

Citizens Arrested

With the party season in full swing, it's all too easy for a few after-work drinks to get out of hand.

Sarah Fung figures out what you've got to know if you find yourself on the wrong side of the law.



It's a funny thing—but it seems like just about everyone in this town knows somebody who's been in trouble with the police. We're not talking about career criminals here, but rather otherwise law-abiding guys—lawyers, bankers and other professionals—who (after one too many drinks) decide that it's an awesome idea to take their clothes off in the middle of Wyndham Street. Or snap a wing mirror off a taxi. Or throw a punch at someone. Or possibly all three. Inevitably, the situation gets out of control and the police are called. And before you know it, they've hauled you down to the station. But before you find yourself in a jam, it's important to know what your rights are and what you can do to avoid making an already difficult situation even worse for yourself.

"Some of these incidents that start small can actually become quite serious, and they're not to be taken lightly," says Jonathan Midgley, criminal litigation solicitor and partner at Haldanes Solicitors and Notaries. "Even if they're modest by way of crime, they can be very serious for the person concerned. If you're a hedge fund manager or banker, for example, the fact that you say, belted a taxi driver is not good news, as you can get into trouble with the Securities and Futures Commission. If you end up with a criminal conviction, you could lose your career."

Shut Your Mouth and Be Nice

Basically, there are two very simple rules to follow if you find yourself under arrest. The first one is to stay silent. The other is to stay polite. "If you are arrested, the first thing is not to do anything stupid like resisting arrest. Try not to be too emotional—even if you feel like you are facing unfair treatment," says Law Yuk-kai, chairman of the Hong Kong Human Rights Monitor. "Don't behave irrationally—instead, take down the badge number of the police officer in question. It's important to be cooperative even at the scene so that you can reasonably request not to be handcuffed," advises Law. However, while being helpful, make sure to keep your wits about you. "You may be searched. Ask the police officer to show you his hands so you can be confident that nothing has been planted," he adds.

Once you get to the police station, the first thing to do is to ask for a copy of your rights. "All your rights are listed; the police have a standard form to inform you of what your rights are. Ask for a copy as soon as you arrive," says Law. This form can also be found at the Hong Kong police website (www.police.gov.hk) under "Useful Information." Although you have been arrested, you are still privy to certain rights. You have the right to water, necessary medication, bathroom visits, phone calls to family or your lawyer, and—if you're held for a long time—food. "If someone prevents you from having these things, keep a record—a mobile phone may help. Key in the number of the police officer," suggests Law.

Though you may feel compelled to give your version of events, it really is better to keep your mouth shut. "The first thing that the person wants to understand in these circumstances is that he really is better off saying nothing until he has had time to assess the situation. The law in Hong Kong permits one to remain silent, and



not have the fact that he has remained silent be held against him. It's not an indication of guilt and cannot be used in an adverse way," explains Midgley. In fact, by speaking up, you could inadvertently incriminate yourself. "People think that by making a statement, that somehow they'll be popular with the police," Midgley adds. "It's a human impulse—people want to talk; they want to be of assistance. But the fact is you're not going to win any friends. All you're going to do is provide evidence—in trying to say something constructive, nine times out of 10 you unwittingly worsen your position. You can be polite, but at the same time be firm in declining to give them [the police] information that will only be useful to them if it helps them convict you."

This is the thing to remember: You can't exonerate yourself by making a statement. Exculpatory evidence—that is, evidence that proves your innocence, rather than your guilt—is not presented in court if you're ultimately charged with an offense. "You might think you're improving your position [by making a statement], but if you're charged, it won't become part of the evidence chain," Midgley explains. Law agrees: "Don't believe in any assurance that after giving a statement you will be let go with no problem." This especially applies if you happen to be innocent. "Don't believe that because you are innocent, it does no harm to give a statement. It could be detrimental to your case, and on a confession alone you can be convicted," he warns.

But keeping your mouth shut and declining to give a statement doesn't mean that you have to be rude or belligerent. Be as cooperative as you can. Remember: you want to post bail as soon as possible and the more difficult you are, the more inclined the police might be to hold you overnight. Remember too that there's nothing wrong with asking—nicely, of course—to go home. So long as you can pay the bail, or sign on your own reconnaissance and agree to come back the next morning once you've rested, it's perfectly reasonable to delay proceedings until the next morning—which should also buy you some time to contact a lawyer. Which brings us to...

Get a Lawyer

No matter how many episodes of "Boston Legal" you've seen, it's always best to get some professional help. Midgley likens forgoing legal counsel in a situation like this to deciding not to bother with a surgeon if you need your appendix removed. "Solicitors see it time and time again when a person hasn't gotten a lawyer at all and he's really put his foot in it—occasionally beyond repair. People who could have been walking around happily instead earn themselves a prison sentence through their ignorance," he says. "And that's a shame, because the law doesn't require it of you—a cornerstone of the law is that you're not required to incriminate yourself." And if you can't afford a lawyer? The Law Society has a duty lawyer scheme, which means anyone can go down to the Magistrate's Court and, for a nominal fee, get access to legal counsel. Due to the nocturnal nature of these incidents, it's not surprising that it's hard to get a lawyer on the phone. But, as Midgley says, if you find yourself in a situation with the police, "You need to know enough at least to put on a tourniquet and stop the bleeding." Now you have the knowledge, let's hope that you never need to use it.

Professional Help

If you're in a bind, give these law firms a call.

Hadlanes

7/F, Ruttonjee House, 11 Duddell St., Central, 2868-1234, www.hadlanes.com

Boase, Cohen and Collins

2303-7 Dominion Centre, 43-59 Queen's Rd. East, Wan Chai, 3416-1711, www.boasecohenandcollins.com

Leland Chu & Co

6/F, Hip Shing Hong Centre, 55 Des Voeux Rd. Central, 3118-7600, www.ilelandchuandco.com