



School Risk management and Law 學校危機管理與法律

教育領導論壇二零一九
教育變革下的教師及學校領導

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1 School Real Risks 學校真正風險

2 Legal Costs 法律費用

3 Negligence 疏忽

4 Risk Assessment 風險評估

5 Apology Ordinance 道歉條例

Which are school real risks? 哪些是學校真正風險?

Sex scandal
性醜聞

Corruption
貪腐

Suicide
自殺

Committee on Prevention of Student Suicide(CPSS) - Final Report (Nov 2016, p12) 防止學生自殺委員會最終報告 2016年11月, 頁12

Secondary and Primary School 中小學			
Academic Year 學年	男	女	Total 總計
2013/14	5	5	10
2014/15	5	4	9
2015/16	14	5	19
Total 總計	24	14	38

Committee's Analysis 委員會的分析

1. Suicides occurred throughout the year without suicide peak in particular months. (para. 2.9)
2. In 2014, aged 15-24, suicide by **jumping (61.2%)**. (para. 2.11)
3. 74.3% of aged below 18 who committed suicide expressed their suicidal thoughts before actual attempts. (para. 2.13)
4. Suicide clusters (自殺連鎖效應), five completed student suicides within the same month: Jan 1993, Oct 1996, June 1997, Oct 1999, Sept 2000, Feb 2006. (para. 2.18).
5. Multiple factors in the causes of student suicides were observed (para. 2.38). Peer relationship problem: 42%, Study-related adjustment problem: 58% (para. 2.28). 22 cases (over 38 cases) relates to recent transfer to a new school, grade retention, poor school attendance. (para. 2.34)

X% of dying within Y (time) of their identifiable suicidal thought, para. 2.13 X%在有迹可尋的自殺念頭出現後在Y時間內去世, 段2.13

X %	Y (time)
16	Less than 1 day
14	1 day - 1 week
10	1 week - 1 month
11	1 - 2 months
23	Over 2 months

Legal Costs and Damages 法律費用和損害賠償

1. How much is the standard hourly rate of a solicitor?
2. How much is a skeleton argument (陳辭大綱) of about 2,500 words?
3. What is the compensation amount for an allegation of theft of a packet of peanuts?
4. What is the level of means test for applying legal aid?

Chong Cheng Lin Courtney v Cathay Pacific Airways Ltd. [2005]2 HKC 477

Fact: After strike, terminate K 1993, suspect theft, 1995 libel suit, 1998 settle, 1998 retirement travel concession scheme (10 years/40), 1999 refuse, 2001 sue in Labor Tribunal, 2003 fail due to time-barred.

Held: Contract (K) end not all terms end, post-termination benefits survive; cause of action arise in 1999, not 1993 so not time-barred; re-trial.

What is the **compensation amount** of this libel?

- A. \$ 30,000 B. \$ 300,000 C. \$3,000,000

How much is the standard hourly rate of a solicitor?

事務律師標準時薪多少?

A. \$1,500

B. \$3,000

C. \$6,000

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*Chong Cheng Lin Courtney v
Cathay Pacific Airways Ltd*

- “In 1995, the Claimant commenced a defamation action against the Defendant and another person in relation to the allegation of theft. The action was settled in May 1998 for **\$3 million** and agreed **costs** of **\$1.4 million**, which payments were “in full and final settlement of all and any claims which the Plaintiff [i.e. the Claimant here] may have against the 1st and 2nd Defendants in respect of the subject matter of this action” .” (HCLA 52/2004, CFI judgment, 12/5/2005, paragraph 4)
- New development: CX has to pay Chong \$149,543 (HCA 898/2007, CFI judgment dated 22/12/2009); costs (judgment dated 27/1/2010)

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Solicitor Fee
HK Lawyer
Jan 2018, p7
律師收費
香港律師
2018年1月, 頁7

