

## Table of Contents

<i>About Wolters Kluwer</i> .....	iii
<i>About the Author</i> .....	v
<i>Preface</i> .....	vii
<i>Acknowledgements</i> .....	xi
<i>Table of Cases</i> .....	xxi
<i>Table of Legislation</i> .....	xlv

### **Part A: Selected General Principles of the Law of Criminal Procedure**

<b>Chapter 1: Introduction to Criminal Procedure .....</b>	
<b>¶1-100</b> Introduction .....	<b>3</b>
<b>¶1-110</b> The Role of Criminal Procedure in Law and Legal Systems.....	5
<b>¶1-200</b> The Distinction between Substantive and Adjectival Law.....	8
<b>¶1-300</b> The Sources of the Hong Kong Law of Criminal Procedure .....	10
<b>¶1-400</b> Seven Fundamental Principles of a Criminal Trial.....	15
<b>¶1-500</b> Conclusion: The Criminal Process and Procedure in Hong Kong .....	18
<b>Chapter 2: The Prosecuting Authority of Hong Kong .....</b>	
<b>¶2-100</b> Introduction .....	<b>21</b>
<b>¶2-200</b> Prosecutors and the Prosecution of Crime .....	26
<b>¶2-300</b> Prosecutorial Decisions .....	28
<b>¶2-310</b> The Decision to Prosecute .....	28
<b>¶2-320</b> The Decision Not to Prosecute, the Certificate <i>nolle prosequi</i> , and Private Prosecutions .....	34
<b>¶2-400</b> Judicial Review of Prosecution Decisions .....	41
<b>¶2-410</b> The Decision to Institute a Prosecution.....	42
<b>¶2-420</b> The Decision Not to Prosecute .....	63
<b>¶2-500</b> Immunity from Prosecution .....	71
<b>¶2-600</b> Conclusion.....	74
<b>Chapter 3: Criminal Courts and their Jurisdiction .....</b>	
<b>¶3-100</b> Introduction .....	<b>77</b>
<b>¶3-200</b> Classification of Offences .....	78
<b>¶3-300</b> Court Structure .....	82
<b>¶3-310</b> Magistrates' Courts .....	83
<b>¶3-320</b> District Court .....	88
<b>¶3-330</b> Court of First Instance of the High Court of the HKSAR.....	90

¶3-340	Court of Appeal of the High Court of the HKSAR.....	92
¶3-350	Court of Final Appeal .....	93
¶3-360	Juvenile Court.....	95
¶3-370	Coroner's Court .....	98
¶3-400	Extra-Territorial Jurisdiction.....	102
¶3-410	Common Law and Statutory Examples .....	105
¶3-420	Conspiracy.....	114
¶3-500	Jurisdiction to Pronounce on the Validity of Laws of the Legislative Council or Conduct of the Chief Executive.....	122
¶3-600	Conclusion.....	123

#### **Part B: Pre-trial Criminal Procedure**

<b>Chapter 4: Police Powers and the Investigation of Crime I – Arrest, Interrogation, and Detention.....</b>	<b>127</b>	
¶4-100	Introduction .....	127
¶4-200	The Hong Kong Police Force .....	131
¶4-300	Duties of Police Officers .....	133
¶4-400	Arrest .....	136
¶4-410	Citizen's Powers of Arrest .....	137
¶4-420	Arrest Without a Warrant .....	141
¶4-430	Arrest with a Warrant.....	150
¶4-440	The Execution of an Arrest.....	151
¶4-500	Interrogation .....	155
¶4-600	Detention .....	167
¶4-700	Conclusion.....	170
<b>Chapter 5: Police Powers and the Investigation of Crime II – Search and Seizure .....</b>	<b>171</b>	
¶5-100	Introduction .....	171
¶5-200	Police Powers to Stop, Detain and Search Persons.....	171
¶5-300	Custody Searches .....	178
¶5-400	Police Powers to Search Premises .....	179
¶5-410	Police Powers to Search Premises Under a Warrant .....	180
¶5-420	Police Powers to Search Premises Without a Warrant .....	182
¶5-500	Seizure of Property .....	184
¶5-600	Disposal and Forfeiture of Seized Property .....	186
¶5-700	Remedies for Abuse of Police Powers .....	193
¶5-800	Conclusion.....	195

