

**THE LAW SOCIETY OF HONG KONG**  
**OVERSEAS LAWYERS QUALIFICATION EXAMINATION**  
**2020 SUPPLEMENTARY INFORMATION PACKAGE**  
  
**HEAD V: PRINCIPLES OF COMMON LAW**

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*\* There were no Examination Papers created for this Head from 1998 to 2002, 2004 to 2005, 2007, 2012 and 2014*



# **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
- 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, (3<sup>rd</sup> ed., 2014)
- *D.K.Srivastava* (General Editor): 'Business Law in Hong Kong', Sweet & Maxwell Asia, (5<sup>th</sup> edition, 2017)
- *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 (3<sup>rd</sup> edition, 2019)
- *Rick Glofcheski*, Tort Law In Hong Kong (Revised 4<sup>th</sup> Edition 2018), Sweet and Maxwell
- *Stephen D. Mau*: 'Hong Kong Legal Principles', HK University Press (2<sup>nd</sup> edition, 2013)
- *Stefan H.C. Lo, Kevin Kwok-yin Cheng, Wing Hong Chui*, The Hong Kong Legal System, Cambridge University Press (2<sup>nd</sup> edition, 2020)
- *Stephen Hall*, Ho and Hall's Hong Kong Contract Law, LexisNexis (5<sup>th</sup> edition, 2019)
- *Victor Ho Wai-kin*, Criminal Law In Hong Kong, Wolters Kluwer (3<sup>rd</sup> edition, 2019)

## **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 10 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 2003, 2006, 2008, 2009, 2010, 2011, 2013, 2015, 2016, 2017, 2018 and 2019 Examinations\***

*\* There were no Examination Papers created for this Head from 1998 to 2002, 2004 to 2005, 2007, 2012 and 2014*



**Examiners' Comments on the 2003, 2006, 2008, 2009, 2010, 2011, 2013,  
2015, 2016 and 2017 Examinations**

**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 ten questions and the candidates were asked to attempt one question from each part. The candidates were given 30 minutes reading time. After the expiry of the reading time, each was given an oral examination by two Examiners.

A few more Hong Kong cases could have been given to substantiate the answers given.

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 answered those questions. Pleasingly, a number of answers revealed a superior understanding and analysis of the salient issues.

At times, a deeper understanding might have been provided by referring to the names (short citations are acceptable here) and facts of some applicable cases.

Past candidates performed better on questions concerning Contract Law and Legal System compared with questions on Tort and Criminal Law. For Criminal Law in particular, topics like "murder", "voluntary manslaughter" & "involuntary manslaughter" are not easy to tackle and future candidates may need to consider placing greater attention to those subjects, if they have not dealt with them before.



## **Examiners' Comments on the 2018 Examination**

### **Head V: Principles of Common Law**

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Perhaps, the longer time gap between the end of the 2018 written Heads and the start of the 2018 Head V examination gave candidates a false sense of security and they had not used the time well to revise.



## **Examiners' Comments on the 2019 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 ten 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.

A few more Hong Kong cases could have been given to substantiate the answers given.

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 answered those questions. Pleasingly, a number of answers revealed a superior understanding and analysis of the salient issues.

At times, a deeper understanding might have been provided by referring to the names (short citations are acceptable here) and facts of some applicable cases.

Past candidates performed better on questions concerning Contract Law and Legal System compared with questions on Tort and Criminal Law. For Criminal Law in particular, topics like "murder", "voluntary manslaughter" & "involuntary manslaughter" are not easy to tackle and future candidates may need to consider placing greater attention to those subjects, if they have not dealt with them before.





### **3. Past Examination Papers from 2017 to 2019**



**2017 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF  
COMMON LAW**

**Monday, 18 December 2017**





# 2017 Overseas Lawyers Qualification Examination

## Head V: Principles of Common Law

### Part A (Constitutional Law & Introduction to Legal System)

#### Question 1 (25 marks)

Olga, originally from Russia and now a permanent resident of Hong Kong, set up a small restaurant in Wanchai half-a-year ago.

The contractor who designed and carried out the renovation of Olga's restaurant claims that Olga owes him fees and expenses exceeding HK\$1,400,000 and has threatened to take Olga to court to recover such fees and expenses.

Boris booked the whole of Olga's restaurant for a private function on the night of 15 November but cancelled the booking at the last moment. Boris had agreed in advance and in writing with Olga a cancellation charge of HK\$20,000, but has so far failed to pay it. Olga wants to recover that charge.

Olga's restaurant was burgled on the night of 30 November. The police caught the burglar inside the restaurant with a handgun.

Olga is unfamiliar with the Hong Kong legal system.

**(a) Explain to her:**

- (i) the major law courts in Hong Kong and give an overview of such courts and their jurisdictions; and**

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

- (ii) Explain the differences between civil and criminal litigation in Hong Kong and clarify who may instigate what proceedings, the rights and considerations involved and the different standards of proof required. Also, you should, in light of the facts set out above, advise Olga in which law courts she is likely to appear or become involved.**
- (18 marks)**

Olga tells you she speaks no Chinese and passable English only. She is concerned that this may be a disadvantage to her in Hong Kong law courts.

- (b) Advise if Olga is right to be concerned.** **(2 marks)**

Olga is worried that, if she is taken to court by the contractor, a jury may award a penalty against her which may be more than the HK\$1,400,000 claimed by the contractor.

- (c) Advise Olga who is eligible to serve as a juror in Hong Kong, what the duties of such jurors are and whether Olga's worry is well founded.**
- (5 marks)**

*(See the next page for a continuation of Part A)*

**Question 2 (25 marks)**

- (a) "Equity follows the law" and "He who comes to equity must come with clean hands" are two often quoted maxims of equity. **Explain what they mean and how the Common Law and Rules of Equity are operating in Hong Kong.**

**(3 marks)**

- (b) Under the Basic Law, the Legislative Council's functions include the making of laws, approving budgets and public expenditure and monitoring the work of the government in general. **Give an overview of the law-making function of the Legislative Council.**

**(11 marks)**

- (c) **Besides statute law enacted in Hong Kong, what are the other sources of law in Hong Kong?**

**(11 marks)**

**End of Part A**

## **Part B (Law of Contract)**

### **Question 3 (25 marks)**

Goliath Limited ("Goliath") is a major smart phone manufacturer in Korea. It sources components from around the world and is one of the world's largest manufacturers of smart phones. David Limited ("David") is a maker of lithium ion batteries in China. It is a rather small company but has been supplying Chinese smart phone manufacturers and is gathering a good reputation as a reliable volume supplier.

