

**THE LAW SOCIETY OF HONG KONG**  
**OVERSEAS LAWYERS QUALIFICATION EXAMINATION**  
**2025 SUPPLEMENTARY INFORMATION PACKAGE**

**HEAD V: PRINCIPLES OF COMMON LAW**

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# **1. Standards, Syllabus and Reading List**



# **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 (Cap. 21)
- Homicide Ordinance (Cap. 339)

### **Text Books**

- *Wesley-Smith*: ‘An Introduction to the Hong Kong Legal System’, Oxford UP, (latest edition)
- *D.K. Srivastava, Anna Lui, Charu Sharma & Sara Tsui*: Law of Tort in Hong Kong, LexisNexis Hong Kong, (3<sup>rd</sup> ed., 2014)
- *D.K. Srivastava* (General Editor): ‘Business Law in Hong Kong’, Sweet & Maxwell Asia, (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 (4<sup>th</sup> edition, 2024)
- *Rick Glofcheski*, Tort Law in Hong Kong (5<sup>th</sup> Edition 2023), 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 (6<sup>th</sup> edition, 2022)
- *Victor Ho Wai-kin*, Criminal Law in Hong Kong, Wolters Kluwer (3<sup>rd</sup> edition, 2019)

## **ASSESSMENT**

The examination will test candidates' ability to demonstrate their understanding of the topics covered by the syllabus both conceptually and also in terms of their ability to communicate this understanding in the English language. The assessment of the candidates being examined in this subject will be by oral examination.

The period of the examination will be up to 2 hours during which time the candidate will be examined by one or two examiner(s).

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/or The Law Student's Dictionary by J. E. Penner will be provided to candidates upon request. The candidate shall be permitted 45 minutes to consider questions and to choose 4 questions to be examined upon. The candidate shall then be called before one or two examiner(s). When called before the examiner(s), 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 and the notes which they have made during the reading time are the only documents that may be brought into the examination room. At the conclusion of the examination, candidates will be required to leave the questions supplied and the notes at the examination venue as directed.

The assessment of each candidate shall be undertaken by the examiner(s) 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 examiner(s) in the course of the examination.

At the end of the examination period, the examiner(s) shall allocate a score based on the assessment of the candidate's performance in dealing with the examination questions and supplementary questions. If the candidates are examined by 2 examiners, the average of the scores allocated by the examiners shall be the final mark allocated to the candidate concerned.

Each candidate's performance may be video recorded for the purpose of later consideration and assessment if necessary.

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## **2. Examiners' Comments on the 2022, 2023 and 2024 Examinations**



## **Examiners' Comments on the 2022 Examination**

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

The Head V Examination paper consisted of 4 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 Head V Examination paper consisted of 4 parts and each part comprised with 2 questions. The candidates were required to answer 1 question from each part. All candidates were given 45 minutes reading time. After the expiry of the reading time, each candidate was given an oral examination by 2 Examiners.

Generally, the candidates were aware of the relevant legal principles and were able to apply them to the facts of the questions and provide correct answers to those questions. The candidates were able to demonstrate in depth understanding and analysis of the core issues. Most candidates were able to support their answers by citing the relevant case law.

The candidates performed best on questions concerning Legal System of Hong Kong. Some candidates, at times, overlooked some issues with questions on Contract and Tort. With a bit of prompting, candidates were able to answer the questions more fully. Overall speaking, candidates were less capable in answering questions on topics of murder and diminishing responsibility. It is advisable for future candidates to have clear understandings of the provisions as set out in the Homicide Ordinance.



## **Examiners' Comments on the 2023 Examination**

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

The examination paper consisted of four parts:

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

Part B (Law of Contract);

Part C (Introduction to Law of Torts);

Part D (Criminal Law).

The examination paper had a total of eight questions. The candidates were required to answer one question from each part. The candidates were given 45 minutes reading time. Upon the expiry of the reading time, each candidate was given an oral examination by two Examiners. Some of the Examiners were newly recruited this year.

Generally, the candidates were familiar with the relevant legal principles and were able to link them up to the facts of the questions and provide correct answers to those questions. Candidates were less capable in citing Hong Kong cases to support their answers. It is advisable for future candidates to have better insights on local case law. The candidates performed best on questions concerning Constitutional Law and Introduction to Legal System. As to the questions on topics of Tort and Criminal Law, some candidates were able to answer more fully after being prompted by the Examiners.

The majority of the candidates were well prepared for the examination and were able to complete answering the questions well within the time set aside for them.



## **Examiners' Comments on the 2024 Examination**

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

The examination paper consisted of four parts:

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

Part B (Law of Contract);

Part C (Introduction to Law of Torts);

Part D (Criminal Law).

The 2024 Head V Examination paper consisted of 4 parts. Each part comprised of 2 questions. The questions revolved around the topics of constitutional law, law of contract, law of torts and criminal law. The candidates were free in selecting 1 question from each part. All candidates were given 45 minutes prior to answering the questions orally. Each candidate was examined by 2 Examiners.

Generally speaking, the majority of the candidates were knowledgeable in the relevant legal principles and able to apply them to the facts of the questions. Most candidates, in supporting their answers, were less capable in citing Hong Kong cases. After the handover of Hong Kong from the United Kingdom to the People's Republic of China, the Hong Kong case-law developed in a highly specific context, responding to the unique statutory and constitutional needs of this jurisdiction. It is thus advisable for future candidates to have better insights on local case precedents.

A high percentage of candidates were well prepared for the examination and able to complete all 4 questions well within the time set aside for them. The pass rate is about 67 % this year.





### **3. Past Examination Papers from 2022 to 2024**



# **2022 OVERSEAS LAWYERS QUALIFICATION EXAMINATION**

## **HEAD V: PRINCIPLES OF COMMON LAW**

**Tuesday, 31 January 2023**





# **2022 Overseas Lawyers Qualification Examination**

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

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

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

- (a) In what languages are legislation published in Hong Kong? Which language of the legislation should the courts rely upon?

