2022 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD V: PRINCIPLES OF COMMON LAW

Tuesday, 31 January 2023

THE LAW SOCIETY OF HONG KONG
香港律師會

2022 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

(a) **In what languages are legislation published in Hong Kong? Which language of the legislation should the courts rely upon?**

(5 marks)

(b) **What happens when there is an apparent discrepancy between the different language texts of a legislation?**

(10 marks)

(c) **What does Remedial Interpretation mean? Can Hong Kong courts engage in Remedial Interpretations with respect to the Basic Law?**

(10 marks)

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

Question 2 (25 marks)

(a) **How many votes are needed for a bill to pass through the Legislative Council?**

(10 marks)

(b) **Are there any restrictions to the types of bills that Members of the Legislative Council can introduce?**

(7 marks)

(c) **Do national laws of the People's Republic of China apply in Hong Kong?**

(8 marks)

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

The COVID-19 pandemic has badly affected the business of Carol's music school. In order to promote business in the new academic year, Carol decided to do more postings on social media and offer discounts on fees. Starting from July 2022, she has placed advertisements on LinkedIn, Facebook and Instagram. She also emailed information to current students, and placed physical copies of the information poster and registration form at the entrance to her school.

The poster reads as follows: "You will enjoy all music classes at a 15% discount for the 2022/23 academic year if you personally subscribe to our Facebook page. In addition, the first five persons who successfully register for our beginners' classes will receive three free lessons. Get the offer by scanning this QR code and completing and submitting the registration form online, or by filling in the form below and submitting it by email or in person to our school."

Assume that Amy, Bob, Cathy, Dan and Eva are the first five persons to respond to Carol's promotion, as follows:

- Amy scanned the QR Code and filled in her brother's name online for the violin beginner's class. She also personally subscribed to the Facebook page of Carol's music school.

- Bob (who knows Carol well) had no time to fill in the form and just emailed Carol to request registration for flute beginner's lessons for his daughter. Bob subscribed to the Facebook page of Carol's music school.

(See over the page for a continuation of Question 3)

- Cathy accidentally scanned the QR code of a poster which was next to one of Carol's posters and therefore never registered for the cello beginner's classes at Carol's music school. Cathy subscribed to the Facebook page of Carol's music school.

- Dan filled in the registration form and delivered it personally to Carol's music school. However, the receptionist misplaced the form and Dan was never registered. Dan subscribed to the Facebook page of Carol's music school.

- Eva registered online for viola beginner's lessons, but asked her secretary to subscribe to the Facebook page of Carol's music school.

Classes started on 1 September 2022. On 1 September 2022, Amy's brother, Bob (bringing his daughter), Cathy, Dan and Eva all turned up at the first class, demanding the discount and the free lessons.

Advise Carol whether the followings are entitled to the 15% discount and the free lessons:

(a) Amy's brother

(5 marks)

(b) Bob

(5 marks)

(c) Cathy

(5 marks)

(d) Dan

(5 marks)

(e) Eva

(5 marks)

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

Question 4 (25 marks)

(a) Jay owns a small café and employs two waitresses, Kate and Lily.

Kate falls ill with COVID-19 while on holiday, and Jay tells her not to come back to the café till she has recovered. However, Jay does not want to employ extra staff while Kate is away, so he asks Lily to work longer hours until Kate is able to come back to work. He promises Lily that he will pay her a bonus for doing so. Lily is happy to help out and she works very hard, but Jay does not pay her extra money.

Kate and Lily usually take turns to purchase and collect the flowers for the tables in the café. Since Kate is ill, the florist, Flora, offers to deliver the flowers to the café until Kate returns to work. Jay saw Flora a few days while she was making a delivery, and mentioned that he would pay for the delivery charges. After Kate returns to work, Jay receives Flora's invoice for the flowers which includes the delivery charges. Jay finds the delivery charges too expensive and now refuses to pay them.

Consider and answer the following (ignore employment law implications):

(i) Does Lily have a good claim against Jay for the bonus for her extra work while Kate is away?

(5 marks)

(ii) Does Flora have a good claim against Jay for the delivery charges in making the flower deliveries?

(5 marks)

(See over the page for a continuation of Question 4)

(b) Great Wall Restaurant is a popular restaurant. Henry, Sarah and Linda have signed a contract to hire a big function room in the restaurant as a venue for their parents' wedding anniversary dinner. On the evening of the dinner, the following happen:

- The floor is slippery as the staff have been cleaning it often due to COVID concerns but did not dry it properly. Henry slips on the floor and injures his hip which needs medical attention. He is a tennis coach and his injury has forced him to cancel many lessons with students.

- Sarah slips on the floor when she gets up to go to the washroom, but manages to hang onto a table and is not injured. However, with the movement of the table, a very expensive bottle of wine on the table which she ordered, falls and the glass shatters on the ground, spilling the wine everywhere. Sarah refuses to pay for the wine.

