

Yang-Wahn Hew

M.A. (Oxon) P.g.D.L.

P.C.L.L.

Certificate in Sports Arbitration (AIAC, Kuala Lumpur)

Email Address:

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Year Of Call:

2005 (Hong Kong)

Singapore International Commercial Court, Registered
Foreign Lawyer

Astana International Financial Centre Court (rights of
audience)

Practice Areas: Administrative and Public Law, Arbitration,
Mediation, Chancery, Commercial Law, Company Law and
Insolvency, Employment and Anti-Discrimination, Family
Law, Land & Planning Law, Securities Law, Regulatory,
Trust and Probate, Professional negligence



Yang worked at Standard Chartered Bank before joining the Bar. His practice focuses mainly on high-value commercial, company, and insolvency cases with an international dimension and claims for equitable and declaratory relief. He has been described by Chambers and Partners as an “Up and Coming Junior” who is a “good advocate and solid performer” with a “particular insight into insolvency matters”, and as being “very good at company law matters”.

His experience includes acting for James Ting, a former director of Akai Holdings Ltd. (in compulsory liquidation) at the trial of Akai’s claim for nearly US\$1 billion of equitable compensation (see ***Akai Holdings Ltd.*** (in compulsory Liquidation) ***v Everwin Dynasty Ltd., & ors.*** (No. 2) [2016] 3 HKC 307), obtaining both urgent injunctive relief and an arbitral award of around US\$595 million in relation to a major Chinese real estate group, and conducting substantial contempt proceedings against the “third wife”, and a daughter, of the late Lim Por Yen (see ***Arboit v. Koo Siu Ying*** (No. 2) [2016] 3 HKLRD 154 and ***Arboit v Koo Siu Ying*** and [2015] 3 HKLRD 319). In ***Re Mongolian Mining Corporation (in Provisional Liquidation in the Cayman Islands)*** [2018] HKCFI 2035, Yang also obtained leave for the company to convene a meeting in relation to a proposed scheme of arrangement, which was eventually sanctioned by the Court.

Administrative and public law is another of Yang’s major areas of practice and interest. He has acted both for and against the Government in various cases with significant implications for commercial and/or fundamental rights. Most notably, he appeared for the Secretary for Justice in a judicial review which arose out of the Inquiry on Allegations relating to the Hong Kong Institute of Education, with which Yang was also involved. He has also recently acted for the Director of Immigration, or for the

Secretary of Security, in several judicial reviews concerning immigration and human rights, such as ***Re FAR*** [2017] 2 HKLRD 1166, ***Sarkar v TCAB*** [2019] 4 HKC 484, and ***Shove Sherpa v Director of Immigration*** [2020] 1 HKC 548 (CA).

Yang's considerable experience also covers the other practice areas mentioned above, in particular trust and probate, securities, employment, family law, and professional negligence.

Directory Quotes:

Hew Yang-Wahn of Des Voeux Chambers "acts across a very broad range of commercial, judicial review and, increasingly, family-related cases, being particularly well known for his insolvency-related expertise." He is further noted, in the words of one source, for his "ability to understand a very complex structure and complicated documentation and to provide incisive opinions within a tight time frame."

Chambers & Partners Asia Pacific (2018)

"Hew Yang-Wahn of Des Voeux Chambers has extensive administrative and public law experience but is increasingly focusing his practice on the commercial and company spaces. His recent work included a number of insolvency-related cases, including Akai Holdings (in compulsory liquidation) v Everwin Dynasty and Others. Interviewees describe him as a "good advocate and solid performer" who is "very knowledgeable."

Chambers & Partners Asia Pacific (2017)

"Hew Yang-Wahn of Des Voeux Chambers is characterised as "a well-regarded junior." His focus is on administrative and public law cases, and he is also praised for his accounting know-how, having worked at a major investment bank before joining the Bar."

