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**University of Hong Kong
Faculty of Law
Bachelor of Laws Examination
LLB First Year Examination
(April/ May/ August, 1995)**

Main Examinations for LL.B. First Year (April/ May, 1995)

	Name of Paper	Date of Exam.	Time
1	Law of Tort (18201)	27-Apr-95	9 30am - 1:00pm
2	The Legal System (18108)	01-May-95	9 30am - 12:45pm
3	Law & Society (18111)	05-May-95	2 30pm - 5 45pm
4	Law of Contract (Group A) (18103)	08-May-95	9 30am - 1 00pm
5	Law of Contract (Group B) (18103)	08-May-95	9 30am - 1 00pm

Supplementary LL.B. First Year Examination (August, 1995)

1	Legal System (18108)	21-Aug-95	9 30am - 12 45pm
2	Law of Tort (18201)	23-Aug-95	9 30am - 1 00pm
3	Law & Society (18111)	25-Aug-95	9.30am - 12 45pm
4	Law of Contract (Group A) (18103)	29-Aug-95	9:30am - 1 00pm

THE UNIVERSITY OF HONG KONG

FACULTY OF LAW

Timetable for LL.B. First Year Examination

April/May 1995

<u>Date</u>	<u>Time</u>	<u>Paper</u>	<u>Venue</u>
April 27 Thursday	9.30a m.-1.00p.m. (30 minutes reading time included)	18201 Law of Tort	Loke Yew Hall
May 1 Monday	9.30a m.-12.45p m. (15 minutes reading time included)	18108 The Legal System	Loke Yew Hall
May 5 Friday	2.30p m.-5.45p.m. (15 minutes reading time included)	18111 Law & Society	Loke Yew Hall
May 8 Monday	9.30a.m.-1.00p.m. (30 minutes reading time included)	18103 Law of Contract <u>Group A</u>	Loke Yew Hall
	9.30a.m.-1.00p.m. (30 minutes reading time included)	18103 Law of Contract <u>Group B</u>	Loke Yew Hall
May 9 Tuesday	10 00a.m.-12.30p.m.	English for Law	Room 1, Library Extension Bldg.

Note: A note on Provision of Legislation for Examinations is at the back of this document.

(Miss) K. Wan
Examinations Secretary

March 1995

L.L.B. First Year Examination: April/May 1995

Provision of Legislation for Examinations

The Registry will supply Legislation for use by candidates in the examination papers listed below. Candidates are not permitted to bring any materials into the examination room.

Law of Tort

Civil Liability (Contribution) Ordinance (Cap. 377) 1984 ed.
Control of Exemption Clauses Ordinance (Cap. 71)
Defamation Ordinance (Cap. 21)
Employees Compensation Ordinance (Cap. 282) 1988 ed.
Fatal Accident Ordinance (Cap. 22)
Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
Occupiers Liability Ordinance (Cap. 314)
Motor Vehicles Insurance (Third Party Risks) Ord. Cap. 272, S.12
Criminal Procedure Ordinance (Cap. 221), S.101 and 101A

Law of Contract

Control of Exemption Clauses Ordinance (Cap. 71)
Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
Misrepresentation Ordinance (Cap. 284)
Unconscionable Contracts Ord. (Ord. No. 87 of 1994)
Sale of Goods Ordinance (Cap. 26)

The Legal System

Application of English Law Ordinances (Cap. 88)
Basic Law
Sino-British Joint Declaration

March 1995

UNIVERSITY OF HONG KONG
Bachelor of Laws: First Examination

LAW: LAW OF TORT

April 27, 1995

Time: 9:30 am to 1pm
(including 30 mins. reading)

4 pages - 9 questions

ANSWER ANY FOUR (4) QUESTIONS

1. Ada was the owner of a restaurant. She wanted to increase the profitability of the restaurant so decided to have it renovated. She planned to upgrade the menu, attract a rich clientele and increase the prices. She retained Bob, an architect/engineer, to advise on design and layout and to supervise the renovations according to a specific timetable. She explained to Bob that she hoped to increase her profit margin through these renovations. Bob in turn retained subcontractors to be responsible for the various aspects of the renovation. Among these was Charles, an electrician whose contract with Bob required him to rewire the building.

The work was completed within the timetable and the restaurant reopened. However, the design and layout of the restaurant that was recommended by Bob proved inappropriate, because it failed to fully utilize the floor space and achieve the desired seating capacity. According to Ada's estimate the design and layout error caused a 10% loss of usable table space.

One week after the restaurant's reopening, the restaurant suffered a power failure. This occurred because Charles had used faulty circuitry when rewiring the restaurant. The food in the large refrigerators went bad due to the lack of electrical refrigeration, which in turn caused a 2 day closure of the restaurant while the food was restocked. Ada had to replace the faulty circuitry and wiring at her own expense.

Ada wishes to sue Bob for damages arising from the improper design and layout, and Charles for damages arising from the installation of the faulty circuitry. Advise Ada regarding the duty of care in these tort actions.

2. One evening, Dana's grandmother, Mrs. Wong, suddenly suffered a stroke. Dana put Mrs. Wong into her car, and was anxious to rush her to the hospital for treatment. As she drove the car quickly through a steep, winding part of Clearwater Bay Road, Dana suddenly came upon an unlighted, parked vehicle owned by Edward. Edward was waiting for a friend who was robbing the 7-eleven store nearby. Edward was to provide the getaway car. Due to her speed, and the fact that Edward's vehicle was unlighted, Dana had little time to avoid Edward's car, and panicked. She applied the brakes too late, and hit Edward's car, pinning him inside the car and causing him some personal injury. Dana and Mrs. Wong were not hurt in the collision.

Thirty minutes later, 2 ambulances arrived to assist the victims and take them to hospital. The ambulance carrying Edward to the hospital was involved in a separate accident when a dog suddenly jumped in the path of the ambulance, causing the driver, through no fault of his own, to swerve and crash into a post. Edward suffered further severe injuries in this accident.

The second ambulance took Mrs. Wong to the hospital. She received treatment for her stroke, but sadly, suffered permanent brain damage. The evidence shows that if she had not been delayed by the collision on Clearwater Bay Road, she would have had a 50% chance of complete recovery.

Advise Edward and Mrs. Wong in their negligence actions against Dana.

3. Fred and George were at a party and began to argue. Fred shouted at George: "If you say one more word, I will punch you in the face!" George, who was much larger and stronger, replied: you little punk! You can't hurt me." Later, when George wasn't looking, Fred tried to punch George but missed, and hit Hank, injuring Hank's nose. John, the host of the party, then grabbed Fred, knocked him unconscious and locked him in the bedroom. John intended to call the police immediately, but when he returned, he saw that all of his friends had left in disgust and that his flat was a mess. This made John very angry at Fred and so he kept Fred in the bedroom and did not call the police until he had finished cleaning the flat, 5 hours later. When the police arrived, Fred was still unconscious.

Discuss the tort liability of the various parties.

4. Allie Cheung, a student in the BA English Literature course at Kowloon University, was accused by her teacher of plagiarism in her term paper. Rather than face disciplinary proceedings, Allie quit the university (the plagiarism charge was never pursued and so was never proved). William, a lecturer, learned some of these facts and told a number of colleagues at lunch that "BA student Allie Cheng has recently been caught cheating". Unfortunately, there was a real Allie Cheng who was a BA student in History. William's colleagues believed the story referred to her. One of them dismissed Allie Cheng from her part time job as research assistant.

Meanwhile, another lecturer, Tom, posted a picture of Allie Cheung on the student notice board. The picture contained the caption "don't cheat or you too will pay the consequences".

Advise Allie Cheng in her action against William, and advise Allie Cheung in her action against Tom.

5. Molly purchased some land near Yuen Long. Although the property included a 4 storey block of flats, all the tenants had moved out. Initially, Molly took little interest and allowed the property to deteriorate somewhat. At various places on the property there were signs saying: "Trespassers not welcome. Enter at your own risk".

Every day, Teri took a short cut over Molly's property on her way to the market. The property was fenced, but at one or two points the fencing had collapsed and passersby could walk through, and in fact regularly did so. One day when Teri was walking through Molly's property, she was injured by a loose piece of roofing that had been blown off the roof by the wind.

Valerie, aged 7, often played with her friends on Molly's property. She was badly injured while playing on an abandoned motor vehicle on the property.

In the meantime, Molly decided to repair the premises and use them as an office for one of her businesses. Bill, an employee of a roofing firm hired to install new roofing, was injured when he fell through a part of the roof which had become weak due to rotting from the weather.

Finally, the office space was ready. Sam, One of Molly's clients, entered and saw a sign which read: the owner takes no responsibility for injuries to visitors". Sam did not see that the floor of the entrance way had just been washed with a mop. He slipped on the wet floor and was injured.

Advise Molly regarding her possible tort liability.

6. Entertainment Inc. held a licence granted under the Outdoor Entertainment Sites Ordinance to operate a stadium in Happy Valley. On some Saturday nights, Entertainment Inc. held pop music concerts at the stadium. The concerts were sold out and very noisy, and normally concluded by 11 pm.

Norbert, who was a nearby resident, was an early sleeper. In fact he went to sleep every night at 7 pm. He was unable to sleep on those occasions when a concert was held at the stadium, due to the high level of noise.

Pierre owned a nearby restaurant. The vibrations from the high density sound amplifiers used in the stadium were so great that the window panes in Pierre's restaurant would rattle. On a few occasions, the vibrations actually caused some windows to shatter, and on one such occasion Catherine, a waitress, was injured.

Before one of the concerts involving a famous local performer, the crowd queued up outside the stadium in large numbers. The stadium's doors were not opened until shortly before the start of the show. The huge crowd caused congestion in the streets, and prevented the flow of traffic. As a result John was delayed in getting to the hospital for much needed medical treatment, and suffered a worsening of his condition as a result.

Advise Norbert, Pierre, Catherine and John as to their rights in tort. (Do not advise in negligence. You can assume that the parties have already received any such relevant advice).

7. Tort law arguably performs a number of functions within society and the legal system. Identify one such function, and write an essay critically assessing that function. Be sure to explain how tort law performs that function, and whether or not it does so effectively. Use case law examples where appropriate.

8. The Hong Kong Children's Product Safety Ordinance (no.80 of 1992) contains the following provisions:

5. No person shall manufacture, import or supply a children's product listed in the 1st Schedule unless the product complies in all respects with the specification established for that product in the 2nd Schedule.

31. A person who commits an offence under s.5 shall be liable on first conviction to a fine of \$100,000 and to imprisonment for 1 year, and on subsequent conviction to a fine of \$500,000 and to imprisonment for 2 years."

One day, Bobo was injured while "double-riding" her bicycle (her brother John was the passenger), when the back wheel fell off and the bicycle collapsed. The bicycle was manufactured by the X company, and was a 1st Schedule product but did not meet the specifications in the 2nd Schedule. Advise Bobo of her chances of succeeding in an action for damages for breach of statutory duty, identifying any additional information you feel may be needed to complete your advice.

9. Ho and Man work on a construction site. They are scaffolders. They are employed by Tin. Tin is employed by the main contractor as the scaffolding subcontractor. Ho and Man signed contracts with Tin which describe their status as "subcontractors".

Tin instructed Ho and Man to install the scaffolding in a certain way. Ho thought he knew better and did it in a different, but quicker, way. In consequence, the scaffolding was not as well constructed, and part of the scaffolding fell onto Man, who was taking his tea break at the time. Man was killed.

Man's widow, who has been appointed administratrix of Man's estate, seeks your advice. Advise her regarding available actions and claims on her own behalf and on behalf of the estate. (For the purposes of this question do not advise regarding occupier's liability or breach of statutory duty. You can assume that Man's widow has already received such advice).

END OF PAPER

UNIVERSITY OF HONG KONG
BACHELOR OF LAWS: FIRST EXAMINATION

(18108) THE LEGAL SYSTEM

1 May 1995

Time: 9:30 am - 12:45 pm
(Reading Time: The first 15 minutes)

Candidates are required to answer **FOUR (4)** questions.

1. ATTEMPT EITHER (a) OR (b):

- (a) "When an appellate court overrules one of its own common law decisions, an injustice is done to the losing party. It does not matter whether you call it a retroactive change to the law or a mere correction of an erroneous understanding of the true law, the effect for the disappointed litigant is the same: what he had previously believed to be the law, in accordance with the best possible advice he could get at the time, turns out to have been wrong, and his reliance upon it has cost him dear."

Explain and discuss.

- (b) Assess the theory and effectiveness of stare decisis in the common law system. Can it ever provide genuine certainty as to the common law at some future date?

2. ATTEMPT EITHER (a) OR (b):

- (a) Explain and illustrate how the ideology of the Rule of Law can be observed in the legal system of Hong Kong.

- (b) "The main justifications of the jury system are that the jury serves as a check against the judiciary and acts as a buffer between the government and the accused. Yet if we have faith in our judiciary which is independent, there is no need for any jury system."

Comment critically on this statement.

3. "The usual technique for the reception of English law in a territory is to provide a cut-off date, receiving all law in force on that day but, unless expressly and separately stipulated, receiving no law which comes into being thereafter. Abolish the cut-off date and you invite all sorts of problems."

Explain this statement with reference to the Hong Kong experience and Article 8 of the Basic Law.

4. Should the Court of Final Appeal, once established in Hong Kong, be bound by:
- (i) its own decisions?
 - (ii) decisions of the Judicial Committee of the Privy Council delivered prior to the Judicial Committee's abolition as the highest court in the Hong Kong judicial hierarchy?

Explain and justify your answer.

5. ATTEMPT EITHER (a) OR (b):

- (a) "The old notion - that you could choose between a limited number of mutually contradictory 'rules' of statutory interpretation to assist you in reaching whatever conclusion you wanted - even if it was ever accurate, is no longer true, and at least in Hong Kong the legislature has intervened to require one dominant approach to the interpretation of all local statutes."

Explain and discuss.

- (b) After quoting the principal passage in *Pepper v Hart* [1993] AC 593 by which the exclusionary principle was limited in scope, Findlay J said in a recent case:

"I am not sure how applicable this decision is to a legislature that has no majority party to ensure the passage of legislation. Where a majority party exists, one can be reasonably sure that what is said by a Minister or other promoter of a Bill represents the intention of the majority of the legislature. In Hong Kong, statements in the Legislative Council cannot be said to be clearly representative of the intention of the majority of the Council."

Discuss *Pepper v Hart* and its application to Hong Kong in the light of this passage.

6. Some people believe that Chinese customary law in Hong Kong, which they say is old-fashioned, based on beliefs which often conflict with modern notions of rights, and impossible to administer in today's world, should be abolished. Others maintain that it would be a grave injustice to deprive certain sections of the community of the legal rules which have helped preserve their customs.

Explain which view you favour and why.

7. ATTEMPT EITHER (a) OR (b):

- (a) "Although both the Law Society and the Bar Association claimed that their proposals on fusion best served the public interest, they are nothing more than perpetuation of self-interest."

Explain whether you agree with this observation.

- (b) "Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. But, as an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests." (*Rondel v Worsley* [1969] 1 AC 191, per Lord Reid)

Explain this statement. How far should a defence counsel in a criminal case assist the court in a manner that may lead to the conviction of his or her client?

8. "The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged." (Art 3(3), *Joint Declaration*)

Explain what steps have been taken to implement Article 3(3) of the Joint Declaration. How far do you think the present common law system in Hong Kong will be preserved after the change of sovereignty in 1997?

***** THE END *****

UNIVERSITY OF HONG KONG

Bachelor of Laws Examination

LAW AND SOCIETY (18111)

Date: 5 May 1995

Time: 2.30 - 5.45 pm (Reading Time: the first 15 minutes)

Instructions to Candidates

This paper consists of nine questions. Please answer four questions.

Questions

1. Answer parts (a), and either (b) or (c). The parts carry equal marks.
 - (a) Explain the concepts of
 - (i) political authority;
 - (ii) the State;
 - (iii) the liberal constitutional state;
 - (iv) the liberal constitutional democratic state.
 - (b) If you have a choice, would you prefer to live in a liberal constitutional democratic state or in a different kind of state? Give reasons.
 - (c) If you have a choice, would you prefer to live in a State or in a stateless society? Give reasons.
2. Discuss the characteristics of the Chinese political tradition and the prospects for liberal constitutional democracy in mainland China in the twenty-first century.
3. Compare and contrast the theories of rights or the understandings of and attitudes towards rights of any THREE of the following thinkers:
 - (a) Thomas Aquinas;
 - (b) Thomas Hobbes;
 - (c) John Locke;
 - (d) Voltaire;
 - (e) Jean Jacques Rousseau.

4. Bracton once said: "The Constitution makes the king, not the king, the Constitution". Please discuss this statement with reference to the doctrines of rule of law AND parliamentary supremacy.
5. Construct a conversation between Sir Edward Coke, Lord Ellesmere and King James I on the relationship between: first, law and equity; AND second, law and the State.
6. What is the significance for English constitutional history of any TWO of the following documents:
 - (a) Constitution of Clarendon;
 - (b) Magna Carta;
 - (c) Provisions of Oxford;
 - (d) Petition of Right;
 - (e) Bill of Rights;
 - (f) Act of Settlement.
7. Please answer either part (a) or part (b).
 - (a) Feminist legal scholars have challenged the idealised view of law as a rational, neutral, and principled set of rules capable of providing justice for all. Explain how these challenges have been made and discuss the issues they raise for an alternative model of justice.
 - (b) Is there a feminist model of justice?
8. Is socialism incompatible with human rights?
9. Discuss how the rules governing EITHER contract OR property in each of the following types of economic systems reflect the nature of that economy:
 - (a) subsistence economy;
 - (b) market economy; AND
 - (c) planned economy.

----- END -----

THE UNIVERSITY OF HONG KONG

DEPARTMENT OF LAW

BACHELOR OF LAWS EXAMINATION

(18103) Law of Contract

Lecturer: Shane Nossal / Group A

Date: 8 May 1995

Time: 9:30 a.m. to 1:00 p.m.

Instructions to Candidates

1. The time for this examination is 3 hours and 30 minutes. This time period includes 30 minutes reading time.
2. This examination consists of 6 pages, including this one. Note that there will be printing on both sides of the pages.
3. All questions are of equal value. Allocate your time accordingly.
4. This examination is composed of 7 questions.
5. You are **required** to answer **four (4)** questions in this examination.
6. Remember that a complete answer to these questions (and especially the problem questions) ought to include a discussion of the remedies available to the injured party.

1. "Freedom of contract has been eroded since the mid-nineteenth century to such an extent that one can now say with confidence that this noble ideal no longer exists."

Do you agree with this statement? Discuss with reference to relevant case law, legislation, and academic writings.

2. "There is considerable overlap between the Unconscionable Contracts Ordinance and the Control of Exemption Clauses Ordinance. Unless the latter ordinance is amended in light of the former, there will be two separate legislative regimes over the same contract resulting in unnecessary and undesirable complexity and uncertainty."

Do you agree with this statement? Discuss with reference to, inter alia, specific provisions of the Ordinances.

3. Wong, the chairman of Bearings Co., wanted to reward his 350 employees with a sumptuous^s banquet. His secretary suggested that the banquet be held on the second day of the Lunar New Year at the Grand Ballroom of the Central Hotel since it had an unobstructed view of the harbour and everyone could watch the fireworks that were scheduled for that evening.

On 5 January 1995, Wong entered into a contract with Central Hotel for a banquet to be held from 7 p.m. to midnight on 1 February 1995 (the second day of the Lunar New Year) in the Grand Ballroom. The price was a 'special fireworks package' of \$500 per head, and Wong paid a deposit of \$50,000.

On 31 January, the Urban Council announced that due to bad weather the fireworks display was to be postponed to 2 February. Wong tried to change the hotel booking, but was informed that the Grand Ballroom had already been booked for someone else on 2 February. Wong telephoned his many rich friends, and was able to borrow a luxury yacht for the evening of 2 February. Wong then telephoned the manager of the Central Hotel and told him to cancel his booking of the Grand Ballroom. The manager replied that it was impossible to cancel the booking at such a late date and that the decorations in the name of Bearings Co. had already been made. Wong was^s unmoved by the manager's claim and ultimately the party was held on board the yacht on 2 February.

Wong has now come to you for advice, telling you that he wants a refund of the \$50,000 that he paid to the Central Hotel, and that the Central Hotel is demanding that Wong pay them compensation since they were unable to find other guests for the Grand Ballroom on the evening of 1 February.

4. Philip Wan was a well known media personality. He had had a very profitable year in 1992 and had celebrated by buying two cars (a 1993 Mercedes sports car and a 1993 Mercedes family sedan) painted in his favourite colour, white. Subsequent losses on the stock market in 1994 made him decide to sell one of his cars. After a great deal of deliberation, he decided to sell the family sedan. It had the same value as the sports car, but was more expensive to maintain. He thought that he could get a higher price for the car if the buying public knew that *he* was the seller. He therefore placed the following advertisement in the newspaper: "Philip Wan's 1993 Mercedes for sale. White. Will sell for \$500,000. First come, first served. Drop by 23 Bowen Rd and buy it!"

Roy Chan saw the ad and knew of Philip's reputation as a big fan of fellow celebrities. He decided to pretend that he was Richard Clayderman, the famous French entertainer, and therefore dressed in a fake Armani beige suit, placed a blonde wig on his head, and wore contact lenses that turned his normally brown eyes a striking blue. He headed off to Philip's house.

"Philip, Richard Clayderman here," Roy said when Philip opened his door. "The family sedan sitting in your driveway is perfect for me and my entourage. I'll buy it! You won't mind taking a cheque, will you? After all, you can always find me at the EMI Record Studio if you need me!"

Philip was stunned. He hadn't heard that Richard Clayderman was living in Hong Kong. He was hesitant about releasing his car in exchange for a personal cheque, but he felt compelled to agree. To refuse Richard's request would cause great embarrassment. "Of course your cheque is acceptable, Richard. Here are the car keys." Philip took the cheque in the amount of \$500,000 and signed "Richard Clayderman" and watched Roy drive away in his family sedan.

Roy immediately sold the Mercedes for \$350,000 to Lee, who knew nothing about the history of the car. The cheque Roy had given to Philip was not honoured by the bank. When Philip learned of this development, he rushed out to report the matter to the police. He jumped into his Mercedes sports car, started the engine and was about to drive away when his sister called him back and told him that his bank manager was on the telephone. Philip dashed back into the house, leaving the car's engine running and its driver's side door unlocked.

Meanwhile, Jeff, a wealthy law student who had also read the advertisement, arrived at Philip's house. He saw the sports car in the driveway and said to himself: "There's the 1993 white Mercedes. I'm the first person to claim it!" He dropped a certified cheque in the amount of \$500,000 made payable to Philip Wan into the letterbox attached to Philip's front door and drove away in the car.

When Philip finished his telephone call, he discovered his sports car missing. He telephoned the police who eventually located the family sedan in the possession of Lee and the sports car in the possession of Jeff. Both Lee and Jeff are claiming that they are the rightful owners of the cars in their possession.

Philip is seeking your legal advice, asking whether he can get back the sports car and the family sedan or its value.

5. Wong was the owner of a small car repair garage. Chan wanted the engine of his car overhauled. Because he used his car in his business (he delivered 1,200 newspapers to his customers' homes each morning), he stressed to Wong that the overhaul job must be completed within the next 10 days, during which time Chan would be on vacation in Thailand. Wong assured Chan that the work would certainly be finished within 10 days and quoted what he described as a "very low price" for the work: only \$12,000. Chan was unpleasantly surprised by this quotation (he had been prepared to spend up to \$8,000 for the work). But he needed the overhaul to be performed and so agreed to that price. Wong asked him to sign a "Service Contract". Set out on the face of the contract was the following clause: "The charge for the services rendered is \$ 12,000, the whole amount of which is due and payable immediately. The garage may grant to the customer temporary credit facilities but retains the right in its absolute discretion to demand payment of the whole amount at any time". Wong asked Chan to pay \$6,000 immediately and the remaining \$6,000 upon completion of the job. Chan complied and left the car with Wong, saying that he would return in 10 days.

Ten days later, Chan returned to Wong's garage and was horrified to find that the parts of his car's engine were strewn around the floor of the garage. "My car," Chan exclaimed. "How am I going to conduct my paper deliveries tomorrow?!" Wong replied that the delay in finishing the overhaul was caused by three factors: the job was more complicated than he had initially thought; he had underestimated the labour costs and therefore could not hire extra mechanics at overtime rates; and he needed a special machine to clean the carburettor, but he did not have the \$1,200 needed to buy one.

Chan started to yell at Wong, demanding the immediate repair and return of his car. "If you don't have more patience and understanding," Wong replied "then I will withdraw your credit and demand immediate payment of the full amount that you owe me. I told you that I do not have the money to continue with the job!"

Chan was beside himself with worry. "Look, I don't care that the overhaul wasn't finished when you promised it was going to be finished. I need the car as soon as possible. I'll give you an extra two days to finish the work. I'll give you an extra \$2,000 to hire the necessary mechanics and an extra \$1,200 to buy that special machine. Just finish the work quickly!" Chan handed over \$3,200 and stormed out of the garage.

Chan returned to Wong's garage two days later and found his car waiting for him. He paid Wong the remaining \$6,000 owing under the initial agreement with a cheque, and drove his car away. During those two days, Chan had found out that most other car garages would have charged only \$8,000 to perform an engine overhaul. So when Chan got his car safely home, he immediately telephoned his bank and left instructions to stop payment on the cheque he had given to Wong. When the cheque was returned for lack of sufficient funds, Wong commenced an action against Chan for the \$6,000.

Chan comes to you for advice, saying that, not only does he not owe Wong anything, but also that he wants to sue Wong for (i) the return of the extra \$3,200 he paid; (ii) the breach of Wong's promise to repair the car within 10 days; and (iii) the \$5,000 expense that he incurred for a rental car during those two extra days Wong was working on his car.

6. Andy was a law student who earned extra money by operating a fishball stall in the market near his home. One day, just as he was getting into his car parked in an alley behind a furniture store, he saw on an unattended loading bay, a beautiful antique wooden chair. Andy drove his car into the loading bay, stuffed the chair into his car and sped away.

Andy displayed the new chair at his stall with a "for sale" sign attached to it. One customer, Mrs. Wong, offered to buy the chair for \$60,000. She told Andy that she wanted to use it to attract more customers to her vegetable stall in the market and to "sit on it like an empress" while she sold her vegetables. Andy said that he would get back to her later in the day.

Andy went home, reviewed his Contract Law notes and took out two pieces of paper. On the first piece of paper he wrote the words in English and Chinese: "The contract of sale is subject to Andy's Terms and Conditions, a copy of which is available on request". On the second piece of paper he wrote: "Andy's Terms and Conditions: Andy does not warrant that he has the right to sell any item, or that any item that he sells is fit for purpose. Andy further will not be liable for any loss or injury howsoever caused resulting from the use of any item sold." He placed the second piece of paper in his desk.

Later that day Andy told Mrs. Wong that he would sell to her his chair. He handed her the first piece of paper and asked her for the \$60,000. "What is this?" Mrs. Wong asked looking at the paper in her hand. "It is a legal document," Andy replied.

"I'm not happy about this paper. I will now only buy your chair if you reduce the purchase price by \$5,000." Andy agreed and Mrs. Wong paid over \$55,000 and took away the chair.

Instead of using it at her stall, Mrs. Wong decided to take the chair home so that she could relax in it after a hard day's work. One evening, as she was sitting in the chair watching a Judge Pao re-run, the door burst open. Mrs. Wong jumped with fright, and her sudden movement caused the wooden chair literally to break apart beneath her body. Mrs. Wong crashed to the floor and lay there on top of a pile of sticks. Standing above her were five policemen.

As it turns out, the chair was actually a Ming dynasty antique valued at \$1.5 million. Because of its age, the wood with which it was made contained so many cracks that the chair was actually quite dangerous and unsuitable for sitting in. The chair's real owner had contacted the police upon discovery of its disappearance from the loading bay, and the police had traced the chair to Andy and then to Mrs. Wong. The police confiscated the remains of the chair and returned them to the chair's rightful owner.

Mrs. Wong injured her back in the fall and commenced an action against Andy. She has claimed (i) a return of the purchase price and/or damages for breach of contract; and (ii) damages for her injured back.

Andy comes to you for advice, wanting to know the grounds on which he can defend the action and the likelihood of his defence succeeding.

7. S.Y. Li owned a trucking company, Trucks-R-Us Co., and wanted to borrow \$8 million to purchase 10 new lorries. His company was already indebted to the Asia Bank in the amount of \$2.5 million, and the bank manager had told him that any new loans would require proper security. S.Y.'s wife, Anna, was very wealthy, but had been warned by her father never to allow S.Y. to get his hands on any of her money. However, in August 1994, S.Y. commenced a campaign to persuade Anna to help him financially, sometimes buying her little gifts, and occasionally yelling at her and threatening to divorce her. Anna did not want to see S.Y. in such an agitated state and therefore agreed to help him out -- just this one time.

S.Y. told her that her financial obligation would not be so onerous. He told her that his company needed her to sign a personal guarantee in the amount of \$3 million. Anna agreed to sign such a guarantee.

S.Y. then went back to the Asia Bank knowing that he had obtained the security that the Bank needed. The bank manager knew of the great wealth of Anna and agreed to loan \$8 million to Trucks-R-Us Co. provided Anna signed an unlimited guarantee both for the company's past and future indebtedness. S.Y. assured the bank manager that she would. "Fine," the bank manager said "I will send the documents to a solicitor and have her sign them in his presence." S.Y. suggested that it would be more convenient if the documents were sent to the law firm of Chan & Yan, who were also the solicitors of Trucks-R-Us Co., for Anna's signature. The bank manager agreed.

On 12 September S.Y. drove Anna to the law offices of Chan & Yan. He told her: "I have a golden rule when dealing with solicitors. "Do not ask any questions and do not offer any information. Understand?"

Anna met with Felix Yan alone. Felix explained to her the nature of the guarantee that she was about to sign and stated that it was an unlimited guarantee with respect to the company's indebtedness to the Bank. Anna did not understand the meaning of the term "unlimited guarantee". When Felix asked her whether she agreed to enter into this guarantee, Anna replied "I really don't know. My husband told me ..." She never completed that sentence and Felix never asked her to elaborate on what she was going to say. Felix handed her the guarantee and she signed it in the box indicated by Felix. On the margin of the guarantee next to her name, Felix wrote the following declaration: "The nature of this unlimited guarantee has been fully explained to Mrs. Anna Li who understood same and freely agreed to enter into this transaction. [Signed] Felix Yan, Chan & Yan, 12 Sept. 1994."

Felix then sent the guarantee directly back to the Asia Bank, who then approved the \$8 million loan and deposited that sum into the account of Trucks-R-Us Co. By January 1995, the company was faring so badly that its creditors forced it into liquidation.

Asia Bank now wants to enforce the personal guarantee signed by Anna. The Asia Bank comes to you for advice, telling you that Anna is resisting payment under the guarantee. The Bank wants to know (i) the probable bases on which Anna will attempt to resist the guarantee, (ii) whether the Bank will be entitled to rely on the guarantee, and (iii) in any event, whether it will be entitled to rely on the guarantee at least up to the amount of \$3 million.

End of examination paper

THE UNIVERSITY OF HONG KONG

DEPARTMENT OF LAW

BACHELOR OF LAWS EXAMINATION

(18103) Law of Contract

Lecturer: B Ho/Group B

Date: 8 May 1995

Time: 9:30 am to 1:00 pm

Instructions to Candidates

1. The time for this examination is 3 hours and 30 minutes. This time period includes 30 minutes reading time.
2. All questions are of equal value. Allocate your time accordingly.
3. You are required to answer **ANY FOUR (4) QUESTIONS** of the following seven questions.

1. Sean, a well-known hair stylist, wanted to sell his shop and emigrate to Canada. On October 2, 1994 he placed an advertisement in the South China Morning Post as follows:

Flourishing hair salon for sale at \$30,000,000. Famous customers. Monthly profits \$200,000.

Benjamin saw the advertisement and started negotiations with Sean the next day. Sean told Benjamin that his customers included Mrs Patten and showed Benjamin his books and records. Benjamin found that Mrs Patten was indeed Sean's customer and Sean's business really made profits of \$200,000 per month for the last 3 years. To assure Benjamin that everything was as it seemed, Sean told Benjamin that the only reason for selling was his emigration plans. Benjamin asked Sean to give him time to arrange financing.

Because Sean was thinking about emigrating all the time, he started to neglect his business. He stopped attending his famous customers personally, but sent his assistants instead. This was an insult. So Mrs Patten and other famous customers stopped going to Sean's. Still Sean went on dreaming about Canada and didn't care.

On March 1, 1995 Benjamin was ready and he contacted Sean. They entered into a contract for the sale and purchase of Sean's business which included these terms:

(a) Benjamin shall pay the price of \$30,000,000 in three installments of \$10,000,000 each respectively on March 15, 1995, June 15, 1995 and September 15, 1995.

(b) Sean represents that the average monthly profits of the business has been \$200,000.

Benjamin paid the first installment and took over the business. He soon found that the business did not have any famous customers; he could only make profits of \$150,000 per month. To

make matters worse, two months after the sale, Sean opened a shop next door.

Advise Benjamin.

2. Peter is a poor little rich boy. His father died over 10 years ago; his mother remarried and Peter could not get on with his step-father. So when he was admitted to the Kowloon University at age 16, Peter chose to live in hall rather than his parents' luxurious house on the Peak. In the three years at the University, Peter only went home once, for dinner. He spent the rest of the time at the hall. In this way, he got to know the Warden, Tom, and his family very well. Tom was everything Peter wanted in a father and Peter went to Tom with all his problems, large and small. Tom was always ready with good advice which was gratefully accepted by Peter.

Soon after Peter's graduation, Tom went to him with a proposal. Tom explained that he wanted to leave the University and go into the publishing business. He was confident of success, but needed capital. He had the brains, Peter had the capital, and they would be great partners, he said. Specifically, he said that he had a firm, Tom Kee, and that the Kowloon Bank was willing to lend to the firm if a rich person guaranteed the loan. Peter did not need much persuasion since he thought Tom was the most talented person on earth. They went to Tom's solicitors and signed a contract whereby Tom agreed to sell 50% of the firm to Peter. They did not wait, however, for the completion of the contract before going to the Kowloon Bank.

At the Kowloon Bank, Tom introduced Peter to the bank manager as his former pupil. The manager pulled out Tom's file and handed the documents over to Peter. The documents showed a \$10 million loan to Tom Kee to be guaranteed by an unlimited personal guarantee of Peter. Tom Kee was described as a sole proprietorship owned by Tom. The manager started to explain the

transaction to Peter, but Peter stopped him, saying, 'Tom told me all about it already. I trust him; he is like a father to me.' Having said that, Peter signed the guarantee and handed it back to the manager. At that moment, the telephone rang and the manager picked up the phone. By the time he finished the conversation, Peter and Tom had left.

Kowloon Bank duly disbursed the loan proceeds to Tom Kee. Tom left the University. Unfortunately, he had lived in the ivory tower for too long to be able to survive. Tom Kee failed within three months. Kowloon Bank has demanded payment from Peter under the guarantee.

Advise Peter.

3. Bill, a civil servant, has a keen interest in antiques. He has spent the last 30 years studying Ming objects of art and has gained a reputation for himself as an amateur expert on Ming antiques. As a civil servant he often goes to London on official business. Whenever he is in London he goes to antiques markets to see if there are bargains to be picked up.

Stuart is a small-time antiques dealer. He wanders around England and buys antiques for resale. Every now and then he makes a huge profit by buying a good piece from an old farmer who doesn't know its true value and reselling it at antiques markets.

Bill, a frequent visitor to antiques markets, knows Stuart by sight. On a recent visit to England, he saw a vase at Stuart's stall. It looked like a Ming Vase. Stuart offered to sell at £50,000. If authentic, the vase should sell at £200,000. Bill bargained with Stuart and succeeded in buying it for £45,000. Stuart gave an invoice with this clause printed in bold red ink on its face: 'No condition or warranty about authenticity is given'.

Bill took the vase home and later discovered it was only a clever reproduction. He wants to sue Stuart.

Advise Bill on each of the following alternatives, at the time of sale:

(a) both Stuart and Bill thought the vase was authentic;

(b) Stuart knew the vase was a reproduction, whereas Bill thought it was authentic.

4. Carl is in the business of interior decorations. When house prices were rising in the period between 1990-1993 his business flourished. He thought the boom would last forever. So towards the end of 1993, he expanded his business by renting more and more expensive office space and hiring more and more expensive designers and other professional staff.

By mid-1994 Carl was in trouble. The housing market was dead. Those who bought were unwilling to spend much on decorations. Carl dismissed some employees and cut expenses where he could. He could not, however, cut back on the rent. In June, 1994 he had only one outstanding job on hand, a renovation job for Dick. Carl sat down and did some calculations. If he asked Dick to increase the contract price by 100%, he could finish the renovations. By then, the lease for the extended office space would expire and he could return to a skeletal operation and wait for the market to recover. Otherwise, he would have to petition for bankruptcy right away.

On being informed of Carl's situation as outlined above, Dick reluctantly agreed to amend the contract to increase the price by 100%. Carl completed the work and sent his invoice for the agreed new price. Dick, however, was only willing to pay the original price. He demanded that Carl give him a receipt stating

that the entire price under the contract as amended has been paid in full. Otherwise, he said, Carl could see him in court. Carl needed the cash desperately, he took Dick's cheque and signed the receipt, complaining bitterly.

Carl comes to you for advice. Advise him.

5. Taipan had a good year and wanted to reward his employees with a sumptuous banquet. His secretary suggested that the banquet be held on the second day of the Lunar New Year at the Grand Ballroom of the Central Hotel since it has an unobstructed harbor view for viewing fireworks scheduled for that evening. Taipan thought it was a great idea because he knew his employees could not otherwise afford to view the fireworks so comfortably.

Taipan entered into a contract with Central Hotel for a banquet to be held from 7 pm to midnight on February 1, 1995 (the second day of the Lunar New Year) at the Grand Ballroom. The price was a 'special fireworks package' of \$500 per head. Taipan paid a deposit of \$50,000.

On January 31, the Urban Council announced that due to weather conditions the fireworks display was to be postponed to February 2, 1995. Taipan tried to change the hotel booking, but was informed that the Grand Ballroom had been booked for someone else on February 2, 1995. After much telephoning, Taipan obtained a loan of a yacht and decided to cancel the hotel booking and to hold the party on the yacht on February 2.

Taipan has demanded a refund of the \$50,000; the Central Hotel has demanded damages for breach of contract.

Advise Taipan.

6. Edward, an exporter, has a contract with Charles for the carriage of his goods. The contract was for three years from January 1994. Under the contract, Edward promised to ship all his goods via Charles and Charles promised that on five days' notice, he would arrange to have Edward's goods picked up and put on a ship for the destination and within the deadline specified in Edward's notice. There was also an agreed schedule of charges for goods so carried during the contract period.

On December 1, 1994, Edward telephoned Charles and warned him he would have a shipment ready on December 20 and that it must be placed on a ship before midnight December 31, 1994. Otherwise, Charles would lose his quota for that shipment and for future years and would suffer great losses. Charles assured Edward that his employees would put the goods on board well before the deadline.

On December 14, 1994, Edward telephoned Charles and asked him to pick up a shipment on December 20, 1994 for shipment to New York and reminded Charles again of the importance of the December 31 deadline. Charles was about to leave for a holiday and told his secretary to tell the foreman. His secretary was having romantic problems and forgot to do so. On December 20, Edward waited all day, but Charles' employees failed to show up. After frantic searches, Edward located Charles' foreman and repeated his requirements. The foreman arranged for the goods to be picked up on December 21. The goods were picked up on December 21. Unfortunately, on December 22, the foreman was arrested in Shenzhen for keeping a mistress, and without the foreman to make arrangements, the goods sat in Charles' warehouse. The goods were still in Charles' warehouse on January 1, 1995.

The goods were intended to fill a particularly profitable contract and the 1994 quota having expired, the goods had to be resold in Hong Kong at a loss. Edward has been sued by the buyer for breach of contract; he has lost his quota for 1995 and thereafter. He is furious. Advise him of his remedies.

7. Answer any **one** (1) of the following:

(a) 'The problem of third party beneficiaries is, in short, a very complex one and it is submitted that no simple formula can provide an adequate solution.'

Discuss.

(b) Explain when the courts will imply terms into contracts. Do you think the courts should exercise their powers to imply terms into contracts more freely or restrictively? Why?

(c) '[C]onsideration had to be not merely "something of value," but "something of value *in the eye of the law.*" The law in certain cases refused to recognise the "value" of acts or promises which might be regarded as valuable by a layman. This refusal was based on many disparate policies; so that "promises without consideration" included many different kinds of transactions which, at first sight, had little in common. It is this fact which is the cause of the very great complexity of the doctrine; and which has also led to its occasional unwarranted extensions and hence to demands for reform of the law.'

Discuss. Do you agree with the above assessment of the doctrine of consideration? Can you give some examples to support or to rebut the above assessment? Do you think the doctrine of consideration should be reformed? How?

THE UNIVERSITY OF HONG KONG

FACULTY OF LAW

FOR FAVOUR OF POSTING

Timetable for the Supplementary LL.B. First Year ExaminationAugust 1995

<u>Date</u>	<u>Time</u>	<u>Paper</u>	<u>Venue</u>
August 21 Monday	9.30 a.m. - 12.45 p.m. (15 minutes reading time included)	18108 Legal system	Room 103, Main Building
August 23 Wednesday	9.30 a.m. - 1.00 p.m. (30 minutes reading time included)	18201 Law of tort	Room 103, Main Building
August 25 Friday	9.30 a.m. - 12.45 p.m. (15 minutes reading time included)	18111 Law & society	Room 122, Main Building
August 29 Tuesday	9.30 a.m. - 1.00 p.m. (30 minutes reading time included)	18103 Law of contract (Group A)	Room 122, Main Building

Provision of Legislation for Examinations

The Registry will supply Legislation for use by candidates in the examination papers listed below. Candidates are not permitted to bring any materials into the examination room.

Law of Tort

Civil Liability (Contribution) Ordinance (Cap. 377) 1984 ed.
Control of Exemption Clauses Ordinance (Cap. 71)
Defamation Ordinance (Cap. 21)
Employees Compensation Ordinance (Cap. 282) 1988 ed.
Fatal Accident Ordinance (Cap. 22)
Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
Occupiers Liability Ordinance (Cap. 314)
Motor Vehicles Insurance (Third Party Risks) Ord. Cap. 272, S.12
Criminal procedure Ordinance (Cap. 221), S.101 and 101A

Law of Contract

Control of Exemption Clauses Ordinance (Cap. 71)
Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
Misrepresentation Ordinance (Cap. 284)
Unconscionable Contracts Ord. (Ord. No. 87 of 1994)
Sale of Goods Ordinance (Cap. 26)

The Legal System

Application of English Law Ordinances (Cap. 88)
Basic Law
Sino-British Joint Declaration



(Miss) K. Wan
Examinations Secretary

UNIVERSITY OF HONG KONG
BACHELOR OF LAWS: SUPPLEMENTARY EXAMINATION

(18108) THE LEGAL SYSTEM

2 | August 1995

Time: 9:30 am - 12:45 pm
(Reading Time: The first 15 minutes)

Candidates are required to answer FOUR (4) questions.

1. "English judges are slaves of the past and despots of the future". Comment on this statement critically in light of the doctrine of stare decisis.

2. Comment critically on the decision of the House of Lords in *Pepper v Hart* [1993] AC 593. What are the justifications for restricting the courts from having full access to Hansard if the task of interpreting statutes is to give effect to the intention of the legislature?

3. ANSWER EITHER (A) OR (B) BUT NOT BOTH
 - A. "Neither *de Lasala* nor *Tai Hing Cotton Mill* is free from criticism, and the latter is difficult to reconcile with the former." Explain this statement, and discuss whether you agree with it.

OR

- B. "*Tai Hing Cotton Mill* is wrong in reasoning, out of touch with the reality in Hong Kong, and a classic reflection of British imperialism."

Discuss this statement critically.

4. Tom was charged with an offence of indecently assaulting his wife. In *R v John Doe* (1723) D & M 234 it was held that the act of marriage was an unqualified consent to sexual intercourse, and therefore there could not be any marital indecent assault at common law. In *R v Dumpty* [1989] AC 211, the House of Lords upheld the

conviction of Dumpty for marital rape. Lord Rumpole, giving judgment of the House, said:

"The beauty of the common law is that it can be developed with the passage of time. In deciding how the common law should develop, the court should pay regard to the rising incidents of domestic violence and marital rape in England in recent years. It is high time to reconsider the fictitious notion of consent by the mere fact of marriage. Such an archaic notion is developed at a time when women were very much seen as the property of the men. Counsel for the defendant relied heavily on *R v John Doe*, which has been followed many times since it was decided, and has stood unchallenged for more than two centuries. We find it unnecessary to comment on this case, which can be distinguished as it is an indecent assault rather than a rape case. Indecent assault is of course far less serious than rape, and we will consider the correctness of *R v John Doe* only when it is necessary to do so in future. It suffices for this judgment to hold that there is no impediment in law to convict a man for raping his wife simply because of the existence of a marriage between them."

By an Order in Council in 1992, the UK Crimes (Amendment) Act 1991, which provides that a marriage shall not by itself constitute consent for the purpose of any sexual offence, including rape and indecent assault, was extended to Hong Kong. This Act expires (insofar as Hong Kong is concerned) on 30 June 1997, and no local enactment in this regard has been made.

The offence for which Tom was charged was committed on **1 April 1998**. Article 8 of the Basic Law provides that the law previously in force shall be maintained. Assuming that the whole of Cap 88 was repealed on 1 July 1997 with no substitute introduced, and assuming Cap 1 is preserved in its entirety upon the transfer of sovereignty, advise Tom whether he can raise the defence of consent on the basis of the marriage to his wife in the criminal proceedings.

5. "When an appellate court overrules one of its own common law decisions, an injustice is done to the losing party. It does not matter whether you call it a retroactive change to the law or a mere correction of an erroneous understanding of the true law, the effect for the disappointed litigant is the same: what he had previously believed to be the law, in accordance with the best possible advice he could get at the time, turns out to have been wrong, and his reliance upon it has cost him dear."

Explain and discuss.

6. It has been suggested that juries should be required to give reasons for their verdicts, if they are asked to do so either (a) by the judges or (b) by a party convicted of an offence. Explain whether you agree.

7. Explain the justifications for the presumption of innocence. Should there be such a presumption at all?

8. Compare the strengths and weaknesses of the system of appointment and removal of judges before and after 1997. In what ways could the post-1997 system be improved to provide for better guarantees of the independence of the judiciary?