- Linda hangs her handbag on the chair she is sitting on, but after dinner, she discovers that her handbag has been stolen.

The restaurant has a sign at the front which says: "Watch your belongings carefully. We are not responsible for any loss or damage to property or any personal injury, however caused." The contract of hire contains a similar provision.

(See the next page for a continuation of Question 4)

Advise on the following:

(i) Does Henry have a good claim against Great Wall Restaurant for the injury he has suffered?

(5 marks)

(ii) Does Sarah have a good claim against Great Wall Restaurant for the wine?

(5 marks)

(iii) Does Linda have a good claim against Great Wall Restaurant for the loss of her handbag?

(5 marks)

End of Part B

Part C (Introduction to Law of Torts)

Question 5 (25 marks)

Late one Saturday night in June 2022, some patrons at the Pink Orchid nightclub ("Nightclub") had drunk more than was good for them. KK, one of these patrons, became disoriented and aggressive. He began to lash out at people around him, punching and kicking them. Charlie, a crowd supervisor in the Nightclub, saw the commotion and decided to remove KK from the premises. He rushed over to KK and restrained him round the arms "in a bear hug" and marched him from the premises. Outside the Nightclub, Charlie sat KK down on a bench on the public footpath and told him to go home.

KK was so drunk that he could not accept that his night had ended. He therefore went around the side of the building where he managed to re-enter the Nightclub through a fire exit door. After a while, Charlie noted KK staggering around the dance floor again. It enraged him to think that anyone dared to defy him, so he stormed over to KK and said: "I told you not to come back tonight." With this, he punched KK, knocking him to the floor. Paolo, another doorman, came to the scene, and Paolo and Charlie then dragged KK to a private room where he was left to sober up. An hour later, when KK had sobered up a little, Paolo guided KK out the side door of the Nightclub.

KK was angry about the treatment he had received from Charlie. From the street, he went back to the front of the Nightclub and made a racially offensive remark to Charlie. Charlie had suffered racist taunts throughout his youth and KK's words hit a raw nerve. Charlie looked as if he would explode and he lunged for KK. Out of fear, KK tried to flee. In panic, he ran into the road and was hit by a vehicle driven by Yasmina. Yasmina was driving carefully and could not have avoided the collision.

(See the next page for a continuation of Question 5)

Yasmina suffered no physical injury as a result of the collision. However, the collision brought back the memories of the trauma that her partner, Helen, a tram driver, had suffered some years back. Helen had to undergo trauma counselling and was compelled to give up her work when a person committed suicide by throwing himself in front of a tram that she was driving. Yasmina feared the same for herself and, indeed, she did develop a severe, long-term psychiatric reaction following the accident. Fortunately, KK did recover fully from the injuries he suffered in the accident.

The Nightclub is licensed under the Dutiable Commodities (Liquor) Regulations (Cap.109B). The Licensing Conditions for the Liquor Licence relevantly provide:

1. No disorder shall be permitted on the premises.

2. No person shall be allowed to become drunk on the premises, nor shall liquor be supplied to any person who is drunk.

The crowd controllers, including Charlie, were provided by Bouncers-R-Us Ltd., who trained all its staff and registered them with the relevant authorities. The employment contracts between Bouncers-R-Us Ltd. and its staff contain a detailed Code of Conduct ("Code"), the breach of which constitutes grounds for immediate dismissal. The Code provides, amongst other things, that the crowd controllers may only use "reasonable force" in the exercise of their functions, which include assisting the Nightclub in ensuring compliance with its licensing conditions.

(See over the page for a continuation of Question 5)

Provide the following advice, giving full reasons and referring to relevant principles and authorities, as well as considering also any relevant defences:

(a) Is Charlie liable to KK for trespass to person?

(11 marks)

(b) Is Charlie liable in negligence for the mental harm suffered by Yasmina?

(6 marks)

(c) Is Bouncers-R-Us Ltd. liable for Charlie's actions?

(8 marks)

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

Question 6 (25 marks)

Belle's Beauty Clinic ("BBC") is a private hospital specialising in cosmetic procedures. Most of its clientele attend as out-patients, but there is also a hospital ward at which more invasive procedures are undertaken for in-patients.

During the pandemic, BBC adopted a strict hygiene regime aimed at keeping its staff and patients safe from the SARS-CoV-2 virus. The measures put in place were in line, or exceeded, the requirements of applicable government regulations. Under this regime, no visitors were allowed in the ward, and all patients needed to have a Polymerase Chain Reaction ("PCR") test prior to admission. All workers at the hospital needed to undertake a daily rapid antigen test for COVID-19 ("RAT") and record the result in an online system operated by BBC. If the RAT returned a positive result, the worker needed to take a PCR-test and could only return to work if the result was negative or after they recovered from COVID-19.

Crystal Wong ("Crystal"), a fourth-year medical student, undertook a clinical placement as a student intern at BBC. She was keen to get work experience at the hospital because it was her dream to work as a cosmetic surgeon one day. One morning in July 2022, she noticed that she had run out of RAT kits and decided to record a negative result despite not having undertaken any test that morning. She had planned to do the RAT when she arrived for work at BBC but then forgot to do so.

