

**THE LAW SOCIETY OF HONG KONG**  
**OVERSEAS LAWYERS QUALIFICATION EXAMINATION**  
**2022 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, (6<sup>th</sup> 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 (3<sup>rd</sup> edition, 2019)
- *Rick Glofcheski*, Tort Law In Hong Kong (Revised 4<sup>th</sup> Edition 2018), Sweet and Maxwell
- *Stephen D. Mau*: 'Hong Kong Legal Principles', HK University Press (2<sup>nd</sup> edition, 2013)
- *Stefan H.C. Lo, Kevin Kwok-yin Cheng, Wing Hong Chui*, The Hong Kong Legal System, Cambridge University Press (2<sup>nd</sup> Revised edition, 2020)
- *Stephen Hall*, Ho and Hall's Hong Kong Contract Law, LexisNexis (5<sup>th</sup> edition, 2019)
- *Victor Ho Wai-kin*, Criminal Law In Hong Kong, Wolters Kluwer (3<sup>rd</sup> edition, 2019)

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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 2019, 2020 and 2021 Examinations**



## **Examiners' Comments on the 2019 Examination**

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

The examination paper consisted of four parts:

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

Part B (Law of Contract);

Part C (Introduction to Law of Torts); and

Part D (Criminal Law).

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

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

Generally, the candidates were aware of the relevant legal principles and were able to link them up to the facts of the questions and provide answers that correctly answered those questions. Pleasingly, a number of answers revealed a superior understanding and analysis of the salient issues.

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

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



## **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.

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.

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.



## **Examiners' Comments on the 2021 Examination**

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

The examination paper consisted of four parts:

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

Part B (Law of Contract);

Part C (Introduction to Law of Torts); and

Part D (Criminal Law).

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

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

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

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

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





### **3. Past Examination Papers from 2019 to 2021**



**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**

**2021 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF  
COMMON LAW**

Tuesday, 25 January 2022





# **2021 Overseas Lawyers Qualification Examination**

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

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

#### **Question 1 (25 marks)**

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

**(10 marks)**

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

**(15 marks)**

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

**Question 2 (25 marks)**

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

(5 marks)

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

(5 marks)

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

(15 marks)

**End of Part A**

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

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

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

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

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

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

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

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

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

(15 marks)

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

How does this affect your advice in (a)?

(10 marks)

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



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

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

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

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

The sales invoice stated:

- “1. *Bloom N Grow will refund the purchase price paid for goods which do not meet recognised quality standards with any product.*
2. *Bloom N Grow does not give any undertaking as to the suitability or fitness of goods purchased for any particular purpose.*
3. *Any damages or compensation payable shall not exceed the purchase price of the goods sold.”*

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

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

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

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

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

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

- (a) Are there any legal grounds on which Ben may make a claim against Bloom N Grow? (10 marks)**
- (b) If the above grounds are valid, and Bloom N Grow is in breach of the sales contract with Ben, what is the impact of the three terms that are written on the invoice? (8 marks)**
- (c) If Bloom N Grow is liable to Ben and cannot claim protection from the terms written on the invoice, what would be the remedies available to Ben? (7 marks)**

**End of Part B**

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

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

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

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

**Discuss, with reference to relevant principles and cases:**

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

**(5 marks)**

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

**(10 marks)**

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

**(10 marks)**

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

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

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

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

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

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

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

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

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

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

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

**(25 marks)**

**End of Part C**

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

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

#### **INTRODUCTION**

1. A has been in the business of trading diamonds in Hong Kong for over 15 years. He has a small office in Kowloon. A sources his diamonds from Z who is based in Antwerp, Belgium.
2. The trading of diamonds is by way of consignment. This means that A will receive diamonds from Z and in turn, will attempt to sell them. The property/ownership remains with Z.
3. The trading of diamonds, worldwide, is characterised by way of trust and reputation. The diamond dealers know each other and rely on each other's reputation. The documentation is simple and sparse. A consignment document will identify the particular stone by reference to colour, identity and specific numbering. A and Z have been in business for many years and there has never been any issues or difficulties between them. A keeps Z's diamonds in his safe. He sells them to other dealers who sometimes pay immediately or within 30 days. Successful sales are noted and each month A accounts to Z with the proceeds less his commission.
4. Due to the COVID-19 pandemic, business has been very bad over the past 12 months. A has suffered badly and has been chased by debt collectors in respect of outstanding rent and credit card expenditure.

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

5. A decides to take some of Z's diamonds to a pawnbroker. He deposits 4 stones and receives HK\$500,000. The value of these 4 stones are approximately HK\$1 million.
6. A then sent to Z a postdated cheque in the sum of HK\$500,000. He enclosed a short note which stated: "Please see attached. As you will see, this is dated one month from today's date. I can assure you that there will be monies in my account at that time. Please consider this to be a good faith payment."
7. Z presented the cheque he had received from A. The cheque was returned to drawer with a note from the bank "no funds in the account". Z sent an email to A stating that he was devastated that the cheque had not been met on presentation.
8. However, A's financial position deteriorated. He was not able to trade his way out of his difficulties. He was not in a position to redeem Z's diamonds from the pawnbroker.
9. Z had not received any updates from A as to the diamonds that were placed on consignment. He demanded the return of all his diamonds. A informed Z that he is hopeful that he will be able to sell them and told him not to worry. Z then finds out from another diamond dealer that the pawnbroker had sold the diamonds that were consigned and placed with A.
10. Z immediately files a police report with the Hong Kong Police Force. The Police investigated. Subsequently A was arrested and charged.

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

- (a) Identify the offence(s) which may or have been committed by A.  
(8 marks)
- (b) Particularise the actus reus and mens rea in respect of each offence that you have identified.  
(8 marks)
- (c) What defences are open to A in respect of charges that would be laid against him?  
(9 marks)

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



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

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

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

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

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

- (i) At the time he assaulted Daisy, he did not have an intention to kill her or an intention to cause her grievous bodily harm;
- (ii) He assaulted Daisy as she had repeatedly kicked, scratched and punched him. He felt intense pain all over his body as a result;

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

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

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

- (i) Multiple injuries were detected all over Ken's body after he was arrested;
- (ii) Ken was addicted to Ice, a drug which can cause mind-altering effects on the user, such as hallucinations, delusions and paranoia;
- (iii) The killing took place whilst Ken was experiencing a psychotic episode triggered by his consumption of Ice;
- (iv) Ken had been abusing Ice for over 10 years. He was suffering from a persistent and active psychotic disorder.

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

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

**(17 marks)**

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

**(8 marks)**

**End of Test Paper**