

**2025 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD II: CIVIL AND
CRIMINAL PROCEDURE**

Wednesday, 12 November 2025



2025 Overseas Lawyers Qualification Examination

Head II: Civil and Criminal Procedure

Question 1 (25 marks)

Your senior partner John Nolan sent you this file note:

“Background:

My son Abe Nolan (“Abe”) aged 33, is an American citizen and a member of the New York Bar. Abe arrived in Hong Kong in 2024 on a work visa and is currently working as a registered foreign lawyer in my firm. You may have met him before in the office.

What happened to Abe:

Abe attended an Overseas Lawyers Qualification Examination course provided by “Sure Win”, a third party course provider.

In the course of attending the class, Abe got to know Ernest, a criminal litigation tutor.

During a coffee break, Abe chatted to Ernest and Abe asked Ernest if there is a “sure win” way to pass this paper.

Ernest told Abe he is one of the examiners who set the criminal litigation paper for the current year.

Ernest also told Abe that for a sum of HK \$10,000, Ernest can let Abe have a look at his question.

A week later, Ernest arranged a meeting with Abe.

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

Unbeknown to Abe, Ernest reported this case to the Independent Commission Against Corruption (“ICAC”) and provided a cautioned written statement to the ICAC detailing his proposed meeting with Abe.

Prior to Ernest attending the meeting with Abe, the ICAC fitted audio recording device on Ernest. Officers were also deployed at the venue to make an audio and video record of the meeting.

At the meeting, Abe passed a brown envelope to Ernest containing HK\$10,000 in cash. At this point, Abe was arrested by the ICAC and later taken to the ICAC headquarters.

At the ICAC headquarters, the arresting officer took a cautioned video interview with Abe.

Prior to the cautioned interview, Abe was neither advised of his rights to a lawyer nor his rights to silence.

The ICAC senior investigator told Abe that if he cooperated, he will be released after the interview and nothing will happen to him. On this basis, Abe agreed to be video interviewed and confessed to offering HK\$10,000 Ernest.

Abe was later released on cash bail.

A few weeks later, Abe was charged with offering a bribe of HK \$10,000 to Ernest to have sight of this year’s examination paper.

Abe will go to the Court in a few days.

You are asked to advise both John and Abe.

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

Questions:

- (1) Identify the most damaging evidence against Abe.**

(5 marks)

- (2) What advice would you give Abe to have his cautioned video interview excluded from the evidence?**

(5 marks)

- (3) Abe is worried that his bail may be revoked when he appeared in Court. Explain to Abe what other bail conditions can be offered to Court to ensure Abe will be able to continue bail.**

(5 marks)

- (4) If Abe is convicted after trial, prepare his mitigation and advice on likely sentence.**

(5 marks)

- (5) What arguments might you use to persuade the Court to exclude the surveillance tapes obtained at the meeting between Abe and Ernest?**

(5 marks)

[25 marks in total]

Question 2 (25 marks)

John, aged 50, is a taxi-driver. He has more than 30 years' driving experience and has worked full-time as a taxi driver for 15 years. He has a clear traffic conviction record.

At about 9:30 p.m. on 5 January 2025, John received an order through taxi app. He drove his taxi ("the Taxi") to pick up a passenger at Mongkok Hotel, Hong Kong and intended to send him to the Hong Kong International Airport. John drove the Taxi through a pedestrian crossing at Nathan Road ("the Pedestrian Crossing") when the green traffic light was on. The Taxi rammed into a pedestrian ("the Victim") who was on the Pedestrian Crossing despite the pedestrian traffic light was red. The Victim suffered multiple fractures on his 4 limbs and was sent to hospital immediately for treatment.

John was arrested by the investigation police officer ("the IO") for the offence of "Causing grievous bodily harm by dangerous driving" immediately at the accident scene. The IO did not caution John before asking him questions. In reply to the IO's questions, John said, "I saw the Victim crossing the road, but I believe that my taxi would not collide with him." ("the Words").

Questions:

Assume you are acting for John for questions (1) to (4).

- (1) On 28 January 2025, John was charged with "Causing grievous bodily harm by dangerous driving". He was brought before West Kowloon Magistrates' Court for mention on 3 February 2025.

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

The Prosecution asked for an adjournment of the case to 1 March 2025 pending legal advice. The Prosecution applied to the court for an order to impose stringent conditions for bail that John should surrender his driving licence as a condition of bail.

Advise John.

(6 marks)

- (2) On 3 February 2025, a magistrate sitting at the West Kowloon Magistracy ordered John to surrender his driving licence as a condition of his bail. John faced grave financial hardship if he was not allowed to drive pending the disposal of the case. He wanted to get back his driving licence.

Advise John.