Post qualification experience of solicitors	Old SHRs (HK\$)	Recommended SHRs in 2013 Report (HK\$)	New SHRs (HK\$) from 1 Jan 2018
High Court			
Over 15 Years	-	5,500 to 6,000	5,800
Over 10 Years	3,200 to 4,000	9 -14 years 4,900 to 5,700	9 - 15 years 5,200
7 - 8 Years	2,900 to 3,500	4,300 to 4,900	4,500
5 - 6 Years	2,400 to 3,000	3,600 to 4,200	3,900
2 - 4 Years	2,000 to 2,500	3,100 to 3,600	3,200
Newly Admitted	1,600 to 2,000	2,500 to 2,900	2,600
District Court			
Over 15 Years	-	3,667 to 4,000	3,860
Over 10 Years	2,100 to 2,600	9 -14 years 3,260 to 3,800	9 - 15 years 3,460
7 - 8 Years	1,900 to 2,300	2,860 to 3,200	3,000
5 - 6 Years	1,600 to 2,000	2,400 to 2,800	2,600
2 - 4 Years	1,350 to 1,650	2,060 to 2,400	2,130
Newly Admitted	1,066 to 1,280	1,670 to 2,000	1,730

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What is law? 何謂法?

法 = 水去

Law implies expensive

What is the level of Financial Test of
the legal aid assistance scheme?

「灋」是「法」的古字

許慎《說文解字》：灋：刑也。灋：平之如水，从水；廌，所以觸不直者；去之，从去。（「廌」是傳說中一種能辨別是非曲直的動物，廌會用角觸不正直的一方，驅走歹人，使刑法公平如水。「灋」的本義是刑法。《漢語多功能字庫》）

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Measures to tackle expensive legal costs

Legal Aid 法律援助

Legal Aid Department 法律援助署：

(1) Financial Test 經濟審查: **\$307,130** (2018.11.23)。

<http://www.lad.gov.hk/chi/las/fe.html> (2019.1.8 瀏覽)

(2) Merit Test 案情審查，reasonable prospect of success 有否合理勝訴機會。

Supplementary legal Aid Scheme 「法律援助輔助計劃」，

\$ 1,535,650 (2018.11.23)。<http://www.lad.gov.hk/chi/las/civil/slas.html>

• Magistrate Courts 裁判法院: Duty Lawyer Scheme 當席律師計劃 (Adm. fee 手續費:\$570, Means Test 入息限額為年薪不超過 **\$197,040**。) (2018.11.26)

<http://www.dutylawyer.org.hk/ch/duty/2h.asp>

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Elements of negligence 疏忽元素

- a. Duty of care 照顧責任
- b. Breach of duty 失責
- c. Causation 失責導致損失
- d. Reasonably foreseeable 可合理預見

Vicarious Liability 轉承責任

Close connection test

(*Lister v Hesley Hall Ltd.* [2001] UKHL 22)



Vicarious liability 轉承責任 Close Connection Test 緊密連繫測試

1979-82: in a boarding school, a warden sexually abused some boys aged 12-15.

1990s: the warden was sentenced to seven years' imprisonment.

1997: the former school boys sue the employer of the warden for personal injury.

On 3 May 2001 UK House of Lords, upheld vicarious liability for the warden's intentional tort, though the employer is free from blame. The warden's **wrongful act** were so **closely connected** with his **employment** that it would be **fair and just** to hold the employers **vicariously liable**.

(cited in *Ming An Insurance Co (HK) Ltd. v Ritz-Carlton Ltd.*, FACV 4/2002, 4 Dec 2002)

Annex I

Chapter:	71	Title:	CONTROL OF EXEMPTION CLAUSES ORDINANCE	Gazette Number:
Section:	7	Heading:	Negligence liability	Version Date: 30/06/1997

PART II

CONTROL OF EXEMPTION CLAUSES

Avoidance of liability for negligence, breach of contract, etc.

- (1) A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence.
- (2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.
- (3) Where a contract term or notice purports to exclude or restrict liability for negligence a person's agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk. (Enacted 1989) [cf. 1977 c. 50 s. 2 U.K.]

章： 71 標題： 管制免責條款條例 憲報編號：
條： 7 條文標題： 疏忽的法律責任 版本日期： 30/06/1997

第II部
管制免責條款
逃避因疏忽、違約等而引致的法律責任

- (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。
- (2) 至於其他損失或損害方面，任何人亦不得藉上述各項而卸除或局限自己因疏忽而引致的法律責任，但在該條款或告示符合合理標準的範圍內，則不在此限。
- (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。
(1989年制定) [比照1977 c. 50 s. 2 U.K.]

