



## Summary of Judicial Decision

### **HKSAR v Chan Chun Kit (“the Appellant”) HCMA 242/2020; [2021] HKCA 1493**

**Decision** : **Appeal against conviction and sentence**  
**Date of Hearing** : **27 May 2021 and 6 August 2021**  
**Date of Judgment** : **11 October 2021**

#### Background

1. On 2 November 2019, an unauthorized assembly took place near Victoria Park, Causeway Bay. The appellant was intercepted at the vicinity and found to have possessed 48 cable ties. The appellant was convicted after trial of one count of “possession of instruments fit for unlawful purposes”, contrary to section 17 of the Summary Offences Ordinance (Cap. 228) (the “**Offence Provision**”), and was sentenced to 5 months and 2 weeks’ imprisonment.
2. In convicting the appellant, the Magistrate held that the 48 cable ties were “instruments fit for unlawful purposes” and that the appellant had intended to use the same for unlawful purposes.
3. He appealed against conviction and sentence. Given the significance of the points of law involved, the appeal was reserved to the Court of Appeal for consideration pursuant to section 118(1)(d) of the Magistrates Ordinance (Cap. 227).

#### The Offence Provision

##### **17. Possession of offensive weapon, etc., with intent**

Any person who has in his possession any wrist restraint or other instrument or article manufactured for the purpose of physically restraining a person, any handcuffs or thumbcuffs, any offensive weapon, or any crowbar, picklock, skeleton-key or other instrument fit for



unlawful purposes, with intent to use the same for any unlawful purpose, shall be liable to a fine at level 2 or to imprisonment for 2 years.

#### 17. 管有攻擊性武器等，並有所意圖

任何人管有任何腕銬或其他為束縛人身而製造的工具或物件，或管有任何手銬、指銬、攻擊性武器、撬棍、撬鎖工具、百合匙或其他適合作非法用途的工具，意圖將其作任何非法用途使用，可處第 2 級罰款或監禁 2 年。

#### **Main issues in dispute**

4. On the appeal, the Court of Appeal considered the statutory interpretation of the Offence Provision. The main issues in dispute are:
  - (i) How should the phrase “other instrument fit for unlawful purposes” (“**Unlawful Purpose A**” as referred to in the judgment) of the Offence Provision be interpreted?
  - (ii) How should the phrase “for any unlawful purpose” (“**Unlawful Purpose B**” as referred to in the judgment) of the Offence Provision be interpreted?

#### **Department of Justice’s Summary of the Court’s rulings**

(Full text of the reasons for judgment of the Court of Appeal at [https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=139318&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=139318&QS=%2B&TP=JU))

5. The Court of Appeal held that the instruments fit for Unlawful Purpose A should be considered as a standalone category (*para 65*). Both Unlawful Purposes A and B of the Offence Provision are not restricted to any specific purpose (*para 73*).
6. The Court first examined the previous authorities on the interpretation of Unlawful Purpose A: *AG v Li Chu* [1968] HKLR 242, *Tang Chi-ming v R* [1968]



HKLR 716 and *Tsoi Shun-hing v R* [1977] HKLR 408 in which the Court held that the Offence Provision was meant to include offensive weapons or instruments for the purpose of gaining unlawful access (*para 48*).

7. The Court then looked into the subsequent legislative amendments to the Offence Provision, which included introducing a new category of instrument for restraining persons, deleting the word “such” from the Offence Provision (*para 50*), and removing the alternative limb for the required intention “being unable to give satisfactory account of his possession of it” (*para 51*).
8. The Court considered that the Offence Provision had become completely different after the legislative amendments (*para 52*) and recently the Courts in Hong Kong especially at the first instance have been construing the meaning of Unlawful Purpose A broadly (*para 59*).
9. After considering the discrepancy between the English and Chinese versions of the Offence Provision and the wordings of the Chinese version, the Court held that Unlawful Purpose A in Chinese should not be narrowly interpreted as that of gaining unlawful access only. It was held that the instruments fit for Unlawful Purpose A should be considered as a standalone category and this is the most reasonable and appropriate interpretation that can reflect the legislative intent (*para 65*).
10. In interpreting the Offence Provision, the Court applied the “always speaking” doctrine and was of the view that the objective of the Offence Provision is to penalize the possession of instruments for unlawful purposes. In order to effectively combat those who are in possession of different kinds of instruments or various newly invented instruments for unlawful purpose, it is appropriate to apply the “always speaking” doctrine and not to restrict Unlawful Purpose B to any specific purpose as well (*para 71*).



11. For the appeal against the sentence, the Court was of the view that cable ties were commonly used by radical protestors to commit crimes, such as barricading roads (*para 80*). In view of the potential use of the cable ties concerned, the fact that they are easily purchased and brought along, and the circumstances of this case, the Court was of the view that the Appellant's possession of the cable ties had posed a serious threat to the public order. It was held that the sentence is not manifestly excessive (*para 82*).
  
12. Accordingly, the appeal against conviction and sentence was dismissed.

**Prosecutions Division  
Department of Justice  
November 2021**