

THE LAW SOCIETY OF HONG KONG
OVERSEAS LAWYERS QUALIFICATION EXAMINATION
2026 SUPPLEMENTARY INFORMATION PACKAGE

HEAD II: CIVIL AND CRIMINAL PROCEDURE

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- 1. Standards, Syllabus and Materials**
- 2. Examiners' Comments on the 2023, 2024 and 2025 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 2026, The Hong Kong White Book’, Sweet & Maxwell
- ‘Hong Kong Civil Court Practice’, Desk Edition 2026, LexisNexis, *Julienne Jen*

The following materials are useful for reference:

- ‘Hong Kong District Court Practice’, 6th Edition, LexisNexis, *Lo, P.Y.*
- ‘Civil Procedure in Hong Kong: A Guide to the Main Principles’, 4th Edition (2017), Sweet & Maxwell, *Dave Lau*
- ‘Civil Litigation in Hong Kong’, 7th Edition (2026), Sweet & Maxwell, *Douglas Clark*

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* 'Criminal Litigation in Hong Kong', 5th Edition, Sweet & Maxwell Hong Kong
- *Amanda Whitfort*, 'Criminal Procedure in Hong Kong: A Guide for Students and Practitioners', 3rd Edition, LexisNexis

For Reference

- 'Archbold Hong Kong 2026, Sweet & Maxwell Hong Kong
- *Grenville Cross GBS, SC. and Patrick W. S. Cheung* 'Sentencing in Hong Kong', 12th Edition, LexisNexis

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 2023, 2024 and 2025 Examinations

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.

Examiners' Comment on the 2025 Examination

Head II: Civil & Criminal Procedure

The Overall Performance of Candidates

1. The number of candidates who sat the Head II paper in 2025 was 97, down from 113 in the previous year. 22 candidates were given overall pass marks, resulting in a pass rate of 23%. This is a considerable deterioration in the pass rate from the previous year where 69 out of 112 candidates (excluding 1 candidate who was disqualified from Head II and whose result for Head II was annulled) 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 32% (2021), 64% (2022), 42% (2023), 62% (2024) and now 23% (2025). This is however the lowest pass rate for many years.

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%. The pass rate was broadly similar for both questions.

Question 1 (pass rate 40%)

7. Question 1 was in five parts.
8. The question was not unusually complex when compared with previous years.
9. Question 1(1) no candidates explained how the evidence can be “excluded”.
10. Question 1(2) the accused being an American citizen, only one candidate mentioned the accused can seek the assistance of the Consulate.
11. Question 1(3) one candidate mentioned the use of “electronic monitoring” which is not available in Hong Kong.
12. Question 1(4) some imaginative answers, e g, “undue influence”, “encourage to commit a crime” and “encourage to do so by Ernest”. Not really focusing on answering the question.
13. Question 1(5) generally not well answered.
14. The overall standard of the answers was below par.

Question 2 (pass rate 51%)

15. Questions 2(1) and 2(2) were related questions examining candidates’ general knowledge on bail applications and the variation of bail conditions. Candidates generally performed well in these parts.
16. In Question 2(3), most of the candidates were able to refer to case authorities to support the choice of venue remains a matter of prosecutorial decision free from any intervention.
17. Question 2(4) was straight-forward in testing candidates' knowledge on the determination of admissibility of evidence either by *voir dire* or by the alternative procedure. Some good candidates were able to mention that the alternative procedure is not available in a trial before a judge and jury in the Court of First Instance.
18. Question 2(5) question tested candidates' knowledge that the prosecution may appeal to the Court of Appeal against a defendant's acquittal by way of case stated pursuant to section 84 of District Court, Cap.336. Some candidates quoted the wrong statutory provisions for such appeal.

Civil Procedure

19. The overall pass rate was 21% on the civil procedure side, which is significantly down from 71% in the previous year. The pass rate did not vary markedly for the three civil procedure questions being 38% who passed Question 3, 22% passing Question 4 and 31% who passed Question 5.

Question 3 (pass rate 38%)

20. Question 3 involved two elements. The first part consisted of a series of questions relating to the procedural steps to be taken on the way to trial, with specific reference to timetables and pre-trial directions and milestone dates, followed by a description of a trial itself with the order of trial, its length and the Court's overall control of its own procedure. This part of the question carried 18 marks.
21. The second part of the question sought knowledge of sanctioned offers under Order 22 R.H.C. and the procedural steps to be followed.
22. Overall, the results were disappointing given a knowledge of the necessary interlocutory steps in an action on a way to trial is a fairly essential part of the general knowledge of the litigation process.
23. Similarly, while some candidates seemed to understand and appreciate the procedural niceties of sanctioned offers, others were very wide of the mark.

Question 4 (pass rate 22%)

24. Question 4 covered two parts of the syllabus: setting aside a default judgment and enforcement of judgment, carrying 20 and 5 marks, respectively.
25. Since the setting aside of a regularly entered default judgment requires the Court to exercise its discretion subject to certain criteria being taken into consideration, plus the question required candidates to advise a client, candidates needed to analyze the facts and apply the relevant law, instead of just regurgitating the relevant Rules of the Courts. The second part was a straightforward question, asking candidates to draft an affidavit/affirmation in support of an application for a Garnishee Order. All the information required to be included in the affidavit/affirmation was set out in the case scenario.
26. The facts of the question were clear in that the defendant did not dispute (i) the writ was properly served, and (ii) the default judgment was obtained properly/without irregularity. However, a number of candidates still spent time explaining the setting aside of an irregular default judgment, whilst some wasted time explaining how proceedings should be served or simply set out the rules and names of authorities, without applying them to the facts. This was not an advice to a client on the merits of a setting aside application. Only a very few candidates explained how the underlying objectives apply in this case.
27. The drafting question was simple. Some candidates did not get full marks because they did not include all the information required for the application in question.

Question 5 (pass rate 31%)

28. Question 5 covered two areas of the Syllabus. Parts (1) and (2) of the question which carried 17 Marks were on verification of a List of Documents filed and applying for specific discovery of documents not disclosed in a List of Documents filed.
29. Although the facts clearly stated that “.... *both parties have filed their Lists of Documents and inspection of documents has been done*”, a significant number of candidates treated these two parts of the question as a question on pre-action discovery. There were no parts of the facts which could have led candidates in such a wrong direction so the only conclusion must be sheer oversight/misjudgment on the part of such candidates.
30. Since these two parts of the question carried the majority of the marks, getting the focus wrong was not conducive to attaining the pass mark. Candidates therefore need to be reminded to read the facts and the question carefully before jumping to their answers.
31. The last part of question 5 was on interrogatories. It might be thought this part could be more difficult, given interrogatories are relatively uncommon and certainly when compared to the parts of the question on discovery, but most candidates were able to identify the need to apply Order 26 R.H.C. and did reasonably well in its application to the substantive questions asked.

3. Past Examination Papers from 2023 to 2025

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

**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