DCPI 282/2015, DCPI 311/2015

DCPI 349/2015, DCPI 375/2015

(Heard Together)

[2020] HKDC 412

DCPI 282/2015

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO.282 OF 2015

\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

WONG WENG CHI Plaintiff

and

THE SECRETARY FOR JUSTICE Defendant

for and on behalf of

THE COMMISSIONER OF POLICE

\_\_\_\_\_\_\_\_\_\_\_\_

AND

DCPI 311/2015

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO.311 OF 2015

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BETWEEN

CHOW NOK HANG Plaintiff

and

THE SECRETARY FOR JUSTICE Defendant

for and on behalf of

THE COMMISSIONER OF POLICE

\_\_\_\_\_\_\_\_\_\_\_\_

AND

DCPI 349/2015

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO.349 OF 2015

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BETWEEN

LEUNG WING LAI Plaintiff

and

THE SECRETARY FOR JUSTICE Defendant

for and on behalf of

THE COMMISSIONER OF POLICE

\_\_\_\_\_\_\_\_\_\_\_\_

AND

DCPI 375/2015

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO.375 OF 2015

\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

CHOW CHUN YU Plaintiff

and

THE SECRETARY FOR JUSTICE Defendant

for and on behalf of

THE COMMISSIONER OF POLICE

\_\_\_\_\_\_\_\_\_\_\_\_

(Heard Together)

Before: Deputy District Judge S.H. Lee in Court

Dates of Trial: 1-4, 8-11, 23 & 24 April 2019

Date of Judgment: 19 June 2020

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**JUDGMENT**

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***A. Introduction***

1. These 4 civil actions arose from one demonstration opposing the North East New Territories New Development Areas Project (**the Project**) held outside the Legislative Council Complex (**the Complex**) on 13 and 14 June 2014 (**the Demonstration**). In the early hours of 14 June, the police intercepted outside the Complex the 4 plaintiff protestors in the Demonstration. They are: -

(1) Mr Wong Weng Chi (**P1**) in DCPI 282/2015;

(2) Mr Chow Nok Hang (**P2**) in DCPI 311/2015;

(3) Mr Leung Wing Lai (**P3)** in DCPI 349/2015; and

(4) Mr Chow Chun Yu (**P4**) in DCPI 375/2015.

1. The 4 plaintiffs complain that the police had “misused and abused their power”[[1]](#footnote-1) on 14 June. The police, they say, had: -

(1) unlawfully deprived liberty of P1, P2 & P3 without declaring arrest and/or giving reasons for arrest;

(2) used excessive and unreasonable force on P2 & P3 before taking all four of them on board a police vehicle;

(3) unnecessarily handcuffed P2 & P4 on board; and

(4) physically and verbally abused all four of them “in the dark interior of police vehicle with the curtains drawn” to “vent their anger and frustrations on these perceived leaders” of the protest[[2]](#footnote-2).

1. The Commissioner of Police defending these 4 actions says otherwise. He says his officers had: -
2. lawfully arrested all 4 plaintiffs by declaring arrest and giving reasons for arrest, or that the circumstances were such that P2 and P3 already knew the same at the time of their arrest and/or were given the same as soon as reasonably practicable thereafter;
3. intercepted and escorted/removed P2 & P3 to police vehicle with necessary and reasonable force in the circumstances;
4. never abused any of the 4 plaintiffs physically or verbally on board police vehicle; and
5. found it necessary to handcuff P2 & P4 because the circumstances necessitated but that they had been released as soon as the circumstances allowed.
6. Save with what transpired on board the subject police vehicle bearing registration number AM7256 the 4 plaintiffs had boarded (**the PV**), much of what occurred outside the Complex before and after their interception were recorded by police and produced by way of 28 clips (collectively **the Police Footage**) at trial.
7. The PV took the 4 plaintiffs to Aberdeen Police Station (**the Police Station**). Shortly after their release on bail after 0800 hours on 14 June, the 4 plaintiffs held a press conference outside the Police Station (**the Conference**). They complained to the press of alleged police maltreatment and showed their alleged injuries arising therefrom. The Conference was captured by television station and a footage containing, among other coverage, the Conference, was also produced at trial (**the TV Footage**).
8. The 4 plaintiffs afterwards in the same morning consulted the Accident & Emergency Department (**the A&E Dept**) of Queen Mary Hospital (**QMH**) at 0900 hours odd. Dr Li Yuk Wah (**Dr Li**) and Dr Lui Tak Wai David (**Dr Lui**) examined them at around noon time. Four medical reports addressed to plaintiffs’ solicitors and prepared by Dr Li for P1 & P3 and by Dr Lui for P2 & P4 (collectively **the A&E Reports**) were produced at trial.
9. Starting from July or August 2014, the 4 plaintiffs consulted the same psychiatrist, Dr Kwan Ka Lik Felix (**Dr Kwan**). Besides producing his medical reports on the 4 plaintiffs, Dr Kwan was called at trial to give expert evidence.
10. In September 2014, P1 and P2 had also complained, and gave statements, to the Complaints Against Police Office (**CAPO**) about their alleged mistreatment on 14 June.

***B. Plaintiffs’ fundamental rights***

1. The freedom of the person of Hong Kong residents shall be inviolable. No Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. Arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited: article 28 of the Basic Law of the Hong Kong Special Administrative Region (**the Basic Law**).
2. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law: article 5(1) of the Hong Kong Bill of Rights[[3]](#footnote-3) (**BOR**).
3. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest: article 5(2) of BOR.

***C. Plaintiffs’ claims***

1. On top of alleging breach of plaintiffs’ constitutional rights above[[4]](#footnote-4), the 4 plaintiffs sue the defendant in trespass to person (i.e. battery and false imprisonment) and negligence, alleging that the defendant was vicariously liable for the alleged misconducts of his officers.
2. The defendant does not take issue with his vicarious liability at law for the alleged misconducts of his officers (if proven) or with him owing the 4 plaintiffs duty of care at common law. This court thus finds it unnecessary to deal with plaintiffs’ legal and factual submissions peculiar to these 2 causes of action[[5]](#footnote-5).
3. It is also common ground that, as far as liability goes, the 4 plaintiffs’ claim for breach of their constitutional rights adds nothing to those of battery and false imprisonment they rely on but that the constitutional nature of these rights has more bearing on the quantum of their claims[[6]](#footnote-6). As such, this court will, on liability section below, focus on plaintiffs’ claims in trespass to person.
4. In terms of quantum, the 4 plaintiffs seek to recover from the defendant damages, including exemplary and aggravated damages, ranging from a total of $154,000 to $259,000 odd in their respective Revised Statement of Damages (**RSOD**).

***D. Liability***

***D1. Applicable principles***

1. It is, I think, worthy to begin remembering these pertinent words in *Lindley v Rutter* [1981] QB 128, 134F[[7]](#footnote-7): “It is the duty of the courts to be ever zealous to protect the personal freedom, privacy and dignity of all… Any claim to be entitled to take action which infringes these rights is to be examined with very great care. But such rights are not absolute. They have to be weighed against the rights and duties of police officers acting on behalf of society as a whole”.
2. Having regard to parties’ submissions on liability, I think the following basic legal principles are applicable to these 4 actions.
3. The starting point is that every resident is entitled to freedom of the person. Anyone who seeks to interfere with that freedom can only do so with proper legal justification. This was well-established at common law and is now laid down in art.28 of the Basic Law: *Yeung May Wan & Others v HKSAR* (2005) 8 HKCFAR 137, 159I.
4. Battery and false imprisonment are both forms of trespass to person. Battery is the actual infliction of unlawful force on another person. False imprisonment is the unlawful imposition of constraint upon another person’s freedom of movement from a particular place: *Collins v Wilcock* [1984] 1 WLR 1172, 1177B.
5. Every person’s body is inviolable. Any touching of another person, however slight, may amount to battery. But there are exceptions. People may be subjected to the lawful exercise of the power of arrest. And all physical contact which is generally acceptable in the ordinary conduct of daily life is excepted: *Collins v Wilcock,* supra, 1177C-H.
6. A police officer may subject another to restraint when he lawfully exercises his power of arrest. But, putting that and other statutory powers aside, police officer has no greater rights than ordinary citizen. If, taking into account the nature of his duty, his use of physical contact in the face of non-cooperation persists beyond generally acceptable standards of conduct, his action will become unlawful; and if he restrains a man, for example by gripping his arm or his shoulder, then his action will also be unlawful, unless he is lawfully exercising his power of arrest: *Collins v Wilcock*, supra, 1178E-G.
7. The arresting officer is the constable who actually effected the arrest. Where several constables take part, they each qualify as an arresting officer. An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It also occurs when by words or by conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go: *Yeung May Wan*, supra, 166J-167B.
8. Essentially an arresting officer is the one who takes an accused into custody by conduct such as, typically, laying hands on him. But it can be by conduct, such as directing a verbal command at him backed by an obvious preparedness to use physical force if necessary: *Yeung May Wan*, supra, 189C-D.
9. It is no longer the law that an arrest requires actual seizing or touching. There may be an arrest by mere words by saying “I arrest you” without any touching provided that the defendant submits and goes with the police. Equally, an arrest is constituted when any form of words is used which in the circumstances of the case were calculated to bring to the defendant’s notice, and did bring to the defendant’s notice, that he was under compulsion and thereafter he submitted to that compulsion: *Alderson v Booth* [1969] 2 QB 216, 220H-221A.
10. If a policeman arrests without warrant, he must in ordinary circumstances inform the person arrested of the ground or reason for arrest: *Yeung May Wan*, supra, 168B, citing *Christie v Leachinsky* [1947] AC 573, 587. If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment: *Christie v Leachinsky*, supra, 587.
11. If a person is subjected to an unlawful arrest by a police officer, the continued detention of that person pursuant to the arrest perpetuates the unlawfulness and constitutes a false imprisonment. It matters not that the continued detention is placed in the hands of officers other than the original arresting officers and it is irrelevant that the latter officers may know nothing of the circumstances of the arrest. And persons unlawfully in custody are entitled to use reasonable force to free themselves: *Yeung May Wan*, supra, 160B-C.
12. Arrest was a continuing act, which started when a person was taken into custody until he was released. An arrest which was initially unlawful could subsequently become lawful upon sufficient reasons being given: *Leung Kwok Hung v Secretary for Justice* [2009] 4 HKLRD 247, 265[[8]](#footnote-8),
13. Handcuffing a person without the person’s consent or other lawful justification amounts to battery: *Saeed v Secretary for Justice* [2015] 1 HKLRD 1030, 1079.
14. In the course of arresting a person and escorting the arrested person, the police can use reasonable measures and force to prevent the arrested person from escaping. If, however, those measures and force exceed what is reasonably necessary, the police may be required to pay compensation to the arrested person. Law enforcement authorities have been ordered to pay compensation to arrested persons for unreasonable use of handcuffs: *Leung Kwok Hung*, supra, 266-267.
15. Unjustified use of handcuffs on an arrested person constitutes trespass to person. Handcuffing is only justifiable when reasonable necessity existed. The court looks at all the circumstances of the case and asks whether reasonable precautions or unreasonable precautions or unnecessary measures are taken: *William Alan Terence Crawley v Attorney General* [1987] HKLR 379, 385-6.
16. For an arrest not meeting legal requirements, any detention and related measures, including the use of handcuffs, taken by the police were civil wrongs, because the police had no right to use any force on the arrested person before they put him under lawful arrest: *Leung Kwok Hung*, supra, 267.

***D2. Factual witnesses***

*Plaintiffs’ witnesses*

1. The 4 plaintiffs themselves gave evidence at trial.

*Defence witnesses*

1. Altogether 7 police officers gave evidence at trial for the defendant. Their service numbers and their ranks at trial were: -
2. Sgt 5101 (**5101**);
3. DPC 4905 (**4905**);
4. WSgt 57078 (**57078**);
5. Sgt 4314 (**4314**);
6. Sgt 49047 (**49047**);
7. SPC 46449 (**46449**); and
8. PC 3819 (**3819**).

*The Triad Team*

1. At all material times, 4905 and 3819 belonged to Team 1 of Regional Anti-Triad Unit, Hong Kong Island (**the Triad Team**).

*The Crime Team*

1. At all material times, the remaining 5 defence witnesses belonged to Team 2B of Regional Crime Unit, Hong Kong Island (**the Crime Team**), with their direct superior being SIP Chow Hok-yin (**SIP Chow**).

*Disclosure of police identity*

1. On 14 June 2014, except for 3819 who wore black police vest, the remaining 6 defence witnesses were, I find, all in plain-cloth. At all material times on 14 June, all 7 defence witnesses had, I accept their evidence, disclosed their police identity by hanging their respective warrant cards in front of their chests, albeit 46449 had once lost, and later, recovered his warrant card.

***D3. Documentary evidence***

*The Footages*

1. None challenges the Police Footage and the TV Footage (collectively **the Footages**).
2. Indeed, both the 4 plaintiffs and the defendant relied on the Footages heavily at trial. Material parts of the Footages have been extensively played at trial, and at times repeatedly replayed forward and/or backward in slow motion, to identify material persons, events and actions, especially during fast-changing and chaotic moments once interception of the 4 plaintiffs began.
3. In preparing this judgment, this court has spent no short period of time and no small effort reviewing the Footages in light of parties’ submissions.
4. The Footages are not without their limitations like sudden or quick movements of the camera, angle of their taking, distance of their taking, lighting conditions at scene, competing and overlapping utterances, shouting, screaming and slogan chanting etc. This court has reminded itself not to consider them in isolation but in light of the rest of the evidence.
5. All evidence having been considered, I decide to give full weight to the video and sound contents of the Footages. Unless otherwise stated, I prefer them to other evidence if there is any direct conflict.
6. For example, I have considered police statement of Inspector Kwok Chun-kit (**IP Kwok**) dated 15 June 2014 in finding the background facts prior to police interception of the 4 plaintiffs. IP Kwok did not give evidence at trial. Thus, I have, among other considerations of such hearsay evidence[[9]](#footnote-9), looked for corroboration, if any, of such parts of it in the Footages (and in other evidence) before I act on any part of it.
7. IP Kwok wrote in his police statement that he gave repeated warnings to protestors of police using reasonable force to “evict or arrest (underline supplied)” them but, according to the voice recordings of the Police Footage, he in fact used both punti phrases of “evict and arrest” and “evict or arrest (underline supplied)”. I prefer the sound record to his written record and act on the former.
8. For the same preference to the Footages, I prefer the timing of events given by the 7 defence witnesses to those given by the 4 plaintiffs. Some clips of the Police Footage had sound record of when the footage concerned was begun to be taken[[10]](#footnote-10).
9. For police training and operational reason, I further accept that the 7 defence witnesses likely kept and checked their timing of events at the material times. Their timing records are thus likely more accurate and reliable than those of lay persons like the 4 plaintiffs. In contrast, P1 and P4 purported to observe timing from his own watch[[11]](#footnote-11) and from “lighted” electronic clock of the PV[[12]](#footnote-12) respectively on his own.
10. Moreover, the timing records of the 7 defence witnesses, I note, generally corroborate with one another. In comparison, P1, P2 and P4 differed in their estimate as to the length of the journey of the PV from the Complex to the Police Station (**the Journey**). P1 gave a range of 10 to 15 minutes in the box. P2 estimated it at 15 minutes[[13]](#footnote-13). P4 said it was as long as 30 minutes[[14]](#footnote-14). And P3 claimed that, during alleged assault on him, the PV “kept making turns continuously”[[15]](#footnote-15) but no such allegation was made by the other 3 plaintiffs.

*Photos of the PV*

1. I also give full weight to photos of the PV which, as shall be demonstrated, shed valuable insight on the exterior and interior of the PV and the evidence given by the witnesses.

*The A&E Reports*

1. If practicable, I have also considered the A&E Reports in light of medical records of the 4 plaintiffs kept by QMH and produced at trial. I also decide to give full weight to the contents of the A&E Reports.

***E. Background Facts***

1. In finding the background facts below, I have also considered the pleadings, admissions given by the witnesses in their witness statements and in the box[[16]](#footnote-16), and such evidence adduced by one side but not disputed by the opposite side.
2. For instance, 46449 did not travel on board the PV on the Journey and plaintiffs’ counsels did not challenge his evidence. In light of that, I decide to accept such evidence of 46449 mentioned below.
3. I find the background facts set out in the following paragraphs proven. Unless otherwise stated, most of these facts up to the last of the 4 plaintiffs i.e. P3 boarded the PV were captured by the Police Footage.
4. At the appropriate junctures below, I will highlight the remaining key issues to be resolved.

*The Demonstration*

1. The 4 plaintiffs were among hundreds of protestors staging the Demonstration at covered square outside the Complex including the Designated Public Activities Area (**the DPAA**) set up therein since the evening of 13 June 2014 when the Finance Committee of the Legislative Council (**LegCo**) was meeting inside the Complex to discuss the preliminary funding for the Project.

*Charging of LegCo entrance*

1. From about 2050 to 2155 hours on 13 June, a no small of number of protestors charged the glass doors of the public entrance side of G/F lobby of the Complex (and police officers defending outside the Complex) with hard objects including bamboos and mills barriers and the Complex was damaged. The TV Footage had also captured the same.
2. Under cross-examination by Ms Juliana Chow appearing for the defendant in all 4 actions (**Ms Chow**), P2 admitted of witnessing the said charging action at the DPAA and P3 admitted that he had participated in such unlawful action.

*Police cordon*

1. By around 2155 hours on 13 June, the police managed to control the situation and formed a police cordon line outside the Complex to contain the protestors at the DPAA.

*Police warnings to protestors*

1. Between 2155 and 2205 hours on 13 June, IP Kwok had repeatedly warned protestors at the DPAA by addressing them via public address system (**PA System**) and by arranging the display of a large banner[[17]](#footnote-17) that they were participating in an unlawful assembly and the police had reasons to believe that the meeting was likely to cause or lead to a breach of the peace. IP Kwok instructed the protestors to disperse peacefully immediately or else the police would use reasonable force to evict and/or[[18]](#footnote-18) arrest them (**the Police Warnings**). However, the Police Warnings were all ignored and the protesters staged sit-in at the DPAA to continue their public assembly.
2. P1, P2 and P3 were seen inside the center stage mentioned below within close, and hearing, distance of IP Kwok when he gave one of the Police Warnings[[19]](#footnote-19).

*LegCo announcements to protestors*

1. From the evening of 13 June until around 0214 hours on 14 June, the Chief Security Officer of the LegCo (**CSO**) had repeatedly announced to protestors at the DPAA via PA System that all LegCo meetings had been over and that they should at once leave the precincts of the LegCo in accordance with instructions given by LegCo security officers or else LegCo would request police assistance to evict them (**the CSO Announcements**).
2. One of the CSO Announcements was also captured by the TV Footage, with all 4 plaintiffs seen inside the center stage mentioned below within close, and hearing, distance of the CSO making the said announcement[[20]](#footnote-20).

*The Removal Action*

1. At around 0219 hours on 14 June, the police commenced eviction action against the protestors assembled at the DPAA. Uniformed officers were deployed to remove them to the pavement of Legislative Council Road (**the Removal Action**).
2. During the Removal Action, IP Kwok repeatedly appealed to the protestors at the DPAA via PA System to follow police instructions and requested them to leave by walking on their own in order to reduce chance of injury. Many protestors refused to leave and even lied on the ground linking their arms with the arms of others. They had to be held up by four or more uniformed officers who carried them away above ground by holding onto their 4 limbs.
3. The Removal Action continued such that, about 2 minutes before police entered the center stage mentioned below to intercept the 4 plaintiffs, there remained, according to P2’s microphone announcement, 20 odd protestors who lied on the ground and refused to leave.

*The Center Stage*

1. Before and during the Removal Action, the 4 plaintiffs were from time to time seen to station themselves inside an area of the DPAA demarcated by, and enclosed by, some mills barriers secured by metal chains (**the Center Stage**).
2. Equipment of PA System and supplies of the protestors were stored inside the Center Stage.
3. Before and during the Removal Action, P1, P2 and P4 had, I find, from time to time used microphone (sometimes with them standing on objects like stools) inside the Center Stage to give speeches to the protestors and to the police, and to chant slogans such as “no withdrawal, no departure (不撤回，不退場)” for the protestors to follow, while P3 was seen playing drum inside the Center Stage.
4. About 1 minute before police entered the Center Stage, P1 climbed over mills barriers to leave the Center Stage at one end, walked over some protestors lying on the ground and stood behind a crowd of protestors in front of a big pillar.
5. About half a minute before police entered the Center Stage, P2 climbed and sat on its mills barriers at one end. He held a black microphone in his hand and gave speeches about the Removal Action being undertaken by uniformed officers outside the Center Stage against the 20 odd remaining protestors lying on the ground. His back was facing the other end of the Center Stage where, in a short moment, a plain-cloth police party would enter to intercept him and the other 3 plaintiffs.
6. At about the moment the police party entered the Center Stage, P3 climbed over the mills barriers at its opposite end and left the Center Stage, while P4 remained standing inside the Center Stage.

