

**2009 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF
COMMON LAW**

Tuesday, 15 December 2009



Head V: PRINCIPLES OF COMMON LAW

TEST PAPER

15 December 2009

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 The Law Student's 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.**



2009 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

- (a) What are the major law courts in Hong Kong?**
- (b) What types of cases will be heard in each of these major law courts?**
- (c) Is English the only language used in Hong Kong courts?**
- (d) Are the judgments made by the Hong Kong courts enforceable in other countries?**
- (e) How are Judges appointed or dismissed in Hong Kong?**

Question 2 (25 marks)

- (a) What constitutes the Hong Kong Laws?**
- (b) What is the influence of the Basic Law on the Hong Kong Legal System?**
- (c) How are the Common Law and the Rules of Equity operating in Hong Kong?**
- (d) Explain the terms “ratio decidendi” and “obiter dictum”.**

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

In June 2008, Wyndham Fitness, a private fitness club on Hong Kong island, hired Chan as its boxing coach for 5 years at a salary of HK\$25,000 per month. Both Chan and boxing proved popular with the club members. In June 2009 the club appointed Lee as its new manager. Neither Lee nor Chan could get along with each other. Two months ago, the club owners wrote to Chan terminating his engagement with immediate effect. Since that time, Chan has failed to find work other than one or two painting and decorating jobs. Chan is 36. He believes that he will never again be employed as a boxing coach because of his age and because the club refuses to supply him with a reference. Chan has made one attempt at suicide and is in a state of deep depression. During Chinese New Year, Chan received about HK\$2,000 worth of red pocket money from club members and now that he can no longer work at the club, Chan will lose this in future years.

What legal action can Chan take against the club?

Question 4 (25 marks)

On December 1, Mary telephoned Linda offering to sell Mary's flat in Happy Valley to Linda for HK\$ 5 Million. Linda said, "Let me think about it and get back to you." Mary replied, "I can't wait forever." On December 2, Linda decided not to buy the flat and posted a letter to Mary telling her that she was not interested. Subsequently Linda's husband told Linda that she was missing a bargain. So Linda telephoned Mary, leaving a message on Mary's answer-phone stating, "I would like to buy your flat." Unknown to Mary and Linda, Mary's answering machine was not working and did not record Linda's message. Linda telephoned Mary and said, "When will I be hearing from your solicitor?" Mary thought that Linda was referring to another matter between them and said, "Everything is fine."

Is Mary contractually bound to sell her flat to Linda? Also, is Linda contractually bound to buy the flat from Mary?

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

Question 5 (25 marks)

Irene plans to leave Hong Kong permanently and invites two friends, Betty and Cherry, to her flat and offers to sell her favourite painting to Betty for HK\$1,000 which Betty accepts. Both Irene and Betty believe the painting is by a little known artist in the Mainland and is probably worth between HK\$1,000 and HK\$1,200.

Irene also offers to sell her Buddha statuette to Cherry for HK\$500, which offer Cherry accepts. Cherry believes the statuette is made of jade and worth about HK\$100,000. Irene knows Cherry believes the statuette is made of jade but Irene knows it is made of only some form of resin.

A few days later, Betty and Cherry had the painting and statuette valued. The art dealer to whom Betty took the painting identified it as a painting by an ancient Chinese painter and offered Betty HK\$280,000 for it. Betty refused to sell. Cherry showed her statuette to an expert who told her it was not made of jade and was quite worthless.

Cherry immediately took the statuette back to Irene and asked for her money back. Irene refused. Meanwhile, Cherry told Irene about the offer that Betty had received from the art dealer.

Can Cherry recover her money from Irene? Does Irene have any legal grounds to recover the painting from Betty?

End of Part B

Part C (Introduction to Law of Torts)

Question 6 (25 marks)

Pete owns an apartment in Kowloon which has a very large balcony. Pete likes to hit golf balls from his balcony into a net on the balcony he has set up about five feet away from his golfing tee. The net covers all of the height and $\frac{4}{5}$ of the width of the balcony. Pete has been doing this for about 5 years. Occasionally when the ball misses the net (about 3 or 4 times a year) it normally drops harmlessly onto the roof of an adjoining warehouse. One evening Pete strikes one of his golf balls in such a way that it travels across the roof of the warehouse and goes through the window of an apartment owned by Maria who lives in a building across from Pete. A piece of glass from the window strikes Maria in the eye.

As a result of the impact of the piece of glass, Maria suffers an injury to her left eye. The effect of the injury is that she is in severe pain and her eye is cosmetically damaged. Maria had already lost sight in her right eye prior to this incident. Maria attempts to leave her apartment to seek help. Because she is a bit confused after being struck and in such a hurry to seek treatment she bumps into a Ming Dynasty Vase worth HK\$2 million and breaks it.

Maria loses sight in her left eye about a week later as a result of the injury. She is now totally blind and cannot engage in her previous occupation as occupational therapist.

Advise Maria as to her rights.

