

**Case Summary for:  
A & ORS v. DIRECTOR OF IMMIGRATION<sup>1</sup>**

<b>Court:</b>	Court of First Instance (Hong Kong)
<b>Judges:</b>	Hon A Cheung J
<b>Applicant Counsel):</b> (and	"A", "AS", "F" and "YA" (Mr. Philip Dykes SC and Mr. Hectar Pun, instructed by Barnes & Daly, for the applicants in all four cases)
<b>Respondent Counsel):</b> (and	Director of Immigration ("DOI") (Mr. Anderson Chow SC and Ms. Grace Chow, instructed by the Department of Justice)
<b>Date heard:</b>	5 February 2009
<b>Date promulgated:</b>	3 March 2009
<b>Full text:</b>	<a href="https://v2.hklii.hk/en/cases/hkcfi/2009/2060?hl=%5B2009%5D%203%20HKLRD%2044">https://v2.hklii.hk/en/cases/hkcfi/2009/2060?hl=%5B2009%5D%203%20HKLRD%2044</a>
<b>ABSTRACT:</b> This case concerns successful claims for damages for unlawful detention in the context of a judicial review. The Court considered the assessment of damages for four Applicants' ("A", "AS", "F" and "YA") unlawful detentions following a judgment of the Court of Appeal ("CA") allowing their claims and declaring that their detentions under the authority of DOI and Secretary for Security (" <b>Secretary</b> ") were unlawful (see [2008] 4 HKLRD 752). After considering the general principles on awarding and quantifying for unlawful detention or false imprisonment and the specific circumstances for each of the four Applicants, the Court awarded all four Applicants ordinary damage. Damages payable to "A", "AS", "F" and "YA" are assessed at \$80,000, \$150,000, \$180,000, and \$100,000 respectively.	
<b>Key words:</b>	Tort; false imprisonment; unlawful detention by servant of government; could be awarded ordinary, aggravated and exemplary damages; quantification to be made on global rather than rateable basis; award restricted to ordinary damages only; no aggravated and exemplary damages; fact that detention unconstitutional per se insufficient to trigger exemplary damages; immigration; removal or deportation; unlawful detention pending removal or deportation; damages

The Justice Centre is grateful for the assistance rendered by Morrison & Foerster on this case summary.

<sup>1</sup> [2009] HKCU 311; Also cited as [2009] 3 HKLRD 44, [2009] 3 HKLRD 44, and (2009) 14 HKPLR 327

## SUMMARY:

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### Facts and Procedural History:

The four Applicants “A”, “AS”, “F” and “YA” were torture claimants under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“**CAT**”). They were all detained by the authorities pending verification of their CAT claims pursuant to s.32 of the Immigration Ordinance (Cap.115) (“**IO**”). On 18 July 2008, the CA handed down a judgment declaring that the four Applicants’ detention under s.32 of the IO was unlawful for violation of art. 5(1) of the Hong Kong Bill of Rights (“**BOR**”), though lawful under domestic law. Under the current judgment, the Court is tasked with the assessment of damages for their unlawful detentions.

The facts of each case of the Applicants are summarized below:

#### Case of “A”

“A” is an Algerian. He was detained from 14 June 2006 to 14 September 2006, a period of three months. He had entered Hong Kong as a visitor on 6 November 2003, and then overstayed and gone underground for a lengthy period after the expiration of his permission to stay (during which he applied for recognition of his refugee status but was refused by the United Nations High Commissioner for Refugees (“**UNHCR**”). In February 2006, “A” began to cohabit with a permanent Hong Kong resident and two of them intended to get married. In June 2006 before they were due to marry, “A” was arrested by the police for overstaying and was detained by the DOI under S.26(a) of IO. Whilst in detention under s.32(2A) of IO pending a decision as to whether to make a removal order against him, he made a CAT claim on 16 June 2006, more than two years and seven months after his arrival (which was later refused on 12 September 2007). A removal order was then made under s.32(3A) of IO, and he was detained pending removal. In July 2006, “A” went on a hunger strike and resumed eating after receiving counseling. “A” made requests for release on recognizance and was refused on 6 August 2006. “A” applied for leave to apply for judicial review on 7 September 2006, and he was granted the leave and bail on 13 September 2006. “A” was released from detention on 14 September 2006. “A” then married the woman whom he had planned to marry prior to the arrest and detention.

