## DCPI 548/2018

[2019] HKDC 1305

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 548 OF 2018

(Transferred from High Court Personal Injuries Action No. 941 of 2016)

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BETWEEN

FONG CHONG CHUEN Plaintiff

and

THE BOY’ AND GIRLS’ CLUBS Defendant

ASSOCIATION OF HONG KONG

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Before: Deputy District Judge K C Hui in Court

Dates of Hearing: 2-4 January 2019

Date of Supplemental Submissions by the Plaintiff: 8 January 2019

Date of Supplemental Submissions by the Defendant: 25 February 2019

Date of Supplemental Reply Submissions by the Plaintiff: 6 March 2019

Date of Judgment: 15 October 2019

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JUDGMENT

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# *I. Introduction*

1. The plaintiff (“**P**”) participated in an activity organized by the defendant (“**D**”) in Sha Lo Tung, Tai Po, New Territories on 20 December 2014. This is the trial on liability for P’s claim for personal injuries suffered by him as a result of an accident (the “**Accident**”) that occurred during the activity.
2. The Court was informed that the parties have already settled on the issue of quantum. The only outstanding issue to be determined by the Court in this lawsuit is therefore whether D is liable for the personal injuries suffered by P.

# *II. Background*

1. P was 17 years old at the time of the Accident. He participated in an activity known as “Team Challenge 36” organized by D on 20 December 2014.
2. D is a non-profit organization founded in 1936 and experienced in providing social service and activities to the public, with a focus on children and youngsters.
3. There is little dispute between the parties that:-
   1. The goals of the activity “Team Challenge 36” included challenging, testing and training the physical / mental endurance, honing team organisation skills of the participants and help building confidence;
   2. Part of the activity was an orienteering competition (the “**Activity**”) in the Sha Lo Tung area in Tai Po (the “**Area**”);
   3. The Premises is owned by the Hong Kong Government. D obtained a permit (No. ORE0242/14) (the “**Permit**”) from the Agricultural, Fisheries and Conservation Department (“**AFCD**”) to hold the Activity in the Area;
   4. Participants were required to participate in the Activity in teams. Each team consisted of 5 persons. Each team was required to find and visit 5 checkpoints marked on a map provided by D in order;
   5. The participants could visit the 5 checkpoints using their own choice of route;
   6. The Activity was in the form of a competition. The participating teams were ranked according to the time that they took to finish the checkpoints;
   7. The Activity involved walking and hiking in the country areas;
   8. D has been organising the Activity once a year since 1998. It was the third time that the Activity was held in the Sha Lo Tung area; and
   9. The Activity was a charitable event with a fundraising element.
4. There is no dispute that the Accident happened. As to how the Accident happened, P’s evidence is as follows:-
   1. P belonged to Team 528 which participated in the orienteering Activity on 20 December 2014;
   2. There were more than one participating team, but he did not know exactly how many;
   3. When the Accident happened, he was wearing sports outfit and cross-country shoes, but not a helmet;
   4. During the Activity, staff members of the organiser only stationed at the starting point and there was no staff or medical team following the participants to the checkpoints;
   5. At about 12 noon, members of Team 528 (including him) arrived at checkpoint 2 (“**Checkpoint 2**”). Checkpoint 2 was located to the west of a bridge made of concrete slabs (the “**Bridge**”). The Bridge consisted of 2 concrete slabs, each having a width of about 35cm and length of about 2 metres. There was a gap between the two concrete slabs having the approximate width of a human foot[[1]](#footnote-1). The Bridge was placed across a stream of about 2 metres of depth;
   6. There were some big trees 2 to 3 metres away from the Bridge, one of which had a sensor hung thereon. All participants of the orienteering Activity had to tap the chip on their wristband on the sensor on the tree in order to complete Checkpoint 2, after which they would have to move on to the next checkpoint;
   7. At the time of the Accident, the first 2 members of Team 528, namely, Wong Kin Yat (“**Wong**”) and Tong Chi Fung (“**Tong**”), had completed Checkpoint 2 and walked onto the Bridge, with the intention of crossing it and going to the other side of the stream to wait for the other 3 team members to complete Checkpoint 2. However, there were other participants standing ahead of Wong and Tong in front of the Bridge, blocking Wong and Tong’s way across the Bridge. Therefore, Wong and Tong had to stand and wait on the Bridge;
   8. After P tapped his chip at Checkpoint 2, he also walked onto the Bridge, joining Wong and Tong in waiting for the other participants in front of them to clear. Therefore, at that particular moment, there were 3 persons on the Bridge, i.e. Wong, Tong and P;
   9. After about 30 seconds of waiting, one of the concrete slabs of the Bridge suddenly broke. As a result, Wong, Tong and P lost their balance and fell into the stream below the Bridge; and
   10. P suffered injuries as a result of the fall.
5. D did not seriously challenge the above evidence during cross-examination and in its closing submissions. I have no reason to doubt the truthfulness of P’s recollection of the Accident described above, and I accept his evidence.

