THE LAW SOCIETY OF HONG KONG

OVERSEAS LAWYERS QUALIFICATION EXAMINATION

2024 SUPPLEMENTARY INFORMATION PACKAGE

HEAD V: PRINCIPLES OF COMMON LAW

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1. Standards, Syllabus, Materials and Assessment

Overseas Lawyers Qualification Examination

HEAD V: PRINCIPLES OF COMMON LAW

Standards, Syllabus, Materials and Assessment

STANDARDS

The test paper for this Oral Head of the Examination is set at the standard expected of a newly qualified solicitor in Hong Kong who has completed a two year traineeship prior to admission.

Candidates will be expected to demonstrate that:-

1. they have achieved a general understanding of the legal system of Hong Kong, its constitutional basis and the structure and operation of its courts;

2. they have achieved a general understanding of how the principles and rules of the common law and Equity have been received into and form part of the law of Hong Kong;

3. they are able to clarify the role of legislation compared to the common law;

4. they have considered the basic principles of the law of contract as modified by legislation;

5. they have considered the basic principles of the law of tort as modified by legislation and, in particular, the law of negligence; and

6. they have considered the concept of criminal liability with particular reference to offences involving dishonesty, theft, fraud and offences against the person.

Candidates will be expected to demonstrate an understanding of:-

1. how the common law principles, developed in England, now apply in Hong Kong;

2. the impact of the Basic Law which provides for the maintenance of the common law system and consideration of the precedents of other common law jurisdictions (not only England)

3. the basic structure and principles of the law of contract and the law of tort; and

4. the essential objectives, elements and principles of the criminal law.

SYLLABUS

1. Background

- The constitutional and law making structure of Hong Kong including the Basic Law and the Bill of Rights Ordinance (Cap.383)
- English common law and equity as sources of Hong Kong law
- Superiority of legislation over the common law
- The doctrine of precedent and its application in Hong Kong
- The basic principles of statutory interpretation

2. Contract

- Essential elements of a valid contract
- Formalities
- Vitiating factors
- Discharge
- Remedies for breach of contract

3. Tort

- General characteristics of tortious duties and liabilities
- An outline of the range of tortious duties
- A specific examination of the torts of negligence, defamation occupiers' liability and economic torts
- Defences
- Remedies

4. Criminal Law

- Function and sources of the criminal law
- Actus reus
- Mens rea
- The standard of proof
- General defences
- Specific examination of the law of homicide, theft and other offences of dishonesty
- Effect of the Bill of Rights Ordinance (Cap.383)

MATERIALS

Ordinances

- Basic Law of Hong Kong SAR
- Theft Ordinance (Cap.210)
- Offences against the Person Ordinance (Cap.212)
- Control of Exemption Clauses Ordinance (Cap.71)
- Law Amendment and Reform (Consolidation) Ordinance (Cap.23)
- Interpretation and General Clause Ordinance (Cap.1)
- Limitation Ordinance (Cap.347)
- Misrepresentation Ordinance (Cap.284)
- Sale of Goods Ordinance (Cap.26) (especially ss.14, 15, 16 and 17)
- Unconscionable Contracts Ordinance (Cap.458)
- Supply of Services (Implied Terms) Ordinance (Cap.457)
- Contracts (Rights of Third Parties) Ordinance (Cap.623)
- Age of Majority Ordinance (Cap.410)
- Occupiers Liability Ordinance (Cap.314)
- Defamation Ordinance (Cap. 21)
- Homicide Ordinance (Cap. 339)

Text Books

- *Wesley-Smith*: 'An Introduction to the Hong Kong Legal System', Oxford UP, (latest edition)
- *D.K. Srivastava, Anna Lui, Charu Sharma & Sara Tsui*: Law of Tort in Hong Kong, LexisNexis Hong Kong, (3rd ed., 2014)
- *D.K. Srivastava* (General Editor): 'Business Law in Hong Kong', Sweet & Maxwell Asia, (6th edition, 2020)
- *Michael Jackson*: 'Criminal Law in Hong Kong', Hong Kong University Press (latest edition)
- *Michael J. Fisher and Desmond G. Greenwood:* 'Contract Law in Hong Kong', HK University Press (4th edition, 2024)
- *Rick Glofcheski*, Tort Law in Hong Kong (5th Edition 2023), Sweet and Maxwell
- *Stephen D. Mau:* 'Hong Kong Legal Principles', HK University Press (2nd edition, 2013)
- *Stefan H.C. Lo, Kevin Kwok-yin Cheng, Wing Hong Chui*, The Hong Kong Legal System, Cambridge University Press (2nd Revised edition, 2020)
- *Stephen Hall*, Ho and Hall's Hong Kong Contract Law, LexisNexis (6th edition, 2022)
- *Victor Ho Wai-kin*, Criminal Law in Hong Kong, Wolters Kluwer (3rd edition, 2019)

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ASSESSMENT

The examination will test candidates' ability to demonstrate their understanding of the topics covered by the syllabus both conceptually and also in terms of their ability to communicate this understanding in the English language. The assessment of the candidates being examined in this subject will be by oral examination.

The period of the examination will be up to 2 hours during which time the candidate will be examined by a panel of nominated examiners which shall consist of not less than 2 and not more than 4 members.

Immediately prior to the examination, the candidate will be provided with a copy of an examination paper consisting of 8 questions of which he or she may nominate 4 to be examined upon. An English dictionary and a copy of a law dictionary (Mozley and Whiteley's law dictionary by J. E. Penner) shall also be provided. The candidate shall be permitted 45 minutes to consider questions and to choose the 4 to be examined upon. The candidate shall then be called before a panel of examiners. When called before the panel, the candidate should take the questions supplied upon which he or she is to be examined.

The candidates may consult notes that they have made on the questions supplied but they must not consult any other notes, books or other materials. The questions are the only documents that may be brought into the examination room and at the conclusion of the examination, candidates will be required to leave the questions supplied at the test venue as directed.

The assessment of each candidate shall be undertaken by the panel members by listening to and assessing the candidate's answers to the nominated questions appearing in the examination paper and also to any supplementary questions put by the individual panel members in the course of the examination.

At the end of the examination period, each examiner shall allocate a score based on their assessment of the candidate's performance in dealing with the examination questions and supplementary questions. The average of the scores allocated by panel members shall be the final mark allocated to the candidate concerned.

Each candidate's performance may be recorded on video tape for the purpose of later consideration and assessment if necessary.