(5 marks)

- (b) What happens when there is an apparent discrepancy between the different language texts of a legislation?

(10 marks)

- (c) What does Remedial Interpretation mean? Can Hong Kong courts engage in Remedial Interpretations with respect to the Basic Law?

(10 marks)

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

**Question 2 (25 marks)**

- (a) How many votes are needed for a bill to pass through the Legislative Council?

**(10 marks)**

- (b) Are there any restrictions to the types of bills that Members of the Legislative Council can introduce?

**(7 marks)**

- (c) Do national laws of the People's Republic of China apply in Hong Kong?

**(8 marks)**

**End of Part A**

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

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

The COVID-19 pandemic has badly affected the business of Carol's music school. In order to promote business in the new academic year, Carol decided to do more postings on social media and offer discounts on fees. Starting from July 2022, she has placed advertisements on LinkedIn, Facebook and Instagram. She also emailed information to current students, and placed physical copies of the information poster and registration form at the entrance to her school.

The poster reads as follows: "You will enjoy all music classes at a 15% discount for the 2022/23 academic year if you personally subscribe to our Facebook page. In addition, the first five persons who successfully register for our beginners' classes will receive three free lessons. Get the offer by scanning this QR code and completing and submitting the registration form online, or by filling in the form below and submitting it by email or in person to our school."

Assume that Amy, Bob, Cathy, Dan and Eva are the first five persons to respond to Carol's promotion, as follows:

- Amy scanned the QR Code and filled in her brother's name online for the violin beginner's class. She also personally subscribed to the Facebook page of Carol's music school.
- Bob (who knows Carol well) had no time to fill in the form and just emailed Carol to request registration for flute beginner's lessons for his daughter. Bob subscribed to the Facebook page of Carol's music school.

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

- Cathy accidentally scanned the QR code of a poster which was next to one of Carol's posters and therefore never registered for the cello beginner's classes at Carol's music school. Cathy subscribed to the Facebook page of Carol's music school.
- Dan filled in the registration form and delivered it personally to Carol's music school. However, the receptionist misplaced the form and Dan was never registered. Dan subscribed to the Facebook page of Carol's music school.
- Eva registered online for viola beginner's lessons, but asked her secretary to subscribe to the Facebook page of Carol's music school.

Classes started on 1 September 2022. On 1 September 2022, Amy's brother, Bob (bringing his daughter), Cathy, Dan and Eva all turned up at the first class, demanding the discount and the free lessons.

**Advise Carol whether the followings are entitled to the 15% discount and the free lessons:**

- |                   |           |
|-------------------|-----------|
| (a) Amy's brother | (5 marks) |
| (b) Bob           | (5 marks) |
| (c) Cathy         | (5 marks) |
| (d) Dan           | (5 marks) |
| (e) Eva           | (5 marks) |

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



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

- (a)** Jay owns a small café and employs two waitresses, Kate and Lily.

Kate falls ill with COVID-19 while on holiday, and Jay tells her not to come back to the café till she has recovered. However, Jay does not want to employ extra staff while Kate is away, so he asks Lily to work longer hours until Kate is able to come back to work. He promises Lily that he will pay her a bonus for doing so. Lily is happy to help out and she works very hard, but Jay does not pay her extra money.

Kate and Lily usually take turns to purchase and collect the flowers for the tables in the café. Since Kate is ill, the florist, Flora, offers to deliver the flowers to the café until Kate returns to work. Jay saw Flora a few days while she was making a delivery, and mentioned that he would pay for the delivery charges. After Kate returns to work, Jay receives Flora's invoice for the flowers which includes the delivery charges. Jay finds the delivery charges too expensive and now refuses to pay them.

**Consider and answer the following (ignore employment law implications):**

- (i) Does Lily have a good claim against Jay for the bonus for her extra work while Kate is away?**

**(5 marks)**

- (ii) Does Flora have a good claim against Jay for the delivery charges in making the flower deliveries?**

**(5 marks)**

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

(b) Great Wall Restaurant is a popular restaurant. Henry, Sarah and Linda have signed a contract to hire a big function room in the restaurant as a venue for their parents' wedding anniversary dinner. On the evening of the dinner, the following happen:

- The floor is slippery as the staff have been cleaning it often due to COVID concerns but did not dry it properly. Henry slips on the floor and injures his hip which needs medical attention. He is a tennis coach and his injury has forced him to cancel many lessons with students.
- Sarah slips on the floor when she gets up to go to the washroom, but manages to hang onto a table and is not injured. However, with the movement of the table, a very expensive bottle of wine on the table which she ordered, falls and the glass shatters on the ground, spilling the wine everywhere. Sarah refuses to pay for the wine.
- Linda hangs her handbag on the chair she is sitting on, but after dinner, she discovers that her handbag has been stolen.

The restaurant has a sign at the front which says: "Watch your belongings carefully. We are not responsible for any loss or damage to property or any personal injury, however caused." The contract of hire contains a similar provision.

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

**Advise on the following:**

- (i) Does Henry have a good claim against Great Wall Restaurant for the injury he has suffered?**

**(5 marks)**

- (ii) Does Sarah have a good claim against Great Wall Restaurant for the wine?**

**(5 marks)**

- (iii) Does Linda have a good claim against Great Wall Restaurant for the loss of her handbag?**

**(5 marks)**

**End of Part B**

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

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

Late one Saturday night in June 2022, some patrons at the Pink Orchid nightclub (“Nightclub”) had drunk more than was good for them. KK, one of these patrons, became disoriented and aggressive. He began to lash out at people around him, punching and kicking them. Charlie, a crowd supervisor in the Nightclub, saw the commotion and decided to remove KK from the premises. He rushed over to KK and restrained him round the arms “in a bear hug” and marched him from the premises. Outside the Nightclub, Charlie sat KK down on a bench on the public footpath and told him to go home.

