

NICHOLAS OH

BARRISTER

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Nicholas commenced practice in 2014 following the completion of his pupillage and extended pupillage with a number of established civil practitioners, including Mr. Horace Wong S.C., Mr. Andrew Mak, Mr. Thomas Lee and Mr. Tony Ko. He has a broad and predominantly civil practice, and has extensive experience advising on insolvency matters, commercial disputes, employment law, land matters (including landlord and tenant disputes, New Territories land disputes, property management disputes etc.) and arbitrations.

Nicholas has substantive trial and appellate experience both as sole advocate and as a led junior, appearing before the Court of Appeal, the Court of First Instance, the District Court, the Lands Tribunal and various magistracies for trials, interlocutory applications and appeals. Nicholas has also been involved in advisory and drafting work for arbitrations, appeared as arbitration counsel and has been appointed as tribunal secretary and arbitration clerks. He has also been appointed as a mediator on a number of disputes since having been accredited by CEDR in 2013.

He is currently a tutor and an external assessor for the PCLL Civil Advocacy course at the University of Hong Kong. He is a contributor of **Emden's Construction Law of Hong Kong** (together with Mr. Thomas Lee) and has delivered a number of CPD talks on interlocutory injunctions (together with Mr. Thomas Lee and Mr. Avery Chan), New Territories land matters (together with Mr. David Tang), probate and administration matters (together with Mr. Ken To) and on bankruptcy law (in collaboration with Messrs. Lee & Chow).

Nicholas also accepts instructions from Legal Aid.

RECENT HIGHLIGHTS

- **盧愛群 v 盧海鴻** (HCA 2033/2016) – Successfully defended a claim for specific performance of a deed promising an interest in a floor of a New Territories small house, on the basis of oral variation of the deed, the doctrine of part performance, promissory estoppel/estoppel by convention, laches and acquiescence.
- **Hong Kong Vending System Company Ltd v Lui Kin Ming & Anor** [2023] HKDC 1175 – Successfully struck out most claims of breach of restrictive covenants, implied duty of trust and confidence and fidelity, fiduciary duties, duties of confidence, tort of conspiracy to injure by unlawful means, tort of causing loss by unlawful means against 2 former employees of a vending machine company.
- **Pacific Bulk Supramax Co Ltd v Wong Man Kam Patrick & Anor** [2023] HKCFI 1973 – Acted for the Respondents in contempt proceedings to apply for one of the alleged contemnors to give evidence by video conferencing facilities (VCF) at trial or to adjourn the trial due to a medical emergency.
- **Securities and Futures Commission v Lau Chi Yuen Joseph & Anor** [2023] HKCFI 910 – Acted for two directors of a listed company in resisting SFO s.214 disqualification proceedings, resulting in disqualification periods substantially shorter than those sought against them. Led by Edwin Choy S.C. and with Kevin Leung.

OTHER NOTABLE CASES

Bankruptcy

- **Re Li Xiaoming** [2022] HKCA 142, [2021] HKCA 779, [2020] HKCA 465, [2019] HKCFI 2782 – Successfully obtained a bankruptcy order (maintained on appeal) against a debtor notwithstanding allegations of duress, non est factum and a recusal application. Led by Douglas Lam S.C. (at the substantive appeal) and appeared as sole advocate (for interlocutory matters before the Court of Appeal and at first instance).
- **Re SNG Allan** [2021] HKCA 1847, [2018] HKCFI 2016 – Successfully resisted an appeal against a bankruptcy order obtained summarily. The key issue in dispute was whether a petitioning creditor could value a security at nil for the purposes of a statutory demand. Led by Christopher Chain (on appeal) and appeared as sole advocate (at first instance).
- **Re Dai Guoliang** [2019] 2 HKLRD 332 – Successfully obtained a bankruptcy order against a debtor claiming to be domiciled and resident in Fujian province, where the Court found that the three core requirements for exercising the Court's winding up jurisdiction over an overseas company should not be imported in bankruptcy proceedings.