Goliath has been working on a new model smart phone and heard of David's reputation as a reliable and cost-effective supplier. After contacting David, Goliath decided to explore doing business with David. As part of a due diligence process, Goliath stationed a technical team at David's factory in China for three months to test different batteries intended to be supplied with a prototype of the new smart phone.

After these three months of testing, Goliath and David signed a Supply Agreement for ten million Type A rechargeable lithium ion batteries ("Type A batteries") for US \$5 each, to be supplied by David to Goliath for installation into the new smart phone to be manufactured and sold by Goliath. In the Supply Agreement, David warrants that the Type A batteries will have capacity of 3,500 milliampere hour between charges with charger supplied by Goliath and good for at least 1,000 recharges, and that the batteries will be fit for their purpose. The Supply Agreement is governed by Hong Kong Law with exclusive jurisdiction conferred on the Hong Kong Courts.

The marketing for the smart phone gave Goliath a great deal of confidence and it sent a purchase order for 5 million of the Type A batteries. The batteries were delivered and when the smart phone was launched, all 5 million of the smart phones were sold out quickly, with the result that Goliath immediately put in an order for the rest of the 5 million Type A batteries.

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



Meanwhile, a week after the launch of the smart phones, a number began to explode, and some even exploded while stored in luggage cabinets of airplanes while in flight. Explosions of the smart phone then began to be reported from around the world. To manage the crisis, Goliath made a global recall of the smart phones and announced that it would stop selling the smart phones until the problem was identified.

Both David and Goliath decided to appoint Professor Donald Quixote, Professor of Electrical and Electronic Engineering of the Massachusetts Institute of Technology's Digital Communications Laboratory to find out what the problem was. Eighty of the returned exploded smart phones (with accessories, including charger) were supplied for Professor Quixote's examination. Also eighty new smart phones were provided to Professor Quixote. After two weeks, Professor Quixote provided the following report to David and Goliath:

1. Of the eighty exploded phones returned, seventy were found to contain Type A batteries produced by David. 10 contained batteries produced by unknown manufacturers.
2. The seventy batteries supplied by David were too tight to fit into the smart phones and as a result of this, the smart phones were prone to overheat and thereby exploded. Due to the fact that the smart phone was very thin, a 50 microns deviation would be enough to cause the heating problem. Most of the Type A batteries were between 60 – 80 microns oversize.
3. The smart phones with the unknown manufacturer's batteries did however fit well and on testing they had no problems.
4. All batteries tested had the electrical capacity warranted and therefore electrical properties could not be a cause of the problems.

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

Goliath then conducted a survey of the unsold stock among their dealers and found similar deviations of over 50 microns in the Type A batteries supplied by David. Meanwhile, three class actions have been filed in the United States Federal Courts seeking over US \$1 billion in damages in each case.

On the strength of this evidence, Goliath sought offers of compensation from David. David said that the batteries supplied were within normal manufacturing tolerances and Goliath during the three months of due diligence should be aware of the manufacturing tolerances that David was capable of. With negotiations at a standoff, Goliath started an action in the High Court alleging breach of warranty on the part of David and seeking the following damages and relief:

- (1) Price of the 5 million Type A batteries bought at US \$5 each, US \$25 million;
- (2) Loss of profit for 10 million smart phones at US \$100 each, US \$1,000 million;
- (3) Payment of claims from exploded phone owners, so far US \$1 million;
- (4) An indemnity for all other claims made against Goliath, including claims in the US Class Actions;
- (5) Damages for loss of commercial reputation;
- (6) Interest\*;
- (7) Costs\*.

You are acting as the Hong Kong Law Firm Partner engaged by David to defend the case in the Hong Kong High Court. **Explain to the Chief Executive Officer of David its possible defences to the action both as to liability and quantum (except on items (6) and (7) which are questions of procedural law which should be addressed by David later).**

**[\*No need to deal with items (6) and (7) of these claims in your answer.]**

**(25 marks)**

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

#### **Question 4 (25 marks)**

Tower Fitness, a popular gym, set up a large sign at its front entrance which reads as follows:

"Anyone using the gym does so at his own risk. We are not responsible for any loss or damage to property or any injury, however caused."

On Friday morning, before lectures, four law students Henry, Ian, John and Ken are at Tower Fitness. They have recently started doing an exercise routine called "Turbo Move", which has become very popular. "Turbo Move" involves the use of some gym equipment and is done to a series of music settings which vary the pace of the exercise routines as the routine progresses.

While they are working out, a deafening high screech suddenly fills the exercise room. Apparently the gym technician who was in charge of the music had carelessly handled the speakers. Shocked by the sound, everyone in the class put their hands to their ears. Caught off balance, all four boys fall down in the middle of their exercise routine. Henry rips his expensive "Prida" gym pants which cost him HK\$ 2,500. Ian complains of great pain in his elbow (as it turns out, Ian had fractured his elbow in the fall and is unable to do his part-time job as a cashier at a fast food shop for two weeks, and will lose HK\$2,000 in salary). John lets go of the weights he was holding which fall onto, and shatter a box of crystal flowers he had bought for his girlfriend (he had brought the box into the gym to show Ken). The crystal flowers had cost John HK\$1,000.

Ken, who is unhurt, offers to drive Henry and John to the lecture and to drive Ian to the doctor. As they have been delayed at the gym, Ken realises that his car has been in Watson Car Park for more than two hours.

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

Watson Car Park has a large sign at its entrance which reads as follows:

"First 2 hours' parking are free. Thereafter parking charges of HK\$600 per hour will apply."

Ken's car has been in the car park for 2 hours 5 minutes. He refuses to pay and drives away through an open gate of the car park. He subsequently received a demand for payment from Watson Car Park, which has been able to track his details through the close-circuit camera which has recorded the licence plate of his car.

You should assume that any part of an hour is counted and charged as a whole hour.

**What are:**

- (a) **Henry's, Ian's and John's rights against Tower Fitness;** (15 marks)
  
- (b) **Ken's defence against paying the parking charge from Watson Car Park;**  
**and** (6 marks)
  
- (c) **if Ken's defence against paying Watson Car Park fails, his claim against Tower Fitness for the parking charges.** (4 marks)

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

### **Question 5 (25 marks)**

Abraham's son, Isaac, aged 21, had graduated with a bachelor's degree in accounting from a UK university and was offered a training contract by a major accounting firm in London. However, at Abraham's request, Isaac returned to Hong Kong to study theology at the Baptist Theological Seminary ("Seminary") (a training college for pastors/ ministers).

Students are contractually obliged to live at the Seminary and be non-smokers and teetotalers during the one-year course. Isaac therefore gave up smoking and drinking alcohol.

Abraham, worried that Isaac would start smoking and drinking again under the pressure of tackling a new and unfamiliar course and preparing for the examinations, promised to pay Isaac HK\$5,000 if he did not smoke or drink at all until he had completed the course. Abraham also promised to buy Isaac an iPad if he passed the examinations.