2. Examiners' Comments on the 2021, 2022 and 2023 Examinations

Examiners' Comments on the 2021 Examination

Head V: Principles of Common Law

The examination paper consisted of four parts:
Part A (Constitutional Law & Introduction to Legal System);
Part B (Law of Contract);
Part C (Introduction to Law of Torts); and
Part D (Criminal Law).

The examination paper had eight questions and the candidates were asked to attempt one question from each part. The candidates were given 45 minutes reading time. After the expiry of the reading time, each was given an oral examination by two Examiners.

Generally, the candidates were aware of the relevant legal principles and were able to link them up to the facts of the questions and provide answers that correctly addressed those questions. There was a range in the standards exhibited.

Case law was not very frequently cited. A few more cases, especially Hong Kong cases could have been given to substantiate the answers.

Candidates appear to find questions concerning Contract Law and Legal System easier to answer compared with questions on Tort and Criminal Law. For Criminal Law, it may be considered whether we can venture into crimes apart from the usual murder /manslaughter areas.

Like for the 2020 exam, Zoom arrangements were made for candidates and examiners to be in separate rooms for social distancing purposes. All sessions proceeded smoothly and no technical issues occurred which were reported to have affected any of the candidates. Thanks to the Law Society staff for their hard work in preparation.

Examiners' Comments on the 2022 Examination

Head V: Principles of Common Law

The Head V Examination paper consisted of 4 parts-
Part A (Constitutional Law & Introduction to Legal System)
Part B (Law of Contract)
Part C (Introduction to Law of Torts) and
Part D (Criminal Law)

The Head V Examination paper consisted of 4 parts and each part comprised with 2 questions. The candidates were required to answer 1 question from each part. All candidates were given 45 minutes reading time. After the expiry of the reading time, each candidate was given an oral examination by 2 Examiners.

Generally, the candidates were aware of the relevant legal principles and were able to apply them to the facts of the questions and provide correct answers to those questions. The candidates were able to demonstrate in depth understanding and analysis of the core issues. Most candidates were able to support their answers by citing the relevant case law.

The candidates performed best on questions concerning Legal System of Hong Kong. Some candidates, at times, overlooked some issues with questions on Contract and Tort. With a bit of prompting, candidates were able to answer the questions more fully. Overall speaking, candidates were less capable in answering questions on topics of murder and diminishing responsibility. It is advisable for future candidates to have clear understandings of the provisions as set out in the Homicide Ordinance.

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Examiners' Comments on the 2023 Examination

Head V- Principles of Common Law

The examination paper consisted of four parts:
Part A (Constitutional Law and Introduction to Legal System);
Part B (Law of Contract);
Part C (Introduction to Law of Torts);
Part D (Criminal Law).

The examination paper had a total of eight questions. The candidates were required to answer one question from each part. The candidates were given 45 minutes reading time. Upon the expiry of the reading time, each candidate was given an oral examination by two Examiners. Some of the Examiners were newly recruited this year.

Generally, the candidates were familiar with the relevant legal principles and were able to link them up to the facts of the questions and provide correct answers to those questions. Candidates were less capable in citing Hong Kong cases to support their answers. It is advisable for future candidates to have better insights on local case law. The candidates performed best on questions concerning Constitutional Law and Introduction to Legal System. As to the questions on topics of Tort and Criminal Law, some candidates were able to answer more fully after being prompted by the Examiners.

The majority of the candidates were well prepared for the examination and were able to complete answering the questions well within the time set aside for them.

3. Past Examination Papers from 2021 to 2023

2021 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD V: PRINCIPLES OF COMMON LAW

Tuesday, 25 January 2022

THE LAW SOCIETY OF HONG KONG
香港律師會

2021 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

(a) **Who has the burden of proof, and what is the standard of proof, for civil and criminal cases?**

(10 marks)

(b) **Discuss the types of civil action that are dealt with in the District Court.**

(15 marks)

(See over the page for a continuation of Part A)

Question 2 (25 marks)

(a) **What is the doctrine of *stare decisis*?**

(5 marks)

(b) **Can the Court of Final Appeal depart from its previous decisions?**

(5 marks)

(c) **Can the Court of Appeal depart from its previous decisions?**

(15 marks)

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

A few months ago, Alan, a musician, purchased a professional sound system from Rob for HK$80,000. As Alan was a bit short of cash, it was agreed that he could pay Rob in two instalments of HK$50,000 and HK$30,000 respectively, three months apart. However, at the end of three months after paying the initial HK$50,000, Alan failed to pay the second instalment.

Rob found out that Alan had lost his job shortly after making the purchase. Last Monday, Rob met Alan, and, feeling sympathetic, he told Alan that if he paid HK$18,000 of the outstanding amount within one week, Rob would "let him off" with the remaining HK$12,000.

Alan paid HK$18,000 to Rob on Thursday.

On Friday, Alan was notified that he had been successful in one of his job applications and that he could start work on the following Monday, at a salary which was much higher than his previous job.

Rob has heard about Alan's new job and that Alan will be earning more than sufficient money to pay the full price of the sound system. He approaches Alan to ask for the remaining HK$12,000, but Alan says that since Rob agreed to accept the amount of HK$18,000 in settlement of the balance payment for the purchase, he would not be paying more. Rob is upset and now wants to claim the remaining HK$12,000 from Alan.

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

(a) **Advise Alan whether Rob has a good claim against him for the balance of HK$12,000.**

(15 marks)

(b) Alan now remembers that when Rob agreed to take HK$18,000 in payment of the outstanding sum, he felt so grateful for Rob's gesture that he gave Rob some much sought-after concert tickets to an upcoming concert by The Low Moons, a popular band. He told Rob that the tickets were given "in consideration of your kindness".

How does this affect your advice in (a)?

(10 marks)

(See the next page for a continuation of Part B)

Question 4 (25 marks)

Ben is a professor of botany (the study of plants) at Kowloon University. He is also a keen farmer and owns a small plot of land in Sai Kung, New Territories, Hong Kong where he grows plants and vegetables. He has started to grow some melons in anticipation of participating in the annual Hong Kong Home Grown Produce Competition. He is very proud of the many prizes he has won for his outstanding melons.

Ben needed to buy some fertilizer and visited Bloom N Grow, a well-known shop which sells gardening supplies such as tools, seeds and fertilizers. Ben studied the chemical composition of the different brands written on the packets, since he noticed that there was a wide price range amongst the brands. He had always used a top brand, but wanted to find something cheaper.

