

Revised Commentary 8 of Principle 6.01
The Hong Kong Solicitors' Guide to Professional Conduct Volume 1

8. (a) Under section 59(2) of the Legal Practitioners Ordinance, a provision purporting to exclude a solicitor's liability for negligence in an agreement for fees in contentious business will be void. In other business, a solicitor may seek to limit his liability to his clients in accordance with Practice Direction M.
- (b) Section 2(1) of the Legal Practitioners Ordinance provides what "contentious business" and "non-contentious business" include¹, but it does not expressly define what they mean. To determine whether the work relates to contentious business or not, it may be necessary to consider the particular nature of the work² and whether it is done in contemplation of any legal proceedings³.
- (c) The term "court" which appears in relation to "contentious business" in section 2(1) of the Legal Practitioners Ordinance is defined in the Interpretation and General Clauses Ordinance (Cap 1) as "courts of the HKSAR of competent jurisdiction". The definition however does not provide expressly what does or does not constitute a "court".
- (d) There have been cases whereby statutory tribunals have been held to be classified as "courts" for specified purposes⁴, but no confined definition on what constitutes a "court" in general is apparent⁵.
- (e) There may be difficulties in classifying arbitration as a "court" on the basis that arbitration as a private consensual system is different from the public justice system in a court⁶.

¹ Section 2(1) of the Legal Practitioners Ordinance provides:

"contentious business" includes any business done by a solicitor in any court, whether as a solicitor or as an advocate;

"non-contentious business" includes any business connected with sales, purchases, leases, mortgages and other matters of conveyancing.

² **Re A Solicitor**, Court of Appeal, [1955] 2 All ER 283

³ **South Horizons International Petroleum Ltd v Crump & Co**, Civil Appeal no 1691 of 2001, [2002] 2 HKLRD 187

⁴ **A Solicitor v Law Society of Hong Kong**, [2004] WL 5861 (CA) and **Dr Ip Kay Lo, Vincent v The Medical Council of Hong Kong**, (No 2) [2003] 3 HKC 579

⁵ **New World Development Co Ltd & Others v Stock Exchange of Hong Kong**, [2004] HKEC 502; Civil Appeal No. 170 of 2004 (Date of Judgment: 27 May 2005)

⁶ **Cannonway Consultants Limited v Kenworth Engineering Limited**, High Court, [1995] 2 HKLR 475