# *III. Duty of Care*

1. D accepts (rightly in my view) that as organiser of the Activity, it owed a common law duty of care to P as participants of the Activity.
2. §7(a) of the Statement of Claim pleaded a number of particulars of negligence and/or breach of common law duty of care. At trial, P’s Counsel, Mr Patrick Lim, emphasised in particular the following:-
   1. Failing to warn P of the dangers of walking on the Bridge, which was not obvious to him in the circumstances;
   2. Failing to take reasonable care to ensure that the event is run in such a way that it is reasonably safe in all circumstances for P to participate in;
   3. Failing to design out any unnecessary dangers of the Activity; and
   4. Failing to place sufficient warning signs in the vicinity of the Accident Place or at all to warn the participants of the Activity of the inherent danger of the Bridge.
3. Mr Lim submits that it is apparent from the events set out above that the cause of the collapse of the Bridge was that the combined weight of the 3 young men exceeded the weight-bearing capacity of the Bridge. Mr Lim adds that the Bridge appeared to consist of an old piece of concrete and suffered weathering and material fatigue whereby the weight-bearing strength was compromised.
4. As Mr Lim rightly points out, whether or not D has discharged its duty of care by e.g. adequate risks assessment is a fact-sensitive question.

# *IV. D’s Defences*

1. Against Mr Lim’s arguments, Counsel for D, Mr Anthony Ismail, puts forward the following defences and argues that D should not be liable for P’s personal injuries:-
   1. The collapse of one of the two concrete slabs of the Bridge was not a foreseeably risk and the Accident was not reasonably foreseeable;
   2. The defect of the Bridge was a latent defect and not discoverable by reasonable inspection; and
   3. D took all reasonable care in the circumstances to ensure P’s safety in the Activity.

# *V. Foreseeability of risks / taking all reasonable care*

1. It seems to me that the defences raised by D in paragraphs 12(a) and 12(c) above, i.e. the reasonable foreseeability of risks and taking of all reasonable care, can be considered together. This is because the reasonable foreseeability of the risks will determine the scope of D’s duty of care. This will in turn determine the question of whether D took all reasonable care in the circumstance to ensure the safety of the participants of the Activity.
2. During the trial, the parties have entangled themselves in dealing with the cause of the collapse of the Bridge. Both parties accepted, as stated in paragraph 10 above, that the Bridge collapsed because one of the concrete slabs could not cope with the combined weight of P, Wong and Tong who had been standing on it for about 30 seconds. But Mr Ismail argues that it is not known whether this is due to some latent defect in the concrete slabs that collapsed.
3. D characterised the risks in the present case as the risk of the Bridge (or more precisely one of the concrete slabs) collapsing. Mr Ismail argued that while there are many foreseeable risks, the risk of the concrete slab collapsing was not *reasonably* foreseeable, and D should not be liable therefor.
4. In my view, it is appropriate to start the analysis with the scope of the duty of care owed by D to P. The starting point is D’s acceptance that it owed a common law duty of care to P. But what exactly is the scope of such duty of care?