- Acted for petitioners and debtors alike across numerous other bankruptcy petitions, successfully obtaining bankruptcy orders against various debtors situated in Hong Kong and the PRC in opposed bankruptcy petitions. Cases include **Re Miao Zhenguo** [2022] HKCFI 1852, **Re Cao Zhong** [2021] HKCFI 3143, **Re Wong Chiu Wo Richard** [2021] HKCFI 531, **Re Chiu Chi Hong** [2020] HKCFI 2486, **Re Chen Yen Fen** [2020] HKCFI 1248, **Re Tam Siu Ki** [2019] HKCFI 83.
- **Fred Lee and Chow Wai Lan, Christine, trustee of the property of Law Shui Kei, a bankrupt v Lee & Wu (A firm) & Anor** [2017] HKCFI 1595 – Advised and acted for trustees-in-bankruptcy in an application for declaratory relief vesting monies in a former law firm’s office account with the bankruptcy estate of the sole proprietor.
- Regularly advises and acts for trustees-in-bankruptcy and creditors of bankruptcy estates on the realization of assets, income payments order under s.43E of the Bankruptcy Ordinance (Cap. 6) and objections to the automatic discharge of bankrupts.
- **Re Shum Tung Lam** [2020] 4 HKLRD 749 – Acted on behalf of an undischarged bankrupt in successfully opposing a creditor’s application to object to the automatic discharge of the bankrupt, involving issues of jurisdiction, extension of time and other irregularities. Led by Jin Pao S.C..

Commercial fraud/civil recovery

- **Chinacast Education Corp. & Ors v Chan Tze Ngon & Ors** [2015] HKCFI 1890; [2017] HKCFI 1350– Successfully defended a former Chief Accounting Officer of a NASDAQ listed company sued for alleged connivance of massive fraud committed against the company. Led by Nicholas Cooney S.C.
- **Wang Xiaojing v Li Boshou & Ka Wah Investment Holdings Ltd** (HCA 1405/2018) – Acting for a Mainland investor in a HKD 30m fraud claim against another Mainland investor purporting to invest in and purchase publicly listed shares held by a Hong Kong company. Successfully resisted a **forum non conveniens** application.
- **JB Management Limited & Ors v Lau Lik Wah David & Ors** (HCA 908/2021) – Obtained a Mareva injunction and ancillary disclosure orders against a former financial controller employee who had committed accounting fraud against the plaintiff. Led by Thomas Lee.
- Advised and acted for victims of email/telephone fraud, including obtaining **Mareva** injunctions, tracing the proceeds of fraud and obtaining judgment against recipients of the proceeds (whether default judgment or judgment after trial).

Companies / Winding-up

- **Bio-Chem Technology (HK) Ltd v Bio-Chem Technology (HK) Ltd** [2019] 2 HKLRD 1087 – Acted for a subsidiary of a Hong Kong listed company in obtaining an interlocutory injunction restraining the defendant from presenting a winding up petition against the plaintiff pending the award of an arbitration claim against the defendant.

- **Wong Chung Chi v Yuilley Building Materials Co. Ltd & Ors** [2019] HKCFI 324 – Successfully resisted an unfair prejudice winding up petition at trial as sole advocate.
- **Lam Kwok Kai v Orient Venture Investment Ltd & Anor** – Acted for a petitioner in an unfair prejudice winding up petition.
- **Re Tung Shun Securities Ltd** (HCMP 2276/2020) – Advised and acted for a former securities company to obtain discharge of trust holdings of unclaimed securities and funds *qua* securities brokerage in preparation for voluntary liquidation.
- Acted for and advised on directors’ disqualification proceedings, including the use of the **Carecraft** procedure.

Employment

- **Lam Siu Wai v Equal Opportunities Commission** [2021] 5 HKLRD 30 – Acted for a former Chief Equal Opportunities Officer of the Equal Opportunities Commission in a High Court appeal from the Labour Tribunal, involving issues including the right to termination without cause, the duty to exercise such a right in good faith and the implied duty of trust and confidence between employers and employees. Led by Thomas Lee.
- **AB Club Ltd & Ors v Chan Yin Ki Cubie & Ors** [2020] HKCFI 2769, [2021] HKCFI 681 – Acted for a company group in a “team move” case in obtaining an injunction restraining former employees from solicitation of clients as well as confidentiality undertakings. Led by Thomas Lee.
- **Richemont Asia Pacific Ltd v Jing He (also known as Jing He)** (HCA 1361/2020) – Acted for a former Senior Vice President of HR of a well-known international luxury goods producer in resisting an interim injunction imposing post-termination restraints. Led by Thomas Lee.
- Advised and drafted claims for clients at the Labour Tribunal.

