

**2004 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD II: CIVIL AND  
CRIMINAL PROCEDURE**

Friday, 12 November 2004



# HEAD II: CIVIL AND CRIMINAL PROCEDURE

## TEST PAPER

12 November 2004

### 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, 4 and 5 (Civil Questions) in Answer Book 2
5. 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.
6. Start each answer on a separate page of your answer book.
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.

# 2004 Overseas Lawyers Qualification Examination

## Head II: Civil and Criminal Procedure

### Question 1 (25 marks in total)

You are a solicitor with Deadwoods. The criminal litigation partner is ill and you have been dealing with his work.

Late one evening you are telephoned at home by X. X says that his friend Y has been arrested and taken to Tsim Sha Tsui Police Station. Y is a client of the firm and you go to Tsim Sha Tsui Police Station. On arrival, you ask the Duty Officer (DO) if you can see Y. The DO tells you that the Officer in Charge of the case (OIC) has left instructions that Y is not to be allowed access to a lawyer until further notice.

#### Questions:

- (a) What action would you take and why would you do that? (2 marks)
- (b) If the DO told you that Y had been informed you were in the police station but he (Y) had declined to see you, what action would you take and why would you do that? (3 marks)

Eventually, the OIC returns to the police station. He says you may interview Y but a police officer must be present and Y must remain handcuffed to the officer. He explains this is because of a recent attack upon a solicitor by a prisoner he was interviewing and that the police must ensure that lawyers are not injured by persons in police custody.

#### Question:

- (c) What would you do and why would you do that? (3 marks)

Eventually you interview Y. Y says he has been arrested on suspicion of a burglary in a dwelling house in which the householder was threatened with a knife. Y denies his involvement and says he wants to make a statement to the police about where he was at the date and the time of the burglary to show he did not do it. Y says he has witnesses who can prove he could not have committed the burglary because he was with them.

#### Question:

- (d) What advice would you give Y and why would you do that? (5 marks)

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

You then find out that Y has already made a written statement to the police admitting his involvement in the burglary. Y says that he only made the statement because he had been forced to lie on his back on the floor, a telephone directory was placed on his chest and a large officer had jumped up and down on his chest telling him to confess.

**Question:**

- (e) **What advice would you give Y and what, if any, action would you take?**  
(5 marks)

Whilst you are interviewing Y, the OIC interrupts the interview and tells you that Y is to be charged with aggravated burglary contrary to s.12 of the Theft Ordinance, Cap. 210\*. You are present while Y is charged. The OIC says that bail will be refused and Y will be brought up before a magistrate tomorrow. Y says you must get him bail as soon as possible.

**Question:**

- (f) **What advice will you give Y about bail, why would you do that and what, if any, information will you want from the police and/or the prosecutor and from Y?**  
(7 marks)

*\*[NOTE: Section 12 of the Theft Ordinance, Cap. 210 is attached at Appendix 1 at the back of the Test Paper.]*

## Question 2 (25 marks)

**Carol**, a 26 year old clerk with a clear record, appeared before a magistrate charged with the theft of a bottle of perfume from the SpendN'Prosper Store in Central contrary to s. 9 of the Theft Ordinance, Cap. 210\*. **Carol** has suffered from depression since the death of her husband and son in a road accident. She has been receiving treatment from a specialist, Dr Fang.

After being arrested she was taken to Central Police Station. She made a written statement under caution admitting she took the perfume and had left the shop without paying for it. She said in her statement that she forgot to pay as her mind was on other things. She also said that after entering the store she suddenly realised she was late for an appointment with Dr Fang and had left the store in a hurry.

After being charged, **Carol** was bailed to attend Eastern Magistrates' Court. **Carol** attended court. She was unrepresented. When the charge was read to her she pleaded guilty. The prosecution then handed up the Brief Facts to the magistrate. Those facts referred to **Carol** admitting in a statement under caution that she had taken the perfume and left the shop without paying, that she claimed she forgot to pay because she had many things on her mind, that she had suddenly realised she was late for an appointment with her doctor, Dr Fang, who was treating her for depression, and left the store in a hurry. Those Facts were read aloud to **Carol** and she admitted them. In mitigation she said she was sorry and would not do it again. The magistrate remanded **Carol** on bail for two weeks for a probation report (PR) and a community service report (CSR).

