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**2010 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

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**HEAD V: PRINCIPLES OF  
COMMON LAW**

Wednesday, 15 December 2010



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

## **TEST PAPER**

**15 December 2010**

### **Instructions to Candidates:**

- 1. The duration of the examination is 2½ hours (which includes 30 minutes designated as 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 minutes' reading time on the questions supplied.**
- 9. Do not take this question paper with you when you leave the examination room.**

# **2010 Overseas Lawyers Qualification Examination**

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

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

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

- (a) What constitutes a civil case in Hong Kong and how is it different from a criminal case? (3 marks)**
- (b) What is the jurisdiction of and what types of civil cases can be handled by the Small Claims Tribunal? (5 marks)**
- (c) What is the jurisdiction of and what types of civil cases can be handled by the District Court? (5 marks)**
- (d) What is the jurisdiction of and what types of civil cases can be handled by the Court of First Instance of the High Court? (5 marks)**
- (e) What practical matters need to be considered before starting a civil action in Hong Kong? (5 marks)**
- (f) What happens if a mentally incapacitated person or an infant / minor wants to start a legal action? (2 marks)**

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

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

### **Part (a)**

Over time, various methods of statutory construction have fallen in and out of favour. Some of the better known rules of construction methods are:

- The Golden rule (3 marks)
- The Literal rule (3 marks)
- The Mischief rule (3 marks)
- The Purposive approach (3 marks)

**Please explain each of the 4 construction methods mentioned above.**

### **Part (b)**

**How can the process of “judicial review” assist a litigant in Hong Kong? How can one obtain judicial review in Hong Kong? What kinds of relief can be obtained if one is successful in one’s application for judicial review?**

**(10 marks)**

### **Part (c)**

**How are Judges appointed or dismissed in Hong Kong?**

**(3 marks)**

**End of Part A**

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

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

Amy was driving her car into a public car park one morning. Upon arriving at the entrance, she put out her finger to press a button to receive her parking ticket. The button was situated on the middle section of a steel column about five feet in height. Above the button some words were printed in font size 12. From where Amy was seated in her car, the words would be clearly visible. They contain the hourly charges, as well as the following notice:

“Our car park is not responsible for property losses and physical injuries sustained by our customers, whatever was the cause of the incident.”

Amy was in a hurry and did not read the notice at all. She received her ticket and proceeded into the car park. She found an empty spot on the second floor and parked her car there. The interior of the second floor was dark even though it was in the morning. As Amy was leaving the car, it was too dark to see anything clearly on the ground. She slipped on a pool of soapy water. This had been left behind by the cleaner. Amy sprained her right ankle and her dress was torn. She spent two days in hospital. The medical bill was \$20,000. Her daily income before the accident was \$2,000. Her dress cost \$3,000.

After she recovered, Amy visited a laundry shop to wash another dress. She gave the dress to the shopkeeper and paid her laundry charges. Then the shopkeeper gave her a receipt. On the back were these words, “Our shop is not responsible for any damage caused to customers’ clothing items brought to our shop for laundry purposes.” A week later, when Amy came to the shop to collect her dress, it was torn because the laundry shop staff had forgotten to zip up the dress before washing it.

**Advise Amy on these events.**

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

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

Bill was having lunch with Charles on a Wednesday afternoon. They were business associates. Bill said, "You remember my little red sports car? I want to sell it because I want another car. You can have it for \$300,000. Take your time. I'll wait till noon this coming Friday. If you cannot reach me, write me a letter. The lines are not working properly." **Advise Charles on the following events.** Treat the facts in parts (a) and (b) independently:

- (a) Charles has decided to buy the car. But he needs to make sure he has enough cash. He is expecting some payment that Friday morning. So he has not contacted Bill yet. On Thursday evening, Bill called Charles and said, "Sorry, I changed my mind. I am not selling the car."

