

Table of Contents

The Author	3
General Introduction	19
Chapter 1. Geography	19
Chapter 2. Cultural Composition: A Hybrid Post-industrial Society in Transition?	21
Chapter 3. Political System	23
§1. COMPOSITION OF THE LEGISLATIVE COUNCIL AND LEGISLATIVE PROCESS	24
§2. LEGAL AND JUDICIAL SYSTEM	29
§3. LOCAL GOVERNMENT	30
§4. THE ELECTORAL SYSTEM UNDER REPRESENTATIVE GOVERNMENT REFORMS AND DEVELOPMENT	33
§5. THE CONSULTATIVE SYSTEM OF ADVISORY BOARDS AND COMMITTEES	34
§6. THE CIVIL SERVICE: THE EXECUTIVE FUNCTIONARY	35
Chapter 4. Economic and Social Environment	40
§1. POPULATION AND EMPLOYMENT STATISTICS	40
§2. INDUSTRIAL, BUSINESS RESTRUCTURING AND ECONOMIC DIVERSIFICATION	47
I. Recommercialization	49
II. Deindustrialization	50
§3. THE LABOUR FORCE (AND IMMIGRATION)	51

Table of Contents

§4. SOCIAL AND CULTURAL VALUES	57
Chapter 5. The Political Status of Hong Kong	66
Chapter 6. The Political Prescription for Hong Kong: The Model of 'One Country, Two Systems'	68
Chapter 7. Labour Law	71
§1. DEFINITIONS AND NOTIONS	71
§2. INDIVIDUAL LABOUR LAW	72
§3. COLLECTIVE LABOUR LAW	73
§4. LEGAL NATURE	73
§5. CATEGORIES OF EMPLOYEES	74
Chapter 8. The Historical Background of the Labour Movement (1850–2012)	75
§1. ORIGINS OF HONG KONG (1850–1911)	75
§2. INDUSTRIAL AND SOCIO-POLITICAL UNREST (1911–1927)	76
§3. THE DEPRESSION ERA (1928–1945)	77
§4. POSTWAR INDUSTRIAL RELATIONS	78
§5. A DIVIDED LABOUR MOVEMENT	79
§6. INDUSTRIALIZATION AND TRADE UNIONS	80
Chapter 9. The Role of the Government: Abstention versus Intervention	86
§1. THE PHILOSOPHY OF GOVERNMENT	86
§2. GOVERNMENT INSTITUTIONS	87
Chapter 10. Sources of Labour Law	90
§1. INTERNATIONAL SOURCES	90

Table of Contents

§2. NATIONAL SOURCES	91
I. Legislation	91
II. Reference to the British Model	92
III. Common Law	92
IV. Labour Tribunal and Other Courts of Law	93
V. Custom and Practice	94
VI. Collective Bargaining	94
Chapter 11. The Language	95
§1. OFFICIAL LANGUAGE	95
§2. LANGUAGE USED IN THE ENTERPRISE	95
Part I. Individual Employment Relations	97
Chapter 1. Definitions and Concepts	97
§1. THE DIFFERENT CATEGORIES OF EMPLOYEE	97
I. Legal Sources/Statutory Sources	97
A. Apprentices	98
B. Workers Engaged Overseas outside Hong Kong	99
C. Seamen	100
D. Children and Young Workers	101
II. Common Law Sources	101
A. Temporary or Casual Workers	102
B. Part-time Workers	102
C. Freelance Workers and the Self-employed	102
D. Others (Company Directors and Partners, etc.)	104
III. Customary Sources	104
§2. THE INDIVIDUAL LABOUR CONTRACT	105
I. Different Categories of Labour Contract	105
II. Legal Test to Ascertain a Contract of Service	106
III. Duration of Contract	107
IV. Statutory Limitations	108
V. Probation Period	109
VI. Form and Content	109
VII. Conditions Necessary to Conclude a Valid Contract of Employment	109
A. Minors	110
B. Women	110
C. The Government	111
D. Foreign Sovereign and Diplomatic Representatives	111
E. Insanity and Unsound Mind	112
VIII. Legal Objects and Purpose	112