**Carol** appeared for sentence yesterday. She was again unrepresented. The PR did not recommend probation, describing **Carol** as uncooperative and uncommunicative. The CSR did not recommend community service because **Carol** was being treated for depression and, accordingly, the prospects of her successfully completing a Community Service Order were not good.

The magistrate summarised the reports to **Carol** and told her 'I don't suppose there is anything else you can say', to which **Carol** replied 'No'. The magistrate then said that even if he had wanted to, it was not possible to make a probation order or a community service order because the reports had not recommended either a probation or a community service order. **Carol** was sentenced to three months immediate imprisonment.

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

You now act for **Carol**. You have seen her at the Correctional Services Institution where she is being held. She has told you that she was taking anti-depressant pills prescribed by Dr Fang which had caused her memory loss and loss of concentration. She also says she had no recollection of taking the perfume until she was stopped outside the store by the store detective and that she was frightened and confused. She has said that the police officer who arrested her and who took her written statement was very nice to her and told her that the most she would get was a fine. **Carol** wants you to get her out of prison as soon as possible. You have obtained a medical report from Dr Fang. That report confirms that **Carol** was taking a medically prescribed anti-depressant that was known to have the side effects **Carol** had referred to in her statement to the police.

**Question:**

**What issues, if any, arise from these facts? How would you advise Carol and why would you do that? What, if any, action might you take on Carol's behalf, what would that entail and why would you do it?**

**(25 marks)**

*\*[NOTE: Section 9 of Theft Ordinance, Cap. 210 is attached at Appendix 2 at the back of the Test Paper.]*

### **Question 3 (25 marks)**

You are Sun Lu See. It is Friday, 12 November 2004, your first day as a solicitor with the well known Hong Kong firm of Xu, Grabit & Ren. You arrive early, but as you enter the office, the litigation partner for whom you will be working rushes over. He tells you that he must leave immediately for an all day hearing in Court. He tells you that he has put some papers on your desk which require immediate attention and that he has left you a note explaining what you must do. He then leaves.

On your desk you find the following documents:

1. the note from the litigation partner;
2. a letter sent by fax from a client;
3. a copy of a Writ of Summons.

Copies of these documents are annexed as Annexes 1, 2, 3 and 4 to Question No. 3 of this examination paper.

#### **Question:**

**You are required to comply with the instructions given to you by the litigation partner and the client.**

**(25 marks)**

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

**Annex 1 to Question 3**

**Memorandum**

To: Sun Lu See  
From: Ren Bun  
Date: 12 November 2004

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I realise that this is your first day in the office (welcome!) but we have an emergency. I will be in Court all day so I am unable to deal with it. However, I think the matter is fairly straightforward and you should be able to give the client the advice he needs without difficulty.

Jasper Jensen is one of the firm's major clients. He is very demanding and does not tolerate letters of advice which are not clear and precise. Unfortunately, he requires an urgent letter of advice, which he will come to the office to collect personally at noon today.

The position is that he has been served with a writ. He has faxed over a copy with a covering letter briefly explaining the background. At this stage, all he needs is a letter advising on the usual preliminary matters of procedure, any points which should or can be taken to contest the writ or attack the other side and the general timetable. I suggest you limit the advice up to the filing of the defence for the time being. However, I have not had time to consider the writ myself. Please prepare the letter of advice for him to collect.

Thank you.

*Ren Bun*

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



### Annex 2 to Question 3

Letter

Jasper Jensen  
19D, ABC Mansions, The Peak, Hong Kong.  
Tel: 2233 4455 Fax: 5544 3322 email: jj@olqe.com

#### URGENT FAX TRANSMISSION

Date: 12 November 2004

To: Ren Bun, Xu, Grabit & Ren

Dear Mr Ren,

I need your urgent advice on the attached Writ of Summons. I have not faxed the Acknowledgement of Service annexed to the Writ.

It appears that Mr Chown (Clown would be more appropriate) came to Hong Kong on holiday and took the opportunity to issue this Writ. His company is not in business here.

