

## Outdoor Activities

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# UK cases

- *Porter v City of Bradford Metropolitan Council* (unreported, but available through Lexis), 14 Jan 1985 (CA)

UK CA 1985: a teacher leading 12 students (aged 15-16) field trip, a boy threw stone 15 minutes and his classmate.

- *Woodbridge School v Chittock* [2002] EWCA Civ 915, [2002]ELR 735

School trip (skiing) in Austria, permanently paralysed from waist down as going too quickly.

- *Kearn-Price v Kent County Council* [2002] EWCA Civ 1539, [2003] ELR 17

15 minutes before start of school day, a football hit a boy's eye (aged 14). Football ban not enforced.

# HK cases

- *Wong Wing Ho v Housing Authority* [2008]1 HKLRD 352 (CACV 28/2007, 28/12/2007)

Climbed over the fence into an adjoining closed court to retrieve the ball but fell.

- *Amrol v Rivera* [2008]4 HKLRD 110 (DCPI 267/2007, 19/3/2008)

A boy aged 4 knocked down by a golden retriever (25 kg) in an open plaza.

- *HK Red Cross v HK Federation of Youth Groups* (DCCJ 2233/2007, 12 Feb 2010)

- *Lilley v HK & Kowloon Ferry Ltd.* (HCPI 811/2005, 20/1/2012)  
Lamma Island fell from a ferry into sea

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- Risk Assessment: careful examination of what could cause harm so that you can weigh up whether you have taken enough precautions.
  - Risk: chance that one will be harmed by hazard.
  - Hazard: anything can cause harm
  - Instructors: qualified as a coach or trainer in a particular activity
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- Purpose: ensure satisfactory precautions are made so that the risk is small.
  - Otherwise: examples of tragedy:  
2003 (late June) Sai Kung incident,  
1996 Pat Sin Leng incident,  
1955 Tsung Tsai Yuen incident

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# Elements of negligence

- a. Duty of care
- b. Breach of duty
- c. Causation
- d. Reasonably foreseeable

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# Examples of possible breach

- a. who plan the activity, approve, assess risk, review and monitor?
- b. Comply with legal requirement?
- c. Observe relevant guidelines?
- d. Have a written manual or checklist?
- e. Group leader, instructors knowledgeable, qualified, trained, experienced?
- f. Proper evaluation of students' abilities?

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- g. Procedures to eliminate unwanted students; students without attending briefing or training; or students for whom arrangements had not been made from joining the activity?
  - h. Site selection is reasonably safe and fit for the purpose?
  - i. Arrange a suitable starting point, ending point and emergency assembly point?
  - j. Adequate instructions to teachers and students?
  - k. Appropriate equipment be taken? E.g. mobile phone
  - l. Fully informed the police?
  - m. A meeting with staff and students to discuss plan and risk?
  - n. Emergency plan site specific?
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# Investigation of serious incidents:

- a. cause of the incident
- b. lessons to learn
- c. information to bereaved parents
- d. exchange information with statutory bodies , e.g. police, coroner
- e. manage media enquires
- f. provide early information to EDB

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# 5 Steps to risk assessment

- a. Look for hazards
- b. Who may be harmed and how
- c. Evaluate the risks and decide whether the existing precautions are adequate
- d. Record your findings
- e. Review assessment and revise if necessary

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# Step 1: look for hazards

- Ignore trivial and concentrate on significant hazards
- Heightened risk factors, e.g. weather

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## Step 2: who may be harmed and how

- Students, disabled, teachers, instructors, assistants, volunteers

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## Step 3: Evaluate risks and see if existing precautions adequate

- a. whether you have done all the legal requirement
- b. do what is reasonably practicable to keep safe
- c. draw up an action list and prioritize the remaining risk
- d. try a less risky option, prevent access to hazard, reduce exposure to hazard, issue protective equipment, provide welfare facilities (e.g. first aid)
- e. failure to take simple precaution costs you a lot!

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## Step 4: record findings

- When, how long to be kept and what?
- Record is able to show risk assessment must be adequate/suitable and sufficient:
  - a. proper check was made
  - b. considered who might be affected
  - c. dealt with all obvious hazards, considered no. of people involved
  - d. precautions are reasonable and remaining risk is low
- Take action is more important than just writing it down

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## Step 5: review assessment and revise if necessary

- Re-assess if any significant change
- e.g. illness of staff and students, change of weather, availability of preferred activity
- Who assess, record, review risk and who monitor review?

