

區域法院

DISTRICT COURT



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區域法院

區域法院具有刑事及民事司法管轄權

1) 刑事司法管轄權

區域法院處理由裁判法院移交的公訴罪行。公訴罪行是可循公訴程序審訊的刑事罪行，由法官單獨或會同陪審團審理。區域法院法官則在沒有陪審團的情況下單獨進行審訊。

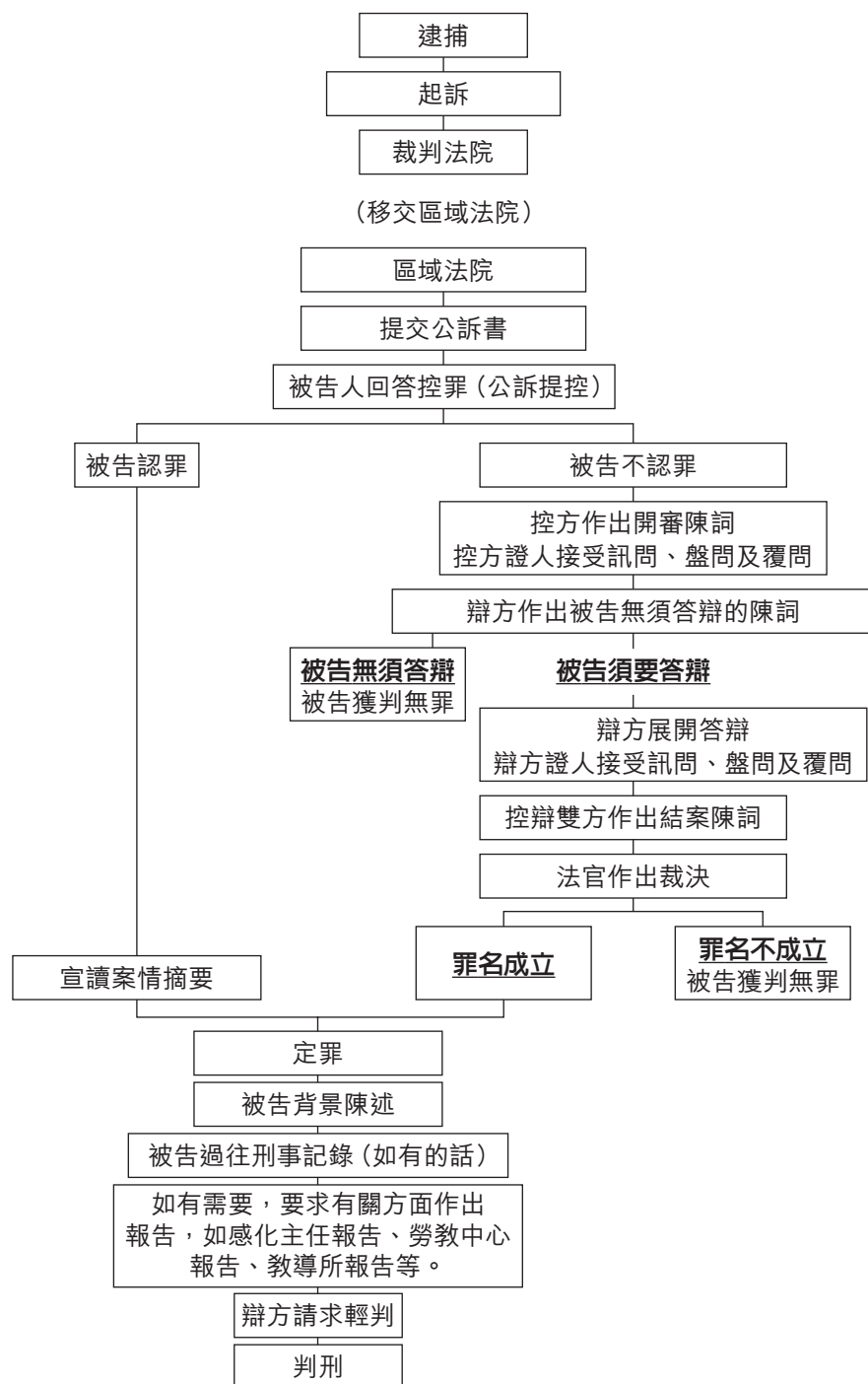
區域法院可審理除謀殺、誤殺和強姦外的所有嚴重刑事案件，可判處的最長監禁刑期是七年。

如果被告承認控罪，法官會於同日聆聽要求輕判的陳詞和判處刑罰；但如果法官下令索取報告，則會押後宣判。如果被告不承認控罪，而案件又已準備就緒，法庭便會排期審訊。

被告有沒有律師代表均可，但大多數人會聘用律師。如果被告沒有能力聘用私人執業的律師，可以申請法律援助。沒有律師代表的被告人須於審訊前做好周全的準備，如有證人的話，可到區域法院登記處索取傳召證人所需的表格。

案件可以用英文或中文審訊，由主審法官作出最後決定。

刑事案件審訊程序流程表



法律援助

無論是獲保釋或被羈押的被告均可申請法律援助。獲保釋者可直接向法律援助署署長申請(地址：香港金鐘道66號金鐘道政府合署24樓，電話：2537 7677)，被羈押者則應與有關的羈押院所的福利主任聯絡。