#### Case of “AS”

“AS” is a Sri Lankan Tamil. He was detained from 14 June 2005 to 29 March 2007, a period of 655 days. He first entered Hong Kong as a visitor on 2 March 2003 but overstayed and went underground after the expiration of his permission to stay on 14 March 2003. In May 2003, he tried to use his cousin’s passport to enter Mainland but was found by the Mainland authority and returned to Hong Kong. He was refused permission to land but admitted to the hospital for medical treatment and absconded during hospitalization. He then travelled back to Sri Lanka and to Hong Kong on a number of occasions. On 25 September 2004, he was

intercepted and subsequently convicted of two counts of immigration offenses. Before serving out the 12-month term of imprisonment imposed, a deportation order was made against him on 23 May 2005. Whilst in detention under s.32(3A) of IO pending removal, he made a CAT claim on 6 June 2005, more than two years and three months after his arrival (which was later refused on 25 May 2007 and a petition against such refusal was also rejected on 3 October 2007). “AS” made requests for release on recognizance and was refused. “AS” made an application for leave to apply for judicial review on 25 January 2007 and was released on recognizance five days before the substantive court hearing on 29 March 2007. “AS” complained about the effect of detention and not seeing daylight and the difficulties of getting evidence to back his claim.

## Case of “F”

“F” is a Sri Lankan Sinhalese. He was detained from 5 July 2005 to 29 March 2007, a period of 634 days. He claimed to have entered Hong Kong on 13 October 2002 and pleaded guilty for breach of his condition of stay by overstaying since 21 October 2002. He was then convicted and sentenced to two months imprisonment. On discharge on 29 May 2005, he was immediately detained pending a decision as to whether to make a removal order against him. A removal order was made on 30 June 2005, and he was detained pending removal under s.32(3A) of IO since then. He made a CAT claim on 5 July 2005, more than two years and nine months after his arrival (which was later refused on 6 March 2006 and a petition against such refusal was also rejected on 4 October 2007). “F” made requests for release on recognizance on 14 September 2005 and was refused on 10 August 2006. “F” went on a hunger strike that lasted for four days in July 2006. “F” made an application for leave to apply for judicial review on 30 January 2007 and was released on recognizance on 29 March 2007 before the substantive court hearing. “F” complained about his conditions of detention and their effect on him.

## Case of “YA”

“YA” is from Togo. He was detained from 25 October 2006 to 29 March 2007, a period of 156 days. He was granted UNHCR initial refugee status in Benin but claimed his documentation was destroyed. He arrived in Hong Kong with no travel documents on 16 October 2006. He was immediately detained, and a removal order was made against him on 1 February 2007, since then he was detained under s.32 of IO. “YA” made a CAT claim on 25 October 2006 (which was refused on 2 June 2008). On 5 December 2006, UNHCR informed the Director that the claim of “YA” for refugee status had been rejected and that it had closed his file. “YA” made requests for release on recognizance and was refused. “YA” filed his application for a writ of habeas corpus on 19 March 2007 and was granted the writ one day later, then he was released by the DOI on recognizance on 29 March 2007. “YA” complained that the detention has made prosecution of his claim more difficult and has impeded contact with his family.

## **Issues:**

The Court considered the assessment of damages for the four Applicants' unlawful detention. Each of the Applicants claimed basic or ordinary damages, aggravated damages and exemplary damages.

## **Judgment:**

For all four Applicants, the Court awarded them ordinary damages, specifically general damages, and refused to award aggravated damages and exemplary damages. The exact amount of ordinary damages awarded for each of the Applicant are set out as below:

- "A": \$80,000 ordinary damages
- "AS": \$150,000 ordinary damages
- "F": \$180,000 ordinary damages
- "YA": \$100,000 ordinary damages

## **Reasons for Judgment:**

### General Principle

The Court first considered the general principles on awarding and quantifying damages for unlawful detention or false imprisonment by a servant of the government (*Paras 42-52*). The Court mainly considered and adopted principles and guidelines from two cases: the English Court of Appeal case of *Thompson v Commissioner of Police of the Metropolis*<sup>2</sup> and the local case of *Pham Van Ngo v Attorney-General*<sup>3</sup>. The general principles from these two cases are summarized below.

