

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

HEAD II: CIVIL AND CRIMINAL PROCEDURE

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- 1. Standards, Syllabus and Materials**
- 2. Examiners' Comments on the 2022, 2023 and 2024 Examinations**
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Important: The test paper for Head II Civil and Criminal Procedure:

- 1. is open book. Candidates may bring in and refer to any book, document or other written material**
- 2. has a duration of 3½ hours**
- 3. has no specific reading time allocated**
- 4. contains FIVE questions. Candidates should answer any FOUR questions only.**

1. Standards, Syllabus and Materials

Overseas Lawyers Qualification Examination

HEAD II: CIVIL AND CRIMINAL PROCEDURE

Standards, Syllabus and Materials

A. CIVIL PROCEDURE

STANDARDS

Candidates will be expected:-

- (i) to be familiar with causes of action arising out of the contract and tort sections of Head V: Principles of Common Law;
- (ii) to demonstrate an ability to draft simple pleadings, affidavits and letters of advice; and
- (iii) to demonstrate a knowledge of and an ability to apply the rules of practice and procedure as set out in the syllabus.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

1. Structure of Hong Kong's Civil Courts System

- Court of Final Appeal
- Court of Appeal
- Court of First Instance of the High Court
- District Court
- jurisdiction of the courts, including supervisory jurisdiction
- sources of civil procedure: Ordinances, Rules of Court, Practice Directions

2. Pre-action Considerations

- the cause of action
- the parties to the action
- time limits
- the merits
- costs only proceedings
- financial considerations including legal aid

3. Underlying objectives of the High Court and District Court Rules

- the underlying objectives
- case management powers

- use of alternative dispute resolution procedures such as mediation
4. **Commencement and Service of Proceedings**
 - types of originating process
 - preparing and issuing originating process
 - validity and renewal of writs
 - modes of service
 - acknowledgement of service and intention to defend
 - applications to serve out of the jurisdiction
 5. **Pleadings and Particulars**
 - the function of pleadings
 - Statement of Claim
 - Defence
 - Counterclaim and/or Set Off
 - Reply to Defence and Defence to Counterclaim
 - amendments to writ and pleadings
 - Further and Better Particulars
 - Third party proceedings
 6. **Interlocutory Matters**
 - striking out and staying
 - security for costs
 - interim payment
 - judgment in default and summary judgment
 - discovery and inspection of documents
 - interrogatories
 - exchange of witnesses' statements
 - orders for exchanged statements to stand as evidence in chief at trial
 - experts' reports
 - joinder of parties
 - contribution notices
 - case management summons, case management conference and pre-trial review
 - case management timetable
 7. **Pre-emptive remedies including:**
 - simple interlocutory injunctions
 - prohibition orders
 8. **Preparations for Trial and Trial**
 - checklist for hearing
 - setting down
 - preparing and lodging documents for trial
 - subpoenas
 - conduct of the trial

9. Termination and Compromise

- without prejudice negotiations
- Calderbank offers
- sanctioned offers and sanctioned payments
- withdrawal and discontinuance
- simple settlement agreements
- consent orders and judgments

10. Enforcement of Judgments

- oral examination
- execution against goods
- charging orders
- injunctions and prohibition orders in aid of enforcement
- garnishee proceedings
- winding up and bankruptcy (N.B. in so far as this is relevant to the enforcement of judgments)

11. Costs

- bases and scales
- costs between litigants and between solicitor and client
- wasted costs
- security for costs
- taxed costs and fixed costs
- discretion of the Court
- costs on interlocutory applications
- summary assessment of costs

12. Rights of Appeal

- setting aside a judgment in default
- interlocutory appeals
- appealing a judgment
- appeals to the Court of Appeal
- appeals to the Court of Final Appeal (s.22 CFA Ordinance)

MATERIALS

A sound knowledge of the following Ordinances and other materials cited is essential to any understanding of civil procedure.

- Hong Kong Court of Final Appeal Ordinance (Cap 484)
- High Court Ordinance (Cap 4)
- Rules of the High Court
- District Court Ordinance (Cap 336)
- Rules of the District Court
- Practice Directions
- authorities

Hong Kong Texts on Civil Procedure

Candidates should note that although Hong Kong's civil procedure was modelled upon the civil procedure of England and Wales, procedural reforms in England and Wales have not been adopted in Hong Kong, but rather Hong Kong has implemented its own civil justice reforms. Reference must therefore be made to Hong Kong texts and materials.

Candidates should also note that Hong Kong Cases can be accessed through the Hong Kong Judiciary web site: <http://legalref.judiciary.hk/lrs/common/ju/judgment.jsp>.

Similarly, much useful Hong Kong material can be found on the Hong Kong Legal Information Institute web site: www.hklii.org.

Main Texts

- ‘Hong Kong Civil Procedure 2025- The Hong Kong White Book’, Sweet & Maxwell
- ‘Hong Kong Civil Court Practice’, Desk Edition 2025, LexisNexis, *Julienne Jen* (ISBN 978 988 886 521 5)

The following materials are useful for reference:

- ‘Hong Kong District Court Practice’, 6th Edition, LexisNexis, *Lo, P.Y.* (ISBN 978 988 886 471 3)
- ‘Civil Procedure in Hong Kong: A Guide to the Main Principles’, 4th Edition (2017), Sweet & Maxwell, *Dave Lau* (ISBN 978 962 661 971 1)
- ‘Civil Litigation in Hong Kong’, 6th Edition (2021), Sweet & Maxwell, *Douglas Clark* (ISBN 978 988 859 085 8)

Candidates must ensure they are using the latest editions of texts and up to date versions of Ordinances.

B. CRIMINAL PROCEDURE

STANDARDS

Candidates will be expected to demonstrate a knowledge of and an ability to apply the rules of practice and procedure as set out in the syllabus.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

1. Hong Kong's Criminal Courts

- Court of Final Appeal (in outline only)
- Court of Appeal of the High Court
- Court of First Instance of the High Court
- District Court
- The Magistrate's Court
- The Juvenile Court

2. Criminal Procedure in Hong Kong

- The Role of the Judge
- The Role of the Jury
- Police Powers in Hong Kong
- The Classification of Offences

3. Commencement of Proceedings

- Prosecuting authorities and the role of the Secretary for Justice
- Arrest, Detention and Seizure of Property, Arrest and False Imprisonment
- Questioning of suspects and obtaining statements
- Receiving instructions to represent a client
- Identification parades and attending the client in custody
- Charging
- Bailing
- Proceeding by way of Summons
- Service of Process and compelling attendance at court

4. From Charging to Trial

- Summonses, Charges and Indictments
- Duplicity
- Joinder of Offences and Offenders
- Severance and Separate Trials
- The Prosecution's Duty to Disclose Unused Materials
- Alibi Notices and Expert Evidence

- 5. Procedure in the Magistrates' Court**
 - Applications for Bail
 - The Plea before the Magistrate
 - The Trial before the Magistrate
 - Amending Charges and Summonses, s 27 of the Magistrates Ordinance
 - Sentencing Powers
 - Transferring to and from the District Court
 - Committals to the Court of First Instance of the High Court
- 6. Procedure in the District Court**
 - From Transfer to Trial
 - Trial in the District Court
 - Sentencing Powers
- 7. Particular Problems During Trials**
 - Admissibility of Caution Statements: the Voir Dire and the Alternative Procedure
 - Objecting to the Information, Charge or Indictment
 - The Duty and Responsibility to the Court and to the Client
 - Vulnerable Witnesses and Video Linking and Pre-Trial Statements
- 8. Verdict and Sentencing**
 - Alternative verdicts
 - Aims and objectives of sentencing
 - Available sentences
 - Sentencing guidelines
- 9. Challenging and Appealing the Decision**
 - Appealing from Magistrates
 - The Review powers of Magistrates
 - Appealing from the District Court
 - Reviewing Sentence
 - Appeals generally
- 10. Costs and Finance**
 - Powers of Courts to Award Costs and Against Whom
 - Compensation Orders and Restitution Orders
 - Forfeiture Proceedings
 - Duty Lawyer Scheme
 - Legal Aid

MATERIALS

Candidates should note that although criminal procedure in Hong Kong is modelled upon the procedure in England and Wales, there are differences between the two procedures. Reference must be made to Hong Kong texts and materials.

The remarks about the Judiciary web site and the Hong Kong Legal Information Institute

web site made in the civil procedure section of this syllabus are equally apposite to criminal procedure.

A sound knowledge of the following Ordinances and other materials cited is essential to any understanding of criminal procedure.

Ordinances and sub-legislations

- Criminal Procedure Ordinance, Cap. 221
 - Sub-legislation:
 - Criminal Appeal Rules, Cap. 221A
 - Indictment Rules, Cap. 221C
 - Legal Aid in Criminal Cases Rules, Cap. 221D
 - Criminal Procedure (Reference of Questions of Law) Rules, Cap. 221E
 - Criminal Procedure (Appeal Against Discharge) Rules, Cap. 221F
 - Criminal Procedure (Applications under Section 16) Rules, Cap. 221G
 - Criminal Procedure (Representation) Rules, Cap. 221H
 - Criminal Procedure (Record of Bail Proceedings) Rules, Cap. 221I
 - Live Television Link and Video Recorded Evidence Rules, Cap. 221J
 - Application for Dismissal of Charges Contained in a Notice of Transfer Rules, Cap. 221K
- Juvenile Offenders Ordinance, Cap. 226
- Magistrates Ordinance, Cap. 227
- District Court Ordinance, Cap. 336
- Costs in Criminal Cases Ordinance, Cap. 492
- Police Force Ordinance, Cap. 232
- Detention Centre Ordinance, Cap. 239
- Drug Addiction Treatment Centres Ordinance, Cap. 244
- Training Centres Ordinance, Cap. 280
- Probation of Offenders Ordinance, Cap. 298
- Community Service Orders Ordinance, Cap. 378
- Rehabilitation of Offenders Ordinance, Cap. 297

Other Materials

- The (Hong Kong) Rules and Directions for the Questioning of Suspects and the Taking of Statements (Hong Kong Government)
- Notice to Suspect for Attendance at Identification Parade (Pol. 60) Hong Kong Police Force
- The Bar Council, Code of Conduct of the Bar of Hong Kong Special Administrative Region (Hong Kong Bar Association)
- The Hong Kong Solicitors' Guide to Professional Conduct, The Law Society of Hong Kong (Paragraphs relating to the Conduct of Litigation)
- Practice Directions
- Solicitor's Practice Rules relating to criminal litigation, esp. Rule 5D

Texts

- *Simon S.Y. So; Christopher Knight; Anthony Upham* ‘Knight and Upham - Criminal Litigation in Hong Kong’, 4th Edition, Sweet & Maxwell Hong Kong (ISBN 978 988 859 077 3)
- *Amanda Whitfort*, ‘Criminal Procedure in Hong Kong: A Guide for Students and Practitioners’, 3rd Edition, LexisNexis (ISBN 978 988 868 236 2)

For Reference

- ‘Archbold Hong Kong 2025, Sweet & Maxwell Hong Kong
- *Grenville Cross GBS, SC. and Patrick W. S. Cheung* ‘Sentencing in Hong Kong’, 11th Edition, LexisNexis, (ISBN 978 988 886 357 0)

Candidates must ensure they are using the latest editions of texts and up to date versions of Ordinances.