*Police interception began*

1. At about 0322 hours, a plain-cloth police party consisting of all 7 defence witnesses and other officers pulled open the mills barriers of the Center Stage at the other end away from the 4 plaintiffs and quickly entered it through an opening one following another.
2. Prior to their entry into the Center Stage, 5101, 57078 and 46449 had been briefed to act as the arresting officer of P1, P2 and P3 respectively.

*P4 arrested & escorted away first*

1. 3819 first reached P4, and intercepted him, inside the Center Stage. 3819 declared arrest on P4 and gave reasons for that. Mr Randy Shek appearing for P3 in DCPI 349/2015 and for P4 in DCPI 375/2015 (**Mr Shek**) confirmed in his oral closing submissions that P4 took no issue about the lawfulness of his arrest[[21]](#footnote-21). 3819 had therefore, I find, lawfully arrested P4, who made no claim of false imprisonment against the defendant.
2. 3819, assisted by 4905 and another officer, took P4 away from the Center Stage and hurriedly escorted P4 along a path cordoned by the police (**the Cordoned Path**) to go to the PV. As we shall see, P4 was the first among the 4 plaintiffs to arrive at (and to board) the PV.

*P2 intercepted & escorted away next*

1. The force police used upon P2 on and after his interception forms subject matter of P2’s battery claim against the defendant.
2. As P2 admitted in his witness statement[[22]](#footnote-22), soon after P2 had given speech to the crowd by sitting on the mills barriers at one end of the Center Stage, he “saw” the plain-cloth police party “approaching his direction” from the other end and he “at once jumped down from the mills barriers” to the ground leaving the Center Stage.
3. Notwithstanding minute and extensive cross-examination of 4314 on this point using the Police Footage by Ms Jacqueline Lam (**Ms Lam**), junior counsel for P1 in DCPI 282/2015 and for P2 in DCPI 311/2015, and by Mr Shek[[23]](#footnote-23), on P2’s admission in the last paragraph, I accept 4314’s evidence in the box that 4314 “did see P2 turning over and looking towards him” when P2 jumped down from the mills barriers to leave the Center Stage.
4. I also believe 4314 and find that 4314 did believe on 14 June 2014 that P2 was escaping from police by jumping down from the mills barriers to leave the Center Stage, thus causing him to hold onto P2 as he later did. When 4314 caught up with P2 from behind, he held onto P2 from behind with mills barriers separating the two. P2 claimed 4314 grabbed his neck from behind while 4314 disagreed. This factual dispute will be resolved below.
5. This court also believes 49047 that he also believed on 14 June 2014 that P2 was escaping from police for having climbed over the mills barriers to leave the Center Stage and he thus also caught up with P2 from behind shortly after 4314 did. In order to assist 4314 to prevent P2 from escaping, 49047 held onto P2’s left arm with mills barriers also separating them while 4314 was holding P2 from behind. 49047 also, I prefer his oral answer to Ms Lam, seized the microphone from P2’s hand and gave it to 57078 as was captured by the Police Footage.
6. Notwithstanding the common belief held by 4314 and 49047 on 14 June 2014, I find it likely on all evidence before me that P2 was not escaping from police before his interception. I arrived at this finding after considering, inter alia, such concessions made by 4314 and 49047 to Ms Lam and Mr Shek after they were asked at trial to view and compare the Police Footage carefully. Of course, the two officers did not enjoy the benefit of the Police Footage on 14 June 2014.
7. Soon after 4314 and 49047 caught up with P2 from behind, 57078 also did and 57078 seized the microphone of P2 as exhibit after 49047 gave it to her. As shall be explained, chaos had by then developed in the crowd in front of them.
8. Later, 4314 and 49047 took P2 away (P2 was the 2nd among the 4 plaintiffs to be taken away) and hurriedly escorted P2 along the Cordoned Path to the PV. During the said escort, 4314 and 49047 each held onto one arm of P2 on his 2 sides while 57078 followed the 3 of them hurriedly behind.

*P1 arrested & taken away from the crowd next*

1. After P1 left the Center Stage, he stood behind a crowd of protestors in front of a large pillar (with some of the protestors lying on the ground). After entering the Center Stage, 5101 quickly climbed over the mills barriers of the Center Stage in order to locate P1 within the said crowd (as we shall see below, 46449 also did the same to locate P3 within the same crowd).
2. After 5101 and other officers swiftly moved into the said crowd to find P1 (and P3), the situation at that part of the DPAA turned tense. Many turned their focus on that small area in front of the said large pillar where P1 (and P3) was found. Many protestors and uniformed officers followed suit to move quickly into that small area and gathered around P1 (and P3). That small area suddenly became very congested. Much bodily contacts occurred among and between civilians and police. People kept touching and pushing against one another and kept screaming and shouting lots of things, including “don’t push”. It became very noisy and it was all in chaos.

1. With great difficulty, 5101 managed to maneuver within the said crowd to intercept P1 by holding onto his body. As P1 admitted in his witness statement[[24]](#footnote-24), 5101 declared arrest on P1 and told P1 to leave the crowd with him. P1 said in chief in the box he believed at that time 5101 was a police officer. He, I accept, also replied 5101 that he would not leave or escape.
2. Afterwards, 5101 put his 2 hands onto P1’s shoulders from behind and took P1 to leave the crowd at about 0324 hours (P1 was the 3rd among the 4 plaintiffs to be taken away). 5101 hurriedly escorted P1 to walk along the Cordoned Path to go to the PV by tapping onto P1’s shoulder and holding onto one arm of P1.
3. P1 gave evidence that he was never told the reasons for his arrest whereas 5101 gave evidence he so told P1 after leaving the crowd. A subsidiary pleading issue arises whether or not it is open to P1 to dispute the lawfulness of his arrest for lack of reasons given. If so, P1 can make claim of false imprisonment against the defendant based on unlawful arrest.

*P3 intercepted & taken away from the crowd last*

1. Again, the force used by police to intercept and escort P3 is also subject matter of P3’s battery claim against the defendant.
2. In order to intercept P3 within the crowd in front of the large pillar, 46449 also quickly climbed over the mills barriers of the Center Stage to move into the said crowd.
3. As P3 admitted in his witness statement, after climbing over the mills barriers to leave the Center Stage, he “saw” a party of plain-cloth officers “rushing towards him”. P3 “afterwards found himself being pushed towards a big pillar by other protestors who gathered together to surround him”.
4. Plain-cloth officers, including 46449, tried to make their way within the crowd towards P3 intending to take him away. At the same time, other protestors, I find, tried to prevent P3 from being taken away. For example, a man in brown with glasses was seen standing in the way between P3 and officers, including 46449, to prevent P3 from being taken away. Clashes occurred between the 2 rival groups competing for P3 and P3 found himself being trapped among the 2 groups and unable to move or leave the crowd.
5. Having been stuck uncomfortably within the said crowd for about 2 minutes, 46449 managed, I accept his oral evidence, to approach P3 and get hold of his rucksack. 46449, I also accept his oral evidence, declared his police identity to P3 and told P3 that they should both get out of the crowd first. P3 replied agreeing to 46449’s suggestion. But it was too congested for the two to leave.
6. 46449, I also accept his oral evidence, shouted loudly “this person is to be arrested”. A group of uniformed officers then came over and, with their assistance, 46449 managed to pull P3 out from the crowd. In response to that, a female protestor pointed her finger at P3 screaming hysterically “give me back this person (俾返個人我)”. Afterwards, 4 or more uniformed officers held P3 up, and carried him above ground along the Cordoned Path to the PV, by holding onto his 4 limbs.
7. A short while later, 46449 also managed to leave the crowd himself.

*The PV*

1. On 14 June, the PV was sent by Police Tactical Unit. It was driven by WPC 346 of Police Tactical Unit (**the Driver**). The Driver was not called at trial.
2. The PV had front transparent windscreen made of glass. Excluding driver seat at its offside front, it had at least 14 passenger seats. It had its door on its nearside. It had 4 rows of single seat behind its nearside door. It had 6 rows of double seats behind its offside driver seat. Lights in circular shape were installed inside it at, at least, its ceiling at its front at a location above its driver seat. Its nearside and offside windows were installed with parallel horizontal bars and equipped with light-transmitting curtains, which could be drawn to the left or right. Locks were installed at windows and they could be unlocked from inside the PV to allow the windows to be pulled open.
3. According to the Police Footage, at the material times, the PV was parked on Legislative Council Road in front of other parked police vehicles of similar type. It was so parked, I think, facing the harbor such that its nearside was next to the Complex. The Cordoned Path led to the nearside door of the PV.
4. At the material times, there were many protestors on the pavement of Legislative Council Road i.e. on the nearside of the PV. The police had erected barriers to demarcate the left and right sides of the Cordoned Path and to separate those within the Cordoned Path from protestors outside it (most of these protestors were stationed at that side away from the harbor). Uniformed officers stood guard on the 2 sides of the Cordoned Path protecting these barriers and those within it.
5. Turning to the offside of the PV, a vehicle painted with the red logo of Hong Kong Cable TV was seen being parked opposite the offside of the PV[[25]](#footnote-25).

*P4 boarded the PV first*

1. With, inter alia, 4905 and 3819 holding his 2 arms, P4 walked along the Cordoned Path to reach the PV first among the 4 plaintiffs.
2. Before P4’s arrival at the PV, 4 to 5 officers, including uniformed officers, had held onto the 4 limbs of an arrested person by name of Wong Dik-sang (**AP Wong**) and carried AP Wong above ground to the PV. AP Wong got on the PV before P4 did and was arranged to sit at the last row double-seater seat next to the window. AP Wong was not called at trial.
3. After he arrived at the PV, P4 got onto it, followed by 4905 and 3819. Afterwards, the door of the PV was closed. It was then, I find, about 0323 hours.
4. P4 was arranged to take a seat next to the window in the double-seater of the PV at the 2nd row after the driver seat and opposite to the door of the PV.

*P2 boarded the PV next*

1. With 4314 & 49047 holding his 2 arms on his 2 sides and 57078 following behind, P2 was escorted walking along the Cordoned Path to reach the PV at about 0324 hours. The door of the PV was opened. P2 got on the PV, followed by 4314 and 57078.
2. P2 was arranged to take a seat next to the window in the double-seater of the PV at, I find, the 4th row after the driver seat (or the 3rd row from its rear) i.e. at the seat behindthat of P3 as we shall see.

*P1 got on board the PV next*

1. Soon afterwards, while the door of the PV remained open, P1 reached the PV by walking along the Cordoned Path. 5101 was seen walking behind P1 holding onto P1’s left shoulder and right arm. P1 got onto the PV, followed by 5101 and 49047.
2. It is common ground that P1 was finally arranged to take the last single seat of the PV on its nearside.

*P3 walked onto the PV last*

1. Before the door of the PV was closed, 4 or more uniformed officers, using their hands to carry P3 above ground with his face facing upwards, hurriedly took P3 along the Cordoned Path to reach the PV at about 0325 hours. They put P3 down to the ground in front of the PV. P3 then boarded the PV by walking on his own.
2. P3 was arranged to take a seat next to the window in the double-seater of the PV at the 3rd row after the driver seat i.e. at the seat behind that of P4 and in front of that of P2.

*46449 not on board the PV*

1. I accept the evidence of 46449 that, after he had been stuck uncomfortably within the crowd for about 2 minutes, he had to take a short rest after leaving it.
2. 46449 did, however, follow behind P3 (who was carried away by uniformed officers) to the PV to see to P3 getting on board it. But 46449 discovered after leaving the crowd that he had lost his warrant card previously hung on his chest. He therefore did not get on the PV but returned on his route to find his card.
3. After 46449 found his warrant card and returned[[26]](#footnote-26), the PV had, however, already left.

*Departure for the Police Station*

1. The PV had departed at, I find, about 0326 hours for the Police Station with the 4 plaintiffs, AP Wong, the remaining 6 defence witnesses (**the 6 Officers**) and 3 other officers from the Triad Team on board. The last 3 officers from the Triad Team were not called at trial.
2. The identities of those on board the PV, and their respective seats inside the PV, during the Journey were marked by 49047 in a sketch annexed to his notebook produced at trial.

*Handcuffing of P2 & P4 on board the PV*

1. It is not disputed that 4905 and 3819 had handcuffed P2 & P4 respectively on board the PV. P2 makes claims of battery and false imprisonment, and P4 makes claim of battery, against the defendant over such handcuffing of him.

*Competing versions of events on board the PV*

1. The defence case (and the evidence of the 6 Officers) is that P2 had stood up, shouted slogans, reached out for the window of the PV, and vigorously struggled inside the PV before and shortly after it departed such that 4905 found it necessary to handcuff P2 with the assistance from other officers on board (**P2’s Incident**). But P2 testified that he had never shouted, stood up, reached out for window nor struggled inside the PV as alleged.
2. P2 also gave evidence that he was never declared arrest nor given any explanation for his arrest by any officer before he arrived at the Police Station. 57078, however, gave evidence that, on board the PV, she had, after P2 had been handcuffed, formally declared arrest on P2 for the 2 offences of obstructing and assaulting LegCo officers in due execution of duties at about 0327 hours.
3. Mr Lawrence Lok SC (**Mr Lok SC**), leading counsel for P1 in DCPI 282/2015 and for P2 in DPCI 311/2015, took issue whether P2 was arrested or not and, if at all, over the lawfulness of such alleged arrest for lack of reasons given (which issues have bearing on P2’s detention and force used upon P2 thereafter). These form the basis of P2’s claims of false imprisonment and battery against the defendant.
4. And, shortly after the PV departed, it is also defence case (and evidence of 3819) that P4 had moved his hands, stood up and shouted slogans while the PV was moving such that 3819 found it necessary to handcuff P4 (**P4’s Incident**). P4 denied P4’s Incident when it was put to him under cross-examination.
5. Each of the 4 plaintiffs also makes claim in battery against the defendant on the same allegation, and gave evidence, that he was physically assaulted and verbally abused by officers after getting on board the PV, and saw and/or heard other civilians i.e. other plaintiff(s) and/or AP Wong suffering from similar police abuse and brutality on board the PV. On the other hand, the 6 Officers denied assaulting the 4 plaintiffs or witnessing their colleagues assaulting the 4 plaintiffs on board the PV.

*Arrival at the Police Station*

1. The PV arrived at the Police Station at, I find, about 0336 hours after, I think, a 10-minute journey[[27]](#footnote-27). On its arrival, 4905 released P2 from his handcuff.
2. 46449 took another police vehicle to leave for the Police Station at about 0330 hours and arrived at the Police Station at about 0340 hours.

*Events inside the Police Station*

1. It was not until about 0346 hours that 46449 declared arrest on P3 inside the Police Station for the offences of obstructing LegCo officers and obstructing police officers in the execution of their duties.
2. Mr Shek had submitted against the lawfulness of P3’s arrest outside the Complex, consequential detention of P3, and force used upon P3, by police. P3 claims against the defendant in false imprisonment and battery. Again, it is questionable if this unlawful arrest point is open on the pleadings for P3 to take or not.
3. It was also not until about 0355 hours that 3819 released P4 from his handcuff inside the Police Station.

*Examination at the A&E Dept*

1. P2 attended the A&E Dept at 0928 hours after holding the Conference outside the Police Station with the other 3 plaintiffs. Dr Lui examined P2 at 1129 hours. P2 noted or complained of multiple abrasions allegedly caused by police. Dr Lui noted abrasions over both forearms, right lateral supraorbital region, forehead, and left pinna. P2 received wound dressing over his abrasions and was given analgesics before he was discharged on the same day.
2. At 0929 hours, P4 attended the A&E Dept. Dr Lui examined P4 at 1137 hours. P4 claimed alleged injuries by police. He noted or complained of upper back pain, and chest wall injury with left rib pain. He also complained of left distal thigh injury with pain. Dr Lui found left chest wall tendernessand P4 was discharged.
3. At 0930 hours, P1 attended the A&E Dept due to alleged multiple injuries he complained. Dr Li examined P1 at 1230 hours. P1 complained to Dr Li of pain over chest wall and face. Dr Li made no reference of any injury of P1 in his medical report. Despite the contents of the medical records of P1 collected from QMH before me, I think Dr Li found no injury on P1on his examination. According to declaration made by Dr Li in his medical report, Dr Li had, I think, apparently reviewed the medical records of P1 before compiling his medical report on P1 addressed to P1’s solicitors. P1 was discharged with Panadol at 1237 hours.
4. At 0932 hours, P3 attended the A&E Dept due to alleged chest wall and head injury. Dr Li examined P3 at 1235 hours and found tenderness over chest wall and bruises over forehead. P3 was discharged at 1341 hours with painkillers.

***F. Discussions***

1. Counsels for P1 & P2 have helpfully reminded this court trite principles of facts-finding and assessment of credibility of witness[[28]](#footnote-28), which are not reproduced in this judgment.

***G. The 4 plaintiffs***

1. It is true that, consistent with their claims in these 4 actions: -

(1) the 4 plaintiffs had held the Conference outside the Police Station soon after they were released on bail;

(2) they had sought examination and treatment of bodily injuries allegedly caused by police from the A&E Dept of QMH in the same morning; and

(3) P1 and P2 had further complained and given statements to CAPO in September 2014.

1. It is also true that, generally speaking, the 4 plaintiffs gave mutually consistent account of alleged events on board the PV and during the Journey.

***G1. Credibility of the 4 plaintiffs***

1. But, as shall be demonstrated, their evidence on material points is, I think, not supported, or contradicted, by contemporaneous and/or indisputable records and documents by way of the Footages, the contents of the A&E Reports and the photos of the PV. Their alleged accounts are also, I think, inherently implausible or unlikely on material points. There are also, I think, material discrepancies among their evidence and with that of Dr Kwan. Internal inconsistencies are also present within the evidence of individual plaintiff.
2. Hence, I do not find the 4 plaintiffs credible or reliable. Save for admissions given by them and unless otherwise stated below, I do not accept their evidence on matters in dispute.
3. I shall now explain by reference to the evidence of individual plaintiff(s), if practicable.

***G2. P1***

*Absence of injury on P1*

1. I agree with Ms Chow that such examination finding of P1 by Dr Li at the A&E Dept is inconsistent with P1’s evidence of allegedly being assaulted on board the PV.
2. Though P1 said he had no superficial wound on leaving the Police Station at about 0900 hours, he said he still allegedly “felt painful over his chest”[[29]](#footnote-29).
3. According to P1, one officer on board the PV had “heavily (大力)”[[30]](#footnote-30) slapped his cheeks and his head for at least “about one to two minutes”[[31]](#footnote-31) and also punched his chest. Another officer had also, said P1, hit him on head, chest and cheeks[[32]](#footnote-32).
4. In his pleadings, P1 further claimed that officers on board the PV had assaulted him by “pushing his head to the glass window”[[33]](#footnote-33) (that, however, was nowhere found in his witness statement).
5. It was also pleaded that P1 “suffered injuries to his chest” and psychiatric injuries as a result of police assault inside the PV[[34]](#footnote-34).
6. According to Dr Kwan, P1 had reported to him that “he was hit over his back and head, and was slapped over his face”. He had no loss of consciousness but there was “pain over his head, face and limbs after the injury”[[35]](#footnote-35).
7. However, Dr Li on examining P1 at the A&E Dept found no injury on P1 at all, not even chest tenderness allegedly complained of by P1 on leaving the Police Station.
8. And P1 strangely declined X-ray examination offered to him by Dr Li at the A&E Dept.
9. Such absence of injury of P1 on Dr Li’s examination is, one thinks, more consistent with defence case of no assault on P1 on board the PV.