Land & property management

- **Grand Planet Ltd v The Incorporated Owners of Lucky Commercial Centre** [2021] HKDC 1198 – Acted for and advised the incorporated owners of a commercial building on a dispute as to whether the entrance door of the roof was a common part of the building. Successfully resisted an application for an peremptory order for specific discovery.
- **黃冠華 對 歐珈好** [2021] HKCFI 1555 – Acted for the defendant in resisting a claim of common intention constructive intention trust/resulting trust over a jointly owned property by a former cohabitee in a 3 days trial conducted in Pundi. Successfully defended the claim and obtained an order for sale of the subject property under the Partition Ordinance (Cap. 352).
- **Faith Luck Corporation Ltd & Anor v Tin Yau Nung** [2020] HKCFI 314 – Successful application for an order for sale of a land locked property in the New Territories pursuant to s.6 of the Partition Ordinance (Cap. 352) notwithstanding the absence of the co-owner Defendant.

- **Wan Kwok Keung v Director of Lands** [2019] HKLdT 38 – Acted for 9 applicants to apply for leave to appeal against a land resumption application judgment, involving the issue of whether the right to a building license under the prevailing Small House Policy protected by Article 40 of the Basic Law falls under the “as of right” exception under s.12(c) of the Land Resumption Ordinance (Cap. 124).
- **Ng Kam Kuk v Chan Fung Chun** [2018] 2 HKLRD 606 – Successful appeal against a master’s order for a co-owner of a property to discharge an outstanding charging order registered against a property made subject to an order for sale under RHC O.31 rr.1 & 2.
- **Lee-Woolhouse Sheila Kathleen also known as Lee Sheila Kathleen (the executrix of Li (or Lee) Kun Fu (李觀富) also known as Kun Fu Lee alias Peter Lee) v 羅天馴** (DCCJ 3843/2018) – Successfully obtained summary judgment on behalf of a landlord and resisted an application for joinder by the tenant’s sister alleging adverse possession.
- **Wong Ching Lun (as administratrix of the estate of Chan Chi Ming David) v Lai Suk Fun & Ors**(HCA 1915/2011) – Advised and acted for defendants alleged to be holding investment properties worth over HKD 300m purchased from a garment business on common intention constructive trust/**Pallant v Morgan** trust for a former bankrupt. Led by Andrew Mak.
- Advised and acted for landlords and tenants alike at the Lands Tribunal. Nicholas also has experience with advising on vendor-purchaser disputes.

Tax

- **Kung Kwok Wai David, the executor of the last will of Kung Wong Sau Hin, deceased v The Commissioner of Estate Duty** [2021] HKCFI 2111 – Acted for an executor in a partially successful appeal against an assessment of estate duty in an 11-days trial, involving issues of valuation of land subject to adverse possession and loans remitted to Swiss bank accounts. Led by Edward Chan Q.C., S.C.
- Advised and acted for a toy manufacturer to successfully obtain an indemnity from a well-known multinational entertainment and media conglomerate for withholding tax chargeable by the Inland Revenue Department to both parties under s.20B (or s.20A) of the Inland Revenue Ordinance (Cap. 112).

Construction

- **Handy Construction Company Ltd v Wo Ming Engineering Ltd & Anor**(HCCT 54/2019) – Acted for a contractor in successfully obtaining an interlocutory injunction for repossession of a construction site against a sub-contractor pending the final determination of a construction arbitration.

Commercial

- **Alpha Financial Press Ltd. v Shanghai Dazhong Public Utilities (Group) Co. Ltd**[2020] HKCFI 1505 – Acted for a financial printer in successfully obtaining summary judgment against a publicly listed company for outstanding service fees.

- **Tin Yat Yu Carol (formerly known as Tin Yuen Sin Carol) v Hung Hin Fai/Yeung Hiu Tung**(HCA 43/2019, HCA 1649/2019) – Acted for the defendants in relation to allegedly unpaid loans of HKD 5 million and HKD 25 odd million said to be secured by publicly listed shares held in a securities account.
- **Liuligongfang Hong Kong Company Ltd. (香港琉璃工房志業股份有限公司) t/a LIULIGONGFANG 琉璃工房 v B J Crystal Hong Kong Company Ltd (明智水晶禮品香港有限公司)** (HCIP 35/2019) – Successfully obtained undertakings for a contemporaneous Chinese crystal/glassware producer restraining a competitor from copyright infringement and from passing off.
- **Jessica Park & Anor v Swiss Asia Asset Management (HK) Ltd**(HCA 1449/2019) – Assisted Thomas Lee with advising and drafting a claim against an asset management firm for fraudulent/negligent investments.