RECOMMENDATION

Candidates may find it useful to spend half a day in the High Court, half a day in the District Court and half a day in the Magistrates’ Court.

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

Examiners' Comments on the 2022 Examination

Head II: Civil & Criminal Procedure

The Overall Performance of Candidates

1. The number of candidates who sat the Head II paper in 2022 was 61, up from 44 in the previous year. 39 candidates were given overall pass marks, resulting in a pass rate of 64%. This is a very welcome increase from the lowly 32% pass rate in the previous year where 14 out of 44 candidates were given overall pass marks. It is difficult to draw long term conclusions as the pass rates over the last four years have been 31% (2019), 77% (2020), 32% (2021) and now 64% (2022).

The Standard and Format of the Examination

2. The Examination, as in previous years, was open book.
3. The Examination is premised on the standard to be expected from the Day One Lawyer. The Day One Lawyer is one who has completed both the academic and vocational stages necessary for professional qualification. In Hong Kong that means the LL.B (or a non-law degree and the CPE), the PCLL and the two year training contract. Day One Lawyers should have a sound base of substantive knowledge and have acquired the ability to apply that knowledge to straightforward situations. In reality those taking the examination will be more than Day One Lawyers because of experience obtained in their home jurisdictions. Even so the Panel was careful to focus on the "Day One" standard and to keep away from what might be classed as "advanced procedure" or "superior ability". A Day One Lawyer intending to practise in Hong Kong should, however, have the ability to demonstrate an appreciation of the structure, powers and responsibilities of Hong Kong's Courts and have a basic knowledge of what is required in advising and representing clients in litigious matters. They should not be a danger to the client.
4. The Panel was concerned to set questions which would test substantive knowledge and the ability to apply that knowledge in a constructive, practical and common sense manner. The examination deliberately mimics the situation of a solicitor asked to advise a client about a problem, and calls for directional practical answers, sometimes against an unfamiliar factual background.

General Comments

5. There were five questions in the paper, and candidates were required to answer any four of those questions. The time allowed was 3 hours and 30 minutes. The first 30 minutes is intended to allow candidates an opportunity to read and digest the questions in the paper and to plan their answers before starting to write. However, candidates can start to write their answers as soon as they wish.

Performance on individual Questions

Criminal Procedure

6. Questions 1 and 2 focused on the kinds of issues any newly qualified solicitor should be able to guide their client through in a competent manner. The overall pass rate for criminal procedure was 48%.

Question 1 (pass rate 45%)

7. This question raised matters of bribery, bail, legal representation, conflict of interest, evidence, sentence and mitigation. It was divided into 6 sub-questions. It required a good, basic understanding of the legal principles involved.
8. The question was very straight forward.
9. Some of the answers to 1 (a) appear to be a standard stock answers as anticipated by the course providers. But the candidates did not analyse the facts and apply the law to the facts.
10. Some of the answers to all parts were sketchy and not enough depth. Hence, the marks are low in general.
11. Some candidates do not know the differences between Duty Lawyer Service (“DLS”) and Legal Aid Department (“LAD”). No candidates mentioned the first appearance for all accused is the Magistrate Court and DLS is available to the accused.

Question 2 (pass rate 52%)

12. This question related to the National Security Law. It has 2 main parts - the first on bail and the second on High Court procedure with regard to jury trial and the Secretary for Justice’s Certificate. This question required the candidates to be familiar with this important legislation.
13. The overall performance of the candidates who answered this question was not that satisfactory.
14. Generally speaking, most of the candidates who answered this question did a little well with some parts whilst doing so poorly with the remaining parts, resulting in achieving a bare pass or a fail in the total mark.
15. There was a part on the issues of “review of sentence and appeal against sentence.” A Day One Lawyer engaged in criminal procedure should possess and grasp these issues.

Civil Procedure

16. The overall pass rate was 62% on the civil procedure side, which is up from 48% in the previous year. 72% of candidates were able to pass all the civil procedure questions they attempted. Questions 4 and 5 proved easier as an over 80% pass rate was achieved but this dropped to 48% for question 3. This probably reflected the fact the primary focus in questions 4 and 5 was on the drafting of pleadings as opposed to question 3 which sought a memorandum of advice on security for costs. This means candidates may be better able to source drafting precedents in an open book examination than in considering advisory issues on a specific interlocutory application such as security for costs.

Question 3 (pass rate 48%)

17. Question 3(1) related to security for costs and sought a memorandum of advice on the merits of a security for costs application at the stage of a case management conference and where the law firm advising the defendant had recently changed.
18. Most candidates appeared to be copying from a template in rendering their memorandum of advice hence the answers were very similar.
19. Most candidates failed to address the various discretionary factors which were embedded in the facts of the question. As such, the application of the specific facts to the principles of security for costs was weak.
20. Many candidates also failed to address the timing of the security for costs application and the impact of the recent change of solicitors on the merits of any proposed application.
21. Question 3(2) addressed a different scenario where the court had awarded judgment to the plaintiff in a certain sum and made a costs order nisi. The defendant client had filed two separate Notices of Sanctioned Payment on different dates at amounts below and above the court's awards of damages. In addition, a "without prejudice save as to costs" letter had been sent between the dates of the Notices of Sanctioned Payment.
22. While most candidates recognised the first sanctioned payment could be ignored as it was below the amount of damages awarded, many candidates failed to address the "without prejudice save as to costs" offer in the appropriate manner i.e. as the claim was a monetary one, such an offer did not attract costs consequences as under Order 2 Rules of the High Court, a sanctioned payment should have been made instead.
23. Candidates who spotted this issue did well on this question but mere recognition that a sanctioned payment above the amount of damages (as the second sanctioned payment was) and the consequences that flowed did not suffice to get a good mark. A proper consideration of the factors which might make it unjust for the court to order the plaintiff to pay the defendant's costs on an indemnity basis with enhanced interest would have also been of benefit to many candidates.

Question 4 (pass rate 80%)

24. Question 4 concerned the drafting of a statement of claim in a relatively simple claim for breach of contract, the plaintiff being the firm of solicitors for whom the candidate is assumed to work.
25. Most candidates appeared to be copying from a precedent. Regrettably, quite a few of them failed to adapt the precedent to the facts of the particular case. For example, quite a number described the plaintiff (a firm of solicitors) as a company incorporated under the Companies Ordinance. This is a serious error whether it arises from lack of knowledge of the law relating to business associations or simple carelessness.
26. Again, possibly copying from a precedent, many candidates over-egged their pleading. A simple breach of contract claim had added to it allegations such as breach of fiduciary duty and claims for equitable damages. Such claims were inappropriate on the facts of the case which was a simple crisp and clear claim for common law damages for breach of contract.
27. Overall, however, the standard was good and the high pass rate was pleasing.

Question 5 (pass rate 88%)

28. Question 5 asked candidates to draft a writ of summons with a statement of claim endorsed on it in respect of a breach of contract for non-delivery of a specific product for a specific use where the price was an agreed fee.
29. Generally speaking, candidates were able to answer the question well. For the writ itself, as marks were given for following the correct format of a writ of summons, using a precedent, as most candidates obviously did, allowed marks to be easily earned.
30. For the statement of claim, the claim was a relatively simple breach of contract case and most candidates were able to produce a passworthy draft pleading.

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Examiners' Comments on the 2023 Examination

Head II: Civil & Criminal Procedure

The Overall Performance of Candidates

1. The number of candidates who sat the Head II paper in 2023 was 86, up from 61 in the previous year. 36 candidates were given overall pass marks, resulting in a pass rate of 42%. This is a decline from the pass rate in the previous year where 39 out of 61 candidates were given overall pass marks. Pass rates seem to fluctuate and it is likely certain types of question may lead to higher and lower pass rates. The pass rates for the last five years have been 31% (2019), 77% (2020), 32% (2021), 64% (2022) and now 42% (2023).

The Standard and Format of the Examination

2. The Examination, as in previous years, was open book.
3. The Examination is premised on the standard to be expected from the Day One Lawyer. The Day One Lawyer is one who has completed both the academic and vocational stages necessary for professional qualification. In Hong Kong that means the LL.B (or a non-law degree and the CPE), the PCLL and the two year training contract. Day One Lawyers should have a sound base of substantive knowledge and have acquired the ability to apply that knowledge to straightforward situations. In reality those taking the examination will be more than Day One Lawyers because of experience obtained in their home jurisdictions. Even so the Panel was careful to focus on the "Day One" standard and to keep away from what might be classed as "advanced procedure" or "superior ability". A Day One Lawyer intending to practise in Hong Kong should, however, have the ability to demonstrate an appreciation of the structure, powers and responsibilities of Hong Kong's Courts and have a basic knowledge of what is required in advising and representing clients in litigious matters. They should not be a danger to the client.
4. The Panel was concerned to set questions which would test substantive knowledge and the ability to apply that knowledge in a constructive, practical and common sense manner. The examination deliberately mimics the situation of a solicitor asked to advise a client about a problem, and calls for directional practical answers, sometimes against an unfamiliar factual background.

