

Chapter 2

Internalization of Environmental Externality in Dwellings: Review of Court Cases in Hong Kong in the Past Two Decades

Abstract In 1960, Ronald Coase suggested that there are many methods to solve the problem of externality apart from imposing Pigovian tax; internalization is one of those noted in relation to the Problem of Social Costs. This chapter studies the possibility of residents receiving their compensation from pollutant generators. Data collected from Hong Kong Law Reports over the past 20 years show that there has been a 40-fold increase in the number of water seepage court cases since the first case happened in 1994. The total amount of compensation has also increased substantially. There is, however, far fewer court cases related to residents seeking compensation from pollutant generators with regard to noise and air pollution. Possible reasons for this are the high transaction costs and low expected benefit derived from court cases.

Keywords Externalities • Pollution • Housing • Court cases • Hong Kong

2.1 Introduction

Environmental problems such as noise and air pollution often lead to health problems, for example, cardiovascular disease (White et al. 2011; Manu et al. 2012; The National Archives 2012), increased mortality rate (Manu et al. 2012), urinary system damage (Chockalingam and Sornakumar 2011), hearing impairment (Morantz 2009) or even psychological problems (Navon and Kolton 2006; Wadick 2010). The outbreak of Severe Acute Respiratory Syndrome (SARS) in Hong Kong was an example of the consequence of improper management of residential pipes and drainage systems. Possibly because of the side-effects on health, the impact of negative externality, e.g. noise (McGehee 2001; Theebe 2004) and air pollutants (Henning and Ridker 1967; Crocker 1971; Deyak and Smith 1974; Chattopadhyay 1999; Connor 2004) on property and rental value has been studied extensively. Environmental damage may be generated by individuals who inflict harm on those nearby, i.e. the costs are not borne by the pollutant generators. Damage caused by

water leakage from an upper floor, for example, can lead to visual problems in false ceilings or even structural problems in the ceilings of lower premises. Such “costs”, generated by those who live on an upper floor, should be compensated in the world of zero transaction costs with property rights well-defined (each unit is bought and owned by somebody). Unfortunately, such utopian situation is difficult to be realized in view of the positive real world transaction costs. Even though individuals do not have incentives to misrepresent their own interests, comprehensive negotiations impose overwhelming costs (Baily 1993). In fact, strata-title ownership characteristics coupled with the dense habitation often ends up with building management disputes in Hong Kong, thereby disintegrating neighbourhood relationships. More importantly, such unresolved problems pose safety and health concerns for our community at large (Kirkwood and Lande 2008). This chapter sheds light on court cases available in Hong Kong Law Reports.

2.2 Market Externality, Private Property Rights and Transaction Costs

Pigou introduced the concept of externality in 1920 (Calvani 1982). Externality arises when the actions of an individual leads to a loss of wealth or utility of others (Roberts 1996). It can also be interpreted as the actions of one actor create costs or benefits for others which are not captured by contractual relationships (Meadowcroft 2004). It can either be negative or positive. The former case, as a subject matter in the law of tort, usually receives greater attention (Roberts 1996). For example, the release of methyl isocyanate in Bhopal led to many innocent people’s deaths and injuries nearby (Li and Hung 2013). In case of positive externality, a major retailer may open in a previously quiet town centre street, bringing an increase trade to the shops nearby (Meadowcroft 2004). It therefore usually refers to the phenomenon where divergence exists between social and private costs (Calvani 1982). Whilst Pigovian welfare economics argues that the existence of externality is a case of market failure and government intervention is required to deal with negative externality (Anderson et al. 1998), Coase argues that if transaction costs between the two parties are low enough and private property rights (the right to own, use and exchange) are well-defined, people should be able to bargain for an efficient solution (Coase 1960; Roberts 1996; Li 2009). Under certain circumstances, market prices reflect how externality can be internalized (Table 2.1), as noted in Steven Cheung’s paper on internalizing externality between traditional bee keepers and apple growers (Glofcheski 2009). In the case of pollution, the externality generators could pay victims a sum of money, leaving both parties better off (Roberts 1996). Alternatively, the source of pollutants can be removed from the parties affected (Coase 1960).