<b>Chapter 6: The Independent Commission Against Corruption (ICAC) .....</b>	<b>197</b>	
¶6-100	Introduction .....	197
¶6-200	The Independent Commission Against Corruption .....	198
¶6-300	The Arrest Powers of the ICAC .....	202
¶6-400	The Powers of the ICAC to Search for and Seize Property .....	206
¶6-500	Conclusion.....	221
<b>Chapter 7: Compelling the Attendance of an Accused at Trial and Fair Trial Rights .....</b>	<b>223</b>	
¶7-100	Introduction .....	223
¶7-200	Compelling the Attendance of an Accused at Trial .....	224
¶7-300	Extradition .....	227
¶7-400	Fair Trial Rights .....	239
¶7-410	The Right to Legal Assistance .....	242
¶7-420	The Right to Silence and the Privilege Against Self-incrimination .....	251
¶7-430	The Right to Legal Proceedings in a Language of Choice .....	264
¶7-440	The Right to Open/Public Justice .....	269
¶7-500	Conclusion.....	276
<b>Chapter 8: Bail.....</b>	<b>279</b>	
¶8-100	Introduction .....	279
¶8-200	A Qualified Right to Bail .....	281
¶8-300	Types of Bail .....	283
¶8-310	Police Bail.....	283
¶8-320	Magistrate's Bail.....	284
¶8-400	The Nature of a Bail Application .....	289
¶8-500	Review of Bail Decisions .....	290
¶8-600	Consequences of Breaching Bail Conditions and Disbursement of Bail Money Paid .....	292
¶8-700	Conclusion.....	297
<b>Chapter 9: Preparation for Trial and Discovery .....</b>	<b>299</b>	
¶9-100	Introduction .....	299
¶9-200	Discovery of Prosecution Materials: Duty to Disclose.....	299
¶9-300	Test for Disclosure .....	306
¶9-400	Materials Discoverable .....	324
¶9-500	Material Exempted from Discovery .....	332
¶9-600	Reciprocal Duty on the Defence to Disclose?.....	335

¶9-700	Duty of the Court in Facilitating Discovery .....	338
¶9-800	Conclusion.....	339
<b>Chapter 10: Commencement of Criminal Proceedings.....</b>	<b>341</b>	
¶10-100	Introduction .....	341
¶10-200	Notice of Prosecution and Fixed Penalties .....	343
¶10-300	Laying an Information or Making a Complaint .....	344
¶10-400	Committal Proceedings .....	353
¶10-410	Preliminary Hearings / Inquiries .....	357
¶10-420	Alternatives to Committal Proceedings .....	361
¶10-500	Transfers to the District Court.....	363
¶10-600	Conclusion.....	367

### Part C: The Criminal Trial

<b>Chapter 11: Indictments And Charge Sheets.....</b>	<b>371</b>	
¶11-100	Introduction .....	371
¶11-200	Charge Sheets.....	372
¶11-300	Indictable Offences Tried Summarily.....	373
¶11-310	Defects in Charges.....	374
¶11-320	The Joining of Accused in One Trial and/or the Joining of More than One Charge in One Charge Sheet .....	382
¶11-400	Indictment .....	386
¶11-410	Defects in Counts.....	388
Duplicity .....	390	
Continuous Offences.....	396	
Specimen Counts.....	400	
Indictments and the Admissibility of Evidence.....	406	
¶11-420	The Joining of Accused in One Trial and/or the Joining of More Than One Count in One Indictment .....	411
¶11-500	Conclusion.....	414
<b>Chapter 12: Pleas and Plea Bargaining .....</b>	<b>417</b>	
¶12-100	Introduction .....	417
¶12-200	Arraignment.....	417
¶12-300	Pleas .....	419
¶12-310	Guilty .....	419
¶12-320	Not Guilty.....	424
Unfit to Plead and Stand Trial .....	425	
Defining Fitness to Plead and Stand Trial.....	426	

