

# 教師權益法律講座系列

## 民主教育與法律權利

### 學生犯法與學校民事疏忽法律風險

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# 免責聲明不免責

2014年6月12日報章報導，有學校在學校網頁增設一欄「反佔中聲明」，校長表示，「如學校沒事前把教育局的警告通知家長，並且有學生因違法被捕，家長或控告學校疏忽，建議各校把吳克儉早前反佔中的呼籲，以通告形式知會師生及家長，藉此「避免責任」。」

# 免責聲明不免責

香港法例第71章《管制免責條款條例》第7條「疏忽的法律責任」：「(1) 任何人不得藉合約條款、一般告示或特別向某些人發出的告示，而卸除或局限自己因疏忽引致他人死亡或人身傷害的法律責任。」「(3) 如合約條款或告示看來是用以卸除或局限因疏忽而引致的法律責任，則雖然某人同意或知道該條款或告示的存在，亦不得單憑這點認為該人表示自願承擔任何風險。」

# 沒警告有法律責任？

- ❖ The Court of Appeal of England and Wales declined to extend the liability of **medical doctors' negligent failure to warn** to other professionals who failed to render complete and comprehensive advice. (paragraph 1.029, page 15, Alexandra Norton, “Causation” in Bokhary PJ (ed.), *Tort Law and Practice in Hong Kong* (2<sup>nd</sup> edition)). HK: Sweet & Maxwell
- ❖ 學校無須過於惶恐，浪費時間力免於法律責任，結果徒勞。

# 幫港出聲致函全港中學

《幫港出聲》2014年5月14日致函535間中學的校董會主席，第6段指：「根據普通民事非故意侵權法，學校和教師對未成年學生有照顧責任（Duty of Care），假若教師知道學生在學期間將會參與佔領中環，及有可能導致暴力傷害，或違法亂紀活動並造成損害，教育工作者若不加以阻止，致令身體受傷，或永久留有犯罪記錄，對日後移民，外國出入境，就業僱傭等前途有所影響，教師要為其自身的疏忽作出民事賠償。」

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第7段: 「根據民事故意侵權法，教師若明知佔領中環時，參與者不論性別年齡都會可能被包圍，驅趕，推撞，踐踏，甚至被拘捕，而教師仍然**鼓動**甚至**帶領**學生**繼續**行動，而**導致**學生肢體**受傷**或**被捕**，**檢控**，前途受影響，教師會被判**故意**傷害（Intentional Infliction of Injury），並作出民事賠償。」

# 幫港出聲致函全港中學

第9段: 「**學校及學校管理層**亦會因為受僱教師**疏忽職守**，或受僱教師**故意傷害**而要負上**民事責任及分擔賠償**（Vicarious Liability）各位身負教育和辦學重任，而對上述相關的法律**條例**的熟悉和掌握，應非他人可及。但為了避免校方被牽涉法律訴訟並影響聲譽，建議盡快**徵詢法律顧問的意見**；如有任何需要提供更多協助的話，請立刻與我們聯絡。。」（「**函告全港中學 佔中後果嚴重**」**大公報** A01 要聞 2014.5.15）



# 校董民事免責權

香港法例第279章《教育條例》第40BI條「校董的權利和法律責任及保障」：

「(2) 校董不得就他真誠地執行或本意是執行其校董職位的任何職能而作出或不作出的任何事情招致任何民事法律責任。」

# Negligence 疏忽

1. Duty of Care (照顧責任)
2. Breach of Duty (失責)
3. Causation (因果關係)
4. Reasonably Foreseeable  
(失責導致損失可合理預見)

*T v Kan Ki Keung, Stephen & the Methodist College*

[2002]1 HKLRD 29, HCPI443/2000, 21/12/2001

# Duty of Care(照顧責任)

**Neighbors:** persons who are **so closely** and **directly affected** by my act that I **ought reasonably foresee**.

Women killed by a **serial murderer**.

Police not liable as harm not inflicted by police. *Hill v Chief Constable of West Yorkshire* [1989]AC 53

# Duty of Care

Police did nothing to prevent arrested Plaintiff (Pl) from jumping from 2<sup>nd</sup> floor. Not liable as it was a crime to **escape custody**, no duty of care.

**Omission:** In general, tort law not impose liability for omission (e.g. not rescue or report to police, reasons include difficult to ascertain scope of duty & reduce individual liberty). Exception school owes duty to pupil

# Duty of Care

Injury at school: *Chan Kin Bun v Wong Sze Ming & another*, HCPI549/2004, 2006.2.21

Consider if students incite teachers to commit offence?

Must have **actual physical damage**: personal injury or property damage. Distress, sadness, sorrow, hurt feeling not attract duty of care.

# Duty of Care

**Pure economic loss:** independent from  
& not consequent upon any physical  
damage (*Hedley Bryne & Co. Ltd. v  
Heller & Partners Ltd.* [1964] AC 465)

Conviction record, suffer loss of future  
earnings, actionable?

# Standard of Care

**Breach of Duty:** what is the standard? Professional ethics is relevant

Code for the Education Profession of Hong Kong  
香港教育專業守則

2.2 Commitment to students 對學生的義務

A member of the profession 一個專業教育工作者：

(7) Shall be concerned about students' safety in the course of his/her teaching.

在**教學過程**中，應關心學生的安全。

# Standard of Care

(13) Shall as far as possible adopt an objective viewpoint in discussing controversial matters with students.