I do not know whether the Writ has been served on my company which is named as 1<sup>st</sup> Defendant. My company traded at a loss during the past 2 years and so about a week ago I closed down its office at Hop Hing Factory Building and temporarily ceased all its business and operation. I do not intend to formally wind up the company at the moment, as I want first to sort out its accounts and other matters. I have therefore decided to move its registered office to my residential address for the time being and I am instructing your secretarial department to file the details with the Companies Registry.

Chown got my residential address wrong. I am not living at 16C, but at 19D, ABC Mansions. However, I met him in the Mandarin Hotel where I was having lunch with my wife yesterday. He came over to my table and threw a copy of the writ onto the table, shouted "Gotcha" then stormed off. It was very embarrassing.

The claim is nonsense. In fact, his company owes mine millions in unpaid commission for garments delivered to it. I therefore refused to deliver the 50,000 ski suits to his company unless it had first settled the outstanding commission. How outrageous it is that instead of paying me the commission, he now sues us! I want to hit him hard. Please advise urgently on the position and any points I can take against him in these proceedings. Please also let me know the general timetable for the proceedings, as I want a better idea of what needs to be done on my side in the near future. This is the first time that I encounter any legal proceedings.

Kind regards,

Yours faithfully,

*Jasper Jensen*

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

**Annex 3 to Question 3**

HCA 12345/2004

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION NO. 12345 of 2004

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BETWEEN

FASHION CONNECTIONS INC.

Plaintiff

and

IMAGINATIVE CLOTHING LIMITED

1<sup>st</sup> Defendant

JASPER JENSEN

2<sup>nd</sup> Defendant

WRIT OF SUMMONS

To the 1st Defendant Imaginative Clothing Limited, whose registered office is at Room 507, 5<sup>th</sup> Floor, Hop Hing Factory Building, 27 Tsing Tao Road, Tsuen Wan, New Territories, Hong Kong and the 2<sup>nd</sup> Defendant whose address is 16C, ABC Mansions, The Peak, Hong Kong.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Registry of the High Court the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Registry of the High Court this 9th day of November, 2004.

**REGISTRAR**

*Note:-* This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

**IMPORTANT**

Directions of Acknowledgement of Service are given with the accompanying form.

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

**Annex 4 to Question 3**

**INDORSEMENT OF CLAIM**

The Plaintiff claims:

1. against the 1<sup>st</sup> Defendant damages of HK\$5,000,000.00 for breach of contract for failure by the 1<sup>st</sup> Defendant to deliver on time and in satisfactory condition 50,000 ski suits pursuant to a written agreement dated 1 April 2003 made between the Plaintiff and the 1<sup>st</sup> Defendant;
2. against the 2<sup>nd</sup> Defendant as director of the 1<sup>st</sup> Defendant punitive damages in the sum of HK\$20,000,000.00;
3. against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant, interest and costs.

Dated the 9th day of September 2004.

Sd. J. Chown  
Vice President  
Fashion Connections Inc.

(Where the Plaintiff's claim is for a debt or liquidated demand only: If, within the time for returning the Acknowledgement of Service, the Defendant pays the amount claimed and \$1,455 for costs and, if the Plaintiff obtains an order for substituted service, the additional sum of \$500, further proceedings will be stayed. The money must be paid to the Plaintiff or his Solicitor.)

THIS WRIT was issued by Fashion Connections Inc whose address is 10<sup>th</sup> Floor, Bush Towers, 50<sup>th</sup> Avenue, New York, United States of America.

#### Question 4 (25 marks)

As a junior associate solicitor you have been working with Mr Au, a partner of the firm of ABC & Co, acting for the Plaintiff in a civil litigation case in the High Court.

Your client is **Mr Eric Pang**, a Hong Kong born entrepreneur now resident in Canada who is the beneficial owner of all the shares in **Span Limited** (“Span”), a private limited company registered in Hong Kong.

**Span** was the registered owner of three commercial premises in Hong Kong, all of which were let to tenants paying a commercial rent.

Mr Qing and Mr Sun, local Hong Kong residents, were the other two directors of **Span**. They were appointed by **Mr Pang** to manage **Span** as he spent most of his time in Canada. Mr Qing and Mr Sun held **Mr Pang**'s shares in **Span** on trust for him.