上訴

如果被告不服法庭的裁決，可於由判刑當日起計28天內向高等法院上訴法庭提出上訴。請向區域法院登記處查詢以了解有關詳情。

被告可以針對定罪或判刑提出上訴，也可以同時針對定罪及判刑提出上訴。雖然被告或可以因針對判刑提出上訴而獲得減刑，但請注意上訴法庭亦可以加重刑罰。

上訴法庭可以駁回上訴或判決上訴得直。如果任何一方對上訴法庭的判決仍然不服，可以申請向終審法院提出上訴的許可。

2) 民事司法管轄權

區域法院最常處理的民事案件包括下列類別：

- 合約
- 準合約
- 侵權(包括人身傷害申索)
- 收回土地或樓宇
- 根據衡平法提出的申索，如管理死者的遺產、信託、按揭、強制履行、未成年人的給養、解散合夥關係、就欺詐行為或過失申請濟助等
- 扣押
- 僱員賠償案件(申索款額並無上限)
- 性別歧視、殘疾及家庭崗位歧視案件
- 婚姻案件：包括離婚、贍養費、管養權及領養兒童(負責處理這類案件的法庭也稱為家事法庭)

涉及合約、準合約及侵權的申索

由區域法院處理的涉及合約、準合約或侵權的申索的款額必須多於5萬元但不超過100萬元，否則便須由高等法院原訟法庭處理。即使你所申索的款額不超過100萬元，但如果被告提出反

申索而款額又超過100萬元的話，則有關的申索及反申索(或只是反申索)便可能會移交高等法院原訟法庭處理。不過，如果你有充分理由的話，區域法院可以在反申索的款額超過100萬元的情況下繼續處理有關的申索，但必須向高等法院作出報告，而高等法院仍可以將案件移交原訟法庭處理。

即使你的申索款額超過100萬元，但只要你放棄超出之數，則仍可以在區域法院展開訴訟(同樣地，即使你的反申索的數額超過100萬元，你也可以放棄超出之數)。如果超出之數不大，上述的建議可能是非常切合實際的做法，因為原訟法庭的訟費通常較區域法院為高。

收回土地或樓宇的申索

區域法院處理涉及年租、應課差餉租值或年值不超過24萬元的建築物或樓宇的訴訟。然而，大部份租務案件都是與因租約期滿或租客違反租約條款而申請收回樓宇有關，這類申請亦可於土地審裁處提出。

衡平法司法管轄權之下的申索

一般來說：

- 如果訴訟與土地無關，申索的最高款額不得超過100萬元。
- 如果訴訟與土地有關，申索的最高款額不得超過300萬元。此

外，如果訴訟涉及收回土地或土地的所有權，則有關的土地的應課差餉租值不得超過24萬元。

只追討欠租的申索

如果你只想追討欠租而無意收回樓宇，可以採用一項稱為“扣押”的特別程序，由法庭頒令，指示執達主任扣押租客的財物。如果租客仍然不繳付租金，便會將財物出售，並將所得收益用作償還欠租之用。

申請表格及誓章表格可向區域法院登記處索取。填妥的表格交回區域法院登記處後，即完成初步程序。法院會在扣押財物後向你發出通知。

不過，如果你追討超過12個月的欠租，這項扣押程序便不適用，你應該按照正常程序以違約理由提出訴訟。

離婚

關於提交離婚呈請書的指引，請參閱“怎樣申請離婚”這本小冊子。

怎樣展開民事訴訟？

展開民事訴訟的方式有下列三種：

- 聘請律師處理
- 尋求法律援助（請參閱“怎樣申請民事訴訟的法律援助”這本小冊子以了解有關詳情。各法院、法律援助署及各區民政事務處的諮詢服務中心均備有這本小冊子以供索閱）
- 親自進行訴訟

請注意：某類人士如未成年人、精神上無能力的人等和死者的遺產都必須由合適的代表展開訴訟。法團則可以由一名律師代表；也可以由法團的其中一名董事代表，但必須提交誓章，述明該名代表已獲得董事局妥為授權，並把董事局決議的正本或核證文本附於誓章作為證物。

展開訴訟的方式

區域法院的民事訴訟可用下列其中一種方式展開：

- 傳訊令狀
- 原訴傳票

有關的表格載於香港法例第336章《區域法院規則》附錄A。由於傳訊令狀是展開訴訟的最常用方式，現於下文概述。

傳訊令狀

涉及合約、準合約、侵權(侵佔土地除外)、詐騙、因不履行責任而引致的包括人身傷亡或財物損毀的損害賠償的訴訟，以及一般而言涉及實質事實爭議的所有訴訟，均必須以傳訊令狀(表格1)展開。

如果你唯一的申索是要求對方付款，你便應該在令狀附上表格16(適用於經算定的申索，例如一筆債項)或16C(適用於未經算定的申索，例如違約或人身傷害的損害賠償)，讓對方可以就你的申索作出承認。

把傳訊令狀送交法院存檔

傳訊令狀(表格1)連同送達認收書(表格14)可向區域法院登記處索取。你必須填寫表格1並作出申索的批註，扼要地說明申索的性質；你也可以附上申索陳述書，詳述申索的法律依據和你所依賴的事實，以及你所申索的濟助和補償。表格可用中文或英文填寫。(如果你只在令狀中作出申索的批註，便須在被告人就文件的送達作出認收後14天內，把申索陳述書送交法院存檔和送達被告人)。《區域法院規則》第41A號命令規定，申索陳述書必須以屬實申述核實。

把令狀送交法院存檔時，你須要在區域法院會計部繳付令狀的存檔費，並把已填好的表格交回登記處。登記處會給你一份

表格的副本作為參考。

你有責任把令狀連同送達認收書及表格16或表格16C(如適用的話)送達被告人。如果被告人身在香港，你可以採取下列送達方式：當面交付，掛號郵遞，或把文件投入被告人的慣常或最後為人所知的地址的信箱(如果被告人是一個法團，則把文件送到法團的註冊地址)。如果訴訟關乎收回土地的管有，則你必須把一份令狀的副本張貼在有關樓宇的入口處。請參閱“執達主任辦事處”這本小冊子以了解關乎收回土地的管有的訴訟的詳情。