*“Continuous” foul languages*

1. P1 claimed that the police had “continuously (不斷)” abused him and others on board the PV with foul languages[[36]](#footnote-36) (so did the other 3 plaintiffs). Under cross-examination, he further claimed that officers had “organized themselves as a group (集體有組織地)” to abuse them with foul languages.
2. Nonetheless, P1 was, I note, strangely at a loss to tell Ms Chow what exact words or phrase other than “fuck your mother (𨳒你老母)” the officers had “continuously” uttered by way of foul languages. P1 instead answered her at length how the officers had allegedly “strongly questioned (強烈質問)” him and others about their triad connection[[37]](#footnote-37). It was only after Ms Chow had repeated her question that P1 gave the word of “wanker (仆街)” as another example of “continuous” foul languages that he claimed the officers had “organized themselves as a group” to abuse him and the other 3 plaintiffs.
3. It also turned out that, on the Police Footage, P2 had once, in the presence of P1 and P3, used microphone to shout foul languages phrase of “fuck your mother” repeatedly within the Center Stage towards the direction of police for the protestors to follow. P3 was seen to have “smiled” in response and he further said in chief in the box that he found it “hilarious (攪笑)”. Questioned on such footage, P1 also admitted that he was “not astonished” by such foul languages.
4. Considered against the said action, reactions and answers of P1, P2 and P3 on the Police Footage and in the box, the 4 plaintiffs’ suggestion that they found themselves “astonished[[38]](#footnote-38) or humiliated” by, what P1 allegedly claims, “continuous” foul languages uttered by the officers “as an organized group” on board the PV loses, I think, considerable force, if not credibility.

*Purported observations implausible*

1. Under cross-examination, P1 once claimed that a police officer “standing at such space between the last and 2nd last rows of double seater” of the PV struck AP Wong sitting at the last row next to the window “as many as 10 times” “using his right knee (膝撞)”.
2. However, P1 agreed that the distance between 2 rows of seats of the PV was similar with those of a “minibus”. Looking at photos of the interior of the PV, such space between 2 rows of seats was, I think, considerably limited. Hence, I agree with Ms Chow that it is inherently improbable that a person could complete a “knee strike” in such limited space as claimed by P1.
3. If one could indeed make such alleged knee strike in such limited space, it would, I think, be most inconvenient for one to undertake “as many as 10 times” as P1 claimed. This is not to mention that P1 had never mentioned in his witness statement that AP Wong suffered any alleged knee strike from officers[[39]](#footnote-39).
4. Further, P1 claimed in the box that, despite he was most of the time pushed on the back of his head causing him to face downwards, he “could vaguely see (隱若見到)” officers attacking other civilians at the front of the PV by “hitting their heads, pushing their heads against the window and pulling their hairs”.
5. Such purported observation by P1 of details of these alleged attacks is, I also agree with Ms Chow, inherently improbable. P1 was seated at the last nearside single seat of the PV. And these civilians at the front of the PV were, according to P1, also seated. And they did not sit next to the aisle but next to the window. On the photos of the interior of the PV, the height of its seats was no short. And these attacking police officers were, said P1, standing and the interior of the PV was dark.
6. If his alleged observation was not handicapped for lack of sufficient light, P1 was, I think, most likely obstructed by the rear of seats in front and/or the bodies of these standing officers from observing how these civilians sitting in front were allegedly attacked.
7. As P1 had to admit later in the box, he “did *not* see it *quite* *accurately*” and he vaguely saw “*gestures* of police officers *moving their arms* (italics supplied)”. But one notes P1 went as far to have claimed in his witness statement that he “vaguely saw” other arrested persons being “kicked (腳踢)” by officers[[40]](#footnote-40). For the same reasons mentioned above, I find it most unlikely that P1 could have observed “kicks” as he claimed.

*Reasons for arrest given*

1. On the grounds below, I do not think the point of *lack* of reasons for P1’s arrest, or unlawful arrest of P1 for that reason, is open to P1 on the pleadings.
2. I agree that, in an action for false imprisonment against police, if lawful arrest is raised as legal justification, the burden is on the police to establish the same.
3. But P1 had *deleted* in his pleadings the words of “without informing the Plaintiff of the reason for the arrest” after the words “A police officer made a declaration of arrest to the Plaintiff” [[41]](#footnote-41).
4. P1 also *deleted* reference to s.5(2) of BOR in his pleadings[[42]](#footnote-42).
5. And, in his particulars of false imprisonment, P1 had also *deleted* (i) the entire sub-paragraph of “Apprehending the Plaintiff onto the PV without providing reasons for the apprehension rendering the arrest unlawful”; (ii) the words of “without the basis of a lawful arrest” after the words of “Intentionally and directly restraining the Plaintiff’s liberty by the use of force and/or confinement in the PV”; and (iii) the entire sub-paragraph of “Intentionally and directly restraining the Plaintiff’s liberty by the use of force and/or confinement in the PV without the basis of a lawful arrest”[[43]](#footnote-43).
6. Counsels for P1 *never* opened for P1 any case of unlawful arrest of him or arrest of him without providing reason[[44]](#footnote-44), though damages for false imprisonment was still sought for P1[[45]](#footnote-45).
7. And Ms Chow had apparently been *misled* by P1’s pleadings to think (and to have written in her opening and closing) that P1 took no issue about the lawfulness of his arrest[[46]](#footnote-46). Those acting for P1 *never* saw fit to *correct* such mistake before the trial began.
8. Taken P1’s actions above as a whole, P1 and his legal team had, I think, effectively *abandoned* (or elected not to run) this point before the trial began.
9. The authority of *Poon Hau Kei v Hsin Chong Construction Co Ltd* (2004) 7 HKCFAR 148 relied upon by Ms Lam cannot, I think, assist P1. It can, I think, be distinguished on 2 grounds: (i) the point had already been *abandoned* by P1 in our case; and (ii) the *alternative* case pleaded and advanced by defence in *Poon Hau Kei*, supra, could allow the plaintiff in that case to succeed whereas, in our case, the *diametrically opposite* defence case[[47]](#footnote-47) of 5101 having *given* reason to P1 for his arrest (for which Ms Chow did put to P1 in cross-examination) couldnotallow P1 to make a claim based on unlawful arrest.
10. Hence, it is, I think, inappropriate and unfair to allow P1 to revive in closing submissions his claim of false imprisonment for *lack* of reason given for his arrest.
11. If I am wrong to hold against P1 above, on this factual dispute, I prefer 5101’s evidence to that of P1 on the following grounds and find that 5101 had, after taking P1 away from the crowd, told P1 that he was arrested for the offence of obstructing LegCo officer in execution of duty.
12. 5101 was briefed as the arresting officer of P1. It being common ground that 5101 had declared arrest on P1 within the crowd after intercepting P1, it occurs to me likely that he would finish the rest of his assignment by giving P1 the reasons after leaving the chaos, and noise, of the said crowd.
13. There appears no plausible reason, and none was advanced on behalf of P1, for 5101 to withhold the reasons from P1 after his declaring arrest on P1.
14. When Ms Chow put to P1 that 5101 had, or had possibly had, so given him the reasons for arrest during the period from his interception to his boarding the PV, P1 saw fit to deny the same “at the moment of interception” and did not do so for the *later* period. He went on to say he “could not be sure” if the two had discussions during the *escort* to the PV and that he had “relatively more ideas” about the reasons of his arrest “at the Police Station”.
15. I think it likely that P1 had focused too much on the moment of his interception and on police interviews of him at the Police Station, and that he had not noticed, or had forgotten, that 5101 had so explained to him the reason for his arrest after the two had left the crowd.

***G3. P3***

*Host of the Demonstration*

1. P3 claimed in chief he was mere “participant” in the Demonstration and denied to be its “host”**.** That, I think, is contradicted by his own words and actions, and inconsistent with the evidence of P1 and P2.
2. P2 confirmed in the box that “all 4 plaintiffs” were hosts of the Demonstration.
3. P3 agreed under cross-examination that he stayed “inside” the Center Stage “most of the time”. P1 agreed in the box that “all 4 plaintiffs” appeared inside the Center Stage “most of the time” as they were “hosts” of the Demonstration.
4. P3 admitted in chief of supporting other protestors by making speech using microphone, and that he was responsible of taking care of supplies, within the Center Stage, including distributing them to protestors.
5. P3 was also seen playing drums inside the Centre Stage. P1 said in the box that the purpose of playing drum was for “encouraging and supporting the protestors”.
6. Finally, P3 told Dr Kwan that he was one of “organizer” for the protest of the Project on 13 June 2014[[48]](#footnote-48).

*Rehearsed evidence on alleged assault*

1. P3’s oral evidence of alleged assault occurs to me too rehearsing to be of comfort. Ms Chow asked P3 the simple question of “how were you assaulted?”, to which P3 did not answer directly but started rehearsing at length what allegedly happened to him since he boarded the PV as he claimed in his witness statement. Ms Chow had to repeat the same simple question *twice* before P3 directly answered it.

*Went to QMH together with lawyer*

1. P3 initially said in the box having no impression whether or not the 4 plaintiffs went to QMH together. Confronted with the close timing of their respective arrivals at the A&E Dept, P3 insisted on not recalling if they went there separately or together. He was then asked if it was “mere coincidence” for the 4 plaintiffs to seek examination of their alleged assault injuries all at QMH on 14 June. P3 said “no” and at last admitted that they went to QMH “together”.
2. In contrast, P4 had admitted in his witness statement[[49]](#footnote-49) and in the box that “a lawyer had accompanied” him and “the other 3 plaintiffs” to go to the A&E Dept of QMH to seek medical examination of their alleged injuries.

*Thrown on board the PV*

1. P3 once saw fit to have alleged in (and to have verified) his pleadings that he was “thrown into the PV and landed with his hip hitting the steps of the PV”[[50]](#footnote-50). As was shown by the Police Footage and as P3 had to admit in the box, he “walked onto the PV on his own” after uniformed officers dropped him in front of the PV. Such untrue and unsustainable allegation was not withdrawn by P3 until amendment was granted by this court on the 1st day of trial.

*Chest wall tenderness & forehead bruises*

1. Mr Shek submitted on behalf of P3 that tenderness over chest wall and bruises over forehead found by Dr Li on examination at the A&E Dept is consistent with, and support, P3’s evidence of being assaulted on board the PV. I cannot agree.
2. In his evidence, P3 also claimed to have been elbowed his “temple”, elbowed and fisted the “back of his head”, “pushed against the window” of the PV, “slapped on his cheek and ear”, “pulled his hairs” and “punched” on his chest[[51]](#footnote-51) by, he said in the box, “hook punches (勾拳)” of at least 2 officers.
3. Such alleged attacks on him, claimed P3 also in the box, were “absolutely not light”, causing “bang” sound when he was “pushed against the window of the PV”, and they were “repeated” both before and after the PV departed.
4. P3 claimed in the box that he could not count the number of such alleged attacks on him as they were “chain non-stop attacks (連環動作)” which “only came to stop when the officers became tired”. He “felt it lasted about 15 to 20 minutes”.
5. Such alleged attack by fists on him, said P3 also in the box, were “heavy” and they “landed repeatedly at about the same location” of the “back of his head”, his “temple” and chest.
6. For these alleged assault on him, P3 further claimed to suffer “bleeding on the corner of his mouth” and “blurred vision (視力模糊)”. The said blurred vision, he said, remained with him on his leaving the Police Station[[52]](#footnote-52).
7. It was also pleaded that P3 suffered injury to his “mouth”, chest, forehead, “eyes” and psychiatric injuries as a result of assault by police officers on board the PV[[53]](#footnote-53).
8. Had all the above evidence, and allegations, of P3 been truthful, one finds it unlikely on examination by Dr Li that P3 showed *only* tenderness over chest wall and bruises over forehead.
9. X-ray carried out on P3 by Dr Li, it should be added, showed no fracture.
10. Such injuries of P3 found by Dr Li at the A&E Dept may also, one thinks, be explainable by P3’s conducts of charging LegCo entrance in the evening of 13 June 2014[[54]](#footnote-54).

***G4. P4***

*Host of the Demonstration*

1. Again, P4 said in chief that he did not consider himself a host of the Demonstration. This assertion is also, I think, contradicted by P4’s own actions and words.
2. He was seen (i) within the Centre Stage from time to time; (ii) to have used microphone in the Centre Stage; and (iii) to have chanted slogan inside the Centre Stage for protestors to follow.
3. He admitted in his witness statement that he took care of supplies within the Centre Stage[[55]](#footnote-55).
4. He was captured to have patted on P2’s shoulder and then discussed with P2, who immediately afterward demanded via microphone that the police needed to name specific ordinance (條例) that allowed them to arrest protestors.

*Arrested & injured at work?*

1. P4’s related assertion in the box that he had only attended the Demonstration “in the capacity of an assistant of a LegCo councilor” is, I think, implausible.
2. P4 claimed under cross-examination that he had arrived at the Demonstration since 1300 hours on 13 June 2014. As an assistant of a LegCo councilor, P4 said in his witness statement that he worked only 8 hours per day[[56]](#footnote-56). But P4 incredibly said he was not sure if he was working “overtime” by 0800 hours on 14 June and if he was arrested “in the course of his work”.
3. P4 also strangely said he never explored if he was arrested in the course of work and if he was “entitled to employees’ compensation for alleged assault injuries in the course of his work”.
4. P4 further said he never tried to find the LegCo councilor who allegedly required him to work in the Demonstration after he was intercepted by police and during his escort to the PV.
5. Finally, on the Police Footage, no interaction was captured to have taken place between P4 and that LegCo councilor that allegedly had required P4 to so work.

*3rd person narrative in the Conference*

1. P4 had also strangely used in the Conference *third person*, instead of *first person,* narrative to provide the press with an account of what, he claims, had allegedly happened to *himself* on board the PV i.e. *he* was allegedly assaulted on board the PV despite *he* had revealed *his* identity “as an assistant of a LegCo councilor”. Under cross-examination, P4 purported to explain the same by claiming that the situation was still very tense and he had not calmed down.
2. I find P4’s explanation most unconvincing.

(1) P4, and the other 3 plaintiffs, had by then regained his freedom. On the TV Footage, there were also many protestors present behind them to lend their support to them.

(2) The 4 plaintiffs, including P4, had apparently carefully planned the Conference by arranging their banner to be brought to the outside of the Police Station and, as shown by the TV Footage, they held the banner in their hands during the Conference to voice their opposition to the Project.

(3) On the TV Footage, P4 was, I think, apparently calm enough to act as spokesperson of the 4 plaintiffs to complain to the press of, inter alia, police handcuffing.

(4) There is also, one thinks, no reason for P4 to omit identifying *himself* as the victim of alleged police brutality had what he told the media (and the public) about what allegedly happened to that “unnamed” assistant of LegCo councillor were the truth. That he *himself* was the source of the information would add, one thinks, more credence to what he claimed to have happened.

1. I believe and find all 4 plaintiffs hosts of the Demonstration on 13 & 14 June 2014 as P1 and P2 had admitted.

*“Felt” attacks on others*

1. Cross-examined by Ms Chow as to whether or not he saw arrested persons other than P2 were attacked, P4 incredibly, I observe, answered that he not only heard so but also “felt” them being attacked. Asked how he could have “felt” the same, P4 retracted this impossible answer and said he allegedly heard such attacks only.

*Requested to see psychologist*

1. P4 denied under cross-examination that he had requested at the A&E Dept to see clinical psychologist. However, Dr Lui wrote in his medical report that, “during the consultation, (P4) was also worried that he might have long term consequences in terms of his mental health due to this incident. However, (P4) did not have any persistent mood disturbance… (P4) *requested* to see clinical psychologist*.* He was discharged with referral letter to clinical psychologist given to him (italics supplied)”.
2. On being confronted by Ms Chow with the above contents of Dr Lui’s medical report, P4 still denied that he had requested to see clinical psychologist. He admitted, however, that Dr Lui gave him a referral letter referring him to see clinical psychologist, but incredibly said he had “no idea” why Dr Lui gave him such a letter.

*Recommended to quit job*

1. Similarly, P4 had pleaded that, “pursuant to Dr Kwan’s advice”, he had resigned from his job as an assistant of a LegCo councilor[[57]](#footnote-57). He also said in evidence that Dr Kwan had “recommended” him to quit his job as an assistant of LegCo councilor[[58]](#footnote-58). Dr Kwan, however, answered this court in the box that he had never advised P4 to quit his gainful job to study. I see no reason to disbelieve Dr Kwan on this (or with contents of Dr Lui’s medical report on P4’s request to see clinical psychologist). Such discrepancy, I think, casts considerable doubt over the credibility of P4.

*Left chest wall tenderness*

1. Mr Shek also submitted on behalf of P4 that left chest wall tenderness found by Dr Lui at the A&E Dept is consistent with, and supports, P4’s evidence of being assaulted on board the PV.
2. Having considered the totality of P4’s evidence and other evidence, I cannot agree with Mr Shek either.
3. P4 also pleaded that, while he was in the PV, a number of police officers committed battery on him “by way of pulling his hair, pushing down his head, hitting his head to the glass window, punching his chest and back with fist, clenching his face, slapping his cheeks and hitting his body with knee”. As a result, he suffered injuries to his chest, “back and cheeks” and psychiatric injuries[[59]](#footnote-59).
4. P4 also claimed in his witness statement that his “head was pressed to hit against the window”, his “cheek was slapped 3 to 4 times”, his “back was punched once or twice”, and his “hairs were pulled” by officers[[60]](#footnote-60).
5. Under cross-examination, P4 claimed to Ms Chow that he “felt painful over his chest, face and back”. He claimed that he had received as many as “about 20 punches (about 4 times, about 5 punches each time)” over his “chest and back”.
6. P4 told Dr Kwan that there was “pain over his head, face and limbs” after the injury[[61]](#footnote-61).
7. P4 also claimed in his witness statements that, on leaving the Police Station, his 2 cheeks were “swollen in red”[[62]](#footnote-62).
8. Despite P4’s bold insistence to the contrary in the box, such facial view captured of him at the Conference as recorded in the TV Footage plainly do not, I think, show any alleged “red swollen cheeks” complained by him in his witness statement.
9. Dr Lui found *only* left chest wall tenderness on P4 at the A&E Dept.
10. Contrary to P4’s above claim and evidence, Dr Lui found no bruising over P4’s left chest wall. Chest X-ray showed no pneumothorax or contusion. X-ray of left ribs showed no fracture. Dr Lui found no scalp or facial wound on P4.Dr Lui also found P4’s left distal thigh non-tender with no significant swelling.

*Lights “switched off” after boarding*

1. In his pleadings, P4 pleaded that after his boarding the PV, the police officers “switched off the lights”[[63]](#footnote-63). In chief and under cross-examination, P4 further pointed to one clip of the Police Footage[[64]](#footnote-64) showing, he claimed, that lights at the front of the interior compartment of the PV was on before he boarded it and claimed that, after his boarding, they were “switched off”.
2. Similarly, P2 was also recorded in the TV Footage to have asserted like a spokesperson of all 4 plaintiffs in the Conference, and he had repeated that in his witness statement[[65]](#footnote-65), that the lights of the PV were “switched off” after getting on board the PV.
3. Such claim of the lights of the PV being “switched off” after boarding made by P4 and P2 above is, in my views, not supported, but contradicted, by the Police Footage.
4. I have considered all clips capturing such moment before and during P4’s boarding the PV, and photos of the PV produced at trial. I think it likely, as Ms Chow put to P4, such light, P4 claims, at the front of the interior compartment of the PV was in fact transmitted *through* the front glass window and left front mesh-wired triangular glass window of the PV from street lamp*outside* the PV in its vicinity, and not due to lights installed *inside* the PV.
5. Had such light come from lights installed *inside* the PV having been turned on, the front interior of the PV would have, I think, looked “much brighter” than it was captured on the clip P4 sought to rely on (one can compare it with *increased* brightness found in front interior compartments of 2 police vehicles bearing registration marks AM7264 and AM7228, whose lights installed *inside* them were switched on while civilians were *boarding* them, see below).
6. Having looked at another clip capturing such moment before P4 boarded the PV[[66]](#footnote-66), P1 had, I note, also agreed with Ms Chow that other police vehicles of similar type that were parked behind the PV at the Legislative Council Road were, like the PV, all dark in their interior, indicative that their lights were “switched off” when they were parked there in the first place.
7. I find on all evidence that the lights installed *inside* the PV had been “switched off”, and that the interior of the PV was dark, *before* P4 boarded it. P4 was, of course, the first among all 4 plaintiffs to board the PV.