與學生討論問題時，應盡量保持客觀。

(14) Shall encourage students to think independently and to form their own rational judgements based upon knowledge.

應鼓勵學生獨立思考作出理性的判斷。

(18) Shall foster among students a sense of democracy and educate them to respect others.

應培養學生民主精神，教育學生尊重他人。



# Standard of Care

## 2.6 Commitment to the Community

(1) Shall show respect for the law and the behavioural norms acceptable to society as a whole.

應**尊重法律**及社會接受的行為準則。

(3) Shall set an example in the performance of civic obligations. 應以身作則履行公民的義務。

(6) Shall be aware of current affairs, show concern about social problems and do his/her best to maintain a healthy social environment. 應注意時事，關心社會問題，並致力維護良好的社會風氣。

# Standard of Care

- (7) Shall teach students to respect different positions and opinions in matters over which public opinion is divided. 當公眾意見分歧時，應教導學生尊重不同的立場和觀點。
- (8) Shall treat as a primary duty the teaching of respect for human rights. 應把尊重人權的教育視為要務。
- (9) Shall do his/her best to nurture in students the concepts of freedom, peace, equality, rationality and democracy. 應致力培養學生的自由、和平、平等、理性、民主等意識。

# Standard of Care

Australian Capital Territory, Canberra (2006)  
*Teachers' code of professional practice*

“Introduction: This Code of Professional Practice is important for all teachers including principals employed by the ACT Department of Education and Training. As public service employees, teachers hold a special position of trust...”

# Standard of Care

## “19. Political Activity

19.1 **Teachers** have the **same rights** as **everyone** else to **express** their **political views** and to **make public comment**.

19.2 However, a teacher must be sensitive about how they exercise these rights. Teachers need to ensure that there is no reasonable perception of **conflict of interest** between their private political opinions/activities and their official responsibilities.”

# Standard of Care

“19.3 Teachers need to be **careful** about expressions of **political opinion** in the **workplace** and the appropriateness of sharing their views with students.

Example: Inappropriate political activity

A teacher holds **very strong political beliefs** and attends school wearing badges and t-shirts with slogans that are potentially **offensive** to others. The teacher uses **class time to encourage students to take action** in support of the teacher’s views.

This action is inappropriate.”

[http://www.det.act.gov.au/\\_data/assets/pdf\\_file/0007/17692/TeachersCode\\_ofProfessionalPractice.pdf](http://www.det.act.gov.au/_data/assets/pdf_file/0007/17692/TeachersCode_ofProfessionalPractice.pdf)

# Causation

Causation (失責導致損傷/失)

**Burden of proof** on **Pl** to **prove** Defendant's (Df's) **breach** was a **cause**, on balance of probabilities

In general, Pl must adduce evidence to show **how** the **accident happened** and **how** Pl **suffered injury**, evidence must show, it was **Df negligence**, not **other**, cause injury.

**“But for” test**: Df failed to provide a **safety belt** but not liable as the victim will not wear safety belt anyway.  
*McWilliams v Sir Williams Arrol & Co* [1962]1 WLR 295 (page 10, *Tort Law & Practice in HK*)

# Causation

Must be an **effective** and **dominant cause** of loss.

By the application of the Court's common sense

*Galoo Ltd v Bright Grahame Murray* [1995]1 All ER 16, R77

If **multiple causes**, Df's breach must be **material**

(more than minimal, trivial or insignificant)

contribution to the damage, *Lam Tam Luen v ATV*,

CACV134/2007, 2008.5.20, Court ruled: TV

program not the cause of the killer's delusional

disorder or one of the causes of attack (pages 18-

20, *Tort Law & Practice in HK*)

# Causation

**Intervening Event (IE): Df not liable** for a **subsequent injury** unrelated to the injury caused by Df. If **IE** is an **effective cause**, it **breaks the chain of causation**.

If **IE** is **deliberate, criminal** act of a **third party**, **Df** should **not be liable** for another's criminal act.

Deliberate and criminal (even not criminal may break the chain of causation) conduct by a third party who is a **stranger** to the **Df** will almost certainly constitute IE (page 64, *Tort Law & Practice in HK*)



# Causation

Unlicensed **hawker** injured a boy. UC not liable. *Yuen Tat Cheong v Urban Council* [1987] HKLR 723

**Watchman** absent or asleep when a thief burgled a flat. Df not liable. *Hui Kay Cheong Herman v Chi Wo Property Ltd* [1992] HKDCLR 51

# Remoteness of Damage

Without some limit on Df's responsibility, liability would stretch endlessly forward.  
(page 74, *Tort Law & Practice in HK*)

Pl's **injury type** is a **foreseeable consequence** of Df's negligence? All damages recoverable if "**direct consequence**" of some foreseeable damage.

Remoteness rule can be interpreted flexibly.

# Defence

**Pl** was engaged in **illegal activity** when injured by Df's negligence. Df may avoid liability.

Exception: minor crimes causally unrelated to Df's negligence. Unlicensed hawkker killed by fragments fell from 11F.

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- 律政司雙語法例資料系統: <http://www.legislation.gov.hk/chi/index.htm>  
判案書: <http://legalref.judiciary.gov.hk/lrs/common/ju/judgment.jsp>

問答環節只以例子說明法律原則，並不可視為對個別問題發表法律意見。

聲明：本講義內容只供參考，不可視作法律意見。

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