THE UNIVERSITY OF HONG KONG
BACHELOR OF LAWS: FIRST EXAMINATION (SUPPLEMENTARY)

LAW: LAW OF TORT (18201)

August 23, 1995

(4 pages - 9 Questions)

Time: 9.30 am — 1.00 pm

(including 30 mins. reading time)

ANSWER ANY FOUR (4) QUESTIONS

1. Mary was entertaining some business clients at her home. Her maid was cooking the dinner when the plug on the rice cooker overheated and malfunctioned. Worried that there would not be enough food unless she cooked rice, and wishing to avoid an embarrassing situation with her clients, Mary decided to try to rewire the plug. She appeared to be successful as the cooker began to function again. However, unknown to Mary the cooker was now improperly wired. When Mary was not looking, one of her guests, Nina, decided to be helpful and picked up the rice cooker to help serve the food. She received an electric shock, dropped the cooker and suffered severe burns on her leg and upper body.

Peter volunteered to drive Nina to the hospital. Peter had been drinking beer throughout the night and offered to drive only because there were no other licensed drivers at the party. However, he said to Nina that in view of the fact that he had been drinking, he would only take her if she agreed to go at her own risk. Nina agreed. On the way to the hospital Peter drove as carefully as he could but due to the effects of the alcohol his reactions were slow and he crashed into a lamp post, causing Nina, who was not wearing a seatbelt, to suffer a concussion.

Once at the hospital Nina was treated for her injuries. She recovered from her concussion and her leg also appeared to be on the way to a complete recovery. However, while she was walking down the steps to the physiotherapy ward for her daily exercise, her injured leg suddenly and without warning collapsed beneath her, causing her to fall and break her arm.

Three months after Mary's party Nina has finally recovered from all of her injuries, although there is some residual scarring on her leg. She wishes to recover damages, including an amount for lost wages of 9 million dollars. She is a fashion model for bathing suits and as a result of the scarring on her legs has been unable to get any work since.

Advise Nina respecting any tort actions she may bring.

2. Tom, a homeless street sleeper, sometimes took shelter in the courtyard of Luke's building, which Tom thought was public property. Luke was annoyed at this, and one night, when Tom was asleep in the courtyard, Luke, wanting to wake Tom up and teach him a lesson, threw a bucket of water on Tom. Tom, who was drunk, slept on. Luke shook Tom, who finally woke up, and prepared to leave. At this

point Luke said to Tom, "if you ever come back again, I will throw this acid over you". Luke held up a can which in fact was empty, but Tom, believing the can to contain acid, attacked Luke with a piece of wood which was nearby, and knocked Luke unconscious.

Luke's neighbour, Chan, heard the fight and came to investigate, but by this time Tom had run away. P.C. Wong, a police officer passing nearby, came on to the scene, and saw Chan leaning over the badly bleeding Luke. Suspecting that Chan may have been the attacker, but not wishing to alarm Chan, Wong asked Chan to come into the van to answer some questions in order to help with the investigation. Chan, wanting to help, agreed. Once inside, Wong locked the van door. Chan did not know this, and continued to wait for Wong, who went to the front of the van to radio police headquarters and advise of what had happened. After 30 minutes Wong returned to the back of the van, and told Chan that he was under arrest for the attack on Luke. Chan, who remained calm and agreed to cooperate to prove his innocence, was then placed in handcuffs and leg chains and taken to the police station and charged with the attack on Luke.

A few hours later Tom was apprehended by police and admitted responsibility for the attack on Luke. Chan was released, but not before being charged with failure to produce his I.D. card contrary to s. 17(2) of the Immigration Ordinance.

Advise the parties as to their rights and liabilities in tort.

3. Pao, a businessman, owned a small 50 year old commercial office block, most of which he let out to commercial tenants. To increase his rental profits, Pao decided to have the building improved. He hired a general contractor, Hei, to do the work. As the work would require an exterior face lift, scaffolding subcontractors would have to be retained by Hei. Pao was anxious to get the work done quickly in order to raise the rents and attract new tenants soon, so he recommended that Tong be retained as the scaffolding subcontractor, since Tong had worked on other buildings that Pao owned. Pao explained to Tong his objective.

Tong quickly installed the scaffolding, but used inferior and outdated materials because his best equipment and materials were being used on another site. One day, fortunately in the evening when no one was working on the scaffolding, it collapsed and came crashing to the ground. The falling material struck a number of people, including Mary, who was walking by, causing her serious injury. It did not hit Mary's boss, John (who was also her fiancée), who was walking slightly behind her, having stopped to look into a shop window. However, as a result of this incident John suffered from nervousness and nightmares, for which he still requires medical treatment. Bob, a passer-by, saw what happened, and rushed to the scene to assist some of the badly injured victims, even though some debris continued to fall. Bob himself suffered personal injury when pieces of the material fell on him.

As a result of this incident Pao had to arrange for the exterior work to be completed

by another company, at considerable additional expense. He was also not able to increase his rents immediately because of this further delay in the work and accordingly suffered a loss of profits.

Advise Mary, John, Bob and Pao, who wish to recover damages in tort.

4. Ben, a lecturer at Kowloon University, saw one of his students, Edwin L. Cheung, paying money to a woman outside a brothel in Mongkok. On returning to the University, Ben spoke to Edwin's personal tutor, John, and said "I think that Edwin is hanging out with a bad crowd in the red light district".

Later that week, John was asked by a prospective employer, Henry, to give a reference for Edwin. John had disliked Edwin for some time as they were competing for the same girlfriend. He wrote a letter to Henry and mentioned the Mongkok incident stating "I have doubts about Edwin's character. He is a known user of prostitutes".

Henry had decided to hire Edwin subject to this reference check. However, he decided to hire someone else after reading John's comments.

The next week an article appeared in a local newspaper, although the identity of the person who gave the information to the newspaper is not known. The article was entitled: "Moral Depravity of University Students" and stated that "Edwin Cheung, a University student, is another example of our morally depraved youth, as he has been seen frequenting the red light district".

In fact, Edwin's mother is a cleaning lady at the brothel in Mongkok and Edwin had stopped by to give her some money to help pay the family's monthly living expenses. Moreover, there is another Edwin Cheung (Edwin K. Cheung), a student at the Polytechnic of Kowloon.

Advise Ben, John, and the newspaper regarding liability in defamation.

5. Write an essay critically assessing Hong Kong's system of compensation for personal injuries.

(Note: As this is such a broad topic you may wish to limit the scope of your essay. Please indicate in your first paragraph the scope or focus of your essay.)

6. "Undoubtedly a great many cases in which the rule in Rylands v Fletcher is applied involve nuisance situations, but nuisance is ... different ... in legal character and in many of its incidents and applications."

With reference to case law, compare and contrast the rule in Rylands v Fletcher and the tort of private nuisance, illustrating the differences that have been referred to in the above quotation.

7. The Hong Kong Toy Safety Ordinance provides that: "No person shall manufacture toy dolls or stuffed animals containing sharp or pointed parts." The penalty for non-compliance is a heavy fine.

Toys Galore, a large Hong Kong toy manufacturer, manufactured a batch of stuffed teddy bears. Helen purchased one of these teddy bears from a local shop for her daughter, Candy.

Candy was playing with her teddy bear when her mother told her that it was time for bed. Candy responded by having a temper tantrum, tearing the teddy bear apart and running around the room. Suddenly, Candy tripped and fell on the bear. A sharp piece of metal protruding from the bear cut Candy's face quite badly.

Discuss the potential liability in tort of Toys Galore.

8. Discuss the extent to which an employer's liability for injuries suffered by its servants at work is strict. Your answer should take into account the nature of the duties imposed upon employers by the law and the attitudes of the courts toward the defences that an employer might plead.
9. Mrs. Chan took her eight year old daughter Jody to the local supermarket. Inside the entrance was a prominent sign reading, "Danger. Work in Progress." This apparently referred to a roped off cavity in the floor where tiles were being laid. While she was inspecting the groceries Mrs. Chan stepped backwards, fell into the cavity and broke her arm. Her fall knocked over a pyramid of tins of pineapple pieces, and several tins fell on Mrs. Chan, injuring her.

Meanwhile, Jody was playing on a supermarket trolley in another part of the supermarket. A wheel on the trolley was loose and it fell off, causing the trolley, with Jody in it, to tip over. Jody suffered a bad cut to her leg.

Jody went to the back of the supermarket looking for an attendant to bandage her leg. She saw a door slightly open, and stairs leading down to a cellar. The door bore a sign reading "No Entry. Unauthorized entrants do so at their own risk". Jody noticed a huge container of chocolate bars in the cellar, and climbed down the stairs to them. The fifth step was missing, and Jody fell into the cellar and was injured.

Advise Mrs. Chan and Jody respecting any available actions in tort.

University of Hong Kong
Bachelor of Laws Examination (Supplementary)

LAW AND SOCIETY (18111)

August 25, 1995

Time: 9.30 a.m. - 12.45 p.m.
(reading time: the first 15 minutes)

Please answer four questions.

- 1 What do you understand by the concept of "the State"? How do we distinguish between a State and a stateless society? Do you think theories about the state of nature and about the social contract throw any light on the nature of the State?
- 2 To what extent did the social, political and intellectual features of the English feudal order give rise to the modern constitutional state?
- 3 Construct a conversation between Sir Edward Coke, Lord Ellesmere and King James I on the relationship between:
 - (a) law and equity; and
 - (b) law and the State.
- 4 What is the significance for English constitutional history of any three of the following documents:
 - (a) Constitution of Clarendon;
 - (b) Magna Carta;
 - (c) Provisions of Oxford;
 - (d) Petition of Right;
 - (e) Bill of Rights;
 - (f) Act of Settlement.
- 5 Discuss the characteristics of the Chinese political tradition and the prospects for liberal constitutional democracy in mainland China in the twenty-first century.
- 6 "The Marxist idea that conflict is peculiar to societies of bourgeois egoism or class divisions, like the traditional liberal idea that rights emerge only in the flawed conditions of the 'circumstances of justice', fails to see the positive contribution that conflict can make to a society's moral and political life." (C. Sypnovich, The Concept of Socialist Law (Oxford: Clarendon Press, 1990) 163)

Assess this view in the light of socialist and Confucian objections to the concept of human rights.
- 7 "Feminism has no part to play in increasing our understanding of the relationship between law and society."

Discuss.
- 8 Please answer either (a) or (b).

- (a) Why is the Rule of Law important for a capitalist market system?
- (b) Explain how, in a legal system like that of Hong Kong, different branches of the law (e.g. law of contract, law of property, etc.) facilitate the operation of the market economy.

* the end *

THE UNIVERSITY OF HONG KONG

DEPARTMENT OF LAW

BACHELOR OF LAWS EXAMINATION 1994/1995

(Supplementary)

Law of Contract

Lecturer: Shane Nossal / Group A

Date: 29 August 1995

Time: 9:30 a.m. to 1:00 p.m.

Instructions to Candidates

1. The time for this examination is 3 hours and 30 minutes. This time period includes 30 minutes reading time.
2. This examination consists of 7 pages, including this one. Note that there will be printing on both sides of the pages.
3. All questions are of equal value. Allocate your time accordingly.
4. This examination is composed of 7 questions.
5. You are required to answer **four (4) questions** in this examination.
6. A complete answer to these questions would include a discussion of the remedies available to, as well as the rights and liabilities of, the parties.

1. "Freedom of contract is dead."

Do you agree with this statement? Discuss with reference to relevant case law, legislation, and academic writings.

2. Answer any **TWO (2)** parts to this question:

- (i) When is specific performance available for breach of contract?
- (ii) When is rescission available for misrepresentation?
- (iii) What is the difference between rescinding a contract for misrepresentation and terminating a contract for breach?

3. Amy was the sole proprietor of a small business which made money holding seminars on different topics. One of her seminars was to be held during breakfast on 2 August. On 15 July she booked a banquet room in the Star Hotel for two-and-a-half hours (between 8:00 to 10:30 a.m.) on 2 August, agreeing to pay \$18,000 for the room and breakfast for the 75 people who she hoped would be attending the seminar. On the day she booked the room, she paid a deposit to Star Hotel of \$10,000, with the remaining \$8,000 to be paid by 9:30 a.m. on 2 August. She also ordered from Wing's Florists \$5,000 worth of flowers. Finally, she arranged that the famous speaker, Dr. Dough, would lead the seminar for a fee of \$25,000. She paid him \$12,500 in advance.

In the late evening of 1 August, while the banquet room of the Hotel was being prepared for the breakfast seminar, a waiter accidentally knocked over a burning candle and the carpet caught fire. By the time the firemen had put out the blaze, the whole room and its contents, including the flowers which had just been delivered by Wing's Florists, were completely destroyed.

All of the people who had registered for the breakfast seminar arrived at the Star Hotel at 8:00 a.m. on 2 August, but were told the seminar had to be cancelled.

As it turned out, Dr. Dough was unable to speak at the breakfast seminar in any event. He had been giving so many talks in the previous month that he lost his voice and was advised by his doctor to rest in bed for the month of August.

Advise Amy as to her legal rights and obligations.

4. Wong wrote to Chan the following letter: 'I am thinking of selling my 1992 Mazda MX5. I know that you like it and so I thought I would give you the chance to buy it. I think that \$125,000 would be a fair price.' He posted the letter to Chan on 1 August

Upon receipt of the letter on 4 August, Chan sent the following fax to Wong: 'I want to buy your car but I am only willing to pay \$110,000. If I hear nothing from you before 6 August I shall assume that the car is mine at that price.'

On 5 August Wong posted the following letter to Chan: 'I cannot sell my car for anything less than \$120,000. If you would like to buy it at that price, I would like to hear from you by 11 August.'

Upon receipt of the letter on 8 August, Chan immediately posted the following letter to Wong: 'I will buy your car for \$120,000. I would like to pick it up within the week.'

This letter arrived at Wong's home at 9:20 a.m. on 12 August. Wong did not open the letter until he returned from a business trip in China on 15 August. By that time, he had already sold the car to one of his business colleagues, Hing.

Advise Chan of his legal position.

5 On 1 July, Philip entered into a contract with Sunny Kai, a land developer, to clean the exteriors of all of the latter's 40 buildings by 15 August. Philip agreed to pay Sunny Kai liquidated damages in the amount of \$20,000 per building for every day he was late in finishing the cleaning operation. On the same day, Philip sub-contracted the window washing to Bruce Li at a price of \$45,000 per building. It was expressly agreed that the work would be completed by 14 August.

On 22 July, Philip noticed that Bruce was working very slowly. He told Bruce to hire extra workers to ensure the contract provisions were met. Bruce told him that he did not have the money to hire anyone else and that he probably would not be able to finish the work by 14 August. Philip was very aware of the fact that, if the work was not finished on time, he would have to pay Sunny Kai heavy damages under the main contract. As Philip was standing there worrying and figuring out how much money he would lose, Bruce told him: 'Well, if you pay me another \$200,000, I am sure I will be able to finish the cleaning on time'.

After agonizing over the problem for five minutes, Philip finally relented and agreed to pay Bruce the extra \$200,000.

Bruce was very happy. He had not hired extra workers because he was waiting for the delivery of a new window washing machine that he had ordered and paid for. As it turns out, the new machine was delivered to Bruce on 28 July, and it was so efficient that all of the windows were washed and Bruce's contract was completed by 10 August.

Philip comes to you for advice, telling you that he does not want to pay Bruce the extra \$200,000.

6. Grace is a faithful customer of Kleen Klothes, a shop which sells exclusive designer wear. Every season, Kleen sends to its favourite customers invitations to preview the latest fashions. The invitations always contain the following statement printed on the back of the card: 'All sales are subject to conditions printed on the back of our sales receipts'.

Grace received an invitation to the Governor's Tea Party which was to be held on 15 July. She knew that she simply had to buy a new gown -- a gown that nobody else in Hong Kong would be wearing. Also in the mail that day, just by coincidence, was an invitation from Kleen asking Grace to review their newest clothes. Grace decided to visit Kleen's shop and see what they had to offer.

After trying on countless gowns, Grace found one which was perfect. She asked the sales manager what other colours were available in that style. The manager replied: 'The gown is not available in any other colours. In fact, the gown on display is the only one available in Hong Kong because we only ever import one of each kind.' Grace asked: 'Are you sure this is the only gown of its kind in Hong Kong?' On being reassured by the manager that it was, Grace bought the gown for \$30,000. She was given a sales slip which she placed in her pocket unread. The sales slip had the following clause printed on its back: 'It is a condition of this sale that all items sold are made with the utmost skill and using the finest materials. Kleen Klothes does not accept any other responsibility whatsoever for or in connection with any goods sold.'

Grace attended the Governor's Tea Party wearing her new gown. Everyone complimented her on her sartorial elegance and she felt very happy. Until, that is, she saw the Governor's wife wearing the exact same gown! She was so embarrassed that she quickly left the Tea Party, leaving all of her friends extremely puzzled by her unusual behaviour.

Grace investigated the matter further and learned that the Governor's wife had also bought her gown at Kleen Klothes.

Kleen Klothes comes to you for advice, telling you that Grace is threatening to sue them.

7. Ling is a secretary who owns a flat on Conduit Road. She was living with her boyfriend, Alex, who owned a company importing rice into China. His company, Doom Co., was experiencing financial difficulties and he needed to borrow \$3 million from the Big Bank to keep it going. The manager at the Big Bank agreed to lend Doom Co. the money, but only if Alex would offer his home as security for the loan.

Alex then went back to Ling and asked for her help. He told her that he needed her to sign a mortgage of her flat in favour of the Big Bank and that her liability to the bank would be limited to Doom Co.'s existing business debts. He promised her that he would never default on the loan.

Alex and Ling then went to meet the manager of the Big Bank. The manager met with Ling alone explained to her the nature of a mortgage and how her flat would be taken away from her if Doom Co. failed to pay back the \$3 million that was going to be loaned. The manager then said to Ling: 'If you have any concerns at all regarding this transaction, then I recommend that you get some legal advice.'

When Ling was discussing the plan with Alex later that evening, she told Alex that she would feel more comfortable about signing the mortgage after she had spoken to a lawyer. 'What are you talking about?' Alex yelled in reply, 'What can some lawyer tell you that I can't tell you? Sign that mortgage, or else!'

In a subsequent meeting attended only by Ling and the Big Bank's senior credit officer, Ling signed the mortgage document that was placed in front of her. The credit officer had noticed small bruises on Ling's arms but did not think anything of them. This mortgage covered not only Doom Co.'s existing business debts, but also all the future debts of the company. The Big Bank then advanced \$3 million into the bank account of Doom Co.

Six months later, Doom Co. was forced to declare bankruptcy. Neither the company nor Alex was able to repay the \$3 million (plus interest) to the Big Bank.

Ling now comes to you for advice, telling you that the Big Bank is taking steps to obtain possession of her flat, and that Alex has left her and is living in a hostel in Wanchai. She also tells you that, although she did not read the mortgage document, she noticed that some of the paragraphs set out in the document were smudged and therefore illegible.

End of examination paper

**University of Hong Kong
Faculty of Law
Bachelor of Laws Examination
LLB I Year 1
(April/May, 1996)**

Main Examination for LLB - First Year (April/May, 1996)

	Name of Paper	Date of Exam.
01	Law of Tort (18201)	29-Apr-96
02	The Legal System (18108)	03-May-96
03	Law & Society (18111)	07-May-96
04	Law of Contract (18103)	10-May-96

UNIVERSITY OF HONG KONG
BACHELOR OF LAWS: FIRST EXAMINATION

(18201)

LAW: LAW OF TORT

APRIL 29, 1996

Time: 9:30 a.m. - 1:00 p.m.

(including 30 mins. reading time)

(4 pages - 9 questions)

ANSWER ANY FOUR (4) QUESTIONS

1. Ron died from food poisoning after eating spoiled meat served by Tan at Tan's restaurant. The meat was spoiled because of a sudden failure in Tan's refrigeration facilities.

Section 29 of the Food and Beverage Ordinance provides in part:

'29. (1) It shall be an offence to operate a restaurant without adequate refrigeration of meats and vegetables.

(2) A violation of this ordinance shall be punishable by a fine of up to \$5,000, and/or a closure of the restaurant.'

Ron is survived by Mary, with whom he had been living for two years, and their infant child Zoe.

It has now been six years since Ron's death, and Mary has just learned of the identity of Tan's restaurant, and the fact that Ron had eaten the poisonous food there.

With reference to relevant case law and any relevant statutory provisions, advise Mary and Zoe regarding an action against Tan for breach of statutory duty, including the method of calculation of damages.

2. The Yee Wa restaurant required a new and larger cooling system to keep fresh the rare lobsters that it was famous for. The old system was insufficient, in view of the sensitivity of the lobsters, which required precise climatic control, and the growing demand for Yee Wa's rare lobsters. After discussions with Tai Engineering, specialists in fish cooling, a system was recommended, designed and installed by Tai Engineering.

A few days after installation, a kitchen worker, Ken, was removing a lobster when he suffered an electric shock. The shock caused Ken to fall and suffer minor head injuries.

On the same day, the cooling system continued to malfunction, causing some of the lobsters to die. Yee Wa suffered a decline in profits on this day due to the lack of fresh lobsters.

Yee Wa was able to save the remaining lobsters, by constantly monitoring the system. However, the system had to be replaced, forcing the restaurant to close its business for 2 weeks.

Advise Ken and the Yee Wa restaurant regarding the issue of duty of care in negligence. Be sure to identify the type of loss, and the criteria necessary for duty of care, with reference to cases.

3. Don was shopping at HMS Video Store. Wishing to compare prices, he removed from his bag a video that he had purchased from another shop. He checked the price and then returned the video to his bag. While leaving the store he was stopped by Fu, a store clerk, who had seen Don place the video in his bag. Fu asked Don to return to the store because Fu suspected that Don had stolen the video from HMS. Don reluctantly agreed.

Fu took Don to the store manager's office. After explaining the facts to the manager's satisfaction, the manager apologized for the confusion and inconvenience and Don departed.

While leaving the store Don was approached by Police Officer George, who had been summoned by Fu. Fu continued to suspect Don despite his explanation to the manager. George asked Don to produce his identity card, and Don did so. George then asked Don to come to the police station for further questioning. Don agreed to do so, in order to clear his name. He got into the police van waiting nearby. George then placed handcuffs on Don for the short trip to the police station. On arrival at the police station, Don was questioned by Sergeant Jake, who placed a large wooden club on the desk in front of him, and told Don that 'he had better cooperate, or else...'. .

Later that day, Don was released, unharmed.

With reference to relevant cases and statutory provisions, identify and discuss any torts that may have been committed, and any defences that might be available.

4. Artco is a firm specializing in large commercial art projects. On a typical Artco project many skilled craftsmen are involved. Artco was engaged in the creation and construction of a large wall mural in a new office block in Central.

Ben, a ceramics specialist, was working on the Central project when he suddenly fell off of the 10 metre high platform on which he was working. He suffered serious injuries in the fall, including paralysis of one leg, and can no longer work as a ceramics specialist. The evidence later showed that he fell because he was hit by a small tool deliberately dropped by his co-worker, Carl, which caused Ben to lose his balance. Ben was not wearing the safety helmet which had been provided by Artco. Carl had only intended to frighten Ben, as a kind of practical joke, not to hit him.

With reference to relevant case law and any relevant statutory provisions, advise Ben regarding any actions or claims available, and the method by which the amount of any awards will be calculated.

5. 'Current methods for establishing standards for breach of duty in negligence are outdated and at times arbitrary.' Discuss, with reference to case law, and any other relevant sources.

6. Wendy was employed as the manager of a restaurant in Sheung Shui. In order to prevent passersby from entering to use the restaurant's toilet facilities, Wendy posted a sign on the door which read "Restaurant Customers Only May Enter. Others Not Welcome On The Premises".

The restaurant had an automatic door which would open when activated by a human presence. The door recently developed a fault in that it would sometimes suddenly close before the customer had passed through the door. After a customer had brought this fault to Wendy's attention, Wendy made a mental note to herself to have the door repaired soon. Sam, the 6 year old child of a neighbouring shopkeeper, was intrigued by the automatic door and would sometimes enter the restaurant for fun in order to activate the door. On one occasion when entering, the automatic door suddenly closed on Sam before he had passed through, causing him to suffer injuries to his hand and fingers.

Wendy then posted a sign which read "Caution! Faulty Door". The same day Don, a waiter who worked in Wendy's restaurant, suffered arm and shoulder injuries when the door suddenly closed on him as he was leaving the restaurant after finishing his work shift.

Wendy then arranged for the doors to be fixed by Bob, the owner of an electrical door repair company. While working on the door Bob suffered head injuries when the doors suddenly closed on him.

Bob's company eventually finished the repair. As an extra precaution, Wendy posted a sign which read "Enter at Your Own Risk. Management Not Liable For Injuries to Customers or damage to property". Moni, a customer, did not notice the sign when he hurriedly entered the restaurant for his short lunch break. The doors suddenly closed on him. He was physically uninjured, but his brother's portable cassette player which he was wearing at the time, was damaged.

With reference to relevant case law and any relevant statutory provisions, advise Wendy of her possible tort liability.

7. Ed and Jim were friends, and Jim was engaged to Clara. Ed telephoned Jim to have a chat. Jim was not home so Ed left a message on the telephone answering machine. In the message, Ed said, 'I hope that Clara knows what she is getting into. I saw you in Wanchai last night. Who was the beautiful woman you were with? I saw you give her the keys to your flat.'

Unfortunately, the message was played back by Jim's roommate Sandra. Sandra immediately called Clara to tell her of the Wanchai incident. In fact Sandra was in love with Jim, and was quite pleased to be able to pass on this information because she did not want Clara to marry Jim. Moreover, neither she nor Ed were aware that the woman to whom Jim gave the keys was Jim's sister from Canada.

With reference to relevant case law and statutory provisions, advise Jim regarding any actions he may have in defamation.

8. Mr Wan owns a farm in the New Territories and uses a rather noisy machine to spread liquid fertilizer on his fields. A large housing estate was recently built next to his fields and tenants of the housing estate have been complaining to Mr Wan about the fertilizer and the use of his fertilizer machine. In particular:

Xun, who works at night, complains that the noise keeps him from sleeping during the day;

Troy complains that the smell of the fertilizer makes his children so nauseous that they cannot eat;

Sam complains that on windy days the liquid fertilizer is blown into his flat and stains his curtains and furniture; and

Zeke complains because the creek in which he fishes has become polluted from the runoff of the liquid fertilizer.

With reference to relevant case law, advise Mr Wan of his possible liability in tort. [**Note:** Do not advise on negligence liability. You may assume that Mr Wan has already received such advice.]

9. Tom aged 8, and his playmate Jerry, aged 9, were playing on their skateboards on the footpath of Clearwater Bay Road. Tom challenged Jerry to a race along the footpath in the course of which Tom in trying to gain extra speed, lost control and fell into the road. The driver of an oncoming car, Michael, who had obtained his driver's licence only 2 days earlier, was driving the car of a neighbour, Mrs Chan. He was exceeding the speed limit somewhat in order that his passenger, Mrs. Chan's son, Perry, would not be late for his doctor's appointment. Before departing, Perry had agreed that Michael would not be liable for any injuries that might be caused in the trip to the doctor's office. Michael swerved to avoid Tom, but due to his inexperience and speed, was slow to react and applied the brakes too late. The car hit Tom with full force, causing him critical injuries.

Perry suffered cuts and bruises in the crash.

Donna, who witnessed the accident from the balcony of her nearby flat, fainted and hit her head on the floor, suffering head injuries.

Jerry was physically uninjured, but suffered nervous shock.

With reference to relevant case law, advise the injured parties regarding their actions in tort.

END OF PAPER

THE UNIVERSITY OF HONG KONG
BACHELOR OF LAWS

18108 THE LEGAL SYSTEM

May 3, 1996

Time: 2.30 pm to 6.00 pm

Reading time: the first 30 minutes

Candidates must attempt FOUR (4) questions, including at least ONE (1) from Part A (questions 1 to 5) and ONE (1) from Part B (questions 6 to 9)

(Note: the Application of English Law Ordinance, the Sino-British Joint Declaration on the Question of Hong Kong, and the Basic Law for the Hong Kong Special Administrative Region are provided and may be consulted and referred to in the examination)

Part A

(attempt at least one question from this Part)

- 1 Compare and contrast 'substantive' or 'social' justice with the concept of justice which predominates in the common law, and consider whether the concept of justice which predominates in the common law is relevant to the doctrine of the rule of law.
- 2 Explain the concept of the ratio decidendi and discuss whether the process by which a judge determines the ratio decidendi of a precedent is compatible with the claim that stare decisis produces certainty and predictability in the common law system.
- 3 The Basic Law maintains the common law as part of the laws 'previously in force in Hong Kong.' Discuss whether the common law should be identified as a collection of propositions of law, as a customary set of traditions, assumptions, approaches, and attitudes, or in some other way.

4 Consider whether the so-called 'wavicle' theory of the common law can be seriously maintained as a theory of how judges decide cases at common law.

5 Attempt EITHER (a) OR (b) but not both:

(a) The common law rule of criminal conversation ('crim con') was recently abolished by statute in Hong Kong. Discuss whether, following amendments to the Application of English Law Ordinance (cap 88) in 1971, abolition was necessary to give effect to the policy of the legislature that crim con should not be part of Hong Kong law.

OR

(b) The courts of Hong Kong consider themselves bound by decisions of the Judicial Committee of the Privy Council, whether that body is sitting as a court of appeal from Hong Kong or not. Discuss and assess the reasons why the Hong Kong courts should be so bound.

Part B

(attempt at least one question from this Part)

6 Attempt EITHER (a) OR (b) but not both:

(a) Critically assess the following statement:

"The so-called "intention of the legislature" is nothing more than an ex post facto [retrospective] justification of the decision of the court. To put it plainly, such intention never exists.'

OR

(b) Assume that, as a result of a recent outbreak of rabies (and following from a consequent Law Reform Commission recommendation), the Rabies and Dangerous Animals Ordinance 1995 has been passed. Its key provisions include the following:

- '1 It is an offence to leave animals unattended in any hotel, public house, restaurant, or other public place.
- 2 The keeping of any animal, other than a domesticated one, without an appropriate licence is an offence. A domesticated animal is one so defined by Schedule 9 of this Ordinance.
- 3 Private dwelling houses are exempted from the provisions of this Ordinance.

.....

Schedule 9:

For the purposes of this Ordinance
"domesticated animal" includes cats,
dogs, horses, cattle, sheep, and pigs.'

- (i) Outline the argument you would make as defence counsel for Au in the following case:

R v Au

Au left his poodle (a pet dog) in the changing rooms at his local tennis club while he played tennis. He is charged with contravening section 1 of the Rabies and Dangerous Animals Ordinance.

- (ii) Suggest in your answer any additional research or investigations you would want to make in support of your argument, and also indicate where you anticipate weaknesses in your argument.

- 7 Attempt EITHER (a) OR (b) but not both:
- (a) Describe, and discuss the significance in the civil litigation process of, THREE of the following:
- i pleadings
 - ii discovery
 - iii interlocutory injunctions
 - iv Anton Piller orders
 - v cross-examination

OR

- (b) What do you regard as the THREE most serious flaws or defects in the current system of adversarial civil litigation in Hong Kong? Explain why you have made those choices, and what reforms you would institute to remedy the situation. Would any features of 'alternative dispute resolution' or of the inquisitorial system of dispute resolution solve the problems you have identified, and if so, how?
- 8 'The prosecutor must always be fair. Defence counsel, however, have to balance their duty to do their utmost for their clients with their duty to act honourably and to assist the court.'

In the light of this comment, discuss the ethics of prosecutors and defence counsel when conducting a trial.

- 9 Adam was charged under section 11(1)(b) of the Theft Ordinance with burglary in that he entered an apartment as a trespasser at about 3.00 am and attempted to steal money. The burglar fled after the occupier of the apartment was awakened by the burglar knocking over a chair. The burglar had climbed up a drainpipe and entered the bathroom window. Adam's fingerprints were found on the window sill of the bathroom. When he was arrested he told the police that he was now a house-painter by trade and the fingerprints might have been left by him when he painted that apartment.

Adam has one previous conviction for burglary for which he was sentenced to three years imprisonment; he

was released from prison just six months before the apartment was burgled.

Section 11(4) of the Theft Ordinance declares that any person who commits burglary shall be liable on conviction upon indictment to imprisonment for fourteen years.

Section 92 of the Magistrates Ordinance excludes from the jurisdiction of the Magistrates Court the offences listed in Part I of the Second Schedule, which is as follows (in part):

'PART I

1 Any offence which is punishable with death.

2 Any offence (except an offence against section 10 or 12 of the Theft Ordinance (Cap 210), or an offence against Part VIII of the Crimes Ordinance (Cap 200) which is punishable with imprisonment for life.'

(i) Consider, describe, and explain the possible courts of trial of Adam for this offence and explain what factors may influence the Attorney General's decision about which court to select.

(ii) Adam, who is in custody, has asked the Magistrate to grant him bail while he awaits his trial, which is set down for four months from now. What should the Magistrate consider before he makes his decision?

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THE UNIVERSITY OF HONG KONG

DEPARTMENT OF LAW

LL.B Examination

18111 Law and Society Examination May 1996

Date: May 7, 1996

Time: 2.30pm - 5:45pm (15 minutes reading time included)

Answer 4 questions in all. You must choose 2 questions from Part I and 2 from Part II

Part I

1. Examine critically the functionalist and marxist accounts of origin and nature of the state.
2. 'The Hong Kong Chinese view of individual freedom differs sharply from the Confucian standpoint, and even the attitude prevalent in modern China, thus testifying to modernising influence and the lack of elite and institutional support for tradition in Hong Kong. Nevertheless, this refutation of tradition does not necessarily drive the Hong Kong Chinese to embrace wholesale the Western view of freedom. Implicit in the Western view of freedom is a general acknowledgement of the binding power of some universal principles that provide the guidelines for the exercise of freedom. These universal principles undergrid the western legal system. The Hong Kong Chinese, interestingly, fail to evince acceptance of binding universal principles.' (Lau Siu-kai, **The Ethos of the Hong Kong Chinese.**)

Explain why you agree or disagree with this statement.

3. How might the debates over the Rule of Law between the courts and the Crown in English history be relevant to post-1997 Hong Kong?
4. Construct a dialogue between THREE of the following over what kind of representative government post-1997 Hong Kong should have: (a) Lenin; (b) a British parliamentarian of the 18th or 19th centuries; (c) Lefort; (d) a Greek philosopher of the classical era; and (e) Rousseau.

Part II

5. Do you agree with Ghai that the role of the formal legal system has not been crucial in the development of capitalism in Hong Kong and may become even less important after 1997?

6. 'In the tribal society, economic transactions and relations are subsumed in and subordinate to social relations. In capitalism, economic transactions and relations are no longer socially embedded and instead determine and dominate social relations.'

Comment.

7. 'The development of contract...can be divided into three stages, which correspond to the history of economic and legal institutions of exchange. In the first stage, all exchange is instantaneous and therefore involves nothing corresponding to 'contract' in the Anglo-Saxon sense of the term. Each party becomes the owner of a new thing, and his rights rest, not on a promise, but on property. In a second stage, exchange first assumes a contractual aspect when it is left half-completed, so that [only] an obligation on one side remains. The third and final stage in the development occurs when the executory exchange becomes enforceable.' (Morton Horowitz).

What do you understand by this quotation and how is it related to the development of the economy?

8. 'It has long been recognised by social and economic historians that the emergence of capitalism was accompanied by changes in the concept and institutions of property.' (Macpherson).

Describe how and why the concept and rules of property have changed from tribal to market and command economies.

**THE UNIVERSITY OF HONG KONG
DEPARTMENT OF LAW**

BACHELOR OF LAWS EXAMINATION

18103 Law of Contract

Date: Friday, 10 May 1996

Time: 9:30 a.m. to 1:00 p.m.

Instructions to Candidates

1. The time for this examination is 3 hours and 30 minutes. This time includes 30 minutes reading time, during which period you may not write in your answer book.
2. This examination consists of 7 pages, including this one.
3. **YOU ARE REQUIRED TO ANSWER ANY FOUR (4) QUESTIONS** of the following eight questions.
4. All questions are of equal value.
5. Start each question on a separate page of your answer book.
6. In your answers, refer where appropriate to the relevant authorities.
7. A complete answer would include a discussion of the remedies available to, as well as the rights and liabilities of, the parties.

1. Write an essay explaining how contract theory has assisted you in your understanding of the principles of contract law. Provide examples from the substantive areas of contract law that you have studied.

2. 'It makes no practical difference to the rights or remedies of the innocent party whether he rescinds a contract on the basis of a misrepresentation or treats a contract as repudiated on the basis of the other party's breach of a condition.'

Discuss, making reference to relevant authorities.

3. Pam is a solicitor working for the firm of Woo & Co. Her competence is reflected in her generous salary of \$125,000 per month. Her contract provides that, if her employment with Woo & Co should cease for any reason, she agrees not to work as a solicitor for any other firm in Hong Kong for a period of 18 months. It also provides that Pam is to give Woo & Co four months' written notice if she wishes to resign.

Pam now comes to you for advice, telling you that the solicitor's firm of Lau & Ching has offered her a salaried partnership at the starting salary of \$175,000 per month.

4. Jim, in the process of planning and carrying out the renovation of his flat, wanted to install hardwood flooring but was concerned about the wood's longevity. He had read an advertisement placed in the local newspapers by Janny Wax Co, the manufacturers of a brand of floor polishing wax called Janny Wax, that Janny Wax was the best wax for hardwood floors in Hong Kong's humid climate. He telephoned the marketing manager of Janny Wax Co who confirmed that Janny Wax protected hardwood floors by preventing the growth of mould and insects that usually infest wood. Satisfied with this explanation, Jim decided to cover his hardwood floors with this brand of floor polishing wax. He went to Buildco, a building materials supplier, and spoke to one of their salesmen, telling the salesman of his concerns. The salesman told Jim that Buildco sold Janny Wax but that he did not know anything about its effectiveness. The salesman told Jim: 'I cannot guarantee that this floor wax will be suitable for your floors'. Jim nevertheless bought 10 two-litre cans of Janny Wax from Buildco for the sum of \$5,000. In large letters on the bottom of the sales receipt that was handed back to Jim with his change were the following words: 'Buildco provides no undertaking of the merchantable quality or fitness for any particular purpose of any product that it sells.'

Jim installed the hardwood floors and covered them with a thick layer of Janny Wax. Within six months the hardwood floors had deteriorated and required replacing. The reason was that Janny Wax had failed to prevent the growth of mould and insects in the wood in Jim's un-airconditioned flat. It will cost Jim \$20,000 to replace the flooring.

Advise Jim.

5. When Alf lent Ben \$100,000, he insisted that Ben sign a document that read: 'I, Ben, owe Alf \$100,000 and I promise to pay the whole amount plus \$10,000 interest on 1 September 1995.' Ben was not able to repay this sum on that date. On 2 September 1995 Alf told Ben that he would not have to pay the \$10,000 interest if he would pay \$20,000 per month for the next five months. Ben agreed and made a repayment of \$20,000 on 3 September and another repayment of \$20,000 on 1 October. In the middle of October Alf fell seriously ill and was consequentially fired from his job. As soon as Ben found out about Alf's dire situation, he contacted Alf and told him that he would not be able to make any more monthly payments. However, Ben said, he would be able to make one last lump sum payment of \$30,000 -- but only on the condition that this payment discharged completely Ben's debt to Alf. Alf, worried about his deteriorating health, replied dramatically: 'Taking into account my weakened state, I suppose I have no choice but to agree.' Ben paid Alf \$30,000 and hurriedly left.

By mid-April 1996, Alf's health was fully restored. He now comes to you for advice as to whether he can recover any monies from Ben.

What difference, if any, would it make to your advice if Alf at all material times was a very wealthy individual?

6. Don lived with his younger brother, Ed, in a small flat registered in Ed's name. The flat was worth \$3.5 million and was encumbered with a \$1 million first mortgage in favour of the Tai Bank. The two brothers held full-time jobs and contributed equally to the household expenses, including the mortgage payments for the flat. Don also ran a small trading company, China Win Co, which had been losing money over the last two years. Don and his girlfriend, Bee, were the directors and shareholders of China Win Co and Ed was given the title of 'Vice President -- Marketing', although he was actually not at all involved with the company.

Don wanted to raise some money to invest in the stock market. On Monday, he went to the HK Bank in his capacity as a director of China Win Co and told them that the company wanted to expand its business and needed financing. The HK Bank advised Don that they would be willing to lend China Win Co \$2 million if Don could provide them with two guarantors. That evening Don made Bee agree to be one of the guarantors of the loan by threatening that, unless she agreed, Don would break up with her. On Tuesday, Don told Ed that he was planning on marrying Bee but that he needed a lot of money to pay for the wedding, the honeymoon and the dowry. Ed was delighted at Don's news and offered to assist Don financially. Don accepted the offer and told Ed that it would be more beneficial if the assistance came from the bank through his company, with Ed acting as a guarantor. Don told Ed: 'That way, you will not have to actually hand over any money and your guarantee will be needed only for a few weeks.'

On Wednesday morning Don and Bee went to the HK Bank to sign the necessary documents. Bee signed the unlimited guarantee on the line indicated by the Bank officer. Don and Ed went to the Bank on Wednesday afternoon. The Bank officer presented to Ed a document which was a 2nd mortgage over Ed's flat and explained to him that the 2nd mortgage was to be used as a guarantee of the loan in the amount of \$2 million that the Bank was going to make to China Win Co. The Bank officer then asked Ed whether he had any questions. Ed said that he did not, and signed the mortgage on the line indicated.

The HK Bank then transferred the \$2 million into the bank account of China Win Co. Don withdrew all of the money and bought shares on the Shanghai stock market. Within three months he had lost all of his money. He was unable to repay the \$2 million loan, and the HK Bank is now seeking the return of its money. At no time was Don ever planning on marrying Bee.

Advise the HK Bank.

7. On 1 January, Al Lee wrote and posted a letter to Erny Chan stating: 'I have heard from mutual friends that you may be selling your 1995 Mercedes 500 sedan. I will pay you \$750,000 for the vehicle if it is in excellent condition.' On 3 January, Erny wrote the following letter to Al: 'I agree to sell you my car at the price indicated. I cannot, however, deliver the car to you until sometime during the week of 15 January as it is currently being re-conditioned at the garage'. This letter was delayed in the post and was not delivered to Al until 20 January.

On 10 January Al posted a letter to Erny stating: 'Since I have not heard from you in over a week, I assume that the price that I offered was too low. Will you accept \$850,000 for the car? Please reply by return of post.' Erny received this letter on 12 January and, taking the number from the printed stationary, telephoned Al. An answering machine picked up Erny's call. It said: 'This is Benny Lee speaking. You have reached the Lee household. If you would like to leave a message, please go ahead at the sound of the tone'. After the tone sounded, Erny said: 'This is Erny Chan. I have two messages for Al Lee: First, please ignore the letter that I sent to you on 3 January. Secondly, I accept your offer of 10 January.'

As it turned out, Al did not hear Erny's telephone message until his son, Benny, returned from a trip to China on 21 January. It was Benny who had installed the telephone answering machine in the Lee household and, although Benny had told his father how to use the machine on a couple of occasions, Al could never understand how the machine worked and relied on his son to pass on any messages for him.

Erny, having heard nothing from Al in a week, sold the Mercedes to PC Wong on 19 January for \$1 million.

Advise Al.

8. Dr Sorrows is an internationally-known speaker on investing in the equity markets. The Hong Kong promotions company, Rave Review, agreed to pay Dr Sorrows \$500,000 for a 90-minute talk on 'Advanced Investment Techniques'. Seats for the talk were limited and ticket prices were exceedingly high: \$6,000 each (light refreshments included). All 300 tickets were sold out within twenty minutes of going on sale. Rave Review had agreed to pay Dr Sorrows \$200,000 immediately and the remainder at the conclusion of the talk.

Ten minutes before the talk was scheduled to commence, an employee of Rave Review stepped up to the podium and announced that Dr Sorrows was suffering from an upset stomach and would not therefore be able to deliver his talk. Instead, an little-known academic from the Baptist University would give a lecture on 'The future of the Hong Kong stock exchange'.

Mr Tse, the owner of an electronics factory in Taiwan, was extremely upset by this development and rushed from the auditorium demanding his money back. He had flown all the way from Taipei in order to attend the talk of Dr Sorrows, incurring expenses of \$18,700 (ticket price: \$6,000; return airfare: \$8,500; accommodation for two nights: \$3,200; miscellaneous expenses: \$1,000) and missing three days' work. He was a busy man and felt very angry and depressed for having spent so much time and money for nothing. Also, upon his return to Taipei he discovered that one of his biggest clients had been looking for him and, hearing that he was out of town, had entered into a contract worth \$10 million with Mr Tse's competitor.

Advise Rave Review.

This is the last page of the examination

**University of Hong Kong
Faculty of Law
Bachelor of Laws Examination
LLB I Year
(April/ May/ September, 1997)**

Main Examinations for LLB I Year (April/ May, 1997)

	Name of Paper	Date of Exam.	Time
1	Law of Tort (18201)	24-Apr-97	2 30pm - 6 00pm
2	Law of Contract (18103)	30-Apr-97	2 30am - 6 00pm
3	The Legal System (18108)	07-May-97	9 30am - 1 00pm
4	Law & Society (18111)	12-May-97	2:30pm - 5 45pm

THE UNIVERSITY OF HONG KONG

FACULTY OF LAW

Timetable for LL.B. First Year Examination

April/May 1997

<u>Date</u>	<u>Time</u>	<u>Paper</u>	<u>Venue</u>
April 21 Monday	2.30p.m.-5.00p.m.	English for Law	Room 1 Library Extension Bldg.
April 24 Thursday	2.30p.m.-6.00p.m. (30 minutes reading time included)	18201 Law of Tort	Loke Yew Hall
April 30 Wednesday	2.30p.m.-6.00p.m. (30 minutes reading time included)	18103 Law of Contract	Loke Yew Hall
May 7 Wednesday	9.30a.m.-1.00p.m. (30 minutes reading time included)	18108 The Legal System	Loke Yew Hall
May 12 Monday	2.30p.m.-5.45p.m. (15 minutes reading time included)	18111 Law & Society	Loke Yew Hall

Note: A note on Provision of Legislation for Examinations is at the back of this document.



(Ms.) K. Wan
Examinations Secretary

March 1997

LL.B. First Year Examination: April/May 1997

Provision of Legislation for Examinations

The Registry will supply Legislation for use by candidates in the examination papers listed below. Candidates are not permitted to bring any materials into the examination hall/room.