Ben asked Matt, a temporary shop assistant, for recommendations on which brand to buy. Matt was not familiar with growing plants or fertilizer composition. He suggested that Ben should try the new (and cheaper) "Grow High" brand. Ben was in a hurry and decided to buy a bag of "Grow High".

The sales invoice stated:

"*1. Bloom N Grow will refund the purchase price paid for goods which do not meet recognised quality standards with any product.*

2. Bloom N Grow does not give any undertaking as to the suitability or fitness of goods purchased for any particular purpose.

3. *Any damages or compensation payable shall not exceed the purchase price of the goods sold."*

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

Ben did not read the invoice but quickly signed it and paid for the fertilizer.

Ben followed the instructions on the fertilizer pack and sprayed the leaves of his melon plants. That night there was heavy rain, which washed away most of the fertilizer before it took effect. Ben did not realise this as this was the first time he had used fertilizer in a spray form.

Ben's melon plants grew poorly and could not be entered into the Hong Kong Home Grown Produce Competition. He was upset and embarrassed and was unable to concentrate on work. His end-of-year university appraisal was poor and he failed to get the salary rise that he was expecting,

Ben wishes to sue Bloom N Grow for the purchase price of the fertilizer, loss of the competition prize money, loss of the salary increase he was expecting, doctor's fees and stress medication.

Bloom N Grow denies liability, and argues that it is also protected by the invoice terms and the maximum amount of its liability is the purchase price paid by Ben.

(a) Are there any legal grounds on which Ben may make a claim against Bloom N Grow? (10 marks)

(b) If the above grounds are valid, and Bloom N Grow is in breach of the sales contract with Ben, what is the impact of the three terms that are written on the invoice? (8 marks)

(c) If Bloom N Grow is liable to Ben and cannot claim protection from the terms written on the invoice, what would be the remedies available to Ben? (7 marks)

End of Part B

Part C (Introduction to Law of Torts)

Question 5 (25 marks)

In Glofcheski, Tort Law in Hong Kong (Revised Fourth Edition 2018) p. 158, the author states:

> "*Duty of care serves to carve out the boundaries of liability in negligence. Not everyone who causes injury will bear responsibility. Only those found to owe a duty of care will be answerable for any damage caused. Duty of care is an issue of law, and as such carries influence as precedent. The judges have this in mind in deciding cases on duty of care. Thus, there is a large policy dimension in the determination of this issue.*"

Discuss, with reference to relevant principles and cases:

(a) How important precedent is in determining the existence of a duty of care in a negligence claim;

(5 marks)

(b) How the Hong Kong courts determine the existence of a duty of care in a negligence claim; and

(10 marks)

(c) How policy is involved in determining the existence of a duty of care in a negligence claim.

(10 marks)

(See over the page for a continuation of Part C)

Question 6 (25 marks)

Albert Au owns a popular discount store in Taipo, New Territories, Hong Kong, Albert's Adventures ("AA"), which sells all kinds of household goods.

In order to protect the safety of his customers and to comply with the law during the COVID-19 pandemic, Albert requires all persons entering AA to wear a face mask.

Albert has a person posted at the only entrance to AA to ensure all persons entering AA wear a face mask.

On 30 June 2021, Bert Bong ("Bert"), a large 20-year-old youth, was on duty at the entrance to AA. Bert was a convicted prisoner permitted to work on day release from prison. The Hong Kong Prison Service had agreed with Albert that Bert could fulfill his day release conditions by working at AA. Bert works 15 hours a week at AA. He was given basic training on how to deal with customers entering AA and to politely refuse entry to anyone not wearing a face mask. Bert is not paid for his work at AA.

Whilst on duty at the entrance to AA on 30 June 2021, Bert noticed an old woman, Christine Chan ("Christine"), not wearing a face mask approaching the AA's entrance. Bert immediately ran towards Christine cursing at her and yelling at her not to enter AA. As Bert approached Christine, he waved his fist at her and said, "If you were not an old lady, I would pick you up and throw you out of the store if you try to enter without a face mask."

(See the next page for a continuation of Question 6)

As Bert approached Christine, he slipped on a puddle of water that had formed at the AA entrance following a recent heavy rain shower. As a result of slipping, Bert fell over and landed on Christine knocking her over. As a result of the fall, Bert suffered a hand injury and Christine a serious head injury.

Don Ding ("Don"), a passing pedestrian, noticed Bert and Christine falling over and immediately ran over to help them. In doing so, Don also slipped on the puddle of water at the AA entrance and fell over suffering a serious leg injury.

Advise ALL parties suffering loss or injury as to their possible tort claims for recovering damages for their losses and injuries. Discuss all relevant causes of action and defences together with the relevant legal principles and cases.

(25 marks)

End of Part C

Part D (Criminal Law)

Question 7 (25 marks)

INTRODUCTION

1. A has been in the business of trading diamonds in Hong Kong for over 15 years. He has a small office in Kowloon. A sources his diamonds from Z who is based in Antwerp, Belgium.

2. The trading of diamonds is by way of consignment. This means that A will receive diamonds from Z and in turn, will attempt to sell them. The property/ownership remains with Z.

3. The trading of diamonds, worldwide, is characterised by way of trust and reputation. The diamond dealers know each other and rely on each other's reputation. The documentation is simple and sparse. A consignment document will identify the particular stone by reference to colour, identity and specific numbering. A and Z have been in business for many years and there has never been any issues or difficulties between them. A keeps Z's diamonds in his safe. He sells them to other dealers who sometimes pay immediately or within 30 days. Successful sales are noted and each month A accounts to Z with the proceeds less his commission.

4. Due to the COVID-19 pandemic, business has been very bad over the past 12 months. A has suffered badly and has been chased by debt collectors in respect of outstanding rent and credit card expenditure.

(See the next page for a continuation of Question 7)

5. A decides to take some of Z's diamonds to a pawnbroker. He deposits 4 stones and receives HK$500,000. The value of these 4 stones are approximately HK$1 million.

6. A then sent to Z a postdated cheque in the sum of HK$500,000. He enclosed a short note which stated: "Please see attached. As you will see, this is dated one month from today's date. I can assure you that there will be monies in my account at that time. Please consider this to be a good faith payment."

7. Z presented the cheque he had received from A. The cheque was returned to drawer with a note from the bank "no funds in the account". Z sent an email to A stating that he was devastated that the cheque had not been met on presentation.

