

**2002 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD II: CIVIL AND
CRIMINAL PROCEDURE**

Tuesday, 29 October 2002



HEAD II: CIVIL AND CRIMINAL PROCEDURE

TEST PAPER

29 October 2002

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. You must answer:
 - Questions 1 and 2 (Criminal Questions) in Answer Book 1
 - Questions 3 and 4 (Civil Questions) in Answer Book 2
 - Question 5 in the separate question paper
5. 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 in the separate question paper.
6. 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.
7. Apart from Question 5, start each answer on a separate page of your answer book.
8. 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.
9. Do not take either the question papers or any answer books with you when you leave the examination room.

2002 Overseas Lawyers Qualification Examination

Head II: Civil and Criminal Procedure

Question 1 (25 marks)

Bob was walking along the street with his girl friend **Dodo** at 1:30 a.m. one morning. **Dodo** was carrying a bag.

A uniformed police officer, **PW1**, stopped them and asked them to produce proof of identity. **Bob** produced his identity card. **PW1** asked **Dodo** to do the same. **Dodo** put the bag she was carrying on the ground, took her identity card from her pocket and gave it to **PW1**. **PW1** kept both cards and told **Bob** and **Dodo** to follow him to the police station.

When **PW1** said this, **Dodo** said 'I don't have to go with you' and walked away. **Bob** then picked up the bag that **Dodo** had placed on the ground. **PW1** grabbed **Dodo's** arm and said 'You are under arrest for obstructing me in the execution of my duty'. **PW1** summoned assistance through his beat radio.

Bob then grabbed hold of **PW1's** hand and tried to make him release **Dodo's** arm. Two more police officers, **PW2** and **PW3**, arrived at that moment. **PW1** told them he had arrested **Dodo**. **PW2** then arrested **Bob** for assaulting **PW1** in the execution of his duty. **PW3** seized the bag that **Bob** was holding.

PW3 opened the bag and found a polythene bag containing a white powdery substance. When **PW3** asked **Bob** what it was, **Bob** said 'It's nothing to do with me, I've never seen it before'. **PW3** arrested **Bob** on suspicion of possession of dangerous drugs. **Bob** and **Dodo** were taken to the nearest police station.

After arrival at the police station, **Bob** was questioned by **Detective Sergeant Sin (PW4)** in the presence of **Detective Constable Chow ("DC Chow")**. At first **Bob** denied any knowledge of the substance found in the bag and said he had picked up the bag from the ground when **Dodo** had walked away. Later **Bob** made a written statement admitting that the powdery substance found in **Dodo's** bag was heroin and that they were taking it to an address in Central for their boss **Ho San** who would pay them \$500 each for doing so. **Dodo** was later released without charge soon after **Bob** had completed his statement.

A drugs disposal officer, **PW5**, took the substance to the Government Chemist for analysis. Upon analysis the substance was found to be 5 grammes of a mixture containing 3 grammes of heroin hydrochloride, a dangerous drug.

Bob was charged with trafficking in dangerous drugs contrary to s. 4 of the Dangerous Drugs Ordinance Cap. 134 (section attached) and assaulting **PW1** in the execution of his duty contrary to s. 36 of the Offences Against the Person Ordinance Cap. 212 (section attached). **Bob's** trial will take place in the Magistrates' Court. You represent **Bob** who is paying your fees privately.

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

Bob will plead not guilty to both charges. He tells you that **PW4**, in the presence of DC Chow, punched him in the stomach whilst he was questioning him and told him: *'If you admit you had the drugs for trafficking, we will leave Dodo out of it and your case can be dealt with by a magistrate. If you don't admit, I will punch you until you do admit it.'*

Bob says he made his written statement because of the punch and because of what **PW4** had told him. Bob also says that **PW4** told him to put in his statement the remarks about delivering the drugs for **Ho San**. **Bob** tells you that he did not know what was in **Dodo's** bag when he picked it up. He tells you he has only known **Dodo** for four months and is unaware whether or not she is involved with drugs.

The prosecution have served you with a copy of the prosecution's Brief Facts of the case, the statements of the witnesses and the list of exhibits they will rely upon at trial. The witnesses are **PW1**, **PW2**, **PW3**, **PW4** and **PW5**. **PW3** will produce the bag as an exhibit, **PW4** will produce Bob's statement. **PW5** will produce the drugs and the Government Chemist Report.

DC Chow is not listed as a witness. The Brief Facts mention that **DC Chow** has left the police force and will not be called as a prosecution witness.