Table of Contents

IX. Consent and Servile Contracts	112
Chapter 2. Rights and Duties of the Parties in the Course of Employment	114
§1. INTRODUCTION	114
§2. DUTY OF MUTUAL RESPECT	114
§3. DUTIES OF THE EMPLOYEE	114
I. Duty to Serve	114
II. Duty to Respect Professional Secrets	116
III. Other Obligations	116
§4. DUTIES OF THE EMPLOYER	117
I. Duty to Employ the Worker	117
II. Duty to Pay Wages	117
III. Duty to Indemnify	118
IV. Provision of Decent Working Conditions	118
V. Reception of New Workers	119
VI. Duties in the Instance of Change in Conditions of Work	119
VII. Obligation of an Employer to Keep Records	120
VIII. Other Responsibilities Due to the Employee	120
IX. Intrinsic Nature of the Employer's Duty	121
Chapter 3. Working Time, Rest Days, Annual Vacation and Holidays	123
§1. WORKING TIME	123
I. Introduction	123
II. Employment of Young Persons in Industry	123
III. Night Work for Young Persons in Industry	124
IV. Employment of Children	124
V. Working Hours in General	124
§2. REST DAYS	125
I. In General	125
II. Rest Days for Young Persons Employed in Industry	126
III. Enforcement	126
§3. ANNUAL LEAVE	126
I. In General	126
II. Common Leave Year	127
III. Annual Leave Shutdown	128
IV. Annual Leave Pay	128
V. Annual Leave Records	128

Table of Contents

VI. Failure to Grant Annual Leave	129
VII. Annual Leave Practice in the Private Sector	129
§4. SHORT HOLIDAYS	129
I. Statutory Holidays	129
II. Statutory Holiday Pay	130
III. Work on Statutory Holidays	130
IV. Restriction on Pay in Lieu of Holiday	130
V. Other Public Holidays	130
Chapter 4. Remuneration and Benefits	131
§1. DEFINITION OF WAGES	131
§2. PAYMENT OF WAGES	131
§3. MANNER AND PLACE OF PAYMENT OF WAGES	132
§4. PROTECTION OF WAGES	133
I. General Legal Procedures	133
II. Offences and Penalties	133
III. Business Insolvency	133
IV. Protection of Wages in Insolvency Fund	134
§5. WAGE DEDUCTION	135
§6. VICARIOUS WAGE LIABILITY IN THE BUILDING AND CONSTRUCTION INDUSTRY	136
§7. WAGE INFORMATION	137
§8. WAGE STANDARDS	137
Chapter 5. The Suspension of the Individual Labour Contract	139
§1. INTRODUCTION	139
§2. WORK ACCIDENTS AND OCCUPATIONAL DISEASES	139
I. Application of the Employees' Compensation Ordinance	139
II. Employers' Liability under the Employees' Compensation Ordinance	140
III. Categories of Employee Compensation	142
IV. Procedures	143
V. Vicarious Liability of the Principals	143
VI. Medical Expenses, Protheses and Surgical Appliances	143
VII. Occupational Diseases	143

