

**THE LAW SOCIETY OF HONG KONG
OVERSEAS LAWYERS QUALIFICATION EXAMINATION**

2011 SUPPLEMENTARY INFORMATION PACKAGE

HEAD V: PRINCIPLES OF COMMON LAW

Contents

- 1. Standards, Syllabus, Materials and Assessment**
- 2. Examiners' Comments on the 2003, 2006, 2008, 2009 and 2010 Examinations**
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** There were no Examination Papers created for this Head from 1998 to 2002, 2004 to 2005 and 2007*

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 and theft
- 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)
- Age of Majority Ordinance (Cap.410)
- Occupiers Liability Ordinance (Cap.314)
- Defamation Ordinance

Text Books

- *Glanville-Williams*: 'Learning the Law', Sweet & Maxwell, (latest edition)
- *Wesley-Smith*: 'An Introduction to the Hong Kong Legal System', Oxford UP, (latest edition)
- *Srivastava & Tennekone*: The Law of Tort in Hong Kong, Butterworths Asia, (2nd ed., 2005)
- Salmond & Heuston on the Law of Torts (latest edition)
- *D.K.Srivastava* (General Editor): 'Business Law in Hong Kong', Sweet & Maxwell Asia, (2nd ed., 2007)
- *Michael Jackson*: 'Criminal Law in Hong Kong', Hong Kong University Press (latest edition)
- *David Ormerod*: 'Smith and Hogan Criminal Law, Cases and Materials', Oxford University Press (latest edition)
- *Michael J. Fisher and Desmond G. Greenwood*: 'Contract Law in Hong Kong', HK University Press (latest edition)
- *Rick Glofcheski*, Tort Law in Hong Kong, Sweet & Maxwell Asia, 2nd edition, 2007

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 30 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 and 2010 Examinations

Examiners' Comments on the 2003, 2006, 2008, 2009 and 2010 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.

3. Past Examination Papers in 2008, 2009 and 2010

2008 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD V: PRINCIPLES OF COMMON LAW

Friday, 12 December 2008



Head V: PRINCIPLES OF COMMON LAW

TEST PAPER

12 December 2008

Instructions to Candidates:

- 1. The duration of the examination is 2½ hours (which includes 30 minutes dedicated reading time).**
- 2. You are not permitted to bring into the examination any books, documents or other materials.**
- 3. At the commencement of the 30 minutes reading time, you will be supplied with 10 questions, together with an English dictionary and a copy of Mozley and Whiteley's law dictionary by J. E. Penner.**
- 4. You will be permitted 30 minutes to consider the test questions, choose 4 questions upon which to be examined (one from each of Parts A, B, C and D of the test paper) and make notes on the questions supplied.**
- 5. At the expiry of the 30 minutes reading time, you will be called before a panel of between 2 and 4 Examiners who will assess your understanding of the topic or subject concerned.**
- 6. Where a question has two sections, you must answer both sections of the question. Each question is worth 25 marks.**
- 7. Wherever possible, support your answer with reference to decided cases and legislation.**
- 8. During the oral examination, you may consult only the notes that you have made during the 30-minute reading time on the questions supplied.**
- 9. Do not take this question paper with you when you leave the examination room.**

2008 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

“Whereas before 1 July 1997 the principles of English common law and equity automatically applied to Hong Kong, so far as they were appropriate to the circumstances of Hong Kong, there is no such continuous reception after that day.”

Examine the above statement, explaining the present importance of the principles of English common law and rules of equity for Hong Kong.

Question 2 (25 marks)

Answer both question (a) and (b)

- (a) What do you understand by vertical and horizontal stare decisis?
- (b) State the circumstances when a court in Hong Kong will not be bound by its own decision or that of a higher court.

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

Alan advertised his home computer for sale in Monday's newspaper for "HK\$4,000 for quick sale – best offer secures". Ben came to see the computer on Tuesday and said that he would give Alan HK\$3,000 for it. He told Alan to let him know by Friday. On Wednesday morning Danny answered the advertisement and came round to look at the computer too. Afterwards Danny posted a letter to Alan. In that letter Danny confirmed that he would agree to buy the computer for the HK\$4,000 asked by Alan. However, before Alan received Danny's letter, Danny telephoned and told Alan that he did not want the computer after all.

