

**2023 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD II: CIVIL AND
CRIMINAL PROCEDURE**

Tuesday, 14 November 2023



2023 Overseas Lawyers Qualification Examination

Head II: Civil and Criminal Procedure

Question 1 (25 marks)

Larry, your American national corporate partner, passed to you his attendance note he took about his son, David:

“My son David, aged 22, a Postgraduate Certificate in Laws (“PCLL”) overseas student from New York, U.S.A, told me he was charged with:

1. Common assault against William Zhang, aged 21, a fellow PCLL student from China.
2. A second charge of possession of dangerous drugs namely 50 or 500 (?) gram of Marijuana. Amount of drugs is not sure!

The common assault took place in front of a small tutor group of about 10 students in the PCLL course last week.

David is on police bail pending his first court hearing next week.”

Questions:

Larry asked you these questions:

- (1) **If you were first at the scene, what would be your first advice to David and William?**

(3 marks)

(See over the page for a continuation of Question 1)

- (2) **What factors would you submit to the court to ensure that David's bail is continued next week?**
(3 marks)
- (3) It seems that the attendance note on the second charge is not clear. **What can you do to make sure you get the brief facts before the hearing?**
(1 mark)
- (4) **How should David plea to both charges and why?**
(3 marks)
- (5) **What would be the sentencing guideline for David for both charges?**
(5 marks)
- (6) David and Larry want to pay William off for not attending court. **What would be your advice to David and Larry?**
(5 marks)
- (7) Assuming now you have a copy of the brief facts and explain to David. David wants to plea guilty before his court attendance, but David does not agree with some of the information on the brief facts. **What would be your advice to David?**
(2 marks)
- (8) Assuming now you have the Government Chemist Certificate and it turns out that David is not in possession of dangerous drugs as charges. **What actions would you advise David?**
(3 marks)

[25 marks in total]

Question 2 (25 marks)

John is 40 years of age. He is a professional accountant working as an audit manager in an accounting firm. He is married with his wife and 2 children (aged 7 and 10) all residing in Hong Kong.

John met an 18-year-old girl, X, on “Facebook”. He made a deal with X by way of “compensated dating” that John would pay X HK\$2,000.00 for 2 hours dating (“the Deal”). They subsequently met up as agreed and went to a rented room at an hourly hotel (“the Room”).

In the Room, John asked for having sex with X. X was very scared and did not know what to do. John told X that she had to have sexual intercourse with him otherwise he would publish the Deal with X on “Facebook”. X was very frightened and asked John to allow her to leave the Room, telling him that she did not want to have sexual intercourse with him.

John refused to allow X to leave the Room until they had sexual intercourse. Sexual intercourse eventually took place.

X reported the matter to the police. John was subsequently arrested by the police. In the video recorded interview with the police, John admitted that he had sexual intercourse with X under an agreement and he did pay her money for compensated dating.

John was subsequently charged with rape.

(See over the page for a continuation of Question 2)

Questions:

- (1) John's case was brought to Court No.1 of West Kowloon Magistrates' Courts for mention. John was then represented by a solicitor under the Duty Lawyer Service. The prosecution asked for an adjournment for 4 weeks for legal advice which was granted. John made an application for bail which was rejected by the presiding magistrate.

John seeks your advice regarding his right to bail. Advise John and specify what instructions you need to have from John for his application for bail.

(7 marks)

- (2) After the prosecution obtained legal advice that John's case should be dealt with in the Court of First Instance ("the CFI") of the High Court, John's case was transferred to the Eastern Magistrates' Courts for committal proceedings.

John concerns his rights to enjoy the credit of guilty plea at various stages of the proceedings. Advise John the applicable sentencing discounts for entering guilty plea.

(8 marks)

(See the next page for a continuation of Question 2)

- (3) In the committal proceedings, John appeared in person before a magistrate (“the Magistrate”), John pleaded guilty to the charge of rape. Subsequently, the summary of facts of John’s case (with the facts that John did have sexual intercourse with X against X’s wish) was read to him. John said he agreed to the summary of facts. In addition, he said to the Magistrate that he had sexual intercourse with X under an agreement and he did pay her money for compensated dating. He asked for lenient sentence. The Magistrate told John that he had no power to sentence John in the committal proceedings. John was then committed to the CFI for sentence.

Pending the sentence hearing in the CFI, John seeks your advice if he may change his guilty plea at the committal proceedings to a plea of not guilty at this stage. Advise John.