Now consider the following questions. Support your answers with reasons and with authorities where appropriate:

Questions:

- (a) **What, if any, further information and/or documentation will you want from the prosecution in advance of the trial and why would you want that?** (7 marks)
- (b) **What advice will you give Bob about the court procedures at trial? What action will you take at the trial about Bob's written statement? Why will you take that action and what procedure is involved?** (6 marks)
- (c) **What action will you take if Bob's statement is excluded from evidence and why will you do that?** (6 marks)
- (d) **What, if any, action will you take if Bob is acquitted of either or both of the charges, and why will you do that?** (6 marks)

[NOTE: Section 4 of the Dangerous Drugs Ordinance, Cap. 134 and section 36 of the Offences Against the Person Ordinance, Cap. 212 are attached at Appendices 1 and 2 respectively at the back of the Test Paper.]

Question 2 (25 marks)

Connie, aged 20, was employed by **XYZ** as a clerk. Her manager was **Mr Pang** ("**Pang**"), aged 42. **Connie** and **Pang** argued after **Pang** criticised her work. **Connie** punched **Pang** in the face. She was wearing a large ring. The ring caused a 2 centimetre cut to **Pang**'s face, near the corner of his left eye. **Pang** went to hospital where three sutures were inserted into the cut. The hospital doctor was concerned about possible damage to **Pang**'s sight and **Pang** was kept in hospital for observation for one day. There was no damage to his eyesight. **XYZ** terminated **Connie**'s employment immediately.

The police were called to **XYZ**'s office. **Connie** admitted she had lost her temper with **Pang** and had struck him. She was arrested for assaulting **Pang** occasioning him actual bodily harm and taken to the nearest police station. In the police station she made a voluntary written statement under caution. In the statement, **Connie** said that **Pang** had been criticising her work since she had refused to have dinner with him one night. She said she could not take his criticism any longer, had lost her temper and punched him. In her statement she also said: "He deserved what I did to him".

Connie was charged with Wounding Contrary to s.19 of the Offences Against the Person Ordinance, Cap. 212 (section attached) and bailed to attend Western Magistracy two days later.

Connie appeared in Western Magistracy as required. She was unrepresented and pleaded guilty to Wounding (s.19). She agreed the prosecution's brief facts of the case. Those facts stated:

"After her manager at work, Mr Pang (PW1), criticised her work, the defendant punched him in the face causing a two centimetre cut very near the corner of his left eye. PW1 received hospital treatment. Three sutures were inserted in the cut. There was concern at possible damage to PW1's eyesight. In the event, there was no damage to PW1's eyesight. In a statement under caution, the defendant admitted she had deliberately punched PW1. In that statement the defendant also remarked that PW1 deserved everything she had done to him."

Connie has no previous convictions. In mitigation she only said: "Please give me a chance. It will be hard for me to find another job now".

The magistrate said that this was a serious premeditated attack upon **Pang**, **Connie**'s superior, who was simply doing his job. The offence was serious and **Pang** was fortunate not to have suffered permanent damage to his sight. **Connie** was sentenced to six months immediate imprisonment.

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

You have been consulted by Connie's mother, **Winnie**, who was deeply shocked to learn of **Connie's** imprisonment. She says that Connie wants to appeal against sentence. **Winnie** tells you that Connie, her only child, has been a good daughter to her. **Winnie** also says that she was widowed two years ago when her husband, **Zu**, was killed in a road accident. **Winnie** says she suffered a nervous breakdown as a result and now cannot work. She tells you that Connie has been supporting her from her salary and that without **Connie's** support she will need to apply for Public Assistance.

Winnie has telephoned the Managing Director of XYZ and told him of the difficulties she now faces because **Connie** has been sent to prison. The Managing Director has told **Winnie** that he valued **Connie** as an honest and trustworthy employee. He is prepared to offer her a job at another branch of XYZ where she will not come into contact with **Pang**.

Winnie also tells you that she suffers from high blood pressure and hyper-tension.

Questions:

Please answer the following questions, supporting your answer with reasons and authorities where appropriate.