A few days after later, there was a COVID-19 outbreak in the BBC hospital ward. One of the patients infected during the outbreak was Mandy Leung ("Mandy"). Mandy became seriously sick and is still suffering from long COVID, a disabling condition that required her to give up her position as a swimming coach in an international school.

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

Unfortunately, Mandy had chosen to remain unvaccinated because she had been worried about possible long-term effects of vaccination. Mandy knew that full vaccination can reduce the chance of infection and drastically reduces the risk of seriously adverse outcomes from COVID-19. However, Mandy blames the BBC for her situation because, in her view, BBC should have had in place a stricter pandemic regime that did not rely on workers self-reporting but required them to undergo testing under supervision each day.

After the outbreak, the in-patient ward was closed for one week for deep cleaning while the source of the outbreak was being investigated. The investigation concluded that it was likely that Crystal was the source of the outbreak after it was discovered that Crystal tested positive for the virus and had close personal contact with Mandy and all other infected patients. When a local newspaper, NT News, reported that "an irresponsible staff member" was the cause of the outbreak at BBC, the reputation of BBC took a hit, leading to severe downturn in bookings and revenue.

Provide the following advice, giving full reasons and referring to relevant legal principles and authorities:

(a) Can Mandy successfully sue Crystal, BBC, or both, in negligence for causing her sickness and, if so, are there any applicable defences?

(12 marks)

(b) Does Crystal owe a duty of care to BBC in relation to the loss of revenue suffered as a result of the outbreak?

(7 marks)

(c) Can BBC successfully sue NT News in defamation?

(6 marks)

End of Part C

Part D (Criminal Law)

Question 7 (25 marks)

W was shopping at ParknShop with a trolley. She selected various items. She proceeded to the automatic checkout. A store employee was watching her. She scanned 7 items and used her credit card to pay and obtained a receipt. She put the items into her bag and walked out of the store. W was confronted by the store employee and in her bag, there were 10 items. When asked to explain why she did not scan 3 of the items (worth a total of HK$150), W asserted that she might have forgotten and was somewhat stressed and absent-minded.

The next day, W was walking along Pedder Street. On the pavement, there was a HK$500 note. She picked it up, looked around and then put the note into her purse. A police officer watched her and in turn, arrested her.

(a) What are the essential ingredients of the offence(s)?

(17 marks)

(b) What defences (if any) are available to W?

(8 marks)

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

Question 8 (25 marks)

Henry refused to pay back a gambling debt that he owed Andy, a triad boss. The dispute of unpaid debt resulted in developing a strong animosity between them. Andy showed a photo of Henry to a group of 7 gang members, amongst whom were Bob and Charles, telling them to be ready to "teach Henry a lesson one day".

In the evening of 7 July 2021, Andy noticed Henry in an open area of a tavern called American Bar. Henry was spotted drinking with an unknown male who was later identified as Ivan. Andy immediately summoned the 7 gang members to go to American Bar to "let Henry have some fun". Bob picked up the gang with his 7-seater vehicle and drove to American Bar. All members, except Bob, were armed with baseball bats, cleavers and machetes.

Henry and Ivan noticed the 7-seater vehicle circling the tavern a couple of times at slow speed. The driver, Bob, was looking in Henry's direction every time when the vehicle went past the tavern. Though Henry sensed danger, he was unconcerned as Ivan is an expert in martial arts.

Moments later, the group alighted from the vehicle whilst Bob remained in the driver's seat. Charles pointed at Henry and shouted "this is the guy". The gang rushed towards Henry with weapons. In a split second, the group chopped and stabbed Henry numerous times. Ivan, upon seeing this, quickly snatched the machete from one of the assailants, Charles, and struck him in the head. The incident ended with the deaths of Henry and Charles.

(See the next page for a continuation of Question 8)

The autopsy reports indicated the cause of death of Henry was multiple puncture wounds to the neck, heart and lung. Charles, on the other hand, suffered a shattered skull.

Bob was arrested days later. He was charged with the offence of murder. He voluntarily admitted to the police under caution emphasizing that:

(1) he did not participate in attacking Henry,

(2) only those who took part in the actual assault of Henry should be responsible for the death of Henry, and

(3) he just followed the instructions of Andy, but the instructions were vague, he did not expect any of the attackers to have gone as far as assaulting Henry fatally.

Ivan was also arrested and charged with murdering Charles. He remained silent under caution.

Discuss:

(a) The actus reus and mens rea of murder.

(4 marks)

(b) The evolution of the doctrine of "malice aforethought". Is this doctrine applicable in modern law of Hong Kong?

(4 marks)

(c) Whether Bob is likely be convicted of murdering Henry.

(10 marks)

(d) Whether Ivan is likely be convicted of murdering Charles.

(7 marks)

End of Test Paper