(6 marks)

- (4) **Would your advice in question (3) be different if John did not say to the Magistrate in the committal proceedings that he had sexual intercourse with X under an agreement and he did pay her money for compensated dating? Advise John.**

(4 marks)

[25 marks in total]

Question 3 (25 marks)

Your firm is instructed by Bold Insurance Company Limited (“Bold”) to defend a claim for damages against its Insureds, the Incorporated Owners of Carnival Building (the “IO”) and Good Luck Property Management Limited (“Building Manager”) (collectively known as “the Insureds”) of Carnival Building (the “Building”). The claim is brought by Mrs. Fatima Lee (“Mrs. Lee”), who occupies a flat in the Building with her husband, Mr. Dennis Lee (“Mr. Lee”).

According to the information provided, Mrs. Lee fell in the Building’s lift lobby at about 9.00 a.m. on 5 June 2021. The CCTV footage in the lift lobby captured Mrs. Lee falling to the floor after walking a few steps as she came out of the lift. The CCTV also captured Mrs. Lee was able to get up by herself before a building attendant (“Mr. Chan”) came to the scene about a minute after the fall. Mrs. Lee then left the lift lobby and drove away in her car. Mr. Lee went to the building management office that evening complaining to Mr. Tsui, the supervisor of the Building Manager, that the floor was wet and slippery. He also told Mr. Tsui his wife had consulted an orthopaedic specialist that afternoon because of back pain and he reserved his wife’s right to sue. The Insureds therefore reported the accident to Bold.

Bold instructed a loss adjusting firm, Cannings, to investigate into the accident. Cannings interviewed Mr. Tsui who described the cleaning and patrol schedules. He provided to Cannings copies of the cleaning and patrol records. Cannings also interviewed Mr. Chan. He said he saw there was a small patch of brown liquid on the floor near where Mrs. Lee fell, and it looked like tea or coffee to him. Cannings visited Mrs. Lee at her flat, but she refused to talk about the accident. She told Cannings she felt great pain in her back and that Dr. Peter Poon had granted her sick leave that afternoon for 14 days, which might continue. Dr. Poon had advised her to attend physiotherapy. Cannings then reported the factual findings to Bold in a written report.

(See the next page for a continuation of Question 3)

On 10 September 2022, the Building Manager and the IO each received a letter before action from Ray Lam & Co. (“RL”), acting for Mrs. Lee. RL also sent a copy of the letter before action to Bold, and in the covering letter to Bold, RL requested disclosure of Cannings’ report.

Question:

(1) Bold is reluctant to disclose Cannings’ report because of what Mr. Chan said.

Write a letter to Bold advising:

(a) **Whether Mrs. Lee is entitled to disclosure of Cannings’ report, and why.**

(6 marks)

(b) **If Mrs. Lee is entitled to disclosure, is there any ground which Bold might be able to rely on to contest the request of disclosure.**

(4 marks)

(c) **The procedure which RL might take to start an application for disclosure of Cannings’ report, and what Bold needs to do to oppose any such application.**

(5 marks)

(See over the page for a continuation of Question 3)

Bold instructed you to reject RL's request for disclosure of Cannings' report and RL decided not to press for it. Instead, they commenced legal proceedings (DCPI No. 1080 of 2023), naming the Building Manager as the 1st Defendant, and the IO as the 2nd Defendant. Your firm has instructions to file a Defence.

Before you finalize the Defence, Mr. Tsui told you that Mr. and Mrs. Lee have inserted a letter signed by both, into the letterbox of each flat. They also posted a copy of this letter in the lift lobby. In the letter, they accused the Insureds of colluding with one another to cover up the accident. They also accuse the Insureds of accepting advantages from the cleaning contractor otherwise they would not agree to the contractor falsifying the cleaning log entries. The Insureds told you that the accusations are untrue and groundless and that they must clear their respective names because the accusations have damaged their reputation. They are also concerned that Mr. and Mrs. Lee will repeat such accusations.

Question:

- (2) Bold agreed to you taking legal steps to assist the Insureds to clear their respective names and to seek appropriate relief.
- (a) **Draft the headings, parties, and title of the relevant pleadings.**
 - (b) **Include a prayer for relief(s) which may be appropriate for the Insureds.**

(10 marks)

[25 marks in total]

Question 4 (25 marks)

Your firm represents Mr. Mok Siu Lung (“Mr. Mok”), the plaintiff in a personal injury action resulting from a road accident in which Mr. Mok was injured.