KK was so drunk that he could not accept that his night had ended. He therefore went around the side of the building where he managed to re-enter the Nightclub through a fire exit door. After a while, Charlie noted KK staggering around the dance floor again. It enraged him to think that anyone dared to defy him, so he stormed over to KK and said: “I told you not to come back tonight.” With this, he punched KK, knocking him to the floor. Paolo, another doorman, came to the scene, and Paolo and Charlie then dragged KK to a private room where he was left to sober up. An hour later, when KK had sobered up a little, Paolo guided KK out the side door of the Nightclub.

KK was angry about the treatment he had received from Charlie. From the street, he went back to the front of the Nightclub and made a racially offensive remark to Charlie. Charlie had suffered racist taunts throughout his youth and KK’s words hit a raw nerve. Charlie looked as if he would explode and he lunged for KK. Out of fear, KK tried to flee. In panic, he ran into the road and was hit by a vehicle driven by Yasmina. Yasmina was driving carefully and could not have avoided the collision.

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

Yasmina suffered no physical injury as a result of the collision. However, the collision brought back the memories of the trauma that her partner, Helen, a tram driver, had suffered some years back. Helen had to undergo trauma counselling and was compelled to give up her work when a person committed suicide by throwing himself in front of a tram that she was driving. Yasmina feared the same for herself and, indeed, she did develop a severe, long-term psychiatric reaction following the accident. Fortunately, KK did recover fully from the injuries he suffered in the accident.

The Nightclub is licensed under the Dutiable Commodities (Liquor) Regulations (Cap.109B). The Licensing Conditions for the Liquor Licence relevantly provide:

1. No disorder shall be permitted on the premises.
2. No person shall be allowed to become drunk on the premises, nor shall liquor be supplied to any person who is drunk.

The crowd controllers, including Charlie, were provided by Bouncers-R-Us Ltd., who trained all its staff and registered them with the relevant authorities. The employment contracts between Bouncers-R-Us Ltd. and its staff contain a detailed Code of Conduct (“Code”), the breach of which constitutes grounds for immediate dismissal. The Code provides, amongst other things, that the crowd controllers may only use “reasonable force” in the exercise of their functions, which include assisting the Nightclub in ensuring compliance with its licensing conditions.

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

**Provide the following advice, giving full reasons and referring to relevant principles and authorities, as well as considering also any relevant defences:**

**(a) Is Charlie liable to KK for trespass to person?**

**(11 marks)**

**(b) Is Charlie liable in negligence for the mental harm suffered by Yasmina?**

**(6 marks)**

**(c) Is Bouncers-R-Us Ltd. liable for Charlie's actions?**

**(8 marks)**

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

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

Belle's Beauty Clinic ("BBC") is a private hospital specialising in cosmetic procedures. Most of its clientele attend as out-patients, but there is also a hospital ward at which more invasive procedures are undertaken for in-patients.

During the pandemic, BBC adopted a strict hygiene regime aimed at keeping its staff and patients safe from the SARS-CoV-2 virus. The measures put in place were in line, or exceeded, the requirements of applicable government regulations. Under this regime, no visitors were allowed in the ward, and all patients needed to have a Polymerase Chain Reaction ("PCR") test prior to admission. All workers at the hospital needed to undertake a daily rapid antigen test for COVID-19 ("RAT") and record the result in an online system operated by BBC. If the RAT returned a positive result, the worker needed to take a PCR-test and could only return to work if the result was negative or after they recovered from COVID-19.

Crystal Wong ("Crystal"), a fourth-year medical student, undertook a clinical placement as a student intern at BBC. She was keen to get work experience at the hospital because it was her dream to work as a cosmetic surgeon one day. One morning in July 2022, she noticed that she had run out of RAT kits and decided to record a negative result despite not having undertaken any test that morning. She had planned to do the RAT when she arrived for work at BBC but then forgot to do so.

A few days after later, there was a COVID-19 outbreak in the BBC hospital ward. One of the patients infected during the outbreak was Mandy Leung ("Mandy"). Mandy became seriously sick and is still suffering from long COVID, a disabling condition that required her to give up her position as a swimming coach in an international school.

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

Unfortunately, Mandy had chosen to remain unvaccinated because she had been worried about possible long-term effects of vaccination. Mandy knew that full vaccination can reduce the chance of infection and drastically reduces the risk of seriously adverse outcomes from COVID-19. However, Mandy blames the BBC for her situation because, in her view, BBC should have had in place a stricter pandemic regime that did not rely on workers self-reporting but required them to undergo testing under supervision each day.

After the outbreak, the in-patient ward was closed for one week for deep cleaning while the source of the outbreak was being investigated. The investigation concluded that it was likely that Crystal was the source of the outbreak after it was discovered that Crystal tested positive for the virus and had close personal contact with Mandy and all other infected patients. When a local newspaper, NT News, reported that “an irresponsible staff member” was the cause of the outbreak at BBC, the reputation of BBC took a hit, leading to severe downturn in bookings and revenue.

**Provide the following advice, giving full reasons and referring to relevant legal principles and authorities:**

- (a) Can Mandy successfully sue Crystal, BBC, or both, in negligence for causing her sickness and, if so, are there any applicable defences?**

**(12 marks)**

- (b) Does Crystal owe a duty of care to BBC in relation to the loss of revenue suffered as a result of the outbreak?**

**(7 marks)**

- (c) Can BBC successfully sue NT News in defamation?**

**(6 marks)**

**End of Part C**



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

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

W was shopping at ParknShop with a trolley. She selected various items. She proceeded to the automatic checkout. A store employee was watching her. She scanned 7 items and used her credit card to pay and obtained a receipt. She put the items into her bag and walked out of the store. W was confronted by the store employee and in her bag, there were 10 items. When asked to explain why she did not scan 3 of the items (worth a total of HK\$150), W asserted that she might have forgotten and was somewhat stressed and absent-minded.