- (a) **What advice would you give to Winnie about the action that could be taken for Connie and the procedure that would be involved? (10 marks)**

- (b) **What sentence, if any, would you argue that Connie should be given in place of the sentence imposed? What arguments would you make? What, if any, supporting material would you obtain? (15 marks)**

[NOTE: Section 19 of the Offences Against the Person Ordinance, Cap. 212 is attached at Appendix 3 at the back of the Test Paper]

Question 3 (25 marks)

On 18 June 2002 a representative of **ABC Limited**, a German company, and a buyer for **Swiss Cycles Limited**, a Swiss Company, met in the offices of **Swiss Cycles Limited** in Zurich to discuss the possible purchase by **Swiss Cycles Limited** from **ABC Limited** of 5,000 bicycles for a price of US\$750,000.00. The negotiations were all conducted in German. The buyer signed a document headed "Order Confirmation" produced by **ABC Limited (the 1st OC)**. (The 1st OC and all documents subsequently referred to were all written in English.) At the foot of the document, under "Remarks", there was stated "Legal domicile in Hong Kong". In the middle of the document were the words "order from ABC Limited follows".

On the following day, 19 June 2002, **Swiss Cycles Limited** received two faxes from the Hong Kong Office of **ABC Limited**. Attached to the first fax was a typed up version of the Order Confirmation of **ABC Limited (the 2nd OC)** on which was typed the words "accepted by Swiss Cycles Limited". A few hours later, **ABC Limited** sent the second fax which set out the export terms and conditions, which contained a Hong Kong exclusive jurisdiction clause, as well as further additional contractual terms. **Swiss Cycles Limited** did not give any indication of its confirmation or acceptance of the 2nd OC or any of the export terms and conditions. However, on 26 June 2002, **Swiss Cycles Limited** wrote to **ABC Limited** informing it that its offer would not be accepted. The following day, **ABC Limited** wrote to **Swiss Cycles Limited** stating that it expected the contract to be fulfilled and that a letter of credit should be opened immediately.

On 10 August 2002, the Managing Director of **ABC Limited** made an appointment to see you and handed over to you his file of correspondence and documents, including three letters from **Swiss Cycles Limited**, the letter dated 26 June 2002, a letter dated 7 July 2002 denying that there was any concluded contract and a letter dated 21 July 2002 asserting that if there was a contract, the terms and conditions sent to them by fax on 19 June 2002 were not incorporated into the contract.

The Managing Director of **ABC Limited** requests your advice on whether proceedings can be issued in Hong Kong for service on **Swiss Cycles Limited**.

Questions:

- (a) **Write a letter of advice to the Managing Director of ABC Limited setting out the procedural rules applicable to the above fact pattern, the steps to be taken and the principles on which the Court will exercise its discretion. (15 marks)**

- (b) **Draft an affidavit on behalf of ABC Limited in support of an ex-parte application for leave to serve out of the jurisdiction. If there are insufficient facts available, set out in each paragraph of the draft affidavit in square brackets the additional instructions you require. (10 marks)**

Question 4 (25 marks)

You act for **Hopeless Construction Ltd.** You issued a Writ on behalf of your client in June this year to recover the outstanding contract price for renovation services provided to **Shameless Trading** in 2001. The Writ was issued against "**Shameless Trading (a firm)**" as the defendant and was served on the firm at its office address in Wanchai by registered post. Upon receiving an Acknowledgment of Service signed by **Chan** as a partner of the defendant firm stating an intention to defend, you applied for summary judgment on behalf of your client.

Four (4) weeks ago, you successfully obtained summary judgment at the call-over hearing in your client's favour against the defendant firm for the sum of HK\$3 million, plus interest, plus costs, as the defendant failed to file any affidavit in reply and failed to appear at the hearing.

The judgment debt has not been paid. You have commissioned enquiry agents to investigate **Shameless Trading**. The enquiry agents' inquiries have established the following:-

1. **Shameless Trading** has 3 partners: **Wong, Lee and Chan**. **Shameless Trading's** office in Wanchai was purchased by **Lee** and a third party as joint tenants in 1999 for HK\$5 million, financed by a 70% mortgage with the **SAR Bank**.
2. **Shameless Trading** closed down its business about 6 weeks ago because of a fierce argument between **Lee and Chan**.
3. **Wong** emigrated to the Netherlands at the end of February this year and since then has had no apparent involvement in **Shameless Trading**. **Wong** owns a flat in Hong Kong. The flat was purchased by him two years ago for HK\$1.5 million, financed by an "All Moneys" mortgage with the **SAR Bank** and is currently rented out to a lecturer at the **SAR University** at a monthly rental of HK\$10,000.
4. **Lee** has substantial private funds, although it is not clear what these amount to or where they are held. Furthermore, **Lee** has applied to emigrate to Canada and he announced to customers of **Shameless Trading** (before it closed down) that he intends to take up his emigration rights in December this year and to sell up his Hong Kong assets.
5. **Chan** owns 3,000 shares in a private Hong Kong company called **Casinos Ltd** which runs casinos in **Macau** and is very profitable. The remaining 27,000 shares are owned by **Chan's** uncle, **Fred**.