In Hong Kong’s housing market, private property rights are well-defined in most premises. Ownership of one particular unit can be checked easily in the Land Registry (Takigawa 2009), so the market should be able to internalize

Table 2.1 The effect of negative externality on housing price reduction (Li 2013)

| Types of noise pollution | Author | Relationship between pollutants and housing price | Country |
|---|---------------------------|--|---------------------|
| PM10 | Gonzalez et al. (2013) | One unit reduction in PM10 levels is valued at US \$41.73 for Mexico City, 36.34 for Guadalajara and 43.47 for Monterrey respectively | Mexico |
| Total suspended particulates reduction in total suspended particulates results in a 0.2–0.4 % increase in mean housing values | Chay and US | Greenstone (2005) | 1 mg/m ³ |
| Sulphur | Ridker and Henning (1967) | There was a decrease in sulfation of 0.25 mg/100 cm ² /day would increase values of owner-occupied single-family homes by between \$83 and \$245 | US |
| Particulate concentration and summer oxidant | Nelson (1978) | There was a decrease in \$57.61 and \$14.11 for particulates and oxidants respectively | US |
| pH value of the water | Epp and Al-Ani (1979) | There was an increase in a 5.9 % in the mean sales value of residential properties | US |
| Water quality | Young (1984) | The estimated decrease in worth due to poor water quality was approximately \$4,200 | US |
| PCB pollution | Mendelsohn et al. (1992) | Properties' value fell from \$10,000 to \$7,000 | US |
| Landfill | Jauregui and Hite (2010) | There was 16 % lower price for a property which was closer to the landfill | US |
| Landfill | Nahman (2011) | Loss of value per property (R) relative to those 4 km away was R57,261.91 (1–2 km), R34,357.15 (2–3 km), R34,357.15 (3–4 km) | South Africa |
| Landfill | Ham et al. (2013) | Active landfills were positively significant related to property prices at 1 % level within 0–2 km. From 0 to 3 km, the coefficient was negative and statistically significant at the 1 % level of confidence. From 0 to 4 km, however, became statistically insignificant at the 10 % level of confidence | UK |
| Landfill | Nelson et al. (1992) | The landfill adversely affected home values in the range of 12 % at the landfill boundary and 6 % at about one mile. Beyond about 2–2.5 miles adverse effects are negligible | US |

(continued)

Table 2.1 (continued)

| Types of noise pollution | Author | Relationship between pollutants and housing price | Country |
|----------------------------|---------------------------|--|-------------|
| Traffic noise | Luttik (2000) | Properties price dropped by 5 % | Netherland |
| Traffic noise | Pennington et al. (1990) | Properties price lowered by 6 % | UK |
| Traffic noise | Taylor et al. (1982) | Residential price decreased by \$312 per decibel in highway areas and \$254 in arterial sites | Canada |
| Highway noise | Nelson (1982) | The noise led to a drop from 8 to 10 % | US |
| Highway noise | Gamble et al. (1974) | Dollar per decibel rate ranged from \$60 to \$646 | US |
| Airport noise | Cohen and Coughlin (2009) | 65-decibel noise contour was 7.5 % discount for semi-log model, i.e. \$8,612 or 10.6 % for the linear specification In 70-decibel noise contour, there was a drop in 12.3 % (\$14,330) or 17.7 % | US |
| Airport noise | Cohen and Coughlin (2007) | There was be a drop in 20.8 % | US |
| Airport noise | Baranzini and Jos (2005) | There was a drop in 1 % | Switzerland |
| Airport noise | Jon (2004) | There was a drop in 0.8–0.9 % in property value per decibel | Canada |
| Air quality and waste site | Thayer et al. (1992) | Every 6 % improvement in ozone had a value of approximately \$3,841 in nominal dollars. Each additional mile from a waste site was \$1,349 in the linear equation and \$1,701 in the semi-log equation | The US |

uncompensated effects in the absence of transaction costs (Anderson et al. 1998). Nevertheless, transaction costs exist in our real world: there are costs involved in identifying the source of pollutant generators and costs in identifying the possible problems. Indeed, transaction costs are one of the major factors which affect people's motivation to complain and one step ahead, to lodge complaints in court.

