

A. Background

According to the Oxford English Dictionary, “harass” in modern times means “to trouble, worry, or distress (a person, a person's mind, etc.)” or “to subject (a person or group) to unwarranted (and now esp. unlawful) speech or behaviour causing annoyance, alarm, distress, or intimidation, usually persistently over a while; ...Also more generally: to annoy, pester.” With such a broad definition, many conduct may amount to harassment. One of them is stalking, which the government specifically referred the matter to the Law Reform Commission of Hong Kong. Twenty-four years ago, the Commission published a report on Stalking (“**Stalking Report**”). Although the Stalking Report focused on criminalising stalking behaviours, it also revealed the inadequacy of civil law back then, urging for statutory intervention to protect the victims of harassment.¹ However, no progress has been made on civil law so far.

This essay argues that HK’s common law tort of harassment should be reformed by statutory intervention. The essay will begin with an introduction to the tort of harassment. Then, deficiencies of the tort in its current formulation will be discussed. By drawing on statutes from overseas jurisdictions, recommendations will be made regarding the codification of the tort in HK.

B. Introduction

1. Existence of the Tort of Harassment in common law in HK

There is much controversy with the existence of this tort in HK. Arguably, this question has only been settled in a recent case of the Court of Appeal (“CA”) in *Sir Elly Kadoorie & Sons Ltd v Samantha Jane Bradley*² (“**CA Judgment**”). It is the first time that a HK appellate court has ever confirmed its existence.

¹ Recommendations 9-11.

² [2024] 4 HKLRD 428

It should be noted that CA did not explicitly recognise the tort but merely stated that the issue is not in dispute (§24). The decision was also made in the context of an appeal against a striking out order, in which CA needed not come to a definite answer at the interlocutory stage so long as the claim disclosed *reasonable* cause of action. Yet, CA impliedly recognised the tort. Particularly CA:-

- (1) Opined that the Defendant’s conduct in that case “could give rise to a claim or claims in the tort of harassment” (§24);
- (2) After considering the development of case law in HK, cited with approval the analysis in *Lau Tat Wai v Yip Lai Kuen Joey*³, which recognised the tort in HK for the first time (§§26-28); and
- (3) Summarised the elements of the tort after reviewing past and overseas authorities (§32);

Together with the trend of judicial decisions in the recent decade recognising the tort (§29), there is a strong indication that the tort of harassment does exist in HK.

2. Elements of the Tort

According to CA Judgment at §32, victims of harassment have to show the following to pursue the tort claim (“**CA Formulation**”):-

- “(1) the harasser, directly or through third parties, has, by a course of sufficiently repetitive, unreasonable and oppressive conduct, caused, and which he ought reasonably to know would cause, worry, alarm, emotional distress or annoyance to the victim;
- (2) the conduct complained of must, objectively, amount to harassment (in the ordinary sense of that word);

³ [2013] 2 HKLRD 1197

(3) the harasser either intends to cause harm or injury to the victim by his harassing conduct, or is reckless as to whether the victim would suffer harm or injury as a result of the harassing conduct; and

(4) to complete the tort, the victim must have suffered actual damage caused by the harassment. For this purpose, physical harm, including anxiety, distress, (*a fortiori*) recognised psychiatric illness, and financial loss would suffice.”

CA also adopted the definition of “harassment” in *Hayes v Willoughby*⁴: “persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.”

3. Purpose of the Tort

Since we will consider whether it is necessary and, if so, how to reform the tort, it is beneficial to examine its purpose.

We shall begin with *Malcomson v Mehta*⁵, a Singapore case in which Anthony Chan J in *Lau Tat Wai* drew support to recognise the tort of harassment in HK. At §§50-51, Lee JC noted that the common law in Singapore should develop the tort of harassment as there are three “great changes in lifestyle” brought by improvements in technology:-

(1) Urbanisation makes people to live closer together;

(2) People have more leisure time such that they “can afford the time and money to indulge in fantasies about other people”; and

⁴ [2013] 1 WLR 935 at §1

⁵ [2001] 4 SLR 454

- (3) Due to technological advancement, communication is not limited by geographical locations but can be done in cyberspace at anytime from anywhere.