#### *(i) Three heads of damages*

There are three recoverable heads of damages: (i) ordinary damages consisting of (a) general damages (which further divided into (1) injury to liberty, *i.e.*, the loss of time, and (2) injury to feelings, *i.e.*, the indignity, mental suffering, disgrace, and humiliation, and damages to shock, reputation, and loss of social status) and (b) special damages, which includes any pecuniary loss incurred which is not too remote, *e.g.*, a loss of general business or employment and the plaintiff's costs incurred in procuring his discharge from the imprisonment; (ii) aggravated damages when there were aggravating features about the case which would result in the victim not receiving sufficient compensation from the ordinary award; and (iii) exemplary damages with the object of punishing and deterring the defendant. Both ordinary damages and aggravated damages were compensatory in nature (though aggravated damages will in fact contain a penal element) while exemplary damages were punitive in nature. Special

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<sup>2</sup> [1998] QB 498.

<sup>3</sup> (unrep., HCA 4895/1990, [1993] HKLY 468)

damages, aggravated damages and exemplary damages must be expressly pleaded. (*Paras 44, 47 and 48*).

The Court took into account different factors when considering which heads of damages to award:

- (a). Ordinary damages are the basic damages that would depend on the circumstance and the degree of harm suffered by the detainee (*Para 44*). For ordinary damages, the court looks at what damage has been done to the plaintiff because of the false imprisonment. For aggravated damages (*Para 47*).
- (b). For aggravated damages, the court takes into account the conduct of the defendant (*Para 47*) and the manner of the false imprisonment (*Para 48*). Aggravated damages can only be awarded where there are aggravating features about the defendant's conduct which justify such award (*Para 44*). The aggravating features could include humiliating circumstances at the time of arrest, high-handed, aggressive, insulting, malicious or oppressive manners of the defendants either in relation to the arrest or imprisonment or in conducting the prosecution, and the way the litigation and trial are conducted (*Paras 45 and 48*). Mitigating factors could also be taken into account, for example, when the defendant had a reasonable and probable cause to do what he did (*Para 48*).
- (c). For exemplary awards the court is to decide whether it is necessary to punish and deter the defendant (*Para 47*). It could be possible where there had been "oppressive, arbitrary or [unconstitutional] action by the servants of the government" and shall be awarded if, but only if, the jury consider that the compensation awarded by way of basic and aggravated damages is in the circumstances an inadequate punishment for the defendants (*Paras 46, 49*). As to the sort of conduct which may justify an award of exemplary damages, different cases have used different descriptions: "arbitrary and outrageous," "deliberately or recklessly or with malice," "wicked and callous," "monstrous" or "deliberate, calculated and wilful" (*Para 49*); The Court maintains discretion to award such damages. The fact that the detentions are unconstitutional itself is insufficient in the absence of the defendant's conduct where it discloses "malice, fraud, cruelty, insolence, or the like" (*Paras 53, 60, 88*). Exemplary damages would only be appropriate when the sum awarded for ordinary and aggravated damages are inadequate to punish the defendant for his outrageous conduct. It requires a fairly high degree of "culpability" in the defendant to merit an award of exemplary damages. After all, it is aimed at punishing him for such conduct as well as deterring him from repeating it (*Para 49*).

## (ii) Quantifying damages (*Paras 50-52*)

With regard to principles on quantifying damages, the Court cited the rejection of "going rate" approach in the local case of *Pham Van Ngo v Attorney-General* and further discussed and applied the principle in *R v Governor of Brockhill Prison, ex p Evans (No 2)*<sup>4</sup>. The Court agreed

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<sup>4</sup> [1999] QB 1043 (CA), [2001] 2 AC 19 (HL)

that a global approach should be adopted and rejected the approach based on daily rates, proportions, and straight-line computations, as the pro rata rates are on a progressively sliding scale (also *Para 111*). The Court further emphasized that the figures suggested or actually awarded in the English cases were not directly applicable and the Court would look at the local awards. Further, since no two cases were the same, even local awards should not be used as if they “*contained figures set by statutes*” or “*act as any straitjacket*”. The local awards should be used to provide the Court with a general “feel” of the appropriate amount or act as a cross-check against any significant departure, one way or the other, from the previous awards, or, where it can be observed, the prevailing trend of awards (*Para 53*). The court also stated that general levels of awards made in personal injury cases may also be looked at to serve as a very rough and general cross-check and therefore considered, very generally and roughly, the levels of awards for personal injury cases, particularly the awards for pain, suffering, and loss of amenities (*Para 110*).

