a bicycle or tricycle on a road shall do so with at least one hand on the handle bars, and no person shall ride a bicycle or tricycle during the hours of darkness or in poor visibility conditions unless he shows a white light at the front and a red light at the rear. The maximum sentence for breaching this Regulation 51 is a fine of \$2,000; and Section 4(8) of the Summary Offences Ordinance (Cap.228 of the Laws of Hong Kong), which prescribes that it shall be an offence if someone “rides or drives on any foot-path without obvious necessity” or “in any public place rides or drives recklessly or negligently or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case”. The maximum sentence is a fine of \$300 or imprisonment for 3 months. One could easily observe that there is no offence like “dangerous cycling” or “dangerous cycling causing death”, as if the act of cycling cannot possibly be dangerous nor cause death. That is obviously not true. Common sense will tell us that a bicycle can also be dangerous. Q1. CYCLIST A RODE A BICYCLE FRANTICALLY AND KNOCKED INTO CYCLIST B. CYCLIST B SUFFERED SERIOUS INJURY AND EVENTUALLY DIED. CAN CYCLIST A BE PROSECUTED UNDER THE ROAD TRAFFIC ORDINANCE (CAP.374 OF THE LAWS OF HONG KONG)? Q1. CYCLIST A RODE A BICYCLE FRANTICALLY AND KNOCKED INTO CYCLIST B. CYCLIST B SUFFERED SERIOUS INJURY AND EVENTUALLY DIED. CAN CYCLIST A BE PROSECUTED UNDER THE ROAD TRAFFIC ORDINANCE (CAP.374 OF THE LAWS OF HONG KONG)? Cyclist A can obviously be prosecuted under section 45 (for reckless cycling) or section 46 (for careless cycling) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong). Depending on the evidence available, the prosecution may also consider prosecuting cyclist A on the more serious offence of “injuring a person by furious driving” under section 33 of the Offences Against the Person Ordinance (Cap.212 of the Laws of Hong Kong): “Any person who, having the charge of any carriage or vehicle, by wanton or furious driving or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to imprisonment for 2 years”. Since the victim in this occasion died eventually, the graver offence of manslaughter may also be available to the prosecution. Detailed analysis of the offence of manslaughter is not within the scope of this discussion. It suffices to say here that manslaughter occurs when death is accidentally caused by an unlawful act or by culpable negligence. Manslaughter is punishable by imprisonment for life. In the present case,

the prosecution will look into the available evidence to ascertain how Cyclist A was riding the bicycle at the material time before it decides what charge(s) would be laid against Cyclist A.

THE DRIVING-OFFENCE POINTS SYSTEM AND THE FIXED PENALTY SYSTEM VI.

THE DRIVING-OFFENCE POINTS SYSTEM AND THE FIXED PENALTY SYSTEM 1. THE DRIVING-OFFENCE POINTS SYSTEM

1. THE DRIVING-OFFENCE POINTS SYSTEM

The Driving-offence Points System is designed to deter drivers from committing driving offences repeatedly within a certain period of time.

A. HOW IT WORKS

A. HOW IT WORKS The basic mechanism of the Driving-offence Points System is: When a driver is convicted of a specified driving offence, he incurs a designated number of driving-offence points in respect of that offence. For example, dangerous driving would attract 10 points, careless driving 5 points, failure to report an accident 3 points, etc. Details of the driving-offence points for different offences can be found in the Schedule of the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong). If a person incurs 15 or more points within a period of 2 years, he shall be liable to be disqualified from holding or obtaining a driving licence (section 8(1) of the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong)). The period of disqualification shall be 3 months if no previous disqualification has been imposed on the driver under the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong), and 6 months if any previous disqualification has been imposed (section 8(3) of the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong)).

B. DEDUCTION OF POINTS

B. DEDUCTION OF POINTS Section 6A(1) of the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong) provides that where a person completes a driving improvement course and is issued with a course certificate, 3 points will be deducted from the total number of points that have been incurred.

1. I BECAME AWARE THAT I HAD INCURRED 15 DRIVING-OFFENCE POINTS WITHIN THE LAST 2 YEARS. I IMMEDIATELY WENT TO TAKE A DRIVING IMPROVEMENT COURSE AND SUCCESSFULLY OBTAINED A COURSE CERTIFICATE. SO MY BALANCE OF DRIVING OFFENCE POINTS SHOULD NOW BE 12, RIGHT?

1. I BECAME AWARE THAT I HAD INCURRED 15 DRIVING-OFFENCE POINTS WITHIN THE LAST 2 YEARS. I IMMEDIATELY WENT TO TAKE A DRIVING IMPROVEMENT COURSE AND SUCCESSFULLY OBTAINED A COURSE CERTIFICATE. SO MY BALANCE OF DRIVING OFFENCE POINTS SHOULD NOW BE 12, RIGHT? Wrong. If you have already incurred 15 or more points on the date that you complete the driving improvement course, you are not entitled to any deduction of points [section 6A(2) of the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong)].

C. CALCULATION OF POINTS

C. CALCULATION OF POINTS The calculation of driving-offence points apparently involves only simple arithmetic and should be quite straight-forward. However, section 8A(1) of the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong) provides that “where 2 or more of the offences in respect of which points have been incurred are constituted by the same, or substantially the same, act... (a) only that offence attracting the highest number of points; or (b) where those offences each attract the same number of points, only one of those offences, shall be taken into account”. Therefore, if a driver is convicted of several offences all arising from one incident, the total driving-offence points incurred may not be simply the sum of all the relevant points.

1. I WAS INVOLVED IN AN ACCIDENT WHERE I WAS LIABLE FOR CARELESS DRIVING, FAILING TO STOP AFTER AN ACCIDENT AND FAILING TO REPORT AFTER AN ACCIDENT, WHICH WOULD INCUR 5, 5 AND 3 DRIVING-OFFENCE POINTS RESPECTIVELY. SO IN THIS ONE SINGLE ACCIDENT, I INCURRED 13 POINTS, RIGHT?

1. I WAS INVOLVED IN AN ACCIDENT WHERE I WAS LIABLE FOR CARELESS DRIVING, FAILING TO STOP AFTER AN ACCIDENT AND FAILING TO REPORT AFTER AN ACCIDENT, WHICH WOULD INCUR 5, 5 AND 3 DRIVING-OFFENCE POINTS RESPECTIVELY. SO IN THIS ONE SINGLE ACCIDENT, I INCURRED 13 POINTS, RIGHT? Not necessarily. According to section 8A of the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong), if several offences are committed in one act, the simple addition of all the points may not be the correct way to make the calculation. You should consult the Commissioner for Transport or seek legal assistance to clarify the actual number of points to be incurred. In your circumstances, it is likely that careless driving and failing to stop after an accident will be considered as the same or substantially the same act, thus attracting 5 points in total for these 2 liabilities; the total points

incurred for this incident may therefore be 8. D. DEFENCE D. DEFENCE The order for disqualification under the Driving-offence Points System is to be made by a magistrate. Existing Court decisions indicate that magistrate's courts almost invariably make orders for disqualification for 3 months in the case of a first incurrance of 15 points and 6 months in the case of a repeated incurrance. However, section 8(3) of the Road Traffic (Driving-Offence Points) Ordinance (Cap.375 of the Laws of Hong Kong) provides that a magistrate may, "having regard to all the circumstances", order a shorter period of disqualification or even not to order the convicted person to be disqualified; and section 8(4) of the same Ordinance expressly denotes that a magistrate may take into account circumstances such as "exceptional hardship". So what exactly is "exceptional hardship"? The Court has made it clear that "exceptional hardship" does not mean an extreme degree of hardship, but a kind of hardship different from a usual or ordinary one. For example, the Court has held that financial hardship is not exceptional hardship even though the defendant is a professional driver.

1. MR. R REPEATEDLY INCURRED 15 DRIVING OFFENCE POINTS AND WAS TO BE DISQUALIFIED FOR 6 MONTHS. HE SUBMITTED THAT HIS WHEELCHAIR BOUND MOTHER WAS SUFFERING FROM HEART DISEASE, RECURRENT MENTAL PROBLEM AND SUICIDAL TENDENCY, THAT HE HAD TO DRIVE HER TO THE HOSPITAL FOR REGULAR MEDICAL CHECKS, AND THAT HE FREQUENTLY HAD TO DRIVE HOME TO TAKE CARE OF HER IN CASE OF EMERGENCY. MR. R TRIED TO RELY ON THE CIRCUMSTANCE OF "EXCEPTIONAL HARDSHIP" AND SOUGHT A NON-DISQUALIFICATION ORDER.

1. MR. R REPEATEDLY INCURRED 15 DRIVING OFFENCE POINTS AND WAS TO BE DISQUALIFIED FOR 6 MONTHS. HE SUBMITTED THAT HIS WHEELCHAIR BOUND MOTHER WAS SUFFERING FROM HEART DISEASE, RECURRENT MENTAL PROBLEM AND SUICIDAL TENDENCY, THAT HE HAD TO DRIVE HER TO THE HOSPITAL FOR REGULAR MEDICAL CHECKS, AND THAT HE FREQUENTLY HAD TO DRIVE HOME TO TAKE CARE OF HER IN CASE OF EMERGENCY. MR. R TRIED TO RELY ON THE CIRCUMSTANCE OF "EXCEPTIONAL HARDSHIP" AND SOUGHT A NON-DISQUALIFICATION ORDER. The above scenario is an actual Court case, where the Court ruled that there was "exceptional hardship" on the part of the mother—though not on the part of Mr. R—and thus allowed an order for non-disqualification.

2. THE FIXED PENALTY SYSTEM

2. THE FIXED PENALTY SYSTEM Traffic offences range from serious ones resulting in fatal accidents to minor ones like a simple parking contravention. If all traffic offences were to be brought to Court, there would definitely be an excessive burden on the judiciary. The Fixed Penalty System was devised to deal with minor offences where the owner of a vehicle is unlikely to plead not guilty and argue the case before the Court. It saves time for the Court, the vehicle owner and the police. In other words, everybody benefits.