被告人把送達認收書送交法院存檔

被告人在獲送達令狀(表格1)及送達認收書(表格14)後，必須填寫表格14以表明會否提出抗辯，並在獲送達令狀後14天內(包括送達當日)把送達認收書送交登記處存檔。

被告人把抗辯書存檔及送達

被告人必須在認收送達期限屆滿後28天內把抗辯書送交法院存檔和向你送達。被告人必須在抗辯書中解釋反對你的申索的理由，並可以向你提出反申索。抗辯書必須按照《區域法院規則》第41A號命令以屬實申述核實。

如果被告人沒把送達認收書或抗辯書送交法院存檔，會有甚麼後果？

如果被告人沒有在限期內把表格14或抗辯書提交法院存檔，你便可以要求法庭就你的申索作出判決，這樣的話，便無須進行全面審訊。

如果你的申索關乎債項或經算定的損害賠償(即申索款額是固定的及可確定的，例如與支票有關的訴訟)；你可以要求法庭就申索款額及訟費登錄判決。

如果你的申索關乎未經算定的損害賠償，例如利潤損失、人身傷害或財物損毀的損害賠償，你可以要求法庭就法律責任登錄非正審判決。在這情況下，你必須要求聆案官或法官評定你所應得的損害賠償數額。

根據《區域法院規則》第13A號命令，如果你的申索只是要求被告人付款，被告人可以將表格16或16C(視乎何者適用而定)送交法院存檔及向你送達，以作出承認及/或就付款的條件提出建議。你可以將一份要求法庭作出判決的請求書或答覆書送交法院存檔(見表格16B，16D及16E)，以表明你是否接納被告人所提出的建議及付款條件。如果你接納建議但不同意付款條件，則可以要求聆案官就付款條件作出裁定。

不過，如果你沒有在獲送達被告人作出承認的表格後14天內，將一份要求法庭作出判決的請求書或答覆書送交法院存檔，有關的申索便會被擱置，直至你將請求書或答覆書送交法院存檔為止。

如果被告人把抗辯書/反申索書送交法院存檔，會有甚麼後果？

作為原告人，你可以在獲送達抗辯書後28天內，把答覆書送交法院存檔及送達被告人，你也可以在答覆書中列出補充事實，以回應被告人的抗辯。

如果被告人把反申索書送交法院存檔，而你又想提出爭議，你便必須於獲送達反申索書後28天內，把反申索的抗辯書送交法院存檔及送達被告人。如果你未能在限期內完成上述程序，被告人便可以因反申索缺乏抗辯而向法庭要求登錄判決。你會成為反申索中的被告人。

用以回應反申索的答覆書或抗辯書並沒有訂明的格式，但你應該把任何對反申索的答覆及抗辯於同一份文件中一併列出。《區域法院規則》第41A號命令規定，有關的文件須以屬實申述核實。

文件透露

提交狀書的程序至此便告完成，接著下來的是“文件透露”的程序。案中每一方均須向另一方透露自己管有哪些與案件有關的文件。在以清單形式(見表格26及27)透露文件後，雙方均必須容許對方查閱有關的文件。

設定時間表的問卷

案中每一方均須於提交狀書的程序完成後28天內，把一份設定時間表的問卷送交法院存檔及送達案中其他各方。你應該嘗試與另一方(或其他各方)就應尋求哪些指示以準備審訊達成共識。

案件管理傳票

作為原告人，你必須在收到來自另一方(或其他各方)的設定時間表的問卷後14天內，或在設定時間表的問卷送交法院存檔及送達其他各方的期限屆滿後14天內，發出案件管理傳票，要求法庭就案件管理作出指示。

法庭會就須採取的步驟編定時間表，並會編定進度指標日期以進行案件管理會議、審訊前的覆核及/或審訊。你應該遵從有關的指示，因為除非你有充分的理由，否則可能不會獲准延期。此外，你應該在各個進度指標日期出庭應訊，否則你的申索便會被剔除。

排期審訊

在法庭作出排期審訊的指示後，你應該把排期審訊申請書及排期審訊通知書送交法院存檔。你必須於存檔時支付訂明的費用，以及提交有關的文件冊。

如果案件被編入定期審訊表內，訴訟各方均須在排期日到排期主任處排期，排期主任屆時會根據排期聆案官的指示編定審訊日期。排期完畢後，審訊前的程序便告完成。訴訟各方應該記著審訊日期和等候審訊。

如果案件被編入流動審訊表內，則最初會放進待審案件表，後來則放進審訊預告表。案件編入審訊表後，如果預計審訊會在下一個月內進行，則待審案件表的下端會列出訴訟標題和訴訟編號。案件一般會依照待審案件表中的次序輪候，逐一交由可以騰出時間的法官審理。案中各方須於每月的最後一天查閱待審案件表，以確定自己的案件是否已列入表內。而當案件已列入待審案件表後，案中各方便須於每個星期三查閱審訊預告表；因為法院逢星期三會從待審案件表中抽出一些有機會在下一週傳喚及審訊的案件，另外列於審訊預告表內。案件一旦被列入審訊預告表內，案中各方便須每天查閱該表，以得知案件是否編排於翌日審訊。

待審案件表張貼在區域法院地下審訊案件表旁的告示板及區域法院六樓登記處外的告示板上，而審訊預告表則張貼在區域法

院地下的告示板及六樓的告示板上。審訊預告表亦可於司法機構的網頁瀏覽。排期主任會在每天下午二時三十分在審訊預告表上標明翌日審訊的案件，並詳列審訊地點和日期。案中各方有責任確保自己準時應訊。

