#### DCPI 2259/2011

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 2259 OF 2011

--------------------------

BETWEEN

CHEUNG WING YEE Plaintiff

and

ANGEL KISS LIMITED Defendant

-------------------------

Before: Deputy District Judge Ling Chun Wai in court

Date of Hearing: 23 December 2015

Date of Judgment: 15 January 2016

----------------------------

## JUDGMENT

----------------------------

*Introduction*

1. This is an action for personal injuries.
2. The plaintiff (“Ms Cheung”) is a young lady who was 23 at the time of the accident. On 25 June 2010, she underwent laser and facial treatment at a beauty centre operated by the defendant. She claims to have suffered burns on both sides of her cheek as a result of negligence on the part of the defendant and its staff.
3. The trial took place before me on 23 December 2015. Both parties were unrepresented. The defendant was absent at the trial.
4. On the day before the trial I directed my clerk to remind the parties by telephone that the trial would start on the following day. I am satisfied that the defendant had been duly notified of the proceedings. So the trial proceeded in the defendant’s absence.

*The plaintiff’s evidence*

1. I shall summarise the evidence given by Ms Cheung as follows. Between 18 March and 28 May 2010 Ms Cheung purchased a beauty package at the defendant’s centre at Man Tai Street, Whampoa (the “Centre”) for a total sum of $21,848. The package consisted of skin polishing for the back and exfoliation for the face using IPL beam treatment.
2. On 28 May 2010, the staff of the Centre recommended to Ms Cheung a new course of treatment known as “nano E-light”. She was assured that it was more effective than IPL beam treatment, and that it was completely safe.
3. On 25 June 2010, Ms Cheung arrived at the Centre where she was attended by a beautician called Amy. Amy recommended a number of operations on Ms Cheung’s face and back using the latest “nano E-light” machine. She assured Ms Cheung that the procedure was safe.
4. When Amy applied “nano E-light” to Ms Cheung’s face, she sensed numbness and sharp pain, so much so that she yelled and cried for Amy to stop. However Amy assured her that it was a normal reaction and that the burning sensation would go away after a few minutes.
5. Then Amy applied a face mask on Ms Cheung’s face. She proceeded to apply the beam to other parts of Ms Cheung’s body, including her back and armpits.
6. When the treatment was completed, Ms Cheung still experienced a burning sensation and pain on her face. She examined her face in a mirror. She found a brown patch and some blisters had appeared on her right cheek. She also saw skin peeling off her left cheek.
7. Ms Cheung demanded an explanation for the irregularity. Various other members of the Centre’s staff reassured her that there were no burns, and that the skin become smooth and shiny in a few days.
8. Ms Cheung went home but the pain persisted. She sought medical attention at Caritas Medical Centre where the doctor diagnosed her with 2% facial burn injury. Similar diagnoses were given by doctors who attended her at the Baptist Hospital and Precious Blood Hospital over the next few days.

*Findings of fact*

1. I accept Ms Cheung’s evidence, in particular, her account of the events leading to the accident and its aftermath.
2. In the Statement of Claim, Ms Cheung claims that the accident was caused by the negligence of the defendant. She relies on the following particulars of negligence:-
   1. Failing to perform the treatment up to a reasonable standard;
   2. Failing to explain all risks involved before performing the treatment;
   3. Giving false assurances that the treatment would not cause any scar or pain to her face;
   4. Failing to take any or any adequate precautions for avoiding injury;
   5. Exposing her to a risk of damage or injury of which the defendant knew or ought to have known.
3. As a matter of law, the defendant owed a duty of care in tort to Ms Cheung to perform the treatment up to a reasonable standard, to explain all risks involved before performing the treatment, to take any or any adequate precautions for avoiding injury and not to expose her to a risk of damage or injury of which the defendant knew or ought to have known.
4. Furthermore, section 5 of the Supply of Services (Implied Terms) Ordinance, Cap 457, provides that:-

“In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.”

1. I find that the defendant has breached its duty of care which it owed to Ms Cheung in tort, as well as the implied term under the Ordinance in contract. Accordingly Ms Cheung has made out the claim as pleaded in the Statement of Claim.
2. In the absence of any acceptable explanation, I find that the most probable cause for the accident is negligence on the part of the defendant as particularised in the Statement of Claim and a breach of the implied term under s 5 of the Ordinance.

