

Questions 1 to 4

2001 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD II: CIVIL AND CRIMINAL PROCEDURE

Friday, 26 October 2001



HEAD II: CIVIL AND CRIMINAL PROCEDURE

TEST PAPER

26 October 2001

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.**

2001 Overseas Lawyers Qualification Examination

Head II : Civil and Criminal Procedure

Question 1 (25 marks)

This question has FOUR parts. You must answer each part. Each part of the question has the value assigned to it.

Andrew Au ("Au") and his friend Mr Brian Bing ("Bing"), were returning to Hong Kong after playing golf in Shenzhen. They were in a motor vehicle that was owned and driven by Au. Bing's girlfriend, Carol, was also in the car.

The car was stopped and searched by Customs and Excise officers on the Hong Kong side of the Lok Ma Chau border crossing. There were two golf bags in the boot of the car. One belonged to Au, the other belonged to Bing. The officers found a package wrapped in brown paper inside Bing's golf bag. When the package was opened it was found to be a cardboard box containing a pair of new golf shoes. There was a packet containing a quantity of a crystalline substance inside one of the golf shoes. On later analysis, the packet was found to contain 100 grammes of a crystalline solid containing 98.10 grammes of methamphetamine hydrochloride (ICE), a dangerous drug.

When the substance was found, Au, Bing and Carol were told they were under arrest on suspicion of trafficking in dangerous drugs. Au tried to run away but was caught by a customs officer after a short chase.

At the time of the arrest, and under caution, Bing said "Carol, knows nothing about the drugs". Neither Au nor Carol said anything upon their arrest when they were cautioned.

Carol, however, later made a statement under caution in which she said she had seen Au put the package in Bing's golf bag. The Officer-in-Charge of the case showed a copy of Carol's statement under caution to Au. Au did not make any comment when shown that statement. Carol later made a witness statement in which she repeated what she had said under caution. Carol will be a witness for the prosecution.

After their arrest, Au and Bing were visited by Mr L. Sap, a solicitor. Mr Sap advised them to say nothing when questioned, not to make any written statements and to save their explanations until trial. Mr Sap's fees came to \$15,000. Au and Bing were subsequently charged with trafficking in dangerous drugs contrary to s. 4 of the Dangerous Drugs Ordinance, *Cap.* 134. Carol has not been charged with any offence.

Au and Bing were refused bail after they were charged and were brought before a magistrate the next day. The magistrate refused them bail and they have both been in the custody of the Commissioner of Correctional Services since then. They appeared before the magistrate again yesterday, when the prosecution asked the magistrate to appoint a Return Day for the

continuation of committal proceedings. The magistrate has appointed a date four weeks ahead and has again remanded Au and Bing in custody.

Au and Bing have been represented by the Duty Lawyer on each of their appearances before the magistrate. They have appeared before the magistrate on four occasions, including the appearance when the prosecutor asked for the appointment of a Return Day. On the first two appearances they both applied, unsuccessfully, for bail. On the Duty Lawyer's advice they have each now waived their right to be brought up to court every eight days.

Au has now asked you to represent him. You have seen Au in the remand centre. He tells you that "money is no object, just get me off". He says that the drugs are not his and the first he knew of them was when they were found. He tried to run away because he was frightened. Similarly, he did not protest his innocence at the time because he was both worried and frightened. He says he is being victimised by other prisoners in the remand centre and wants bail. You have seen Carol's witness statement in which she says that she saw Au put the package into Bing's golf bag.

Au's father is a man of substantial wealth and is a director of a public listed company in Hong Kong. Au wants bail. With the help of his father he can raise HK\$1,000,000 cash for bail.