如果案中任何一方打算傳召證人，便必須盡早作好安排，以確保證人能出庭作證，必要時可能需要發出傳召出庭令狀，即證人傳票(見香港法例第336章《區域法院規則》附錄A表格28或29)。

區域法院登記處負責發出傳召出庭令狀。發出每份令狀時均須繳存一筆款項，以支付證人的合理開支。

審訊

案中各方必須在審訊當日準時出庭應訊，證人亦應出席。如有需要，亦應帶同有關文件的正本及複印本，以供法官及另一方查閱。你可以到法院地下大堂的告示板查看或六樓的詢問處查詢你的案件在哪個法庭進行審訊。

在審訊中，法官會聆聽證人的證供及訴訟各方的陳詞。

如果需要其他資料及/或證據，法官可以把案件押後至另一日期繼續審訊。審訊完結時，法官可於當天宣告判決，或於較後的日期宣讀/發下判決書。

如果案中各方願意和解，法官會按照和解協議作出法庭命令。

如果你與另一方在審訊開始前達成和解協議，則你可以把一份終止訴訟通知書或一份列出協議條款的同意令送交法院存檔。此外，你亦可以在審訊中向法官申請按照你們的和解協議條款作出命令。

上訴

一般來說，如果你不服聆案官的決定，你可以在內庭向法官提出上訴，但你必須在有關的決定作出後14天內發出上訴通知書。如果你不服聆案官於訊問判定債務人後所作出的判決或命令，或於由租購協議引起的訴訟中所作出的簡易判決，或於評定損害賠償時所作出的決定等，則你應該向高等法院上訴法庭提出上訴。你必須在由有關的判決或命令作出當日起計28天內向聆案官申請上訴許可，如果聆案官拒絕給予許可，你可以在申請被拒絕後14天內向上訴法庭申請上訴許可。

如果你不服法官的決定，可以在由有關的決定作出當日起計28天內，就向上訴法庭提出上訴的許可申請不屬非正審判決或命令，或在14天內申請非正審判決或命令。

如果法官拒絕給予許可，你可以在申請被拒絕後14天內向上訴法庭申請上訴許可，上訴法庭可以在施加它認為合適的條款(例如訟費、保證金等)的情況下給予許可。

執行判決

在你取得判決後，如果判定債務人不遵守命令，你可以向法院申請財物扣押令以強制執行判決。執達主任會藉著扣押判定債務人的財物和資產執行判決，替你追討欠款或收回財物的管有權。

如果你需要執達主任的服務，可以向區域法院登記處查詢或參閱“執達主任辦事處”這本小冊子。上述小冊子可向區域法院登記處或執達主任辦事處索取。

執行判決還有其他方式，本小冊子不能盡錄，請參閱《區域法院規則》或徵詢法律意見。

服務承諾

- 區域法院案件輪候時間：
 - 刑事案件：被告首次提訊後100天內進行審訊。
 - 民事案件：排期聆訊後120天內進行聆訊。
- 如果情況許可，司法機構會盡可能即時回覆市民的來信。無論如何，我們會在收到信件後10天內作出臨時回覆，並於30天內作出詳盡答覆。
- 如果你想查詢區域法院的有關規則和實務，可以聯絡位於香港金鐘道38號高等法院大樓的無律師代表訴訟人資源中心(該中心的熱線電話設於區域法院登記處)。

- 為使服務更完善，我們歡迎任何意見及建議，來信可寄香港金鐘道38號高等法院大樓司法機構政務長收。

如何聯絡我們？

地址：香港港灣道12號灣仔政府大樓灣仔法院

電話：2845 5696

傳真：2824 1641

辦公時間

登記處及會計部

星期一至五 上午九時至下午一時

下午二時至下午五時

星期六 上午九時至中午十二時

(星期日及公眾假日休息)

考慮展開法律程序前須知

- 展開法律程序應被視為最後的解決辦法，你應當盡量以協議方式解決糾紛。
- 即使未能與另一方達成協議，也未必值得訴諸法院，以下事宜是你必須衡量的：訴訟所必然會挑起的敵意，你的敗訴機會，訴訟所花的時間，訴訟所必然帶來的精神和體力上的負擔，訟費，以及被告人可能沒有足夠能力支付判定款項(即使你勝訴)等。
- 此外，在許多案件中所需進行的法律程序遠較這本只供一般參考的小冊子中所述的基本程序複雜，因此，最好還是透過法律援助或其他方式向執業律師尋求協助。

無律師代表訴訟人資源中心

地址：香港金鐘道38號高等法院大樓低層一樓LG 105室

電話：2825 0586

傳真：2825 0588

電郵：inquiryrc@judiciary.gov.hk

宗旨

向高等法院或區域法院的民事法律程序中的無律師代表的訴訟人，或準備展開民事法律程序的無律師代表的訴訟人提供與法庭規則和程序有關的資料和協助。

設施及服務

- 接待處及一般詢問處
- 介紹法庭程序的錄影帶
- 簡介民事法律程序的小冊子
- 常見問題
- 法庭表格樣本
- 電腦設施
- 特設網頁：<http://rcul.judiciary.gov.hk>
- 宣誓及聲明服務

開放時間：

星期一至星期五： 上午八時四十五分至下午一時
下午二時至下午六時

星期六、星期日及公眾假期休息

請注意：

資源中心的職員樂意就法庭程序方面的查詢提供協助，但不會提供法律意見，亦不會就個別案件或訴訟的處理作出評論或提供協助。

各有關的登記處會繼續就與婚姻、土地、僱員補償、申請遺囑認證等有關的事宜提供協助。

司法機構
二〇〇九年四月
(第七版)

THE DISTRICT COURT

The District Court has both criminal and civil jurisdiction.

