

TRAINING TIPS

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[90] Spouse/former spouse

Injunctions against a spouse/former spouse are available when the victim is either the applicant themselves or a 'specified minor'.¹ There is no requirement that the parties cohabit.

The term 'spouse' was introduced by the legislature in the Domestic Violence (Amendment) Ordinance 2008, replacing the phrase 'party to a marriage'. It is not defined in the Ordinance. However, in keeping with the purpose of the Ordinance² and the constitutional protections,³ in which the Ordinance is intended to give effect, spouse should be interpreted to include, inter alia, parties to:

- (a) Marriages lawfully celebrated in Hong Kong;⁴
- (b) Marriages where the parties are subject of a decree of judicial separation;⁵
- (c) Marriages celebrated in Hong Kong that are voidable where there has not yet been a decree of nullity;⁶ (though not those void ab initio);⁷
- (d) Chinese customary marriages, Kim Tiu (polygamous) marriages, validated modern marriages, and concubinage lawfully contracted in Hong Kong prior to 7 October 1971;⁸
- (e) Marriages lawfully celebrated outside Hong Kong⁹ (including informal/common law marriages,¹⁰ same-sex marriages and civil partnerships¹¹).

Where a marriage is in dispute, the court may order interlocutory relief and treat the marriage as binding until the issue is properly determined.¹²

[210] Ex parte applications

An application may be dealt with ex parte where just and reasonable, for example where: (a) the matter is urgent, (b) informing the respondent would itself cause danger to the applicant, or (c) it is impossible to serve the respondent. The originating application should comply with Practice Direction 11.1. If possible, whether there is time to complete the affidavit (or draft affidavit), the skeleton argument, or the draft order, and to file (but not serve) the originating summons, will depend on the urgency of a particular case. There is no requirement of service; however, notice should be given to the respondent's solicitors in appropriate cases. Arrangements may be made to see the duty judge by telephoning or attending the Clerk of the Family Court Duty Judge (in the District Court) or the Deputy Clerk of Court (Civil) (in the Court of First Instance).

The supporting affidavit should clearly set out all facts relevant to the application, as well as the reasons why an ex parte hearing was sought.

The applicant should provide the court with a draft order. If the application is granted, the order should include:¹ undertakings to issue the originating summons and/or file the supporting affidavit (if needed); an undertaking to notify the respondent of the order; a return date for an inter partes hearing; provision for the respondent to apply on notice to vary or discharge the order; and that costs be reserved.

An inter partes hearing should be fixed as soon as possible, and the injunctions termed to expire on a specific date (rather than 'until further order').²

Under the circumstances of COVID-19 pandemic, most employees, employers and students are adapted to staying at home for work and school. This current situation raises challenges within family relationships, leaving some people vulnerable to the risk of domestic violence and other family issues. *Hotten and Ho on Family and Divorce Law in Hong Kong* and *Hong Kong Family Court Practice – Third Edition* offer you a comprehensive coverage and guide across various family legal topics with regular updates on legislations amendments, case laws and some pragmatic tips for your legal practice.

For example, our “Domestic Violence Injunctions” chapter shares with you some commentaries, the applicable statutory law along with some recent & leading common law cases and the relevant practical procedures to follow should a spouse wishes to apply for domestic violence injunctions against his or her partner.

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4.1 Deed of separation between a married couple

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4: SEPARATION AGREEMENTS

4.1 Deed of separation between a married couple¹

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HIS DEED OF SEPARATION is made the (date) day of (month) (year) [BE] West:

(1) (name) of (address) ('AB'); and

(2) (name) of (address) ('CD')

THIS DEED PROVIDES as follows:

I Background

1.1 The parties were married on (date) and there are (number) children of the Family 2 (or marriage) namely (child's name) born on (date) and (child's name) born on (date) (The Children);

1.2 The parties have agreed to live separately and apart from the date of this deed (or lived separately and apart since (the date of separation)).³

Explore more in our *Hong Kong Encyclopaedia of Forms and Precedents*, *Atkin's Court Forms Hong Kong* publications and *Practical Guidance* and you will come across to a wide range of family law templates for drafting purposes. For instance, simply search within our publication for locating a standard separation agreement.

We hope our content help you conduct legal research and drafting far more efficiently. Please feel free to contact us at traininghk@lexisnexis.com to arrange a training session conducted in person or through a conference call.