Table of Contents

VIII. Pneumoconiosis (Compensation) Ordinance	143
IX. Relationship with Civil Liability at Common Law	145
X. Compulsory Insurance	145
XI. Suspension of Contract During Absence Due to Incapacity	145
XII. Other Penal Sanctions	146
XIII. Seamen	146
XIV. Proposal for Reforms	146
§3. SICKNESS ALLOWANCE	146
I. General Provisions	146
II. Level of Sickness Allowance	147
III. Other Qualifications Attached to Sickness Allowance	148
IV. Record of Sickness Allowance	148
V. Employment Protection	148
§4. PREGNANCY AND MATERNITY	149
I. In General	149
II. Employer's Consent and Giving Notice	149
III. Payment for Maternity Leave	150
IV. Medical Certification of Maternity Leave	150
V. Protection of Employment During Maternity Leave	150
VI. Paternity Leave	151
§5. PUBLIC AND AUXILIARY CIVIL SERVICE	152
§6. ANNUAL LEAVE	152
§7. TECHNICAL DISRUPTION OF WORK AND OTHER ECONOMIC REASONS	153
§8. BAD WEATHER	153
§9. STRIKE	154
§10. SUSPENSION ON DISCIPLINARY GROUNDS	154
§11. AGREEMENT BETWEEN THE EMPLOYER AND THE EMPLOYEE	154
Chapter 6. The End of the Individual Labour Contract	156
§1. JOB SECURITY IN GENERAL	156
§2. FREEDOM TO ENTER INTO AND DISSOLVE A CONTRACT	156
§3. ORGANIZATIONAL OR OWNERSHIP CHANGES	157
§4. SENIORITY AND JOB SECURITY	157

Table of Contents

§5. LIFETIME COMMITMENT IN EMPLOYMENT	158
§6. GENERAL WAYS OF DISSOLVING AN INDIVIDUAL CONTRACT OF EMPLOYMENT	159
§7. DISSOLUTION BY SERVING A TERM OF NOTICE ACCORDING TO STATUTE	160
I. Continuous Contract	160
II. Notice	161
III. Duration of Contracts	161
IV. Manner of Termination by Means of Notice	162
V. The Term of Notice	162
A. Commencement	162
B. Length	162
VI. Term of Notice for Employees at Retirement Age	163
VII. Waiver of the Right to Notice	164
VIII. Suspension of the Term of Notice	164
IX. Rights and Duties of the Parties During the Term of Notice	164
§8. COMPENSATION: PAYMENT IN LIEU OF NOTICE	165
§9. THE BREAKING OF THE INDIVIDUAL LABOUR CONTRACT	166
I. The Notion of Breaking	166
II. Breaking by the Employer	166
III. Breaking by the Employee	167
IV. The Remedy for Improper Breaking of the Labour Contract	168
V. Suspension of an Employee from Employment	169
§10. SPECIAL PROTECTION IN THE CASE OF PREGNANCY, MATERNITY, ACCIDENTS, JURY SERVICE AND UNION PARTICIPATION	170
I. Pregnancy and Maternity	170
II. Accidents	170
III. Jury Service	171
IV. Protection Against Anti-union Discrimination	171
§11. REDUNDANCY AND SEVERANCE PAY	171
I. Calculation of Severance Pay	173
II. Procedure for Claim and Disbursement of Severance Pay	174
§12. SEVERANCE PAY AND TRANSFER OF OWNERSHIP	174
§13. BUSINESS FAILURE AND INSOLVENCY	174
I. Claims of the Employee in Business Failures and Insolvency	175
II. Insolvency and Priority of Employee's Claims <i>vis-à-vis</i> Those of Other Creditors	176
III. Protection of Wages in Insolvency Fund	176

Table of Contents

Chapter 7. Laws of Anti-discrimination and Equal Opportunities	177
§1. INTRODUCTION	177
§2. SEX DISCRIMINATION ORDINANCE AND ITS MAIN PROVISIONS	177
§3. DISABILITY DISCRIMINATION ORDINANCE AND ITS MAIN PROVISIONS	182
§4. MAIN PROVISIONS OF THE FAMILY STATUS DISCRIMINATION ORDINANCE AND EMPLOYMENT	184
§5. RACE DISCRIMINATION ORDINANCE	186
Chapter 8. Covenant of Non-competition	190
§1. NON-COMPETITION WITH THE EMPLOYER DURING THE LIFETIME OF THE INDIVIDUAL LABOUR CONTRACT	190
§2. COVENANTS IN RESTRAINT OF TRADE AFTER EMPLOYMENT	190
I. Competition	190
II. Limits of Covenants	191
III. Connection Between Employment under Restraint and Actual Hiring	191
IV. Others	192
§3. SEVERANCE OR PARTIAL ENFORCEMENT	192
§4. ENFORCEMENT OF A COVENANT	192
Chapter 9. Inventions by Employees	193
Chapter 10. Settlement of Industrial Disputes and the Statute of Limitations	195
§1. INTRODUCTION	195
§2. CLAIMS AS DISPUTES OF RIGHT AND SETTLEMENT	195
§3. LABOUR RELATIONS SERVICE (CONCILIATION)	196
§4. LABOUR TRIBUNAL (ADJUDICATION)	196
§5. STATUTE OF LIMITATIONS	198