Questions:

Please answer the following:

- (a) Can anything, and if so what, be done about bail up to and including the return date? Give reasons for your answer. (4 marks)**
- (b) What advice would you give as to how Au should proceed on the Return Day? Give reasons for your answer. (5 marks)**
- (c) Assume that Au was committed for trial and, acting on his instructions that "money is no object", you instructed a leading criminal Senior Counsel and two experienced junior barristers to represent him. If Au is acquitted at the trial in the Court of First Instance, what application(s) would you advise him to make? What would be the basis for that application(s) and what would be the prospects of success? Give reasons for your answer. (9 marks)**
- (d) Assume that Au is convicted after trial and you discover for the first time after the conviction that the Customs and Excise had found some fingerprints on the package containing the drugs but the analysis report on those fingerprints shows that none of the fingerprints belongs to Au or Bing. Does the non-disclosure of the fingerprint analysis report by the prosecution before the trial give you a valid ground to overturn the conviction? Does it make any difference to your approach if you have previously made an express request to the prosecution for the disclosure of all unused prosecution materials and the prosecution has failed to include the fingerprint report in the list of unused material? Give reasons for your answer. (7 marks)**

Question 2 (25 marks)

This question has FIVE parts. You must answer each part. Each part has the value assigned to it.

Au, Bong and Chau were convicted in the District Court of burglary of a dwelling house contrary to s.11 of the Theft Ordinance, *Cap.* 210. The offence was committed on 26 July 2001. The charge was transferred to the District Court in accordance with s.88 of the Magistrates Ordinance on 5th September 2001.

Au and Bong entered the dwelling house and stole jewellery and cash to the value of HK\$30,000. Chau remained outside as the lookout. As Au and Bong were leaving the house, the householder returned home. The householder caught Au but Bong and Chau escaped.

Au made a statement under caution to the police in which he admitted his part in the burglary. He identified Bong and Chau as the other persons involved. He said that the burglary was Chau's idea and that he and Bong became involved because they were short of money and frightened of Chau. Au told the police where they could find Bong and Chau. As a result of the information Au supplied, Bong and Chau were arrested two days later. The stolen property has not been recovered.

Au has been on bail since his arrest. Bong and Chau have been in custody since their arrest. All three were separately represented at trial. Au pleaded guilty and gave evidence for the prosecution against Bong and Chau. Bong and Chau pleaded not guilty but were convicted after trial.

Au was born on 1st April 1986. He has no previous convictions. Bong is 19 years old. He has one previous conviction for theft from a shop in 1999 for which he was fined \$250. Chau is 22 years old. He has previous convictions for fighting in a public place, for which he was fined \$1,000 in 1998, and for living on the earnings of prostitution, for which he was sentenced to 8 months imprisonment, suspended for two years, on 10th August 1999.

The District Court judge transferred Au to the Juvenile Court for sentence. The Juvenile Court remanded Au in custody for a probation report, a detention centre report and a training centre report. Au is assessed as medically unfit for a detention centre but suitable for a training centre. The report states that a period of disciplined training is in his best long term interests. The probation report does not recommend probation because Au's parents have separated. Au lives with his mother and a younger brother. The probation report states that Au is easily led by older friends, spends his time hanging around video games centres, has dyed his hair bright green, and his mother has had little control over him in the past but has now given up her job to look after him.

(See over the page for Questions 2(a)-(e))

Questions:

- (a) **If you were representing Au, what mitigation would you advance? Why would you do that? Give reasons for your answer. (6 marks)**

Bong and Chau will be sentenced in the District Court.

Bong is single and lives with his elderly mother who is partially sighted. Until his arrest on the present offence, Bong has been working as a delivery worker earning \$8,000 per month. That job is still available to him.

- (b) **If you were representing Bong, what if any pre-sentencing reports would you suggest the court should obtain? Give reasons for your answer. (3 marks)**
- (c) **Assuming that the reports obtained by the court show that Bong is medically and mentally fit for any of the sentences available to the court, and all the statutory requirements for those sentences are satisfied, how would you mitigate on Bong's behalf? Give reasons for your answer. (6 marks)**
- (d) **Assuming that Bong is ordered to be detained in a Detention Centre and intends to appeal conviction, what application(s) would you make on his behalf? Give reasons for your answer. (4 marks)**

Chau has been living with his girl friend in a flat in Tsim Tsa Tsui since April 2001. The girlfriend is pregnant by him and is due to give birth in three months' time. She is currently working as a shop assistant. She has no family members in Hong Kong.