8. However, A's financial position deteriorated. He was not able to trade his way out of his difficulties. He was not in a position to redeem Z's diamonds from the pawnbroker.

9. Z had not received any updates from A as to the diamonds that were placed on consignment. He demanded the return of all his diamonds. A informed Z that he is hopeful that he will be able to sell them and told him not to worry. Z then finds out from another diamond dealer that the pawnbroker had sold the diamonds that were consigned and placed with A.

10. Z immediately files a police report with the Hong Kong Police Force. The Police investigated. Subsequently A was arrested and charged.

(See over the page for a continuation of Question 7)

(a) **Identify the offence(s) which may or have been committed by A.**

(8 marks)

(b) **Particularise the actus reus and mens rea in respect of each offence that you have identified.**

(8 marks)

(c) **What defences are open to A in respect of charges that would be laid against him?**

(9 marks)

(See the next page for a continuation of Part D)

Question 8 (25 marks)

Ken and Daisy were lovers and were in the habit of consuming methamphetamine hydrochloride, commonly known as 'Ice'. In the morning on 14 February 2019, they were consuming Ice at home with their friend, Irene. Shortly afterwards, Irene fell asleep. She was woken upon hearing Ken and Daisy shouting and screaming at each other. Daisy kept yelling at Ken, "How dare you hit me first!". She saw Ken and Daisy were fighting with each other and each was bleeding. Irene's efforts to stop the fight were unsuccessful. Irene's hands and clothing were covered in blood from her efforts to stop the fight. She could not say what it was that caused so much bleeding when Ken and Daisy were fighting.

In a state of panic, Irene rushed to the nearby police station for help. She led two officers back to the scene where they found Ken sitting on a chair, breathing heavily. Daisy was lying on the floor and bleeding profusely. The officers quickly arrested Ken.

Daisy was conveyed to hospital where she was certified dead. An autopsy revealed multiple injuries to her head. Ice was detected in a blood sample taken from Daisy. A test on a sample of Ken's urine that was collected after his arrest also revealed the presence of Ice.

In a video interview, Ken told the police under caution:

(i) At the time he assaulted Daisy, he did not have an intention to kill her or an intention to cause her grievous bodily harm;

(ii) He assaulted Daisy as she had repeatedly kicked, scratched and punched him. He felt intense pain all over his body as a result;

(See over the page for a continuation of Question 8)

(iii) He had a long history of drug abuse. He was, moments before the killing, fighting with Daisy over who would take the remaining quantity of Ice.

Ken was medically and psychiatrically assessed by various doctors after the arrest. The doctors expressed the opinion that-

(i) Multiple injuries were detected all over Ken's body after he was arrested;

(ii) Ken was addicted to Ice, a drug which can cause mind-altering effects on the user, such as hallucinations, delusions and paranoia;

(iii) The killing took place whilst Ken was experiencing a psychotic episode triggered by his consumption of Ice;

(iv) Ken had been abusing Ice for over 10 years. He was suffering from a persistent and active psychotic disorder.

Ken was charged with the offence of murder, contrary to the common law.

(a) Discuss what possible defence or defences Ken can rely on regarding the murder charge against him.

(17 marks)

(b) Assume that Ken is not a drug addict, but instead an occasional drinker, and he kills Daisy when he is under the influence of alcohol. Explain whether Ken can rely on drunkenness as a defence.

(8 marks)

End of Test Paper

2022 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD V: PRINCIPLES OF COMMON LAW

Tuesday, 31 January 2023

THE LAW SOCIETY OF HONG KONG
香港律師會

2022 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

(a) **In what languages are legislation published in Hong Kong? Which language of the legislation should the courts rely upon?**

(5 marks)

(b) **What happens when there is an apparent discrepancy between the different language texts of a legislation?**

(10 marks)

(c) **What does Remedial Interpretation mean? Can Hong Kong courts engage in Remedial Interpretations with respect to the Basic Law?**

(10 marks)

(See over the page for a continuation of Part A)

Question 2 (25 marks)

(a) **How many votes are needed for a bill to pass through the Legislative Council?**

(10 marks)

(b) **Are there any restrictions to the types of bills that Members of the Legislative Council can introduce?**

(7 marks)

(c) **Do national laws of the People's Republic of China apply in Hong Kong?**

(8 marks)

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

The COVID-19 pandemic has badly affected the business of Carol's music school. In order to promote business in the new academic year, Carol decided to do more postings on social media and offer discounts on fees. Starting from July 2022, she has placed advertisements on LinkedIn, Facebook and Instagram. She also emailed information to current students, and placed physical copies of the information poster and registration form at the entrance to her school.

The poster reads as follows: "You will enjoy all music classes at a 15% discount for the 2022/23 academic year if you personally subscribe to our Facebook page. In addition, the first five persons who successfully register for our beginners' classes will receive three free lessons. Get the offer by scanning this QR code and completing and submitting the registration form online, or by filling in the form below and submitting it by email or in person to our school."

Assume that Amy, Bob, Cathy, Dan and Eva are the first five persons to respond to Carol's promotion, as follows:

- Amy scanned the QR Code and filled in her brother's name online for the violin beginner's class. She also personally subscribed to the Facebook page of Carol's music school.

- Bob (who knows Carol well) had no time to fill in the form and just emailed Carol to request registration for flute beginner's lessons for his daughter. Bob subscribed to the Facebook page of Carol's music school.

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

- Cathy accidentally scanned the QR code of a poster which was next to one of Carol's posters and therefore never registered for the cello beginner's classes at Carol's music school. Cathy subscribed to the Facebook page of Carol's music school.

- Dan filled in the registration form and delivered it personally to Carol's music school. However, the receptionist misplaced the form and Dan was never registered. Dan subscribed to the Facebook page of Carol's music school.

- Eva registered online for viola beginner's lessons, but asked her secretary to subscribe to the Facebook page of Carol's music school.

Classes started on 1 September 2022. On 1 September 2022, Amy's brother, Bob (bringing his daughter), Cathy, Dan and Eva all turned up at the first class, demanding the discount and the free lessons.

Advise Carol whether the followings are entitled to the 15% discount and the free lessons:

(a) Amy's brother

(5 marks)

(b) Bob

(5 marks)

(c) Cathy

(5 marks)

(d) Dan

(5 marks)

(e) Eva

(5 marks)

(See the next page for a continuation of Part B)

Question 4 (25 marks)

(a) Jay owns a small café and employs two waitresses, Kate and Lily.