Law of Tort

Criminal Procedure Ordinance (Cap. 221), S.101 and 101A
Defamation Ordinance (Cap. 21)
Employees Compensation Ordinance (Cap. 282) 1988 ed.
Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
Occupiers Liability Ordinance (Cap. 314)
Police Force Ordinance (Cap. 232) S. 50, 51, 54

Law of Contract

Control of Exemption Clauses Ordinance (Cap. 71)
Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
Misrepresentation Ordinance (Cap. 284)
Unconscionable Contracts Ordinance
Sale of Goods Ordinance (Cap. 26)

The Legal System

Application of English Law Ordinance (Cap. 88)
Basic Law
Sino-British Joint Declaration

March 1997

UNIVERSITY OF HONG KONG
Bachelor of Laws: First Examination

LAW: LAW OF TORT (18201)

24 April 1997
6 pages - 8 questions

Time: 2.30 pm - 6.00 pm
(including 30 min. reading time)

ANSWER ANY FOUR (4) QUESTIONS

1. Answer EITHER (a) OR (b)

- (a) "Hard cases make bad law" is a saying which means that sometimes the courts, trying to avoid what seems to be unfairness or injustice, will manipulate or twist the law in a way which distorts the law. This can produce problems in the future when the courts have to deal with fresh cases using the law in the "twisted" cases. Do you think it would be fair to say that this applies to the distinction, found in Hong Kong case law, between employees and independent contractors? Is it right to say that the use by employers of independent contractors has produced injustice, and that sometimes in an effort to avoid injustice the courts have produced bad law?

OR

- (b) This is an extract from the Merchant Shipping (Seafarers) Ordinance Cap. 478, s.96:

- "96. (1) The Secretary for Economic Services may make regulations -
(a) for securing the health, safety and welfare of seafarers employed in, or persons carried on board -
(i) any Hong Kong ship; or
(ii) any other ship while it is within the waters of Hong Kong ...
(2) Without prejudice to the generality of subsection (1), regulations made under this section may, in particular, prescribe or provide for -
(a) the maintenance of safe working conditions and safe means of access for seafarers employed in ships ..."

Suppose that the following Regulation is made under the Ordinance:

The master of any merchant vessel shall ensure that at all times there are adequate handholds for any person using a ladder on board ship.

The *Star of Hong Kong* is a passenger ship registered in Hong Kong. On a cruise to Penang a member of the crew, Tom, falls from a ladder which is permanently fixed to the upper part of the ship; he falls 30 feet to the deck below, landing on a passenger, Mary. Tom suffers a broken arm. Mary is much more seriously injured: she has a broken back and has to be taken by helicopter back to Hong Kong. Her

boyfriend, Vincent saw the accident and was very frightened for Mary. He has been having bad dreams about the accident every night since, and has become very depressed.

It seems that the reason Tom fell was that one of a series of handles beside the ladder was missing. It is not known how it came to be missing, nor it is known how long it had been missing, since the ladder is used very rarely.

Advise Tom, Mary and Vincent on their chances of success in suing the master of the ship, or his employer, the shipping company.

2. Answer EITHER (a) or (b)

(a) This is para. 823 (I) of the German Civil Code:

A person who, wilfully or negligently, unlawfully injures the life, body, health, freedom, property or other right of another is bound to compensate him for any damage arising therefrom.

Do you think that the application of this rule would lead to any different results from the common law?

Warning: this is the sort of question that is easy to answer very badly! You will not do well by writing in a broad general way about the law of tort, nor is there a “right answer” in the minds of the examiners! You should only attempt this question (if you wish to get a good mark) if you can think before you write, and, focus on a few points in order to illustrate what you have to say. You may draw your examples from any area of the law of tort.

OR

(b) Discuss TWO of the following cases. For each case explain what the legal issues were, and how the court resolved them. How does the case advance or illustrate the law? Comment on the reasoning and the outcome and implications of the case. You are at liberty to comment favourably or critically as you see fit, provided that you demonstrate an understanding of the case, and your comments relate to issues like whether the case was consistent with previous authority, whether it is an advance in legal terms, whether it is likely to produce justice or injustice, or is appropriate to the Hong Kong circumstances, and so on (not whether the case is difficult for students to understand!)

Pitts v Hunt [1990] 3 All ER 344

Stovin v Wise [1996] 3 WLR 388

Wong v Johnson, Stokes and Master [1984] AC 296

Leung On v Chan Pui Ki [1996] 2 HKC 568

3. The Worst Construction Company built a block of flats - University View - for Mid-levels Development Co. The flats were put on the market before completion and one was bought by Mr Anson, a speculator, who then sold it immediately to Mr and Mrs Chan. The Chans have used all their savings to make the necessary payments, and, like many of the other purchasers in the block, borrowed 70% of the price from the People's Bank of Hong Kong. The Chan's flat is used as security for the loan (which means that if the Chans fail to repay the loan, the bank can claim the flat and sell it). When the block was completed, but before an occupation permit was issued by the Building Office, the Chans paid for a bathroom to be installed. They had expensive tiles placed on the walls and floor, and a bath with gold taps installed. In fact it should not have been possible for these things to be installed before the occupation permit was issued - but the developer had allowed many of the purchasers to make arrangements to install such fittings.

Now the Building Office is refusing to issue the occupation permit because there is doubt about the strength of the foundation. It seems that the contractors who built the foundations (Caisson Construction Co.) had constructed them negligently. The only solution is to demolish the building.

The Chans are desolated. It seems that they are in danger of losing all the money they have paid for the flat. In addition, the new tiles can be removed from the walls and floor of the beautiful new bathroom, but many of them will inevitably be cracked in the process; and they will be able to sell the elegant bath with its gold taps - but only for about 50% of the price they paid for it. They now feel they will never be able to move into their own home, and will have to stay in public housing for the rest of their lives. Mr Chan falls into a deep depression, and is seriously ill.

The People's Bank also finds that it has lost a lot of money because people like the Chans will not be able to repay the loan, and the security which the bank thought it had is worthless, since the flat will no longer exist.

Assume that Mr Anson has disappeared, and that the only available defendants are the foundation contractors (Caisson Construction Co.). Advise the Chans and the Bank as to their chances of recovering damages from Caisson.

4. Eric went on a business trip to the South-East Asian state of Angkor. Before travelling he consulted his doctor, Dr A who advised him that there was no problem of malaria in Angkor. So Eric took no precautions against malaria - neither anti-malaria drugs nor insect repellent. When Eric returned from Angkor he was given (and read) a leaflet at the airport which advised him that he had just returned from a malarial area and if he developed certain symptoms in the next 10 days he should consult a doctor immediately. Eric did develop symptoms identical to those described in the leaflet, but believing what Dr A had said, he decided it could not be malaria. His condition got worse, and within two weeks he was feeling very bad. He went to see another doctor (Dr B), a specialist in tropical diseases, who immediately realised there was a possibility that Eric had malaria. Dr B prescribed the drug chloroquine. Unfortunately, the type of malaria was resistant to chloroquine and the drug had no effect. Eric developed inflammation of the brain and died.

The following additional information is available:

- (i) it used to be the case that mosquitoes in Angkor were not carriers of malaria, but in recent years there has been a resurgence of the disease. The Department of Health had circulated a warning note to doctors six months before Eric left on his journey.
- (ii) there had also been an article in *The Journal of Tropical Diseases* saying that there had been cases of chloroquine-resistant malaria in Angkor; Dr B had read this but had forgotten about it (you may assume that he was negligent)
- (iii) If Dr B had treated Eric with the recommended alternative to chloroquine, it is not certain whether Eric would have survived since by the time he saw Dr B his case of malaria had become very serious. An expert witness puts the chances of his surviving at 40% if he had been treated with the new drug instead of chloroquine. If he had been treated with the new drug immediately on becoming ill, his chances of recovering would have been 99%.

Advise Eric's widow on whether she should sue Dr A or Dr B or both, and what her chances of success are. (Ignore any questions of the Fatal Accidents Ordinance, or ss. 20-20C of LARCO).

5. Po had been hiking in the New Territories and lost his way for more than 24 hours. Desperately in need of shelter to escape the oncoming typhoon, he entered a small building on Luk's farmlands. Shortly after the storm, Luk discovered Po in the building. Luk locked the door, in order to teach Po a lesson, and to later find out what he was doing there. Many hours later, Luk returned, only to find that Po was still sleeping.

In an effort to force Po to leave, Luk threatened to get the water hose and spray Po with water. Po, still exhausted from his ordeal, continued to sleep. Luk then brought the hose and sprayed Po with water, but still, Po slept on.

Luk summoned Police Constable Tso, who woke Po up and asked him what he was doing there. Po, still confused and tired, said nothing. Tso, who had been unsuccessfully investigating some notorious crimes in the area, decided to arrest Po and to have him charged with these crimes, in order to ease public anxiety. Without any explanation, Tso handcuffed Po and took him to the police station. Po was released a few hours later without being charged, because the station supervisor felt that there was insufficient evidence against Po.

With reference to relevant case authorities and legislation, discuss the possible tort liability of the parties. For the purposes of this question you do not need to discuss remedies.

6. The construction of a new racecourse and stadium complex in West Kowloon was authorized under the Racecourse Ordinance. The stadium was owned and operated by Stadium Inc.

On opening night, the crowds were large and proved too much for the ticket takers to handle. The queue of people awaiting entry in the adjacent side street of the main gate grew so big that the roadway was blocked to pedestrian and vehicular traffic. Bill, the owner of a restaurant at the end of the street, suffered a serious loss of business, caused, according to Bill, by the inability of pedestrians to pass through the street.

Dr Chan, who conducted a sleep therapy clinic nearby, complained that the noise from the races was so loud that he could not run his clinic.

John had recently returned from China and was staying in his parents' flat adjacent to the stadium. The vibrations from the high resonance of the stadium's sound system caused the cupboard to collapse, destroying some of John's expensive antique vases. John also complained of television reception interference caused by the stadium's 100 metre high lighting towers.

With reference to relevant case authorities, advise Bill, Dr Chan and John of any possible tort actions and remedies available to them against Stadium Inc. [Do not advise in negligence. You may assume that the parties have already received any relevant advice in negligence.]

7. Tom signed a contract with Corporate Towers Inc ('Corporate') to clean the offices, corridors and stairwells of one of Corporate's office buildings. In the contract Tom was designated an 'independent contractor'. There was no fixed starting time but the contract required him to report to the office manager every day when arriving at work. The contract also stipulated the areas to be cleaned. He was to be paid a fixed monthly sum, to be increased each year according to the rate of inflation. He was provided with cleaning equipment by Corporate, but was not provided with a uniform. There was no provision for vacation or other benefits in the contract.

One day shortly after arriving for work, Tom was found dead at the bottom of a stairwell, apparently from head injuries. The coroner investigating the cause of death reached a mixed verdict: a) Tom may have fallen, especially as alcohol was found in his blood sample; b) Tom may have been pushed, especially as it was discovered that Tom had triad connections, and a note was found at his home threatening action if he did not pay his debts; c) Tom may have been robbed after a struggle, as Tom's set of keys to the various offices could not be found on his person.

Advise of the likelihood of Tom's widow's application for compensation under the Employees' Compensation Ordinance, for each of the three scenarios mentioned above. [You need not advise on the issue of dependency, nor on the amount of compensation payable. You may assume that such advice has already been given.]

8. Some students of the University of Kowloon were having lunch at an off-campus restaurant. Ben, a senior student, was advising the others on selection of courses for the coming academic year. He advised them not to take a course from Felix Chan, because 'Felix is incompetent, sometimes drunk, and usually late for class'.

A reporter for the South China Morning Roast Newspaper overheard the conversation. That newspaper later published an article criticizing the University of Kowloon. The article said that the university was being mismanaged, in view of its having hired incompetent staff such as Felix Chan.

The Hong Kong Banner Newspaper published an article entitled 'Incompetent Lecturer Under Review', which described the lecturer as 'being under review following allegations of incompetence'. Unfortunately the lecturer's name was misspelled as Felix Chang. In fact there was a lecturer in the university called Felix Chang.

Advise the following persons on their rights in tort, including any defences that might be raised: a) Felix Chan, who wishes to sue Ben; b) the president of the University of Kowloon, who wishes to sue the South China Morning Roast; c) Felix Chang, who wishes to sue the Hong Kong Banner. Refer to relevant case authorities and legislation where appropriate.

ooooooooo END ooooooooo

THE UNIVERSITY OF HONG KONG

Department of Law

Bachelor of Laws Examination

(18103) Law of Contract

Date: 30 April 1997

Time: 2:30 to 6:00 pm

(Reading time: the first 30 minutes)

Instructions to Candidates

1. The time for this examination is 3 hours and 30 minutes. This time period includes 30 minutes reading time.
2. All questions are of equal value. Allocate your time accordingly.
3. There are 9 pages and 8 questions. You are required to answer **ANY FOUR (4)** questions.

1. If you were a judge of the High Court of Hong Kong, would you apply *In re Selectmove* [1995] 1 WLR 474? Give reasons.

2. 'It has been said that there is a need for a law providing relief from unconscionable bargains because relief by way of misrepresentation, duress or undue influence is inadequate.' [anon]

Discuss.

3. Seto owns a nice apartment in the mid-levels. At the back of the apartment he has a view of Victoria Peak; at the front he has an unobstructed harbour view. In January 1997 at the height of the property boom he contracted to sell it to Bill for \$40 million. But as he wanted to watch the fireworks from there on July 1, he did not want to complete the purchase until August 1. Bill needed time to arrange the financing needed and did not mind this term, but, being a nosy person, asked, 'Why?' Seto did not want to go into detailed explanations and said thoughtlessly, 'I plan to emigrate in August.' Seto and Bill signed the contract and agreed to complete the purchase on August 1.

Sure enough, in March 1997, Mr Tung, the Chief Executive-Designate announced a plan for land supply in Hong Kong with a view to bringing house prices down to affordable levels. The market value of all luxury housing in Hong Kong fell by 40%. The value of Seto's flat, now sold to Bill, fell with it.

Bill, looking for a way to get out of the contract, found out that the retaining wall at the back of the apartment building had been declared 'dangerous' by the Hong Kong government. It would require \$5 million to fix and each flat-owner in the building would have to contribute \$100,000.

Bill seeks a declaration from the court that the contract of purchase is void on the ground of mistake in that neither knew of the dangerous retaining wall. Alternatively, he seeks rescission on the ground of misrepresentation in that Seto never had any intention to emigrate.

Advise Seto.

4. Victor and Phillip entered into a contract under which Victor agreed to sell and Phillip agreed to buy Victor's flat. The contract included these clauses:

1. This agreement shall be completed on February 1, 1997. If Phillip should fail to arrange for mortgage finance by then, completion could be postponed provided that Phillip pay interest at the Prime Rate. In any event, completion shall take place no later than 5:00 pm on April 3, 1997.
2. Should Phillip be in breach of this agreement, the deposit shall be forfeited as liquidated damages and not as a penalty.
3. Forthwith on the signing of this agreement, Phillip shall take out insurance against damage by fire, typhoon or other natural disasters.

Phillip was unable to arrange financing by February and the closing was postponed. On April 2, Victor's lawyers reminded Phillip's lawyers to complete the purchase by 5:00 pm the next day. Phillip's lawyer assured Victor's lawyers that everything was in hand. The next day, Victor's lawyers waited for Phillip's cheque and the other closing documents until 5:15 pm. When they failed to show up, Victor's lawyers locked up and went home. Victor had told them not to wait further. The clerk from Phillip's lawyers arrived at 5:17 pm and, finding the doors locked, slipped the envelope containing the cheque and all other necessary documents under the door.

That evening, Victor learned through confidential sources that the Government would introduce programs to cool house prices. He immediately instructed his lawyers to give Phillip time and to close the deal if possible. By 9:15 am Phillip heard of the rumour too. He immediately put a stop payment on his cheque and instructed his lawyers to demand the return of his cheque and other documents, claiming that the contract had been terminated and that Victor's remedies were limited to the forfeiture of the deposit. His stop payment order was received by the bank five minutes before Victor tried to cash it.

Three days later a fire broke out in the flat which had been left vacant and the flat was no longer habitable without repairs costing well over \$2 million.

Advise Victor.

5. The Committee for Celebrating the Resumption of Sovereignty over Hong Kong (the 'Committee') moved into action in January 1997. The Committee planned a series of events for the month of July. They wanted as a high point of the celebrations a classy concert, but had a difficult time deciding whom to engage. Finally, they settled on Peter. A contract was duly signed in February. Peter was to sing at a grand concert in the evening of July 1. Guests would include international and local dignitaries. A portion of the seats would be sold to the public at \$5,000 each. Ticket sales could not cover the costs of the concert and the Committee expected to fund the deficiency from donations.

Peter was very happy that he was chosen over his rivals. In his excitement he tripped over himself and broke his right arm and leg. The fall was quite serious and he had to have surgery twice to 'mend his bones'. As his voice was not affected, however, no one thought much of it in the beginning. However, as the days passed and Peter still appeared on crutches with his arm in a sling, the Committee were alarmed. They pressed Peter for a report from his doctor. Peter's doctor reported (a) Peter's voice was not in any way affected, but (b) there was something mysteriously wrong and there was no way of predicting when he could leave off the crutches and the sling, and (c) as a result, Peter was in a mild depression. The Committee lost no time after reading the report. They fired off a letter to Peter notifying him that the contract was terminated. They then started to look for a replacement.

Peter was angry. He did two things. First, he immediately sued the Committee for \$100 million in damages. Second, he looked for another doctor. The second doctor soon discovered what was wrong and by April 30, 1997, Peter was as good as he was before the fall.

In the meantime, the Committee were close to signing a contract with Paul, a singer of equal fame. As soon as Peter learnt of this, he decided he wanted the opportunity to sing instead of damages. Armed with a doctor's certificate, he demanded that the Committee reinstate him. Certain committee members thought that even though Peter had fully recovered, the accident was a bad sign and they did not want such an unlucky person at the concert. The Committee therefore persisted in their refusal.

Peter fired his first lawyer and now asks you to review his legal position and advise him whether to continue the suit against the Committee, to change the claim to one of specific performance, or to take any other action.

6. Mary was the Chief Financial Officer of ABC Ltd (the 'Company'). She had been with the Company for a long time and was a trusted employee. Mary has a spendthrift husband and two children studying at Ivy League colleges in the US. The husband, John, had taken to gambling and Mary was hard pressed to pay his debts. She therefore resorted to using the Company's funds to speculate on the stock market.

The auditors of the Company soon discovered this and notified the board of directors. Mary was summoned by the Chief Executive Officer and she was told that the Company was displeased with her gambling activities and that if she did not resign within 24 hours she would be dismissed and her pension benefits would be forfeited. She resigned. The Company gave her a letter that said: 'TO WHOM IT MAY CONCERN: Mary has worked for this Company for 25 years. We have signed an agreement to release her from her employment contract.' The Company also issued a press release stating that Mary was taking early retirement in order to spend more time with her family. Mary herself promptly left for the US to visit her children.

Three months later, she returned. Instead of looking for a job, she approached Paul, a retired executive with whom she had prior business dealings while she was with the Company. She proposed that, as retirees, they should enter into a partnership to carry on a small import and export business. Paul has heard of Mary's abilities. His only concern was that Mary might have agreed not to compete with the Company after her retirement. Mary assured him on that score and showed him the Company's letter. Recalling the Company's press release, Paul thought that since Mary and the Company had parted amicably, the opportunity to go into partnership with Mary was too good to pass up. They quickly formed a company, Kowloon Trading Co, and, to avoid worries about rent, jointly purchased an office. Their small company prospered.

In the meantime, John had reverted to his old ways and needed money to pay his gambling debts again. He told Mary that he had found a business which was willing to admit him as a partner and asked her to raise the money needed, \$10 million, for him. Alternating between sweet-talking and threats of suicide, John succeeded in persuading Mary to mortgage the office to NT Bank.

The next day, John and Mary attended at the offices of NT Bank. John did the talking, stating that his wife wanted to expand her business, Kowloon Trading Co, and needed a loan of \$10 million. She and her partner would be willing to mortgage their office as security. Considering that the business of Kowloon

Trading Co was good and the office valuable, NT Bank approved. The documents were sent to Mary later. Mary signed the documents and asked Paul to sign as co-owner. Paul had always left financial matters to Mary and signed without questions. NT Bank sent Mary a cheque made payable to Kowloon Trading Co. Mary deposited it into the company account and drew out \$10 million for John.

John immediately spent all the money and was unable to give Mary money to repay NT Bank. When NT Bank threatened to sell the office, Paul discovered the truth and Mary's past.

Advise Paul as to his rights and liabilities.

7. The business of Fortune Ltd had slumped for sometime. To revive its fortunes, the public relations manager, Abel, set about looking for a fresh advertising angle.

Florence had just graduated from the New York School of Design and set up her own business in Hong Kong. Her work caught Abel's eye. On January 2, 1997, Fortune Ltd entered into a two-year contract with Florence. Under the contract, Fortune Ltd appointed Florence its advertising agent and agreed to pay her a retainer of \$50,000 per month. In addition, for every design submitted, she would be paid \$50,000. If a design is approved for use by Fortune Ltd, she would be paid an extra 3% of the fees charged by the advertising medium.

For the first little while, all went well. Florence worked happily and quite a few of her designs were approved for use by Fortune Ltd. Fortune Ltd's fortune did not, however, revive. Abel blamed it on Florence although her designs were winning awards. On March 2, Fortune Ltd sent Florence a letter informing her that her contract was terminated.

Florence ignored the letter and continued to produce advertising materials which she delivered personally to Fortune Ltd's office. She was producing as many as one design a day. When Fortune Ltd refused to accept delivery, she would write to them giving details of what had been done and asking them to pick up the materials from her studio.

By August, both Fortune Ltd and Florence were exhausted. Fortune Ltd wanted some peace and quiet. Florence needed \$300,000 to pay her accumulated rent and debts. When Abel heard of this he went to Florence and said, 'Here is \$500,000. If you sign here and agree to give up all your claims under our contract, you can have it.' Florence was not a good mathematician, but she knew Fortune Ltd owed her more than \$500,000. Besides, she did not want to give up her contract. But Abel said, 'Your work is no good and we have a right to cancel the contract. Besides, we are friends with your landlord and we can throw you out tomorrow if we wish.' Florence meekly signed the document and took the \$500,000.

She has come to you for advice whether she could sue Fortune Ltd and how much she could expect to recover.

8. Mr Rich ('Rich') bought a large tract of land at Sai Kung and intended to build a beautiful country home there to be used as a vacation home for his family and also to be used for entertaining his business associates.

Tough Tiles Ltd ('TT Ltd') had previously delivered to Rich a four-page pamphlet concerning a type of tiles sold under the brand name 'Super Rich'. The pamphlet had pictures of beautiful rooms showing Super Rich tiles to great effect. The face and back pages of the pamphlet said:

Super! Super! Super Rich tiles are made with the best materials. They come in beautiful designs and soothing colours. Beautiful and smooth. Easy to clean. They cost more than any other tiles, but you are worth it! Ask your builders to use Super Rich Tiles!

The inside pages of the pamphlet showed the dimensions of the tiles, the manufacturer's suggested retail price and also contained this clause:

The Company [TT Ltd] will be pleased to return to its buyers the price paid for any defective tiles. Other than the above obligation, the Company does not accept any responsibility in respect of the tiles sold by it and shall not be liable for any loss or damage howsoever arising out of the manufacture, sale or use of its tiles, whether caused by its negligence or otherwise.

Rich purchased some Super Rich Tiles from TT Ltd for his villa.

The final product was, however, disappointing. The tiles were discoloured (faded and streaked) in part and glaring in part; they bore no resemblance to the tiles shown in the pamphlet. They were rough and even when first delivered showed hairline cracks. Two weeks after the completion of the house the cracks in the tiles widened. These defects were solely attributable to the negligence of TT Ltd both in the selection of raw materials and in the manufacturing process.

The tiles do not pose any danger to anyone, but they are an eyesore and because of the cracks keeping them clean is very difficult. Rich decides to tear them out and replace them. Rich wants to sue TT Ltd.

Advise Rich.

-END-

The University of Hong Kong

Bachelor of Laws: First Examination

18108 Legal System

7 May 1997

**Time : 9:30 am - 1:00 pm
(First 30 minutes reading time)**

**This paper consists of 4 pages and 8 questions.
Answer any Four Questions.**

1. Lai was charged with an offence of driving a vehicle without a driving licence contrary to s 42 of the Road Traffic Ordinance when he was found driving a truck crane at the vicinity of a construction site at Pokfulam Road. Section 42 of the Road Traffic Ordinance provides that any person who drives a vehicle without a valid driving licence commits an offence and may, upon conviction, be fined \$5,000 and be imprisoned for up to 3 months. Section 2(2) of the Ordinance defines vehicle as any car, van, lorry, locomotor or other conveyance constructed or adapted for use on roads. Section 2(3) provides that the definition of vehicle does not include any bicycle, tricycle, trolley or other manually driven vehicle.. It was not in dispute that at the time of the offence, the truck crane was on a road.

The truck crane was a huge machine measuring 12 m x 3 m and weighing over 30 tons. It was primarily used for lifting building materials at construction sites. It had no horn or gears, but it had proper brakes and mirrors. While it could be driven under its own power, its maximum speed was only 10 km per hour. In view of its size and its slow speed, it was always conveyed to a construction site by a delivery container truck. In this particular case, since the delivery container truck was too large to go into the construction site, the truck crane was off-loaded at the entrance of an access road at the side of Pokfulam Road. The truck crane was then driven to the construction site which was about 50 m down the access road. The truck crane was stopped by the police when it was on the access road to the construction site, and Lai, who was driving the truck crane, was found without a valid driving licence. While the access road was a public road, the construction company had put up barriers to close the access road to the public. Apart from workers on the construction site, no members of the public were using the access road.

Before 1994, the term vehicle was defined as any vehicle intended or adapted for use on roads. The drafting history did not reveal the reason for the amendment in 1994, which replaced the phrase intended or adapted by constructed or adapted.

Advise Lai whether he has committed an offence under s 42 of the Road Traffic Ordinance.

2. "If the rules of precedent are part of the common law, and the common law previously in force in Hong Kong is to be maintained in the Hong Kong Special Administrative Region [SAR] under [Article 8 of the Basic Law], and Hong Kong courts are now required to follow decisions of both the House of Lords and the Judicial Committee of the Privy Council on matters of common law, then SAR courts will also be bound by House of Lords and Privy Council decisions [even after 1997]." (P Wesley-Smith, at p 199)

Comment critically on this statement.

3. ANSWER EITHER PART A OR PART B BUT NOT BOTH.

- (a) Art 18 of the Basic Law provides that "the laws in force in the Hong Kong Special Administrative Region shall be [the Basic Law], the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region." Discuss this article critically in the light of the promise in the Joint Declaration that the laws in Hong Kong after 1997 will remain basically unchanged.

OR

- (b) In refusing an application by the Hong Kong Government for the extradition of Mr Jerry Lui to Hong Kong to face various corruption charges, the United States District Court stated:

"If, nonetheless, Lui is extradited now, but the Crown Colony of Hong Kong is unable to try and to punish him prior to reversion [of sovereignty over Hong Kong], he will then be in the custody of China, not the United Kingdom. China could, therefore, try Lui before the courts of the Hong Kong Special Administrative Region. If found guilty, Lui would be punished, not by the Crown Colony of Hong Kong or the United Kingdom, but by China." (*In re Jerry Lui and the United States of America*, judgment dated 7 January 1997)

Comment, in the light of this statement, on the extent to which the Hong Kong Special Administrative Region may retain its own legal system separate from that of the People's Republic of China.

4. Compare and contrast the means to guarantee the independence of the judiciary before and after the change of sovereignty over Hong Kong. In what ways could the guarantee of the independence of the judiciary after 1 July 1997 be strengthened?

5. Explain the meaning of the "rule of law", and discuss how this concept is reflected in the legislative process and in the process of statutory interpretation. To what extent can the rule of law be maintained after the change of sovereignty over Hong Kong on 1 July 1997?

6. [T]he so-called presumption of innocence in favour of the prisoner at bar is a pretence, a delusion, an empty sound.... The treatment of the prisoner negatives the presumption. If he is presumed innocent, why is he manacled? Why is he put in jail? Why is he let out only on bail? Why, when he is put on trial, is he put in the dock?... How can a person be presumed innocent who is presumably guilty? (*Ten Years a Police Judge* (1884), cited in 4 Wigmore, *Evidence* (Chad Rev), s 2511)

Discuss this statement critically.

7. ANSWER EITHER PART A OR PART B BUT NOT BOTH.

- (a) "It is in the public interest for solicitors to acquire rights of audience in all courts under statutory provisions similar to those in England and Scotland." Do you support this proposal? Explain your reasons.

OR

- (b) "It is contrary to public interest to have a fees structure which has nothing to do with the amount of work involved, which does not permit competition, and which is to serve nothing but the self-interest of solicitors." Discuss this statement critically in the light of the proposal to abolish scale fees for conveyancing.

8. You are a senior Crown Counsel in the Prosecution Division of the Attorney General's Chambers. You are asked to consider an investigation report prepared by the police and advise whether consent of the Attorney General to prosecute Lam should be given. The investigation report outlined the following matters:
 - a. Lam, aged 60, was arrested in connection with a suspected offence of incest (having sexual intercourse with close relatives). It was alleged that he had unlawful sexual intercourse with Iris, his 12 years old daughter, on at least 6 occasions in the last three years.

 - b. Iris was mildly retarded. She is four months' pregnant now. Two months ago, Jessie, a social worker, found Iris showing signs of pregnancy and this was confirmed when she took Iris to see a doctor. Iris eventually told Jessie that the pregnancy was a result of her father playing with her. Iris did not fully appreciate the fact that she was pregnant. The doctor's opinion was that Iris

would not be able to stand cross-examination in court; strenuous cross-examination might result in permanent damage to her mental health. It might also have an adverse effect on the baby if the trial took place before the birth of the baby.

- c. Mandy, the mother of Iris, was a timid, traditional woman who came from a peasant family in China. Having been married to Lam for 15 years, she was a full-time housewife with no income or savings of her own. When she first found out that Lam had had sexual intercourse with Iris, Mandy was very angry. She had a fight with Lam, resulting in injuries to both parties. Subsequently, she turned a blind eye to the affair, as she was financially and emotionally dependent on Lam. She did not know that Iris was pregnant until it was discovered by Jessie. In her first statement to the police, Mandy asserted affirmatively that Lam, the father, had had sexual intercourse with Iris resulting in the pregnancy. However, a week later, in her second statement to the police, Mandy said that she knew nothing about the sexual intercourse between Lam and Iris, and begged the police not to ruin her family. She was extremely worried that she would not be able to support both Iris and the baby if Lam were sentenced to imprisonment.
- d. In his statement to the police, Lam admitted that he had sexual intercourse with Iris on one occasion, but denied that the pregnancy had anything to do with him. He said that Iris was sometimes lured to go to bed with strangers who offered her sweets. He now says that he was beaten up by the police and was forced to sign the statement which the police fabricated. He had made a complaint to the Complaint Against the Police Office. The matter is still under investigation.
- e. Apart from these statements and the fact of pregnancy, there is no other evidence.
- f. Once a defendant is convicted of this offence, it is almost certain that there will be a custodial sentence. The guideline from the Court of Appeal is that in the absence of any aggravating factor, the starting point for sentencing is 5 years' imprisonment.
- g. You ran into the Director of Social Welfare on a social occasion last week. The Director knew about the case and that you were handling it. He told you that it was a disgraceful case and that justice must be done. You understood that he was saying that Lam should be prosecuted.

Advise whether consent to prosecute should be given, and explain your decision. Also advise what documents, if any, should be disclosed to Lam.

***** THE END *****

The University of Hong Kong

18111 Law and Society

LLB Examinations: Part I

12 May 1997

2.30 to 5.45 (including 15 minutes reading time)

Answer **FOUR** questions in all. You **MUST** choose **TWO** questions from Part I and **TWO** from Part II.

Part I

1. 'It is better to live in a classless society than in a State, since the latter inevitably means physical coercion, political oppression, economic exploitation and social hierarchy.'

Discuss.

2. What is the significance of Plato and Aristotle in the history of Western political thought? To what extent is their thought still relevant today?

3. Explain the contribution, if any, made by Hobbes, Locke and Rousseau to the development of the liberal constitutional democratic state in modern times.

4. How and why did the absolutist states that emerged in Western Europe in early modern times become transformed into liberal democracies subsequently? Illustrate your answer with reference to the example of one state (e.g., England, France, etc).

Part II

5. 'Maine's thesis of the move from status to contract is apparently even more often quoted in the contemporary literature produced by Chinese legal philosophers than the views of Marx himself. The Chinese writers unanimously understand this move as a kind of historical progress. In particular, they read into the idea of the contract the whole story of modernization, freedom, autonomy, equality--in short, the collection of the aspirations of humankind in modernity' (Albert Chen 1996).

Discuss.

6. Answer **BOTH** (a) and (b).

(a) Describe the principal features of the economy of Hong Kong and examine the role of the law in its operation.

(b) What factors are likely to determine whether this economic system will continue beyond 1 July 1997?

7. Examine critically the role of the courts in England and the US in the 19th century in developing the law of torts to deal with the problems of industrialisation.

8. Discuss the problems that a country with a planned economy faces in moving to a market economy. Illustrate your answer by reference to the Chinese experience since 1979.

Supplementary Examinations for LLB I Years (September, 1997)

	Name of Paper	Date of Exam.	Time
1	Law of Tort (18201)	02-Sep-97	9:30am - 1 00pm
2	The Legal System (18108)	02-Sep-97	9:30am - 1 00pm
3	Law and Society (18111)	04-Sep-97	9:30am - 12:45pm
4	Law of Contract (18103)	04-Sep-97	9:30am - 1 00pm

UNIVERSITY OF HONG KONG
Department of Law
18201 LAW OF TORT 1996-97

September 2, 1997

Supplementary Examination
Value: 80% of Final Mark

Time: 9:30 a.m. - 1.00 p.m.
(including 30 minutes reading time)

ANSWER FOUR QUESTIONS ONLY

1. Bang & Co., a firm specializing in large commercial art projects, was engaged in the creation and installation of a ceramic sculpture in a recently constructed tower block in Admiralty.

Tai, a ceramics specialist, was working on the Admiralty project when he suddenly fell off of the 10 metre high platform on which he was working. He died 3 weeks later from head injuries suffered in the fall. The evidence later showed that he fell because he was hit by a falling object, which caused him to lose his balance. Tai was not wearing a safety helmet at the time. The object, a tool, slipped from the hands of John, another ceramics worker working above Tai on the same project.

Tai's widow seeks your advice regarding a claim for Employees' Compensation.

2. Andrew's sister Bonnie suddenly became very ill, so Andrew decided to drive her to the hospital. Andrew was worried about Bonnie's condition and so drove very fast. It was after midnight and the roads were very quiet. When he came to a set of traffic lights which were red, he slowed a little, could see no traffic, and went straight through the intersection.

Unfortunately there was at that moment a car speeding toward the intersection. This car was driven by Carl, who was drunk, and whose passenger, Doris, was also very drunk. They were laughing and Doris was encouraging Carl to drive faster, as she enjoyed travelling at high speeds, especially when she was drunk.

The two cars collided. Andrew, Bonnie, and Carl were not harmed. However, Doris, who was not wearing a seatbelt, suffered serious personal injuries.

Advise Doris regarding her claim in tort.

3. "If you want to know when you have the right to lay hands on another person or his property, you must look at the defences to an action in trespass".

Illustrate this proposition as applied to the defences of consent, legal authority and necessity, making reference to cases and legislation, as appropriate.

4. The preamble to the Dogs Ordinance announces that the purpose of the ordinance is to "impose conditions for the control of dogs, the health and welfare of dogs, and generally for the safety of the public".

One of the regulations made pursuant to the Dogs Ordinance provides that:

27) any person walking a dog in a public place in Hong Kong must clean up its excrement.

Another regulation, entitled "Penalties", reads in part:

32) any person found guilty of a violation of regulation 27...will be subject to a fine of up to \$1,000, and...in the event of a repeated offence...a confiscation order may be made in respect of the dog.

George was walking his mother's large dog in a nearby park. The dog left a mess (excrement) in a number of places. George tried his best to clean up the various piles left by the dog. Unfortunately, he missed one spot. Henry, who was jogging at lunchtime, was chatting with his running partner and not watching the path when he failed to notice the large pile of dog's mess left by the dog. He stepped into the dog's mess, slipped, and broke an arm.

Advise George regarding possible liability for breach of statutory duty.

5. Fred, a solicitor, has in the past acted as legal adviser to Mrs. Chan. After work one day, Fred joined some of his former classmates, including Ben, an accountant, and Carl, a journalist, for dinner. During dinner Ben told a story about Mrs. Chan's husband Andes, a well known society figure, in which he described "Mr. Andes Chan, the husband of one of Fred's clients", as "having been seen more often than he should in the company of known drug traffickers".

Fred had some doubts about the story, but he was secretly in love with Mrs. Chan. He also knew that Mrs. Chan was unhappy with her marriage and was contemplating a separation from Mr. Chan. He wrote a letter to Mrs. Chan, informing her of the story told by Ben. In the letter he advised that serious drug addiction would constitute grounds for divorce. When she read the letter, Mrs. Chan became very upset. She later confronted Mr. Chan, who reacted with considerable surprise. In fact Mr. Chan is not a drug user and has never used drugs, although he has some friends who are drug addicts and who he has been trying to counsel.

Advise Andes Chan.

6. Agnes was employed as the manager of a restaurant in Tai Po. In order to prevent passersby from entering to use the restaurant's toilet facilities, Agnes posted a sign on the door which read "Restaurant Customers Only May Enter. Others Not Welcome On The Premises".

The restaurant had an automatic door which would open when activated by a human presence. The door recently developed a fault in that it would sometimes suddenly close before the customer had passed through the door. Agnes had noticed this fault and made a mental note to herself to have the door repaired soon. John, the 6 year old child of a neighbouring shopkeeper, was intrigued by the automatic door and would sometimes enter the restaurant for fun in order to activate the door. On one occasion

when entering, the automatic door suddenly closed on John before he had passed through, causing him to suffer head injuries.

Agnes then posted a sign which read "Caution! Faulty Door". The same day Sharon, a waitress who worked in Agnes' restaurant, suffered personal injuries when the door suddenly closed on her as she was leaving the restaurant after finishing her work shift.

Agnes then arranged for the doors to be fixed by Bill, the owner of an electrical door repair company. While working on the door Bill was injured when the doors suddenly closed on him.

Advise Agnes of her possible tort liability.

7. Racing Ltd. held a licence under the Outdoor Entertainment Sites Ordinance to operate a horse racing stadium in Causeway Bay. Norbert was the owner and occupier of a flat about half a kilometre from the stadium. Pierre was the owner and operator of a French restaurant immediately adjacent to the stadium.

On most Saturday nights, Racing Ltd. held a full schedule of horse races at the stadium. The races were sold out and very noisy, and often continued until past midnight. Norbert and his wife Jane, both of whom went to sleep every night at 10 pm and were light sleepers, could not sleep on those occasions when a race was held, due to the level of noise. The smell from the horses in the stadium's numerous stables was so bad that customers stopped coming to eat at Pierre's restaurant, causing a loss of profits. On one occasion, through no fault of the stadium staff, a number of horses bolted from the stables in the stadium, and ran into the streets of Causeway Bay. John had little chance to react when the horses suddenly ran in front of his vehicle. He swerved to avoid the horses but collided with a post and was injured.

Advise Racing Ltd. as to its possible liability in tort. (Do not advise on the tort of negligence. You can assume that the parties have already received any such relevant advice).

8. Kevin, a developer, was developing a site in Kowloon. One day the crane operator, Lana, suddenly lost control of the crane, which then swung across and crashed into the Kowloon Hotel, opposite, damaging the top two floors. Part of the crane then fell to the ground, seriously injuring Michael, a pedestrian, and narrowly missing his girlfriend, Nancy. Nancy, a frail person who already suffered from a nervous condition, developed an even more acute mental illness as a result of the accident. She eventually attempted suicide (swallowing a large number of pills). Her suicide attempt failed but she now suffers permanent brain damage from the overdose of pills.

The damage to the hotel required 2 months to repair, during which time the hotel was unable to let the top 2 floors for guests.

The debris on the roadway was so extensive that the road had to be closed for 2 days in order to arrange for a safe cleanup. As a result, the Dim Sum Restaurant in the ground floor of the hotel had to remain closed to business for those 2 days.

Advise Kevin and Lana regarding possible tort liability.

END OF PAPER

UNIVERSITY OF HONG KONG
BACHELOR OF LAWS: SUPPLEMENTARY EXAMINATION

18108 THE LEGAL SYSTEM

September 2, 1997

Time: 9:30 am - 1:00 pm
(Reading Time: The first 30 minutes)

This paper consists of 2 pages and 7 questions. Candidates are required to answer FOUR (4) questions.

1. "The right against self-incrimination should be abolished. If someone remains silent, he must have something to hide. If he is forced to speak up and what he said is true, why should the law exclude his confession?" Do you agree?
2. It has been suggested that juries should be replaced by a mixed tribunal comprising a judge and a number of laymen. Explain whether you agree.
3. **ANSWER EITHER PART A OR PART B BUT NOT BOTH:**
 - A. "When an appellate court overrules one of its own common law decisions, an injustice is done to the losing party. It does not matter whether you call it a retroactive change to the law or a mere correction of an erroneous understanding of the true law, the effect for the disappointed litigant is the same: what he had previously believed to be the law, in accordance with the best possible advice he could get at the time, turns out to have been wrong, and his reliance upon it has cost him dear."

Do you agree with the statement that the existence of the power of overruling is unjust? How can the situation described in the above statement be justified? Illustrate your answer by reference to decided cases.

OR

- B. "English judges are slaves of the past and despots of the future. Accordingly, the doctrine of stare decisis is backward-looking and tends to preserve the status quo."

Comment on the doctrine of stare decisis in the light of this statement.

4. After quoting the principal passage in *Pepper v Hart* [1993] AC 593 by which the exclusionary principle was limited in scope, Findlay J said in a recent case:

"I am not sure how applicable this decision is to a legislature that has no majority party to ensure the passage of legislation. Where a majority party exists, one can be reasonably sure that what is said by a Minister or other promoter of a Bill represents the intention of the majority of the legislature. In Hong Kong, statements in the Legislative Council cannot be said to be clearly representative of the intention of the majority of the Council."

Discuss *Pepper v Hart* and its application to Hong Kong in the light of this passage.

5. Compare the strengths and weaknesses of the system of appointment and removal of judges before and after 1997. In what ways could the post-1997 system be improved to provide for better guarantees of the independence of the judiciary?
6. Explain and discuss the public interest, if any, in retaining a divided (non-fused) legal profession.
7. Art 3 of the Joint Declaration provides that "the laws currently in force in Hong Kong will remain basically unchanged." Explain this provision in the context of statutory law applicable to Hong Kong/Hong Kong SAR. To what extent is this promise honoured?

**** THE END ****

THE UNIVERSITY OF HONG KONG
DEPARTMENT OF LAW

BACHELOR OF LAWS EXAMINATION
1996-1997
(Supplementary)

18111 Law and Society

Date : September 4, 1997
Time : 9.30 am - 12.45 pm
(15 minutes reading time included)

Answer FOUR questions. You MUST answer TWO questions from Part I and TWO from Part II.

Part I

1. Answer parts (a), and either (b) or (c). The parts carry equal marks.
 - (a) Explain the concepts of
 - (i) political authority;
 - (ii) the State;
 - (iii) the liberal constitutional state;
 - (iv) the liberal constitutional democratic state.
 - (b) If you have a choice, would you prefer to live in a liberal constitutional democratic state or in a different kind of state? Give reasons.
 - (c) If you have a choice, would you prefer to live in a State or in a stateless society? Give reasons.
2. What is the significance of Plato and Aristotle in the history of Western political thought? To what extent is their thought still relevant today?
3. Of the social contract theorists (Hobbes, Locke and Rousseau), whose views appeal most to you, and why?
4. Examine the relative influence of Confucian and Marxist ideas on the present political system of China.

Part II

5. How does the study of the law of contracts in tribal, market and planned economies help you to understand the essential features of these economies?
6. "It has long been recognised by social and economic historians that the emergence of capitalism was accompanied by changes in the concept and institutions of property." (Macpherson).

Describe how and why the concept and rules of property have changed from tribal to market and command economies.

7. Hong Kong's economic system is often described as 'laissez-faire'.
 - (a) What do you understand by this term?
 - (b) Is it a correct description of Hong Kong's economic system?
8. Examine critically the economic provisions of the Basic Law.

THE UNIVERSITY OF HONG KONG

DEPARTMENT OF LAW

(18103)

LAW OF CONTRACT

1996-1997

Supplementary Examination

Date: September 4, 1997

Time: 9:30 a.m. - 1:00 p.m.

(Reading time: the first 30 minutes)

Instructions to candidates

1. The time for this examination is 3 hours and 30 minutes. This time period includes 30 minutes reading time.
2. All questions are of equal value. Allocate your time accordingly.
3. There are 8 pages and 7 questions. You are required to answer **any four (4)** questions.

1. Nigel wanted to go to Hong Kong because he had heard of the fabulous opportunities there. He had also heard of the resumption of sovereign by China and thought that even if he could not find a job in Hong Kong, he could have a good holiday. He went to a travel agent in London to book and pay for a room in the CheepRate Hotel, which was located in Central. He was told that the hotel had spacious rooms with a spectacular view of the harbour. Upon payment, he was given a receipt on which the following words were printed: 'The CheepRate Hotel reserves the right to substitute rooms and services without prior notice.'

Nigel arrived at Kai Tak airport in the rain. After taking a look at the crowd at the taxi-stand, he gratefully boarded the free shuttle bus provided by the hotel. The driver was friendly but looked as though he had not slept for 3 days. Indeed that was the case: he had been watching too much of the Resumption of Sovereignty Celebrations. At the back of the driver's seat, facing the passengers, was posted a sign with the following words printed in 14pt: 'Our luxurious hotel offers guests this bus service to and from the airport as a courtesy. To keep our costs (and your rates) down, we do not accept any liability for any loss or damage to our guests or their property however caused.' Nigel was too distracted by the weather to see the sign. It was, in any event, too dark for anyone to read such fine print.

The bus set off from the airport. As it was proceeding through the cross-harbour tunnel, the tedium of the journey proved too much for the driver: he fell asleep at the wheel. The bus crashed into the wall of the tunnel, causing Nigel's suitcase to drop from an overhead compartment and hit Nigel on the knee. Nigel hobbled out of the wrecked bus and was taken to the CheepRate Hotel by a helpful policeman. Once at the hotel, he was given his room key. The room was tiny and had no window.

As a result of this unfortunate series of events, Nigel became very depressed. Not only did he fail to find a job, he had a terrible holiday in Hong Kong. He had to seek medical attention for his injured knee and required three months of intensive physiotherapy.

Advise Nigel.

2. Peter is a poor little rich boy. His father died more than 10 years ago; his mother remarried and Peter could not get on with his step-father. So when he was admitted to the Kowloon University at age 16, Peter chose to live in hall and during the three years at the University, he went home only once. Spending so much of his time on campus, he got to know the Warden, Tom, and his family very well. Tom was everything Peter wanted in a father and Peter went to Tom with all his problems, large and small. Tom was always ready with good advice which was gratefully accepted by Peter.