## Summary of position in the present case

Each of the Applicants claimed basic or ordinary damages, aggravated damages, and exemplary damages. The Court considered the positions of the four Applicants’ cases and awarded them ordinary damages, specifically general damages, and rejected awarding aggravated or exemplary damaged.

### *(i) Ordinary damage*

The Applicants did not claim any pecuniary or special damages under the ordinary damage head but just non-pecuniary damages for (i) loss of liberty and (ii) damage to reputation, humiliation, shock, injury to feelings and so on.

For the first element, i.e., loss of liberty, as to the general damages, the Court differentiated the current case with *Pham Van Ngo v Attorney-General*<sup>5</sup>, where *Pham Van Ngo* was only a case of a technical breach as the detainees in question could have been lawfully detained. The Court held that in the present case there was no alternative lawful procedure available to the Director or the Secretary to detain the four Applicants (*Para 53*). The Court also took into account the following considerations: each Applicant’s “*loss of liberty*”, the “*victim’s quality of life or liberty, during the period of unlawful detention*”, and the “*damage to reputation, humiliation, shock, injury to feelings and so on*”. The Court stressed that for the Applicants, even if they had been released on recognizance as CAT claimants, they would still have been “*persons without any legal right to stay and live permanently, or even indefinitely in Hong Kong*” and the government was free to remove them to place where no apprehended torture would take place, albeit the fact that they would stay and live as free persons in Hong Kong (*Para 53*).

For the second element, i.e., injury to feelings, the Court pointed out that this element was affected in the case of “AS” and “F”, as both of their detentions followed “*immediately after their release from imprisonment*”. Particularly for “AS”, the second element was “*absent or*

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<sup>5</sup> (unrep., HCA 4895/1990, [1993] HKLY 468)

*almost absent*” given he has been in lawful custody for a lengthy period (12 months imprisonment), and for “F”, since his lawful detention (two months imprisonment) was relatively shorter, the influence is “*of reduced significance*”. The Court emphasized that the second element, to a substantial extent, was “*subjective and dependent on individuals their particular circumstances*”. The Court set forth some relevant considerations: what the victim’s quality or conditions of life had been prior to detention, what his expectation had been, how he perceived, his detention (including its lawfulness or otherwise), and how his condition of detention, as subjectively experienced by him, compared with life outside if he had not been wrongfully detained and compared with life before detention (*Para 53*).

## *(ii) Aggravated damages*

For aggravated damages, the Court considered the manner of the false imprisonment and the conduct of the wrongdoer (i.e., conduct pertaining to the government). The Court stressed that aggravated damages were “*essentially compensatory in nature, but nonetheless contains also a penal element so far as the wrongdoer party is concerned*” (*Para 53*).

The Court held that the fact that the four Applicants were “*CAT claimants expecting protection and fair procedure for determining their claims*” is a valid argument for aggravated damages. However, “A”, “AS” and “F” did not have “*good grounds for complaint, on the merits of their respective cases*”. “A” had been convicted of offenses and served a substantial period of imprisonment. “AS” and “F” had both gone underground and overstayed for a lengthy period of time. “YA” was a more marginal case as he was detained since his arrival and made his CAT claim shortly after. But the Court held that the fact that his identity had not been verified upon arrival in Hong Kong would go some way towards justifying the Director detaining him (*Para 78*).

The Court held that the “*absence of apology*” for the wrongful detention was a factor to be considered, but itself was not a sufficient ground for the award of aggravated damages (*Para 79*).