**Mr Pang** claims in his proceedings that about three years ago, without notice to him and without any valuable consideration being provided by the third party concerned, namely **Bandit Properties Limited** (“Bandit”), another Hong Kong company, Mr Qing and Mr Sun passed board resolutions of **Span** which resulted in it transferring all three properties to **Bandit**. There are four defendants: **Span**, as a nominal defendant, Mr Qing, Mr Sun and **Bandit**.

As **Mr Pang** is not resident in Hong Kong, he voluntarily provided security for costs by way of a payment into court. A split trial (liability first, then quantum) was ordered.

The trial on liability finished three months ago, two years after the writ had been issued. Pending the trial no rental income from the three properties has been paid to **Span**. Three weeks ago judgment on liability was handed down. The Order has not yet been drawn up. Your note of the Order made is attached as Annex 1 to Question 4.

Mr. Au is on leave. Today you received a letter from the solicitors representing **Bandit**. This is attached as Annex 2 to Question 4. You sent a copy of this letter to **Mr Pang** and you have now received an e-mail from him. **Mr Pang** informs you that he has heard that Mr Qing and Mr Sun are taking steps to hide their assets. He says he knows that Mr Au is away and that counsel will not be able to advise for two days. He asks you to prepare a note of the issues on which Counsel needs to advise and to set out your preliminary views on those issues, but to limit your note to procedural matters only. He requests that the note should cover:

1. How will the Court of Appeal approach the two main issues raised by **Bandit**? Does the Court of Appeal hear all the evidence again? Will it hear the new evidence of Mr Chan?
2. The defendants have not even paid any costs of the action – can they appeal without doing so?
3. The meaning of the different costs orders?

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

4. Can I get my security for costs back from the court and, if so, how?
5. Can the assets of Mr Qing, Mr Sun and Bandit be preserved and the judgment be enforced in Hong Kong? What evidence does the court need?

Mr Qing's and Mr Sun's solicitors have not indicated whether they are going to appeal.

**Question:**

**Please prepare the note required by the client.**

**(25 marks)**

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

**Annex 1 to Question 4**

**ERIC PANG v QING, SUN AND OTHERS**

**FILE NOTE: TERMS OF ORDER**

1. Declaration that Mr Qing and Mr Sun are in fraudulent breach of their duties as directors of Span Limited.
2. Declaration that Mr Qing and Mr Sun and Bandit Properties Limited together conspired to defraud Span Limited and Mr Pang.
3. Declaration that Bandit Properties Limited holds on constructive trust for Span Limited the commercial properties transferred to Bandit Properties Limited and all the net rental income derived from there since the date of their transfer to Bandit Properties Limited.
4. Bandit Properties Limited is ordered to transfer the properties back to Span Limited.
5. The defendants (other than Span Limited itself) are jointly and severally liable to Span Limited in damages to be assessed or for an account of profits.
6. Indemnity costs against Mr Qing and Mr Sun (except as already ordered previously, i.e. previous costs orders in the action).
7. Costs on a party and party basis against Bandit Properties Limited.
8. No order as to costs against Span Limited.

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

## Annex 2 to Question 4

Dear Sirs,

As you know, we act on behalf of Bandit Properties Limited ('Bandit'). We write to inform you that we have instructions from Bandit to appeal to the Court of Appeal against the judgment on two main grounds, namely that the judge erred in finding that: (i) as a matter of fact Bandit had the requisite knowledge of the fraud and (ii) as a matter of law, Span Limited was entitled to an order for the return of the properties which had all been charged to third parties by Bandit subsequent to their transfer to it. In respect of ground (i), one of Bandit's former employees, Mr Chan, who had refused to give evidence previously and was based in the PRC, has now agreed to give evidence. We will be serving a witness statement for him shortly.

We write now to request that your client consents to a stay of the proceedings against Bandit pending the outcome of the appeal. Otherwise, we have instructions to seek a stay of execution of the judgment pending appeal, as Bandit is not financially in a position to comply with the orders, in particular for delivery up of the properties.

Yours faithfully.

## Question 5 (25 marks in total)

This question contains 3 sub-questions carrying 25 marks in total.

