

Questions 1 to 4

2000 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD II: CIVIL AND CRIMINAL PROCEDURE

Friday, 27 October 2000



HEAD II : CIVIL AND CRIMINAL PROCEDURE

TEST PAPER

27 October 2000

Instructions to Candidates

1. **The duration of the examination is 3 hours and 30 minutes.**
2. **This is an open-book examination.**
3. **There are FIVE questions in this paper. ANSWER ANY FOUR QUESTIONS ONLY.**
4. **IF YOU ATTEMPT MORE QUESTIONS THAN YOU HAVE BEEN INSTRUCTED TO ANSWER :**
 - (a) **THE EXAMINERS WILL MARK ALL QUESTIONS THAT HAVE BEEN ATTEMPTED AND NOT DELETED; AND**
 - (b) **IN COMPUTING YOUR FINAL MARK, THE EXAMINERS WILL COUNT THE MARKS FOR THE NUMBER OF QUESTIONS THAT YOU WERE INSTRUCTED TO ANSWER TAKING INTO ACCOUNT THE ANSWERS WITH THE LOWEST SCORES.**
5. **Apart from Question 5, start each answer on a separate page of your answer book.**
6. **Please note that Question 5 is printed in a separate question paper. If you answer Question 5, your answer must be written in the spaces provided for that question on the separate question paper.**
7. **Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.**
8. **Do not take either the question papers or any answer books with you when you leave the examination room.**

2000 Overseas Lawyers Qualification Examination

Head II : Civil and Criminal Procedure

Question 1 (25 marks)

Konrad, a German national, arrived in Hong Kong on a flight from Thailand on 4 September 2000. There were 8 hours before his connecting flight to Germany and he decided to leave the airport to look around.

When he presented his passport at the Immigration Counter, an Immigration Officer told him he suspected the passport was forged. **Konrad** immediately told the Immigration Officer, *“I just want to leave the airport to look around for a short while and then I am flying on to Germany. Let me through and there is \$US100 for you”*. **Konrad** was taken into an interview room and questioned by two immigration officers. Both they and **Konrad** all spoke fluent English. **Konrad** made a written statement under caution. In that statement he admitted the passport was forged, that he had obtained it in Thailand and that he should not have offered money to the Immigration Officer.

Konrad was charged with possession of a forged travel document contrary to s. 42(2)(c)(1) of the Immigration Ordinance, Cap.115 and with offering an advantage to a public servant contrary to s. 4(1)(a) of the Prevention of Bribery Ordinance, Cap. 201. He was not given bail.

Konrad appeared at Tsuen Wan Magistracy on 5 September 2000. He was represented by the Duty Lawyer and pleaded guilty to both charges. The Brief Facts of the Case were read aloud to him in English and **Konrad** said they were understood and admitted. Those Facts recited that he came to Hong Kong from Thailand on 4 September 2000, had presented a forged German passport to an Immigration Officer, offered that officer \$US100 to let him go through the immigration counter despite the forged passport, and in a written statement under caution had admitted the passport was forged and obtained in Thailand and that he was wrong to have offered money to the officer.

In mitigation, the Duty Lawyer simply asked the magistrate to be as lenient as possible so that **Konrad** could leave Hong Kong “sooner rather than later”. The magistrate imposed 15 months immediate imprisonment on the passport offence and (under s. 12(1)(b)(ii) of the Prevention of Bribery Ordinance, Cap. 201) 27 months immediate imprisonment on the bribery charge, the sentences to run consecutively.

(See over the page for questions 1(a) and (b))

Now consider the following:

- (a) You saw **Konrad** in prison on 30 September 2000. He tells you that the passport was genuinely issued to him by the German authorities. He agreed it was forged “as a joke” and had just wanted to find out how Hong Kong’s legal system operated. He also said that the offer of money was made for a similar reason.

Question :

Assuming all that Konrad said is correct, what, if any, action(s) would you recommend him to take and what is the chance of success?

(17 marks)

- (b) **Assume that :**

Konrad’s son was critically injured in an accident in Germany on 3 September 2000 and he was rushing home to see him. When the officer said he suspected the passport was forged, **Konrad** immediately offered the \$US100 to the officer to allow him to leave Hong Kong as he was anxious to rush home to see his badly injured son, though he knew the passport was genuine. When he was taken to the interview room, he told the officers the passport was genuine. One of the officers told him it would take a long time to investigate the matter but that if he co-operated, made a statement and pleaded guilty, he would only be fined and could then leave Hong Kong. The officer wrote out the statement that **Konrad** had signed and told him not to say anything about what had really happened to any lawyer or to the magistrate as that would complicate things.

Question :

Would it make any difference to your answer in (a)?

Support your answers with reasons and authorities where appropriate.

(8 marks)

[s. 42 of the Immigration Ordinance, Cap.115 and ss. 4 and 12 of the Prevention of Bribery Ordinance, Cap. 201 are attached as **Appendix 1** and **Appendix 2** respectively at the back of the Test Paper]

Question 2 (25 marks)

PW1 was a plain-clothes police officer on anti-drug patrol duty in Wanchai. In the early evening of 1 April 2000 he saw **John**, a six-year old boy, sitting on a bench outside the Southern Playground in Wanchai. The playground was a notorious hangout for drug addicts.

PW1 then saw **Ah Kwong**, whom he recognised as a drug addict, approach **John** and hand him a \$500 banknote. **John** then took a small plastic packet containing some tablets from the schoolbag he was carrying and handed it to **Ah Kwong** who then walked away. **PW1** followed **Ah Kwong** for some distance before intercepting him. **PW1** conducted a body search on **Ah Kwong** and the plastic packet containing tablets was found and seized. The bag contained 20 tablets. **PW1** suspected that these tablets were the dangerous drug “ice” (methamphetamine hydrochloride).

PW1 cautioned **Ah Kwong**. **Ah Kwong** admitted that he had bought the 20 tablets and claimed these were for his own consumption. **PW1** then questioned him about a number of recent domestic burglaries in Wanchai. **Ah Kwong** admitted he had committed them. He begged for a chance and offered to provide **PW1** with information about the identity of his drug supplier if **PW1** agreed not to charge him with any offences. **PW1** replied that this would depend upon how useful the information would be.

Ah Kwong led **PW1** to **John** and told him that **PW1** was his friend who would like to buy drugs from his father **Ah Sam**. **John** then led them to **Ah Sam** who was in the vicinity of the playground. **Ah Kwong** made the same introduction to **Ah Sam**. **Ah Sam** said that he did not have any tablets available at that moment. **Ah Kwong** then deliberately prompted **Ah Sam** into saying that he used **John** to supply buyers with drugs and that he had previously sold drugs to **Ah Kwong**. This conversation lasted about 20 minutes. The conversation was cassette-tape recorded by **PW1** without the knowledge of **Ah Sam** or **John**.

PW1 then revealed his police identity and arrested and cautioned **Ah Sam**. **Ah Sam** was searched but nothing incriminating was found on him. **PW1** also searched **John**'s schoolbag and found some 200 tablets that he suspected to be “ice”. **PW1** seized those tablets and sealed them in **Ah Sam**'s presence. **Ah Sam** scolded **Ah Kwong** for betraying him but refused to say anything further to **PW1**.

Ah Sam and **John** were taken to their flat that was nearby. The flat was searched but nothing suspicious was found.

Ah Sam and **John** were then taken to Wanchai Police Station. They were both cautioned in the police station but both remained silent. **Ah Sam** only said that he owned two taxis and claimed to earn his living by driving one himself and renting out the other one. **Ah Sam** was charged with the offence of Trafficking in Dangerous Drugs contrary to s.4 (1)(a) of the Dangerous Drugs Ordinance (Cap. 134). He was refused Police bail.

(See over the page for questions 2(a) and (b))

You are the solicitor instructed by **Ah Sam**. You visited him the same evening in the detention cell of Wanchai Police Station. **Ah Sam** told you he has no previous convictions and asked you what would happen to him. You asked the officer in-charge of the case what the police intended to do. That officer told you that as the suspected dangerous drugs weighed 22.4 grammes, the case would be dealt with in the Court of First Instance of the High Court but this would be subject to the result of the Government Chemist's analysis of the tablets. The officer in-charge of the case also told you that the police had reason to believe that **Ah Sam** was a leader of an active triad gang and was involved in a number of armed robberies and brutal gang fights.

Question :

- (a) **Please explain to Ah Sam step by step the procedures involved, after 1 April 2000 and up to the commencement of trial, for having Ah Sam tried in the Court of First Instance of the High Court, for the offence of drug trafficking, highlighting any particular rights or entitlements Ah Sam has during this process. (N.B. You do not need to explain the procedures involved in empanelling the jury or at the trial). Could Ah Sam apply to have his case tried in the District Court or the Magistracy if he felt that his case should not be so serious as to warrant a trial in the Court of First Instance? Please give reasons for your answers.**

(13 marks)

Assume that, for some reason, the trial of **Ah Sam** on the drug trafficking charge took place in the District Court. A voir dire was conducted to determine the admissibility of the tape-recording of the conversation between **Ah Kwong** and **Ah Sam**. The judge eventually held that the admissions were voluntarily made by **Ah Sam**, but nevertheless exercised his residual discretion to exclude the evidence on the ground that the court should discourage the police from using such deceitful and unfair tactics to trap an accused.

Question :

- (b) **If the prosecution disagrees with the judge's ruling on admissibility, but considers that without the tape-recording, the rest of the prosecution evidence is not sufficient to secure a conviction, what procedures should the prosecution adopt? Please give reasons for your answer.**

(4 marks)

(See over the page for question 2 (c))

Assume that, with the help of **Ah Kwong**, **Ah Sam** was eventually convicted of drug trafficking. However, the prosecution refused to grant **Ah Kwong** an immunity and charged him in the Magistracy with 3 counts of domestic burglaries. **Ah Kwong** pleaded guilty to all 3 charges on 3 October 2000.

Question :

- (c) **How much discount from the normal starting point for sentencing upon trial would likely be given by the sentencing court to Ah Kwong in the circumstances? Would your answer be different if Ah Kwong's case was before the District Court? Please give reasons for your answers.**

(8 marks)

[S. 4 of the Dangerous Drugs Ordinance, Cap. 134 is attached as **Appendix 3** at the back of the Test Paper]

Question 3 (25 marks)

Bio Sheng (HK) Limited (“**Bio Sheng**”) is the manufacturer of pharmaceutical and cosmetic products. One of its products is a drug used to treat respiratory ailments caused by pollution. **Bio Sheng** is the owner of the patent to the drug, which is valid and subsisting in Hong Kong. **Bio Sheng** has learned that a similar drug is being imported into Hong Kong which it claims is in violation of **Bio Sheng**’s patent. It wants to sue the importer, but it does not know its identity. **Bio Sheng** has asked the **Customs & Excise Department** (“**Customs**”) for the name and address of the importer and the dates on which consignments of the drug were imported into Hong Kong. **Customs** officials have refused to give the information to **Bio Sheng**. They have given three reasons for this refusal. First, **Bio Sheng** is not legally entitled to the information. Secondly, **Customs** employees would have to work overtime to collect the information requested by **Bio Sheng**, which would be an unjustifiable expenditure of public funds. Thirdly, they say that they are not convinced that the imported drug violates **Bio Sheng**’s patent.

Question :

- (a) Advise **Bio Sheng** what action it may take and the likely result thereof.

(7 marks)

Assume that your client, **Bio Sheng** already knew the name of the importer and sued it. The importer is **Tat Limited** (“**Tat**”). **Tat**’s solicitor has asked you for a copy of an expert’s report which he knows **Bio Sheng** has. You have told **Tat**’s solicitor that the report is privileged and you have declined to produce it. After the hearing of the Summons for Directions, you ask a trainee solicitor to prepare and serve a list of documents on behalf of **Bio Sheng**. After the List has been served on **Tat**’s solicitors, you notice that the expert’s report has been listed by the trainee solicitor in Part I of Schedule I of the List.