Anthony Chan J had the same observations for HK: see §60. He also noted that some existing causes of action, such as the tort of intimidation, private nuisance or trespass to goods, were not appropriate for dealing with cases of harassment: see §§43-55. He held that there was no “reason why there should not be a tort of harassment to protect the people of Hong Kong who live in a small place and in a world where technological advances occur in leaps and bounds. It means that, eg, intrusion on privacy is difficult to prevent and it is hard for the victim to escape the harassment.”: §59. This analysis was followed by four subsequent judgments written by three judges and cited with approval by CA: see CA Judgment at §26.

Thus, the tort intends to fill the gap in common law and protect people’s private lives against unreasonable and oppressive conduct, such as stalking.

C. Current Problems

1. CA Formulation

There are three problems in the CA Formulation: (a) uncertainty, (b) undesirable repetition requirement and (c) the absence of exceptions.

(a) Uncertainty

As demonstrated by the facts of the CA Judgement, the meaning of “damage” for this tort is still evolving. The Plaintiff, a corporate body, on behalf of its former officers, employees and agents, commenced an action for the tort of harassment against Defendant, the Plaintiff’s former employee who harassed the representees. Noting there are conflicting lower courts’ and Court of Appeal’s decisions (§§60-

61), CA held that it was reasonably arguable that a corporate entity can sue for tort of harassment.⁶

Although the appeal concerns the issue of *locus*, it has a much broader implication on what can qualify as “damage” for this tort. CA left some questions unanswered, creating uncertainty regarding the “damage” requirement. For example:-

- Is “financial loss” itself sufficient? Or, is “worry, emotional distress or annoyance” that can only be suffered by natural persons necessary? (at §§62(1), 63(1) &67(1))
- How should the tort sit with or be shaped by other common law rules, e.g., the employer’s common law duty to provide a safe working environment for employees? (at §§62(2) &63(4))

(b) Undesirable repetition requirement

The word “repetitive” in the CA Formulation denotes that the harassment acts must be done at least twice: there is a repetition only if something is done *again*. A single act, in any event, will not be caught.

Problems arise when there is a *single yet continuous* harassing act. In that scenario, to catch the harasser under the tort of harassment in CA Formulation, the court may artificially break the continuous harassing act into at least two occasions. This approach was criticised by the Singapore Court of Appeal in Lee Shing Chan v PP⁷ at §23, where an English case Wass v DPP⁸ was cited as an illustration. In Wass, the UK court separated the harasser’s continuous act of following the victim throughout a day into following her (1) before she entered and (2) after she left, a shop: see §7. As noted by Tay J, the distinction is “unreal and do not accord with common sense... Such artificiality in approach should be avoided

⁶ CA Judgment at §68

⁷ [2020] 4 SLR 1174

⁸ 11 May 2000, (QB) (England and Wales)

altogether.” Although the case was about the statutory wording of the UK’s Protection from Harassment Act 1997 (“**UK Act**”), it also revealed the limitation of CA Formulation, which equally requires harassing acts to be done twice at least. Alternatively, if the court does not adopt the *Wass* approach, there may be a lacuna in law. A harasser engaging in a single yet uninterrupted act can escape from liability.

Furthermore, the above issue is exacerbated by technological advancement. For example:-

- (1) the harasser places a camera that continuously transmits live videos of the victim in the victim’s apartment, and the harasser watches the videos continually over several days;⁹
- (2) the harasser places offensive material about the victim online and keeps it there for a period of time.¹⁰

Example (2) can be considered in light of the nature of the Internet. Once information is revealed online, even if the original point of revelation is subsequently removed, that information will almost certainly forever remain publicly available: see *SJ v Chan Kin Chung*¹¹ at §51. One-off harassing acts that have long-lasting effects are more likely on the Internet. Although this kind of harassment has already been criminalised by the Personal Data (Privacy) Ordinance (Cap.486) (“**PDPO**”) s.64, the victims have no civil remedy. Due to the much higher standard of proof in criminal law, victims may not be sufficiently protected.