On Thursday Alan posted a letter to Ben agreeing to sell the computer for HK\$3,000, but Ben did not receive this letter until Saturday. Ben then went to Alan's house and produced HK\$2,000 in cash saying, "that's the best I can do", but Alan refused.

Advise Alan on his contractual obligations, if any, towards Ben and Danny.

Question 4 (25 marks)

Vanessa was a pop singer, famous both in Hong Kong and on the mainland. On 1 August 2007, she signed a contract with Wonderful Music Entertainment Limited ("WME"), a company specialized in organising concerts, to perform in a concert in Hong Kong on 25 December 2007. Vanessa was to receive HK\$1 million for singing in the Xmas concert. Because of Vanessa's fame and the fact that Vanessa was taking part in the concert, WME was able to sell lots of tickets at very high prices. By 15 September 2007 all tickets were sold out. On 15 October 2007 Vanessa told WME that she had accepted an engagement elsewhere for which she would be paid a HK\$2 million fee. Eventually, WME agreed to raise her fee to HK\$2.5 million and paid HK\$0.5 million by 15 November 2007 as Vanessa demanded. On 15 December 2007, Vanessa wrote to say that she would be off to Beijing to do some filming and might not be back in time for the Xmas concert in Hong Kong. In fact, Vanessa did not go to Beijing but was hit by a car on 23 December 2007 while crossing a street. She was admitted to a hospital and was unable to perform on 25 December 2007 because she was in a critical condition.

WME seeks your legal advice in relation to the contract they had with Vanessa.

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

Question 5 (25 marks)

Alan's grandson, Edward, aged 21, was studying for a business course at The Chinese University of Hong Kong. Edward was staying in one of the halls of residence provided by the University and it was a contractual requirement that students in residence were non-smokers. Edward therefore gave up smoking. Alan, however, was worried that under the pressure of preparing for the examinations Edward would start smoking again. So Alan promised to pay Edward HK\$2,000 if Edward did not smoke at all until the course was completed. Alan also promised to buy Edward a new suit if he passed the examinations.

Alan owns a number of restaurants and asked Edward to review the business operations of those restaurants and make a report recommending how the business could be improved. Edward produced the report and Alan was pleased with the results and said he would give Edward HK\$30,000 for Edward's hard work.

Edward passed his examinations. He did not smoke in the hall of residence and has not started smoking again. However, Alan has not made either of the promised payments, or bought the suit. Alan seeks your advice as to whether he is legally obliged to do so.

Please advise Alan.

End of Part B

Part C (Introduction to Law of Torts)

Question 6 (25 marks)

Answer both question (a) and (b)

- (a) Wilson came from the Mainland to Hong Kong on a two way permit. He was prohibited from obtaining any employment during his stay. He met Sihon who was carrying on a construction business in the New Territories. Sihon was constructing a 50-storey building. There was a scarcity of construction site workers. Sihon employed Wilson even though he knew that Wilson was not allowed to work in Hong Kong. Wilson plunged to his death from the 33rd floor of the building under construction, largely due to the negligence of another worker employed by Sihon.

Advise Wilson's widow if she has a claim against Sihon.

- (b) Christine was a first year LLB student studying at City University. She was also a learner driver and she practised her driving in the vicinity of the university. While she was driving in nearby Cornwall St, the traffic had stopped as two groups of people were fighting. Several of them were lying in a pool of blood, and some appeared to have died. She was in great shock. As she turned the corner, she saw a fleet of ambulances overtaking other cars at great speed. Christine panicked. She tried to brake, but her car did not stop and smashed into a stationary vehicle. A passenger in the vehicle, Wesley, was thrown from the rear seat to the front, suffering cuts and bruises. Wesley was not wearing a seat belt at that time. Wesley was taken to hospital. The nurse at the hospital applied some paste without cleaning the wounds. This caused serious infection and Wesley had to stay in the hospital for a month instead of a few days.

Advise Christine.