- (e) **How is the court likely to deal with Chau on sentence? What mitigation would you advance on his behalf? Give reasons for your answer. (6 marks)**

Question 3 (25 marks)

On 1st August 1997, Interbank, a Hong Kong registered bank, offered a loan facility to iz.com.limited, a Hong Kong registered company, for research and development. Under the terms of loan facility, iz.com.limited was entitled to draw down the total sum of HK\$50 million within 12 months. The loan was repayable with interest on 30th July 1999. The loan was to be secured by a joint and several guarantee executed by each of the 4 directors of iz.com.limited, Mr Chan, Mr Ho, Mr Lee and Mr Wong.

iz.com.limited drew down the total sum of HK\$50 million but failed to repay the loan on 30th July 1999 and requested an extension of time for payment until 31st January 2001. Again, iz.com.limited failed to make payment on the due date and Interbank finally instructed your firm to issue a writ against iz.com.limited and the 4 guarantors. iz.com.limited is in financial difficulties, but two of the guarantors, Mr Chan and Mr Wong, are the sons of well known local property tycoons.

As a newly qualified assistant solicitor, you are assisting the partner in handling this case. You are aware that a writ was issued in the High Court on 1st October 2001, but otherwise, you do not know the current status of the proceedings. It now appears that an assistant solicitor, who has since left the firm, delegated the task of effecting service of the Writ of Summons to the firm's litigation clerk immediately after the Writ was issued. On 19th October 2001, the litigation clerk wrote a memorandum to the former assistant solicitor reporting on service. The assistant solicitor then sent a copy of that memorandum to Interbank with a short covering letter saying that all but one of the defendants had been successfully served. Interbank's in-house lawyer has requested a meeting with you to discuss the matter. At the meeting, he informs you that the Chairman of the Board is taking a close interest in the proceedings because of the sum involved. He produces a copy of the memorandum which reads as follows:-

“19th October 2001

Received 5 sealed copies of the Writ of Summons for service on iz.com.limited and the 4 individual guarantors.

Checked file for addresses for service. Information is as follows:

- iz.com.limited is carrying on business at 10th floor, High Rise Building, Wellington Street, Central, Hong Kong and its registered office (as shown in the up-to-date company search) is at 8th Floor, Low Rise Building, Queen's Road Central Hong Kong. I attended the registered office address at 8th Floor, Low Rise Building but the office is vacant.
- Mr Chan's current residential address is unknown but he is working for New Co Ltd which carries on business on 25th floor, Archive House, Duddell Street, Hong Kong.
- Mr Ho's residential address is No. 5, The Avenue, La Jolla California, USA.

(See over the page for continuation of Question 3)

- Mr Lee's residential address is 25th floor, Block 75, Baguio Villa, Hong Kong
N.B. enquiry agent confirms Mr Lee is currently spending 3 months in Australia with his family.
- Mr Wong's current address is unknown, but he is believed to be in Hong Kong. He has moved out of the address shown on the Company search report.

I have been successful in serving the proceedings upon all but one of the defendants by taking the following steps:

- (1) On 1st October 2001, I attended at 10th Floor, High Rise Building, Wellington Street and left a sealed copy Writ with the receptionist who placed iz.com.limited's chop upon my photocopy Writ. See copy on the file.
- (2) On 1st October 2001, I sent a sealed copy of the Writ by registered post to Mr Chan at the address of New Co. Ltd. My covering letter and the enclosed Writ has just been returned by the post office.
- (3) Sealed copy of the Writ was sent by courier to Mr Ho at his residential address in California. The courier service has confirmed receipt by Mr Ho on 10th October 2001.
- (4) On 2nd October 2001, I attended 25th floor, Block 75, Baguio Villa and inserted a sealed copy of the Writ through the letter box. Service takes effect immediately.
- (5) Unfortunately, I have not been able to serve Mr Wong as I do not have a current address for him. I can, however, confirm that Mr Wong is in Hong Kong as I saw him in the street on Sunday 14th October 2001 as he was getting into a taxi. I recognised him from his recent photographs in the society pages of the press. I ran over, asked him if he was the Mr Wong of iz.com.limited and when he said he was, I handed him the sealed copy of the Writ through the open taxi window. However, Mr Wong did not accept it and he threw it out of the window. See attached sealed copy of Writ for service."

The in-house lawyer requests you to write a letter to the Chairman of the bank advising whether service has been effected upon each of the defendants and, if not, what further steps must be taken to ensure that there is good and proper service as the Chairman has said he is confused by the contents of the memorandum.