A. HOW IT WORKS

A. HOW IT WORKS The Fixed Penalty System is governed by the Fixed Penalty (Traffic Contraventions) Ordinance (Cap.237 of the Laws of Hong Kong) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap.240 of the Laws of Hong Kong). Both Ordinances provide that the owner or driver (as the case may be) of a vehicle may be discharged from the liability for a specified offence upon the payment of a fixed penalty. In other words, once the penalty is paid, there can be no conviction. However, if the fixed penalty is not paid within 21 days, the Commissioner of Police may serve a notice on the owner or driver (as the case may be) of the vehicle, demanding payment and informing the owner or driver of their right to dispute the liability. If the payment is not made and no dispute is raised, the Court shall order the offender to pay the fixed penalty plus an additional penalty equal to the amount of the fixed penalty.

B. WHAT OFFENCES ARE COVERED

B. WHAT OFFENCES ARE COVERED The Fixed Penalty (Traffic Contraventions) Ordinance (Cap.237 of the Laws of Hong Kong) specifies offences which are mostly related to the unauthorized or improper parking of vehicles. All these offences lead to the fixed penalty of \$320. A complete list of the contraventions can be found in the Schedule to this Ordinance. The Fixed Penalty (Criminal Proceedings) Ordinance (Cap.240 of the Laws of Hong Kong) deals with slightly more serious offences such as speeding, failing to comply with traffic signals, driving without a securely fastened seat belt, etc. All the specified offences and their corresponding fixed penalties, ranging from \$230 to \$1,000, can be found in the Schedule of this Ordinance.

WHAT TO DO WHEN ACCIDENTS HAPPEN

VII. WHAT TO DO WHEN ACCIDENTS HAPPEN

1. DUTY TO STOP

1. DUTY TO STOP Probably every sensible driver involved in an accident will stop and check what has happened. But what about those non-sensible drivers? Section 56(1) of the

Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) provides as follows: "Where, owing to the presence of a vehicle on a road, an accident occurs whereby- personal injury is caused to a person other than the driver of that vehicle; or damage is caused to- a vehicle other than that vehicle or a trailer drawn thereby; a specified animal (other than one in or on that vehicle or a trailer drawn by that vehicle); or any other thing not being in or on that vehicle or a trailer drawn thereby, the driver of that vehicle shall stop." Specified animal means any horse, cattle, ass, mule, sheep, pig, goat, cat or dog. In other words, a driver must stop whenever there is an accident causing damage to another vehicle or anything (for example, if you crashed into a lamp post), irrespective of whether any other person is injured. But what exactly is meant by "stop"? How long should a driver "stop" in case of an accident? What should the driver do after "stopping"? While section 56(1) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) does not define "stop", section 56(2) of the same Ordinance provides that in the case of such an accident, a driver shall "if required, give to any police officer or to any person having reasonable grounds for so requiring the following particulars- his name and address; the name and address of the owner of the vehicle; and the registration or identification mark or number of the vehicle." Reading sections 56(1) and 56(2) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) together, we can safely assume that to "stop" means to stop and to remain at the scene of the accident for a period long enough for anyone to obtain the necessary particulars from the driver.

2. DUTY TO GIVE PARTICULARS

2. DUTY TO GIVE PARTICULARS As already discussed above, sections 56(1) and 56(2) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) impose a duty to give particulars in the case of accidents involving another vehicle or anything. Such particulars include the driver's name and address, the vehicle owner's name and address, and the vehicle's registration mark. It should also be noted that this duty is imposed on the driver personally. Therefore, the driver cannot leave the scene and just ask a passenger of the vehicle to give the necessary particulars.

3. DUTY TO REPORT

3. DUTY TO REPORT Now consider this situation: a driver drove in the middle of the night in some country side and collided with a lamp post. This driver stopped; but there was obviously no one there for him to give particulars to; he therefore left the scene. Did this driver breach the duty to stop and to give particulars? In this particular case, certainly the law would not be so unreasonable as to impose on this driver the duty to stop and wait indefinitely in the middle of the night for someone to come along and ask him for his particulars. Instead this driver should comply with section 56(2A) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong), which requires that if "the driver of the vehicle for any reason does not give the particulars mentioned in subsection (2), he shall report the accident in person at the nearest police station or to any police officer as soon as reasonably practicable, and in any case not later than 24 hours after the accident." Therefore, the driver in this situation must report the incident in person to a police as soon as reasonably practicable. Further, section 56(3) of the same Ordinance also stipulates a similar duty to report accidents that involve injury to any person, unless the driver "is incapable of doing so by reason of injuries sustained by him in the accident".

1. MR. C'S VEHICLE ACCIDENTALLY COLLIDED WITH ANOTHER VEHICLE. BOTH DRIVERS STOPPED, GOT OUT OF THEIR VEHICLES AND QUARRELED. IN THE HEAT OF THE INCIDENT, THE DRIVER OF THE OTHER VEHICLE DID NOT ASK MR. C TO GIVE PARTICULARS, BUT DID TELL MR. C TO REMAIN AT THE SCENE TO WAIT FOR THE POLICE. MR. C, WHO HAD TO ATTEND AN IMPORTANT MEETING, THEN LEFT THE SCENE. THE OTHER DRIVER, HOWEVER, MANAGED TO REMEMBER THE REGISTRATION MARK OF MR. C'S VEHICLE AND REPORTED THE SAME TO THE POLICE. THE POLICE HAD NO DIFFICULTY IN LOCATING MR. C IN HIS OFFICE WITHIN JUST ONE HOUR. DURING THE INTERVIEW WITH THE POLICE, MR. C TOLD EVERYTHING IN DETAIL TO THE POLICE. UNDER SUCH CIRCUMSTANCES, WHAT ARE MR. C'S LIABILITIES (IF ANY) UNDER SECTION 56 OF THE ROAD TRAFFIC ORDINANCE (CAP.374 OF THE LAWS OF HONG KONG)?

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REGISTRATION MARK OF MR. C' S VEHICLE AND REPORTED THE SAME TO THE POLICE. THE POLICE HAD NO DIFFICULTY IN LOCATING MR. C IN HIS OFFICE WITHIN JUST ONE HOUR. DURING THE INTERVIEW WITH THE POLICE, MR. C TOLD EVERYTHING IN DETAIL TO THE POLICE. UNDER SUCH CIRCUMSTANCES, WHAT ARE MR. C' S LIABILITIES (IF ANY) UNDER SECTION 56 OF THE ROAD TRAFFIC ORDINANCE (CAP.374 OF THE LAWS OF HONG KONG)? Obviously Mr. C had stopped. But as discussed above, "stop" means to stop and to remain at the scene of the accident for a period long enough for anyone to obtain from the driver the necessary particulars. Therefore, even though the driver of the other vehicle did not ask Mr. C for particulars, Mr. C had to stay and wait for the police. In other words, Mr. C did not comply with the duty to "stop" under section 56(1) of the Road Traffic Ordinance(Cap.374 of the Laws of Hong Kong). When Mr. C was approached by the police, he fully co-operated and gave all particulars to the police. It is therefore likely that Mr. C would not be prosecuted under section 56(2) of the same Ordinance, i.e. under the duty to give particulars. What about the duty to report an accident under section 56(2A)? If Mr. C did not give particulars at the scene of the accident, he was supposed to report to the police as soon as reasonably practicable and in any case not later than 24 hours after the accident. But since the police located Mr. C and obtained particulars from him in just one hour, could Mr. C argue that there was no duty to report under such circumstances? It should be noted that the words "in any case not later than 24 hours after the accident" do not mean that a driver can wait till the last minute of that 24 hours to report; he must report as soon as reasonably practicable. In Mr. C' s case, obviously he did not report immediately. But since the police had obtained particulars from him within just one hour, it was arguable that there was no further need to comply with the duty to report under section56(2A). In this situation, Mr. C should at least have made a phone call to the police within that one hour—although a report by telephone does not satisfy the legal duty to report in person—to explain why he could not report immediately and to show that in any case he intends to report.

4. PRESERVING EVIDENCE 4. PRESERVING EVIDENCE Incidental to the duty to stop, to give particulars and to report the accident to the police, the law also lays down a duty to preserve evidence in the case of a serious accident. Section 57(1) of the Road Traffic Ordinance(Cap.374 of the Laws of Hong Kong) prescribes that if there is an accident "in consequence of which any person is killed or seriously injured or serious damage is caused to any vehicle or thing, any person who without the authority of a police officer moves or otherwise interferes with any vehicle involved in the accident or any part of any such vehicle or does any other act which destroys, alters or conceals any evidence of the accident commits an offence". Notwithstanding the above, section 57(2) of the same Ordinance provides that if the moving or interference is done "for the purpose of saving life, extinguishing fire or meeting any other emergency", no offence would have been committed.

1. A VEHICLE BUMPED INTO THE BACK OF ANOTHER VEHICLE. BOTH VEHICLES STOPPED. THERE WAS OF COURSE SOME DAMAGE TO BOTH VEHICLES; BUT LUCKILY, NO ONE WAS INJURED. IN ORDER NOT TO BLOCK THE TRAFFIC, BOTH DRIVERS AGREED TO DRIVE THE VEHICLES TO A NEARBY GAS STATION TO DISCUSS LIABILITY AND DAMAGES. SINCE THEY HAD OBVIOUSLY MOVED THE VEHICLES, WOULD THEY BE LIABLE UNDER SECTION 57 OF THE ROAD TRAFFIC ORDINANCE (CAP.374 OF THE LAWS OF HONG KONG)?

1. A VEHICLE BUMPED INTO THE BACK OF ANOTHER VEHICLE. BOTH VEHICLES STOPPED. THERE WAS OF COURSE SOME DAMAGE TO BOTH VEHICLES; BUT LUCKILY, NO ONE WAS INJURED. IN ORDER NOT TO BLOCK THE TRAFFIC, BOTH DRIVERS AGREED TO DRIVE THE VEHICLES TO A NEARBY GAS STATION TO DISCUSS LIABILITY AND DAMAGES. SINCE THEY HAD OBVIOUSLY MOVED THE VEHICLES, WOULD THEY BE LIABLE UNDER SECTION 57 OF THE ROAD TRAFFIC ORDINANCE (CAP.374 OF THE LAWS OF HONG KONG)? This appears to be a minor accident where no person was injured and no vehicle or thing was seriously damaged. Section 57 of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong) is therefore inapplicable. However, if the accident involves serious injury or damage or even death, no one should be bothered about the traffic and no person should move or interfere with anything at the scene.

5. NOTIFYING AN INSURER 5. NOTIFYING AN INSURER In Hong Kong there is no law that compels drivers to report an accident to their insurers. As a matter of fact, most parties involved in minor accidents would simply resolve the disputes by way of mutual agreement without involving their insurers. However, most

vehicle insurance policies require vehicle owners to immediately report an accident to the insurance company if they intend to claim damages under their policy. Drivers involved in an accident should therefore duly consider whether it is in their best interest to report the case to their insurers.