⁹ Illustration in Singapore Protection from Harassment Act (“**Singapore Act**”), s.7(10)

¹⁰ Example in New Zealand Harassment Act 1997 (“**NZ Act**”), s.3(4)

¹¹ [2021] 1 HKLRD 563

(c) Absence of Exceptions

Even if the CA Judgment may be helpful to identify the elements of the tort, it does not include exceptions. This brings us to the question of under what circumstances one can escape from liability of the tort if he/she commits the harassing acts for a *good* cause.

Such an issue has been discussed in the Stalking Report, Chapter 7. In proposing the new criminal offences, it was suggested exceptions should be provided to prevent jeopardising the pursuits of legitimate activities. For example:-

- (1) Lawful authorities and crime prevention or detection;¹² or
- (2) A pursuit that is reasonable in the circumstances, recognising that members of the press, political canvassers, insurance company investigators, private investigators, etc., may cause harassment which is legitimate if undertaken reasonably;¹³ or
- (3) Activities protected by Basic Law, such as those relating to free speech, press freedom and the right of peaceful assembly.¹⁴

The absence of recognised exceptions in CA Formulation may deter others from doing legitimate conducts.

2. Inadequate civil remedies

As noted in CA Judgment at §33, the usual remedy for most cases of harassment is an injunction. However, it is difficult for the victims to enforce it in case of breach.

¹² §7.1

¹³ §7.3

¹⁴ §§7.62-7.64

(a) Committal Proceedings

Since the breaching of an injunction is not a criminal offence, police have no power to arrest the contemnor.¹⁵ In case of a breach, the victim must take action on his/her own or through lawyers, such as applying for a committal order from the court, serving documents to the harasser, etc. The process is long¹⁶ and costly, placing a huge burden on the victims – not only do they have to deal with the court procedures but also withstand the psychological harm brought by harassment.

(b) Consequence for Breaching the Injunctions

Further, in commenting that civil law was inadequate to tackle the problem of stalking, at §6.5(h) of the Stalking Report, it was considered that there was a need to imprison stalkers in serious cases. Imprisonment can prevent harassers from inflicting further harm on the victims and gives victims time to change addresses, seek help, and prepare for the stalkers' release. Since there is no criminal law on stalking in HK, at present, the victim can only resort to civil law committal proceedings. Yet, there is no guarantee that the harassers will be imprisoned. The sentencing principle for civil contempt of court has been summarised in SJ v Cheng Lai King.¹⁷ Although it was held that the primary penalty for breaching an injunction was imprisonment to be measured in months, it was also pointed out that a custodian sentence should be the last resort. Furthermore, Coleman J opined that "custodial term should be as short as possible and consistent with the circumstances of the case." (§68(1)). Even if imprisonment is ordered, suspended sentences are not uncommon: e.g., Cheng Lai King, SJ v Chan Oi Yau Rito¹⁸, and SJ v Yiu Ka Yu.¹⁹

¹⁵ Stalking Report at §4.40

¹⁶ Particularly given that there is a leave stage: see RHC, O.62 rr.2-3

¹⁷ [2020] 5 HKLRD 356 at §65

¹⁸ [2020] 3 HKLRD 494

¹⁹ [2021] 1 HKLRD 607

3. Lack of Common Law Counterparts

The above problems are worsened by the fact that HK cannot seek assistance from overseas jurisdictions but has to develop the common law by itself, which is a slow process.

CA at §64 noted that authorities from the UK and Singapore offered little assistance to HK courts in developing the common law tort of harassment due to their respective statutory enactments. New Zealand has also enacted the NZ Act to regulate similar issues. These codifications have stifled the development of the tort in common law.

