
2015 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD V: PRINCIPLES OF COMMON LAW

Thursday, 17 December 2015



Head V: PRINCIPLES OF COMMON LAW

TEST PAPER

17 December 2015

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.**

2015 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

- (a) Give an overview of the statutory law making and changing process.

(10 marks)

- (b) How do judges in Hong Kong go about interpreting Ordinances? In your answer, describe what makes up an Ordinance and what principles and tools have been deployed to accomplish this task.

(15 marks)

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

Question 2 (25 marks)

Adam has borrowed HK\$10,000 from Benny but now fails to repay Benny.

Charlie, aged 25, has been caught pickpocketing by the Police.

Denis is planning to divorce his wife, Elena.

Frank wishes to sue George for breach of contract to recover damages in the amount of HK\$5 million.

How can each of the aggrieved parties mentioned above seek redress in the law courts in Hong Kong? In giving your answers, give an account of the Hong Kong court system, the major law courts in Hong Kong and the doctrine of judicial precedent. You should also talk about the differences between criminal and civil litigation in Hong Kong (including the different standards of proof).

(25 marks)

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

- (a) Explain the differences between a common mistake and a unilateral mistake.

(5 marks)

- (b) In an action for rectification of a contract what matters will the court take into account in deciding whether a mistake in the contract was common or unilateral?

(20 marks)

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

Question 4 (25 marks)

Adam owns a car park. He was concerned that customers may sue him if they are injured in the car park, or their cars are damaged in the car park. He consults you with respect to exemption clauses and asks you to draft two exemption clauses to protect him against:

- (a) a customer who is injured in the car park due to negligence by Adam or his employees; and
- (b) a customer whose car is damaged in the car park due to negligence by Adam or his employees.

Advise Adam whether the proposed exemption clauses are effective to prevent him from liability.

(25 marks)

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

Question 5 (25 marks)

On 1 June 2015, Ben, a music store owner, entered into a contract with Charles, a supplier of pop music DVDs. Under the contract, Charles was to sell 1,000 DVDs to Ben. The DVDs contained new songs performed by a popular singer. Delivery was to be made on 1 July 2015. However, the delivery was late and was only made on 1 August 2015. Since the beginning of 2015, the DVD was in huge demand in Hong Kong. But by July, demand for the DVD died down. Many shops began to reduce the price of the DVD below the intended price under Ben's contract. Ben did not do anything while waiting for Charles' delivery. **Advise Charles.**

(25 marks)

End of Part B

Part C (Introduction to Law of Torts)

Question 6 (25 marks)

Albert owns the Executive Mansion (“EM”). The EM is an exclusive 30-room hotel in the Central District of Hong Kong. The guests at the EM are mostly wealthy business people. **Bill** manages the EM. **Bill** is an employee of the hotel and reports directly to **Albert**.

On 1 June 2015 **Conrad**, an American businessman, checked into the EM for a week’s stay. As **Conrad** has recently had major heart surgery, his wife, **Diana** (who remained in the USA), had arranged to call **Conrad** in his room at the EM daily at 8:00 p.m. (Hong Kong time) to check that he was well.

On 5 June 2015 **Diana**, as arranged, called **Conrad** on his mobile phone at 8:00 p.m. (Hong Kong time). She did not get a reply. **Diana** continued to call **Conrad** on his mobile phone every five minutes until 8:30 p.m. As she had no reply to her calls, **Diana** called the EM and spoke to **Bill**.

Diana explained to **Bill** that she was worried about **Conrad** because he had recently had major heart surgery and was not answering his mobile phone at the arranged time. **Bill** put **Diana** through to the telephone in **Conrad**’s room but this call was not answered. **Diana** then asked **Bill** to go to **Conrad**’s room and to use the master key to enter the room to see if **Conrad** was there. **Bill** refused to go to **Conrad**’s room saying that it was EM’s policy not to disturb guests and to respect their privacy. **Bill** was also concerned that he had no way of checking that the person to whom he was speaking was, in fact, **Conrad**’s wife. Despite repeated calls from **Diana** and constant reminders that because of **Conrad**’s heart condition, he might need medical aid, **Bill** refused to go to **Conrad**’s room to check on him. **Diana**’s last call to **Bill** was at 10:30 p.m. on 5 June 2015.

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

The next morning at 10:30 a.m., the hotel maid responsible for cleaning **Conrad's** room entered his room and found him unconscious on the floor. An ambulance was called and **Conrad** was immediately taken to hospital, where he died an hour after his admission.

