**2025 JD1 Administrative Law**

**Week 3 – Procedural Fairness I**

*Those marked with \* are mandatory reading*

1. Concepts of Procedural Fairness and Natural Justice

* One of 4 main grounds in JR
* (1) *nemo judex in causa sua* – no one should be judge in his own cause (2) *audi alteram partem* – hear the other side
* Modern day content of (2) includes (but is not limited to) (i) notice (ii) written representations (iii) disclosure prior to decision (iv) oral hearing (v) legal representation (vi) reasons
* Serves (at least) the following purposes (i) decision-making conscious of needs and interests of individuals affected (ii) may influence quality of substantive decision

Thomson, Administrative Law in Hong Kong (2018), pp247-248

\* Jhaveri, Ramsden & Scully-Hill, Administrative Law in Hong Kong, 2nd ed., pp297-300

*Kanda v Government of Malaya* [1962] AC 322

*Ridge v Baldwin* [1964] AC 40, esp 66, 79, 121, 124, 132

*\* R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, 560D-G

*Chu Ping Tak v Commissioner of Police* [2002] 3 HKC 663, §§53-73

* Sources of principle of fairness in HK – (i) common law (ii) Hong Kong Bill of Rights art.10 (“**BOR10**”) – “fair and public hearing by a competent, independent and impartial tribunal established by law” (=ICCPR art.14 which is incorporated under Basic Law art.39) [NB HKBORO (Cap.383) has exceptions, eg prisoners]
* Content is however the same: *Wong Tak Wai v Commissioner of Correctional Services* [2010] 4 HKLRD 409, §37 (Kwan JA)

1. Right to be informed and to be heard

* Right to be informed of charges
* Disclosure of materials relied upon before decision is made
* Right to be heard vs right to oral hearing

Thomson pp248-253

\* Jhaveri, Ramsden & Scully-Hill pp320-329

*Liu Pik Han v Hong Kong Federation of Insurers Appeal Tribunal* [2005] 3 HKC 242

*Ng Nga Wo v Director of Health*, HCAL 16/2006 (*unrep*., 16 May 2006)

*ATV v Communications Authority* [2013] 3 HKLRD 618

*ST v Betty Kwan* [2014] 4 HKC 419

*R (Osborn) v. Parole Board* [2014] AC 1115

*AIA International Ltd v Appeal Tribunal of Hong Kong Federation of Insurers* [2017] 5 HKC 83

*Registrar of Hong Kong Institute of Certified Public Accountants v Disciplinary Committee of Hong Kong Institute of Certified Public Accountants* [2020] 5 HKLRD 262

*Up Energy Development Group Ltd v Stock Exchange of Hong Kong Ltd* [2021] HKCFI 3813; HCAL 949/2021 (*unrep*., 21 December 2021)

1. Legal representation

Thomson pp253-256

Jhaveri, Ramsden & Scully-Hill pp329-337

*\* Stock Exchange of Hong Kong Ltd v New World Development Co Ltd* (2006) 9 HKCFAR 234

*Rowse v Secretary for Civil Service* [2008] 5 HKC 405

*\* Lam Siu Po v Commissioner of Police* (2009) 12 HKCFAR 234

1. Specific issues
2. Fundamental rights and high standard of fairness

*\** Jhaveri, Ramsden & Scully-Hill pp313-320

*R v Home Secretary, ex p Bugdaycay* [1987] 1 AC 514

*\* Secretary for Security v Prabakar* (2004) 7 HKCFAR 187

*MA v Director of Immigration*, HCAL 10/2010, (*unrep*., 6 January 2011), §§94-95

1. BOR10 - “fair and public hearing by a competent, independent and impartial tribunal established by law” – the “curative” principle

*\* Lam Siu Po v Commissioner of Police* (2009) 12 HKCFAR 234

*\* Wong Tak Wai v Commissioner of Correctional Services* [2010] 4 HKLRD 409