

THE LAW SOCIETY OF HONG KONG
OVERSEAS LAWYERS QUALIFICATION EXAMINATION
2021 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
- Homicide Ordinance (Cap. 339)

Text Books

- *Wesley-Smith*: 'An Introduction to the Hong Kong Legal System', Oxford UP, (latest edition)
- *Charu Sharma*: Law of Tort in Hong Kong, LexisNexis Hong Kong, (4th ed.(Student), 2020)
- *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 (3rd edition, 2019)
- *Rick Glofcheski*, Tort Law In Hong Kong (Revised 4th Edition 2018), 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 edition, 2020)
- *Stephen Hall*, Ho and Hall's Hong Kong Contract Law, LexisNexis (5th edition, 2019)
- *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 2018, 2019 and 2020 Examinations

Examiners' Comments on the 2018 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 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.

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.

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Examiners' Comments on the 2020 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.

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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.

This year was particularly challenging as Zoom arrangements were made for candidates and examiners to be in separate rooms for social distancing purposes. Nonetheless, the examination 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.

3. Past Examination Papers from 2018 to 2020

**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

**2020 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF
COMMON LAW**

Thursday, 14 January 2021



2020 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

You are watching a television programme with your friend. Two political commentators are debating if Hong Kong is an “executive-led government” or if its government can be defined as possessing a “separation of powers”. Your friend turns to you and asks: “What does separation of powers mean?”

(a) Explain the doctrine of the separation of powers.

(10 marks)

One of the commentators on the programme remarks that: “The term ‘separation of powers’ is not stated in the Basic Law.”

(b) To what extent is the doctrine of the separation of powers reflected in the Basic Law?

(15 marks)

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

Question 2 (25 marks)

Part A

A relative of yours is seeking damages for HK\$50,000 in a contract dispute.

- (a) **Explain what the Small Claims Tribunal can do in respect of your relative's claim.**

(5 marks)

Part B

- (b) **Explain what the mischief rule is with respect to statutory interpretation. Discuss with respect to the purposive approach.**

(10 marks)

Part C

- (c) **Explain what "Persuasive Authorities" are.**

(10 marks)

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

Television International Limited (“TVI”) planned to organize “Hong Kong’s Got Talent” (“HGT”), a talent competition in Hong Kong. TVI approached Britney Pears (“Britney”), a famous local singer, to perform on the HGT opening night and on the closing night when the competition finals would be held.

TVI found the performance fee proposed by Britney to be too expensive. TVI’s General Manager, Simon Kao (“Simon”), told Britney that TVI could not afford to pay more than HK\$300,000, but that perhaps some other benefit could be arranged. Simon said that TVI had invited world famous judges for the competition. The judges were looking for singers to perform at prestigious musical festivals around the world. Singing in front of them might bring Britney further global performing opportunities.

Britney decided to use the opportunity to help her friend Nick and his group “The Low Moons”, an up-and-coming band. She asked Simon if The Low Moons could also perform on 8 June 2020, the closing night. Simon replied: “That should be okay. If you sign with us, we will invite The Low Moons to perform on the closing night for HK\$40,000. We will pay them after their performance.”

Eventually, TVI and Britney signed a contract - Britney would be paid HK\$300,000 in total to perform on both evenings. She would receive HK\$180,000 on signing the contract (which she could keep regardless of whether she performed on the opening night), and HK\$120,000 after performing on the closing night. The contract also mentioned the agreement regarding The Low Moons.

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

Excited about the TVI opportunity, The Low Moons turned down an offer they had received to perform on 8 June 2020 at a small concert in Kowloon for HK\$15,000. However, a few days before the start of HGT, TVI informed The Low Moons that they were no longer needed. Britney was upset and refused to perform at either the HGT opening or closing nights. She later found out that the singer who replaced her was asked by the judges to perform at a few well known music festivals in Europe.

Britney has received HK\$180,000 from TVI, but The Low Moons have not been paid anything.

(a) Advise Britney of her rights and/or liabilities against TVI.

(20 marks)

(b) Advise The Low Moons of their rights against TVI.

