

**2011 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF  
COMMON LAW**

Tuesday, 20 December 2011



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

## **TEST PAPER**

**20 December 2011**

### **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.**

# **2011 Overseas Lawyers Qualification Examination**

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

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

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

- (a) What is the general meaning of the “Rule of Law”? Is it applicable to the Hong Kong Legal System? (5 marks)
- (b) What are the sources of law in Hong Kong? (10 marks)
- (c) Who can initiate changes to the different types of laws in Hong Kong and how can one go about doing that? (10 marks)

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

**Question 2 (25 marks)**

- (a) Who is responsible for criminal prosecutions in Hong Kong? What criteria are used in determining whether or not to prosecute?  
(3 marks)
- (b) Under what circumstances would there be a trial by jury and how does the jury system in Hong Kong work?  
(3 marks)
- (c) In a criminal trial in Hong Kong, the defence is afforded certain rights by statute or otherwise. Please name five of those rights and elaborate on them.  
(7 marks)
- (d) Name the courts of justice and the major tribunals in Hong Kong and describe their functions as well as relationships (if any) to each other.  
(12 marks)

**End of Part A**

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

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

“It seems to me that in the law of contract, too, a similar distinction is emerging. It is between loss of profit consequent on a breach of contract and physical damage consequent on it.....The present case falls within the class of case where the breach of contract causes physical damage. The test of remoteness in such cases is similar to that in tort. The contractor is liable for all such loss or expense as could reasonably have been foreseen, at the time of the breach, as a possible consequence of it.” per Lord Denning in *Parsons H. (Livestock) Ltd. v Uttley, Ingham & Co. Ltd.* [1977] WLR 990.

**Comment on this view by Lord Denning in light of the law on remedies for breach of contract in Hong Kong.**

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

#### Question 4 (25 marks)

- (a) David and Elsa were negotiating the sale of David's car to Elsa for \$30,000. During the course of negotiation, Elsa asked David, "Has this car ever been involved in any accidents?" David replied, "Not at all. It is in perfect condition." Believing David, Elsa agreed to the sale and paid David \$30,000. David delivered the car to Elsa. After the sale, Elsa got worried because she heard strange noises while driving the car. She took it to a renowned car mechanic in Hong Kong, Frank. After examining the car, Frank told Elsa, "You have paid too much for this car! It has been involved in an accident before. It caused structural damage to the car although ordinary people cannot see it from the outside. I'd say the car is now worth no more than \$15,000." Elsa then called David and said, "You lied to me! The car is only worth half of what I paid you. I want my money back." David denied that he lied to Elsa, but said that he bought the car two years ago and the former owner told him that the car had no history of accidents. **What alternatives and remedies are available to Elsa?**

(15 marks)

- (b) What difference would it make to your answer if instead of asking David whether the car has ever been involved in any accidents, Elsa asked, "When was this car first registered in Hong Kong?" David said, "2008." Elsa then asked, "Under Hong Kong law, how many years after first registration would a car be required to undergo the Hong Kong Government's mandatory check-up?" David said, "Five years. So you need not undergo the check-up until 2013." The first answer was correct but the second answer was wrong because the correct period should have been three years. Elsa's car would need to undergo the check-up almost immediately after she purchased the car. Relying on David's wrong answer, Elsa bought the car because she thought she could save the check-up fee until two years later. The check-up fee is \$10,000. David and Elsa are not lawyers. After Elsa bought the car, she asked a Hong Kong solicitor who told her the correct law and that her car must undergo the check-up immediately. **What remedies are available to Elsa?**

(10 marks)

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

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

Adam walked into a restaurant in Central specialising in serving Shanghainese food. He read the menu and ordered three dishes. Bill the waiter took the order. Charlie the chef prepared the food. According to Adam's calculation, the total bill should amount to \$200. When he asked for the bill, it was \$250. The extra \$50 was for two small plates of pickles and peanuts on his dining table. Adam never ordered the two dishes and he did not touch the pickles or the peanuts.

- (a) **When was the contract formed?** (15 marks)
- (b) **Advise Adam if he refused to pay for the pickles and peanuts.** (4 marks)
- (c) **Would your advice to Adam be different if there was a statement on the bill of the restaurant stating, "Our restaurant charges for Shanghainese pickles and peanuts."** (3 marks)
- (d) **Advise Adam if one of dishes ordered has turned bad and was not suitable for consumption.** (3 marks)

**End of Part B**

## Part C (Introduction to Law of Torts)

### Question 6 (25 marks)

The Hong Kong SAR Government owns and manages Hong Kong Park, a large area of parkland with many trees, close to the central business district on Hong Kong Island.