Question 7 (25 marks)

Express Newspaper Inc. in Washington DC uploaded an article about a Chinese businessman, Andrew, on its online edition. The article made a scathing attack on the professional competence of Andrew, stating, inter alia, that Andrew's success in business was largely due to unethical practices, sale of fake products, sensational advertising and gross exaggeration of the quality of products that he marketed. Andrew had an excellent business reputation not only in Hong Kong and China but also in Singapore and Australia. The article was downloaded by Andrew's business associates in these places. As a result, Andrew's business in Hong Kong was badly affected. Those who read the article in Hong Kong did not want to do any business with Andrew. Andrew's clients in Australia in any case did not want to deal with Andrew because they were getting similar products from another company in China at 30% less cost. Andrew's clients and business associates in Singapore, who read the article, did not believe that Andrew could do anything of this kind; they thought it referred to someone else. It was also established that Express Newspapers Inc. uploads sensational materials concerning Chinese businessmen with a view to boosting its readership.

Advise Andrew.

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

Question 8 (25 marks)

Peter was a wealthy businessman. He had assets worth HK\$40 billion. Nancy, his girlfriend, had lived with him for over 10 years. Peter then formed an attachment to another girl. However, he promised Nancy he would execute a legal document giving Nancy HK\$50 million, so that she could live the rest of her life without any financial problems. Peter instructed XY Solicitors Firm to draft a document that would give Nancy the right to HK\$50 million. The firm drafted a defective document and Nancy could not claim any money on the basis of the document. In the meantime, Peter suffered considerable losses in his business and his net assets now were just about HK\$10 million. Peter regretted agreeing to give Nancy HK\$50 million and discovered the defect in the document.

Advise Nancy whether she could succeed against XY Solicitors Firm and claim the HK\$50 million from the firm.

End of Part C

Part D (Criminal Law)

Question 9 (25 marks)

Donald left the following message on Charlie's answer phone: "Adam is not showing me any respect. I can't stand him anymore. Let's go break his leg and teach him who's boss around here." Charlie, who was a friend of Adam, decided not to reply to Donald's message or to tell the police about Donald's plan. Subsequently, Donald persuaded Barney to join him instead. Two days later Barney was driving Donald to a bar where Adam was known to frequent when Barney told Donald that he no longer wanted to go through with the plan and stopped the car. Donald threatened Barney that unless Barney drove him to the bar, Donald would "disfigure" Barney's wife. Donald had a reputation of being very violent. Reluctantly, Barney drove Donald to the bar but, upon arrival, they discovered that Adam had just been taken into custody by the police.

Advise Donald, Charlie and Barney of their criminal liability, if any.

Question 10 (25 marks)

Alice, intending to give her ex-boss, Bernadine a fright, lit a fire in Bernadine's letterbox not knowing whether anybody was in the house. In fact, Bernadine had gone out to the opera that night, but her friends from England, Christine and Denise, who were staying at Bernadine's home, were overcome by fumes. Two ambulances arrived to take the victims to hospital. The ambulance carrying Denise was driven by a new driver and the driver got lost. By the time the ambulance arrived at hospital Denise had died.

Christine arrived at hospital and was informed that a blood transfusion would save her life. However, owing to religious beliefs, Christine refused and died the following day.

Discuss the criminal liability of Alice.

End of Test Paper

**2009 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF
COMMON LAW**

Tuesday, 15 December 2009



Head V: PRINCIPLES OF COMMON LAW

TEST PAPER

15 December 2009

Instructions to Candidates:

1. The duration of the examination is 2½ hours (which includes 30 minutes dedicated reading time).
2. You are not permitted to bring into the examination any books, documents or other materials.
3. At the commencement of the 30 minutes reading time, you will be supplied with 10 questions, together with an English dictionary and a copy of The Law Student's Dictionary by J. E. Penner.
4. You will be permitted 30 minutes to consider the test questions, choose 4 questions upon which to be examined (one from each of Parts A, B, C and D of the test paper) and make notes on the questions supplied.
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6. Where a question has two sections, you must answer both sections of the question. Each question is worth 25 marks.
7. Wherever possible, support your answer with reference to decided cases and legislation.
8. During the oral examination, you may consult only the notes that you have made during the 30-minute reading time on the questions supplied.
9. Do not take this question paper with you when you leave the examination room.