Question :

- (b) What action can you take to rectify the mistake? Would the position be different if inspection has already taken place and **Tat**’s solicitors already have a copy of the expert’s report?

(6 marks)

Bio Sheng now has a different problem. It has been sued by **Richard Lai**, who alleges he is suffering from serious psychological side effects as a result of taking **Bio Sheng**’s drug. Discovery in the action by **Mr Lai** has taken place. One of the documents disclosed by **Mr Lai** on discovery states that the Plaintiff had been treated for psychological problems prior to taking **Bio Sheng**’s drug.

(See over the page for questions 3(c) and (d))

You have written a letter to **Mr Lai**'s lawyer asking for details of the previous psychological problems. **Mr Lai**'s lawyer has refused to give you the information. He has said that any relevant information you want will be in **Mr Lai**'s witness statement and that the exchange of witness statements will be ordered when the Summons for Directions takes place.

Question :

- (c) **Advise Bio Sheng on the appropriate steps to take in the light of this response, with reasons.**

(7 marks)

After he began to use **Bio Sheng**'s drug and before he obtained legal advice, **Richard Lai** kept a diary in which he described the psychological problems he was experiencing. When he decided to seek legal advice about these problems, he gave a copy of the diary to his solicitor. On the advice of his solicitor, he continued to make notes in the diary about the psychological problems.

Question :

- (d) **Can Bio Sheng inspect and take a copy of the diary? Please explain your answer.**

(5 marks)

Question 4 (25 marks)

You are a solicitor of **Messrs Lawless & Co.** **Mr Wong** comes to your office in something of a panic early this morning. He tells you that he is a businessman who spends a lot of time in Mainland China. As a result, he admits, his financial affairs are in a mess. Now, on his latest return from Mainland China yesterday, he found a watchman at his office guarding property belonging to him seized by the bailiff pursuant to a writ of execution. Worse, his bank account has been frozen because of a garnishee order. He tells you the writ of execution has been issued at the request of **Miss Chan**, a creditor with whom he had thought he had previously reached an agreement to pay the debt by instalments, although he acknowledges he has missed the 2nd instalment due and payable 1 week ago.

He hands you a writ issued by **Miss Chan** in the Court of First Instance of the High Court about 7 weeks ago for HK\$650,000 for the price of goods sold and delivered to him. He says there was some dispute about the quality of the goods and he did not take any steps in the proceedings, but soon negotiated with **Miss Chan** and reached a settlement less than 2 weeks after the writ had been served on him. He hands you a letter of settlement that was signed by himself and **Miss Chan** 5 weeks ago. It provides in the body of the letter that, as the parties have reached a settlement in full and final satisfaction of **Miss Chan's** claim in the proceedings, the action be discontinued on the terms appearing in the Schedule attached. The Schedule records an acknowledged debt of HK\$500,000 and provides that **Mr Wong** should pay the debt by instalments of HK\$50,000 per month, with a clause at the end saying that, if a single instalment is missed, the whole debt then outstanding should immediately fall due. He paid the 1st instalment upon execution of the settlement agreement.

Mr Wong also gives you a writ issued in the Court of First Instance of the High Court, and a judgment, as well as a garnishee order nisi. The judgment creditor is **Triad Finance Limited** ("**Triad**"), a credit card company, to whom **Mr Wong** admits owing money. He says, however, that he picked up these documents from his letter box upon his return yesterday and realized for the first time that proceedings were instituted against him by **Triad**. He says that **Triad** probably did not know that he was in Mainland China over the past 4 weeks. He admits, however, that **Triad** has been chasing him for repayment through solicitors and debt collectors for some months.

The writ is dated 4 weeks ago and claims HK\$90,000, together with continuing interest from 4 weeks ago at a rate of 2% per month (i.e. over **Triad's** standard lending rate), and HK\$60,000 being the indemnity costs pursuant to the credit card contract. The judgment is dated 5 days ago, and is said to be for HK\$150,000, together with continuing interest from 4 weeks ago up to the date of the judgment on HK\$90,000 at a rate of 2% per month, and fixed costs of around \$1,500. The garnishee order is fixed to be heard in a fortnight's time.

(See over the page for continuation of Question 4)

Mr Wong says that his father-in-law has offered to help him out of his financial problems but his father-in-law wants written advice from a lawyer on the validity of legal actions taken against **Mr Wong** and on **Mr Wong**'s liabilities. His father-in-law also wants advice as to what steps **Mr Wong** should take to help minimize his liabilities.

Question :

Please write a letter of advice to Mr Wong.

[N.B. You may omit the addresses and letterhead etc and just write the body of the advice letter.]zz

(25 marks)

(See Question 5 in the separate Test Paper)

~~39. 船隻上載有尋求非法入境的人時船長的法律責任~~

如船隻上的人在違反第 38(1)(a) 條的情況下尋求從船隻入境，該船隻的船長即屬犯罪。

- (a) 經公訴程序定罪後，可處罰款 \$600,000 及監禁 7 年；及
(b) 經簡易程序定罪後，可處罰款 \$600,000 及監禁 3 年， (由 1996 年第 25 號法律公告修訂)

除非他證明自己並不知情，亦無理由懷疑該人在違反第 38(1)(a) 條的情況下尋求入境。

40. 無有效旅行證件而抵達的飛機乘客

乘飛機抵達香港的乘客，如未帶備有效旅行證件，則飛機的擁有人及其代理人即屬犯罪，經定罪後，可處第 3 級罰款。

(由 1993 年第 82 號第 11 條修訂；由 1996 年第 25 號法律公告修訂)

41. 違反逗留條件

任何人違反他有效的逗留條件，即屬犯罪，經定罪後，可處第 5 級罰款及監禁 2 年。

(由 1996 年第 25 號法律公告修訂)

42. 虛假陳述、偽造文件、使用及管有偽造文件

(1) 任何人——

- (a) 向根據或為執行本條例第 IB、II、III 或 IV 部而合法行事入境事務主任、入境事務助理員或其他人員；
(b) 在依據本條例或本條例規定向入境事務主任或入境事務助理員提交的文件中；或
(c) 為取得 (不論為自己或為別人) 旅行證件、居留權證明書、入境證、回港證、身分證明書、簽證身分書、亞太經合組織商務旅遊證、旅遊通行證或越南難民證，

~~39. Liability of captain of ship carrying persons seeking to land unlawfully~~

If a person on board a ship is seeking to land from the ship in contravention of section 38(1)(a), the captain of the ship shall be guilty of an offence and shall be liable—

- (a) on conviction on indictment, to a fine of \$600,000 and to imprisonment for 7 years; and
(b) on summary conviction, to a fine of \$600,000 and to imprisonment for 3 years, (Amended L.N. 25 of 1996)

unless he proves that he did not know and had no reason to suspect that such person was seeking to land in contravention of section 38(1)(a).

~~40. Aircraft passengers arriving without valid travel document~~

If a passenger who arrives in Hong Kong in an aircraft does not have a valid travel document, the owner of the aircraft and his agent shall be guilty of an offence and shall be liable on conviction to a fine at level 3.

(Amended 82 of 1993 s. 11; L.N. 25 of 1996)

~~41. Breach of condition of stay~~

Any person who contravenes a condition of stay in force in respect of him shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(Amended L.N. 25 of 1996)

~~42. False statements, forgery of documents and use and possession of forged documents~~

(1) Any person who makes or causes to be made

- (a) to an immigration officer, immigration assistant or any other person lawfully acting under or in the execution of Part IB, II, III or IV of this Ordinance;
(b) in any document furnished to an immigration officer or immigration assistant pursuant to this Ordinance or a requirement made thereunder; or
(c) for the purpose of obtaining, whether for himself or any other person, any travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass or Vietnamese refugee card,

作出或安排作出明知為虛假或自己亦不信為真確的陳述或申述，即屬犯罪。(由 1972 年第 57 號第 10 條修訂)

(2) 任何人——

- (a) (i) 偽造或沒有合法授權而改動；或
(ii) 沒有合理辯解而向另一人轉讓，
任何旅行證件、居留權證明書、入境證、回港證、身分證、簽證身分書、亞太經合組織商務旅遊證、旅遊通行證或越南難民證，或任何根據或為施行本條例第 IB、II、III 或 IV 部而發出、備存或擬備的文件；(由 1986 年第 61 號第 3 條代替)
- (b) 為施行本條例第 IB、II、III 或 IV 部而使用偽造、虛假、或非法取得或改動的旅行證件、居留權證明書、入境證、回港證、身分證、簽證身分書、亞太經合組織商務旅遊證、旅遊通行證、越南難民證或其他文件；
- (c) 管有——
(i) 偽造的、虛假的、或非法取得或改動的旅行證件、居留權證明書、入境證、回港證、身分證、簽證身分書、亞太經合組織商務旅遊證、旅遊通行證或越南難民證；或
(ii) 任何偽造的、虛假的或非法改動的文件，而此等文件乃意圖為本條例第 IB、II、III 或 IV 部的目的而使用者，

即屬犯罪。

(3) 就本條而言，如為了或由於申請發出或更換旅行證件、居留權證明書、入境證、回港證、身分證、簽證身分書、亞太經合組織商務旅遊證、旅遊通行證或越南難民證而作出虛假的陳述或申述，則該證須被當作非法取得。

(4) 任何人犯本條罪行——

(a) 經公訴程序定罪後，可處罰款 \$150,000 及監禁 14 年；及 (由 1981 年第 66 號第 3 條修訂)

(b) 經簡易程序定罪後，可處第 6 級罰款及監禁 2 年。(由 1996 年第 25 號法律公告修訂)

(5) 在本條內，“虛假”(false)指在要項上的虛假，而“偽造”(forged)則具有《刑事罪行條例》第 200 章)第 1X 部給予該詞的涵義。(由 1992 年第 49 號第 5 條修訂)(由 1980 年第 62 號第 7 條修訂；由 1997 年第 124 號第 5 條修訂；由 1999 年第 6 號第 4 條修訂)

any statement or representation which he knows to be false or does not believe to be true shall be guilty of an offence. (Amended 57 of 1972 s. 10)

(2) Any person who—

- (a) (i) alters without lawful authority or forges; or
(ii) transfers to another without reasonable excuse;
any travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass or Vietnamese refugee card or any document whatsoever issued, kept or made under or for the purposes of Part IB, II, III or IV of this Ordinance; (Replaced 61 of 1986 s. 3)

(b) uses for the purposes of Part IB, II, III or IV of this Ordinance any forged, false or unlawfully obtained or altered travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass, Vietnamese refugee card or other document;

(c) has in his possession—

- (i) any forged, false or unlawfully obtained or altered travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass or Vietnamese refugee card; or

(ii) any forged, false or unlawfully altered document whatsoever intended for use for the purposes of Part IB, II, III or IV of this Ordinance,

shall be guilty of an offence.

(3) A travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass or Vietnamese refugee card shall be deemed to be unlawfully obtained for the purposes of this section if any person made a false statement or representation for the purposes of or in connection with an application for the issue or renewal of the same.

