

Police's Legal Justification for their Security Measures in the VP's Visit

- i) The duties of the Police are set out in section 10 of the Police Force Ordinance (Cap 232) which include taking lawful measures for, inter alia, preserving public peace, preventing and detecting crimes and offences, preventing injury to life and property, regulating processions and assemblies in public places or places of public resort, and preserving order in public orders and places of public resort.
- ii) Section 39(1) of the Interpretation and General Clauses Ordinance (Cap 1) provides that where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires. The Police are therefore conferred with the powers to carry out the duties under section 10 of the PFO as long as the exercise of powers is reasonable and proportionate.
- iii) Every police officer enjoys the power and is subject to a duty to seek to prevent, by arrest or other action, any breach of the peace occurring in his presence. The power and duty extend to any breach of the peace which (having occurred) is likely to be renewed, or any breach of the peace which is about to occur. (*Chan Hau Man Christina v Commissioner of Police* [2009] 6 HKC 44)
- iv) In *Rice v Connolly* [1966] 2 QB 414, Lord Parker CJ said that it is clear “*that it is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace,*

for preventing crime or for protecting property ... There is no exhaustive definition of the powers and obligations of the police ...”

- v) The Police in the frontline often have to assess the situation and the risks involved, and to make timely judgment and taken prompt actions. This is not always an easy task. It has been held that when freedom was involved, the court must scrutinize the conduct of the Police with care. On the other hand, the courts should not carry the scrutiny to the length of second-guessing the Police on operational matters. [*R v To Kwan Hang* [1994] HKC 293 at 304B per Bokhary JA (as he then was)]
- vi) According to the House of Lord judgment in *R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105 and the judgment in *Chan Hau Man Christina v Commissioner of Police* supra at 55, “[t]he court must guard against the danger of hindsight, and the judgment of the officer on the spot, in the exigency of the moment, deserves respect.”
- vii) “The law also calls upon demonstrators to accommodate other people’s rights ... For that purpose demonstrators have to tolerate some interference with their own freedom to demonstrate. Such tolerance is expected of demonstrators however strongly they may feel about their cause” (*YEUNG May Wan & ors v HKSAR* (2005) 8 HKCFAR 137, at 185, per Bokhary PJ)
- viii) “A right of peaceful assembly is not infringed by the police doing their duty to preserve the public peace and to prevent injury to life and property. On the contrary, the right would be put in peril if the

police were to refrain from doing that duty.” (R v To Kwan Hang supra, at 303F per Bokhary JA (as he then was)

- ix) In exercising the above powers, Police officers may need to cordon off and stop people from entering an area (*R v To Kwan Hang supra, Chan Hau Man Christina supra and HKSAR v Au Kwok Kuen [2010] 3 HKLRD 371*).