

# ICAC Cases & Trial Tips: Challenging Confession Statements



by

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and

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Mr. Jackson Poon was called to the Hong Kong Bar in 1986. He is experienced in dealing with civil and criminal cases. In 1994 and 1995, he sat as a Deputy Magistrate for the Judiciary. In 1995, he joined the then Legal Department (now Department of Justice) directly as a Senior Crown Counsel. In 2006, he returned to private practice. He is now in Cheng Huan Q.C., S.C.'s Chambers involved in civil cases and criminal litigation. In August 2015, he sat as a Deputy District Judge.



Mr. Poon has handled numerous personal injury cases and has given many lectures on personal injury. He has also handled cases involving Employees Compensation, Incorporated Owners disputes, Lands Tribunal trials, Trust, Commercial disputes, Sales of Goods, Manufacturing of Goods, Construction, Dishonoured Cheques, Defamation, Landlord and Tenant disputes, Conveyancing disputes, Employment disputes, Land disputes, Company matters and Judicial Reviews. He has handled various criminal cases and he is a listed mediator of the Bar Association.

Various law lectures had been delivered by him for the University of Hong Kong, Hong Kong Polytechnic University, City University, Law Society, Butterworths, Police Detective Training School and Criminal Advocacy Courses of the Department of Justice.

## Miss Ada Kam

*Former Chief Inspector of Police, Solicitor, Messrs. S.H. Chan & Co.*

Miss Ada Kam was a Chief Inspector of Police. She then joined the Department of Justice and is now a solicitor practicing at Messrs. S.H. Chan & Co. handling criminal and civil litigation.

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## Dr. Eric Cheung Kwan-Ming

*Permanent Magistrate, Kowloon City Magistrates' Courts*

Dr. Cheung obtained his LL.B. (Hons), P.C.L.L. and a Master of Arts Degree in Arbitration and Dispute Resolution from the City University of Hong Kong in 1995, 1996 and 1999 respectively. He further obtained LL.M. from the City University of Hong Kong and the University of Hong Kong in 2000 and 2004 respectively. He was called to the Bar in Hong Kong in 1996. He has since 1997 been in private practice. Dr. Cheung was appointed as a Permanent Magistrate in 2009. He was awarded the Doctor of Juridical Science from City'U in 2012.

### ICAC Cases

- Independent Commission Against Corruption Ordinance (Cap.204)
- Prevention of Bribery Ordinance (Cap.201) - including "The Acceptance of Advantages (Chief Executive's Permission) Notice 2004 was given by the Chief Executive and published as G.N. 252 in the Government of the HKSAR Gazette (No.2 Vol.8) on 9 January 2004)
- Elections (Corrupt and Illegal Conduct) Ordinance (Cap.554)
- The offence of Misconduct in public office
- "Other cases" prosecuted by ICAC
- **The following cases will be discussed:**
  1. AG v CHUNG Fat-ming (1978) HKLR 480
  2. Kong Kam-piu & Another v R (1973) HKLR 120
  3. AG v IP Chiu & Another (1980) HKLR 11
  4. Ng Siu-chau v HKSAR (2000) 3 HKCFAR 62
  5. Mok Wei-tak v R (1986) HKLR 1054, (Privy Council in (1990) 1 HKLR 631)
  6. Chung Cheong v R CA 1364/1997
  7. Tang Wai-keung v R (1976) 736
  8. AG v HUI Kin-hong (1995) 1 HKCLR 227
  9. Lai Yuk-kui v R (1981) HKLR 691
  10. SJ v Li Cheuk-ming (1999) 1 HKLRD 63
  11. HKSAR v LAIWai-cheong, CA 314 of 1997
  12. Sin Kam Wah & Another v HKSAR, (2005) 8 HKCFAR 192
  13. Ch'ng Poh v Commission of ICAC (1996) 3 HKC 677

### Trial Tips: Challenging Confession Statements

- What is an admission?
  1. Equivocal or unequivocal?
  2. The preamble lack details
  3. Is Apology an admission?
  4. "Give me a chance?"
  5. "Ah Sir, whatever you say, I have nothing to say"
- Who is "Person in Authority"?
- The meaning of a verbal admission
- The danger of solely relying on oral confession
- What is post-recorded notebook entries?
- A suspect has an absolute right to decline to be interviewed
- Whether the accused choose to exercise his/her rights?
- The Burden of Proof
- Written grounds of objection
- Grounds for challenging the statement
  1. What is Oppression?
    - Statement taken at late hour
    - A lengthy process of Statement Taking
  2. Fruit of the Poison Tree
  3. Denied Access to Lawyer
  4. Tired, Drunk or mentally unbalanced
  5. Pre-trial Discussion/Memory Refreshing Exercise
  6. Similar content of witness statement

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- Is it necessary for holding a Voir Dire?
- Failing to hold Voir Dire/Alternative Procedure
  1. The double barrel attack
- The weight
  1. The Mushtaq direction
- The Court's duty to unrepresented defendant
- Preparation for the Voir Dire/Alternative Procedure
  1. The Out of Court Identification Parade
  2. Disclosure
  3. Drafting an admitted facts
  4. Editing Out
    - What is Right of Silence?
    - Right of Silence: the defendant refused to answer any questions in the interview
    - The defendant answered some of the questions in the interview

- The Defendant remained silent when being accused of crime
- 5. Adducing prejudicial answers from D or PW
- 6. Lack of or delay in complain
- 7. Advices given to D on giving evidence in special issue
- Prosecution should ask the general details of allegations not specific
- P should not XX D on his refusal to answer Q in interview
- The discretion to exclude or admit evidence
- High Court Jury Trial
- Revisiting/Rechallenging the caution statement

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Code:	<b>EVT000000146</b>	Level:	<b>Intermediate</b>
Date:	<b>10 September 2016 (Saturday)</b> <b>- Cancelled</b>	Language:	<b>Cantonese</b> <b>(Course Materials in English)</b>
Time:	<b>09:30 - 12:45</b> (Reception starts at 09:00)	Accreditation(s):	<b>LSHK 3.0 CPD Points</b> (LSHK Allocated Number: 20162583)
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**Our deepest condolences to the Late Dr. Eric Cheung Kwan-Ming.**

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