Chambers & Partners Asia Pacific (2016)

Expertise:

Memberships and Appointments

- Deputy District Judge, District Court (December 2019, January 2020)
- Registered Foreign Lawyer, Singapore International Commercial Court
- Member, Board of Review (Inland Revenue Ordinance)

- Accredited Mediator (HKIAC General Panel)
- Chairman, Appeal Tribunal Panel (Buildings)
- Hong Kong Bar Association's (1) Special Committee on Legal Education (2) Special Committee on Overseas Admissions (3) Working Group on Sport Law and Practice
- Lecturer (Non-Clinical) in the Department of Professional Legal Education, University of Hong Kong
- Tutor for the HKICPA Professional Diploma in Insolvency

Selected Cases

Company & Insolvency

- *Arboit v Koo Siu Ying* (No. 2) [2016] 3 HKLRD 154. Yang (leading [Kaiser Leung](#)) continued to act for the liquidators in the finale to these proceedings where Queeny Au-Yeung J., having earlier found the Defendants guilty of contempt in [2016] HKEC 556, thoroughly reviewed the authorities on and the approach to be adopted by the courts in imposing punishment for civil contempt.
- *Arboit v Koo Siu Ying* [2015] 3 HKLRD 319. Yang (led by Mark Strachan Q.C., S.C.) successfully refuted accusations of abuse of process and oppression that had been levelled against a liquidator who had brought contempt proceedings arising out of orders made under s. 221 of the previous Companies Ordinance (CAP. 32).
- *Re Hang Heung Cake Shop Co Ltd* [2013] HKEC 163. Yang obtained leave for the shareholders of 2 companies to proceed with a statutory derivative action for abuse of confidence, undue influence, and unconscionable conduct against, inter alia, the companies' former solicitors. The Judgment of Le Pichon DHCJ. is instructive as regards locus standi to bring such applications.
- *Max Regent Garments Co Ltd. v Direct Fashion Sourcing Ltd.* [2012] HKEC 1368. The Court refused applications by a creditor for invalidation of various resolutions or the removal of the Liquidators (who were represented by Yang). Barma J.'s judgment is the leading decision on the appropriate form of resolutions for voluntary liquidations, as well as on requirements that have to be met in order for a document or information to be "laid before" a meeting.
- *Akai Holdings Ltd. (in compul liq) v Everwin Dynasty Ltd. & ors.* [2012] 4 HKLRD 248; [2012] 3 HKC 485. Yang (led by Mark Strachan) appeared for James Ting in this case which concerned the correct approach to take where an application to amend pleadings which might prejudice a potential limitation defence. This was the first time the Court of Appeal considered and contrasted the approach espoused by the Hong Kong Court of Appeal in *Extramoney Ltd. v Chan, Lai, Pang & Co.* [1992] 1 HKLR 244), with that subsequently set out by the English Court of Appeal in *Welsh Development Agency v Redpath Dorman Long Ltd.* [1994] 1 WLR 1409.
- *Re Legend International Resorts Ltd.* [2011] HKEC 221. The liquidators of the company applied for security for costs in relation to an application for directions as to the conduct of the liquidation, including their removal. Yang acted on behalf of a creditor and contributory in opposing the said application, which was the first of its kind in Hong Kong.
- *Re Legend International Resorts Ltd.* [2011] HKEC 317. Appeared (led by [Anson Wong S.C.](#)) on

behalf of a creditor and contributory applying for directions as to the conduct of this liquidation, which was subject to a regulating order. An important case on post-regulating order directions, and the only case to consider whether a regulating order can be varied or discharged.

- *Re Wickson Holdings Ltd.* [2011] 2 HKLRD 373. Appeared for a group of shareholders to seek directions regarding the disposal of the company's major assets. The Court had regard to the commercial reality of the situation and granted the desired directions in spite of the application being fiercely contested by a rival camp of shareholders.
- *GDH Ltd. v CreditorCo Ltd.* [2010] HKEC 1238 (CFA), [2010] HKEC 818 (CA), [2008] 5 HKLRD 895 (CFI). Appeared (led by [Chua Guan-Hock S.C.](#)) at all levels of these proceedings, which arose out of a US\$4.9 billion debt restructuring scheme, the main concern being who would receive payment of US\$23 million worth of assets. The leading case on whether and how far good faith applies in relation to debt restructuring agreements, and also an important case on service out of the jurisdiction.

Employment

- *AXA China Region Insurance Co Ltd. v Lin Kwai Ying Katie* [2012] 2 HKLRD 1139. Chung J. granted the Defendant's (represented by Yang) application to strike out a defective Statement of Claim in this employment dispute. The Judgment contains useful observations on pleading the tort of causing loss by unlawful means and examined pressing issues relating to the extent of the Labour Tribunal's jurisdiction.