B. OBLIGATION TO UNDERGO DRUG TEST

B. OBLIGATION TO UNDERGO DRUG TEST Screening breath test is only for assessing whether a driver has alcohol in his body. In the case of drugs, a police officer is equipped with similar power to require a driver to undergo drug test. The relevant law, however, are quite complicated. Let's try to go through the relevant details. If a police officer has reasonable cause to suspect that a person: has been driving or attempting to drive, or has been in charge of, a motor vehicle with specified illicit drug present in his blood or urine, or under the influence of any drug (section 39M(2)(a) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)); or has been driving or attempting to drive, or has been in charge of a motor vehicle and has committed a traffic offence while the motor vehicle was in motion (section 39M(2)(b) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)); or was driving or attempting to drive, or was in charge of, a motor vehicle at the time of an accident which occurs owing to the presence of that motor vehicle on the road (section 39M(3) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)) then the police officer may require that person to undergo one or more of the following preliminary drug test: a Drug Influence Recognition Observation; or an Impairment Test. (section 39M(1) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)) A Drug Influence Recognition Observation can take place anywhere; but an Impairment Test must be carried out at a police station (sections 39M(7) and 39M(8) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)). Despite that any police officer can require a person to undergo preliminary drug test, only certain authorized police officer can conduct the test (section 39T(5) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)). And if an authorized police officer has conducted a Drug Influence Recognition Observation on a person and does not opine that he was under the influence of a drug, he is not obliged to undergo an Impairment Test (section 39M(4) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)). And when a police officer requires a person to undergo a preliminary drug test, he must also warn the person that failure to undergo the test may render him liable to prosecution (section 39M(6) of the Road Traffic Ordinance (Cap.374 of the Laws of Hong Kong)).

6. RELATED TO SAFETY EQUIPMENT

6. RELATED TO SAFETY EQUIPMENT A. **PROTECTIVE HELMETS**

A. PROTECTIVE HELMETS Probably we all know that drivers and passengers of motor cycles must wear helmets. But it is interesting to note the following: Not all helmets are the same. We are not talking about the style or design of helmets. But drivers and passengers of motor cycles are required not just to wear any helmet; they must wear "approved protective helmets" which conform to the specifications and standards set out in Schedule 1 of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong of the Laws of Hong Kong). Maximum penalty for not wearing an approved protective helmet while driving or riding as passenger on a motor cycle is a fine of \$5,000 or imprisonment for 3 months (regulation 12 of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong) Road Traffic (Safety Equipment) Regulations (Cap.374F of the Laws of Hong Kong))). In most cases, the usual penalty would be a fine of \$320 under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap.240 of the Laws of Hong Kong). Accordingly, it shall be an offence for anyone to sell or hire out any protective helmet other than an approved protective helmet; maximum penalty for doing so is also a fine of \$5,000 or imprisonment for 3 months. If a motor cycle is equipped with a side car, it is not compulsory for a passenger in the side car to wear an approved protective helmet (regulation 3(1) of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong) Road Traffic (Safety Equipment) Regulations (Cap.374F of the Laws of Hong Kong)). While it is mandatory for riders and passengers of motor cycles to wear approved protective helmets, there is no such restriction in relation to motor tricycle. According to regulation 10 of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong) Road Traffic (Safety Equipment) Regulations (Cap.374F of the Laws of Hong Kong), the Commissioner for Transport may exempt any person or any class of

persons from the mandatory requirement of wearing approved protective helmets while driving or riding as passenger on a motor cycle. Religious reason is the most common grounds for application for exemption. B. SEAT BELTS B. SEAT BELTS It should be common knowledge to all Hong Kong citizens that all drivers and passengers must wear seat belts. That sounds simple and straight-forward. However, there are different laws governing the installation of seat belts on different seats of a vehicle. Let's try to simplify the issue as much as we can. As a vehicle owner, you have to make sure that:

- (a) the driver seat and the front passenger seat are equipped with seat belts unless your vehicle is: a private car manufactured before 30 June 1964; a taxi manufactured before 1 January 1981; a light bus manufactured before 1 January 1984; or a goods vehicle manufactured before 1 January 1989. (regulation 6 of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong))
- (b) the middle front seat (if there is any) is equipped with seat belt unless your vehicle is registered before 1 June 1996 (regulation 6A of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong)).
- (c) the rear seats are equipped with seat belt unless your vehicle is: a private car or a taxi registered before 1 January 2001; or a public light bus registered before 1 August 2004. (regulations 6B and 6C of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong))

Contravention of any of the above regulations could make a person liable to a fine of \$5,000 or imprisonment for 3 months. As a passenger of a private car, taxi, public light bus or goods vehicle, you simply have to wear a seat belt (if any) no matter which seat you are sitting on (regulations 7, 7A and 7B of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong)). Contravention of any of these regulations could make a person liable to a fine of \$5,000 or imprisonment for 3 months. As the driver of a private car, of course you have to wear a seat belt (if any). You also must also ensure that all passengers on your vehicle are fastened to their seat belts (if any) (regulations 7 and 7B of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong)). Contravention of any of these regulations could make a person liable to a fine of \$5,000 or imprisonment for 3 months. As the driver of a private light bus or goods vehicle, you of course have to wear a seat belt (if any). You also have to ensure that all passengers on your vehicle are fastened to their seat belts (if any) (regulation 7A of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong)). Contravention of this regulation could make a person liable to a fine of \$5,000 or imprisonment for 3 months. As the driver of a taxi or a public light bus, you of course have to wear a seat belt (if any). But you do not have a legal duty to ensure that your passengers are fastened to their seat belts. But when we come to buses, the situation is a bit different. The present law only requires that seat belts be installed for the driver seats and that drivers of buses must wear seat belts when driving (regulations 8A and 8B of the Road Traffic (Safety Equipment) Regulations (Cap. 374F of the Laws of Hong Kong)). It is not compulsory for seat belts to be installed for passenger seats of buses; and it is also not compulsory for passengers of buses to wear seat belts. Q1. CAN A LEARNER'S DRIVING LICENCE HOLDER DELIVER TAKEOUT WITH HIS/HER MOTORCYCLE? Q1. CAN A LEARNER'S DRIVING LICENCE HOLDER DELIVER TAKEOUT WITH HIS/HER MOTORCYCLE? Obviously a person with learner's driving licence should not use his/her motorcycle to deliver takeout or conduct any commercial activities. Simple logic will tell us that a learner's driving licence only entitles the holder to practise the driving of a motor vehicle (or a motorcycle). However, from a strictly legal perspective, there is no statute which expressly disallows the holder of a learner's driving licence to deliver takeout with his/her motorcycle; under regulation 12DA of the Road Traffic (Driving Licences) Regulations (374B), which specifically deals with the Commissioner for Transport's power to cancel learners' driving licences, there is nothing which empower the Commissioner to cancel a learner's driving licence under similar circumstances; and while regulation 20 of the Road Traffic (Driving Licences) Regulations (374B) gives general power to the Commissioner for Transport to cancel a driving licence if the holder does not fulfill the conditions and requirements for the issue of the licence, or contravenes any condition of the licence, it seems that there is not any requirement or condition which prescribes that a learning driver cannot use

his/her motor vehicle/motorcycle for takeout delivery. Nevertheless, the third party insurance policy for a motor vehicle/motorcycle for learners certainly will be void if the motor vehicle/motorcycle is used for commercial activities such as food delivery. The Commissioner for Transport may therefore rely on section 25(1) of the Road Traffic Ordinance (Cap. 374) to cancel the learner's driving licence: "The Commissioner may cancel the licence of a motor vehicle if... (vi) no valid insurance in respect of third party risks as required by the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) is in force in respect of the vehicle".

Q1. ARE DRIVING LICENCES ISSUED BY OTHER COUNTRIES VALID DRIVING LICENCES IN HONG KONG? Q1. ARE DRIVING LICENCES ISSUED BY OTHER COUNTRIES VALID DRIVING LICENCES IN HONG KONG? Strictly speaking, driving licences issued by other countries are not valid driving licences in Hong Kong. However, a visitor from abroad, if holding a valid domestic driving licence, may drive in Hong Kong during the period of 12 months following the date of his/her last entry into Hong Kong (regulation 37(1)(b) of the Road Traffic (Driving Licences) Regulations (Cap. 374B). But obviously the above regulation 37(1)(b) provides only a temporary solution for a visiting driver. If a person holding a foreign driving licence is looking for a more or less long term relief, regulation 11(3) of the Road Traffic (Driving Licences) Regulations (Cap. 374B) would be helpful. It states that a person holding such foreign driving licence may apply for a full Hong Kong driving licence if he/she holds a driving licence issued within the last 3 years by a competent authority in any countries listed in Fourth Schedule of the said Regulations. If the person holding a foreign driving licence does not come from those countries, and if he/she makes an application for a driving test within 3 months after his/her arrival in Hong Kong, he/she may apply for a temporary driving licence. The temporary driving licence is valid for 12 months from the date of the applicant's arrival in Hong Kong (regulation 13 of the Road Traffic (Driving Licences) Regulations).

Q2. IF I LET MY CHILD SIT ON THE DRIVER'S SEAT TO PLAY WITH THE STEERING WHEEL WHILE THE CAR IS STOPPED, WILL I BE CHARGED? Q2. IF I LET MY CHILD SIT ON THE DRIVER'S SEAT TO PLAY WITH THE STEERING WHEEL WHILE THE CAR IS STOPPED, WILL I BE CHARGED? Section 42(3) of the Road Traffic Ordinance (Cap. 374) provides that "no person shall suffer or permit a motor vehicle to be driven by a person who is not the holder of a driving licence of the class to which such vehicle belongs". The question here, therefore, is whether your car is being "driven" by your child. Regulation 42(1)(a) of the Road Traffic (Traffic Control) Regulations (Cap. 374G) also provides that a driver shall not "when driving a motor vehicle on a road permit any person not being a driving instructor to grasp or interfere with the steering, gearing or braking mechanism of the vehicle". In the hypothetical scenario, "...while the car is stopped" is somewhat ambivalent. Is it stopped in the middle of a traffic jam? Is it stopped by the roadside or in a parking lot? Is the key in the ignition? Is the engine still running? As discussed above, there is no statutory definition of the word "driving". We can only say that if you let your child play with the steering wheel when the engine is still running or the key in the ignition, no matter in what manner the vehicle is stopped, you probably have committed the aforesaid offence under section 42(3) of the Road Traffic Ordinance (Cap. 374) and regulation 42(1)(a) of the Road Traffic (Traffic Control) Regulations (Cap. 374G).