2009 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

- (a) What are the major law courts in Hong Kong?**
- (b) What types of cases will be heard in each of these major law courts?**
- (c) Is English the only language used in Hong Kong courts?**
- (d) Are the judgments made by the Hong Kong courts enforceable in other countries?**
- (e) How are Judges appointed or dismissed in Hong Kong?**

Question 2 (25 marks)

- (a) What constitutes the Hong Kong Laws?**
- (b) What is the influence of the Basic Law on the Hong Kong Legal System?**
- (c) How are the Common Law and the Rules of Equity operating in Hong Kong?**
- (d) Explain the terms “ratio decidendi” and “obiter dictum”.**

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

In June 2008, Wyndham Fitness, a private fitness club on Hong Kong island, hired Chan as its boxing coach for 5 years at a salary of HK\$25,000 per month. Both Chan and boxing proved popular with the club members. In June 2009 the club appointed Lee as its new manager. Neither Lee nor Chan could get along with each other. Two months ago, the club owners wrote to Chan terminating his engagement with immediate effect. Since that time, Chan has failed to find work other than one or two painting and decorating jobs. Chan is 36. He believes that he will never again be employed as a boxing coach because of his age and because the club refuses to supply him with a reference. Chan has made one attempt at suicide and is in a state of deep depression. During Chinese New Year, Chan received about HK\$2,000 worth of red pocket money from club members and now that he can no longer work at the club, Chan will lose this in future years.

What legal action can Chan take against the club?

Question 4 (25 marks)

On December 1, Mary telephoned Linda offering to sell Mary's flat in Happy Valley to Linda for HK\$ 5 Million. Linda said, "Let me think about it and get back to you." Mary replied, "I can't wait forever." On December 2, Linda decided not to buy the flat and posted a letter to Mary telling her that she was not interested. Subsequently Linda's husband told Linda that she was missing a bargain. So Linda telephoned Mary, leaving a message on Mary's answer-phone stating, "I would like to buy your flat." Unknown to Mary and Linda, Mary's answering machine was not working and did not record Linda's message. Linda telephoned Mary and said, "When will I be hearing from your solicitor?" Mary thought that Linda was referring to another matter between them and said, "Everything is fine."

Is Mary contractually bound to sell her flat to Linda? Also, is Linda contractually bound to buy the flat from Mary?

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

Question 5 (25 marks)

Irene plans to leave Hong Kong permanently and invites two friends, Betty and Cherry, to her flat and offers to sell her favourite painting to Betty for HK\$1,000 which Betty accepts. Both Irene and Betty believe the painting is by a little known artist in the Mainland and is probably worth between HK\$1,000 and HK\$1,200.

Irene also offers to sell her Buddha statuette to Cherry for HK\$500, which offer Cherry accepts. Cherry believes the statuette is made of jade and worth about HK\$100,000. Irene knows Cherry believes the statuette is made of jade but Irene knows it is made of only some form of resin.

A few days later, Betty and Cherry had the painting and statuette valued. The art dealer to whom Betty took the painting identified it as a painting by an ancient Chinese painter and offered Betty HK\$280,000 for it. Betty refused to sell. Cherry showed her statuette to an expert who told her it was not made of jade and was quite worthless.

Cherry immediately took the statuette back to Irene and asked for her money back. Irene refused. Meanwhile, Cherry told Irene about the offer that Betty had received from the art dealer.

Can Cherry recover her money from Irene? Does Irene have any legal grounds to recover the painting from Betty?

End of Part B

Part C (Introduction to Law of Torts)

Question 6 (25 marks)

Pete owns an apartment in Kowloon which has a very large balcony. Pete likes to hit golf balls from his balcony into a net on the balcony he has set up about five feet away from his golfing tee. The net covers all of the height and 4/5 of the width of the balcony. Pete has been doing this for about 5 years. Occasionally when the ball misses the net (about 3 or 4 times a year) it normally drops harmlessly onto the roof of an adjoining warehouse. One evening Pete strikes one of his golf balls in such a way that it travels across the roof of the warehouse and goes through the window of an apartment owned by Maria who lives in a building across from Pete. A piece of glass from the window strikes Maria in the eye.

As a result of the impact of the piece of glass, Maria suffers an injury to her left eye. The effect of the injury is that she is in severe pain and her eye is cosmetically damaged. Maria had already lost sight in her right eye prior to this incident. Maria attempts to leave her apartment to seek help. Because she is a bit confused after being struck and in such a hurry to seek treatment she bumps into a Ming Dynasty Vase worth HK\$2 million and breaks it.