(4) Any person who is guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to a fine of \$150,000 and to imprisonment for 14 years; and (Amended 66 of 1981 s. 3)

(b) on summary conviction, to a fine at level 6 and to imprisonment for 2 years. (Amended L.N. 25 of 1996)

(5) In this section, “false” (虛假) means false in a material particular and “forged” (偽造) has the meaning assigned to that term by Part IX of the Crimes Ordinance (Cap. 200). (Amended 49 of 1992 s. 5)

(Amended 62 of 1980 s. 7; 124 of 1997 s. 5; 6 of 1999 s. 4)

4. 賄賂

(1) 任何人(不論在香港或其他地方)無合法權限或合理辯解,向任何公職人員提供任何利益,作為該公職人員作出以下行為的誘因或報酬,或由於該公職人員作出以下行為而向他提供任何利益,即屬犯罪——(由 1980 年第 28 號第 3 條修訂)

- (a) 作出或不作出,或曾經作出或不作出任何憑其公職人員身分而作的作為;
- (b) 加速、拖延、妨礙或阻止,或曾經加速、拖延、妨礙或阻止由本人作出或由其他公職人員作出任何憑其本人或該其他人員的公職人員身分而作的作為;或
- (c) 協助、優待、妨礙或拖延,或曾經協助、優待、妨礙或拖延任何人與公共機構間往來事務的辦理。

(2) 任何公職人員(不論在香港或其他地方)無合法權限或合理辯解,索取或接受任何利益,作為他作出以下行為的誘因或報酬,或由於他作出以下行為而索取或接受任何利益,即屬犯罪——(由 1980 年第 28 號第 3 條修訂)

- (a) 作出或不作出,或曾經作出或不作出任何憑其公職人員身分而作的作為;
- (b) 加速、拖延、妨礙或阻止,或曾經加速、拖延、妨礙或阻止由本人作出或由其他公職人員作出任何憑其本人或該其他人員的公職人員身分而作的作為;或
- (c) 協助、優待、妨礙或拖延,或曾經協助、優待、妨礙或拖延任何人與公共機構間往來事務的辦理。

(3) 非官方僱員的公職人員如有所屬公共機構的許可而索取或接受任何利益,且該項許可符合第(4)款的規定,則該公職人員及提供該利益的人均不算犯本條所訂罪行。(由 1980 年第 28 號第 3 條增補)

- (4) 就第(3)款而言,許可須為書面形式,並且——
 - (a) 須在提供、索取或接受利益之前給予;或

4. Bribery

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's— (Amended 28 of 1980 s. 3)

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his— (Amended 28 of 1980 s. 3)

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(3) If a public servant other than a Crown servant solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section. (Added 28 of 1980 s. 3)

(4) For the purposes of subsection (3) permission shall be in writing and—

- (a) be given before the advantage is offered, solicited or accepted; or

(b) 在利益未經事先許可而已提供或接受的情況下，須於該利益提供或接受之後在合理可能範圍內盡早申請及給予；同時，公共機構在給予該許可之前須顧及申請的有關情況，該許可方具有第(3)款所訂效力。(由1980年第28號第3條增補)

為合約事務上給予協助等而作的賄賂

(1) 任何人無合法權限或合理辯解，向任何公職人員提供任何利益，作為該公職人員在以下事項上給予協助或運用影響力，或曾經給予協助或運用影響力的誘因或報酬，或由於該公職人員在以下事項上給予協助或運用影響力，或曾經給予協助或運用影響力而向他提供任何利益，即屬犯罪——

(a) 以下合約的促進、簽立或促使——

(i) 與公共機構訂立的任何有關執行工作、提供服務、辦理事情或供應物品、物料或物質的合約；或

(ii) 就與公共機構訂立的合約而執行所需工作、提供所需服務、辦理所需事情或供應所需物品、物料或物質的分包合約；或

(b) 上述合約或分包合約中規定或以其他方式訂定的價格、代價或其他款項的支付。

(2) 任何公職人員無合法權限或合理辯解，索取或接受任何利益，作為他在以下事項上給予協助或運用影響力，或曾經給予協助或運用影響力的誘因或報酬，或由於該公職人員在以下事項上給予協助或運用影響力，或曾經給予協助或運用影響力而索取或接受任何利益，即屬犯罪——

(a) 第(1)款所指合約或分包合約的促進、簽立或促使；或

(b) 第(1)款所指合約或分包合約中規定或以其他方式訂定的價格、代價或其他款項的支付。

6. 為促使他人撤回投標而作的賄賂

(1) 任何人無合法權限或合理辯解，向他人提供任何利益，作為撤回為了與公共機構訂立有關執行工作、提供服務、辦理事情或供應物品、物料或物質的合約而作的

(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance, and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought. (Added 28 of 1980 s. 3)

5. Bribery for giving assistance, etc. in regard to contracts

(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in—

(a) the promotion, execution, or procuring of—

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance; or

(ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

(a) the promotion, execution or procuring of; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.

6. Bribery for procuring withdrawal of tenders

(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing

(2) 在因第(1)(b)款所訂罪行而進行的法律程序中，法庭經顧及任何入與被控人關係的密切程度及其他情況後，如信納有理由相信該人為被控人以信託形式持有或以其他方式代被控人持有金錢資源或財產，或因被控人的饋贈而獲取該等金錢資源或財產，則在沒有相反證據的情況下，該等金錢資源或財產須推定為由被控人控制。
(由 1974 年第 9 號第 3 條增補。由 1996 年第 48 號第 3 條修訂)

(3)-(4) (由 1973 年第 56 號第 2 條廢除)

(5) 在本條中，“公職薪俸”(official emoluments)包括根據《退休金條例》(第 89 章)、《退休金利益條例》(第 99 章)或《退休金利益(司法人員)條例》(第 401 章)須付的退休金或酬金。
(由 1987 年第 36 號第 44 條修訂；由 1988 年第 85 號第 51 條修訂；由 1997 年第 192 號法律公告修訂；由 1997 年第 219 號法律公告修訂)

11. 行賄者與受賄者即使目的未達仍屬有罪

(1) 在因本部任何一條所訂罪行而進行的法律程序中，如經證明被控人接受任何利益，且接受時相信或懷疑，或有理由相信或懷疑所獲給予的利益是作為他作出或不作出，或曾經作出或不作出該條所指作為的誘因或報酬，或是由於他作出或不作出，或曾經作出或不作出該等作為而獲給予的，則以下情況不得成為免責辯護——

- (a) 被控人實際上沒有權力、權利或機會作出或不作出該作為；
- (b) 被控人接受該利益但無意作出或不作出該作為；或
- (c) 被控人事實上未有作出或不作出該作為。

(2) 在因本部任何一條所訂罪行而進行的法律程序中，如經證明被控人向他人提供任何利益，作為該人作出或不作出，或曾經作出或不作出該條所指作為的誘因或報酬，或由於該人作出或不作出，或曾經作出或不作出該等作為而向他提供任何利益，同時被控人相信或懷疑，或有理由相信或懷疑該人有權力、權利或機會作出或不作出該作為，則該人沒有此權力、權利或機會，不得成為免責辯護。

12. 罪行的罰則

- (1) 除第 3 條所訂罪行外，任何人犯了本部所訂罪行，可遭處罰如下——

(a) 一經循公訴程序裁定——

(2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused. (Added 9 of 1974 s. 3. Amended 48 of 1996 s. 3)

(3)-(4) (Repealed 56 of 1973 s. 2)

(5) In this section, “official emoluments” (公職薪俸) includes a pension or gratuity payable under the Pensions Ordinance (Cap. 89), the Pension Benefits Ordinance (Cap. 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap. 401). (Amended 36 of 1987 s. 44; 85 of 1988 s. 51)

11. Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

(1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that—

- (a) he did not actually have the power, right or opportunity so to do or forbear;
- (b) he accepted the advantage without intending so to do or forbear; or
- (c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

12. Penalty for offences

(1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable—

- (a) on conviction on indictment—

- (i) 犯了第 10 條所訂罪行，罰款 \$1,000,000 及監禁 10 年；
 (ii) 犯了第 5 或 6 條所訂罪行，罰款 \$500,000 及監禁 10 年；及
 (iii) 犯了本部所訂其他罪行，罰款 \$500,000 及監禁 7 年；及 (由 1987 年第 50 號第 3 條代替)
- (b) 一經循簡易程序裁定——
- (i) 犯了第 10 條所訂罪行，罰款 \$500,000 及監禁 3 年；及
 (ii) 犯了本部所訂其他罪行，罰款 \$100,000 及監禁 3 年， (由 1987 年第 50 號第 3 條代替)

此外，法庭須命令該人按法庭指示的方式將所收取的利益款額或價值，或該款額或價值中由法庭指明的部分付予法庭所指示的人或公共機構。 (由 1980 年第 28 號第 5 條修訂)

(2) 任何人犯了第 3 條所訂罪行，一經定罪，可處罰款 \$100,000 及監禁 1 年，法庭並須命令該人按法庭指示的方式將所收取的利益款額或價值，或該款額或價值中由法庭指明的部分付予官方。 (由 1974 年第 9 號第 4 條修訂；由 1980 年第 28 號第 5 條修訂)

(3) 對於未能就所獲取的金錢資源或財產向法院提出圓滿解釋而被裁定犯了第 10(1)(b) 條所訂罪行的人，法庭除可根據第 (1) 款處以刑罰外，亦可命令該人將以下款項付予官方——

- (a) 一筆不超過該等金錢資源款額的款項；或
 (b) 一筆不超過該財產價值的款項。 (由 1974 年第 9 號第 4 條增補)

(4) 根據第 (3) 款作出的命令可採用與高等法院民事審裁的判決同樣的強制執行方式予以強制執行。 (由 1974 年第 9 號第 4 條增補。由 1998 年第 25 號第 2 條修訂)

(5) 凡第 10(1)(b) 條所訂罪行的犯罪事實是在 1974 年 2 月 15 日之前發生者，可就該罪行根據第 (3) 款作出命令。 (由 1980 年第 61 號第 2 條增補)

- (i) for an offence under section 10, to a fine of \$1,000,000 and to imprisonment for 10 years;
 (ii) for an offence under section 5 or 6, to a fine of \$500,000 and to imprisonment for 10 years; and
 (iii) for any other offence under this Part, to a fine of \$500,000 and to imprisonment for 7 years; and (Replaced 50 of 1987 s. 3)
- (b) on summary conviction—
- (i) for an offence under section 10, to a fine of \$500,000 and to imprisonment for 3 years; and
 (ii) for any other offence under this Part, to a fine of \$100,000 and to imprisonment for 3 years, (Replaced 50 of 1987 s. 3)

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify. (Amended 28 of 1980 s. 5)

(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of \$100,000 and to imprisonment for 1 year, and shall be ordered to pay to the Crown in such manner as the court directs the amount or value of the advantage received by him or such part thereof as the court may specify. (Amended 9 of 1974 s. 4; 28 of 1980 s. 5)

(3) In addition to any penalty imposed under subsection (1), the court may order a person convicted of an offence under section 10(1)(b) to pay to the Crown—

- (a) a sum not exceeding the amount of the pecuniary resources; or
 (b) a sum not exceeding the value of the property,

the acquisition of which by him was not explained to the satisfaction of the court. (Added 9 of 1974 s. 4)

(4) An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction. (Added 9 of 1974 s. 4. Amended 25 of 1998 s. 2)

(5) An order may be made under subsection (3) in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence arose before 15 February 1974. (Added 61 of 1980 s. 2)

~~12A 資產的沒收~~

~~(1) 除本條另有規定外，對於一經循公訴程序被裁定犯了第 10(1)(b) 條所訂罪行的人，法庭除可根據第 12(1) 條處以刑罰外，亦可命令沒收以下金錢資源或財產——~~

~~12A Confiscation of assets~~

~~(1) Subject to this section, where a person is convicted on indictment of an offence under section 10(1)(b) the court may, in addition to any penalty imposed under section 12(1), order the confiscation of any pecuniary resources or property—~~

3. 就附表 1 而言的百分率計算方法，及“物質”(substance)的引伸涵義

- (1) 就附表 1 而言——
- (a) 如屬液體製劑，百分率須按以下基礎計算：在每 100 毫升的製劑中，如含有 1 克固體物質或含有 1 毫升液體物質，該份製劑即含有百分之一該物質；較大或較小的百分率均按此比例計算；及
- (b) 如屬鹽類，百分率須以無水鹼的分量計算。
- (2) 在附表 1 第 1 部第 1 段中指明的物質，如可能存有與同樣化學名稱的異構體，則須視為包括指明該物質的異構體；在附表 1 中其他提及第 1 部第 1 段指明的物質之處，亦須據此解釋。 [比照 1965 c. 15 s. 24(2) U.K.]