## *(A) The scope of the duty of care owed to P*

1. The duty of care as accepted by D obliged it to take all reasonable steps to prevent P (as a participant of the Activity) from suffering damage while participating in the Activity in the Area. In the context of this case, the damage concerned is injuries to the body.
2. In my judgment, in order to prevent P from suffering bodily injuries while participating in the Activity, D was obliged to ensure that the Area was reasonably safe for the Activity to be carried out in the circumstances that it was carried out, and in the manner as directed by D. In other words, D was obliged to ensure that the Area was reasonably safe for carrying out the orienteering competition according to the manner and rules as designed and directed by it.
3. What D was obliged to do to ensure such safety depends on what would reasonably be anticipated to be the likely usage of the Area. Specifically in relation to the usage of the Bridge, I find that the following are important factors that D should reasonably consider:-
   1. As mentioned above, there were a total of 5 checkpoints to visit in order to complete the Activity. From the orienteering map (the “**Map**”) for the Activity, it can be seen that the start of the orienteering was at a point located at the southern part of the Area. The first checkpoint (“**Checkpoint 1**”) is near a grave that is located at the north-eastern side of the starting point. Checkpoint 2 is located at the west side of the Bridge. The Bridge was located at the north-western side of Checkpoint 1;
   2. Although D does not accept that the closest route from Checkpoint 1 to Checkpoint 2 is through the Bridge, D does accept that it is one of routes. Also, Checkpoint 2 is labelled in the Map as “石橋的西面 Bridge, west side”. I therefore find that it would be normal to expect participants of the Activity to locate Checkpoint 2 by first locating the Bridge, and that they would approach the Bridge from Checkpoint 1. Once the participants reached and completed Checkpoint 2, they would naturally walk across the Bridge to go to the next checkpoint. This also appears to be the strategy adopted by Team 528;
   3. Furthermore, it is not disputed that the sensor for Checkpoint 2 was hung on one of the big trees 2 to 3 metres away from the Bridge. In other words, Checkpoint 2 was very close to the Bridge; and
   4. Although the exact number of people participating in the Activity is unknown, it is likely that there were a fair number of people from different teams that would use the Bridge after completing Checkpoint 2. Furthermore, each team of participants consisted of 5 members, and it is likely that they would travel together in a group.
4. Taking into account the above important factors, I find that under the circumstances of the Activity as designed and directed by D, D would reasonably expect that:-
   1. The route to Checkpoint 2 and the Bridge would be a reasonably popular route that the participants of the Activity would choose; and
   2. A number of participants would gather around the area of the Bridge from time to time, especially around the big trees where Checkpoint 2 was located. For example, if 3 teams arrived at Checkpoint 2 at around the same time, 15 people would gather around the area of the Bridge.
5. As for the usage of the Bridge, it can be reasonably contemplated that at least 3 participants would use the Bridge (i.e. physically present on the Bridge) at the same time. In reaching this conclusion, in addition to the factors above (especially the size of each team), I also take into consideration that the length of the Bridge was about 2 metres. It is not difficult to fit 3 people on the Bridge at the same time.
6. Furthermore, given that (i) Checkpoint 2 is very close to the Bridge; (ii) the likely number of participants that would gather around Checkpoint 2 from time to time; and (iii) time would be taken for each team member to tap the sensor for Checkpoint 2 in turn, I find that it is within the reasonable contemplation of D that at least 3 participants would stand on the Bridge at the same time, either waiting for their team members to complete Checkpoint 2, or for their turn to get to the other side.
7. I emphasise the words “*at least 3 participants*” in the last paragraph. As organiser of the Activity knowing the existence of the Bridge *and* placing a checkpoint near the Bridge, the risk of participants falling from the Bridge while using it resulting in bodily harm was clearly reasonably foreseeable. As the Bridge from its outward appearance clearly could not hold a lot of people, in my judgement, in order to discharge its duty of care, it is incumbent upon D to contemplate the reasonable number of participants which would be crossing and/or standing on the Bridge at the same time during the Activity, and to use reasonable means to test and/or ascertain whether the Bridge could hold such a number of participants. For the reasons discussed above, in my judgment, such number of participants which could reasonably be contemplated by D is 3.[[2]](#footnote-2)
8. In passing, I would add that the scope of the duty of care is clearly fact sensitive. My analysis above may be different if, for example, the size of each team is smaller, or the Bridge was not close to any checkpoints or any popular routes. But given the specific facts of the present case, my conclusion is that D’s scope of duty of care included the duty to test and/or ascertain whether the Bridge could hold at least 3 participants.
9. D argues that one cannot say one way or the other that it is reasonably foreseeable that there would be 3 persons on the Bridge at the same time because there are so many variables, such as the pace of each individual team member. D further points out that during cross-examination, P also agreed that he would not expect the Bridge to be blocked because the other teams were running against the clock. It was a race against time.
10. Given the factual circumstances and analysis above, I do not agree that D could not reasonably foresee that there would be 3 participants standing on the Bridge at the same time during the Activity. I do not agree that the variables mentioned by D would render it far-fetched to suggest that at least 3 participants would use the Bridge at the same time during the Activity.
11. I would also point out that during cross-examination, one of D’s witnesses, Mr Kwok Wing Bun (“**Kwok**”), a regional manager of the Activity and a member of the technical committee, agreed that he would except 1, 2, 3, even 4 people to walk on the bridge at the same time. Mr Tsang Hon Kei Jeff (“**Tsang**”), the Senior Corporate Communications Manager of D and a member of the technical committee set up by D, also gave similar evidence during cross-examination. Their view is consistent with the above analysis.
12. As to D’s reliance on P’s agreement during cross-examination, I do not find it helpful in the analysis. This is because the scope of the duty of care and the foreseeability test is an objective concept. Furthermore, it is what D as organiser could reasonably foresee, rather than what P could, that matters.