Kate falls ill with COVID-19 while on holiday, and Jay tells her not to come back to the café till she has recovered. However, Jay does not want to employ extra staff while Kate is away, so he asks Lily to work longer hours until Kate is able to come back to work. He promises Lily that he will pay her a bonus for doing so. Lily is happy to help out and she works very hard, but Jay does not pay her extra money.

Kate and Lily usually take turns to purchase and collect the flowers for the tables in the café. Since Kate is ill, the florist, Flora, offers to deliver the flowers to the café until Kate returns to work. Jay saw Flora a few days while she was making a delivery, and mentioned that he would pay for the delivery charges. After Kate returns to work, Jay receives Flora's invoice for the flowers which includes the delivery charges. Jay finds the delivery charges too expensive and now refuses to pay them.

Consider and answer the following (ignore employment law implications):

(i) Does Lily have a good claim against Jay for the bonus for her extra work while Kate is away?

(5 marks)

(ii) Does Flora have a good claim against Jay for the delivery charges in making the flower deliveries?

(5 marks)

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

(b) Great Wall Restaurant is a popular restaurant. Henry, Sarah and Linda have signed a contract to hire a big function room in the restaurant as a venue for their parents' wedding anniversary dinner. On the evening of the dinner, the following happen:

- The floor is slippery as the staff have been cleaning it often due to COVID concerns but did not dry it properly. Henry slips on the floor and injures his hip which needs medical attention. He is a tennis coach and his injury has forced him to cancel many lessons with students.

- Sarah slips on the floor when she gets up to go to the washroom, but manages to hang onto a table and is not injured. However, with the movement of the table, a very expensive bottle of wine on the table which she ordered, falls and the glass shatters on the ground, spilling the wine everywhere. Sarah refuses to pay for the wine.

- Linda hangs her handbag on the chair she is sitting on, but after dinner, she discovers that her handbag has been stolen.

The restaurant has a sign at the front which says: "Watch your belongings carefully. We are not responsible for any loss or damage to property or any personal injury, however caused." The contract of hire contains a similar provision.

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

Advise on the following:

(i) Does Henry have a good claim against Great Wall Restaurant for the injury he has suffered?

(5 marks)

(ii) Does Sarah have a good claim against Great Wall Restaurant for the wine?

(5 marks)

(iii) Does Linda have a good claim against Great Wall Restaurant for the loss of her handbag?

(5 marks)

End of Part B

Part C (Introduction to Law of Torts)

Question 5 (25 marks)

Late one Saturday night in June 2022, some patrons at the Pink Orchid nightclub ("Nightclub") had drunk more than was good for them. KK, one of these patrons, became disoriented and aggressive. He began to lash out at people around him, punching and kicking them. Charlie, a crowd supervisor in the Nightclub, saw the commotion and decided to remove KK from the premises. He rushed over to KK and restrained him round the arms "in a bear hug" and marched him from the premises. Outside the Nightclub, Charlie sat KK down on a bench on the public footpath and told him to go home.

KK was so drunk that he could not accept that his night had ended. He therefore went around the side of the building where he managed to re-enter the Nightclub through a fire exit door. After a while, Charlie noted KK staggering around the dance floor again. It enraged him to think that anyone dared to defy him, so he stormed over to KK and said: "I told you not to come back tonight." With this, he punched KK, knocking him to the floor. Paolo, another doorman, came to the scene, and Paolo and Charlie then dragged KK to a private room where he was left to sober up. An hour later, when KK had sobered up a little, Paolo guided KK out the side door of the Nightclub.

KK was angry about the treatment he had received from Charlie. From the street, he went back to the front of the Nightclub and made a racially offensive remark to Charlie. Charlie had suffered racist taunts throughout his youth and KK's words hit a raw nerve. Charlie looked as if he would explode and he lunged for KK. Out of fear, KK tried to flee. In panic, he ran into the road and was hit by a vehicle driven by Yasmina. Yasmina was driving carefully and could not have avoided the collision.

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

Yasmina suffered no physical injury as a result of the collision. However, the collision brought back the memories of the trauma that her partner, Helen, a tram driver, had suffered some years back. Helen had to undergo trauma counselling and was compelled to give up her work when a person committed suicide by throwing himself in front of a tram that she was driving. Yasmina feared the same for herself and, indeed, she did develop a severe, long-term psychiatric reaction following the accident. Fortunately, KK did recover fully from the injuries he suffered in the accident.

The Nightclub is licensed under the Dutiable Commodities (Liquor) Regulations (Cap.109B). The Licensing Conditions for the Liquor Licence relevantly provide:

1. No disorder shall be permitted on the premises.

2. No person shall be allowed to become drunk on the premises, nor shall liquor be supplied to any person who is drunk.

The crowd controllers, including Charlie, were provided by Bouncers-R-Us Ltd., who trained all its staff and registered them with the relevant authorities. The employment contracts between Bouncers-R-Us Ltd. and its staff contain a detailed Code of Conduct ("Code"), the breach of which constitutes grounds for immediate dismissal. The Code provides, amongst other things, that the crowd controllers may only use "reasonable force" in the exercise of their functions, which include assisting the Nightclub in ensuring compliance with its licensing conditions.

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

Provide the following advice, giving full reasons and referring to relevant principles and authorities, as well as considering also any relevant defences:

(a) Is Charlie liable to KK for trespass to person?

(11 marks)

(b) Is Charlie liable in negligence for the mental harm suffered by Yasmina?

(6 marks)

(c) Is Bouncers-R-Us Ltd. liable for Charlie's actions?

(8 marks)

(See the next page for a continuation of Part C)

Question 6 (25 marks)

Belle's Beauty Clinic ("BBC") is a private hospital specialising in cosmetic procedures. Most of its clientele attend as out-patients, but there is also a hospital ward at which more invasive procedures are undertaken for in-patients.

During the pandemic, BBC adopted a strict hygiene regime aimed at keeping its staff and patients safe from the SARS-CoV-2 virus. The measures put in place were in line, or exceeded, the requirements of applicable government regulations. Under this regime, no visitors were allowed in the ward, and all patients needed to have a Polymerase Chain Reaction ("PCR") test prior to admission. All workers at the hospital needed to undertake a daily rapid antigen test for COVID-19 ("RAT") and record the result in an online system operated by BBC. If the RAT returned a positive result, the worker needed to take a PCR-test and could only return to work if the result was negative or after they recovered from COVID-19.