(5 marks)

- (3) On 1 March 2025, John's case was brought up for mention in West Kowloon Magistracy. The Prosecution asked for the transfer of the case to District Court for trial. John would like to dispute that his case should be tried at the Magistrates' Court.

Advise John.

(4 marks)

- (4) On 6 June 2025, John was tried at the District Court. He would like to challenge the admissibility of the Words.

Advise John what procedures may be followed for challenging the admissibility of the Words.

(5 marks)

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

Assume you are acting for the Prosecution for question (5).

- (5) The Words were ruled inadmissible by the trial judge. The trial judge ruled that there was a case to answer for the charge of “Causing grievous bodily harm by dangerous driving”. John did not give evidence. Eventually, John was acquitted of the charge of “Causing grievous bodily harm by dangerous driving” but convicted of the alternative verdict of “careless driving”. The Prosecution was dissatisfied with John’s acquittal of the charge of “Causing grievous bodily harm by dangerous driving”.

Advise the Prosecution.

(5 marks)

[25 marks in total]

Question 3 (25 marks)

Your client is Mr. Arnold Piscator (“Mr. Piscator”), who spends most of his time living and running his business interests in New Jersey, United States of America (“U.S.”), through a Hong Kong company wholly owned by him, Aspire Together Limited (“Aspire”). In July 2022, he agreed to buy from a Hong Kong music composer and businessman, Mr. Man Chiu Wai (“Mr. Man”), a 60% stake in a Mainland Chinese company, Vermilion Notes Limited (“Vermilion”). Vermilion has a growing music publishing business, based in Shanghai, Mainland China. Mr. Piscator and his wife, Madam Shirley Wong (“Madam Wong”), are the two directors of Aspire. Madam Wong spends most of her time living in Hong Kong. The purchase price was USD 35 million, which was paid on completion in September 2022. The sale and purchase agreement (“SPA”) was governed by Hong Kong law and provided for the Hong Kong courts to have non-exclusive jurisdiction in respect of any dispute or difference arising relating to the SPA. The SPA required Mr. Man to assist with the management of the business for 12 months after completion of the purchase.

Almost immediately following completion, Mr. Piscator became very unhappy about Mr. Man’s lack of commitment to the business. Mr. Piscator made no secret of his displeasure, and the two businessmen had a complete falling out. During this time, Mr. Piscator discovered that Mr. Man had already started another music business, in Chengdu, Mainland China, in contravention of a restrictive covenant in the SPA by Mr. Man not to involve himself, directly or indirectly, in any business in Mainland China which competed with Vermilion, for two years after completion. Mr. Piscator also discovered that the revenues for the prior financial year of Vermilion were 3% less than set out in the financial statement contained in the schedule of representations and warranties in the SPA. The SPA provided that, in the event of any material breach by Mr. Man of the SPA, Aspire was entitled to terminate the contract and recover USD 35

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

million plus 20% per annum from the date of completion to the date of termination. In August 2023, Aspire served a notice terminating the SPA.

Your firm receives instructions from Mr. Piscator on behalf of Aspire under a board resolution signed by both Mr. Piscator and Madam Wong authorizing you to receive instructions from Mr. Piscator on all matters relating to the dispute with Mr. Man, including any formal litigation. In January 2024, your firm started High Court proceedings on behalf of Aspire against Mr. Man. Aspire's claims in the action are for: firstly, USD 42 million (USD 35 million plus 20%); secondly, damages of USD 10 million representing lost dividends that Aspire would have received if Mr. Man had devoted himself properly to Vermilion's business and not involved himself in the Chengdu business, alternatively an account of profits made by Mr. Man from the business he was involved in Chengdu; and, thirdly, interest and costs.

Mr. Man, represented by another law firm, has denied any liability in his defence. The main elements of Mr. Man's defence are that: (i) the 3% difference in revenues was not material, and did not affect the value of Vermilion; (ii) Mr. Man did his best to assist in the management of the business, but found it almost impossible to contribute because of Mr. Piscator, who harangued him every time they met; (iii) the Chengdu business does not compete with Vermilion's business, and in any event the restrictive covenant is unreasonable and unenforceable as a matter of both the law in Hong Kong and Mainland China; and (iv) the provision providing for payment of 20% per annum in the event of termination is an unenforceable penalty clause, bearing no correlation to the actual damages suffered by Aspire.

Pleadings have closed, and each party has provided discovery following a timetable that was agreed between the solicitors. The case is in the general court list.