Soon after Peter's graduation, Tom went to him with a proposal. Tom explained that he wanted to leave the University and go into the publishing business. He was confident of success, but needed capital. He had the brains, Peter had the capital, and they would be great partners, he said. Specifically, he said that he had a firm, Tom Kee, and that the Kowloon Bank was willing to lend to the firm if a rich person guaranteed the loan. Peter did not need much persuasion since he thought Tom was the most talented person on earth. They went to Tom's solicitors and signed a contract whereby Tom agreed to sell 50% of the firm to Peter. They did not wait, however, for the completion of the contract before going to the Kowloon Bank.

At the Kowloon Bank, Tom introduced Peter to the bank manager as his former pupil. The manager pulled out Tom's file and handed the documents to Peter. The documents showed a \$10 million loan to Tom Kee to be guaranteed by an unlimited personal guarantee of Peter. Tom Kee was described as a sole proprietorship owned by Tom. The manager started to tell Peter about the transaction, but Peter stopped him, saying, 'Tom told me all about it already. I trust him; he is like a father to me.' Having said that, Peter signed the guarantee and handed it back to the manager. At that moment, the telephone rang and the manager picked up the phone. By the time he finished the conversation, Peter and Tom had left.

Kowloon Bank disbursed the loan proceeds to Tom Kee. Tom left the University to devote all his time and attention to the business. Unfortunately, he had lived in the ivory tower for too long to be able to survive. Tom Kee failed within three months. Kowloon Bank has demanded payment from Peter under the guarantee.

Advise Peter.

3. Answer any TWO (2) parts to this question:

(a) When would a party be relieved of his contract on the ground of mistake?

(b) When is rescission available for misrepresentation?

(c) What is the difference, if any, between rescinding a contract for misrepresentation and terminating a contract for breach?

4. Amy is an entrepreneur. In 1991 she booked a floor of suites with a harbour view at the Great Hotel for June 29 to July 3 1997. She planned to offer to tycoons packaged party services to relieve them of the burden of planning parties. All the tycoons would have to do is to give her a guest list. She would take care of the invitations, decorations, souvenirs, catering etc. Normally, she would make arrangements for entertainment, but on this occasion, entertainment would be provided by the Urban Council and others free of charge.

Amy obtained the bargain price of \$1,997 per suite per evening from the hotel payable in advance. She charged the tycoons \$200,000 plus costs per suite and so stood to make a tidy profit. Her proposal proved an attractive one and in no time at all, her suites were 'sold out'.

By June 29, Amy was ready. She registered for her suites, collected her keys and inspected the rooms. Soon, the flowers she ordered arrived and she started to make the appropriate decorations. She left at midnight, after the rooms had been arranged to her satisfaction.

At 1 am, while the restaurant on the floor above was being cleaned up, a waiter accidentally knocked over a burning candle and the carpet caught fire. By the time firemen had put out the blaze, all of Amy's suites and their contents were completely destroyed. The parties had to be cancelled.

The tycoons were furious: they had invited friends and business acquaintances to the party and now it was too late to make alternative arrangements. They told Amy that not only would they lose the esteem of their friends and acquaintances, their failure to host a party would be seen as unpatriotic and they feared great losses. They have threatened to sue.

Advise Amy.

5. Discuss the doctrine of consideration, its application, the problems it creates, and its future.

6. In May 1997, Victor was about to emigrate to Canada and he placed an advertisement in the newspapers to sell his flat. Peter was planning to marry and was looking for a flat. Victor and Peter entered into a contract for the sale and purchase of the flat which included this clause:

This agreement shall be completed on 1 June, 1997. If Peter should fail to arrange for mortgage finance by then, completion could be postponed provided that Peter pay interest at the Prime Rate. In any event, completion shall take place on 15 June, 1997.

Peter was unable to arrange financing before 15 June, 1997, but he was very anxious to get the flat and pleaded with Victor for more time. In the two weeks after 15 June, 1997, Victor and Peter were in daily contact, with Victor urging Peter to hurry up and complete, and Peter placating Victor by reporting great progress with his loan application.

On 1 July, 1997, the Chief Executive Mr Tung made his first policy speech and pledged to bring house prices down. Peter now wants to get out of the contract as he expects market prices to fall.

Advise Peter.

7. Bill, a civil servant, has a keen interest in antiques. He has spent the last 30 years studying Ming objects of art and has gained a reputation for himself as an expert on Ming antiques. As a civil servant, he often goes to London on official business. Whenever he is in London he goes to antiques markets to see if there are bargains to be picked up.

Stuart is a small-time dealer in antiques. He wanders around England and buys antiques for resale. Every now and then he makes a huge profit by buying a good piece from an old farmer who doesn't know its true value and reselling it at his stall at one of the markets around London.

Bill, a frequent visitor, knows Stuart by sight. On a recent visit to England, he saw a vase at Stuart's stall. It looked like a Ming Vase. Stuart offered to sell at L50,000. If authentic, the vase should sell at L200,000. Bill bargained and succeeded in buying it for L45,000. Stuart gave him an invoice with this clause printed in bold red ink on its face: 'No condition or warranty about authenticity is given.'

Bill has discovered that the vase is a fake and wants to sue Stuart.

Advise Bill.

**University of Hong Kong
Faculty of Law
Bachelor of Laws Examination
LLB First Year Examination
(April/ May/ August, 1998)**

Main Examinations for LLB First (Year I) (April/May, 1998)

	Name of Paper	Date of Exam.	Time
01	Law of Contract (18103)	27-Apr-98	9:30am - 1:00pm
02	The Legal System (18108)	30-Apr-98	9:30am - 12:45pm
03	Equity and Introduction to Trusts (18229)	5-May-98	9:30am - 12:00pm
04	Law of Tort (18201)	5-May-98	9:30am - 1:00pm
05	Insolvency Law (18324)	6-May-98	9:30am - 12:00pm
06	Constitutional & Administrative Law (18105)	8-May-98	9:30am - 1:00pm
07	Company Law (18353)	9-May-98	9:30am - 12:00pm
08	Alternative Dispute Resolution (18210)	11-May-98	2:30pm - 4:45pm
09	Law and Society (18111)	11-May-98	2:30pm - 5:45pm
10	Issues in Intellectual Property Law (18223)	13-May-98	9:30am - 11:45pm
11	Chinese Laws Governing Foreign Investments (18239)	15-May-98	2:30pm - 5:00pm

LL. B. First (Year I) Time Table in 1998

<u>Date</u>	<u>Time</u>	<u>Course</u>	<u>Description</u>	<u>Venue</u>
Apr 20 MON	2:30 pm - 5:00 pm	77103	English for law (not counted towards the LLB degree)	Loke Yew Hall
Apr 27 MON	9:30 am - 1:00 pm	18103	Law of contract	Loke Yew Hall
Apr 28 TUE	2:30 pm - 6:00 pm	18412	Trade & investment in the People's Republic of China (Full Course)	Loke Yew Hall
Apr 30 THU	9:30 am - 12:45 pm	18108	The legal system	Loke Yew Hall
Apr 30 THU	9:30 am - 1:00 pm	18466	Hong Kong basic law (Half Course)	Rm 141 Main Bldg.
May 4 MON	2:30 pm - 4:30 pm	02239	Ci poetry: Ci up to the nineteenth century	Rm 103 Main Bldg.
May 5 TUE	9:30 am - 1:00 pm	18201	Law of tort	Loke Yew Hall
May 5 TUE	9:30 am - 12:00 noon	18229	Equity and introduction to trusts	Loke Yew Hall
May 6 WED	9:30 am - 12:00 noon	18324	Insolvency law	Loke Yew Hall
May 8 FRI	9:30 am - 1:00 pm	18105	Constitutional & administrative law	Loke Yew Hall
May 8 FRI	2:30 pm - 4:30 pm	02201	Prose: prose up to the nineteenth century	Rm 105 Chong Yuet Ming Amenities Centre
May 9 SAT	9:30 am - 12:00 noon	18353	Company law	Loke Yew Hall
May 11 MON	2:30 pm - 5:45 pm	18111	Law and society	Loke Yew Hall
May 11 MON	2:30 pm - 4:45 pm	18210	Alternative dispute resolution	Rm 103 Main Bldg.
May 11 MON	2:30 pm - 4:45 pm	18469	International criminal law (Half Course)	Rm 103 Main Bldg.
May 12 TUE	9:30 am - 11:30 am	03510	Text and discourse in contemporary English	Loke Yew Hall
May 13 WED	9:30 am - 11:45 am	18223	Issues in intellectual property law	Loke Yew Hall
May 15 FRI	9:30 am - 11:30 am	03294	English novel I	Flora Ho Sports Ctr.
May 15 FRI	2:30 pm - 5:00 pm	18239	Chinese laws governing foreign investments	Rm 122 Main Bldg.
May 20 WED	9:30 am - 11:30 am	03298	Reading literature	Rm 122 Main Bldg.
May 26 TUE	2:30 pm - 4:30 pm	02238	Shi poetry: Shi up to the nineteenth century	Loke Yew Hall
May 27 WED	9:30 am - 11:30 am	02226	Chinese literary criticism (Part I)	Rm 151 Main Bldg.

Note:

- (1) Location of Flora Ho Sports Centre/ Lindsay Ride Sports Centre: at the junction of Pokfulam Road and Pokfield Road.
- (2) Students taking examinations at the Loke Yew Hall, the Flora Ho Sports Centre and the Lindsay Ride Sports Centre are advised to arrive at the examination venue 15 minutes before the examination and to read the seating plan displayed on the noticeboard outside the examination venues carefully. Students must take their examinations at the right venues.

Printed/Written Materials/Special Notes

18103 Law of contract

This is an open book examination. Candidates may bring in any written materials, subject to University Regulations, except for books or other materials borrowed from the University Library System, including the Law Library.

18105 Constitutional & administrative law

1. The Registry will supply the following ordinances:
 - a) The Basic Law of the Hong Kong Special Administrative Region
 - b) Hong Kong Bill of Rights Ordinance
 - c) Section 21K, Supreme Court Ord. (Cap. 4)
 - d) Order 53, Rules of the Supreme Court, Supreme Court Ordinance.
2. No other materials are allowed.

18108 The legal system

1. The Registry will supply the following ordinances:
 - a) Application of English Law Ordinance (Cap. 88)
 - b) Basic Law
 - c) Hong Kong Reunification Ord.
2. Candidates are not permitted to bring any materials into the examination hall.

18201 Law of tort

1. The Registry will supply the following ordinances:
 - a) Defamation Ordinance (Cap. 21)
 - b) Employees Compensation Ordinance (Cap. 282) 1988 ed.
 - c) Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
 - d) Occupiers Liability Ordinance (Cap. 314)
 - e) Fatal Accidents Ordinance (Cap. 22)
2. Candidates are not permitted to bring any materials into the examination hall.

18223 Issues in intellectual property law

This is a closed book examination. No ordinance, no notes and no printed materials are allowed

18229 Equity and introduction to trusts

1. The Registry will supply the following ordinances:

- a) Conveyancing and Property Ordinance (Cap. 219)
- b) The Law Amendment and Reform (Consolidation) Ord. Cap. 23
- c) Wills Ordinance (Cap. 30).

2. No other materials are allowed.

18239 Chinese laws governing foreign investments

This is an open book examination (Candidates can bring their statutes, notes, etc.).

18324 Insolvency law

Candidates are permitted to bring in their own unannotated Companies Ordinance, C.32.

18353 Company law

Candidates are permitted to bring in their own unannotated Companies Ordinance, C.32 and unannotated Securities (Insider Dealing) Ordinance, C.395.

18412 Trade & investment in the People's Republic of China (Full Course)

This is an open book examination. Materials brought into the examination room may include underlining or highlighting but must not be annotated in any other way. Any annotations made during the year must be wholly obliterated using opaque correction fluid. Candidates who infringe this rule will be required to surrender the materials concerned immediately, will be reported to the Board of Examiners, and may be subject to disciplinary proceedings.

18466 Hong Kong basic law (Half Course)

1. The Registry will supply the following ordinances:

- a) H.K. Basic Law (Eng. & Chi. versions)
- b) Sino British Joint Declaration.

2. No other materials are allowed.

18469 International criminal law (Half Course)

This is an open book examination. Materials brought into the examination room may include underlining or highlighting but must not be annotated in any other way. Any annotations made during the year must be wholly obliterated using opaque correction fluid. Candidates who infringe this rule will be required to surrender the materials concerned immediately, will be reported to the Board of Examiners, and may be subject to disciplinary proceedings.

THE UNIVERSITY OF HONG KONG

Department of Law

Bachelor of Laws Examination

18103 Law of Contract

Date: 27 April 1998

Time: 9:30 am - 1:00 pm

(Reading time: the first 30 minutes)

Instructions to Candidates:

1. The time for this examination is three hours and thirty minutes. This time period includes 30 minutes reading time.
2. You are required to answer any **four (4)** of the following eight (8) questions.
3. All questions are of equal weight. Allocate your time accordingly.
4. This paper consists of 10 pages including this one.

1. Next Day Delivery Services Ltd ('Courier') operates courier services worldwide. It has many outlets in Hong Kong and runs many advertisements on the television and in print. The theme of its advertisements is next day delivery anywhere in North America. Alex is a struggling architect who had been working on an entry for the contest for the design of the tallest building in New York. He finished the job on 27 February 1998. As the deadline was 12:00 noon on 3 March, 1998, he decided to send his precious drawings by Courier because he had seen its advertisements.

He took the drawings to Courier's pick-up point at Central. There was a long line at the counter and while he was waiting he flipped through the brochures left around the office. One stated: 'In by 12:00 noon, delivered anywhere in the US by 12:00 noon the next day'. Alex felt he made the right choice because there he was, 10:00 am on 28 February, Saturday. The drawings would arrive in time and he would win the big prize. In this dazed mood, he reached the counter and handed the parcel over to the clerk. He filled out a form in quadruplicate, giving the addresses of the recipient and himself, and signed it. He paid \$2,000 and the clerk tore off one part of the form and gave it to him. He stuffed it in his pocket without reading and went home and waited.

On 7 March, his drawings were returned to him because they had arrived at noon on 4 March, 1998, one day past the deadline. Courier has demanded \$2,000 for returning the items.

Alex has come to you for advice and you discover the following clauses on the back of the form Alex signed:

1. 'Day' means business day.
2. Unless the customer makes a special declaration of urgency, our liability for any loss arising under this contract is limited to \$10,000.

You also discover the following facts: The time difference between Hong Kong and New York is 12 hours (New York behind). Saturdays are not business days in New York and Monday, 2 March was a public holiday in New York. Under the terms of the contest, the winner of the contest will not necessarily be awarded the architectural contract, but will be awarded a cash prize of US\$50,000 at a ceremony starring, inter alia, Mr Pei. The architectural contract, if awarded, will probably bring profits of US \$20 million.

Advise Alex.

2. In the summer of 1997, poor little rich girl Georgina took a summer job at a stockbrokerage firm owned by her 'Uncle' Tom, ie a good friend of her father. Georgina had just finished her second year at Famous University in the US and this summer job was arranged for her by her father to let her acquire a little knowledge of the world.

Georgina's official position at the company was a trainee investment representative, but since she was (and is) young and pretty, fluent in English, French, Cantonese and Mandarin, Uncle Tom began taking her everywhere with him as his personal assistant. Uncle Tom was an astronaut, ie his wife and children lived in Vancouver while he lived and made money in Hong Kong. As Georgina's parents were in New York that summer and Georgina did not have friends in Hong Kong, it was not long before Uncle Tom and Georgina began to spend their evenings together. Georgina idolized Uncle Tom who found it flattering.

Then in late August, one week before Georgina had to go back to school in Boston, Uncle Tom went to her and confessed that he was in deep financial troubles. He told her how much he had enjoyed their summer together, but that once his business failed, they would not be likely to meet again. Georgina immediately offered to help and the next day they went to see Uncle Sam, Managing Director of Polo Bank. Uncle Sam was another good friend of Georgina's father. Although Sam had seen Georgina and Tom together on many occasions, he was surprised to see Georgina on this occasion and was even more surprised when Georgina offered to mortgage her flat at the Peak (valued at \$50 million) to secure Tom's debts of \$60 million. After some hesitation, Uncle Sam agreed, knowing that Georgina could well afford it.

Georgina returned to Boston and soon got a letter from Polo Bank demanding payment under the guarantee.

Georgina comes to you for advice. She informs you she did not have a sexual relationship with Tom. Advise Georgina.

3. Quick Profits Stockbrokers Ltd ('Stockbroker') was one of the largest retail stockbrokers in Hong Kong. Eager Beaver graduated from Kowloon University in June 1997 and immediately got a job at Stockbroker. Anxious to climb up in the world, Eager took a stack of client agreements home and began to persuade all his family, relatives and friends to open an account. Eager's mother opened one and having earned \$50,000 in two weeks, boasted to her mahjong friends who all wanted to open accounts at Stockbroker.

One afternoon, Eager's mother took Mrs Fook, Mrs Look and Mrs Sau to Stockbroker's offices. Eager was very busy, so another clerk took care of the ladies. She gave each of Mrs Fook, Mrs Look and Mrs Sau two forms to sign. Mrs Fook did not understand English and asked the clerk what the forms were. Eager's mother chimed in and said that she had signed only one form. Whereupon the clerk gave Eager's mother another form to sign. She then explained to Eager's mother and Mrs Fook that the forms were only account-opening agreements for the purchase of stocks and they were meaningless unless the ladies actually placed orders for stocks. She gave them Chinese translations to take home to study and told them if they liked the terms, they could start dealing and if not, they could call and she would tear up the signed English forms. As the office was crowded and there were many other customers waiting, it seemed to be a reasonable proposal. They signed the English forms and put the translations carefully in their handbags.

Meanwhile, Mrs Look completed her two forms without asking any question. She did not understand English either but was sure that if something was wrong, Eager's mother would not have opened any accounts there. Mrs Sau understood English and insisted on signing only one form. Mrs Fook and Mrs Look didn't like Mrs Sau very much and, thinking that she was showing off her mastery of the English language, did not give her any opportunity to explain her objections to the other form.

Having accomplished the exciting task of opening accounts, they left for Mrs Fook's house where they were to have a game of mahjong. On their way they saw a run on a cake shop. As all of them had stacks of cake coupons, they rushed home to get them and rushed back to the shop to fight for cakes. In the process, the translations from Stockbroker were lost.

The loss of the translations did not stop Eager's mother, Mrs Fook and Mrs Look from placing orders with Stockbroker the next day or thereafter. For the months of September and October, all four ladies traded heavily. Usually, they

met at Stockbroker's office in the morning, studied the screen and placed their orders. Then they went to each other's house for a game of mahjong until lunch. After lunch, they went to Stockbroker's office again, studied the screen, and placed their orders again.

In November, Stockbroker and Finance went bankrupt. It was only then that Eager's mother, Mrs Fook and Mrs Look discover that they had signed two contracts: one with Stockbroker and another with Stockbroker's affiliated company, Quick Profits Finance Ltd ('Finance'). In their agreement with Stockbroker they authorized Stockbroker to give their shares to Finance and in their agreement with Finance they authorized Finance to mortgage their shares to its own bankers which it did. 'Misrepresentation! Non est factum!' they said.

Advise Eager's mother, Mrs Fook and Mrs Look.

4. In January 1997 Hong Kong Pop Concert Promoters Ltd ('Promoters') agreed to arrange a concert for the Rolling Rocks ('RR') at the Stadium in Happy Valley on 2 July 1997. Promoters paid RR US\$3 million by way of advance payment and agreed to pay the balance of US\$7 million on the day after the concert.

On 15 June 1997, the authorities informed Promoters that the expected noise level of the concert would exceed legal limits and required Promoters to undertake the following:

1. to ensure that the sound level of the music would be reduced by 50%;
2. to put up illuminated signs prohibiting whistling or other expressions of approval from the audience other than clapping, and
3. to issue to each patron a pair of thick gloves which must be worn while clapping.

Promoters were eager to comply, but RR refused, stating that they had never been so insulted. Because Promoters did not give the undertaking by the deadline, the permit for the concert was revoked by the authorities.

RR have claimed damages from Promoters for failing to secure the permit and Promoters seeks to recover the advance payment from RR.

Advise Promoters.

5. On 30 October 1997, Benjamin signed a provisional agreement with Sam for the purchase of Sam's flat. The agreement included the following usual terms:

1. Sam agrees to sell and Benjamin agrees to buy Flat 15/D at 123 Pokfulam Road, Hong Kong.
2. Benjamin agrees to pay the price of \$10,000,000 as follows:
 - (a) 1% (ie \$100,000) on signing the provisional agreement (the 'initial deposit');
 - (b) 9% (ie \$900,000) on signing the formal contract of sale and purchase, and
 - (c) the balance on completion.
3. Both parties shall attend at the office of Liu & Co no later than 5:00 pm on or before 10 November 1997 to sign the formal contract of sale and purchase.
4. Should Sam fail to perform this provisional agreement, he shall repay to Benjamin the initial deposit and shall in addition pay to Benjamin a sum equal to the initial deposit as liquidated damages.
5. Should Benjamin fail to perform this provisional agreement, the initial deposit shall be forfeited.

On 10 November, Benjamin was caught at a traffic jam and failed to appear at Liu & Co until 6 pm. Sam had by then left for the airport as he was due in London for a business meeting. Sam was away for a week. During this week Benjamin's lawyer kept calling Sam's lawyer for another appointment to sign the formal contract. As Sam's lawyer could not get in touch with Sam, he put Benjamin's lawyer off with these statements: 'We can't agree to an appointment until we hear from our client; we reserve on behalf of our client all his rights in the matter'.

By the time Sam returned, both Sam and Benjamin realized that the real estate market might be heading downwards. It was Sam's lawyer's turn to chase after Benjamin's lawyer. Finally, Benjamin refused flatly to perform.

Sam has sued for specific performance. What are his chances of success?

6. On 3 January 1997, Albert entered into a contract with Kowloon Land Ltd ('Landlord'), the largest landlord in Kowloon, to clean the exterior of Landlord's buildings by 15 June 1997. Landlord was very anxious about the deadline because its buildings were on the parade route and it wanted to present a good corporate image during the Reunification celebrations. The contract provided for liquidated damages of \$1 million per day of delay.

Albert subcontracted the window cleaning to Benny and in this contract Benny agreed to complete the job by 1 June. In May, on an inspection tour, Albert found that Benny had only done half the job. Moreover, Benny and his men had not been seen for more than a month. After some trouble, Albert found Benny and demanded to know why he was off the job and when he expected to finish. Benny had fired all his workers because he was expecting a brand new machine which could finish the job very quickly and needed only a few men, but Benny didn't like Albert's attitude and decided to play dumb. He said he had stayed off the job because he had fired all his workers and he had no idea when he would finish the job. Albert immediately said, 'If you finish on time, I will pay you an additional \$1 million. Otherwise, watch out.' Benny humbly thanked Albert and promised to finish on time. Benny did finish on time, because the new machine arrived the next day and with the machine and a few men he finished the job by 25 May.

Albert, however, felt cheated and refused to pay the extra \$1 million as promised. But because Benny was making such a fuss, Albert relented and paid \$500,000. In exchange, Benny gave Albert an acknowledgment that Albert was discharged of all obligations.

Benny comes to you for advice as to whether he could get the other \$500,000. Advise him.

7. Sam, the restaurateur, wanted to sell his restaurant. On 3 January 1998 he placed an advertisement in the newspaper as follows:

Flourishing restaurant for sale at \$50,000,000. Famous patrons.
Monthly profits \$500,000.

Bosco was attracted by the advertisement and found from Sam's records that the advertisement was correct. Regular patrons included people like Martin Lee and Emily Lau as well as movie stars like Jacky Chan. To assure Bosco that everything was as it seemed, Sam told Bosco that the only reason for selling was his plan for retirement. Bosco asked Sam to give him one month to arrange financing.

In February, Bosco returned and they entered into a contract for the sale and purchase of Sam's business which included these terms:

1. Bosco shall pay the price of \$50,000,000 as follows:
\$20,000,000 on signing this contract and two instalments of \$15,000,000 each respectively on 15 May 1998 and 15 August 1998.
2. Sam represents and warrants that the average monthly profits of the business have been \$500,000.

Bosco paid \$20,000,000 and took over the business. In the first five months he made only \$250,000 each month. Nevertheless, Bosco made the other two instalment payments on time. However, six months after the sale, Sam opened a restaurant in the next block and the famous patrons stopped going to Bosco's restaurant.

Advise Bosco.

8. Answer (a) **or** (b).

(a) 'Promissory estoppel should be available as a sword and not simply a shield. The fight against inequity ought not to be limited by technicalities.'

Discuss.

(b) '[C]onsideration had to be not merely "something of value," but "something of value in the eye of the law." The law in certain cases refused to recognise the "value" of acts or promises which might be regarded as valuable by a layman. This refusal was based on many disparate policies; so that "promises without consideration" included many different kinds of transactions which, at first sight, had little in common. It is this fact which is the cause of the very great complexity of the doctrine: and which has also led to its occasional unwarranted extensions and hence to demands for reform of the law.'

Discuss. Do you agree with the above assessment of the doctrine of consideration? Can you give some examples of support or to rebut the above assessment? Do you think the doctrine of consideration should be reformed? How?

WARNING: plagiarism will be penalized.

-end-

The University of Hong Kong
Bachelor of Laws: First Examination
18108 Legal System

30 April 1998

Time : 9:30 am - 12:45 pm
(First 15 minutes reading time)

This paper consists of 3 pages and 9 questions.
Answer any Four Questions.

1. It is often said that the common law provides justice. What is meant by the common law concept of 'justice'? Does it include the idea that the law secures the 'right' result, 'right' in terms of some social, political, or economic theory?

2. **Answer either (a) or (b)**
 - A. Section 4 of the Jury Ordinance provides that 'every person who has a knowledge of the English language sufficient to enable him to understand the evidence of witnesses, the address of counsel and the Judge's summing up, shall be qualified and liable to serve as a juror.' Explain whether persons who have a sufficient knowledge of the Chinese language only should also be eligible to serve as jurors, and the practical consequences of broadening the jury base for the administration of justice.

OR

 - B. Should a jury be required to give reasons if asked by a judge or by a party convicted of an offence?

3. Consider whether the Basic Law, by providing a cut-off date for laws previously in force, has ensured that the common law is a frozen collection of propositions which cannot develop after 30 June 1997.

4. Does the Hong Kong legal system contain sufficient safeguards to avoid a miscarriage of justice? Illustrate your answer with examples.

5. The Application of English Law Ordinance was not adopted as part of the law of the Hong Kong Special Administrative Region by the Standing Committee of the National People's Congress. Why was it not so adopted? Consider whether we must nevertheless continue to apply it when deciding what the common law of present-day Hong Kong is.
6. 'All rules and practices which restrict or limit the way in which a lawyer may choose to practise should be abolished.'

Discuss this statement critically.

7. Article 160 of the Basic Law reads:

'Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.'

Documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong Special Administrative Region, provided that they do not contravene this Law.'

With reference to *HKSAR v David Ma Wai-kwan* [1997] 2 HKC 315, consider whether the common law has been 'adopted' as part of the law of the Hong Kong Special Administrative Region.

8. With respect to the general practice of stare decisis in Hong Kong prior to the establishment of the Hong Kong Special Administrative Region, discuss whether:
 - (a) the Hong Kong Court of Final Appeal ought to consider itself bound by decisions of the Hong Kong Court of Appeal given before 1 July 1997;
 - (b) the Court of First Instance ought to consider itself bound by decisions of the Hong Kong Court of Final Appeal; and
 - (c) the District Court ought to consider itself bound by decisions of the Judicial Committee of the Privy Council given on appeal from Hong Kong before 1 July 1997.

9. Tam has been the licensee of a fresh provision shop in Wanchai for 10 years. Her shop sold pork and sea water fish. In respect of the shop, the Urban Services Department had approved a floor plan and Tam had not applied for any alteration or addition to the plan. On 18 December 1997, a health inspector visited Tam's shop and found that three metal trays, a chopping block and a table were placed outside Tam's shop. There were about 15 kg of dead fish on the metal trays and a customer was seen selecting the fish which was then taken inside the shop for cleaning and payment. Tam was charged with an offence under section 35(a) of the Food Business (Urban Council) By-laws. Section 35(a) provides:

'After the grant or renewal of any licence, no licensee shall, save with the permission in writing of the Urban Council, cause or permit to be made in respect of the premises to which the licence relates:

- (a) any alteration or addition which would result in a material deviation from the plan thereof approved under section 33;....'

The particulars of the offence alleged that the metal trays and other items outside Tam's shop constituted an 'alteration or addition' to the floor plan. The floor plan referred to a floor plan approved under section 33, which provides:

'Every application for a licence under this part shall be made in writing,... such plan shall include particulars of the following matters:

- (a) space allocated to the cooking... of open food;
(b) space allocated to the storage of any kind of open food;
(c) space allocated to the serving of meals to customers;
(d) space allocated to the cleansing... of utensils;
(e) sanity, fitments and drainage works;
(f) cloakrooms, passageways and open spaces;
(g)
(h) the siting of all furniture of a substantial and permanent nature, including food manufacturing or preparation plant, cooking ranges, refrigeration or cooling equipment and fixed sideboards, washbasins or sinks, drying racks, water tanks and other like equipment;
(i) space allocated to the thawing of frozen articles of food and to facilities for inspection and sampling of such food.'

Advise whether Tam has committed the offence under s 35.

UNIVERSITY OF HONG KONG
Bachelor of Laws: First Examination

LAW: LAW OF TORT (18201)

5 May 1998
5 pages - 9 questions

Time: 9:30 - 1.00 pm
(including 30 min. reading time)

ANSWER ONE QUESTION FROM PART A
ANSWER THREE QUESTIONS FROM PART B

PART A

YOU MUST ANSWER ONE (1) QUESTION FROM THIS PART
(DO NOT ANSWER MORE THAN ONE)

1. 'In determining the question of defendant's breach of duty for the purposes of a negligence action, the judge applies essentially objective criteria.'

Discuss this statement, with reference to cases.

2. **Discuss critically the proposal of the Hong Kong Law Reform Commission for reform of the law relating to civil liability for unsafe products. How does the proposal compare to and improve upon the current situation? Illustrate with reference to cases where appropriate.**

3. **Answer (a) and (b)**

(a) Commenting on the criteria to determine whether or not a breach of statute gives rise to civil liability, Lord Denning said 'You might as well toss a coin to decide it'.

Discuss, with reference to cases.

(b) Assuming that the court has determined that a breach of the statute does give rise to a cause of action for breach of statutory duty, **write an essay outlining the advantages and disadvantages of suing in breach of statutory duty rather than in negligence. Be sure to make reference to cases in your answer.**

PART B

YOU MUST ANSWER THREE (3) QUESTIONS FROM THIS PART

4. To supplement his income, John started up a part-time window-washing business. He agreed to wash the windows in the 2nd-floor flat occupied by Bill. In order to reach the outer side of the windows, John was required to extend much of his body outside the window. Bill asked him to wear a safety harness when doing so, indicating that the window frames may not be very strong. As it was not a long drop to the bottom, John later decided not to wear the safety harness, even though he was aware that it was an offence for window washers to wash windows without wearing a safety harness in such circumstances. The window frame that John was holding onto was old and proved weak and broke, causing John to fall to the pavement below. John was injured, as was Mary, a pedestrian on the public sidewalk on whom John fell.

With reference to relevant case law and legislation, advise John and Mary in the tort actions they may wish to bring.

5. AB Storage Co purchased a recently constructed one-storey warehouse building for its storage business in the New Territories. Prior to purchase, AB consulted CD Engineering regarding the suitability of the building, in particular the roof, for purposes of storage of a range of valuable property. CD certified the building as sound.

Soon after completion, the roof proved inadequate for the purpose, and during a typhoon, rain leakage occurred. The rainwater accumulated at floor level when the drainage system failed to clear the water, due to the accumulation of rubbish at the drainage sites. The property of AB's customers was badly damaged by the rainwater. The roof's leakage also affected the rest of the building, causing the walls to sag and crack. AB could no longer use the building for its intended purpose, and sold it for considerably less than the purchase price.

With reference to relevant case law:

a) Advise AB, who wishes to sue CD for the diminished value of the building (ie the loss on resale).

b) On the assumption that the action in a) is unsuccessful, advise AB, who wishes to sue EF Roofing Co, the specialist roofing subcontractors that installed the roof, for the diminished value of the building.

c) Advise the owners of the property stored in the warehouse, who wish to sue CD and EF for the damage to their property.

6. Carl was a labourer working for GH Construction Co. He was working at ground level on one of GH's construction sites, when he was hit by a large object that was blown from an upper storey of the building under construction. His body was crushed and he was bleeding profusely. His brother Tom, working on the same site, was not hurt by the object, and rushed to free Carl from the rubble. The ambulance attendants sent by the Queen B Hospital attempted to lift Carl, an extremely heavy man, onto a stretcher, but in doing so, dropped Carl onto the ground, and Carl's head hit a sharp metal object. Despite proper treatment at the hospital, Carl suffered permanent brain damage. Tom suffered from nervous shock as a result of these events.

With reference to relevant case law:

Advise Carl and Tom in their tort actions against GH, and advise Carl in his tort action against Queen B Hospital. [Do not advise on the Occupiers' Liability Ordinance or Employees' Compensation Ordinance. You may assume that any such relevant advice has been given.]

7. Glazier was employed on a construction site, and had signed a contract with the Super Construction Company which said, among other things: "The contract between Glazier and Super is agreed to be for all purposes a contract for services"; and "Glazier has no right to claim under the Employees' Compensation Ordinance".

Glazier's trade was installing particularly intricate glass panelling. He worked for Super whenever the latter wanted such work done. He also did some work for private clients, installing stained glass in churches and other buildings. This was known to Super who did not object. Glazier provided his own tools for installing glass. He worked regular hours for Super from 8am to 6pm and on those occasions when he worked overtime he was paid on an hourly basis. Otherwise, he was paid a rate fixed by Super but about once a year he would ask for an increase and it was usually agreed by Super. In installing the glass for Super he would use the techniques required by Super.

Glazier usually does not drink; however, one lunchtime he was invited by a friend to celebrate the birth of a child, and had a few drinks. On his way back to the construction site he stopped off at a building supplies shop to purchase some materials which he knew he would need the next day, for his work for Super. As he entered the shop he fell over some building materials on the floor. (You may assume that the shop owner was not at fault). Glazier fell onto a pile of sheets of glass and was cut badly. The fall also damaged glass worth \$50,000.

With reference to relevant case law and legislative provisions:

- a) **Advise Glazier regarding his intended claim under the Employees' Compensation Ordinance.**
- b) **Advise the shop owner regarding his action in tort for the damaged glass.**

8. Alice took pity on Theo after he had an accident and was unable to work. Theo moved in with Alice and lived with her for two years. Theo says that their relationship was 'just one of friendship, not sexual in any way'. Alice gave him free accommodation and Theo paid for food out of his comprehensive social assistance payments. He also agreed to be a guardian for Alice's 6-year old adopted son, Ben.

Alice would spend most of her income on the rent for her flat (about \$20,000 a month) and education for Ben. She always tried to put a little money away in a savings account, although the amount saved varied from month to month.

In Alice's will she has left 50% of her property to Theo and 50% to Ben. Theo is the executor of Alice's will.

Alice was seriously injured in an accident at her place of work. It is clear that Alice's employer was negligent in causing the accident, and that the accident happened to Alice while in the course of her employment. After spending a month in great pain in the hospital, Alice died.

With reference to relevant case law and legislation, advise Theo and Ben as to their entitlement

a) to compensation under the Employees' Compensation Ordinance; and

b) to damages by virtue of any cause of action in tort.

Theo and Ben also seek your advice as to how any award under a) and b) might be calculated.

9. The Pearl Delta Television Station carries a programme in which the year's new films are reviewed by Acid Tong, well known for her biting comments on films and actors. The programme is transmitted live and many of the remarks seem to be unscripted. The programme concludes with the sentence 'And the booby prize for the year's saddest actress goes to a very small star indeed. I won't say which of the films I have mentioned that she appeared in, but I expect you can guess. Made in Guangzhou she may be - but she is no Maggie Leung. The wrinkles are beginning to show, dear: maybe it is time you quit.'

Stella Siu (whose first name, you will note, means 'star' and whose family name sounds like 'small') immediately believes that the 'small star' is herself. She comes into your office the next day in floods of tears, saying that she was born in Guangzhou, and had appeared in one of the films mentioned earlier in Acid's programme. Maggie Leung, she explains, is a well-known actress who is so beautiful that she is never mentioned in the press without some expression such as 'the beautiful' or 'the stunning' attached to her name.

She says, 'I want to sue Acid and the TV station. I want lots of damages and I want to stop them repeating the programme, which they have advertised they will do. That bitch Acid is just mad at me, because I recently married her ex-husband'.

Incidentally - you can't help noticing that Stella, who has just turned 50, does have some wrinkles under her heavy makeup.

With reference to relevant case law and legislation, advise Stella.

END OF PAPER

University of Hong Kong

Faculty of Law

Bachelor of Laws: Final Examination

Equity and Introduction to Trusts (18229)

5 May 1998

Time: 9:30 a.m. to 12:00 p.m.
(30 minutes reading time)

There are 4 questions and 6 pages in this paper. Please answer any 3 questions. For each individual question, please answer either (a) or (b), not both. Each question carries equal marks.

EITHER

Question 1(a)

Adam was a wealthy businessman. One day, while he was browsing in the City's Bookstore, he saw a book, "Be Your Own Lawyer." In order to save future legal costs, he bought the book immediately. After reading the chapter, "How to Draft Your Own Will," he decided to draft his will in English, appointing Eve (his wife) as the executrix of his will, and directing her to do the following -

- (a) to transfer my house at No.1 Rocky Road to my wife;
- (b) to distribute \$200,000 to my cousins in such shares as my wife thinks fit;
- (c) to pay to my brother Abel, the \$500,000 owed to me by Mac;
- (d) to pay \$500,000 to my sister, Merlin, on condition that Merlin agrees to take good care of my mother;
- (e) to divide equally the residue of my estate among our children subject to the absolute power of my wife to appoint \$30,000 to each of my loyal friends (my wife shall have the absolute discretion to decide who my loyal friends are).

Adam was very pleased with what he had done. He signed the document right away on the morning of July 1, 1997. Later in the evening, Abel and Sarah (Abel's wife) came over to visit him. Adam led Abel and Sarah into his study. Adam showed him his will and asked Abel and Sarah to sign as witnesses. After Abel and Sarah had read the will

with Adam's signature on it, they put their signatures on the will accordingly.

On July 2, 1997, Adam was badly injured in a car accident. He was paralyzed and had to be hospitalized. Adam was very frustrated with the situation and became very ill-tempered. The situation was so bad that Adam's family members and friends tried to avoid him. In the end, the only person who would talk to Adam was Dr. Kind. On December 31, 1997, Adam whispered into Dr. Kind's ears, "I am going to revoke my previous will and give all my property to St. Mary's Hospital for your kindness." Adam died on January 1, 1998 without amending his previous will in written form. Adam's mother was shocked by the news and she died of grief the following day.

Please advise whether the following persons or institutions will get any shares in Adam's estate:

- (a) Eve
- (b) Adam's cousins
- (c) Abel
- (d) Merlin
- (e) Adam's children
- (f) St. Mary's Hospital
- (g) Adam's loyal friends

OR

Question 1(b)

"The three certainties of a trust may be subsumed under the general principle that a court will not uphold a trust which it cannot control."

Please comment critically.

* * * * *

EITHER

Question 2(a)

Amy met Beatrice in 1990. At that time, Amy was a 16-year-old student in Fine Arts. Beatrice was a 25-year-old investment broker. They fell in love almost immediately after they met each other. In 1991, Beatrice suggested to Amy that they should live together as a couple. They decided to purchase a flat in Galaxy Road as their home. They agreed to purchase the flat at HK\$800,000. The down payment was \$80,000. The stamp duty and the solicitor's fee came to \$20,000. Beatrice provided \$80,000 from her own savings. Amy's parents at first objected to her relationship with Beatrice. But seeing that Amy had found true love with Beatrice, they supported them by lending them \$20,000. The rest of the money for the purchase of the flat was provided for by a 20-year mortgage taken from Kowloon Bank. Beatrice herself was solely responsible for repaying the loan.

The flat was purchased in Beatrice's name alone. In 1991, Amy was only 17 years old. When they moved into their new home, in 1991, Beatrice said to Amy, 'This will be our home. Whatever is mine is yours.' Amy smiled. Beatrice was indeed very generous with Amy. The two of them operated their daily finances on a joint account, though the money for that account came from Beatrice alone. For two months in 1995, when Beatrice was in New York on business and forgot to arrange for payment of the mortgage instalments, Amy borrowed the amount from her parents to pay the instalments. She also decorated the house with a lot of her own paintings. In a personal exhibition of hers, Amy was able to sell her paintings at an average price of HK\$5,000 each. To celebrate the successful exhibition, she treated Beatrice and herself to a luxurious round-the-world tour, which cost HK\$80,000. Amy also did all the household work, as Beatrice was too busy to attend to these details.

In 1998, Beatrice was killed in a car accident. She died intestate. Advise Amy as to what proprietary claims she has regarding the flat. Assess the likelihood of success of each of these claims. (You may assume that Amy does not wish to bring a claim based upon the doctrine of proprietary estoppel.)

OR

Question 2(b)

"Whilst the legal reasoning [in *Midland Bank plc v Cooke*] may be suspect in some respects, the actual decision is to be welcomed as marking a positive retreat from the strict orthodoxy of Lord Bridge's speech in *Lloyds Bank plc v Rosset and Another*." Mark Pawlowski, "*Midland Bank plc v Cooke - A New Heresy?*"

Please comment critically.

* * * * *

EITHER

Question 3(a)

Clark was the senior manager of Dubious Co. Ltd. (Dubious), which manufactured hard disks for computers. Everdull was a company which assembled and sold notebook computers but did not produce the hardware itself. On behalf of Dubious, Clark negotiated with Everdull to supply hard disks to the latter. Dubious and Everdull entered into an initial agreement to supply Dubious hard disks to Everdull for a period of two months. It was contemplated by both parties that should this trial supply prove successful, Dubious would enter into substantial supply contracts with Everdull.

While he was negotiating with Everdull, Clark got on very well with the people in that company. Everdull offered Clark a job as the manager of a new unit in that company to manufacture hard disks. Clark happily took up the offer and resigned from Dubious, saying that he planned to emigrate to Canada. About one month after Clark joined Everdull, that company was able to produce hard disks of its own. At the same time, even though the trial supply was very successful, Everdull informed Dubious that it would not enter into substantial contracts with the latter. Everdull's new line of notebook computers, which used its own hard disks, proved very successful. Clark got \$1 million bonus for his contribution.

In the meantime, Everdull was inundated with mail orders for notebook computers. Amongst these purchasers was Kowloon University, which ordered 4,000 notebooks for its first year students. As Everdull could not meet all the orders in such a brief period, it issued to each purchaser who had paid up the purchase price a 'certificate of ownership'. These certificates stated that the particular purchaser owned a certain number of notebook computers which were kept with Everdull for a period, but which could be claimed from it after 5 May 1998. In reality, the notebook computers mentioned in the certificates were not yet manufactured. Everdull also instructed its bank to put the money coming from the mail order purchasers into a bank account of theirs (No. 001-1-000001). However, due to an error the money was deposited in Everdull's general account (No. 001-1-100000). On 3 May 1998, Everdull went into liquidation. There were only 200 notebook computers in stock, and \$5,000 in total in both accounts of Everdull.

Advise

- (a) Dubious as to what personal and / or proprietary claims it might have against Clark.
- (b) Kowloon University as to what proprietary claims it might have against Everdull.

Assess the likelihood of success of each of these claims. You may assume that Dubious does not wish to pursue any claim of breach of confidence by Clark.

OR

Question 3(b)

“It is an inflexible rule of a Court of Equity that a person in a fiduciary position...is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict.” (Lord Herschell in *Bray v Ford* [1896] AC 44)

Discuss this statement. Do you agree with it?

* * * * *

EITHER

Question 4 (a)

Tony died in 1995. In his will, Tony left his residential apartment to his son, Sunny, while leaving all the shares in Tony Co. Ltd. to his granddaughter, Ginger. Tony held all the shares in his company which were worth \$4 million. He appointed Sunny to be the executor and the trustee of his will. In 1995, Ginger was only 15 years old and could not hold a vested interest in the shares. Sunny himself owned Fluffy Co., a soft-toy company.

Tony Co. Ltd., Sunny and Fluffy Co. all banked at Kowloon Bank. Overseeing the accounts was the bank manager, Mr. Slack, who was familiar with the details of the will.

In 1997, Fluffy Co. got into financial difficulty. The Kowloon Bank demanded repayment of a loan of \$1 million it had made to Fluffy Co.. In desperation, Sunny approached the directors of Tony Co. Ltd. He persuaded the directors to invest in a joint venture with his soft-toy company. The directors thought that as Sunny was Tony's son and Ginger's father, Sunny's decision must be a prudent one. They caused \$2 million to be transferred from Tony Co. Ltd's account into Fluffy Co.'s account. Later, Sunny directed Mr. Slack to transfer \$1 million from Fluffy Co.'s account into Sunny's personal account. The Kowloon Bank credited the other million to pay off the overdraft.

Deep inside, Sunny was very angry at his father for leaving the lucrative shares in Tony Co. Ltd. to Ginger. Sunny decided to start a new life elsewhere. Sunny told Mr. Slack he was planning to start a new business in Bermuda and directed him to transfer all the money in his personal and company accounts (in the same currency) to the Bermuda's Bank. Mr. Slack did so. Sunny has left Hong Kong.

Now in 1998, Ginger has reached 18 years old. She has found out what her father had done and that Tony Co. Ltd. has lost \$2 million.

Please advise her what equitable claims she can make against

- (a) her father, Sunny
- (b) the directors of Tony Co. Ltd.
- (c) the Kowloon Bank

Please ignore the claims that Tony Co. Ltd. may have against its directors for any breach of fiduciary duty.

OR

Question 4(b)

“Far from being a welcome development of the law of obligations, *Royal Brunei Airlines* has blocked the formation of a unified system of liability for interference with legal rights.”

Please comment critically.

End of paper

UNIVERSITY OF HONG KONG
FACULTY OF LAW
BACHELOR OF LAWS EXAMINATION 1997-98

INSOLVENCY LAW (18324)

6th May 1998

9.30 a.m – 12 noon
(15 minutes reading time included)

(This paper is Five pages long and has Five questions. Each question is worth equal marks. Where a question has parts, the weighting of each part is indicated.)

*****Candidates are required to answer three questions*****

Question 1

Outline those aspects of the Bankruptcy (Amendment) Ordinance 1996 which, in your opinion, are central to the creation of a modern and fair system of personal insolvency law for Hong Kong.