## *(B) Steps taken by D for risk assessment*

1. D’s case is that it has made detailed preparation for the Activity before it started. Specifically, D has carried out a safety assessment of the Bridge:-
   1. Tsang recalled walking on the Bridge on three occasions on 20 August 2014, 5 November 2014 and 21 November 2014 without any incident or accident;
   2. Kwok also recalled walking on the Bridge on two occasions on 5 November 2014 and 3 December 2014 without incident or accident; and
   3. Mr. Yu Ming Shun (“**Yu**”), a volunteer and independent expert orienteer, also recalled walking on the Bridge at least twice on one occasion in early November 2014 without incident or accident.
2. Kwok gave evidence that on 5 November 2014, he walked across the Bridge together with Yu without any incident. He also recalled seeing 2 people walking across the Bridge at the same time without any incident.
3. I accept the evidence of Tsang, Kwok and Yu. However, it can be seen from their evidence that D has not tried to test-walk the Bridge with 3 persons at the same time, or otherwise attempted to find out (e.g. from the AFCD) whether the Bridge could hold at least 3 persons at the same time. Having found that D should reasonably have foreseen that at least 3 participants would use the Bridge at the same time, I find that this is what D should have done, but failed to do. This, in short, is P’s case against D.
4. Mr Ismail sought to convince the Court skilfully that even if it is reasonably foreseeable that 3 participants would be crossing the Bridge at the same time, the risk of the Bridge collapsing was not reasonably foreseeable. He argued that:-
   1. The Bridge was made of solid material, i.e. 2 concrete slabs;
   2. The 2 solid concrete slabs showed no obvious signs of danger, e.g. cracking, erosion or spalling. There is no evidence that the slabs had suffered weathering and material fatigue; and
   3. No similar accident had happened before.
5. In my judgment, these are not convincing reasons. Clearly, when assessing whether the Bridge was reasonably safe for use for the purpose of the Activity, its load-bearing capacity should be one of the major considerations. Whether or not it was reasonable for D to assume, from the Bridge’s outward appearance and lack of history of accident *etc*, that it is safe for the expected use for the Activity is fact-sensitive. To use a hypothetical example, if the Activity would foreseeably involve 100 participants crossing the Tsing Ma Bridge at the same time, D would likely be entitled to assume without checking that Tsing Ma Bridge would be able to hold the weight of 100 participants. It is only common sense that the risk of Tsing Ma Bridge collapsing under such conditions is fanciful and certainly not reasonably foreseeable, as Tsing Ma Bridge is widely known to be capable of supporting the weight of many vehicles and even a railway. However, we are not dealing with Tsing Ma Bridge here. We are dealing with a bridge in a country park area which build and conditions of daily usage were unknown to D. For example, D could not tell from the appearance of the Bridge whether the concrete was reinforced by steel bars. Also, as mentioned above, the Bridge was close to Checkpoint 2 and was likely to be part of a popular route. In these circumstances, I do not think that the risk of the Bridge not capable of holding the weight of 3 or more participants could be brushed aside as merely theorical and fanciful, and not reasonably foreseeable.
6. D also argued that there were other teams which had walked on the Bridge immediately before the Accident without incident. I do not find this point of much assistance, as there was no evidence on whether 3 or more participants from the other teams had crossed the Bridge at the same time before the Accident.
7. D also prayed in aid that the Area was owned and maintained by the Hong Kong Government for the use of the general public as a country park. D needed to get the Permit from the government to use the Area for the Activity, and was obliged by the Permit to maintain “free use” to the Area by the general public at all times during the Activity.
8. What I understand from D’s argument is that if the Hong Kong Government is content for the Bridge to be use by the general public at all times, D was entitled to assume that it was safe for the Activity. Again, I do not find this point to be helpful. The Government was not the organiser of the Activity and was not faced with the aforesaid factual circumstances. It was D’s obligation, after being permitted to organise the Activity in the Area, to ensure that the Bridge was safe for use for the purpose of the Activity. Also, there was no evidence of what the Government contemplated would be the normal expected usage of the Bridge as a matter of general public use. As such, I do not accept that D could rely on the Permit (*per se* or in together with other reasons put forward by D) to assume that the Bridge was safe for use for the purpose of the Activity.
9. Mr Ismail cited the well-known decisions of *Bolton v Stone* [1951] A.C. 850 and *The Wagon Mound (No. 2)* [1967] 1 A.C. 617 to support his argument that D was not obliged by its duty of care of take precautions against every risk that it can foresee. He further relied on a more recent English decision of *Blair-Ford v CRS Adventures Ltd* [2012] EWHC 2360 (QB). These decisions state the well-known principle that a duty of care only arises in relation to *reasonably* foreseeable risks of damage. I do not think P has any qualms with this line of cases. The issue is whether the risk of the Bridge collapsing under the expected reasonable use for the Activity is reasonably foreseeable. For the reasons given above, my conclusion is “yes”, and D has failed to take reasonable steps to prevent such a reasonably foreseeable risk.

