

**Research Assessment Exercise 2020**  
**Impact Case Study**

**University:** The University of Hong Kong (HKU)

**Unit of Assessment (UoA):** 19 Law

**Title of case study:** Interdisciplinary research directly led to a substantial increase in compensation awarded to victims of personal injury and medical negligence

**(1) Summary of the impact**

Research at the University of Hong Kong (HKU) has directly led to a significant increase in the compensation awarded to the victims of personal injury and medical negligence, ranging from 130% to 165%. The research is significant because it has directly solved the problem of serious under-compensation of victims. The research produced new insights into how HK judges apply the principle of restoring the victims to their original position (*restitutio in integrum*). It has introduced up-to-date assessment for victim compensation that better reflects HK's mortality experience and economic conditions, and is recognised as the starting point for assessing victim compensation.

**(2) Underpinning research**

When an innocent party is injured in a tort-based system of law as a result of the negligence of another party, the innocent party should be awarded adequate compensation. The purpose of such compensation is to ensure that they receive all proper and necessary damages so that they may live as fulfilling lives as possible following injury. It is also of public importance to instil confidence in the judicial system which provides such compensation. This requires that the system be based on rational and justifiable economic criteria which can be objectively measured.

Until 2012, judges in Hong Kong selected the appropriate multiplier "intuitively" without making reference to evidence of life expectancies, inflation and investment return rates. Judges used their "experience" yet all too often overlooked the intricate factors that actuaries and economists examined when compiling life tables and actuarial tables. It was almost 30 years before formal judicial recognition was accorded to the use of actuarial tables in determining the appropriate multiplier. In the UK, Lord Lloyd stated in *Wells v Wells* [1999] 1 AC 345: "The [actuarial] tables should now be regarded as a starting point, rather than a check. A judge should be slow to depart from the relevant actuarial multiplier on impressionistic grounds, or by reference to 'a spread of multipliers in comparable cases' especially when the multipliers were fixed before actuarial tables were widely used." The tables to which Lord Lloyd referred were published by the UK Government Actuary in 1981, and used extensively by judges and practitioners in the UK to determine the appropriate multiplier. The UK tables cannot be blindly applied in HK because those tables rely on statistical data and mortality assumptions that do not reflect the realities of life in HK.

This project is distinctly interdisciplinary. With three General Research Fund grants (GRFs), Felix Chan (associate professor in law) collaborated with W.S. Chan (actuarial science and econometrics), J. Li (statistics and quantitative finance) and N. Sarony QC (a top personal injury silk). The objective is to compute the actuarial multipliers that take account of the uncertainty inherited from the risk-free rate of investment return, net of inflation. The role of Felix Chan is to convert the actuarial computation into an accessible and practical manual that can be understood and used by lawyers and Judges. Five editions of *Personal Injury Tables Hong Kong* ("Chan Tables") were published between 2003 and 2019 (3.1). The latest edition takes into account the revised HK mortality projections by the Census and Statistics Department (Population Projections 2017-2066), under which there is an

increase in life expectancy. Its comprehensive contents also cover the inflationary rates for adjusting PSLA (Pain, Suffering and Loss of Amenities), wage statistics and retail price indices. In addition, a series of academic articles were written to explore the conceptual framework and legal doctrines from an international and comparative perspective. A comparison of HK, the UK and mainland China shed light on how uncertainties can be reduced in jurisdictions where inflation-linked government debt securities are not available.