Question 2

What, in your opinion, are the major features of the proposals for Corporate Rescue suggested in 1996 by the Law Reform Commission of Hong Kong? Do you think the suggested system of provisional supervision, if implemented, will be useful?

Question 3

UST Inc ('UST') is an American company that carries on business in North America. UST owns beneficially all the shares in a Hong Kong subsidiary, HKT Ltd ('HKT'), which carries on business in the South-East Asian region. All the shares in UST are owned by Edmund and Albert, who were born in Hong Kong but now reside principally in California, USA. Edmund and Albert are the only directors of both UST and HKT. HKT's office in Hong Kong is run by a manager but all important decisions are taken by Edmund and Albert, who visit Hong Kong several times each year.

Supplier Ltd ('Supplier'), a Hong Kong incorporated company, in 1997 entered into a contract with UST, which contract Supplier alleges UST has breached. In February 1998 Supplier began an action against UST in the courts of Hong Kong and, in the following month, obtained a Mareva injunction against UST. The Mareva injunction has the effect of freezing UST's assets in Hong Kong. Those assets include bank accounts worth approximately US\$130,000. In April 1998 UST went into Chapter 11 re-organisation in the United States pursuant to the US Bankruptcy Code and a trustee ('the US trustee') was subsequently appointed there. The US trustee wants the Mareva injunction to be discharged, so that the US\$130,000 can be dealt with in the US insolvency proceedings.

Meanwhile, Supplier in January 1998 had brought an action in Singapore ('the Singapore action') against HKT for breach of a contract, which HKT and Supplier had entered into in 1996. The Singapore action is listed to be heard in Singapore in August 1998.

On 20 April 1998 a winding up order was made in Hong Kong, on a creditor's petition, in respect of HKT and a liquidator has recently been appointed.

(i) Advise the liquidator of HKT:

as to whether the Hong Kong court has jurisdiction to order Edmund and Albert to submit for examination under the provisions of the Companies Ordinance. (You may assume that Edmund and Albert are not currently in Hong Kong); and
(50 marks)

(ii) Advise Supplier:

(a) **as to whether the liquidator can prevent Supplier from continuing with the Singapore action;**

(b) **how, if at all, would you answer to (a) above be different if Supplier had in January 1998 attached assets belonging to HKT in Singapore and thereby become a secured creditor according to the law of Singapore; and**
(20 marks)

(iii) Advise the US trustee:

as to whether the Hong Kong court will likely discharge the Mareva injunction against UST and allow the US\$130,000 to be remitted to the United States to be dealt with in the US insolvency proceedings.
(30 marks)

Question 4

Happy Motors Ltd ('the company') is a Hong Kong registered company which deals in second-hand cars. Benny and Charles are the only directors and shareholders of the company and run its day-to-day operations. David is the brother of Charles. Erica was employed by the company at all relevant times as a salesperson.

In 1995 Charles lent the company \$100,000 ('the 1995 loan'), in 1996, David lent the company \$50,000 ('the 1996 loan'), and in January 1997, Erica lent the company \$30,000 ('the 1997 loan'). All the loans were unsecured. On 1 June 1997 David lent the company an additional \$200,000 on the understanding that both Charles and Benny would personally guarantee the loan or that other arrangements in relation to security would be made. However, it afterwards turned out that Benny would not personally guarantee the loan. David thereupon threatened to demand immediate repayment. But at a meeting between Benny, Charles and David on 30 June 1997 it was agreed that, whilst Benny did not have to enter into a personal guarantee, the company would grant David a floating charge ('the floating charge') on all its property present and future to secure all monies owing to David. (The floating charge was immediately thereafter executed and duly registered.)

A creditor presented a winding up petition in relation to the company on 1 April 1998. A winding up order was made on 30 April 1998 and a liquidator appointed. The liquidator has discovered that on 1 September 1997 the company: (a) paid \$100,000 to Charles (in repayment of the 1995 loan), (b) paid \$50,000 to David (in repayment of the 1996 loan); and (c) paid \$30,000 to Erica (in repayment of the 1997 loan). The liquidator has also discovered that the company was insolvent throughout 1997.

Advise the liquidator:

(i) As to the grounds, if any, upon which the floating charge may be attacked; and
(40 marks)

(ii) Whether the payments on 1 September 1997 of (a) \$100,000 to Charles (b) \$50,000 to David and (c) \$30,000 to Erica may be set aside as unfair preferences pursuant to section 50 of the Bankruptcy Ordinance and section 266B of the Companies Ordinance.
(60 marks)

(You should answer this question on the basis that section 50 of the Bankruptcy Ordinance and section 266B of the Companies Ordinance (and all other related provisions in the Bankruptcy (Amendment) Ordinance 1996) were already in force on 1 September 1997.)

Question 5

- (i) XTD Ltd ('the company') is a company incorporated in Hong Kong which deals in traditional Chinese medicine. The shareholders are Fiona, Ginnie, Henrietta, Jasmine and Kay, whom each hold 20% of the company's shares. The directors are Fiona, Jasmine and Kay. Since late 1997 the company's business has been in decline and it has been operating at a substantial loss. Fiona and Jasmine believe the company should go into liquidation, and Henrietta agrees with them. But both Kay and Ginnie are against the company going into liquidation, believing that in a few months time the business environment will improve and any losses can be made good.

Advise Fiona and Jasmine as to whether they can put the company into liquidation in the circumstances described above.

(30 marks)

- (ii) The facts are as in (i) above, however, Ginnie now agrees with Fiona, Jasmine and Henrietta that the company should go into liquidation. Yesterday Kay received notice that an extraordinary general meeting of the company is to be held in 2 days from today. The purpose of the meeting is stated in the notice to be in order to pass a special resolution to wind up the company pursuant to section 228(1)(c) of the Companies Ordinance.

Kay has also informed you that a statutory demand was recently received by the company in the post. The statutory demand was posted by C and claims a debt of \$200,000. Kay has told you that the company owes money to C, but that the actual amount owing is only \$40,000.

Advise Kay:

(a) as to whether the extraordinary general meeting has been properly called; and

(b) whether there are any grounds on which the company could resist the statutory demand of C.

(30 marks)

- (iii) The facts are as in (i) above, however, the company has now gone into liquidation and a liquidator has been appointed. The liquidator has ascertained that the company is insolvent and that, *inter alia*, the following items are in the company's warehouse.

- (1) a quantity of Korean ginseng ('the Korean ginseng') worth \$100,000;
- (2) a quantity of ginseng paste ('the ginseng paste') worth \$200,000, and
- (3) a quantity of ginseng capsules ('the ginseng capsules') worth \$300,000.

(The ginseng paste consists of ground Korean ginseng mixed with alcohol. The ginseng capsules consist of ginseng paste mixed with several other Chinese medicines and sealed in water-soluble capsules).

The liquidator informs you that all the company's Korean ginseng orders were supplied by Rupert. The company owes \$1 million to Rupert for unpaid orders of Korean ginseng. The contracts between the company and Rupert contained the following provisions:

Clause Y: The ownership of the Korean ginseng shall remain in Rupert, who reserves the right to dispose of the Korean ginseng until the purchase price under this contract, and all other monies owing from the company to Rupert, have been paid in full.

Clause Z: In the event that any of the Korean ginseng is used by the company to make any other products, or mixed with any other substances, the ownership in the whole of such products or substances shall at once vest in Rupert; and the company shall hold such products (or substances), or the proceeds of sale of such products (or substances), as a fiduciary and shall at all times be strictly liable to account to Rupert for any such proceeds.

In reliance upon these provisions, Rupert has now claimed ownership of the Korean ginseng, the ginseng paste and the ginseng capsules in the company's warehouse.

Advise the liquidator as to the validity of Rupert's claim.
(40 marks)

END

CONSTITUTIONAL & ADMINISTRATIVE LAW

(18105)

Date: 8 May 1998

Time: 9.30 am to 1.00 pm (reading time: the first 30 minutes)

Instructions:

1. This paper has TWO parts. Candidates are required to attempt FOUR questions, TWO questions from each part. Choose any TWO questions from PART A (Questions 1-4) and any TWO questions from PART B (Questions 5-8).
2. Each question in this paper carries equal weight and the whole paper counts for 70 per cent of the overall grade. The assignment that you have already submitted counts for 20 per cent of the overall grade while your class presentation counts for the remaining 10 per cent.
3. The following legislation is provided and may be consulted and referred to in the examination:
 - (1) The Basic Law of the Hong Kong Special Administrative Region
 - (2) The Hong Kong Bill of Rights Ordinance (cap 383)
 - (3) Section 21K, Supreme Court Ordinance (cap 4)
 - (4) Order 53, Rules of the Supreme Court (cap.4)

You may not refer to any other materials during the examination.

PART A

Choose any TWO questions from this part.

Question 1

Explaining your reasons, state whether you agree with the decisions of the judges in *HKSAR v David Ma Wai-kwan* [1997] 2 HKC 315 concerning the jurisdiction of the courts of the HKSAR.

Question 2

Some provisions of the Hong Kong Bill of Rights Ordinance (cap 383) are not adopted as the laws of the HKSAR by the Standing Committee of the National People's Congress in accordance with Article 160 of the Basic Law. These include the provisions relating to the interpretation and application of the Ordinance in section 2(3), the effect on pre-existing legislation in section 3, and the interpretation of subsequent legislation in section 4.

Consider how the removal of these provisions will affect human rights protection in Hong Kong.

Question 3

You are invited to speak to a group of constitutional law students. The title is "Constitutionalism with Hong Kong Characteristics".

Write your speech.

Question 4

"It is thus clear that the PRC must be able to protect itself. Hong Kong will be a local administrative region of China. The high level of autonomy it will enjoy is conferred on it by the central organs of state power, and this level of autonomy is not without limits. When exercising its high level of autonomy, Hong Kong will not proceed entirely without guidance, and even necessary intervention, from the central government. However, China's national sovereignty may not be damaged by Hong Kong's enjoyment of its high level of autonomy." (Zhang Youyou, "The Reasons for and Basic Principles in Formulating the Hong Kong Special Administrative Region Basic Law, and its Essential Contents and Mode of Expression" (1988) 2 Journal of Chinese Law 5)

Do you agree with this quotation and do you think that it is reflected in the Basic Law of the HKSAR?

PART B

Choose any TWO questions from this part.

Question 5

Lord Atkin in the *Electricity Commissioners* case [1924] 1 KB 171 stated that the prerogative remedies would not be available unless the decision-maker had a duty to act judicially. Consider and discuss the history of this requirement in administrative law. Is it the law now that a body must have a duty to act judicially before an application for judicial review can succeed?

Question 6

In the light of the problems each case might be thought to raise and the ways in which the courts might address such problem in future, discuss TWO of the following cases:

- (1) *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147
- (2) *O'Reilly v Mackman* [1983] 2 AC 237
- (3) *Council of Civil Service Unions v Civil Service Minister* [1985] 1 AC 374
- (4) *R v Gough* [1993] AC 646

Question 7

"Despite hesitations, false starts, and judicial timidity, it can now be stated with confidence that the common law prima facie requires all decision-makers to give the reasons for their decisions, though the obligation can be displaced by indications from the legislature or by the circumstances in which any particular decision is made. Failure to give reasons may amount to procedural impropriety and the intervention of the courts."

Discuss.

Question 8

The Asian Financial Turmoil Commission (AFTC) was established by statute to determine which of the top-200 public companies in Hong Kong were "prudently managed". The Commission was to consist of five members. The quorum was three. No specific procedures were laid down, the ordinance providing that the Commission should determine its own procedures "as it thinks fit", but extensive powers were granted to call and examine witnesses, inspect books of account, and if necessary enter premises to collect documents. The

Commission invited written submissions from the companies it had identified as the top 200 public companies, but it held no public hearings, permitted no legal representation for any directors or other company staff, and gave no notice to any company that it was to be identified as not "prudently managed". It did, however, give reasons to any company which asked for them. It published its findings in its final report and, in the process, identified certain companies as not "prudently managed". The report had no direct legal consequences for any company.

Companies A, B, and C were among those identified as not "prudently managed". Each company was granted leave to apply for judicial review, seeking certiorari to quash those parts of the report which identified it as not "prudently managed". Each relied on, *inter alia*, the ground that the *audi alteram partem* rule of natural justice had not been complied with.

Company A was one of two companies which dominated its area of business, and complained that one member of the Commission was a major shareholder in the other, rival company.

Company B complained that it was a small company which could not on any account be regarded as belonging to the top 200 public companies in Hong Kong.

Company C discovered that only two members of the Commission were present when the decision was taken to include it in the list of companies which were not "prudently managed". The final report was however approved by a full meeting of all five members of the Commission.

Advise each company on its chances of success in the application for judicial review, explaining the obstacles, if any, which lie in its path.

THE UNIVERSITY OF HONG KONG
FACULTY OF LAW
BACHELOR OF LAWS EXAMINATION 1997-98
COMPANY LAW (18353)

9TH MAY 1998

9.30 a.m. - 12.00 noon
(Reading time. the first 15 minutes)

(This Paper has Five Questions and is Four Pages in length Each Question is worth equal marks Where a question contains Parts, the weighting of each Part is indicated.)

****CANDIDATES ARE REQUIRED TO ANSWER THREE QUESTIONS****

Question 1

'In deciding what is fair or unfair for the purposes of section 459,* it is important to have in mind that fairness is being used in the context of a commercial relationship. The articles of association are just what their name implies. the contractual terms which govern the relationships of the shareholders with the company and each other. They determine the powers of the board and the company in general meeting and everyone who becomes a member of a company is taken to have agreed to them. Since keeping promises and honouring agreements is probably the most important element of commercial fairness, the starting point in any case under section 459 will be to ask whether the conduct of which the shareholder complains was in accordance with the articles of association.' *Per Hoffmann LJ in Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14.

[* The equivalent of section 168A of the Companies Ordinance.]

Do you agree with the above statement? What are the criteria which determine whether the court will grant a remedy to a petitioner under section 168A of the Companies Ordinance? Support your discussion and analysis with reference to relevant legal authorities.

Question 2

'As directors owe fiduciary duties to their companies it is not necessary to have specific legislation dealing with insider trading.'

To what extent, if at all, do you agree with this comment? Does the Securities (Insider Dealing) Ordinance currently provide an adequate mechanism regulating insider dealing activities? (Support your reasons with relevant legal authorities.)

Question 3

Palace Cinemas Ltd ('the company') was incorporated in Hong Kong in 1970 to operate certain cinemas in Hong Kong. The company's articles are in the form of Table A of the First Schedule to the Companies Ordinance. Mr and Mrs Chow were the company's only directors and shareholders. In 1990 Mr and Mrs Chow retired and transferred all their shares to their five children, Albert, Benny, Chris, Nancy and Olivia, each of whom owns 20% of the company's shares. In 1990 Benny, Chris and Nancy were appointed as directors. Olivia and Albert were living in North America and did not want to be directors.

In 1995 the company was negotiating the purchase from Shark Ltd of a cinema complex in Tuen Mun ('the TM Complex') for \$12 million. However, at the last moment, Shark Ltd raised the price to \$15 million. The company did not have \$15 million, but Chris proposed to the board of directors of the company that he would provide the additional \$3 million, provided the TM Complex was purchased in the joint names of the company and Chris (in proportion to their respective financial contributions). Benny and Nancy agreed to Chris' proposal (they did not consult Albert or Olivia) and in February 1995 the TM Complex was purchased accordingly. In June 1997 the TM Complex was sold for a little over \$30 million. Accordingly, the company made a profit of \$12 million and Chris made a profit of \$3 million.

In January 1998 Albert, Benny, Chris, Nancy and Olivia sold all their shares in the company to Holdings Ltd. The officers of Holdings Ltd were fully aware of Chris' involvement in the purchase and sale of the TM Complex. Recently the company has issued proceedings against Chris alleging that his involvement in TM Complex was in breach of his fiduciary duty and seeking an account of the \$3 million profit made by Chris.

(i) Advise Chris as to whether the company is likely to succeed in its action against him.
(50 marks)

AND

(ii) How would your answer to (i) above be different if, in October 1997, a general meeting of the company had been called and a majority of the shareholders had voted in favour of a resolution ratifying any breach of duty that Chris might have committed in relation to the purchase and sale of the TM Complex. You may assume that Benny and Nancy voted in favour of the resolution, whilst Olivia and Albert voted against it. Chris voted his shares in favour of the resolution and, accordingly, the resolution was passed.
(50 marks)

Question 4

GT Shoes Ltd ('the company') was incorporated in Hong Kong in 1986 as a shoe manufacturer, operating from rented premises in Chai Wan. In 1987 the company borrowed \$100,000 from FirstBank, which loan was secured by a floating charge on all the company's present and future assets. The FirstBank charge was duly registered.

On 4 January 1996 the company borrowed \$200,000 from SecondBank, which loan was secured by a floating charge on all the company's present and future assets. The SecondBank charge was not registered in time, and on 10 May 1996 the company was granted leave to register the charge out of time. Leave was granted without prejudice to the rights of creditors acquired prior to the date of late registration. The charge was in fact registered on 16 May 1996.

On 4 April 1996 the company had borrowed \$300,000 from ThirdBank. The details of ThirdBank's debenture were as follows. The ThirdBank debenture purported to create a 'fixed equitable charge' over the company's present and future book debts. The company was not allowed to sell, factor or assign any of its book debts without ThirdBank's consent. It was further provided, in Clause T(i), that the company was required to pay the proceeds of any book debts into a special designated bank account ('the designated account') and only to deal with any money in the designated account in accordance with such written instructions as might be given from time to time by ThirdBank. The ThirdBank debenture also stated, in Clause T(ii), that in the absence of any written instructions from ThirdBank the money in the designated account would be released from the fixed charge and would be subject only to a floating charge. No written instructions were ever given by ThirdBank. (ThirdBank's debenture was properly and duly registered on 10 April 1996)

Since late 1997 the company has been in serious financial difficulty. As of 1 April 1998 the company was hopelessly insolvent and owed, *inter alia*, \$80,000 to its workers in respect of unpaid wages. The only sizeable assets of the company are \$100,000 in uncollected book debts and \$50,000 in the designated account.

- (i) **Assume that the company was put into liquidation on 1 April 1998 and a liquidator appointed. Advise the liquidator as to questions of priority in respect of the competing claims of the workers, FirstBank, SecondBank and ThirdBank.**
(80 marks)

AND

- (ii) **Assume that the company has not been put into liquidation, but that on 1 April 1998 FirstBank appointed a receiver pursuant to the terms of its charge. Advise the receiver as to questions of priority in respect of the competing claims of the workers, FirstBank, SecondBank and ThirdBank.**
(20 marks)

Question 5**ANSWER BOTH PART A AND PART B****Part A**

Green Products Ltd ('the company') is a private company incorporated in Hong Kong in 1995. The articles of association of the company are in the form of Table A in the First Schedule to the Companies Ordinance. The company runs a shop in Hong Kong selling organically cultivated farm products. The company has an authorised share capital of \$1,000,000 divided into 80,000 ordinary shares of par value \$10 and 20,000 preference shares of par value \$10. All the company's shares have been issued and all the shares have been fully paid up. Tom holds 40,000 ordinary shares, Jim holds 40,000 ordinary shares and Harry holds 20,000 preference shares. The directors of the company are Tom and Jim. The preference shares are entitled to a fixed rate of 7% dividend on the amount paid up on their shares, as well as priority for the repayment of the capital paid up on their shares in the event of a winding up. The preference shareholders do not have any further rights to participate in the profits or assets of the company.

In early 1998, Tom and Jim discovered that Harry was involved in the business of manufacturing chemical fertilisers in South America. In March 1998, Tom and Jim proposed at a meeting of the board of directors that, as the company has share capital in excess of the needs of the company, the company's capital should be reduced. They suggested that the company's capital be reduced by the repayment of the whole of the capital paid up on all the preference shares and that thereafter all the preference shares will be cancelled.

Explain the means by which such a reduction of capital might be achieved; and advise Harry as to whether he has any grounds for objecting to the proposed reduction of capital.

(50 marks)

AND

Part B

To what extent and with what exceptions, if any, does the Companies Ordinance require that share premium be treated as if it were share capital of the company?

(50 marks)

END OF PAPER

**The University of Hong Kong
Bachelor of Laws Examination**

18111 Law and Society

Date: 11 May 1998

Time: 2.30 to 5.45 pm (including 15 minutes reading time)

Instructions to Candidates: **Please answer four (4) questions, two (2) of which must be from Part I, and the other two (2) from Part II.**

Part I

1. How does the anthropologist Marvin Harris explain the transformation of stateless societies into states? Does his explanation support the Marxist or functionalist interpretation of the rise of states?

2. "The political and legal philosophies of Plato and Aristotle were developed more than 2,300 years ago. They are now completely out-of-date and totally irrelevant to modern societies."

Discuss.

3. "The political philosophies of Hobbes, Locke, and Rousseau provide the intellectual foundation of the modern liberal constitutional democratic state."

Discuss.

4. How did the absolutist states that emerged in Western Europe in the late Middle Ages become transformed into liberal constitutional democracies? Illustrate your answer with reference to the case of England.

Part II

5. Answer BOTH parts (a) and (b)

(a) China's economic system has been described as 'semi-reformed' and 'mixed economy'. Explain.

(b) 'The reception of Western-style economic laws in China represents a Chinese move towards the notion of the Rule of Law.' Discuss.

6. Answer BOTH parts (a) and (b)

(a) Describe how the Basic Law seeks to entrench Hong Kong's capitalist

system.

- (b) Examine critically Professor Ghai's view that the role of law had not been crucial in the development of capitalism in Hong Kong and will become even less important in post-1997 HKSAR.

7. Answer BOTH parts (a) and (b)

- (a) What do you understand by the term 'economic globalisation'?
- (b) Examine the impact of globalisation on human rights.

8. Discuss critically Maine's statement that 'the movement of all progressive societies hitherto has been from status to contract'.

UNIVERSITY OF HONG KONG
FACULTY OF LAW

FINAL EXAMINATION 1997 - 98

ALTERNATIVE DISPUTE RESOLUTION

(18210)

MONDAY, MAY 11, 1998

2:30 - 4:45 PM

(Reading Time: the first 15
minutes)

INSTRUCTIONS TO STUDENTS:

1. Students must answer **THREE (3)** questions:

Part A: Question No 1 is compulsory - students must answer Question No 1.
Parts (i) and (ii) in Question No 1 are of equal weight.

Part B: Students must answer **ANY TWO** of the questions in Part B

2. Each of the questions answered is of equal weight - allocate your time accordingly.
3. Please double-space your answer on the paper provided.

PART A:**QUESTION NO 1: ***** QUESTION NO 1 IS COMPULSORY *******

Set out below are two hypothetical disputes. You must answer BOTH Parts (i) and (ii) which are of equal weight.

Part (i):

HK Marine Services Ltd. ("HK Marine") is a successful Hong Kong company involved in the construction of racing yachts and the manufacture of specialised marine equipment. In December 1997 HK Marine entered into a contract with Chung Kong Ltd. ("Chung Kong"), a local distributor of fiberglass material. Under the contract Chung Kong was to supply HK Marine with various types of fiberglass material for use in the construction of their yachts. The supply contract was for one year and set out in detail the nature and specifications of the various types of fiberglass to be supplied by Chung Kong to HK Marine. On April 20, 1998 Chung Kong sent a shipment of fiberglass to HK Marine but HK Marine claims that the fiberglass supplied does not meet the specifications required by the contract and that it is unsuitable for its intended use in yacht construction. However, Chung Kong vigorously denies that the fiberglass material they supplied is defective in any way. As a result of this problem, HK Marine's construction process has been halted for 20 days and they are now behind schedule - they must deliver a number of completed yachts to their customers by the end of June. HK Marine wants to sue Chung Kong for breach of the supply contract, however, they are concerned about the costs of the litigation proceedings and the further delay which may result while the problem is resolved in the courts.

Assume that you are the lawyer acting for HK Marine. Advise HK Marine on the various methods which may be used to resolve this dispute with Chung Kong and the potential advantages and disadvantages of each method. In your discussion, give a reasoned opinion on the most appropriate method(s) of resolving this dispute.

- AND -

Part (ii):

Judy and Ben met in 1989 when they were both students at the University of Hong Kong. In 1992 they were married in Hong Kong and now have a daughter named Maria, who is 5 years of age. She attends a local kindergarten near the flat Judy and Ben own in Sheung Wan. Judy works as a credit manager with the Hong Kong Bank and Ben works for a computer software company. Unfortunately, Judy and Ben have been having marital difficulties over the last year and recently, Ben moved out of their flat in Sheung Wan. He is currently residing with a friend in Tsuen Wan. Both Ben and Judy are very distraught over their marriage break-up. While Ben would like to attempt a reconciliation with his wife he is not optimistic that it will work and is contemplating a divorce from his wife. He is anxious that he not be deprived of seeing his daughter and taking an active role in her care and upbringing. Ben and Judy have not spoken in over a month but Ben has learned from his sister-in-law that Judy does not want to give up custody of Maria.

Assume that Ben seeks your advice about a formal separation and divorce from his wife. He knows about the legal requirements for divorce in Hong Kong but wants a quick yet effective resolution of the following issues: (a) the arrangements for who will have custody of his daughter - he thinks that joint custody is the best thing for Maria and he wants to actively participate in raising her; (b) the division between Ben and Judy of their joint assets, e.g. the money in their bank accounts and the Sheung Wan flat, and (c) maintenance provisions for Maria and Judy, if any.

Advise Ben on the potential ways to resolve this dispute with his wife and the advantages and disadvantages of each method. In your discussion, give a reasoned opinion on the most appropriate method(s) of resolving this dispute. (Assume that Ben already knows about his legal rights, and those of his wife, under the relevant Hong Kong matrimonial legislation).

PART B: * STUDENTS MUST ANSWER ANY TWO OF THE FOLLOWING FOUR QUESTIONS

QUESTION NO 2:

“The relationship of ADR to substantive law is uneasy. ADR is, at its core, almost entirely procedural in goals and scope. The ADR passion is to terminate disputes quickly and at low costs to disputants. While these characteristics possess genuine procedural value, the ADR process may give short shrift to substantive law.”
per Edward Brunet, “Questioning the Quality of Alternative Dispute Resolution”, 62:1 Tulane Law Review 1 at p. 54.

Analyse this statement by considering whether you agree or disagree with the assertions made by the author. Support your answer with reasons and examples, where appropriate.

QUESTION NO 3:

Analyse EACH of the following methods of resolving disputes:

- Dispute Resolution Advisers
- Mini-trials
- Judicial or Case Management
- Summary Jury Trials

In your answer, compare and contrast these methods by considering the following factors: voluntariness, access, cost, time, privacy, control, formality, finality, binding nature, enforcement, and potential remedies. Support your answer with reasons and where appropriate, give examples from Hong Kong to illustrate any points raised in your answer.

QUESTION NO 4: Answer BOTH Parts (i) and (ii) which are of equal weight.**Part (i):**

“Mediation can be an empowering process insofar as it fosters respect and co-operation but a successful outcome depends on active participation by both [disputants] and requires a relatively balanced capacity to negotiate. True equality in the balance of power may be impossible to achieve, but the mediator must prevent an abuse of power by either disputant.”

per Julien Payne, Q.C. in “Family Conflict Resolution: Dealing with the Consequences of Marriage Breakdown through Counselling, Negotiation, Mediation and Arbitration” at p. 18.

Analyse this statement by discussing the role of the mediator in dealing with power imbalances between disputing parties.

- AND -

Part (ii): Analyse the merits and disadvantages of court-annexed mediation schemes and their potential use in Hong Kong. Support your answers with reasons and examples, where appropriate.

QUESTION NO 5:

“Although both the domestic and international arbitration provisions of the Arbitration Ordinance ultimately seek to achieve the same aims, their approaches are very different and have resulted in differing degrees of success.”

per R. Morgan, The Arbitration Ordinance of Hong Kong, 1997 at p. 5

Analyse this statement by comparing and contrasting the statutory provisions governing domestic and international arbitration in Hong Kong under the Arbitration Ordinance, Cap 341. Where appropriate, comment on the recent reform of the Arbitration Ordinance contained in the Arbitration (Amendment) Ordinance 1996.

***** END *****

18223

ISSUES IN INTELLECTUAL PROPERTY

13 May 1998, 9:30-11:45am (15 min. reading time included), closed book
Four pages - five questions in two parts

Answer THREE questions; choose at least ONE question from each Part:

Part One

1. Until recently, David was a manager of the marketing department of Pioneer Plus Inc., a leading vendor of home electronic appliances based in Hong Kong. During the last year of his employment at Pioneer Plus, he was in charge of the company's marketing operation in Beijing where his duties included sales promotion, networking retailers in northern China and, occasionally, negotiating joint ventures with prospective local partners. David worked under a "standard employment contract" which contained a clause prohibiting Pioneer Plus employees from disclosing or using any confidential information, including any materials they created for Pioneer Plus, for purposes of competing with Pioneer Plus within two years after the date their employment at Pioneer Plus terminated.

David left Pioneer Plus in December 1997 and started working for a smaller competitor E-Shop Co. Ltd. as its vice-president for research and training. In March 1998, E-Shop moved its research and training department to Beijing reportedly to take advantage of the lower labour cost and "closeness to the expanding market." Since March 1998, Pioneer Plus has lost two important retail agents in northern China, and some of its prospective partners in that region are now rumoured to be ready to switch over to E-Shop.

Last month, David published a manual on marketing ethics in Beijing. In it he criticizes certain "unethical marketing strategies" used by an anonymous Hong Kong company. He quoted three pages of in-house training materials which he and another former Pioneer Plus employee prepared for Pioneer Plus to illustrate these unethical marketing strategies, including what is described as "false and ambiguous slogans" of two TV ads which Pioneer Plus commissioned in China. The "Epilogue" of the manual states that the author once resigned from a Hong Kong company because his conscience could no longer bear such unethical business conduct.

Pioneer Plus has approached you seeking advice on the prospects of suing David and E-Shop for infringement of its intellectual property rights. Please advise with reference to relevant legal provisions and cases where necessary.

2. After watching the new James Bond ("007") film *Tomorrow Never Dies*, Penny, a HKU law student, hit on an idea to "redo" the story. Her idea was to feature the Chinese woman agent as a double agent and the real 007, while the handsome man calling himself "Bond, James Bond" turns out to be a fake. She wrote a synopsis of her story and showed it to her friend Karen, an art student at another university. The next day Karen called back to suggest that they work together to improve the story with more detailed episodes and sell it to some film studio. Penny agreed. Karen produced several drawings of the characters, costumes and scenes on the basis of Penny's synopsis.

Soon after, Karen's class decided to stage an anniversary performance in which student-designed costumes could be displayed. Teachers were invited to assess the costumes as well as enjoy students' performance. Karen showed her drawings and Penny's synopsis to her classmates. They all liked the story very much. Two students volunteered to adapt the story for the stage; others would design and make costumes based on Karen's drawings. This was achieved two weeks ago, when Karen's class staged a drama *Tomorrow Never Kisses* at the university theatre. The drama featured a Chinese woman double agent "007" and a fake James Bond. Both wore costumes exactly as Karen drew. Students' parents as well as teachers watched the performance and voted for the best costume design. Prior to the performance, Karen's university published an announcement in a Hong Kong newspaper. The announcement stated that the anniversary drama was produced by Karen's class, based on Karen's "original story."

Penny was not aware of the performance till she read the newspaper announcement. Yesterday she heard that a local professional theatre is interested in purchasing rights to adapt and perform *Tomorrow Never Kisses* from Karen and Karen's university. Being a conscientious law student, Penny feels her rights have been infringed. **She would like to discuss with you what intellectual property issues are involved here and if she can take any legal action. Advise Penny, in light of relevant legal provisions and cases where appropriate, as to (a) any possible claims that Penny may have against any party involved in this case and (b) the likelihood of success.**

3. **What is the role of the "notional skilled technician" (or "person skilled in the art" (art. 56, EPC; s. 3, (UK) PA 1997; s. 96 (HK) PO 1997), "person skilled in the relevant field of technology" (art. 26, para. 3, (PRC) PL 1993)? What are his/her main characteristics and functions? Discuss with reference to relevant cases where necessary.**

Part Two

4. KL Paper Limited and Floral Limited are competitors in the production of high quality toilet tissue, their brand names being "Kleenex" and "Cleen" respectively. Neither name has been registered.

In May 1997, Floral Limited introduced a new toilet paper which it called "Cleen Quilted". To emphasize the high quality of this new product, part of the promotion was to be an on-pack offer to consumers that if they were dissatisfied with Cleen Quilted, they could claim an equivalent sized pack of Kleenex in substitution for it. This promotion was to be supported by the use of packaging bearing a notice in the following form:

***Softness guaranteed
or we will exchange it for Kleenex***

(Kleenex is a trademark of KL Paper Limited)

When KL Paper Limited discovered that its mark "Kleenex" was prominently displayed on the Cleen Quilted packaging, it conducted a market survey designed to show that the on-pack offer packaging is likely to cause confusion. The survey was carried out by employees of KL Paper Limited around Causeway Bay on two consecutive days. 255 members of the public were shown the Cleen Quilted packaging and asked the question "who do you think makes this product?" 167 of them said "Kleenex" and the rest said "Cleen".

Advise KL Paper Limited on whether it may stop Floral Limited's activities and how it should prepare its case.

5. **Answer both parts (a) and (b).**
- (a) **Comment on the registrability of the following marks under the Trade Marks Ordinance:**
- (i) 'AI-QUEUE' for computers;
 - (ii) A heart-shaped container for cookies; and
 - (iii) 'GOUDA' for cheese. Gouda is the name of a town in the Netherlands.
- and**
- (b) In February 1998, Alan Dominic, a fashion designer, applied to register "AD2000" for clothing. The application was opposed by Well Fortune Limited,

the proprietor of a local chain store trading under the name "G2000". The G2000 stores only sell mens' and ladies' clothing bearing the "G2000" label. When Well Fortune Limited discussed the matter with its solicitors, it was also advised to consider having its own mark, "G2000", registered as soon as possible.

Advise Alan Dominic.

THE END

THE UNIVERSITY OF HONG KONG
FACULTY OF LAW
LL.B. EXAMINATION 1997-98

CHINESE LAWS GOVERNING FOREIGN INVESTMENTS
(18239)

15 MAY 1998

2.30PM to 5.00PM
(Reading time: first 30 minutes)

7 pages - 3 questions

Candidates are required to answer two questions, of which one **MUST** be **Question One**. Candidates are required to answer **either Question Two or Question Three**. Question One contains a fact pattern, which will continue to develop in Questions Two and Three. Question One carries weighting of 40 marks and it is recommended that candidates spend not less than 75 minutes in answering this question. Question Two, or Three, carries weighting of 26.6 marks.

This is an OPEN-BOOK examination. Students may bring into the examination room any laws, regulations and any other materials, including any hand-written notes.

NB. Candidates are expected to support their analysis by reference to appropriate laws, regulations, rules, and policies promulgated or issued by relevant law making bodies of the People's Republic of China ('PRC'), including any opinions of the Supreme People's Court of the PRC.

1. Question One - YOU MUST ANSWER THIS QUESTION

You are the legal adviser of a Hong Kong limited company ('HK Co'). HK Co wishes to create a Chinese-foreign joint venture in the People's Republic of China ('PRC') that will manufacture household electric fans ('Fan JV'). HK Co has a very special technology for making a 'magic' fan that blows out cool air as if it was an air conditioning unit. This is a great device for the PRC as it saves a tremendous amount of energy. HK Co developed the technology in Hong Kong. It did not apply for any patents for the technology. It preferred to keep the technology secret so that it could protect the technology for as long as possible. Apparently, it is not possible to reverse engineer the fans and work out what the technology is. HK Co believes the magic fan will be an instant hit in the PRC, and intends the new joint venture to manufacture the fans and sell 100 percent of them in the PRC. HK Co will of course have to license or sell to the Fan JV the fan technology.

HK Co intends to locate the joint venture in Guangzhou City. To this end, HK Co has identified a prospective partner, the Guangdong Electric Appliances General Corporation ('GEAC'), a state-owned enterprise that controls the supply of household electric appliances in the whole of Guangdong Province. GEAC claims that it has a very efficient sales network for household electronic products (including fans) for the whole country and could help the Fan JV distribute its magic fans in the domestic PRC market. GEAC however would like to own a majority of the equity interest of the Fan JV. HK Co, however, also wants to own a majority interest in Fan JV. Both agree that the joint venture shall be for a term of 15 years.

HK Co estimates that the Fan JV will need a total investment of US\$28,000,000. HK Co however, does not wish Fan JV to have a registered capital that is larger than the minimum required by law as it believes that Fan JV could borrow the difference from domestic and foreign banks. Fan JV will, however, need to purchase state-of-the-art equipment and machinery from the United States in order to manufacture the magic fans. Such equipment and machinery will cost US\$8,000,000. Fan JV will also need to source at least 50% of the raw materials and parts required for the manufacture of the fans from the US. Similar raw materials produced in the PRC are, at least for now and into the foreseeable future, not up to the standard required. Fan JV will also have to pay for HK Co's technology. HK Co is willing to make a license to Fan JV for the use of the technology for the term of the joint venture for an upfront lump sum payment that will be credited as part of HK Co's contribution to capital. HK Co estimates that, assuming that it does not own a majority interest in Fan JV, the upfront payment for the license should be US\$8,000,000. HK Co also heard that in China, one could only have technology licenses for ten years after which time the technology belongs to the licensee. HK Co wants to find a way to continue to protect its technology after the ten-year period.

GEAC intends to contribute to Fan JV the use of a site, which is located in urban Guangzhou, for the term of the venture. Currently, GEAC uses the site for a 1950-style factory using antiquated machinery and employing about 400 workers. As the factory produces totally outdated electric fans that nobody wants, the workers only work (and get paid) about three days a week. GEAC was granted the right to occupy the site some 20 years ago, and it built the factory there. It tells HK Co that it currently pays an annual land

use fee to the government for the site. It plans to contribute this right, together with the factory building, to Fan JV. GEAC believes that the right to use the site and the building for 20 years has a value of Renminbi ('RMB') 18,000,000. HK Co questions if GEAC could transfer its right to use the site, and whether the value is that high, as the factory is not suitable for Fan JV. A new factory will have to be built.

GEAC also wants Fan JV to hire the existing 400 workers. HK Co estimates that Fan JV will indeed need 400 workers, but it questions if these workers should be hired. HK Co is concerned that GEAC's existing workers may not possess the required skills. It feels that it ought to hire its own workers from the general pool of workers that are available in Guangzhou. HK Co believes Fan JV will also need to hire from Hong Kong a general manager, two technical engineers and three quality control engineers to manage the day to day operations, exercise quality control and conduct the necessary training. In the manufacture of magic fans, the level of skill of workers is very important. GEAC on the other hand does not believe any staff should be hired from Hong Kong, pointing out that their salaries are substantially higher than their local counterparts'.

As HK Co's counsel, you are asked to advise HK Co on how to best structure Fan JV. In particular, you should consider how the registered capital and the means of contribution should be determined, how to split the equity and how foreign exchange problems could be resolved. HK Co is also concerned about labour issues. It has also asked you to comment on any other matters that you believe HK Co ought to consider. (You may assume an exchange rate of US\$1.00 to RMB8.30). In answering this question, DO NOT take into consideration any of the facts or assumptions in Questions Two and Three.

YOU MUST CHOOSE EITHER QUESTION TWO OR QUESTION THREE

2. Question Two

Assume that Fan JV was established on 1 July 1996, the date its business licence was issued. Fan JV has a total investment of US\$28,000,000 and a registered capital of US\$14,000,000. GEAC owns a 40% equity interest and HK Co has a 60% equity interest. The joint venture contract ('JV Contract') and articles of association for the establishment of Fan JV were submitted to and approved by the Guangzhou People's Government ('Guangzhou Commission') on 10 June 1996. Fan JV commenced operation on 30 August 1996. Under the approved JV Contract, and as stated on its business licence, Fan JV is to have an annual production output of 3,000,000 fans.

The JV Contract further provided that HK Co was entitled to appoint 3 of the 5 directors of Fan JV and to nominate the JV's general manager. HK Co considered that necessary in order that it could exercise control over management and daily operations of the JV.

Mr. Dominic Wong ('Wong'), a director and one of the shareholders of HK Co, was appointed the Chairman of Fan JV. He was also the legal representative of HK Co named in the JV Contract.

Commencing 10 November 1997, Wong in his capacity as director and legal representative of HK Co entered into two agreements with GEAC to amend the JV Contract. Wong did not tell the board of HK Co about these agreements. Nor did he tell the other shareholders of HK Co. These agreements were:

1. On 10 November 1994 a document called an 'agreement' (Xieyi) between GEAC and HK Co was signed by the legal representative of GEAC and Wong in his capacity as legal representative of HK Co ('First Agreement'). Under this agreement, it was agreed that GEAC should be credited as having made an additional contribution to the registered capital of Fan JV in an amount of RMB equivalent to US\$4,000,000. The reason for this, it was stated, was that the land use rights contributed by GEAC were undervalued by that amount. The agreement provided that as a result of this additional amount, HK Co agreed to contribute an additional amount of US\$6,000,000 so that the parties could maintain the 40:60 split. The First Agreement provided that as GEAC's amount had already been paid into the joint venture, HK Co had to pay in its amount in one lump sum within three months from the date of approval of the agreement by the examination and approval authority. The First Agreement did not specify if the total investment of Fan JV would correspondingly increase. On 13 November 1997, the Guangzhou Commission issued its approval of the First Agreement.

2. On 15 November 1997, another amendment agreement ('Second Agreement') was signed between GEAC and HK Co (by their respective legal representatives) to increase the annual production output of magic fans (from the original three million to six million fans per year). This required an additional contribution by HK Co of US\$6,000,000. GEAC, however, was to increase its contribution by the equivalent of US\$16,000,000. This meant that the parties' relative ownership in Fan JV changed to 56% GEAC and 44% HK Co. The number of directors was to increase to 8 and GEAC had the right to appoint 5 of the 8 directors. There was no timetable for the contribution of this additional capital. Again, no mention was made as to any corresponding increase to the amount of total investment. The Guangzhou Commission approved this Second Agreement on 24 November 1997.

The board of directors of HK Co discovered in early 1998 the existence of these two secret agreements. Meanwhile, GEAC threatened to terminate the JV Contract if HK Co did not pay the amount required under the First Agreement by 15 March 1995. The board of HK Co sent its Managing Director, Mr. Walls, to open negotiations with GEAC, in the hope to undo the secret agreements or to mitigate the damage created by these agreements. GEAC insisted that these agreements were binding on HK Co. It pointed out that if Wong had no authority to sign these agreements, that was an internal problem of HK Co and that could not affect the validity of the agreements. Eventually, HK Co entered into a settlement agreement with GEAC. HK Co agreed that GEAC and HK Co would have a 50:50 equity interest in Fan JV. HK Co also paid damages to GEAC in the amount of US\$4,000,000.

The board of HK Co considered that Wong was in serious breach of his duties to HK Co. It intended to sue Wong for all its loss. Wong, however, insisted that neither of the secret agreements was binding. The Guangzhou Commission had no authority to approve any agreement that purported to increase total investment to US\$30,000,000 or more. Further, in signing those agreements, Wong deliberately called them 'agreements' and not 'contracts' so that they could not be binding on HK Co. The Second Agreement, in particular, could not have been more than a preliminary indication of intention as it did not provide any capital contribution timetable. In short, both agreements lacked the specificity required for binding contracts. Wong insisted that he was not responsible for HK Co's losses as these losses were brought upon the company not by his acts but by the ignorance of the managing director.

HK Co's directors now come to you for your advice on whether they acted properly and reasonably in entering into the settlement agreement with GEAC, or if Wong was right and the secret agreements were not binding on HK Co. The directors now tell you that at the time of the settlement agreement, they were aware that Guangzhou Commission did not have authority to approve any increase of capital that would take the overall total investment of a Chinese-foreign joint venture to US\$30,000,000 or more.

3. Question Three

Assume that Fan JV has to order fan blades for the production of a special limited edition of magic fans to commemorate the first anniversary of China's resumption of sovereignty over Hong Kong. In order that it could meet its tight production and marketing schedule for these fans, Fan JV held a series of discussions with San Francisco Fan Company ('SFC'), a very large US supplier of electric fan blades, for the sale by SFC to Fan JV of 1,000,000 sets of fan blades.

On 16 December 1997 the parties signed a letter of intent, providing for the sale of the fan blades at a price of US\$4.00 per set of blades, for delivery CIF Guangzhou, shipment date to be no later than 15 January 1998. The letter of intent stated that it was merely an expression of intent and would have no legally binding effect. It also specified that the parties would sign the formal sale and purchase contract within 15 days from the date of the letter of intent.

Mr. Chen, the general manager of Fan JV, passed the letter of intent to Xiao Lu, the head of purchasing, and asked him to prepare a formal purchase contract based on Fan JV's standard forms. Xiao Lu immediately faxed SFC a copy of Fan JV's standard form purchase contract on which Xiao Lu inserted the terms of purchase set out in the letter of intent. The standard form provided that Chinese law was the governing law of the contract. It also provided that the contract would be written in Chinese and English but the Chinese text was the governing text.

SFC made the following changes (in handwriting) in the English text of the standard form:

1. Shipment date was changed from "no later than 15 January 1998" to "not earlier than 1 March 1998 and no later than 15 March 1998".
2. "CIF Guangzhou" was changed to "FOB San Francisco".
3. Chinese text being the governing text was changed to English text being the governing text.

As no one at SFC understood Chinese, no changes were made to the Chinese text. In fact, SFC only faxed the revised English text of the standard form to Fan JV. Upon receipt, Xiao Lu proceeded to prepare the purchase contract. Xiao Lu simply copied the English changes into the English text final form of the purchase contract. It did not occur to Xiao Lu that corresponding changes had to be made to the Chinese text. He then sent the final purchase contract (both texts) to Mr. Chen. Mr. Chen briefly read the Chinese text, compared it with the letter of intent, and signed both language texts of the purchase contract. Mr. Chen understood English well but did not bother to read it and compare it to the Chinese. Xiao Lu then faxed both texts to SFC on 28 December 1997. SFC signed and returned both texts (by fax, followed by airmail of hard copies) on 29 December 1997.

The purchase contract was then sent from the purchasing department to the accounting department. The assistant accountant, who was learning English, decided to read the English text and compare it with the Chinese text. He was shocked by the three discrepancies between the two language texts. He brought this to the attention of Mr. Chen. Mr. Chen considered that a shipment date of between 1 March and 15 March 1998 was impossible as his factory would not be able to make the fans in time for the commemorative event. Worse, at a price of US\$4.00 per set of blades FOB San Francisco, his production costs would increase by at least 20%, as this meant that the price for the blades would not include freight or insurance.

Mr. Chen immediately wrote to SFC by fax and pointed out that the Chinese language text was the governing text, relying on the argument that it was closest to the terms in the letter of intent, and insisting that in China, the language of commercial contracts should be the Chinese language which took precedence over a foreign language.