The next day, W was walking along Pedder Street. On the pavement, there was a HK\$500 note. She picked it up, looked around and then put the note into her purse. A police officer watched her and in turn, arrested her.

**(a) What are the essential ingredients of the offence(s)?**

**(17 marks)**

**(b) What defences (if any) are available to W?**

**(8 marks)**

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

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

Henry refused to pay back a gambling debt that he owed Andy, a triad boss. The dispute of unpaid debt resulted in developing a strong animosity between them. Andy showed a photo of Henry to a group of 7 gang members, amongst whom were Bob and Charles, telling them to be ready to “teach Henry a lesson one day”.

In the evening of 7 July 2021, Andy noticed Henry in an open area of a tavern called American Bar. Henry was spotted drinking with an unknown male who was later identified as Ivan. Andy immediately summoned the 7 gang members to go to American Bar to “let Henry have some fun”. Bob picked up the gang with his 7-seater vehicle and drove to American Bar. All members, except Bob, were armed with baseball bats, cleavers and machetes.

Henry and Ivan noticed the 7-seater vehicle circling the tavern a couple of times at slow speed. The driver, Bob, was looking in Henry’s direction every time when the vehicle went past the tavern. Though Henry sensed danger, he was unconcerned as Ivan is an expert in martial arts.

Moments later, the group alighted from the vehicle whilst Bob remained in the driver’s seat. Charles pointed at Henry and shouted “this is the guy”. The gang rushed towards Henry with weapons. In a split second, the group chopped and stabbed Henry numerous times. Ivan, upon seeing this, quickly snatched the machete from one of the assailants, Charles, and struck him in the head. The incident ended with the deaths of Henry and Charles.

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

The autopsy reports indicated the cause of death of Henry was multiple puncture wounds to the neck, heart and lung. Charles, on the other hand, suffered a shattered skull.

Bob was arrested days later. He was charged with the offence of murder. He voluntarily admitted to the police under caution emphasizing that:

- (1) he did not participate in attacking Henry,
- (2) only those who took part in the actual assault of Henry should be responsible for the death of Henry, and
- (3) he just followed the instructions of Andy, but the instructions were vague, he did not expect any of the attackers to have gone as far as assaulting Henry fatally.

Ivan was also arrested and charged with murdering Charles. He remained silent under caution.

**Discuss:**

- (a) **The actus reus and mens rea of murder.**  
(4 marks)
- (b) **The evolution of the doctrine of “malice aforethought”. Is this doctrine applicable in modern law of Hong Kong?**  
(4 marks)
- (c) **Whether Bob is likely be convicted of murdering Henry.**  
(10 marks)
- (d) **Whether Ivan is likely be convicted of murdering Charles.**  
(7 marks)

**End of Test Paper**



**2023 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF  
COMMON LAW**

Friday, 2 February 2024





# **2023 Overseas Lawyers Qualification Examination**

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

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

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

- (a) Were Privy Council decisions binding on Hong Kong courts before the Handover?

(8 marks)

- (b) Are Privy Council decisions binding on Hong Kong courts today?

(7 marks)

- (c) Were House of Lords decisions binding on Hong Kong courts before the Handover? How should Hong Kong courts treat House of Lords decisions today?

(10 marks)

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

**Question 2 (25 marks)**

- (a) Discuss how the definitions section (section 3) of the Interpretation and General Clauses Ordinance (Cap. 1) is useful.

(8 marks)

- (b) What is the role of the Standing Committee of the National People's Congress in the legislation making process in Hong Kong?

(9 marks)

- (c) Compare the two “vetting” procedures by the Legislative Council for subsidiary legislation.

(8 marks)

**End of Part A**



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

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

**Answer all of the following sections.**

- (a)** Harry said to Meghan two months ago: “I really like your car. Let me know if you ever wish to sell it.”

Meghan has recently decided to move house, but the new apartment block has no car parking space. Meghan remembered what Harry had said previously, and the following events took place:

On Monday, Meghan wrote to Harry offering to sell him her car. She asked Harry to “let me know your decision by Sunday”.

Meghan’s letter arrived at Harry’s home on Tuesday.

On Wednesday morning, Harry posted a reply to Meghan accepting the offer. However, that afternoon, one of his friends told him that Meghan’s car was too expensive, and that he could get something similar for much cheaper.

On Thursday, Harry decided to telephone Meghan on her mobile phone to tell her that he had changed his mind about buying her car. Meghan did not answer her phone, so Harry left a voice mail on Meghan’s phone withdrawing his acceptance of Meghan’s offer.

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

On the following Monday morning, Harry's letter arrived at Meghan's home. After reading the letter, Meghan realizes Harry has left her a voice mail and listens to the voicemail message.

Meghan is quite upset because she had previously found it difficult to sell her car because of its green colour, and she had been hoping that she would be able to sell it to Harry.

**Advise Meghan. (7 marks)**

**(b)** As applied to contractual relationships:

**(i) What is the "reasonable test" in the Control of Exemption Clauses Ordinance (Cap 71) ("CECO")?**

**(4 marks)**

**(ii) Under the CECO, what matters should a court refer to in determining whether an exemption clause is reasonable?**

**(4 marks)**

**(iii) As against a consumer, what type of contractual liability cannot be excluded or restricted by reference to an exemption clause?**

**(3 marks)**

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

- (c) Bill held a sale of his home furniture as he was moving into a smaller flat. One visitor to his home, Kate, was interested in a pair of antique Ming Dynasty chairs and offered HK\$80,000 for the pair. Bill accepted the money and Kate took the chairs away. After two days, Kate came back to see Bill. She was very angry. She said that she had asked an expert to examine the chairs and found that they were only Ming-styled pieces made in the last 50 years and not true antiques, and therefore worth at most only HK\$8,000. Kate asked for her money back. Bill refuses to return the money to her.

**Advise Kate.**

**(7 marks)**

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

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

**Answer all sections in this question.**

Andy, Ben, Cody and Dave are entrepreneurs undertaking different business ventures. However, they have not been doing well in these ventures due to the occurrence of various events. They ask for your advice on their respective legal positions.

