

Case Summary

HKSAR v Yeung Suet-ying Clarisse (楊雪盈) and Others

CACC 253/2024; [2026] HKCA 284

(Court of Appeal)

(Full text of the Court’s judgment in English at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=177571&QS=%28YEUNG+Suet%5C-%5Cyung+Clarisse%29&TP=JU)

Before: Hon Poon CJHC, Pang JA and Anthea Pang JA in Court

Dates of Hearing: 14 to 17 July 2025

Date of Judgment: 23 February 2026

Criminal law – National security – Subversion – Conspiracy to commit subversion – Construction of NSL 22 – Whether “other unlawful means” in NSL 22 is restricted to force or threat of force – Whether “other unlawful means” is limited to criminal acts – Relevance of ejusdem generis rule – Primary legislative purposes of the NSL – Constitutional order – Subversive intent – Sentence – Application of penalty bands in NSL 22 to the offence of conspiracy

Background

1. In the proceedings below, 47 defendants were charged with one count of conspiracy to commit subversion, contrary to NSL 22(1)(3) and ss. 159A and 159C of the CO. (para. 2)
2. 31 of the 47 defendants pleaded guilty and were convicted accordingly. (para. 3)
3. The remaining 16 denied the charge and stood trial before the Trial Court. On 30 May 2024, the Trial Court convicted all of them except D16 and D46. (para. 3)

4. On 19 November 2024, the Trial Court imposed different terms of imprisonment on all the 45 convicted defendants, ranging from 4 years and 2 months to 10 years. (para. 3)

5. Before CA are, among other things, appeals on questions of law alone and applications for leave to appeal against conviction, and applications for leave to appeal against sentence, by various defendants. (para. 4)

Major provision(s) and issue(s) under consideration

- NSL 22
- CO ss. 159A, 159C

6. Issues under consideration are, among other things:-

- (a) Construction of NSL 22 - whether the *ejusdem generis* rule applies so that “other unlawful means” may include any unlawful means other than “the use of force or the threat of force”; whether “other unlawful means” in NSL 22 is confined to criminal acts;
- (b) NSL 22 offence: subversive intent; and
- (c) whether the penalty bands in NSL 22 apply to a charge of conspiracy for sentencing.

Summary of the Court’s rulings

7. To secure a conviction of the offence of subversion under NSL 22, the prosecution must prove that the accused:

- (a) organizes, plans, commits or participates in one of the four prohibited acts;
- (b) by force or threat of force or other unlawful means;
- (c) with a view to subverting the State power.

The first two elements together constitute the *actus reus* of the offence. The third element stipulates the requisite *mens rea* to

complete the offence, which is a specific intent to subvert the State power. (para. 44)

Construction of NSL 22

8. The Court adopts a contextual and purposive approach in construing provisions of the NSL, taking into account the constitutional basis upon which the NSL is applied in the HKSAR: *HKSAR v Lai Chee Ying* [2021] 24 HKCFAR 33, at [8]; and *HKSAR v Lui Sai Yu* (2023) 26 HKCFAR 332, at [20]-[26]. The meaning and effect of a particular provision of the NSL is to be determined in the light of the context and purpose of the NSL as a whole. (para. 49)

9. The following three primary legislative purposes emerge from the legislative materials of the NSL, which inform the construction of NSL 22. (para. 55)

10. Firstly, upholding the “One Country, Two Systems” regime and the constitutional order in the HKSAR as established by the Constitution and the BL is a fundamental aspect of safeguarding national security in the HKSAR. (para. 56)

(a) As stated in the Preamble of the BL, the HKSAR is established in accordance with Art. 31 of the Constitution to uphold the national unity and territorial integrity and to maintain the prosperity and stability of Hong Kong. (para. 57)

(b) Art. 31 of the Constitution and BL 1 and BL 12 together establish the constitutional order in the HKSAR under the “One Country, Two Systems” principle. (para. 57)