***G5. P2***

*Neck grabbed from behind or not?*

1. On this factual dispute, I prefer the evidence of 4314 to those of P2 and find that, after 4314 had caught up with P2 from behind with mills barriers in between separating them, he merely used his right arm to hold onto P2’s “right upper body” from behind and placed his right hand on P2’s “left shoulder”. In other words, 4314 had not grabbed P2’s “neck” from behind as P2 alleged.
2. My reasons are as follows.
3. It is true that, on the Police Footage, 4314’s right arm was at some stage very close to P2’s neck as 49047 admitted watching the same on the footage. 4314’s right arm might have, as 49047 said in his witness statement and I agree, come into contact with P2’s neck for some short period at some stage.
4. But, on the Police Footage, 4314 never *bent* his right lower arm at wrist level to “surround” P2’s neck with his right arm. Moreover, the palm of 4314’s right hand was *flat* such that 4314 had not made any fist to grab P2’s neck as alleged.
5. And P2 was captured to have uttered words and waved his right handwhile he was being held by 4314 from behind*.* Had 4314 grabbed P2’s neck while he was being held by 4314 from behind, P2 would unlikely, I think, have taken these actions “comfortably” as he did on the Police Footage.
6. Finally, P2 had not complained of any neck injury in his evidence. At the A&E Dept, Dr Lui did not find P2 suffering from any neck injury either. Had P2’s neck been grabbed from behind as alleged, the position should likely be otherwise.
7. If indeed 4314 had grabbed P2’s neck for any short period during his holding of P2 from behind (Ms Lam had put to 4314 that it lasted about 10 seconds), for the same reasons above, I do not think it likely that 4314 had grabbed P2’s neck “forcefully” at all. I also accept 4314’s evidence that he had held onto P2 from behind with his right arm using “mild” force only.

*Abrasions on both forearms, above right eyebrow, forehead & left pinna*

1. Mr Lok SC submitted (and I tend to agree after viewing the Police Footage) that P2 was captured to have no facial injuries shortly before he boarded the PV. It was, he pointed out, also confirmed by 4314, who agreed with Ms Lam that he saw no forehead injury on P2 on his interception and escorting P2 to the PV. 4314, I note, also said he only noticed P2 having forehead injury inside the Police Station. Indeed, both 57078 and 4314 had given evidence observing foreheadabrasion of P2 at 0300 odd hours inside the Police Station. On the above evidence, I agree with Mr Lok SC that P2 had likely sustained his foreheadabrasion on board the PV during the Journey.
2. But forehead abrasions were only *one* among several abrasions injuries found on P2 at the A&E Dept. As P2 explained in evidence[[67]](#footnote-67) and as they were captured in the Conference by the TV Footage, these abrasions injuries of P2 found at the A&E Dept were located on 2 different parts of his body i.e. over

(1) both the forearms of P2; and

(2) the head of P2 at the 3 spots of i) right lateral supraorbital region, ii) forehead, and iii) left pinna (collectively **the Head Abrasions Injuries**).

1. The Head Abrasions Injuriessustained by P2 are, I should stress, very minor injuries by all means. They are very small in size and inconspicuous at longer distance. But not for “close-up” views of the camera in the TV Footage, they would not, I think, have been noticeable to others at all.
2. Furthermore, though P2 alleged and testified that he was assaulted on his left arm inside the PV, he never, I note, alleged or testified that he was injured on his arm(s) as a result.
3. P2 did plead that, while he was sitting in the PV, he was assaulted by police officers by way of “slapping and pushing his head, punching hisleft arm with fist, pulling his hair, spitting, and pulling his left ear and nose”[[68]](#footnote-68).
4. But, it was also pleaded by P2 that he suffered injuries to “his left ear and head” and psychiatric injuries[[69]](#footnote-69). There was no mention of injuries to P2’s arm(s).
5. P2 told Dr Kwan that he “was slapped over his face, hit over his nose and forehead resulting in several abrasions over forehead region. He had no loss of consciousness but there was pain overwound face after the injury”[[70]](#footnote-70). Again, there was no mention of injuries to P2’s arm(s).
6. According to detailed evidence P2 gave, he was “slapped on left and back of his head for 2-3 times” before the PV departed. After it departed, he was further “slapped continuously” for “about 1-2 minutes”. “During the whole 15-minute journey” to the Police Station, said P2, he was “continuously assaulted (持續毆打)” by “at least 2 officers” by different means including “slapping left and back of his head”, “punching on his left armwith fist”, “pulling his left ear and nose, pulling his hairs to the back and spatting on his face”[[71]](#footnote-71). As a result, said P2, he “bled at his forehead, eyebrow and back of left ear”[[72]](#footnote-72). Again, P2 gave no evidence of injuries to his arm(s).
7. I have not overlooked P2’s claim of his washing his face at the toilet of the Police Station on 14 June.
8. Nevertheless, had P2’s detailed evidence above of alleged assault on him inside the PV been truthful, one
9. wonders why P2 did not complain of injury to his left arm and why he was not found injured on his left arm alone;
10. thinks it likely that his resulting injuries should be more serious and more conspicuous than the Head Abrasions Injuries; and
11. thinks it likely that the locations of his resulting injuries should not be limited to the 3 spots of the Head Abrasions Injuries (they should also be found, for example, on P2’s nose and cheeks).
12. It should be stressed that, at the A&E Dept, Dr Lui found no other external head wounds on P2. And, after a series of medical examination, Dr Lui found nothing otherwise abnormal of P2.
13. Strangely, though P2 complained of dizziness of light-headed sensation to Dr Lui at the A&E Dept, he declined injection of medications to reduce dizziness.
14. Hence, I agree with Ms Chow that P2’s injuries found at the A&E Dept do not correlate with his evidence of alleged assault on him inside the PV.
15. To the contrary, I think both forearms injuries and the Head Abrasions Injuries of P2 found at the A&E Dept are more consistent with defence case of P2’s Incident, and are explainable by, P2’s alleged conducts therein of standing up and reaching out for the window with his head and hands, P2’s vigorousstruggleusing his hands against actions of a total of 5 officers, including 2 officers behind him, of pressing and/or pulling him back to his seat and 4905’s handcuffing both forearms of him at his front at the end of P2’s Incident.
16. In anticipation of that, counsels for P2 pointed to a specific plea by defence that P2’s injuries were brought about by his bodily contact between security officers, police officers and/or fellow protestors “in the course of the Protest”[[73]](#footnote-73) and argued that, as it was never specifically pleaded that P2’s injuries were “caused by, or sustained in, P2’s Incident”, the above argument or submissions is not open to the defendant.
17. I agree that there is no specific plea by defence that P2’s injuries were “caused by, or sustained in,P2’s Incident”. But the defendant did plead P2’s Incident[[74]](#footnote-74). Ms Chow did cross-examine P2 on P2’s Incident. P2 (and his legal team) had been given full opportunity to deal with defence allegations of P2’s Incident, though it is true that Ms Chow had never put to P2 that P2’s injuries were “caused by, or sustained in,” P2’s Incident.
18. But, all things considered, I find nothing unfair to P2 for this court to consider “possible consequences” of P2’s Incident, when P2’s Incident itself was so squarely put in issue on the pleadings and was fully explored by P2 and the defendant in the evidence.
19. Moreover, as was captured on the TV Footage, P2 and P4 had, in the Conference, shown both their forearms (and injuries shown thereon) to the press to complain of police handcuffing on board the PV (with P4 acting as the spokesperson).
20. In such circumstances, I fail to see any unfairness to P2 for this court to consider both forearms abrasions found on him in light of P2’sown complaint of police handcuffing. Handcuffing of P2 by 4905 on board the PV is, after all, common ground between P2 and the defendant. And that, I think, affords the most likely explanation of abrasion injuries on “both forearms” of P2.
21. Hence, on deeper and fuller analysis of P2’s allegations in the pleadings and of the entirety of his evidence of alleged assault on him inside the PV against the entire contents of his medical report at the A&E Dept, the rest of evidence and also defence case, I conclude that such very minor injuries found on P2 at the A&E Dept do not assist P2’s case as submitted on his behalf.
22. To recap, I have also, after similar analysis, reached similar conclusions above over minor injuries found on P3 and P4, and on absence of injury of P1, at the A&E Dept. They do not assist the other 3 plaintiffs as submitted either.

***H. The 6 Officers***

1. I now turn to the 6 Officers. I start dealing with plaintiffs’ submissions against individual officer and then submissions against all or some of them.

***H1. 5101***

*Failure to record events on board*

1. Mr Lok SC orally submitted in his closing address that it was inconceivable for 5101 not to have recorded what allegedly had happened on board the PV with recorder in his possession at that time.
2. Mr Lok SC had questioned 5101 by pointing out to him that arresting officers are from time to time accused of assaulting suspects and, absent production of photos or presence of third party witnesses like reporters, they are vulnerable to unfounded criticism by suspects.
3. 5101 did, I think, fairly acknowledge in the box that it is not uncommon for suspects to make accusations of assault against police officers and chances are, he agreed, that these accusations are more easily made in the absence of third party witnesses.
4. But, for reasons below, I do not agree with Mr Lok SC’s submissions that it was implausible for 5101 not to make video record of what transpired inside the PV.
5. Accusations of officers assaulting suspects are, 5101 said and I agree, still from time to time resolved in courts of law with only the protagonists giving evidence.
6. 5101 was provided with video recorder, and briefed by SIP Chow, to record illegal activities, if any, of public assembly at the DPAA on 13 June and he had not been briefed to record any other activities. He had, I accept his words, no previous experience of taking recording in events other than public assembly.
7. While his video recorder was still inside his rucksack after he boarded the PV, 5101’s primary task was, I think, to take good custody of P1 he had arrested. There were, one remembers, other officers on board the PV to take care of other civilians and incident arising therefrom, despite 5101 noticed the same.
8. On the defence case, P2’s Incident (and P4’s Incident) happened, I think, all of a sudden and lasted only a short period of time (I think P2’s Incident lasted within 1 minute or so, see below). And there is no evidence that any officer had asked 5101 to take recording. There was thus even less reason for 5101 to take out his recorder from his rucksack to take recording.

*Discussions with colleagues afterwards*

1. Mr Shek had submitted that 5101 was evasive when he was cross-examined on whether or not members of the Crime Team had, after the event, “discussed” with one another about what happened on board the PV.
2. Having carefully observed 5101 giving evidence in the box, I do not find 5101 evasive as submitted. 5101 denied “discussions” with his colleagues as suggested by Mr Shek but frankly agreed that he and his colleagues had, after the event, “mentioned” about isolated events such as someone refusing to put on seatbelt.
3. Importantly, 5101 stressed, and I also accept his evidence, that he made his record independently on his own. Though his police statement was dated 17 June 2014, he made his notebook post-record as early as from 1745 hours on 14 June 2014. And the contents of his notebook are, I note, wholly consistent with the contents of his police statement and his evidence at trial.

***H2. 57078***

*Place of arrest of P2*

1. I do note that, as counsels for P2 stressed, 57078 had put down or reported the place of P2’s arrest by her using different words, such that such place came to be recorded as: -
2. “outside the Complex (立法會廣場外)” at record of interview she took with P2 at 0425 hours on 14 June 2014; and
3. “LegCo Building, 8-8 Jackson Road, Hong Kong” at Detained Person Movement Record of P2.

But I accept her explanation that these were “clerical mistakes”.

1. For the following reasons, I accept 57078’s evidence that she had failed to use precise words to express herself and that the different words above did in fact refer to the same place of her arrest of P2 as she gave evidence i.e. on board the PV shortly after it departed LegCo outside the Complex.
2. Significantly, the 2 records above gave the same important *timing* of arrest of P2 “at 0327 hours”, which meant that P2 and 57078 had by then both “boarded the PV” as recorded and captured by the Police Footage;
3. Before its departure, the PV was parked outside the Complex at Legislative Council Road and it departed for the Police Station at about 0326 hours as recorded in the Police Footage;
4. 57078 had, I note, given a consistent account of arresting P2 “on board the PV” at the same important *timing* of about 0327 hours in her notebook post-recorded at 0725 hours on 14 June 2014 and in her police statement made at 0745 hours on 14 June 2014;
5. Hence, the places of arrest of P2 by 57078 so recorded to have happened at the same *timing* in these 2 records, her notebook and police statement could well, I agree with her, to mean the same place though different words were used.
6. The words in these various records reported or made by 57078 refer, one thinks, to “more or less” the same place on the ground and not different places “far apart” from one another;
7. And, 57078’s evidence of arresting P2 “on board the PV” shortly after it departed from LegCo was corroborated by the evidence of 4314 and 49047.

***H3. 4314***

*Declared arrest on P2 on interception?*

1. When Ms Lam put to 4314 that he had not declared arrest on P2 upon his interception of P2, 4314 claimed that he had allegedly told P2: “Police, I now arrest you. Don’t leave” upon his first getting hold of P2.
2. I agree with counsels for P2 that the above evidence of 4314 is unreliable for the following reasons.
3. 4314 recorded no such declaration of arrest on P2 in his notebook post-recorded at 0730 hours on 14 June 2014, his police statement dated 22 September 2014 and his witness statement dated 1 September 2016.
4. 4314 made this claim of alleged declaration of arrest on P2 upon interception for the first time in the box more than 4 years after the incident.
5. 4314 purported to explain his omission by saying that he was not the assigned arresting officer of P2 and that he “forgot” to have recorded the said alleged declaration of arrest in his previous records. I do not accept such explanation.
6. In his witness statement dated 1 September 2016, 4314 had already seen fit to have replied specifically to P2’s allegation of police not having made declaration of arrest on him on or after interception by referring to P2’s alleged escape by climbing the mills barriers on seeing or realizing police party approaching him.
7. Hence, 4314’s attention had apparently been directed on P2’s specific allegation of no declaration of arrest before he made his witness statement. Had 4314 declared arrest on P2 on his intercepting him, he ought, I think, to have been reminded and to have so stated in his witness statement as his reply to that.

***H4. 49047***

*Inconsistencies with himself & 4314*

1. Mr Shek acting for P3 & P4 submitted that 49047 had “contradicted himself” about P3 using microphone “after 0300 hours” on 14 June 2014 to chant slogan for protestors to follow and about P2 having “struggled” for 10 plus seconds after being grabbed from behind as he claimed in his police statement.
2. I agree with Mr Shek. After he cross-examined 49047 on the Police Footage, 49047 conceded in the box that: -
3. he “no longer recalled” whether or not P3 had, after 0300 hours on 14 June as he claimed in his police statement, used microphone to chant slogans for protestors to follow; and
4. P2 “could not be said to have struggled” after being grabbed from behind as he claimed in his police statement.
5. Indeed, 49047 had claimed in his police statement that “he and 4314 had both shouted” at P2 demanding him to stop making bodily movement after P2 was grabbed from behind. On the other hand, 4314 answered Mr Shek after viewing the Police Footage that he had never so shouted. 49047, however, insisted in the box of having so shouted at P2 himself. As to whether 4314 had so shouted at P2, 49047 first answered Ms Lam that he did not recall but later claimed to Mr Shek that 4314 had so shouted at P2.

***H5. 3819***

*P4’s Incident not noticed/recorded by other officers*

1. Mr Shek acting for P4 stressed that the interior of the PV was a small confined place but that other officers on board the PV did not notice or record P4’s Incident as alleged by 3819. Such inconsistencies, he submitted, cast doubt on the credibility of 3819. I cannot agree with him.
2. It should, I think, be remembered that: -
3. P4 was arranged to sit at the offside front of the PV i.e. at that double-seater seat next to the window at the 2nd row on the offside (and that 3819 sat to his left on the same row guarding him).
4. P4’s Incident, according to 3819, apparently began *after* P2’s Incident did. 3819 said of P4 standing up from his seat after he heard words of “calm down, put your hands down” from the rear of the PV, turned around and saw P2 raising his hands and holding onto the horizontal bar of the window.
5. P4’s Incident, as 3819 estimated, lasted about 20 odd seconds. On the evidence before me, it likely ended earlier than, or at about the same time of, P2’s Incident. In other words, P4’s Incident of shorter duration, I think, coincided with P2’s Incident of longer duration at some stage.
6. Hence, such failure to observe and/or record P4’s Incident by other officers on board the PV above was, I think, understandable and explainable on the evidence.
7. Though 5101, who half-squatted on his 2nd last single seat facing his arrested person i.e. P1 at the nearside last single seat, noticed P2’s Incident happening one row behind him on the offside of the PV, he could well, I think, not have noticed what happened to P4 at as many as three rows behind him on the offside of the PV. That was especially the case that, according to 5101, he had to take steps to calm P1 down by words (and therefore focused on P1) once P2’s Incident began.
8. Under cross-examination by Mr Shek, 4905 merely said that P4 was cooperative during the Journey “as far as he observed”. Though P4 and 3819 sat at the row in front of his, 4905 had to guard P3 sitting next to him. More importantly, 4905’s attention was once distracted away by P2’s Incident. He had turned around and assisted his colleagues in controlling P2. He ultimately handcuffed P2.
9. Though 57078, who sat at the 2nd single seat after the door of the PV, gave evidence of AP Wong attempting to stand up at the rear of the PV but recorded no arrested person at front row (e.g. P4) standing up or attempting to stand up, she had explained that she focused on P2 for as long as, she estimated, 40 to 50 seconds during P2’s Incident and she paid no attention to other arrested persons during the same period.
10. 4314 sat next to P2 responsible for guarding P2. On his evidence, after P2’s Incident began, he had directed all his attention and effort on controlling P2 but could not do so on his own. That could well also explain, in my views, why he did not notice or record arrested persons other than P2 shouting and/or standing up on board the PV at about the same time.
11. On his evidence, 49047, who sat at the single seat behind the door of the PV, also participated in controlling P2 during P2’s Incident and he should also have focused on that during its duration of close to 1 minute he estimated. While he had only recorded in his police statement P2 and “other arrested persons at front” and rear of the PV shouting during the course of P2’s Incident, he had clarified under cross-examination by Ms Lam that these persons at the front included P4.

***H6. Some of, or all, the 6 Officers***

*No “defensive wound” after subduing P2*

1. It was stressed on behalf of P2 that the defence case is that P2 had, during P2’s Incident, vigorously struggled and resisted with considerable force such that he had to be subdued by 4 to 5 officers and was ultimately handcuffed. However, the police officers, it was argued, did not sustain any injury - not even a “defensive wound” - and it was improbable.
2. First, while 4314 and 49047 confirmed that they were not injured after subduing P2, 4905 was not asked the same. And two other officers of the Triad Team sitting behind P2 who assisted in subduing P2 were not called and they never confirmed. 3819, who was not involved at all in subduing P2, only told Mr Lok SC that he did not see afterwards any superficial injury on “his colleagues” or hear of the same “as far as his memory goes”.
3. Had all officers subduing P2 not been injured as submitted, I still do not find defence case improbable for these reasons.
4. During P2’s Incident, P2 shouted, stood up and reached for the window of the PV with his hands and head. The officers stopped him by holding onto his hands, pressing and/or pulling him back to his seat, handcuffing him and fastening his seatbelt at the end. In return, P2 had “resisted” by refusing to sit down and by waving his hands vigorously.
5. The defendant had thus never suggested that P2 had resisted by “attacking” the officers or that he had “attacked” the officers by, say, punches or kicks.
6. And, on defence case, P2’s Incident lasted a relatively short period of no more than, I think, about a minute.

*Motive for assaulting the 4 plaintiffs*

1. Mr Shek in his submissions pointed to the following grievances disclosed in the evidence, namely that: -
2. The 4 plaintiffs were perceived as the “leaders” of the Demonstration and became targets of arrest;
3. Members of the Crime Team were working “overtime” by the early hours of 14 June as they had worked for “more than 19 hours” by police interception of the 4 plaintiffs (**2nd Grievance**); and
4. SIP Chow of the Crime Team had on 13 June been injured by protestors of the Demonstration and was admitted to hospital (**3rd Grievance**).
5. Against the above background, Mr Shek submitted that it is all too natural that police officers would “vent their anger and frustrations on these perceived leaders”. When confined in the dark interior of the PV with its curtains drawn, he submitted that “it was simply all too easy for things to get out of hand with violence directed at these protestors ensured”.
6. On Mr Shek’s questioning, 57078 and 4314 had, I note, acknowledged all 3 grievances above. Indeed, 57078, I think, also candidly agreed with Mr Shek that: -
7. Individual plaintiff like P2 had improperly criticized police of exerting improper violence against protestors;
8. The actions of the plaintiffs had caused great inconvenience to police action (thus hindering police from completing their work);
9. she found the situation “helpless” and she wished the 4 plaintiff protestors to cooperate with police to end the Demonstration “as soon as possible”; and
10. she was “unhappy” with the 4 plaintiffs.
11. Hence, this court does not rule out such possible motives as suggested by Mr Shek for the officers to vent their anger and frustrations on the 4 plaintiffs on board the PV.
12. At the same time, 57078, I note, categorically denied on oath Mr Shek’s suggestion that the plaintiff protestors were, in her opinion, “causing trouble” and that police should therefore “vent their anger” on them. 57078, I think, fairly acknowledged that the 4 plaintiffs were entitled to take their own different views of the Project in exercise of their freedom of speech and assembly, and she stressed that police officers are professionally trained to exercise self-restraint.
13. Furthermore, while the 2nd & 3rd Grievances *peculiar* to the Crime Team could, one thinks, be attributable to its members on board the PV, they could not be attributable to 3819 and 4905 both of the Triad Team. But P4 has specifically identified 3819 of the Triad Team to have assaulted him on board the PV.
14. And, had the 2nd & 3rd Grievances been “troubling” members of the Crime Team on board the PV, the 4 plaintiffs gave no evidence of any of them complaining of either or both of them while they were allegedly abused physically and verbally on board the PV[[75]](#footnote-75). In contrast, the 4 plaintiffs were, said P1, “strongly questioned” about their alleged triad connection and asked with questions, among others, if they had been paid to attend the Demonstration.
15. As such, while these possible motives are worthy to be considered, they are, I think, of limited assistance to plaintiffs’ case in the context of their evidence.