- (a) Andy has entered into contracts with several restaurants in Hong Kong to supply them with fresh lobsters for the upcoming lobster festival. He has ordered a huge shipment of lobsters from a supplier in Sydney, Australia. Before the lobsters were shipped, however, the Australian government declared that lobsters were to be considered protected species of animals and, with immediate effect, exporting them from Australia would be illegal. (Assume that all contracts with the restaurants are on the same terms.)

**Advise Andy on his legal position with regard to (i) the supply contract with the Australian supplier; and (ii) his supply contracts with the restaurants.**

**(7 marks)**

- (b) A Chinese New Year Bazaar (“Bazaar”) was to be held on the grounds owned by Sunny Day Property Limited (“Sunny Day”). Ben rented a stall to sell dried seafood during the Bazaar. On the day before the opening of the Bazaar, Ben delivered the goods and placed them inside his stall, and securely locked them. That night however, Sunny Day’s cleaner forgot to extinguish his cigarette when throwing it away, which led to a fire. The fire destroyed the panels of Ben’s stall. Sunny Day’s employees managed to put out the fire with water hoses and fire extinguishers, but the water and fire extinguisher’s chemicals completely ruined Ben’s merchandise.

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

**Advise Ben on his legal position as regards (i) the destroyed goods and (ii) the rent he has pre-paid to Sunny Day.**

**(6 marks)**

- (c) For his new business venture, Cody agreed to pay Dan HK\$100,000 to design a crowdfunding website. A HK\$30,000 deposit was paid to Dan in advance. A law was subsequently passed in Hong Kong making crowdfunding, and therefore crowdfunding websites, illegal. Cody and Dan agreed that Dan should stop working on the website design. Dan has already spent over 80 hours working on the website, at an hourly rate of about HK\$250, which was the rate agreed by the parties.

**Advise Cody whether he can claim against Dan for the return of the deposit, and if so, whether he will be able to recover the whole of the deposit or only a portion of it.**

**(6 marks)**

- (d) Dave decided to purchase the shares in a company from John. During negotiations for the contract, Dave enquired about the state of the accounts of the company, specifically, whether the company was profitable. John said “I’m unsure, but it is my opinion that the company is profitable. However, I will check the accounts next week, if you don’t hear from me, you can assume all is well”. After a week, Dave hears nothing. The contract is signed, but when Dave received the accounts, he found that the company has not been profitable in the last 12 months.

**Advise Dave whether he has any legal remedy.**

**(6 marks)**

**End of Part B**

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

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

On a Sunday afternoon, Mr. Fong was walking along a paved footpath within Penfold Park, a park in Shatin, New Territories, Hong Kong that is very popular amongst dog lovers. His dog, a 2-year-old placid Cavalier King Charles spaniel named Cooky, was playing with other dogs within 10 metres of Mr. Fong. All dogs were off leash, as was common practice in the park.

At the same time, Mrs. YC Wang, a woman in her early thirties, allowed her 11-year-old daughter, Emily, to walk their energetic Shiba Inu, Socks, also in Penfold Park. Socks was attached to an extendable leash with a spring mechanism that Emily was holding securely when they were on the footpath walking towards Mr. Fong. Suddenly, Cooky was attacked by another dog and howling in pain and distress. Alerted to the dog fight, Mr. Fong rushed towards Cooky to save her. The fight got Socks excited as well, who also started to run towards the scene, thereby tensioning his leash. Before Mr. Fong could reach Cooky, Emily had to let go off the leash because Socks had been pulling too strongly. The handle of leash flew with force against Mr. Fong, who was in the immediate vicinity, hurt his ankle and caused him to fall.

As a result of the fall, Mr. Fong suffered several injuries, including a fractured wrist. He was taken to the hospital, where he underwent surgery for his wrist fracture. He was required to wear a cast on his wrist for several weeks, during which he experienced pain and discomfort. The injuries also prevented him from working as a carpenter during his recovery period, leading to a loss of income. During this time, Mr. Fong could not take care of Cooky. Mr. Fong booked Cooky into an expensive dog hotel although his mother had offered to look after him for free. He thought that Cooky deserved a treat after being attacked in Penfold Park.

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

After Mr. Fong's accident, the following additional facts are established:

- The Penfold Park by-laws provide:
  15. No person shall cause or suffer any dog or other pet belonging to him/her or in his/her charge or otherwise under his/her control or custody to enter or remain in Penfold Park unless under proper control and effectively restrained from causing annoyance to any person, from worrying or disturbing any animal, bird or waterfowl and from entering any ornamental water.
  29. Any person who, in Penfold Park, contravenes any of the provisions of these Bye-laws [sic] may be requested to leave Penfold Park or, if circumstances require, be removed therefrom by the keeper or by any other official authorized by the Stewards.
- Mr. Fong did not have a valid dog licence for Cooky. It is a criminal offence under s.20 of the Rabies Regulation (Cap. 421A) to keep a dog over the age of five months without a licence.
- The dog that attacked Cooky was an Australian sheep dog called Matilda. Matilda was generally sociable. However, there had been one incident some years ago, when she had bitten another dog that came too close to her. Matilda, who was off leash at the time of the accident in Penfold Park, was owned by, and in the park, with Mabel Ma.
- There was a sign at the entrance to the dog area of Penfold Park that said: "Dog owners use this park at their own risk."

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

**Provide the following advice, giving full reasons and referring to relevant legal principles and authorities:**

- (a) Does Mr. Fong have a cause of action in negligence against YC Wang, Emily Wang and/or Mabel Ma for his injury and losses?**

**(12 marks)**

- (b) Assuming that Mr. Fong has a cause of action, are there any applicable defences?**

**(8 marks)**

- (c) Assuming that Mr. Fong has a valid claim, how are damages to be assessed?**

**(5 marks)**

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



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

“Water leakage, normally from the premises above, is a problem of considerable scale in Hong Kong. [...] Leakage cases are increasingly brought in negligence and nuisance [...] Indeed, there seems some confusion amongst counsel and judges as to the correct cause of action and principles in such cases. [...] It is submitted that water leakage cases would be best pleaded and decided on the basis of nuisance.”