*Quantum of damages*

1. I turn to the question of damages. The first item is pain suffering and loss of amenities (PSLA).
2. According to the medical report of Dr Otto Yum To Au dated 30 May 2014, Ms Cheung is suffering from post-inflammatory hyperpigmentation of her skin of both mandibular areas. In addition, she also suffers post-inflammatory hypopigmentation of the skin of the right mandibular area.
3. I have seen the photos taken shortly after the accident between 25 June and 27 August 2010. I have also reviewed the photos taken more recently by Dr Au on 28 May 2014.
4. Initially, the burns manifested themselves as unsightly brown scars and blisters over a large part of the cheek on each side of Ms Cheung’s face. According to her evidence, the wounds healed and gradually stabilised over the next 12 months or so.
5. I have visually examined the site of the burns. I confirm Dr Au’s assessment that the hyperpigmentation is now barely visible. The hypopigmentation is very slight. In his opinion, there is no practical treatment for the hypopigmentation. However the hyperpigmentation may be treated with laser, but the chance of success is only 50%.
6. Whilst the accident has not produced any serious cosmetic effect on the young lady’s face, it has caused residual irritation and itchiness during changes of the weather, and whenever her face is exposed to sunlight.
7. As a result, Ms Cheung is unable to resume her former pastimes such as swimming or cycling. The water in the pool causes irritation to her facial skin. She is also unable to wear make-up.
8. Before the accident Ms Cheung worked as a saleslady in a clothing chain shop. Since September 2015, she has been an office worker doing administrative work.
9. The accident caused her much anxiety and embarrassment. She also felt acutely self-conscious while the scars were still visible on her face.
10. Ms Cheung referred me to *Leung Ka Yee v L&Y Beauty Centre Ltd*, DCPI 196 of 2003, unreported, 22 October 2003. In that case, the plaintiff, a 27 year old lady, suffered scalded injuries on her back as a result of receiving “intense pulse light” treatment at a beauty centre. She was diagnosed to have post-inflammatory hyperpigmentation and hypopigmentation on large areas of her back. She suffered pain for two months. Some scars persisted but her doctor opined that they would improve over a few months. The plaintiff was unable to wear swimwear and had to avoid exposure to the sun. Taking into account the physical and psychological effects of the accident, HH Judge HC Wong awarded $75,000 for PSLA.
11. In *Shabbina Khokhar v Europe Beauty International Ltd*, DCPI 579 of 2007, unreported, 4 January 2008, the plaintiff, aged 28, was another victim of negligent beauty treatment involving the use of “intense pulse light”. She suffered multiple burn wounds to her arms, with 80% being first-degree burns, and 20% being second-degree burns. By the time of trial, most of the scars improved to the point that they were only evident upon close inspection. She suffered great embarrassment during and after her wedding which took place a month after the accident.
12. In his judgment, Deputy DJ J Ko (as he then was) observed that the injuries in that case were more serious than those in *Leung Ka Yee*. He noted the great pain (though not long-lasting) suffered by the plaintiff and made an award of $120,000.
13. In the present case, the wounds are less extensive than those in *Leung Ka Yee* and *Shabbina Khokhar*. However they are located on the face of the victim, rather than other body parts which are easier to cover up with normal clothing. The psychological impact, including the fear of permanent disfigurement, is accordingly greater, particularly on a younger lady. The initial pain must have been intense although I am not sure how long it lasted. Finally I also take into account the residual irritation and hypersensitivity and the resulting loss of amenities as described above.
14. For these reasons I would award $120,000 for PSLA.
15. Ms Cheung produced the relevant sick leave certificates. I accept the pre-trial loss of earnings, based on the pre-accident average monthly income of $10,190.01, is $5434.67. This is arrived at by multiplying the income figure by 16/30 representing the days she took off work immediately after the accident.
16. There is no claim for future loss of earnings.
17. In the Revised Statement of Damages Ms Cheung claimed $18,000 being the cost of the laser treatment suggested by Dr Au. At the hearing however she informed me that she would not take up the suggestion, as its effectiveness was far from certain. I therefore make no award under this head.
18. Under Special Damages, I allow in full the sum of $4,071 claimed for medical expenses which included homeopathy treatment and health supplements.
19. I further allow a sum of $660 for travelling expenses. Whilst Ms Cheung was unable to produce any receipts, I am satisfied that this represents the estimated total of taxi fares which she paid for the trips made to the three hospitals, the homeopathy centre, and to the Centre, in the aftermath of the accident.
20. Next, Ms Cheung claimed a refund of the unused portion of the price paid for the Laser and Facial Treatment package, including the treatment which caused the injuries. The sum claimed is $20,660.
21. I am not satisfied that the claim is properly or adequately pleaded in the Statement of Claim. It only appears as an item of special damages in the Revised Statement of Damages. There might be scope for pleading a breach of an implied condition of the contract of service entitling the plaintiff to terminate it by accepting the repudiation. But it is not so pleaded.
22. In any event, the price paid for the beauty package is not a loss which arose from the accident. It was paid before the accident occurred.
23. For the avoidance of doubt, nothing in this judgment prevents Ms Cheung from making a claim for refund (which, as I have held, is not properly made in this action) and pursuing it elsewhere.
24. Finally, Ms Cheung claimed $271.73 in respect of the loss of MPF contribution over the period of the sick leave, presumably representing the employer’s share. However the loss is offset by an identical contribution which the employee would otherwise have had to make. I therefore disallow this item.

*Conclusion*

1. In conclusion the award I shall make is $130,165.67, which is made up as follows:-

PSLA $120,000.00

Pre-trial loss of earnings $5,434.67  
Medical expenses $4,071.00  
Travelling expenses $660.00

1. There will be interest on the above award of $130,165.67 at the rate of 2% from 25 June 2010 until judgment, and thereafter at judgment rate.
2. Finally the defendant will pay the plaintiff the costs of this action, to be taxed if not agreed.

( Ling Chun Wai )

Deputy District Judge

The plaintiff was not represented and was acting in person

The defendant was not represented and did not appear