Q1. A DRIVER WHOSE DRIVING LICENCE HAD BEEN SUSPENDED DROVE THROUGH A POLICE ROADBLOCK. WHAT OFFENCES THE DRIVER COULD HAVE COMMITTED? Q1. A DRIVER WHOSE DRIVING LICENCE HAD BEEN SUSPENDED DROVE THROUGH A POLICE ROADBLOCK. WHAT OFFENCES THE DRIVER COULD HAVE COMMITTED? Obviously this driver has committed the offence of "driving while disqualified" under section 44 of the Road Traffic Ordinance (Cap. 374). Other possible offences that he/she may have committed include the following: the act of driving through a police roadblock may constitute an offence under section 60 of the Crimes Ordinance (200), i.e. without lawful excuse destroying or damaging any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged, or intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered; the act of driving through a police roadblock very likely amounts also to dangerous driving, i.e. "the way he drives falls far below what would be expected of a

competent and careful driver” and “it would be obvious to a competent and careful driver that driving in that way would be dangerous”; this act may also be equivalent to an assault on police officer contrary to section 36(b) of the Offences against the Person Ordinance (212); and depending on the consequence of that act of driving through a police roadblock, the driver could have committed the offence of homicide or manslaughter. Q2. CAN A PERSON WITHOUT A DRIVING LICENCE REGISTER A CAR IN HIS/HER NAME? Q2. CAN A PERSON WITHOUT A DRIVING LICENCE REGISTER A CAR IN HIS/HER NAME? Registration of a motor vehicle conveys the right of a vehicle to be driven on a road. It confirms ownership of a vehicle. But the owner does not have to drive the vehicle. The owner does not even need a driving licence in order to have a vehicle registered under his/her/its name. One obvious example is: a vehicle can be registered under the name of a company (i.e. the company owns the vehicle) even though a company cannot possibly drive a vehicle or have a driving licence. Therefore, yes, a person without a driving licence can have a car registered under his/her name. Q1. WHAT SHOULD DRIVERS AND PEDESTRIANS DO WHEN THE LIGHT SIGNAL IS NOT WORKING? Q1. WHAT SHOULD DRIVERS AND PEDESTRIANS DO WHEN THE LIGHT SIGNAL IS NOT WORKING? There is no law which governs such situation. However, it is generally accepted that drivers and pedestrians should adopt the following practice: drivers and pedestrians should treat intersections with failed traffic lights as four-way stops; that is to say, all vehicles have to come to a complete stop before proceeding further; vehicles entering from a minor road should give way to those on the major road; drivers should always give way to the vehicle on your right; drivers should always give way to pedestrians; pedestrians should always proceed with exceptional care; and after all, it all boils down to one single rule: be patient and courteous. Q2. I AM A VISUALLY IMPAIRED PERSON. I CROSSED THE ROAD WITHOUT NOTING THAT THE PEDESTRIAN LIGHT WAS ON RED. I AM CHARGED WITH JAYWALKING. IS IT A DEFENCE THAT I AM A VISUALLY IMPAIRED PERSON? Q2. I AM A VISUALLY IMPAIRED PERSON. I CROSSED THE ROAD WITHOUT NOTING THAT THE PEDESTRIAN LIGHT WAS ON RED. I AM CHARGED WITH JAYWALKING. IS IT A DEFENCE THAT I AM A VISUALLY IMPAIRED PERSON? Regulation 33(6) of the Road Traffic (Traffic Control) Regulations (Cap. 374G) prescribes that every pedestrian at a crossing that has traffic lights shall comply with the prevailing light signal. Even though regulation 61(2) provides that contravention of regulation 33(6) may be forgiven if there is a “reasonable excuse”, it is believed that visual impairment does not constitute a “reasonable excuse”, otherwise all visually impaired person is entitled to jaywalking. A visually impaired person does not enjoy any exemption. As a result, iniquitous as it may be, being visually impaired is not a defence or excuse for jaywalking. Q3. IN A CONGESTED ROAD, IF A VEHICLE HAS MOSTLY PASSED A YELLOW BOX MARKING (E.G., 2/3 OF ITS LENGTH HAS PASSED), IS THE DRIVER IN BREACH OF ANY TRAFFIC LAWS? Q3. IN A CONGESTED ROAD, IF A VEHICLE HAS MOSTLY PASSED A YELLOW BOX MARKING (E.G., 2/3 OF ITS LENGTH HAS PASSED), IS THE DRIVER IN BREACH OF ANY TRAFFIC LAWS? According to regulation 10(1) of the Road Traffic (Traffic Control) Regulations (Cap. 374G), “no person shall drive a vehicle into a boxed junction unless he will be immediately able to drive the vehicle wholly out of the boxed junction”. Therefore, it appears that the vehicle having 1/3 of its length trapped in the boxed junction is in breach of the said Regulation 10(1). However, regulation 10(3) prescribes that regulation 10(1) does not apply if a vehicle is driven from a traffic lane marked with a right turn arrow to a position where the vehicle can conveniently wait to make a right turn, and is prevented from being driven out of the box junction by other stationary vehicles in or near the box junction waiting to complete a right turn, or by vehicles moving in the opposite direction. For the same token, regulation 10(3) prescribes that regulation 10(1) does not apply if a vehicle is driven from a traffic lane marked with a left turn arrow to a position where the vehicle can conveniently wait to make a left turn, and is prevented from being driven out of the box junction by other stationary vehicles in or near the box junction waiting to complete a left turn, or by vehicles moving in the opposite direction. Therefore, depending on the actual circumstances, the vehicle having part of it prevented from being driven out of a box junction may not have breached regulation 10(1). Q4. WHEN A TRAFFIC LIGHT SIGNAL TURNS AMBER, A DRIVER STOPS THE CAR IMMEDIATELY. AT THE TIME WHEN IT TURNS RED, THE CAR STOPS COMPLETELY WITH ITS HEAD HAVING CROSSED THE STOP LINE. IS

THE DRIVER IN BREACH OF ANY TRAFFIC LAW? Q4. WHEN A TRAFFIC LIGHT SIGNAL TURNS AMBER, A DRIVER STOPS THE CAR IMMEDIATELY. AT THE TIME WHEN IT TURNS RED, THE CAR STOPS COMPLETELY WITH ITS HEAD HAVING CROSSED THE STOP LINE. IS THE DRIVER IN BREACH OF ANY TRAFFIC LAW? Regulation 17(1)(e) of the Road Traffic (Traffic Control) Regulations (Cap. 374G) provides that a vehicle shall not proceed beyond the stop line "except in the case of any vehicle which when the light signal first appears is so close to the stop line or light signals that it cannot safely be stopped before passing the stop line or light signals". In other words, the driver in this scenario may adopt the defence that the vehicle "cannot safely be stopped before passing the stop line". Q1. IS IT ILLEGAL TO GO TOO SLOW ON THE ROAD OR HIGHWAY? DOES THE LAW PRESCRIBE A MINIMUM SPEED FOR VEHICLES ON ROADS? Q1. IS IT ILLEGAL TO GO TOO SLOW ON THE ROAD OR HIGHWAY? DOES THE LAW PRESCRIBE A MINIMUM SPEED FOR VEHICLES ON ROADS? The law does not prescribe any minimum speed for vehicles on the road. However, driving too slow could cause annoyance to other drivers and indirectly encourage overtaking, which of course would increase the probability of accident. Driving too slow could therefore be a sign of driving "without due care and attention or without reasonable consideration for other persons using the road", i.e. the feature of careless driving. Q1. CAN A PASSENGER REFUSE TO WEAR A SEAT BELT ON THE MEDICAL GROUND? Q1. CAN A PASSENGER REFUSE TO WEAR A SEAT BELT ON THE MEDICAL GROUND? There is no statute which allows dispensation of seat belts on medical ground. Regulation 10 of the Road Traffic (Safety Equipment) Regulations (Cap. 374F) provides that the Commissioner for Transport may, "on application made to him in such form as he may determine", exempt any person or any class of persons from compliance with seat belt regulations. However, there is no indication of what the "form as he may determine" really is. If anyone wants to dispense with seat belt on medical ground, it seems that he/she could only make an application by writing to the Commissioner for Transport. Q2. IF A PASSENGER TRAVELS WITH A YOUNG CHILD, CAN HE/SHE USE ONE SEAT BELT TO FASTEN HIMSELF/HERSELF AND THE YOUNG CHILD? Q2. IF A PASSENGER TRAVELS WITH A YOUNG CHILD, CAN HE/SHE USE ONE SEAT BELT TO FASTEN HIMSELF/HERSELF AND THE YOUNG CHILD? No. Regulations 7, 7A and 7B of the Road Traffic (Safety Equipment) Regulations (Cap. 374F) contain express terms which govern the use of seat belts by child and infant. Put it simply, any passenger over 2 years of age has to be fastened to his/her seat by means of a seat belt; and any passenger of 2 years of age or less has to be fastened to his/her seat by means of an approved restraining device. Therefore, passenger travelling with a young child cannot use one seat belt to fasten both of them to one seat. Q2. NOWADAYS MANY TAXI DRIVERS HAVE MULTIPLE MOBILE PHONES IN FRONT OF THEIR DRIVER SEATS TO RECEIVE CALLS FOR BUSINESS. THIS POSSIBLY WILL AFFECT THEIR ATTENTION ON ROAD SITUATIONS. ARE TAXI DRIVERS IN BREACH OF ANY TRAFFIC LAW IN SUCH CIRCUMSTANCES (EVEN IF THEY MAKE AND RECEIVE PHONE CALLS WITH HAND-FREE FUNCTION)? Q2. NOWADAYS MANY TAXI DRIVERS HAVE MULTIPLE MOBILE PHONES IN FRONT OF THEIR DRIVER SEATS TO RECEIVE CALLS FOR BUSINESS. THIS POSSIBLY WILL AFFECT THEIR ATTENTION ON ROAD SITUATIONS. ARE TAXI DRIVERS IN BREACH OF ANY TRAFFIC LAW IN SUCH CIRCUMSTANCES (EVEN IF THEY MAKE AND RECEIVE PHONE CALLS WITH HAND-FREE FUNCTION)? Technically a taxi drivers operating multiple mobile telephones simultaneously without "holding" any of them may argue that he/she did not "use a mobile telephone while holding it in his hand" and therefore get away with the offence. However, if any accident happens to that taxi, no matter how minor that accident is, the fact of using multiple mobile telephones simultaneously may contribute to the evidence against him/her for driving "without due care and attention or without reasonable consideration for other persons using the road", i.e. careless driving. Q3. CAN DRIVERS WATCH VIDEOS DURING DRIVING? Q3. CAN DRIVERS WATCH VIDEOS DURING DRIVING? Regulation 37 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) expressly confirms that any video display unit visible to the driver in a vehicle could only display information about the current state of the vehicle or its equipment, the current closed-circuit view of any part of the vehicle or the area surrounding the vehicle, information about the current location of the vehicle or information for the purpose of navigating the vehicle. A driver watching video while driving definitely is in breach of the said regulation 37 and is liable to a fine of \$10,000 and imprisonment for 6 months. Q1. DO PEOPLE OBSTRUCTING A PARKING SPACE BY PLACING AN OBJECT (E.G., A