1) Criminal Jurisdiction

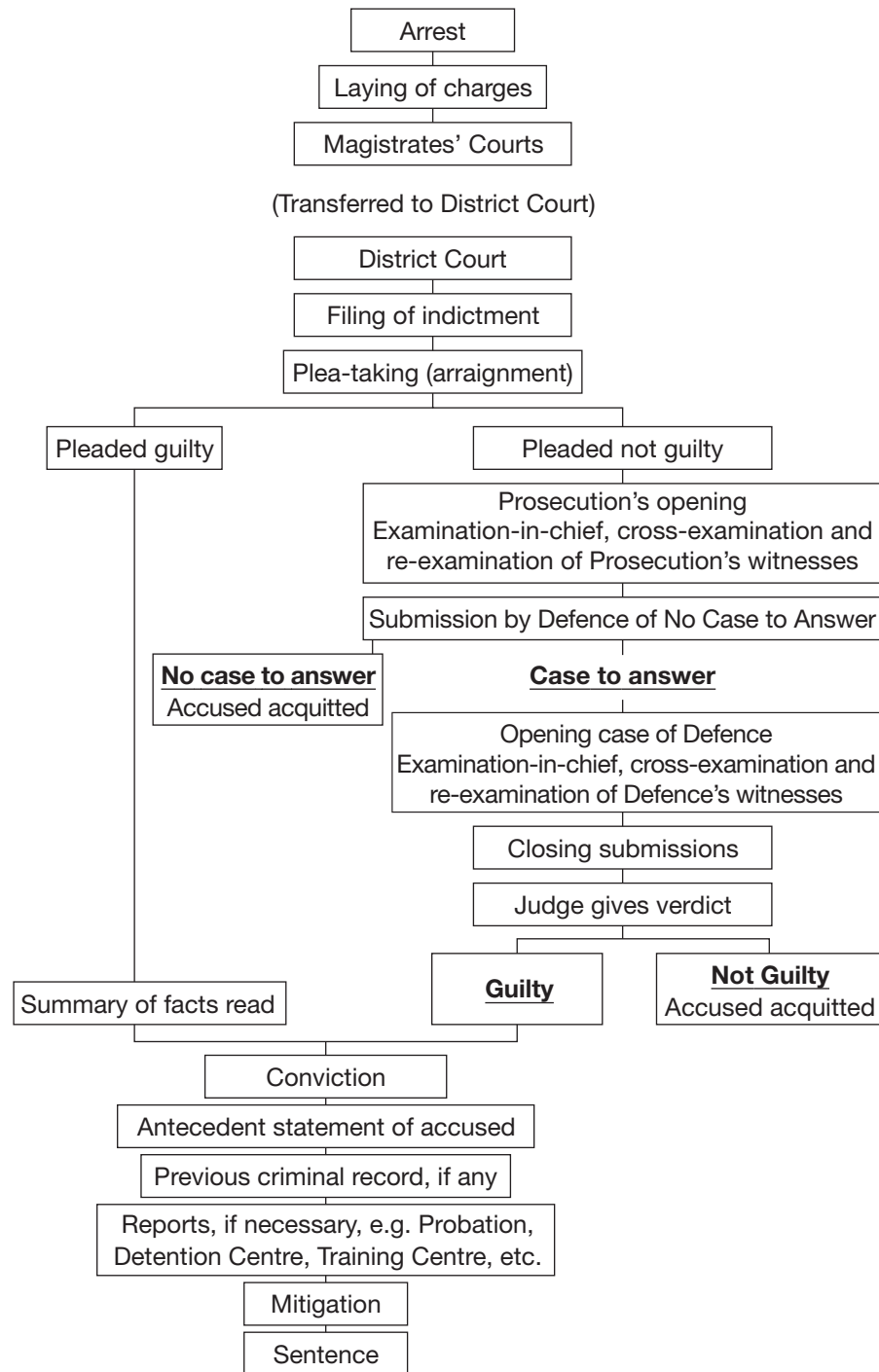
The District Court deals with indictable offences transferred to it from the Magistrates' Court. Indictable offences are criminal offences triable on indictment before a Judge alone or with a jury. A District Court Judge sits alone without a jury.

The District Court may try all serious criminal cases except murder, manslaughter and rape. The maximum term of imprisonment it can impose is 7 years.

If the accused pleads guilty, the Court will hear any mitigation and pass sentence on the same day unless the Court orders various reports to be sought. If so, the Court will adjourn the case to another date for sentence. If the accused pleads not guilty, the Court will fix a date for trial if the case is ready.

An accused can choose to act in person or, much more commonly, to engage a lawyer. If the services of a legal practitioner in private practice are beyond his means, an accused may seek legal aid. Those accused who act in person need to prepare their case very carefully before trial. This includes the summoning of their witnesses, if any, and they may approach the District Court Registry to obtain the form for summoning witnesses.

Flow Chart for Criminal Proceedings



The trial judge has the final decision as to whether a case is conducted in Chinese or English.

Legal Aid

An accused on bail or in custody can apply for legal aid. Those on bail may apply direct to the Director of Legal Aid, 24/F, Queensway Government Offices, 66 Queensway, Hong Kong (Tel: 2537 7677). Those in custody should contact the Welfare Officer in the institution where they are being held.