(5 marks)

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

Question 4 (25 marks)

Will, a musician, recently decided to go into the events venue business. He rented a floor of an industrial building and engaged Tubby Tunes Limited (“Tubby Tunes”), a specialist sound/lighting systems engineering firm, to put in a state-of-the-art sound system, special lighting and installations for special effects suitable for band performances and disco events. Will paid a deposit of HK\$50,000 to Tubby Tunes. Tubby Tunes’ manager, Charlie, phoned Will to say: “Don’t worry. We will make sure that we have a licensed electrician in charge of this. We have been in the business for a long time and only use licensed electricians.” In fact, the licensed electrician who worked with Tubby Tunes had been on sick leave for over two weeks and was unlikely to return to work for another month.

Tubby Tunes signed a contract with Will for the work for a total fee of HK\$200,000. The contract did not mention the engagement of a licensed electrician. Tubby Tunes engaged Harry to install the wiring system for the whole floor. Harry completed the installations in three weeks. Will then got the whole floor painted and purchased furniture which was delivered.

The day before his venue was due to be hired out for the first event, Will decided to try out the sound effects himself. However, as soon as he plugged in his electric guitar, keyboard, the speakers and other equipment, the wiring short-circuited. The sparks hit the curtain fabric and the venue caught fire. Because final renovations were still ongoing in the venue, there was some flammable liquid lying around. Large parts of the venue were burnt, although the fire was eventually put out.

The venue suffered a lot of fire damage. Much of the furniture and equipment was burnt. Will had to cancel all the venue bookings for three months and had to pay damages to customers whose bookings were cancelled.

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

Will himself suffered burns and required extensive burn treatment for four months, which cost him HK\$100,000 in medical fees.

It was discovered that Harry had incorrectly installed the wiring in the venue, leading to the short circuiting. Harry was not a licensed electrician, but only an assistant working at Tubby Tunes who was studying a course of electrical engineering at the Hong Kong Institute of Vocational Education.

- (a) **Advise Will of his rights against Tubby Tunes regarding the loss caused by the damage to the venue and his injuries.**

(16 marks)

- (b) **Would your answer be different if the contract contained wording which said: “Any liability incurred by Tubby Tunes Limited for any negligence, loss or damage to any property or person howsoever caused by the acts of its contractors, subcontractors or employees shall be limited to HK\$10,000.”?**

(9 marks)

See the next page for a continuation of Part B)

Question 5 (25 marks)

Answer both parts (a) and (b).

(a) Davy decided to sell a few pieces from his Ming dynasty furniture collection. He approached a few collectors and dealers, all of whom expressed an interest. The following takes place:

- Davy emailed Ivan on Monday morning and offered to sell two Imperial chairs to Ivan for HK\$1,000,000. Davy said that he would keep the offer open until 6:00 p.m. on Tuesday.
- On Monday afternoon, James, another dealer, offered to buy the chairs for HK\$1,200,000. Davy was happy with the higher offer and sold the chairs to James. James was so happy with the purchase that he posted a picture of himself with the chairs on his social media account.
- Ivan saw this picture. He emailed Davy immediately late on Monday night to accept the offer to purchase the chairs at HK\$1,000,000.
- On Tuesday morning, Davy telephoned Cliff offering to sell him a set of cupboards from his collection. Cliff agreed to buy them. However, on Tuesday afternoon, Davy received a higher offer from another collector. He telephoned Cliff to tell Cliff that he could not sell the cupboards to him.

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

- On Wednesday, Davy met Frank in the street and told him that he would sell him a set of tables from the collection for HK\$300,000. Frank agreed to buy them and to pay Davy and take delivery in two weeks. However, Davy lost a lot of money on the stock market during the following two weeks. Frank found out about this and called Davy to say that he was no longer willing to pay HK\$300,000 but only HK\$200,000 for the tables. Davy accepted this because he needed the money to pay off some of his losses.

(1) Advise Ivan and Cliff whether they have a binding contract with Davy and their rights against him.

(8 marks)

(2) Advise Davy of his rights against Frank.

(7 marks)

(b) Passion Foods Ltd. (“Passion”) sources specialty foods for hotels in Hong Kong. In August 2020 it entered into the following contracts:

- it agreed to supply to The Pacific Hotel 500 dozens of French oysters for consumption at the Oyster Festival to be held at the hotel in September 2020; and
- it agreed to supply to The Atlantic Hotel 1,000 legs of Iberian dry-cured ham from Spain. This is a very popular item and the hotel expected a large number of 2020 Christmas orders.