Abraham is a pastor in charge of Eastern District Baptist Church and asked Isaac to prepare a report on the taxation and finances of the church. He was pleased after reading the report and said he would give Isaac HK\$10,000 for his hard work.

Isaac passed his examinations and has not started smoking or drinking again. Abraham has not made either of the promised payments or bought the iPad. Isaac seeks your advice as to whether Abraham is legally obliged to do so. **Advise Isaac.**

**(25 marks)**

**End of Part B**

## **Part C (Introduction to Law of Torts)**

### **Question 6 (25 marks)**

Amy is a keen marathon runner and trains each day by running along a footpath next to a busy highway near her home. One morning earlier this year as she was on her daily run, she received a call on her mobile phone telling her that her husband had suffered a heart attack at home. Amy immediately decided to run home by the shortest route possible. Without looking she jumped over the barrier separating the footpath from the highway intending to run across the highway to her home.

Amy landed on the highway in front of a bicycle being ridden at high speed by Bruce. Seeing Amy land in front of his bicycle, Bruce instinctively swerved to avoid hitting Amy and fell off his bicycle suffering severe head injuries.

Soon after this accident an ambulance was called to take Bruce to hospital. The Ambulance Company charges for its services. On the way to the hospital the ambulance stopped at an intersection for a red traffic light. Whilst the ambulance was stopped, a sudden gust of wind blew a large branch off a tree located near the intersection on land owned by Cathy. The branch fell onto the ambulance, damaging it badly and injuring Bruce's legs. Another ambulance eventually took Bruce to hospital.

Following these events, the following facts have been established by independent witness statements, police, and hospital reports:

- a. If Bruce had been wearing a bicycle helmet (which he was not) his head injuries would have been less severe.

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

- b. Bruce was riding on the highway in breach of the Road Safety Regulations which prohibit bicycle riding on the highway on which he was injured. Breach of these regulations can be punished by a fine and/or imprisonment.
  
- c. Cathy has the trees on her property regularly inspected by a professional tree safety company.

**Advise parties who have suffered injury, damage or loss on any tort actions they might bring to recover damages for their injuries, damage or losses. Support your discussion with reference to the relevant principles and authorities.**

**(25 marks)**

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

### **Question 7 (25 marks)**

Alfred and his wife Betty decided that they wished to move to a quiet rural area of Hong Kong as they were soon to retire from their stressful jobs in Central, Hong Kong. After a lot of searching they found a suitable house in a small village in the Sai Kung area of the New Territories. They chose their house because of its sea view and the quiet surrounding countryside.

When Alfred and Betty inspected the house they bought, they met their immediate neighbour, Charles, whose property was vacant. When Alfred and Betty moved into their house six months after buying it, they discovered that Charles had established a car repair business on his property, erecting a two-story workshop for his business. This building has blocked their sea view. The car repair business is extremely noisy with a lot of hammering and banging.

Alfred and Betty have spoken to Charles about the noise from his business and politely asked if he could shut the doors to his workshop when working to contain or reduce the noise. They also asked Charles if he could restrict the hours of his business to lessen their inconvenience. Charles reacted with hostility to these requests. He kept his workshop doors open and worked even longer hours and on Sundays which he had not previously worked.

Charles had obtained the necessary permission and approvals to construct the two-story building and to operate a car repair business on his property.

Alfred and Betty had planned to operate a dog breeding business in their retirement on their property. They had purchased at considerable expense many pedigree dogs for their business. The noise from Charles' car repair shop has made their dogs nervous and unable to breed.

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



**Alfred and Betty seek your advice as to whether they have any legal remedies in respect of the loss of their sea view and the noise from Charles' business.**

**(25 marks)**

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

### **Question 8 (25 marks)**

In *White v Chief Constable of South Yorkshire* [1999] 2 AC 455 Lord Steyn said:

"Policy considerations have undoubtedly played a role in shaping the law governing recovery for pure psychiatric harm. The common law imposes different rules for the recovery of compensation for physical injury and psychiatric harm."

**Discuss with reference to the relevant cases:**

- (a) **The policy concerns that have shaped the law governing recovery for pure psychiatric harm and how these policy concerns have been dealt with in the rules developed by the courts for pure psychiatric harm claims, and**

**(10 marks)**

- (b) **What rules have the courts developed to deal with pure psychiatric harm claims.**

**(15 marks)**

**End of Part C**

## Part D (Criminal Law)

### Question 9 (25 marks)

Albert, 50 years of age, and his girl friend Bobo, 22, have been cohabiting together for 2 years. About 3 months ago, Albert began to suspect that Bobo was being unfaithful to him. This led to a deterioration of the relationship between them. Upon returning home one evening, Albert accused Bobo of having gone out with another man. An argument ensued. Bobo taunted Albert as to his looks, old age and sexual prowess compared to the other men that she had been with before and admitted to having been with another man just an hour before. On hearing this, Albert became enraged and wanted to teach Bobo a lesson by slashing her face with a knife. He fetched a knife from the kitchen and, in a fury and out of control, stabbed Bobo a number of times. Bobo died as a result of the stabbings.

After killing Bobo, Albert called up his friend, Charles, to come up to his apartment to help dispose of the body. They put the deceased into luggage and dumped the corpse into the sea.

Both Albert and Charles were arrested. The forensic pathologist found 14 cut wounds over Bobo's face and 2 fatal stab wounds in her vital organs. Given the number of wounds and the nature of the attack, the forensic expert concluded that the infliction of violence on Bobo was a "frenzied attack".

**(a) What criminal liability, if any, may Albert and Charles have for the death of Bobo?**

**(15 marks)**

**(b) What possible defence, if any, may be raised by Albert?**

**(10 marks)**

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

### **Question 10 (25 marks)**

Jim has set up a company with his business partner Joe in Hong Kong. Sherry is the personal assistant and secretary to Jim. The company is called "Scumco General Trading" ("Scumco"). Jim decides to import into Hong Kong diamonds from various places overseas. Joe has been informed about this project. But, Joe does not take any active part in the day-to-day running of Scumco. He simply shares any profits or losses.

Jim has become aware of two sellers of diamonds in different parts of the world. Deal 1 is from X, a diamond dealer operating from Dubai. Jim has dealt with X previously and knows that he can be untrustworthy. After paying the price, Jim collects the diamonds from the airport in Hong Kong. It turns out that the diamonds have been stolen from the real owner in Dubai.

Deal 2 is from Y. Y operates from Amsterdam. Y has given Jim a Bill of Sale for these diamonds and a receipt for the price. The price was below market value but was not very cheap. Jim collects the parcel containing the diamonds from DHL. Having already sold the diamonds to Rebecca (a third party), the diamonds turn out to be fake. Also, in the parcel containing the fake diamonds is a quantity of cocaine.