Crystal Wong ("Crystal"), a fourth-year medical student, undertook a clinical placement as a student intern at BBC. She was keen to get work experience at the hospital because it was her dream to work as a cosmetic surgeon one day. One morning in July 2022, she noticed that she had run out of RAT kits and decided to record a negative result despite not having undertaken any test that morning. She had planned to do the RAT when she arrived for work at BBC but then forgot to do so.

A few days after later, there was a COVID-19 outbreak in the BBC hospital ward. One of the patients infected during the outbreak was Mandy Leung ("Mandy"). Mandy became seriously sick and is still suffering from long COVID, a disabling condition that required her to give up her position as a swimming coach in an international school.

(See over the page for a continuation of Question 6)

Unfortunately, Mandy had chosen to remain unvaccinated because she had been worried about possible long-term effects of vaccination. Mandy knew that full vaccination can reduce the chance of infection and drastically reduces the risk of seriously adverse outcomes from COVID-19. However, Mandy blames the BBC for her situation because, in her view, BBC should have had in place a stricter pandemic regime that did not rely on workers self-reporting but required them to undergo testing under supervision each day.

After the outbreak, the in-patient ward was closed for one week for deep cleaning while the source of the outbreak was being investigated. The investigation concluded that it was likely that Crystal was the source of the outbreak after it was discovered that Crystal tested positive for the virus and had close personal contact with Mandy and all other infected patients. When a local newspaper, NT News, reported that "an irresponsible staff member" was the cause of the outbreak at BBC, the reputation of BBC took a hit, leading to severe downturn in bookings and revenue.

Provide the following advice, giving full reasons and referring to relevant legal principles and authorities:

(a) Can Mandy successfully sue Crystal, BBC, or both, in negligence for causing her sickness and, if so, are there any applicable defences?

(12 marks)

(b) Does Crystal owe a duty of care to BBC in relation to the loss of revenue suffered as a result of the outbreak?

(7 marks)

(c) Can BBC successfully sue NT News in defamation?

(6 marks)

End of Part C

Part D (Criminal Law)

Question 7 (25 marks)

W was shopping at ParknShop with a trolley. She selected various items. She proceeded to the automatic checkout. A store employee was watching her. She scanned 7 items and used her credit card to pay and obtained a receipt. She put the items into her bag and walked out of the store. W was confronted by the store employee and in her bag, there were 10 items. When asked to explain why she did not scan 3 of the items (worth a total of HK$150), W asserted that she might have forgotten and was somewhat stressed and absent-minded.

The next day, W was walking along Pedder Street. On the pavement, there was a HK$500 note. She picked it up, looked around and then put the note into her purse. A police officer watched her and in turn, arrested her.

(a) What are the essential ingredients of the offence(s)?

(17 marks)

(b) What defences (if any) are available to W?

(8 marks)

(See over the page for a continuation of Part D)

Question 8 (25 marks)

Henry refused to pay back a gambling debt that he owed Andy, a triad boss. The dispute of unpaid debt resulted in developing a strong animosity between them. Andy showed a photo of Henry to a group of 7 gang members, amongst whom were Bob and Charles, telling them to be ready to "teach Henry a lesson one day".

In the evening of 7 July 2021, Andy noticed Henry in an open area of a tavern called American Bar. Henry was spotted drinking with an unknown male who was later identified as Ivan. Andy immediately summoned the 7 gang members to go to American Bar to "let Henry have some fun". Bob picked up the gang with his 7-seater vehicle and drove to American Bar. All members, except Bob, were armed with baseball bats, cleavers and machetes.

Henry and Ivan noticed the 7-seater vehicle circling the tavern a couple of times at slow speed. The driver, Bob, was looking in Henry's direction every time when the vehicle went past the tavern. Though Henry sensed danger, he was unconcerned as Ivan is an expert in martial arts.

Moments later, the group alighted from the vehicle whilst Bob remained in the driver's seat. Charles pointed at Henry and shouted "this is the guy". The gang rushed towards Henry with weapons. In a split second, the group chopped and stabbed Henry numerous times. Ivan, upon seeing this, quickly snatched the machete from one of the assailants, Charles, and struck him in the head. The incident ended with the deaths of Henry and Charles.

(See the next page for a continuation of Question 8)

The autopsy reports indicated the cause of death of Henry was multiple puncture wounds to the neck, heart and lung. Charles, on the other hand, suffered a shattered skull.

Bob was arrested days later. He was charged with the offence of murder. He voluntarily admitted to the police under caution emphasizing that:

(1) he did not participate in attacking Henry,

(2) only those who took part in the actual assault of Henry should be responsible for the death of Henry, and

(3) he just followed the instructions of Andy, but the instructions were vague, he did not expect any of the attackers to have gone as far as assaulting Henry fatally.

Ivan was also arrested and charged with murdering Charles. He remained silent under caution.

Discuss:

(a) The actus reus and mens rea of murder.

(4 marks)

(b) The evolution of the doctrine of "malice aforethought". Is this doctrine applicable in modern law of Hong Kong?

(4 marks)

(c) Whether Bob is likely be convicted of murdering Henry.

(10 marks)

(d) Whether Ivan is likely be convicted of murdering Charles.

(7 marks)

End of Test Paper

2023 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD V: PRINCIPLES OF COMMON LAW

Friday, 2 February 2024

THE LAW SOCIETY OF HONG KONG
香 港 律 師 會

2023 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

(a) **Were Privy Council decisions binding on Hong Kong courts before the Handover?**

(8 marks)

(b) **Are Privy Council decisions binding on Hong Kong courts today?**

(7 marks)

(c) **Were House of Lords decisions binding on Hong Kong courts before the Handover? How should Hong Kong courts treat House of Lords decisions today?**

(10 marks)

(See over the page for a continuation of Part A)

Question 2 (25 marks)

(a) **Discuss how the definitions section (section 3) of the Interpretation and General Clauses Ordinance (Cap. 1) is useful.**

(8 marks)

(b) **What is the role of the Standing Committee of the National People's Congress in the legislation making process in Hong Kong?**

(9 marks)

(c) **Compare the two "vetting" procedures by the Legislative Council for subsidiary legislation.**

(8 marks)

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

Answer all of the following sections.

(a) Harry said to Meghan two months ago: "I really like your car. Let me know if you ever wish to sell it."

Meghan has recently decided to move house, but the new apartment block has no car parking space. Meghan remembered what Harry had said previously, and the following events took place:

On Monday, Meghan wrote to Harry offering to sell him her car. She asked Harry to "let me know your decision by Sunday".

