|  |  |
| --- | --- |
| **[Illegality, Equity and Trusts in Hong Kong: Clean Hands, Ex Turpi Causa, Reliance, Locus Poenitentiae, Range of Factors or What?](http://cpd.hk/evt000000390/)**  *by*  [Prof. Steven Gallagher](http://www.profectional.com/presenters/idl000011512/),  Professor of Practice in Law,  Associate Dean  (Academic & Student Affairs),  The Faculty of Law,  The Chinese University of Hong Kong |  |

|  |  |
| --- | --- |
|  | Steven Gallagher was awarded a first class LL.B. He was called to the Bar of England and Wales in 2006. Steven teaches equity and trusts, property law, and art, antiquities, cultural heritage and the law. Steven has presented continuing professional development courses for solicitors in Hong Kong on many topics associated with property law. Steven’s research interests include equity and the law of trusts, Chinese custom and law, cultural heritage law, and law and technology. |

|  |
| --- |
| In 2016, the majority of the UK Supreme Court, in Patel v Mirza [2016] UKSC 42, adopted a new test to decide if a plaintiff’s case should be barred for illegality - the Range of Factors Test. This test has been applied by the court in Hong Kong and also rejected in light of Hong Kong’s own Court of Appeal guidance that our courts should follow the Reliance Principle developed by the House of Lord in Tinsley v Milligan [1994] 1 AC 340.  This seminar will consider the development of the doctrine of illegality from its roots in the equitable maxim “He who comes to equity must come with clean hands”, and the common law maxim “Ex turpi causa non oritur action”.  The seminar will consider the original approach of equity and the common law to plaintiffs who founded their actions on illegal acts in the seminal judgments of Lord Mansfield in Holman v Johnson (1775) 1 Cowp 341, bringing his equity to the law, and the more formalistic approach of Lord Eldon in Muckleston v Brown (1801) 6 Ves 52, arguably bringing law into equity when he opined, “Let the estate lie where it falls”.  The seminar then considers the developments in the doctrine in law and equity through the influential comments of Lord Denning in Tinker v Tinker [1970] 1 All ER 540, to the development of the modern approach to claims of illegality. This modern approach consists of three main trends in equity’s relaxation of the harshness of the common law: The Reliance Principle, the doctrine of locus poenitentiae, and the common sense interpretation of law to categorise the maligned acts as outside any illegality identified at law and especially in statute. |

|  |
| --- |
| The seminar will also consider the use of the doctrine by defendants attempting to hide behind the attribution of their illegal acts to their principals.  The seminar will conclude by considering the application of the Range of Factors test in the UK and its possible application in Hong Kong. In particular, the seminar will consider whether Hong Kong should continue to apply the Reliance Principle and its associated exceptions, adopt the Range of Factors Test, follow the guidance of other common law jurisdictions (e.g. Nelson v Nelson (1995) 184 CLR 538) or perhaps go its own way. |

|  |  |
| --- | --- |
| **Some of the topics which will be covered in this course include:** | |
| * The traditional approach of equity to issues of illegality in Gascoigne v Gascoigne [1918] 1 KB 223 and Tinker v Tinker [1970] 1 All ER 540; * The supposed relaxation of the doctrine of illegality in the Reliance Principle as applied in Tinsley v Milligan [1994] 1 AC 340; * The doctrine of Locus poenitentiae: Tribe v. Tribe [1996] Ch 107; * There is no “true” illegality or the legislative prohibition is for “other mischief” Ali v Khan [2002] EWCA Civ 974; * Common sense approaches in Hong Kong to trusts in Home Ownership Scheme flats - Cheuk Shu Yin v Yip So Wan and Lo King Fai [2012] HKEC 1554; * The Range of Factors Test as adopted by the UK Supreme Court in Patel v Mirza [2016] UKSC 42; * Application of the Test by the Supreme Court in Singularis Holdings Limited (in liquidation) v Daiwa Capital Markets Europe Limited [2019] UKSC 50 and Stoffel & Co v Grondona [2020] UKSC 42; * The application of the Test in professional negligence claims against solicitors by the UK Court of Appeal in Day v Womble Bond Dickinson [2020] EWCA Civ 447; * The application of the Test in Hong Kong: Chung Tin Pui v Li Pak Sau [2017] HKEC 2103; * The restriction of the Range of Factors Test in Hong Kong: Arrow ECS Norway AS v M Yang Trading Ltd [2018] HKCFI 975. |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Code: | **EVT000000390** | | Level: | **Intermediate** | |
| Date: | **4 May 2023 (Thursday)** | | Language: | **English** | |
| Time: | **14:30 - 17:45**  (Reception starts at 14:00) | | Accreditation(s): | **LSHK 3.0 CPD Points** | |
| Venue: | *Option of:*  (1) **Online** via Zoom; *or*  (2) **[Kornerstone Institute](http://goo.gl/maps/DKYQ1)**  [15/F, Hip Shing Hong Centre](http://goo.gl/maps/DKYQ1)  [55 Des Voeux Road Central](http://goo.gl/maps/DKYQ1)  [Central, Hong Kong](http://goo.gl/maps/DKYQ1) |  | Request for  Rerun: | **Please** [**Contact Us**](mailto:marketing@profectional.com)  **for Details** |  |