Sherry has assisted Jim with the above deals. She has dealt with paperwork and has had direct contact with the sellers.

Deal 1.

Jim, Joe and Sherry are charged with conspiracy to handle or receive stolen goods. Jim is alternatively charged with a substantive count of receiving stolen goods.

*(See the next page for a continuation of Question 10)*

Deal 2.

Jim, Joe and Sherry are charged with conspiracy to defraud and an alternative charge of attempting to obtain property by deception. They are also charged with trafficking in dangerous drugs.

**Explain and discuss the possible criminal liability of Jim, Sherry and Joe. Discuss all issues relevant to either possible guilt or possible innocence.**

**(25 marks)**

**End of Test Paper**



**2018 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF  
COMMON LAW**

Tuesday, 15 January 2019







# 2018 Overseas Lawyers Qualification Examination

## Head V: Principles of Common Law

### Part A (Constitutional Law & Introduction to Legal System)

#### Question 1 (25 marks)

"The jury system in Hong Kong is a relic of the past. It is not very efficient in terms of costs or in dispensing justice."

- (a) **Do you agree or disagree with the above statement? Support your reasons by describing the function of a jury in a trial in Hong Kong and the advantages and/ or disadvantages of such a system.**

**(10 marks)**

Hong Kong residents have the right to seek judicial review in the courts of the acts of the executive authorities and their personnel. Various independent organizations, including the Office of the Ombudsman, exist also to enable citizens in Hong Kong to challenge maladministration and inappropriate decisions made by executive authorities.

- (b) **Advise how the process of judicial review and the Ombudsman help aggrieved Hong Kong citizens. Describe the two forms of recourse mentioned above, the powers and limitations of the judicial review process and the Ombudsman respectively and how the two forms of recourse interact with each other.**

**(15 marks)**

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

## **Question 2 (25 marks)**

"There is hardly any aspect of the education, welfare, health, employment, housing, income and public conduct of the citizen that is not regulated by statute." - David R. Miers and Alan C. Page, *Legislation*, 2nd edition (London: Sweet & Maxwell, 1990), page ix.

- (a) Give an overview of the law-making function of Hong Kong's Legislative Council and in the process, distinguish between Government bills and Members' bills as well as highlight where the balance of powers lies between the legislature and the executive.**

**(13 marks)**

"It is to the glory and happiness of our excellent constitution, that to prevent injustice no man is concluded by the first judgment; but that if he apprehends himself to be aggrieved, he has another Court to which he can resort for relief; for this purpose the law furnishes him with appeals, with writs of error and false judgment." – *Lord Pratt CJ, R v Cambridge University, ex parte Bentley (1723) 1 Str 557.*

- (b) Give an account of the Hong Kong courts' criminal jurisdiction and their functions. Discuss if the above obiter dictum is still true for Hong Kong's criminal law courts.**

**(12 marks)**

**End of Part A**

## Part B (Law of Contract)

### Question 3 (25 marks)

- (a) Nancy sells a car to Mandy. After the sale is over, Nancy promises Mandy that none of the tyres is a retread. This is not true. **Advise Mandy.**

(3 marks)

- (b) Ben owes David HK\$50,000. Fred comes along and promises Ben HK\$5,000 if Ben pays David the HK\$50,000. Ben pays David the HK\$50,000. Fred fails to pay Ben HK\$5,000. **Advise Ben.**

(4 marks)

- (c) Anne runs a clothes shop next to Charlotte's shoe shop. Anne is unhappy about a huge sign Charlotte has put up outside Charlotte's shop abutting Anne's shop. Anne's repeated complaints regarding the sign have been largely ignored by Charlotte. That is until Anne threatened to go to the High Court to seek an order to have the sign removed. To avoid trouble, Charlotte promised Anne to take down the sign if Anne will agree not to go to court. Anne has agreed to this proposal.

Meanwhile Charlotte has spoken with her friend, Emily, who teaches land law at university. She advised Charlotte (correctly) that the erection of the sign (in the position it is in) is lawful and the size of the sign is well within the legal limit. Charlotte then promises to pay Emily HK\$1,000 for her advice as soon as Charlotte has a chance to go to the bank.

Charlotte has still not removed the sign and has so far failed to pay HK\$1,000 to Emily.

**Advise Anne and Emily.**

(18 marks)

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

#### **Question 4 (25 marks)**

IIL, a Hong Kong company, and China Gas, a People's Republic of China ("PRC") company, entered into an agreement whereby China Gas will build a gas plant (the "Gas Plant") for IIL in Hunan, PRC using gas from the Changsha Landfill 20 km away (the "Agreement"). The Agreement provides that the Gas Plant will include land permitted for use for a gas plant (the "Land"), a pipeline from the Changsha Landfill with extraction rights for 70 years and rights of way along its passage to the Gas Plant as well as land with user rights for 70 years for the use of the Gas Plant and that the Gas Plant shall be ready for production within 48 months from date of the execution of the Agreement and commencement of work shall take place within 180 days of the execution of the Agreement. The building work shall be in 4 stages.

Before entering into the Agreement, China Gas produced to IIL a Valuation Certificate purporting to have been issued by an independent certified land valuer, certifying that the value of the Land is RMB 150 million on the open market as at date of valuation. China Gas also provided documentation that the Land was ready for transfer to IIL with full rights to enable IIL to take gas from the Changsha Landfill, to transport the gas from pipes along a designated route and to operate the Gas Plant.

The cost (inclusive of the Land) of HK\$400 million is to be paid by IIL to China Gas in stages as follows:

- (1) within 30 days upon the execution of the Agreement, HK\$150 million, to cover the cost of the Land (and the Land and all rights pertaining thereto shall be transferred to IIL within 30 days of this payment of the first HK\$150 million);

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

(2) within 7 days upon the happening of the following events:

- a. The issue of a certificate by China Gas Construction, a subsidiary of China Gas, the project manager appointed by China Gas and IIL (the "Project Manager") of date of commencement of building work, HK\$50 million;
- b. The issue of a certificate by the Project Manager of completion of each of 4 stages of building work as defined in the Agreement, HK\$50 million.

IIL has on site its own supervisory and management team and China Gas and the Project Manager shall provide IIL with access to all information relevant to the performance of the Agreement.