Although some other common law jurisdictions have not yet codified the tort, such as Australia and Canada, they are still struggling to recognise the tort in common law: see *Sheridan v Australian Pacific Airports (Melbourne) Pty Ltd*²⁰ at §§93-94 for Australia and *Sandher Fruit Packers Ltd. v MacAskill*²¹ at §§20-24 for Canada.

HK is now in an awkward situation – a step ahead of Australia and Canada but cannot refer to the UK, Singapore or New Zealand for assistance. Relying on HK courts to develop the common law will likely take a long time and result in piecemeal development. There is a need for statutory intervention.

D. Overseas Experience

Before making recommendations for HK, it is beneficial to review the statutes in other jurisdictions.

²⁰ [2021] VSC 440

²¹ 2024 BCSC 1855: note while Alberta's and Ontario's courts have recognised the torts and internet harassment, respectively, their decisions have not been confirmed by the appellate courts.

1. The UK

Elements of the tort

Since the statutory tort is based on the criminal offence of s.1 UK Act,²² it is necessary to look at that penal provision.

The UK Act does not define harassment. According to s.1(1), a person must not pursue a course of conduct that amounts to harassment of another and which he knows or ought to know amounts to harassment of the other. The “ought to know” requirement is satisfied if a reasonable person in possession of the same information would think the same.²³ Further, s.1(1A) prohibits harassment of two or more persons to persuade a third party to do or not to do something. As defined in s.7(3), “a course of conduct” means conduct on at least two occasions in relation to a person.

Section 1(3) provides three defences. A person will not be convicted and thus not liable for the tort if the course of conduct was (a) pursued for preventing or detecting crime; (b) pursued under lawful authority; or (c) reasonable in the particular circumstances.

Remedies

Civil remedies provided in the UK Act include:-

- (1) Damages for anxiety and financial loss;²⁴
- (2) Injunctions restraining the harasser from harassing the victim;²⁵
- (3) Allowing the victim to apply for a warrant arresting the harasser in case of a breach of the injunction,²⁶ and such a breach is a criminal offence.²⁷

²² s.3(1)

²³ s.1(2)

²⁴ s.3(2); note however a breach of s.1(1A) does not give the victim civil remedy in damages.

²⁵ s.3(3)

²⁶ *ibid*

²⁷ s.3(6)

2. Singapore

Elements of the tort

Like the UK Act, the statutory tort in Singapore is based on a criminal offence, s.7 of the Singapore Act. Thus, we shall begin with s.7.

Although the Singapore Act has no statutory definition for harassment, s.7(2) defines stalking. An individual is said to unlawfully stalk another if he/she engages in the course of conduct, which involves acts or omissions associated with stalking and causes harassment, alarm or distress to the victim. The individual must intend or have actual or constructive knowledge that the conduct is likely to cause such harm to the victim. Subsection (3) provides some examples of stalking, including following the victim or a related person, keeping the victim or a related person under surveillance, etc. Similar to UK Act s.1(3), defences are provided for the accused.²⁸

A significant difference between Singapore and UK legislation is that the former expands the definition of “a course of conduct” to include conduct done on one occasion but is protracted, i.e. has a long-lasting effect.²⁹

Remedies

Apart from damages,³⁰ the Singapore Act provides a list of orders that the court may grant to protect the victims. These include:-

- (1) ss.12(2) & 12(2B)(a): Prohibiting the harassers from doing any harassing act specified in the order;
- (2) In cases involving offending communication³¹:-

²⁸ s.7(10)

²⁹ illustration in s.7(10)

³⁰ s.11(2)

³¹ Communication that contravenes the Singapore Act: s.2

- (I) ss.12(2B)(b) &12(2E): requiring the harassers or any third party³² to stop publishing the communication or to not publish anything substantially similar; and
- (II) s.12(2F)(b): requiring internet intermediary to disable end-users of the service in Singapore to access the communication within a specified time.

