

**2013 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF
COMMON LAW**

Thursday, 19 December 2013



Head V: PRINCIPLES OF COMMON LAW

TEST PAPER

19 December 2013

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.**

2013 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

- (a) Describe how laws are made and/ or changed in Hong Kong? What processes are involved and who are responsible for making and/or changing laws?

(10 marks)

- (b) Your friend tells you that he believes he has been wronged by a decision of a government department in Hong Kong. What he can do about that under the Hong Kong legal system and what relief he can seek under the system?

(15 marks)

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

Question 2 (25 marks)

Part 1

“People in society have mutual obligations. Some arise from contracts; some arise from status and some in other ways....”

(a) Explain the differences between criminal and civil litigation in Hong Kong. You should do so by clarifying who may instigate which proceedings, the rights and considerations involved and the different standards of proof.
(10 marks)

(b) Also give an overview of what types of cases will be heard in each of the following major law courts in Hong Kong: (1) Small Claims Tribunal; (2) Magistrates’ Courts; (3) District Court; (4) High Court and (5) Court of Final Appeal?
(10 marks)

Part 2

Peter has admitted to you that he has stolen a watch from a shop but he does not want to plead guilty to the offence of theft. He wants to plead not guilty and asks you to represent him at his trial. **Can you do that or can you only say something in mitigation for Peter? Are you as Peter’s lawyer bound to report his offence to the Court after Peter has told you the truth?**

(5 marks)

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

Tycoon Limited ("Tycoon") owns many cargo containers in Hong Kong. Two of their containers have been rented to Export Limited ("Export") since January 2012. The rental agreement will expire at the end of December 2013.

On 1 November 2013, Tycoon wrote to Export requesting Export to tender for a new rental agreement for 24 months commencing on 1 January 2014. The letter stated that:

"Your tender must reach Tycoon's registered office not later than 5:00 pm on 1 December 2013. Once delivered to Tycoon, you are required to abide by the tender in its entirety until 31 December 2013. During that period you shall neither withdraw nor amend the tender without first obtaining Tycoon's consent."

On 15 November 2013 Export posted its tender to Tycoon which arrived on the next day. Export tendered a monthly rental of HK\$100,000.

Has a contract been created between Tycoon and Export? Explain your answer.

(25 marks)

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

Question 4 (25 marks)

Adam is an authorised dealer of Seoul cars in Hong Kong. Seoul is a famous Korean brand. Adam owns a showroom in Wanchai to display his Seoul cars. On 1 July 2013, Adam ordered ten Seoul cars from their distributor Nice Cars Limited (“Nice Cars”) in Hong Kong. The cars were of the same model and colour. Each car was priced at HK\$100,000. Delivery was to be made on 1 December 2013. Delivery of the ten cars was finally made on 10 December 2013. The market price of each Seoul car was HK\$150,000 on 1 December 2013. However, by the time these 10 Seoul cars were delivered on 10 December 2013, they were the only Seoul cars in Hong Kong in perfect condition, because all the other Seoul cars had been affected by defective engines due to problems at the factory in Korea. As a result, the market price of each car has risen to HK\$200,000 on 10 December 2013.

Many customers of Adam enquired about the arrival of the new Seoul cars months in advance. Each customer had placed an order to pay Adam HK\$150,000. The customers cancelled the orders when the cars were not delivered on 1 December. Adam was very angry at Nice Cars.

Advise Adam of his rights against Nice Cars. In particular,

- (a) **What level of damages can Adam claim from Nice Cars?** (20 marks)
- (b) **Can Adam obtain damages from Nice Cars for injured feelings and disappointment?** (5 marks)

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

Question 5 (25 marks)

Beth was an insurance agent in Hong Kong. Chung was Beth's potential client. He was introduced to Beth through a friend. They had several telephone conversations during which Beth explained the insurance policies to Chung. Chung made very clear to Beth from the beginning that he has never gone to school so he was illiterate. Finally, they agreed to meet so that Chung could finalise the policy with Beth. On the day of the meeting, Chung was held up by heavy traffic. Upon arrival, he realised that he was very late for the next meeting. So he said to Beth, "I won't be able to understand the policy anyway if I read it. Just let me sign it." After Chung signed the policy, he had second thoughts and wished to cancel it. The contents of the policy were substantially similar to what Beth told him during telephone conversations.

Advise Chung whether he could cancel the policy. Explain your answer.

(20 marks)

Would your answer be different if Beth forgot to inform Chung, that the policy contained a clause requiring Chung to treble his premium for three months, if he was late in paying one monthly premium? Explain your answer.