Appeal

If an accused is not satisfied with the Court's decision, an appeal may be made to the Court of Appeal of the High Court within 28 days from the date of sentence. For further information, please contact the District Court Registry.

Such an appeal may be against conviction, or sentence, or against both conviction and sentence. While an appeal against sentence may result in the sentence being reduced, it should be noted that the Court of Appeal of the High Court may also increase the sentence.

The Court of Appeal may dismiss or allow the appeal. If either party is still not satisfied with the decision of the Court of Appeal, an application for leave to appeal to the Court of Final Appeal may be lodged.

2) Civil Jurisdiction

The most common types of civil action that the District Court deals with are:

- contract
- quasi-contract
- tort (including personal injuries claims)
- recovery of land or premises
- claims in equity such as administration of estate of a deceased person, trust, mortgage, specific performance, maintenance of infant, dissolution of partnership, relief against fraud or mistake
- distress
- employees' compensation cases (there is no limit on the amount claimed)
- sex discrimination, disability and family status discrimination cases
- matrimonial cases including divorce, maintenance, custody and adoption of children (the Court which handles these types of cases is also known as the Family Court)

Claims for Contract, Quasi-contract and Tort

For a contract, quasi-contract or tort claim to be handled by the District Court rather than the Court of First Instance of the High Court, it must be for an amount over \$50,000 but not more than \$1 million. Even where your claim does not exceed \$1 million, if the defendant counterclaims for over \$1 million, the claim and the counterclaim or

just the counterclaim may be transferred to the Court of First Instance of the High Court. For good reasons, the District Court may continue to handle the claim when the counterclaim exceeds \$1 million, but a report has to be made to the High Court and the High Court may transfer the case.

Note that if your claim exceeds \$1 million, you may still start the action in the District Court provided you abandon the excess. [Equally, if the counterclaim exceeds \$1 million, you may waive the excess.] This can be a very practical strategy when the excess is small, since the litigation cost at the Court of First Instance is usually higher than that of the District Court.

Claims for Possession of Land or Premises

The District Court deals with buildings or premises the annual rent or rateable value or the annual value of which does not exceed \$240,000. However, in most tenancy cases where possession of the premises is claimed when the terms of the tenancy has expired, or when the tenant is in breach of the terms of the tenancy, application for possession may also be issued in the Lands Tribunal.

Claims under Equity Jurisdiction

Generally speaking,

- where proceedings do not relate to land, the maximum value involved shall not exceed \$1 million
- where proceedings do relate to land, the maximum value involved shall not exceed \$3 million; and further, for proceedings for the recovery

of land or relating to the title to land, the rateable value of the land must not exceed \$240,000

Claims for Arrears of Rent Only

If you merely want to recover arrears of rent and not the possession of the premises, there is a special procedure known as “distress”, whereby the Court makes an order directing the goods of the tenant to be seized by the bailiff. If the tenant still fails to pay the rent, the goods will be sold and the proceeds applied towards the outstanding rent.

The application form and pro forma affidavit can be obtained from the District Court Registry. You can complete the preliminary procedure by returning the completed forms to the District Court Registry. The Court will inform you when execution has been levied.

However, if you are claiming more than 12 months’ rent, you cannot use the distress procedure. Use instead the normal procedure for suing for breach of contract.

Divorce

Guidance on filing a petition for divorce can be found in the “How to Apply for a Divorce” booklet.

How to Start a Civil Action?

There are three ways for you to start a civil action:

- engage a lawyer
- seek legal aid (for details please refer to the “How to apply for legal aid in civil cases” pamphlet which is available at all courts, the Legal Aid Department and Public Enquiry Service Centres of District Offices)
- do it yourself

Note that certain types of individual, e.g. infants, mentally disabled persons and the estate of a deceased person, can commence an action only by an appropriate representative. A corporation may either be represented by a solicitor or by one of its directors by filing an affidavit stating that he has been duly authorized by the board of directors and exhibiting either original or certified board’s resolution.

Mode of starting an action

Civil actions in the District Court can be commenced in one of the following modes:

- writ of summons
- originating summons

The relevant forms can be found in Appendix A of the Rules of the District Court, Chapter 336 of the Laws of Hong Kong.

Since the most common mode for commencing an action is the Writ of Summons, this is outlined below.

Writ of Summons

A writ of summons (Form No.1) must be used to commence an action based on contract, quasi-contract, tort (other than trespass to land), fraud, breach of duty where the damages consist of or include damages for death of or personal injuries to any person, or in respect of damage to property and generally for all actions which would involve a substantial dispute of facts.

If the only claim that you are making is for payment of money, a Form 16 (for a liquidated claim, e.g. a debt) or Form 16C (for an unliquidated claim, e.g. damages for breach of contract or personal injuries) for admission of your claim should accompany your writ.

Filing of Writ of Summons

A writ of summons (Form No.1) and the accompanying acknowledgement of service (Form No.14) can be obtained at the District Court Registry. Fill out Form No. 1, setting out an endorsement of claim, e.g. a concise statement of the nature of your claim, or a statement of claim setting out in details the legal basis of your claim together with the facts you are relying on and the relief and remedy you are claiming. Forms can be completed in Chinese or English. (If you only attach an endorsement of claim, a statement of claim has to be filed and served on the defendant within 14 days after the defendant has acknowledged service.) You have to verify the statement of claim with a statement of truth in accordance with Order 41A of the Rules of the District Court.

When you file the Writ, you will be asked to pay a filing fee at the Accounts Office of the District Court. You will then return the completed

forms to the Registry. One copy of the form will be returned to you for reference.

