





Differences between Criminal Law and Civil Law		
	Criminal	Civil
Nature	Deal with crime (wrong- doings against the society) and the legal punishment of criminal offences	Deal with disputes between individuals or organisations, in which compensation is awarded to the claimant
Burden of proof	Lies on the government	Initially lies on the claimant
Standard of proof	Beyond reasonably doubt Nearly 100%	Preponderance of evidence Balance of probabilities over 50%
Purpose	Maintain good public order in the society     Punishment by Imprisonment and/or fines	Compensation/Redress     Punitive damages     Injunction
examples:	Theft, assault, robbery, trafficking in controlled substances, sexual abuse, murder, etc	Negligence, malpractice, property disputes, divorce, child custody proceedings, defamation, personal/psychiatric injury, etc.



# A. Legal Basics for Educators 1. The laws around us (cont'd) Other very important sources: Code of Aid Compendium to Code of Aid Supplement to Code of Aid Administration Guide Code for the Education Profession of Hong Kong What are their status in the eyes of the law?

## A. Legal Basics for Educators 2. School system and the Key Players • Types of school (funding mode, levels, ... etc.) • Governing bodies • School Premises (see Cap.279 & 279A) • Education Bureau + Regional Education Office • School Sponsoring Body (SSB) • School Management Committee (SMC) and Incorporated Management Committee (IMC) • PRINCIPALS, teachers, parents and STUDENTS • Other players - SSW, EP, PSLO, ....

## A. Legal Basics for Educators 2. School system and the Key Players Education Ordinance (Cap 279) Section 32 Management committee to manage school Section 40AD Incorporated management committee to manage school Section 58 Functions of principal Norincipals are responsible for discipline ... have authority over ... pupils of Section 74 Power of Permanent Secretary to order attendance at primary or secondary school

# A. Legal Basics for Educators 3. Separate legal entity • the IMC shall be responsible for any legal liability relating to management of the school. • managers shall not incur any legal liability in respect of anything done in the performance of their function as a manager if they have acted in good faith. • insurance policy to indemnify the liability of IMCs and their managers from any claims against their wrongful acts in performing their duties in school management. • management liability, vicarious liability and employment practices liability."

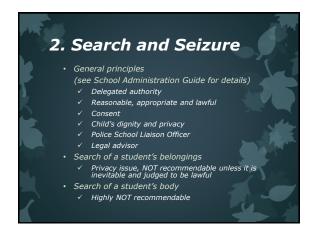
### A. Legal Basics for Educators 4. In Loco Parentis (替代家長) • Latin meaning "in the place of a parent" • " ... the schoolmaster was bound to take such care of his boys as a careful father would take of his boys, and there could not be a better definition of the duty of a schoolmaster." see Williams v Eady (1893) for details • Often refer to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent • It also allows schools to act in the best interests of the students as they see fit ...

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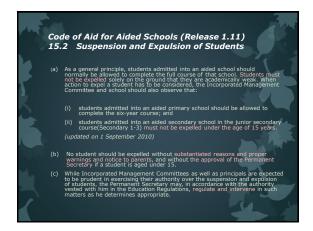








## 4. Supervision & Discipline School policies regarding supervision School Rules - how legitimate? School uniforms Mandla v Dowell Lee (1983) Supervision of students with Disabilities School-related activities, e.g. field trip Suspension & Expulsion Serious Student Behavioural Problems Drug related, sex related, Gambling, Gang activities, ... Bullying



# Education Regulations (Cap 279A) Regulation 96 Expulsion and suspension of pupils (1) If in the opinion of the Permanent Secretary the behaviour of any pupil is undesirable or improper or contrary to the good of the school or the other pupils he may, in his absolute discretion, require the principal to expel such pupil from the school or to suspend him for such time and under such conditions as the Permanent Secretary may specify. (L.N. 268 of 1990; 3 of 2003 s. 14; 27 of 2004 s. 61) (2) Nothing in paragraph (1) shall prejudice the right of a principal or supervisor to expel or suspend a pupil from the school.

# Disciplinary action Should not be arbitrary Should not be contrary to the established school regulations or rules Based on rules or principles that are announced and known by all students Must be fair, just and "reasonable" Must be humanistic and educational in nature Procedural justice (or due process) to be observed Appeal mechanism (see the JR case of ESF (2004))

## "Reasonableness" ... broadly construed to apply to regulations that maintain and advance the educational process. School and classroom rules cannot be so broad or vague, cannot be too narrow and tight In Loco parentis is bound by two standards: reasonableness and good faith without malice.

## 5. Property and Privacy When students bring illegal items to school, e.g. drugs or weapons, do you have an obligation to respond? When students bring bothersome items such as water pistols or comic books, how will you respond? School may make rules that forbid students to bring certain items into the school setting, if the items are deemed to interfere with educational process. School may need to develop procedures for confiscation and later return of most items. Absent reasonable rules, educators run the risk of being accused of "trespass of private personal property". What about locker and desk searches? Reasonable cause?

## 5. Property and Privacy (con't) Intellectual Property Ordinance (Cap.528) Personal Data (Privacy) Ordinance (Cap.480) ✓ Check here for details School policies and guidelines

# 6. Special Educational Needs Diversity of students Physical or psychiatric disorders, emotional problems, or learning disorders. ..... These children are entitled or have the right to an education. Potential issues: Confidentiality – most student records must be regarded as confidential Privacy – personal data, data user, 6 data protection principles Discrimination

# 7. Complaints and Remedies • Enhancing home-school communication through various means • Fair, open and transparent school rules • Procedures for handling complaints • Resolving complaints through mediation • Non-legal alternatives • Insurance