*Police officers assaulting suspects*

1. Pointing to 2 high profile cases[[76]](#footnote-76), Mr Shek also submitted that 4905, 57078 and 49047 might not have been “candid” in that they “denied” in the witness stand of having “witnessed” police officers assaulting suspects in their police careers.
2. I disagree with Mr Shek for the following reasons.
3. The two high profile cases[[77]](#footnote-77) had *never* been put to the 3 officers. It was *never* suggested to them that they had personally been involved in these cases as witness or otherwise.
4. Despite the wealthy past working experiences of these 3 officers with the police force, the police force remains, one thinks, a very large establishment.
5. No evidence was adduced to contradict the answers of these 3 officers on oath that they had never “witnessed” police officers assaulting suspects in the past.
6. Mr Shek’s bold submission remains, I think, a bare assertion unsupported by evidence.

*Lights of the PV “not switched on” after boarding*

1. The 6 Officers answered one way or another that, from the moment P4 boarded the PV until it reached the Police Station, the lights of the PV had not been switched on. No officer, they said, had requested the Driver to switch on the lights of the PV. These answers were elicited by plaintiffs’ counsels and I so find.
2. Regarding the curtains of the PV, according to P1, they had been partly drawn on his boarding. He claimed to have later heard officer instructing other officer to draw up the curtains[[78]](#footnote-78) and an officer drew up the curtain next to him. P2 also claimed to find curtains of the PV partly drawn on his boarding and curtains next to his seat drawn up after he was arranged his seat[[79]](#footnote-79). P3 claimed to have curtains of the PV drawn up after he last boarded it[[80]](#footnote-80).
3. To the contrary, 3819 gave evidence by reference to the Police Footage that the curtains of the PV had already been drawn before P4 got on the PV.
4. Hence, it is at least common ground that, during the Journey, the curtains of the PV were drawn. I so find.
5. If necessary, I prefer 3819’s evidence to those of P1, P2 and P3, and find that the curtains of the PV had already been drawn before P4 boarded it. On such of the Police Footage capturing P4’s arrival at the PV and thereafter, despite there were outside light sources coming from the nearside of the PV, one could not see its middle and rear interior compartments through its nearside glass windows. That suggests that all the nearside curtains of the PV had likely been drawn up before P4’s arrival at the PV and thus supports 3819’s evidence.
6. In any event, the 4 plaintiffs rely on the darkness of the interior of the PV coupled with drawing of its curtains on the Journey as part of their cases against the defendant.
7. Mr Lok SC in his closing submissions further pointed to the following matters and circumstances, namely: -
8. police duty to ensure safety of persons under their custody;
9. the total number of passengers on board the PV during the Journey being as many as 14;
10. the aisle of the PV being crowded (said by 3819, and agreed by 49047, in evidence); and
11. inability of the police to make clear visual identification of the appearances of the detained persons inside the dark interior of the PV (said by 3819 in evidence).
12. Mr Lok SC submitted that it was “absurd” on defence case and defence evidence for the lights of the PV “not to have been switched on” from the moment P4 boarded the PV until its arrival at the Police Station, especially it was claimed by the defence that the interior of the PV had been turned into chaos with AP Wong chanting slogans and refusing to be seated, and with the happening of P2’s Incident & P4’s Incident involving the subduing of, and handcuffing of, P2 and P4.
13. Such state of affairs admitted and asserted by the defence, it was submitted, was all the more suspicious when 2 other police vehicles with registration numbers AM7264 and AM7228 parked at Legislative Council Road in the early hours on 14 June 2014 were, I agree, captured to have their lights on while other civilians were *boarding* them after the PV had left the Complex.
14. Ms Lam had also put to 4314 and 49047 that the lights of the PV were “not switched on” in order to assault the plaintiffs on board the PV. The 2 officers, of course, denied.
15. My observations on each of submissions made by Mr Lok SC above are as follows: -

(1) In the first place, the PV was, on the Police Footage, not the only police vehicle with its lights off parked outside Legislative Council Road. As such, there was, one thinks, nothing suspicious about that.

(2) As the Driver was not called at trial, one could hardly tell from her mouth why she did not switch on the lights of the PV during its boarding and afterwards.

(3) Police vehicle with registration mark AM7264 was, I note, also captured to have its lights “switched off” at the moment of its *departing* LegCo on the Police Footage[[81]](#footnote-81). Hence, the fact that the lights of the PV were “not switched on” during the Journey is, one thinks, nothing suspicious.

(4) There is no evidence to tell whether the other police vehicle with registration mark AM7228 had kept its lights on, or had them switched off, on its departing LegCo or afterwards. The Police Footage simply did not capture that.

(5) The maximum passenger capacity of the PV had apparently not been exceeded at the material time such that it posed any safety issue because of darkness of its interior.

(6) Looking at photos of the PV, its aisle was, I think, not that narrow. 4314 disagreed when Ms Lam suggested that to him. Though 49047 agreed with Ms Lam, he agreed because the aisle only allowed for “2 persons” to pass “sideway” at the same time. I think it likely that 3819 found the aisle of the PV “crowded” for similar reason given by 49047. Before 3819 followed P4 to get onto the PV, as many as 3 uniformed officers[[82]](#footnote-82) had already boarded it. They did not get off until P3 arrived at the PV. Their earlier presence likely, I think, caused 3819 to find the aisle of the PV crowded.

(7) There was no evidence that the passengers of the PV had on 14 June any difficulty, or danger, getting to their respective seats or getting off it on its arrival at the Police Station due to the darkness of its interior or the width of its aisle.

(8) The interior of the PV was, as 3819 said and I agree, not in “complete darkness” such that one could see nothing at all. Indeed, none of the 4 plaintiff said of it in “complete darkness” in their witness statements. It was, as 3819 said in box and I find, “relatively dark (比較陰暗)”as P2 also put it in his witness statement[[83]](#footnote-83).

(9) There are, I find, instances in the witness statements of P1, P3 and P4 where they claimed “seeing” other plaintiffs and/or AP Wong being assaulted by officers on board the PV, though P1 said he “vaguely saw” the same.

(10) As P4 had also admitted[[84]](#footnote-84), the interior of the PV could be illuminated and was, I find, illuminated by outside light sources emitting through its front glass windscreen, its front triangular glass window and its lights transmitting curtains.

(11) Ms Chow was, I think, right to submit that travelling inside the PV would have been very similar to riding inside an ordinary vehicle at night and it would not have created any “intimidating” environment as alleged in plaintiffs’ pleadings.

(12) Indeed, none of the 4 plaintiffs had said specifically in their witness statements that the dark interior of the PV had caused them to feel “frightened or threatened” in any way.

(13) The Journey was, one thinks, a short one in terms of its duration, with the simple aim of transporting the 4 plaintiffs and AP Wong to the Police Station. Notwithstanding the dark interior of the PV, their guarding officers could easily locate and control them as they sat next to, or in front of, these civilians. There was, one thinks, no need for these officers to make visual identification of their appearances despite it was difficult to make the same on board the PV.

(14) As such, it was, one thinks, not surprising that 4905, 57078 and 49047 had, as they explained in the box, found it unnecessary to request the Driver to switch on the lights of the PV for they had sufficient light to perform their tasks at hand.

(15) P2’s Incident and P4’s Incident happened, as I said above, all of a sudden but they also ended quickly. All the 6 Officers had either to deal with one of them, and its consequences, or had one’s attention directed and focused on it. As such, they could not, I think, be faulted for not having asked the Driver to switch on the lights of the PV during the course of these incidents.

(16) After the 2 incidents were over, the remainder of the Journey was uneventful and there was thus even less need for the lights of the PV to be switched on or for requesting them to be switched on.

1. Hence, I do not agree that the 6 Officers are discredited by the facts that the lights of the PV were “not switched on”, and its curtains were, during the Journey, drawn up as submitted by Mr Lok SC.
2. In fairness, I have to agree that, on plaintiffs’ case of police “assaulting” them inside the PV, the darkness of its interior would likely render individual plaintiffs’ subsequent visual identification of their culprit(s) more difficult.
3. But, as I find above, the PV was parked with its lights “switched off” in the first place and the 4 plaintiffs boarded the PV while its lights were off. None of them, I note, said specifically in their witness statement of hearing any officer instructing the Driver “not to switch on” its lights during the Journey. P4 and P2 had instead asserted in the box and in the Conference respectively of the police “switching off” the lights of the PV after their boarding in order to assault them (and I have already rejected their assertions above).
4. Moreover, the drawing up of the curtains of the PV coupled with its dark interior could, one imagines, avoid persons outside the PV observing and/or recording such alleged assault inside.
5. Nevertheless, had officers on board the PV been concerned about outside observation and/or recording of their alleged assault inside, they could, one thinks, wait doing so until *after* the PV had departed the Complex. But, according to P4[[85]](#footnote-85), 3819 assaulted him on board the PV *before* the other 3 plaintiffs boarded it[[86]](#footnote-86). P3 also claimed he and AP Wong were assaulted *before* the PV departed[[87]](#footnote-87). P2 made the same claim of being assaulted *before* the PV departed[[88]](#footnote-88).
6. Hence, though the dark interior of the PV coupling with the drawing of its curtains could advance plaintiffs’ case of them being assaulted on board the PV, I also think they are of limited assistance in the context of plaintiffs’ own evidence.

*Reasons, if any, for non-cooperation of P2 & P4*

1. Mr Lok SC submitted that, on the Police Footage, P2 was captured walking with police officers in a “cooperative” manner while he was escorted to the PV. It was said to be confirmed by 57078. It is, he argued, illogical for P2 to have suddenly become agitated and to have struggled vigorously with officers inside the PV in P2’s Incident as alleged. It is, he argued, also unreasonable for P2 to have chanted slogans with other detainees on board the PV where there was neither reporter nor other protestors in the proximity of, or inside, the PV.
2. Similarly, Mr Shek stressed that common sense suggests that protestors shout slogans to express their grievances or gain attention to their causes. If P4 were to continue doing so after his arrest, he should do so within sight and/or earshot of other protestors and journalists. But, P4 did not, said 3819, utter any word while he was being escorted to the PV. Instead, P4 only shouted slogans after he got on board the PV and after its door was closed. 3819, he submitted, must have, or would likely have, fabricated P4 shouting slogans on board, and P4’s Incident, to make an excuse for his mistreating P4.
3. I deal with Mr Lok SC’s submissions first.
4. 57078 did agree that there were reporters and photographers along, or inside, the Cordoned Path. I would so find. The Police Footage had captured reporters and photographers following P2 and taking photos and/or video of P2 being escorted by police (one can recognize in the footage[[89]](#footnote-89) red logo of Hong Kong Cable TV and of Radio Television Hong Kong in their equipment). And their presence and actions would not, one thinks, have escaped P2’s attention.
5. But I give no weight to 57078’s further answer that P2 did not shout slogan during his escort for the following reasons.

(1) The Police Footage plainly captured otherwise. P2 was captured to have opened up his mouth and had mouth movements like shouting[[90]](#footnote-90) while he was escorted by 4314 and 49047 on his 2 sides to the PV. And one clip had even captured and recorded P2 shouting “no withdrawal, no departure”[[91]](#footnote-91) at the last section of the Cordoned Path before he boarded the PV.

(2) So was the evidence of 4314, who answered Ms Lam that P2 did shout slogans, including the slogan of “police arrest without reason (警察無理拘捕)” once, while he was escorting P2 by his side to the PV. I accept such answer of 4314 supported by the footage and prefer it to that given by 57078 above.

(3) I think it likely that 57078 had overlooked and/or forgotten such shouting of P2 because she did not escort P2 by his side but followed him at some distance behind.

1. Moreover, both 4314 and 49047 disagreed with Ms Lam that P2 was “fully cooperative” or “cooperative” during his escort. Both testified that P2 had “deliberately stalled his steps”. 4314 added that P2 was not calm. I accept all these evidence, supported, I think, by the Police Footage. During the escort, P2 was seen not walking with the trunk of his body straight but walking with it “inclined backwards”[[92]](#footnote-92). He also looked uneasy, not to mention his shouting.
2. Indeed, P2 had earlier repeatedly chanted slogan using microphone inside the Center Stage during the Removal Action, criticizing the police for having used, in P2’s words, “violence (暴力)”to remove protestors. Such slogans he chanted included “shame on police (警察可恥)”, “police abused with violence (警方濫用暴力)” and “not guilty to resist (抗爭無罪)”. The police, in P2’s words, serves “the powerful and the rich (權貴)” and “a government full of unfairness and injustice (不公不義的政府)”[[93]](#footnote-93).
3. While P2 was approaching the PV during his escort by 4314 and 49047 on his 2 sides, the crowd of protestors outside the Cordoned Path (especially on that side away from the harbor) was also captured shouting loudly slogans identical or similar to those chanted by P2 like “shame on police”, “protest not guilty (示威無罪)”, “release protestors (釋放示威者)”. These loud slogans from his fellow protestors should not, one thinks, have escaped the attention of P2, whose emotion could well have been aroused thereby.
4. These background slogans shouting from fellow protestors were captured in the Police Footage to last from P4’s arrival at the PV until P3’s last boarding onto the PV.
5. Against the above history of P2’s own shouting during the Removal Action, P2’s own shouting during his escort to the PV, and the background shouting of his fellow protestors outside the Cordoned Path, it occurs to me not unlikely for P2 to try, to continue and/or repeat doing the same after he boarded the PV.
6. Save except for 3819, according to the evidence of the remaining 5 defence witnesses on board the PV, such slogans shouted by P2 inside the PV during P2’s Incident were also, one notes, of identical or similar words i.e. “shame on police”, “police arrest without reason”, “police unlawfully used violence (警方非法使用暴力)” and “political oppression (政治打壓)”.
7. While there was no protestors or reporters inside the PV, the target of P2’s criticism on such slogans he shouted (i.e. police officers) remained on board the PV.
8. It is also defence evidence that P2 had stood up and reached out for the window next to his seat. Had P2 not been stopped and managed to pull open the said window, he could, one thinks, have made his slogans heard by protestors and/or reporters outside the PV, could have made his protest actions captured by mobile phones and/or cameras of such protestors and/or reporters found outside the PV, or, at least, could have had the opportunity of doing so.
9. This court does note that the crowd of protestors gathered on the nearside of the PV outside the Cordoned Path away from the harbor, and that P2 sat on an offside seat of the PV. Save for that vehicle painted with red logo of Hong Kong Cable TV, the Police Footage did not capture the rest of that area opposite the offside windows of the PV. But no other evidence was, I think, adduced to exclude the presence of protestors and/or reporters on that side. And one thinks reporters do not stand still to wait for their news and/or photos.
10. For the above reasons, I reject Mr Lok SC’s submissions that there was no reason for P2’s non-cooperation inside the PV during P2’s Incident.
11. Moving to Mr Shek’s submissions, P4, I accept the evidence of 4905 and 3819, did not resist, struggle or shout during his escort to the PV and cooperated with police in these respects. 3819 also said there were other protestors and reporters along the Cordoned Path but that P4 elected to shout slogans only after he boarded the PV and after its door was closed.
12. Nevertheless, as P4 was escorted along the Cordoned Path to reach the PV, he could, I think, also have heard, and could also have been affected by, slogans chanted by the crowd of his fellow protestors outside the said path before, during and after his boarding the PV.
13. According to 3819, after he had on board the PV instructed P4 to take his seat opposite the door, he heard “it was very noisy outside the PV at that time (當時車外聲音嘈吵)”. At that juncture, P4, said 3819, loudly shouted slogans like “shame on police”, “police arrest without reason” and “no withdrawal, no departure”, and declined to sit down. It was after his persuasion that P4 sat down. That, if true, indicates to me that P4 could well have been affected by noises of similar slogans shouted by fellow protestors outside the PV at that time.
14. Afterwards, P4 could well, I think, be aroused again but, this time, by shouting of P2 (and of AP Wong) on board, thus starting P4’s Incident. According to 3819, after P4 sat down, “other suspects who were brought on board and arranged to sit behind P4 also chanted slogans”. After the PV took off, he heard noises of “calm down, put down your hands” behind, turned around and saw P2 holding the horizontal bar of the window, and he then felt P4 sitting next to him “moving his hands and standing up”.
15. In the box, 3819 added that he turned around and focused again on P4, who, he observed, “had also turned around and focused his attention on the rear of the PV”. These, if true, indicate to me that P4 could well have been affected by conducts of his fellow protestors at the rear of the PV.
16. Unlike P2 who could want to reach out for others outside the PV, P4 could well, I think, have started P4’s Incident in support of similar actions of standing and shouting taken by P2 (and by AP Wong) at the rear of the PV to express their common criticism of police to the officers on board the PV.
17. Accordingly, I also reject Mr Shek’s submissions. There was, I think, every reason for P2 and P4 to have started P2’s Incident and P4’s Incident respectively as alleged.

***H7. Credibility of the 6 Officers***

1. All evidence and plaintiffs’ counsels’ submissions having been considered, I find nothing inherently implausible or improbable in the evidence of the 6 Officers.
2. Save except with 49047’s evidence on P3 allegedly using microphone since 0300 hours of 14 June and on P2’s alleged reaction after his interception, the evidence of the 6 Officers is mostly, I think, consistent with, and supported by, contemporaneous and indisputable documents like the Police Footage and photos of the PV.
3. Except for discrepancies in the evidence of 4314 on his alleged declaration of arrest on P2 and of 49047 on P2’s alleged reaction after interception, the 6 Officers gave, I think, consistent evidence within themselves and among the 6 of them.
4. Their consistent account of events could be traced to notebook post-records of:
5. 57078 made as early as from 0725 hours on 14 June 2014;
6. 4314 made as early as from 0730 hours on 14 June 2014;
7. 5101 made as early as from 1745 hours on 14 June 2014; and
8. 49047 made as early as from 1800 hours on 14 June 2014.
9. Notwithstanding discrepancies found within, and between, evidence of 4314 and 49047 on earlier events, their evidence of later events on board the PV and during the Journey, in particular that of P2’s Incident, remain, I think, consistent with, and was corroborated by, those given by 4905, 57078 and 3819.
10. All evidence considered, I find 5101, 4905, 57078 and 3819 honest and reliable witnesses and, unless otherwise stated, I accept and prefer their evidence to those given by the 4 plaintiffs.
11. Notwithstanding unsatisfactory parts of their evidence, I am also prepared to act on other evidence of 4314 and 49047 in so far they are corroborated by the Police Footage or the evidence of the other 4 officers.

***I. Events aboard the PV before and during the Journey***

1. I therefore disbelieve the 4 plaintiffs’ alleged version of them being abused physically and verbally on board the PV and find instead as per the evidence of the 6 Officers as follows.