**(9 marks)**

- (b) Charles went home and sent Bill an e-mail message at 9 am the next day: "I don't need the car for now. Thank you." The e-mail message never went through because Bill's computer network was not operating. Two hours later, he changed his mind and called Bill but the phone line had broken down too. So Charles wrote a letter to Bill: "I'll buy your car for \$300,000." The letter was sent out at the local post office at 1 pm on Thursday. A letter usually takes 24 hours to reach Charles. At 12.30 pm on Friday, not having heard from Charles, Bill agreed to sell the car to David.

**(16 marks)**

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

### Question 5 (25 marks)

- (a) Hadley orally agreed to sell his flat to Jack for HK\$3 million. They did not think of hiring a law firm to prepare the contract in order to save legal fees. The flat has no furniture. **Comment on this transaction.** (5 marks)
- (b) Same as (a) but the flat comes with furniture. (3 marks)
- (c) Hadley orally agreed to lease his flat to Jack for HK\$30,000 per month for two years. They did not think of hiring a law firm to prepare the contract in order to save legal fees. **Comment on this transaction.** (2 marks)
- (d) Hadley orally agreed to give Jack HK\$30,000 as a wedding gift. Jack was concerned that Hadley might not honour his promise, and suggested that they enter into a contract. But Hadley said, "In Hong Kong, my promise to give you \$30,000 constitutes a contract." **Comment on this promise.** (5 marks)
- (e) Hadley negotiated with Jack to sell his car to Jack for HK\$300,000. Both parties exchanged several letters on the contractual terms. Each letter was marked "subject to contract" at the top. Both parties have not signed anything during this process and have not performed any duties. **Comment on this transaction.** (5 marks)
- (f) Hadley negotiated with Jack to sell his car to Jack for HK\$300,000. Both parties exchanged several letters on the contractual terms. Each letter was marked "provisional contract" at the top. Both parties have not signed anything during this process and have not performed any duties. **Comment on this transaction.** (5 marks)

**End of Part B**

## Part C (Introduction to Law of Torts)

### Question 6 (25 marks)

**Mr Winston Wong** is a wealthy businessman who lives in a large house in the New Territories. He owns a large (25 kilogram) dog called **Rover**. As he is very busy and frequently travels, **Winston** employs a full time domestic helper, **Alfred Au**, to look after **Rover**. **Winston** has instructed **Alfred** that he is to walk **Rover** four times a day along the footpath adjacent to the road in front of the house. **Winston** has stressed to **Alfred** that **Rover** must always be on a lead when taken for a walk outside the house.

One day in April this year **Alfred** took **Rover** for a walk on the footpath outside the house. As **Rover** was continuously pulling on his lead **Alfred** decided to release **Rover** from his lead. **Rover** walked alongside **Alfred** for some distance and then suddenly without warning ran into the road, and into the path of a car driven by **Jenny Jones**. As **Jenny** was driving over the speed limit she was unable to stop the car and so she instinctively swerved to avoid **Rover** and crashed into a tree. **Jenny**, who was eight months pregnant, was not wearing a seatbelt and suffered serious injuries to herself and her car as a result of the crash. **Jenny** gave birth to a healthy baby one month after the crash.

**Jenny** wishes to sue **Alfred** and **Winston** for her personal injuries and for the damage to her car.

**Discuss her claims and the issues they raise with reference to the relevant legal principles and cases.**

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



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

**Angela Auyeung** owns and operates a small factory which manufactures bicycle locks. **Angela** has two full time employees, **Ben Bong** and **Charles Chan**. As **Angela** has purchased an automatic machine for cutting and welding bicycle locks, **Ben** and **Charles** are primarily employed to operate the machine.

One day in June this year, **Ben** was operating the machine when it suddenly stopped. **Ben** noticed a piece of metal stuck in the machine and reached into the machine to remove the piece of metal. Whilst **Ben's** hand was in the machine it suddenly started, cutting off **Ben's** hand. The machine originally had a safety guard to prevent anyone reaching into the machine but **Angela** had the safety guard removed so that the machine would operate faster.

**Charles**, who was outside the factory having a cigarette, heard **Ben's** screams when the machine cut off his hand. As **Charles** ran into the factory to see what had happened and if he could help, he slipped on some oil which had been spilt on the factory floor that morning by **Ben**. As a result of his slip and fall, **Charles** suffered severe head injuries.