第 II 部

對進口、出口、獲取、供應、經營或
處理、製造及管有危險藥物的管制

4. 危險藥物的販運

- (1) 除根據及按照本條例，或根據及按照署長根據本條例而發出的許可證外，任何人不得為其本人或代表不論是否在香港的其他人士——
- (a) 販運危險藥物；
- (b) 提出販運危險藥物或提出販運他相信為危險藥物的物質；或
- (c) 作出或提出作出任何作為，以準備販運或目的是販運危險藥物或其他相信為危險藥物的物質。 (由 1980 年第 37 號第 2 條修訂)
- (2) 不論危險藥物是否在香港，或將進口入香港，或是否被確定、據有或存在，第 (1) 款均適用。

3. Calculation of percentages for purposes of First Schedule, and extended meaning of "substance" (物質)

- (1) For the purposes of the First Schedule—
- (a) in the case of liquid preparations, percentages shall be calculated on the basis that a preparation containing 1 per cent of any substance means a preparation in which 1 gram of the substance if a solid, or 1 millilitre of the substance if a liquid, is contained in every 100 millilitres of the preparation, and so in proportion for any greater or less percentage; and
- (b) in the case of salts, percentages shall be calculated as in respect of the anhydrous base.
- (2) The specification in paragraph 1 of Part I of the First Schedule of a substance shall, if the existence of isomers of that substance is possible within the specific chemical designation thereof, be taken to comprehend the specification of any isomer of that substance whose existence is possible as aforesaid; and any other reference in the First Schedule to a substance specified in paragraph 1 of Part I thereof shall be construed accordingly. [cf. 1965 c. 15 s. 24(2) U.K.]

PART II

CONTROL OF IMPORT, EXPORT, PROCURING, SUPPLY,
DEALING IN OR WITH, MANUFACTURE AND
POSSESSION OF DANGEROUS DRUGS

4. Trafficking in dangerous drug

- (1) Save under and in accordance with this Ordinance or a licence granted by the Director hereunder, no person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Hong Kong—
- (a) traffic in a dangerous drug;
- (b) offer to traffic in a dangerous drug or in a substance he believes to be a dangerous drug; or
- (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug or in a substance he believes to be a dangerous drug. (Amended 37 of 1980 s. 2)
- (2) Subsection (1) shall apply whether or not the dangerous drug is in Hong Kong or is to be imported into Hong Kong or is ascertained, appropriated or in existence.

- (3) 任何人違反第(1)款的任何規定，即屬犯罪，可處以下罰則——
- (a) 循公訴程序定罪後，可處罰款 \$5,000,000 及終身監禁；及
- (b) 循簡易程序定罪後，可處罰款 \$500,000 及監禁 3 年。 (由 1974 年第 43 號第 2 條修訂)
- (4) 本條不適用於——
- (a) 在附表 1 第 II 部所指明的製劑；或
- (b) 過境途中的危險藥物，而——
- (i) 該危險藥物正從一個可合法出口該危險藥物的國家運往另一個可合法進口該危險藥物的國家的過境途中；及
- (ii) 該危險藥物是從一個公約締約國出口，並附有一份有效的出口授權書或轉運證明書(視屬何情況而定)。 (由 1984 年第 7 號第 2 條代替)

- (3) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable—
- (a) on conviction on indictment, to a fine of \$5,000,000 and to imprisonment for life; and
- (b) on summary conviction, to a fine of \$500,000 and to imprisonment for 3 years. (Amended 43 of 1974 s. 2)
- (4) This section does not apply to—
- (a) a preparation specified in Part II of the First Schedule; or
- (b) a dangerous drug which is in transit and—
- (i) is in course of transit from a country from which it may lawfully be exported to another country into which it may lawfully be imported; and
- (ii) was exported from a country which is a party to the Conventions and is accompanied by a valid export authorization or diversion certificate, as the case may be. (Replaced 7 of 1984 s. 2)

~~4A. 販運看來是危險藥物的物質~~

- (1) 任何人不得為其本人或代表不論是否在香港的其他人士——
- (a) 販運其表示或顯示為危險藥物，但事實上並非危險藥物的物質；
- (b) 提出販運其表示或顯示為危險藥物，但事實上並非危險藥物的物質；或
- (c) 作出或提出作出任何作為，以準備販運或目的是販運其表示或顯示為危險藥物，但事實上並非危險藥物的物質。
- (2) 不論表示指稱或顯示為危險藥物的物質是否在香港，或將進口入香港，或是否被確定、據有或存在，第(1)款均適用。
- (3) 任何人違反第(1)款的任何規定，即屬犯罪，可處以下罰則——
- (a) 循公訴程序定罪後，可處罰款 \$500,000 及監禁 7 年；及
- (b) 循簡易程序定罪後，可處罰款 \$100,000 及監禁 1 年。
- (4) 未徵得律政司司長書面同意，不得就本條所訂的罪項提出檢控，但本款不妨礙因該罪項而逮捕任何人或發出逮捕令，或拘押或保釋被檢控該罪的人。 (由 1997 年第 362 號法律公告修訂)
- (由 1980 年第 37 號第 3 條增補)

~~4A. Trafficking in purported dangerous drug~~

- (1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Hong Kong—
- (a) traffic in any substance represented or held out by him to be a dangerous drug but which is not in fact a dangerous drug;
- (b) offer to traffic in any substance represented or held out by him to be a dangerous drug but which is not in fact a dangerous drug; or
- (c) do or offer to do an act preparatory to or for the purpose of trafficking in any substance represented or held out by him to be a dangerous drug but which is not in fact a dangerous drug.
- (2) Subsection (1) shall apply whether or not the substance represented or held out to be a dangerous drug is in Hong Kong or is to be imported into Hong Kong or is ascertained, appropriated or in existence.
- (3) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable—
- (a) on conviction on indictment, to a fine of \$500,000 and to imprisonment for 7 years; and
- (b) on summary conviction, to a fine of \$100,000 and to imprisonment for 1 year.
- (4) No prosecution for an offence under this section shall be instituted without the consent in writing of the Secretary for Justice, but this subsection shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for any such offence, or the remand in custody or on bail of a person charged with such an offence. (Amended L.N. 362 of 1997)

(Added 37 of 1980 s. 3)

Question 5

Candidate No. _____

**2000 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD II: CIVIL AND
CRIMINAL PROCEDURE**

Friday, 27 October 2000



2000 Overseas Lawyers Qualification Examination

Head II : Civil and Criminal Procedure

Question 5 (25 marks)

This question contains 10 sub-questions carrying 25 marks in total. Candidates are required to answer **all** sub-questions **in the space provided on this question paper** (N.B. NOT in the answer booklet).

The sub-questions in this question are based upon an initial fact pattern progressively modified by the addition of facts, or the alteration of facts, in subsequent sub-questions.

INITIAL FACTS

You are a solicitor in private practice and are on the Legal Aid Panel. On 6 May 1999, **Ng Kat-lee** came to see you for advice. He gave you the following information:

1. Since the late '70s and until the end of 1997, he has worked as a bus driver for a bus company. He is married with a son aged 24, living together in a rented flat.
2. On 30 October 1997, he began his day's work by driving his designated bus from the bus depot at Tsuen Wan to Lai Chi Kok. From there he began at 6:36 am what should have been the first of many runs of the day. The journey was without incident until he got to Kwai Chung Road. There, he was proceeding between bus stops at a speed of 30-40 km per hour, when he became aware, too late to take any evasive action, that a large area of the road's surface in his immediate path had been uplifted, leaving a muddy, gravelly, bumpy surface some 5 inches below the road. The front wheels and then the rest of the bus ran off the road and into this depression, which he described as a large manmade pothole. The resultant jolt tossed him up off his seat so that his head struck the roof of his cabin and then he landed back in his seat, with a force which jarred his back. He was not aware of the manmade pothole when he drove the bus along the same route the day before (i.e. 29 October). There was no warning sign or barrier for this newly made pothole.
3. He was conscious of some numbness in his lower back and left leg, but the bus was fitted with automatic transmission and he found that he was still able to drive safely. After ascertaining that no passengers were hurt, he completed his run without further incident. Then as he was climbing out of his seat and down from the bus he could get no movement from his left leg and he had to drag it out by hand. He tripped but did not fall. He reported his injury to his superior

and was told to take himself off to Princess Margaret Hospital for examination. There, he was treated and discharged, but with follow up orthopaedic treatment which was to continue until April 1999.

4. Pains in his lower back and stiffness in his left leg have persisted since the accident and he can no longer sit or stand for long periods without the pain becoming intolerable. In particular, he can no longer drive buses for the long periods that he could tolerate prior to the accident. He was forced to take an early retirement from the bus company 6 months after the accident and was paid a total sum of HK\$820,000, inclusive of his provident fund entitlement and ex-gratia payment. He used to earn around HK\$20,000 per month as a bus driver. He now works as a taxi driver on a part-time basis and earns around \$6,000 per month.
5. Two of his former colleagues, who drove buses along the same route at the material time, are willing to be his witnesses and can corroborate what he said.
6. He applied for Legal Aid a couple of months ago but was rejected, since he had around HK\$1 million savings in his bank accounts as a result of the payment received from the bus company upon his retirement.

Upon your investigations, you found that the **Director of Highways** was the authority responsible for the maintenance of Kwai Chung Road and **Hon Kee Construction** was the contractor responsible for carrying out certain roadworks along Kwai Chung Road for the period between May 1997 to May 1998. The business registration search showed that **Hon Kee Construction** was a sole proprietorship with **B & D Ltd** registered as its sole proprietor.

You obtained from the Princess Margaret Hospital copies of all the relevant medical records of **Ng** since his admission to the hospital on 30 October 1997. You passed the same to **Dr Tam**, a specialist in Orthopaedic and Traumatology in private practice and made arrangements with him to examine **Ng** on 6 July 1999 to assess his medical condition for the purposes of the civil proceedings. Later, on 10 July 1999, you received from Dr Tam his report dated 9 July 1999, opining that **Ng** suffered from a back injury in the category of mild impairment with a loss of earning capacity at 10%. **Dr Tam** also noted in his report that X-rays taken by the hospital on 30 October 1997 and an MRI scan done the following year together confirmed a pre-existing degenerative disc. Dr Tam opined that **Ng's** injuries were probably caused by this degenerative condition being triggered by something untoward that occurred on or about 30 October, like the jolt **Ng** described; but it could also have been because of a twist or sprain suffered when alighting from a bus.

A writ endorsed with a statement of claim was issued on 27 July 1999 on behalf of **Ng** in the Court of First Instance of the High Court against the party responsible for the maintenance of Kwai Chung Road (hereafter called “the First Defendant”) and the

contractor responsible for carrying out certain roadworks along Kwai Chung Road at the material times (hereafter called “the Second Defendant”).

Sub-question 1

How should the First Defendant be named and described in the Writ? Briefly explain your answer in the space below.

(2 marks)

Sub-question 2

How should the Second Defendant be named and described in the Writ? Which of the following descriptions is/are legally correct?

- (1) Hon Kee Construction (a firm)**
- (2) Hon Kee Construction trading as B & D Ltd**
- (3) B & D Limited**
- (4) B & D Limited trading as Hon Kee Construction**

Please put a tick against the best answer.

(2 marks)

- (a) (1) only
- (b) (3) and (4)
- (c) (1) and (2) only
- (d) (4) only
- (e) (1), (3) and (4)

(See over the page for sub-questions 3 & 4)

- [] (a) The Plaintiff can immediately issue a Summons for leave of the court to enter judgment against the First Defendant in default.
- [] (b) The Plaintiff can, without leave of the court, immediately apply for and obtain a final judgment against the First Defendant in default, provided that the Plaintiff has quantified his claim for damages in his pleadings.
- [] (c) The Plaintiff can, without leave of the court, immediately apply for and obtain an interlocutory judgment against the First Defendant in default whether or not the Plaintiff has quantified his claim for damages in his pleadings.
- [] (d) The Plaintiff can issue a Summons for leave of the court to enter judgment against the First Defendant in default, but he must wait until after August when the court's summer vacation is over.
- [] (e) Although the Plaintiff can apply for and obtain judgment in default against the First Defendant, he should not do so because such a judgment will bar his claim against the Second Defendant.