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

Passion placed orders for these foods with the respective food item suppliers.

A flood occurred at the Pacific Hotel during a storm in late August and the hotel had to be closed for three months for repairs. All events scheduled at the hotel during the three-month period were cancelled. A disease broke out at many Spanish pig farms in September, severely reducing the supply of dry-cured ham. The ham would now cost three times as much to source, and Passion would lose money on the contract.

Advise whether Passion's contracts with The Pacific Hotel and The Atlantic Hotel can be treated as frustrated and the consequences, if the contracts are found to be frustrated.

(10 marks)

End of Part B

Part C (Introduction to Law of Torts)

Question 6 (25 marks)

At 10:00 a.m. on Thursday, 16 January 2020, Angel, a financial consultant, who was feeling very sick, registered to see a doctor at a private medical clinic in Central. Whilst Angel was waiting to see a doctor, she received a telephone call from a client, Ben. Ben told Angel that he had heard a rumour of an unknown virus that was making people ill and a rumour that some ill people had died. Ben was worried about the effect of this unknown virus on the Hong Kong stock market and asked if he should sell his Hong Kong shares.

Angel, who was feeling very sick and had not heard of the rumours about the virus, told Ben that she was in no position to advise him on what to do with his Hong Kong shares. Angel stressed that she did not give investment advice based on rumours but only on research and analysis. She also told Ben that she was sick and sitting in a medical clinic waiting to see a doctor.

Ben was very persistent and kept asking Angel if he should sell his Hong Kong shares. Under the persistent demands for advice from Ben, Angel suggested that he should not sell his Hong Kong shares, as she felt that the unknown virus would be contained and would not affect the Hong Kong stock market.

Following this conversation Ben did not sell his Hong Kong shares. The Hong Kong shares dropped significantly in value the day after his conversation with Angel, when the existence of the deadly virus was confirmed by the government.

Ben claims to have lost HK\$15 million as a result of not selling his Hong Kong shares on 16 January 2020.

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

Discuss any tort actions that Ben might have against Angel in respect of his alleged HK\$15 million loss. Support your discussion with reference to relevant principles and authorities.

(25 marks)

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

Question 7 (25 marks)

Mavis Chan (“Mavis”) was a 22-year-old student, living in a hostel, at the University of Shatin (“US”) in the New Territories, Hong Kong. For some time, she had been suffering from stress due to study and examination pressures. She had told her mother, Eva Chan (“Eva”), about her stress problems and had also spoken to the US counselling service about her stress problems.

Recently Eva had noticed that Mavis had become more stressed as she was worried about poor job prospects for graduates due to the Covid-19 pandemic.

On 1 July 2020 at 8:00 a.m., Eva made a 999 call to the police expressing concern about her daughter, Mavis, who was a US student. Eva explained to the police call handler that her daughter, Mavis, was severely depressed when she last spoke to her 40 minutes ago and that Mavis was thinking of committing suicide. Since that conversation with Mavis, Eva had been unable to contact her. Eva explained that she was unwell and unable to travel to the US to see Mavis. Eva also said that she had unsuccessfully tried to contact the US helpline and so she had contacted the police for help.

The police call handler told Eva that the police would be immediately sent to Mavis’ accommodation at US to check on her and if Mavis needed to be transferred to hospital, the police would arrange it.

The police arrived at Mavis’ US accommodation three hours after Eva’s call and found Mavis dead from an overdose of sleeping pills.

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

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

1. The police call handler, who answered Eva's 999 call, after assuring her that the police would immediately go to Mavis' US accommodation, graded the call as Grade 2 (priority attendance within 4 hours);
2. For immediate attendance, the call should have been graded as Grade 1 (immediate response);
3. If the police had responded to the call immediately, they would have arrived in time to prevent Mavis from committing suicide.
4. Eva, as a result of being assured by the police call handler that the police would immediately attend to Mavis, did not try again to call Mavis or the US helpline.

Discuss any tort actions that might be brought against the police in respect of the death of Mavis. Support your discussion with reference to relevant principles and authorities.

(25 marks)

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

Question 8 (25 marks)

In Gloccheski, Tort Law in Hong Kong (Revised Fourth Edition, 2018) page 299, the author states:

“It has already been observed that volenti (non fit injuria) may also arise out of an express agreement between plaintiff and defendant that purports to exclude the liability of the defendant. Such a term, when found in an agreement is known as a disclaimer, or exemption clause....