The Agreement contains the following clause:

*"This agreement shall constitute the entire contract of the parties hereto with respect to the object hereof and supersedes all prior oral or written agreements, representation and contracts with respect to the object hereof."*

Upon the execution of the Agreement, IIL also signed on the same day, an agreement with Hunan Gas whereby IIL agreed to supply gas to Hunan Gas and Hunan Gas will take such gas (the "Hunan Agreement") 60 months from the date of the execution of the Agreement (between IIL and China Gas). Both the Agreement and the Hunan Agreement are governed by Hong Kong law. There is no restriction against assignment in either the Agreement or the Hunan Agreement.

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

The first payment of HK\$150 million was duly paid by IIL to China Gas but the land rights were not transferred within the 30 days of this payment as agreed. Nothing happened in the next few months and meanwhile 180 days after the execution has passed and there is still no sign of commencement of works either on the pipeline or the Gas Plant. The Project Manager has recently issued the Certificate of Commencement of Works and a demand for payment of HK\$50 million has been sent by China Gas to IIL. Meanwhile, IIL's on-site manager has discovered that the person who signed the valuation report was in fact not a registered valuer. He then commissioned another valuation report from a registered valuer who valued the Land at RMB 50 million, the reason for such a large discrepancy being that the transactions used by the previous valuer were directly based (with no adjustment or discussion of the reasons for comparability) on general commercial property values in the City of Changsha and some transactional comparables were in fact non-existent. It was also discovered that the Land was granted to China Gas for only RMB 50 million by the local authority 3 months before the Agreement by an administrative order (never disclosed to IIL).

**The CEO of IIL has come to you for advice and asks if he could walk away from what is turning out to be a potentially sour deal and if so, what are the consequences with regard to the Agreement with Hunan Gas.**

**(25 marks)**

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

## **Question 5 (25 marks)**

The Hong Kong Jockey Club ("the Club") has decided to host the Asian Championship Horse Racing Meeting ("the Race") on 5, 6 and 7 September 2018.

To accommodate the larger anticipated attendance, the Club decided to undertake some construction works to its Shatin racecourse as follows:

- (1) The Club entered into a contract with Tarzan Builders ("Tarzan Builders") to:
  - extend the current car parking capacity by building an extension carpark next to the current carpark (the "Extension"); and
  - widen the existing access road to the current carpark - the access road would have a new lane which would lead to the entrance to the extension carpark.

Tarzan Builders were required under the contract to complete the Extension by 31 July 2018.

The Club paid a deposit of HK\$2,000,000 on signing the contract. The balance of HK\$18,000,000 was required to be paid by 31 August 2018.

- (2) To upgrade the seating, the Club also contracted with Allsides Ltd. ("Allsides") to replace all the seats in the race stands. The seats were to be of four different colours to designate different sections of the race stands. It was stated in the contract that the seats were to be in place by 31 July 2018. The cost for the seating work was HK\$5,000,000.

It was intended that two local race meetings would be run at the Shatin racecourse during August 2018 to test out the new facilities before the Race.

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

The following events have occurred:

- (i) There was heavy rain in Hong Kong in mid-July 2018 and the whole of the Shatin racecourse, being low-lying, was flooded. The Race had to be cancelled and could not be rescheduled as the overseas jockeys, trainers and horses were all scheduled to appear at other races overseas for the rest of the year.
- (ii) The Extension, where cement and paintworks were still very wet and being left to dry, was also flooded as part of it was at sub-basement level. Some of the cement has fallen off and the paintwork has been ruined as the floodwaters have left water marks. The access road has also been flooded. As proper drainage had not yet been put in place, the flooding made it impossible for carpark to be built in the area. Tarzan Builders had paid out approximately HK\$1,000,000 in expenses for workers and materials.
- (iii) Allsides was running behind schedule in their replacement of the seats and hurriedly finished installing them on 31 July 2018. Some of the seats were badly fitted and rocked to and fro, while some of the seats were of the wrong colour. As a result, admission to the 2 local races in August 2018 had to be limited.
- (iv) Ms. Wong owns a flat in Shatin which has an unobstructed view of the Shatin racecourse. She rented it out through Air BnB for the three days of the Race for HK\$10,000 to Mr. and Mrs. Smith ("the Smiths") from Australia. The Smiths had paid a deposit of HK\$2,000 on entering into the contract with Ms. Wong, and were supposed to pay the balance of HK\$8,000 on the first day of the Race. The Smiths have now notified Ms. Wong that they will no longer travel to Hong Kong since the Race has been cancelled.

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



**Advise, with an explanation of the law involved:**

**(a) the Club in respect of:**

**(i) Tarzan Builders' claim against the Club for the balance of HK\$18,000,000, i.e. the balance of the monies they say are due; and**

**(9 marks)**

**(ii) Allsides' claim against the Club for the full amount of HK\$5,000,000 for supply of the seating.**

**(8 marks)**

**(b) Ms. Wong who is seeking to recover the balance of HK\$8,000 from the Smiths. (Ignore any discussion of payments that need to be routed through Air BnB.)**

**(8 marks)**

**In relation to the contract between the Club and Tarzan Builders, you can assume that there is no force majeure clause or any provision which requires Tarzan Builders to rebuild in a force majeure situation or that it bears all of the risk up to and including completion of all the building works. You can also assume that the deposit was paid by the Club to Tarzan Builders.**

**End of Part B**

## Part C (Introduction to Law of Torts)

### Question 6 (25 marks)

Angel owns a small successful restaurant, Angel's Adventure ("AA") in Shatin, Hong Kong. AA specializes in making noodles and dumplings. Angel is at AA everyday supervising her business. The restaurant was very busy on Saturday, 8 September 2018 when a number of incidents occurred.

At 7:00 p.m., Betty, who was working in the AA kitchen, was carrying a large container of boiling water used for noodle making. The container was very heavy and Betty suddenly dropped the container as it was too heavy for her to carry. Charles, an employee of AA, who was in the kitchen, was badly burnt by the boiling water as was Betty.

Danielle, a customer in the restaurant, upon hearing Betty's and Charles' screaming in pain after being burnt, ran towards the kitchen to see if she could help. On entering the kitchen, Danielle slipped on the water that had been spilt on the floor and fell, suffering severe abdominal injuries.

Betty, Charles and Danielle were taken to hospital immediately by ambulance. Following these events, the following facts have been established by independent witness statements, police and hospital reports:

- a) At the time of the injury to Betty, she was a convicted prisoner serving a prison sentence under the custody and control of the Hong Kong Prison Service ("HKPS"). As part of its programme to prepare prisoners for their release and return to society, the HKPS operates a day-release programme. Under this programme, Betty was granted day-release to work for an approved employer.

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

AA was an approved employer. Betty worked for AA for 3 days a week returning to prison at the end of each working day. AA did not pay Betty for her work and agreed with the HKPS that any prisoners assigned to them would not be given dangerous work.