Following the accident **Ben** and **Charles** were taken to hospital where it was discovered that **Charles** was an illegal immigrant and did not hold a Hong Kong ID card, which is required for him to be able to work in Hong Kong.

**Ben** and **Charles** wish to sue **Angela** for their respective personal injuries.

**Discuss their individual claims and the issues they raise with reference to the relevant legal principles and cases.**

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

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

**Mayse Mok** is from a wealthy family. She is a law student at the University of the New Territories in Taipo. She is not doing well in her torts class and believes it is because her torts lecturer is biased against women. She writes a letter addressed to all the members of the university council and all the teachers in the law faculty. In the letter she states “My torts teacher, **Professor Leopold Lim**, is a sexist and is biased against women.”

**Mayse** takes the letter to the law library in order to make copies to send to all the **university council members** and **all law faculty teachers**. She mistakenly leaves the original letter in the photocopy machine where it is picked up by another student **Nathan Ng**, who reads the letter and posts it on the general notice board in the law faculty. The letter remains on the notice board for several days and has been read by many students and visitors to the law faculty.

**Mayse** sends a copy of her letter to **each council member** and **law teacher** in a plain envelope, addressed to each individual recipient. Each letter is marked “Confidential to be opened by addressee only”.

**Leopold Lim** strongly denies that he is a sexist and biased against women.

**Advise Leopold Lim as to his cause of action, if any, in defamation.**

**Discuss with reference to the relevant legal principles and cases.**

**End of Part C**

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

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

John is concerned that security at the branch of his local bank is very slack. He wants to highlight this so that the bank can improve their security. So he decides to pretend to carry out a bank robbery to see how the bank staff react. His purpose is not to obtain any money. He writes a note reading: "This is a robbery. I have a gun. Hand over the money immediately." He goes into the bank and hands the note to Fred the bank clerk. Fred reads it and thinking it was a real bank robbery suffers a heart attack and dies. John is arrested and tells the police that this was not a real bank robbery and that his purpose was to expose the bank's poor security to prompt them to improve it.

**Discuss John's criminal liability (if any) for the death of Fred.**

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

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

**Consider any issues of criminal liability and defences that may arise in the following situations.**

### **Part A**

Jamie and Terence are friends from University. Jamie contacts Terence and suggests that they meet up. Terence invites Jamie to visit him at his (Terence's) flat the next evening. Jamie has never been there before. Terence explains that if he is out then Jamie should let himself in to the flat by using a key that he will leave under the doormat outside the front door. Terence gives Jamie the address and the next evening Jamie goes to visit Terence. Jamie mistakenly thinks that Terence lives on the 6<sup>th</sup> floor, whereas Terence in fact lives on the 7<sup>th</sup> floor. Jamie arrives at the 6<sup>th</sup> floor flat in the block where Terence lives and rings the front door bell. There is no answer. Jamie then looks under the door mat, finds a key and uses it to open the front door. He goes inside. Nobody else is inside. Just then Jamie's mobile phone rings. It is Terence asking where Jamie is. Jamie then realizes that he is in the wrong flat and decides to leave. But before leaving, he walks over to a table near the window and takes from the table a laptop computer and leaves the flat with it.

**(10 marks)**

### **Part B**

On reaching Terence's flat Jamie shows Terence the laptop computer and asks Terence if he wants to buy it. Terence asks the price and Jamie says \$5,000. Terence knows that the computer is a new model which would normally cost over \$15,000 in the shops. Terence does not ask anything more and gives Jamie \$5,000 for the computer.

**(8 marks)**

### **Part C**

Now assume that when Terence paid Jamie for the computer, he did not believe that it had been stolen. He later became suspicious and decided that it had in fact been stolen and so decided to hand it in to the police. But before doing so, he pawned it as he needed money urgently, intending to repay the pawnbroker within a week and get back the computer, which he would then hand in to the police.

**(7 marks)**

**End of Test Paper**