General Comments

5. There were five questions in the paper, and candidates were required to answer any four of those questions. The time allowed was 3 hours and 30 minutes. The first 30 minutes is intended to allow candidates an opportunity to read and digest the questions in the paper and to plan their answers before starting to write. However, candidates can start to write their answers as soon as they wish.

Performance on individual Questions

Criminal Procedure

6. Questions 1 and 2 focused on the kinds of issues any newly qualified solicitor should be able to guide their client through in a competent manner. The overall pass rate for criminal procedure was 47%.

Question 1 (pass rate 41%)

7. Question One is divided into 8 small parts.
8. For part 1: No one mentioned the first thing is to contact the students' respective consulates. Some answered: say sorry; no case to answer; they took drugs; one said there is a defence to the charge without specification; one mentioned the detention period is 72 hours
9. For Part 2: no one mentioned the accused does not have roots in Hong Kong. One mentioned to report to the Independent Commission Against Corruption (ICAC)
10. For part 3: one answered request for further particulars and Pre Action Discovery
11. For part 4: One answered: "Students have conflict but no common assault."
12. For part 5: this is a guideline not tariff
13. For Part 6: one answered to pay off the victim and offer to settle with the victim
14. For Part 7: there is a new term used 'rectified pleadings'
15. For Part 8: how can one claim an acquittal
16. Question One is a simple straight forward question and the blank books answered reflect the standard this year has fallen sharply.
17. No marks were deducted for deciphering the handwriting.

Question 2 (pass rate 50%)

18. This Question is divided into 4 parts examining 3 different areas.
19. Question 2(1) examines candidates' basic knowledge in handling a bail application. This part is relatively straight forward. Most of the candidates were able to grasp as well as to apply the fundamental principles. Some candidates gained very good marks in this part.
20. Question 2(2) is also relatively straight forward. The issue is the importance of timely guilty plea. One third full credit of discount for guilty plea would only be given when the plea was entered at the first opportunity. The percentage of discount for guilty plea would be progressively reduced at the later stages of the proceedings. Most of the candidates gained good marks in this part.

21. Question 2(3) and (4) are relatively difficult parts of this Question concerning the reversal of plea. For Question 2(3), candidates are expected to pick up the point that the accused specifically made a qualification of his plea by saying “compensated dating” which vitiated the important element of the offence of rape. This led to the issue whether it was a defence of consensual sexual intercourse. The accused’s qualification is arguably making his guilty plea equivocal. Unfortunately, most of the candidates did not analyse the facts and apply the law to the facts.
22. For Question 2(4), candidates are expected to pick up the point that the accused may raise the argument of “in the interest of justice” even if his guilty plea was unequivocal. Only few candidates could identify this point.
23. The overall performance of the candidates who answered this Question was fair.

Civil Procedure

24. The overall pass rate was 49% on the civil procedure side, which is down from 62% in the previous year but almost identical to the pass rate of 48% in 2022. The pass rate varied markedly for the three civil procedure questions ranging from 22% who passed Question 3, through 52% passing Question 4 up to 72% who passed Question 5. This probably reflects the subject matter of the questions. So Question 3 (pre-action discovery) is likely a less familiar subject to candidates than Question 4 (sanctioned offers) and particularly Question 5 (enforcement of a monetary judgment). This year's questions did not allow references to a precedent, such as drafting a pleading, which candidates often seem to find easier than answering questions on specific points of civil procedure.

Question 3 (pass rate 22%)

25. Question 3 related to a typical personal injury claim, coupled with a counterclaim by the defendants against the plaintiff in the original action and an additional party.
26. There were two questions set to test the candidates' understanding of (i) pre-action discovery against non-parties (which is not uncommon in a case where the potential defendants are insured and the discovery is made against his insurers), (ii) the relevant procedures and exceptions which may be relied upon to object to a request for discovery, (iii) ability to attend to details, (iv) application of Ord 15, r3, (v) familiarity of titles to proceedings and (vi) relief which might be sought.
27. The overall total marks of this questions were low mainly because of the second question. The first question was relatively straight-forward, but many candidates did not get high marks because either they did not state all the three requirements which had to be shown to seek pre-action discovery against a non party, and many also did not go further to give a brief analysis or explain why the discovery was relevant and went to assist in the fair disposal of the matter. Of note also is that many candidates did not spot the difference between pre-action (non-party) discovery and discovery after proceedings have been commenced.

28. The second question asked candidates to produce a proforma pleading for a counterclaim without the actual substance of the pleaded counterclaim. This therefore required attention to the correct heading, the parties, the way the parties are referred to in a counterclaim, the title and the prayer for relief.
29. Most candidates got low marks on this question because of an inability to focus on detail and making simple errors.

Question 4 (pass rate 52%)

30. Question 4 was about the sanctioned offer procedure under RHC O 22, whereby a plaintiff can propose settlement to the defendant, with costs and interest sanctions if the defendant refuses but ultimately fails to do better.
31. The question consisted of two parts. Part (a), which was allocated the bulk of the marks, asked candidates to draft a letter to the client in a personal injury claim, explaining the procedure and asking for further instructions. Part (b) asked candidates to draft the sanctioned offer for client's approval.
32. The performance of candidates on part (a) was, on the whole, very good. However, it was noted that many of the answers were rather general, and could well have been copied out from pre-prepared notes. That is the risk of an open-book exam. Higher marks were awarded to answers which were clearly focused on the individual client's case.
33. Candidates tended not to do quite as well on part (b), although the overall pass rate was acceptable. This part required candidates to think for themselves, as they could not have anticipated the particular factual circumstances set out in the question. A few candidates who answered part (a) adequately were unable to think for themselves and were given fail marks on part (b).
34. Overall the pass rate on question 4 was acceptable and it was pleasing to note that the majority of candidates had a least a basic knowledge of this important new procedure.

Question 5 (pass rate 72%)

35. Question 5 was a straight forward question testing the candidate's knowledge on the various ways to enforce a monetary judgment obtained in the High Court of Hong Kong by reference to the facts given. A typo in the paper was found on the day of the examination but it was clarified with all candidates immediately and at the end, nobody was misled as to what he or she was required to answer.
36. In general, candidates did not have much of a problem in identifying all or some of the 6 ways of enforcement set out in Paragraph 10 of the Syllabus. The difference between good and bad answers generally lay in the quality of the analysis and application.
37. This examination is on, inter alia, "Civil Procedure" and the Question did ask the candidates to "... set out in brief the procedure for each means of enforcement proposed ..." so some candidates could have done better if they had made direct/more reference to The Rules of the High Court as opposed to The High Court Ordinance although the latter is the enabling statute.

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Examiners' Comments on the 2024 Examination

Head II: Civil & Criminal Procedure

The Overall Performance of Candidates

1. The number of candidates who sat the Head II paper in 2024 was 113, up from 86 in the previous year. One candidate was disqualified from Head II and her result for Head II was annulled. Of the 112 candidates, 69 candidates were given overall pass marks, resulting in a pass rate of 62%. This is a considerable improvement from the pass rate in the previous year where 36 out of 86 candidates were given overall pass marks. Pass rates seem to fluctuate and it is likely certain types of question may lead to higher and lower pass rates. The pass rates for the last five years have been 77% (2020), 32% (2021), 64% (2022), 42% (2023) and now 62% (2024).

The Standard and Format of the Examination

2. The Examination, as in previous years, was open book.
3. The Examination is premised on the standard to be expected from the Day One Lawyer. The Day One Lawyer is one who has completed both the academic and vocational stages necessary for professional qualification. In Hong Kong that means the LL.B (or a non-law degree and the CPE), the PCLL and the two year training contract. Day One Lawyers should have a sound base of substantive knowledge and have acquired the ability to apply that knowledge to straightforward situations. In reality those taking the examination will be more than Day One Lawyers because of experience obtained in their home jurisdictions. Even so the Panel was careful to focus on the "Day One" standard and to keep away from what might be classed as "advanced procedure" or "superior ability". A Day One Lawyer intending to practise in Hong Kong should, however, have the ability to demonstrate an appreciation of the structure, powers and responsibilities of Hong Kong's Courts and have a basic knowledge of what is required in advising and representing clients in litigious matters. They should not be a danger to the client.
4. The Panel was concerned to set questions which would test substantive knowledge and the ability to apply that knowledge in a constructive, practical and common sense manner. The examination deliberately mimics the situation of a solicitor asked to advise a client about a problem, and calls for directional practical answers, sometimes against an unfamiliar factual background.

General Comments

5. There were five questions in the paper, and candidates were required to answer any four of those questions. The time allowed was 3 hours and 30 minutes. The first 30 minutes is intended to allow candidates an opportunity to read and digest the questions in the paper and to plan their answers before starting to write. However, candidates can start to write their answers as soon as they wish.

Performance on individual Questions

Criminal Procedure

6. Questions 1 and 2 focused on the kinds of issues any newly qualified solicitor should be able to guide their client through in a competent manner. The overall pass rate for criminal procedure was 36%.

Question 1 (pass rate 57%)

7. There are 4 parts in Question 1.
8. For Part 1: Generally well answered as it is straight textbook materials. I anticipate course provider have provided stock answers to candidates.
9. For Part 2: No candidates actually mentioned the accused lack any roots in HK!
10. For Part 3: Candidates were getting confused and convoluted in their answers! Poorly answered by most of the candidates.
11. For Part 4: Generally good analysis provided by candidates.