It is your responsibility to serve the writ, acknowledgement of service and Form 16 or Form 16C (if applicable) on the defendant. If the defendant is in Hong Kong, this can be done by personal service, by registered post, or by inserting the documents through the letter box of the defendant at his usual or last known address (or, in the case of a corporation, on the registered address). In an action for recovery of possession of land, you must also post up a copy of the writ at the entrance of the premises in question. (Please see the “Bailiff’s Office” booklet regarding action for recovery of possession of land.)

Filing of Acknowledgement of Service by the Defendant

When the defendant is served with the writ (Form No. 1) and the acknowledgement of service (Form No. 14), he or she must fill in Form No. 14 to indicate if he or she wishes to defend the action and file it with the Registry within 14 days after service of the Writ (including the day of service).

Filing and serving of defence by the Defendant

Any defence must be filed with the court and served on you within 28 days after the time limit for acknowledgement of service expires. The defendant must explain in his defence why the defendant is disputing your claim and may include a counterclaim against you. The defence must be verified by a statement of truth in accordance with Order 41A of the Rules of the District Court.

What happens if the defendant does not file an acknowledgement of service or a defence?

If the defendant does not file Form No. 14 or a defence within time, you can apply to the Court for judgment on your claim. In such a case, a full trial is not required.

You may enter judgment for the amount claimed and costs, if the claim is for debt or for liquidated damages, e.g. where the amount of the claim is fixed and ascertainable, for example, action on a cheque.

Interlocutory judgment on liability may be entered instead if you are claiming for unliquidated damages, for example, for loss of profits or damages for injury to person or property. In this case you will have to ask a master or a judge to assess the amount of damages you are entitled to.

Under Order 13A of the Rules of District Court, if you are only claiming for the payment of money, the defendant may make an admission and/or propose terms of payment by filing in Court a Form 16 or Form 16C as may be appropriate and serve a copy of the same on you. You may file a request for judgment or reply (see Form 16B, 16D and 16E) to indicate if you accept the offer and the terms of payment as proposed by the defendant. If you accept the offer but do not agree to the terms of payment, you may request a master to determine the terms of payment.

However, if you do not file a request for judgment or reply within 14 days after a copy of the admission form served on you, the claim is

stayed until you file the request or reply.

What happens if the defendant files a defence / counterclaim?

As plaintiff, you may file with the court and serve on the defendant a reply to any defence filed by him within 28 days after service on you of the defence, and set out additional facts in answer to it.

If the defendant files a counterclaim, you will have to file and serve a defence to it within 28 days after the service on you of the counterclaim if you wish to dispute it. The defendant can enter judgment in default of defence to the counterclaim if you fail to do so within time. As far as the counterclaim is concerned, you have become a defendant.

There are no prescribed forms for a reply or defence to a counterclaim, but you should combine the reply and any defence to the counterclaim in one single document. The document has to be verified by a statement of truth in accordance with Order 41A of the Rules of the District Court.

Discovery of Documents

The pleadings stage will then be complete. Next comes “discovery”, when each side must disclose to the other the documents he possesses that relate to the case. After disclosing the documents in the form of a list (Forms No. 26 and 27), both sides must allow the other side to inspect the actual documents.

Timetabling Questionnaire

Each party shall file and serve a timetabling questionnaire within 28 days after the pleadings stage is complete. You should try to agree with the other party (parties) on what directions to seek to prepare a case for trial.

Case Management Summons

As plaintiff, you must, within 14 days after receiving the timetabling questionnaire from the other party (parties) or within 14 days upon expiry of the period for filing and serving a timetabling questionnaire, issue a case management summons for the court to give directions relating to the management of the case.

The court will fix a timetable for the steps to be taken and may fix a milestone date for a case management conference, pre-trial review and/or the trial. You should comply with the directions as you may not be able to get extensions of time without sufficient grounds. In addition, you should attend court on the milestone dates, otherwise your claim will be struck out.

Listing for Trial

After the Court has given directions for setting down, you should file with the Court an application to set a case down for trial and a notification of setting down. In so doing, you have to pay a prescribed fee. Besides, a bundle of documents has to be lodged.

For cases in the Fixture List both parties should attend before the Listing Officer on the date scheduled for date fixing. The Listing

Officer will then list the case for trial in accordance with the directions given by the Master. After date fixing, the pre-trial procedure is then complete and parties should bear the trial date in mind and wait for trial.

For cases set down in the Running List, they will be placed initially on the Pending List and then Warned List. Once a case has been set down the title of the action and its action number will appear at the bottom of the Pending List if it is expected to be tried during the next succeeding month. The cases will be tried by judges who are found available to try them one after another generally in accordance with the order set out in the Pending List. Parties have to check the Pending List on the last day of each month to see if their case has been listed on it. Once the case is listed on the Pending List, they have to check the Warned List every Wednesday. This is because every Wednesday a number of cases from the Pending List will be warned that they will likely to be called and tried in the next week and they are put in a separate list called the Warned List. Once a case is listed on the Warned List, parties are required to check the Warned List every day whether their case is fixed to be tried the next day.

The Pending List is posted on the Notice Board on the ground floor of the District Court next to the daily cause list and on the 6th floor of the District Court in the Notice Board outside the Registry. The Warned List is posted on the Daily Notice Boards on the ground floor and the 6th floor of the District Court. The Warned List is also accessible at the Judiciary Website. At 2:30 p.m. in every afternoon the Listing Officer will mark on the Warned List those cases that will be tried the next day specifying the venue and date of trial. It

is the responsibility of the parties to ensure that they will attend the trial on time.

If either party intends to call witnesses, their attendance at the trial must be secured well in advance. It may be necessary to issue a writ of subpoena, i.e. a witness summons. (See Form No. 28 or 29 in Appendix A of the Rules of the District Court, Chapter 336 of the Laws of Hong Kong.)