## *(iii) Exemplary damages*

As regards exemplary damages, the Court held that Hong Kong law has always followed the landmark decision of *Rookes v Barnard*<sup>6</sup>. The Court would normally look for “*outrageous conduct, disclosing malice, fraud, insolence, cruelty, and the like, to justify an award for exemplary damages*”. In other Commonwealth jurisdictions such as New Zealand that does not follow *Rookes v Barnard*, the Privy Council has held in a much more liberal approach that, in exceptional and rare cases, “*inadvertently negligent conduct which [was] so outrageous as to call for condemnation and punishment [might] be sufficient to justify an award of exemplary damages*”. This liberal approach has limited value in Hong Kong, but for its emphasis on the rationale of awarding exemplary conduct: Court’s disapproval of or the punishment of the

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<sup>6</sup> [1964] AC 1129

defendant for his outrageous conduct (*Para 53*). The Court specifically rejected this argument in favor of exemplary damages and held it was not Hong Kong law (*Para 96*).

The Court held that same as the analysis for aggravated damages, the detention in the case of “A”, “AS” and “F” were not oppressive and were understandable considering their own conduct, albeit wrong. For “YA”, the Court hesitated to call it oppressive as unjustifiable detention under general public law did not necessarily equal oppressive detention (*Para 87*). The fact that the detentions were unconstitutional is insufficient *per se* to trigger an actual award for exemplary damages (*Para 88*). The lack of punished and accessible policy on detention was not itself a willful disregard of the Director or Secretary to the Court of Final Appeal’s decision<sup>7</sup> that Government had a duty to put in place fair and proper procedures to screen the claims of torture claimants (*Para 89*). Finally, the loss of “A” resulting from his marriage plan being affected by his detention should be covered by the award for ordinary damages (*Para 90*).

(iv) *Six factors*

Apart from the above, the Court also consider six other factors:

- i. **The Applicants’ Own Conduct:** The Applicants’ own conduct in causing or substantially contributing to their detention. The Court held that this factor could be relevant to the “injury to feeling” element in the award for ordinary damages as well as aggravated damages and exemplary damages, because “[t]he more “meritorious” ...the detention, the less grievance the victim may have felt towards his unlawful detention” (*Paras 65, 66*).
- ii. **Defendant’s Perception:** The Director or Secretary claimed to have reasonable and probable cause to detain the applicants and acted *bona fide*. On this point, the Court accepted these matters are relevant to a consideration of aggravated damages and exemplary damages, but rejected it has any relevance to the quantification of the ordinary damages due to the wronged applicants (other than being mirror images of the first factor discussed above) (*Para 70*). It is the subjective perception of the applicant which really matters.
- iii. **Being Detained before Unlawful Detention:** All four Applicants had already been held in detention prior to the commencement of the periods of unlawful detention. The Court agreed that the second element of injury to feelings and the like would be seriously affected in “AS” case and also affected the case of “F”, but to a much less extent (*Para 71*).
- iv. **Previous Living Conditions of Applicants:** The Court agreed that the “*personal circumstances of the [A]pplicants must be taken into account*” for assessing the second element of the award for ordinary damages, but the relevance was limited (*Para 72*).

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<sup>7</sup> *Secretary for Security v Sakthevel Prabakar* (2004) 7 HKCFAR 187



- v. **No Right to Work:** The Court held that the Applicants had “*no legal rights to work in Hong Kong*” was relevant to the first element comprising the award for ordinary damages but only of “*negligible weight*” (Para 73).
- vi. **Detention Conditions:** When the applicants were detained, they were allowed to make telephone calls, had access to newspapers and other reading materials, and were provided with adequate medical treatment where required (Para 74). The Court agreed all were relevant but also took into account the relevant fact that the Applicants’ life in prison “*lacked the structure and direction of the regime that governs convicted prisoners that required them to work and allows them access to vocational and educational opportunities to make them better adjusted to return to civil society. This fact assumes significance when the detention becomes prolonged*” (Para 75).