- b) Betty had on several occasions told Angel that she found it difficult to carry the container of boiling water. Angel merely told Betty to get another person to help her carry the boiling water.
- c) At the time she slipped on the wet floor, Danielle was five months pregnant. The fall severely injured her unborn child, Edward, who was born with severe physical deformities as a result of Danielle's fall.

**Discuss any tort actions that the injured parties might bring to recover damages for their injuries and losses. Support your discussion with reference to the relevant principles and cases.**

**(25 marks)**

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

### **Question 7 (25 marks)**

In Glofcheski, Tort Law in Hong Kong (Revised Fourth Edition 2018) page 184, the author states:

*"In Robinson v Chief Constable of West Yorkshire Police [2018] 2 WLR 595... The court confirmed (if indeed it was necessary to do so) that the three-fold Caparo test was not a pre-requisite for a duty of care in all cases, and did not apply to straightforward cases involving the infliction of injury, what the court called positive acts as opposed to omissions. On that point Robinson merely confirmed what was already the practice of Hong Kong courts."*

**Discuss the practice and approach of the Hong Kong Courts for determining the existence of a duty of care in a negligence claim. In your discussion, refer to the relevant cases and principles used by the Hong Kong Courts on this issue.**

**(25 marks)**

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

### **Question 8 (25 marks)**

Jack has spent a considerable amount of time driving his car around a public carpark in Central looking for a vacant parking space. He finally sees a vacant space and stops his car to reverse into the space. Ken, who has just entered the carpark, sees the same vacant space and drives directly into it, preventing Jack from parking in it.

Jack is very angry at Ken parking in what he considered should be his parking space, and jumps out of his car cursing Ken and waving his fist at Ken. Jack says to Ken, "If I were not in a hurry to attend an important meeting, I would punch you for taking my parking space."

Despite Jack's words, Ken was frightened at Jack's abusive language and threatening behaviour and runs over to Jack to try to calm him down. Jack, fearing that Ken is about to attack him, punches Ken, causing him to fall to the ground.

Lenny, a friend of Ken who was a passenger in his car, on seeing Ken fall to the ground, gets out of the car and says to Jack in a loud voice, "I am arresting you for punching Ken. Don't move! I am going to call the police. Stay where you are until the police arrive." As Lenny is a very large man, Jack reluctantly obeys Lenny. Jack stands still and does not move. The police are called by Lenny and when they arrive, they take statements from Jack, Ken and Lenny.

**Advise all parties as to their possible tort claims arising from the events described. Discuss all relevant causes of action together with the relevant legal principles and cases in your answer.**

**(25 marks)**

**End of Part C**

## **Part D (Criminal Law)**

### **Question 9 (25 marks)**

David, a drugs abuser for many years, had a long-standing grudge against his neighbour, Winnie. One evening, David was high on drugs after consuming some cocaine. He armed himself with a hammer and followed Winnie into a lift when she was on her way home. Inside the lift, David repeatedly assaulted Winnie with the hammer. She put up a strong resistance in defending herself. He was afraid she might scream for help, so he gagged her with a piece of cloth and bound her neck, hands and legs with a rope. David then fled.

The police arrived at the scene to investigate and found Winnie dead. The forensic pathologist who conducted the post mortem concluded by saying:

"There were 16 areas of injury on the victim's abdomen, arms and legs. A long piece of rope was secured tightly with a knot at the back of the neck. The rope passed over the back of the body to loop around the ligature which tied the hands and legs together. The victim had been trussed up without hope of escape. The autopsy findings indicated that the death of the victim resulted, not from the bodily injuries, but from ligature strangulation caused by the rope around her neck."

David was subsequently arrested for the offence of murder. In a video-recorded interview, he voluntarily admitted that assaulting Winnie was a reprisal attack, but denied that he had any intention to kill the deceased. He also told the police that he, at the time of the offence, did not know what he was doing as he was intoxicated by drugs. A psychiatrist confirmed that at the time of the killing, David was suffering from a psychosis induced by long-term cocaine consumption and that he was unable to resist taking the cocaine.

*(See the next page for a continuation of Question 9)*

- (a) Briefly discuss the evolution of mens rea for murder. (7 marks)
- (b) Should David be liable for murder if he did not intend to kill Winnie?  
(8 marks)
- (c) Explain what possible defence or defences to the murder charge David may rely on.  
(10 marks)

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

### **Question 10 (25 marks)**

Tommy was seen acting furtively inside a department store. Police officers in plain clothes thus placed him under close observation. He was served by a salesman in the store. He asked to buy an expensive diamond ring. He produced a Visa credit card ("the Card") in order to settle payment. The salesman proceeded with the transaction but the card centre declined payment. Tommy quickly took back the Card and left the shop. The police officers then intercepted Tommy. He, after admitting to the police that he had picked up the Card on the street half-an-hour earlier, remained silent. Subsequent police investigation confirmed from Cindy, the true owner of the Card, that she had lost the Card about half-an-hour before Tommy was arrested.

The police later took Tommy to his residence, where he lives alone, for a search. Three stolen motorcycles were found inside his house. It was subsequently ascertained that they had been stolen between 3 and 5 months ago. A large number of tools, including spray-painting guns and metal grinders, were found. The spray-painting equipment can be used to disguise a stolen motorcycle and the grinders can be used to remove chassis or engine numbers stamped on the metal. It was discovered that this had been done to all three motorcycles that were recovered. All of the motorcycles now had a different number plate and had been registered in Tommy's name.

**What charge(s) (and on what basis) is likely be brought against Tommy in respect of-**

- (a) the Card, (9 marks)**
  
- (b) his attempt to use the Card to purchase the diamond ring, and (8 marks)**
  
- (c) the three motorcycles found in his house. (8 marks)**

[Note: The facts of Question 10 are designed to be equivocal, inviting candidates to identify and discuss the issues of the case.]

**End of Test Paper**



**2019 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF  
COMMON LAW**

Friday, 17 January 2020





# 2019 Overseas Lawyers Qualification Examination

## Head V: Principles of Common Law

### Part A (Constitutional Law & Introduction to Legal System)

#### Question 1 (25 marks)

##### Part A

"He who comes to equity must come with clean hands" is an often quoted maxim of equity.

- (a) Explain (i) what that maxim means, and (ii) the major distinction between common law and the rules of equity.

(5 marks)

##### Part B

A number of principles of defence in criminal cases, which are in accordance with Article 14 of the International Covenant on Civil and Political Rights (applied to Hong Kong by the Hong Kong Bill of Rights Ordinance, Cap. 383), have been incorporated in the Criminal Procedure Ordinance (Cap. 221), Legal Aid in Criminal Cases Rules (Cap. 221D), or absorbed into the common law. The Hong Kong Basic Law guarantees the preservation of these rights.

- (b) Name 5 of those rights.