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5 Steps to Risk Assessment 風險評估五步曲

- Look for hazards 找出危險
- Who may be harmed and how 誰會受損
- Evaluate the risks and decide if the existing precautions are adequate 評估風險
- Record your findings 記錄評估
- Review assessment and revise if necessary 覆核評估

<https://www.labour.gov.hk/tc/public/pdf/os/D/FiveSteps.pdf>

Apology Ordinance, Cap. 631 《道歉條例》(第631章)

3 Tiers of Protection under Apology Ordinance	《道歉條例》下的三重保障
1. Insurance not affected	1. 保險不受影響
2. Apology not constitute admission of the person's fault or liability	2. 道歉不構成承認過失或法律責任
3. Evidence of an apology normally not admissible	3. 道歉通常不可接納為證據

Apology Ordinance

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Section 10: Contract of **insurance** or indemnity **not affected**

- (1) An apology made by a person in connection with a matter does **not void** or otherwise affect any insurance cover, compensation or other form of benefit for any person in connection with the matter under a contract of insurance or indemnity.
- (2) This section applies regardless of whether the contract of insurance or indemnity was entered into before, on or after the commencement date of this Ordinance.
- (3) This section applies despite anything to the contrary in any rule of law or agreement.

《道歉條例》

第10條: **保險**或彌償合約**不受影響**

「(1) 如根據某保險或彌償合約，就某事宜對任何人提供保險保障、補償或其他形式的利益，則某人就該事宜作出的道歉，並不使該項保障、補償或利益無效，或受到其他影響。

(2) 不論上述保險或彌償合約是在本條例生效日期之前、當日或之後訂立，本條仍然適用。

(3) 儘管任何法律規則或協議中，有任何相反規定，本條仍然適用。」

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Apology Ordinance

Section 7(1): **Effect** of **apology** for purposes of applicable proceedings

For the purposes of applicable proceedings, an **apology** made by a person in connection with a matter—

- (a) does **not constitute** an express or implied **admission** of the person's **fault** or **liability** in connection with the matter; and
- (b) must **not be taken into account** in **determining fault, liability** or **any other issue** in connection with the matter to the **prejudice** of the person.

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《道歉條例》

「第7條: **道歉**對適用程序的**效果**

就適用程序而言，某人就某事宜作出的道歉—

(a) 並不**構成**以明示或默示的方式，**承認**該人在該事宜方面的**過失**或**法律責任**；及

(b) 在就該事宜**裁斷過失**、**法律責任**或**任何其他爭議**事項時，**不得**列為**不利**於該人的**考慮因素**。」

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Apology Ordinance

Section 8: Admissibility of **evidence of apology**

- (1) Evidence of an apology made by a person in connection with a matter is **not admissible** in **applicable proceedings** as **evidence** for determining fault, liability or any other issue in connection with the matter to the **prejudice** of the person.
- (2) However, if in particular applicable proceedings there is an **exceptional case** (for example, where there is no other evidence available for determining an issue), the **decision maker** may exercise a **discretion** to admit a statement of fact contained in an apology as evidence in the proceedings, but only if the decision maker is satisfied that it is **just** and **equitable** to do so, having regard to the **public interest** or the **interests** of the **administration of justice**.

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《道歉條例》

第8條: 道歉證據是否可予接納

(1) 某人就某事宜作出的道歉的證據，**不得**在適用程序中，為就該事宜裁斷過失、法律責任或任何其他爭議事項，而**接納為不利於該人的證據**。

(2) 然而，如在個別適用程序中，出現特殊情況(例如**沒有其他證據**，可用於裁斷爭議事項)，有關的裁斷者可行使**酌情權**，將道歉所包含的事實陳述，在該程序中接納為證據，但該裁斷者須信納，行使該酌情權，在顧及**公眾利益**或**公義原則**之後，屬**公正公平**之舉，方可行使該酌情權。

(3) 儘管任何法律規則或其他關於程序事宜的規則中，有任何相反規定，本條仍然適用。

(4) 在本條中— 裁斷者 (decision maker) 就適用程序而言，指具有權限在該程序中聆聽、收取和審查證據的人(不論是法院、法庭、審裁處、仲裁員或任何其他團體或個人)。

Apple Daily 黎明越夜越有機 關公災難變公關教材 蘋果動新聞

29 Apr, 2016: <https://www.youtube.com/watch?v=h5rvM5Waq6I>

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Apology Ordinance

Section 2: The object of this Ordinance is to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.

