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# 2008 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

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## HEAD V: PRINCIPLES OF COMMON LAW

Friday, 12 December 2008



# **Head V: PRINCIPLES OF COMMON LAW**

## **TEST PAPER**

**12 December 2008**

### **Instructions to Candidates:**

- 1. The duration of the examination is 2½ hours (which includes 30 minutes dedicated reading time).**
- 2. You are not permitted to bring into the examination any books, documents or other materials.**
- 3. At the commencement of the 30 minutes reading time, you will be supplied with 10 questions, together with an English dictionary and a copy of Mozley and Whiteley's law dictionary by J. E. Penner.**
- 4. You will be permitted 30 minutes to consider the test questions, choose 4 questions upon which to be examined (one from each of Parts A, B, C and D of the test paper) and make notes on the questions supplied.**
- 5. At the expiry of the 30 minutes reading time, you will be called before a panel of between 2 and 4 Examiners who will assess your understanding of the topic or subject concerned.**
- 6. Where a question has two sections, you must answer both sections of the question. Each question is worth 25 marks.**
- 7. Wherever possible, support your answer with reference to decided cases and legislation.**
- 8. During the oral examination, you may consult only the notes that you have made during the 30-minute reading time on the questions supplied.**
- 9. Do not take this question paper with you when you leave the examination room.**

# **2008 Overseas Lawyers Qualification Examination**

## **Head V: Principles of Common Law**

### **Part A (Constitutional Law & Introduction to Legal System)**

#### **Question 1 (25 marks)**

“Whereas before 1 July 1997 the principles of English common law and equity automatically applied to Hong Kong, so far as they were appropriate to the circumstances of Hong Kong, there is no such continuous reception after that day.”

**Examine the above statement, explaining the present importance of the principles of English common law and rules of equity for Hong Kong.**

#### **Question 2 (25 marks)**

Answer both question (a) and (b)

- (a) What do you understand by vertical and horizontal stare decisis?
- (b) State the circumstances when a court in Hong Kong will not be bound by its own decision or that of a higher court.

**End of Part A**

## **Part B (Law of Contract)**

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

Alan advertised his home computer for sale in Monday's newspaper for "HK\$4,000 for quick sale – best offer secures". Ben came to see the computer on Tuesday and said that he would give Alan HK\$3,000 for it. He told Alan to let him know by Friday. On Wednesday morning Danny answered the advertisement and came round to look at the computer too. Afterwards Danny posted a letter to Alan. In that letter Danny confirmed that he would agree to buy the computer for the HK\$4,000 asked by Alan. However, before Alan received Danny's letter, Danny telephoned and told Alan that he did not want the computer after all.

On Thursday Alan posted a letter to Ben agreeing to sell the computer for HK\$3,000, but Ben did not receive this letter until Saturday. Ben then went to Alan's house and produced HK\$2,000 in cash saying, "that's the best I can do", but Alan refused.

**Advise Alan on his contractual obligations, if any, towards Ben and Danny.**

### **Question 4 (25 marks)**

Vanessa was a pop singer, famous both in Hong Kong and on the mainland. On 1 August 2007, she signed a contract with Wonderful Music Entertainment Limited ("WME"), a company specialized in organising concerts, to perform in a concert in Hong Kong on 25 December 2007. Vanessa was to receive HK\$1 million for singing in the Xmas concert. Because of Vanessa's fame and the fact that Vanessa was taking part in the concert, WME was able to sell lots of tickets at very high prices. By 15 September 2007 all tickets were sold out. On 15 October 2007 Vanessa told WME that she had accepted an engagement elsewhere for which she would be paid a HK\$2 million fee. Eventually, WME agreed to raise her fee to HK\$2.5 million and paid HK\$0.5 million by 15 November 2007 as Vanessa demanded. On 15 December 2007, Vanessa wrote to say that she would be off to Beijing to do some filming and might not be back in time for the Xmas concert in Hong Kong. In fact, Vanessa did not go to Beijing but was hit by a car on 23 December 2007 while crossing a street. She was admitted to a hospital and was unable to perform on 25 December 2007 because she was in a critical condition.

**WME seeks your legal advice in relation to the contract they had with Vanessa.**

*(See the next page for a continuation of Part B)*

### **Question 5 (25 marks)**

Alan's grandson, Edward, aged 21, was studying for a business course at The Chinese University of Hong Kong. Edward was staying in one of the halls of residence provided by the University and it was a contractual requirement that students in residence were non-smokers. Edward therefore gave up smoking. Alan, however, was worried that under the pressure of preparing for the examinations Edward would start smoking again. So Alan promised to pay Edward HK\$2,000 if Edward did not smoke at all until the course was completed. Alan also promised to buy Edward a new suit if he passed the examinations.

Alan owns a number of restaurants and asked Edward to review the business operations of those restaurants and make a report recommending how the business could be improved. Edward produced the report and Alan was pleased with the results and said he would give Edward HK\$30,000 for Edward's hard work.