1. After boarding, P4 at first refused to take the seat arranged for him and shouted loudly slogans of “shame on police”, “police arrest without reason” and “no withdrawal, no departure”. P4 was eventually persuaded to sit down by 3819 and 4905.
2. Shortly before the PV took off, P2 stood up from his seat,shouted slogans like “shame on police”, “police arrest without reason”, “political oppression”, and reached out for the window next to him. 4314, who sat to his left, grabbed hold of P2’s left arm and persuaded P2 to sit down. P2 sat down but soon rose up shouting slogan and reaching out again intending to open the window. He once held its horizontal bar with his hands. P2 later saw P3 taking the seat in front of his and his emotion went higher. P2 kept waving his 2 arms to shake off 4314’s grab, and shouted even more loudly.
3. 4905 heard shouting of P2 behind, turned around and saw P2 struggling with 4314. 4905 joined in persuading P2 to stop shouting and to calm down. At about the same time, AP Wong also stood up from his last row seat and shouted same or similar slogans of P2.
4. The PV then took off at about 0326 hours.
5. P4, who sat at the front of the PV, heard shouting of P2 and of AP Wong behind, turned around and saw them standing up and shouting. In support of them, P4 also moved his hands, stood up and shouted same or similar slogans. 3819 sensed P4’s motion and shouted at P4 to stop and sit down. P4 ignored him and kept standing and shouting.
6. For fear of P4 escaping and/or causing danger to the Driver and others on board with the PV in motion, 3819 quickly took away P4’s backpacks and handcuffed P4’s hands to his back. P4 calmed down and sat down. 3819 at once buckled P4’s seat belt. This entire episode of P4’s Incident lasts about 20 plus seconds and it ended earlier than, or at about the same time of, the ending of P2’s Incident.
7. Backtracking to the earlier point in time when 4314 grabbed hold of P2’s left hand and shouted at him to sit down but failed, seeing that the PV had taken off and was in motion, 4314 warned P2 to sit down or else there would be danger. P2 refused and 4314 again grabbed hold of P2’s left arm.
8. At that time, two officers of the Triad Team sitting at the row behind offered help to 4314 by pressing P2 back to his seat. 49047 also joined in to control P2. Though P3 also persuaded P2 to calm down and to cooperate with police, P2 refused to sit down, kept struggling by waving his hands and his body, and continued shouting slogans towards the direction of the window with his face edging close to it. 4314 repeated his warnings to P2 but they were all in vain.
9. At this juncture, 4905 turned his body around and half knelt on his seat.4905warned P2 that if he continued to resist violently he would be handcuffed. P2 ignored 4905’s warning and continued struggling, shouting and with his face edging closer and closer to the window. For fear of endanger the driving of the PV by the Driver and causing danger to those on board the PV, 4905 took out his pair of handcuffs to handcuff P2.
10. With assistance of 4314 in grabbing hold of P2’s left arm, 4905 first handcuffed P2’s left forearm. P2 struggled vigorously and it took another 10 seconds for 4314 to grab hold of P2’s right arm for 4905 to finish handcuffing P2’s two forearms at his front. 4314 at once buckled P2’s seat belt. P2 finally calmed down and sat down. This entire episode of P2’s Incident lasts within a minute or so.
11. If necessary, I find such injuries of P2 found at the A&E Dept were sustained by him during, and due to, P2’s Incident.
12. After P2 was handcuffed, 57078 formally declared arrest on him on board the PV for the offences of obstructing and assaulting LegCo officers in due execution of their duties at about 0327 hours.
13. Afterwards, the rest of the Journey was uneventful.

***J. Claims of the 4 plaintiffs in trespass to person***

1. Save first dealing with all 4 plaintiffs’ common battery claim for alleged assault on board the PV, I shall discuss below their respective claims by reference to individual plaintiff.

***J1. Battery claims of 4 plaintiffs for alleged assault on board***

1. As the 4 plaintiffs have failed to prove alleged verbal abuse and physical assault on them on board the PV, their respective battery claim on such ground fails.

***J2. P4’s battery claim against police handcuffing***

1. P4’s arrest admittedly being lawful, Mr Shek advanced P4’s battery claim against police handcuffing on the sole ground that it was unnecessary and excessive given his cooperation with the police after his arrest, during his escort to the PV and during the Journey as P4 claimed. He did not argue that P4’s conducts on board the PV as alleged by defence and P4’s Incident, if proven, are not sufficient legal justification to allow handcuffing. Neither did he argue against the length of time during which P4 was handcuffed[[94]](#footnote-94).
2. On my acceptance of defence evidence of P4’s conducts after his boarding the PV and P4’s Incident above, I rule that it was reasonably necessary for 3819 to have handcuffed P4 on board the PV as he did. Such handcuffing was a reasonable and necessary precaution or measure taken in the circumstances as I find them. And P4 had, I find, been released from his handcuff by the police as soon as the circumstances allowed.
3. Hence, P4’s battery claim over police handcuffing also fails.
4. All P4’s claims against the defendant in DCPI 375/2015, including those in negligence and for breach of his constitutional rights, therefore fail.

***J3. P1’s false imprisonment claim for unlawful arrest***

1. Those acting for P1 advanced this 2nd claim on false imprisonment only[[95]](#footnote-95) and advanced it on the sole ground that P1 had not been told the reason for his arrest within reasonable time, if not at the moment, of his arrest and thus his arrest was unlawful[[96]](#footnote-96).
2. But, as I hold above, this sole ground is not open to P1 on the pleadings.
3. In any event, I have also found above that 5101 did tell P1 the reason for his arrest after the two had left the crowd. Hence, 5101 had, I think, given such reason at the time of his arresting P1 and, if not, within reasonably practicable time thereafter. 5101 had therefore, I find, lawfully arrested P1.
4. Accordingly, this false imprisonment claim of P1 must also fail.
5. All P1’s claims against the defendant in DCPI 282/2015, including those in negligence and for breach of his constitutional rights, therefore fail.

***J4. P2’s claims of false imprisonment and battery for unlawful arrest***

1. Mr Lok SC in his closing submissions submitted that P2’s arrest was unlawful on 2 grounds and, thus, P2 has a claim in false imprisonment[[97]](#footnote-97) against the defendant. These 2 grounds are that: -
2. the arrest of P2 itself being equivocal in nature; and
3. reason for arrest not having been provided to P2 within reasonable time, if not at the moment, of P2’s arrest.
4. Mr Lok SC seems also to advance a claim of battery[[98]](#footnote-98) for P2 on the same basis that P2’s arrest was unlawful. Though the point was not taken by Ms Chow, I have great reservation if it is open to P2 on the pleadings. In his particulars of battery, P2 nowhere alleged “unlawful arrest” or police exerting force on him “without providing reason for arrest”[[99]](#footnote-99). In any event, I think this battery claim, if available, stands or falls with P2’s claim of false imprisonment.

*Equivocal arrest?*

1. For his first ground of unlawful arrest, Mr Lok SC submitted that the defence had failed to prove that P2 was actually aware of himself being arrested by police officers at the time of his interception on the following reasons: -
2. IP Kwok gave warnings to protestors staging sit-in at the DPAA saying that police would use reasonable force to “evict **or** arrest” them if they did not disperse peacefully immediately;
3. “To evict”, it is argued, means expelling somebody from one’s property whereas “to arrest” means taking away someone’s liberty and putting him/her in police custody;
4. P2 had, it was argued, merely envisaged the “possibility” of him being “arrested **or** taken away” by his microphone announcement inside the Center Stage during the Removal Action;
5. Police interception of P2 had occurred during the course of the Removal Action such that “eviction”, as opposed to “arrest”, remained a possibility to P2;
6. Absent declaration of arrest on P2 at the time of police interception, such force exerted by 4314 and 49047 to restrain P2 was, it was argued, equivocal – it could mean removing P2 away from the Complex **or** arresting him;
7. There is no evidence that P2 understood or appreciated that 4314 and 49047 were exerting force to arrest him at the time of their interception of P2;
8. The police had thus not made clear to P2 that he was being arrested at the time of his interception; and
9. The defence case (and evidence) is that P2 was only arrested by 57078 (and given reason for arrest) on board the PV shortly after it departed from the Complex.
10. Hence, it is argued on behalf of P2 that an arrest had not been effected upon P2 at the time of his interception by police outside the Complex. Such deprivation of P2’s liberty thereafter amounted to false imprisonment.
11. I reject these ingenious submissions made on behalf of P2 in this civil trial for the following reasons.
12. Contrary to P2’s submissions, as I find above, IP Kwok gave his warnings to the protestors staging sit-in at the DPAA using both phrases of “evict **and** arrest” and “evict **or** arrest” in punti.
13. Cross-examined with the Police Footage[[100]](#footnote-100), P2 admitted to have heard the CSO Announcements and that he understood “eviction (清場)” to mean that police would “arrestus **or** remove us away from the DPAA”. P2 apparently understood “arrest” as one possibility *within* “eviction”. He did not distinguish “evict” and “arrest”, nor believed that they are mutually exclusive, as submitted on his behalf.
14. During the Removal Action, as P2 explained in the box, he was captured[[101]](#footnote-101) to have used microphone to forewarn the protestors that the “hosts” inside the Center Stage (i.e. the 4 plaintiffs) “might be arrested first” such that PA System could no longer be used, and that there should not be confusion should “the police arrest the 4 plaintiffs by taking them away first (警察釘咗我哋先)” [[102]](#footnote-102). P2 answered Ms Chow that he then “anticipated” that he “may be arrested” by police. Apparently, P2 considered his own arrest a real possibility to forewarn other protestors to avoid confusion should it occur.
15. While police interception of the 4 plaintiffs occurred during the Removal Action, it was, P2 should then notice, undertaken against him and other “hosts” inside the Center Stage in one goal by a plain-cloth police party breaking open its mills barriers and entering it, whereas ordinary protestors lying on the ground outside the Center Stage were removed one by one by uniformed officers holding them up and carrying them away. Such *separate* treatment of him should not, I think, have escaped P2’s attention when he “saw” the said police party approaching him and later jumped down from the mills barriers to the ground leaving the Center Stage.
16. Though I find against declaration of arrest on P2 by 4314 at the time of interception, words are only one method of effecting arrest at law. With hindsight, it would, of course, be perfect had 4314 and/or 49047, as was suggested at 221D-E of *Alderson v Booth*, supra, said to P2 “I arrest you” in the heat of their “chase” of P2. But, conducts such as actual seizing or touching, or the use of force to restrain someone, also suffice at law.
17. 4314 and 49047 had, I think, unequivocally conveyed to P2 that he was no longer a free man after they seized him from behind with force. And P2 did, I think, comply with their compulsion without resisting, struggling or escaping.
18. Under cross-examination, P2 had claimed that he jumped down from the mills barriers to leave the Center Stage in order to re-unite with the crowd to face the prospect of “being arrested or carried away” together. He admitted “anticipating” his “arrest” after leaving the Center Stage. And he believed that those in plain-cloth holding him from behind were police officers.
19. P2 nowhere said in his witness statement that, on or after his interception, he thought that 4314 and 49047 were merely “removing him away from the DPAA” like what uniformed officers did to ordinary protestors. Neither did P2 give evidence that he was going “voluntarily” with these 2 officers, as the defendant did, and was believed, in *Alderson v Booth*, supra, at 221C.
20. In circumstances not dissimilar to those of P2, P1 said in his witness statement that he and “other hosts” had reunited with the crowd to “wait for police arrest (等待警方拘捕)”[[103]](#footnote-103) and P3 said in his witness statement that the party of plain-cloth officers was approaching him “intending to arrest him (意圖拘捕本人)”[[104]](#footnote-104).
21. On my findings above, while he was escorted by 4314 and 49047 to nowhere but a police vehicle and once he went on board the PV, P2 had shouted “(警察無理***拘捕***) police ***arrest*** without reason (italics and bold supplied)”. That, one thinks, was the best indication of P2’s own understanding of his position after interception.
22. On the above evidence, I decide to give full weight to such of P2’s admissions above regarding his anticipation of police arrest, reuniting with the crowd to face police arrest and shouting slogans of “police arrest without reason”, but not of him merely being removed or carried away.
23. In any event, I infer from all the evidence that P2 knew full well, on and after his interception, that he was being arrested by police. I find that 4314 and 49047 had by their conducts of seizing P2 successfully made it clear to P2 that they were arresting him by their interception.
24. The fact, as I find above, that 57078 had “formally” declared arrest on P2 (and gave him reason for that) on board the PV *later* does not, I think, preclude that 4314 and 49047 had *earlier* arrested P2 by their conducts.
25. 57078 told Mr Lok SC in the box, and I believe her evidence, that 4314 and 49047 were assigned to *assist* her in *arresting* P2 (this was also pleaded by the defendant[[105]](#footnote-105)) as she was a female officer. The 3 of them were, I find, briefed together to work as “a team” to *arrest* P2, albeit with different roles and duties. All 3 of them were, I find, arresting officers of P2 at law.
26. Accordingly, I find that an arrest had been effected on P2 when 4314 and 49047 intercepted and seized him.

*Reason for Arrest*

1. Moving to the 2nd ground raised by Mr Lok SC alleging unlawful arrest of P2, Ms Chow relied on exception (3) below to the general rule stated in *Christie v Leachinsky*, supra, and submitted that the duty to inform the suspect of the ground of arrest does not exist if the circumstances are such that the suspect must already know the general nature of the alleged offence.
2. Ms Chow further submitted that, in the circumstances of this case, P2 must have already known the reason for his arrest at the time of his arrest. Hence, the arrest of P2 was lawful and P2’s claim of false imprisonment must fail.
3. In reply, Mr Lok SC submitted that: -
4. There is video evidence by way of the Police Footage capturing P2 using the microphone to ask police “which ordinance (條例)” allowed them to arrest protestors, suggestive of an “absence of knowledge” on P2’s part about the reason for his arrest;
5. Notwithstanding exception (3) below to the general rule stated in *Christie v Leachinsky*, supra, the police still owes, he argued, a positive duty to give the reason for arrest to P2 “as soon as practicable after his arrest”, if not at the time of his arrest;
6. 4314 and 49047 had not given reason for arrest to P2 on and after their interception of P2 or during his escort to the PV, and there is no evidence that it was reasonably impracticable for either or both of them to do so during the said period;
7. 57078 did not give P2 reason for his arrest on board the PV until after it departed such that P2 had not been given reason for his arrest “within reasonable time of his arrest”; and
8. Hence, P2’s arrest was unlawful “from the first moment of his interception” by 4314 and 49097 and that such police detention of him afterwards amounted to false imprisonment until such time 57078 gave him reason for his arrest.
9. In answer to Mr Lok SC’s reply, Ms Chow submitted that police had within reasonably practicable time after P2’s arrest given him reason for his arrest. As 4314 and 49047 were not assigned as P2’s arresting officer, it was, she submitted, reasonable for them to leave to 57078 i.e. the assigned officer to formally declare arrest on P2 and to give him reason for his arrest as she later did on board the PV.

*Rationales for police giving reason*

1. To start with, this court always bears in mind at the forefront that the general rule for a police officer arresting without warrant to give reason for arrest to the arrested person serves as an important measure to safeguard the freedom of the person.
2. An individual is entitled to protect his freedom of the person until he knows in substance why this freedom should be restrained. The right to arrest and the duty to submit are correlative. If the reasons given are not sufficient to justify an arrest, the arrested person can resist in an appropriate way. And, having been informed of the reasons, the arrested person has the opportunity to provide an explanation, in order that he will not be unjustifiably accused. If the suspicion is thereby dispelled, the arrest cannot be proceeded with for the same reason: *Leung Kwok Hung*, supra, 257-258, citing, inter alia, *Christie v Leachinsky*, supra, 587-8, 591-2; *Yeung May Wan*, supra, 160D-G, also citing *Christie v Leachinsky*, supra, 591 & 598.

*Exceptions to general rule*

1. Nevertheless, at common law, there are, I hold, exceptions to the general rule above.
2. Viscount Simon had laid down at *Christie v Leachinsky*, supra, 587, the following 5 propositions, namely: -
3. A policeman arresting without warrant must in ordinary circumstances inform the person arrested of the ground or reason for arrest (**the General Rule**).
4. If the person arrested is not so informed, the policeman is liable for false imprisonment.
5. The requirement of so informing the person arrested “naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained” (**Exception (3)**).
6. The requirement does not mean that technical or precise language need be used. The matter is a matter of substance.
7. The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g. by immediate counter-attack or by running away (**Exception (5)**). There may well be other exceptions to the General Rule and the above propositions are not intended to constitute a formal or complete code, but to indicate general principles of law.
8. These exceptionsin *Christie v Leachinsky*, supra, have been recognized in Hong Kong in *Leung Kwok Hung*, supra, 259, and other exceptions at common law were also noted in that case e.g. where reason for arrest has not been effectively conveyed to the person arrested because he is aurally handicapped or does not understand the Chinese language.
9. Exceptions (3) & (5) had also been applied in Hong Kong in *HKSAR v Ip Kenneth* [2006] 2 HKLRD 433, 442D-443C.

*Reasonably practicable thereafter, if not at moment of arrest*

1. Mr Lok SC laid particular emphasis on the following 2 passages from the speech of Lord du Parcq in *Christie v Leachinsky*, supra, 600, to submit that it was wrong for Ms Chow to rely on Exception (3) as the police still owes a positive duty to give reason for arrest to P2 as soon as practicable after his arrest, if not at the time of his arrest, namely: -
2. “In cases where a statement of the charge at the moment of arrest is, in the circumstances, excused there is still a duty to acquaint him with it at the first reasonable opportunity”; and
3. “The omission to tell a person who is arrested at, or within a reasonable time of, the arrest with what offence he is charged, cannot be regarded as a mere irregularity”.
4. If such a positive duty on the police to give P2 reason for his arrest as soon as practicable thereafter is not fulfilled, Mr Lok SC submitted, P2’s arrest is unlawful from its very beginning.
5. With respects, the above 2 quoted passages of Lord du Parcq should, I think, be read in the context of his entire speech, the speech of Viscount Simon, the other 3 speeches of the remaining 3 Law Lords in *Christie v Leachinsky*, supra.
6. Lord du Parcq was, I think, merely stating the *timing* for an arresting officer to give reason for arrest *if the General Rule applies*. There could well be circumstances which “excused” the giving of reason for arrest at the “moment” of the arrest, in which case the arresting officer is still required to provide the information “at the first reasonable opportunity thereafter”.
7. Exception (3) by its nature, I think, *negates* the *duty* to give reason such that the General Rule *no longer* applies. Viscount Simon had, I think, put it clear enough in his 3rd proposition: the “*requirement*” of informing the person arrested “*naturally* *does not exist*” if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.
8. The ratio of the case was, I think, also summarized in the headnote of the report to the same effect: it is a condition of lawful arrest that an officer arresting without warrant “*must state at the time (unless the party is already acquainted with it)*, on what charge the arrest is made or at least inform him of the facts which are said to constitute a crime on his part. *Even if circumstances exist which may excuse this, it is still the duty to give the information at the first reasonable opportunity after the arrest*(italics supplied)”.
9. Lord du Parcq in his speech also acknowledged the General Rule and its exceptions: 598-9, 603. Had his lordship disagreed with any of the propositions or exceptions of Viscount Simon, he could, one thinks, have so done or agreed with qualification. Neither did the other 3 Law Lords so disagreed or agreed with qualification.

*Lawful arrest if reason already known*

1. Furthermore, in *Christie v Leachinsky*, supra, there were 2 claims of false imprisonment, the first from 31 August to 1 September and the second on 15 September. The Court of Appeal held the police liable on both imprisonments and the police appealed against both. Viscount Simon found the second arrest on 15 September covered by Exception (3) and allowed the appeal on the second imprisonment: 589-590. His lordship thus effectively, I think, found the second arrest *lawful* when Exception (3) *dis-applied* the General Rule.
2. In *Ip Kenneth,* supra, McMahon J, in dealing with a submission of “unlawful arrest” in a citizen’s arrest, also found the case covered by Exception (3) and held the arrest “not rendered unlawful” by the failure of the citizen to have stated “contemporaneously” why she was arresting the defendant. His lordship said that the common law “cannot require” someone to inform another person of something the other person “already knows”: 442B-D, 442J-443B, 443D, 444D.
3. In *Leung Kwok Hung*, supra, 259, Lam J (as he then was), explained *Ip Kenneth,* supra, to have decided that, at common law, if the arrested person “already knew” the reason for his arrest before he was arrested, then even if the police officer “at the time of arrest” did not tell him why he was being arrested, the arrest was “still lawful”.
4. As a matter of precedent, this court is bound by *Ip Kenneth,* supra, although it does not deal specifically with failure to give reason for arrest at the *later* timing of “first reasonable opportunity” after arrest. But, if the common law “cannot require” someone to inform another person of something the other person “already knows”, the *timing* to so inform is, one thinks, neither here nor there.
5. For the above reasons, I reject Mr Lok SC’s submissions above and rule that an arrest covered by Exception (3) remains lawful from its very beginning even if the police fails to give reason for it within reasonable opportunity (in practice, this court believes that arrested persons who “already know” reason for arrest will “almost invariably” be still informed the same by police “in due course”).
6. If it is necessary for me to decide, I would have disagreed with Ms Chow on following grounds and find that police had not been given reason to P2 for his arrest within reasonable time of his arrest.
7. After their leaving the Center Stage with P2, I consider it reasonably practicable for 57078, 4314 and/or 49047 to have informed P2 reason for his arrest, like what 5101 had done after leaving the crowd with P1 as I find above.
8. Though not assigned as P2’s arresting officer, 4314 and 49047 could also, I think, be briefed beforehand to do the same for 57078 if she was unavailable to do so for any reason.
9. Had 4314 and 49047 slowed down their pace in escorting P2 to the PV, it is, I think, likely that 57078 could have caught up with the 3 of them to have formally declared arrest on P2, and given him reason for the same, during the said escort.
10. As Mr Lok SC stressed and I agree, convenience of the police should not prevail over individual’s freedom of the person.