Hong Kong Park is used by many schools for outdoor educational activities, with the encouragement of the Government.

In February this year a group of 20 primary school children from the Super Star School, accompanied by their teacher **Mr. Wilson Wong** (“Mr. Wong”) and four of the pupils’ parents visited Hong Kong Park. The purpose of the visit was to teach the children about the trees, plants and birds in the park.

Whilst the school group was in the park it suddenly began to rain heavily, so **Mr. Wong** directed the group to shelter under a large banyan tree. Suddenly, without warning, a large branch broke off the top of the tree and fell onto the group sheltering under the tree. The falling branch seriously injured **Mr. Wong** and one of the pupils, **Charles Chan**. **Charles Chan**’s mother, **Clarice Chan**, was one of the parents accompanying the school group. When she saw her son **Charles** screaming in pain and covered in blood she went into severe shock.

Following these events, these facts have been established by an independent accident investigation:

- a. There are several hundred trees in Hong Kong Park. The normal method employed by the Government to inspect the trees for safety purposes, is by visual inspection from the ground.
- b. The tree from which the branch broke off had been visually inspected from ground level by staff from the Government’s Parks and Recreation Department, a month before the accident. No aerial examination was made of the tree. If the tree inspectors had climbed up the tree to inspect it, they would have seen obvious signs that the branch which fell was rotting and decayed. The decayed condition of the branch could not be seen from the ground.

*(See over the page for a continuation of Question 6)*



- c. **Mr. Wong**, the school teacher, had checked the weather forecast on the Hong Kong Government's weather website in the morning before he took his pupils to visit Hong Kong Park. The Government's weather website said that the weather that day would be fine and dry. In fact, this was the weather forecast for the following day and not that day. The wrong weather forecast had been mistakenly posted on the website by a new and inexperienced employee. The correct weather forecast for the day of the accident, which had not been posted on the website, predicted heavy rain and thunderstorms for that day.
- d. **Mr. Wong**, following his schools' safety guidelines for pupils' outings, would not have taken his pupils to Hong Kong Park, if the correct weather forecast had been posted on the Government's weather website.
- e. **Mrs. Clarice Chan** has been diagnosed as suffering from Post-Traumatic Stress Disorder.

Each of the injured parties, **Wilson Wong, Charles Chan** and **Clarice Chan** wish to receive compensation for their injuries.

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

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

## Question 7 (25 marks)

**Alfred Au** owns and operates a successful investment advice business. His clients are very wealthy people who pay a lot of money for **Alfred's** advice on where to invest their money. The success of **Alfred's** business is due to the excellent investment advice that he gives his clients.

As **Alfred's** advice is highly sought after by clients, who demand total confidentiality, **Alfred** does not give his advice to his clients by telephone, e-mail or through the post. **Alfred's** advice is typed up and hand-delivered to each individual client. All of **Alfred's** clients are aware that his advice is to be hand-delivered to them.

One day in April this year, **Alfred** received a telephone call from one of his clients **Bert Bong**, who asked if he should invest in a company called Golden Goose (HK) Ltd. **Alfred** said that he would check up on this company and have his advice hand-delivered to **Bert**.

**Alfred** searched his database of listed company files. By mistake he reviewed the file for Golden Goose (Macao) Ltd., which revealed that the company was highly profitable and a good one in which to invest. **Alfred** was unable to have his advice to **Bert** hand-delivered immediately because his messenger was ill. He intended to review his advice to **Bert** and have it hand-delivered to him the next morning.

That evening, **Alfred** was having dinner in Central and had consumed several glasses of wine with his dinner. By chance, **Bert** happened to come into the restaurant and saw **Alfred**. **Bert** asked **Alfred**, whose face was visibly red and flushed from drinking, if he should invest in Golden Goose (HK) Ltd. **Alfred** replied, "You know that I only give my advice in writing but since my messenger is sick and I have no one to deliver my written advice to you, I suggest that you should go ahead and invest in Golden Goose (HK) Ltd. It is a good buy. However, you might wish to wait until later tomorrow morning when I can confirm my advice to you in writing."

Later that evening, **Bert** met his girlfriend, **Cathy Chan** and repeated **Alfred's** advice to her that Golden Goose (HK) Ltd. was a good buy.

The next morning, **Bert** and **Cathy** make a substantial investment in shares in Golden Goose (HK) Ltd. as soon as the stock market opened. Later that day **Alfred** re-checked his database of listed companies and realised that the advice he had given **Bert** was for Golden Goose (Macao) Ltd. **Alfred's** files disclosed that Golden Goose (HK) Ltd. had significant financial problems and was a highly risky company in which to invest and was rated as a sell.