FURTHER ADDITIONAL FACTS

The First and Second Defendants were separately represented and their respective solicitors duly filed their respective acknowledgment of service within time. The First Defendant duly filed and served its Defence within time. The Second Defendant issued a Summons for an extension of time and subsequently obtained, by consent, a Court Order ("the first Court Order") on Wednesday, 15 September 1999, to extend the period for the filing and service of its Defence "*within 7 days from the date of the Court Order*". On Tuesday, 21 September 1999, the Second Defendant, realizing that it could not file its Defence within the extended period, took out another Summons ("the second Summons") for a further extension of time and the Summons was to be heard on Thursday, 30 September 1999.

Sub-question 5

Which of the following statements is/are correct? (N.B. You may assume that apart from the Sundays on 19 and 26 September 1999, there were no other public holidays during the relevant period.)

- (1) **The last date under the first Court Order for filing and service of the Second Defendant's Defence was Wednesday, 22 September 1999.**
- (2) **The last date under the first Court Order for filing and service of the Second Defendant's Defence was Thursday, 23 September 1999.**

- (3) The Plaintiff could not apply for judgment in default against the Second Defendant even after the expiry of the extended period under the first Court Order as it had to wait until the disposal of the second Summons on 30 September.
- (4) The Plaintiff could not apply for judgment in default against the Second Defendant even after the expiry of the extended period under the first Court Order, unless it had first served at least 2 clear days' prior notice to the Second Defendant of his intention to enter judgment in default.

Please put a tick against the best answer.

(2 marks)

- (a) (1) only
- (b) (2) only
- (c) (1) and (4) only
- (d) (2) and (3) only
- (e) (1) and (3) only

FURTHER ADDITIONAL FACTS

The Second Defendant had eventually filed its Defence and no default judgment had been obtained. The proceedings continued. On 12 October 1999, Ng **Kat-lee** came to see you again. He told you that 2 months ago he had used up more or less all his savings to buy a flat (in his own name without any mortgage) in Causeway Bay for HK\$1 million. He moved out from his rented flat one month ago and lived, together with his son, in the newly purchased flat. His wife, unfortunately, had an affair with another person 3 months ago. He formally separated from his wife about 2 months ago and they had since lived apart. His wife had a savings of around \$300,000. He himself now only had a savings of around \$30,000 and he continued to drive the taxi earning about \$5,000 per month. His son had graduated and was currently earning \$30,000 per month.

Sub-question 6

Was Ng now eligible for obtaining legal aid for continuing the current proceedings? Please put a tick against the best answer. (N.B. You should assume that what he said above was true and the market value of the newly purchased flat remained at HK\$1 million; and that he could satisfy the merits test.)

[Relevant extracts of the Legal Aid (Assessment of Resources and Contribution) Regulations, Cap 91, are attached as **Appendix 1** at the back of this Test Paper].

(2 marks)

- [] (a) Ng was eligible under the Standard Scheme for Legal Aid as his total financial resources did not exceed HK\$169,700.
- [] (b) Ng was only eligible under the Supplementary Scheme for Legal Aid as his total financial resources exceeded HK\$169,700 but did not exceed HK\$471,600.
- [] (c) Ng was not eligible for legal aid for these proceedings because his early application for legal aid before the commencement of the proceedings was rejected and he did not appeal against that decision.
- [] (d) Ng was not eligible for legal aid for these proceedings because his total financial resources exceeded HK\$471,600.
- [] (e) Although Ng's financial resources exceeded HK\$169,700 but did not exceed HK\$471,600, he was not eligible for legal aid for these proceedings because the nature of the proceedings was outside the scope of the Supplementary Scheme for Legal Aid.

FURTHER ADDITIONAL FACTS

The proceedings continued. Witness statements were filed. All interlocutory matters had been sorted out and the case was set down for a 3-day trial in the running list. Shortly after the case was set down, Ng asked you what it meant by setting down the case in the running list and when the trial would take place. He said that his elderly father, living in Mainland China, had just been diagnosed with cancer and would need to undergo an operation there. He would therefore need to go there to visit his father 3 weeks later and would spend about 2 weeks there.

Sub-question 7

How would you advise Ng? Briefly explain your answer.

(3 marks)

FURTHER ADDITIONAL FACTS

The Police subsequently arrested **Ng** and one of his 2 former colleagues, **Wong**. The other former colleague, **Lam**, had apparently left Hong Kong and could not be located. In the course of the arrest, **Wong** resisted and hit the arresting police officer but was eventually subdued. Both **Ng** and **Wong** were charged with the offence of perjury contrary to s 31 of the Crimes Ordinance and **Wong** was charged additionally with the offence of assaulting a police officer in the execution of his duty, contrary to s 63 of the Police Force Ordinance.

[N.B. S. 31 of the Crimes Ordinance, Cap. 200 and s. 63 of the Police Force Ordinance, Cap. 232 are attached as **Appendix 2** and **Appendix 3** respectively at the back of the Test Paper].

Sub-question 9

If, before plea is taken, the prosecution applies before the Magistrate to have the trial of Ng and Wong transferred to the District Court in respect of all charges, which option is open to the Magistrate? Please put a tick against the best answer.

(2 marks)

- (a) The Magistrate must order a transfer in respect of all charges.
- (b) The Magistrate must order a transfer in respect of the perjury charge but he has no jurisdiction to order a transfer in respect of the “assaulting police officer” charge because it is a summary offence.
- (c) Although the Magistrate has jurisdiction to order a transfer in respect of any or all of the charges, he has a discretion whether to order such a transfer.
- (d) The Magistrate must order a transfer in respect of the perjury charge but he has a discretion whether to order a transfer in respect of the “assaulting police officer” charge.
- (e) The Magistrate must order a transfer in respect of the perjury charge but he has no jurisdiction to order a transfer, save with the consent of **Wong**, in respect of the “assaulting police officer” charge because it is a summary offence.

FURTHER ADDITIONAL FACTS

Eventually the charges against **Wong** were dropped and he became a key prosecution witness in the trial against **Ng**. Before the trial, the defence solicitor for **Ng** sought from the prosecution confirmation as to whether **Wong** was granted an immunity and if so, disclosure of documents showing the terms of the immunity. In the prosecution’s reply, it only stated that the charges against **Wong** were dropped but it refused to confirm whether an immunity was formally granted, nor did it disclose any document relating to the

[附屬法例]

[Subsidiary]

法律援助(評定資源及分擔費用)規例

LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) REGULATIONS

(第 91 章第 28 條)

(Cap. 91, section 28)

[1984 年 10 月 1 日]

[1 October 1984]

註：根據 1998 年第 25 號第 1(2) 條，該條例對本成文法則的修訂當作自 1997 年 7 月 1 日起實施。上述第 1(2) 條須符合第 383 章第 II 部列出的香港人權法案第十二條。

Note: Under s. 1(2) of 25 of 1998, the amendment to this enactment by that Ordinance is deemed to have come into operation on 1 July 1997. The aforesaid s. 1(2) is subject to article 12 of the Hong Kong Bill of Rights set out in Part II of Cap. 383.

第 I 部

PART I

引言

INTRODUCTORY

1. 引稱

本規例可引稱為《法律援助(評定資源及分擔費用)規例》。

1. Citation

These regulations may be cited as the Legal Aid (Assessment of Resources and Contributions) Regulations.

2. 釋義

(1) 在本規例中，除文意另有所指外——

“可動用資產”(disposable capital)或“可動用收入”(disposable income)指已經或必須由署長根據本規例釐定的可動用資產或可動用收入；

“申請”(application)指申領法律援助證書的申請；

“收入”(income)指已經或必須由署長釐定的收入，包括利益及特權；

“有關人士”(person concerned)指根據本規例其財務資源、收入、可動用收入或可動用資產須予釐定或重新釐定的人士，或所擁有的資源須被視為另一人的資源的人士；(1992 年第 195 號法律公告)

“受養人”(dependant)指任何完全由有關人士維持其生活的人；(1988 年第 105 號法律公告)

“計算期間”(period of computation)指自申請證書之日起計的 12 個月期間，或署長按任何案件的個別情況而認為適當的其他為期 12 個月的期間；

2. Interpretation

(1) In these regulations, unless the context otherwise requires—

“application” (申請) means application for a legal aid certificate;

“dependant” (受養人) means any person wholly maintained by the person concerned; (L.N. 105 of 1988)

“Director” (署長) includes any public officer acting under the authority of regulation 3(2);

“disposable capital” (可動用資產) or “disposable income” (可動用收入) means disposable capital or disposable income as determined or to be determined by the Director under these regulations;

“income” (收入) means income as determined or to be determined by the Director and includes benefits and privileges;

“period of computation” (計算期間) means the period of 12 months next ensuing from the date of the application for a certificate, or such other period of 12 months as in the particular circumstances of any case the Director may consider to be appropriate;

[附屬法例]

“署長”(Director)包括任何根據第3(2)條所賦權力而行使的公職人員。

(2) 就本規例而言，有關人士的收入包括為幼年人的贍養而付予該人的款項，及根據法院命令或任何文書而屬須如此付予該人的款項。(1992年第195號法律公告)

(3) 任何人居住並享有權益的住宅如多於1所，就本規例而言，該人的主要住宅由署長決定。

(1992年第195號法律公告)

2A. 財務資源的評定

就本條例第2條中“財務資源”(financial resources)的定義而言，受助人的財務資源的評定方法如下：將該人的每月可動用收入乘以12，再加上其可動用資產，所得之數即為其財務資源。

(1992年第195號法律公告)

3. 資產及收入由署長釐定

(1) 任何人的財務資源、收入、可動用收入或可動用資產，及該人就任何法律程序繳付分擔費用的法律責任的範圍，均由署長釐定。(1992年第195號法律公告)

(2) 任何公職人員均可根據本條代署長行事。

第II部

收入、可動用收入及可動用資產的釐定

4. 收入、可動用收入及可動用資產的釐定

除本規例另有規定外——

- (a) 有關人士的收入須按照附表1第I部釐定，其可動用收入須按照附表1第I及II部釐定；及
- (b) 有關人士的可動用資產須按照附表2釐定。

[Subsidiary]

“person concerned”(有關人士) means the person whose financial resources, income, disposable income or disposable capital is to be determined or redetermined or the person whose resources are to be treated as the resources of any other person, under these regulations. (L.N. 195 of 1992)

(2) For the purposes of these regulations, the income of the person concerned includes any sums payable to that person for the purpose of the maintenance of an infant and any sum so payable under an order of a court or under any instrument. (L.N. 195 of 1992)

(3) Where a person resides in more than one dwelling in which he has an interest his main dwelling shall, for the purposes of these regulations, be that determined by the Director.

(L.N. 195 of 1992)

2A. Assessment of financial resources

For the purpose of the definition “financial resources” (財務資源) in section 2 of the Ordinance, the financial resources of an aided person shall be assessed by multiplying that person's monthly disposable income by 12 and adding his disposable capital to that sum.

(L.N. 195 of 1992)

3. Determination by Director

(1) The financial resources, income, disposable income or disposable capital of a person and the extent of his liability to contribute in respect of any proceedings shall be determined by the Director. (L.N. 195 of 1992)

(2) Any public officer may act on behalf of the Director under this regulation.

PART II

DETERMINATION OF INCOME, DISPOSABLE INCOME AND DISPOSABLE CAPITAL

4. Determination of income, disposable income and disposable capital

Save as otherwise provided by these regulations—

- (a) the income of the person concerned shall be determined in accordance with Part I of Schedule 1 and his disposable income in accordance with Parts I and II of Schedule 1; and
- (b) the disposable capital of the person concerned shall be determined in accordance with Schedule 2.