(See over the page for continuation of Question 4)

Hopeful Au ("Au"), the managing director of **Hopeless Construction Ltd**, wants a written letter of advice from you as to what steps should be taken to enforce the judgment obtained against **Shameless Trading**, bearing in mind the information available in the enquiry agents' report. He wants to know the procedural steps necessary to enforce the judgment, together with a summary of the recommended methods of execution of the judgment. **Au** has specifically said he requires no advice on statutory insolvency remedies because he, being a qualified accountant, is familiar with liquidation and bankruptcy procedures under Hong Kong law.

Question:

Please write a letter of advice to your client.

(25 marks)

[NOTE: You may omit the addresses and letterhead etc and just write the body of the advice letter)

(See Question 5 in the separate Test Paper)

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 段中指明該物質，如可能存有與其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.]

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.]

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

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

PART II

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) 不論危險藥物是否存在香港，或將進口入香港，或是否被確定、據有或存在，第 (1) 款均適用。

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——
- 循公訴程序定罪後，可處罰款 \$5,000,000 及終身監禁；及
 - 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——
- 在附表 1 第 II 部所指明的製劑；或
 - 過境途中的危險藥物，而——
 - 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
 - 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)
- 4A. 販運看來是危險藥物的物質
- 任何人不得為其本人或代表不論是在香港的其他人士——
 - 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；
 - 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
 - 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。
 - 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。
 - 任何人違反第(1)款的任何規定，即屬犯罪，可處以下罰則——
 - 循公訴程序定罪後，可處罰款 \$500,000 及監禁 7 年；及
 - 循簡易程序定罪後，可處罰款 \$100,000 及監禁 1 年。
 - 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)

- Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable—
 - on conviction on indictment, to a fine of \$5,000,000 and to imprisonment for life; and
 - on summary conviction, to a fine of \$500,000 and to imprisonment for 3 years. (*Amended 43 of 1974 s. 2*)
- This section does not apply to—
 - a preparation specified in Part II of the First Schedule; or
 - a dangerous drug which is in transit and—
 - 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
 - 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. Trafficking in purported dangerous drug

- No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Hong Kong—
 - traffic in any substance represented or held out by him to be a dangerous drug but which is not in fact a dangerous drug;
 - 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
 - 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.
- 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.
- Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable—
 - on conviction on indictment, to a fine of \$500,000 and to imprisonment for 7 years; and
 - on summary conviction, to a fine of \$100,000 and to imprisonment for 1 year.
- 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*)

2

(*Added 37 of 1980 s. 3*)

押票犯可循簡易或公訴程序審訊的罪行，可處監禁 2 年。

(由 1911 年第 30 號第 2 及 5 條修訂；由 1950 年第 22 號第 3 條修訂；由 1991 年第 50 號第 4 條修訂)

[比照 1861 年 c. 100 第 36 條 U.K.]

35. 因裁判官等保存遭毀壞船隻貨物而予以襲擊

任何人在裁判官、官員或其他獲合法授權的人執行其保存或關乎保存遇險船隻或遭毀壞、擱淺、擱流上岸或沉沒的船隻、貨物或財物的職務之際，或因其執行此等職務之故，將其襲擊及擊打或傷害，即屬犯可循公訴程序審訊的罪行，可處監禁 7 年。

(由 1911 年第 30 號第 2 及 5 條修訂；由 1911 年第 50 號第 4 條修訂；由 1912 年第 21 號第 2 條修訂；由 1991 年第 50 號第 4 條修訂；由 1997 年第 47 號第 10 條修訂)

[比照 1861 年 c. 100 第 37 條 U.K.]

36. 意圖犯罪而襲擊或襲擊等

任何人——

- (a) 意圖犯可逮捕的罪行而襲擊他人；或
- (b) 襲擊、抗拒或故意阻撓在正當執行職務的任何警務人員或在協助該警務人員的人；或
- (c) 意圖抗拒或防止自己或其他人由於任何罪行受到合法拘捕或扣留而襲擊他人，

即屬犯可循簡易或公訴程序審訊的罪行，可處監禁 2 年。

(由 1911 年第 30 號第 2 及 5 條修訂；由 1911 年第 51 號第 2 條修訂；由 1950 年第 22 號第 3 條修訂；由 1991 年第 50 號第 4 條修訂)

[比照 1861 年 c. 100 第 38 條 U.K.]

shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to imprisonment for 2 years.