CHAIR) THERE VIOLATE THE LAWS? IF I DRIVE A CAR AND PASS BY, DO I HAVE RIGHT TO THE REMOVE THE OBJECT AND PARK MY CAR INTO THE PARKING SPACE? Q1. DO PEOPLE OBSTRUCTING A PARKING SPACE BY PLACING AN OBJECT (E.G., A CHAIR) THERE VIOLATE THE LAWS? IF I DRIVE A CAR AND PASS BY, DO I HAVE RIGHT TO THE REMOVE THE OBJECT AND PARK MY CAR INTO THE PARKING SPACE? Section 4A of the Summary Offences Ordinance (Cap. 228) provides clearly that it is an offence for any person “without lawful authority or excuse sets out or leaves, or causes to be set out or left, any matter or thing which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, any person or vehicle in a public place”. As to removal of the object, you better leave it to the Police. Q3. IS IT PARKING IF I STOP MY CAR AT THE ROADSIDE BUT THE ENGINE IS STILL ON? Q3. IS IT PARKING IF I STOP MY CAR AT THE ROADSIDE BUT THE ENGINE IS STILL ON? Regulation 2(1) of the Road Traffic (Parking) Regulations (Cap. 374C) defines parking as “the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading or picking up or setting down passengers”. The key words here are “temporarily for the purpose of and while actually engaged in loading or unloading or picking up or setting down passengers”. It is irrelevant whether the engine is on or not. Simply leaving the engine on while standing a vehicle for an extended period of time without doing the excepted acts under regulation 2(1) certainly constitutes an act of parking. Q6. MOTOR VEHICLES LEFT UNATTENDED IN STREETS OR CARPARKS FOR EXTENDED PERIOD ARE FOUND AT TIMES. WHAT ACTION CAN BE TAKEN IF IT HAPPENS IN THE PUBLIC AREA? WHAT ACTION CAN BE TAKEN IF IT HAPPENS IN PRIVATELY RUN CARPARKS? Q6. MOTOR VEHICLES LEFT UNATTENDED IN STREETS OR CARPARKS FOR EXTENDED PERIOD ARE FOUND AT TIMES. WHAT ACTION CAN BE TAKEN IF IT HAPPENS IN THE PUBLIC AREA? WHAT ACTION CAN BE TAKEN IF IT HAPPENS IN PRIVATELY RUN CARPARKS? It should be noted that under section 2 of the Road Traffic Ordinance (Cap. 374), both “road” and “private road” are given such wide definitions that they include almost all kinds of places where a vehicle can be used. Sections 117 and 118 of the same Ordinance expressly stipulate that all major traffic ordinances and regulations shall apply to private roads as they apply to roads. It therefore does not matter whether the unattended vehicle is on a road or in a public area or privately run carpark. According to regulation 9 of the Road Traffic (Parking) Regulations (Cap. 374C), any person who “causes or permits a vehicle to remain at rest on a road in such a position or in such condition or in such circumstances as to be likely to cause danger to other persons using the road” commits an offence and is liable to a fine of \$2,000. The Police is also empowered under section 103 of the Road Traffic Ordinance (Cap. 374) to remove any vehicle which “remains at rest on a road in such conditions or in such circumstances as to be likely to cause danger to other persons using the road or to interfere with the use of the road” when the driver cannot be located, is unable to remove the vehicle or refuses to remove the vehicle. If the owner does not come forth to claim the vehicle within 3 days, the Police will issue a notice to the owner demanding him/her to take the vehicle and pay the removal and storage charges within the next 14 days; and if the owner does not claim the vehicle accordingly, the vehicle will become Government property and may be sold. Even if the vehicle may not cause danger to other persons or may not interfere with the use of the road, if there is reasonable cause to believe that a vehicle has been abandoned, the Police may pursuant to section 107 of the Road Traffic Ordinance (Cap. 374) give notice to the vehicle owner requiring the owner to remove the vehicle. If the owner does not remove the vehicle within 7 days, the Police may seize it; and if the owner does not claim the vehicle within 14 days after the seizure, the vehicle will become Government property and may be sold. Q4. CAN TRAFFIC TICKETS BE ISSUED FROM MIDNIGHT TO DAWN TO VEHICLES PARKED IN ANY AREA WHICH ARE NOT DESIGNATED PARKING SPACES WITHOUT OBSTRUCTING OTHER TRAFFIC OR PEDESTRIANS? Q4. CAN TRAFFIC TICKETS BE ISSUED FROM MIDNIGHT TO DAWN TO VEHICLES PARKED IN ANY AREA WHICH ARE NOT DESIGNATED PARKING SPACES WITHOUT OBSTRUCTING OTHER TRAFFIC OR PEDESTRIANS? The Government has by way of traffic signs and road markings designated parking spaces all over Hong Kong. You are not allowed to park at any area which are not designated parking space irrespective of the time. Q5. CAN PARKING SPACES WITH MALFUNCTIONING METERS BE USED? Q5. CAN PARKING SPACES WITH MALFUNCTIONING METERS BE USED? Section 11(2) of the Fixed Penalty (Traffic

Contraventions) Ordinance (Cap. 237) stipulates that in any proceedings related to failure to feed a parking meter, it shall be a defence to prove that: you have paid but the meter fails to show the payment; or it is not possible to use any approved payment means for the meter. In other words, yes, legally speaking, parking spaces with malfunctioning meters can be used. However, practically, an enforcement officer may not bother to find out whether a parking meter is in working condition and may just issue a ticket to you if you do not pay for the parking space. In such circumstances, you may find it useful to adopt the Police's recommendation.

Q1. CAN I LEAVE MY CAR UNINSURED OR UNLICENSED IF I DO NOT INTEND TO DRIVE IT ANYMORE? Q1. CAN I LEAVE MY CAR UNINSURED OR UNLICENSED IF I DO NOT INTEND TO DRIVE IT ANYMORE? Section 4(1) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) specifies that in order to "use, or to cause or permit any other person to use, a motor vehicle on a road", there must be a third party risks insurance policy in force in relation to the user of that vehicle. The keyword here is "use". Regulation 25 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) specifies that "no motor vehicle shall be upon or used on any road unless a valid vehicle licence in respect of the vehicle is displayed". The keywords here are "be upon or used". It is evident that there is a difference between the requirements for insurance and that of licensing: For insurance, you cannot "use" a vehicle if you do not have the insurance. For licensing, you cannot have your vehicle "upon or used on any road" if you do not have the licence. Judging from the wording of these 2 statutes, you may argue that you can leave a vehicle uninsured if you do not intend to "use" or you will not let anyone "use" your car on a road. Nevertheless, even if no one is going to "use" the vehicle, you must maintain a licence as long as the vehicle is "upon" any road. Given the broad definition of the word "road", which comprises almost any place, you certainly need a licence for the vehicle. Regulation 21(1)(a)(ii) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) provides that a licence shall not be issued unless there is a third party insurance policy is "valid on the date when the licence is to become operative". In other words, you must have a valid insurance policy as long as you continue to own the vehicle. Note: since the law only requires that there must be a valid insurance policy "on the date" when the licence is to become operative, you could obtain a licence with an insurance policy which will expire in the near future. So it is possible that there will be a time gap that an unused vehicle can be placed "upon" a road without a valid insurance.

Q2. CAN MY SON DRIVE MY CAR IF HE IS AN UNNAMED DRIVER? Q2. CAN MY SON DRIVE MY CAR IF HE IS AN UNNAMED DRIVER? In insurance jargon, an "unnamed driver" means someone who is not named as a driver in the insurance policy but is authorized by the policy holder to drive the car. Therefore the real question is: by allowing my son, who is an unnamed driver under the subsisting insurance policy, am I in breach of section 4(1) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), which specifies that in order to "use, or to cause or permit any other person to use, a motor vehicle on a road", there must be a third party risks insurance policy in force in relation to the user of that vehicle. The answer must be: it all depends on whether your third party insurance plan covers any unnamed driver. So read your insurance policy or consult your insurance agent.

Q2. DOES A PEDESTRIAN COMMIT THE OFFENCE OF JAYWALKING IF THE PEDESTRIAN LIGHT IS NOT WORKING AND HE/SHE CROSSES THE ROAD? Q2. DOES A PEDESTRIAN COMMIT THE OFFENCE OF JAYWALKING IF THE PEDESTRIAN LIGHT IS NOT WORKING AND HE/SHE CROSSES THE ROAD? If a pedestrian light is not working, the pedestrian obviously cannot be expected to quit crossing the road. He/She should proceed with exceptional care. Crossing the road under such circumstance should constitute a "reasonable excuse" under regulation 61(2) of the Road Traffic (Traffic Control) Regulations (Cap. 374G) and a good defence if the pedestrian is charged with jaywalking.

Q2. MY CAR CAMERA RECORDED SOMEONE HITTING MY CAR DELIBERATELY AND PRETENDING TO BE KNOCKED DOWN BY MY CAR. WILL THAT PERSON BE CHARGED? WILL I BE CHARGED WITH CARELESS DRIVING? Q2. MY CAR CAMERA RECORDED SOMEONE HITTING MY CAR DELIBERATELY AND PRETENDING TO BE KNOCKED DOWN BY MY CAR. WILL THAT PERSON BE CHARGED? WILL I BE CHARGED WITH CARELESS DRIVING? This appears to be a case of injury feigning rather than a negligent pedestrian. Assuming that the acts of "hitting...deliberately"

and “pretending to be knocked down” can be proved, it is likely that you will not be charged with careless driving. On the other hand, if that person tried to extort money from you, he/she may be charged with fraud or blackmail (depending on the factual circumstances).