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

You have sent Mr. Piscator a draft Timetabling Questionnaire [*note: not necessary or provided as a copy for the purpose of this examination*] and advised him that it may be necessary to engage independent expert witnesses in respect of financial and valuation matters (for the financial statements, the 3% discrepancy in revenues and the reasonableness of a 20% return on investment), the music publishing industry (for the restrictive covenant preventing Mr. Man from being involved in a competing business) and People's Republic of China ("PRC") law (raised by Mr. Man). A barrister retained by you has advised that his preliminary estimate of the length of a trial is 8 days. Mr. Man's solicitors have indicated that their initial estimate of the trial length is 16 days.

Mr. Piscator, on receiving the draft Timetable Questionnaire from you, sends you an email asking for a call with you to discuss the case. He emails you in advance the questions that interest him most.

Questions:

- (1) **"With all my litigation experience here in the U.S, I know what is going to worry Mr. Man the most. I want to create as much difficulty for him as possible. I don't want you to try to agree on any timetable with his lawyers. Is that OK?"**

(5 marks)

- (2) **"You have mentioned "milestones" to me in your e-mail. What are they? What do they mean?"**

(5 marks)

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

(3) “I don’t understand why the trial might last so long, even 8 days. Can you explain to me what is involved in the trial?”

(3 marks)

(4) “Can’t the court control the length of the trial?”

(3 marks)

(5) “Can I make Mr. Man give evidence and testify first – he is the bad guy in this, after all.”

(2 marks)

(6) “I want to put maximum pressure on Mr. Man to settle. Can I make a sealed offer before the trial, which puts him under pressure to beat it? How do we do that?”

(5 marks)

(7) “Can you give me some brief ideas as to how a “sealed offer” by Aspire might be structured in this case, given Aspire’s claims?”

(2 marks)

Draft an e-mail reply to Mr. Piscator answering each of his seven questions, using the same numbering.

[25 marks in total]

Question 4 (25 marks)

Angela Wong (“Angela”) came to seek your advice about an accident which occurred on 7 May 2022 in Focus Fitness & Yoga (“FFY”).

- 1 For over 3 years, Angela regularly attended yoga classes taught by Miss Emily Chen (“Emily”) 4 times a week at FFY. She signed a membership agreement with Focus Holdings Limited (“FHL”). The membership fees were paid on a monthly basis by a direct debit authorization to a bank account no. 003-020-281-00431 in the name of FHL at The Bank of East World Limited. FHL’s said account was held at the Wanchai main branch at Shop 1-10, Harbour Centre, 12 Harbour Road, Wanchai, Hong Kong.
2. On 7 May 2022, she attended class as usual, but Emily pressed against her back too hard, and as a result she suffered back pain. She consulted a general practitioner the following day who recommended a magnetic resonance imaging (“MRI”) which revealed herniated discs in the lower back region. She was referred to an orthopaedic specialist and physiotherapist for treatment and rehabilitation. She attended physiotherapy for 8 months and incurred HK\$80,000 in medical expenses. She has since resumed yoga practice, but only attends class once a week with another instructor, Mary Kwok (“Mary”).
3. You reviewed the medical reports, receipts and the membership agreement. The medical report of Dr. Wong Kwok Shing, GP, recorded that Angela attended his clinic on 8 May 2022, complaining of back pain after attending yoga class the previous day. The report also mentioned Angela had attended yoga class regularly for many years without problem. The membership agreement contained a clause stating that FFY would not be liable for any bodily injury sustained by its members whilst using its facilities or attending its classes, and that members attend classes at their own risk.

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

4. Your preliminary advice to Angela was that she had a reasonably good case, the causes of action being negligence and breach of duties under the Supply of Services (Implied Terms) Ordinance (Cap 457). It was also your preliminary view that the amount of damages recoverable would be no more than HK\$200,000 plus interest unless her condition deteriorated. Having heard your advice, Angela instructed you to represent her to claim damages.
5. You subsequently conducted a search at the Companies Registry as well as a Business Registration Search. The searches revealed that FHL is a limited company incorporated in Hong Kong with a registered address at 12/F, Harbour Centre, 30 Harbour Road, Wanchai, Hong Kong. The Business Registration Search confirmed that FFY was operated by FHL.
6. Your firm sent a letter before action to FHL in April 2023, setting out the basis of the intended claim, but received no reply. On 5 June 2023, your firm's clerk served a Writ of Summons, Statement of Claim, Statement of Damages, and other requisite documents for a personal injury claim on FHL. The aforesaid documents were served at the registered address of FHL.
7. No Acknowledgment of Service was filed by the Defendant after the deadline for doing so expired. Your firm therefore applied for interlocutory judgment on liability which was later granted on 7 August 2023. Your firm served the sealed copy of the interlocutory judgment on the Defendant at its registered office on the same day. Court directions were subsequently granted for leave to set down the case for assessment of damages hearing in the running list, not to be warned before 31 March 2025. Your firm set down the case and has complied with the other directions such as filing of witness statements and medical reports. The sealed order of directions, witness statement, medical reports and setting down notice were served on the Defendant at its registered office on 10 December 2024.

