

止水有「法」Part 1 有關法律程序解決滲水事宜

Legal Means to Address Water Seepage (Part 1)

Resolving Water Seepage Through Legal Processes

熒幕蓋字： 主持 Kily

Super: Kily
Host

香港律師會 梁匡舜律師
LEUNG Hong-shun, Alexander
Solicitor, The Law Society of Hong Kong

Kily : 大家好，我是 Kily
Hello everyone, I am Kily
今日很榮幸可以邀請到香港律師會梁匡舜律師
We are honoured to have invited practising solicitor Mr LEUNG
Hong-shun, Alexander, of The Law Society of Hong Kong to join
us today
為大家解答一些有關法律程序去解決滲水的問題
to answer some questions on legal procedures for resolving water
seepage issues

Kily : 滲水可以說是一個民生很重要的議題
Water seepage is a very important livelihood issue
也是多層式大廈常見的問題
and also a common problem found in multi-storey buildings
但滲水成因複雜，又未必這麼容易找到滲水源頭
But the causes of water seepage are complicated, and it is not
always easy to identify the source

熒幕蓋字： 民生議題
Super: Livelihood issue
滲水
Water seepage
常見於
Commonly found in
多層式大廈
Multi-storey buildings

難發現
Difficult to identify
滲水源頭
Source of water seepage

Kily : 如果單位天花
出現滲水情況
If water seepage is found in the ceiling of a flat,
應如何採取法律行動？
how should we go about taking legal actions?

梁匡舜律師 : 從法律途徑解決滲水問題
Mr LEUNG: To resolve water seepage by legal means
首先我們要釐定誰人須要就滲水問題負上責任
We have to first determine who is responsible for the problem
滲水問題不只局限於樓上和樓下的問題
Water seepage may not only be an issue between the flats on the
upper floor and the lower floor
而有可能會牽涉大廈的公用部分或者設施
It may involve common parts or facilities of the building
要找業主立案法團或者管理處幫忙
requiring the assistance from the Incorporated Owners (IO) or
management office

熒幕蓋字 : 公用部分或者設施
Super: Common parts or facilities
業主立案法團
Incorporated Owners
管理處
Management office

Kily : 哪些屬於公共地方？
是否即是天台 / 管道槽？
大廈業主立案法團和管理處
可以如何跟進？
What are common parts?
Are they roof tops / pipe ducts?
How can the IO and management office of the building follow up

on the problem?

梁匡舜律師： 如果是大廈的公用部分或者設施滲水的話
Mr LEUNG: If water seepage is found in the common parts or facilities of the building
法團根據《建築物管理條例》第 18 條有責任處理
the IO has a duty to deal with it under Section 18 of the Building Management Ordinance

熒幕蓋字： 第 18 條
Super: Section 18

梁匡舜律師： 而管理處根據一般公契亦都有責任處理
Mr LEUNG: And so does the management office according to a typical Deed of Mutual Covenant (DMC)
至於何為大廈的公用部分或設施
As for the definitions of common parts or facilities of the building
那就要參考大廈公契及《建築物管理條例》
one may refer to the DMC of the building and the Building Management Ordinance
一般包括大廈的公用渠管、防水層及大廈外牆
Normally they include the common drains, waterproofing layers and external walls of the building

熒幕蓋字： 公用渠管
Super: Common drains
防水層
Waterproofing layers
大廈外牆
External walls of the building

Kily： 如果懷疑滲水源頭來自某處
除了找律師發律師信
和向法院提出民事訴訟
If water seepage is suspected to originate from a certain location, apart from engaging a lawyer to issue a letter before action and instituting a civil action in court,

可否透過調解

去解決滲水問題？

is it possible to resolve the water seepage problem through mediation?