(c) In giving effect to this legislative purpose, NSL 1 expressly provides that the NSL is enacted for the purpose of, among other aspects, ensuring the resolute, full and faithful implementation of the “One Country, Two Systems” policy under which the people of Hong Kong administering Hong Kong with a high degree of autonomy. NSL 2 refers to BL 1 and BL 12, which are fundamental provisions on the legal status of the HKSAR, as the lynchpin for safeguarding national security in the

HKSAR. (para. 58)

11. Secondly, the NSL must effectively prevent, stop and punish all acts and activities endangering national security. Plainly, the NSL must cover all acts and activities endangering national security, whether involving force or otherwise. (para. 59)

- (a) In giving effect to this legislative purpose, NSL 3(3) imposes on the executive authorities, legislature, judiciary of the HKSAR the duty to prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the NSL and other relevant laws. (para. 60)
- (b) NSL 8 requires the law enforcement and judicial authorities of the HKSAR to fully enforce the NSL and the laws in force in the HKSAR concerning the prevention of, suppression of, and imposition of punishment for acts and activities endangering national security, in order to safeguard national security effectively. (para. 60)
- (c) These two articles embrace all acts and activities endangering national security, without differentiating between those that involve force and those that do not, or limiting the duty to suppress, prevent or punish such acts or activities to the former only. (para. 60)

12. Thirdly, read together, these two legislative purposes mean that the NSL must seek to prevent, stop and punish all acts and activities endangering the constitutional order in the HKSAR, whether involving force or otherwise. (para. 61)

13. The phrase “by force or threat of force or other unlawful means” is the second element of the *actus reas* of an NSL 22 offence. It categorizes the means by which the prohibited act is committed into (1) force, that is, the actual use of force; (2) threat of force; and (3) other unlawful means. A proper construction of “other unlawful means” must give full effect to the legislative purposes above. It clearly intends to cover all other unlawful means without restricting to those involving force only. Read in context, “other unlawful means” clearly means

“other unlawful means not involving force or threat of force”. It is not “any unlawful means”. It does not render “force or threat of force” otiose. (paras. 62-63, 81 and 91)

14. The defendants may invoke the *ejusdem generis* rule (i.e. wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character) in argument. The reason is that the Court adopts essentially the same contextual and purposive approach to construction of both local statutes and the NSL. Nonetheless, the Court emphasized that whether the rule applies is another matter. (para. 66)

15. The Court held that the *ejusdem generis* rule (i.e. wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character) clearly does not apply to the construction of “other unlawful means” in NSL 22 given the contrary intention which may be gathered from the context and purpose of the NSL. (paras. 67-68)

- (a) The conclusion to be drawn from the contextual and purposive considerations of the legislative materials is that the means to commit the prohibited acts under NSL 22 is not to be limited to force or threat of force. (para. 69)
- (b) On a proper reading of the phrase “by force or threat of force or other unlawful means” as an element of the *actus reus* of an NSL 22 offence, the genus is the means to be adopted in committing the prohibited acts, and not force or threat of force, which is but one of the means. (para. 70)
- (c) Words in a statute are given their natural and ordinary meaning with context and purpose to be considered alongside the expressed wording from the start. It is entirely legitimate and indeed necessary for the court to refer to the Explanation of a Draft Decision presented to the NPC on 22 May 2020 and the NPC 5.28 Decision to understand the matrix in which the NSL was enacted in order to ascertain the legislative purposes of NSL 22. Paragraph 6 of the NPC 5.28 Decision clearly conveys the unmistakable directive that no act or activity endangering

national security should escape the full force of the NSL. In other words, the NPCSC must formulate the NSL to catch all acts and activities endangering national security falling within its ambit. (paras. 73-74)