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

8. On 10 February 2025, Yeung & Associates, representing the Defendant, served on your firm a Summons with an affidavit of Edward Chan (“Edward”), the finance manager of the Defendant, in support of its application to set aside the interlocutory judgment, together with a draft defence. According to the affidavit:
- (i) Edward, representing the Defendant, on 12 June 2023, telephoned Tommy Chan (“Tommy”), the principal of Tommy Chan & Co, Solicitors, instructing the firm to defend the claim. Edward personally knew Tommy and the Defendant also instructed Tommy on other matters. In the call, Edward instructed Tommy to deny the claim. The court documents were sent by courier to the office of Tommy Chan & Co. on the same day.
 - (ii) Edward had not heard from Tommy further but did not follow up with him on the assumption a defence had been filed.
 - (iii) The Defendant has a meritorious defence. Another instructor, Mary, recalls Angela attended her classes after 7 May 2022 at least twice a week and did not show or complain of any discomfort in her back.

The gist of the draft defence is:

- (a) The Defendant does not admit Angela sustained injury as a result of attending yoga class at any time; instead, it avers that Angela had already complained of back pain on various occasions prior to 7 May 2022.
- (b) The Defendant denies it has been negligent or has breached any duty under the Supply of Services (Implied Terms) Ordinance (Cap 457). It further relies on the clause in the membership agreement excluding liability.

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

- (c) Angela attended classes as usual after the alleged accident so if an accident had occurred in the manner alleged, it did not result in any injury to her.

Questions:

- (1) **Advise Angela on the merits of the Defendant's application. In your advice, please explain all relevant factors which the Court would take into consideration on the case scenario. In your advice, explain also how the Underlying Objectives would be applied given the set of facts presented in this case.**

(20 marks]

Assuming the Court dismissed the Defendant's application and after the assessment of damages on 12 April 2025, Angela was awarded HK\$180,000 in damages plus interest and costs. The judgment was served on the Defendant at its registered address, but it failed to satisfy the same. You advised Angela to enforce the Judgment by means of a Garnishee Order which she agreed.

- (2) **Draft an affirmation/affidavit in support of an application for a garnishee order.**

(5 marks)

[25 marks in total]

Question 5 (25 marks)

Facts:

- (a) You act for Mr. Declan in defence of a Writ of Summons issued by Mr. Phillips in the High Court.
- (b) You have filed a Defence for Mr. Declan denying liability.
- (c) Pleadings have closed and both parties have filed their Lists of Documents and inspection of documents has been done.
- (d) Having seen the documents disclosed by Mr. Phillips, Mr. Declan suspects Mr. Phillips has not disclosed all documents which are relevant to the matters in question in the proceedings and he would like to know what he can do to hold Mr. Phillips personally accountable if it transpires Mr. Phillips has not disclosed all relevant documents.

Question:

- (1) **Write an advice letter telling Mr. Declan what he can do to make Mr. Phillips confirm the completeness of his List of Documents and how Mr. Phillips can so confirm.**

(4 marks)

Facts:

- (e) What makes your client think in the manner described in paragraph (d) above is that Mr. Declan recalls having signed an agency agreement with Mr. Phillips which is relevant to the matters in dispute between them in the proceedings but unfortunately, Mr. Declan has not kept a copy of it. Mr. Declan disclosed in his List of Documents that such agency agreement was once in his possession (on

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

the signing day), but he gave it to Mr. Phillips after signing. Mr. Declan is not happy that Mr. Phillips' List of Documents makes no reference to the agency agreement at all.

Question:

- (2) In the same letter, you also need to advise Mr. Declan what application he can make to compel Mr. Phillips to disclose the agency agreement. Your advice should cover the documents to be submitted in support of such application and their contents and what matters the Court will take into consideration when considering the application. You should also advise Mr. Declan what he can do if Mr. Phillips fails to comply with any Court Order obtained.

(13 marks)

Facts:

- (f) Mr. Declan is a sophisticated client. He says he has heard of a Court procedure allowing him to ask Mr. Phillips questions on matters of fact (e.g. whether he had ever appointed sales agents in any Asian city).

Question:

- (3) In your letter, advise Mr. Declan if such procedure exists, what it is called and what purpose such questions will have to serve before they will be considered as necessary to the proceedings. You should also advise Mr. Declan what Mr. Phillips can do if he does not want to answer questions from Mr. Declan and to what use any answers can subsequently be put in the action.

(8 marks)

[25 marks in total]

END OF TEST PAPER