Following these events an independent investigation by the government's Labour Department, the police and the hospital to which **Conrad** was admitted have established the following facts:

- (a) The majority of the leading hotels in Hong Kong have a privacy policy similar to that of EM. That is, the hotels do not enter a guest's room in response to a request by an unknown third party.
- (b) **Conrad** had fallen unconscious in his room at the EM at around 7:30 p.m. on 5 June 2015 after suffering a major heart attack.
- (c) If **Bill** had entered **Conrad's** room on 5 June 2015 following **Diana's** calls and if **Conrad** had then been taken to hospital, he might have recovered from his heart attack.

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 principles and authorities.

(25 marks)

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

Question 7 (25 marks)

Alfred is the sole shareholder of **Money Makers (“MM”)**, a private company providing financial services to rich people. **MM** provides investment advice and manages investments for its clients.

On 1 July 2015, **Betty**, a 24 year-old female MBA student was hired by **Alfred** as a summer intern. **Betty** was hired to work at **MM** for July and August 2015. She was not paid for her work, but was promised a full time job at **MM** on completion of her MBA degree, if she performed well during her internship.

Soon after **Betty** started work at **MM** one of the senior managers, **Cliff**, a 55 year-old married man began to make unwelcome advances towards her. **Cliff** continually harassed her and constantly asked if she would be his girlfriend and go out with him. On several occasions **Cliff** inappropriately touched **Betty** against her will. **Betty** did not complain about **Cliff’s** behaviour to **Alfred**. She was scared that if she complained she might not be offered a job at **MM** when she graduated.

In late August 2015, **Betty** had a total breakdown caused by **Cliff’s** harassment and had to stop working at **MM**. **Betty** has been diagnosed as suffering from organic depression which resulted in her having to defer by a year returning to her MBA studies. **Betty** was not offered a job at **MM** following her delayed graduation. As a result of her mental breakdown **Betty** filed a complaint with the police about **Cliff’s** behaviour towards her.

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

Following these events, an independent investigation by the government's Labour Department, the police and the hospital to which **Betty** was admitted have established the facts below:

1. **Betty** was a foreign student and was illegally working at **MM** as an intern, in breach of the provisions of her student visa which did not permit her to be employed in any capacity (**Immigration Ordinance Cap 115 Laws of Hong Kong ("LHK")**)
2. **Cliff** was prosecuted and convicted of criminal assault under the **Offences Against the Person Ordinance Cap 212 LHK** for his inappropriate touching of **Betty**.
3. In February 2013 **Cliff** was accused of sexual harassment and inappropriate touching by a young female employee of **MM**. The police investigated the allegation but found that there was insufficient evidence to prosecute **Cliff**. However, **Alfred** warned **Cliff** that he was not to engage in such conduct again or he would be dismissed from his job at **MM**.

Discuss any tort actions that the injured party (Betty) might bring to recover damages for her injuries and losses. Support your discussion with reference to the relevant principles and authorities.

(25 marks)

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

Question 8 (25 marks)

In *Yaqoob v Asia Times Online Ltd* [2008] HKLRD 911 Reyes J said:

“How does the court strike a balance between the individual’s right to have his good reputation protected and the public’s right to be told of serious potential wrongdoing (and it might be added, the individual’s right to free speech)?”

Discuss, with reference to the relevant law, how the courts have attempted to balance the competing interests of protecting an individual’s reputation and freedom of speech.

(25 marks)

End of Part C

Part D (Criminal Law)

Question 9 (25 marks)

Explain the differences between offences of specific intent and of basic intent and discuss to what extent intoxication may be used as a defence to both types of offence.

(25 marks)

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

Question 10 (25 marks)

Alice lives in a flat with Mary, her mother. Mary is the owner of the flat. Alice is angry with Bob, her former boyfriend after he ended their relationship. Alice decides to frame Bob by planting goods in his flat and then reporting him to the police. Alice asks her friend Clare to help. Alice gives Clare a spare key to her (Alice's) flat and also a key to Bob's flat. Alice tells Clare to enter her flat the next day when Mary will be out and to take some jewellery belonging to Mary and put it in Bob's flat when he will be out. Alice also tells Clare that she will report Bob to the police so that the jewellery can be returned to Mary. The next day Clare does as she is asked. She enters Alice and Mary's flat, takes some jewellery from Mary's bedroom which she then places in Bob's flat. Clare then tells Alice that she has put Mary's jewellery in Bob's flat. Alice then tells the police that her flat has been burgled, that jewellery has been stolen from Mary's bedroom and that she believes Bob may be the burglar. The police arrest Bob and recover Mary's jewellery. Bob convinces the police that he is innocent whereupon they arrest Alice and Clare.

Discuss Clare's liability for the offence of burglary of Mary's flat and whether she has any defence available to her.

(25 marks)

End of Test Paper