- (d) The phrase “whether or not by force or threat of force” under NSL 20 and the phrase “by force or threat of force or other unlawful means” under NSL 22 are different. The reason for using different language for the two phrases is that in NSL 20, the means for committing the prohibited acts, involving force or not, is not an element of the *actus reus* of the offence; the phrase “whether or not by force or threat of force” emphasizes the point that once the prohibited acts are committed with the requisite *mens rea*, the offence is complete; and whatever means the accused adopts in doing so is immaterial; whereas in NSL 22, the means adopted for committing the prohibited acts is an element of the *actus reus*. The phrase “by force or threat of force or other unlawful means” makes it clear that it catches all unlawful means, whether it is force or threat of force or some other unlawful means. The CA held that the two phrases serve different purposes and that drawing a comparison between them without reference to that distinction missed the mark. (paras. 75-78)
- (e) There is no justification to draw a distinction that only one particular aspect of national security, namely, territorial unity, is “non-negotiable” while other aspects are not, which would only defeat the primary legislative purposes of the NSL. (para. 80)
- (f) NSL 2 emphasizes the utmost importance of upholding the constitutional order in the HKSAR as established by the Constitution and the BL under the “One Country, Two Systems” regime. The basic systems and body of power of the State, and those of the HKSAR are also central to that constitutional order. (para. 80)
- (g) There is all the more reason for NSL 22 to catch all such acts or activities overthrowing or undermining the basic systems, whether they involve force or not. (para. 80)
- (h) The phrase in NSL 22 “by force or threat of force or other unlawful means” groups the means for committing the

prohibited acts into three broad categories: (1) force, (2) threat of force and (3) other unlawful means. Read in context, “other unlawful” means clearly means other unlawful means not involving force or threat of force. (para. 81)

16. The second major argument run by the defendants is that “unlawful means” in NSL 22 should be confined to criminal acts. (para. 83)

17. When NSL 22 is construed in the context in which the NSL was enacted with its primary legislative purpose of effectively preventing, stopping and punishing all acts and activities endangering national security in mind, NSL 22 evidently covers all unlawful means other than force or threat of force and is not confined to criminal acts. There is no ambiguity in the phrase “other unlawful means” as contended. There is no ambiguity in the phrase “other unlawful means”. It was further held that the reliance on other local penal provisions in which the word “unlawful” has been used to describe or define the offences does not assist, for those provisions must be understood in their own context and purpose, which are quite different from those of NSL 22. (paras. 59, 83-85 and 91)

18. On *actus reus*, “other unlawful means” in NSL 22 covers all unlawful means other than force or threat of force, committed in breach of the law. (para. 91)

19. In the present context, it may include an act committed in breach of an article of the BL. (para. 91)

Subversive intent

20. It was accepted by the CA that in terms of evidence, a genuine and honest belief held by an accused that the means adopted is lawful may be relevant to the issue if he has the specific intent to subvert. In that case and as a matter of evidence, once the trial court was satisfied that a defendant would be acting contrary to the Basic Law with an intent to subvert in pursuing the course of conduct in question (“the Course of Conduct”), the argument of mistaken belief fell away. It is because one

could not have genuinely believed that the Basic Law would allow a LegCo member, when purportedly exercising his constitutional powers and functions, to carry out any subversive act. (paras. 88-89, 91 and 178)

The Scheme

21. the CA recapitulated the scheme in the case (“the Scheme”), which involved abusing the LegCo member’s powers under BL 73(2) with the specified purpose of: (1) obtaining a controlling majority in the LegCo to indiscriminately refuse to pass any budgets or public expenditure to be introduced by the Government regardless of their contents or merits of the contents; (2) compelling the Chief Executive to dissolve the LegCo under BL 50 so as to paralyze the operations of the Government; (3) ultimately causing the Chief Executive to resign under BL 52 entailed by the dissolution of the LegCo and the refusal to pass the original budget by the new LegCo. (para. 138)

The HKSAR’s constitutional order

22. The CA pointed out the HKSAR’s constitutional order as follows:

- (a) the HKSAR is an inalienable part of China: Preamble of the Basic Law and BL 1;
- (b) the HKSAR is authorized by the National People’s Congress to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication in accordance with the provisions of the Basic Law: BL 2;
- (c) the HKSAR is a local special administrative region and comes directly under the CPG: BL 12;
- (d) the executive, legislative and judicial systems practiced in the HKSAR are all prescribed by the Basic Law in accordance with Article 31 of the Constitution; the provisions of the Basic Law set up an executive-led system with the Chief Executive as the head of the HKSAR and the Government;
- (e) the Basic Law allocates to the Chief Executive, the Government or the LegCo different constitutional roles together with distinct

functions and powers that are central and primary to their roles; they do not and cannot exist or operate in isolation; passing of budgets is a live example of interaction and coordination between them;