*P2 already knew reason for arrest*

1. The only outstanding question on the 2nd ground raised by Mr Lok SC alleging unlawful arrest of P2 is thus whether or not, in the circumstances of this case, P2 knew reason for his arrest at the time of his arrest such that his arrest by police was covered by Exception (3) as submitted by Ms Chow.
2. I agree with Mr Lok SC that, on the Police Footage, P2 had once, shortly before the Removal Action began, used the microphone to demand the police to declare formally their source of authority in terms of “ordinance (條例)” to *arrest*, I think,“protestors” during the “eviction (清場)”, claiming that they could hold their assembly and demonstration at the DPAA (which place, P1 followed up by declaring with his microphone, “belonged to the people (人民的地方)” and that they could exercise their right of assembly and of demonstration there in order to monitor the government)[[106]](#footnote-106).
3. It should also be added that, after his arrest by 4314 and 49047 as I find, P2 had, I find, shouted “police arrest *without reason* (警察*無理*拘捕) (italics supplied)” during his escort to the PV and after he boarded the same.
4. Nonetheless, I have come to the conclusion (and I do not do that lightly) that P2 had “already known” reason for his arrest at the time of his arrest such that his arrest was covered by Exception (3).
5. Since the evening of 13 June, the Police Warnings and the CSO Announcements had both been repeatedly made within close, and hearing, distance of P2. P2 admitted under cross-examination to have heard them “repeated” “many times” over “many hours”.
6. P2 further admitted in the box that he and other protestors were demanded by the Police Warnings and the CSO Announcements to leave the DPAA or else there would be “eviction (清場)”.
7. Notwithstanding the Removal Action had begun, P2 and other protestors did not leave the DPAA as instructed by IP Kwok and by the CSO even up to police interception.
8. Before and during the Removal Action, P2, a host of the Demonstration, had from time to time used microphone inside the Center Stage to give speeches to the protestors and to chant slogans like “no withdrawal, no departure (不撤回、不退塲)” for the protestors to follow.
9. P2 also agreed, under cross examination, that LegCo security officers and police officers were “acting in due execution of their duties” (執行職務) in giving their warnings to protestors by way of the Police Warnings and the CSO Announcements.
10. P2 also agreed with Ms Chow that if one “deliberately” shouted over, or out spoke, the voice of police officers and/or LegCo security officers when they gave their warnings to protestors by way of the Police Warnings and the CSO Announcements, one would be “obstructing them in due execution of their duties”.
11. Despite bold denial of P2 of having done the same “deliberately”, which I give no weight, P2 was captured: -
12. to have “shouted over the voice” of CSO with slogans of “no withdrawal, no departure (不撤回、不退塲)” using his microphone together with other protestors chanting the same slogan[[107]](#footnote-107), after the CSO had requested for “silence (肅靜)” and while he was *reading out* one of the CSO Announcements through PA System,.
13. to have loudly shouted: “you had said enough (你講夠)… We all know very clearly what you want to say (我地好清楚你想講嘜)… No withdrawal, no departure (不撤回、不退塲)” using his microphone, with other protestors immediately chanting the same slogan following him[[108]](#footnote-108), when another of the CSO Announcements was *going* to be read out by the CSO through PA System.
14. All things considered, I find it likely that P2 had taken the above actions “deliberately”.
15. On the above evidence and his divers admissions above, I think it likely that P2 “must have known” at the time of his interception and arrest outside the Complex that he was being arrested for having there and then obstructed LegCo officers in due execution of their duties in the manners above.
16. Hence, in all the circumstances of this case, I find that P2 “already knew” *in substance* the “general nature of the alleged offence” he was arrested for, or “the facts which are said to constitute a crime on his part”, and that Exception (3) applied to cover his arrest.
17. I do not find it necessary for P2 to have known of particular “ordinance (條例)” that provides for the offence of obstructing LegCo officers in due execution of their duties for Exception (3) to apply. By way of proposition (4) stated by Viscount Simon in *Christie v Leachinsky*, supra, such legal nicety is not called for, though it is, I think, better for the police to have provided the same on request in practice (and it would also be forthcoming if the person arrested is to be charged).
18. The fact that P2 “subjectively” disagreed, or might have “subjectively” disagreed, with such reason for his arrest due to, say, his own sense of justice and/or morality (such that he had seen fit to have shouted slogan of “police arrest *without reason* (italics supplied)” during his escort to the PV and after his boarding) is, I think, also neither here nor there.
19. It does not, I think, lie in P2’s mouth to claim, when Ms Chow asked him what responsibility he had to bear for his conducts above, that he thought he only bore responsibility as a matter of “courtesy (禮貌)”. In any event, I disbelieve this most incredible answer from P2, who had answered Ms Chow that he had been hosts of demonstrations for as many as “uncountable” times.
20. It should be stressed that P2’s (and also, as shall be discussed, P3’s) constitutionally protected right of freedom of assembly under Article 27 of the Basic Law is not absolute and can be subject to lawful restrictions[[109]](#footnote-109).
21. For the above reasons, P2’s arrest was, I hold, lawful from its beginning and P2’s claims of false imprisonment and battery fails.

***J5. P2’s battery claim for excessive & unreasonable force before boarding***

1. Mr Lok SC submitted that such force used by police on P2 at the time of his interception is “disproportionately excessive, thereby unreasonable resulting in battery”.
2. Developing his submissions, Mr Lok SC stressed that: -
3. P2 did not flee, or attempted to flee, by climbing over the mills barriers of the Center Stage;
4. 4314 had seized hold of P2’s neck from behind; and
5. it was not necessary for 4314 to grab P2’s neck for such long period of time as he did (4314 should have released his grab earlier than he did) because there was not a slight chance for P2 to flee as
6. 49047 also grabbed hold of P2’s left arm at the same time;
7. P2 did not struggle, and had cooperated, with the officers after being grabbed from behind; and
8. P2 was at the material time surrounded by a large number of uniformed officers.
9. It is true that, on my findings above, P2 did not run away by leaving the Center Stage or by jumping down from its mills barriers. As captured by the Police Footage, P2, I also agree, showed no sign of escape after being grabbed by 4314 and 49047 from behind. He did not struggle or resist. And 4314 agreed, after viewing the footage, that a large number of uniformed officers had surrounded those protestors in that area in front of the large pillar. These uniformed officers could have assisted 4314 and 49047 to control P2 if required.
10. However, for the following reasons, I disagree that the police had exerted excessive or unreasonable force in intercepting P2 as 4314 and 49047 did.
11. We should, I think, “objectively” assess the force used upon P2 by 4314 and 49047 by putting ourselves “in their perspectives on 14 June 2014”. In the heat of their intercepting P2, they then had to make snap judgment quickly and they did not enjoy the benefit of the Police Footage as we now do.
12. As I find above, 4314 and 49047 had, I think, reasonable grounds to believe, and did believe, on 14 June 2014 that P2 was running away.
13. As I have also found above, 4314 did not grab neck of P2 from behind. He had merely used his right arm to hold P2’s right upper body from behind and placed his right hand on P2’s left shoulder.
14. While 49047 also got hold of P2 from behind as 4314 did the same, 4314 did not have, I think, a “safe or secured” hold of P2 *outside* the Center Stage from *inside* because he was *separated* from P2 by mills barriers *in between*. 4314 had explained that, and I believe him, *due to such barrier*, he could not, on interception, grab hold of P2’s “hand” from behind and had to grab instead P2’s “upper body” by adopting an uneasy posture of “raising himself from the ground”.
15. When 49047 caught P2 from behind, he was also *separated* from P2 by mills barriers *in between* them. It was therefore, I think, not surprising for 4314 to continue holding onto P2’s upper body from behind after 49047 arrived and got hold of P2’s left arm from behind.
16. Notwithstanding 4314 and 49047 had both grabbed P2 from behind and the presence of uniformed officers in the vicinity, both of them had, I think, reasonable cause to fear of possible mishap to P2 (if not of his possible escape with assistance of other protestors) in view of the chaos of the crowd developing in front of them in that area in front of the big pillar. As Mr Lok had submitted in a different context above, police officer was also obliged to protect the safety of those under their custody.
17. As was captured on the footage, 4314 had, I think, *released* P2 from his hold from behind *as soon as* 49047 had climbed over the mills barriers separating him and P2 and had obtained a “secured” hold of P2 *outside* the Center Stage (4314 later also climbed over the mills barriers to leave the Center Stage and, with the assistance of 49047, the two of them then took P2 away).
18. 4314 held onto P2 from behind, on my estimate, for 40 odd seconds only. Such duration was, I think, no longer than it was necessary in the circumstances.
19. During the said period, 4314, as I find above, had only used “mild” force in holding onto P2 from behind.
20. During this short period, P2 showed no sign of pain on the footage. Indeed, he was seen to have “comfortably” waved his right hand and uttered words.
21. P2 had not complained of any neck injury, shoulder injury, or upper body injury at the A&E Dept. Neither was P2 found to have sustained any of these injuries at the A&E Dept.
22. Accordingly, I find that police had exerted no more than was reasonable and necessary force in all the circumstances in intercepting P2 (and, if necessary, also in escorting P2 to the PV) and that this battery claim of P2 also fails.

***J6. P2’s claims of battery and false imprisonment against police handcuffing***

*“Alternative” case*

1. It is stressed in closing submissions for P2[[110]](#footnote-110) that he was arrested by 57078 *after* he was handcuffed inside the PV. Thus, it is submitted that, without being lawfully arrested *prior* to his handcuffing, P2 was entitled to use reasonable force to free himself and not to be blamed for resistance, even if P2’s Incident is to be proven. In other words, the police had no legal right to handcuff P2 without first putting him under lawful arrest in the first place.
2. Again, though the point was not taken by Ms Chow, I have much reservation whether the above “alternative” case has been pleaded on behalf of P2 or not.
3. Particulars (3) of his battery claim focuses on “unreasonably and unnecessarily” handcuffing P2 “given the cooperation of the Plaintiff, the unlikeliness of escaping and/or harming himself and/or others in the PV and the circumstances at the material time”.
4. In his particulars (3) of false imprisonment alleging “restraining the Plaintiff’s liberty by the use of force and/or confinement in the PV”, the original words of “without the basis of a lawful arrest” had been *deleted*.
5. In any event, this “alternative” case cannot, I think, succeed. P2, as I find above, had been lawfully arrested *earlier* on his interception by 4314 and 49047 outside the Complex.

*Primary pleaded case*

1. Going back to P2’s “primary” pleaded case opened on his behalf[[111]](#footnote-111), as I find for P2’s Incident above and no submissions was advanced on his behalf that the same was not sufficient legal justification for 4905 to have handcuffed P2 as he did, I rule that it was reasonably necessary for 4905 to do so. His handcuffing of P2 was a reasonable and necessary precaution or measure taken in the circumstances of this case as I find them. And P2 had, I find, been released from his handcuff as soon as the circumstances allowed. This “primary” case also does not succeed.
2. Hence, P2’s claims against police handcuffing fail.
3. All P2’s claims against the defendant in DCPI 311/2015, including those in negligence and for breach of his constitutional rights, therefore fail.

***J7. P3’s battery & false imprisonment claims for unlawful arrest***

1. I think it is open for P3 to claim false imprisonment, but not battery, against the defendant on the basis of unlawful arrest for lack of reasons given for his arrest at the time of his arrest or as soon as reasonably practicable thereafter.
2. P3 did plead that he was apprehended onto the PV “without any declaration of arrest or explanation”[[112]](#footnote-112).
3. P3 did rely on article 5(2) of BOR[[113]](#footnote-113).
4. In his particulars of battery, P3 made no allegation of unlawful arrest[[114]](#footnote-114). P3 only alleged of the police exerting “unreasonable” and disproportionate force” during his “apprehension”, which will be discussed separately below.
5. But, in his particulars of false imprisonment, P3 did plead “Forcibly apprehending the Plaintiff onto the PV without declaring arrest and/or providing reasons for the apprehension” and “Intentionally and directly restraining the Plaintiff’s liberty by the use of force and/or confinement in the PV without a lawful arrest”[[115]](#footnote-115).
6. In any event, any battery claim P3 may have for unlawful arrest, I think, falls or stands with his claim of false imprisonment for unlawful arrest.

*No arrest before arrival at the Police Station*

1. Mr Shek acting for P3 in his closing submissions adopted such legal submissions made on behalf of P2 on the point of unlawful arrest. He further developed P3’s case on the same point with following additional factual submissions peculiar to P3.
2. He started with the premises that P3 was “taken on board the PV without being arrested”[[116]](#footnote-116).
3. 46449 was, he emphasized, the only officer responsible for arresting P3 and he did not do so until after both he and P3 arrived at the Police Station. 46449 did not do so when he first reached P3. Nor did he do so during P3’s removal to the PV by the uniformed officers.
4. None of those uniformed officers who held P3 up and carried him to the PV was, he argued, tasked with arresting P3 and, thus, they would unlikely have declared arrest on P3. Therefore, no arrest was declared on P3 until 46449 did so at the Police Station.
5. Mr Shek went on to quote these passages from *Collins v Wilcock*, supra, 1180G-H: “But, if a police officer, *not exercising his power of arrest*, nevertheless reinforces his request with the actual use of force, or with the threat, actual or implicit, to use force if the other person does not comply, then his act in thereby detaining the other person will be unlawful (italics supplied)” and submitted that they were applicable in the circumstances of P3.
6. Mr Shek submitted that those uniformed officers carrying P3 to the PV, and those officers on board the PV, did not detain P3 *in exercise of their power of arrest.* Instead, they were detaining P3 so that 46449 could, at some time in future, declare arrest on P3. It follows that their act of detaining P3 prior to 46449’s declaration of arrest on P3 at the Police Station was unlawful.
7. Ms Chow again relied on Exception (3) and submitted that P3 must have, in all circumstances of this case, already known of reason for his arrest. As the assigned arresting officer of P3, 46449 had, she submitted, declared arrest on P3 at the Police Station within reasonably practicable time. Hence, P3’s arrest was lawful and P3’s claim of false imprisonment must fail.

*P3 arrested by uniformed officers*

1. The fatal flaw of Mr Shek’s submissions is, I think, his erroneous assumption that those uniformed officers who held P3 up and carried him by hands to the PV had not arrested P3 and that they were not exercising their power of arrest in so doing. As I shall explain, the evidence led me to find to the contrary.
2. It is true that 46449 agreed under cross-examination that: -
3. he was the only officer of the Crime Team assigned with the task of arresting P3 and he was responsible for declaring arrest on, and cautioning, P3 (and he did not so until he arrived at the Police Station on another police vehicle than the PV); and
4. he did not know if those uniformed officers carrying P3 away, or any other officers of the Crime Team on board the PV, had declared arrest on P3 or not (in any event, no evidence is, I think, adduced to prove the same before me).
5. It is also true that, on his evidence that I accept, 46449 alone could not get hold of P3 within the chaotic crowd. He declared his police identity to P3, who agreed to go out the crowd with him. But it was too congested for the two to leave.
6. Importantly, at this stage, 46449 “improvised” by calling for assistance from other officers. He shouted loudly “this person is to be **arrested** (bold supplied)”. A group of uniformed officers then came over and assisted him. He managed to pull P3 out from the crowd. These officers afterwards held P3 up and carried him above ground along the Cordoned Path to the PV.
7. While 46449 agreed with Mr Shek that he did not know whether or not those uniformed officers heard his loud shouting in the noisy background, I infer from their subsequent actions that they must have so heard. They therefore came over to “arrest” P3 at the request of 46449, albeit on an *ad hoc* basis and not by way of a pre-arranged team like that arranged for P2.
8. Though they did not declare arrest on P3, the conducts of these uniformed officers in holding P3 up and thereafter carrying him above ground to the PV by holding onto his 4 limbs unequivocally, I think, conveyed to P3 that he was being arrested and was no longer a free man. And P3 had, I think, compiled with such police compulsion or force exerted on him on the Police Footage.
9. And my conclusion above is, I think, supported, by P3 likely sharing the same view.
10. He also considered plain-cloth police officers going after him within the crowd intending to “*arrest*” him (意圖拘捕本人), with him finally pulled out from the crowd by officer and carried away by 6 uniformed officers[[117]](#footnote-117). In chief in the box, he also said of plain-cloth officers coming after him within the crowd to *arrest* him.
11. He also pleaded that he was “suddenly lifted up by a number of police officer... and subsequently *apprehended* onto the PV without any declaration of arrest or explanation. The Plaintiff did not resist the *apprehension* in any manner (italics supplied)”[[118]](#footnote-118).
12. Hence, contrary to Mr Shek’s submissions, in line with defence pleaded case[[119]](#footnote-119), these uniformed officers had, I find, at 46449’s requestand *in exercise of their power of arrest*, arrested P3 and then carried him to the PV, though also with a view for 46449 to declare arrest on P3 in due course.
13. The passages Mr Shek quoted from *Collins v Wilcock*, supra, are explainable, I think, on the special facts in that case that the prosecutrix in taking hold of the defendant by the left arm to restrain her was not arresting her but carrying out a special cautioning procedure to question her to establish her status in order to decide whether to caution or to arrest her: 1175D-1176F, 1179H-1180E. Hence, the prosecutrix in that case was *not exercising her power of arrest* when she got hold of defendant’s left arm to question her.

*Reasons for arrest not given within reasonable opportunity*

1. Again, I differ from Ms Chow to conclude that the police had not given P3 reason for his arrest within reasonable opportunity. It is a pity that 46449 did not declare arrest on P3 and give him reason for his arrest before he went back on his route to find his lost warrant card. 46449 could have, and should have, I think, first completed, his duties as the assigned arresting officer of P3. As it turned out, it was as late as about 0346 hours that he declared arrest on P3 inside the Police Station. Again, police convenience should not, I think, prevail over individual’s freedom of the person.

*P3 already knew reason for his arrest*

1. I repeat herein my analysis, and conclusions, of the law in dealing with Mr Lok SC’s legal submissions above on P2’s claim on the ground of unlawful arrest in so far Mr Shek adopted the same to make good P3’s claim on the same ground.
2. The ultimate question to answer is thus whether or not, in the circumstances of this case, P3 knew his reason for arrest at the time of his arrest by the uniformed officers such that his arrest was covered by Exception (3) as submitted by Ms Chow.
3. Again, I am driven by evidence below to conclude that P3 did know reason for arrest at the time of his arrest.
4. Since the evening of 13 June, the Police Warnings and the CSO Announcements had both been repeatedly made within close, and hearing, distance of P3.
5. Notwithstanding the Removal Action had also begun, P3 and other protestors did not leave the DPAA as instructed by IP Kwok and by the CSO even up to police interception.
6. Before and during the Removal Action, P3, a host of the Demonstration, had also from time to time played drums inside the Center Stage in order, I think, to encourage and support the protestors to stay behind at DPAA.
7. In chief, P3 admitted in the box that he did hear the CSO Announcements. He said he did not leave the DPAA as demanded by LegCo security officers because he and other protestors were staging a “peaceful assembly” there.
8. P3 further admitted in the box to have heard P2 forewarning protestors through microphone that those inside the Center Stage (i.e. the 4 plaintiffs) “might be *arrested* by police first (警察*釘咗*我哋先)”. He said he understood these words but did not leave. He said he “elected to stay behind with other protestors to the very end”.
9. Under cross-examination, P3 said he had arrived at LegCo at about 5pm or 6pm on 13 June and that he had participated in “unlawful” charging of LegCo entrance on 13 June. He further agreed police had not issued letter of non-objection to the Demonstration, though he thought it “unnecessary” to obtain it on that day.
10. On further cross-examination, P3 confirmed that he heard both the Police Warnings and the CSO Announcements demanding him and other protestors to disperse or leave and that he had shouted slogan of “no withdrawal, no departure (不撤回、不退塲)”. He said he and other protestors disagreeing with police and/or LegCo security officers having authority to disperse “peaceful assembly”.
11. Ms Chow put to P3 that the police had authority or duties to enforce the law, to which P3 repeated that it had no authority to disperse “peaceful assembly” but, on “enforcing other laws”, P3 admitted it “depends on the circumstances”.
12. Ms Chow further put to P3 that police and/or LegCo security officers had duties and authority to prevent possible charging of the Complex, to which P3 agreed.
13. When Ms Chow turned to “eviction (清場)” carried out by police, P3 answered he knew of the Removal Action but disagreed with police having power to carry it out.
14. P3 did, however, agree with Ms Chow that he was performing “civil disobedience (公民抗命)” at the Demonstration, which was not his first “social action (社會行動)”.
15. Finally, Ms Chow put to P3 that he “knew full well” on 14 June that he “would be *arrested*”, to which P3 answered instead to say he had “no idea about *what offence* (罪名)” the police would charge him for.
16. On the evidence and P3’s divers admissions above, I cannot but conclude in the circumstances of this case that P3 already knew *in substance* the “general nature of the alleged offence” he was arrested for, or “the facts which are said to constitute a crime on his part” at the time of his arrest.
17. It is, I think, unnecessary at that time for P3 to have known of the particular “offences” of obstructing LegCo and police officers in due execution of their duties that he was later told of by 46449 during interview at the Police Station.
18. Again, the fact that P3 “subjectively” disagreed, or might have “subjectively” disagreed, with power or authority of police and of LegCo security officers due to his own concepts, or understanding, of “peaceful assembly” and “civil disobedience” is, I think, neither here nor there. P3’s constitutional right of freedom of assembly under Article 27 of the Basic Law is, it should be stressed again, not absolute and can be subject to lawful restrictions.
19. Hence, I find Exception (3) applied to P3’s arrest such that it was a lawful arrest from its beginning. P3’s claims of false imprisonment and battery, if any, on ground of unlawful arrest fail.