Maria loses sight in her left eye about a week later as a result of the injury. She is now totally blind and cannot engage in her previous occupation as occupational therapist.

Advise Maria as to her rights.

Question 7 (25 marks)

Bill purchases some scaffolding in order to cut some branches on a tree next to the side of the wall of his home. A workman, Paul, who delivers and sets up the scaffolding, is an employee of an unincorporated business with the trading name "Quality Scaffolding" which designed and produced the scaffolding. Paul instructs Bill that he (Bill) should wear a safety harness when working on the scaffolding. Bill gets up on the scaffolding with a chain saw and begins cutting the branches. The scaffolding collapses because of the faulty design and Bill falls to the ground. Bill breaks a bone in his left hand. However, Bill is right-hand dominant and is not required to take any time off from his job as a police officer and the injury heals completely in 3 weeks. In fact, although painful, up until the time of recovery the injury healed itself with no need for the incurring of medical treatment or ingestion of pain killers or other medicine.

However, while Bill was falling he dropped the chain saw and it hit an electricity line connecting his neighbour Karen's home. Assume that the electricity line is owned by the government of the HKSAR and that some monies need to be expended by that government in fixing that line. Furthermore, the damage to the electricity line caused Karen's computer to crash and for her to be unable to retrieve a document in time that she needed to submit that day to a customer in order to secure a contract for providing marketing services. As a result of her missing the deadline the customer refused to pay Karen \$HK50,000 as stipulated under their agreement.

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

Advise Quality Scaffolding and Bill if they have any tortious liability to any parties. If so, who? Give reasons for your answer/s.

On the other hand, is Bill entitled to any compensation? Is there any reason why this compensation should be limited? Give reasons for your answer/s.

End of Part C

Part D (Criminal Law)

Question 8 (25 marks)

Frank and Jane are having dinner at a restaurant in Tsim Tsa Tsui. During the dinner Frank asks Jane for a loan for a business that Frank wishes to set up. Jane politely says she cannot afford to give Frank this loan. Frank, in a fit of anger, picks up a kitchen knife and slashes Jane across the stomach with it. Frank is concerned that Jane might die as he did not intend to kill her when he slashed her. Frank rings the ambulance service.

An ambulance driver takes Jane who is in a critical condition to the nearest public hospital for treatment. Unfortunately, the ambulance breaks down on the way and Jane dies before she can get medical treatment.

Max, Jane's brother, is in the hospital waiting room. Frank goes into the waiting room shortly after he arrives at the hospital and tells Max what occurred. Frank says he is sorry but that it was all Jane's fault because she is so mean with money. Max flies into a rage and punches Frank in the jaw. Frank's head strikes the wall behind him and Frank instantly dies.

Advise Frank and Max in relation to their criminal liability, if any, and if whether or not they have any defences.

Question 9 (25 marks)

Candy is throwing a party in her apartment on the fifth floor of a building in Mong Kok. Ed who is an acquaintance of Candy attends at her invitation. At about 2 am all the guests except Ed have left. Ed enters Candy's bedroom and goes through Candy's private possessions which she had left in a coat in a cupboard in her bedroom to satisfy his curiosity. Ed has been drinking heavily throughout the night and is extremely drunk. He also has a very low IQ of 85. Candy walks into her bedroom and sees Ed going through her private possessions. Ed is scared that he will go away to jail for a long time and he picks up a hammer which is lying on the ground nearby. At this stage Ed is blocking the exit through the door and Candy retreats to a balcony in the bedroom. Ed keeps advancing toward Candy in a menacing way. Candy becomes terrified and jumps out of the window to her death.

Advise Ed in relation to his criminal liability, if any, and if whether or not he has any defences.

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

Question 10 (25 marks)

Ralph is a salesman of new luxury cars. He works in a car dealership in the New Territories where he sells new Porsche. Ralph's manager Tom says he (Tom) has to leave early for the afternoon. Tom asks Ralph to lock up the showroom of the dealership. Tom leaves the showroom at 3.30 pm that day. Ralph decides to go to have a meal in Causeway Bay (an area on Hong Kong Island). He also decides he would like to drive a brand new Porsche which has arrived in the showroom. This Porsche has never been driven before. It is not a test car and is due to be picked up the following day by a buyer. Ralph has access to the keys to this Porsche and drives it to Causeway Bay.