[附屬法例]

[Subsidiary]

5. 爭議標的

- (1) 在計算有關人士的財務資源、收入、可動用收入或可動用資產時，不得將申請所涉及的爭議標的之價值包括在內。(1992年第195號法律公告)
- (2) 就第(1)款而言，根據法院命令而定期支付的贍養費不得視為爭議標的。

6. 以代表或受信人身分提出申請

凡純粹以代表或受信人身分牽涉入有關法律程序的人提出申請，則為釐定該人的財務資源、收入或可動用收入及可動用資產，以及(在適當情況下)釐定其根據本條例第18(1)(b)條須繳付的分擔費用款額，署長——

- (a) 須釐定該人有權從中獲得彌償的基金的款額或財產或產業的價值，以及可能因該法律程序的結果而受惠的任何人(在適當情況下包括該人)的財務資源、收入或可動用收入及可動用資產，以及所須繳付的分擔費用最高款額；但
- (b) 除此以外，無須理會該人的財務資源。

(1992年第195號法律公告)

7. 配偶的資源

- (1) 除第(2)款另有規定外，在計算有關人士的財務資源、收入或可動用收入及可動用資產時，該人的配偶的資源須視為該人的資源。(1988年第105號法律公告；1992年第195號法律公告)
- (2) 如有以下情況，有關人士的配偶的資源不得視為該人的資源——
- (a) 其配偶在申請所涉及的爭議中有對立利益；或
- (b) 有關人士已與其配偶分居。
- (3) 如根據本條將有關人士的配偶的資源視為該人的資源，則就附表1第8條及附表2第11條而言，該名配偶須當作為該有關人士的受養人。(1988年第105號法律公告)

5. Subject matter of dispute

- (1) In computing the financial resources, income, disposable income or disposable capital of the person concerned there shall be excluded the value of the subject matter of the dispute in respect of which application has been made. (L.N. 195 of 1992)
- (2) Periodical payments of maintenance made under an order of a court shall not be treated as the subject matter of the dispute for the purposes of subregulation (1).

6. Application in representative or fiduciary capacity

Where an application is made by a person who is concerned in the proceedings only in a representative or fiduciary capacity, then for the purpose of determining the financial resources, income or disposable income and disposable capital of that person and, where appropriate, the amount of any contribution under section 18(1)(b) of the Ordinance, the Director—

- (a) shall determine the value of any property or estate or the amount of any fund out of which that person is entitled to be indemnified and the financial resources, income or disposable income and disposable capital and maximum contribution of any persons (including that person if appropriate) who might benefit from the outcome of the proceedings; but
- (b) shall otherwise disregard the financial resources of that person.

(L.N. 195 of 1992)

7. Resources of a spouse

- (1) Except as otherwise provided in subregulation (2), in computing the financial resources, income or disposable income and disposable capital of the person concerned the resources of his or her spouse shall be treated as that person's resources. (L.N. 105 of 1988; L.N. 195 of 1992)
- (2) The resources of the spouse of the person concerned shall not be treated as his or her resources if—
- (a) the spouse has a contrary interest in the dispute in respect of which application is made; or
- (b) the person concerned and the spouse are living separate and apart.
- (3) A spouse, whose resources are to be treated under this regulation as the resources of the person concerned, shall, for the purposes of rule 8 of Schedule 1 and rule 11 of Schedule 2, be deemed to be a dependant of the person concerned. (L.N. 105 of 1988)

8. 屬幼年人的申請人的資源

凡有人代表幼年人申請法律援助，該幼年人的資源須包括根據法院命令或任何文書，為該幼年人的贍養而付予任何人的款項。

(1992 年第 195 號法律公告)

9. 資源的捨棄或變換

如署長覺得有關人士意圖減低其財務資源、收入、可動用收入或可動用資產的款額而曾經—— (1992 年第 195 號法律公告)

- (a) 直接或間接自行捨棄任何資源；或
- (b) 將其資源的任何部分變換為根據本規例須全部或部分不予理會的資源 (包括以住宅作保證所得的借款的償還)，或變換為釐定其資源時不得包括在考慮之列的資源。

則該人已捨棄的資源仍須視為其資源的一部分，而該人已變換的資源仍須視為未曾變換。

10. 有關人士報告財務狀況變更的責任

如署長原先的釐定是參考有關人士的財務狀況而作出的，其後該等狀況有所變更，而該人有理由相信該變更可能影響其證書的條款或證書是否繼續有效，則該人須將該變更通知署長。

11. 狀況變更時須重新作出釐定

(1) 凡署長在釐定有關人士的財務資源時乃參考某些情況而作出的，而他認為該等情況有所改變，署長可重新釐定該人的財務資源、收入、可動用收入或可動用資產。 (1992 年第 195 號法律公告)

(2) 如署長在根據第 (1) 款行使其權力後，沒有取消或撤回該人的法律援助證書，他可重新釐定該人的分擔費用最高款額，但如證書是根據法律援助輔助計劃發給的，則屬例外。

8. Resources of an applicant who is an infant

Where an application is made on behalf of an infant for the grant of legal aid, the infant's resources shall include any sum payable under an order of the court or under any instrument to any person for the maintenance of the infant. (L.N. 195 of 1992)

9. Deprivation or conversion of resources

If it appears to the Director that the person concerned has with intent to reduce the amount of his financial resources, income, disposable income or disposable capital— (L.N. 195 of 1992)

- (a) directly or indirectly deprived himself of any resources; or
- (b) converted any part of his resources into resources which under these regulations are to be wholly or partly disregarded (including the repayment of money borrowed on the security of a dwelling), or in respect of which nothing is to be included in determining the resources of that person,

the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted as the case may be.

10. Duty of the person concerned to report change in financial circumstances

The person concerned shall inform the Director of any change in the financial circumstances in reference to which the original determination was made where that person has reason to believe that such change may affect the terms or continuation of his certificate.

11. Re-determination on change of circumstances

(1) Where it appears to a Director that the circumstances in reference to which he has determined the financial resources of the person concerned have altered, the Director may re-determine that person's financial resources, income, disposable income or disposable capital. (L.N. 195 of 1992)

(2) If the Director does not after exercising his powers under sub-regulation (1) discharge or revoke that person's legal aid certificate, he may, except in the case of a certificate granted under the Supplementary Legal Aid Scheme, re-determine that person's maximum contribution.

[附屬法例]

[Subsidiary]

12. 因出現錯誤或過失而對釐定作出修訂

凡署長覺得在釐定任何人的財務資源、收入、可動用收入、可動用資產或分擔費用最高款額時曾出現錯誤或過失，或在該項釐定所根據的計算或估計中曾出現錯誤或過失，而改正該項錯誤或糾正該項過失是公正及公平的，署長可作出經修訂的釐定；就各方面而言，經修訂的釐定須取代原先的釐定，並全面有效，猶如它是原先的釐定一樣。

(1992 年第 195 號法律公告)

12. Amendment of determination because of error or mistake

Where it appears to the Director that there has been an error or mistake in the determination of a person's financial resources, income, disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such determination is based and that it would be just and equitable to correct the error or mistake, the Director may make an amended determination, which shall for all purposes be substituted for the original determination and shall have effect in all respects as if it were the original determination.

(L.N. 195 of 1992)

第 III 部

PART III

分擔費用

CONTRIBUTIONS

13. 接受法律援助人士繳付的分擔費用

受助人根據本條例第 18(1)(b)條繳付的分擔費用最高款額，為按照附表 3 第 I 部就其財務資源評定的分擔費用。

(1992 年第 195 號法律公告)

13. Contributions from legally aided persons

The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall be a contribution in respect of his financial resources assessed in accordance with Part I of Schedule 3.

(L.N. 195 of 1992)

14. 根據法律援助輔助計劃受助所需繳付的分擔費用

為施行本條例第 32 條而訂明的分擔費用百分率，須符合附表 3 第 III 部的規定；根據《法律援助規例》(第 91 章，附屬法例)第 3(3)及 5(7)條繳付的費用，須從分擔費用中扣除。

14. Contributions under the Supplementary Legal Aid Scheme

The percentage contribution prescribed for the purposes of section 32 of the Ordinance shall be in accordance with Part III of Schedule 3 and there shall be deducted from that contribution fees paid under regulations 3(3) and 5(7) of the Legal Aid Regulations (Cap. 91 sub. leg.).

15. 為僱員補償及普通法損害賠償而繳付的分擔費用

凡任何人就僱員補償獲發給一張法律援助證書，而就普通法損害賠償獲發給另一張法律援助證書，而該等僱員補償及普通法損害賠償是因同一情況而產生的，則該人只須為該兩張證書繳付一筆分擔費用。

(1995 年第 489 號法律公告)

15. Contributions for employee's compensation and common law damages

A person who is issued with 2 legal aid certificates, one for employee's compensation and the other for common law damages arising out of the same circumstances, is liable to pay only one amount of contributions for the 2 certificates.

(L.N. 489 of 1995)

[附屬法例]

附表 1 [第 4(a) 及 7(1) 條]

第 I 部

計算收入的規則

1. 有關人士在計算期間內可合理地預計會獲得的收入(不論是現金或實物),須視為該人從任何來源所得的收入,如無其他方法確定該收入,則去年獲得的收入須視為該收入。
2. 在估計非以現金支付的薪酬、利益或特權所得的收入時,須估計出一個在衡量所有情況後屬公正及公平的數額。
3. (1) 除收取工資或薪金的工作外,凡從事任何行業、業務或有報酬職業所得的收入均須當作有關人士在計算期間內自所從事的行業、業務或有報酬職業獲取或將可獲取的利潤;而在計算該等利潤時,署長可考慮該等行業、業務或有報酬職業在上一會計期間(如有就該期間擬備帳目)的利潤。
(2) 為施行第(1)段而確定利潤時,須扣除賺取該等利潤所需使用的所有數額,但不得扣除該人或其家庭成員的生活開支,不過如該人的家庭成員屬完全或主要受僱從事該人的行業或業務,而且其生活開支為其薪金的一部分,則可扣除該等開支。
4. 在計算從任何來源所得的收入時,如署長在考慮收入的性質或個案的其他情況後,認為不理會某些款額是合理的,便無須理會該等款額。

第 II 部

計算可動用收入時須扣除的款項

5. 凡有關人士的全部或部分收入為受僱所得的工資或薪金,則如屬合理,須扣除為應付以下開支項目而支付的款額——
 - (a) 在有關人士因受僱工作而離家期間照顧與該人同住的受供養幼年人的費用;
 - (b) 該人對退休金或退休計劃作出的供款;
 - (c) 該人繳付的薪俸稅。

(1992 年第 195 號法律公告)
- 5A. 在計算有關人士的可動用資產時已包括在內的資產所產生的收入,於計算該人的可動用收入時不得包括在內。
(1992 年第 195 號法律公告)
6. (1) 如有關人士是戶主,須就其主要或唯一住宅的租金,扣除其所須繳付的租金淨額,或在有關情況下屬於合理的一部分租金淨額;
但——
 - (a) 除非署長信納在該個案的情況中,扣除一筆較大的數額是合理的,否則扣除額不得超過有關人士的收入的一半;
 - (b) 凡有關人士為某處所繳付租金,而除有關人士,其配偶或其受養人外,有任何人以分租客以外的身分在該處所居住,署長可將上述租金當作須減去可合理地歸由該人負責的款額。

[Subsidiary]

SCHEDULE 1 [regs. 4(a) & 7(1)]

PART I

RULES FOR COMPUTING INCOME

1. The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of computation, that income in the absence of other means of ascertaining it being taken to be the income received during the preceding year.
2. The income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such a sum as in all the circumstances is just and equitable.
3. (1) The income from a trade, business or gainful occupation other than an employment at a wage or salary shall be deemed to be the profits therefrom which have accrued or will accrue to the person concerned in respect of the period of computation, and, in computing such profits, the Director may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been made up.
(2) In ascertaining the profits for the purpose of paragraph (1) there shall be deducted all sums necessarily expended to earn those profits, provided that no deduction shall be made in respect of the living expenses of that person or any member of his family or household, except in so far as such member of his family or household shall be wholly or mainly employed in such trade or business and such living expenses form part of his remuneration.
4. In computing the income from any source there shall be disregarded such amount, if any, as the Director considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

PART II

DEDUCTIONS IN COMPUTING DISPOSABLE INCOME

5. Where the income of the person concerned consists, wholly or in part, of a wage or salary from employment there shall be deducted, if it is reasonable to do so, an amount to provide for—
 - (a) the care of any dependant infant living with the person concerned during the time that that person is absent from the home by reason of employment;
 - (b) any payment made by that person by way of contribution to a pension or retirement scheme;
 - (c) any payment made by that person for salaries tax.