***J8. P3’s battery claim for excessive & unreasonable force before boarding***

1. It was complained on behalf of P3 that police had, in the course of apprehending P3 outside the Complex and escorting him to the PV, applied “unreasonable and excessive force” on him by “suddenly lifting him up” when in fact P3 “did not resist the apprehension”[[120]](#footnote-120). Such force applied by police on P3, Mr Shek submitted, was “unnecessary” as P3 was “cooperative all along and had done nothing to suggest that force was necessary to put him under control”[[121]](#footnote-121).
2. I disagree and my reasons are as follows.
3. 46449 was obstructed by other protestors within the crowd, including a man in brown with glasses, from approaching and arresting P3 within it.
4. Even when 46449 managed to reach P3 with difficulty, both he and P3 were trapped between 2 rival groups competing for P3 within the crowd and found themselves unable to move or leave (for this reason, P3 was, of course, not in a position to resist; indeed, P3 looked uneasy by being “squeezed” within the crowd).
5. Hence, it is, I think, necessary for 46449 to request other officers to assist him in arresting P3 within, and to take him out safely from, the crowd. Had those uninformed officers not come over to assist, 46449 alone was unlikely, I think, able to achieve that, especially in view of potential further hostile reaction of other protestors surrounding and protecting P3 within the crowd, like the female protestor screaming hysterically “give me back this person”.
6. Had the said police reinforcement not been forthcoming, clashes between the 2 rival groups competing for P3 could well, one thinks, have escalated, causing injuries to be sustained by P3, 46449 and/or members of the 2 groups.
7. That those uniformed officers took the step of holding P3 up, and carrying him away, by holding onto his 4 limbs was, I think, reasonably justified by the emergency of the situation caused by the rivalry of the 2 competing groups. The chaos and noises so caused, I am afraid, did not allow police to sit down and talk with P3, or with those protestors protecting him, beforehand.
8. And, against the above background, those uniformed officers had, one imagines, no idea whether P3 agreed, or would cooperate, with them to be taken away or not (indeed, they would, I think, likely take the opposite view in view of the “determination” shown by those protestors refusing to leave and lying on the ground).
9. It was thus, I think, natural and reasonable for these uniform officers to take P3 away using the same method that had been employed to remove protestors during the Removal Action.
10. As a matter of time, it did not take long for these uniformed officers to carry P3 to reach the PV at about 0325 hours. On his arrival, P3 could walk on his own to board the PV.
11. P3 made no complaint of suffering any injury to his 4 limbs by the actions of these uniformed officers in his witness statement or in the A&E Dept. And Dr Li found no injury to P3’s 4 limbs after his examination at the A&E Dept.
12. Hence, the police had applied, I think, reasonable and proportionate force in all the circumstances to arrest P3, take him safely out from the crowd and remove him to the PV.
13. Accordingly, I find that the police had exerted no more than necessary and reasonable force in intercepting P3 and removing him to the PV in all the circumstances of this case.
14. This last battery claim of P3 also fails.
15. All claims raised by P3 in DCPI 349/2015, including those in negligence and for breach of his constitutional rights, therefore fail.

***K. Summary of findings***

1. On the issues identified in Section A, I find that police officers had lawfully arrested all 4 plaintiffs by intercepting them outside the Complex. Police officer had arrested P4 and gave reason for his arrest at the time of arrest. Another officer had, I find, shortly after arresting P1 gave him reason for his arrest. For P2 and P3, in the circumstances of this case, they already knew reasons for their respective arrest at the time of their arrest.
2. I further find that police officers had used no more than necessary and reasonable force in intercepting P2 and P3 and escorting/removing them to the PV.
3. The 4 plaintiffs had not, I think, proven that they have been verbally abused, or physically assaulted, by police officers inside the PV as they claimed.
4. To the contrary, I find that, after P2 boarded the PV, he had stood up, shouted slogans, reached out for the window of the PV, and vigorously struggled inside the PV before and shortly after it departed. An officer thus found it necessary to have taken reasonable precaution or measure of handcuffing P2 with the assistance of other officers. After P2 was handcuffed, an officer formally declared arrest on him and told him reason for his arrest. On his arrival at the Police Station, P2 was released from his handcuff as soon as circumstances allowed.
5. I also find that, shortly after the PV departed, P4 had moved his hands, stood up and shouted slogans with the PV in motion. Another officer thus also found it necessary to handcuff P4 by way of reasonable precaution or measure. P4 was released from his handcuff as soon as circumstances allowed sometime after he arrived at the Police Station.
6. Finally, sometime after P3 had arrived at the Police Station, a police officer had, I find, declared arrest on him and gave him the reason for his arrest.
7. All 4 plaintiffs have thus failed to prove that the defendant is liable to them on their respective claims in the 4 actions.

***L. Quantum***

1. Hence, I find it unnecessary to further consider the quantum aspect of these 4 actions.

***M. Disposition of the 4 actions***

1. Accordingly, in each of the 4 actions, I enter judgment in defendant’s favour and make the same order: the plaintiff’s claim be dismissed.

***N. Costs of the 4 actions***

1. As a general rule, costs follow the event after trial.
2. Hence, in each of the 4 actions, I make the same costs order nisi: the plaintiff do pay the defendant the costs of the action, including all reserved costs and the costs of trial together with certificate for counsel, to be taxed if not agreed.
3. Each of the above order nisi shall become absolute if none applies to vary it within 14 days of this judgment.
4. Finally, I thank counsels of all sides for their submissions.

(LEE Siu-ho)

Deputy District Judge

Mr Lawrence Lok, S.C., leading Ms Jacqueline Lam, instructed by Kenneth Lam, Solicitors, for the Plaintiff in DCPI 282/2015 and the Plaintiff in DCPI 311/2015

Mr Randy Shek, instructed by Kenneth Lam, Solicitors, for the Plaintiff in DCPI 349/2015 and the Plaintiff in DCPI 375/2015

Ms Juliana Chow, instructed by the Department of Justice, for the same Defendant in DCPI 282/2015, DCPI 311/2015, DCPI 349/2015 and DCPI 375/2015

1. Para 10 of written Closing Submissions for P1 & P2 (**P1-2 Submissions**) [↑](#footnote-ref-1)
2. Para 42 of written Closing Submissions for P3 & P4 (**P3-4 Submissions**) [↑](#footnote-ref-2)
3. See Hong Kong Bill of Rights Ordinance, Cap.383 [↑](#footnote-ref-3)
4. The 4 plaintiffs also rely on article 39 of the Basic Law, articles 3 & 6(1) of BOR. [↑](#footnote-ref-4)
5. Sections E & F of P1-2 Submissions [↑](#footnote-ref-5)
6. Para 70 & 71 of P1-2 Submissions, and Para 12 of written Opening Submissions for the Defendant (**D’s Opening**) [↑](#footnote-ref-6)
7. They were said in the context of a case dealing with police authority to search a person in custody. [↑](#footnote-ref-7)
8. The case went on appeal on this point and Mr Leung’s appeal was dismissed: [2010] 5 HKLRD 170 [↑](#footnote-ref-8)
9. Including those under s.49(2) of Evidence Ordinance, Cap.8 [↑](#footnote-ref-9)
10. They are clip 142 in disc A, clip 18 in disc B, and clip 156 in disc C all within item 30 of core bundle. [↑](#footnote-ref-10)
11. Para 10 of P1’s witness statement [↑](#footnote-ref-11)
12. Para 10 of P4’s witness statement [↑](#footnote-ref-12)
13. Para 8 of P2’s witness statement [↑](#footnote-ref-13)
14. P4 said the PV arrived at police station at about 0410 hours at para 16 of his witness statement with departure time at about 0340 hours at para 10 & 11 thereof, thus giving a long 30-minute estimate for the Journey. [↑](#footnote-ref-14)
15. Para 10 of P3’s witness statement [↑](#footnote-ref-15)
16. Which I give full weight, unless otherwise stated [↑](#footnote-ref-16)
17. Which is bilingual and reads in English: “This meeting or procession is in breach of the law. Disperse or we may use force”. [↑](#footnote-ref-17)
18. IP Kwok uttered in punti 2 differentphrases i.e. “evict and arrest” and “evict or arrest”, according the voice recording of the Police Footage. [↑](#footnote-ref-18)
19. Clip 7 of item 30A of core bundle [↑](#footnote-ref-19)
20. At about 0151 of the TV Footage [↑](#footnote-ref-20)
21. Albeit 3819 and P4 gave evidence of different reasons given by 3819 to P4 for the said arrest. I do not find it necessary to resolve this difference due to Mr Shek’s confirmation. [↑](#footnote-ref-21)
22. Para 5 of P2’s witness statement [↑](#footnote-ref-22)
23. Though he did not act for P2, Mr Shek also cross-examined 4314 on interception of P2 by playing forward and backward in slow motion 2 portions of footages as short as 13 seconds and 7 seconds in 2 different clips for 4314 to view and compare carefully. [↑](#footnote-ref-23)
24. Para 5 of P1’s witness statement [↑](#footnote-ref-24)
25. clip 21 of item 30A of core bundle [↑](#footnote-ref-25)
26. 46449 was captured returning and holding a card in his hand at about 6 minutes of clip 18 of disc B of item 30 of core bundle (or about 0329 hours) [↑](#footnote-ref-26)
27. The Journey should, I think, be short and smooth in view of minimal traffic in the early hours of the day. And the Police Station was not that far away from LegCo. [↑](#footnote-ref-27)
28. See *Hui Cheung Fai v Daiwa Development Ltd & Others*, unreported, HCA 1734/2009, 8 April 2014, para 77-80 [↑](#footnote-ref-28)
29. Para 20 of P1’s witness statement [↑](#footnote-ref-29)
30. Para 10 of P1’s witness statement [↑](#footnote-ref-30)
31. Para 11 of P1’s witness statement [↑](#footnote-ref-31)
32. Para 15 of P1’s witness statement [↑](#footnote-ref-32)
33. Para 2 of Re-Re-Re-Amended Statement of Claim in DCPI 282/2015 [↑](#footnote-ref-33)
34. Para 3 & 6(4) of Re-Re-Re-Amended Statement of Claim in DCPI 282/2015, and para 2(3) of RSOD in DCPI 282/2015 [↑](#footnote-ref-34)
35. P.2 of Dr Kwan’s medical report on P1 dated 29 December 2014 [↑](#footnote-ref-35)
36. Para 8 & 13 of P1’s witness statement [↑](#footnote-ref-36)
37. The other 3 plaintiffs made similar accusation against the officers, but P4 agreed that triad connection was not foul languages. [↑](#footnote-ref-37)
38. P1 insisted on answering Ms Chow that police foul language remained one reason that he was “astonished” on board the PV. [↑](#footnote-ref-38)
39. See para 9 thereof [↑](#footnote-ref-39)
40. Para 8 thereof [↑](#footnote-ref-40)
41. Para 2 of Re-Re-Re-Amended Statement of Claim in DCPI 282/2015 [↑](#footnote-ref-41)
42. Para 4(iv) of Re-Re-Re-Amended Statement of Claim in DCPI 282/2015 [↑](#footnote-ref-42)
43. Para 5 of Re-Re-Re-Amended Statement of Claim in DCPI 282/2015 [↑](#footnote-ref-43)
44. See Sections A, B & D of written Opening Submissions for the Plaintiffs (**Ps’ Opening**) [↑](#footnote-ref-44)
45. Para 72(a) of Ps’ Opening and para 3 of RSOD in DCPI 282/2015 [↑](#footnote-ref-45)
46. Para 10 of D’s Opening & para 8 of written Closing Submissions for the Defendant (**D’s Closing**) [↑](#footnote-ref-46)
47. Para 3(b) of Re-Re-Amended Defence in DCPI 282/2015 [↑](#footnote-ref-47)
48. Dr Kwan’s medical report for P3 dated 29 December 2014 [↑](#footnote-ref-48)
49. Para 18 of P4’s witness statement [↑](#footnote-ref-49)
50. Para 2 of Re-Re-Re-Amended Statement of Claim in DCPI 349/2015 [↑](#footnote-ref-50)
51. Para 8 to 10 of P3’s witness statement [↑](#footnote-ref-51)
52. Para 12 & 15 of P3’s witness statement [↑](#footnote-ref-52)
53. Para 3 & 6(4) of Re-Re-Re-Re-Amended Statement of Claim in DCPI 349/2015, and Para 2(3) of RSOD in DCPI 349/2015 [↑](#footnote-ref-53)
54. Para 3(e) of Re-Re-Amended Defence in DCPI 349/2015 [↑](#footnote-ref-54)
55. Para 4 of P4’s witness statement [↑](#footnote-ref-55)
56. Para 3 of P4’s witness statement [↑](#footnote-ref-56)
57. Para 3(2) of RSOD in DCPI 375/2015 [↑](#footnote-ref-57)
58. Para 24 of P4’s witness statement. Unlike the other 3 plaintiffs, P4 makes a claim for loss of earnings in DCPI 375/2015. [↑](#footnote-ref-58)
59. Para 2, 3 & 6(4) of Re-Re-Re-Amended Statement of Claim in DCPI 375/2012, para 2(3) of RSOD in DCPI 375/2012 [↑](#footnote-ref-59)
60. Para 9 & 14 of P4’s witness statement. [↑](#footnote-ref-60)
61. p.1 of Dr Kwan’s medical report on P4 dated 29 December 2014 [↑](#footnote-ref-61)
62. Para 18 of P4’s witness statement [↑](#footnote-ref-62)
63. Para 2 of Re-Re-Re-Amended Statement of Claim in DCPI 375/2012 [↑](#footnote-ref-63)
64. Clip 21 at item No.30A of core bundle [↑](#footnote-ref-64)
65. Para 6 of P2’s witness statement. P2 said that the lights of the PV “had already been turned off” upon his (P2’s) boarding. [↑](#footnote-ref-65)
66. Clip 18 of item No.30A of core bundle [↑](#footnote-ref-66)
67. See also exhibits D1 & D2 marked by P2. [↑](#footnote-ref-67)
68. Para 2 of Re-Re-Re-Amended Statement of Claim in DCPI 311/2015 [↑](#footnote-ref-68)
69. Para 3 & 6(4) of Re-Re-Re-Amended Statement of Claim in DCPI 311/2015, Para 2(3) of RSOD in DCPI 311/2015 [↑](#footnote-ref-69)
70. pp.1 & 2 of Dr Kwan’s medical report on P2 dated 29 December 2014 [↑](#footnote-ref-70)
71. Para 6 to 8 of P2’s witness statement [↑](#footnote-ref-71)
72. Para 10 of P2’s witness statement [↑](#footnote-ref-72)
73. Para 4 of Re-Re-Amended Defence in DCPI 311/2015 [↑](#footnote-ref-73)
74. Para 3(e)-(g) of Re-Re-Amended Defence in DCPI 311/2015 [↑](#footnote-ref-74)
75. though these officers could also have kept these complaints or grievances to their hearts and not have spoken out about them [↑](#footnote-ref-75)
76. *HKSAR v Chu Frankly* [2018] HKCFI 2072; *HKSAR v Wong Cho Shing & 6 others*, DCCJ 980/2015 [↑](#footnote-ref-76)
77. They arose from events that happened *after* June 2014 and Mr Shek mentioned them for the first time in his closing submissions. [↑](#footnote-ref-77)
78. Para 6 of P1’s witness statement [↑](#footnote-ref-78)
79. Para 6 of P2’s witness statement [↑](#footnote-ref-79)
80. Para 7 of P3’s witness statement [↑](#footnote-ref-80)
81. At about 0412 timing of clip 18 of disc B of item 30 of core bundle [↑](#footnote-ref-81)
82. They appeared to be those officers removing AP Wong to the PV in the first place. [↑](#footnote-ref-82)
83. Para 11 of P2’s witness statement [↑](#footnote-ref-83)
84. Para 13 of P4’s witness statement [↑](#footnote-ref-84)
85. Para 9 & 10 of P4’s witness statement. [↑](#footnote-ref-85)
86. albeit after the door of the PV was closed after his boarding [↑](#footnote-ref-86)
87. Para 7 to 9 of P3’s witness statement [↑](#footnote-ref-87)
88. Para 6 of P2’s witness statement [↑](#footnote-ref-88)
89. E.g. clip 19 in item 30A of core bundle [↑](#footnote-ref-89)
90. Clips 16 & 17 in item 30A of core bundle [↑](#footnote-ref-90)
91. Clip 19 in item 30A of core bundle [↑](#footnote-ref-91)
92. E.g. clips 16, 17 & 23 in item 30A of core bundle [↑](#footnote-ref-92)
93. Clip 10 of item 30A of the core bundle [↑](#footnote-ref-93)
94. Para 14 & 34 of P3-4 Submissions. See also particulars of battery at para 5(3) of Re-Re-Re-Amended Statement of Claim in DCPI 375/2015 [↑](#footnote-ref-94)
95. Para 37 of P1-2 Submissions [↑](#footnote-ref-95)
96. Para 35 & 37 of P1-2 Submissions [↑](#footnote-ref-96)
97. Para 37 of P1-2 Submissions [↑](#footnote-ref-97)
98. Para 41 of P1-2 Submissions [↑](#footnote-ref-98)
99. Para 5 of Re-Re-Re-Re-Amended Statement of Claim in DCPI 311/2015 [↑](#footnote-ref-99)
100. Item 30B of core bundle [↑](#footnote-ref-100)
101. Clip 6 of item 30A of core bundle [↑](#footnote-ref-101)
102. P2 explained that “釘咗” meant “*arrest* by being taken away” in the box. [↑](#footnote-ref-102)
103. Para 4 & 5 of P1’s witness statement [↑](#footnote-ref-103)
104. Para 5 of P3’s witness statement [↑](#footnote-ref-104)
105. Para 3(b) of Re-Re-Amended Defence in DCPI 311/2015 [↑](#footnote-ref-105)
106. Clip 10 of item 30A of core bundle [↑](#footnote-ref-106)
107. Clip 4 of item 30A of core bundle [↑](#footnote-ref-107)
108. Clip 5 of item 30A of core bundle [↑](#footnote-ref-108)
109. *Yeung May Wan*, supra, 155A, *Leung Kwok Hung v HKSAR* (2005) 8 HKCFAR 229, 248C-249E, and *Secretary for Justice v Wong Chi Fung* (2018) 21 HKCFAR 35, 71-72 [↑](#footnote-ref-109)
110. Para 48-49 of P1-2 Submissions [↑](#footnote-ref-110)
111. Para 30 of Ps’ Opening [↑](#footnote-ref-111)
112. Para 2 of Re-Re-Re-Re-Amended Statement of Claim in DCPI 349/2015 [↑](#footnote-ref-112)
113. Para 4(iv) & 9(3) of Re-Re-Re-Re-Amended Statement of Claim in DCPI 349/2015 [↑](#footnote-ref-113)
114. Para 5 of Re-Re-Re-Re-Amended Statement of Claim in DCPI 349/2015 [↑](#footnote-ref-114)
115. Para 5 of Re-Re-Re-Re-Amended Statement of Claim in DCPI 349/2015 [↑](#footnote-ref-115)
116. Para 2 of P3-4 Submissions [↑](#footnote-ref-116)
117. Para 5 of P3’s witness statement [↑](#footnote-ref-117)
118. Para 2 of Re-Re-Re-Re-Amended Statement of Claim in DCPI 349/2015 [↑](#footnote-ref-118)
119. Para 3(b) of Re-Re-Amended Defence in DCPI 349/2015 [↑](#footnote-ref-119)
120. Para 28 of Ps’ Openings [↑](#footnote-ref-120)
121. Para 20 of P3-4 Submissions [↑](#footnote-ref-121)