Question 2 (pass rate 17%)

12. Question 2(1) examines candidates' general knowledge from the prosecution's perspective. Only few candidates performed badly in this part.
13. Question 2(2) and 2(3) are related questions addressing the issue if a trial district judge/magistrate has jurisdiction to grant bail pending appeal. Some candidates failed to appreciate the distinction between their respective power.
14. Question 2(4) is relatively difficult question testing the candidate's knowledge of the accused's right of renewal of application for leave to appeal against conviction and the knowledge of the risk of "a loss of time" under section 83W of Criminal Procedure Ordinance.
15. Question 2(5) question is testing the candidate's knowledge of (a) "offering assistance to the authority" as an important mitigating factor in sentencing; and (b) the international element as an aggravating factor in sentencing for dangerous drugs cases. A significant number of candidates failed to identify "***Sivan*** Procedures" at all.
16. The overall performance of the candidates who answered this Question was fair.

Civil Procedure

17. The overall pass rate was 71% on the civil procedure side, which is up from 49% in the previous year and ahead of the pass rate of 62% in 2022. The pass rate varied markedly for the three civil procedure questions ranging from 81% who passed Question 3, through 71% passing Question 4 down to 45% who passed Question 5. This probably reflects the subject matter of the questions. So Question 3 (summary judgment application) is

marginally easier than Question 4 (sanctioned offers) and Question 5 (pre-action disclosure and detailed issues relating to discovery) is a broader topic and therefore harder to answer well.

Question 3 (pass rate 81%)

18. Question 3 related to a relatively straight-forward claim for repayment of a loan.
19. There were two questions set to test the candidates' knowledge of the steps required to issue legal proceedings and apply for summary judgment.
20. The first question required a letter of advice to explain the procedure both for the issue of proceedings and an application for summary judgment. Candidates were requested to identify the appropriate court to issue a writ, the filing of an acknowledgment of service and the ability to apply for summary judgment. Candidates were expected to explain how to apply for summary judgment, what the defendant might do in opposition to such application and the matters the court would take into account when deciding on a summary judgment applicant.
21. The second question required candidates to draft an affidavit in support of the summary judgment application.
22. The overall total marks were high. While there was some confusion as to the correct defendant, most candidates had a reasonable knowledge of the principles of issuing a writ and applying for summary judgment.
23. As for drafting the affidavit, again most candidates made a reasonable attempt at producing a good draft. Given a precedent can readily be found, some of the free drafting employed was perhaps a little odd but overall this part of the question was dealt with well by the majority of the candidates.

Question 4 (pass rate 71%)

24. Question 4 raised issues concerning the costs of a civil action. These were first, the nature of a costs order *nisi*, and secondly the possible grounds to apply for variation of such an order.
25. The facts set out in the question posited an unsuccessful defendant unhappy with an order *nisi* that it pay the costs of the successful plaintiff after trial, given that the latter had:
 - 25.1 refused mediation;
 - 25.2 failed to obtain judgment better than a sanctioned payment and top-up thereof; and
 - 25.3 despite having proceeded in the Court of First Instance, obtained damages assessed at an amount within the jurisdiction of the District Court.
26. On the whole the performance of candidates was reasonable and the pass rate was good.
27. One of the pleasures of being an examiner is learning from candidates. This year several candidates pointed out that in regard to point 2 above, pre-judgment interest needed to

be taken into account. This had been overlooked in preparing the notes for examiners. Naturally these candidates were rewarded appropriately.

28. Only one or two candidates spotted point 3 above, though the draft question had been amended to make the issue more obvious. No candidate was marked down for failing to spot this point, but candidates who did spot it were given credit for doing so.

Question 5 (pass rate 45%)

29. Question 5 concerned the topical subject of a financial scam with a forged cheque, a romantic angle and potentially compromising messages and photographs.
30. Candidates were asked questions relating to the general topic of obtaining and disclosing information in litigation.
31. The first question sought knowledge by candidates of pre-action disclosure of information under the *Norwich Pharmacal* jurisdiction and the procedure in making a *Norwich Pharmacal* application.
32. The second question related to general principles of discovery and when discovery must be given. There was a gloss in the question requiring candidates to show awareness of concepts of privilege specifically legal professional privilege and the privilege against self-incrimination particularly as those heads of privilege applied in the context of discovery.
33. Candidates found this question harder than the other two perhaps because the questions covered broader areas of the law. This seems to follow a pattern of previous years where questions with a specific focus on a particular litigation procedure (such as methods of enforcing a judgment or a security for costs application) are answered better than questions requiring a broader legal knowledge.

3. Past Examination Papers from 2022 to 2024

**2022 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD II: CIVIL AND
CRIMINAL PROCEDURE**

Thursday, 3 November 2022



2022 Overseas Lawyers Qualification Examination

Head II: Civil and Criminal Procedure

Question 1 (25 marks)

Dr. Wolfgang is a German citizen, a researcher and a part-time tutor for the Postgraduate Certificate in Laws course.

Zhang and Williams are two of Dr. Wolfgang's small tutor group students. Zhang is a PRC citizen and Williams is a local born British holding a HKSAR passport and a UK passport.

During the small group tutorial, Dr. Wolfgang always half-heartedly jokes with the students how little he got paid as a part-time tutor and that if the students want to pass his subject with flying colours, Dr. Wolfgang is open to accept cash bribes from the students.

All the staff and students have signed an acknowledgement letter that they are aware that soliciting offering or accepting bribes are illegal acts and be expelled from the institution immediately.

Zhang and Williams discussed amongst themselves and agreed to each offer a cash bribe of HK\$10,000 to Dr. Wolfgang to help them pass the examinations.

They each placed HK\$10,000 notes bills in a brown envelope with their names signed on the envelope and deposited the envelope in the pigeon box of Dr. Wolfgang.

(See over the page for a continuation of Question 1)

Unknown to Zhang and Williams, their acts were all recorded by the CCTV by internal security. The contents of the envelope and the video tapes were reviewed by the Department Head and the matter was reported to The Independent Commission Against Corruption (“ICAC”).

Dr. Wolfgang, Zhang and Williams were all arrested by the ICAC one morning on suspicion of soliciting and offering bribes contrary to the Prevention of Bribery Ordinance, Cap. 201.

Upon cautioned Dr. Wolfgang remained silent.

Zhang was threatened by one ICAC officer of being sent back to China and shame put upon his family that he confessed to offering bribe to Dr. Wolfgang to help him pass the examinations.

Williams upon cautioned explained the idea is Zhang’s and he was simply following Zhang.

Questions:

- (1) Explain to Dr. Wolfgang, Zhang and Williams on their rights to bail and what they can offer the court to get a better chance of getting bail.**

(7 marks)

- (2) Would there be a conflict of interest if one firm of lawyers act for both Zhang and Williams and why?**

(4 marks)

(See the next page for a continuation of Question 1)

- (3) **Zhang cannot afford private lawyers. What help can he get and why?**
(3 marks)
- (4) **Who will be the principal witness to secure a conviction?**
(3 marks)
- (5) **What type of sentence will the three of them get?**
(3 marks)
- (6) **Draft a set of mitigation on behalf of Zhang and Williams.**
(5 marks)

[25 marks in total]

Question 2 (25 marks)

On 1 July 2022, D published a statement in a widely circulated newspaper in Hong Kong advocating that:

“We Hong Kong Guys should join together to fight for all rights from the Government of the Hong Kong Special Administrative Region by all means including resorting to serious violence, bombs and firearms!!!” (“the Advocated Slogan”).

Shortly on 3 July 2022, D was arrested by the police officers of the National Security Department of the Hong Kong Police Force for investigation. In a house search conducted on the same day, some notes and loose papers were found from one of the drawers of his desk, on which there were some notes advocating and suggesting more or less the same as the Advocated Slogan even with the names of certain contact persons and proposed schedules of actions ahead. Certain statements similar to the Advocated Slogan were also found from the database of his computer. All those notes, loose papers and his computer were accordingly seized (collectively “the Seized Items”) for further investigation.

D was since detained in the police station until 5 July 2022 when he was charged with an offence contrary to Article 27 of the National Security Law (“the NSL”), which is a piece of legislation written in Chinese against acts and activities, etc. endangering national security, and passed by the National People’s Congress of the People’s Republic of China and promulgated as the law applicable to the Hong Kong Special Administrative Region (“the HKSAR”) effective from late night of 30 June 2020.

(See the next page for a continuation of Question 2)

The English translation of the relevant part of Article 27 reads as follows:

“A person who advocates terrorism or incites the commission of a terrorist activity shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term of imprisonment of not less than five years but not more than ten years, and shall be imposed with a criminal fine or subject to confiscation of property;”.

At the first appearance on 5 July 2022 in the West Kowloon Magistrates’ Courts before the Chief Magistrate, being a designated Magistrate assigned to handle cases of NSL offences, the case was adjourned for 4 months for further enquiries and investigations with high possibility of laying additional charges against D for other offences under the NSL, and D (being unrepresented) was refused bail upon his bail application.

D through his family has approached you as a Hong Kong lawyer for assistance. You have since taken instructions from D in the detaining institution. From the instructions you have obtained, you learn that:

1. D, being a permanent Hong Kong resident at the current age of 55, is a practising medical practitioner specializing in gynaecology with his operated clinic in Central. He has been in the profession for about 28 years;
2. He is married with 2 children both at universities. His wife is a housewife. He resides with his family in a house at Mid-Levels, Hong Kong Island;
3. He has no previous criminal conviction record both in Hong Kong and elsewhere, neither has he ever been subject to any disciplinary enquiry or proceedings in his profession;

(See over the page for a continuation of Question 2)

4. He has been suffering from long-term heart-disease;
5. He professes certain belief in dissatisfaction with the current Government of the HKSAR in many aspects;
6. He did not say or express anything when being asked about the Advocated Slogan or the Seized Items; and
7. He intends to apply for bail again in the upcoming adjourned hearing before the Chief Magistrate.

