**2025 JD1 Administrative Law – 5 February 2025**

**Week 2: Leave, Delay, Standing & Limits of JR**

1. **Leave to Apply for Judicial Review**

* The purpose of a leave requirement in judicial review
  + Distinction between proceedings brought “as of right” and those which require prior permission from the court.
  + The right to access the court and “qualitative” filtering
* Statutory provisions governing leave to apply for judicial review
  + Section 21K(3) of the High Court Ordinance (Cap. 4)
  + RHC Order 53, rule 3
* The applicable merits threshold in a leave application
  + Po Fun Chan v Winnie Cheung (2007) 10 HKCFAR 676
* Other matters which will be considered at the leave stage
* The manner to apply for leave to apply for judicial review
* Recommended reading
  + Chapter 9, Thomson, Administrative Law in Hong Kong

1. **Promptness and Delay** 
   * The underlying rationale behind the need to apply promptly
   * Statutory provisions governing timing and delay – the relevant test
     + Section 21(K)(3) & 21K(6) of the High Court Ordinance.
     + RHC Order 53, rule 4.
     + Law Chun Loy v Secretary for Justice, HCAL 13/2006, 26 October 2006
   * The need to identify when time starts to run
   * Applications for an extension of time to apply for leave
     + AW v Director of Immigration [2016] 2 HKC 393
       - The length of the delay
       - The reasons for the delay
       - The merits of the intended challenge
       - Prejudice to the parties and good administration
       - Points of general public importance
       - Whether the challenge is against a continuing policy
   * Refusal of relief on the ground of delay
     + R v Dairy Tribunal ex p Caswell [1990] 2 AC 738
   * Recommended Reading
     + Chapter 5, Thomson, Administrative Law in Hong Kong
2. **Sufficient Interest & Standing**

* The underlying rationale behind the requirements of standing in judicial review
* Statutory provisions
  + Section 21K(3) of the High Court Ordinance
  + RHC Order 53, rule 3(7)
* Case law on the approach to standing
  + R v IRC ex p National Federation of Self-Employed and Small Businesses [1982] AC 617.
  + Re Wong Chi Kin, CACV 80/2014, 26 September 2014.
  + Kwok Cheuk Kin v Commissioner of Police [2017] 6 HKC 93.
  + Ho Kar Hei v Director of Immigration [2018] HKCFI 2517.
  + 803 Funds Ltd v Director of Buildings [2021] 2 HKLRD 1274.
  + Kwok Cheuk Kin v President of LegCo [2021] 1 HKLRD 1247.
  + Kwok Cheuk Kin v Director of Lands [2021] HKCFA 38.
  + Kwok Cheuk Kin v Chief Executive in Council [2023] HKCFI 3074.
* Recommended Reading
  + Chapter 6, Thomson, Administrative Law in Hong Kong

1. **Alternative Remedies**

* Stock Exchange of Hong Kong Ltd v New World Development Co Ltd (2006) 9 HKCFAR 234
* Leung Ka Lau v Medical Council of Hong Kong [2021] HKCFI 2914

1. **Limitations on Judicial Review**
   * Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147
   * Bahadur v Director of Immigration [2001] 3 HKLRD 225.
   * Clean Air Foundation v Government of HKSAR, HCAL 35/2007 (unrep., 26 July 2007)
   * Leung Chun Ying v Albert Ho Chun Yan (2013) 16 HKCFAR 735
   * Recommended Reading
     + Chapter 8, Thomson, Administrative Law in Hong Kong