(L.N. 195 of 1992)
- 5A. Income arising from any capital asset which has been included in the computation of the disposable capital of the person concerned, shall not be taken into account in the computation of the disposable income of the person concerned.
(L.N. 195 of 1992)
6. (1) Where the person concerned is a householder, there shall be a deduction in respect of rent of his main or only dwelling of the amount of the net rent payable, or such part thereof as is reasonable in the circumstances:
Provided that—
 - (a) the deduction shall not exceed one half of the income of the person concerned unless the Director is satisfied that in the circumstances of the case it is reasonable to deduct a greater sum;
 - (b) where any person or persons other than the person concerned, his or her spouse or any dependant of his or hers is accommodated, otherwise than as a sub-tenant, in the premises for which the rent is paid, the Director may deem the rent to be reduced by an amount reasonably attributable to such other person.

[附屬法例]

[Subsidiary]

- (2) 在本條中——
- “租金”(rent)指——
- (a) 須就一年繳付的租金；及
- (b) 由有關人士承擔的每年支出數額，尤須包括差餉、保險費及就以住宅或住宅的權益作押記的按揭貸款而須繳付的每年分期付款(不論用作償還利息或本金)；
- “租金淨額”(net rent)指租金減去將住宅任何部分租予他人所收取的得益，而有關租金及支出是就該住宅而繳付或招致的。
7. 如有關人士並非戶主，則須就其住宿費用扣除在有關情況下屬合理的款額。
8. (1) 如有關人士——
- (a) 無受養人，則無須考慮一筆相等於根據援助計劃單身健全成人可領取的現行標準金額的款額；
- (b) 有一名或超過一名受養人，則無須考慮一筆相等於以下金額的總和的款額——
- (i) 根據援助計劃屬於家庭成員的健全成人可領取的現行標準金額；及
- (ii) 受養人數乘以根據援助計劃屬於家庭成員的健全成人可領取的現行標準金額。(1993 年第 241 號法律公告)
- (1A) 在本條中——
- “現行標準金額”(current standard rate)指申請當日有效的標準金額；
- “援助計劃”(Scheme)指社會福利署署長管理的綜合社會保障援助計劃。(1993 年第 241 號法律公告)
- (2) 在確定任何人是受養人時，須考慮該人的收入及其他資源。(1988 年第 105 號法律公告)

- (2) In this rule—
- “net rent”(租金淨額) means the rent less any proceeds of sub-letting any part of the dwelling in respect of which the said rent is paid or the outgoings incurred;
- “rent”(租金) means—
- (a) the rent payable in respect of a year; and
- (b) a sum in respect of the yearly outgoings borne by the person concerned including, in particular, rates, insurance and any annual instalment (whether of interest or capital) payable in respect of a mortgage debt charged on the dwelling or on any interest therein.
7. If the person concerned is not a householder, there shall be a deduction in respect of the cost of his living accommodation of such amount as is reasonable in the circumstances.
8. (1) There shall not be taken into account the following amount—
- (a) if the person concerned has no dependant, an amount equivalent to the current standard rate for a single person able-bodied adult under the Scheme;
- (b) if the person concerned has one or more dependants, an amount equivalent to the sum of—
- (i) the current standard rate for a family member able-bodied adult under the Scheme; and
- (ii) the number of dependants times the current standard rate for a family member able-bodied adult under the Scheme. (L.N. 241 of 1993)
- (1A) In this rule—
- “current standard rate”(現行標準金額) means the standard rate in force on the date of application;
- “Scheme”(援助計劃) means the Comprehensive Social Security Assistance Scheme administered by the Director of Social Welfare. (L.N. 241 of 1993)
- (2) In ascertaining whether a person is a dependant regard shall be had to his income and other resources. (L.N. 105 of 1988)

附表 2 [第 4(b) 及 7(1) 條]

SCHEDULE 2 [regs. 4(b) & 7(1)]

計算可動用資產的規則

RULES FOR COMPUTING DISPOSABLE CAPITAL

1. 在符合本規例或本規則的規定下，在計算有關人士的資產款額時，每項屬資產性質的資源經確定在申請當日的款額或價值，均須包括在內；
- 但如署長注意到在提出申請當日其他作出釐定期間，某項資源的價值出現大幅波動，或某項資源的性質出現重大變化，以致影響計算其價值的基準，或有任何資源已不再存在，或有新資源已由有關人士管有，署長須根據該等事實計算該人的資產資源，並須在作出釐定時考慮經如此計算的資源。
2. 任何非金錢的資源，其在公開市場出售可變現的款額須被視為其款額或價值；如出售該資源的市場受到局限，則在該受局限市場出售可變現的款額須被視為其款額或價值；或以署長覺得公正及公平的方式評估所得的款額或價值須被視為其款額或價值。
3. 凡有人須付款予有關人士，不論是否須即時繳付，亦不論付款是否獲得保證，該筆款項的現有價值須被當作其價值。

1. Subject to the provisions of these regulations or rules, there shall be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application:
- Provided that, where it is brought to the notice of the Director that, between the date of application and his determination there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the possession of the person concerned, the Director shall compute the capital resources of that person in the light of such facts and the resources as so computed shall be taken into account in the Director's determination.
2. So far as any resource does not consist of money, the amount or value thereof shall be taken to be the amount which that resource would realize if sold in the open market or, if there is only a restricted market for that resource, the amount which it would realize in that market, or shall be taken to be the amount or value thereof assessed in such manner as appears to the Director to be just and equitable.
3. Where money is due to the person concerned, whether immediately payable or otherwise and whether the payment thereof is secured or not, the value shall be taken to be the present value thereof.

[附屬法例]

4. 如有關人士在一間公司內所處的地位類似該公司業務的唯一擁有人或合夥人，則署長可視該人猶如是該公司的唯一擁有人或合夥人，並按照第5條就該資源計算該人的資產款額，以代替確定該人所持有的該公司證券、股份、債券或債權證的價值。
5. 凡有關人士是或須視為是任何業務的唯一擁有人或合夥人，則該業務或該人在該業務中所佔份額對該人的價值須視為——
- 在不致嚴重損害該業務的利潤或正常發展的情況下，可從該業務的資產中取出的數額或該人在該數額中所佔的份額（視屬何情況而定）；或
 - 在不損害該業務的商業信用的情況下，該人以其在該業務所佔權益作保證所可借入的數額。
- 兩個數額之中，以較大者為準。
6. 任何土地財產或非土地財產或信託或其他基金的估先產業終止後的復歸權益或剩餘權益，不論是普通法權益或衡平法上的權益，亦不論是由有關人士獨享或與其他人士聯權共有或分權共有，亦不論是既得權益或是或有權益，其價值須以公正及切實可行的方式計算。
7. 除在特殊情況外，不得就以下物品而將任何款額列入有關人士的資產款額內——
- 該人佔用的主要或任何住宅樓宇中的家具及物品；
 - 個人衣物；及
 - 該人從事其行業所使用的個人工具及器材，但該等工具及器材不得是本附表第5條所適用的業務的設備或器材的其中一部分。
8. (1) 在計算有關人士的資產款額時，無須理會他居住的唯一或主要住宅的權益的價值。
(1992年第195號法律公告)
- (2) 凡有關人士居住在多於一所其享有權益的住宅，署長須考慮該人可用非主要住宅作保證而借得的數額，作為該人在該非主要住宅享有的權益對他的價值。
9. 凡就某法律程序申請法律援助證書的有關人士屬團體的成員，並已收取或有權收取該團體以財務協助方式給予的一筆款項，用以支付該法律程序的訟費，該筆款項無須加以理會。
10. 任何人壽保單或儲蓄壽險保單，須以有關人士可輕易地以該等保單作保證而借入的款額，視為該等保單的價值。
11. (由1992年第195號法律公告廢除)
12. 凡申請與因任何人的身受傷或死亡而提出的損害賠償申索有關，有關人士根據下列條例所收取的補償款額，無須理會——
- 《僱員補償條例》(第282章)；
 - 《肺塵埃沉着病(補償)條例》(第360章)；或
 - 《職業性失聰(補償)條例》(第469章)。
- (1989年第186號法律公告；1990年第107號法律公告；1995年第21號第45條)
13. 在計算有關人士的可動用資產的款額時，以下款額無須理會——
- 根據《交通意外傷亡者(援助基金)條例》(第229章)第3條設立的援助基金付予該人的任何款額；
 - 按照《高等法院規則》(第4章，附屬法例)所發出的命令，或按照與該命令有相同效力的協議而給予該人的任何中期付款；及 (1998年第25號第2條)
 - 署長考慮該人曾接受的捐贈或禮物的款額、價值及性質後，認為合理的捐贈或禮物的款額或價值。

(1989年第186號法律公告)

[Subsidiary]

4. If the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Director may, in lieu of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were such sole owner or partner and compute the amount of his capital in respect of that resource in accordance with rule 5.
5. Where the person concerned is or is to be treated as the sole owner of or a partner in any business, the value of such business or his share therein to that person shall be taken to be either
- such sum, or his share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development thereof; or
 - such sum as that person could borrow on the security of his interest in such business without injuring the commercial credit of that business, whichever is the greater.
6. The value of any interest in reversion or remainder on the termination of a prior estate, whether legal or equitable, in any real or personal property or in a trust or other fund, whether the person concerned has the sole interest or an interest jointly or in common with other persons or whether his interest is vested or contingent, shall be computed in such manner as is both equitable and practicable.
7. Save in exceptional circumstances, nothing shall be included in the amount of capital of the person concerned in respect of—
- the household furniture and effects of main or any dwelling house occupied by him;
 - articles of personal clothing; and
 - the personal tools and equipment of his trade, not being part of the plant or equipment of a business to which the provisions of rule 5 of this Schedule apply.
8. (1) The value of any interest in the only or main dwelling in which the person concerned resides shall be disregarded in computing the amount of his capital. (L.N. 195 of 1992)
- (2) Where the person concerned resides in more than one dwelling in which he has an interest, the Director shall take into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which might be obtained by borrowing money on the security thereof.
9. Where the person concerned has received or is entitled to receive from a body of which he is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which a certificate is applied for, such sum shall be disregarded.
10. The value of any life assurance or endowment policy shall be taken to be the amount which the person concerned could readily borrow on the security thereof.
11. (Repealed L.N. 195 of 1992)
12. Where an application relates to a claim for damages arising from personal injuries to, or the death of, any person, there shall be disregarded the amount of any compensation received by the person concerned under—
- the Employees' Compensation Ordinance (Cap. 282);
 - the Pneumoconiosis (Compensation) Ordinance (Cap. 360); or
 - the Occupational Deafness (Compensation) Ordinance (Cap. 469).
- (L.N. 186 of 1989; L.N. 107 of 1990; 21 of 1995 s. 45)
13. In computing the amount of the disposable capital of the person concerned, there shall be disregarded—
- the amount of any moneys paid to him from the assistance fund established under section 3 of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229);
 - the amount of any interim payment made to him in accordance with an order made under the Rules of the High Court (Cap. 4 sub. leg.), or in accordance with an agreement having the same effect as such an order; and (25 of 1998 s. 2)
 - such amount or value, if any, of a donation or gift received by him, as the Director considers to be reasonable having regard to the amount, value and nature of the donation or gift.