Mr. Mok was a passenger in a taxi which collided with a delivery van parked on the side of the road. He is a 71-year old retiree who was on his way home after meeting friends for tea. During the journey, Mr. Mok noticed that the taxi driver had a bank of mobile telephones and other electronic devices in front of him. The driver was watching the devices, sending and receiving messages and talking animatedly when he drove the taxi right into the back of the delivery van.

Mr. Mok was thrown forward in the accident. His face hit the plastic screen affixed to the back of the headrest in front of him. He suffered cuts and bruises to the forehead. He was badly shaken by the accident and was taken to a private hospital by ambulance. In hospital, Mr. Mok was given medical treatment, and, after a period of observation, allowed to go home. After a few days rest at home, Mr. Mok returned to the private hospital for a check-up and was advised that the wounds were healing well and that he was on track for a full recovery.

Six months after the accident, the taxi driver, Mr. Chan Chi Keung, was convicted of careless driving, his 5th such conviction.

Your firm commenced proceedings in the District Court against the driver. Pleadings have now closed. Discovery has not yet taken place. Mr. Mok is anxious for an amicable settlement. At his age, he wishes to avoid the stress of a full trial, even mediation would be too stressful, he says.

(See over the page for a continuation of Question 4)

You have obtained an expert medical report which opines that there is permanent scarring on Mr. Mok's forehead. You have also obtained counsel's advice to the effect that since Mr. Mok, being a retiree, did not lose any income, the total principal amount of damages, both general and special, should be no more than \$500,000.

Questions:

- (1) Prepare a letter to the client explaining the sanctioned offer procedure and counsel's advice, asking for client's instructions whether he would like such an offer to be put forward, and if so in what amount. You may assume any facts not inconsistent with those set out above.**

(17 marks)

- (2) Prepare a draft sanctioned offer (for client's approval) in an appropriate amount, to be enclosed with the above letter. For extra credit, you may add footnotes explaining any part of your draft.**

(8 marks)

[25 marks in total]

Question 5 (25 marks)

Facts:

1. You, a solicitor, have obtained a judgment in the sum of HK\$10 million in the High Court against Mr. A for failing to repay a loan extended by Mr. B to him. Mr. A has not settled the judgment debt or any part of it to date. Obviously, he is avoiding satisfaction of the judgment debt aforesaid. A bankruptcy search indicates that Mr. A is not an undischarged bankrupt and he has never been bankrupted before.
2. Mr. A lives in a small flat in Wan Chai, Hong Kong. A land search of the Wan Chai flat indicates that its registered owner is Mr. A and it is free of mortgage. Mr. A has a Canadian passport and properties in Vancouver, Canada. You have instructions from Mr. B that Mr. A is telling everyone that he is leaving Hong Kong and not coming back anytime soon.
3. You are also instructed that Mr. A is a wealthy individual. Most of Mr. A's assets are believed to be in Hong Kong. For instance, Mr. B had heard Mr. A talking about his investments in the Hong Kong stock market and various private companies in Hong Kong. Mr. A has also spoken of his collection of paintings and art pieces. However, Mr. B does not know their whereabouts nor any details of the same.
4. Mr. B has shown you a copy of a cheque (drawn on HSBC's branch office in Wan Chai) which was given by Mr. A to Mr. B some time ago to pay interest accrued on the HK\$10 million loan. The cheque was honoured and Mr. B kept a copy of it prior to paying it in.

(See over the page for a continuation of Question 5)

5. Mr. B wants to know how you are going to enforce the judgment obtained. Specifically, Mr. B wants to know (a) what action can be taken through the High Court to enforce the judgment obtained on the basis of the information available to date, (b) how to find out more about the assets of Mr. A through the High Court for enforcement purposes, and (c) how to prevent Mr. A from leaving Hong Kong to avoid payment of the judgment debt.

Question:

Write an advice letter to Mr. B, setting out your advice on how to enforce the judgment obtained. Your advice has to be comprehensive enough to answer the 3 enquiries set out in paragraph 5 above. You also have to explain to your client why you recommend a particular course of action and set out in brief the procedure for each means of enforcement proposed by you. If a particular course of action recommended by you is only effective for a certain time period, you need to let your client know as well.

(25 marks)

[25 marks in total]

END OF TEST PAPER