## Assessment of damages for the Applicants

For all four Applicants, the Court awarded them ordinary damages, specifically general damages, and refused to award aggravated damages and exemplary damages. Damages payable to “A”, “AS”, “F” and “YA” are assessed at \$80,000, \$150,000, \$180,000, and \$100,000 respectively. Except for the matters discussed above, the Court also took into account the personal circumstances of each Applicants, including the following considerations:

- **The award for “A”:** the Court took into account, inter alia, the “*detention’s effect on his intending marriage*”, that he went on “*hunger strike whilst being detained*” and also “*suffered from some depression during imprisonment*” (Para 92).
- **The award for “AS”:** the Court took into account, inter alia, that the “*wrongful detention was preceded by a substantial period of imprisonment for conviction of offenses*”, and that the second element for awarding ordinary damages was “*very minor if not negligible*” given that “*so far as the individual “merit” of his case was concerned, it was very poor and there were more than sufficient reasons to detain him*” (Para 98).
- **The award for “F”:** the Court took into account, inter alia, his hunger strike, the period of detention was lengthy, the period of wrongful detention was preceded by a period of lawful imprisonment, albeit the sentence was short, so that the second element of ordinary damages had a reduced, albeit some, effect. Although F complained about the conditions of detention, the Court is of the view that “*appropriate [medical] treatments had been rendered to him*” and “*his general health condition had been satisfactory during the detention*” (Paras 101, 102).
- **The award for “YA”:** the Court took into account, inter alia, that he went on hunger strike whilst in detention and “*the alleged difficulties of communicating with his family back home*” (Para 105). Although “YA” might be a marginal case for the award of aggravated damages, the award for basic damages was sufficient to cover his loss, therefore aggravated damages were not awarded (Para 107).

## Other Considerations:

The Court, with the help of the counsels, has considered relevant Hong Kong cases on false imprisonment and malicious prosecution (please see the Appendix) and offered useful guidance (*paras 54-62*). Particularly, the Court considered the relationship between the length of unlawful detention and the amount of the damages awarded. The Court observed that the award could be relatively substantial for a very short period of false imprisonment (damages of \$10,000 for 12 hours in the case *馬桂珍訴香港警務處長曾蔭培*<sup>8</sup>) and would progressively reduce the scale very steeply for any further period. The Court further emphasized that for this reason, it would not be appropriate to compare the award in a case with a very short unlawful detention with a case with a detention period that goes to many months or years (*Paras 57, 58*).

Unlike a personal injury claim, no pre-assessment interest is in question. Post-assessment interests will of course follow the judgment rate (*Paras 113, 114*).

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## Legal Provisions considered:

1. Basic Law of the Hong Kong Special Administrative Region arts.39, 48(13)  
<https://www.basiclaw.gov.hk/en/basiclaw/index.html>
2. Fatal Accidents Ordinance (Cap.22) s.4(3)  
<https://www.elegislation.gov.hk/hk/cap22>
3. Hong Kong Bill of Rights Ordinance (Cap.383) s.8 art.5(1)  
<https://www.elegislation.gov.hk/hk/cap383>
4. IO ss.26(a), 32, 32(2A), 32(3A)  
<https://www.elegislation.gov.hk/hk/cap115>

## Key Cases cited:

1. *Holden v Chief Constable of Lancashire* [1987] QB 380 (For exemplary damages, it is doubtful whether the conduct which is mere “unconstitutional” is in itself insufficient to bring the case within exemplary damages. The Court will normally look for outrageous conduct, disclosing malice, fraud, insolence, cruelty, and the like, to justify an award for exemplary damages)  
<https://uk.westlaw.com/Document/IC2B12E20E42711DA8FC2A0F0355337E9/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad62aef000001845fce72d3335a0661%3Fppcid%3D7b4f667b4616476b8a2d8f602fe9c406%26Nav%3>

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<sup>8</sup> unrep., HCA 3983/2001, [2003] CHKEC 443)