Meghan's letter arrived at Harry's home on Tuesday.

On Wednesday morning, Harry posted a reply to Meghan accepting the offer. However, that afternoon, one of his friends told him that Meghan's car was too expensive, and that he could get something similar for much cheaper.

On Thursday, Harry decided to telephone Meghan on her mobile phone to tell her that he had changed his mind about buying her car. Meghan did not answer her phone, so Harry left a voice mail on Meghan's phone withdrawing his acceptance of Meghan's offer.

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

On the following Monday morning, Harry's letter arrived at Meghan's home. After reading the letter, Meghan realizes Harry has left her a voice mail and listens to the voicemail message.

Meghan is quite upset because she had previously found it difficult to sell her car because of its green colour, and she had been hoping that she would be able to sell it to Harry.

Advise Meghan. **(7 marks)**

(b) As applied to contractual relationships:

(i) **What is the "reasonable test" in the Control of Exemption Clauses Ordinance (Cap 71) ("CECO")?**

(4 marks)

(ii) **Under the CECO, what matters should a court refer to in determining whether an exemption clause is reasonable?**

(4 marks)

(iii) **As against a consumer, what type of contractual liability cannot be excluded or restricted by reference to an exemption clause?**

(3 marks)

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

(c) Bill held a sale of his home furniture as he was moving into a smaller flat. One visitor to his home, Kate, was interested in a pair of antique Ming Dynasty chairs and offered HK$80,000 for the pair. Bill accepted the money and Kate took the chairs away. After two days, Kate came back to see Bill. She was very angry. She said that she had asked an expert to examine the chairs and found that they were only Ming-styled pieces made in the last 50 years and not true antiques, and therefore worth at most only HK$8,000. Kate asked for her money back. Bill refuses to return the money to her.

Advise Kate.

(7 marks)

(See over the page for a continuation of Part B)

Question 4 (25 marks)

Answer all sections in this question.

Andy, Ben, Cody and Dave are entrepreneurs undertaking different business ventures. However, they have not been doing well in these ventures due to the occurrence of various events. They ask for your advice on their respective legal positions.

(a) Andy has entered into contracts with several restaurants in Hong Kong to supply them with fresh lobsters for the upcoming lobster festival. He has ordered a huge shipment of lobsters from a supplier in Sydney, Australia. Before the lobsters were shipped, however, the Australian government declared that lobsters were to be considered protected species of animals and, with immediate effect, exporting them from Australia would be illegal. (Assume that all contracts with the restaurants are on the same terms.)

Advise Andy on his legal position with regard to (i) the supply contract with the Australian supplier; and (ii) his supply contracts with the restaurants.

(7 marks)

(b) A Chinese New Year Bazaar ("Bazaar") was to be held on the grounds owned by Sunny Day Property Limited ("Sunny Day"). Ben rented a stall to sell dried seafood during the Bazaar. On the day before the opening of the Bazaar, Ben delivered the goods and placed them inside his stall, and securely locked them. That night however, Sunny Day's cleaner forgot to extinguish his cigarette when throwing it away, which led to a fire. The fire destroyed the panels of Ben's stall. Sunny Day's employees managed to put out the fire with water hoses and fire extinguishers, but the water and fire extinguisher's chemicals completely ruined Ben's merchandise.

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

Advise Ben on his legal position as regards (i) the destroyed goods and (ii) the rent he has pre-paid to Sunny Day.

(6 marks)

(c) For his new business venture, Cody agreed to pay Dan HK$100,000 to design a crowdfunding website. A HK$30,000 deposit was paid to Dan in advance. A law was subsequently passed in Hong Kong making crowdfunding, and therefore crowdfunding websites, illegal. Cody and Dan agreed that Dan should stop working on the website design. Dan has already spent over 80 hours working on the website, at an hourly rate of about HK$250, which was the rate agreed by the parties.

Advise Cody whether he can claim against Dan for the return of the deposit, and if so, whether he will be able to recover the whole of the deposit or only a portion of it.

(6 marks)

(d) Dave decided to purchase the shares in a company from John. During negotiations for the contract, Dave enquired about the state of the accounts of the company, specifically, whether the company was profitable. John said "I'm unsure, but it is my opinion that the company is profitable. However, I will check the accounts next week, if you don't hear from me, you can assume all is well". After a week, Dave hears nothing. The contract is signed, but when Dave received the accounts, he found that the company has not been profitable in the last 12 months.

Advise Dave whether he has any legal remedy.

(6 marks)

End of Part B

Part C (Introduction to Law of Torts)

Question 5 (25 marks)

On a Sunday afternoon, Mr. Fong was walking along a paved footpath within Penfold Park, a park in Shatin, New Territories, Hong Kong that is very popular amongst dog lovers. His dog, a 2-year-old placid Cavalier King Charles spaniel named Cooky, was playing with other dogs within 10 metres of Mr. Fong. All dogs were off leash, as was common practice in the park.

At the same time, Mrs. YC Wang, a woman in her early thirties, allowed her 11-year-old daughter, Emily, to walk their energetic Shiba Inu, Socks, also in Penfold Park. Socks was attached to an extendable leash with a spring mechanism that Emily was holding securely when they were on the footpath walking towards Mr. Fong. Suddenly, Cooky was attacked by another dog and howling in pain and distress. Alerted to the dog fight, Mr. Fong rushed towards Cooky to save her. The fight got Socks excited as well, who also started to run towards the scene, thereby tensioning his leash. Before Mr. Fong could reach Cooky, Emily had to let go off the leash because Socks had been pulling too strongly. The handle of leash flew with force against Mr. Fong, who was in the immediate vicinity, hurt his ankle and caused him to fall.

As a result of the fall, Mr. Fong suffered several injuries, including a fractured wrist. He was taken to the hospital, where he underwent surgery for his wrist fracture. He was required to wear a cast on his wrist for several weeks, during which he experienced pain and discomfort. The injuries also prevented him from working as a carpenter during his recovery period, leading to a loss of income. During this time, Mr. Fong could not take care of Cooky. Mr. Fong booked Cooky into an expensive dog hotel although his mother had offered to look after him for free. He thought that Cooky deserved a treat after being attacked in Penfold Park.

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

After Mr. Fong's accident, the following additional facts are established:

- The Penfold Park by-laws provide:

  15. No person shall cause or suffer any dog or other pet belonging to him/her or in his/her charge or otherwise under his/her control or custody to enter or remain in Penfold Park unless under proper control and effectively restrained from causing annoyance to any person, from worrying or disturbing any animal, bird or waterfowl and from entering any ornamental water.