Q3. ARE ELECTRIC GOLF CARTS REGULATED BY TRAFFIC LAW? Q3. ARE ELECTRIC GOLF CARTS REGULATED BY TRAFFIC LAW? As defined under the Road Traffic Ordinance (Cap. 374), golf cart is a “village vehicle”. Village vehicles are governed by the Road Traffic (Village Vehicles) Regulations (Cap. 374N). The major regulations in relation to golf carts are: a permit issued by the Commissioner for Transport is required to authorize the driving or use of a golf cart (regulation 4 of the Road Traffic (Village Vehicles) Regulations (374N)); the permit may impose conditions on the use of the golf cart, such as the roads on which the vehicle may or may not be driven or used, the times and days during which the vehicle may or may not be driven or used, and the place where the vehicle will be kept when not being driven or used (regulation 9(2) of the Road Traffic (Village Vehicles) Regulations (374N)); the golf cart has to be “so constructed as to render it safe to carry any passengers that it may reasonably be required to carry” (regulation 16(1)(c) of the Road Traffic (Village Vehicles) Regulations (374N)); and for certain specified road in Discovery Bay, the driver of a golf cart must hold a valid driving licence or a valid international driving permit (regulation 18(7A) of the Road Traffic (Village Vehicles) Regulations (374N)). Basically drivers of golf carts shall comply with all traffic regulations as if they are drivers of motor vehicles.

Q2. CAN I RIDE A BICYCLE OR TRICYCLE TO CARRY ANIMALS? Q2. CAN I RIDE A BICYCLE OR TRICYCLE TO CARRY ANIMALS? According to regulation 51(3)(b) of the Road Traffic (Traffic Control) Regulations (Cap. 374G), “No person riding a bicycle or tricycle on a road shall carry... any animal or article which obstructs his view or which prevents him from exercising complete control over his vehicle”. In other words, as long as the animal does not obstruct the rider’s view or prevents him/her from exercising complete control over the bicycle or tricycle, the rider has not committed any offence.

14. RELATED TO OTHER VEHICLES AND ELECTRIC MOBILITY DEVICES 14. RELATED TO OTHER VEHICLES AND ELECTRIC MOBILITY DEVICES Q1. ARE ELECTRIC MOBILITY DEVICES TREATED AS “MOTOR VEHICLES”? IS RIDING ON ELECTRIC MOBILITY DEVICES (E.G. ELECTRIC SCOOTERS, ELECTRIC UNICYCLES, ELECTRIC HOVERBOARDS, ELECTRIC SKATEBOARDS, ELECTRIC BICYCLES, ETC.) ILLEGAL IN HONG KONG? WHAT CHARGES COULD BE LAID AGAINST THE RIDERS? Q1. ARE ELECTRIC MOBILITY DEVICES TREATED AS “MOTOR VEHICLES”? IS RIDING ON ELECTRIC MOBILITY DEVICES (E.G. ELECTRIC SCOOTERS, ELECTRIC UNICYCLES, ELECTRIC HOVERBOARDS, ELECTRIC SKATEBOARDS, ELECTRIC BICYCLES, ETC.) ILLEGAL IN HONG KONG? WHAT CHARGES COULD BE LAID AGAINST THE RIDERS? The term “electric mobility devices” usually refers to electric scooters, electric unicycles, electric hoverboards, electric skateboards, electric bicycles, etc. As defined under the Road Traffic Ordinance (Cap. 374), “motor vehicle” means “any mechanically propelled vehicle”, and “motor cycle” means “a two-wheeled motor vehicle with or without a sidecar”. With such definitions and from a legal perspective, electric bicycle is a motor cycle and all other electric mobility devices are motor vehicles. However, according to the leaflet “Electric Mobility Devices are banned on roads (including footpaths)” published by the Transport Department, electric mobility devices are banned on roads. It is interesting to note that: the Transport Department confirms the legal position that electric mobility devices “are likely ‘motor vehicles’ under the Road Traffic Ordinance”; it then states that electric mobility devices “are not suitable to share road spaces with ordinary vehicles, no matter from the road safety perspective or from the smooth traffic angle. They are also not suitable for use on footpaths. Therefore, it is a general policy of the Transport Department that such mobility devices would not be registered or licensed under the Road Traffic Ordinance”; and it then concludes that since electric mobility devices will not be registered or licensed, riding one on the road “may constitute an offence under section 52 of the Road Traffic Ordinance and is liable in the case of a first conviction for that offence to a fine at level 2 (currently \$5000) and to imprisonment for 3 months”. It is not difficult to see that the Transport Department’s decision to ban electric mobility devices is based on safety concern and is probably reasonable and realistic. But this administrative measure is irreconcilable with the existing law. It fails to

answer the fundamental question: since electric mobility devices are motor vehicles, why are they not allowed to run on roads like other motor vehicles? Obviously the law is not adequately updated to keep up with the advancement of technology. In the meantime, unless and until someone being charged with riding an electric mobility device brings the case to the Court and obtain a definitive judgment, anyone riding an electric mobility device is taking the risk of committing the offence of driving an unregistered and licensed vehicle. Q2. DO I BEAR THE RESPONSIBILITIES OF A DRIVER IF I RIDE AN ELECTRIC UNICYCLE ON THE ROAD AND HIT SOMEONE? Q2. DO I BEAR THE RESPONSIBILITIES OF A DRIVER IF I RIDE AN ELECTRIC UNICYCLE ON THE ROAD AND HIT SOMEONE? As discussed in the section on electric mobility devices, riding an electric unicycle may constitute the offence of driving an unregistered and licensed vehicle. You may therefore be treated as a driver and have to bear all responsibilities that a driver of a motor vehicle may bear. Even though it is unlikely that an electric mobility device may lead to serious charges like careless driving and dangerous driving, you could be charged under section 4(8) of the Summary Offences Ordinance (Cap. 228): “rides or drives on any foot-path without obvious necessity; or in any public place rides or drives recklessly or negligently or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case”. Q4. ARE ELECTRIC WHEELCHAIRS REGULATED BY TRAFFIC LAW? Q4. ARE ELECTRIC WHEELCHAIRS REGULATED BY TRAFFIC LAW? As defined under the Road Traffic Ordinance (Cap. 374), “motor vehicle” means “any mechanically propelled vehicle”, and “motor cycle” means “a two-wheeled motor vehicle with or without a sidecar”. An electric wheelchair evidently falls into these definitions and should be a motor vehicle or motor cycle. Yet, strangely enough, the Government does not consider the electric wheelchair a motor vehicle nor a motor cycle, not even an electric mobility device. According to the “Review of the Use of Electric Mobility Devices in Hong Kong” made by the Transport Department in June 2020, electric wheelchairs are “Motorised Personal Mobility Aids”; and they are “the motorised version of wheelchairs for essential mobility of the disabled and the elderly. Their use on footpaths is considered necessary for these people and the impact on pedestrians is expected to be low, provided that their speed is restricted at a certain level”. When comparing electric mobility devices (EMDs) and personal mobility aids (PMAs), the Review makes the following remarks: “we are mindful that Hong Kong is a densely populated city and our road networks are heavily used by motor vehicles. We need to take into account a host of local factors in reviewing the proposed regulation of EMDs in Hong Kong, including road and pedestrian safety concerns, traffic environment, road design and associated traffic impacts, as well as the benefits that EMDs may bring to their users. In connection with the last factor, due consideration has been given to the practical needs of the users of motorised PMAs.” In other words, EMDs are motor vehicles but they will not be registered or licensed because they do not bring forth much benefit to the community; and motorized PMAs (i.e. electric wheelchairs), though within the definition of “motor vehicle”, will not be treated as motor vehicles and thus are not required to be registered or licensed because they serve practical purposes. One certainly cannot reproach the Transport Department for giving due consideration to the needs of the elderly and the disabled. Nevertheless, just like in the case of electric mobility devices, this administrative measure based on practicality is irreconcilable with the existing law. Since electric wheelchairs are not motor vehicle, they could not be regulated by the Road Traffic Ordinance (Cap. 374). The user of an electric wheelchair, however, should remain vigilant of section 4(8) of the Summary Offences Ordinance (Cap. 228): it shall be an offence if someone “rides or drives on any foot-path without obvious necessity; or in any public place rides or drives recklessly or negligently or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case”. 15. RELATED TO ANIMALS 15. RELATED TO ANIMALS Q1. IN CHINESE, THE WORD “ROAD” IS FREQUENTLY CALLED “馬路”, LITERALLY “HORSE WAY”, WHICH WAS SO DEFINED WHEN HORSES OR CARRIAGES WERE THE MAJOR MEANS OF TRANSPORTATION. NOWADAYS, CAN WE STILL RIDE HORSES ON ROADS? Q1. IN CHINESE, THE WORD “ROAD” IS FREQUENTLY CALLED “馬路”, LITERALLY “HORSE WAY”, WHICH WAS SO DEFINED WHEN HORSES OR CARRIAGES WERE THE MAJOR MEANS OF TRANSPORTATION. NOWADAYS, CAN WE STILL RIDE HORSES ON

ROADS? The Chinese term “馬路” (transliterated “horse way”) has almost completely disappeared in Hong Kong statutes. There are only 2 references to the Chinese term. Both appear in the Road Traffic (Traffic Control) Regulations (Cap. 374G); both are called “road” in the English version; and both are used in the context of pedestrians crossing the “road”. But Hong Kong citizens have all along been using the term “馬路” (transliterated “horse way”) to describe the road in their daily language. It is therefore interesting to ponder upon whether riding horses on a road is permitted. As a matter of fact, there is no law which prohibits riding of horse on the road. There are actually a few statutes which suggest that it is not an offence to ride a horse on the road: Section 28(3) of the Summary Offences Ordinance (228) stipulates: “Any person who is found drunk while in charge of any vehicle (other than a motor vehicle) or of any horse, in any public road or street shall be liable to a fine at level 1 or to imprisonment for 2 months.” That seems to suggest that you can be in charge of any vehicle or horse on a road as long as you are not drunk. At certain areas where equestrian centres or riding schools are located, you may see a triangular traffic sign displaying a running horse. According to Schedule 1 of the Road Traffic (Traffic Control) Regulations (Cap. 374G), “This sign indicates that motorists are approaching a length of road on which they are likely to encounter horses.” That again seems to suggest that horse riding is allowed on the road. The Road Users’ Code published by the Transport Department, though not representing the law, also contains passages which indicate that horse riding on the road is allowed. For example: “Riding a horse on roads with traffic should be avoided. However, if you have to ride a horse on the road, make sure you can control it in traffic.” “When riding, keep to the left of the road. If you are leading a horse, on foot or while riding another, you should also keep to the left and keep the led animal on your left.” “If you are riding a horse, you should wear a hard hat and lightcoloured, reflective or fluorescent clothing.” In view of the above, it is believed that it is not an offence for someone to ride a horse on the road.