**NOTE:** 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 **Mr Jack So**. He has recently been served with a Writ issued in the Court of First Instance. You note from the Writ that the Plaintiff is named as “**Foughty Equipment Trading (a firm)**” while the Defendant is named as “**So So Construction (a firm)**”. Your business searches show that **Ng Ying Cheung** is the sole proprietor of Foughty Equipment Trading while So Family Ltd is the sole proprietor of So So Construction. **Mr So** further explains to you that So Family Ltd was a Hong Kong company set up by his deceased father about 20 years ago and is now owned by **Mr So** and his wife who are the only shareholders and directors. It carries on renovation and construction business in the name of So So Construction and export trading business in the name of So So Trading.

### Sub-Question 1

**Are there any defects in the way the Plaintiff and the Defendant are described in the Writ? If so, what are the consequences and what remedial steps, if any, can the Plaintiff take?**

**(4 marks)**

### FURTHER FACTS

Assume that there is no defect in the description of the parties (or all existing defects have now been remedied) and you continue to act for the Defendant. **Mr So** shows you the relevant sales contract (copy of the contract is annexed as Annex 1 to Question 5). He further explains that he first came to know **Ng Ying Cheung** early this year when **Ng** asked him to renovate **Ng**'s house in Stanley. In the course of renovation, he learnt that **Ng** was carrying on a business of selling heavy construction equipment. At that time the Defendant had just entered into a lucrative contract with the MTR Corporation for the removal of earth and rubbish from one of its construction sites. To do this work, the Defendant needed a piece of earth moving equipment which was capable of moving and loading not less than 150 tonnes of rock spoil per hour. When **So** mentioned this to **Ng**, **Ng** said Caterpillar (US) Inc., one of the world's best-known equipment manufacturers, had recently released a new model CX800P, which would suit his requirement.

*(See the next page for a continuation of Question 5)*



The following day, **See Dan**, Ng's sales manager, came to **So**'s office and gave him the sales contract. **So** said the price was too high and asked **See** if the price could further be reduced, emphasizing that he was a good friend of Ng. **See** said he would need to take further instructions. The following morning, **See** telephoned **So** and said **Ng** agreed to give him a 10% rebate. **So** immediately said that he would strike the deal. **See** then asked him to first pay a deposit of \$100,000 into their bank account and to complete the formality by signing the sales contract and faxing it back to him. **See** said after receipt of the signed sales contract he would issue **So** a credit note for \$200,000 for the rebate. Later in the afternoon **So** transferred the sum of \$100,000 into the designated bank account and faxed to **See** the signed sales contract.

About a week later, the MTR Corporation informed **So** that it would like to advance the completion date for the removal work by one month and agreed to pay an extra sum of \$300,000. **So** therefore immediately telephoned **See** to check if it was possible to have the CX800P equipment delivered by 1 May 2004. **See** later telephoned **So** that in order to advance the delivery date to 1 May 2004, **So** had to pay an extra sum of \$200,000. **So** immediately confirmed his agreement. As the increase in price just balanced out the 10% rebate, **So** agreed that **See** no longer needed to send him the credit note. **So** then confirmed with the MTR Corporation his agreement to advance the completion date.

**So** says the CX800P equipment was only delivered to him on 28 May. When he complained to **Ng** about the delay, **Ng** denied that there was any agreement to advance the delivery date. **Ng** said **See** had already left his company. **So** felt very angry and said unless and until **Ng** agreed to compensate him for his loss as a result of the delay, he would not pay the balance of the purchase price to **Ng**.

In the end, **So** could not complete the removal work on time. MTR Corp initially asked for a sum of \$2m as damages for the delay and **So** suggested a much lower sum of \$200,000. He is still negotiating with the MTR Corporation as to the amount of damages.

### **Sub-Question 2**

**Please prepare a Defence (and Counterclaim, if you consider appropriate) to the Statement of Claim (annexed as Annex 2 to Question 5). If there are insufficient facts available, you should set out in square brackets the description of such facts (e.g. [office address]) or the additional information you require (e.g. [further details of the client's assets]).**

**You do NOT need to write down the title of the action or the names of the parties. You should start with the heading "Defence [and Counterclaim]"**

**(15 marks)**

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

## **FURTHER FACTS**

The proceedings continue. The Defendant subsequently settled with the MTR Corporation and paid the latter \$600,000 as agreed damages for the delay in completing the removal work. The settlement agreement with the MTR Corporation was disclosed to the Plaintiff on mutual discovery.

The Plaintiff now takes out a summary judgment application for the claim of \$1.9 million plus interest and costs.