3. New Zealand

Elements of the tort

Different from the above, the statutory tort of harassment in New Zealand does not depend on criminal offences and does define harassment. According to NZ Act s.3, “a person harasses another person if he or she engages in *a pattern of behaviour* that is directed against that other person, being a pattern of behaviour that includes doing any *specified act* to the other person on at least 2 separate occasions within a period of 12 months.” Similar to the Singapore Act, NZ Act ss.3(3) &(4) define “a pattern of behaviour” to include a continuing act, i.e. specified act done on any one occasion that continues to have effect over a protracted period.

Further, s.4 lists some harassing acts as examples of “specified act”, with s..4(1)(f) being a catch-all provision to encompass any other acts not listed. Lastly, it is a defence if the harasser proves the specified act was done for a lawful purpose.³³

Remedies

NZ Act ss.16&18 confer the court the power to make a restraining order requiring the harasser:-

- (1)s.19(1)(a): Not to harass or threaten to harass the victim;
- (2)s.19(1)(b): Not to encourage others to do the harassing act; and

³² Including an internet intermediary service, a telecommunication service, etc: see s.11(10)

³³ s.17

(3) s.19(1A): Take reasonable steps to prevent the harassment from continuing.

Additionally, New Zealand has passed the Harmful Digital Communications Act 2015 (“**HDCA**”) to protect victims of harmful digital communication.³⁴ Digital communication means any form of electronic communication and includes information that is communicated electronically.³⁵ This covers online harassing acts. By HDCA s.11, victims of online harassment may apply for orders in ss.18 or 19, for example, requiring the defendant to:-

- (1) take down or disable public access to material that has been posted;
- (2) order the identity of the author of an anonymous or pseudonymous communication be released to the court; or
- (3) not encourage others to engage in similar communications towards the victims.

E. Suggested Reform

With the comparative analysis in mind, the following makes recommendations to reform the current state of the common law tort that fits the HK context. One should note that the below only highlights the important matters that should be considered in drafting the legislation but does not include all elements that should appear in the new law.

1. Elements of the Proposed Tort

Harassment – HK should follow Singapore and the UK and not define the term “harassment” in the statute. As noted in *Hayes* at §1, the term is an “ordinary English word with a well-understood meaning”. Further, the word has been commonly used in various local legislation, like Trade Descriptions Ordinance (Cap.362) s.13F(2)(a) and PDPO s.64(6). HK courts can interpret the word

³⁴ s.3

³⁵ s.4

themselves or refer to case law from Singapore and the UK. The Chinese translation “騷擾” or “滋擾” is not uncommon either. Creating a statutory definition may confuse the public that the word has a special legal meaning, which is untrue.

Harassing conduct – Both the Singapore Act³⁶ and NZ Act³⁷ list some examples of harassing acts, but the UK Act does not. It is considered that HK should follow the UK’s approach. Harassment can take many different forms, particularly with the aid of technology. It is impossible to anticipate all forms of harassment. Listing the instances of harassing acts may result in legislative amendments in the future. This was the case with the NZ Act, which was amended by HDCA in 2015 in light of the prevalence of incidents of harmful electronic communication.³⁸ It does not help even if the statute explicitly includes an all-encompassing provision³⁹ or states clearly that those listed instances are mere examples.⁴⁰ A list approach was considered problematic as the interpretation of the provision would be subject to the *ejusdem generis* rule, which requires the list to be construed by referring to the listed activities.⁴¹

A course of conduct – As mentioned above, the requirement that the harassing acts must be done twice is undesirable. Thus, HK should follow Singapore’s and New Zealand’s approach by expanding the definition of “course of conduct” to include one-off conducts that have continuous effects over a protracted period. This is also consistent with the view at §6.26 of the Stalking Report, which considered it undesirable to specify the number of incidents or the period within which the harassment should occur.

³⁶ s.7(3)

³⁷ s.4

³⁸ s.33 HDCA inserted provisions relating to electronic communication/media.