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# Risk management:

- a. remove the risk
- b. avoid the risk
- c. reduce the risk
- d. accept the risk



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## Endnotes:

- a. Information of slides 8-13 are referred to “Five steps to risk assessment”, UK Health & Safety Executive, 1999.
- b. Slide 7 is cited from “Standards for Local Educational Authorities in overseeing educational visits”, UK Dept. for Education & Skills, 2003

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# Reference:

- a. Guidelines on outdoor activities, EMB 2004 (its Appendix IX is the list of common and useful guidelines, circulars and websites for outdoor activities)
  - b. Guidelines on study tours outside HKSAR, EMB 2003
  - c. “Good practice in adventure activities within the educational visits- a good practice guide”, Dept. for Education and Employment, England, 1998
  - d. “Health and safety of pupils on educational visits”, Department for Education and Employment, UK, 1998
  - e. “Standards for adventure”, Circular 0565/2002 UK Department for Education and Skills, 2002
  - f. “A Handbook for Group Leaders”, Circular 0566/2002 UK Department for Education and Skills, 2002
  - g. “Good practice in adventure activities within the education section”, Adventures Activities Licensing Authorities, U.K., 2002
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- j. *學校課外活動指引 (1997年1月)*。香港：教育署輔導視學處學校活動組。2008年5月5日，取自  
<http://www.edb.gov.hk/index.aspx?nodeID=98&langno=2>
- k. 香港法例第71章，第7條，疏忽的法律責任。在*雙語法例資料系統*。2008年5月5日取自  
<http://www.legislation.gov.hk/chi/home.htm>
- l. 香港小童群益會 (2003)。 *校園法律：戶外活動篇*。香港：香港小童群益會「校園危機支援計劃」。
- m. 香港小童群益會 (2003)。 *校園法律：責任與疏忽Q&A篇*。香港：香港小童群益會「校園危機支援計劃」。
- n. *戶外活動指引 (2008)*。香港：教育局。
- o. 莊耀洸「戶外活動」輯於趙文宗、洪雪蓮、莊耀洸編 (2011) *《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。頁217-232

# Annex I

Chapter:	71	Title:	CONTROL OF EXEMPTION CLAUSES ORDINANCE	Gazette Number:
Section:	7	Heading:	<b>Negligence liability</b>	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.]

# Annex I (Chinese)

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.]

# Annex II 教育局課外活動指引 (1997年)

## 第五章 舉辦課外活動應該注意的事項

### 5.6 責任與法律問題

校方於學校舉辦的課外活動中負有監督的責任。活動中教師有責任照顧學生，如同一個父親或母親照顧其子女般。教署已於1988年起代各資助及按位津貼學校向保險公司投保綜合保險，綜合保險包括以下三部份：

1. 公眾責任保險 (保額上限為每所學校每宗事故港幣1億元)
2. 僱員補償保險 (保額上限為每間受保學校每宗事故港幣1億元)
3. 團體人身意外保險 (保額上限為每名學生港幣10萬元)

## Annex III 綜合保險摘要說明

- 1.2 這保險的主要目的在於保障學校，以免學校因其行動使他人身體受到傷害而招致金錢上的損失。
- 1.3 在這些學校行動中受到傷害的人士，可向有關學校索償。受害人可以是：
- 按政府補助薪金表支薪的學校僱員；
  - 任何並非受僱於學校的人士（例如學生、家長、訪客、或與學校接觸的市民）。
- 1.4 如法庭裁定學校疏忽，可下令學校支付賠償給受害人

## Annex IV 教育局《戶外活動指引》(2008年)

### 引言

「重視學生安全是推展戶外活動的重要課題。因此，不同的戶外活動組織/團體都會清晰具列有關活動守則，如學生參加活動前的測試標準、又或因應天氣變化所作的應變計劃等資料，惟取捨之間，各組織團體可能稍有出入。假如學校本身是戶外活動的主辦者，則應依循<<指引>>的準則行事，並根據活動的性質及學生的體力和技能，制訂合適而周全的計劃。」

21 June 2017

L17a outdoor activities