Ralph arrives at the restaurant at Causeway Bay. Ralph orders a meal. Ten minutes later the meal arrives. While he is eating his meal he sees that the waiter regularly goes back into the kitchen for up to a few minutes at a time. The waiter come up to Ralph and asks him if he needs anything else. Ralph says no. The waiter goes into the kitchen. Ralph then finishes his last bite of the food and runs out of the restaurant without paying.

Ralph then goes to a bar where he is offered a new Blackberry computer for sale by Jemma at a price well below its market value. The Blackberry had been stolen earlier by Jemma.

Ralph asks Jemma, "Where did you get the Blackberry?"

Jemma laughs and says, "Don't ask"

Ralph says, "I'm not sure whether I should do this as I have never broken the law before. But it's a great deal, so why not?"

Ralph pays the very low price asked by Jemma and receives the Blackberry from her.

Ralph drives the Porsche back to the dealership and parks the car in its original place. He also puts the keys back where he found them.

Has Ralph committed any offences? If so, what are they? Give reasons for your answer/s.

End of Test Paper

**2010 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF
COMMON LAW**

Wednesday, 15 December 2010



Head V: PRINCIPLES OF COMMON LAW

TEST PAPER

15 December 2010

Instructions to Candidates:

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2010 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

- (a) What constitutes a civil case in Hong Kong and how is it different from a criminal case? (3 marks)**
- (b) What is the jurisdiction of and what types of civil cases can be handled by the Small Claims Tribunal? (5 marks)**
- (c) What is the jurisdiction of and what types of civil cases can be handled by the District Court? (5 marks)**
- (d) What is the jurisdiction of and what types of civil cases can be handled by the Court of First Instance of the High Court? (5 marks)**
- (e) What practical matters need to be considered before starting a civil action in Hong Kong? (5 marks)**
- (f) What happens if a mentally incapacitated person or an infant / minor wants to start a legal action? (2 marks)**

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

Question 2 (25 marks)

Part (a)

Over time, various methods of statutory construction have fallen in and out of favour. Some of the better known rules of construction methods are:

- The Golden rule (3 marks)
- The Literal rule (3 marks)
- The Mischief rule (3 marks)
- The Purposive approach (3 marks)

Please explain each of the 4 construction methods mentioned above.

Part (b)

How can the process of “judicial review” assist a litigant in Hong Kong? How can one obtain judicial review in Hong Kong? What kinds of relief can be obtained if one is successful in one’s application for judicial review?

(10 marks)

Part (c)

How are Judges appointed or dismissed in Hong Kong?

(3 marks)

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

Amy was driving her car into a public car park one morning. Upon arriving at the entrance, she put out her finger to press a button to receive her parking ticket. The button was situated on the middle section of a steel column about five feet in height. Above the button some words were printed in font size 12. From where Amy was seated in her car, the words would be clearly visible. They contain the hourly charges, as well as the following notice:

“Our car park is not responsible for property losses and physical injuries sustained by our customers, whatever was the cause of the incident.”

Amy was in a hurry and did not read the notice at all. She received her ticket and proceeded into the car park. She found an empty spot on the second floor and parked her car there. The interior of the second floor was dark even though it was in the morning. As Amy was leaving the car, it was too dark to see anything clearly on the ground. She slipped on a pool of soapy water. This had been left behind by the cleaner. Amy sprained her right ankle and her dress was torn. She spent two days in hospital. The medical bill was \$20,000. Her daily income before the accident was \$2,000. Her dress cost \$3,000.

After she recovered, Amy visited a laundry shop to wash another dress. She gave the dress to the shopkeeper and paid her laundry charges. Then the shopkeeper gave her a receipt. On the back were these words, “Our shop is not responsible for any damage caused to customers’ clothing items brought to our shop for laundry purposes.” A week later, when Amy came to the shop to collect her dress, it was torn because the laundry shop staff had forgotten to zip up the dress before washing it.

Advise Amy on these events.