Question 7 (25 marks)

Bill purchases some scaffolding in order to cut some branches on a tree next to the side of the wall of his home. A workman, Paul, who delivers and sets up the scaffolding, is an employee of an unincorporated business with the trading name "Quality Scaffolding" which designed and produced the scaffolding. Paul instructs Bill that he (Bill) should wear a safety harness when working on the scaffolding. Bill gets up on the scaffolding with a chain saw and begins cutting the branches. The scaffolding collapses because of the faulty design and Bill falls to the ground. Bill breaks a bone in his left hand. However, Bill is right-hand dominant and is not required to take any time off from his job as a police officer and the injury heals completely in 3 weeks. In fact, although painful, up until the time of recovery the injury healed itself with no need for the incurring of medical treatment or ingestion of pain killers or other medicine.

However, while Bill was falling he dropped the chain saw and it hit an electricity line connecting his neighbour Karen's home. Assume that the electricity line is owned by the government of the HKSAR and that some monies need to be expended by that government in fixing that line. Furthermore, the damage to the electricity line caused Karen's computer to crash and for her to be unable to retrieve a document in time that she needed to submit that day to a customer in order to secure a contract for providing marketing services. As a result of her missing the deadline the customer refused to pay Karen \$HK50,000 as stipulated under their agreement.

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

Advise Quality Scaffolding and Bill if they have any tortious liability to any parties. If so, who? Give reasons for your answer/s.

On the other hand, is Bill entitled to any compensation? Is there any reason why this compensation should be limited? Give reasons for your answer/s.

End of Part C

Part D (Criminal Law)

Question 8 (25 marks)

Frank and Jane are having dinner at a restaurant in Tsim Tsa Tsui. During the dinner Frank asks Jane for a loan for a business that Frank wishes to set up. Jane politely says she cannot afford to give Frank this loan. Frank, in a fit of anger, picks up a kitchen knife and slashes Jane across the stomach with it. Frank is concerned that Jane might die as he did not intend to kill her when he slashed her. Frank rings the ambulance service.

An ambulance driver takes Jane who is in a critical condition to the nearest public hospital for treatment. Unfortunately, the ambulance breaks down on the way and Jane dies before she can get medical treatment.

Max, Jane's brother, is in the hospital waiting room. Frank goes into the waiting room shortly after he arrives at the hospital and tells Max what occurred. Frank says he is sorry but that it was all Jane's fault because she is so mean with money. Max flies into a rage and punches Frank in the jaw. Frank's head strikes the wall behind him and Frank instantly dies.

Advise Frank and Max in relation to their criminal liability, if any, and if whether or not they have any defences.

Question 9 (25 marks)

Candy is throwing a party in her apartment on the fifth floor of a building in Mong Kok. Ed who is an acquaintance of Candy attends at her invitation. At about 2 am all the guests except Ed have left. Ed enters Candy's bedroom and goes through Candy's private possessions which she had left in a coat in a cupboard in her bedroom to satisfy his curiosity. Ed has been drinking heavily throughout the night and is extremely drunk. He also has a very low IQ of 85. Candy walks into her bedroom and sees Ed going through her private possessions. Ed is scared that he will go away to jail for a long time and he picks up a hammer which is lying on the ground nearby. At this stage Ed is blocking the exit through the door and Candy retreats to a balcony in the bedroom. Ed keeps advancing toward Candy in a menacing way. Candy becomes terrified and jumps out of the window to her death.

Advise Ed in relation to his criminal liability, if any, and if whether or not he has any defences.

(See the next page for a continuation of Part D)

Question 10 (25 marks)

Ralph is a salesman of new luxury cars. He works in a car dealership in the New Territories where he sells new Porsche. Ralph's manager Tom says he (Tom) has to leave early for the afternoon. Tom asks Ralph to lock up the showroom of the dealership. Tom leaves the showroom at 3.30 pm that day. Ralph decides to go to have a meal in Causeway Bay (an area on Hong Kong Island). He also decides he would like to drive a brand new Porsche which has arrived in the showroom. This Porsche has never been driven before. It is not a test car and is due to be picked up the following day by a buyer. Ralph has access to the keys to this Porsche and drives it to Causeway Bay.

Ralph arrives at the restaurant at Causeway Bay. Ralph orders a meal. Ten minutes later the meal arrives. While he is eating his meal he sees that the waiter regularly goes back into the kitchen for up to a few minutes at a time. The waiter come up to Ralph and asks him if he needs anything else. Ralph says no. The waiter goes into the kitchen. Ralph then finishes his last bite of the food and runs out of the restaurant without paying.

Ralph then goes to a bar where he is offered a new Blackberry computer for sale by Jemma at a price well below its market value. The Blackberry had been stolen earlier by Jemma.

Ralph asks Jemma, "Where did you get the Blackberry?"

Jemma laughs and says, "Don't ask"

Ralph says, "I'm not sure whether I should do this as I have never broken the law before. But it's a great deal, so why not?"

Ralph pays the very low price asked by Jemma and receives the Blackberry from her.

Ralph drives the Porsche back to the dealership and parks the car in its original place. He also puts the keys back where he found them.

Has Ralph committed any offences? If so, what are they? Give reasons for your answer/s.

End of Test Paper