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2. *Lee Ting Lam v Leung Shu Wing* [1980] HKLR 657 (figures of damages suggested or actually awarded in the English cases are not directly applicable or translatable in Hong Kong)  
<https://advance.lexis.com/document/onecase/?pdmfid=1518314&crId=096a3d52-fc66-4d8a-8a01-e5666d04aeec&pddocfullpath=%2Fshared%2Fdocument%2Fcases-hk%2Furn%3AcontentItem%3A5PSW-DBF1-FGRY-B28B-00000-00&pdcontentcomponentid=305743&pdteaserkey=cr2&pditab=allpods&ecomp=zz9qk&earg=cr2&prid=f8364133-e127-4e1c-92da-c7ffb58904d7>
3. *Pham Van Ngo v Attorney-General* (unrep., HCA 4895/1990, [1993] HKLY 468) (relevant principles on general principles on awarding and quantifying damages for unlawful detention or false imprisonment by a servant of the government)  
<http://www.hklii.hk/eng/hk/cases/hkcfi/1992/212.html>
4. *R v Governor of Brockhill Prison, ex p Evans (No 2)* [1999] QB 1043 (CA), [2001] 2 AC 19 (HL) (If the unlawful detention is after a lengthy period of lawful detention, the damages to reputation, humiliation, shock, injury to feelings and so on would be absent or almost absent; global approach to quantify damages)
5. *Rookes v Barnard* [1964] AC 1129 (landmark decision as regards exemplary damages)  
<http://www.bailii.org/uk/cases/UKHL/1964/1.html>
6. *Secretary for Security v Sakthivel Prabakar* (2004) 7 HKCFAR 187 (the Government had a duty to put in place fair and proper procedures to screen the claims of torture claimants.)  
<http://www.hklii.hk/eng/hk/cases/hkcfa/2004/43.html>
7. *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 (guidelines on general principles on awarding and quantifying damages for unlawful detention or false imprisonment by a servant of the government)  
<http://www.bailii.org/ew/cases/EWCA/Civ/1997/3083.html>

## Appendix

Case	Date	Facts	Length of unlawful detention	General damages	Aggravated damages	Exemplary damages	Judge's comments in the current case
<i>Faridha Sulistyoningsih v Mak Oi Ling</i> <sup>9</sup>	4/4/07	Physical abuse (hitting, pinching, scratching and assault with objects) and false imprisonment of Indonesian domestic helper who had just arrived in Hong Kong. She slept on the kitchen floor, was not allowed to go out and worked very long hours.	Around 4 months	\$60,000 (false imprisonment including aggravated damages)		nil	The Court was of the view that the facts in this case were appalling.
<i>Godagan Deniyalage Prema C v Cheung Kwan Fong</i> <sup>10</sup>	20/12/04	Plaintiff was a domestic helper falsely accused of theft of a pair of shoes. Conviction was overturned on appeal.	19 days in prison and almost a year before acquitted	\$200,000 (malicious prosecution)  The Judge in the <i>Godagan</i> case acknowledged that there were no relevant	nil	nil	The Court was of the view that this case had to be read with care as the award was not primarily for false imprisonment (which lasted 19 days) but for malicious prosecution

<sup>9</sup> (unrep., DCPI 1575/2005, [2007] HKLRD (Yrbk) 418, [2007] HKEC 653)

<sup>10</sup> (unrep., DCCJ 2488/2003, [2004] HKEC 1551)

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Case	Date	Facts	Length of unlawful detention	General damages	Aggravated damages	Exemplary damages	Judge's comments in the current case
				comparable in Hong Kong and referred to the benchmark figures in <i>Thompson v Commissioner of Police of the Metropolis</i> .			(which lasted almost a year).
馬桂珍訴香港警務處長曾蔭培 <sup>11</sup>	13/6/03	Plaintiff was arrested without proper basis and unlawfully detained.	12 hours	\$50,000 (in terms of her loss of dignity and injury to her feelings)  The Judge for the 馬桂珍 case considered the award made by the CA in 霍兆榮訴廉政公署, which concerned the wrongful handcuffing and photographing of	\$30,000 (for the absence of any apology, the way the police had maintained, quite without justification, the lawfulness of the wrongful arrest of the plaintiff in the proceedings)	nil	The Court was of the view that the awards made by the Judge were justified on the peculiar facts of that case. The Court further stated that it, perhaps, provided an illustration that for a very short period of false imprisonment, the award could be, relatively speaking, substantial, whilst for any further period of unlawful detention, the progressively reducing

<sup>11</sup> unrep., HCA 3983/2001, [2003] CHKEC 443

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Case	Date	Facts	Length of unlawful detention	General damages	Aggravated damages	Exemplary damages	Judge's comments in the current case
				the plaintiff by the ICAC, where the CA awarded damages of \$10,000 for loss of dignity			scale should be very steep.

