

2024 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD V: PRINCIPLES OF COMMON LAW

Thursday, 13 February 2025



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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