- (f) to achieve the check and balance between the executive and legislative branches, the Basic Law establishes a carefully constructed mechanism between the Chief Executive and the LegCo;
- (g) the courts perform their constitutional role under the Basic Law of acting as a constitutional check on the executive and legislative branches of government to ensure that they act in accordance with the Basic Law; and
- (h) the Basic Law envisages further development of the political system in the HKSAR by amending the methods for the selection of the Chief Executive and the formation of the LegCo. (paras. 99-125)

Conviction of the offence of conspiracy to commit subversion

23. The purpose of the Scheme and the Course of Conduct was to seriously interfere in, etc. the constitutional order in the HKSAR by triggering the consequences provided for in BL 50 - 52. The subversive consequences in NSL 22(1)(3) then follow. It means that an accused will have the specific subversive intent if he intends to trigger the mechanism to bring about the consequences in BL 50 - 52 with that purpose in mind. That is, in the CA's view, what the Trial Court meant in their finding on *mens rea*. (para. 169)

24. In conclusion, the CA stated (paras. 139-140, 162, 169 and 171):

- (a) The Scheme was conceived, advocated and pursued by D1 as a “constitutional mass destruction weapon” for the purpose of toppling the constitutional order in the HKSAR. The Scheme was clearly an abuse of the power under BL 73(2); the powers bestowed on LegCo members by BL 73(2) do not entitle the LegCo members to undermine the very foundation of the Basic Law, to seriously interfere in, etc. the constitutional order in the

HKSAR. Those powers cannot possibly be used by the LegCo members to drive the HKSAR to destruction.

- (b) As such, it is an unlawful means within the meaning of NSL 22. The Course of Conduct seeks to implement the Scheme by using the mechanism in BL 50-52 to achieve the subversive consequences stipulated in NSL 22(1)(3). It is a prohibited act within the meaning of NSL 22(1)(3).
- (c) When a LegCo member takes the LegCo Oath pursuant to BL 104, he assumes the overarching constitutional duty of upholding the Basic Law, including the constitutional duty to uphold the constitutional order in the HKSAR. He cannot act in breach of that duty when he purports to perform his official powers and functions, including those under BL 73(2) and BL 64. If a LegCo member joins the Scheme and participates in the Course of Conduct, he must have necessarily acted in breach of his constitutional duty to uphold the constitutional order in the HKSAR.
- (d) If an accused, including a LegCo member, agrees to join the Scheme and participate in the Course of Conduct with the subversive intent as explained above, he will be guilty of the offence of conspiracy as charged.

Sentence – penalty bands in NSL

25. The penalty bands of NSL 21 apply to the sentencing of conspiracy to commit a NSL 20 offence. The same construction must equally apply to NSL 22; it follows that the view expressed by the Trial Court must be regarded as erroneous; to the contrary, the penalty bands in NSL 22 apply to the sentencing of the offence of conspiracy to commit subversion. (para. 308)

Sentencing – mistake of law

26. The Court of Appeal held that giving a discount in that case by the CFI for mistake of law about the Scheme would be no different from giving credit to the defendants for activating what they erroneously believed to be a self-destructing mechanism unwitting built into the

system. Exploiting the system in the way as the defendant did in that case intending to bring about potentially devastating consequences for the HKSAR, even under the mistaken belief that it was lawful, deserves little by way of mitigation, if at all. It makes no difference whether any of the defendants was misled. The CA remarked that the discount given by the CFI on mistake of law can only be regarded as gratuitous. (paras. 326-329)

Result

27. The applicants' appeals against conviction and sentence were dismissed. (paras. 297 and 344)

#1004203v6