Questions:

- (1) On the issue of bail, D is anxious to know the following:
 - (a) **What is your advice on the chances of success in the bail application?**
(6 marks)
 - (b) **What proposed bail terms and conditions you may submit to the Chief Magistrate?**
(3 marks)
 - (c) **If the Chief Magistrate refuses bail again, what can D do?**
(2 marks)
 - (d) **If the Chief Magistrate grants bail to D and the Prosecution is dissatisfied with it, what can the Prosecution do?**
(2 marks)

(See the next page for a continuation of Question 2)

- (2) Assuming that D's case is to be tried in the Court of First Instance of the High Court of the HKSAR, and in connection with the mode of trial, the Secretary for Justice ("SJ") has issued a Certificate in exercise of the power vested in him under and pursuant to Article 46(1) of the NSL directing that:

"D's case shall be tried without a jury on the following ground(s) having taken into account and considered all the relevant circumstances and information:

- (1) Protection of personal safety of jurors and their family members; and/or
- (2) If the trial is to be conducted with a jury, there is a real risk that the due administration of justice might be impaired."

("SJ's Certificate").

As a result, D's case shall be tried before a panel of three Judges designated to handle cases of the NSL offences without a jury.

Advise D on how he can challenge SJ's Certificate if he prefers to have the trial conducted with a jury.

(8 marks)

(See over the page for a continuation of Question 2)

- (3) Assuming that the trial is ultimately to be conducted before a panel of three designated Judges without a jury, and shortly before the first day of trial, D instructed that he was determined to plead guilty to the offence and admit the whole contents of the summary of facts pertaining to the offence. A single designated Judge in the Court of First Instance was accordingly assigned to handle D's plea and sentence. Consequently, D was convicted of the offence contrary to Article 27 of the NSL on his own plea of guilt, followed by a term of imprisonment of nine years imposed by the Judge ("the Sentencing Judge"), who held the view in connection with the sentence that the circumstances of the offence are of a serious nature.

- (a) **If the Prosecution is dissatisfied with the sentence, how can it be challenged?**

(2 marks)

- (b) **If D is dissatisfied with the sentence, how can he challenge it?**

(2 marks)

[25 marks in total]

Question 3 (25 marks)

In January 2021, Belfast (BVI) Limited (“Belfast”) commenced a claim in the High Court against Win Win Company Limited (“WWCL”) for damages for misrepresentation and breach of warranties in relation to the sale of company, ABC Limited, from WWCL to Belfast, in the sum of HK\$15 million.

Belfast is a BVI company with a sole shareholder and director, Amy Chan, who is ordinarily resident in Hong Kong. WWCL and ABC Limited are both Hong Kong companies.

At a case management conference on 13 April 2022, the court gave leave for the parties to exchange supplemental witness statements by 31 May 2022 and for experts’ reports on the valuation of ABC Limited to be exchanged by 31 August 2022. The hearing of the case management conference was adjourned to 11 November 2022.

On 1 November 2022, WWCL changed its solicitors to your firm. By this time, the parties had already complied with all the directions as set out above and your partner considers that the matter should be ready for trial. However, your partner would like to advise WWCL on the merits of a security for costs application against Belfast.

Question:

- (1) Write a memorandum of advice to your partner in relation to the merits of a security for costs application against Belfast at this stage of the proceedings. In case you need further information/instructions, set out the same in square brackets in your draft memorandum of advice.**

(10 marks)

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

Assume it is now 12 May 2023.

Your firm did not make the security for costs application and the matter proceeded to trial from 24 to 27 April 2023. On 12 May 2023, Yoda J handed down his judgment in relation to the case and awarded damages to Belfast in the sum of \$10 million (inclusive of interest). In addition, Yoda J made an order nisi for costs to be taxed if not agreed.

Your partner reminds you that on the WWCL file,

- (i) On 9 September 2022, WWCL filed a Notice of Sanctioned Payment in the sum of HK\$8 million (inclusive of interest) in satisfaction of all of Belfast's claims.
- (ii) On 14 October 2022, the former solicitors of WWCL wrote a letter to Belfast's solicitors marked "without prejudice save as to costs", offering to pay HK\$3 million to top up the previous sanctioned payment, in full and final settlement of the matter.
- (iii) On 16 January 2023, on behalf of WWCL, your firm paid into court a further sum of HK\$3.5 million and filed a further Notice of Sanctioned Payment on Belfast's solicitors on the same day. The HK\$3.5 million was inclusive of interest and paid in addition to the amount paid on 9 September 2022, in satisfaction of all of Belfast's claims.

All of the above have not been accepted by Belfast.

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

Question:

- (2) Draft a letter of advice to WWCL to advise them whether an application should be made to vary the costs order nisi of Yoda J and if so, what would be the most appropriate costs order to be made.

(15 marks)

[25 marks in total]

Question 4 (25 marks)

You are a newly admitted solicitor in an international firm known as Featherstone & Silverman LLP (“F&S”). F&S acts for China International Megabank (“CIMB”). CIMB recently acquired an office building in Central to serve as its headquarters in Hong Kong. After renovation, the building was renamed “CIMB Tower”. Of the 50 floors in the Tower, CIMB occupies 10. 30 others have been taken up by commercial tenants and 10 floors remain vacant. CIMB approached F&S to take up at least one of the vacant floors. Somewhat reluctantly F&S agreed to move to CIMB Tower because CIMB is one of its major clients.

The relocation of F&S to CIMB Tower was carefully arranged. The old office was scheduled to close after business hours on Friday, 6 May 2022 and the new one to open on the following Tuesday, 10 May 2022, after the long weekend. A vital part of the relocation was to shift and set up all the computer systems including internet and intranet in the new office so that all would be ready to go when it opened for business (the “IT work”).

On the recommendation of one of the partners, who had met Ivan Chong (“Ivan”) on a hike over Lamma Island, Hong Kong, F&S appointed Ivan to handle the IT work. Ivan had said he had considerable experience in this type of IT work, and that he had a group of friends who collaborated with him. A single page contract between F&S and Ivan was signed to complete the IT work. The contract stipulated that the IT work must be completed by 9:00 a.m. on Tuesday, 10 May 2022 in order that the new office could be up and running seamlessly after the move.

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

Unfortunately, the IT work did not go well. Over the long weekend, there were thunderstorms and heavy rain resulting in an interruption of power supply. As a result, installation of F&S's IT equipment in the new office was delayed until the lift service resumed. Also, one of Ivan's friends had failed to turn up. F&S was finally up and running in the new office, all IT work completed, by the morning of Wednesday, 11 May 2022, a delay of 24 hours.

On that Wednesday morning, the responsible partner of F&S discovered that a potential client, INJSEEKER, had given instructions by e-mail to take immediate proceedings for an urgent *ex parte* interlocutory injunction to restrain an alleged creditor from issuing a winding-up petition. Because F&S internet systems were down, the responsible partner was unaware of INJSEEKER's instructions until too late. INJSEEKER instructed another firm of solicitors to handle the matter. INJSEEKER had earlier been given, by F&S, a fee estimate of HK\$250,000 for this work, plus counsel's fees and other disbursements. F&S lost this fee income of HK\$250,000 and potentially much more if the matter were to go on to substantive dispute.

INJSEEKER was unsuccessful in the interlocutory injunction application. It is not yet known whether INJSEEKER will proceed.

F&S has now issued and served a generally indorsed writ of summons against Ivan claiming damages for breach of contract. The firm decided to handle the matter in-house rather than instruct another firm to act for it. Notice of intention to defend has been given and the file has been passed to you for further action.

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

Question:

Prepare a draft statement of claim seeking damages on behalf of F&S. Your draft should:

- (a) comply with necessary formalities;**
- (b) include a heading naming the Court and the parties;**
- (c) plead the material facts in accordance with the Rules of Court;**
- (d) include an appropriate prayer for relief; and**
- (e) indicate where and by whom the document should be signed.**

(5 out of the total 25 marks will notionally be allocated to each of the above heads. However, the final mark may be adjusted to take into account the examiner's overall impression of the quality of the draft.

Candidates who include accurate notes to explain why any part of the pleading is drafted in any particular way may expect to receive above average marks.)

(25 marks)

[25 marks in total]

Question 5 (25 marks)

Questions:

Existing clients of your firm, the Chan brothers, who own Chan Brothers Company (Hong Kong) Limited, visit your office to show the e-mail chain on pages 16-20 to the managing partner of your firm. **The managing partner asks you to draft:**

- (1) The heading of the Writ of Summons (showing the name of the Hong Kong court in which the proceedings should be issued and the parties);**

(5 marks)

- (2) A draft Statement of Claim, identifying with blanks and notes where further information will be required from the Chan brothers, in order to complete the Statement of Claim.**

(20 marks)

[25 marks in total]

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

Email chain:

“To: noriyuki.morita@gmail.com
Cc: johnny.chan@changbroscos.com
From: daniel.chan@chanbroscos.com
1 April 2022 @ 21:45:13
Re: Proposal - hiring Infinity Wars Endgame Iron Man suit for Hong Kong Avengers
Fan event - July 22 - 24, 2022

Dear Morita-San,

My brother, Johnny and I, through our company, Chan Brothers Company (Hong Kong) Limited, are planning a high-profile Marvel Avengers fan event in Hong Kong for the weekend of July 22 - 24. We are very excited about this. We held a similar event last year, which was also quite profitable. We made HKD 800,000 net profit from that event. This year, we believe the event will be bigger and better. But to achieve this, we need your support. We know you are the proud owner of the original Iron Man suit used at the end of the Avengers Infinity Wars Endgame movie - the one that Tony Stark was wearing when, sadly, he died. With this suit as the centre-piece of the event, we are confident that we can at least double, if not triple, our profits this year. We know the suit is a very precious object. Our company is prepared to pay you a flat fee of HKD 250,000 for the use of the suit, just for the duration of the event, plus five per cent of the net profits.

Johnny and I look forward to your favourable response.