16. RELATED TO ENVIRONMENTAL PROTECTION 16. RELATED TO ENVIRONMENTAL PROTECTION Q1. DOES THE REGULATION REGARDING RUNNING ENGINES ON IDLING VEHICLES ALSO APPLY TO ELECTRIC MOTOR CARS? Q1. DOES THE REGULATION REGARDING RUNNING ENGINES ON IDLING VEHICLES ALSO APPLY TO ELECTRIC MOTOR CARS? The Motor Vehicle Idling (Fixed Penalty) Ordinance (Cap. 611) comes into effect on 15 December 2011 with the prime objective to control air pollution and fuel waste caused by combustion-type vehicle engines. That would include vehicle engines powered by fuels such as petrol, diesel or liquefied petroleum gas, as well as hybrid vehicles operating in fuel combustion mode. According to sections 5 and 7 of the Ordinance, if a driver causes or permits a vehicle to be idling on a road for more than 3 minutes in any 60-minute period, he/she is liable to pay a fixed penalty of \$320. Nevertheless, as electric vehicles and hybrid vehicles operating solely in electric mode do not emit pollutants, the Environment Protection Department has confirmed that the Ordinance does not apply to such vehicles.

C. PROCEDURAL FLOW C. PROCEDURAL FLOW 1. PARKING CONTRAVENTIONS 1. PARKING CONTRAVENTIONS The enforcement procedures for fixed penalty tickets against parking contraventions under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) are as follows: Form 1 (commonly known as “traffic ticket”): If a police officer has reasonable cause to believe that a contravention is being or has been committed, he/she may deliver a Fixed Penalty Notice (Form 1) to the person in charge of the vehicle or fixed on the vehicle. The penalty should be paid according to the payment instructions stated on the overleaf of the Form 1 within 21 days of the issue date of the Notice in order to discharge the liability of the contravention. Form 2: If the offender fails to pay the penalty within 21 days of the issue date of Form 1, the Notice Demanding Payment of Fixed Penalty (Form 2) will be issued within 6 months from the date of the contravention and sent to the registered owner of the offending vehicle by post to the address as registered at Transport Department. The vehicle owner has to pay the penalty or dispute the case in court according to the instructions stated on the Notice before the due date prescribed in the Notice. In case the offender has not indicated the intention to dispute in court Court order: If a person on whom Form 2 has been served has not paid the fixed penalty and has not notified the Commissioner of Police that he wishes to dispute liability for the

contravention before the prescribed due date in Form 2, an application will be made by the Secretary for Justice, in the absence of the person, before a magistrate to order the person to pay the fixed penalty, together with an additional penalty equal to the amount of the fixed penalty and a court costs in a total of HK\$1080. At the same time, the magistrate will put the following restrictions against the person until the payment of the order has been settled: refuse the issuing and renewal of the person's driving licence; refuse the renewal of all vehicle licences under the name of the person; refuse the transfer of vehicle ownerships of all vehicles registered under the name of the person; and refuse the issuing of traffic conviction records of the person.

Distress: If a person failed to settle a court order within 1 month of the date of the order to so pay, the Secretary for Justice will apply, in the absence of the person, before a magistrate for an order directing that all costs as stated in the ordinance be levied on any goods and chattels of the person by distress and sale. In case the offender intends to dispute in court Return Form 2: A registered vehicle owner could dispute the liability of a traffic contravention by writing to or forwarding a signed Notification to Commissioner of Police of Wish to Dispute Liability for Contraventions, which is at the back of the Notice Demanding Payment of Fixed Penalty (Form 2), to Unit 4 of Central Traffic Prosecutions Division (CTPD) at 30/F, Arsenal House, Police Headquarters, No. 1 Arsenal Street, Wanchai. Any such document must be signed by the registered vehicle owner or affixed with a company seal (if the registered owner is a company) and forwarded to CTPD by the due date prescribed on the Form 2.

Appear before the Magistrate: The offender should appear before the magistrate presiding in the summons or he/she may discharge the liability for the contravention by presenting the Summons at the Accounts Office of any Magistrates' Courts, not later than two clear working days before the appearance day and pay the amount stated in the Summons.

2. SPEEDING AND OTHER MOVING OFFENCES

2. SPEEDING AND OTHER MOVING OFFENCES The enforcement procedures for fixed penalty tickets against moving offences under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) are as follows: Form 1 (commonly known as "traffic ticket"): If a police officer has reason to believe that a person is committing or has committed a scheduled offence, he may give that person a Notice of Particulars of Alleged Fixed Penalty Traffic Offence (Form 1) by delivering it personally to that person or by fixing it to the vehicle used or involved in the commission of the offence. The penalty should be paid according to the payment instructions stated on the overleaf of the Form 1 within 21 days of the issue date of the Notice in order to discharge the liability of the contravention.

Notice Requiring Identification of Driver: In case the identity of the offended driver cannot be identified, a police officer may issue a Notice Requiring Identification of Driver to the registered owner of the vehicle involved. Within 21 days after the date of the notice, the recipient shall provide the name, address and driving licence number of the driver of the vehicle at the time of the alleged offence, and the recipient's relationship to any such driver.

Form 2: No matter whether the penalty specified in Form 1 has been cleared or not before the due date, the Commissioner of Police will mail a Notice Demanding Payment of Fixed Penalty (Form 2) to the offender's address registered with Transport Department. If the penalty has not been cleared, and if the offender does not intend to dispute liability for the offence concerned, he/she should pay the penalty according to the payment instructions stated on the overleaf of the demand note before the Last Date for Payment / Notification of Dispute. The demand note can be ignored if the correct amount of payment of the penalty has been made. In case the offender has not indicated the intention to dispute in court Court order: If the penalty has not been cleared and no notification of dispute has been given after the Last Date for Payment / Notification of Dispute, the magistrate will order the offender to pay the fixed penalty together with an additional penalty equal to the amount of the fixed penalty and court costs of not less than HK\$80 or more than HK\$1,500 within 14 days of being served with notice of the order. At the same time, the court will put the following restrictions against the person until the payment of the order has been settled: refuse the issuing and renewal of the person's driving licence; refuse the renewal of all vehicle licences under the name of the person; refuse the transfer of vehicle ownerships of all vehicles registered under the name of the person;

and refuse the issuing of traffic conviction records of the person. Imprisonment: If the offender fails to pay the amount of the fixed penalty, additional penalty and costs on the specified date, he/she will be deemed to have failed to have paid a sum adjudged to be paid by a conviction and shall be liable to be imprisoned under Magistrates Ordinance (227). Distress: If a person failed to settle a court order within 1 month of the date of the order to so pay, the Secretary for Justice will apply, in the absence of the person, before a magistrate for an order directing that all costs as stated in the ordinance be levied on any goods and chattels of the person by distress and sale. In case the offender intends to dispute in court Return Form 2: If the offender wishes to dispute a fixed penalty ticket, he/she can sign the notification of dispute slip on the overleaf of the Form 2 and mail it on or before the Last Date for Payment / Notification of Dispute to Unit 3 of CTPD (30/F, Arsenal House, Police Headquarters, No. 1 Arsenal Street, Wanchai). The unit will then arrange with the court to issue a summons to the offender. Appear before the Magistrate: The offender should appear before the magistrate presiding in the summons or he/she may discharge the liability for the contravention by presenting the Summons at the Accounts Office of any Magistrates' Courts, not later than two clear working days before the appearance day and pay the amount stated in the Summons. D. COMPLAINT MECHANISM D. COMPLAINT MECHANISM Complaints against unjust issue of fixed penalty notices can be lodged in person or by post or fax: In Person The complainant can bring the notice to any Police Station or the Central Traffic Prosecutions Division (CTPD) Enquiry Counter and complete an enquiry or complaint form. Address: 11/F, Arsenal House, Police Headquarters, No. 1 Arsenal Street, Wanchai, Hong Kong Opening hours: Monday to Friday 9:00 am to 5:45 pm, closed on Saturdays, Sundays and General Holidays. Complaints against traffic tickets related to parking contraventions will be referred to Unit 4 of CTPD while those related to speeding or other moving offences will be referred to Unit 3 for investigations. By Post or Fax The complainant can also write to CTPD by post or fax, stating the personal particulars, telephone number, the number of the Fixed Penalty Notice and reason or justification for the complaint, together with a photocopy of the notice. Related to Parking Contravention Address: Unit 4 of Central Traffic Prosecutions Division, 11/F, Arsenal House, Police Headquarters, No. 1 Arsenal Street, Wanchai, Hong Kong Fax number: 2200-4320 Related to Speeding and Other Moving Offences Address: Unit 3 of Central Traffic Prosecutions Division, 11/F, Arsenal House, Police Headquarters, No. 1 Arsenal Street, Wanchai, Hong Kong Fax number: 2200-4319 Related to Traffic Summons Address: Unit 2 of Central Traffic Prosecutions Division, 11/F, Arsenal House, Police Headquarters, No. 1 Arsenal Street, Wanchai, Hong Kong Fax number: 2200-4318 Via the e-Report Room Complaints against unfair traffic tickets can also be lodged through the e-Report Room. Inquiry Hotline Call the hotline 2866-6552 during office hours. Result Upon receiving a complaint, the relevant unit of the CTPD will carry out the investigation and will inform the complainant of the outcome in about 2 months. Q1. SHOULD I PAY FOR A TRAFFIC TICKET IF I BELIEVE IT IS WRONGLY ISSUED AND WOULD LIKE TO RAISE AN OBJECTION? Q1. SHOULD I PAY FOR A TRAFFIC TICKET IF I BELIEVE IT IS WRONGLY ISSUED AND WOULD LIKE TO RAISE AN OBJECTION? If you believe that the ticket is wrongly issued, you certainly have the right to raise an objection and indeed you should not pay. The standard traffic ticket contains the following words: "if you wish to dispute liability for the contravention, you should inform me. You are required...to notify me that you wish to dispute liability for the contravention (by using the notification form overleaf)." After receiving your notification of dispute, the Police will pass the case to the Court and you will be notified of a hearing date. For details of Court procedures, please refer to "Court procedure - criminal cases". Q2. DO I HAVE THE RIGHT TO REQUEST ACCESS TO THE PICTURES TAKEN FROM THE SPEED CAMERA (AND OTHER PHOTOGRAPHIC EVIDENCE MADE BY HK POLICE)? Q2. DO I HAVE THE RIGHT TO REQUEST ACCESS TO THE PICTURES TAKEN FROM THE SPEED CAMERA (AND OTHER PHOTOGRAPHIC EVIDENCE MADE BY HK POLICE)? Yes, definitely. Every person being accused of any offence is entitled to obtain the evidence in the Police's possession. The standard traffic ticket contains a telephone number of the Central Traffic Prosecutions Division of the Police and you can call that number to raise your request. 6. USING VIDEO CLIPS AS EVIDENCE IN COURT 6. USING VIDEO CLIPS AS EVIDENCE IN COURT Q1.