(Amended 30 of 1911 ss. 2 & 5; 22 of 1950 s. 3; 50 of 1991 s. 4; [cf. 1861 c. 100 s. 36 U.K.]

APPENDIX 2

35. Assaulting magistrate, etc., on account of his preserving wreck

Any person who assaults and strikes or wounds any magistrate, officer, or other person whomsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for 7 years.

(Amended 30 of 1911 ss. 2 & 5; 50 of 1911 s. 4; 21 of 1912 s. 2; 50 of 1991 s. 4; 47 of 1997 s. 10)

[cf. 1861 c. 100 s. 37 U.K.]

36. Assault with intent to commit offence, or on police officer, etc.

Any person who—

- (a) assaults any person with intent to commit an arrestable offence; or
- (b) assaults, resists, or wilfully obstructs any police officer in the due execution of his duty or any person acting in aid of such officer; or
- (c) assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence,

shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to imprisonment for 2 years.

(Amended 30 of 1911 ss. 2 & 5; 51 of 1911 s. 2; 22 of 1950 s. 3; 50 of 1991 s. 4)

[cf. 1861 c. 100 s. 38 U.K.]

37. 撤銷申訴證明書

裁判官聆訊由受屈一方自行提出或由他人代為提出申訴的襲擊或毆打案件時，若根據案情認為未能證實所申訴罪行，或裁定該襲擊或毆打具有正當理由，或事屬輕微

37. Certificate of dismissal of complaint

If the magistrate, on the hearing of any case of assault or battery upon the merits, where the complaint is preferred by or on behalf of the party aggrieved,

3

19. 傷人或對他人身體加以嚴重傷害

任何人非法及惡意傷害他人或對他人身體加以嚴重傷害，不論是否使用武器或器具，均屬犯可循公訴程序審訊的罪行，可處監禁 3 年。

(由 1911 年第 30 號第 2 及 5 條修訂；由 1991 年第 50 號第 4 條修訂)
[比照 1861 年 100 號第 20 條 U.K.]

19. Wounding or inflicting grievous bodily harm

Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for 3 years.

(Amended 30 of 1911 ss. 2 & 5; 50 of 1991 s. 4)
[cf. 1861 c. 100 s. 20 U.K.]

APPENDIX 3

20. 為了犯可公訴的罪行而企圖使人窒息等

任何人意圖使自己或他人能犯可公訴的罪行，或意圖協助他人犯可公訴的罪行，而——

- (a) 以任何方式，企圖使他人哽噎、窒息或企圖扼勒他人咽喉；或
- (b) 以刻意使他人哽噎、窒息或扼勒他人咽喉的任何方式，企圖使該人失去知覺、不省人事或失去抵抗能力，

即屬犯可循公訴程序審訊的罪行，可處終身監禁。

(由 1911 年第 30 號第 2 及 5 條修訂；由 1991 年第 50 號第 4 條修訂)
[比照 1861 年 100 號第 21 條 U.K.]

20. Attempting to choke, etc. in order to commit indictable offence

Any person who—

- (a) by any means whatsoever, attempts to choke, suffocate, or strangle any other person; or
- (b) by any means calculated to choke, suffocate, or strangle, attempts to render any other person insensible, unconscious, or incapable of resistance,

with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for life.

(Amended 30 of 1911 ss. 2 & 5; 50 of 1991 s. 4)
[cf. 1861 c. 100 s. 21 U.K.]

21. 為了犯可公訴的罪行而使用哥羅仿等

任何人意圖使自己或他人能犯可公訴的罪行，或意圖協助他人犯可公訴的罪行，而非法對任何人使用或施用，或導致任何人服用，或企圖對任何人使用或施用，或企圖導致任何人被施用或服用哥羅仿、鴉片酩、胡椒粉或其他使人神志不清或軟弱無力的藥物、物質或物品，即屬犯可循公訴程序審訊的罪行，可處終身監禁。

(由 1911 年第 30 號第 2 及 5 條修訂；由 1991 年第 50 號第 4 條修訂)
[比照 1861 年 100 號第 22 條 U.K.]