The in-house lawyer also tells you that the Chairman believes the bank is entitled to apply for judgment against each of the defendants as soon as the Writ has been served. He asks you to include a paragraph in the letter advising in what circumstances a default or summary judgment can be obtained.

Question:

On the assumption that the events occurred as set out in the clerk's file note, please draft a suitable letter of advice to the Chairman of Interbank. (25 marks)

Question 4 (25 marks)

Late on Friday afternoon, you receive a call from Bruce, the in-house counsel of OzBank, a leading bank in Australia. Bruce is calling you from Sydney, Australia. He tells you the story.

On the previous Wednesday evening, the sum of A\$10 stood to the credit of the account of OzBank's customer, Sheila, with OzBank's main Sydney Branch. On Thursday morning, at about 10 a.m., a sum of A\$10,000 was deposited in cash to the credit of Sheila's account. Instead of crediting the sum of A\$10,000 to Sheila's account, OzBank's teller entered the sum of A\$1,000,000 as having been received in cash.

At about 12 noon on Thursday, Sheila requested OzBank to make a payment of A\$1,000,000 as cleared funds to VicBank for the account of ABC Corporation. In so doing, Sheila told OzBank officers that her account had recently been credited with A\$1,000,000.

As OzBank's officers mistakenly believed that the value of A\$1,000,000 entered in Sheila's account represented cleared funds, OzBank duly remitted the funds to VicBank by telegraphic transfer. On the same day, ABC Corporation, a company in which Sheila is both a shareholder and director, transferred the sum of A\$1,000,000 to RightBank in Hong Kong for the account of Wong.

Bruce has spoken to the in-house counsel of RightBank, who has told him informally that Wong, a Hong Kong resident, came to RightBank earlier on Friday. He had given instructions for the remittance of various sums from his account to one bank in Hong Kong and another bank in Macau, but leaving a substantial balance in the account.

Bruce said that, in Australia, an action could be brought for restitution based on payment made under a mistake. He assumes that the same relief can be sought in Hong Kong. He then goes on to ask what steps can be taken in Hong Kong to protect OzBank's position as far as possible.

Questions:

Please answer the following :

- (a) **Can any steps be taken to find out what has happened to the amounts transferred out of Wong's account. If so, please advise what and how any such application can be made, with details of the procedural requirements. (6 marks)**

- (b) **Can any steps be taken to protect the client's interest in respect of some or all of the A\$1,000,000? If so, please advise what and how any such application can be made, with details of the procedural requirements. (8 marks)**

(See over the page for Questions 4(c)-(d))

- (c) **Would your answer to Question (a) and/or (b) be different if Wong were resident in Beijing, and instead of giving instructions personally at RightBank, he had telephoned them from Beijing?** (7 marks)
- (d) **Assume Bruce tells you that he has reported the matter to the Hong Kong police who have arrested Wong on suspicion of fraud. Would this affect the type of application to be made?** (4 marks)

(See Question 5 in the separate Test Paper)

Question 5

Candidate No. _____

**2001 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD II: CIVIL AND
CRIMINAL PROCEDURE**

Friday, 26 October 2001



THE
LAW SOCIETY
OF HONG KONG
香港律師會

Question 5 (25 marks in total with 8 sub-questions)

This question contains 8 sub-questions carrying 25 marks in total. Candidates are required to answer all sub-questions in the space reserved on this question paper (N.B. Not on 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 act as the solicitor for **Hong Kong Abused Cats & Dogs Trust** (the "Trust") and you were approached on 3 May 2000 by two of the Trustees, **Mr Chan Oi-gou and Madam Wong Oi-mile**. You were informed by **Chan & Wong** that they had been appointed executors of a will made by **Mr Mok Yum-zhou** on 10 April 1994 in which the Trust was the sole beneficiary. **Mok** died on 22 December 1999 as a result of drinking poisonous champagne, leaving no surviving issue or next of kin.