The appropriate office for issuing such a writ is the Registry of the District Court. Every writ of subpoena should be accompanied by a deposit to cover the witness's reasonable expenses.

Trial Hearing

Both parties should attend Court punctually on the trial date, bringing along relevant original documents and photocopies for the judge and the other party if necessary. Your witnesses should come with you. Check the notice board on the ground floor lobby or the Enquiry Counter on the 6th floor to find out which court is hearing your case.

At the trial, the Court will hear the evidence of witnesses and the submissions of the parties.

The Court may adjourn the case to another date if further information and / or evidence are needed. The Court may deliver judgment at the end of the trial or deliver / hand down the judgment at a later date.

If the parties are willing to settle, the Court will make the settlement an order of the Court.

If you and the other party settle the case amicably before the trial, you may file a notice to discontinue the case, or file a consent application setting out your agreement. You may also apply to the Court at the trial to have the terms of settlement made an order of the Court.

Appeal

Generally speaking, if you are not satisfied with the decision of a Master, you may appeal against it to a Judge in chambers. You must do so by way of a notice within 14 days after the decision. For certain matters, e.g. judgments or orders made by a Master after the examination of a judgment debtor or judgments made summarily in actions arising out of a hire-purchase agreement, or assessment of damages, the appeal should be made to the Court of Appeal of the High Court. For such cases, the application for leave to appeal must be made to the Master within 28 days from the date of the judgment or order. If the Master refuses to grant leave, you may apply to the Court of Appeal for leave to appeal within 14 days from the date of such refusal.

If you are not satisfied with the decision of a Judge, you may apply to the Judge within 28 days for non-interlocutory judgments or orders, or within 14 days for interlocutory judgments or orders from the date of the decision for leave to appeal to the Court of Appeal of the High Court.

If the Judge refuses to grant leave, you may apply within 14 days from the date of refusal to the Court of Appeal for leave to appeal. The Court of Appeal may grant leave on such terms as to costs, security, etc. as it thinks fit.

Execution of Judgment

If, after you have obtained a judgment, the judgment debtor fails to obey the order, you may apply to the Court for a Writ of Fieri Facias to enforce the judgment. The Bailiff will “levy execution” to recover the judgment debt by seizing goods and chattels of the judgment debtor to cover the money owed to you or to recover possession of property for you.

Contact the District Court Registry for information if you want to apply for the Bailiff’s service. You may also refer to the “Bailiff’s Office” booklet available from the District Court Registry or the Bailiff Office.

There are other modes of execution and we could not include all the details. Please read the Rules of the District Court or seek legal advice.

Performance Pledge

- Waiting time in the District Court:
 - Criminal cases: 100 days from the date of first appearance of the accused to trial
 - Civil cases: 120 days from the date of listing to hearing

- Wherever possible, the Judiciary will reply at once to correspondence from members of the public. In any case, we will give you an interim reply within 10 days and a full response within 30 days of receiving a letter.
- If you wish to enquire about the rules and practice of the District Court, you may contact the Resource Centre for Unrepresented Litigants at the High Court, 38 Queensway, Hong Kong. (A hot line to the Centre is set up at the Registry of the District Court).
- We welcome all comments and suggestions for improving our services. Please send them to the Judiciary Administrator at the High Court, 38 Queensway, Hong Kong.

How to Contact us?

Address: Wanchai Law Courts, Wanchai Tower, 12 Harbour Road,
Hong Kong
Telephone: 2845 5696
Facsimile: 2824 1641

Business Hours

Registry and Accounts Office

Monday to Friday 9:00 a.m. to 1:00 p.m.
2:00 p.m. to 5:00 p.m.

Saturday 9:00 a.m. to 12:00 noon
(Closed on Sundays and Public Holidays)

Before You Consider Legal Proceedings

- Legal proceedings should always be thought of as a last resort. It is advisable to make every effort to settle a dispute by agreement.
- Even where you cannot reach agreement with the other party, it may still not be worth your while to begin an action. Always consider the unavoidable element of hostility; the chance that your action may not succeed; the time consumed; the inevitable mental and physical strain; the legal costs; and whether the defendant has sufficient assets to pay you if you do win the case.
- You should also note that in some cases, legal procedures are considerably more complicated than the basic procedures described in this general reference booklet. It is thus always advisable to seek the help of a legal practitioner, whether through legal aid or otherwise.

Resource Centre for Unrepresented Litigants

Address: Room LG105, Lower Ground Floor 1,
High Court Building, 38, Queensway, Hong Kong
Telephone: 2825 0586
Fax: 2825 0588
Email: inquiryrc@judiciary.gov.hk

Objective

To provide information and assistance on court rules and procedures to unrepresented litigants, who are parties to, or about to commence, civil proceedings in the High Court or the District Court.

Facilities and Services

- Reception and general enquiries counter
- Videos on court procedures
- Brochures on civil proceedings
- Frequently asked questions
- Sample court forms
- Computer facilities
- Dedicated webpage: <http://rcul.judiciary.gov.hk>
- Oaths and declaration services

Opening Hours

Monday - Friday: 8:45 a.m. - 1:00 p.m.
2:00 p.m. - 6:00 p.m.

Closed on Saturday, Sundays and Public Holidays

Please note:

The staff of the Resource Centre are happy to assist you with enquiries on court procedures, but they will not provide any legal advice or offer any comment or assistance on the conduct of specific court cases and proceedings.

Assistance on matrimonial, lands and employees' compensation matters and probate applications will continue to be provided by the respective registries.

Judiciary
April 2009
(7th Edition)