(5 marks)

End of Part B

Part C (Introduction to Law of Torts)

Question 6 (25 marks)

The Shatin Sports Association (“SSA”) was established ten years ago to provide recreational and sporting activities for people in the Shatin district. The SSA is a charitable and non-profit-making organisation.

In January this year, the SSA organised a 10th anniversary celebration to mark the great success of its activities in promoting the fitness and health of young people in Shatin. The main celebration event was a soccer game at a sports ground owned and managed by the SSA.

During the soccer game the following unfortunate events occurred:

- At the start of the soccer match, Alfred, a 21 year old youth, decided that he could get a better view of the soccer game from the top of a tree which was inside the SSA sports ground. Whilst climbing the tree, Alfred slipped and fell, severely injuring his leg.
- Ben, who had been hired by the SSA to collect tickets from people entering the grounds, saw Alfred fall and heard his cries for help. Ben ignored Alfred’s cries for help as he was busy collecting tickets. Alfred was eventually taken to hospital by ambulance.
- During the soccer game, a ball was kicked out of the ground by one of the players onto an adjacent road. Charlie was driving his car along the adjacent road and instinctively swerved to avoid the soccer ball which landed in front of him. In swerving, Charlie lost control of his car and hit a concrete electricity pole at the side of the road. Charlie was seriously injured in the crash and taken to hospital by ambulance.

Following these events, an independent accident investigation has established the following facts:

- a. There were no signs at the SSA telling people not to climb the trees inside the sports ground.
- b. During the ten years that soccer has been played at the SSA sports ground, an average of five soccer balls has been kicked out of the ground each year. There have never previously been any accidents or injuries caused by soccer balls being kicked out of the SSA sports ground.

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

- c. The SSA has been given many awards by the community and government for its sports programmes and for giving young people in Shatin the opportunity to play sports.
- d. There is only a low fence around the Shatin sports ground. As a charitable and non-profit-making organisation the SSA does not have the money to build a fence high enough to stop all soccer balls being kicked out of the sports ground.

Discuss any tort actions that the injured parties might bring to recover damages for their injuries and losses. Support your discussion with reference to the relevant legal principles and authorities.

(25 marks)

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

Question 7 (25 marks)

In *Lamb v Camden* [1981] QB 625 at 636, Denning MR said:

“The truth is that all these three – duty, remoteness and causation – are all devices by which the courts limit the range of liability for negligence or nuisance...it is not every consequence of a wrongful act which is the subject of compensation. The law has to draw a line somewhere. Sometimes it is done by saying that there is a break in the chain of causation. At other times it is done by saying that the consequence is too remote to be a head of damage. All these devices are useful in their way. But ultimately it is a question of policy for the judges to decide....”

Discuss and explain the significance of policy to the development of the principles of the tort of negligence.

(25 marks)

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

Question 8 (25 marks)

In *JGE v The English Province of Our Lady of Charity and the Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EW HC 2871, 2872 (QB), MacDuff J said:

“Thus in examining whether Party A is vicariously responsible for the acts of Party B, there is a two stage test. The first stage involves an inquiry into the relationship between A and B; whether it was a relationship (classically employment) to which the principles of vicarious liability may attach. The second involves an inquiry into the act or omission of B which is in question; whether the act was within the scope of employment (or other relationship). These are both fact sensitive inquiries and it is a judgment upon a synthesis of the two that is required.”

Explain with reference to decided cases, how the courts have interpreted and applied the two stage test for determining vicarious liability.

(25 marks)

End of Part C

Part D (Criminal Law)

Question 9 (25 marks)

Winston is HIV positive and knows it. He has consensual sexual intercourse with Sandra but does not tell her of his condition. The following night he has consensual sexual intercourse with Tracey. Before doing so he tells Tracey that he may be suffering from a sexually transmitted disease but does not say which disease. Sandra and Tracey each become HIV positive themselves.

Discuss the criminal liability of Winston for causing Sandra and Tracey to become HIV positive. You may assume that their condition was a result of having sexual intercourse with Winston.

(25 marks)

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

Question 10 (25 marks)

Gary is aged 16. He has been drinking in a bar. He leaves the bar to go home. His way home takes him over a bridge which crosses a railway line. When he is on the bridge he sees a large heavy stone. He picks it up and throws it from the bridge to the railway line below knowing that a train is passing underneath the bridge. The stone smashes through the window of the driving cab of the train killing Harry, the driver. Gary is arrested and at his trial says that he never intended to harm anyone and did not foresee that anyone would be hurt. His purpose was only to damage the train. He also says that he was drunk and that he would not have thrown the stone from the bridge if he had been sober.

Discuss the criminal liability of Gary for the death of Harry.

(25 marks)

End of Test Paper