Yours truly,

Danny Chan
Chairman
Chan Brothers Company (Hong Kong) Limited
The Penthouse,
LaRusso Tower,
Mills Street,
Kowloon,
Hong Kong”

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

“To: daniel.chan@chanbroscos.com
Cc: johnny.chan@chanbroscos.com
From: noriyuki.morita@gmail.com
2 April 2022 @ 09:30:14
Re: Proposal - hiring Infinity Wars Endgame Iron Man suit for Hong Kong Avengers
Fan event - July 22 - 24, 2022

Dear Danny-san,

I would be honoured if my Iron Man suit could be part of your event. I propose the following terms:

1. Flat fee - HKD 250,000 - to be paid into my bank account: Okinawa Kairo Bank, Tomigusuku Branch, Account number 001 - 442316 - 888 by no later than July 5, 2022.
2. Net profit share - 15% - to be paid into the same bank account by your company within 15 days after the event.
3. Transportation costs - to be borne by me.
4. Import expenses and cost of insurance (insurable value of suit - USD 500,000) to be borne by you.
5. Re-import expenses back to Japan - to be borne by me.
6. Suit will be delivered to Hong Kong by no later than July 20 and to leave Hong Kong by no later than July 26, to be returned to me.

Yours truly,

Noriyuki Morita
House 17
Tomi Village
Near Naha
Okinawa
Japan”

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

“To: Johnny.chan@chanbroscos.com
From: Daniel.chan@chanbroscos.com
4 April 2022 @ 10:04:15

Danny - great news. I spoke to Noriyuki this morning. He has agreed to a net profit share of 10%. All other terms as he proposed. We can move forward! It's going to be a great event! I will start work on the design of the marketing materials, with the Iron Man suit front and centre. The marketing cost will be the same as last year - HKD 200,000. The bigger and better venue we have in mind is going to cost us HKD 108,000 for all three days. Let me know if you have any questions. Johnny.”

“To: noriyuki.morita@gmail.com
Cc: johnny.chan@chanbroscos.com
From: daniel.chan@chanbroscos.com
July 20 2022 @ 23:45:16
Re: Proposal - hiring Infinity Wars Endgame Iron Man suit for Hong Kong Avengers Fan event - July 22 - 24, 2022

Noriyuki-san - tried to call you but went to voice-mail. The suit has not arrived. We have checked with customs. We have also checked with Cathay Pacific Services. They are double-checking and will come back to us in the morning, but they told us by phone that they have no record of carrying the shipment. Can you call me on +852 3535 7904 urgently? Any time, please.

Yours truly,

Danny Chan”

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

“To: noriyuki.morita@gmail.com
Cc: johnny.chan@changbroscos.com
From: daniel.chan@chanbroscos.com
July 21 2022 @ 11:45:17
Re: Proposal - hiring Infinity Wars Endgame Iron Man suit for Hong Kong Avengers
Fan event - July 22 - 24, 2022

Noriyuki-san - we still have not been able to contact you. The suit has definitely not arrived. We have checked again with customs. We have also confirmed with Cathay Pacific Services that they have no record of carrying the shipment. Again, can you call me on +852 3535 7904 urgently? Any time, please.

If the suit does not arrive in time, what are we going to do? As you know, it was the centre piece of the whole event. We have marketed the whole event based on the suit as a centre-piece. It's not just a matter of lost profits. We will have to offer a refund of the ticket price to everyone and swallow all of the venue costs and our marketing costs. Johnny and I really cannot believe this is happening. We paid you the flat fee on time. This is going to be terrible for our reputation. We may not be able to host any event like this in future, if this does not work.

Yours truly,

Danny Chan”

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

“To: daniel.chan@chanbroscos.com
Cc: johnny.chan@chanbroscos.com
From: noriyuki.morita@gmail.com
22 July 2022 08:48:18
Re: Proposal - hiring Infinity Wars Endgame Iron Man suit for Hong Kong Avengers
Fan event - July 22 - 24, 2022

Dear Danny-san,

I regret that, once I double-checked the insurance policy you have arranged, it was not adequate. I am not prepared to risk the precious suit and must treat our contract as cancelled. I will retain the flat fee as reflecting the lost opportunity, but I am willing not to sue you for my share of the profits I should have earned.

Yours truly,

Noriyuki Morita”

END OF TEST PAPER

2023 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD II: CIVIL AND CRIMINAL PROCEDURE

Tuesday, 14 November 2023



2023 Overseas Lawyers Qualification Examination

Head II: Civil and Criminal Procedure

Question 1 (25 marks)

Larry, your American national corporate partner, passed to you his attendance note he took about his son, David:

“My son David, aged 22, a Postgraduate Certificate in Laws (“PCLL”) overseas student from New York, U.S.A, told me he was charged with:

1. Common assault against William Zhang, aged 21, a fellow PCLL student from China.
2. A second charge of possession of dangerous drugs namely 50 or 500 (?) gram of Marijuana. Amount of drugs is not sure!

The common assault took place in front of a small tutor group of about 10 students in the PCLL course last week.

David is on police bail pending his first court hearing next week.”

Questions:

Larry asked you these questions:

- (1) **If you were first at the scene, what would be your first advice to David and William?**

(3 marks)

(See over the page for a continuation of Question 1)

(2) **What factors would you submit to the court to ensure that David's bail is continued next week?**

(3 marks)

(3) **It seems that the attendance note on the second charge is not clear. What can you do to make sure you get the brief facts before the hearing?**

(1 mark)

(4) **How should David plea to both charges and why?**

(3 marks)

(5) **What would be the sentencing guideline for David for both charges?**

(5 marks)

(6) **David and Larry want to pay William off for not attending court. What would be your advice to David and Larry?**

(5 marks)

(7) **Assuming now you have a copy of the brief facts and explain to David. David wants to plea guilty before his court attendance, but David does not agree with some of the information on the brief facts. What would be your advice to David?**

(2 marks)

(8) **Assuming now you have the Government Chemist Certificate and it turns out that David is not in possession of dangerous drugs as charges. What actions would you advise David?**

(3 marks)

[25 marks in total]

Question 2 (25 marks)

John is 40 years of age. He is a professional accountant working as an audit manager in an accounting firm. He is married with his wife and 2 children (aged 7 and 10) all residing in Hong Kong.

John met an 18-year-old girl, X, on “Facebook”. He made a deal with X by way of “compensated dating” that John would pay X HK\$2,000.00 for 2 hours dating (“the Deal”). They subsequently met up as agreed and went to a rented room at an hourly hotel (“the Room”).

In the Room, John asked for having sex with X. X was very scared and did not know what to do. John told X that she had to have sexual intercourse with him otherwise he would publish the Deal with X on “Facebook”. X was very frightened and asked John to allow her to leave the Room, telling him that she did not want to have sexual intercourse with him.

John refused to allow X to leave the Room until they had sexual intercourse. Sexual intercourse eventually took place.

X reported the matter to the police. John was subsequently arrested by the police. In the video recorded interview with the police, John admitted that he had sexual intercourse with X under an agreement and he did pay her money for compensated dating.

John was subsequently charged with rape.

(See over the page for a continuation of Question 2)

Questions:

- (1) John's case was brought to Court No.1 of West Kowloon Magistrates' Courts for mention. John was then represented by a solicitor under the Duty Lawyer Service. The prosecution asked for an adjournment for 4 weeks for legal advice which was granted. John made an application for bail which was rejected by the presiding magistrate.

John seeks your advice regarding his right to bail. Advise John and specify what instructions you need to have from John for his application for bail.

(7 marks)

- (2) After the prosecution obtained legal advice that John's case should be dealt with in the Court of First Instance ("the CFI") of the High Court, John's case was transferred to the Eastern Magistrates' Courts for committal proceedings.

John concerns his rights to enjoy the credit of guilty plea at various stages of the proceedings. Advise John the applicable sentencing discounts for entering guilty plea.

(8 marks)

(See the next page for a continuation of Question 2)

- (3) In the committal proceedings, John appeared in person before a magistrate (“the Magistrate”), John pleaded guilty to the charge of rape. Subsequently, the summary of facts of John’s case (with the facts that John did have sexual intercourse with X against X’s wish) was read to him. John said he agreed to the summary of facts. In addition, he said to the Magistrate that he had sexual intercourse with X under an agreement and he did pay her money for compensated dating. He asked for lenient sentence. The Magistrate told John that he had no power to sentence John in the committal proceedings. John was then committed to the CFI for sentence.

Pending the sentence hearing in the CFI, John seeks your advice if he may change his guilty plea at the committal proceedings to a plea of not guilty at this stage. Advise John.

(6 marks)

- (4) **Would your advice in question (3) be different if John did not say to the Magistrate in the committal proceedings that he had sexual intercourse with X under an agreement and he did pay her money for compensated dating? Advise John.**

(4 marks)

[25 marks in total]

Question 3 (25 marks)

Your firm is instructed by Bold Insurance Company Limited (“Bold”) to defend a claim for damages against its Insureds, the Incorporated Owners of Carnival Building (the “IO”) and Good Luck Property Management Limited (“Building Manager”) (collectively known as “the Insureds”) of Carnival Building (the “Building”). The claim is brought by Mrs. Fatima Lee (“Mrs. Lee”), who occupies a flat in the Building with her husband, Mr. Dennis Lee (“Mr. Lee”).

According to the information provided, Mrs. Lee fell in the Building’s lift lobby at about 9.00 a.m. on 5 June 2021. The CCTV footage in the lift lobby captured Mrs. Lee falling to the floor after walking a few steps as she came out of the lift. The CCTV also captured Mrs. Lee was able to get up by herself before a building attendant (“Mr. Chan”) came to the scene about a minute after the fall. Mrs. Lee then left the lift lobby and drove away in her car. Mr. Lee went to the building management office that evening complaining to Mr. Tsui, the supervisor of the Building Manager, that the floor was wet and slippery. He also told Mr. Tsui his wife had consulted an orthopaedic specialist that afternoon because of back pain and he reserved his wife’s right to sue. The Insureds therefore reported the accident to Bold.