Rick Glofcheski, Tort Law in Hong Kong, 4th edition (2018), pp. 693-4.

- (a) Explain the core principles of the action in private nuisance.**

**(20 marks)**
  
- (b) Why might it be advantageous for a plaintiff to proceed in nuisance, rather than negligence, in a water leakage case, as identified in the quote above?**

**(5 marks)**

**End of Part C**

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

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

1. John, aged 16, and his mother, Lucy, have made an appointment to see you at your office. Lucy explained the difficulties John now faces. John has recently returned from a short holiday from Bangkok and during his stay, he had purchased cannabis from a store. Lucy emphasized that in Bangkok, it is legal to purchase cannabis which is freely available. He purchased and smoked the cannabis whilst in Bangkok.

On John's return to Hong Kong, he met up with friends in Lan Kwai Fong. He spent considerable time drinking as well as partying. He then hailed a taxi and asked the taxi to take him to his home in the Mid-levels. During the course of the taxi ride, an argument broke out as to the route the driver was taking. When he arrived at his home, the meter displayed HK\$100. John made it clear to the taxi-driver that he was not going to pay this since the normal fare from Lan Kwai Fong to his home is HK\$50. A heated argument broke out. He threw a HK\$50 note on the front seat and left the taxi. The driver got out and a fight took place, which ended when John pushed the taxi-driver backwards who then slipped and injured his arm. A watchman witnessed all of this and called the Police. John also kicked the taxi door, which resulted in a small dent. Everything was caught on CCTV. The Police arrived and John tried to explain what happened. The Police then decided to arrest everyone and took them to the police station. John was wearing a backpack. The Police asked him to open the backpack. They searched and found what they believed to be some traces of cannabis. The taxi-driver insisted on going to hospital. John gave a statement to the Police which explained as to what transpired in respect of the taxi ride but said nothing about the cannabis in his backpack. Everyone was released on police bail.

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

2. Lucy made it clear to you that she was very concerned that John could face charges that would have an impact upon her son's future career. He is a bright student and was expected to be admitted to a well-known university and embark upon a degree that would lead to a professional qualification.
3. As to the cannabis, John explained that he did recollect utilising the same backpack whilst in Bangkok. It may very well be the case that some of the cannabis he purchased may have been left in the bag.
4. A Government Chemist Certificate certified the weight of the herbal cannabis as 0.2g. The medical report showed some bruising and tenderness on the taxi driver's arm. The repair to the taxi door was HK\$2,500.

- (a) **What charge(s) and on what basis are likely to be brought against John?**  
(9 marks)
- (b) **What defences are available?**  
(8 marks)
- (c) **Advise John and his mother, Lucy, as to the best way forward to try to reduce the risk of a conviction.**  
(8 marks)

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

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

Henry and Winnie were husband and wife. One morning, Henry discovered in the purse of his wife a photo of Winnie and a man, both naked. Henry was furious and he believed that Winnie was having an affair with that man. He immediately took a knife and went to Winnie's work-place, where she worked as a waitress.

Henry confronted Winnie, demanding her to reveal the identity of the man depicted in the photo. An argument ensued. Winnie started attacking Henry with a serving tray from the restaurant. As Winnie kept hitting Henry with the tray, he took out the knife and stabbed her several times. Whilst she was lying on the ground, Henry kicked her repeatedly. She suffered multiple stab wounds and bruises as a result.

Winnie was rushed to the hospital for treatment. The doctor administered an insufficient dosage of pain relief medication to Winnie, and she died with intense pain shortly afterwards.

Henry was arrested for the offence of murder. Under caution, he said "I am very angry as my wife has had an affair with another man." In a subsequent video interview, he told the police that he brought along the knife to scare his wife, without the intention of hurting her. It was only because his wife scolded and hit him, that he stabbed her with the knife.

The autopsy report indicated that there were multiple bruises on Winnie's upper limbs and chest. The deceased also had 3 lacerations on her neck suggestive of cuts from a knife, one of the 3 cuts being potentially fatal.

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

**Discuss:**

- (a) Is murder a statutory offence?  
(1 mark)
- (b) Which Ordinance sets out how the offender is punishable for committing the offence of murder? Assuming that Henry, at the time of the offence, is 17 years of age, would he be liable to be sentenced to life imprisonment?  
(2 marks)
- (c) To secure a conviction for the offence of murder, what does the prosecution have to establish under the present circumstances?  
(10 marks)
- (d) Discuss in detail, what defence, if any, Henry may raise?  
(12 marks)

**End of Test Paper**



# **2024 OVERSEAS LAWYERS QUALIFICATION EXAMINATION**

## **HEAD V: PRINCIPLES OF COMMON LAW**

Thursday, 13 February 2025







# **2024 Overseas Lawyers Qualification Examination**

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

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

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

- (a) Does the Legislative Council need the approval of the Standing Committee of the National People's Congress when enacting ordinances in Hong Kong? Explain.

(12 marks)

- (b) How can national laws of the PRC be applied to Hong Kong?

(10 marks)

- (c) What is the difference between public bills and private bills?

(3 marks)

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

**Question 2 (25 marks)**

- (a) Can Hong Kong courts refer to precedents from other common law jurisdictions and decisions of international courts in their decisions? Discuss.  
(10 marks)
- (b) Are international treaties a source of law in Hong Kong?  
(7 marks)
- (c) How has equity originating in English law been received into and form part of the laws of Hong Kong?  
(8 marks)

**End of Part A**

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

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

**Answer all of the following sections.**

Joe runs a business selling air-conditioners. He needs your advice on the following contracts which he has made with various parties:

- (1) So Cool Limited (“So Cool”) has been supplying air-conditioner parts to Joe for some years. So Cool is unfortunately in financial difficulties. Joe owes So Cool HK\$200,000 for some mechanical parts which he has ordered. This sum is not payable until June 2025.