### **(3) References to the research**

- (3.1) W.S. Chan, Felix W.H. Chan and J.S.H. Li, (1st ed. 2003; 2nd ed. 2005, 3rd ed. 2013; 4th ed. 2016; 5th ed. 2019) *Personal Injury Tables Hong Kong 2019: Tables for the Calculation of Damages* (Sweet and Maxwell), 80 pages. (Editor: N. Sarony QC)
- (3.2) Felix W.H. Chan, W.S. Chan and J.S.H. Li, “Actuarial Assessment of Damages in Personal Injury Litigation: How Precise are We?” (2012) 11(1) *Law, Probability and Risk* (Oxford University Press), 25-39.
- (3.3) W.S. Chan and Felix W.H. Chan, “On Selection of the Discount Rate for Actuarial Assessment of Damages in Personal Injury Litigation in Hong Kong” (2003) 2(1) *Law, Probability and Risk* (Oxford University Press), 15-24.
- (3.4) Felix W.H. Chan, W.S. Chan and J.S.H. Li, “Using Actuarial Evidence in Singapore and Hong Kong: A Sequel to ‘Lai Wee Lian Revisited’” (2015) 45(2) *Hong Kong Law Journal*, 499-516.
- (3.5) Felix W.H. Chan, W.S. Chan and J.S.H. Li, “Assessing Personal Injury Liabilities in China from National to Provincial Level: An International and Comparative Analysis” (2017) 8(2) *Asian Journal of Law and Economics*.

The outputs were produced by Dr. Felix Chan after he joined HKU in 1998. The preparation of these research outputs was generously supported by the HK Research Grants Council, GRF project numbers: HKU 741512H (outputs 3.1 and 3.5), HKU 741408H (outputs 3.2 and 3.4) and HKU 716901H (output 3.3).

### **(4) Details of the impact**

Since their introduction in 2003, the Chan Tables have become the widely accepted method of calculating personal injury compensation in HK. It is acknowledged by the Association of Personal Injury Lawyers and others within the profession as fundamental to positively transforming the values of compensation awarded to victims since 2004 (5.3 and 5.8). The team’s research is highly regarded around the world (5.7) and has contributed to the drafting of the UK Civil Liability Act 2018 (5.9 and 5.10)

As explained above, actuarial tables have been used extensively in the UK since 1981. Unfortunately, in *Chan Pui Ki v Leung On* [1996] HKCA 678, the HK Court of Appeal appeared to be ignorant of the tables that had been in use in the UK for the previous 15 years, preferring the “intuitive” approach, which locked the personal injury victims in HK into a time warp out of touch with economic reality (5.4 and 3.1).

However, significant changes took place in response to the publication of *Personal Injury Tables HK*. From 2004, lawyers began to cite the tables in courts (5.3). In 2012, the HK courts reversed direction and accepted the application of the Chan Tables. Two significant judgments were rendered by

Bharwaney J. in *Chan Pak Ting (No.1)* [2012] HKCFI 1584 and *Chan Pak Ting (No.2)* [2013] HKCFI 179.

In *Chan Pak Ting (No.1)*, Bharwaney J. stated: “[32] ... I agree that the Chan Tables should be accepted as the starting point in Hong Kong, just as the Ogden Tables are accepted as the starting point in the UK. In future, there should be less need to refer to previous case law of multiplier precedents, particularly if those cases were decided without reference to actuarial tables by way of a cross-check” (5.3). The tables have been judicially referred to as the “Chan Tables”. This new approach was subsequently endorsed explicitly by the HK Court of Appeal in *Chan Wai Ming v Leung Shing Wah* [2014] HKCA 318 and most recently in *Hussain v Khan* [2016] HKCA 455.

Setting the appropriate discount rate in HK is fundamental. It is the rate of investment return the claimant can be expected to achieve on the lump-sum award before it is fully exhausted. The lower the discount rate, the higher the lump-sum award.

In *Chan Pak Ting (No.2)*, Bharwaney J. departed from the conventional discount rate of 4.5% per annum (set by the UK House of Lords in *Cookson v Knowles* and endorsed in HK in *Chan Pui Ki*). For needs exceeding ten years, he set a much lower discount rate of 2.5% by taking a portfolio of 80% in time deposits and high-quality bonds, and 20% in blue-chips stock. This methodology accords with the recommendations advocated by the present research team: “In Hong Kong the claimant in personal injury litigation should be assumed to invest the lump sum of the award in low-risk investment vehicles ... As a result, the discount rate for personal injury and fatal accident cases needs to be carefully revised from time to time” (3.3).