³⁹ Singapore Act s.4(1)(f)&(3)

⁴⁰ UK Act s.7(3)

⁴¹ Stalking Report at §5.34

Damage – Recall the dispute in CA Judgment, i.e. whether financial loss itself suffices for the tort of harassment. The facts of the CA Judgment demonstrate a dilemma: while the purpose of the tort is to protect *individuals*’ private lives, there is a lacuna in law if a corporate body cannot sue. Both the Singapore and NZ Acts require emotional damage despite the gap in the law: see *Ting Choon Meng v AG*⁴² at §36 and NZ Act s.18(b)(i)-(iii)⁴³.

The UK Act has an “innovative” way to deal with the scenario where the claimant is a corporate entity without undermining the purpose of the tort. Section 1(1A) prohibits a harasser from harassing two or more individuals for the purpose of persuading a third party to do or not do something. As held in *Harlan Laboratories UK Ltd and another v Stop Huntingdon Animal Cruelty and others*⁴⁴, a corporate body can be a third party within the meaning of s.1(A) and apply for an injunction under s.3A to prevent the harassment of individuals: see §8. It means that a corporate body can seek an injunction if its employees suffer emotional harm.

It is recommended that the UK approach should be followed. The UK Act addresses the arguments from both sides in the CA Judgment:-⁴⁵

- (1) Avoids the conceptual obstacle that a corporate entity can claim harassment;
- (2) Sits well with the common law employer’s duty;
- (3) Fills the gap in the law;
- (4) Does not overstretch the meaning of “harm” for the tort of harassment and preserves the common law requirements for emotional harm; and
- (5) Avoids the floodgate argument that the legal system may be improperly used to intimidate and financially or psychologically exhaust opponents.⁴⁶

⁴² [2016] 1 SLR 1248 (HC)

⁴³ requires distress to be suffered by the claimant

⁴⁴ [2012] EWHC 3408 (QB)

⁴⁵ §§62-63

⁴⁶ At §63(2)

Exceptions – Recall the discussion above, exemptions are needed in order not to catch legitimate activities, such as newsgathering by the press, private investigation by investigators for civil cases, etc. Summing up all three Acts above, it is recommended that one should not be liable for the tort if the alleged harassing act is done:-

- (1) To prevent or detect crime;
- (2) With lawful authority or to comply with any lawfully imposed condition or requirement; or
- (3) Reasonably in the particular circumstances.

Concerning limbs (1) and (2), the Singapore Act s.7(8) and UK Act s.12(1)(a) allow the governments to certify that the alleged harassing act relates to national security. The certificate is conclusive evidence that the alleged acts fall within the exception. However, it is unnecessary to have such a provision in HK. The Safeguarding National Security Ordinance s.115 has already empowered the Chief Executive to certify acts or matters as involving national security. It is binding to the courts by virtue of s.115(3) and Article 47 of the HK National Security Law and can be used as conclusive proof.

On the other hand, HK should not follow the UK Act s.1(2)(c), which allows the Secretary of State to certify that the alleged harassing act is done to prevent or detect “serious crime”. This in effect allows the authorities to authorise harassing acts for crime prevention and detection. Arguably, s.1(2)(c) gives too much discretion to the government in authorising harassing acts that infringe people’s right not to be subjected to “arbitrary or unlawful interference with his privacy, family, home or correspondence.”⁴⁷ This was a matter considered by the Commission and drove it to recommend the proportionality and necessity tests

⁴⁷ Article 17 of the International Covenant on Civil and Political Rights as incorporated in Article 14 of Hong Kong Bill of Rights

when authorising covert surveillance to investigate serious crimes.⁴⁸ Such a recommendation was accepted and included in the Interception of Communications and Surveillance Ordinance (Cap.589) s.3(1)(c). Given that harassment is also a serious intrusion into the victims' privacy, similar tests should be introduced.