SFC immediately responded, pointing out that it did not read or understand Chinese. SFC further argued that it was not open to Fan JV to say, after the signing of the purchase contract, that the Chinese text (which did not contain the same amendments as in the English text) was the governing text.

The two parties continued their dispute. Meanwhile, 15 January 1998 came and went. None of 1,000,000 blade sets was shipped. On 16 January 1998, Fan JV faxed to SFC to terminate the contract, pointing out that SFC was in breach of its obligation to ship on or before 15 January 1998. SFC countered by alleging that Fan JV had no right to unilaterally terminate the purchase contract, and that SFC would incur heavy losses as it had commenced production of the blades. As these blades were gold coloured and had the words "The People's Republic of China embraces the Hongkong Special Administrative Zone" on them, SFC would not be able to sell them to any other purchaser. Meanwhile, Fan JV tried to obtain fan blades from alternative suppliers but was unable to do so in time for it to produce the limited edition fans. It estimates that as a result of this, it stands to lose profits to the tune of US\$6,000,000.

SFC now seeks your advice on its rights and liabilities under the purchase contract, whether the English text or the Chinese text was the governing text, and whether it has any cause of action against Fan JV and if so the remedies to which it would be entitled.

Supplementary Examinations for LLB First (Year I) (August, 1998)			
	Name of Paper	Date of Exam.	Time
1	Law of Contract (18103)	18-Aug-98	9:30am - 1:00pm
2	Law and Society (18111)	24-Aug-98	9:30am - 12:45pm
3	The Legal System (18108)	24-Aug-98	9:30am - 12:45pm
4	Constitutional & Administrative Law (18105)	26-Aug-98	9:30am - 1:00pm

THE UNIVERSITY OF HONG KONG
Department of Law

Bachelor of Laws Examination
(Supplementary)

18103 Law of Contract

Date: 18 August 1998

Time: 9.30a.m.-1.00p.m.

(Reading time: the first 30 minutes)

Instructions to Candidates:

1. The time for this examination is three hours and thirty minutes. This time period includes 30 minutes reading time.
2. You are required to answer any **four (4)** of the following 7 questions.
3. All questions are of equal weight. Allocate your time accordingly.
4. This paper consists of 4 pages including this one.

1. Answer any **two (2)** parts to this question:

- (a) When is specific performance available for breach of contract?
- (b) When is rescission available for misrepresentation?
- (c) What is the difference between rescinding a contract for misrepresentation and terminating a contract for breach?

2. Jim decided to support Hong Kong's economy by spending instead of saving. The biggest expenditure he could think of was buying a flat. So, he bought one and proceeded with renovations. He wanted to install hardwood flooring and obtained from his consultant architect some brochures by manufacturers. There was one brochure by the manufacturer of Longlasting Wax, claiming to be the expert manufacturer for Asia. Jim telephoned the marketing manager of Longlasting Wax Co Ltd who confirmed that Longlasting Wax protected hardwood floors by preventing the growth of mould and insects that usually infest wood and would last at least 10 years. Satisfied with this explanation, Jim instructed his building contractor to use Longlasting Wax.

Within six months, the hardwood floors had deteriorated because the wax had failed to prevent the growth of mould and insects. The floor does not pose a danger, but Jim wishes to replace it.

Advise Jim.

3. If you were a judge of the Court of First Instance of Hong Kong, would you apply *In Re Selectmove* [1995] 1 WLR 474? Give reasons.

4. Amy carries on business as a conference organizer. The financial crisis in Asia brought trouble for others, but Amy's business flourished and she hosted seminar after seminar on the crisis. One of her seminars was to be held during breakfast on 2 July. A famous economist was engaged to speak on the probable duration of the recession. Amy booked the hotel rooms, made the catering arrangements and sold

100 tickets at \$1,000 each. She paid the hotel and the speaker 50% of the charges and fees in advance.

In the late evening of 1 July, while the room was being prepared for the seminar, a fan short-circuited and caused a fire. As the waiters had been working hard in the past few days, they were a little slow in reacting and by the time the fireman had put out the blaze, the whole room and its contents were completely destroyed.

All the important businessmen who had registered for the seminar arrived on time on 2 July, but were told the seminar had to be cancelled.

Advise Amy as to her legal rights and obligations.

5. Carl is in the business of interior decorations. In July 1998, he was in trouble. The housing market was dead. Those who bought were unwilling to spend much on decorations. Carl dismissed some employees and cut expenses where he could. He could not, however, cut back on the rent. By August 1998, he had only one outstanding job on hand, a renovation job for Dick. Carl figured if Dick would increase the price by 100%, he might survive for another year and wait for the market to recover. If not, he would have to petition for bankruptcy right away.

On being informed of Carl's situation as outlined above, Dick reluctantly agreed to amend the contract to increase the price by 100%. Carl completed the work and sent his invoice for the agreed new price. Dick, however, was only willing to pay the original price. He demanded that Carl give him a receipt stating that the entire price under the contract as amended has been paid in full. Otherwise, he said, Carl could see him in court. As Carl needed the cash desperately, he took Dick's cheque and signed the receipt.

Advise Carl.

6. Is the doctrine of sanctity of contract good, bad or indifferent?

Discuss.

7. Benjamin is a civil servant with a lot of time on his hands. He has spent the last 30 years studying Ming objects of art and is an amateur expert on Ming antiques. Sam is a small-time antiques dealer, operating out of a tiny shop on Hollywood Road. Benjamin and Sam know each other by sight.

One Saturday, Benjamin saw a vase at Sam's shop which looked like a valuable piece. Sam offered to sell it at \$200,000. If authentic, the vase should sell at \$2,000,000. Benjamin bargained with Sam and succeeded in buying it for \$150,000. Sam gave him an invoice with this clause printed in bold red ink on its face: "No condition or warranty about authenticity is given".

Benjamin discovered later that the vase was only a clever reproduction. He wants to sue Sam.

Advise Benjamin on each of the following alternatives: at the time of the sale,

(a) both Sam and Benjamin thought the vase was authentic;

(b) Sam knew the vase was a reproduction, whereas Benjamin thought it was authentic.

-end-

The University of Hong Kong
Bachelor of Laws Examination (Supplementary)

18111 Law and Society (1997-98)

Date: 24 August 1998

9.30a.m.-12.45p.m.

Time: 3 hours and 15 minutes (including 15 minutes reading time)

Instructions to Candidates: **Please answer four (4) questions, two (2) of which must be from Part I, and the other two (2) from Part II.**

Part I

1. "It is better to live in a classless society than in a State, since the latter inevitably means physical coercion, political oppression, economic exploitation and social hierarchy."

Discuss.

2. Describe the key elements in the political thought of Plato and Aristotle. What (if any) are

- (a) the ideas in their thought which you agree with?
- (b) the ideas in their thought which you disagree with?

3. What is the contribution (if any) made by Hobbes, Locke and Rousseau to the development of the modern liberal constitutional democratic state?

4. Discuss the characteristics of the Chinese political tradition, and the prospects for liberal constitutional democracy in mainland China in the twenty-first century.

Part II

5. "No society can function without a concept of property, but it is in the market economy that we find the highest development of the concept and protection of property."

Discuss this statement critically.

6. Trace the different stages in the development of the law of contract in the common law and explain how these stages are related to the shift from subsistence to a market economy.

7. Answer BOTH parts (a) AND (b)

- (a) "Despite the fact that the PRC's reforms have produced extraordinary economic results, China faces a daunting set of problems."

Describe the reforms and the problems arising therein.

- (b) "The transition from the planned economy to the Socialist market economy is seen by many contemporary Chinese philosophers as a transition from the rule of man to the rule of law, from the supremacy of power to the supremacy of law, from status to contract, and from the priority of power to the priority of rights."

Discuss.

8. Answer BOTH parts (a) AND (b)

- (a) "The economic provisions of the Basic Law are designed to implement five principal objectives."

What are these objectives? To what extent have the objectives been achieved?

- (b) It has been contended that with the integration of the economies of Hong Kong and the PRC, the role of law in the HKSAR's economy would be marginalised, as personal connections and patronage become more important than the regime of rules.

Do you agree?

UNIVERSITY OF HONG KONG
BACHELOR OF LAWS: SUPPLEMENTARY EXAMINATION

18108 THE LEGAL SYSTEM

24 August 1998

Time: 9:30 am - 12:45 pm
(Reading Time: The first 15 minutes)

This paper consists of 3 pages and 9 questions. Candidates are required to answer any FOUR (4) questions.

1. Should immigrants who have newly arrived in Hong Kong be permitted to sit as jurors? Should there be a minimum residence requirement for jury service, and if so, why?

2. "English judges are slaves of the past and despots of the future. Accordingly, the doctrine of stare decisis is backward-looking and tends to preserve the status quo."

Comment on the doctrine of stare decisis in the light of this statement.

3. After quoting the principal passage in *Pepper v Hart* [1993] AC 593 by which the exclusionary principle was limited in scope, Findlay J said in a recent case:

"I am not sure how applicable this decision is to a legislature that has no majority party to ensure the passage of legislation. Where a majority party exists, one can be reasonably sure that what is said by a Minister or other promoter of a Bill represents the intention of the majority of the legislature. In Hong Kong, statements in the Legislative Council cannot be said to be clearly representative of the intention of the majority of the Council."

Discuss *Pepper v Hart* and its application to Hong Kong in the light of this passage.

4. In March 1997, Ms L, a prominent legislator, wrote to Xinhua News Agency enquiring whether Xinhua kept any personal file on her and requesting a copy of her personal data, if any. Under the Personal Data (Privacy) Ordinance, any person is entitled to

have access to any personal data about that person kept by a data user. A data user must respond to the request for access within 40 days of the request. Xinhua did not reply to Ms L's request until December 1997, and denied that it kept any personal data of her. Ms L then made a complaint to the Privacy Commissioner.

In April 1998, the Privacy Commissioner found that Xinhua was a data user within the meaning of the Ordinance, and that it had failed to comply with the time limit for responding to a data request, which is an offence under the Ordinance. The Privacy Commissioner referred the case to the Secretary for Justice for prosecution.

With reference to prosecution policy in Hong Kong, advise the Secretary for Justice whether prosecution should be taken out against Xinhua News Agency. If you think that you do not have enough factual information to make a decision, explain what additional factual information you require and why you require it.

5. 'What is best for the consumers may not be best for the community at large.' Discuss this statement in the context of retaining a divided (non-fused) legal profession. In your discussion you should identify the public interest, if any, to be protected.
6. A solicitor recently placed the following advertisement in MTR stations, newspapers, and even on both sides of mini-buses: 'Solicitor who can help you. Divorce from \$6,999. Drafting a will from \$999. Expert in conveyancing, matrimonial and other legal services.' The advertisement is of varying sizes in different places. Those in the MTR stations and at the side of the mini-buses are relatively prominent and conspicuous, with a large picture of the solicitor himself, together with his qualifications, and the phone, the fax number and address of his office. Do you think that this advertisement is in breach of the Solicitors' Code of Conduct? Explain. Should the Solicitors' Code restrict advertisement at all, and why?
7. Consider and discuss the significance of the decision in *HKSAR v David Ma Wai-kwan* [1997] HKLRD 761 for the legal system of the Hong Kong Special Administrative Region.
8. The Standing Committee of the National People's Congress, in its decision on 23 February 1997, declared that a number of Hong Kong ordinances were in contravention of the Basic Law and were not to be adopted as laws of the Hong Kong Special Administrative Region. Consider and discuss whether, or to what extent, this decision was consistent with the doctrine of the rule of law.
9. Discuss whether the courts of the Hong Kong Special Administrative Region should regard themselves as bound by decisions of the Judicial Committee of the Privy

Council and the House of Lords,

- (a) made prior to 1 July 1997, and
- (b) after establishment of the Special Administrative Region.

**** THE END ****

UNIVERSITY OF HONG KONG

18105

CONSTITUTIONAL & ADMINISTRATIVE LAW (97-98) (DEFERRED AND SUPPLEMENTARY EXAMINATION)

Date : August²⁶ , 1998

Time : 9:30 a.m. to 1:00 p.m.

(Reading time: the first 30 minutes)

Instructions

1. This paper has *TWO* parts. Students are required to answer *FOUR* questions (*TWO* questions from each part). Choose any *TWO* questions from PART A (Question **ONE**, **TWO**, **THREE** and **FOUR**) and any *TWO* questions from PART B (Question **FIVE**, **SIX**, **SEVEN** and **EIGHT**).

2. Every question in this paper carries the same weight and the whole paper will count for 70% of the overall grade. The assignment that you have already submitted will count for 20% of the overall grade while your class presentation will count for the remaining 10%.

3. The following legislation is provided and may be consulted and referred to in the examination:

(1) *The Basic Law of the Hong Kong Special Administrative Region*

(2) *Hong Kong Bill of Rights Ordinance (Cap. 383)*

(3) *Section 21K, Supreme Court Ordinance (Cap. 4)*

(4) *Order 53 , Rules of the Supreme Court, Supreme Court Ordinance (Cap. 383)*

You may not refer to any other materials during the examination.

PART A

Choose any *TWO* questions from this part.

QUESTION 1

How far do you think constitutionalism is maintained in the first year of the HKSAR?
Please state your reasons.

QUESTION 2

Please write a commentary on Article 39 of the Basic Law and illustrate how that article will affect constitutional protection of human rights in the HKSAR.

QUESTION 3

What is the role of the Committee for the Basic Law in balancing the relationship between the Central Authorities and the HKSAR?

QUESTION 4

It is said that the Hong Kong government is an executive-led form of government. Do you agree and what are your reasons? Do you think that this form of government in Hong Kong is compatible with the concept of constitutionalism?

PART B

Choose any *TWO* questions from this part.

QUESTION 5

Lord Atkin in the *Electricity Commissioners* case [1924] 1 KB 171 stated that the prerogative remedies would not be available unless the decision-maker had legal authority to determine questions affecting the rights of subjects. Consider and discuss the history of this requirement in administrative law. Is it the law now that a body must have legal authority to determine questions affecting the rights of subjects before an application for judicial review can succeed?

QUESTION 6

In the light of the problems each case might be thought to raise and the ways in which the courts might address such problems in future, discuss TWO of the following cases:

- (1) *Ridge v Baldwin* [1963] 2 All ER 66
- (2) *O'Reilly v Mackman* [1983] 2 AC 237
- (3) *Associated Provincial Picture Houses Ltd v Wednesday Corporation* [1948] 1 KB 223
- (4) *Re Hong Kong Hunters' Association* [1980] HKLR 179

QUESTION 7

“Despite hesitations, false starts, and judicial timidity, it can now be stated with confidence that the common law prima facie requires all decision-makers to give reasons for their decisions, though the obligation can be displaced by indications from the legislature or by the circumstances in which any particular decision is made. Failure to give reasons may amount to procedural impropriety and the intervention of the courts.”

Discuss.

QUESTION 8

The Asian Financial Turmoil Commission (the Commission”) was established by statute to determine whether financial institutions in Hong Kong had made numerous unsecured loans to Asian companies. If, in the words of the statute, the Commission “had reasonable grounds to believe that any financial institution in Hong Kong had made so many unsecured loans to Asian companies as to render it unfit to be allowed to continue in business”, the commission could order that the financial institution be wound up. The Commission was to determine its own procedures, though it was given extensive powers to call and examine witnesses, inspect books of account, and if necessary enter premises to search for and collect documents. It was expressly authorised, if it wished, to dispense with a hearing for any company under investigation under the ordinance, and to act “in a manner not analogous to the judicial”.

The New Territories Bank (“the Bank”) was investigated by the Commission, which found that the Bank had made unsecured loans to a taxi company in Sham Shui Po, three hawkers in Kam Tin, two restaurants in Tai Po, an electrical supplies company in Shanghai, and seventeen noodle-makers in Sydney, Australia. All loans had been repaid before the investigation commenced and the Bank was in a financially secured position. Nevertheless, the Commission, which granted no hearing to the Bank, issued an order that the Bank be wound up. It was later revealed that the Chairman of the Commission was married to the Bank’s principal shareholder and his three concubines were all members of the Bank’s Board of Directors.

Pursuant to leave, the Bank seeks judicial review (certiorari) of the order that it be wound up. The Commission’s counsel claims that the Commission was not under a duty to act judicially and therefore the court had no jurisdiction to entertain the proceedings.

Advise the Bank whether (a) the court had jurisdiction to grant certiorari, and (b) sufficient grounds existed to challenge the legality of the decision to wind up.

**UNIVERSITY OF HONG KONG
FACULTY OF LAW
BACHELOR OF LAWS EXAMINATION
LLB I YEAR
(DECEMBER 1998 / MAY/ AUGUST 1999)**

Main Examinations for LLB First (Year I) (Dec. 1998/ May 1999)			
	Name of Paper	Date of Exam.	Time
1	The Legal System (LLAW1008)	09-Dec-98	9:30am - 11:50am
2	Equity and Introduction to Trusts (18229)	03-May-99	2:30pm - 5:00pm
3	Law and Society I (LLAW1003)	06-May-99	9:30am - 12:45pm
4	Law and Society II (LLAW1004)	06-May-99	9:30am - 12:45pm
5	Law of Tort I (LLAW1005)	11-May-99	9:30am - 1:00pm
6	Law of Tort II (LLAW1006)	11-May-99	9:30am - 1:00pm
7	Criminal Law I (LLAW2003)	13-May-99	9:30am - 1:00pm
8	Criminal Law II (LLAW2004)	13-May-99	9:30am - 1:00pm
9	Foundations in International Financial Law (18240)	14-May-99	2:30pm - 5:45pm
10	Law of Contract I (LLAW1001)	15-May-99	9:30am - 1:00pm
11	Law of Contract II (LLAW1002)	15-May-99	9:30am - 1:00pm
12	Comparative Securities Laws (LLAW6057)	17-May-99	2:30pm - 5:45pm
13	Constitutional and Administrative Law I (LLAW2001)	19-May-99	9:30am - 1:00pm
14	Constitutional and Administrative Law II (LLAW2002)	19-May-99	9:30am - 1:00pm
15	Alternative Dispute Resolution (18210)	20-May-99	2:30pm - 5:30pm
16	Commercial Law I (18351)	21-May-99	2:30pm - 5:00pm
17	Securities and Insolvency Law of the PRC (LLAW6048)	21-May-99	2:30pm - 6:00pm
Supplementary Examinations for LLB First (Year I) (May/ August, 1999)			
1	The Legal System (18108 / LLAW1008)	24-May-99	9:30am - 11:50am
2	Law of Constract (LLAW1001/LLAW1002)	16-Aug-99	9:30am - 1:00pm
3	Constitutional and Administrative Law (LLAW2001 / LLAW2002)	19-Aug-99	9:30am - 1:00pm
4	Criminal Law I & II (LLAW2003 / LLAW2004)	25-Aug-99	9:30am - 1:00pm
5	Legal Skills	25-Aug-99	9:30am - 10:30am
6	Law of Tort 9LLAW1005 / LLAW1006)	30-Aug-99	9:30am - 1:00pm
7	Law and Society (LLAW1003 / LLAW1004)	31-Aug-99	9:30am - 12:45pm

LL. B. First Year (2nd Semester) Examination Time Table in 1999

<u>Date</u>	<u>Time</u>	<u>Course Code</u>	<u>Description</u>	<u>Venue</u>
May 3 MON	2:30 pm - 5:00 pm (30 min reading time included)	18229	Equity and introduction to trusts	Loke Yew Hall
May 6 THU	9:30 am - 12:45 pm (15 min reading time included)	LLAW1003	Law and society I	Loke Yew Hall
May 6 THU	9:30 am - 12:45 pm (15 min reading time included)	LLAW1004	Law and society II	Loke Yew Hall
May 11 TUE	9:30 am - 1:00 pm (30 min reading time included)	LLAW1005	Law of tort I	Loke Yew Hall
May 11 TUE	9:30 am - 1:00 pm (30 min reading time included)	LLAW1006	Law of tort II	Loke Yew Hall
May 13 THU	9:30 am - 11:30 am	FINA0002	Common sense of investing	Lindsay Ride Sp. Ctr.
May 13 THU	9:30 am - 1:00 pm (30 min reading time included)	LLAW2003	Criminal law I	Loke Yew Hall
May 13 THU	9:30 am - 1:00 pm (30 min reading time included)	LLAW2004	Criminal law II	Loke Yew Hall
May 14 FRI	2:30 pm - 5:45 pm (15 min. reading time included)	18240	Foundations in international financial law	Rm 142 Main Bldg.
May 15 SAT	9:30 am - 1:00 pm (30 min reading time included)	LLAW1001	Law of contract I	Loke Yew Hall
May 15 SAT	9:30 am - 1:00 pm (30 min reading time included)	LLAW1002	Law of contract II	Loke Yew Hall
May 17 MON	9:30 am - 12:00 noon	ECEN1602	Writing solutions to legal problems	T2
May 17 MON	2:30 pm - 5:45 pm (15 min. reading time included)	LLAW6057	Comparative securities laws	Rm 142 Main Bldg.
May 18 TUE	9:30 am - 11:30 am	YSWK0001	Emotions (EQ), health and social competence	Flora Ho Sports Ctr
May 18 TUE	2:30 pm - 3:30 pm	YAES0001	The road in American culture	Rm 237 Main Bldg.
May 18 TUE	2:30 pm - 4:30 pm	YSOC0001	Crime and punishment in Hong Kong	Rm 217 Main Bldg.
May 19 WED	9:30 am - 1:00 pm (30 min reading time included)	LLAW2001	Constitutional and administrative law I	Loke Yew Hall
May 19 WED	9:30 am - 1:00 pm (30 min reading time included)	LLAW2002	Constitutional and administrative law II	Loke Yew Hall
May 20	2:30 pm - 5:30 pm	18210	Alternative dispute resolution	Rm 151 Main Bldg.

THU	(15 min reading time included)			
May 21	2:30 pm - 5:00 pm	18351	Commercial law I	Rm 141 Main Bldg.
FRI	(30 min reading time included)			
May 21	2:30 pm - 6:00 pm	LLAW6048	Securities and insolvency law of the people's republic of China	Rm 141 Main Bldg.
FRI	(30 min. reading time included)			
May 24	9:30 am - 10:30 am	PHYS0002	Stars, galaxies and cosmology for beginners	Lindsay Ride Sp. Ctr.
MON				

There are changes in time, venue or special provision for those courses in red color

Note:

- (1) Location of Flora Ho Sports Centre/ Lindsay Ride Sports Centre: at the junction of Pokfulam Road and Pokfield Road.
- (2) Students taking examinations at the Loke Yew Hall, the Flora Ho Sports Centre and the Lindsay Ride Sports Centre are advised to arrive at the examination venue 15 minutes before the examination and to read the seating plan displayed on the noticeboard outside the examination venues carefully. Students must take their examinations at the right venues.

Electronic Calculators

Candidates sitting the papers listed below may use any self-contained, silent, battery-operated and pocket-sized calculators. The calculator should have numeral-display facilities only and should be used only for the purpose of calculation. It is the candidate's responsibility to ensure that his calculator operates satisfactorily. Candidates must record the name and type of their calculators on the front page of their examination scripts.

FINA0002 Common sense of investing

All courses of PHYSXXXX

Printed/Written Materials/Special Notes

18229 Equity and introduction to trusts

1. The Registry will supply the following ordinances:
 - a) Conveyancing and Property Ordinance (Cap. 219)
 - b) The Law Amendment and Reform (Consolidation) Ord. Cap. 23
 - c) Wills Ordinance (Cap. 30).
2. No other materials are allowed.

18351 Commercial law I

This is an "open book" examination.

LLAW1001 Law of contract I

This is an open book examination, i.e. students may bring any paper materials into the examination hall. Subject to this exception, the examination will be governed by University regulations.

LLAW1002 Law of contract II

This is an open book examination, i.e. students may bring any paper materials into the examination hall. Subject to this exception, the examination will be governed by University

regulations.

LLAW1005 Law of tort I

1. The Registry will supply the following ordinances:
 - a) Defamation Ordinance (Cap. 21)
 - b) Employees Compensation Ordinance (Cap. 282) 1988 ed.
 - c) Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
 - d) Occupiers Liability Ordinance (Cap. 314)
 - e) Fatal Accidents Ordinance (Cap. 22)
 - f) Sex Discrimination Ordinance (relevant extracts)
 - g) a list of cases
2. No other materials are allowed.

LLAW1006 Law of tort II

1. The Registry will supply the following ordinances:
 - a) Defamation Ordinance (Cap. 21)
 - b) Employees Compensation Ordinance (Cap. 282) 1988 ed.
 - c) Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)
 - d) Occupiers Liability Ordinance (Cap. 314)
 - e) Fatal Accidents Ordinance (Cap. 22)
 - f) Sex Discrimination Ordinance (relevant extracts)
 - g) a list of cases
2. No other materials are allowed.

LLAW2001 Constitutional and administrative law I

1. The Registry will supply the following ordinances:
 - a) The Basic Law of the Hong Kong Special Administrative Region
 - b) Hong Kong Bill of Rights Ordinance
 - c) Section 21K, Supreme Court Ord. (Cap. 4)
 - d) Order 53, Rules of the Supreme Court, Supreme Court Ordinance.
2. No other materials are allowed.

LLAW2002 Constitutional and administrative law II

1. The Registry will supply the following ordinances:
 - a) The Basic Law of the Hong Kong Special Administrative Region
 - b) Hong Kong Bill of Rights Ordinance
 - c) Section 21K, Supreme Court Ord. (Cap. 4)
 - d) Order 53, Rules of the Supreme Court, Supreme Court Ordinance.
2. No other materials are allowed.

LLAW2003 Criminal law I

The Registry will supply the following ordinances:

1. Theft Ordinance (Cap 210)
2. Homicide Ordinance (Cap 339)
3. HK Bill of Rights Ordinance (Cap 383)
4. Compilation of the following statutory provisions: - Crimes Ordinance (Cap 200): ss59-67, ss117-124, ss159A-159L
 - Offences Against the Person Ordinance (Cap 212): s2, ss5-15, s17, s19, s36, ss39-41, s45, s47C
 - Criminal Procedure Ordinance (Cap 221): s65A, s65E, ss74-76A, ss89-91, s94A, ss100-101A, ss101B-101J
 - Interpretation and General Clauses Ordinance (Cap 1): s2, s3 (the following definitions: "act", "arrestable offence", "offence", "person")

- Road Traffic Ordinance (Cap 374): ss36-38

5. A case list.

LLAW2004 Criminal law II

The Registry will supply the following ordinances:

1. Theft Ordinance (Cap 210)
2. Homicide Ordinance (Cap 339)
3. HK Bill of Rights Ordinance (Cap 383)
4. Compilation of the following statutory provisions: - Crimes Ordinance (Cap 200): ss59-67, ss117-124, ss159A-159L
 - Offences Against the Person Ordinance (Cap 212): s2, ss5-15, s17, s19, s36, ss39-41, s45, s47C
 - Criminal Procedure Ordinance (Cap 221): s65A, s65E, ss74-76A, ss89-91, s94A, ss100-101A, ss101B-101J
 - Interpretation and General Clauses Ordinance (Cap 1): s2, s3 (the following definitions: "act", "arrestable offence", "offence", "person")
 - Road Traffic Ordinance (Cap 374): ss36-38
5. A case list.

End of time-table

THE UNIVERSITY OF HONG KONG
BACHELOR OF LAWS

LLAW1008 THE LEGAL SYSTEM

December 9, 1998

Time: 9.30 am to 11.50 am
Reading time: the first 20 minutes

Candidates must attempt THREE (3) questions

(Note: the Application of English Law Ordinance and the Basic Law for the Hong Kong Special Administrative Region are provided and may be consulted and referred to in the examination. This paper has seven questions on two pages.)

1 Attempt BOTH (1) AND (2):

(1) Explain how the common law differs from

(a) equity, and

(b) statute,

as a legal source of law.

(2) In relation to the common law, what objections does the declaratory theory make to the notion of 'judge-made' law and how does it purport to overcome them?

2 Consider these (purely imaginary) facts:

The ancient common law of England allowed, as a defence to an action for excessive inquisitiveness (AEI), proof that the defendant possessed a long nose. In 1756 the Long Nose Act abolished the long nose defence (LND) in all AEI cases and created a new defence of morbid curiosity (MC). One hundred years later the Supreme Court of Hong Kong decided that both AEI and the Long Nose Act were part of Hong Kong law. The Act was repealed in England in 1953 but the repealing Act was never in force in Hong Kong. The Long Nose Act was not included in the schedule of the Application of English Law Ordinance, nor was it extended to Hong Kong by any other means. No other legislation affects AEI or possible defences to it.

In 1998 your client, who has a long nose and is clinically certified to be suffering from morbid curiosity, is sued for AEI. You are asked to advise

(a) whether AEI is part of the law of the Hong Kong SAR,

(b) whether the LND can be validly pleaded, and

(c) whether MC provides a defence.

Explain the legal basis for your opinion.

- 3 Present an argument for fusion of the Hong Kong legal profession.
- 4 Discuss what is meant by 'the rule of law'. Is 'the rule of law' a rule of law? If not, what is it? If yes, what is its legal source?
- 5 'There is no widespread public concern about the independence of the Legal Aid Department, except from the legal profession and some LegCo members, and the public is more concerned about the quality of service than independence. If it were thought that the Government could not run an independent legal aid service, logically it could not fund one either. And the full consequences of disestablishing the Legal Aid Department, in terms of cost and disruption to staff and services, have not been taken into account.'

In the light of this comment, discuss the recommendation of the Legal Aid Services Council in 1998 to establish an independent Legal Aid Authority by phases. Do you agree with the recommendation of the Legal Aid Services Council? Give reasons for your answer.

- 6 Explain the decision in *Tang Siu-man v HKSAR* [1988] 1 HKC 371. What are the differences between Litton PJ and Bokhary PJ regarding their assessment of the quality of juries in Hong Kong?
- 7 'The root of the problems in our civil litigation process is the proliferation of "adversarial tactics" which have resulted in the procedural tools "being subverted from their proper purpose". Left to their own devices, litigants may complicate and protract the litigation process without limit, and it is this adversarial freedom which is the cause of complexity, cost and delay.'

Do you agree with this view? Give reasons for your answer.

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University of Hong Kong
Faculty of Law
Final Examination 1998-99
EQUITY AND INTRODUCTION TO TRUSTS
(18229)

3 May 1999
2:30pm – 5:00 pm

Reading Time: first 30 minutes
Writing Time: 2 hours

Answer any two (2) of the following three (3) questions.

1. Rachel and Ross started living together in 1985 in a flat owned solely by Ross. In 1997, they intended to start a family and therefore sold the flat for \$2 million. They purchased a more spacious flat that cost \$7 million, with a stamp duty charge of \$200,000 and a solicitor fee of \$30,000.

When they decided to purchase the new flat, Ross told Rachel: 'Now that we have a bigger flat of ours, we can start a family. And quit your lecturer job – it's giving you too much pressure.' Rachel replied: 'I've never wanted to teach anyway.'

All the proceeds of the old flat were used to pay for the down payment of the new flat. When the solicitor asked for payment of stamp duty and solicitor fee, Ross realised he forgot to bring his cheque book, whereas Rachel had hers and so drew out cheques on her own bank account for payment of these two items. The balance of the purchase price was paid by a mortgage obtained from Pokfulam Bank. Ross alone assumed liability to repay the mortgage. The new flat was registered in Ross' sole name.

After they moved into the new flat, Rachel gave birth to a baby and thereafter quitted her job as a lecturer at Pokfulam University. Rachel got a pension of \$50,000 and used it to pay the decoration expenses of the baby room. In May 1998, Ross was laid off by his employer, and for three months, Rachel borrowed money from her parents to pay for the mortgage installments, which amounted to \$90,000 in total. Rachel has yet to return the money to her parents.

Partly because of their financial difficulties, the relationship between Rachel and Ross deteriorated. Ross now asked Rachel to move out of the flat with the baby.

Advise Rachel as to what proprietary claims she might have in relation to the new flat, and the likelihood of success of such claims.

2. Dana was the senior manager of FBI, a very successful French restaurant. Its main source of profits was the business from regular customers, who have become good friends of Dana. Fox, one of these customers, was a famous French chef. Fox suggested, through Dana, to FBI that they could open a branch restaurant with Fox as the head chef. FBI was very interested in the proposition.

The negotiation culminated into an agreement that Fox would work at FBI for a week as guest chef. All the parties intended to go ahead with the branch restaurant should this arrangement be successful, though this intention was not reduced into any written agreement.

In the meantime, the owner of FBI met Tia, a successful PR manager, and fell in love with her. Tia was very jealous of Dana's close working relationship with the owner, and asked him to replace Dana by herself, which he did. Dana was given the post of associate manager at the same salary but with much less prestige. She told Fox what happened, and the latter came up with the idea that she should resign from FBI and start a new restaurant with him. Dana was attracted by the offer, and resigned from FBI claiming that she needed to take a spiritual retreat in India to re-discover her soul.

After Dana resigned, Fox worked very successfully at FBI for a week as guest chef, bringing in a lot of business. However, he surprised FBI when he told them that he would not go ahead with any branch restaurant.

One week after she resigned, Dana opened a new restaurant with Fox as his head chef. Fox was given double the salary he was offered by FBI. Most of FBI's regular customers switched to Fox's new restaurant; they liked Dana's management style and Fox's avant garde cuisine. For the past two years, Dana's restaurant has made a huge profit of \$1 million, and the business goodwill is now worth \$1.5 million.

Ever since Dana's restaurant was open, FBI's business went downhill, suffering a loss of \$2 million profits. In the hope to revive the business, FBI took Tia's advice to refurbish the restaurant at a cost of \$2 million, even though FBI's business consultant advised it against such a move.

Advise FBI as to what claims it has against Dana and Fox, and the likelihood of success of such claims.

Stan was a civil servant working at the Department of Education of the Hong Kong Government. In January 1999, he took \$10,000 from a student to disclose the contents of an A-Level exam paper to him. He used the money to buy Mark Six and won \$1.5 million. He gave half of the money to his wife, Po, who thought the money was probably from a suspicious source but who did not know that it came from a bribe.

In February 1999, Stan was given \$1,000 by his Department Head to buy cognac to entertain visitors to the Department. Stan deposited the money in a new bank account and reported to the Department Head that the money was stolen by a thief.

Stan was also the President of the Mahjong Club. In March 1999, a philanthropist intended to donate \$200,000 to the Club for the promotion of mahjong. The philanthropist drew out a cash cheque and handed it to Stan for this purpose. Stan deposited the money in another new bank account of his.

In April 1999, the Mahjong Club intended to put up ten sets of ivory mahjong tiles for sale to raise funds. Stan got his mistress, Lala, to purchase all ten sets at \$1,000 each. The market value of the tiles as at April 1999 was \$10,000 each. Stan did not tell the executive committee of the Mahjong Club that Lala was his mistress.

Stan has recently been declared bankrupt.

Advise the Hong Kong Government and the members of the Mahjong Club as to any proprietary claims they might have against Stan's assets.

Advise the Hong Kong Government as to any personal claims it might have against Po.

What is the likelihood of success of these claims?

End of Paper

**University of Hong Kong
Bachelor of Laws Examination**

18111/LLAW1003/LLAW1004 **Law and Society**

Date: 6 May 1999

Time: 9.30am to 12.45pm (including 15 minutes reading time)

Instructions to Candidates: **Please answer four (4) questions, two (2) of which must be taken from Part I, and two (2) from Part II.**

Part I (Answer TWO questions from this Part, which consists of questions 1 to 4)

1. Describe and explain the principal differences between the liberal democratic state and the European absolutist state.

2. Examine **CRITICALLY** the use of the social contract theory to justify different political ideas.

3. **Answer ALL parts (A), (B) and (C)**

(A) How democratic is the Hong Kong Special Administrative Region?

(B) What are the arguments for and against further democratisation of Hong Kong?

(C) What changes to the Basic Law will be necessary to make Hong Kong more democratic?

4. Analyse the principal political ideas and aspirations that have influenced constitutional developments in China since the revolution of 1911.

Turn over for Part II

Part II (Answer TWO questions from this Part which consists of questions 5 to 9)

5. Answer BOTH parts (A) and (B):

(A) How does globalisation affect the protection and enjoyment of human rights?

(B) With reference to the East Asian experience, does globalisation, in your opinion, increase or decrease democratisation and respect for human rights?

6. What theory regarding the relationship of law and economic change underlies legal changes to facilitate economic reform in contemporary China?

Illustrate your answer by analysing the objectives of economic reform and the laws to implement them.

7. Describe the findings of Professor Stewart Macaulay's study of contracts in the US economy in his article, 'Non-Contractual Relations in Business: A Preliminary Study' and explain critically what you learn from it about the role of contract in market economies.

8. Answer BOTH parts (A) and (B)

In discussing the concept of property in tribal societies, Professor Max Gluckman says:

'The law of property is intricately intertwined with the law of status. It means that to understand the holding of property, we must investigate the system of status relationships; and to describe the system of status relationships, we must deal constantly with relations to property'.

(A) Describe the rules of property in tribal societies and show how they are related to the social organisation of a tribal society.

(B) What difficulties would arise if the tribal concept and rules of property were applied in a market economy?

9. Discuss the role of domestic and international law in relation to the functioning of Hong Kong's economic system.

END OF QUESTION PAPER

UNIVERSITY OF HONG KONG
Bachelor of Laws: First Examination

LAW: LAW OF TORT (18201/LLAW1005/LLAW1006)

11 May 1999

Time: 9.30 - 1.00 pm
(including 30 mins reading time)

There are TEN QUESTIONS ON FIVE PAGES. EACH QUESTION IS OF EQUAL VALUE. YOU MUST ANSWER FOUR QUESTIONS. ANSWER ONE QUESTION FROM PART A. ANSWER THREE QUESTIONS FROM PART B

PART A

**YOU MUST ANSWER ONE (1) QUESTION FROM THIS PART
(DO NOT ANSWER MORE THAN ONE)**

1. 'As a mechanism for compensation for personal injury, the tort action in negligence is seriously flawed'.

Discuss this statement analytically, with reference to relevant case authorities and (if appropriate), legislation.

2. 'In Hong Kong, an injured worker is best advised to pursue his claim under the Employees' Compensation Ordinance, where compensation is swift, certain, and sufficient.'

Discuss this statement analytically, with reference to relevant case authorities and specific provisions of the Employees' Compensation Ordinance.

3. Discuss analytically the decision of the House of Lords in **EITHER *Hunter v Canary Wharf* [1997] 2 WLR 684 OR *Cambridge Water Co v Eastern Counties Leather* [1994] 2 AC 264.**

PART B

YOU MUST ANSWER **THREE (3)** QUESTIONS FROM THIS PART
(DO NOT ANSWER MORE THAN THREE)

4. Tom, aged five, was walking with his mother, Elsie, along Queen's Road Central. While waiting for the light to change, Tom saw his playmate Victor across the street, and suddenly ran into the street to shout at Victor and get his attention. Bill, who was driving his taxi down the street, had too little time to brake. He swerved and successfully avoided Tom, but in the process, lost control of his car, jumped the curb on the opposite side of the road, and hit and injured Mary, a pedestrian, and crashed into a post. Bill was injured when his car crashed into the post. John, who was with Mary at the time of the collision, suffered no physical injuries but suffered nervous shock on witnessing the injuries to Mary.

With reference to relevant case authorities, advise Bill, John and Mary, who wish to sue in negligence for the injuries suffered. You may assume that Bill was not negligent in his driving of the taxi.

5. HK Asiabank ('HK') purchased some land for its new Hong Kong headquarters, and arranged for the construction of a tower block by Paul Tam Development Corp ('Paul'). Shortly after completion of the tower block by Paul, HK moved into the premises, but encountered a number of problems:

The decorative cladding had been negligently installed, and according to an independent consultant's report, would eventually pose the risk that falling pieces of cladding might injure the pedestrians below.

The plaster coating on the ceiling in the offices also proved to be substandard because of negligent installation, and occasionally some of it would fall, damaging the carpet and some of HK's computer equipment.

Some of the office space in the new building had been let to commercial tenants, and one of the tenants, JK Ltd, a hi-tech firm with expensive equipment, refused to take possession and to pay rent under the tenancy agreement because of the defective ceiling and falling plaster. HK has now commenced an action in negligence against Paul, to recover damages for the losses suffered.

With reference to relevant case authorities, advise HK regarding the DUTY OF CARE in its negligence action against Paul.

6. Jackie, a five year old boy, ran into the street to retrieve a rubber ball that he had been playing with. Chan, who was driving a delivery van, swerved but, because he was driving at an excessive speed, could not avoid Jackie and injured him. In the process, Chan lost control of the vehicle and collided with Tso, who was driving a car that he had stolen one week earlier. Tso suffered personal injuries, as did Chan's passenger Wong. Wong was a friend who was riding with Chan pursuant to an understanding that Chan would not be liable for any injuries that Wong might suffer. Wong was not wearing a seatbelt at the time, in violation of Section 7 of the Road Traffic (Safety Equipment) Regulations (cap 374).

With reference to relevant case law and legislation, advise Chan of the DEFENCES he may raise in the negligence actions likely to be brought against him. You should assume for the purposes of the question that Chan was negligent.

7. Max was an ambulance driver for Queen Victoria Hospital. He had just collected Ben, a patient who required immediate treatment for eye injuries he had suffered in an accident at his home. Max accelerated to a high speed, and activated his siren and lights. Eric, a newly-qualified driver, panicked while trying to allow Max to pass, lost control of his vehicle, and crashed into Max's ambulance.

Max suffered head injuries in the accident, and was taken by another ambulance to a nearby hospital. Max required a large blood transfusion, but due to a shortage in the hospital of his blood type, a very rare blood type, he suffered permanent brain damage.

By the time Ben was treated for his eye injuries, the hospital was unable to save his eyesight, though there would have been a chance of full recovery had he received earlier treatment.

With reference to relevant case authorities, advise Eric in the negligence actions brought by Max and Ben.

8. Amina is a domestic helper who lives with her employers. As her employers know, she is a devout Muslim who shrinks from any contact with a man (even a handshake).

The husband in the family (Bob) is a big, overwhelming and friendly man. He is American and tends to respond to people in a rather "physical way" - he slaps male friends on the back and kisses women friends on the cheek. He is very egalitarian and treats Amina like another friend, which means that he quite frequently hugs her, and has actually kissed her on the cheek. Amina always responds by moving away as soon as possible.

Bob's wife Mary is very jealous of Amina, thinking that Bob's hugs are more than just friendly. She develops the habit of nagging Amina. She never touches her, but she comments constantly about her appearance in a very critical way, and in a way which lays the emphasis on sexual attractiveness. She tells Amina details of her own relationship with her husband - things which Amina has no wish to hear. Although she knows Amina is distressed, for she often finds Amina in tears, she continues to shout at her and criticise her, refuses her time to go out with her friends, withholds her pay so she cannot afford to meet friends, and even locks the telephone. She tells Amina that if she goes out on her days off Mary will not write her a good reference when her contract ends and will withhold even more pay; Amina stays in the flat every Sunday as a consequence. Although Mary never touches her, Amina is physically afraid because she knows that Mary does hit her son, and even fights physically with her husband.

One day things get really bad: Bob greets her with a hug on his return from work, Mary then abuses her and calls her a "prostitute". Amina leaps over the balcony (fortunately the flat is on the first floor) is found by another domestic helper and taken to a refuge, where she is advised to start proceedings.

Advise Amina, on the basis of common law and statute, whether she might succeed in actions in tort against either Bob or Mary or both.

9. A University writes a letter to its solicitor as follows:

'We are worried that so many people are now making use of our computer facilities to communicate internally, and externally via the Internet. These uses include individual e-mail messages, discussion groups, web pages and others. All these different sorts of material are stored on the University's personal computers and transmitted via the University's mainframe computer. We seek a legal opinion as to whether the University might be held liable in any of the following circumstances - in particular, we wish to know what someone would have to prove if they sued us, and whether we would have any defences:

- a) A staff member is running a discussion group internationally, related to members' research and teaching interests, from which any member could, if he wishes, edit or remove any item from public access. Suppose a message from a member of the discussion group is defamatory - would the staff member be liable? Would the University be liable?
- b) A student organisation has a web page accessible from anywhere in the world, which contains material defamatory of someone unconnected with the University. Would the University be liable?
- c) A staff member sends an e-mail message to another colleague criticising the other colleague in defamatory and virulent terms. The message concerns the personal relationship of the two teachers, but it is read by the relevant department's computer technician while administering the departmental network. Would the University be liable?

Write a first draft of the solicitor's reply.

10. Justin is a registered lift engineer, working for Floatis Lift Maintenance. He is sent by Floatis to the Skiline Centre to carry out maintenance of a lift. The Lifts and Escalators (Safety) Ordinance (long title "To provide for the design and construction, and the maintenance in safe working order of lifts and escalators, for the examination and testing thereof and for matters connected with the purposes aforesaid") states:

The owner of every lift shall, at intervals not exceeding 12 months, cause the lift to be thoroughly examined by a registered lift engineer in order to determine whether the lift and all machinery and equipment connected therewith is in safe working order.

The lift in the Skiline Centre has not been examined or repaired for 3 years and the work is therefore more difficult and dangerous. One of the sets of doors into the lift shaft on the 10th floor opens much too easily, and will not stay shut. Justin notes this problem, but fails to treat it as a top priority problem. Lucy was a visitor to the Skiline Centre who has seen that lift maintenance was going on. When she saw the doors on the 10th floor open she assumed that they had been fixed and stepped (as she thought) into the lift. But there was no lift there - it was 3 floors lower down and Justin was working on the top of it. Lucy landed on Justin, seriously injuring Justin, though she herself was quite unhurt.

With reference to relevant case authorities and legislation, advise Justin, who wishes to sue Skiline in tort.

UNIVERSITY OF HONG KONG
FACULTY OF LAW
LLB
Final Examination 1998-99

CRIMINAL LAW I AND II
(LLAW2003 / LLAW2004)
(18207)

Thursday, 13 May 1999

Time: 9.30 am – 1.00pm
(Reading time: the first 30 minutes)

This paper consists of 5 Pages, including this one. There are **SIX (6)** questions in all. Candidates are required to answer **THREE (3)** questions. All questions are of equal weight.

QUESTION 1.

Paul visited a hardware store to buy cutting equipment. Paul asked Brian, the shop manager, to show him equipment powerful enough to cut through steel pipe. While there, Paul received a call on his mobile phone. Brian overheard part of Paul's conversation, "Okay, we'll do the job tonight. Where's the car going to be parked? I'll bring the cutting equipment". Brian knew there had been a series of break-ins at banks in recent months. Brian suspected that Paul might be involved, but nevertheless sold the equipment to Paul.

Later that afternoon, Paul met Steve to discuss the job. Paul said to Steve, "The plan is to cut the brakes on V's car. We should not have any trouble as V is away in Macau this weekend. If we meet any opposition, I'll pull out this". Paul then showed Steve a gun. Steve was scared as he knew Paul had a violent reputation. Paul said, "Don't worry. I have no intention of using it. It's not loaded anyway."