(L.N. 186 of 1989)

[附屬法例]	[Subsidiary]
附表 3	SCHEDULE 3
分擔費用	CONTRIBUTIONS
第 I 部	PART I

受助人根據本條例第 18(1)(b) 條所須承擔的分擔費用最高款額如下——

- (a) 如受助人的財務資源不超過 \$86,000，他無須承擔任何分擔費用；
 (b) 除 (c) 節另有規定外，如受助人的財務資源超過以下 A 欄所示款額，但不超過 B 欄在相對位置所示款額，則他須承擔的分擔費用最高款額為其財務資源的一個百分率，即在 C 欄相對位置所示的百分率——

A	B	C
如其財務 資源超過	但不超過	則就其財務資 源而言，其分 擔費用最高款 額為
\$86,000	\$94,300	10%
\$94,300	\$104,900	15%
\$104,900	\$121,400	20%
\$121,400	\$129,600	25%
\$129,600	\$139,100	30%
\$139,100	\$147,300	34%
\$147,300	\$155,600	38%
\$155,600	\$163,800	41%
\$163,800	\$169,700	43% ；及

- (c) 如受助人的證書是就違反《香港人權法案條例》(第 383 章) 或抵觸《公民權利和政治權利國際公約》中適用於香港的條文為其中論點的法律程序發出——
 (i) 如受助人的財務資源超過以下 A 欄所示款額，但不超過 B 欄在相對位置所示款額，則他須承擔的分擔費用最高款額為其財務資源的一個百分率，即在 C 欄相對位置所示的百分率——

A	B	C
如其財務 資源超過	但不超過	則就其財務資 源而言，其分 擔費用最高款 額為
\$86,000	\$94,300	10%
\$94,300	\$104,900	15%
\$104,900	\$121,400	20%
\$121,400	\$129,600	25%
\$129,600	\$139,100	30%
\$139,100	\$147,300	34%
\$147,300	\$155,600	38%
\$155,600	\$163,800	41%
\$163,800	\$284,100	43%

[Subsidiary]	[Subsidiary]
SCHEDULE 3	[regs. 13 & 14]
CONTRIBUTIONS	
PART I	

The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall—

- (a) if his financial resources do not exceed \$86,000, be nil;
 (b) except as provided in subparagraph (c), if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the percentage of his financial resources indicated opposite in column C as follows—

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$86,000	\$94,300	10%
\$94,300	\$104,900	15%
\$104,900	\$121,400	20%
\$121,400	\$129,600	25%
\$129,600	\$139,100	30%
\$139,100	\$147,300	34%
\$147,300	\$155,600	38%
\$155,600	\$163,800	41%
\$163,800	\$169,700	43% and

- (c) if his certificate is for proceedings in which a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue and—
 (i) if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the percentage of his financial resources indicated opposite in column C as follows—

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$86,000	\$94,300	10%
\$94,300	\$104,900	15%
\$104,900	\$121,400	20%
\$121,400	\$129,600	25%
\$129,600	\$139,100	30%
\$139,100	\$147,300	34%
\$147,300	\$155,600	38%
\$155,600	\$163,800	41%
\$163,800	\$284,100	43%

[附屬法例]

如其財務 資源超過	但不超過	則就其財務資 源而言，其分 擔費用最高款 額為
\$284,100	\$425,600	46%
\$425,600	\$568,200	49%
\$568,200	\$709,700	52%
\$709,700	\$852,400	55%
\$852,400	\$993,800	58%
\$993,800	\$1,136,500	61%
\$1,136,500	\$1,278,000	64%；或

(ii) 如受助人的財務資源超過 \$1,278,000，則他須承擔的分擔費用最高款額為其財務資源的 67%。

(1997 年第 85 號法律公告)

第 II 部

(由 1992 年第 195 號法律公告廢除)

第 III 部

根據法律援助輔助計劃受助所須繳付的分擔費用

- 凡申索進展至判決階段，分擔費用率為 15%。(1995 年第 353 號法律公告)
- 凡申索在判決前達致和解，分擔費用率須調低如下——
 - 凡在向大律師送交在正審中出庭的委聘書之前達致和解，調低 50%；
 - (c) (由 1995 年第 353 號法律公告廢除)

第 IV 部

(由 1995 年第 489 號法律公告廢除)

Contributions) Regulations

[Subsidiary]

If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$284,100	\$425,600	46%
\$425,600	\$568,200	49%
\$568,200	\$709,700	52%
\$709,700	\$852,400	55%
\$852,400	\$993,800	58%
\$993,800	\$1,136,500	61%
\$1,136,500	\$1,278,000	64%; or

(ii) if his financial resources exceed \$1,278,000, be 67% of his financial resources.

(L.N. 85 of 1997)

PART II

(Repealed L.N. 195 of 1992)

PART III

CONTRIBUTIONS UNDER THE SUPPLEMENTARY LEGAL AID SCHEME

- Where a claim proceeds to judgment the rate of contribution is 15%. (L.N. 353 of 1995)
- Where a claim is settled prior to judgment the rate of contribution shall be reduced as follows—
 - where settlement occurs prior to delivery of a brief to Counsel, by 50%;
 - (c) (Repealed L.N. 353 of 1995)

PART IV

(Repealed L.N. 489 of 1995)

~~30. 陳述的關鍵性屬法律問題~~

藉以確定任何人犯本部罪行的陳述是否具關鍵性乃法律問題，須由法院作出裁定。

(將 1967 年第 45 號第 3 條編入)

31. 宣誓下作假證供

任何人如在一般情況下或某一司法程序中依法宣誓為證人或傳譯員後，在任何司法程序中故意作出一項在該程序中具關鍵性的陳述，且知道該項陳述是屬虛假的或不相信該項陳述是屬真實的，即屬犯宣誓下作假證供的罪行，一經循公訴程序定罪，可處監禁 7 年及罰款。

(將 1922 年第 21 號第 3 條編入。由 1967 年第 45 號第 4 條修訂)
[比照 1911 c. 6 s. 1 U.K.]

~~32. 在司法程序以外的情況下
經宣誓後作出的虛假陳述~~

如法律規定或授權任何人經宣誓後為任何目的作出陳述，而該人在司法程序以外的情況下，經依法宣誓後故意作出一項為該目的具關鍵性的陳述，且知道該項陳述是屬虛假的或不相信該項陳述是屬真實的，即屬犯罪，一經循公訴程序定罪，可處監禁 7 年及罰款。

(將 1922 年第 21 號第 4 條編入)
[比照 1911 c. 6 s. 2 U.K.]

32A. 根據《證據條例》第 76 條作出而屬
虛假的未經宣誓陳述

如根據《證據條例》(第 8 章)第 76 條所發出的命令規定任何人(以口頭或書面形式)作出非經宣誓而作的證供，則該人如此作出證供時作出一項如下的陳述——

- (a) 該人知道在要項上屬虛假者；或
 - (b) 在要項上屬虛假而他亦不相信其是屬真實者，
- 即屬犯罪，一經循公訴程序定罪，可處監禁 2 年及罰款 \$5,000。

(由 1977 年第 2 號第 4 條增補)
[比照 1975 c. 34 s. 8(1) U.K.]

~~30. Materiality of a statement is a question of law~~

The question whether a statement on which any offence against this Part is assigned was material is a question of law to be determined by the court.

(45 of 1967 s. 3 incorporated)

31. Perjury

If any person lawfully sworn as a witness or as an interpreter, either generally or in a particular judicial proceeding, wilfully makes a statement in any judicial proceeding which is material in that proceeding and which he knows to be false or does not believe to be true, he shall be guilty of perjury and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.

(21 of 1922 s. 3 incorporated. Amended 45 of 1967 s. 4)
[cf. 1911 c. 6 s. 1 U.K.]

~~32. False statements on oath made otherwise
than in a judicial proceeding~~

If any person being required or authorized by law to make any statement on oath for any purpose and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true, he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.

(21 of 1922 s. 4 incorporated)
[cf. 1911 c. 6 s. 2 U.K.]

32A. False unsworn statement under section 76
of Evidence Ordinance

If any person, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under section 76 of the Evidence Ordinance (Cap. 8), makes a statement—

- (a) which he knows to be false in a material particular; or
- (b) which is false in a material particular and which he does not believe to be true,

he commits an offence and is liable on conviction on indictment to imprisonment for 2 years and to a fine of \$5,000.

(Added 2 of 1977 s. 4)
[cf. 1975 c. 34 s. 8(1) U.K.]

當時一如證明該手令上的簽署是一名單所則知為裁判官的人的筆迹，以及該件為是在遵從該手令下作出的，則陪審團或法庭須裁斷或判決被告勝訴，而被告亦須獲雙倍於其訟費的款項。

61. 食肆等窩容當值警務人員的罰則

任何款待公眾的場所的經營者，不論該場所是否有烈酒出售，如明知地窩容或款待任何當值警務人員，或准許他在當值時在該處逗留，循簡易程序定罪後，可處罰款 \$250。

62. 導致警隊產生離叛情緒的罰則

任何人導致、企圖導致或作出任何作為刻意導致警隊成員產生離叛情緒，或誘使或企圖誘使或作出任何作為刻意誘使警隊成員違犯紀律或不再提供服務，即屬犯罪，循簡易程序定罪後，可處罰款 \$2,000 及監禁 2 年。

(由 1950 年第 29 號第 16 條增補)

63. 對執行職責的警務人員襲擊等或以虛假資料誤導警務人員的罰則

任何人襲擊或抗拒執行職責的警務人員，或協助或煽惑任何人如此襲擊或抗拒，或在被要求協助該執行職責的人員時拒絕協助，或意圖妨礙或拖延達到公正的目的而提供虛假資料，以蓄意誤導或企圖誤導警務人員，循簡易程序定罪後，可處罰款 \$5,000 及監禁 6 個月。

(由 1977 年第 42 號第 16 條修訂)

64. 虛報有人犯罪等罪行

任何人明知地——

- (a) 向警務人員虛報或導致他人虛報有人犯罪；或
- (b) 提供虛假資料或作出虛假的陳述或指控，以誤導警務人員，

magistrate and that the act was done in obedience to the warrant, the jury or court shall find a verdict or give judgment for the defendant who shall also recover double his costs of suit.

61. Penalty on victualler, etc. harbouring police officer while on duty

Any keeper of any place for the entertainment of the public whether spirituous liquors are sold thereon or not, who knowingly harbours or entertains any police officer on duty, or permits him to remain in such place while on duty, shall be liable on summary conviction to a fine of \$250.

62. Penalty on persons causing disaffection in police force

If any person causes, or attempts to cause, or does any act calculated to cause disaffection amongst the members of the police force, or induces, or attempts to induce, or does any act calculated to induce any member of the police force to withhold his services or to commit breaches of discipline, he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$2,000 and to imprisonment for 2 years.

(Added 29 of 1950 s. 16)

63. Penalty on person assaulting, etc. police officer in execution of duty, or misleading officer by false information

Any person who assaults or resists any police officer acting in the execution of his duty, or aids or incites any person so to assault or resists, or refuses to assist any such officer in the execution of his duty when called upon to do so, or who, by the giving of false information with intent to defeat or delay the ends of justice, wilfully misleads or attempts to mislead any such officer, shall be liable on summary conviction to a fine of \$5,000 and to imprisonment for 6 months.

(Amended 42 of 1977 s. 16)

64. Offence of making false report of commission of offence, etc.

Any person who knowingly—

- (a) makes or causes to be made to any police officer a false report of the commission of any offence; or
- (b) misleads any police officer by giving false information or by making false statements or accusations,