Regarding limb (3), the Stalking Report considered similar defences in the context of criminal law. There were some comments that the exception was too vague,⁴⁹ demanding specifically listing the protected activities in the statutes, such as newsgathering⁵⁰ or constitutionally protected activities⁵¹. The Commission disagreed because (a) reasonable excuse is a common defence in many offences;⁵² (b) listing all other legitimate activities with a catch-all provision is not desirable as the *ejusdem generis* rule requires the courts to construe the provision concerning those listed; (c) the court will not construe the law in a way to limit the rights guaranteed in the Basic Law. These arguments equally apply to civil law and remain valid today. Particularly, reasonableness is a common concept in tort law. Further, as evidenced by case law, the court frequently construes statutes in the light of constitutionally protected rights, e.g. *MK v Registrar of High Court (No.2)*⁵³ at §§27&82.

⁴⁸ Report on Privacy: the Regulation of Covert Surveillance (2006) at §5 of Background

⁴⁹ §§7.5-7.6

⁵⁰ §§7.13-7.21

⁵¹ §7.43

⁵² §§7.8-7.9

⁵³ (2024) 27 HKCFAR 204

2. Proposed Remedies

Injunctions

While Singapore and New Zealand list all possible order options in the statutes exhaustively, the UK relies on the court's inherent jurisdiction to grant injunctions.

The UK's approach is preferable. According to the principles summarised in *SJ v Persons Conducting Themselves in Any of the Acts Prohibited under Paragraph 1(a), (b), (c) or (d) of the Indorsement of Claim* at §§20-21⁵⁴:-

- (1) The court has inherent unlimited equitable jurisdiction to grant injunctions, subject to statutory restrictions;
- (2) The principles concerning the court's equitable jurisdiction need to and do evolve over time to respond to the circumstances where the intervention of equity is called for;
- (3) Bearing in mind the continuing ability of equity to innovate to protect and enhance the administration of justice, the content of an injunction is highly flexible; and
- (4) New types of injunctions may be issued in new circumstances when the principles underlying the existing law so require.

Thus, even if a list of potential orders is not provided in the statute, the court can still make those orders. For example, the UK court has recently developed a new type of injunction – internet blocking orders which have a similar effect to the orders in the Singapore Act s.12(2F)(b) and the HDCA s.19(a), i.e. ordering internet service providers to disable users' access to certain websites.⁵⁵ Equity is clearly capable of tackling harassment acts without statutory intervention.

⁵⁴ [2024] 3 HKLRD 32; the Court summarised the principles from *Wolverhampton CC v London Gypsies and Travellers and others* [2024] 2 WLR 45

⁵⁵ *Wolverhampton CC* at §49

Furthermore, as mentioned, harassment can be done in various creative ways with the help of technology. A list approach limits the flexibility and innovative ability of equity to tackle new challenges in the future.

Enforcement

Given the difficulty faced by victims in enforcing injunctions, HK should follow the UK Act s.3(3) to allow victims to apply for the issue of a warrant to arrest the harassers in case of breaches of the injunctions. A similar measure has been introduced in the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) (“**DCRVO**”) s.5(2), allowing an authorisation of arrest to be attached to an injunction. This procedure allows the victim to call the police when the harasser breaches the injunction, providing an effective and efficient enforcement mechanism.

Moreover, to solve the problem of inadequate consequences for civil contempt of court, references can be made to DCRVO s.5(3)(b). The new law should similarly give the court the power to detain the contemnor within the effective period of the injunction if the contemnor is arrested.

F. Conclusion

To conclude, there must be statutory intervention to reform HK’s common law tort of harassment due to the deficiency of the current state of law, including uncertain elements, the undesirable repetition requirement and the lack of exceptions protecting legitimate activities. These shortcomings not only hinder victims from effectively pursuing claims and others from pursuing legitimate activities but also fail to cater for the evolving acts of harassment, particularly with technological advancement nowadays.

Drawing on the experiences of the UK, Singapore, and New Zealand, the proposed reforms suggest a more inclusive definition of harassment. The reforms

also supplement the traditional common law requirements of the tort of harassment. It is hoped that implementing these reforms will fill the existing gaps in law and provide greater legal protections to victims of harassment.