## *(C) Social value of the Activity; balancing the risk and costs of preventive measures*

1. Mr Ismail also argued, relying on *Uren v Corporate Leisure (UK) Ltd and Anor* [2010] EWHC 46 (QB), [2011] EWCA Civ 66, *Blair-Ford v CRS Adventures Ltd* [2012] EWHC 2360 (QB) and *Tomlinson v Congleton Borough Council* [2004] 1 A.C. 46, that whether one imposes a duty of care in relation to a foreseeable risk is a product of balancing the foreseeability of the risk, the social value of the activity and the costs of preventative measures.
2. In *Tomlinson*, Lord Hoffman said at §34 and 37:-

“34. My Lords, the majority of the Court of Appeal appear to have proceeded on the basis that if there was a foreseeable risk of serious injury, the council was under a duty to do what was necessary to prevent it. But this in my opinion is an over-simplification. Even in the case of the duty owed to a lawful visitor under section 2(2) of the 1957 Act and even if the risk had been attributable to the state of the premises rather than the acts of Mr Tomlinson, **the question of what amounts to "such care as in all the circumstances of the case is reasonable" depends upon assessing, as in the case of common law negligence, not only the likelihood that someone may be injured and the seriousness of the injury which may occur, but also the social value of the activity which gives rise to the risk and the cost of preventative measures. These factors have to be balanced against each other**.

…

37. This is the kind of balance which has to be struck even in a situation in which it is clearly fair, just and reasonable that there should in principle be a duty of care or in which Parliament, as in the 1957 Act, has decreed that there should be. **And it may lead to the conclusion that even though injury is foreseeable, as it was in Bolton v Stone, it is still in all the circumstances reasonable to do nothing about it.**” (emphasis added)

1. In the same vein, Globe J in *Blair-Ford* said at §45:-

“…the law of tort must not stamp out socially desirable activities just because an activity carries some risk. Whether the social benefit of an activity is such that the degree of risk it entails is acceptable is a question of fact, degree and judgment, which must be decided on an individual basis and not by a broad brush approach.”

1. I accept Mr Ismail’s emphasis on the social value and benefit of the Activity. It was a fun, constructive and charitable event which was aimed at the well-being and whole-person development of youngsters in Hong Kong. What the Court needs to do is to carefully conduct a balancing exercise in the specific context of the present case.
2. Against the social benefit and value of the Activity is the foreseeable risk of injury that I have discussed at length above. Another important factor that Mr Ismail impressed upon the Court is the costs of the preventive measures, and the ensuing “chilling effect” on similar activities in the future if D is to be found liable. He submits that D would have to identify the dangers in the first place by engaging in structural engineers to see if the Bridge had the capacity to hold 3 or more participants standing on it. Mr Ismail also argued that D would have to comprehensively survey the Area *in toto* to look out for all possible dangers and put up warning signs during the Activity. He submits that the degree of risk does not justify the considerable expenses and effort in the present case.
3. I find that the various factors in the present case are fairly balanced. In my judgment, the decisive points that tip in favour of P are that (i) D designed the Activity in a way to place Checkpoint 2 near the Bridge; (ii) D decided to label and identify Checkpoint 2 in the Map by reference to the Bridge; and (iii) the Bridge was likely to be a popular route that the participants of the Activity would choose. In other words, the Bridge was located at a rather important place in the context of the Activity. This, in my view, justify imposing a duty of care on D in relation to the safety of the Bridge (as opposed to other places in the Area).
4. Furthermore, in my view, the preventive measures, viewed in the above context, would not be out of all proportions. At the very least, D could have easily test-walked the Bridge with 3 people at the same time. D could have asked the AFCD for more information about the Bridge, in particular, its load bearing capacity, if such information is available. Even in the present situation that D have only test-walked the Bridge with 2 people crossing at the same time, D could have placed personnel at the Bridge during the Activity to ensure that the Bridge was used in the same way as it was previously tested (i.e. ensuring that no more than 2 participants were to cross the Bridge at the same time). In my view, taking these steps would not impose an unduly heavy burden on D. Similarly, I do not think that imposing a duty of care on D in this situation will have a chilling effect on other similar activities.
5. In short, I find that it is fair, just and reasonable that a duty of care be imposed on D in the present situation.