Table of Contents

§6. MINOR EMPLOYMENT CLAIMS ADJUDICATION BOARD	198
Chapter 11. Anti-corruption Control and Implications for Employment Rights and Freedom	200
§1. INTRODUCTION	200
§2. STATUTORY PROVISIONS	200
§3. THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)	203
§4. IMPLICATIONS FOR EMPLOYMENT AND WORK	204
Chapter 12. Migrant Workers and Labour Importation	208
§1. BACKGROUND	208
§2. THE PRE-1997 SYNDROME	211
Part II. Collective Labour Relations	217
Chapter 1. Trade Union Legislation and Its Background	217
§1. INTRODUCTION	217
§2. THE EARLY YEARS BEFORE 1919	218
§3. GENERAL STRIKES OF THE 1920S: 1922 AND 1925	219
§4. ILLEGAL STRIKES AND LOCK-OUTS ORDINANCE (1927)	220
§5. THE YEARS 1927-1930	221
§6. THE BUTTERS REPORT (1939)	222
§7. SECOND WORLD WAR	223
§8. POSTWAR RECOVERY	223
§9. THE FIRST TRADE UNION LEGISLATION (1948)	224
§10. REVISION OF TRADE UNION LEGISLATION (1961)	225
§11. REVISION OF TRADE UNION LEGISLATION (1971 AND 1977)	225

