

**2023 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF  
COMMON LAW**

Friday, 2 February 2024





# **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**