

# **Court of Final Appeal Judgment**

## **Overriding Public Need Test**

**Importance of the Harbour** – The public need for reclamation must be so great as to override the importance that the law attaches to the Harbour and the degree of protection that the law affords to it. To implement the strong and vigorous statutory principle of protection and preservation of the Harbour, reclamation would only be justified where there is a much stronger public need to override such statutory principle. (Paragraph 44)

**Statutory Duty** – The primary duty is to protect and preserve the Harbour. The extent of reclamation that had already taken place renders what remains of the Harbour even more precious, and it makes the need to protect and preserve what remains of the Harbour all the more important and compelling. (Paragraph 31)

**Legislative Intention** – The Harbour Ordinance accords to the Harbour a unique legal status. The Harbour is undoubtedly a central part of Hong Kong's identity. There is a great public need to protect and preserve it having regard to its unique character. (Paragraph 35)

**Natural Heritage** – The Harbour is a part of nature which is inherited as a legacy from previous generations and which is to be transmitted from generation to generation. It is a community asset to be enjoyed by the people of Hong Kong. (Paragraph 33)

**Protection & Preservation** – There must be protection, that is, it must be kept from harm, defended and guarded. And there must be not merely protection. There must also be preservation. Preservation connotes maintenance and conservation in its present state. (Paragraph 34)

**Overriding Public Need Test** – A need which satisfies the following requirements (Paragraphs 44 – 49):-

**Compelling** – a need which has the requisite force to prevail over the strong public need for protection and preservation of the harbour

**Present** – the need must arise within a definite and reasonable time frame

**Public** – includes the economic, environmental and social needs of the community

**Minimum** – reclamation must not go beyond what is required

**No Reasonable Alternative** – where costs, time and delay would be relevant

**Heavy Burden** - The burden to rebut the presumption is a heavy one. (Paragraph 52) The need must go far beyond something which is “nice to have”, desirable, preferable or beneficial. (Paragraph 47)

**Cogent & Convincing Materials** - Due to the demanding nature of the Test, it is not sufficient to incant the Test or just to pay lip service to it. The materials relied on must be cogent and convincing. (Paragraphs 50 & 51) Each area proposed to be reclaimed must be justified. (Paragraph 48)

**What is at Stake** – Irreversible loss of a special asset and a natural heritage belonging to the people of Hong Kong. (Paragraph 52)