(5 marks)

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

Part C

- (c) Give reasons why you agree (or disagree) with the statement that "Hong Kong Basic Law offers a high degree of separation that the Hong Kong courts enjoy from institutions on the mainland of the People's Republic of China".

(15 marks)

*(See the next page for a continuation of Part A)*

## **Question 2 (25 marks)**

### Part A

- (a) Is third-party litigation funding permitted in Hong Kong? If the answer is no, explain why and are there exceptions?**

**(5 marks)**

### Part B

Your friend has been selected for jury service in Hong Kong. He has asked you for a succinct explanation of a jury trial. He has also asked if he can during the trial call you for advice on matters arising out of the trial.

- (b) What would you tell your friend?**

**(5 marks)**

### Part C

- (c) Explain the doctrine of judicial precedent and how it works within the Hong Kong court system.**

**(15 marks)**

**End of Part A**

## **Part B (Law of Contract)**

### **Question 3 (25 marks)**

Cherry owns an antique shop on Cat Street.

Walking past the shop one day, Kitty saw a vase on display in the shop window described as being of early Ming Dynasty and priced at HK\$28,000. Kitty bought the vase from Cherry. Both Cherry and Kitty believed that the vase had been accurately described as early Ming Dynasty. However, the vase turned out to be an excellent fake.

There was another vase on display in the shop window offered for sale at HK\$9,000. Lucy, believing that it was of early Ching Dynasty, agreed to buy it. In fact, the vase was made in the late Ching Dynasty and accordingly was worth much less than HK\$9,000. Cherry knew of Lucy's mistake but said nothing.

**Advise the parties of their respective contractual rights and liabilities as well as the remedies available to each of them in the two sales described above.**

**(25 marks)**

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

#### **Question 4 (25 marks)**

'Super Jupiter' is the 2019 hip-hop group of the year and is very popular. With their Asian tour coming up in November 2019, they decided to make some personnel changes and on 1 July 2019 they entered into the following contracts:

- They hired a new singer, Ebony, who will receive a salary of HK\$2,000,000 a year.
- They engaged Neil to be their new manager at HK\$1,500,000 a year.
- They also signed up Craig as a Stage Manager at HK\$400,000 a year.

The following subsequently occurred (after the above contracts had been signed):

- Ebony was not popular with the fans, so Super Jupiter advised her that they would reduce her salary to HK\$1,500,000 a year. Ebony accepted this because she needed the money to help pay for her brother's university fees.
- Super Jupiter heard that their rival, 'Marvellous Mars', was trying to poach Neil. To prevent Neil from leaving, they offered him an extra HK\$500,000 a year.
- Craig told the group in September 2019 that another group, 'Viva Venus', was offering him more money as Senior Stage Manager and he intended to leave. Since the tour was approaching, Super Jupiter had no choice but to agree to raise his salary to HK\$500,000 a year and make him Head of Stage Management.

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

The Asian tour was very successful, but now:

- Super Jupiter does not want to pay the higher fees to Neil and Craig.
- Ebony also wants to be paid the original salary under her 1 July 2019 contract.

**Advise Super Jupiter. You may ignore all issues relating to employment law.**

**(25 marks)**

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



## Question 5 (25 marks)

### Part A

Cherry Chan was a promising young singer. In December 2018, when she was 16, she entered into a 3-year agreement with Yvonne Yeung, a noted singing coach. Yvonne undertook to organize Cherry's training and decide which competitions she should sing in. In return, Cherry agreed to follow Yvonne's advice and to pay her 20 per cent of her winnings from singing competitions.

In December 2019, Cherry disobeyed Yvonne's instruction to sing in the National Pop Song Singing Competition in Beijing, where the total prize money was equivalent to HK\$1.8 million. Instead, Cherry stayed in Hong Kong to defend her title at the New Territories Regional Singing Competition, where the total prize money was only HK\$10,000.

- (a) **What is the position as to the enforceability of Cherry Chan's contract with Yvonne Yeung?**

**(10 marks)**

### Part B

Happy Bakers Ltd. ("Happy Bakers") produces and sells pastries. It signed a contract with Fawltly Tools Ltd. ("Fawltly Tools") to repair one of its baking ovens, at a cost of HK\$1,000. Fawltly Tools' employee reassembled the oven negligently, so that the first

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

time it was used the interior of the oven cracked and the oven was rendered beyond repair. The cost of replacing the oven is HK\$8,000. Happy Bakers was unable to obtain a replacement oven for 3 weeks. During this period it is estimated that the lack of the oven reduced Happy Bakers' profits by HK\$1,400 per week. Moreover, Happy Bakers missed out on the chance to bid for a very lucrative contract, which would have produced a profit of HK\$2,000.

**Advise Happy Bakers as to the damages it can claim for Fawltly Tools' breach of contract.**

**(15 marks)**

**End of Part B**

## Part C (Introduction to Law of Torts)

### Question 6 (25 marks)

Joe's Juice Ltd. ("JJ") has developed a popular drink called Durian Delight. This drink is made by extracting the pulp from fresh durians and mixing it with coconut water. JJ has been manufacturing Durian Delight in its factory at an industrial estate in Tai Po, New Territories. The factory has been operating for 2 years. As the government has a policy of encouraging the start up of small manufacturing enterprises producing export goods, it readily granted JJ planning permission for its factory which produces a very strong unpleasant odour released by the many durians it uses.

The occupiers of a nearby residential building, Happy Homes, have complained about the strong durian smell which has emanated from JJ's premises since it started its operations.

Mrs. Chan, an owner of a flat in Happy Homes, says that the fumes and smell from JJ's manufacturing operations have killed her valuable collection of sensitive rose plants growing on her balcony.

Mr. Ding lives rent-free at a flat owned by his father in Happy Homes. Mr. Ding has complained that because of the fumes and odour from JJ's premises, he has lost his sense of smell and is unable to sleep at night. As a result, he is suffering from severe exhaustion which is affecting his job performance.

JJ does not care about the complaints made by the various residents of Happy Homes. JJ feels that they have chosen to live in a residential building next to an industrial area and have nothing to complain about.

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

As its business is doing so well, JJ is thinking of expanding its business which will involve increasing the size of its factory. As part of its expansion plans, JJ employed a contractor to check its waste pipes to see if they were adequate for expanded production of Durian Delight. Whilst the pipes were being checked, one of the pipes burst, and the waste substances in the waste pipes spread into nearby pipes supplying water to Happy Homes. The result was that the water supply to Happy Homes was contaminated and unusable for a significant period of time.