21. Using chloroform, etc., in order to commit indictable offence

Any person who unlawfully applies or administers to or causes to be taken by, or attempts to apply or administer to, or attempts to cause to be administered to or taken by any person any chloroform, laudanum, pepper, or other stupefying or overpowering drug, matter, or thing, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for life.

(Amended 30 of 1911 ss. 2 & 5; 50 of 1991 s. 4)
[cf. 1861 c. 100 s. 22 U.K.]

Question 5 (25 marks in total with 7 sub-questions)

This question contains 7 sub-questions carrying 25 marks in total.

NOTE: Candidates are required to answer all sub-questions **in the space reserved on this question paper, not** in the answer book.

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 for **Loanshark Ltd** (“**Loanshark**”).

On 15 January 2002, you issued on behalf of **Loanshark** a Writ of Summons in the Court of First Instance of the High Court against **Mo Chin-bei** (“**Mo**”), **Tai Jo-sai** (“**Tai**”) and **Chow Jan-min** (“**Chow**”) as the guarantors to recover an unpaid loan of HK\$1 million granted to **Defaulter Ltd** (“**Defaulter**”) plus interest and costs. **Defaulter** had been put into liquidation and so **Loanshark** chose not to pursue any legal action against it. **Loanshark** claimed in the Statement of Claim indorsed on the Writ that **Defaulter** failed to repay the loan when it was due on 1 February 1996 and that the guarantors failed to pay despite written demand being first made on all three of them on 1 March 1996 pursuant to a joint and several guarantee signed by them on 1 February 1995.

Your process server served the Writ on **Mo**, **Tai** and **Chow** by registered post at their respective residential addresses stated in the guarantee. Only **Chow** filed an Acknowledgment of Service stating an intention to defend. You obtained judgment in default against the other two defendants when neither of them had filed an Acknowledgment of Service by the deadline prescribed under the Rules of the High Court.

Sub-Question 1

You obtain on behalf of **Loanshark** a garnishee order nisi against **Mo**'s banker, the **SAR Bank**, and it transpires that there is a credit balance of HK\$200,000 in **Mo**'s account.

Five (5) days after obtaining the garnishee order nisi, you receive from the Post Office as uncollected mail the Writ previously posted to **Mo**.

What steps should you recommend Loanshark to take? Briefly explain your answer.
(3 marks)

Sub-Question 4

ASSUME FOR THIS SUB-QUESTION ONLY THAT YOU ACT FOR Chow.

Immediately after the hearing before Master Law, **Chow** tells you that indeed he has promotional documents printed by **Loanshark** showing that the latter was at the material time carrying on business as a moneylender.

What application(s) should you recommend Chow to make? Briefly explain your answer and discuss the merits of the application(s). (5 marks)

Sub-Question 6

Which of the following statements regarding an action begun by writ in the District Court is/are correct?

- (1) A defendant who wishes to appeal against a monetary judgment given by a District Court Judge at trial has a right to appeal to the Court of Appeal without leave so long as he lodges the appeal within the prescribed time.
- (2) The District Court has no jurisdiction to grant Mareva Injunctions.
- (3) A plaintiff may commence legal proceedings for HK\$1 million as damages for breach of contract directly in the District Court without leave provided that the defendant consents.

Please put a tick against the answer you consider is correct.

(2 marks)

- (a) (1) only
 (b) (2) only
 (c) (3) only
 (d) (2) and (3)
 (e) none of the above choices

Sub-Question 7

Which of the following statements regarding an action begun by writ in the District Court is/are correct?

- (1) If a Judge in chambers hearing a contested interlocutory application makes an Order that "Costs of the application be to the Plaintiff", the Plaintiff may not proceed to tax his costs unless and until the whole proceedings are concluded.
- (2) A Judge in chambers hearing a contested interlocutory application has jurisdiction to make a gross sum assessment of costs in favour of the successful party instead of ordering taxed costs.
- (3) A limited company being sued as a defendant may be represented by its director to defend the proceedings as of right if the director has filed at court an affidavit stating that he has been duly authorised to act on behalf of the company, exhibiting a duly certified copy of the relevant board resolution.

(See over the page for a continuation of Sub-Question 7)

Please put a tick against the answer you consider is correct.

(2 marks)

- (a) (1) only
- (b) (2) only
- (c) (3) only
- (d) (2) and (3)
- (e) none of the above choices

END OF TEST PAPER