Section 6: Meaning of applicable proceedings

(1) In this Ordinance, the following proceedings are **applicable proceedings**—

(a) judicial, arbitral, administrative, **disciplinary** and regulatory **proceedings** (whether or not conducted under an enactment);

(b) other proceedings conducted under an enactment.

(2) However, applicable proceedings **do not include**—

(a) **criminal** proceedings; or

(b) proceedings specified in the Schedule.

《道歉條例》

第2條: 「條例的目的提倡和鼓勵作出道歉, 以期防止爭端惡化, 和促進和睦排解爭端。」

第6條: 適用程序的涵義:

- (1) 「司法、仲裁、行政、**紀律處分**及規管性程序(不論是否根據成文法則進行) ;
- (b) 根據成文法則進行的其他程序。」
- (2) 適用程序**並不包括**—
 - (a) **刑事**法律程序; 或
 - (b) 附表指明的程序。

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Apology Ordinance

Section 4: **Meaning of apology**

- (1) In this Ordinance, an apology made by a person in connection with a matter means an expression of the person's **regret**, sympathy or benevolence in connection with the matter, and includes, for example, an expression that the person is **sorry** about the matter.
- (2) The expression may be **oral**, **written** or by **conduct**.
- (3) The apology also includes any part of the expression that is—
 - (a) an **express** or **implied** admission of the person's fault or liability in connection with the matter; or
 - (b) a **statement of fact** in connection with the matter.
- (4) In this Ordinance, a reference to an apology made by a person includes an apology made on behalf of the person.
- (5) Section 5 specifies the apologies to which this Ordinance applies.

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《道歉條例》

第4條: **道歉的涵義**

- (1) 在本條例中，某人就某事宜作出的道歉，指該人就該事宜表達**歉意、懊悔、遺憾**、同情或善意，並包括(舉例而言)該人就該事宜表達**抱歉**。
- (2) 上述表達可屬**口頭或書面**形式，亦可藉**行為**作出。
- (3) 如上述表達有任何部分符合以下說明，則上述道歉亦包括該部分—
 - (a) 該部分是以**明示或默示**的方式，承認上述的人在上述事宜方面的過失或法律責任；或
 - (b) 該部分是與上述事宜相關的**事實陳述**。
- (4) 在本條例中，凡提述某人作出的道歉，包括代表該人作出的道歉。
- (5) 第5條指明本條例適用的道歉。

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參考資料

莊耀洸律師、涂謹申律師·香港教育專業人員協會主辦「校園法律講座：學校責任與個案分析」·2002年10月12日·

莊耀洸律師，「學校的法律責任與疏忽」，輯於吳迅榮、黃炳文主編《廿一世紀的學校領導：持續與創新》，香港，學術專業圖書中心，2009

莊耀洸「戶外活動」輯於趙文宗、洪雪蓮、莊耀洸編(2011.12)《社會福利與法律應用:溝通與充權(增訂再版)》。香港：紅投資有限公司。

林壽康、余惠萍《香港教育法—疏忽侵權篇（增訂版）》香港：印象文字。2017年9月

電子版香港法例: <http://www.elegislation.gov.hk/chi/index.htm>

判案書: <http://legalref.judiciary.hk/lrs/common/ju/judgment.jsp>

《教師慎防誤墮法網之道歉篇一》(Facebook video 快樂教與學 The Joy of Education)12 March 2018:

https://www.facebook.com/FEHDE&Hk/videos/1024897131010846/?v_crf=ARS0F7p5b6GL6XANZ28FZ2cClmH4haL_3Q2NCoLQ3A2d-sF6g7u9j8F3ZK1eSM

若有賜教，請電郵至 ykchong@alumni.cuhk.net

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