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

Question 4 (25 marks)

Bill was having lunch with Charles on a Wednesday afternoon. They were business associates. Bill said, "You remember my little red sports car? I want to sell it because I want another car. You can have it for \$300,000. Take your time. I'll wait till noon this coming Friday. If you cannot reach me, write me a letter. The lines are not working properly." **Advise Charles on the following events.** Treat the facts in parts (a) and (b) independently:

- (a) Charles has decided to buy the car. But he needs to make sure he has enough cash. He is expecting some payment that Friday morning. So he has not contacted Bill yet. On Thursday evening, Bill called Charles and said, "Sorry, I changed my mind. I am not selling the car."

(9 marks)

- (b) Charles went home and sent Bill an e-mail message at 9 am the next day: "I don't need the car for now. Thank you." The e-mail message never went through because Bill's computer network was not operating. Two hours later, he changed his mind and called Bill but the phone line had broken down too. So Charles wrote a letter to Bill: "I'll buy your car for \$300,000." The letter was sent out at the local post office at 1 pm on Thursday. A letter usually takes 24 hours to reach Charles. At 12.30 pm on Friday, not having heard from Charles, Bill agreed to sell the car to David.

(16 marks)

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

Question 5 (25 marks)

- (a) Hadley orally agreed to sell his flat to Jack for HK\$3 million. They did not think of hiring a law firm to prepare the contract in order to save legal fees. The flat has no furniture. **Comment on this transaction.** (5 marks)
- (b) Same as (a) but the flat comes with furniture. (3 marks)
- (c) Hadley orally agreed to lease his flat to Jack for HK\$30,000 per month for two years. They did not think of hiring a law firm to prepare the contract in order to save legal fees. **Comment on this transaction.** (2 marks)
- (d) Hadley orally agreed to give Jack HK\$30,000 as a wedding gift. Jack was concerned that Hadley might not honour his promise, and suggested that they enter into a contract. But Hadley said, "In Hong Kong, my promise to give you \$30,000 constitutes a contract." **Comment on this promise.** (5 marks)
- (e) Hadley negotiated with Jack to sell his car to Jack for HK\$300,000. Both parties exchanged several letters on the contractual terms. Each letter was marked "subject to contract" at the top. Both parties have not signed anything during this process and have not performed any duties. **Comment on this transaction.** (5 marks)
- (f) Hadley negotiated with Jack to sell his car to Jack for HK\$300,000. Both parties exchanged several letters on the contractual terms. Each letter was marked "provisional contract" at the top. Both parties have not signed anything during this process and have not performed any duties. **Comment on this transaction.** (5 marks)

End of Part B

Part C (Introduction to Law of Torts)

Question 6 (25 marks)

Mr Winston Wong is a wealthy businessman who lives in a large house in the New Territories. He owns a large (25 kilogram) dog called **Rover**. As he is very busy and frequently travels, **Winston** employs a full time domestic helper, **Alfred Au**, to look after **Rover**. **Winston** has instructed **Alfred** that he is to walk **Rover** four times a day along the footpath adjacent to the road in front of the house. **Winston** has stressed to **Alfred** that **Rover** must always be on a lead when taken for a walk outside the house.

One day in April this year **Alfred** took **Rover** for a walk on the footpath outside the house. As **Rover** was continuously pulling on his lead **Alfred** decided to release **Rover** from his lead. **Rover** walked alongside **Alfred** for some distance and then suddenly without warning ran into the road, and into the path of a car driven by **Jenny Jones**. As **Jenny** was driving over the speed limit she was unable to stop the car and so she instinctively swerved to avoid **Rover** and crashed into a tree. **Jenny**, who was eight months pregnant, was not wearing a seatbelt and suffered serious injuries to herself and her car as a result of the crash. **Jenny** gave birth to a healthy baby one month after the crash.

Jenny wishes to sue **Alfred** and **Winston** for her personal injuries and for the damage to her car.

Discuss her claims and the issues they raise with reference to the relevant legal principles and cases.

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

Question 7 (25 marks)

Angela Auyeung owns and operates a small factory which manufactures bicycle locks. **Angela** has two full time employees, **Ben Bong** and **Charles Chan**. As **Angela** has purchased an automatic machine for cutting and welding bicycle locks, **Ben** and **Charles** are primarily employed to operate the machine.

One day in June this year, **Ben** was operating the machine when it suddenly stopped. **Ben** noticed a piece of metal stuck in the machine and reached into the machine to remove the piece of metal. Whilst **Ben's** hand was in the machine it suddenly started, cutting off **Ben's** hand. The machine originally had a safety guard to prevent anyone reaching into the machine but **Angela** had the safety guard removed so that the machine would operate faster.