# *VI. Causation and Remoteness of damage*

1. D emphasised that there is no expert evidence at the trial to ascertain the cause of the collapse the Bridge. I do not agree that expert evidence is necessary for this case. The Court is to determine what, *on a balance of probability*, was the cause of the collapse of the Bridge. Given that 3 participants were on the Bridge when it collapsed, and there being no evidence that some other 3 (or more) persons have stood on Bridge without incident prior to the Accident, I have no difficulty in concluding on the available evidence that it is more likely than not that the Bridge collapsed because it could not hold the combined weight of Wong, Tong and P. If D wants to contend for another cause for the collapse, it is for it to adduce the necessary evidence (including expert evidence) at trial.
2. That being so, I conclude that there is no issue of causation. Had D taken steps to ascertain whether the Bridge could hold 3 or more participants, it is likely that D would have found out that the Bridge was not safe for use in such a way, and would have taken steps to either redesign the route or make sure the Bridge would not overload. Alternatively, having test-walked the Bridge with 2 persons crossing at the same time, P should have ensured that the Bridge was used in such a manner during the Activity. Either way, the bodily injury to P could have been avoided.
3. There is also no issue of remoteness of damage. As a result of him falling into the stream under the Bridge, P suffered from haemorrhoid inside his skull, occipital bone fracture, posterior fossa epidural haematoma and risk wrist sprain. There is no suggestion that these injuries are not foreseeable as a result of the fall.

# *VII. Latent Defect*

1. The issue of latent defect, raised by D as a defence, can be quickly disposed of.
2. The parties are in agreement that in order to establish this defence, there must be some facts justifying the inference of a latent defect being the cause of the Accident: *Sanfield Building Contractors Ltd v Li Kai Cheong* (2003) 6 HKCFAR 207 at §21-22. Given my conclusion above that on the available evidence, it is more likely than not that the Bridge collapsed because it could not hold the combined weight of Wong, Tong and P, it is incumbent upon D to adduce evidence to disprove the abovementioned likely cause, and to suggest an alternative cause which is due to a latent defect. D has not discharged such an evidential burden in this case.

# *VIII. Conclusion*

1. For all the above reasons, I conclude that D has breached its duty of care owed to P. P’s case of negligence is established.
2. I will enter judgment for damages in favour of P. Since the Court has not been informed of the detailed terms of the settlement sum for quantum, the parties are directed to propose to the Court (by way of a joint letter if agreement can be reached) the appropriate terms of the order to be made within 14 days from the date which this judgment is handed down.
3. Costs should follow the event. I make an order *nisi* that P’s costs of this action, including all costs hitherto reserved, be paid by D on a party-to-party basis, to be taxed if not agreed, with a certificate for counsel and P’s own costs be taxed in accordance with the Legal Aid Regulations.
4. Lastly, I must thank Mr Lim and Mr Ismail for their valuable assistance to the Court.

( K C Hui )

Deputy District Judge

Mr Patrick D. Lim, instructed by Li & Lai, assigned by the Director of Legal Aid, for the plaintiff

Mr Anthony Ismail, instructed by Clyde & Co, for the defendant

1. There is some dispute about the width of the gap. However, nothing turns on this dispute. [↑](#footnote-ref-1)
2. It may be argued that the reasonably contemplated number of participants is 4 (or even more), but this argument does not affect my analysis and conclusion below. [↑](#footnote-ref-2)