

The Hong Kong Apology Ordinance (Cap.631)

Professor Robyn Carroll (UWA)

16 May 2018

Commenced 1 December 2017

13 Sections and a Schedule

Outline of presentation:

1. Meaning and functions of apologies
2. Introduction to apology-protecting legislation
3. Overview of the Apology Ordinance
4. Concluding remarks

Meaning of 'apology'

Apologies encompass some or all of the following components:

Emotional aspect - an expression of regret for injurious action, remorse, expression of sympathy, sorrow, shame (Affect)

Cognitive aspect - an acknowledgement, admission of fault, wrongdoing (Affirmation)

Behavioural aspect - an offer to make good the damage, a promise of future change (Action)

Accidents happen

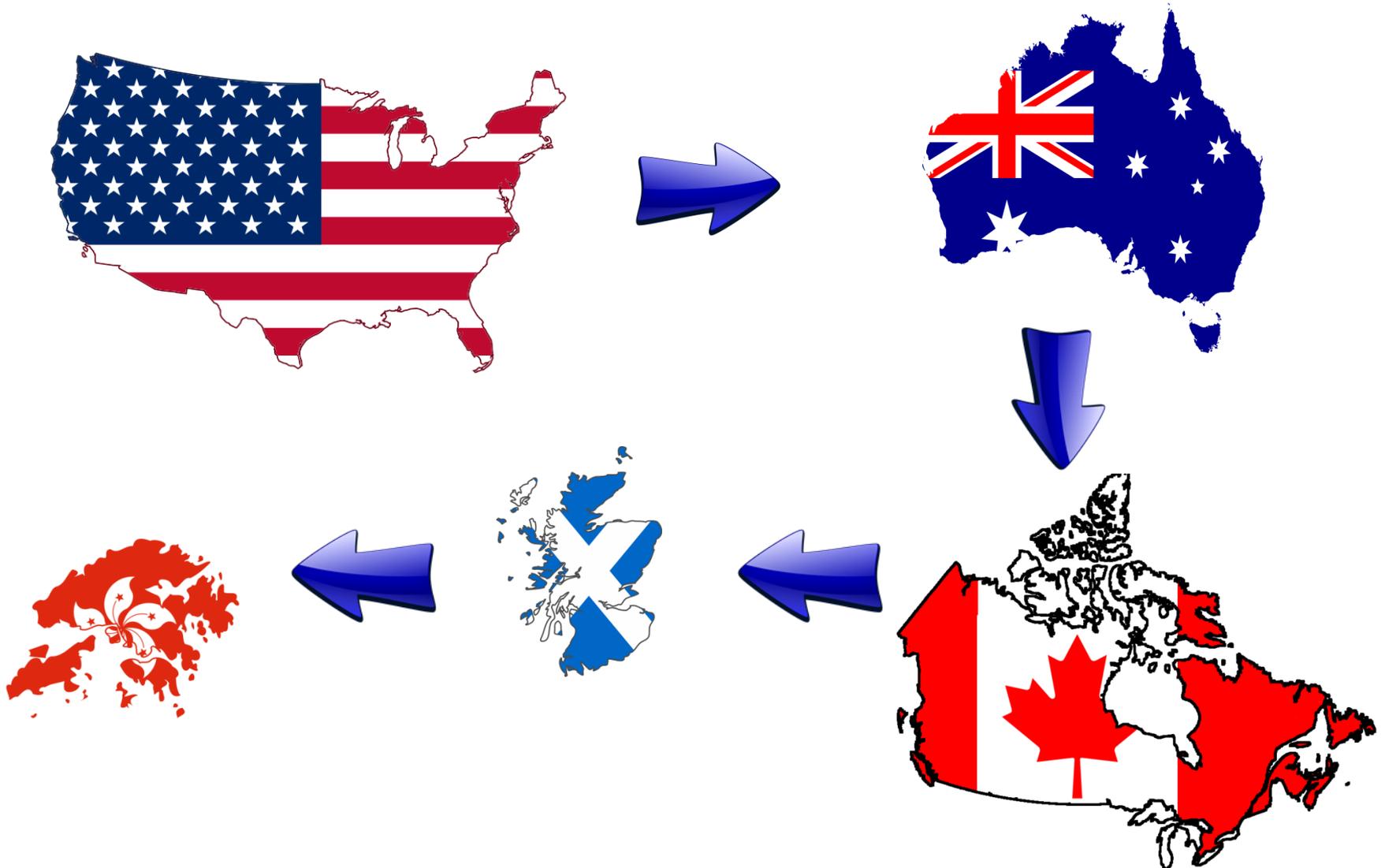


Accidents happen ...