To illustrate the unique pollution problem in Hong Kong's concrete jungle, I will use Metro City as an example (note that it is only an example and the court cases that I found were not restricted to this estate only but were scattered around all the residential areas in Hong Kong). Metro City is one of the large-scale residential estates with 11 towers, 6–8 flats on each floor and densely populated environments can be found easily in Hong Kong. In the case of water seepage, it is quite easy to identify the source of pollutants as the one who lives in Flat H, 35/F, Tower 6 only needs to search the 3 units above (the highest one is 38/F), i.e. the H flats from 36/F to 38/F. As water seepage will not stop at a particular time, it is



Fig. 2.1 Floor plan of metro city phase 2 (11 towers are inside the *rectangle*) (Centaline Property Agency 2013)

quite easy to locate the source. Yet, in the case of noise pollution, it is quite difficult to identify the source of the pollution. First, the one who generates loud noise may be in Tower 2, Tower 10 or even in Yan Lan (the tower with 10 flats on each floor over 30 storeys in a circle). This implies that it is quite hard to find out where the defendant is. The same theory also holds true for some air pollution cases, such as bad smells. The second problem is that air and noise pollution generators may stop polluting at some time while water seepage cannot stop at any time once it has occurred. Therefore, the author hypothesizes that there should be a lot more water seepage cases which ultimately end up in the courts as the costs of identifying the source of pollutants are comparatively lower (Fig. 2.1).

2.3 Liability of Negative Environmental Externality Producer Under Common Law

Common environmental externality in dwellings, namely air pollution, noise and water leakage/seepage have different considerations when the judges made their judgments under common law in Hong Kong.

2.3.1 Air Pollution

Plaintiffs in Hong Kong may rely on “nuisance” to seek air pollution compensation in court (Westlands Estates Limited and Egremont Estates Limited v Swilynn (HK) Limited [1985]). Nuisance, according to the learned judge in Born Chief Co. (trading as Beijing Restaurant) v George Tsai and Another [1996], can be defined as “an act of omission which is an interference with, disturbance of or annoyance to, a person in the exercise or enjoyment of his occupation of land or of some right used or enjoyed in connection with land”. In another court case Teng Fuh Co Ltd v Air pollution Board and another [2001], it is stated that “air pollutants defined in [Sect. 2.2](#) of the Ordinance refers to ‘any solid, particulate, liquid, vapour, objectionable odour or gaseous substance emitted into the atmosphere’. Smells that are objectionable may therefore constitute air pollutants”.

2.3.2 Noise Pollution

In determining whether or not the “noise” constitutes pollution, judges do not only put their lens on Hong Kong court cases, legal rules and regulations; they may also consider cases and law from overseas which also rule under the umbrella of common law jurisdiction. For example, the judge in Step In Ltd v Noise Control Appeal Board and Another gave his judgment on Australian and UK law. In assessing “noise” he read a Code of Practice on Environmental Noise Control at Concerts 1995 in England which was issued by the Noise Council: “(a)ssessment of noise in terms of dB(A) is very convenient but it can underestimate the intrusiveness of low frequency noise. Furthermore, low frequency noise can be very noticeable indoors. Thus, even if the dB(A) guideline is being met, unreasonable disturbance may be occurring because of the low frequency noise. With certain types of events, therefore, it may be necessary to set an additional criterion in terms of low frequency noise, or apply additional control conditions.” He further pointed out that “a criterion for nuisance which relies only on subjectivity represents an easy get-out for local authorities seeking to avoid a more difficult approach and is unjust. It has been my position for very many years that whilst indeed there are many situations where music noise should not be allowed to intrude into people’s dwellings, an objective criterion is the only fair way of addressing the issue. All other sources of noise are measured objectively so why single out entertainment noise as the sole exception?” To decide whether the defendant is liable or not for noise pollution, the judge in Jack Gordon Leslie Smith and Another v Tam Wing Wah and Another [2007] stressed the importance of reasonableness, saying “Tams (defendant) should not be punished because the Smiths may have unreasonable expectations of silence, or at least quietness, within the confines of their home”.