Joe contacted So Cool, and offered that, to ease So Cool’s cashflow difficulties, he would, by 31 March 2025: (i) make a payment of HK\$120,000; and (ii) give to So Cool, for free, 10 new air-conditioners, in return for So Cool waiving payment of the remaining HK\$80,000. So Cool reluctantly accepts Joe’s offer and waives the payment of the remaining HK\$80,000, but after a while comes to Joe asking for the HK\$80,000 to be paid.

- (2) Joe has a contract to sell 80 air-conditioners to Big Home Limited (“Big Home”), a contractor who is refurbishing a small block of flats. Big Home wants all 80 air-conditioners installed in the flats in four weeks’ time to avoid a penalty clause. Joe said that he does not have so many air-conditioner units available. Big Home offers Joe an extra HK\$20,000 if he delivers and installs all the units within four weeks. Joe accepts this offer. He reassigns some units from another order and the units are delivered and installed in time. However, Big Home then refuses to pay the extra HK\$20,000 promised.

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

(3) Joe's main customer is Fancy Hotel. Four months ago, Fancy Hotel ordered 300 air-conditioners from Joe to replace the units in all their hotel rooms. Recently, Fancy Hotel has discovered another air-conditioner supplier who offers a better discount. However, as a gesture of goodwill, Fancy Hotel told Joe that they would still keep their order with him if he could reduce the price. Afraid that he would lose the order, Joe agreed to reduce the price by 20%. After a while, Joe regretted his decision.

(a) **Advise Joe whether he still has to pay the HK\$80,000 to So Cool?**  
(8 marks)

(b) **Can Joe force Big Home to pay the extra HK\$20,000?**  
(8 marks)

(c) **Can Joe insist that Fancy Hotel pay him the whole of the original price for the air-conditioners?**  
(9 marks)

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

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

**Answer all of the following sections.**

### **Situation 1**

Ben's business trades in kitchen appliances. His biggest customer is Sun Sun Supermarket ("Sun Sun"), which accounts for over half his sales. Last week, Sun Sun told Ben that they would place a huge order with him on condition that Ben should pay Sun Sun a large advertising fee to promote his appliances. If he refused, Sun Sun would not place further orders with him. Ben felt he had no choice but to agree to the payment so as not to lose his sales to Sun Sun.

Ben has a one-year contract to buy the appliances at a fixed price from the importer, Starry Supplies. Starry Supplies heard about the great deal between Ben and Sun Sun, and immediately increased its prices by 50%. Ben protested as this was in breach of his contract with Starry Supplies, but as he was not able to find another suitable supplier, he had no choice but to agree to the increased price.

After three months, Ben was approached by Great Big Supermarket, who offered to buy kitchen appliances from him with a much smaller promotion cost. He also found another importer whose prices were lower. Ben now wants to terminate the contracts with Sun Sun and Starry Supplies.

**(a) Advise whether Ben's termination of the contract with Sun Sun would be lawful on the basis of economic duress.**

**(6 marks)**

**(b) Advise whether Ben's termination of the contract with Starry Supplies would be lawful on the basis of economic duress.**

**(6 marks)**

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

## **Situation 2**

Tim manages the Amazing Fun Restaurant and is arranging a large party for a corporate client. He has entered into the following contracts one month before the party:

- a contract with Wong's Wine Merchants ("Wong's") for 100 bottles of a particular wine selected by the client; and
- a contract with Galaxy Band, a ten-person band, to play at the party.

A week before the party, Wong's told Tim that their supplier could not ship the wine in time and they could no longer fulfil his order. Tim was able to find the identical wine from another supplier. However, this supplier, knowing Tim's predicament, increased the price of the wine by 40%, making the wine more expensive than what Tim had agreed to charge the corporate client. Tim was desperate and had no choice but to place an order with them.

Galaxy Band came to play at the party but with only four musicians. Tim was upset as he had rented a stage large enough for ten musicians. As it was too late to get any replacement, Tim had no choice but to allow the band, with only four musicians, to go ahead and play at the party.

The corporate client is only willing to pay the price of the wine as previously agreed with Tim. It also refused to pay for Galaxy Band as it had specifically asked for the complete band of ten persons to perform. Galaxy Band, however, has asked to be paid for performing.

- (c) Advise what remedies Tim may be able to claim from Wong's, assuming that Wong's is in breach of contract.**

**(6 marks)**

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

- (d) What remedies Tim can claim from Galaxy Band, assuming the band is in breach of contract? Can Galaxy Band claim for their fees for playing at the party? Can Tim insist on payment from the corporate client for the fees for the Band?**

**(7 marks)**

**End of Part B**

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

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

Grace and Rui, who are both 12 years old, visited a fund-raising event at a local primary school. Otiz, one of the parents, was running the trash and treasure stall selling second hand goods he no longer needed, with the proceeds to go towards the school. While Otiz was busy with other customers, Grace and Rui rummaged through the items on display to see if there was anything worth stealing. Rui found a basket of used bathtub toys, including a yellow rubber duck. The rubber duck had not been used for some time, and Rui could smell that the water in it was foul. Rui picked up the rubber duck and squirted water at Grace, splashing some of the water into Grace's eye.

A couple of days after the school fete, Grace's eye was very sore and inflamed. She visited her doctor, Dr. Stella. Dr. Stella told Grace to put a warm towel on her eye and wait until the eye gets better. Grace knew instinctively that her condition was more serious and needed urgent attention, but she felt too embarrassed to tell the story about Rui and therefore left the clinic.

Unfortunately, the infection worsened dramatically overnight and by the time Grace attended the clinic again, the infection had caused Grace to permanently lose vision in the infected eye. Investigations showed a bacterium in the water squirted into Grace's eye had caused the infection, although it was very rare for such infections to cause a loss of vision. If antibiotic treatment had begun when Grace visited Dr. Stella, it would have been likely that Grace's vision could have been saved.

