

## Case Review (JH/32912/02)

### Think twice before driving while being disqualified

1. **Case Type:**  
Criminal - Magistracy - Driving while disqualified - Road Traffic Ordinance
2. **Relevant Law:**  
S.44(1)(b) Road Traffic Ordinance Cap. 374 – S.12(2)(b) Road Traffic (Driving-offence Points) Ordinance Cap. 375 – Ss.4(1) & 4(2)(a) Motor Vehicle Insurance (Third Party Risks) Ordinance, Cap. 272
3. **Case Discussion:**

For those of us who love driving so much, it would almost be unbearable to be disqualified from driving. But life is full of tempting fate. For those who show contempt for the law by driving whilst being disqualified, they risk serious consequences

According to the Road Traffic Ordinance Cap 374 and Road Traffic (Driving-offence points) Ordinance Cap. 375, the maximum penalty for the offence of driving while disqualified is a fine of \$10,000 and imprisonment for 12 months. Usually, the offender is also charged with the offence of using a vehicle without third party insurance as one cannot be insured whilst being disqualified from driving. According to the Motor Vehicle Insurance (Third Party Risks) Ordinance Cap.272, the maximum penalty for using a vehicle without third party insurance is again a fine of \$10,000 and imprisonment for 12 months, plus at least 1 year mandatory disqualification starting from the date of conviction.

There have been cases where first offenders were imprisoned for the above offences. The reasons for the court to impose an immediate custodial sentence mainly are :-

- (1) The breach is a disobedience of court order;
- (2) It endangers other road user's safety; and
- (3) The victims in the traffic accidents may be left without any compensation.

Sentencing guidelines were laid down in the case R v. Chan Hon Piu (MA 913/86, unreported) in which Barnes J clearly stated that an immediate custodial sentence should not be imposed for breach of a disqualification order if the magistrate found that the offender had never been imprisoned before and the breach was not flagrantly committed. A suspended sentence for a period of time would usually be imposed in most cases. Furthermore, one should not forget that a conviction for these sort of offences would carry a criminal record and a further period of disqualification. Hence, why not act smart and take the taxi if you are not qualified to drive!

Written by Cheung Chi Chu, Trainee Solicitor  
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