The facts of *Hussain v Khan* [2016] HKCA 455 can be used to illustrate the impact. The victim (male aged 17 at accident and 21 at trial) was a factory worker. He was injured when the detached disc of the grinder cut his wrist. He could no longer perform his pre-accident job. If the HK Court of Appeal had awarded compensation (regarding loss of future earnings) without the Chan Tables:

HK\$43,848 (multiplicand) x 18 (multiplier under previous case law) =  
**HK\$789,264** (lump-sum award for loss of future earnings)

According to paragraph 52 of the judgment, the HK Court of Appeal relied on and cited the Chan Tables (Table 9). Adopting a discount rate of 2.5% (as opposed to the old discount rate of 4.5%), the court awarded significantly higher compensation:

HK\$43,848 (multiplicand) x 26.11 (multiplier under the Chan Tables, Table 9) =  
**HK\$1,144,871** (a sharp increase to **145%** of the value calculated without the Chan Tables)

More examples from recent Hong Kong cases handled by various solicitors and barristers are available in 5.1. The examples given show that the Chan Tables directly led to a substantial increase in compensation, ranging from 130% to 165% of the value calculated without the Chan Tables. The Chan Tables have been cited more than 70 times in the Hong Kong courts (5.1). As a direct result, personal injury victims will continue to receive significantly larger amounts of compensation in the future, with commensurate effects on their quality of life.

## **(5) Sources to corroborate the impact**

(5.1) Examples from Hong Kong personal injury cases.

(5.2) Forewords written by the Honourable Mr. Justice Cheung and Mr. Justice Bokhary of the Hong Kong Court of Final Appeal to the “Chan Tables”.

(5.3) Letter from Ms Rebecca Lee, a practising barrister and Deputy District Judge specialised in personal injury law.

(5.4) Letter from Mr. Raymond Leung S.C., Chairman of the sub-committee of the Law Reform Commission of Hong Kong on “Periodical Payments for Future Pecuniary Loss in Personal Injury Cases”.

(5.5) Citation of the Chan Tables (output 3.1) by the HK Court of Appeal: *Hussain v Khan* [2016] HKCA 455 at [para. 52] and *Chan Wai Ming v Leung Shing Wah* [2014] HKCA 318 at [para. 5.5]

<http://www.hklii.org/cgi-bin/sinodisp/eng/hk/cases/hkca/2016/455.html>

<http://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkca/2014/318.html>

(5.6) Citation of the Chan Tables (output 3.1) by the HK Court of First Instance: *Chan Pak Ting v Chan Chi Kuen* [2012] HKCFI 1584 at [para. 22] – [para. 32].

<http://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2012/1584.html>

(5.7) Tony Hazell, “Prioritise the Injured, not the Insured”, *Financial Times (FT Adviser)*, 24 May 2017.

(5.8) *Response by the Association of Personal Injury Lawyers* (May 2013) to the UK Ministry of Justice’s consultation on Damages Act 1996: The Discount Rate Review of the Legal Framework. Felix Chan’s co-authored article published in the Law Gazette is cited at p.3 and reproduced at p.16-17

<https://www.apil.org.uk/files/pdf/ConsultationDocuments/2702.pdf>

(5.9) British Institute of International and Comparative Law, *Briefing Note on the Discount Rate applying to Quantum in Personal Injury Cases: Comparative Perspectives* (September 2017), prepared for the UK Ministry of Justice responsible for the drafting the Civil Liability Act 2018.

The Hong Kong report written by Dr Felix Chan is reproduced at p.36-40. The report was cited seven times in the Briefing Note (at pp. 6, 10, 11, 12 and 13)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/642815/biicl-comparative-law-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642815/biicl-comparative-law-report.pdf)

(5.10) Letter from Dr Jean-Pierre Gauci of the British Institute of International and Comparative Law.