### **Sub-Question 3**

**How would you advise So as to the Plaintiff's chance of success in obtaining the summary judgment, and, if applicable, the likely amount of the summary judgment and interest rate thereon.**

**(6 marks)**

*(See the next page for a continuation of Question 5)*

## Annex 1 to Question 5

### Foughty Equipment Trading

Office: 1234, PCLL Building, Causeway Bay, Hong Kong  
Tel: 2222 4444 Fax: 2222 3333

We offer to sell the CX800P Equipment manufactured by Caterpillar (US) Inc to your company on the following terms:

1. Price: HK\$2,000,000
2. Quantities: 1 set
3. Payment:
  - (a) HK\$100,000 deposit, payable upon acceptance of this offer.
  - (b) Balance of the purchase price payable within 7 days upon delivery.
  - (c) In case of any default in payment, without prejudice to our right to elect to terminate the contract, we may proceed with the contract and charge you interest on the outstanding balance at the agreed rate of 24% per annum from the date of default.
4. Time for Delivery: 2 months from date of acceptance of this offer.

*See Dan*

See Dan  
Sales Manager  
28 March 2004

**We agree to purchase on the above terms.**

*Jack So*

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For and on behalf of  
So So Construction  
Date: 29 March 2004

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

**Annex 2 to Question 5**

**STATEMENT OF CLAIM**

1. By an agreement in writing (“the Agreement”) between the parties dated 28 March 2004 and signed by the Defendant on 29 March 2004, the Plaintiff agreed to supply to the Defendant a Caterpillar CX800P Equipment (“the Equipment”) for a total price of HK\$2m.
2. The Agreement contains the following terms:
  - (a) the Defendant shall first pay a deposit of \$100,000.
  - (b) the Defendant shall pay the balance of \$1,900,000 within 7 days upon delivery; and
  - (c) Time for delivery shall be 2 months from the date of contract.
3. The Defendant duly paid the deposit of \$100,000 and the Plaintiff duly delivered the Equipment on 28 May 2004.
4. The Defendant has refused and continues to refuse to pay the outstanding price of \$1,900,000 owed under the Agreement.

**AND THE PLAINTIFF CLAIMS:**

1. The sum of \$1,900,000.
2. Interest.
3. Costs.

Dated the 14<sup>th</sup> day of October 2004

**END OF TEST PAPER**

- (b) unlawfully altering or erasing any program, or data, held in a computer in the building or in a computer storage medium in the building; and
- (c) unlawfully adding any program or data to the contents of a computer in the building or a computer storage medium in the building. (*Added 23 of 1993 s. 6*)
- (4) Any person who commits burglary shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years.

[*cf. 1968 c. 60 s. 9 U.K.*]

#### 12. Aggravated burglary

- (1) A person commits aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive.
- (2) For the purposes of subsection (1)—
- “explosive” (炸藥) means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose;
- “firearm” (火器) includes an airgun or air pistol;
- “imitation firearm” (仿製火器) means anything which has the appearance of being a firearm, whether capable of being discharged or not;
- “weapon of offence” (攻擊性武器) means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use.
- (3) Any person who commits aggravated burglary shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

[*cf. 1968 c. 60 s. 10 U.K.*]

#### ~~13. Removal of articles from places open to the public~~

- (1) Subject to subsections (3) and (4), where the public have access to a building in order to view the building or part of it or a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 5 years.
- (2) For the purposes of subsection (1)—
- “collection” (收藏品) includes a collection got together for a temporary purpose, but references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

- (b) 非法地更改或刪除該建築物內任何電腦或該建築物內任何電腦貯存媒介所保存的任何程序或數據；及
- (c) 非法地將任何程序或數據加入該建築物內任何電腦或該建築物內任何電腦貯存媒介內。 (由1993年第23號第6條增補)
- (4) 任何人犯入屋犯法罪，即屬犯罪，循公訴程序定罪後，可處監禁14年。

(*比照 1968 c. 60 s. 9 U.K.*)