That evening, Paul and Steve located V's car. Steve kept watch while Paul used the cutting equipment to cut the front brakes on one side of the car, and Paul then kept watch while Steve cut the front brakes on the other side. They were disturbed by a security guard on patrol. Paul panicked and fired off a shot. The security guard was shot in the chest and was killed.

The police traced the cutting equipment to Brian's shop. In a statement to the police, Brian said, "There has been a lot of crime in the neighbourhood in recent months. Sure I was suspicious that Paul was a criminal but I am not a policeman. The economy is bad and my boss needs the money".

In a statement to the police, Steve said, "I knew Paul was trouble. He is a bad man. I didn't want any trouble. Paul was carrying the gun only to frighten people. He told me the gun was unloaded."

Paul has been convicted of murdering the security guard and causing criminal damage to V's car.

Discuss the criminal liability, if any, of Brian and Steve.

QUESTION 2.

You are a prosecutor. You have received the following summary of facts:

"Andy visited Betty, his mistress, at her apartment. Betty was about to go out and told Andy to leave. Andy told Betty in a threatening manner that he wanted to have sexual intercourse with her. Betty, who had been beaten by Andy several times in the past, made no effort to resist Andy's initiation of sexual activity. Andy tried, but failed to have sexual intercourse with Betty.

Andy then went home, and fell asleep on the sofa. About an hour later, Andy awoke when he heard the voice of his wife, Carol, in the kitchen. Carol was talking to her friend, Doris, but Andy thought Carol was talking on the telephone and shouted at her to bring him his dinner. Carol did not reply. Andy shouted, 'Do as I tell you!' and threw an empty glass towards the kitchen. The glass struck Doris in the face, cutting her face in several places.

Carol came out of the kitchen carrying a kitchen fork and moved towards Andy, who had just taken off his belt to loosen his trousers. Andy struck Carol several times about her head with his belt, causing Carol to fall unconscious to the floor. Doris called an ambulance, but Carol died before medical help arrived."

Andy made a statement to the police in which he said, " When I saw Carol coming out of the kitchen, I thought she was holding a knife. She often said she would 'get me' one day. I just lashed out instinctively."

Prepare a memorandum outlining the offences that may have been committed by Andy based on this summary of facts, and any difficulties you may encounter in proving these offences.

QUESTION 3.

A year ago, Gary's application to Big Bank for a loan was rejected by Helen, the local manager. Aggrieved, Gary began sticking up anonymous posters near the branch office alleging that Helen was corrupt. In addition, he began telephoning Helen at work, at home, and on her mobile phone, sometimes shouting "I'm going to get you" at her, and other times saying nothing. After several months of this, Helen began to suffer mental trauma, necessitating psychiatric treatment.

One day, while Helen was waiting at a bus stop, she received a phone call on her mobile. When she answered, a voice (it was Gary phoning from his car parked across the road) said, " I'm watching you in the bus queue - you can't escape me". Panicking, Helen tried to rush out of the queue, but she tripped and fell against Mark, who fell onto the road just as the bus arrived. The bus driver was unable to brake in time and Mark was killed.

(Question 3 continues on p.3)

(Question 3 continued)

Gary, meanwhile, drove away, knocking down Lucy who had just stepped out onto a pedestrian crossing. Lucy, who was 7 months pregnant, suffered only minor injuries, but she went into labour, and was taken in an ambulance to hospital where the baby was delivered in an emergency operation. The baby, born two months prematurely, was in a distressed condition and was immediately placed on a life support machine for intensive care. Three days later, Jill, a nurse, wrongly connected one of the tubes from the life support machine to the baby, causing heart seizure and death.

Discuss the criminal liability, if any, of Gary.

*

QUESTION 4.

Dick, a sailor on the Star Ferry, noticed a small cargo ship coming towards the ferry when it was half way between Tsim Tsa Tsui and Central. Dick was sure the two boats would collide if one of them did not immediately change course. Dick ran to the small wheelhouse (where the Captain was steering the boat) and shouted, "We're going to crash". The Captain looked surprised because he knew from experience the two boats would pass safely. Dick tried to push the Captain aside, but the Captain stood firm. In desperation, Dick picked up a thick piece of wood and hit the Captain about the head. The Captain collapsed to the floor bleeding from the head. Dick then steered the ferry sharply away from the cargo ship.

Sam, another sailor, had seen Dick hit the Captain with the piece of wood. Sam rushed into the wheelhouse just as Dick was picking up the piece of wood again. Dick intended to use the piece of wood to lock the steering wheel in place while he tried to help the Captain, but Sam thought Dick was about to hit the Captain again. Sam knocked Dick over and quickly tied Dick's hands behind his back. Sam then steered the ferry safely to the dock.

At the dock, Dick suddenly got up, jumped onto the wharf and ran away shouting "Help". Sam chased after Dick, shouting "Stop". Two police officers on patrol saw and heard the chase. One police officer grabbed hold of Dick. The other jumped on Sam's back, knocking Sam down, and causing bruises to Sam's face and hands. Both Sam, handcuffed, and Dick, whose hands were still tied, were then taken to the nearest police station.

Later the police officers said they didn't know exactly what was happening and, believing the crowd might soon join in and attack one or both of the men, they decided to arrest both men and find out the truth at the station.

Discuss the criminal liability, if any, of Dick, Sam and the police officers.

QUESTION 5.

You are a defence lawyer and have been instructed by Edward who has been charged with MURDER. You have received the following instructions from Edward:

"Edward, 36 years old, has suffered from severe depression on and off throughout his adult life. When necessary, he takes anti-depressant medication prescribed for him by his psychiatrist. On occasion, this medication makes him highly irritable and easily confused. Several times over the years Edward has suffered from 'black-outs' while using the medication.

Several months ago, Edward had some health problems and these left him suffering from sexual impotence (陽萎). Some of his friends and work colleagues found out about this problem, and joked about it with Edward. His boss, Frank, went further and made fun of Edward nearly every day; Edward was often very angry about this, but kept it to himself and just 'laughed along' with everyone else at Frank's 'jokes'.

Recently, Edward visited his doctor to discuss a new anti-impotence drug in the hope it might help him, but he was told it could not help in his case. Edward became very depressed, and began taking his anti-depressant pills.

After work one evening, Frank took Edward and several others out for dinner. During dinner, Frank repeatedly boasted about how many girlfriends he had, and several times said for all to hear, 'Not like Edward ... he's not much use!' Edward became very angry and told Frank to 'shut up and mind your own business!' Frank told Edward, 'Calm down, it's just a joke'.

Later, as they were leaving the restaurant, Frank poked Edward in the shoulder, pointed at a pretty waitress, and asked, 'Think I should invite her out for tea?' Edward thought Frank was making fun of him again, and became very angry.

According to witnesses, Edward picked up a heavy glass ashtray and 'went crazy', smashing it down on Frank's head several times before he could be stopped. Frank died immediately."

In his instructions to you, Edward says he remembers taking two anti-depressant pills just before dinner (his prescription was one per day). He says he remembers feeling very irritated by Frank's comments, much more so than usual, and has a very confused memory of leaving the restaurant. He remembers Frank's comment about the waitress, but nothing else, "I just blacked out". He does not remember picking up the ashtray or striking Frank with it.

Identify any defences Edward may be able to raise on the charge of murder, and the likely success or failure of each such defence.

QUESTION 6.

Jack and Tom went to Sha Tin Fun Park. At the entrance, Jack paid for a \$50 Basic Ticket which allowed him to enter the Park but meant he would have to pay an extra \$10 for each game he wanted to play there. Tom paid \$200 for a Daily ticket; this ticket entitled its holder to play all or any of the games in the Park without any further payment. The Daily ticket had the words "Not Transferable" written on the front in large letters and on the back, the words: "This ticket is the property of Sha Tin Fun Park Ltd. This ticket cannot be resold to any person. Valid for use by the original purchaser of the ticket only."

After entering the Fun Park, Tom and Jack each used Tom's Daily Ticket 5 times. Every time Jack used the card, he pretended he was the original purchaser.

As Tom and Jack were leaving the Park they went up to Peter, a boy standing in a queue waiting to play a game. Peter was holding a Basic Ticket and a \$10 coin.

"Want to buy my Daily Ticket?" asked Tom.

"I thought you weren't supposed to sell Daily Tickets," replied Peter.

"You're not," said Tom, "but they'll never know. If they ask, all you have to say is that you bought the ticket yourself today at 10:05am. The time the ticket was bought is the only thing they can check. Anyway, I paid for the ticket. I should be able to do what I like with it."

Peter paid Tom \$50 for the Daily Ticket.

Later, after Peter had left the Park, he met Fred, his elder brother. Fred is much bigger and stronger than Peter. He had bullied Peter all his life. Peter was very afraid of him. This time Fred pointed to three rough-looking friends who were with him and said, "We are going to teach a lesson to a man who has insulted our friend's sister." Then he told Peter to come with them. At first, Peter said "No." but Fred said he would certainly give Peter a beating later if Peter did not help so Peter agreed to go along.

Arriving at a restaurant, Fred told Peter to stay outside and keep watch. "And just you make sure you don't run away, or it'll be the worse for you. You tell us if you see any police anywhere, you hear?" While waiting outside the restaurant, Peter saw two police officers walking towards him. He shouted loudly, "Police officers, quick. Fight inside." Then Peter ran into the restaurant building and out again through a back door. The police officers followed him and caught Fred and the others holding choppers. No one in the restaurant had been hurt.

Discuss the criminal liability, if any, of Jack, Tom, Peter and Fred.

***** THE END *****

**UNIVERSITY OF HONG KONG
FACULTY OF LAW**

EXAMINATION 1998-99

**FOUNDATIONS OF INTERNATIONAL FINANCIAL LAW
(18492/LLAW 6055/18240)**

DATE: 14 May 1999

Time: 2:30 p.m. – 5:45 p.m.

(15 minutes reading time included)

Instructions to candidates:

This examination paper consists of SIX questions.

Postgraduate candidates are required to answer any THREE questions.

LLB candidates are required to answer any TWO questions.

THIS IS AN OPEN BOOK EXAMINATION

Question No. 1

Answer BOTH (a) AND (b)

Within the Hong Kong banking market, there are domestic commercial lending and international commercial lending facilities.

- (a) What are the main legal similarities and dissimilarities between a domestic commercial loan and an international commercial loan?
- (b) In what ways is the international loan agreement designed to provide “legal security”?

In answering (a) and (b), provide specific references to, and detailed legal analysis of, specific clauses in the relevant loan agreement.

Question No. 2

The Hong Kong financial market is a major market for international syndicated loans. Discuss and analyze the various legal relationships (i.e., legal duties, rights and responsibilities) by and among lenders, borrowers and agent banks involved in a syndicated loan agreement. Compare and contrast these relationships vis-à-vis the legal relationships by and among investors, issuers, underwriters and trustees in a bond offering.

Question No. 3

“For a Hong Kong corporate borrower there is little, if any, practical difference between securing funds under a syndicated loan agreement and under a bond offering.”

Critically examine this observation, emphasizing the various relevant legal structures and legal implications of each such form of debt financing.

Question No. 4

Consider a major infrastructure project in Thailand being funded in part by Hong Kong lenders. Identify three fundamental lender risks and two fundamental borrower risks involved in a project financing arrangement. Suggest and support the most appropriate legal ways for dealing with such risks.

Question No. 5

The common law trust is well-known and developed within the Hong Kong legal system. Consider the following statement: “The trust vehicle serves a necessary and indispensable role in facilitating international bond offerings.”

Critically evaluate whether this statement is valid, drawing on your knowledge of the course materials, of the Hong Kong legal system and Hong Kong financial market practices.

Question No. 6

Privatization, or its functional equivalent, is currently in vogue in a number of Asian countries. Consider the following statement: “Privatization is fundamentally a political and economic process, having minimal connection to law and legal process.”

Do you agree? Discuss.

THE UNIVERSITY OF HONG KONG
Department of Law

Bachelor of Laws Examination
LLAW1001/LLAW1002/(18103) Law of Contract

Date: 15 May, 1999

Time: 9:30 a.m. to 1:00 p.m.
(Reading time: the first 30 minutes)

Instructions to Candidates:

1. The time for this examination is three hours and thirty minutes. This time period includes 30 minutes reading time.
2. You are required to answer any **four (4)** of the following eight (8) questions.
3. All questions are of equal weight. Allocate your time accordingly.
4. Plagiarism will be penalized.
5. This paper consists of 9 pages including this one.

1. In January 1997, Pollyanna entered into a contract to buy from Kowloon Land Ltd a flat then under construction at Paradise Bay. The purchase price was a modest \$15 million and she paid a deposit of \$1.5 million. Pollyanna and her husband already owned two flats and planned to resell the Paradise Bay flat quickly or to rent it and use the rental income to pay the mortgage. In other words, buying the flat was a sure win.

In October 1998, Pollyanna, a securities analyst, was laid-off. Her husband's income as a senior manager of an accounting firm barely covered household expenses and the mortgage payments on the two flats. The market value of flats at Paradise Bay had fallen by 50% and banks were unwilling to lend the money needed to complete the purchase. Pollyanna thus faced the prospect of having the \$1.5 million already paid forfeited and an action for damages.

Desperate, Pollyanna joined a group of would-be owners in protest marches. In the morning they marched to the Legislative Council building and stayed there until some legislators appeared on television promising action if Kowloon Land Ltd would not come to a reasonable compromise. Satisfied, they moved onto Kowloon Land Ltd's head office and demanded to see the Chairman. As the Chairman was busy rehearsing his speech to be delivered at the annual general meeting later that day, he sent the Deputy Chairman to see them. But the tired and hungry crowd started getting violent; the Deputy Chairman beat a quick retreat. The management was anxious to make the crowd leave before the arrival of shareholders for the meeting as well as more newsmen. After some deliberation, the Chairman went out and promised the crowd that the company would lend them the shortfall so that they could complete the purchase. That promise pleased the crowd and the people dispersed. Being assured of a loan from Kowloon Land Ltd, Pollyanna did not make any further efforts to raise funds and merely waited for the date of completion. But word came that Kowloon Land Ltd did not admit any legal obligations to make loans as promised.

Advise Pollyanna.

2. Sam is a tailor. Until June 1998, he carried on business at Tai Po. He had been there for 30 years and had built up a large clientele from the neighbourhood and as far away as Kowloon. In other words, he had prospered with Hong Kong.

Early 1997, Sam noticed a change. His clients were moving northwards. They still came to him for “expensive” or special things, but tended to buy more at Shenzhen. Being an astute businessman, Sam thought it was time to close the Tai Po shop and open one in Shenzhen instead.

Around this time, Bob came to see him. Bob is a childhood friend who had emigrated to England more than 30 years ago. He returned to Hong Kong to witness her return to the Motherland and had thoughts of staying in Hong Kong permanently. When Sam learnt of this, he said, “Old Friend, we still think alike. We both want to retire at the same time, except you want to come back here, and I want to go back to my ancestral home outside Shenzhen.” Bob asked him what he planned to do after retirement. Sam said, “Some gardening and some baby-sitting (his grandchildren).” Bob was envious. He had no grandchildren and needed something with which to occupy himself.

In January 1998, Bob made up his mind to stay in Hong Kong and entered into a contract to buy Sam’s business which included these terms:

1. Bob shall pay the price of \$2,000,000 as follows: \$200,000 on signing this contract and the balance on July 3, 1999.
2. Sam represents and warrants that the average monthly profits of the shop over the last 5 years was \$400,000.

Bob took over the shop in June, 1998. Sam spent the hot months of July and August with his grandchildren in his ancestral home just outside Shenzhen. In September, the children returned to school in Hong Kong and Sam opened a shop near the Shenzhen train station. His old clients found him there and he has a roaring business.

Currently, Bob is lucky if he has one customer a day. He is very angry with his old friend and has come to you for advice.

Advise Bob.

3. Flora owns a floral shop in Causeway Bay. One of her best customers is Peter who has had a standing agreement for the last five years to send flowers at seasonal prices to designated persons at designated times. Naturally, he would change the designation from time to time. Flora agreed to deliver the flowers within 1 hour of the order. Peter pays a \$5,000 deposit on the first of each month and settles the month's bill on the last day of each month.

In January 1998 Peter met Mary and instructed Flora to send the most expensive orchids from California to Mary three times a week until further notice. Flora did so to the satisfaction of all parties, until July 1998 when the Chek Lap Kok airport opened. Due to the chaos at the airport, Flora stopped filling Peter's orders after July 2. Air cargoes could come via airports in Guangzhou or Macau, but only at very high costs. So most of Flora's customers switched to flowers grown in Shenzhen. Flora did not think it was worthwhile to make complicated air transport arrangements just for Peter's orchids.

In August, Mary threw Peter over for Paul. Peter slumped into a depression and blamed Flora's breach of contract for his misfortunes. He has sued Flora claiming, inter alia, \$5 million damages for emotional distress.

Advise Flora.

4. Benjamin is an expatriate banker who has lived in Hong Kong for 30 years. Over the years, he has developed an interest in jade and bronze pieces. Every Saturday, he can be seen wandering in and out of the shops on Hollywood Road. He fancied himself an expert on Chinese jade.

One Saturday, he wandered into Tim's shop and poked around. Tim said, "I don't have anything here you would like. Go over to Seto's. He has just made something for you. Ha! Ha!" Benjamin did not pay any attention because he knew that was a stock phrase used to tease "amateur experts" like himself. After browsing some more, Benjamin did go to Seto's and asked if he had found anything interesting recently. Seto brought out a tray of jade pieces. Benjamin was soon absorbed in examining these while Seto busied himself in another part of the shop. Finally, Benjamin picked out a piece he wanted. Seto opened the bargaining at \$500,000. Benjamin beat him down to \$200,000 and went home the proud owner of an antique piece of jade. He thought it was worth \$1,000,000, at least.

Benjamin later discovered that the jade was only a reproduction. He wants to sue Seto.

Advise Benjamin on each of the following alternatives, at the time of sale:

- (a) both Seto and Benjamin thought the jade was authentic;
- (b) Seto knew the jade was a reproduction, whereas Benjamin thought it was authentic.

5. Abel has been with the Police Force for 20 years. Although he has worked loyally and diligently throughout that period, he has never once been promoted. It must be said, he is not too bright. For the last 5 years, he has worked in Cain's division. Although Cain is 10 years his junior, Abel looks up to Cain because the latter has all the proper credentials and connections and is the rising star of the Force.

Finally, Abel is on the short list for a promotion. With the prospect of a promotion and an increased salary, Abel thought it was time to move out of government quarters and buy his own flat under the home-purchase scheme. This would be good provision for eventual retirement.

Cain has a brother, Jacob, who owned a flat. As soon as Cain heard of Abel's plans, he urged the latter to consider his brother's flat and arranged a dinner party for Abel and his wife so that they could meet his brother Jacob and see the flat. Abel's wife, Ruth, did not like the idea, saying that the flat was in too exclusive a neighbourhood, beyond their means and in any event, not worth the money. Abel, however, was flattered to be on social terms with The Boss (Cain) and did not wish to disappoint him. After all, it was very kind of him to have arranged the meeting with his brother. Abel signed the contract.

Within two months, the value of the flat had fallen by 40%. Ruth was angry and became furious when she heard that Jacob was looking for a flat to rent in the same neighbourhood. She wants Abel to get out of the contract.

Advise Abel.

6. Back in 1997 Victor and Phillip had entered into a contract under which Victor agreed to sell and Phillip agreed to buy Victor's flat in Pokfulam. The contract included these clauses:

1. Phillip agrees to pay the price of \$15,000,000 as follows:
 - (a) a deposit of 15% (ie 2,250,000) on the date of this contract, the payment of which is hereby acknowledged;
 - (b) the balance on completion.
2. This agreement shall be completed on March 1, 1999.
3. Should Victor fail to complete the agreement, he shall repay to Phillip the deposit of \$2,250,000 and shall in addition pay to Phillip a sum equal to the deposit as liquidated damages.
4. Should Phillip fail to complete this agreement, the deposit of \$2,250,000 shall be forfeited.

By December 1998, the value of the flat had fallen to \$6,000,000 and Phillip wanted to get out of the contract. Victor, on the other hand, was anxious not to give Phillip any excuse. On his instructions, his lawyers had taken pains to accommodate Phillip's lawyers.

March 1 arrived and Phillip had no excuse. So at the last minute, his secretary called Victor's lawyers to say that Phillip had to visit his mistress in Shenzhen who had been taken ill. On March 3, 1999, the Financial Secretary announced in his budget speech a huge development project for the Pokfulam area. As soon as he heard the news, Phillip instructed his lawyers to arrange another meeting. Victor is undecided.

Advise Victor.

7. Answer any **one (1)** of the following:

(a) Explain when the courts will imply terms into contracts. Do you think the courts should exercise their powers to imply terms more freely or restrictively? Why?

or

(b) Explain the extent to which the law regulates the use of exemption clauses. Is the law good, bad or indifferent?

8. Answer **both** of the following:

(a) “The Privy Council in *Union Eagle Ltd v Gold Achievement Ltd* [1997] 1 HKC 173 was too harsh on the defaulting party.” [anon]

Discuss.

and

(b) “The decision in *Chan Wong-hung v Associated Bankers Insurance* [1993] HKLR 127 is just.” [anon]

Discuss.

-end-

UNIVERSITY OF HONG KONG
FACULTY OF LAW

EXAMINATION 1998-99

COMPARATIVE SECURITIES LAW
(18494/LLAW 6057)

DATE: 17 May 1999

Time: 2:30 p.m. – 5:45 p.m.

(15 minutes reading time included)

Instructions to candidates:

This examination paper consists of SIX questions.

Postgraduate candidates are required to answer any THREE questions.

LLB candidates are required to answer any TWO questions.

THIS IS AN OPEN BOOK EXAMINATION

Question No. 1

In terms of models for capital market reform and development in emerging economies, discuss the comparative advantages and disadvantages of drawing from the securities law systems of the United States, United Kingdom and the European Union.

Question No. 2

Is there a “New International Financial Architecture”?

Discuss in the context of financial sector reform, with particular emphasis on the capital markets area.

Question No. 3

“The Japanese ‘Big Bang Reforms’ are too little, too late”

Critically discuss this statement.

Question No. 4

Compare and contrast the effectiveness of the respective United States and European Union approaches to insider dealing.

Question No. 5

“Transparency is at the core of every effective modern securities law system”.

Critically discuss this statement, utilizing comparative references from THREE of the securities law systems (i.e. US, UK, EU, PRC, Japan and HK) we have touched upon in the course.

Question No. 6

In light of the comparative discussions regarding various securities law systems during the course, in what ways, and why, would you recommend upgrading the current Hong Kong securities law system?

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UNIVERSITY OF HONG KONG

CONSTITUTIONAL & ADMINISTRATIVE LAW (98-99)

(LLAW2001/LLAW2002)

(18105)

Date: May 19, 1999

Time: 9:30 a.m. to 1:00 p.m.

(Reading time: the first 30 minutes)

Instructions

1. This paper has *TWO* parts. Students are required to answer *FOUR* questions (*TWO* questions from each part). Choose any *TWO* questions from **PART A** (Questions **ONE**, **TWO**, **THREE** and **FOUR**) and any *TWO* questions from **PART B** (Questions **FIVE**, **SIX**, **SEVEN** and **EIGHT**).

2. Every question in this paper carries the same weight and the whole paper will count for 70% of the overall grade. The assignment that you have already submitted will count for 20% of the overall grade while your class presentation will count for the remaining 10%.

3. The following legislation is provided and may be consulted and referred to in the examination:

(1) The Basic Law of the Hong Kong Special Administrative Region

(2) Hong Kong Bill of Rights Ordinance (Cap. 383)

(3) Section 21K, High Court Ordinance (Cap. 4)

(4) Order 53, Rules of the High Court, High Court Ordinance (Cap. 383)

You may **not** refer to any other materials during the examination.

PART A

Choose any *TWO* questions from this part.

QUESTION 1

The Court of Final Appeal of the HKSAR in *Ng Ka Ling v Director of Immigration* [1999] 1 HKC 291 stated that.

"What has been controversial is the jurisdiction of the courts of the Region to examine whether any legislative acts of the National People's Congress or its Standing Committee (which we shall refer to simply as 'acts') are consistent with the Basic Law and to declare them to be invalid if found to be inconsistent. In our view, the courts of the Region do have this jurisdiction and indeed the duty to declare invalidity if inconsistency is found. It is right that we should take this opportunity of stating so unequivocally."

Do you agree? Please state your reasons.

QUESTION 2

In the speech given in the debate in the Legislative Council on the "Motion of Thanks" regarding the *Chief Executive's Policy Address 1998*, the Chief Secretary for Administration, Mrs. Anson Chan, said:

"I would like to deal with the suggestion raised by a few Members that a ministerial system is the best way to improve the relationship between the Executive and the Legislature. I am not convinced that this is the panacea they have in mind. This is an issue, which requires careful and thorough consideration within our constitutional framework. The Basic Law has set out the blueprint for the political development of Hong Kong in the next ten years. This includes, inter alia, the system for appointing principal officials. We should work according to this blueprint and give it a fair wind before considering whether to introduce changes."

Will a ministerial system make the Executive more accountable to the Legislature in the HKSAR? Please state your reasons.

QUESTION 3

You are asked to give a speech and the title is "Maintenance of the Rule of Law in Hong Kong beyond Year 2000."

Please write your speech.

QUESTION 4

In *Chan Kam Nga and Others v Director of Immigration*, Final Appeal No. 13 of 1998 (Civil), Mr. Justice Bokhary of the Court of Final Appeal of the HKSAR stated that:

"Article 39 of the Basic Law gives ... the International Covenant on Civil and Political Rights constitutional force in Hong Kong."

Please consider the constitutional significance of this statement.

PART B

Choose any *TWO* questions from this part.

QUESTION 5

Lord Atkin in the *Electricity Commissioners* case [1924] 1 KB 171 stated that the prerogative remedies would not be available unless the decision-maker had the power to affect rights. Consider and discuss the history of this requirement in administrative law. Is it the law now that a body must have power to affect rights before an application for judicial review can succeed?

QUESTION 6

Discuss *TWO* of the following cases:

- (1) *R v Northumberland Compensation Appeal Tribunal, ex p Shaw* [1952] 1 All ER 122
- (2) *Ridge v Baldwin* [1963] 3 All ER 66
- (3) *R v Civil Service Board, ex p Cunningham* [1991] 1 All ER 310
- (4) *Cooper v Wandsworth Board of Works* (1863) 143 ER 414

QUESTION 7

"Just as ancient restrictions in the law relating to the prerogative writs and orders have not prevented the courts from extending the requirement of natural justice, namely the duty to act fairly, so that it is required of a purely administrative act, so also has the modern law ... extended the range of judicial review in respect of the exercise of prerogative power. Today, therefore, the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject matter."

Discuss the extent to which the exercise of prerogative power can be reviewed by the courts, and explain whether the law of England on this topic has any relevance to Hong Kong.

QUESTION 8

The Subversion and Secession Ordinance 1999 empowers the Secretary of Security to make an order prohibiting any organisation which advocates, or does anything which promotes, subversion against the Central People's Government or secession of Hong Kong from the People's Republic of China. The Rosicrucian Alliance, against which a prohibition order was in effect, unsuccessfully applied to the Subversion and Secession Review Board established under the ordinance. The ordinance provides:

- 2 "The Board" means the Subversion and Secession Review Board established under section 5.
- 5 (1) There shall be a Subversion and Secession Review Board.
(2) The Board shall be composed of seven members, one of whom shall be a judge of the Court of First Instance, one a solicitor, one an officer in the People's Liberation Army stationed in Hong Kong, one a police officer recommended by the Commissioner of Police, one a Hong Kong deputy to the National People's Congress, and two Assistant Secretaries of Security.
(3) Members of the Board shall be appointed by the Chief Executive by notice in the Gazette for a period of two years from the date of the notice.
(4) The quorum for all meetings of the Board shall be four.
- 6 (1) The Board shall consider any application for review of a prohibition order made under section 17 and may confirm, reverse, quash, or vary the order under review.
(2) In considering any application for review the Board may decide on the grounds that, in the circumstances, the order should or should not have been made, and that the order was or was not infected by an error of law.
(3) The Board may determine its own procedures as it sees fit.
- 10 The decisions of the Board shall be final and conclusive and shall not be called into question in any court of law.

The decision was made by six members of the Board; only the judge was absent. The appointment, however, of the solicitor had expired four days before the hearing (a fact which no one appeared to realise at the time), and the appointment of the police officer had not been recommended by the Commissioner of Police (who had in fact recommended the appointment of the officer's twin brother). The Rosicrucian Alliance had asked for an oral hearing which, however, was denied; instead the Alliance was invited to make written submissions to the Board.

The Rosicrucian Alliance now wishes to apply for judicial review and seeks your advice on the following questions:

- (1) Can the decision of the Board be challenged on the grounds of
 - (a) expiry of the solicitor's term of appointment and the irregularity in the appointment process in respect of the police officer, and
 - (b) failure to grant an oral hearing to the applicant?
- (2) Is the Court of First Instance barred by section 10 from considering the application for judicial review?
- (3) Is the establishment of the Board consistent with the Basic Law?

~ End of Paper ~

UNIVERSITY OF HONG KONG
FACULTY OF LAW

FINAL EXAMINATION 1998 - 99

ALTERNATIVE DISPUTE RESOLUTION (18210)

THURSDAY, MAY 20, 1999

2:30 pm – 5:30 pm

(Reading Time: the first 15 minutes)

INSTRUCTIONS TO STUDENTS:

1. Students must answer **THREE (3)** questions:

Part A: Question No 1 is compulsory - students must answer Question No 1.

Part B: Students must answer **ANY TWO** of the five questions in Part B.

2. Each of the questions answered is of equal weight. Please allocate your time accordingly to ensure that you answer a total of **THREE** questions.
3. Please double-space your answer on the paper provided.

PART A:

QUESTION NO 1: *** QUESTION NO 1 IS COMPULSORY *******

ABC Development Co. Ltd. (“ABC”) is a Hong Kong company specialising in the construction and development of manufacturing and industrial factories in Hong Kong and Southern China (particularly in Shenzhen and Guangzhou). In March 1998 ABC entered into a contract with another Hong Kong company, Wai Yip Electrical Co. Ltd. (“Wai Yip”) for supply of high-tech electrical equipment to be used in the construction of two warehouses in Guangzhou. The construction of these two warehouses is to be completed by January 2000. The electrical equipment was to be delivered by Wai Yip to ABC in six instalments over an 18 month period with full payment to be made upon completion of the contract. ABC claims that in the last shipment of electrical goods (in late March 1999) certain of the items supplied by Wai Yip were defective and were not in accordance with the contract specifications. Mr. Wong, the Chairman of ABC, is very upset because ABC needs these items to complete the construction of its two warehouses on time. Mrs. Yip, the manager of Wai Yip, denies that the electrical equipment delivered was defective and says that any problems with the equipment are due to faulty handling and installation by ABC’s workers. Unfortunately, there has been a two-month delay in ABC’s warehouse construction projects because of this dispute with Wai Yip and ABC is urgently trying to locate another supplier of the high-tech electrical goods.

Mr. Wong, the Chairman of ABC, is furious over the delay and what he calls a “flagrant breach of contract” by Wai Yip. Advise Mr. Wong, the Chairman of ABC, about the various methods which may be used to resolve this dispute with Wai Yip and the potential advantages and disadvantages of each method. In your discussion, give a reasoned opinion on the most appropriate method(s) of resolving this dispute.

PART B: * STUDENTS MUST ANSWER ANY TWO OF THE FOLLOWING FIVE QUESTIONS

QUESTION NO 2:

“The First Wave...ADR advocates boldly assert that ADR can ‘dispense better justice’ than ordinary litigation and that ADR is qualitatively superior to conventional case processing. The First Wave answer to the problem of increasing caseloads and expensive litigation is seductively simple: reduce the quantity of litigation by employing ADR techniques...In clear contrast, there exists a more balanced and sceptical Second Wave of analysis regarding ADR. The Second Wave focuses upon the positive and negative attributes of litigation and of various ADR mechanisms.”
Per E. Brunet, “Questioning the Quality of ADR”, (1987) 62 Tulane Law Review 1

Analyze this statement concerning the rhetoric and reality of ADR in the context of the HKSAR. Support your answer with reasons and examples, where appropriate.

QUESTION NO 3:

Analyze the following statement:

“Principled negotiation seeks to achieve outcomes that take into account people’s interests, to foster and promote continuing relationships and to avoid the limitations of reliance on legal rights and duties. It has been perceived as ‘the product of a feminist conception of dispute negotiation and transaction planning’.”

Per H. Astor and C. Chinkin , Dispute Resolution in Australia (1992, Butterworths, Sydney) at p 92.

In the course of your analysis, consider whether you agree or disagree with this statement and support your answer with reasons and examples, where appropriate.

QUESTION NO 4:

Compare and contrast the following methods of resolving disputes:

- Court-annexed Mediation
- Arbitration
- Mini-trials

In your answer, analyze these methods by considering the following factors: voluntariness, access, cost, time, privacy, control, formality, finality, binding nature, enforcement, and potential remedies. Support your answer with reasons and where appropriate, give examples from the HKSAR to illustrate any points raised in your answer.

QUESTION NO. 5:

Analyze mediation in the PRC in view of the following statement:

“...the idea of mediation as the English term is commonly understood is an important strain in Chinese theory and practice, and the principle of voluntariness is constantly stressed both in academic commentary and in legislation. But that strain is only one strain, and it coexists with other strains that pull mediation as practised [in the PRC] in other, more coercive directions. Thus, the standard picture of mediation needs to be enriched by a recognition that some of its elements previously thought of as aberrational, such as coercion, may in fact be a vital part of a different, competing logic operating within Chinese mediation institutions.”

Per Donald C. Clarke, “Dispute Resolution in China”, (1991) 15 Journal of Chinese Law 244, at p. 246

Support your analysis with reasons and examples, where appropriate.

QUESTION NO 6:

Analyze the following TWO issues:

- (i) Analyze the dispute resolution procedures established by the Hong Kong Government in the Airport Core Programme contracts (concerning construction of Hong Kong's Chep Lap Kok airport)

AND

- (ii) Analyze the benefits and problems of on-line mediation (mediation via email and internet facilities)

Support your analysis of these two issues with reasons and examples, where appropriate.

******* END *******

THE UNIVERSITY OF HONG KONG
Department of Law

Bachelor of Laws Examination
Commercial Law (18351)

Date:21 May, 1999

Time:2:30 p.m. to 5:00 p.m.
(Reading time: the first 30 minutes)

Instructions to candidates:

1. The time for this examination is two hours and thirty minutes. This time period includes 30 minutes reading time.
2. You are required to answer any **three (3)** of the following five (5) questions.
3. All questions are of equal weight. Allocate your time accordingly.
4. Plagiarism will be penalized.
5. The paper consists of 6 pages including this one.

1. "The Sale of Goods Ordinance causes more problems than it solves." [anon]
Discuss.

2. Ben is an astronaut, that is, he has settled his family in Vancouver but has remained in Hong Kong. He has been flying back and forth for the last five years and is getting tired. So, he has set up a business in Vancouver and plans to withdraw from Hong Kong altogether once his business is firmly established.

In March 1999, taking advantage of a temporary revival of the real estate market, he sold his flat and dismissed his servants, moving into a smallish serviced apartment. Since he will have to fend for himself, he went shopping for one essential item for the new apartment: a micro-wave oven. He went to the Ding-Dong Department Store and told the sales clerk that he needed a micro-wave oven. As he seemed very confused, the clerk explained the features of the oven very carefully. After much deliberation, he picked the latest, largest model. As he was paying, the clerk said, "You must be an astronaut." Ben said, "Yes. I really miss my wife's soup."

Ben took the oven home, poured over the instructions and finally learnt how to cook rice, meat and vegetables in it, and even to steam a fish. But he cannot make soup or porridge in the oven. As he must have porridge in the morning and soup in the evening, he wanted to return the oven. The Ding-Dong Department Store refused to take it back.

Ben has come to you for advice. You find this clause on the face of the receipt given to Ben:

If customers wish to use merchandise for a particular purpose, he must give the sales clerk a notice in writing before the purchase.

The same notice had been posted on the walls and shelves of the store at the relevant time.

Advise Ben.

3. Bob is in the graphics design business and has a long-term contract with Sam Paper Ltd. The contract provides that every year in January, Bob would place firm orders for different kinds of paper for that year. These would be delivered within 5 days of notice. Price would be payable on delivery. In January, 1999, Bob ordered for the year:

100 reams of 'ABC' paper in ivory;
500 reams of 'XYZ' paper in white;
50 reams of 'DEF' paper in black.

On 5 February 1999, Bob gave the first notice of delivery of 50 reams of each of 'ABC', 'XYZ' and 'DEF'. As was his practice, Sam immediately put aside the quantities ordered and marked them as Bob's.

Unfortunately for both parties, right after Bob had given Sam his notice, Bob's major client cancelled his orders and Bob's business faced immediate difficulties. So, he refused to accept the 150 reams when delivered on 7 February. As the truck driver could not locate Sam for instructions, he simply took the goods back and put them with the rest of the stock in the warehouse. That very night, there was a fire which destroyed Sam's warehouse and contents.

Advise Sam.

4. Susan carries on business as a wholesaler of nuts. Baker owns and operates the largest chain of cake shops in Hong Kong.

In July Baker contracted to buy from Susan 200 lbs of hazel nuts, 100 lbs of almonds, and 200 lbs of walnuts. He paid 50% of the price in advance. Invoices were to be sent at the end of each month for deliveries made in the month and he agreed to pay within 10 days of receipt.

In August, Baker took delivery of 20 lbs of hazel nuts, 10 lbs of almonds and 20 lbs of walnuts. He used part of the almonds in a new receipt for mooncakes. The trial batches sold very well and Baker proceeded full-scale, stocking all his branches with the new-style almond mooncakes. Soon, however, word came that people became ill after eating these cakes. Some greedy children had to be hospitalized. It turned out that the almonds supplied by Susan had a trace of arsenic which is harmful to humans.

Baker called Susan to pick up the remaining nuts and to stop further delivery, but to wait for his lawyer's letter. Susan refused to take the nuts back, stating that the problem stemmed from the quantities of almonds used. She also threatened to sue Baker if he did not take and pay for the nuts as agreed.

Baker persisted in his refusal and Susan issued a writ in September. In October, an article appeared in the newspapers stating that medical experts have found a cure for cancer in arsenic.

Advise Susan.

5. In September, Baker, the owner and operator of the largest chain of cake shops in Hong Kong, entered into a contract with Sam to buy 180 lbs of hazel nuts, 90 lbs of almonds and 180 lbs of walnuts, all from specified lots. Sam had heard of Baker's dispute with his previous supplier and insisted on payment in advance. As there were few other suppliers, Baker paid. Sam gave Baker orders addressed to the Kowloon Godown where Sam stored his goods. He promised that the nuts would be available for pick-up within 24 hours of notice.

In October, an article appeared in the newspapers stating that medical experts have found a cure for cancer in arsenic. The reporter also mentioned that Baker had sold arsenic cakes which could be consumed in small quantities. There was a run on Baker's cake shops.

Baker called Sam for the 90 lbs of almonds under his contract. He was told that although Sam had 100 lbs in stock, they could not be delivered. Sam was bankrupt and the trustee in bankruptcy was taking advice. Baker also found out that Sam had only one other outstanding order for almonds: Paul had a contract and held a delivery order for 10 lbs. Baker wants the almonds in order to keep his shops stocked with almond cakes.

Advise Baker.

- end -

UNIVERSITY OF HONG KONG
FACULTY OF LAW

LLM EXAMINATION
May 1999

PRC SECURITY AND INSOLVENCY LAW (18489)/LLAW6048

Date: 21 May 1999

Time: 2:30 – 6:00 (including a recommendation of 30 minutes reading time)

General Instructions

1. This examination paper has four pages.
2. This is an open-book examination. Candidates may use all of the teaching materials distributed in the course and any course notes.
3. This paper consists of two questions. Candidates are required to answer both of them. Each question carries one third of the total marks for the course. Each question carries 100 marks.
4. Please write your answers in separate examination books as follows: Answer Question 1 in the blue book, Question 2(a) in the green book, and Question 2(b) in the yellow book.

Question 1

Answer BOTH parts (a) and (b)

In December 1997, a Hong Kong bank ("HK Bank" or "HK Lender") made a loan in US dollars to Guangdong International Trust and Investment Corp. ("GITIC" or "borrower") pursuant to a loan agreement (the "Loan Agreement"), though HK Bank was aware that GITIC had previously been unable to borrow the money from several Chinese banks in the mainland. The loan by HK Bank was registered with the Branch Bureau of the State Administration for Foreign Exchange ("SAFE") in Guangdong province. In the Form of Registration, the Branch Bureau affixed its seal in the appropriate place as required for the reviewing and approving unit (*shenpi danwei*). The affixation of the official seal in China suggests not only that the loan has been reviewed and approved by the Branch Bureau on behalf of SAFE, but also that the loan is legitimate under the PRC regulations. Such an approval of a foreign loan means, in a way, at least that the state has sufficient foreign exchanges to cover the loan amount made by the foreign lenders.

The following letter (the "Letter") was inserted as part of the Loan Agreement between HK Bank and GITIC. It was prepared by the Guangdong Provincial Government and provides, in part

In consideration of HK Bank's agreeing to make the loan available to the Borrower, we, the Guangdong Provincial Government, hereby confirm that:

- (i) The Borrower is a wholly-owned financial institution of the Guangdong province. It is normally called a 'window company' or the arm of the Guangdong Provincial Government. The Borrower is permitted to engage in fund raising for the Guangdong Provincial Government and for the development of the Guangdong economy.
- (ii) . . .
- (iii) We have complete confidence that the Borrower shall perform and meet all of its obligations according to the terms and conditions of the Loan agreement.
- (iv) We irrevocably undertake to support the Borrower by all necessary means so that it will be able to meet its payment obligation in full and in a timely manner under and according to the terms and conditions of the Loan Agreement.

On one occasion, prior to the signing of the Loan Agreement, the chief of the Guangdong Provincial Government told the manager of HK Bank: "GITIC is a fully state-owned financial institute and a business of this nature has never gone bankrupt in China. If it were to do so, the state's creditability would be in danger!" "Most importantly," the chief added, "the loan is going to be for a large power project in Guangdong province. You can imagine that it will no doubt be extremely profitable under the monopoly system in China. We in the government never worry about GITIC's capability to pay back its loans. That is also why so many international banks, even those with rigid financing standards

for approving loans, do not do any risk assessments when dealing with China." Finally, the chief increased his tone and said: "Don't hesitate any more. Your potential loan is actually a very small portion of the overall total. I bet you know that this Letter is, as a matter of fact, a guarantee by the government as the loan to GITIC is actually a loan to the Chinese state. And most importantly, your loan would have to be registered with the state." To reinforce his points, the chief cited some precedents prior to November 1997 in which unsecured foreign creditors had been repaid by the Chinese government when state-owned financial institutions similar to GITIC had failed. A typical example, the chief mentioned, was the foreign unsecured loan to the Agricultural Fiduciary Investment Cooperation of China ("AFIC"), and the loan was fully paid by the Chinese government when AFIC was in difficulty.

Unfortunately, GITIC has applied for bankruptcy in a Chinese court recently. It was reported that the Governor of the People's Bank of China (the Chinese central bank) expressed to the public that those loans that were registered with SAFE would get paid by the Chinese government, and that these loans, by implication, included those unsecured foreign loans as well. But later, the Governor changed his position and stated that both foreign and Chinese creditors would be treated equally, which suggests that HK Bank may not recover anything from the GITIC bankruptcy proceedings.

(a) Some argue that in the circumstances as described above, given that GITIC is not a truly independent legal person, the Chinese Government should pay back the loan, independently of whether or not the loan is secured. What is your view on this? Please discuss (50 marks)

(b) Suppose that HK Bank is now considering making another loan to a different International Trust & Investment Corp. ("ITIC") in China for a power project similar to that described above. However, given the difficulties that HK Bank has experienced with GITIC, please advise HK Bank as to what security devices and arrangements could best protect the bank's interests. (50 marks)

Question 2

Answer BOTH parts (a) and (b)

Article 3 of Chapter 1 of the latest draft of the proposed Bankruptcy Law of the PRC states, in part:

The Law applies to the following civil subjects:

- (1) Enterprise legal persons;
- (2) Partnership enterprises, with their partners involved;
- (3) Sole proprietorships, with their investors involved; and
- (4) Other economic organizations established in accordance with the Law

Article 4 of Chapter 1 of the draft further provides that:

When a debtor is unable to pay debts due, all its assets shall be liquidated in accordance with the procedures provided in the Law. The cessation of payment by a debtor is presumed as inability to pay. The procedure of reorganization provided in the Law is applicable to enterprise legal persons that may become unable to pay debts due owing to difficulties in business or finance.

(a) Please assess the likely impact on the current bankruptcy law regime if the draft of the proposed Bankruptcy Law of the PRC with these two articles is adopted by the national legislature in the near future. In your view, are the changes made to the current law by these sections advantageous or disadvantageous to potential debtors, creditors, and foreign investors? Please explain. (70 marks)

(b) What changes would you recommend be enacted in the proposed Bankruptcy Law of the PRC to facilitate greater cooperation in cross-border insolvencies? Please explain. (30 marks)

END OF EXAMINATION

Supplementary Examinations for LLB First (Year I) (May/ August., 1999)

	Name of Paper	Date of Exam.	Time
1	The Legal System (18108/LLAW1008)	24-May-99	9:30am - 11:50am
2	Law of Contract (LLAW1001/LLAW1002)	16-Aug-99	9:30am - 1:00pm
3	Constitutional and Administrative Law (LLAW2001/ LLAW2002)	19-Aug-99	9:30am - 1:00pm
4	Criminal Law I & II (LLAW2003/ LLAW2004)	25-Aug-99	9:30am - 1:00pm
5	Legal Skills	25-Aug-99	9:30am - 10:30am
6	Law of Tort (LLAW1005/ LLAW1006)	30-Aug-99	9:30am - 1:00pm
7	Law and Society (LLAW1003/ LLAW1004)	31-Aug-99	9:30am - 12:45pm

THE UNIVERSITY OF HONG KONG
BACHELOR OF LAWS

18108/LLAW1008 THE LEGAL SYSTEM (Supplementary Examination)

May 24, 1999

Time: 9 30 am to 11.50 am
Reading time: the first 20 minutes

Candidates must attempt THREE (3) questions

(Note: the Application of English Law Ordinance and the Basic Law for the Hong Kong Special Administrative Region are provided and may be consulted and referred to in the examination. This paper has six questions on two pages.)

- 1 "Life might be much simpler if the common law consisted of a code of rules, identifiable by reference to source rules, but the reality of the matter is that it is all much more chaotic than that ... The myth, for that is what it is, owes its attractiveness to another ideal, that of the rule of law, not men."