I'm so sorry; it's my fault that you are injured. I was distracted by one of the other passengers on the bus. I looked away from the road for an instant and that is why I accidentally drove into the barrier. I should have been more careful. I will pay you compensation and be more careful in the future.

1. What is 'apology - protecting' legislation?
2. Common features of apology legislation
3. Distinctive features of the Hong Kong legislation

5 'Waves' of Apology Legislation



Object: Section 2

The object of this Ordinance is to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.

'Apology (道歉)': Section 4

- (1) In this Ordinance, an apology made by a person in connection with a matter means **an expression of the person's regret, sympathy or benevolence** in connection with the matter, and includes, for example, an expression that the person is sorry about the matter.
- (2) The expression may be **oral, written or by conduct**.
- (3) The apology also includes any part of the expression that is-
 - (a) an **express or implied admission of the person's fault or liability** in connection with the matter; or
 - (b) a **statement of fact** in connection with the matter.
- (4)...(5)...

Applicability of the Ordinance

Which apologies? Section 5

Which proceedings? Section 6

Which laws are not affected?

Section 11: Does not affect the operation of:

- Discovery rules
- Defamation Ordinance: sections, 3, 4, 25
- Mediation Ordinance

Does it apply to the Government? Section 12

An apology made by a person in connection with a matter:

- **does not constitute an admission of fault or liability:**
Section 7(1)(a)
- **must not be taken into account in determining fault, liability or any other issue** in connection with the matter to the prejudice of the person: Section 7(1)(b)
- **Is not admissible evidence** in applicable proceedings:
Section 8(1) unless section 8(2) applies
- **does not constitute an 'acknowledgment'** for purposes section 23 of the Limitation Ordinance (Cap.347): Section 9
- **does not void a contract of insurance or indemnity:**
Section 10

Statements of fact in an apology

Admissibility in an 'exceptional case' Section 8(2)

Evidence of a statement of fact contained in an apology may be admissible 'if in particular proceedings there is **an exceptional case**'.

The decision maker may exercise a **discretion to admit the statement of fact** 'only if satisfied that 'it is **just and equitable** to do so, having regard to **the public interest or the interests of the administration of justice**.'

Section 6: 'applicable proceedings'

(1) In this Ordinance, the following proceedings are applicable proceedings—

(a) **judicial, arbitral, administrative, disciplinary and regulatory proceedings (whether or not conducted under an enactment);**

(b) other proceedings conducted under an enactment.

(2) However, applicable proceedings do not include—

(a) criminal proceedings; or

(b) proceedings specified in the Schedule.

Section 10: Insurance benefits

- (1) An apology made by a person in connection with a matter does not void or otherwise affect any insurance cover, compensation or other form of benefit for any person in connection with the matter under a contract of insurance or indemnity.
- (2) This section **applies regardless of whether the contract of insurance or indemnity was entered into before, on or after the commencement date of this Ordinance.**
- (3) This section applies despite anything to the contrary in any rule of law or agreement.

Interaction between the Apology Ordinance and the Mediation Ordinance (Cap.320)

Evidence of an apology is generally inadmissible in
applicable proceedings by operation of both Ordinances

Mediation Ordinance: Sections 8, 9, 10

Apology Ordinance: Sections 7 and 8

Concluding remarks

- The objects of both Ordinances are complementary
- The Apology Ordinance creates opportunities for parties to prevent their dispute from escalating and facilitates its amicable resolution, partially or in full, before mediation and/or litigation.
- The Mediation Ordinance provides 'protection' to an apology made in mediation
- The Apology Ordinance extends the 'protection' to an apology from the time the apology is made