  29. Any person who, in Penfold Park, contravenes any of the provisions of these Bye-laws [sic] may be requested to leave Penfold Park or, if circumstances require, be removed therefrom by the keeper or by any other official authorized by the Stewards.

- Mr. Fong did not have a valid dog licence for Cooky. It is a criminal offence under s.20 of the Rabies Regulation (Cap. 421A) to keep a dog over the age of five months without a licence.

- The dog that attacked Cooky was an Australian sheep dog called Matilda. Matilda was generally sociable. However, there had been one incident some years ago, when she had bitten another dog that came too close to her. Matilda, who was off leash at the time of the accident in Penfold Park, was owned by, and in the park, with Mabel Ma.

- There was a sign at the entrance to the dog area of Penfold Park that said: "Dog owners use this park at their own risk."

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

Provide the following advice, giving full reasons and referring to relevant legal principles and authorities:

(a) **Does Mr. Fong have a cause of action in negligence against YC Wang, Emily Wang and/or Mabel Ma for his injury and losses?**

(12 marks)

(b) **Assuming that Mr. Fong has a cause of action, are there any applicable defences?**

(8 marks)

(c) **Assuming that Mr. Fong has a valid claim, how are damages to be assessed?**

(5 marks)

(See the next page for a continuation of Part C)

Question 6 (25 marks)

"Water leakage, normally from the premises above, is a problem of considerable scale in Hong Kong. [...] Leakage cases are increasingly brought in negligence and nuisance [...] Indeed, there seems some confusion amongst counsel and judges as to the correct cause of action and principles in such cases. [...] It is submitted that water leakage cases would be best pleaded and decided on the basis of nuisance."

Rick Glofcheski, Tort Law in Hong Kong, 4th edition (2018), pp. 693-4.

(a) Explain the core principles of the action in private nuisance.

(20 marks)

(b) Why might it be advantageous for a plaintiff to proceed in nuisance, rather than negligence, in a water leakage case, as identified in the quote above?

(5 marks)

End of Part C

Part D (Criminal Law)

Question 7 (25 marks)

1. John, aged 16, and his mother, Lucy, have made an appointment to see you at your office. Lucy explained the difficulties John now faces. John has recently returned from a short holiday from Bangkok and during his stay, he had purchased cannabis from a store. Lucy emphasized that in Bangkok, it is legal to purchase cannabis which is freely available. He purchased and smoked the cannabis whilst in Bangkok.

   On John's return to Hong Kong, he met up with friends in Lan Kwai Fong. He spent considerable time drinking as well as partying. He then hailed a taxi and asked the taxi to take him to his home in the Mid-levels. During the course of the taxi ride, an argument broke out as to the route the driver was taking. When he arrived at his home, the meter displayed HK$100. John made it clear to the taxi-driver that he was not going to pay this since the normal fare from Lan Kwai Fong to his home is HK$50. A heated argument broke out. He threw a HK$50 note on the front seat and left the taxi. The driver got out and a fight took place, which ended when John pushed the taxi-driver backwards who then slipped and injured his arm. A watchman witnessed all of this and called the Police. John also kicked the taxi door, which resulted in a small dent. Everything was caught on CCTV. The Police arrived and John tried to explain what happened. The Police then decided to arrest everyone and took them to the police station. John was wearing a backpack. The Police asked him to open the backpack. They searched and found what they believed to be some traces of cannabis. The taxi-driver insisted on going to hospital. John gave a statement to the Police which explained as to what transpired in respect of the taxi ride but said nothing about the cannabis in his backpack. Everyone was released on police bail.

(See the next page for a continuation of Question 7)

2. Lucy made it clear to you that she was very concerned that John could face charges that would have an impact upon her son's future career. He is a bright student and was expected to be admitted to a well-known university and embark upon a degree that would lead to a professional qualification.

3. As to the cannabis, John explained that he did recollect utilising the same backpack whilst in Bangkok. It may very well be the case that some of the cannabis he purchased may have been left in the bag.

4. A Government Chemist Certificate certified the weight of the herbal cannabis as 0.2g. The medical report showed some bruising and tenderness on the taxi driver's arm. The repair to the taxi door was HK$2,500.

(a) What charge(s) and on what basis are likely to be brought against John?

(9 marks)

(b) What defences are available?

(8 marks)

(c) Advise John and his mother, Lucy, as to the best way forward to try to reduce the risk of a conviction.

(8 marks)

(See over the page for a continuation of Part D)

Question 8 (25 marks)

Henry and Winnie were husband and wife. One morning, Henry discovered in the purse of his wife a photo of Winnie and a man, both naked. Henry was furious and he believed that Winnie was having an affair with that man. He immediately took a knife and went to Winnie's work-place, where she worked as a waitress.

Henry confronted Winnie, demanding her to reveal the identity of the man depicted in the photo. An argument ensued. Winnie started attacking Henry with a serving tray from the restaurant. As Winnie kept hitting Henry with the tray, he took out the knife and stabbed her several times. Whilst she was lying on the ground, Henry kicked her repeatedly. She suffered multiple stab wounds and bruises as a result.

Winnie was rushed to the hospital for treatment. The doctor administered an insufficient dosage of pain relief medication to Winnie, and she died with intense pain shortly afterwards.

Henry was arrested for the offence of murder. Under caution, he said "I am very angry as my wife has had an affair with another man." In a subsequent video interview, he told the police that he brought along the knife to scare his wife, without the intention of hurting her. It was only because his wife scolded and hit him, that he stabbed her with the knife.

The autopsy report indicated that there were multiple bruises on Winnie's upper limbs and chest. The deceased also had 3 lacerations on her neck suggestive of cuts from a knife, one of the 3 cuts being potentially fatal.

(See the next page for a continuation of Question 8)

Discuss:

(a) **Is murder a statutory offence?**

(1 mark)

(b) **Which Ordinance sets out how the offender is punishable for committing the offence of murder? Assuming that Henry, at the time of the offence, is 17 years of age, would he be liable to be sentenced to life imprisonment?**

(2 marks)

(c) **To secure a conviction for the offence of murder, what does the prosecution have to establish under the present circumstances?**

(10 marks)

(d) **Discuss in detail, what defence, if any, Henry may raise?**

(12 marks)

End of Test Paper