Critically discuss.
- 2 Attempt ALL of the following:
 - (1) List all the legal sources of law in the Hong Kong Special Administrative Region.
 - (2) Discuss whether, and if so to what extent, the Application of English Law Ordinance is relevant to determining the law of the Hong Kong Special Administrative Region.
 - (3) Explain the decision in *Oceania Manufacturing Co v Pang Kwong-hon* [1979] HKLR 445.
 - (4) Describe the jurisdiction of each of the major courts and tribunals in the Hong Kong Special Administrative Region.
- 3 Discuss what is meant by "the justice of the common law".

- 4 “The Law Society assumes that fusion would enhance accessibility of lawyers because clients could approach their lawyers without a mediator. It further argues that fusion would not lead to the extinction of an independent Bar. But if the Law Society welcomes the continued existence of an independent Bar, why should there be fusion, especially when there is no obstacle for switching from one branch of the profession to another? The assumption of enhancing accessibility is also unsound. Even if accessibility is a problem, fusion is not the automatic answer or the only solution. Another option is to maintain a specialist branch of advocates who could be directly accessed by the public and to withdraw from solicitors the right to do litigation or advocacy work. Would this not be more sensible?”

Comment on this statement critically. Explain with reasons your view on the alternative proposed here or any other alternatives short of complete fusion which you would put forward.

- 5 Under the Legal Aid (Assessment of Resources and Contribution) Regulations, different methods of assessment are adopted depending on whether the applicant is an adult or a minor. Where an applicant is an adult, the financial resources of the applicant's spouse will be treated as the applicant's own financial resources unless some exceptions apply. Where an applicant is an infant, the financial resources of his parents or guardians will not be treated as the applicant's financial resources.

Do you think that this difference in treatment can be justified?

- 6 Tso was tried upon indictment before a judge and jury. During the trial, the judge ended his summing up shortly after noon and several jurors were not able to keep luncheon appointments. The judge gave leave to jurors to make telephone calls to cancel their luncheon engagements. The judge ordered that they had to make the calls separately and be accompanied by the usher. The judge's direction was as follows:

“Yes, telephone calls can be made, or if you can tell the usher, the usher can do them or you can do them yourselves - but you'll have to do them one by one and be accompanied by the usher.”

The usher remembered that some jurors (but he couldn't recall how many) did make phone calls and that, although he was present when the jurors made the calls, he was at a distance so that he could not hear what was said. After making the phone calls, the jurors gathered together for the deliberation, which lasted for three hours. Tso was convicted by a majority verdict of five to two.

Advise Tso whether there was any material irregularity in his conviction.

END OF PAPER

THE UNIVERSITY OF HONG KONG

Department of Law

Bachelor of Laws Examination

Law of Contract
(LLAW1001/LLAW1002)

DATE: 16 August 1999

TIME: 9:30 am - 1:00 pm
(Reading time: the first 30 minutes)

Instructions to candidates:

1. The time for this examination is three hours and thirty minutes. This time period includes 30 minutes reading time.
2. You are required to answer any **four (4)** of the following seven (7) questions.
3. All questions are of equal weight. Allocate your time accordingly.
4. Plagiarism will be penalized.
5. This paper consists of 6 pages including this one.

1. Alex wanted to take a vacation. He went to Bubble Travels and collected a handful of brochures. After examining these at leisure with his girlfriend, Christine, he decided on a Mediterranean cruise. He went to Bubble Travels the next day to book places for himself and Christine. He paid a 10% deposit and received a receipt with these printed words: "Mediterranean cruise: December 12 to 31. Double de luxe cabin." Two months before departure, Alex paid the balance and received the tickets.

Alex and Christine enjoyed themselves for the first few days of the cruise. But on the fifth day, they became ill. It was discovered later that the food served on board was contaminated. Alex and Christine cut short their vacation and flew home. On their way home, they had a terrific quarrel and broke up as a result.

Alex claimed from Bubble Travels damages in the amount of \$1,000,000 to compensate him for emotional distress on losing his vacation and his girlfriend. Bubble Travels pointed to the following clause which appeared in the 30-page brochure describing the cruise and on the back of the ticket:

Bubble Travels is under no liability for any injury, loss or damage caused to any person in connection with this cruise.

Advise Alex.

2. On 1 April 1999, Bill signed a provisional agreement with Sam Ltd for the purchase of a flat. The agreement included the following terms:

1. Sam Ltd agrees to sell and Bill agrees to buy Flat 18/A at 123 Pokfulam Rd, Hong Kong.
2. Bill agrees to pay the price of \$4,000,000 as follows:
 - (a) 1% (ie \$40,000) on the signing of this agreement (the “initial deposit”);
 - (b) 9% (ie \$360,000) on the signing of the formal contract of sale and purchase (the “further deposit”), and
 - (c) the balance on completion.
3. Both parties shall attend at the office of Ho & Co on or before 10 April 1999 to sign the formal contract of sale and purchase.
4. Should Sam Ltd fail to complete this agreement, it shall repay to Bill the initial deposit and shall in addition pay to Bill a sum equal to the initial deposit as liquidated damages.
5. Should Bill fail to complete this agreement, the initial deposit shall be forfeited.

Bill refused to sign the formal contract or pay the further deposit because the flat only had a useable area of 400 sq ft. Before signing the provisional agreement, Sam Ltd had given him a pamphlet stating that the flat had an area of 500 sq ft.

Both Bill and Sam Ltd have threatened to sue the other.

Advise Bill.

3. Abel has been with the Police Force for 20 years. Although he has worked loyally and diligently throughout that period, he has never once been promoted. It must be said, he is not too bright. For the last 5 years, he has worked in Cain's division. Although Cain is 10 years his junior, Abel looks up to Cain because the latter has all the proper credentials and connections and is the rising star of the Force.

Finally, Abel is on the short list for a promotion. With the prospect of a promotion and an increased salary, Abel thought it was time to move out of the government quarters and buy his own flat under the home-purchase scheme. This would be good provision for eventual retirement.

Cain has a brother, Jacob, who owned a flat. As soon as Cain heard of Abel's plans, he urged the latter to consider his brother's flat and arranged a dinner party for Abel and his wife so that they could meet his brother Jacob and see the flat. Abel's wife, Ruth, did not like the idea, saying that the flat was in too exclusive a neighbourhood, beyond their means and in any event, not worth the money. Abel, however, was flattered to be on social terms with The Boss (Cain) and did not wish to disappoint him. After all, it was very kind of him to have arranged the meeting with his brother. Abel signed the contract.

Within two months, the value of the flat had fallen by 40%. Ruth was angry and became furious when she heard that Jacob was looking for a flat to rent in the same neighbourhood. She wants Abel to get out of the contract.

Advise Abel.

4. In January 1999 Taipei Entertainment Co Ltd (“T Co”) agreed to arrange a concert for Peter, Paul and Mary (“PPM”) at Taipei from 30 July to 2 August. T Co paid PPM \$5 million by way of advance payment and agreed to pay the balance of \$50 million on 4 August.

PPM arrived at Taipei on 28 July and attended rehearsals that evening. Unfortunately, Peter and Paul quarrelled with Gi-gi, a representative of T Co. The next morning, PPM took the first flight back to Hong Kong. The top management of T Co was furious with Gi-gi for having offended PPM. Throughout the day on 29 July, the managing director of T Co tried desperately to reach PPM to apologise and to persuade them to return to Taipei for the concert. He could not make contact.

At midnight on 29 July, a power failure occurred in Taiwan. T Co’s theatre did not return to normal until 3 August.

Advise T Co of its rights and obligations as regards PPM.

5. Purchasers of flats from the Cheung Kong Group could not pay for their flats because of the decline in the real estate market. They protested outside Cheung Kong's office demanding "help" to complete their purchases. Mr Li Ka-shing said, "Cheung Kong has not done anything wrong. It has no legal duty to help. Purchasers should respect the sanctity of contract and help themselves."

Discuss.

6. The courts of Hong Kong should follow *Walton Stores v Maher* (1987) 164 CLR 387 and *Commonwealth v Verwayon* (1990) 64 ALJR 540. [anon]

Discuss.

7. Explain the difference between a liquidated damages clause and a penalty clause and the implications of *Philips Hong Kong v Attorney General* [1993] 1 HKLR 269.

UNIVERSITY OF HONG KONG
(LLAW2001/LLAW2002)
CONSTITUTIONAL &
ADMINISTRATIVE LAW 98-99
(Deferred and Supplementary Examination)

Date: 19 August 1999

Time: 9:30 a.m. to 1:00 p.m.
(Reading time: the first 30 minutes)

Instructions

1. This paper consists of *TWO* parts. Students are required to answer *FOUR* questions (*TWO* questions from each part). Choose any *TWO* questions from **PART A** (Questions **ONE, TWO, THREE** and **FOUR**) and any *TWO* questions from **PART B** (Questions **FIVE, SIX, SEVEN** and **EIGHT**).

2. Every question in this paper carries the same weight and the whole paper will count for 70% of the overall grade. The assignment that you have already submitted will count for 20% of the overall grade while your class presentation will count for the remaining 10%.

3. The following pieces of legislation are provided and may be consulted and referred to in the examination:

- (1) *The Basic Law of the Hong Kong Special Administrative Region*
- (2) *Hong Kong Bill of Rights Ordinance (Cap. 383)*
- (3) *Section 21K, High Court Ordinance (Cap. 4)*
- (4) *Order 53, Rules of the High Court, High Court Ordinance (Cap. 383)*

You may **not** refer to any other materials during the examination.

PART A

Choose any *TWO* questions from this part.

QUESTION 1

Four Chinese legal experts seriously criticized the decision of the Court of Final Appeal of the HKSAR in *Ng Ka Ling v Director of Immigration* [1999] 1 HKC 291. The Court of Final Appeal asserted that the courts of the HKSAR have the constitutional jurisdiction to review legislative acts of the National People's Congress and the Standing Committee of the National People's Congress on their compatibility with the Basic Law of the HKSAR. However, the Chinese legal experts said that the jurisdiction of the Court of Final Appeal could not be extended to Beijing and the Basic Law had not granted such authority to the Court of Final Appeal. According to them, such power of review as asserted by the Court of Final Appeal is sovereign in nature and it is ridiculous that the Court of Final Appeal could have such power. Their most serious criticism is that the judgement would have transformed Hong Kong into an independent political entity.

With whom do you agree, the Court of Final Appeal or the Chinese legal experts? Please state your reasons.

QUESTION 2

What are the main characteristics of the relationship between the government of the HKSAR and the Central Government in China? Do you think Hong Kong enjoys autonomy and what are your reasons? Please refer to constitutional development in Hong Kong after the establishment of the HKSAR.

QUESTION 3

You are asked to give a speech and the title is "Rule of Law: The Pillar of Hong Kong 's Success"

Please write your speech.

QUESTION 4

Some provisions of the Hong Kong Bill of Rights Ordinance (Cap. 383) were not adopted as the laws of the HKSAR by the Standing Committee of the National People's Congress in accordance with Article 160 of the Basic Law. These include the provisions relating to the interpretation and application of the Ordinance in section 2(3), the effect on pre-existing legislation in section 3 and the interpretation of subsequent legislation in section 4.

Consider how this would affect human rights protection in Hong Kong after the decisions of the Court of Final Appeal in *Ng Ka Ling v Director of Immigration* [1999] 1 HKC 291 and *Chan Kam Nga and Others v Director of Immigration* [1999] 1 HKLRD 304.

PART B

Choose any *TWO* questions from this part.

QUESTION 5

The doctrine of "ultra vires" is traditionally regarded as the theoretical basis of judicial review. Discuss whether this is still true on the basis of recent judicial developments in this area.

QUESTION 6

Consider *TWO* of the following cases and illustrate how the courts exercised their powers to review administrative acts. Please state with reasons whether you support the decisions of the courts in the cases:

- (1) *Lee Ma-loi v Commissioner of Inland Revenue* (1991) HCt, MP2936/91;
- (2) *O'Reilly v Mackman* [1983] 2 AC 237;
- (3) *McInnes v Onslow Fane* [1978] 3 All ER 211;
- (4) *Ng Yuen-shiu v AG* [1983] 2 AC 629.

QUESTION 7

Do you think the existing procedure of application for judicial review strikes a fair balance between administrative efficiency and individual rights? Please state your view.

QUESTION 8

IFPI is an association that represents a number of major recording companies. IFPI has made complaints to the Commissioner for Television and Entertainment Licensing about a television licensee, "ZTV." ZTV is wholly owned by HKZTV Ltd. Chen is the chairman of the board of both ZTV and HKZTV Ltd. HKZTV Ltd. has another subsidiary, Dynasty, which is a recording company. HKZTV Ltd. owns 80% of the shares of Dynasty. The remaining 20% are owned by the Tien Organization. Chen is also the director of Tien Organization.

There are mainly two complaints. First, IFPI alleged that there was a breach of sections 10 and 11 of the Television Ordinance (Cap. 52) by ZTV. Sections 10 and 11 of the Television Ordinance provide that:

"10. A license may be granted only to a company formed and registered under the Companies Ordinance which complies with the following conditions:

- (a) The only business carried on by the company shall be:
 - (i) to establish and operate a television broadcasting service;
 - (ii) to carry on such forms of business as may be directly connected or associated with the foregoing....
- (f) No disqualified person ...shall exercise control of the company.

11. A licensee shall comply at all times with paragraph (a) to (f) of section 10."

Section 2 of the Ordinance has the following definitions:

"disqualified person" means-

- (a) ...
- (b) a company which supplies material for broadcasting by a licensee;
- (c) a company-
 - (i) which is a licensee; or
 - (ii) which transmits sound or television material, whether within or without Hong Kong.
- (d) a person who exercise control of a company specified in paragraphs (b) or (c).

"exercise control of a company" means-

- (a) to hold office in that company; or
- (b) to be the beneficial owner of more than 15% of the voting shares of that company.

The second complaint is that ZTV has given preferential treatment to Dynasty's recordings. It was found that the percentage of appearances by Dynasty's artists to those of other companies on certain shows was around 30%.

The Commissioner for Television and Entertainment Licensing organized a meeting for the representatives of IFPI, ZTV and the Dynasty to discuss the dispute with him. Before the meeting was held, the press reported that the Commissioner had said that this was just "a storm in a tea cup". After the representative of IFPI left the meeting, the Commissioner continued the meeting with the representatives of ZTV and Dynasty for an additional 20 minutes.

Three days after the meeting, the Commissioner replied by letter in which he advised IFPI of his decision not to take any further action in respect of the matters complained of. In the letter, the Commissioner stated that the two complaints were dealt with separately. For the first complaint, he said that on the present corporate structure there was no evidence to suggest that Mr. Chen is a disqualified person. On the second complaint, he said that as a general practice he would not interfere with stations' choice of artists and recordings.

Advise IFPI on what legal action it can take and the chance for getting any remedy. Support your answer with reasons and reference to relevant authorities.

~ End of Paper ~

UNIVERSITY OF HONG KONG
FACULTY OF LAW
LLB
Final Examination 1998-99
(Supplementary)

CRIMINAL LAW I AND II
(LLAW2003 / LLAW2004)
(18207)

Wednesday, 25th August 1999

Time: 9.30 am – 1.00 pm
(Reading time: the first 30 minutes)

This paper consists of 4 pages, including this one. There are **SIX (6)** questions in all. Candidates are required to answer **THREE (3)** questions. All questions are of equal weight.

Question 1.

Betty learned that Chris and Eric (whom Betty had been 'told' was a triad member) intended to burgle Peter's house. Peter, a rich businessman, had recently become Betty's lover, but he had also been seen around town with a younger actress. Betty approached Chris and told him he would do her a big favour if he would 'beat up' Peter when they went to his house, if he was there. In return, Betty gave information to Chris about the layout and security at Peter's house.

Several nights later, Chris and Eric broke into Peter's house on the Peak, using the information provided by Betty. Peter was not at home. After ransacking the house for cash, gold, and jewelry, Chris and Eric waited to see if Peter would return.

Shortly afterwards Peter arrived with the actress. Chris and Eric tied them up and Chris then kicked Peter several times in the chest, warning him about being 'unfaithful'. Chris then went to check the front of the house to see if the way was clear to leave. While Chris was in the other room, Eric tied a piece of rope around Peter's neck and strangled Peter to death. When Chris came back and saw what Eric had done, he demanded they leave. But Eric ignored him and, even though Chris repeatedly shouted at him 'let's leave now', and physically tried to make Eric leave, Eric then raped the actress.

Eric has been convicted of murdering Peter and raping the actress.

Discuss the criminal liability, if any, of Betty and Chris (there is no need to discuss their liability for burglary).

Question 2.

You are a prosecutor. You have received the following summary of facts:

'Bill was driving his taxi in Central when Dave got into the taxi. Unknown to Bill, Dave had just attempted to rob a jewelry shop. Dave asked Bill to 'drive to Wanchai ... quickly'. Bill started driving, but suddenly saw the road ahead of his taxi was blocked by two men pointing guns straight at Bill's taxi. The two men, PC1 and PC2, were off-duty police officers responding to cries of 'Robbery' from the staff of the jewelry shop. Dave told Bill, 'They're triad hitmen. They're out to kill me. They will kill both of us for sure'. Bill was very scared and drove his taxi straight at the two men. PC1, who could not get out of the way, was struck by Bill's accelerating taxi and was instantly killed. PC2 jumped aside and fired his gun towards the taxi. The bullet struck Dave in the shoulder. Bill tried to hide below the window level to avoid being shot, but lost control of the taxi which veered across the road, knocking down Emily, before crashing into a wall. Bill tried to get out and run, but was shot in the leg by PC2, who then arrested him. Emily died before medical help could arrive.'

Prepare a memorandum outlining any offences that may have been committed by Bill, Dave, and PC2 based on this summary of facts, and any difficulties you may encounter in proving these offences.

*

Question 3.

Ann recently broke up with her boyfriend. She was very depressed and could not sleep. She visited her doctor who prescribed some sleeping pills for her. Ann found that these not only helped her sleep, but also helped her relax.

One evening, Ann was at her favourite Karaoke bar, when she saw her ex-boyfriend, Ron, enter the bar with his new girlfriend, Sue. Ann became very tense, and took two pills (the doctor had told her only to take one at a time), and also drank some brandy (the doctor had told her not to mix the pills and alcohol before activities like driving etc).

According to other guests, shortly afterwards, just after Ron began singing a love song to Sue, Ann suddenly stood up, walked over to Ron's table, and threw a glass full of orange juice at Ron. The glass missed Ron, but struck Sue, causing several deep cuts to her face. When bar staff tried to grab hold of Ann, Ann hit them several times about the head with her handbag, and when Ron tried to grab her, Ann pushed him backwards. Ron fell against the table, breaking two of his ribs.

Ann says she remembers nothing from the moment Ron began singing; her mind just 'blacked out'. She 'came to' her senses while she was being handcuffed by two police officers.

Discuss the criminal liability, if any, of Ann.

Question 4.

Paul (aged 16) and Mark (aged 18) were out one day. Paul was mentally subnormal (tests showed he had the mental age of a 6 year old) and Mark sometimes played cruel jokes on him. On the way home, while they were waiting at the MTR platform, Mark told Paul that the girl standing in front of them liked Paul. Paul did not believe Mark, but Mark told Paul that the girl had told him this. Mark told Paul to pinch the girl on her bottom to get her attention; Paul did so.

The girl, who did not know either Mark or Paul, jumped in surprise and turned around, accidentally pushing Tim, who was standing in front of her. Tim was knocked forward, off the platform and fell onto the tracks just as the train was arriving. Tim was struck by the train and seriously injured. When medical help arrived, one of the ambulance staff failed to notice a 'medical alert' bracelet on Tim's wrist (which recorded that Tim was allergic to some common pain-relieving drugs). Tim was given inappropriate drugs, suffered an allergic reaction, and died before he could be taken to the hospital for further treatment.

Discuss the criminal liability, if any, of Paul and Mark.

*

Question 5.

Late one night, Robert broke into 'Dazzle Fashions', a small clothing boutique in a fashionable shopping arcade, through an air-conditioning duct. Robert forced open the cash register and two locked drawers in the manager's office, and took some cash and a small box containing a gold watch belonging to the manager. Looking behind a filing cabinet, he found a small safe fixed into the wall. Unsure how to open it, Robert tried to remove the safe from the wall so he could force it open later; but he lacked the equipment necessary to remove it from the wall.

On his way out of the boutique, while crawling through the air-conditioning duct, Robert stopped to have a cigarette. Throwing the cigarette butt behind him, he made his way to the exit of the air-conditioning duct. Turning around, he saw that the cigarette butt had set fire to some waste material lying in the duct. Robert quickly crawled out of the duct, left the building, and went home.

Meanwhile, the fire grew larger and smoke began to fill the duct. This smoke set off a fire alarm, and caused sprinklers to turn on automatically, putting out the fire, but not before water from the sprinklers caused extensive damage to the clothing and other contents of 'Dazzle Fashions'.

All of Robert's actions inside 'Dazzle Fashions' had been monitored on a closed-circuit television camera installed in the boutique (Robert had not noticed this). Unfortunately, Conan, the guard, was asleep at the time and failed to notice Robert's unlawful entry into the boutique. Had he done so, Conan would have called the police and Robert may well have been caught while still inside the boutique.

Discuss the criminal liability, if any, of Robert and Conan (there is no need to discuss Robert's liability for burglary).

Question 6.

Simon contracted AIDS. At first he did not tell his lover, Trudy, but continued to have unprotected sexual relations with her. When he did eventually tell Trudy, one evening after a meal during which they had drunk several bottles of wine, she became very upset and locked herself in the bedroom.

An hour later when she came out, Simon was asleep on the sofa. When Trudy saw him asleep, she suddenly became extremely angry at Simon. She went into the kitchen, picked up a heavy frying pan, and struck Simon several times on the head.

Minutes later, seeing blood flowing from Simon's head, and thinking he was dead, she dragged Simon's body to the balcony of their 10th floor apartment, and pushed him off, intending to say he jumped to end his life because of his disease. In fact, Simon was still alive, but he died as a result of the fall.

Discuss the criminal liability, if any, of Trudy.

*** THE END ***

--

Date: 25 August 1999

Time: 9:30 a.m. to 10:30 a.m.

Legal Skills

SUPPLEMENTARY IN-CLASS TEST AUGUST 1999

Note: this test is to be answered on the University of Hong Kong's standard computer readable answer sheet. Please complete on that sheet your Department (Law) and Subject (Legal Research and Writing). Also write your EXAMINATION number in the space provided at the top right, and underneath that fill in the corresponding numbered ovals. Answer each question below by completing the relevant lettered oval shape. Each question has a number and each answer a letter. In the case of TRUE/FALSE questions A is TRUE and B is FALSE. Please note the instruction to complete the form in HB pencil, and to fill in the oval completely. I have sometimes referred to the oval to be completed as O below (since my word-processor cannot apparently produce the oval).

*Instructions and introductory information are in italics; actual questions are in **bold**. Possible answers are in normal type (unless they are titles). Groups of questions are divided by a line.*

Hint: you might want to make a note in the margin of the correct answer and then transfer several at a time to the computer readable sheet. But make sure you allow yourself enough time for the latter! This sheet must be returned to me with the computer readable sheet. A few questions are to be answered on this sheet - in such a case, leave the corresponding parts of the computer readable sheet blank. A hand symbol (✎) reminds you if you are to answer on this sheet.

PLEASE THINK BEFORE YOU ENTER AN ANSWER. IT IS DIFFICULT FOR THE COMPUTER TO READ AN ANSWER WHICH IS NOT ROUGHLY THE SAME SHAPE AS THE O OR WHEN THERE ARE GREY SMUDGES BECAUSE YOU RUBBED OUT AN ANSWER.

Marks will be deducted for wrong answers - it is therefore not a good idea to guess!

The following statements are to be answered either TRUE or FALSE (any statement which is not entirely true is to be treated as false). For the answer TRUE fill in the A O, and for the answer FALSE fill in the B O:

1. **The *English Reports* contain reprints of The Yearbooks.**
2. **There are more cases in the *English Reports* than the *Revised Reports***
3. **The *All England Reports Reprint* is the same thing as the *Revised Reports***
4. ***Hong Kong Cases* appear weekly**
5. ***The Hong Kong Criminal Law Reports* have ceased to appear**

6. **Please WRITE in the full title for which the following are abbreviations:**

All ER Rep ✎ _____

QB ✎ _____

7. You will sometimes see citations with a square bracket - [] - round a date and sometimes with round - (); why is this?:
- A It is simply a matter of preference on the part of the printer
 B A square bracket means that the date is not necessary to find the relevant volume on the shelves.
 C A square bracket means that the date is essential to find the relevant volume on the shelves.

Below is a list of references (without brackets). How would you complete the citation by (where appropriate) inserting brackets? For each please indicate answer A, B Cor D

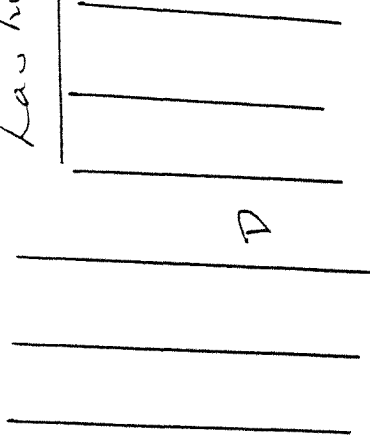
- A The date should be in a round bracket
 B The date should be in a square bracket
 C The citation is correct as it is
 D It is impossible to complete the citation fully as there is some information missing
8. *Edler v Auerbach* 1950 1 KB 359
 9. *The Ki Hing Lau v The Sun Loong Firm* 1910 HKLR 83
 10. *Hong Kong Polytechnic University v Next Magazine* 1997 7 HKPLR 286
 11. *Hong Kong Polytechnic University v Next Magazine* 1996 HKLR 260
 12. *Cheung Lai Wah v Director of Immigration* 1997 3 HKC 64
 13. *Pearce v Brooks* 1866 LR 1 Ex 213

Opposite is a plan of the second floor of the Law Library. On it you will find a number of locations indicated by letters. At which location is each of the following items to be found? J should be used if you wish to indicate "There is no letter corresponding to this item". Note: \cancel{C} with a line through it =computer.

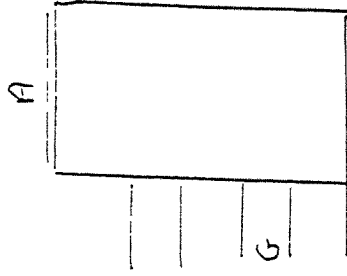
14. *Hong Kong Law Reports* bound volumes
 15. Books on contract and tort
 16. *English Reports*
 17. *Laws of Hong Kong Looseleaf Edition*
 18. *Current Law Case Citator*
 19. *Index to the Law Reports*
 20. English statutes
 21. Current (unbound) issues of Hong Kong law reports

See questions 15-21

Law library \angle / i

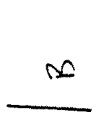


D

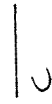


A

P
P
P

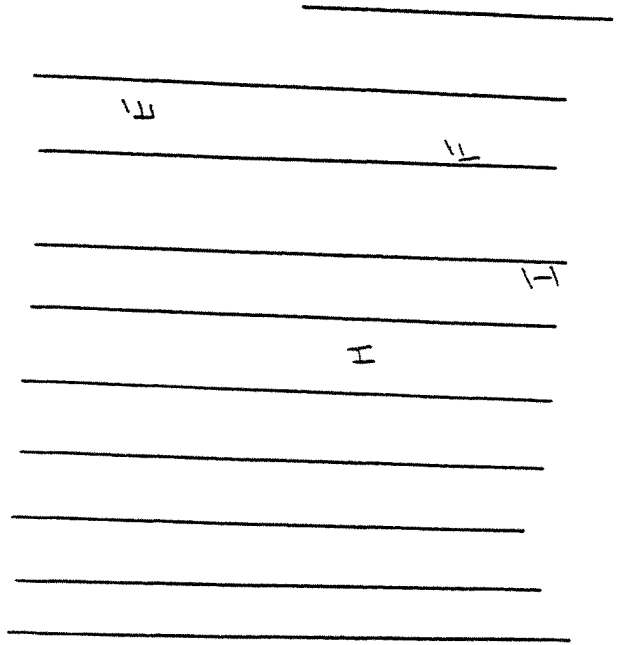
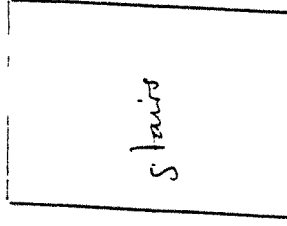


B



C

\angle



E

F

H

I



R
E
E

X

X

Here are the citations of several nineteenth century cases. You may recognise the citation for some of them. Before you set out to find such a case in the Library, it would be good to have an idea of which sort of law report they are in. For each case answer A B or C

- A This case is in one of the nominate reports and the best place to find it would be in the *English Reports*
- B This case is in one of the reports of the Incorporated Council of Law reporting
- C This case is in a law report series which, while it is older than the Incorporated Council Law Reports, is not a nominate report and is not reprinted in the *English Reports* or *Revised Reports*.
- D This is not an English case at all and would not be found in any of these sorts of reports!

- 22. **Brook v Evans (1860) L.J.Ch. 616**
- 23. **Brewer v Dew (1843) 11 M & W 625**
- 24. **Brandrick v Johnson (1875) 1 Vict. L.R. 306**
- 25. **Brinsmead v Harrison (1871) L.R. 6 C.P. 584**
- 26. **Brinsmead v Harrison (1871) 24 L.T. 789**

27. Which of the following is the best strategy for a law student to use in finding cases in the *English Reports*?

- A Look for the volume with the same abbreviation on the spine as you have in the case citation?
- B Look at the wall chart and discover which *English Reports* volume contains the original citation?
- C Look up the case in the Index volumes of the *English Reports*?

Here is a list of publications. Some of them are real and some of them are imaginary. If you think they are real mark A and if you think they are imaginary mark B

- 28. **Hong Kong Commercial Law Reports**
- 29. **Index to All Hong Kong Reported Decisions**
- 30. **Hong Kong Basic Law Reports**
- 31. **Hong Kong Board of Review Decisions**

There is a mistake in each of the following case citations. After the list there are a number of possible errors. You have to indicate which occurs in which citation:

- A The bracket is the wrong shape
- B The date is wrong - this series of law reports did not exist at this date.
- C The law report has never existed
- D The form of name of one of the parties cannot be right for the date indicated

- 32. **HKSAR v Chan Wai Man [1966] 1 HKLR 21**

33. Orient Press v Chan [1996] 6 HKPLR 92
 34. Jones v Thomas [1925] 2 All ER 123
 35. Orient Shipping v Korean Cargo Handlers [1966] 1 HKWLR 111
 36. Chan v Chow [1990] 1 HKLRD 70
-

Here is a short passage with some words missing. Each space has a number. There is also a list of words, some of which are the missing ones. Indicate which word belongs in which space.

The (38) ----- law system which applies in Hong Kong depends upon the (39)----- of precedent. This means that the (40) ----- of previous courts are a major (41)----- -- of the law. These earlier (42) ----- are known as precedents or (43) ----- and they may be (44)----- on a particular later court (which means that court must follow them) or (45) ----- . In Hong Kong the Court of Appeal is (46) ----- by its own previous decisions, but we do not yet know whether the (47) ----- will treat its own previous -(48)----- as (49)-----.

- A persuasive
 - B binding
 - C source
 - D Court of Final Appeal
 - E ratio decidendi
 - F authorities
 - G doctrine
 - H common
 - I decisions
 - J bound
-

Turn over - there is more to come.

Read the extract opposite from a statute. Different parts of the ordinance have been labelled with numbers 50-60, and below are several descriptions or statements. For each number on the Ordinance select the most appropriate description or statement

- A The enacting clause
- B The date the ordinance was passed by the Legislative Council
- C The commencement date.
- D The long title.
- E The date the Ordinance was signed by the Chief Executive..
- F The chapter number given to the ordinance in the laws of Hong Kong
- G The ordinance was the 7th ordinance passed by the Legislative Council in 1999.
- H The page number at which the ordinance appeared when it was first published in the Gazette.
- I This is not part of any section of the Ordinance but still has legal effect
- J None of the other descriptions or statements accurately refers to this number

True or False:

- 61. The commencement date will not appear on the copy of the ordinance printed in the Laws of Hong Kong.
 - 62. The Chief Executive's name will not appear on the copy of the ordinance printed in the Laws of Hong Kong.
 - 63. This is a photocopy of the ordinance, from the Gazette Supplement No. 2.
-

More True or False statements - about interpretation, or about legislative procedure.

- 64. There is a rebuttable presumption that the legislature did not intend to impose liability on people without proof of at least some fault.
- 65. A literal approach to statutory interpretation is one in which the judge considers only the plain meaning of the words used by the legislature and nothing else.
- 66. A purposive approach to statutory interpretation is always more liberal in result as well as method.
- 67. Hong Kong courts will not admit evidence of the Legislative Council debates about an ordinance in order to decide the meaning of some specific part of the ordinance.
- 68. Hong Kong courts may permit a report of the Hong Kong Law Reform Commission to be referred to in court in order to clarify the purpose of a particular ordinance passed as a result of that Report.

69. All bills presented to the Hong Kong Legislative Council are referred to a Bills Committee.

56 HUMAN ORGAN TRANSPLANT
(AMENDMENT) ORDINANCE

Ord. No. 7 of 1999

A125 50

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 7 OF 1999 53

55 (L.S.)

TUNG Chee-hwa

Chief Executive

15 February 1999 54

An Ordinance to amend the Human Organ Transplant Ordinance 59

[19 February 1999] 60

52

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Human Organ Transplant (Amendment) Ordinance 1999.

(2) Section 2(a) shall come into operation on a day to be appointed by the Secretary for Health and Welfare by notice in the Gazette. 57

2. Restriction on transplants
between living persons 51

Section 5 of the Human Organ Transplant Ordinance (Cap. 465) is amended—

(a) by adding—

“(2A) Two persons shall not in any particular case be treated as spouses whose marriage has subsisted for not less than 3 years unless the fact of the relationship has been established by such means, or in accordance with such guidelines, as may be prescribed by the board by regulation.”; 58

(b) by adding—

“(6A) Notwithstanding subsections (4)(c) and (5) (insofar as it relates to subsection (4)(c)) or, as the case may be, subsection (6) (insofar as it relates to subsection (4)(c)) in the case, but only in the case, of the recipient—

(a) the board may give its approval under subsection (3); or

Opposite is part of a Hong Kong reported case. Please read it quickly and answer the following questions - True or False?

- 70. It would be equally accurate to give the name of this case as *Rex v Chu Kam-to and Another*
- 71. It would be acceptable in something discussing only criminal cases to refer to this case simply as *Chu Kam-to*
- 72. We do not know the name of one of the defendants
- 73. This is an appeal case

The next question offers several answers:

- 74. The defendants were accused of possession of drug, but the drugs could not be produced in court: why not?
 - A the drugs had never been found in the defendants' possession
 - B the drugs had been mislaid by the police
 - C The police said the drugs had been taken by someone pretending to be a police officer
 - D The drugs had been destroyed by the police
- 75. On which words did this part of the decisions turn:
 - A "shall be submitted"
 - B "shall be produced"
- 76. Which words describes the way in which the court dealt with *Asia Dyeing Co Ltd v The Authority*:
 - A applied
 - B distinguished
 - C reversed
 - D overruled
- 77. The extract from the case does not include the final decision, but if you were preparing a headnote of the case you could derive part of the ratio decidendi from this part of the case. On the lines on the last page, write in your own words the holding you would derive from this extract

AND

Chu Kam-to and Another

(High Court)

(Criminal Jurisdiction No. 229 of 1992)

The defence, first of all, relied on Section 86 of the Magistrates' Ordinance which deals with custody of depositions and exhibits after committal. Section 86(4) provides:

"All exhibits, other than documentary exhibits shall, unless the Magistrate otherwise directs, be taken charge of by the Commissioner of Police and shall be produced at the trial by him or by a police officer deputed for that purpose."

It was submitted by the defence that by virtue of the use of the phrase "shall be submitted", there is a mandatory burden on the Commissioner to produce such exhibits. Failure to do so breaches the fair hearing provisions in the Bill of Rights. Any resulting conviction would not be according to law and the defendants would have been denied adequate facilities both for the preparation and conduct of their defence.

The Crown submitted that this section is only directory and relied on the case of *Asla Dyeing Company Limited v. The Authority* (appointed under the Air Pollution Control Ordinance (Cap. 311) [1990] 1 HKLR 263.

This case was decided in a totally different matrix of facts. It concerned with the Air Pollution Ordinance, s. 9. The question was whether the Authority should state whether certain pollution was in existence or imminent. The Court of Appeal decided that this section which the Authority had not complied with was only directory and not mandatory. Non-compliance did not therefore vitiate the notification given therein.

In my view, under s. 86(4) of the Magistrates' Ordinance, the Commissioner of Police is under a mandatory duty to take charge of all non-documentary exhibits and to produce them at trial. However, it is not a question whether this section is mandatory or directory. It cannot be that whenever the Commissioner of Police had been in breach of his duty to preserve and produce exhibit to the court, there must be a stay of the criminal proceedings concerned. The question is, whether in the event of such a breach of this duty the court should stay the criminal proceedings under the Bill of Rights or otherwise under the common law.

Yam, J.:

Court:

The 1st and 2nd defendants are charged with two counts of possession of dangerous drugs the respective amount of 40.23 grammes and 53.63 grammes of salts of esters of morphin the purpose of unlawful trafficking.

The Prosecution alleged that at about 1614 hours on 21st March 1992, the 1st and 2nd defendants were apprehended outside their home at Unit 425, Choi Ping House, Choi Estate. The 2nd defendant is alleged to have had in her possession a white plastic containing dangerous drugs, the subject-matter of the first charge. The premises were searched with money and further drugs being seized therein, the subject-matter of the second charge.

Both defendants were arrested and taken to Sheung Shui Police Station where they all made admissions under caution.

The case eventually commenced before me on 11th November 1993. Both defendants pleaded not guilty and the 1st defendant objected to the cautioned statement and the issue of voluntariness was tried separately in *voir dire* proceedings.

On 11th November, counsel for the 1st defendant required the Crown to produce the exhibits for inspection. The case put on his behalf was that the drugs had been planted in police and that he had never signed on the exhibit envelope containing the drugs. The Crown sought an adjournment to enable them to produce the drugs in court.

The Crown have been unable to locate the drugs. Apparently the Crown discovered someone imposed as PC 47429 went to the Sheung Shui Police Station on 29th September and obtained the drug exhibits together with the containers and the envelope containing drugs. Thereupon the defendants applied for an order of permanent stay of these proceedings before me as against both defendants.

4

THE END - please ensure that you have written your examination number on both this sheet and the computer readable sheet

THE UNIVERSITY OF HONG KONG
BACHELOR OF LAWS

LAW: LAW OF TORT (LLAW1005/LLAW1006)

Date: 30 August, 1999

Time: 9:30 a.m. – 1:00 p.m.
(including 30 mins. reading time)

(4 pages – 9 questions)

ANSWER ANY FOUR (4) QUESTIONS

1. “As a system for providing compensation for personal injuries, the law of tort is neither effective nor efficient.”

Discuss.

2. Albert’s wife Betty suddenly became very ill, and so Albert put her in his car and drove her to the hospital. Betty was not wearing a seatbelt. It was 3 a.m. and there was very little traffic around. Albert drove very fast. He came to a set of traffic lights which were red, but he went straight through, saying to himself “I’m sure there is no one coming and I really must get Betty to hospital”.

Unfortunately there was a car coming toward the same junction, also being driven fast. This car was driven by Carl who was drunk, and he had a passenger, Doris, who was also very drunk. They were laughing and joking with each other about driving fast and frightening the other people in the road.

The two cars collided. Albert and Carl were not harmed. However, both Betty and Doris suffered personal injuries.

Advise Betty and Doris regarding their claims in tort.

3. Ann had a stormy relationship with her boyfriend John. He had violent temper and sometimes shouted at her, and on occasion hit her. At first she forgave him, but eventually she insisted that they must break up.

After the break-up John became obsessed with Mary. He started to follow her about, at first silently, and then he would get closer. He would come up to her and whisper in her ear when she was standing at a bus-stop or in the supermarket “I still love you”. When she did not respond, he started to telephone her. He would phone her at home, where she was living with her parent, and say “I am going to rape you”. Eventually he began phoning her at work and saying nothing (she knew it was him because occasionally he would say when he phoned at home “Did you like my call to you at work yesterday?”). And she found that he would simply stand outside the block of flats, which had only one exit, and wait for her to come in and out, so she would have to pass him every time.

Advise her as to her chances of bringing a civil action against John, under statute or common law, for the events which have happened since the break up of the relationship with John.

4. Mark, a businessman, purchased a small 50 year old commercial office block. Mark let most of the premises to commercial tenants.

Mark wanted to increase his profit margin from rents, and to justify a proposed increase in rents Mark decided to have the building upgraded. He hired a general contractor, Peter Ltd., to do the work. As the work would require an exterior face lift, exterior specialists would have to be retained by Peter. Mark suggested that Peter use Sam Ltd., exterior specialists trusted by Mark, since Sam had done such work on other buildings that Mark owned. Sam assured Mark that the building would acquire a stylish appearance, and that the rental value would increase.

Unknown to Mark & Peter, much of Sam's equipment, including scaffolding materials, had become old and outdated and to save money, Sam decided not to replace it. One day, fortunately while no one was working on the scaffolding, an entire wall of scaffolding collapsed onto the street. Part of the scaffolding struck Mary, who was walking by, causing her serious injury. It did not hit Mary's boyfriend, John, who was walking slightly behind her, having stopped to look into a shop window. However, as a result of this incident he suffered nervousness and nightmares, for which he still requires medical treatment.

The debris from the accident in front of the building was extensive, making access to the premises difficult, if not impossible for the commercial tenants and their customers. It took a few days for rescue crews to disentangle and remove the mess. A number of tenants lost business as a result, for which Mark was required to provide rent rebates, pursuant to a clause in the lease which covered such situations. As a result, Mark suffered a decline in profit.

Advise Mary, John and Mark, who wish to recover damages in tort.

5. Dr Wong is a distinguished lecturer in architecture at the University of Kowloon. He is the author of a book on Hong Kong's new airport entitled *Hong Kong's New Airport: An Analysis of the Project*. It examines the commercial, political, and structural aspects of the project.

The book includes the following statements:

(a) "The Chief Secretary totally misled the Legislative Council about key elements in the financing of the airport project";

(b) "The man who designed the runway, David Chan, is an amateur";

(c) "The project could have been completed at half the cost; the Financial Secretary is responsible for this mess. I wouldn't be surprised if he profited personally out of it."

(d) “I understand the ICAC is investigating the affairs of one of the surveyors on the project, Sheila Shady.”

Actions for defamation are brought against Wong, by the Chief Secretary, David Chan, the Financial Secretary, and Sheila Shady respectively. Advise Wong in respect of his possible liability, including the defences that may be open to him.

6. **Answer (a) and (b)**

(a) Commenting on the criteria to determine whether or not a breach of statute gives rise to civil liability, Lord Denning said ‘You might as well toss a coin to decide it’.

Discuss, with reference to cases.

(b) Assuming that the court has determined that a breach of the statute does give rise to a cause of action for breach of statutory duty, **write an essay outlining the advantages and disadvantages of suing in breach of statutory duty rather than in negligence. Be sure to make reference to cases in your answer.**

7. To supplement his income, John started up a part-time window-washing business. He agreed to wash the windows in the 2nd-floor flat occupied by Bill. In order to reach the outer side of the windows, John was required to extend much of his body outside the window. Bill asked him to wear a safety harness when doing so, indicating that the window frames may not be very strong. As it was not a long drop to the bottom, John later decided not to wear the safety harness, even though he was aware that it was an offence for window washers to wash windows without wearing a safety harness in such circumstances. The window frame that John was holding on to was old and proved weak and broke, causing John to fall to the pavement below. John was injured, as was Mary, a pedestrian on the public sidewalk on whom John fell.

With reference to relevant case law and legislation, advise John and Mary in the tort actions they may wish to bring.

8. Tom, aged 8, and his playmate Jerry, aged 9, were playing on their skateboards on the footpath of Clearwater Bay Road. Tom challenged Jerry to a race along the footpath in the course of which Tom in trying to gain extra speed, lost control and went into the road. The driver of an oncoming car, Michael, who had obtained his driver’s licence only 2 days earlier, was driving the car of a neighbour, Mrs Chan. He was exceeding the speed limit somewhat in order that his passenger, Mrs. Chan’s son, Perry, would not be late for his doctor’s appointment. Before departing, Perry had agreed that Michael would not be liable for any injuries that might be caused in the trip to the doctor’s office. Michael swerved to avoid Tom, but due to his inexperience and speed, was slow to react and applied the brakes too late. The car hit Tom with full force, causing him critical injuries.

Perry suffered cuts and bruises in the crash.

Donna, who witnessed the accident from the balcony of her nearby flat, fainted and hit her head on the floor, suffering head injuries.

Jerry was physically uninjured, but suffered nervous shock.

Advise Michael regarding his possible tort liability.

9. “The House of Lords has severely restricted the scope of the torts of nuisance and *Rylands v Fletcher* in the cases of *Cambridge Water v Eastern Counties Leather*, and *Hunter v Canary Wharf*”

Discuss.

- End of Paper -

University of Hong Kong
Bachelor of Laws Examination
(1998–1999)

Law and Society
(LLAW1003/LLAW1004)

Supplementary Examination

Date: 31 August 1999

Time: 9.30am to 12.45pm (including 15 minutes reading time)

Instructions to Candidates: **Please answer four (4) questions, two (2) of which must be taken from Part I, and two (2) from Part II.**

Part I (Answer TWO questions from this Part, which consists of questions 1 to 4)

1. Discuss the political aspects of Confucianism and examine its influence on the development of China's constitutional system.

2. Which social contract theorist do you find most attractive, and why?

3. Discuss the major differences between the constitutional systems of China and the HKSAR, and assess the prospects of the success of the doctrine of 'one country, two systems'.

4. Discuss **CRITICALLY** the statement that human rights are an invention of the West and have no relevance to Asia.

Turn over for Part II

Part II (Answer TWO questions from this Part which consists of questions 5 to 8)

5 Examine **CRITICALLY** the arguments in favour of the superiority of the capitalistic market system over other economic systems.

6 Compare the role of law in market and planned economies through an examination of contractual remedies in legal systems of the market and planned economies

7 Answer both parts (a) and (b):

It is sometimes said that property in socialist systems falls in the domain of public law while property in market systems falls in the domain of private law.

(a) What do you understand by this statement?

(b) Do you agree with it?

8 Through an examination of economic and political reforms in China, discuss critically measures that are necessary for the transition of a planned economy to a market economy.

END OF QUESTION PAPER

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