Bold instructed a loss adjusting firm, Cannings, to investigate into the accident. Cannings interviewed Mr. Tsui who described the cleaning and patrol schedules. He provided to Cannings copies of the cleaning and patrol records. Cannings also interviewed Mr. Chan. He said he saw there was a small patch of brown liquid on the floor near where Mrs. Lee fell, and it looked like tea or coffee to him. Cannings visited Mrs. Lee at her flat, but she refused to talk about the accident. She told Cannings she felt great pain in her back and that Dr. Peter Poon had granted her sick leave that afternoon for 14 days, which might continue. Dr. Poon had advised her to attend physiotherapy. Cannings then reported the factual findings to Bold in a written report.

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

On 10 September 2022, the Building Manager and the IO each received a letter before action from Ray Lam & Co. (“RL”), acting for Mrs. Lee. RL also sent a copy of the letter before action to Bold, and in the covering letter to Bold, RL requested disclosure of Cannings’ report.

Question:

- (1) Bold is reluctant to disclose Cannings’ report because of what Mr. Chan said.

Write a letter to Bold advising:

- (a) Whether Mrs. Lee is entitled to disclosure of Cannings’ report, and why.

(6 marks)

- (b) If Mrs. Lee is entitled to disclosure, is there any ground which Bold might be able to rely on to contest the request of disclosure.

(4 marks)

- (c) The procedure which RL might take to start an application for disclosure of Cannings’ report, and what Bold needs to do to oppose any such application.

(5 marks)

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

Bold instructed you to reject RL's request for disclosure of Cannings' report and RL decided not to press for it. Instead, they commenced legal proceedings (DCPI No. 1080 of 2023), naming the Building Manager as the 1st Defendant, and the IO as the 2nd Defendant. Your firm has instructions to file a Defence.

Before you finalize the Defence, Mr. Tsui told you that Mr. and Mrs. Lee have inserted a letter signed by both, into the letterbox of each flat. They also posted a copy of this letter in the lift lobby. In the letter, they accused the Insureds of colluding with one another to cover up the accident. They also accuse the Insureds of accepting advantages from the cleaning contractor otherwise they would not agree to the contractor falsifying the cleaning log entries. The Insureds told you that the accusations are untrue and groundless and that they must clear their respective names because the accusations have damaged their reputation. They are also concerned that Mr. and Mrs. Lee will repeat such accusations.

Question:

(2) Bold agreed to you taking legal steps to assist the Insureds to clear their respective names and to seek appropriate relief.

(a) **Draft the headings, parties, and title of the relevant pleadings.**

(b) **Include a prayer for relief(s) which may be appropriate for the Insureds.**

(10 marks)

[25 marks in total]

Question 4 (25 marks)

Your firm represents Mr. Mok Siu Lung (“Mr. Mok”), the plaintiff in a personal injury action resulting from a road accident in which Mr. Mok was injured.

Mr. Mok was a passenger in a taxi which collided with a delivery van parked on the side of the road. He is a 71-year old retiree who was on his way home after meeting friends for tea. During the journey, Mr. Mok noticed that the taxi driver had a bank of mobile telephones and other electronic devices in front of him. The driver was watching the devices, sending and receiving messages and talking animatedly when he drove the taxi right into the back of the delivery van.

Mr. Mok was thrown forward in the accident. His face hit the plastic screen affixed to the back of the headrest in front of him. He suffered cuts and bruises to the forehead. He was badly shaken by the accident and was taken to a private hospital by ambulance. In hospital, Mr. Mok was given medical treatment, and, after a period of observation, allowed to go home. After a few days rest at home, Mr. Mok returned to the private hospital for a check-up and was advised that the wounds were healing well and that he was on track for a full recovery.

Six months after the accident, the taxi driver, Mr. Chan Chi Keung, was convicted of careless driving, his 5th such conviction.

Your firm commenced proceedings in the District Court against the driver. Pleadings have now closed. Discovery has not yet taken place. Mr. Mok is anxious for an amicable settlement. At his age, he wishes to avoid the stress of a full trial, even mediation would be too stressful, he says.

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

You have obtained an expert medical report which opines that there is permanent scarring on Mr. Mok's forehead. You have also obtained counsel's advice to the effect that since Mr. Mok, being a retiree, did not lose any income, the total principal amount of damages, both general and special, should be no more than \$500,000.

Questions:

- (1) Prepare a letter to the client explaining the sanctioned offer procedure and counsel's advice, asking for client's instructions whether he would like such an offer to be put forward, and if so in what amount. You may assume any facts not inconsistent with those set out above.**

(17 marks)

- (2) Prepare a draft sanctioned offer (for client's approval) in an appropriate amount, to be enclosed with the above letter. For extra credit, you may add footnotes explaining any part of your draft.**

(8 marks)

[25 marks in total]

Question 5 (25 marks)

Facts:

1. You, a solicitor, have obtained a judgment in the sum of HK\$10 million in the High Court against Mr. A for failing to repay a loan extended by Mr. B to him. Mr. A has not settled the judgment debt or any part of it to date. Obviously, he is avoiding satisfaction of the judgment debt aforesaid. A bankruptcy search indicates that Mr. A is not an undischarged bankrupt and he has never been bankrupted before.
2. Mr. A lives in a small flat in Wan Chai, Hong Kong. A land search of the Wan Chai flat indicates that its registered owner is Mr. A and it is free of mortgage. Mr. A has a Canadian passport and properties in Vancouver, Canada. You have instructions from Mr. B that Mr. A is telling everyone that he is leaving Hong Kong and not coming back anytime soon.
3. You are also instructed that Mr. A is a wealthy individual. Most of Mr. A's assets are believed to be in Hong Kong. For instance, Mr. B had heard Mr. A talking about his investments in the Hong Kong stock market and various private companies in Hong Kong. Mr. A has also spoken of his collection of paintings and art pieces. However, Mr. B does not know their whereabouts nor any details of the same.
4. Mr. B has shown you a copy of a cheque (drawn on HSBC's branch office in Wan Chai) which was given by Mr. A to Mr. B some time ago to pay interest accrued on the HK\$10 million loan. The cheque was honoured and Mr. B kept a copy of it prior to paying it in.

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

5. Mr. B wants to know how you are going to enforce the judgment obtained. Specifically, Mr. B wants to know (a) what action can be taken through the High Court to enforce the judgment obtained on the basis of the information available to date, (b) how to find out more about the assets of Mr. A through the High Court for enforcement purposes, and (c) how to prevent Mr. A from leaving Hong Kong to avoid payment of the judgment debt.

Question:

Write an advice letter to Mr. B, setting out your advice on how to enforce the judgment obtained. Your advice has to be comprehensive enough to answer the 3 enquiries set out in paragraph 5 above. You also have to explain to your client why you recommend a particular course of action and set out in brief the procedure for each means of enforcement proposed by you. If a particular course of action recommended by you is only effective for a certain time period, you need to let your client know as well.

(25 marks)

[25 marks in total]

END OF TEST PAPER

2024 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD II: CIVIL AND CRIMINAL PROCEDURE

Wednesday, 13 November 2024



2024 Overseas Lawyers Qualification Examination

Head II: Civil and Criminal Procedure

Question 1 (25 marks)

You received urgent instructions from an organization “Help for Domestic Helper HK” regarding an overseas foreign worker (“OFW”) named Denise Santana (“Denise”). The note read as follows:

“Dated 1 October 2024

Urgent help required for Miss Denise Santana, aged 45, an OFW from Manila.

Denise has a clear record in Hong Kong.

Denise was an OFW who has been working and looking after an elderly couple, Mr. and Mrs. Chan (no children or other persons) for over 10 years in Blue Pool Road, Happy Valley on Hong Kong Island.

Recently, Mrs. Chan discovered that cash in the sum of HK\$5,000 was unaccounted for from the market shopping money Mrs. Chan prepared for Denise.

Mrs. Chan also discovered that a pair of pearl earrings worth HK\$10,000 (a gift from Mr. Chan to Mrs. Chan on their 30th wedding anniversary) was missing from her main unlocked drawer on Mrs. Chan’s dressing table.

As a result, Mr. and Mrs. Chan questioned Denise at home from midnight till the early morning on 10 September 2024.

(See over the page for a continuation of Question 1)

At first, Denise denied having stolen the cash and the earrings.

After some 5 hours of oral interrogations by the Chans, with threats that they would beat Denise with a cane, report the theft to the police and to the Philippines Consulate, and deprive Denise of water and food, Denise finally admitted in writing in Chinese to the Chans, that she did use the cash of HK\$5,000 to pay for the hospital bill of her husband who had a motorcycle accident in Manila.

But Denise maintained she has not seen the pair of pearl earrings.

The Chans also made a search of Denise's personal possession without Denise's consent, but the pair of pearl earrings was not discovered in Denise's personal items.

As a result of Denise's confession, the Chans reported the theft to the Happy Valley Police Station.

Denise was arrested by the Happy Valley Criminal Investigation Department ("CID") on 12 September 2024 and was charged with two counts of theft from Mr. and Mrs. Chan first of cash in the sum of HK\$5,000 and second of a pair of earrings worth HK\$10,000.

No further native language version of Denise's cautioned statement was obtained. But Mr. and Mrs. Chan both gave witness statements in Chinese."

Questions:

- (1) Explain in details if the confession from Denise is admissible in Court and why.

(6 marks)

(See the next page for a continuation of Question 1)

- (2) You are asked to apply for bail for Denise, what grounds would you submit to the Magistrate for his/her consideration for bail, if applicable?**

(6 marks)

- (3)** After further investigation by the CID at several pawn shops in the Wanchai area, Hong Kong, the Chans' pair of pearl earrings was found to have been pawned at Glory Pawn Shop by one Jenny Vargas ("Jenny").

There is no further information if there is any personal direct or indirect connections between Denise and Jenny.

I have recently come to discover this information before the plea day.

What application will you be making to the Court on the plea day regarding the charge of theft of the pair of earrings?

(6 marks)

- (4) Advise Denise how she should plead and why.**

(7 marks)

[25 marks in total]

Question 2 (25 marks)

Mary, aged 35, is an Australian who was born and raised in Sydney, Australia. She is single with her parents in Sydney. Mary is the only child in her family. She is a Native-speaking English Teacher in a local primary school in the New Territories, Hong Kong. She has been working in the same school for 5 years. Mary has no criminal record.