2.3.3 Water Seepage/Leakage

Similar to the abovementioned “reasonableness”, judges in relation to water seepage/leakage also consider it as a major concern in determining remedies or compensation. The learned judge in *Bulmer Ltd and Another v ACL Electronics (HK) Ltd* [1991] pin pointed that where condensation occurred on plaintiff’s ceiling the resulting damage was a consequence “within the general range which any reasonable person might foresee and was not of an entirely different kind which no one could anticipate and “the defendant’s fault in relation to the causation or remoteness of the damages awarded or to the matters of which he took judicial notice”.

Nevertheless, not all plaintiffs who win their case receive a monetary sum in compensation. In some cases, the judge restrains the defendant’s activity to stop the source of negative externality, which is quite similar to Coase’s idea in the Problem of Social Cost (Coase 1960). In *Incorporated Owners of Jing Hui Garden v Ng Kei Sang* [2007], the defendant was restrained from erecting or installing any pipes, other fittings or air-conditioners at the Building’s external wall not provided for under the DMC.

2.4 Current Legal Rules and Regulations Concerning and Regulating the Problem of Externality in Residential Units

2.4.1 Air Pollution Regulations

The authorized officer or the Authority may take the followings into consideration: (1) the advice of the Director-General of Civil Aviation; (2) technical memorandum; (3) a medical practitioner’s opinion; (4) the distance between the source of emission and the place which is affected; (5) the location of the place being affected; (6) the duration, frequency and time of the emission; (7) publications or research results which indicate that the emission may have adverse health effects; (8) any of the following effects which, in the opinion of the Authority or the authorized officer is contributed to or caused by emission: (1) the corrosion, staining of, or damage to equipment, plant, building or other material; (2) an objectionable odour; (3) irritation of the skin, nose or eye, or any other sensory discomfort; (4) the deposit of grit, particles or dust of any kind; (5) skin eye, nose irritation or any other sensory discomfort; (6) normal activities disturbance of by colour; (7) an authorized officer confirms that the emission may affect public safety; (8) any other effect which in the opinion of an authorized officer or the Authority is unreasonable for a member of the public to suffer.

Under s.10 of the Air Pollution Control Ordinance (Cap. 311) (the Ordinance), where an authorized person or the Authority is satisfied that air pollutants emitted from a polluting process is contributing to or causing air pollution which is imminent or exists, the Authority or the authorized officer may issue a verbal or written air pollution abatement notice to the person who carries out the activity and require him or the owner of the premises to abate or reduce or cease air pollutants emission or the polluting process. In *Teng Fuh Co Ltd v Air pollution Board and another* [2001], the learned judge provided an interpretation on the captioned piece of legislation; he said “in defining polluting process, s.2 referred to, inter alia, an activity and so, for there to be a polluting process, there had to be some activity by X”.

2.4.2 Rules and Regulations on Noise

Neighbourhood noise includes noise produced in domestic premises by sources such as television sets, air-conditioners or dogs, and noise produced in public places by sources such as radios, hawkers or loudspeakers. Sections 2.4 and 2.5 of the Noise Control Ordinance were designed specifically for this type of noise and came into operation on 1 November 1989. Section 2.4 of the Ordinance controls noise which causes annoyance during holidays or at night from 11 p.m. to 7 a.m. Section 2.5 of the Ordinance controls particular noise sources at any time. These include games, musical instruments, animals and birds, loudspeakers, trades or businesses and air conditioners. Table 2.2 illustrates the types of noise offence and the corresponding fines and Fig. 2.2 sheds light on the warning, abatement notices, and summonses issued in 2008.

2.4.3 Rules and Regulations on Water Seepage/Leakage

To identify whether water seepage or leakage problems exist, there are three stages of tests in Hong Kong. In stage 1, health inspectors or environmental nuisance investigators have to confirm the extent of water seepage nuisance by visiting the complainant's premises. If the moisture content of seepage area is equal to or more than 35 %, and premises of other owner are suspected to have caused seepage, Joint Office staff will carry out stage 2 “initial investigation” with one or more of the following tests (Li 2013) (Table 2.3).

If the source of seepage cannot be identified after stage 2 “initial investigation”, Joint Office will proceed to stage 3 “professional investigation”. Building Safety Officers or staff of private consultants appointed by Joint Office will carry out one or more of the tests. In complicated cases, for instance, those having more than one seepage locations will have multiple visits for investigation and tests (Li 2013) (Table 2.4).