Personal injuries/Employees' compensation

- **譚國武 v 三星電子香港有限公司 & Ors** [2020] HKDC 1136 – Represented a sub-contractor in resisting a joinder application in respect of employees' compensation proceedings.
- Advised and drafted a number of personal injury claims.

Arbitration/Mediation/ADR

- Advised and acted for an investor in enforcement of a Mainland PRC arbitral award and to obtain a **Mareva** injunction pending enforcement.
- Advised and acted for a media advertising company in obtaining an arbitral award for unpaid invoices.
- Advised and acted for a contractor in a construction dispute exceeding HKD 20 million in alleged damages.
- Advised and acted for a party to a joint venture in a cross-border commercial arbitration.
- Appointed as tribunal secretary or clerk to the arbitrator in a number of arbitrations (past and ongoing).
- Appointed as mediator in numerous mediations, including shareholder disputes, commercial disputes and employment disputes.

Probate, equity & trusts

- **Dong Li (董莉) v Lam Pu Qiao (林溥翹)** (HCMP 663/2018) – Advised and acted for the plaintiff in an application for revocation of grant of probate.
- **Re Tung Shun Securities Ltd** (HCMP 2276/2020) – Advised and acted for a former securities company to obtain discharge of trust holdings of unclaimed securities and funds **qua** securities brokerage in preparation for voluntary liquidation.

Civil procedure & Costs

- ***Kung Kwok Wai David, the executor of the last will of Kung Wong Sau Hin, deceased v The Commissioner of Estate Duty*** [2022] 1 HKLRD 965 – Successfully resisted an application to vary a costs order made after trial and an argument that the costs order was a costs order nisi pursuant to RHC O.42 r.5B. Led by Edward Chan Q.C., S.C.
- ***West Coast International Trading Ltd t/a Dandelion Fine Arts v Chelesa Art Co. Ltd*** [2020] 1 HKLRD 841 – Partially successful in resisting an application to vary the default costs consequences under RHC O.22 r.20(1) under the “otherwise proviso” . Led by Andrew Mak.
- ***Zhejiang Provincial Railway Investment Int’l Trade Co. Ltd. v HK Zexin Resources Co., Ltd*** [2018] 1 HKC 200 – Successfully resisted part of a bankers book application brought ancillary to a Mareva injunction. Led by Thomas Lee.
- ***Mathnasium Center Licensing, LLC v Chang Chu Hung (also known as Alex Chang)***– Acted for a defendant in contempt proceedings to set aside leave to commit the defendant for contempt. Led by Ling Chun Wai.

Miscellaneous

- ***West Coast International Trading Ltd t/a Dandelion Fine Arts v Chelesa Art Co. Ltd***– Advised and acted for an art dealing company claiming against another art dealing company for conversion or detinue of stolen artwork, involving hotly disputed valuation evidence of Chinese paintings. Led by Andrew Mak.
- ***HKSAR v Ma Sin Chi*** [2016] HKCA 253 – Successful appeal against a POBO s.9 jury conviction of a former derivative warrants trader based on expert evidence by a SFC expert. Led by the late Mr. Adrian Bell S.C. and with Mr. Edward M.H. Chan.
- Advised and acted for both petitioners and respondents in matrimonial proceedings.
- Advised and acted for both plaintiffs and defendants in a number of water leakage cases.
- Regularly prosecutes as fiat counsel for the HKSARG.
- Duty Lawyer Service Convention Against Torture & Non-refoulement Claims Scheme panel lawyer.

APPOINTMENTS AND MEMBERSHIPS

- Member of the Chartered Institute of Arbitrators
- Associate of the Hong Kong Institute of Arbitrators
- Accredited CEDR Mediator
- Part-time tutor and external assessor, University of Hong Kong

PUBLICATIONS

- Contributor of ***Emden’s Construction Law of Hong Kong*** (with Mr. Thomas Lee)

EDUCATION

- LLB (LSE)
- PCLL (HKU)