Peter, aged 36, is a locally born Chinese. He is Mary's boyfriend. They cohabitated together for 2 years. Peter is an insurance agent. He has a criminal conviction for "possession of a dangerous drug" 15 years ago. He was put on probation for 12 months.

On 30 August 2023, Mary and Peter came back to Hong Kong from Bangkok after a holiday trip. A Custom & Excise officer found a pack of substance suspected to be cocaine ("the Seized Drug") in a concealed compartment in their luggage. Both of them were arrested by the Custom & Excise Department.

Questions:

Assuming you are acting for the Prosecution for question (1).

- (1) On 2 September 2023, Mary and Peter were jointly charged with "unlawfully trafficking in a dangerous drug". They were brought before West Kowloon Magistrates' Court for mention. The Prosecution asked for (a) no plea to be taken from Mary and Peter; and (a) an adjournment of the case for 8 weeks.

Explain on what grounds the application for adjournment was made.

(4 marks)

(See the next page for a continuation of Question 2)

Assuming Mary and Peter were separately legally represented and you are acting for Peter for questions (2) to (4).

- (2) Peter pleaded not guilty to the charge of “unlawfully trafficking in a dangerous drug”. He was granted bail pending trial. His case was tried before a District Judge. He was convicted after trial and sentenced to imprisonment for 2 years. He would like to ask for bail pending appeal.

Advise Peter.

(4 marks)

- (3) **Would your advice in question (2) be different if his case was tried before a Magistrate?**

Advise Peter.

(2 marks)

- (4) Peter’s application to the Court of Appeal for leave to appeal against conviction was refused by a single judge of Court of Appeal. Peter is not satisfied with the refusal. He wishes to attempt further appeal.

Advise what Peter may do and what he should be warned.

(5 marks)

(See over the page for a continuation of Question 2)

Assuming Mary and Peter were separately legally represented and you are acting for Mary for question (5).

- (5)** Mary admitted to you that (a) she knew that the Seized Drug was cocaine; (b) the Seized Drug was provided by an agent arranged by her friend, George who is a drug dealer; (c) she was paid HK\$10,000 by George for bringing the Seized Drug to Hong Kong; (d) Neither did Peter know the Seized Drug was cocaine nor participate in the trafficking of the Seized Drug; and (d) she would plead guilty to the charge.

Advise Mary what important factors the court would consider when sentencing Mary apart from her timely guilty plea. What further instructions do you need to take from Mary for her mitigation? What would be the procedure that you would adopt so that Mary's interest would be fully protected?

(10 marks)

[25 marks in total]

Question 3 (25 marks)

Mr. Ian Wong (“Ian”) came to seek your advice about a loan he has made to Mr. Nicholas Chan (“Nicholas”).

Background

Ian is a businessman and a long-time friend of Nicholas.

Nicholas is the sole director and shareholder of Digital Innovation Limited (“DIL”) which was set up in early 2021 providing blockchain technology.

In January 2023, Nicholas invited Ian to invest in DIL to which Ian agreed. He purchased 50% of the shares in cash but left the day-to-day running of the business to Nicholas.

On 1 May 2023, Nicholas told Ian he needed a loan in the sum of HK\$3M. Ian agreed to advance Nicholas a loan of HK\$3M by 3 instalments respectively in the sums of HK\$2M (on 5 May 2023), HK\$500,000 (on 5 June 2023), and HK\$500,000 (on 6 July 2023). The terms of the oral agreement were that each of the sums advanced must be repaid within 1 month of advancement with the last repayment to be made on 6 August 2023 together with aggregate interest in the sum of HK\$200,000. Ian transferred the money to an account held in the personal name of Nicholas.

Despite the agreement, Nicholas has not made any repayment despite Ian having reminded him on several occasions. Nicholas said he was waiting for a return from an overseas investment.

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

Around the end of August 2023, Ian again reminded Nicholas to make repayment and told him if he did not repay the full amount by 15 September 2023, he would consider taking legal action.

Nicholas assured Ian his overseas investment was soon to come in. In order to ease Ian's concerns, Nicholas issued a cheque post-dated to 15 September 2023, in the sum of HK\$3,200,000 in favour of Ian. Nicholas told Ian to hold onto the cheque and present it for payment on 15 September 2023.

Ian presented the cheque for payment on 16 September 2023. The cheque was later returned "Refer to drawer". Ian called Nicholas and asked him what happened with the cheque. Nicholas said his investment failed. He also said the loan was made to DIL so he had no personal responsibility.

Ian wants to know how he can get his money back and how quickly.

Questions:

- (1) **Write a letter of advice to Ian summarising what steps he can take in terms of issuing legal proceedings and applying for summary judgment. The letter should explain the procedure, the information needed to be put before the Court and the possible responses of Nicholas.**

(20 marks)

- (2) **Draft the affidavit in support of the summary judgment application including the heading, parties and all relevant averments needed.**

(5 marks)

[25 marks in total]

Question 4 (25 marks)

Your firm's client ("client") is the defendant in a commercial dispute in the Court of First Instance. The plaintiff claims damages of HK\$4 million on the ground that goods delivered by client under contract were of inferior quality. In its pleadings, client denies liability, and in the alternative asserts that the quantum of damages should be no more than HK\$2,000,000.

Client has all along been keen to reach a settlement. After pleadings closed, your firm proposed mediation. The proposal was ignored by the plaintiff's legal representatives and the action proceeded. Following discovery, client, still keen on settlement, made a sanctioned payment of HK\$2.5 million ("1st SP"). No response was received. Later, following exchange of witness statements, client made a top-up sanctioned payment of HK\$500,000, bringing the total to HK\$3 million ("2nd SP"). Again, no response was received.

The case proceeded to trial. Judgment was handed down awarding HK\$2.5 million to the plaintiff, with an order *nisi* that client pay the plaintiff's costs of the action.

Client feels aggrieved by the costs order given that a substantial amount of costs could have been saved if the plaintiff had been more receptive to the attempts to settle. Client had delayed delivering counsel's brief for trial in the hope that this expense could be avoided. Counsel's brief, marked with a flat fee of HK\$800,000, was delivered only after it had become clear that the 2nd SP would not be accepted.

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

Question:

Prepare a draft letter, for your supervising partner's approval, advising client what the costs order means, and what could now be done to address client's sense of grievance.

(25 marks)

[25 marks in total]

Question 5 (25 marks)

The managing partner sends you the following attendance note:

“Client: Mr. Colin Chan (“Mr. Chan”)

- Meeting in our offices today.
- Existing client. Owner and CEO of C. Chan & Co (Holdings) (Hong Kong) Limited. Successful bio-tech start up manufacturing and distributing skincare products.
- Mr. Chan’s long-time personal secretary, Phyllis Poon (“Phyllis”), retired last month – last day was 31 August 2024. As well as her contractual and statutory termination package, Mr. Chan had promised her a gift. He had talked about getting her a Patek Philippe Calatrava Ref. 6119R-001 (rose gold), worth about USD 33,000. But had not got around to organizing it by the time she left.
- He has just discovered that, on her last day, Phyllis faked his signature on a number of cheques on the company’s bank account to herself in the aggregate amount of USD 550,000 and paid them into an account at the Hong Kong branch of Suisse Credit Privee, a Swiss bank. He found this out when the Financial Controller noticed the entries in the monthly bank statements and brought them to his attention. After calling the bank, they sent him copies of the cheques which showed the cheques had been cleared by Suisse Credit Privee’s branch in Hong Kong in an account in the name “Gloria Poon”. He can tell the signatures are forged. He is not completely sure, but he thinks he recognizes Phyllis’ handiwork in the forged signatures. He is pretty sure that only Phyllis knew about the cheque book in his personal office from which the cheques came.

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

- He also produced an exchange of three WhatsApp messages between himself and Phyllis in July 2024:
 - o Dear Sweet P – how about a Calatrava (rose gold)?
 - o Oh, ChubbyChan-kins – how about a Nautilus Tiffany?
 - o Dear Sweet P – you adorable trouble-maker – ha ha, how about a Nautilus Factory Diamond? – ha ha.

Note: the price of a Calatrava (rose gold) is USD 33,000. The price of a Nautilus Tiffany is approximately USD 6 million. A Nautilus Factory Diamond is approximately USD 550,000.

- Mr. Chan (married) had engaged in an “affair of the heart” (his words) with Phyllis since 2000 and each year bought her a watch priced around USD 30,000 - 50,000. He has many photographs on his private cellphone of Phyllis and himself at dinner and visiting watch conventions.”

Questions:

- (1) Mr. Chan wants to get the company’s money back. He is prepared to sue. But who does he sue? He very strongly suspects Phyllis stole his money. But he does not know anyone called Gloria Poon. It might be a pseudonym for Phyllis, or may be a relative. Mr. Chan simply does not know.

- (a) **What information can he find out by issuing proceedings and on what legal basis?**

(6 marks)

- (b) **What procedural steps does he need to take?**

(6 marks)

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

(2) He is worried that Phyllis will defend herself by saying she was simply taking money representing the value of the Nautilus Factory Diamond. He does not want to disclose the WhatsApp messages.

(a) These are only WhatsApp messages. Mr. Chan thinks they are not proper documents. **Does that mean they will not have to be disclosed as part of the Plaintiff's discovery? Can they be deleted?**

(4 marks)

(b) Mr. Chan has heard it is not necessary to have to disclose documents covered by "legal professional privilege". **Briefly, what does that mean and can it be relied on in respect of the WhatsApp messages?**

(3 marks)

(c) What about the photographs? Mr. Chan's photographs will be terribly incriminating for him in the eyes of his wife. **On what grounds might it be possible to withhold them? He has heard that documents do not have to be produced if one can claim privilege against self-incrimination. What is that and is it likely to help? Are there other possible grounds?**

(4 marks)

(d) At what stage in any litigation will it be necessary to produce documents to Phyllis and any other defendants?

(2 marks)

[25 marks in total]

END OF TEST PAPER