CAN VIDEO CLIPS FROM DRIVING RECORDERS (OF ANY DRIVER INVOLVED IN A CASE, OR ANY THIRD-PARTY DRIVER) BE USED AS EVIDENCE IN COURT? Q1. CAN VIDEO CLIPS FROM DRIVING RECORDERS (OF ANY DRIVER INVOLVED IN A CASE, OR ANY THIRD-PARTY DRIVER) BE USED AS EVIDENCE IN COURT? Generally speaking, a video clip, as long as its content is relevant to the subject matter, is prima facie admissible in Court as evidence. Another issue is the authenticity of the video clip: it has to be shown that the clip has been, since the time it was recorded, continuously in the custody of the person who asserts that it was not tampered with. If you believe that a video clip on your driving recorder may assist you in the defence of a charge, you should keep the memory card in your safe custody at all times and be ready to testify to the Court that you have not and no one will have tampered with the content of the memory card. Q2. WHAT MAKES A VIDEO CLIP ADMISSIBLE EVIDENCE? (CORRECT TIME? VEHICLE REGISTRATION NUMBER CLEARLY CAPTURED?) Q2. WHAT MAKES A VIDEO CLIP ADMISSIBLE EVIDENCE? (CORRECT TIME? VEHICLE REGISTRATION NUMBER CLEARLY CAPTURED?) A video clip is prima facie admissible in Court as evidence if its content is relevant to the subject matter. In a case involving a traffic incident, a video recording of the incident would certainly be helpful to the Court. The video clip produced to the Court must be the original clip. A copy will not be allowed unless there is a cogent reason why the original cannot be produced. The video clip must truly and accurately represent the actual circumstances of the incident. For instance, the subject vehicle, driver and/or victim should be identifiable in the video clip. Correct date and time, if available, should also be shown. It is quite usual that a dashcam often does not display the accurate date and time because it is not properly charged at all times. This may not render the clip inadmissible as long as there are other elements in the clip which verify that it is a truthful recording of the incident. Q3. WHAT MAKES A VIDEO CLIP BE REGARDED AS BEING "INTERFERED" AND THAT MAY CAUSE IT INADMISSIBLE IN COURT? Q3. WHAT MAKES A VIDEO CLIP BE REGARDED AS BEING "INTERFERED" AND THAT MAY CAUSE IT INADMISSIBLE IN COURT? Any editing or post-production on a video clip would render the clip being "interfered" or "tampered" with and thus adversely affect or even completely destroy its authenticity. This is also the reason why only original of a video clip will be admissible because a copy is always subject to the accusation that it could have been "interfered" or "tempered" with. For the same reason, if the authenticity of a video clip is being challenged, the person who took the clip should be ready to confirm to the Court that he/she has all along kept the video clip in his/her safe custody without any possible interference of the clip by any other person. Q4. WHAT CAN I DO IF MY DRIVING RECORDER HAS RECORDED THE HAPPENING OF A TRAFFIC OFFENCE ON THE ROAD? Q4. WHAT CAN I DO IF MY DRIVING RECORDER HAS RECORDED THE HAPPENING OF A TRAFFIC OFFENCE ON THE ROAD? First of all, as an ordinary citizen, you are not the right person to decide whether that is an offence or not. We suggest that you should pass the video clip (i.e. the memory card containing the video clip) to the Police and let the professionals do their job. We do not recommend passing the memory card to any party involved in the traffic incident. The obvious reason is: you do not know which party has committed an offence (if any) in the incident; the apparent victim could actually be the offender. Then you may have passed a valuable evidence to the offender and give him/her an opportunity to destroy the evidence. Certainly you do not want to make that kind of mistake. You should also be prepared to be requested by the Police to give evidence in the Court to verify the authenticity of your recording. 7. PRIVATE SETTLEMENT 7. PRIVATE SETTLEMENT Q1. DOES SUCH KIND OF SETTLEMENT CONTRACT PRECLUDE THE RIGHT OF THE PARTIES TO REPORT THE ACCIDENT TO THE POLICE? Q1. DOES SUCH KIND OF SETTLEMENT CONTRACT PRECLUDE THE RIGHT OF THE PARTIES TO REPORT THE ACCIDENT TO THE POLICE? A settlement agreement is a contract between parties on a civil basis. Investigation by the Police, on the other hand, belongs to the criminal realm. Settlement on a civil basis cannot exclude criminal liability. Let's review a rather extreme hypothetical situation: A driver rode dangerously and crashed into your supercar, causing total loss of your supercar and permanent disability to you; but you, for whatever reason, reached a settlement with the driver whereby you did not require damages from him and even paid him \$1 million. This settlement is of course binding on you; but it cannot negate the fact that the driver has driven dangerously and cannot stop the Police from laying charges against him. In

the settlement agreement, the parties have probably agreed not to report the accident to the Police. However, even if you have agreed not to report the accident to the Police, such agreement has no effect because it may amount to perverting the course of justice.

Q2. IF I HAVE PAID A SUM OF MONEY TO THE OTHER PARTY IN THE AGREEMENT, AND SUBSEQUENTLY I REPORTED THE CASE TO THE POLICE, AND IT TURNS OUT THAT IT IS THE OTHER PARTY WHO HAS COMMITTED THE OFFENCE OF "CARELESS DRIVING". CAN I ASK FOR THE MONEY BACK? Q2. IF I HAVE PAID A SUM OF MONEY TO THE OTHER PARTY IN THE AGREEMENT, AND SUBSEQUENTLY I REPORTED THE CASE TO THE POLICE, AND IT TURNS OUT THAT IT IS THE OTHER PARTY WHO HAS COMMITTED THE OFFENCE OF "CARELESS DRIVING". CAN I ASK FOR THE MONEY BACK? As discussed above, one same incident can lead to difference aspects of civil and criminal liabilities. If you have paid according to an agreement, it seems that there is no reason, even that the other party has committed a criminal act, that you can get your money refunded unless the contract contains some clauses which allow such refund.

HONG KONG - MAINLAND CHINA CROSS REGIONAL TRANSPORT VIII. HONG KONG - MAINLAND CHINA CROSS REGIONAL TRANSPORT HONG KONG'S JURISDICTION OVER SHENZHEN BAY PORT, HONG KONG - ZHUHAI - MACAO BRIDGE AND THE EXPRESS RAIL LINK HONG KONG'S JURISDICTION OVER SHENZHEN BAY PORT, HONG KONG - ZHUHAI - MACAO BRIDGE AND THE EXPRESS RAIL LINK The general legal principle on jurisdiction is: each country shall have jurisdiction over its own land. Hong Kong of course is not a country. But it has its own jurisdictional power under the "one country, two systems" principle. The above general legal principle on jurisdiction therefore must apply also to Hong Kong. Section 5 of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) provides that the laws of Hong Kong shall apply in area lying within Hong Kong. This is consistent with the general legal principle on jurisdiction. As for the Hong Kong-Zhuhai-Macao Bridge, there is no statute which expressly deals with the jurisdiction issue. However, according to the "Government Statement in respect of the jurisdiction of the Eastern Artificial Island of the Hong Kong-Zhuhai-Macao Bridge" published on 17 December 2019, the operation and law enforcement of the portion of the Hong Kong-Zhuhai-Macao Bridge situated in Hong Kong are carried out by the Hong Kong Government in accordance with the laws of Hong Kong. This is also consistent with the general legal principle on jurisdiction. The Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632), however, provides a creative deviation from this general principle due to practical consideration. It introduces the "Mainland Port Area" which includes part of the West Kowloon Station and train compartments of passenger trains in operation on the Hong Kong section of the Express Rail Link. The laws of mainland China shall apply in the "Mainland Port Area" which is geographically and physically located in Hong Kong.

ROAD USERS' CODE IX. ROAD USERS' CODE Q1. DOES FOLLOWING THE ROAD USERS' CODE PUBLISHED BY THE TRANSPORT DEPARTMENT GIVE ME A STRONG CASE WHEN FACING A CRIMINAL CHARGE OR WHEN DEALING WITH A CIVIL CLAIM RELATING TO TRAFFIC INCIDENTS? Q1. DOES FOLLOWING THE ROAD USERS' CODE PUBLISHED BY THE TRANSPORT DEPARTMENT GIVE ME A STRONG CASE WHEN FACING A CRIMINAL CHARGE OR WHEN DEALING WITH A CIVIL CLAIM RELATING TO TRAFFIC INCIDENTS? First of all, it should be noted that the Road Users' Code published by the Transport Department is not law. Section 109(5) of the Road Traffic Ordinance (Cap. 374) expressly states: "A failure on the part of any person to observe any provisions of the road users' code...shall not of itself render that person liable to criminal proceedings of any kind but any such failure may in any proceedings whether civil or criminal and including proceedings for an offence under this Ordinance be relied upon by any party to the proceedings as tending to establish or negative any liability which is in question in those proceedings." By the same token, full compliance with the Road Users' Code does not mean that you have fully complied with the law, but such compliance may in any proceedings whether civil or criminal be relied upon by any party to the proceedings as tending to establish or negative any liability. The Court has also in various cases confirmed that the Road Users' Code serves only the purpose of guidance. So yes, compliance with the Road Users' Code may give you a strong case in criminal or civil proceedings. But you should not expect anything more than a strong case.