梁匡舜律師：

正確！調解是民事糾紛的另類排解程序

Mr LEUNG:

Yes! Mediation is an alternative dispute resolution procedure for civil disputes

但是調解程序必須先得到雙方同意

But the mediation process can only commence with mutual agreement of both parties

調解通常以較輕鬆和隨和的方式進行

Mediation usually takes place in a more relaxed and casual manner

有助雙方當事人維持他們的關係

so as to help both parties maintain their relationship

如果雙方同意的話，其實任何時間

In fact, subject to mutual agreement, mediation may take place anytime

即訴訟前或訴訟期間，都可以作調解

before or during the course of litigation

無論訴訟是經高等法院或區域法院

Whether the litigation is in the High Court or the District Court

調解都是訴訟的一部分

mediation is part of the litigation process

如果是經區域法院的話，雙方亦可透過案件和解會議的形式進行調解

For cases in the District Court, mediation may be conducted in the form of a Case Settlement Conference between both parties

茆慕蓋字：

區域法院

Super:

District Court

梁匡舜律師：

香港律師會網站上有一個調解員名冊

Mr LEUNG:

The Panels of Mediators can be found on the website of The Law Society of Hong Kong

大家如果有需要，亦可以瀏覽以下網站

You may visit this website as necessary

熒幕蓋字： 香港律師會

Super: The Law Society of Hong Kong
香港律師會網頁 <https://www.hklawsoc.org.hk>
Website of the The Law Society of Hong Kong
<https://www.hklawsoc.org.hk>

Kily： 涉及滲水事故的民事訴訟
須準備甚麼證明文件？
For civil litigations involving water seepage incidents,
what supporting documents should be prepared?

梁匡舜律師： 原告要以一般民事案件的舉證標準
Mr LEUNG: The plaintiff has the same standard of proof in general civil cases
即是相對可能性衡量，證明滲水是由被告的設施導致的
which is to prove on a balance of probabilities that water seepage
is caused by the facilities of the defendant
一般來說，原告須要證明某些事實的可能性是高於不可能性
Generally speaking, the plaintiff has to prove that the probability
of certain facts is higher than the improbability

熒幕蓋字： 相對可能性衡量
Super: On a balance of probabilities
原告須要證明
The plaintiff has to prove
可能性>不可能性
Probability > Improbability

梁匡舜律師： 在滲水案件中，原告須要舉證證明
Mr LEUNG: In a case of water seepage, the plaintiff has to adduce evidence to
prove that the probability of the water seepage being caused by
被告有責任須要維修的設施，例如浴缸或者喉管
the facilities which the defendant has the obligation to maintain,
for example bathtubs or pipes

熒幕蓋字：浴缸

Super: Bathtubs

喉管

Pipes

梁匡舜律師：導致原告單位滲水的可能性高於不是這些設施導致滲水的可能性

Mr LEUNG: is higher than the probability of the water seepage not being caused by such facilities

熒幕蓋字：可能性>不可能性

Super: Probability > Improbability

梁匡舜律師：原告可以如何舉證呢？

Mr LEUNG: How can the plaintiff adduce evidence?

通常的做法是聘請相關專家

A common practice is to engage relevant experts

例如註冊測量師或公證行作出報告

such as a registered surveyor or loss adjuster to prepare a report

證明被告設施導致滲水

to prove that the defendant's facilities have caused the water seepage

熒幕蓋字：註冊測量師

Super: Registered surveyors

公證行

Loss adjusters

Kily：由食環署和屋宇署聯合組成的聯辦處
會對引起滲水的單位作出刑事檢控

The Joint Office set up by the Food and Environmental Hygiene Department and the Buildings Department may institute criminal prosecutions against the owners of flats who have caused water seepage

民事訴訟與刑事檢控

有何不同？

What are the differences between civil litigations and criminal prosecutions?