- (a) Mrs. Chan and Mr. Ding seek your advice as to whether they have any legal remedies in respect of the loss and damage they have suffered.**

**(20 marks)**

- (b) The residents of Happy Homes seek your advice as to whether they have any legal remedies in respect of the contamination of their water supply.**

**(5 marks)**

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

### **Question 7 (25 marks)**

The Happy Healing Hospital ("Hospital") is a privately owned and operated hospital located in the New Territories. The Hospital specializes in treating patients who suffer from long-term illnesses and require specialist care.

Friday, 9 August 2019 was a busy and eventful day at the Hospital.

At 11:00 a.m., Angel, a long-term patient in the Hospital, gave an hour-long lecture on stock market investments to a group of fellow patients who voluntarily attended her lecture. At the end of the lecture, Angel said, "My stock market tip for today is ABC Co. Ltd. This is a well-run listed Hong Kong company with great growth potential".

Betty, a patient in the Hospital, on hearing Angel's investment tip, immediately called her stock broker, Charlie and asked him to invest all her savings of HK\$10 million in ABC Co. Ltd. Charlie immediately complied with Betty's request and bought HK\$10 million dollars worth of shares in ABC Co. Ltd.

At 3:00 p.m., Betty saw an announcement by the Hong Kong Stock Exchange that trading in ABC Co. Ltd. shares had been suspended as the company had been petitioned for winding-up. The winding-up meant that shareholders in the company would likely lose all the money which they had invested in ABC Co. Ltd.

The following facts have been established by independent witness statements, police reports and an investigation by the Hospital:

- a) The Hospital, to promote the recovery of its patients, has for a number of years organized a series of free lectures for its patients.

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

- b) Angel was a stockbroker who had worked at a leading investment firm. The Hospital asked Angel to deliver weekly lectures on finance and investment topics, but told her that she was not to give investment advice.
- c) Angel had given lectures weekly for six months prior to 9 August 2019. Unbeknown to the Hospital, Angel gave an investment tip or investment advice at the end of each of her lectures.
- d) Betty had attended Angel's weekly lectures for the four months prior to 9 August 2019. Betty had from time to time relied on Angel's investment tips or investment advice and had made money in reliance on such tips and advice.
- e) Angel was not paid for her weekly lectures, but the Hospital gave her a 5% discount on the fees and charges she had to pay the Hospital as a patient.
- f) Angel had done no research into the financial position of ABC Co. Ltd. She had heard from a friend that it was a good company to invest in.
- g) Charlie was aware, when Betty called him, that ABC Co. Ltd. was in financial difficulties. He did not mention this to Betty as he did not want to lose his commission on Betty's purchase of shares in the company.

**Advise Betty as to her possible tort claims for recovering damages for her potential HK\$10 million loss. Discuss all relevant causes of action, legal principles and cases.**

**(25 marks)**

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

### **Question 8 (25 marks)**

Section 21 of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) states in part:

- (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage ...
  
- (10) "fault" means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this section, give rise to the defence of contributory negligence.

**Discuss the purpose and significance of the above legislation and its interpretation by the courts in respect of negligence claims.**

**(25 marks)**

**End of Part C**

## **Part D (Criminal Law)**

### **Question 9 (25 marks)**

Albert, a six-foot tall athlete, was approached by Bebe, an attractive lady but a stranger to Albert, at a bar. After drinking and chatting, Bebe agreed to go to Albert's apartment to have sex.

Later, at Albert's home, whilst Albert was kissing Bebe, she demanded he pay her \$20,000 in exchange for sexual advances. Albert thought that Bebe was trying to take advantage of him financially. A fierce argument ensued. During the course of the argument, Albert slapped Bebe a number of times. Bebe cried out loudly for help. She also fought back by repeatedly punching Albert's face and squeezing his genitals. Albert did not want her to shout, so he placed his hands over her mouth in order to silence her. Bebe became unconscious shortly afterwards. In a panic and having waited for a few hours, Albert decided to take Bebe to a nearby pier and dump her body in the sea, which he did.

After a lengthy investigation, the police arrested Albert for murder. In a subsequent video interview, Albert explained to the police the events that occurred on that day. He said that Bebe seduced him when he was having a drink at the bar. Later, in his apartment and in the middle of caressing, he became very angry when Bebe suddenly asked him for money. There was an exchange of blows between himself and Bebe. He covered her mouth with both hands as he had lost control. Albert thought, when Bebe became unconscious, that she was then already dead. He said if he had known that Bebe was still alive, he would not have thrown her into the sea.

A post-mortem examination determined that the cause of death was drowning.

*(See the next page for a continuation of Question 9)*



The defence contended that when Albert threw Bebe's body into the sea, she in fact was still alive. At that very moment, Albert would not have had any intention to kill or cause grievous bodily harm as he thought he was dealing with a corpse. It was argued that one could not murder a dead body.

**(a) Should Albert be found guilty of murder or any other offences? Explain.**

**(12½ marks)**

**(b) Explain what possible defence or defences Albert can rely on to the murder charge against him.**

**(12½ marks)**

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

## **Question 10 (25 marks)**

John went out with Simon and Lucy one night to a bar in Lan Kwai Fong ("LKF") and drank a large quantity of alcohol.

At approximately 11.30 p.m., John left the bar and proceeded down a road in LKF. There he noticed a man sprawled on the pavement asleep and a mobile phone lying on the ground close by. John picked up the phone, put it in his back pocket and continued down the road to a junction. At the junction stood various police officers and other persons. Unbeknown to John, he was being watched and followed by a plain clothes police officer after leaving the bar. John was stopped, questioned and searched. In John's back pocket, the mobile phone was found. When asked whether that was his own phone, John declared that he had found the phone and he was intending to hand it in to the nearest police station.

John was promptly arrested, taken to the police station and placed on police bail. When he returned 4 weeks later, John was charged with theft. At the Court, John, represented by the Duty Lawyer, pleaded not guilty. He has now visited your office. He explained to you that he found the mobile phone on the pavement. He picked it up and when he saw the police officers at the junction, it was his intention to give them the mobile phone but he was arrested and searched before he could do so. He mentioned to you that he had a considerable amount of drink but was aware of what he was doing.

He indicated that his friends may have been following him and might be able to assist. He also told you that he has never been in trouble with the Police, nor has he had any criminal conviction either in Hong Kong or elsewhere. His trial has been fixed for 20 February 2020 at Court 3 at Eastern Magistrates' Court for 1 day.

*(See the next page for a continuation of Question 10)*

**(a) Set out all steps you should take in order to prepare for John's defence and, in particular, identify the various issues that need to be addressed in order to ensure that you are in a proper position to defend him.**

**(15 marks)**

**(b) What defences are available to John based on the instructions he has provided to you?**

**(5 marks)**

**(c) Are there any other aspects of this matter that would give you concern?**

**(5 marks)**

**End of Test Paper**