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

Upon discovering his mistake, **Alfred** unsuccessfully tried to contact **Bert**, who was on a plane flying to New York. Later that afternoon trading in Golden Goose (HK) Ltd. shares was suspended because of financial irregularities. Subsequently Golden Goose (HK) Ltd. was put into receivership and its shares become worthless.

**Bert Bong** and **Cathy Chan** wish to sue **Alfred Au** for the financial losses they suffered as a result of the investment advice from **Alfred**.

**Discuss their respective claims and the issues that 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)**

A local paper, the Shatin Daily News, decides it needs to increase its circulation. The editor, **Herman Ho**, decides to launch a medical advice column for teenagers and their parents in the Shatin Daily News.

The advice column is called **Dr. Alvin's Advice** and is purportedly written by a Shatin Doctor, **Alvin Au**, who specialises in teenagers' medical issues. In fact the advice column is written by **Kevin Kwok**, a junior reporter at the Shatin Daily News in response to reader's questions.

The strange and unusual advice given by **Dr. Alvin** in his column generates a lot of public debate and significantly boosts sales of the Shatin Daily News.

A doctor, **Alvin Au**, a specialist in teenagers' medical issues, who practises medicine in Shatin has noticed a decline in the number of patients coming to his clinic, since the publication of **Dr. Alvin's Advice** in the Shatin Daily News.

**Dr. Alvin Au**, who has for many years been a board member of a prominent Shatin school received a letter from the chairman of the school's board terminating his membership on the board. In the letter, which is copied to all the other board members, the chairman said, "We cannot afford to have a board member who is so publicly dispensing bad advice to teenagers and their parents. Your continued membership on the school's board threatens the reputation of our school."

**Eva Eu**, a member of the Legislative Council representing the Shatin electoral district, is approached by a number of her constituents to do something about the strange and unusual advice being given in the **Dr Alvin's Advice** column of the Shatin Daily News. During question time in the Legislative Council, **Eva Eu** asks the Secretary of Health and Welfare to investigate the "flood of stupid advice being given by a Shatin doctor, **Alvin Au**, in the Shatin Daily News." As a result of this request the Medical Council has launched an investigation to determine if **Dr. Alvin Au** has committed professional misconduct.

**Dr. Alvin Au** strongly denies that he has had any involvement in writing the **Dr. Alvin's Advice** column in the Shatin Daily News.

**Advise Dr. Alvin Au as to his causes 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)**

Andy and Bill decide to steal from Charles' house. Andy buys a gun from Dan who knows Andy to be a violent criminal. Dan asks why Andy needs a gun. Andy tells Dan, "Don't ask silly questions. What do you think I need it for?" Before the raid, Bill discovers that Andy intends to take a gun and he tells Andy that he is not going ahead. Andy threatens to inform Bill's wife of an affair Bill is having with another woman unless Bill participates. Bill goes ahead because of this threat but obtains from Andy a promise that the gun will not be loaded and should they encounter anyone he will not use the gun except to frighten.

The two break into Charles' house but are seen by Charles. Andy pulls out his gun, which is loaded, and deliberately shoots Charles dead.

**Discuss the criminal liability, if any, of Andy, Bill and Dan for the death of Charles.**

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

## Question 10 (25 marks)

Assume that the Hong Kong Legislative Council has recently passed an Ordinance that makes it an offence “to use or knowingly permit to be used any land for any concert or musical performance without a licence issued by the Government.” Another section of this Ordinance provides that the Government may attach conditions to any licence to ensure the safety of persons attending the event covered by the licence. The maximum penalty for the offence is a fine of \$100,000.

Bona Promotions Ltd., a company which specialises in organising concerts, instructs Sandy its area manager to organise a concert on 10 July on land belonging to Julian. Julian agrees, so Sandy applies to the Government for a licence by completing an application form.

Sandy does not hear from the Government for a long time and on 5 July telephones the Government and speaks to a Mr. Slack. Slack tells Sandy that the licence has been approved but because of staff shortages it may not be possible to deliver the licence before 10 July. Slack also says that Sandy need not worry and that the concert can go ahead even if the licence does not arrive before 10 July. In fact Slack has made a mistake and the Government has refused a licence for the concert.

The concert goes ahead with both Sandy and Julian thinking that a licence has been issued.

**Discuss the criminal liability, if any, of Bona Promotions Ltd. and Sandy for ‘using the land for a concert without a licence’; Julian for ‘knowingly permitting the use of land for a concert without a licence’ and of Slack for aiding and abetting Sandy. Assume that this is the first prosecution brought under this Ordinance. Assume also that Julian did not know that no licence had been issued.**

**End of Test Paper**