#### 12. 嚴重入屋犯法罪

- (1) 如任何人在犯入屋犯法罪時攜帶任何火器或仿製火器，任何攻擊性武器，或任何炸藥，即屬犯嚴重入屋犯法罪。
- (2) 就第(1)款而言——
- “火器”(firearm)包括長槍型氣槍或手槍型氣槍；
- “仿製火器”(imitation firearm)指任何看似是火器的東西，不論是否能夠發射；
- “攻擊性武器”(weapon of offence)指任何製造或改裝用以傷害人或使人傷殘的物品，或指攜帶該物品的人意圖作如此使用的物品；
- “炸藥”(explosive)指任何製造用以產生實際爆炸效果的物品，或指攜帶該物品的人意圖作該用途的物品。
- (3) 任何人犯嚴重入屋犯法罪，即屬犯罪，循公訴程序定罪後，可處終身監禁。

(*比照 1968 c. 60 s. 10 U.K.*)

#### ~~13. 從對公眾人士開放的地方取走物品~~

- (1) 除第(3)及(4)款另有規定外，凡公眾人士可進入某建築物以參觀該建築物或其部分，或參觀存放在該建築物內的收藏品，即任何人如無合法權限而從該建築物或其圍地取走在該建築物或其部分或其圍地向公眾人士展出的物品或其部分，或取走收藏其內以供向公眾人士展出的物品或其部分，即屬犯罪，循公訴程序定罪後，可處監禁5年。
- (2) 就第(1)款而言——
- “收藏品”(collection)包括為臨時目的而聚集一起的收藏品，但本條所提述的收藏品，並不適用於為達致銷售或其他商業交易目的而製造或展覽的收藏品。

## THEFT, ROBBERY, BURGLARY, ETC.

## 9. Theft

Any person who commits theft shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

[cf. 1968 c. 60 s. 7 U.K.]

盜竊罪、搶劫罪、入屋犯法罪等

## 9. 盜竊罪

任何人犯盜竊罪，即屬犯罪，循公訴程序定罪後，可處監禁 10 年。

(比照 1968 c. 60 s. 7 U.K.)

~~10. Robbery~~

(1) A person commits robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2) Any person who commits robbery, or an assault with intent to rob, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

[cf. 1968 c. 60 s. 8 U.K.]

~~10. 搶劫罪~~

(1) 任何人如偷竊，而在緊接偷竊之前或在偷竊時，為偷竊而向任何人使用武力，或使或試圖使任何人害怕在當時當地受到武力對付，即屬搶劫罪。

(2) 任何人犯搶劫罪，或意圖搶劫而襲擊他人，即屬犯罪，循公訴程序定罪後，可處終身監禁。

(比照 1968 c. 60 s. 8 U.K.)

## 11. Burglary

(1) A person commits burglary if—

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2); or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1)(a) are—

(a) stealing anything in the building or part of a building in question; (b) inflicting on any person therein any grievous bodily harm or raping any woman therein; and (c) doing unlawful damage to the building or anything therein.

(3) References in subsections (1) and (2) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

(3A) The reference in subsection (2)(c) to doing unlawful damage to anything in a building includes—

(a) unlawfully causing a computer in the building to function other than as it has been established by or on behalf of its owner to function, notwithstanding that the unlawful action may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer,

## 11. 入屋犯法罪

(1) 任何人如作出下列事項，即屬入屋犯法罪——

(a) 作為侵入者進入任何建築物或其部分，意圖犯第(2)款所述的任何罪行；或

(b) 作為侵入者在進入任何建築物或其部分後，偷竊或企圖偷竊在該建築物或其部分內的任何東西，或使或企圖使在該處的任何人的身體受到嚴重傷害。

(2) 第(1)(a)款所描述的罪行是——

(a) 偷竊在該建築物或其部分內的任何東西；

(b) 使在該處的任何人的身體受到嚴重傷害，或強姦在該處的婦女；及

(c) 非法損壞該建築物或其內的任何東西。

(3) 第(1)及(2)款中對建築物的提述，亦適用於有人居住的車輪或船隻，而不論在任何該等車輪或船隻居住的人是否在该車輛或船隻內，該提述仍適用。

(3A) 第(2)(c)款中對非法損壞建築物內的任何東西的提述，包括——

(a) 非法地導致該建築物內任何電腦，以並非該電腦的擁有人或他人代該擁有人所設立的電腦運作方式運作，即使該非法行為並不損害該電腦或在該電腦內所保存的數據的可靠性，亦不損害在該電腦內所保存的數據的可靠性；