Table 2.2 Types of noise offenses and their corresponding fines (Environmental Protection Department 2011)

| Noise control ordinance section(s) | Type of offence | Maximum fine |
|------------------------------------|--|--|
| 4, 5 | Noise from domestic premises and public space (neighborhood noise) | \$10,000 |
| 6, 7 | Noise from construction sites | \$10,000 on the first conviction, |
| 13 | Noise from places other than domestic premises, public places or construction sites (industrial noise) | \$200,000 on second or subsequent conviction plus \$20,000 a day |
| 14–17 | Noise from products | |
| 13A | Noise from intruder alarm system in any premises | \$10,000 and imprisonment for 3 months |
| 13B | Noise from intruder alarm system in any vehicle | \$10,000 |

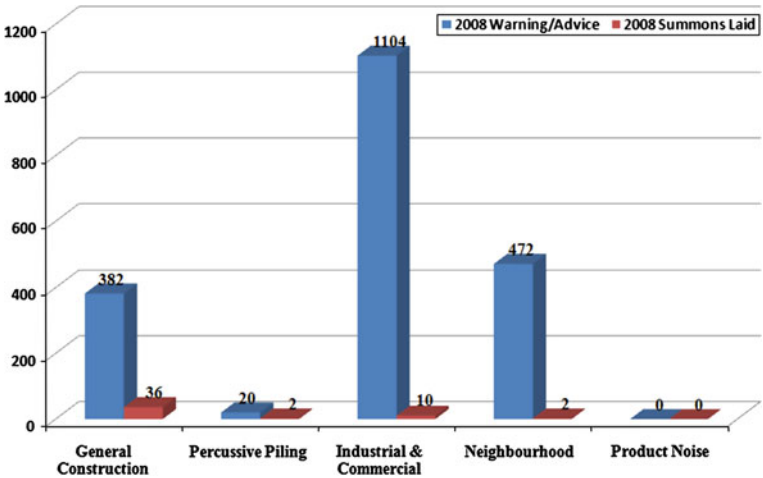


Fig. 2.2 Warning, abatement notices, summons laid in 2008 (Environmental Protection Department 2011)

Table 2.3 Test to be carried out in stage 2 (Li 2013)

| Test method | Test location | Premises involved | Time required |
|-----------------------------|-------------------------------------|---|-----------------------|
| Reversible pressure test | Water supply pipes and seepage area | Suspected premises and complainant's premises | About 3–5 h |
| Colour water test | Drainage outlets | Suspected premises | About 1 h |
| Moisture content monitoring | Wall surface/ceiling | Complainant's premises | About 0.5 h each time |

Table 2.4 Test to be carried out in stage 3 (Li 2013)

| Test method | Test location | Premises involved | Time required |
|---|---|---|-----------------------|
| Ponding test | Floor slabs of balcony/bathroom/kitchen | Suspected premises | About 2 h |
| Reversible pressure test (if not carried out in stage II) | Water supply pipes and seepage area | Suspected premises and complainant's premises | About 3–5 h |
| Moisture content monitoring | Wall surface/ceiling | Complainant's premises | About 0.5 h each time |

If the source of seepage is confirmed as a sanitary nuisance, the Joint Office set up by the Food and Environmental Hygiene Department and the Buildings Department may issue a nuisance notice under the Public Health and Municipal Services Ordinance (Cap. 132), directing the nuisance generator to fix the problem (Kovacic 1996), failing which will be led to prosecution. Upon conviction, he/she is liable to a daily fine of HK \$200 and a maximum fine of HK \$10,000. The Joint Office may also apply to the Court for a Nuisance Order requiring the person concerned to abate the nuisance. Failure to comply with the order will be subject to prosecution. Upon conviction, the penalty will be a maximum fine of HK \$25,000 and a daily fine of HK \$450 (Calliess and Mertens 2011).

Apart from the abovementioned regulations, Deeds of Mutual Covenant also impose obligations on property managers to maintain facilities in common areas. Nevertheless, residents should not expect their manager to ensure that no common facilities (which includes water pipes) break down, as in *Lo Yuk Chu v. Hang Yick Properties Management Ltd* [1996].