The Procedural Framework for Determining Fitness to Plead and Stand Trial .....	429	
Unfit to Plead and Stand Trial and the Fair Trial Rights of an Accused.....	448	
¶12-330	Autrefois Acquit and Autrefois Convict .....	468
¶12-340	Other Pleas .....	477
¶12-400	Plea Bargaining .....	477
¶12-410	Types of Plea Bargaining .....	484
¶12-420	The Practice of Plea Bargaining in Hong Kong .....	485
¶12-500	Stay of Proceedings.....	491
¶12-600	Conclusion.....	502
<b>Chapter 13: Verdicts, Judgments, and Miscellaneous Matters to the Trial.....</b>	<b>505</b>	
¶13-100	Introduction .....	505
¶13-200	The Jury .....	506
¶13-210	A Brief History on the Origin and Development of the Hong Kong Jury System.....	506
¶13-220	General Principles Regarding the Contemporary Hong Kong Jury System .....	509
¶13-230	Empanelling a Jury .....	512
¶13-240	Miscellaneous Matters Relating to Jury Trials.....	517
¶13-300	The Verdict .....	529
¶13-310	Specimen Jury Directions .....	544
¶13-320	Guilty Verdicts on Alternative and/or Lesser Counts .....	547
¶13-400	Judgments in Magistrates' Courts and in the District Court .....	551
¶13-500	Applications for the Recusal of a Magistrate or Judge .....	555
¶13-600	Costs .....	561
¶13-610	A Cost Order in Favour of the Defence .....	563
¶13-620	A Cost Order in Favour of the Prosecution .....	566
¶13-630	Miscellaneous Matters Relating to Costs .....	570
¶13-700	Conclusion.....	571

### Part D: Post-trial Criminal Procedure

<b>Chapter 14: Sentencing .....</b>	<b>575</b>	
¶14-100	Introduction .....	575
¶14-200	General Principles of Penal Law .....	576
¶14-210	National Sentencing Schemes and the Triad of Sentencing Considerations.....	582

¶14-300 Sentencing Framework of Hong Kong .....	586
¶14-310 Mitigating and Aggravating Circumstances .....	617
¶14-320 Prescription of Certain Previous Convictions / Expiry of a Minor Conviction.....	625
¶14-400 Sentencing: Options no Longer Available .....	626
¶14-410 The Death Penalty .....	626
¶14-420 Corporal Punishment .....	628
¶14-500 Sentencing: Available Options .....	629
¶14-510 Custodial Sentences .....	629
Imprisonment .....	631
Suspended Sentences.....	637
Cumulative Sentences, Consecutive and Concurrent Sentences .....	644
Special Custodial Sentences for Certain Categories of Offenders.....	647
Detention Centres.....	652
Training Centres .....	654
Reformatory Schools .....	656
Rehabilitation Centres .....	657
Drug Addiction Treatment Centres .....	663
¶14-520 Non-custodial Sentences .....	665
Fine .....	665
Correctional Supervision.....	667
Community Service Order .....	668
Probation Order.....	676
¶14-530 Discharge and Bind Over Orders.....	679
Discharge .....	679
Bind Over Orders .....	688
The Legal-historical Development of Bind Over Orders .....	690
Current Application of Bind Over Orders in England and Wales.....	710
Current Application of Bind Over Orders in Hong Kong .....	720
¶14-600 Ancillary Orders.....	729
¶14-700 Release from Custody under a Supervision Scheme .....	734
¶14-800 Conclusion.....	743
<b>Chapter 15: Appeals And Reviews .....</b>	<b>745</b>
¶15-100 Introduction .....	745

¶15-200 Appeals Versus Reviews .....	747
¶15-300 Appeals and Reviews from Magistrates' Courts .....	750
¶15-310 Review or Rehearing of a Magistrate's Decision .....	751
¶15-320 Appeal to Court of First Instance by Way of Case Stated .....	754
¶15-330 Appeal to Court of First Instance by Way of the "Alternative Procedure" .....	757
¶15-340 General Provisions Relating to Appeals and Reviews from Magistrates' Courts.....	762
¶15-400 Appeals and Reviews from the District Court and the Court of First Instance .....	768
¶15-410 Appeals Against a Conviction on Indictment.....	775
Ordering a Retrial.....	782
¶15-420 Appeals Against a Sentence Following Conviction on Indictment .....	786
¶15-500 The Hong Kong Court of Final Appeal.....	797
¶15-510 The Inclusion of Judges from Other Common Law Jurisdictions on the Bench of the Hong Kong Court of Final Appeal .....	803
¶15-600 Conclusion.....	807
<b>Chapter 16: Pardon, Mercy, and Indemnity .....</b>	<b>809</b>
¶16-100 Introduction .....	809
¶16-200 Pardon .....	810
¶16-300 Mercy .....	814
¶16-400 Ex Gratia Compensation (Indemnity) .....	815
¶16-500 Conclusion.....	817
<b>Appendices.....</b>	<b>819</b>
<b>Index .....</b>	<b>1027</b>