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Case	Date	Facts	Length of unlawful detention	General damages	Aggravated damages	Exemplary damages	Judge's comments in the current case
<i>Pham Van Ngo v Attorney-General</i> <sup>12</sup>	30/7/93	Vietnamese refugees were detained at the detention centre pending the screening of their refugee claims. Of the 7 sample plaintiffs, 5 were adults and 2 were young children.	About 18 months  However, it was also held that there were alternative provisions whereby the Government could have detained them lawfully	\$30,000 \$30,000 \$50,000 \$50,000 \$15,000 \$100  The Judge in the <i>Pham</i> case was dealing only with the second element of the award for ordinary damages, <i>i.e.</i> , the injury to feelings	nil	nil	The Court did not find that the awards made in this case to be on the low side. The Court emphasized again that it was not appropriate to simply compare the award in a case of a very short period of false imprisonment with a case of period of false imprisonment that was much longer, due to the reason of progressively reducing scale. The Court was of the view that, the longer the period of detention, the less significant the second element ( <i>i.e.</i> , the injury to feelings) for the award would be after the initial period and the sole and major factor would be the first element, <i>i.e.</i> , the injury to liberty.

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Case	Date	Facts	Length of unlawful detention	General damages	Aggravated damages	Exemplary damages	Judge's comments in the current case
<i>William Crawley v Attorney-General</i> <sup>13</sup>	13/11/86	Arrested pursuant to a bench warrant and detained at a waiting cell at the police station for 20 minutes before taking him to the Magistrate, handcuffed, without justification for doing so.	2.5 hours	\$4,500	nil	nil	The period of unlawful detention was very short in this case. The Court was of the view that it should be understood in the same light as the Court's reasoning of <i>Pham</i> .

<sup>12</sup> (unrep., HCA 4895/1990, [1993] HKLY 468)

<sup>13</sup> [1987] HKLR 379



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Case	Date	Facts	Length of unlawful detention	General damages	Aggravated damages	Exemplary damages	Judge's comments in the current case
<i>Yoo Soon Nam v Attorney-General</i> <sup>14</sup>	6/8/76	The plaintiff claimed that she was wrongfully detained by immigration officers on suspicion that she entered HK illegally. The Court held that her detention was lawful but had there been unlawful detention it would have been both unconstitutional and oppressive to justify exemplary damages. Yet having regard to the fact that the plaintiff could have been detained up to 7 days and the officers believed they were acting lawfully, there could be mitigation in damages.	Just under 56 hours	\$40,000 (would have been awarded inclusive of exemplary damages)  This award of damages was contained in the obiter of the judgment and was calculated under the presumption that the liability had already been established			The Court was of the view that this was a case of technical breach, and the awards would be on the high side, even for a very short period of false imprisonment. The Court went on and said that this award was " <i>quite out of line</i> " with the figures of other cases summarized in this table. The Court was not convinced that the exemplary damages should be awarded at all, given that there was not any conduct, " <i>which was outrageous or deserving of punishment</i> ", albeit it being "unconstitutional".

<sup>14</sup> [1976] HKLR 702

Case	Date	Facts	Length of unlawful detention	General damages	Aggravated damages	Exemplary damages	Judge's comments in the current case
<i>Chong Yee Shuen v Attorney-General</i> <sup>15</sup>	23/9/74	Plaintiff was ordered to be removed and detained pending his removal. He was later released on recognizance. The removal and detention order was admitted to be of no effect being signed by the Deputy Colonial Secretary instead of by the Governor or the Colonial Secretary.	3 days	\$3,000	nil	nil	The Court was of the view that award of \$3,000 for three days false imprisonment seemed understandable enough. The Court preferred the judgment of <i>Chong Yee Shuen</i> over <i>Yoo Soon Nam</i> , given the proximity in time of these two cases.
<i>Chow Hau Yung v Pang Chun Ying</i> <sup>16</sup>	5/2/70	The plaintiff was suspected of having taken part in a fight and was arrested without evidence and detained at the police station where he was assaulted and threatened by the police officers during interrogation.	5 hours	\$7,000	nil	nil	The Court considered that the case <i>Chow Hau Yung</i> and <i>Chong Yee Shuen</i> confirmed the general level of award, and <i>Yoo Soon Nam</i> was very much on the high side.

<sup>15</sup> [2001] 3 HKC 745

<sup>16</sup> [1946–1972] HKC 322

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Case	Date	Facts	Length of unlawful detention	General damages	Aggravated damages	Exemplary damages	Judge's comments in the current case
		He was later released without charge.					