Plaintiffs in water leakage/seepage cases usually receive compensation under five headings:

1. Cost of repair: to repair the damage to the Plaintiff's premises which include the replacement of building parts, as per *Shum Chi Yung and Another v Lam Chung Kwong and Another* [2006], *Lai Yuen Wah and Another v Chan Sai and Another* [2006];
2. Damages: damages to any parts of the premises: e.g. damage to floors and wall tiles and other parts of premises (e.g. *Tai Wai Lam v Ho Ka Tung and Another* [2005], *Wong Huen Min v Wong-Kong Chong-Kam-Sau Tong Clansman Association Ltd and Another* [2007], *Chan Yip Cheung v Fong Chow Wo* [2008]);
3. Inconvenience: apart from inconvenience which is caused by the negative externality, such as water leaks to the immediate floor beneath, also refer to the time spent by the plaintiff due to visiting and cleaning their units, e.g. *Chan Yip Cheung v Fong Chow Wo* [2008];

Table 2.5 Keywords used in searching for relevant court cases in Hong Kong Law Report

| Types of externality | Keyword use in Hong Kong Law Report |
|----------------------|---|
| Air | Smell (151) Air (1972) Heat (266) Odour (34) |
| Noise | Noise (560) |
| Water | Water leakage (230) Water seepage (126) |

4. Professional/expert fees: fees for preparing reports (e.g. *Hung Tung Shing and Another* [2002], *Larbons Ltd v Kuo You Weaving Factory Ltd* [2007]) and tests carried out by the Plaintiff's expert, (e.g. *Costantino Gonnella v Dart Co Ltd* [2008]);
5. Loss of rental: property has been reduced in value as a result of the water leakage problem and expenses for alternative accommodation (*Lai Yuen Wah and Another v Chan Sai and Another* [2006]);
6. Other possible headings include medical expenses, costs of finding alternative accommodation, etc.

In the case of noise pollution, however, it is seldom to see a clear breakdown. The majority of cases in Hong Kong Law Reports only show the total amount that the defendants need to pay.

2.5 Data

Data from First Instance Court cases were mainly collected from Hong Kong Law Reports. These keep records of court decisions from as early as 1905. By using the keyword search “water leakage”, “noise” and “air”, a large number of court cases appear. Numbers in brackets indicates the number of cases existing in the database. After the keyword search, each of the files was read to find out if the externality(ies) (either air, noise or water pollution) occurring in one place affect the residents in residential units, ultimately leading to litigation (Table 2.5).

2.6 Results

2.6.1 Water Seepage/Leakage

Although Hong Kong has a long history of litigation, Hong Kong Law Reports recorded the first water leakage case in 1994. From 1996 to 2000, there were only four cases. The figure then increased 5-fold to 20 in the period 2001–2005. From 2006 to 2010, there were 40 cases—10 times that from 1996 to 2000. The results