The Control of Exemption Clauses Ordinance, based on English legislation (the Unfair Contract Terms Act 1977) came into force on 1 December 1990...A primary objective of the ordinance is to restrict or at least control the use by business entities of contract terms or notices intended to limit or exclude liability for personal injury.”

- (a) **Discuss the elements required to establish the defence of volenti (non fit injuria).**

(15 marks)

- (b) **Discuss the effect of the Control of Exemption Clauses Ordinance (Cap. 71) on contract terms or notices intended to limit or exclude liability for personal injury.**

(10 marks)

End of Part C

Part D (Criminal Law)

Question 9 (25 marks)

1. After several hours of visiting numerous bars in Wanchai, Bill goes into a 7-11 convenience store (“7-11”). He walks around. He then sees some sandwiches and picks them up from the shelves. He continues walking. He sees some beers. He takes two cans and puts them in the side pockets of his jacket and holds two other cans and the sandwiches in his hands. He proceeds to the check-out. He puts down the two cans of beer and the sandwiches. He pays for them, takes a receipt in the sum of HK\$50 and starts walking out of the store. Just after he passes the entrance, he is stopped by the store detective and asked if he has anything in his pockets. Bill laughs and asks the store detective whether he would like to join him for a beer! He then takes out the two cans from his pockets.
2. The Police are called. He is arrested for theft of the two cans of beer. On the way to the police station, he tells the police officers that he could not recollect taking the two cans of beer and asks them whether they would like to join him for a drink. Bill spends the night in the police cells. He is cautioned. He does not give a statement and is charged with theft, and released on police bail in the sum of HK\$500 to appear in the Eastern Magistrates’ Court in three weeks’ time.
3. Bill comes to your office and tells you the following:-
 - (i) He works as an investment banker.
 - (ii) He has never been in trouble before either here or anywhere else in the world.

(See over the page for a continuation of Question 9)

- (iii) He has been under severe stress that evening since his girlfriend had left him.
 - (iv) He has looked at his credit card receipts and had spent HK\$15,000 in several bars.
 - (v) He can recollect going into 7-11 and buying some sandwiches. He has no idea why he bought two cans of beer and a further two cans of beer which were found in the pockets of his jacket.
 - (vi) He feels that one of his drinks that evening may have been spiked.
- (a) **Set out all steps and advice you should give Bill in order to prepare his defence.**
- (13 marks)**
- (b) **What defences, if any, are available to him?**
- (12 marks)**

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

Question 10 (25 marks)

On the evening of 15 July 2018, Alan, 22 years of age, went up the stairs from the ground floor to the first floor of Lucliff Court (the “Building”). He did so intending to look for his friend. In doing so, he accidentally triggered a burglar alarm. Mr. Boo, a 70-year-old watchman of the Building, confronted Alan by grabbing Alan’s neck in order to prevent him from leaving. Mr. Boo accused Alan of burgling one of the flats in the Building. Feeling insulted, Alan scolded Mr. Boo with foul language, saying: “You accuse me of stealing, fxxx you!” Alan pushed Mr. Boo causing him to fall on the ground. Alan then kicked Mr. Boo’s head four to five times. The altercation alerted Charlie, a resident of the Building. Charlie managed to restrain Alan. The police soon arrived at the scene and arrested Alan for assaulting Mr. Boo.

Mr. Boo fell into a coma after the assault and died in the hospital a couple of days later. The government pathologist who performed an autopsy on Mr. Boo stated in the autopsy report that although the direct cause of death was bronchopneumonia, which is a condition that causes an inflammation of the lungs, the intervening antecedent cause was intracranial bleeding (i.e. blood vessels within the skull are ruptured) and that the underlying antecedent cause was complications of a head injury. Alan was subsequently charged with the offence of murder.

Under caution, Alan claimed that (1) he was furious when being accused of stealing from one of the flats in the Building, (2) he had only used necessary and reasonable force to free himself when he had been grabbed and held by Mr. Boo, and (3) he denied having any intention to cause grievous bodily harm to Mr. Boo.

(See over the page for a continuation of Question 10)

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

(15 marks)

(b) Discuss the concept of causation of death in the present case.

(10 marks)

End of Test Paper