梁匡舜律師： 民事訴訟與刑事檢控的舉證責任是不同的
Mr LEUNG: The burdens of proof in civil litigations and criminal prosecutions are different
之前提及在民事案件上
As previously mentioned, in civil cases
原告有責任「以相對可能性衡量」的準則舉證
the standard of proof for the plaintiff is to prove “on a balance of probabilities”
在刑事檢控中
whereas in criminal prosecutions
控方須要以無合理疑點的舉證準則證明
the standard of proof for the prosecution is to prove beyond reasonable doubt
這個準則比民事準則為高
This standard of proof is higher than that in civil cases

熒幕蓋字： 以相對可能性衡量
Super: On a balance of probabilities
無合理疑點的舉證準則
Standard of proof beyond reasonable doubt
民事
Civil
刑事
Criminal

梁匡舜律師： 就算被告在民事訴訟敗訴
Mr LEUNG: Even if the defendant has lost his case in a civil litigation
亦不代表被告會成功被檢控
it does not necessarily mean that the defendant will be convicted

Kily： 除了訴訟或者調解
仲裁是另一種法律途徑
去解決滲水問題
Apart from litigation or mediation, arbitration is another legal means to resolve the water seepage problem.
甚麼是仲裁？
What is arbitration?

梁匡舜律師： 仲裁以及先前提及到的調解
Mr LEUNG: Arbitration and mediation, as previously mentioned,
其實都是另類排解程序
are both alternative dispute resolution procedures
如果爭議的雙方同意的話，可以安排仲裁
Subject to the agreement of the parties in dispute, arbitration may
be arranged
另外，有一些大廈公契會指明
Besides, some DMCs may specify that

熒幕蓋字： 大廈公契
Super: Deed of Mutual Covenant

梁匡舜律師： 涉及公契條文或詮釋的爭議，必須安排仲裁
Mr LEUNG: arbitration must be taken for disputes over the provisions or
interpretation of the DMC

熒幕蓋字： 公契條文的爭議
Super: Disputes over the provisions in the DMC
詮釋的爭議
Disputes over the interpretation

梁匡舜律師： 仲裁的裁決是對當事人具有約束力的
Mr LEUNG: An arbitral award is binding on the parties
仲裁的裁決和法院的判決極為相似
An arbitral award is very similar to a court judgment
並可以同樣方式強制執行
and can be enforced in the same manner

Kily： 目前香港律師會
有否免費的法律諮詢
或者當值律師服務？
Does The Law Society of Hong Kong currently offer free legal
consultation or duty lawyer service?

梁匡舜律師： 為協助有需要的市民解答切身的法律疑難
Mr LEUNG: In order to help members of the public who need to address their
legal concerns

香港律師會網頁載有提供免費法律諮詢服務的律師行名單
a list of law firms offering free legal consultation service is
available at the website of The Law Society of Hong Kong
有興趣人士可瀏覽以下網頁
Interested parties may visit this website

熒幕蓋字： 香港律師會網頁 <https://www.hklawsoc.org.hk>

Super: Website of The Law Society of Hong Kong
<https://www.hklawsoc.org.hk>

Kily： 如何尋找可以處理滲水案件的律師？
How to search for a lawyer who can handle water seepage cases?

梁匡舜律師： 香港律師會出版的《香港律師行指南》
Mr LEUNG: The Directory of Hong Kong Law Firms published by The Law
Society of Hong Kong
載有「找尋律師行」的資訊
provides information on how to “search for a law firm”

熒幕蓋字： 香港律師行指南
Super: The Directory of Hong Kong Law Firms

梁匡舜律師： 市民可按法律類別，當中包括「大廈管理」
Mr LEUNG: By the areas of practice, including “Building Management”
找尋相關的律師行
members of the public may search for relevant law firms

Kily： 聽完梁律師今日就法律程序
After Mr LEUNG’s explanation on how legal procedures
解決滲水問題的講解之後
may resolve the water seepage problem today
大家可以參考以下圖表，重溫今集的要點
you may refer to this diagram to recap the key points in this
episode

Kily： 下一集梁律師會繼續為大家解答
In the next episode, Mr LEUNG will continue to answer

questions
有關法律費用和索償的問題
about legal costs and claims

熒幕蓋字：

Super:

免責聲明：

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