Administrative/Public Law

- *Shove Sherpa v Director of Immigration* [2020] 1 HKC 548 (CA). Yang appeared for the Director of Immigration in this appeal, where the Court of Appeal confirmed that Article 24(2) of the Basic Law of the HKSAR provided an exhaustive list of the categories of HKSAR permanent residents, who have the right of abode in Hong Kong, and reiterated its approach to determining an appeal.
- *Sarkar v TCAB* [2019] 4 HKC 484. Yang successfully resisted, on behalf of the Director of Immigration, this application for judicial review before Bruno Chan DHCJ. This is the leading Hong Kong case on the relationship between *res judicata*/issue estoppel and legitimate expectation in non-refoulement proceedings, wherein his Lordship agreed with the Director's analysis.
- *Re FAR* [2017] 2 HKLRD 1166. Albert Wong J. rejected the Applicant's application for judicial review of the decisions of the Director of Immigration (represented by Yang) and of the Torture Claims Appeals Board under the Unified Screening System. The judgment is an instructive example of how the Courts approach the question of alleged mental suffering, as well as the concept of extended state acquiescence given the test set out by the Court of Appeal in *AM v Director of Immigration* [2014] 1 HKC 416.
- *Secretary for Justice v Commission of Inquiry on Allegations relating to the Hong Kong Institute of Education* [2009] 4 HKLRD 11, [2009] 3 HKC 102. Appeared (led by Michael Beloff Q.C. and [Johnny Mok S.C.](#)) on behalf of the Secretary of Justice, the former Secretary for

Education and Manpower, and the former Permanent Secretary for Education and Manpower, in this leading case which examined and defined the relationship between academic freedom and the freedom of expression, with a particular emphasis on the rights and responsibilities of senior government officials when dealing with academics.

- Inquiry on Allegations relating to the Hong Kong Institute of Education. Yang was led by [Johnny Mok S.C.](#), Lisa Wong S.C. (now Lisa Wong J.), and Thomas Au (now Au JA) in this high-profile 35-day inquiry which arose out of allegations that the Secretary for Education and Manpower, and the then-Permanent Secretary for Education and Manpower, had interfered with the academic freedom and institutional autonomy of higher education institutions. The report led to subsequent groundbreaking judicial review proceedings in which Yang was also involved.

Scholarships and Awards

- Bar Scholarship (2004)
- Charles Ching Scholarship (2005)
- Middle Temple Society of Hong Kong Scholarship (2004)

Publications, Lectures and Talks

Editorship

Contributing Editor:

- Contributing Editor to Hong Kong Company Law Cases (2008 - 2019) - published in 2020 by DVC in collaboration with Kluwer
- Hong Kong Civil Procedure - (2007 to date)
- Butterworths Hong Kong Contract Law Handbook (4th Edition, 2019)
- Hong Kong Company Law Cases (to be re-issued in 2019)
- (upcoming) The Annotated Ordinances of Hong Kong: Immigration Ordinance (CAP 115, 2020 Re-issue)
- The Annotated Ordinances of Hong Kong: Electronic Transactions Ordinance (CAP 553, 2018 Re-issue)
- Hong Kong Construction Law - (2007 to 2012)
- Does the "good arguable case" test apply in Mareva applications under the new s 21M of the High Court Ordinance? [2009] 17 CJRA (Sweet & Maxwell)
- "A change of direction by the Court in favour of filial piety?" in Des Voeux Chambers' 2018 2nd Edition of A Word of Counsel
- "How do jurisdiction clauses affect winding-up and shareholders' petitions?" in Des Voeux Chambers' 2018 3rd Edition of A Word of Counsel
- "When will severance pay?" in in Des Voeux Chambers' 2019 3rd Edition of A Word of Counsel

Lectures/Talks

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- International Schemes of Arrangement, Interim Relief, and Inspection of Documents (with Tiffany Chan)
 - Shareholders' Rights and Remedies (with Stephanie Wong)
 - The limits of Judicial Review (with Johnny Mok S.C.)
 - Issues arising from Companies winding up proceedings of which former Directors should be aware (with Barrie Barlow S.C. and Mr. Calvin Y.C. Cheuk)
 - Mis-selling and Related Issues: Duties and Obligations of Financial Advisors Explained (with Mark Lin of Lovells and Ian De Witt of Tanner De Witt).

Spoken Language

English, Cantonese, Mandarin