Further, Otiz admitted that the bath toys were from his family. Otiz said that he was getting rid of the toys because his own children had developed eye infections after squirting water from the toys at each other.

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



**Advise Otiz as to his liability to Grace in the tort of negligence. You should consider all elements of the tort of negligence and any defences that might arise and any remedies that may be given.**

**(25 marks)**

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

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

Several years ago, Andy lost the use of both of his legs and right arm. As a result, he relies on a battery-powered wheelchair for mobility. One day, after shopping in his local neighbourhood in Mongkok, Hong Kong, Andy was proceeding to cross a street at a zebra crossing. Boe, driving a large four-wheel drive, screeched around a corner, very nearly hitting Andy, before pulling into a parking spot. Fearing a collision, Andy instinctively turned his head away, cutting and bruising his cheek on the back of his wheelchair. Andy then moved near to Boe's car and began shouting angrily at Boe about Boe's appalling driving. Boe, embarrassed by the incident and by his own bad driving, simply ignored Andy.

Andy, incensed by Boe's failure to respond, angrily slapped Boe's car door. This was the beginning of a heated argument which ended with Boe grabbing the battery pack from Andy's wheelchair and throwing it onto the ground a few metres away from Andy, before storming off. As Boe was walking away, another driver inadvertently drove over the battery, smashing it beyond repair. Andy screamed at Boe that he would hunt him down and get him. Several minutes passed before someone came to Andy's assistance. As he was being wheeled away from the scene, Andy reached through a lowered window on Boe's car and took Boe's laptop business computer.

**(a) Advise Andy as to his tortious rights (if any) against Boe.**

**(15 marks)**

**(b) Advise Boe as to his tortious rights (if any) against Andy.**

**(10 marks)**

**End of Part C**

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

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

- (a) X owed monies to his friends. Most of his friends were being reasonable and told him that he should make payment as and when he could. However, Z insisted that he be paid HK\$100,000. X agreed to pay him an initial sum of HK\$20,000 by way of a cheque and gave him 4 other cheques each postdated. X knew that at the present time he did not have sufficient monies in his account to satisfy the postdated cheques. However, he was hopeful that he would have sufficient monies later as he would be receiving consultancy fees. The first cheque cleared and payment was made. Z then presented the second postdated cheque on the relevant date. This cheque was not met and returned to drawer with a note that there were insufficient funds. Z reported this matter to the Police.

**Provide advice to X as to whether he has any defences to this matter and in particular, draw his attention to any offences that he may have committed. Advise him as to what steps he should consider taking.**

**(9 marks)**

- (b) A visited several bars in Wanchai, Hong Kong during the course of an evening. On the pavement, A saw a mobile phone. A picked up the mobile phone and put it in his back pocket. Shortly thereafter, A was stopped by a police officer who arrested him and he was charged with theft.

A came to see you at your office. He indicated that he had drunk somewhat too much that evening but he did confirm he saw the mobile phone on the floor. It was his intention to hand in the mobile phone to the police station.

**Provide advice to A as to any offence(s) he has committed and what defences are available.**

**(8 marks)**

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

- (c) B hailed a taxi outside the Mandarin Hotel, Central, Hong Kong and asked to be taken to Mid-levels, Hong Kong. The taxi-driver however drove him towards Causeway Bay, Hong Kong. An argument broke out. B insisted that the taxi-driver should stop the taxi. B jumped out of the taxi and said “I am not paying” and started abusing the taxi-driver. In turn, the taxi-driver got out of the cab and started shouting at B and demanded payment. B pushed the taxi-driver and in turn, the taxi-driver fell over. The taxi-driver got up and started pushing and kicking B. A police officer was watching all of this and intervened. Both the taxi-driver and B were arrested and taken to the police station. Both the taxi-driver and B were released on police bail. B came to your office.

**Set out what charge(s) (if any) would be brought against B. What defence(s) (if any) are available? Provide advice as you think to be appropriate to B as to the best way forward in order to reduce the risk of a conviction.**

**(8 marks)**

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

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

David, a healthy 18-year-old athlete, and Amy, an elderly woman aged 70, were involved in an altercation about a trifle. In the heat of the dispute, Amy scolded David with foul language. She also angrily slapped his face a couple of times. In return, David forcefully punched Amy on the bridge of her nose, causing her to fall backward to the ground. Whilst Amy was lying on the ground unconscious and bleeding from the back of her head, David accused her of pretending to be dead. After that, he kicked her rib cage a few more times.

Amy died the following day. The post-mortem examination showed severe injuries to the back of her skull which could have been due to a fall. There were haemorrhages in the left orbital plate with damage to the brainstem. Though she also suffered fractures to her ribs, these injuries did not cause her death. The pathologist determined that the cause of death was attributed to a hard object, possibly a fist, hitting Amy's nose, coupled with a fall to the ground causing her to suffer serious head injuries.

The police arrested David. Under caution, he admitted that he had assaulted Amy but claimed to be acting in self-defence. He was adamant that he did not initiate the fight. He also said that he was upset at being scolded. He further explained that after Amy was lying on the floor, he thought Amy was feigning death. He thus used his foot to "push" Amy to check if she was really unconscious.

The police, after consulting the Department of Justice, charged David with the offence of murder.

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

**Discuss:**

- (a) The doctrine of concurrence and the actus reus and mens rea of murder.**  
**(4 marks)**
- (b) Whether the single transaction rule is an exception to the doctrine of concurrence in the case of murder?**  
**(4 marks)**
- (c) Whether the single transaction rule has any application in the present case.**  
**(4 marks)**
- (d) How likely is it that David would succeed in relying on the defence of self-defence?**  
**(4 marks)**
- (e) What other advice would you give David?**  
**(9 marks)**

**End of Test Paper**