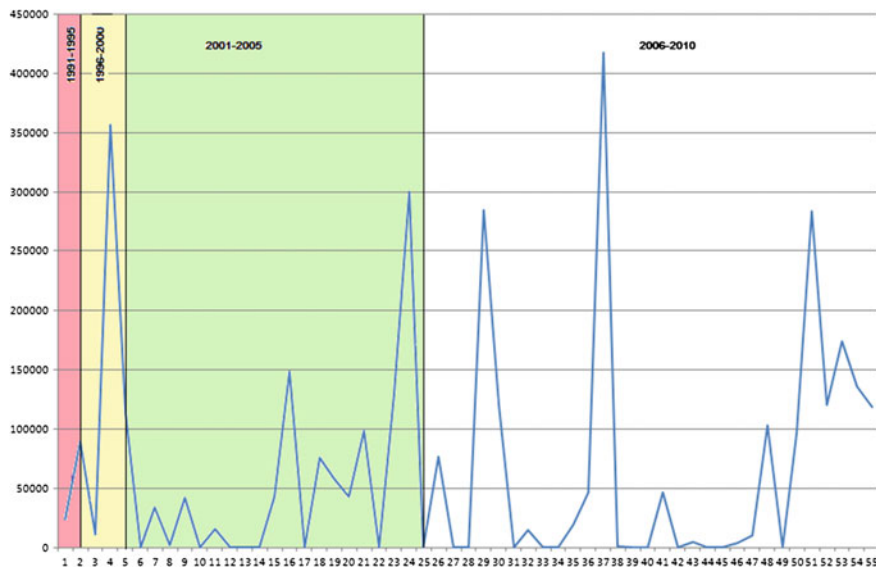


Fig. 2.3 Value of compensation (deflated by GDP deflator, year 2007 = 100) for water seepage/leakage court cases (start from 1994 as number 1). *Note* Plaintiffs of number 25 and 45 won the case but the amount to be compensated had not been mentioned in the report

not only indicate that the number of compensation court cases in residential buildings rose significantly, amount of compensation also climbed significantly. The total amount of compensation from 2001 to 2005 was twice that of 1996–2000, while the figure for 2006–2010 was ten-fold that of 2001–2005.

The court cases illustrate different methods which could be used to deal with negative environmental externality. Apart from requesting compensation from households which caused water seepage, the defendant in case numbers 22, 31 and 44 were ordered to perform the repairs and stop the source of pollution. The defendant in case 40 was restrained from installing or erecting any air-conditioners, pipes or other fittings at the external wall of the Building which was not provided under the Deed of Mutual Covenant (Fig. 2.3, Table 2.6).

2.6.2 Noise Pollution

Number of noise pollution court case was far less than that of water seepage. There were 16 cases only. The first court case appeared in 1998. In 1996–2000, there were 4 cases and all the plaintiff win. In 2001–2005, 2 out of 3 cases' plaintiffs fail to receive any compensation. Although there were 7 court cases in 2006–2010, only 1 plaintiff out of 7 cases won and received his compensation. In *Jack Gordon Leslie Smith and Another v Tam Wing Wah and Another*, the Tams installed

Table 2.6 Amount of compensation for water leakage (1991–2010)

| Year | Repair fee | Damages | Medical expenses | Damages for personal damages | Inconvenience | Professional fees | Loss in rental | Removal costs | Alternative accommodation | Management fee | Total |
|--|------------|---------|------------------|------------------------------|---------------|-------------------|----------------|---------------|---------------------------|----------------|---------|
| 1991–1995 (1 case, 0 plaintiff lost the cases) | | | | | | | | | | | |
| 1994 | 1 | 23551 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23551 |
| 1996–2000 (4 cases, 0 plaintiff lost the cases) | | | | | | | | | | | |
| Sum | 481278 | 0 | 0 | 0 | 85615 | 4398 | 0 | 0 | 0 | 0 | 571291 |
| Ave | 120320 | 0 | 0 | 0 | 21404 | 1099 | 0 | 0 | 0 | 0 | 142823 |
| SD | 156428 | 0 | 0 | 0 | 33421 | 2199 | 0 | 0 | 0 | 0 | |
| 2001–2005 (20 cases, 4 plaintiffs lost the cases) | | | | | | | | | | | |
| Sum | 238441 | 471435 | 2892 | 15897 | 48205 | 39115 | 31837 | 3385 | 0 | 248 | 991815 |
| Ave | 11922 | 23572 | 145 | 795 | 2410 | 1956 | 1592 | 169 | 0 | 12 | 49591 |
| SD | 22267 | 71592 | 647 | 3555 | 6038 | 4862 | 6022 | 757 | 0 | 56 | |
| 2006–2010 ^a (40 cases, 5 plaintiffs lost the cases) | | | | | | | | | | | |
| Sum | 950481 | 333272 | 1815 | 0 | 328788 | 138293 | 6438 | 0 | 35379 | 0 | 2078534 |
| Ave | 23762 | 8332 | 45 | 0 | 8220 | 3457 | 161 | 0 | 884 | 0 | 51963 |
| SD | 67666 | 38302 | 331 | 0 | 36249 | 16225 | 897 | 0 | 5266 | 0 | |