Table of Contents

§12. THE 1997 POLITICAL REVERSION, THE SAR GOVERNMENT AND TRADE UNION LAW 226

Chapter 2. The Protection of Trade Union Freedom 228

§1. THE EFFECTS OF INTERNATIONAL LABOUR CONVENTIONS 228

 I. Hong Kong and International Labour Conventions 228

 II. ILO Conventions Applied in Hong Kong Pertaining to Trade Union Freedom and Protection 228

 III. Other International Labour Conventions Relevant to Hong Kong 230

§2. TRADE UNION FREEDOM AND THE STATE 232

 I. Trade Unions' Freedom as a Legal Right and Its Limits 232

 II. Union Participation in the Government 233

§3. TRADE UNION FREEDOM AND THE RELATIONS BETWEEN TRADE UNIONS 234

 I. Multi-unionism and Trade Union Law 234

 II. The Association of Trade Unions 235

 III. Trade Unions and Employers 236

§4. INDIVIDUAL TRADE UNION FREEDOM 237

 I. Legal Right to Join and Participate in Trade Unions 237

 II. Union Membership 238

 III. Right of the Individual Member *vis-à-vis* the Union 238

 IV. Anti-union Discrimination and Union Security Instruments 239

Chapter 3. Organization and Structure of the Trade Unions 241

§1. UNION MEMBERSHIP STRENGTH IN GENERAL 241

§2. POLITICAL CHANGES AND MEMBERSHIP SURGE: THE '1997 SYNDROME' 243

§3. POLITICAL DIVISION OF THE LABOUR MOVEMENT AND MULTI-UNIONISM 245

§4. THE TRADE UNION CENTRES AND THEIR RENEWAL 246

 I. The Hong Kong Federation of Trade Unions (FTU) 246

 II. Hong Kong and Kowloon Trades Union Council (TUC) 249

 III. Hong Kong Confederation of Trade Unions (CTU) 249

§5. UNIONISM IN THE POST-TRANSITIONAL PERIOD AND THE SAR ERA: AN EMERGING NEW 'PARADIGM'? 252

Table of Contents

§6. THE CONTESTED TERRAIN: RIVAL TRADE UNION CENTRES AND PERSISTING UNION PLURALISM 257

§7. UNION DUES 261

§8. UNION BRANCHES 262

§9. INTER-UNION RELATIONSHIP 263

§10. TRADE UNION GOVERNMENT AND LEADERSHIP 264

 I. Union Constitution 264

 II. Machinery of Union Government 265

 III. Union Leadership 265

 IV. Rank-and-File Union Membership 267

 V. International Union Affiliation 267

 VI. Union Activities 268

§11. LEGAL STATUS OF TRADE UNIONS 269

 I. Legal Capacity 269

 II. Body Corporate 270

 III. Trade Union Rights and Obligations 270

 IV. Registration 271

 V. Amalgamation 272

 VI. Federation 272

 VII. Union Affiliation (Overseas) 274

 VIII. Union Funds 275

 IX. Individual Liability of Union Officers 275

Chapter 4. Employers' Associations 276

§1. GENERAL SITUATION OF EMPLOYERS' ASSOCIATIONS IN HONG KONG 276

§2. THE EMPLOYERS' FEDERATION OF HONG KONG (EFHK) 277

§3. THE GENERAL CHAMBER OF COMMERCE (GCC) 278

§4. THE CHINESE MANUFACTURERS' ASSOCIATION (CMA) 278

§5. THE FEDERATION OF HONG KONG INDUSTRIES (FHKI) 279

§6. THE JOINT ASSOCIATIONS COMMITTEE OF EMPLOYER/EMPLOYEE RELATIONS (JACEER) 279

§7. COLLECTIVE POWER OF EMPLOYERS AND THEIR ORGANIZATIONS 280

§8. PROFESSIONAL INSTITUTES 282

Table of Contents

Chapter 5. Institutionalized Workplace Relations Between Employers and Employees	284
§1. INTRODUCTION	284
§2. JOINT CONSULTATION (JCC)	284
§3. WORKPLACE DELEGATES AND WORKPLACE LABOUR AND EMPLOYMENT RELATIONS	286
I. Workplace Permissiveness	286
II. Workplace System of Communication	287
III. Workplace Labour Relations and Personnel Practices	288
§4. JOINT INDUSTRIAL COMMITTEES	290
§5. LABOUR ADVISORY BOARD	291
Chapter 6. Collective Bargaining	292
§1. INTRODUCTION	292
§2. STATUS OF COLLECTIVE AGREEMENTS IN HONG KONG	292
§3. BARGAINING PROCEDURES	292
§4. TRADE UNION RECOGNITION AND COLLECTIVE BARGAINING RIGHTS	293
§5. MINIMUM WAGE	296
I. History	296
II. The Debate	297
III. Shifting Terrain	298
IV. The Legislative Impasse	298
V. Collective Bargaining and Its Prospects	301
VI. Legal Status of the Collective Agreement and Quasi-collective Bargaining in the Public Sector	302
Chapter 7. Industrial Conflict	304
§1. INTRODUCTION	304
I. Definition of Industrial Conflict	304
II. Trade Disputes versus Individual Claims	304
III. Local Statistics	305
§2. LEGAL REGULATION OF INDUSTRIAL CONFLICT	305
I. Legal Definition of 'Strikes' and 'Lock-outs'	305
II. Laws of Industrial Conflict	307

Table of Contents

III. Trade Unions Ordinance	308
IV. Public Order Ordinance	309
V. Labour Relations Ordinance	310
§3. STRIKES AND SECURITY IN THE INDIVIDUAL CONTRACT OF EMPLOYMENT	311
I. The 'Suspension' Theory	311
II. The Hong Kong Situation	311
§4. PRESENT STATE OF INDUSTRIAL CONFLICT	312
I. Introduction	312
II. Industrial Conflict in the Late 1990s and Early 2000s	313
III. Industrial Conflict in Recent Years	314
Postscript: Where are Labour Law and Labour Policies Headed?	319
Selected Bibliography	325
Index	329