Edward passed his examinations. He did not smoke in the hall of residence and has not started smoking again. However, Alan has not made either of the promised payments, or bought the suit. Alan seeks your advice as to whether he is legally obliged to do so.

**Please advise Alan.**

**End of Part B**

## **Part C (Introduction to Law of Torts)**

### **Question 6 (25 marks)**

Answer both question (a) and (b)

- (a) Wilson came from the Mainland to Hong Kong on a two way permit. He was prohibited from obtaining any employment during his stay. He met Sihon who was carrying on a construction business in the New Territories. Sihon was constructing a 50-storey building. There was a scarcity of construction site workers. Sihon employed Wilson even though he knew that Wilson was not allowed to work in Hong Kong. Wilson plunged to his death from the 33<sup>rd</sup> floor of the building under construction, largely due to the negligence of another worker employed by Sihon.

**Advise Wilson's widow if she has a claim against Sihon.**

- (b) Christine was a first year LLB student studying at City University. She was also a learner driver and she practised her driving in the vicinity of the university. While she was driving in nearby Cornwall St, the traffic had stopped as two groups of people were fighting. Several of them were lying in a pool of blood, and some appeared to have died. She was in great shock. As she turned the corner, she saw a fleet of ambulances overtaking other cars at great speed. Christine panicked. She tried to brake, but her car did not stop and smashed into a stationary vehicle. A passenger in the vehicle, Wesley, was thrown from the rear seat to the front, suffering cuts and bruises. Wesley was not wearing a seat belt at that time. Wesley was taken to hospital. The nurse at the hospital applied some paste without cleaning the wounds. This caused serious infection and Wesley had to stay in the hospital for a month instead of a few days.

**Advise Christine.**

### **Question 7 (25 marks)**

Express Newspaper Inc. in Washington DC uploaded an article about a Chinese businessman, Andrew, on its online edition. The article made a scathing attack on the professional competence of Andrew, stating, inter alia, that Andrew's success in business was largely due to unethical practices, sale of fake products, sensational advertising and gross exaggeration of the quality of products that he marketed. Andrew had an excellent business reputation not only in Hong Kong and China but also in Singapore and Australia. The article was downloaded by Andrew's business associates in these places. As a result, Andrew's business in Hong Kong was badly affected. Those who read the article in Hong Kong did not want to do any business with Andrew. Andrew's clients in Australia in any case did not want to deal with Andrew because they were getting similar products from another company in China at 30% less cost. Andrew's clients and business associates in Singapore, who read the article, did not believe that Andrew could do anything of this kind; they thought it referred to someone else. It was also established that Express Newspapers Inc. uploads sensational materials concerning Chinese businessmen with a view to boosting its readership.

**Advise Andrew.**

*(See the next page for a continuation of Part C)*

### **Question 8 (25 marks)**

Peter was a wealthy businessman. He had assets worth HK\$40 billion. Nancy, his girlfriend, had lived with him for over 10 years. Peter then formed an attachment to another girl. However, he promised Nancy he would execute a legal document giving Nancy HK\$50 million, so that she could live the rest of her life without any financial problems. Peter instructed XY Solicitors Firm to draft a document that would give Nancy the right to HK\$50 million. The firm drafted a defective document and Nancy could not claim any money on the basis of the document. In the meantime, Peter suffered considerable losses in his business and his net assets now were just about HK\$10 million. Peter regretted agreeing to give Nancy HK\$50 million and discovered the defect in the document.

**Advise Nancy whether she could succeed against XY Solicitors Firm and claim the HK\$50 million from the firm.**

**End of Part C**

## **Part D (Criminal Law)**

### **Question 9 (25 marks)**

Donald left the following message on Charlie's answer phone: "Adam is not showing me any respect. I can't stand him anymore. Let's go break his leg and teach him who's boss around here." Charlie, who was a friend of Adam, decided not to reply to Donald's message or to tell the police about Donald's plan. Subsequently, Donald persuaded Barney to join him instead. Two days later Barney was driving Donald to a bar where Adam was known to frequent when Barney told Donald that he no longer wanted to go through with the plan and stopped the car. Donald threatened Barney that unless Barney drove him to the bar, Donald would "disfigure" Barney's wife. Donald had a reputation of being very violent. Reluctantly, Barney drove Donald to the bar but, upon arrival, they discovered that Adam had just been taken into custody by the police.

**Advise Donald, Charlie and Barney of their criminal liability, if any.**

### **Question 10 (25 marks)**

Alice, intending to give her ex-boss, Bernadine a fright, lit a fire in Bernadine's letterbox not knowing whether anybody was in the house. In fact, Bernadine had gone out to the opera that night, but her friends from England, Christine and Denise, who were staying at Bernadine's home, were overcome by fumes. Two ambulances arrived to take the victims to hospital. The ambulance carrying Denise was driven by a new driver and the driver got lost. By the time the ambulance arrived at hospital Denise had died.

Christine arrived at hospital and was informed that a blood transfusion would save her life. However, owing to religious beliefs, Christine refused and died the following day.

**Discuss the criminal liability of Alice.**

**End of Test Paper**