^a Note Data in 2010 consists of January and February only

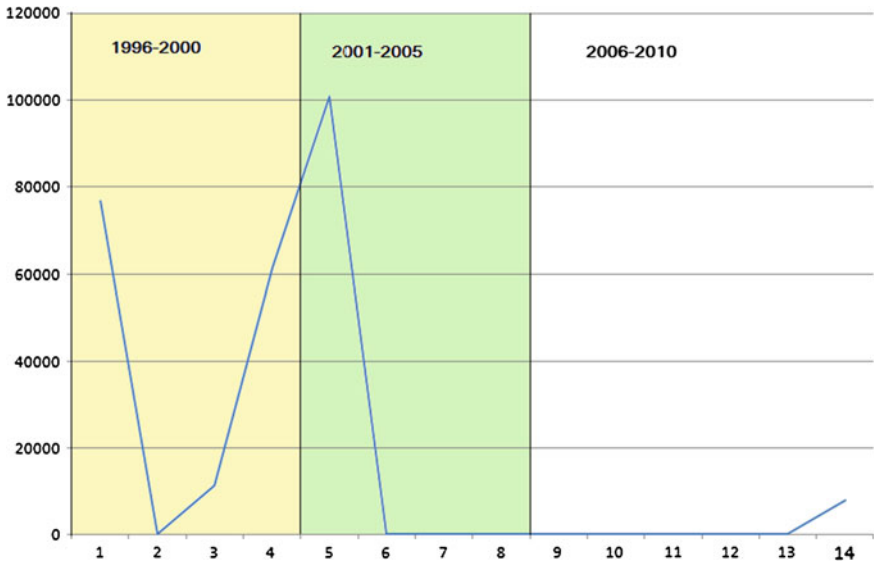


Fig. 2.4 Noise pollution compensation residential cases (start from the first case in 1998 as number 1, defendants of number 2 and 10 were ordered to stop producing noise, plaintiff of case number 9 received costs of proceedings only)

four loudspeakers in their garden and played amplified music. The judge considered that Smith had unreasonable requirements on quietness and therefore dismissed the case. Whist many of the noise complaints were neighborhood noise cases in residential areas, this might provide useful hint on why few cases successfully received compensation in court (Fig. 2.4).

2.6.3 Air Pollution

In the past, most of the flat owners relied on “bad air lowers value of residential units” to seek for reduction of Rate payable to the government, for example, Cheung Fat-Fan and Madam Fu Ah-kum and Commissioner of Rating and Valuation [1977], Lee Kan and Yip Hon-Ching and Commisionner of Valuation [1978]. There were also criminal case which arose under the air pollution ordinance: the contractor was responsible for a construction site where work had to be carried out in accordance with the Schedule, e.g. HKSAR v China State Construction Engineering (Hong Kong) Limited [2005]. Nevertheless, there was only one court case where the residential owner sued the air and noise pollutant producer. This failing precedent showed the difficulty in seeking air pollution compensation to internalize externality without help from the third party, i.e. government.

In *Westlands Estates Limited and Egremont Estates Limited v Swilynn (HK) Limited* [1985], the plaintiff contended that the heat and noise nuisance during the summer months adversely affected the salability of several residential units opposite to the installations. The plaintiff applied for assessing damages to be compensated with reference to “nuisance”. Nevertheless, the application failed as there was no evidence as to the degree of heat and noise produced by the defendant’s installations. Besides, it remained arguable that the heat emission was reasonable. The judge commented that the matter was not beyond argument. Therefore, the defendant must have unconditional leave to defend in case of nuisance.

2.7 Discussion and Conclusion

Hong Kong Law Report reviewed that there was substantially more successful cases which sought for compensation due to water seepage/leakage than noise and air pollution problem. The results agree with the author’s hypothesis that the costs of identifying the source of pollutants are a lot lower in the water seepage and therefore more cases would be found in Hong Kong. As Hong Kong is a densely populated city, it is often difficult to locate the air pollutant defendant, e.g. who should be blamed for the poor air next to highway? How about pollutants arise from somewhere outside Hong Kong? Similarly, noise which affects the residents, such as quarreling in the next door may not occur every day. Nevertheless, evidence of damages can be found easily in water seepage cases. Transaction costs in searching for the defendant are lower than noise and air pollution problems.

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