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### 「校規：法理情」研討會 問題分析

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個案一：屋邨投訴

法律問題重點：私隱權

- 1.1 如學生涉及校外行爲問題，學校可否發放個案資料與校外人士，例如：提供學生相片？
- 1.2 老師可要求檢查學生手機內容？

Trespass to goods:

Obtaining private information through unauthorized physical access

The Hong Kong Bill of Rights Ordinance (Cap. 383):

1. Article 14 (1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Section 7: This Ordinance binds only the government and all public authorities

Hong Kong Polytechnic University v Next Magazine Publishing Ltd [1997] HKLRD 514:

“Public authorities” ... (1) act for the public benefit and not for private profit; (2) are wholly or partly publicly funded; and (3) are subject to a degree of government supervision.

Proportionality test: To show interference is justifiable (Democratic Party v Secretary for Justice [2007] 2 HKLRD 804):

1. Restriction must be rationally connected with a legitimate purpose; and
2. Means used to impair the right of privacy must be no more than is necessary to accomplish the legitimate purpose in question.

Wong Tze Yam v Tang King Shing, Commissioner of Police and Another (CACV199 / 2009):

1. Section 54 Police Force Ordinance (Cap. 232) did not contravene Article 14 Cap. 383

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2. Recording of the particulars of a person stopped and searched was not unreasonable or arbitrary
3. The interference that was caused to the “privacy” of the persons stopped and searched was minimal.

Article 30 The Basic Law: The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.

### Interception of Communications and Surveillance Ordinance (Cap. 589)

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個案二：攜帶貴重物品回校

法律問題重點：保管財物

- 2.1 老師可暫收學生財物？多少時間？
- 2.2 折舊？／損毀？
- 2.3 學校可禁止學生帶貴重物品？
- 2.4 學校免責條款成立否？

#### Theft:

1. Dishonesty
2. Appropriation
3. Property belonging to others
4. With the intention of permanently depriving the owner of it

#### Conversion:

1. Positive wrongful act of handling goods (use and employment) in a way not consistent with owner’s rights.
2. Mere possession is not conversion
3. D is liable for any loss or damage before the article is returned.

#### Detinue:

1. A failure to deliver the article after demand

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### 2. The mere keeping of another's goods is not detinue

#### Negligence:

##### 學校綜合保險:

1. 公眾責任 (need to prove negligence on the part of the school)
2. 僱員補償
3. 團體人身意外

The defence of Volenti: An agreement made voluntarily by P to absolve D from the legal consequences of an unreasonable risk of harm created by D, where P has full knowledge of both the extent and nature of the risk. (Tort law and practice in Hong Kong (2010) p. 973)

1. There is an agreement.
2. The agreement must be made by P voluntarily.
3. P must know that the nature and extent of the risk

#### Control of Exemption Clauses Ordinance (管制免責條款條例) (Cap. 71):

1. The law generally applies to business liability.
2. Business is defined in Section 2 (1) as “includes a profession and the activities of a public body, a public authority, or a board, commission, committee or other body appointed by CE or Government”
3. Section 7 (1): liability for death or personal injury resulting from negligence is not excludable.
4. Section 7 (2):The terms in the exemption clause limiting liability in respect of other property loss or property damage must meet the reasonableness requirement in Section 3.

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#### 個案三：學生染髮

##### 法律問題重點：身體

- 3.1 要求染髮的學生回復舊模樣？（噴髮劑染髮／敏感）從學生頭上取頭髮樣本檢驗／保存作顏色紀錄？
- 3.2 要求學生除紋身、舌環、剪髮？
- 3.3 只許女生穿耳孔，男女有別？
- 3.4 不許穿耳針？

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### Section 59 C Police Force Ordinance (Cap. 232)

- (1) In any investigation in respect of any offence committed or believed to have been committed, a **non-intimate sample** may be taken from a person **with or without his consent** for forensic analysis only if
    - (a) That person is in police detention or is in custody on the authority of a court; and
    - (b) A police officer of or above the rank of superintendent ("authorizing officer") authorizes it to be taken
  - (2) An authorizing officer may only give an authorization as required under subsection (1) (b) if he has reasonable grounds
    - (a) For suspecting that the person ... has committed a serious arrestable offence; and
    - (b) For believing that the sample will tend to confirm or disprove the commission of the offence by that person
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個案四：搜書包及報警

法律問題重點：涉及刑事的個案

- 4.1 報警責任交由家長決定？如家長反對？學校有報警責任？
- 4.2 學校應否要求有關學生寫下事件情況？（落口供、受傷警司警戒
- 4.3 報案後應留意的事項，例如：落口供、請律師／法援
- 4.4 家長要求另一方賠償，學校的角色？

No general legal duty to report crime:

1. Section 91(2) CRIMINAL PROCEDURE ORDINANCE (Cap. 221):  
It is a crime to accept or agree to accept consideration for not disclosing information that might be of material assistance in securing the prosecution or conviction of an offender.
2. There are some specific provisions imposing a legal duty to report crimes, basically concerning disclosure of knowledge or suspicion that certain property or proceeds are related to relevant crimes.
  - (a) Section 12 United Nations (Anti-Terrorism Measures) Ordinance:
  - (b) Section 25A Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405):
  - (c) Section 25A Organized and Serious Crimes Ordinance (Cap. 455):

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### Rules and Directions for the Questioning of suspects and the taking of statements (1992):

5. ... citizens have a duty to help a police officer to discover and apprehend offenders;

學校行政手冊 3.7.8 校方應主動聯絡警方的學校聯絡主任。若情況嚴重，應即時報警求助。

### Rules and Directions for the Questioning of suspects and the taking of statements (1992):

#### Part III Administrative Directions:

#### Interrogation of children and young persons:

So far as practicable, children and young persons under the age of 16 years (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, not even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his nominee.

#### Minority is not a defence in the law of tort:

1. A minor must be judged by the foresight and prudence of an ordinary minor of his age. (Yachuk v Oliver Blais Co. Ltd. [1949] AC 386)
2. Parents are not vicariously liable for their children's torts but are answerable for their negligence for failing to exercise proper supervision so that their children do not cause any injury or damage to others (Smith v Leurs [1970] CLR 256)
3. Chan Wai Nga v Tam Chi Wai and Another (DCPI 1158/2005)
  - (a) No general parental duty to keep a child under constant supervision
  - (b) Parental duty: to exercise a reasonable degree of supervision and control over the child, in view of any foreseeable danger in the activities the child was involved in at the relevant time, taking into account that particular child's propensity to meddle.

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注意: 本講義僅為講解法律原則，不可視為提供法律意見。

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4. Patterson, F et al. (2011). Judicial Review: Law and Practice: Bristol: Jordan Pub