Charles, who was outside the factory having a cigarette, heard **Ben's** screams when the machine cut off his hand. As **Charles** ran into the factory to see what had happened and if he could help, he slipped on some oil which had been spilt on the factory floor that morning by **Ben**. As a result of his slip and fall, **Charles** suffered severe head injuries.

Following the accident **Ben** and **Charles** were taken to hospital where it was discovered that **Charles** was an illegal immigrant and did not hold a Hong Kong ID card, which is required for him to be able to work in Hong Kong.

Ben and **Charles** wish to sue **Angela** for their respective personal injuries.

Discuss their individual claims and the issues they raise with reference to the relevant legal principles and cases.

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

Question 8 (25 marks)

Mayse Mok is from a wealthy family. She is a law student at the University of the New Territories in Taipo. She is not doing well in her torts class and believes it is because her torts lecturer is biased against women. She writes a letter addressed to all the members of the university council and all the teachers in the law faculty. In the letter she states “My torts teacher, **Professor Leopold Lim**, is a sexist and is biased against women.”

Mayse takes the letter to the law library in order to make copies to send to all the **university council members** and **all law faculty teachers**. She mistakenly leaves the original letter in the photocopy machine where it is picked up by another student **Nathan Ng**, who reads the letter and posts it on the general notice board in the law faculty. The letter remains on the notice board for several days and has been read by many students and visitors to the law faculty.

Mayse sends a copy of her letter to **each council member** and **law teacher** in a plain envelope, addressed to each individual recipient. Each letter is marked “Confidential to be opened by addressee only”.

Leopold Lim strongly denies that he is a sexist and biased against women.

Advise Leopold Lim as to his cause of action, if any, in defamation.

Discuss with reference to the relevant legal principles and cases.

End of Part C

Part D (Criminal Law)

Question 9 (25 marks)

John is concerned that security at the branch of his local bank is very slack. He wants to highlight this so that the bank can improve their security. So he decides to pretend to carry out a bank robbery to see how the bank staff react. His purpose is not to obtain any money. He writes a note reading: "This is a robbery. I have a gun. Hand over the money immediately." He goes into the bank and hands the note to Fred the bank clerk. Fred reads it and thinking it was a real bank robbery suffers a heart attack and dies. John is arrested and tells the police that this was not a real bank robbery and that his purpose was to expose the bank's poor security to prompt them to improve it.

Discuss John's criminal liability (if any) for the death of Fred.

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

Question 10 (25 marks)

Consider any issues of criminal liability and defences that may arise in the following situations.

Part A

Jamie and Terence are friends from University. Jamie contacts Terence and suggests that they meet up. Terence invites Jamie to visit him at his (Terence's) flat the next evening. Jamie has never been there before. Terence explains that if he is out then Jamie should let himself in to the flat by using a key that he will leave under the doormat outside the front door. Terence gives Jamie the address and the next evening Jamie goes to visit Terence. Jamie mistakenly thinks that Terence lives on the 6th floor, whereas Terence in fact lives on the 7th floor. Jamie arrives at the 6th floor flat in the block where Terence lives and rings the front door bell. There is no answer. Jamie then looks under the door mat, finds a key and uses it to open the front door. He goes inside. Nobody else is inside. Just then Jamie's mobile phone rings. It is Terence asking where Jamie is. Jamie then realizes that he is in the wrong flat and decides to leave. But before leaving, he walks over to a table near the window and takes from the table a laptop computer and leaves the flat with it.

(10 marks)

Part B

On reaching Terence's flat Jamie shows Terence the laptop computer and asks Terence if he wants to buy it. Terence asks the price and Jamie says \$5,000. Terence knows that the computer is a new model which would normally cost over \$15,000 in the shops. Terence does not ask anything more and gives Jamie \$5,000 for the computer.

(8 marks)

Part C

Now assume that when Terence paid Jamie for the computer, he did not believe that it had been stolen. He later became suspicious and decided that it had in fact been stolen and so decided to hand it in to the police. But before doing so, he pawned it as he needed money urgently, intending to repay the pawnbroker within a week and get back the computer, which he would then hand in to the police.

(7 marks)

End of Test Paper