Chan & Wong instructed you that the **Trust** had assets valued at approximately \$25 million. They sought your advice as to whether or not they had a case against the person or persons responsible for making available the champagne for consumption. They gave you the following additional information:

1. At the date of his death, **Mok** was 65 years' old and was suffering from terminal liver cancer. When he last visited his doctor, **Dr Mo Tak-ye**, on 14 December 1999, **Dr Mo** opined that Mok's life expectancy was about 6 to 9 months. He used to be a banking executive employed by **SAR Bank Ltd** earning the sum of HK\$140,000 per month, but had been retired since 1996.
2. **Mok** was not married and enjoyed his retirement. He had the reputation of being a womanizer who loved good food, wine and many girlfriends. He was a spendthrift and did not save for himself any substantial money, notwithstanding his high income. His estate had a value of around HK\$850,000.
3. On or about 20 December 1999, **Mok** visited the **Poison Wines Shop** (the "Shop") situated on the basement level of the Mighty Dragon Building on Des Voeux Road in Central. The **Shop** is a registered business name used by the **Poison Wine Co. Ltd** (whose registered office is the same as the business address), and is operated by its shareholders and directors **Mr Siu Zhou and Madam Sheung Zhing**. The company search records show that **Siu** holds 99 shares while **Sheung** holds 1 share. Both of them gave the same residential address at Flat 10B, Block 49, South Horizons, Hong Kong.

4. On that occasion, **Mok** purchased from the **Shop** 12 bottles of Chateau a' Breau champagne bottled in France, at a price of HK\$1,450 per bottle, at a total cost of HK\$17,400.
5. On 22 December 1999, **Mok** had arranged a dinner date with Miss **Piggy**, Miss Hong Kong Reunification Beauty winner, at his home on the Peak. During the dinner **Mok** drank 2 bottles of the champagne. Miss **Piggy** did not drink any wine and only had 2 glasses of Perrier water.
6. About 1 hour after dinner, when they were sitting on the sofa, **Mok** complained of feeling ill, and of having severe stomach pains. 15 minutes later he died.
7. The police took possession of the 2 empty bottles of Chateau a' Breau. An analysis of the residue of the bottles showed that the champagne had contained traces of "tracid", an agent used in the cleaning of wine bottles which, in large doses, is lethal.
8. A post mortem conducted on 26 December 1999 revealed that **Mok** had died from tracid poisoning.
9. The **Shop** had, on 16 October 1999, imported from **Chateau a' Breau Ltd** (a French corporation, located in France, and which is not registered in Hong Kong) (the "**Supplier**") 600 bottles of Chateau a' Breau champagne, at a cost of HK\$500 per bottle, for a total cost of HK\$300,000.

Sub-Question 1

A Writ endorsed with a Statement of Claim was issued in the High Court, Court of First Instance, in July 2000 against the **Shop** (as the First Defendant) and the **Supplier** (as the Second Defendant).

Name and describe the Plaintiff(s) in the Writ. Briefly explain your answer.

(2 marks)

Sub-Question 2

Assume that both the First and Second Defendants have been properly served. If the First Defendant has not filed any Acknowledgment of Service before the prescribed deadline, while the Second Defendant has, **what step(s) should be taken against the First Defendant? Explain with brief reasons.** (2 marks)

Sub-Question 3

The First Defendant has filed an acknowledgment of Service and subsequently a Defence. In the Defence, only the fact that 12 bottles of **Chateau a' Breau** were purchased by **Mok** on 20 December 1999 was admitted, while all the other allegations contained in the Statement of Claim were met with either a bare denial or non-admission. What should you do next on behalf of the Plaintiff?

Please put a tick against the best answer:

(2 marks)

- (a) file a Counterclaim in case you wish to make further claim against the First Defendant.
- (b) serve a Request for Further and Better Particulars on the First Defendant to find out more about the First Defendant's defence (and if the First Defendant refuses to comply with the Request, make the necessary application to the Court).

- (c) file a Reply in case you wish to state further particulars or facts in support of the Plaintiff's claim.
- (d) apply to strike out The Defence for disclosing no reasonable cause of defence and/or as being an abuse of process.
- (e) proceed further with the action without doing any of the above.

Sub-Question 4

The Second Defendant has filed a defence contesting liability. In September 2000, pleadings between all the parties were closed. With the coming into force of the District Court (Amendment) Ordinance 2000, **could any of the parties apply to have the action transferred to the District Court? Briefly explain your answer.** (3 marks)

Sub-Question 5

Assume that no party has applied for any transfer of proceedings to the District Court. If the First Defendant wishes to seek contribution or indemnity from the Second Defendant in case it is held liable to the Plaintiff(s), **is it necessary for the First Defendant to invoke any procedure, and if so, name the procedure and relevant rule(s)? Briefly explain your answer.** (3 marks)

Sub-Question 6

Assume, **for this Sub-Question only**, that you are acting as the solicitor for the First Defendant to defend the proceedings. After filing the Defence as mentioned in **Sub-Question 3** above, you are now preparing a List of Documents on behalf of the First Defendant.

State in respect of each document mentioned below, whether the document must be disclosed in the List of Documents and if so, which Part of the List. Briefly explain your answer.

- (i) a copy of the credit card voucher signed by Mok on 20 December 1999 for purchasing the 12 bottles of Chateau a' Breau.

- (ii) a copy of the third party insurance policy which the First Defendant took out with AA Insurance Ltd.

- (iii) a letter from the First Defendant to you dated 27 December 1999 seeking your advice on its potential liability upon learning of the death of Mok. In the letter, the First Defendant stated, inter alia, that before the incident on 22 December 1999 there was an oral complaint by another customer on 18 December 1999 about discomfort experienced after drinking a small glass of the champagne Chateau a' Breau.

(4 marks)

Sub-Question 7

Assume for this Sub-question that you are acting for the Plaintiff.

The parties eventually reached a settlement agreement before trial. In the sealed Consent Order dated 15 September 2001 it was ordered that judgment be given against the First Defendant for the sum of HK\$500,000 with a stay of execution for 1 month (as it was agreed that the First Defendant could have 1 month to come up with the payment) and that the Plaintiff's claim against the Second Defendant be withdrawn. It was also ordered that the costs of the proceedings be borne by the First Defendant, to be taxed if not agreed. The First Defendant gave a post-dated cheque dated 15 October 2001 drawn on **ABC Bank Ltd** in favour of the Plaintiff for HK\$500,000 for settlement of the judgment.

You are a keen lover of cats and dogs and you applaud the work done by the **Hong Kong Abused Cats & Dogs Trust**. You have therefore agreed orally at the outset of the proceedings with **Chan** and **Wong** that the amount of costs you could recover from the other side would be the costs that you would charge the Plaintiff, so that they need not worry about the legal costs. You have so far not billed the Plaintiff for any legal costs. From your experience, the legal costs that the Plaintiff would have to pay if your firm were acting for a normal client should be in the region of HK\$600,000.

What is the amount of legal costs that the Plaintiff would likely be entitled to recover from the First Defendant in case the parties could not agree on the amount? Please explain your answer briefly. (4 marks)

Sub-Question 8

Assume for this Sub-question that you are acting for the Plaintiff.

In the morning on 16 October 2001, Mr **Chan** of your clients came to you and said that he presented the cheque for payment with the Plaintiff's own banker **CDE Bank Ltd** on 15 October but the cheque was dishonoured with a memo stating "Refer to Drawer". He went to the Shop at Mighty Dragon Building but found that the **Shop** had closed down. A security guard outside the **Shop**, Mr **Ng**, informed him that the **Shop** had been closed down for about 3 to 4 days.

Your private investigations have revealed the following:

- **Siu Zhou**, the majority shareholder and director of the First Defendant, owns premises on the Peak, bought in 1998 for HK\$10m free of mortgage. He holds 10,000 shares in SAR Bank Ltd, a publicly listed company with shares currently valued at HK\$100 per share. He also has an account with ABC Bank Ltd with credit balance believed to exceed HK\$1 million.
- Land search records of the **Shop** premises at Mighty Dragon Building show that the premises was purchased by the First Defendant in 1994 for HK\$1.5 million with the finance of an "All Monies" Mortgage with ABC Bank Ltd. There was, however, a sale and purchase agreement executed on 18 September 2001 for selling the premises to a Mrs **Foot Tai Tai** for HK\$2 million. You have further obtained from the Land Registry a copy of this sale and purchase agreement which showed that the completion date had been fixed for 1 November 2001 and the outstanding purchase price is HK\$1.8 million.

You had another meeting with Chan and Wong this morning (26 October 2001) and informed them of your investigation results. **They asked you what legal steps should be taken to protect the Plaintiff's interest. Explain your advice. (5 marks)**
