

# **BARRISTERS QUALIFICATION EXAMINATION 2024**

## **PAPER I: Contract & Tort**

### **PART A (Contract)**

#### **QUESTION 1**

Daniel is an insurance agent. He had worked for Ace Insurance Co. as its insurance agent for a few years and had been a successful agent.

One day, Peter, who was an insurance agent of Fund Insurance Co. (“FIC”) with the title District Manager and a friend of Daniel, invited Daniel to join FIC and worked in his team. Peter told Daniel that FIC would offer him a join-in incentive bonus of a sum of HK\$800,000 upon his joining FIC and a further bonus of HK\$300,000 at the commencement of his 4<sup>th</sup> year. Daniel asked about the conditions upon which such bonuses were offered to him. Peter told Daniel to the effect that the incentive bonus would be advanced immediately upon Daniel joining FIC without any condition whereas the other bonus would be granted if he met the performance benchmark, and the bonuses were not repayable by Daniel in any event.

A few days thereafter, Daniel decided to join FIC and went to its office to sign the agent’s agreement. A staff of the Administration Department of FIC met with Daniel and presented a copy of the agreement for Daniel’s signature. Before he signed, Daniel asked the staff whether he would be entitled to an incentive bonus of HK\$800,000 immediately upon his joining of FIC and a performance bonus of HK\$300,000 at the 3<sup>rd</sup> year. The staff replied to the effect that the terms for his entitlement to bonuses had been stated in the agreement, and asked Daniel to sign it which he did. Daniel commenced his agency work at FIC, and duly received the incentive bonus of HK\$800,000 in full.

Despite the bad economy, Daniel managed to meet the performance benchmark for the first 3 years, but he did not get the further bonus of HK\$300,000. When he asked FIC for it, FIC referred him to his agreement which did not provide for such performance bonus at all. At the 38<sup>th</sup> month, in accordance with the contract term FIC gave Daniel one-month’s notice to terminate his agent’s agreement and demanded Daniel to repay HK\$400,000 of the incentive bonus pursuant to a clause which stated that “notwithstanding anything to the contrary, the Agent shall repay 50% of the join-in incentive bonus if the Agent’s Agreement is terminated for whatever reason within the first 4 years from its effective date”. The agreement also contains a clause to the effect that it was a complete agreement between the parties which supersedes all previous communications whether written or oral. Daniel did not know about such clauses when he signed the agent’s agreement, and felt that FIC’s demand for repayment was a penalty.

**Advise Daniel whether he has any ground to decline FIC’s demand and claim for the further bonus of HK\$300,000.**

**[25Marks]**

## QUESTION 2

Winnie once lived in the UK for a few years, and had the experience of purchasing a facial plan with a beauty salon in the UK by way of instalment payments with a credit card issued by a UK bank, and received protection under the Consumer Credit Act 1974 which provided that in relation to a transaction financed by a debtor-creditor-supplier agreement, if the debtor has any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor who with the supplier shall be jointly and severally liable to the debtor. She was aware of a UK case which says that the law implies a term into such a credit agreement that it is conditional on the survival of the supply agreement, such that upon rescission of the supply agreement she may also rescind the credit agreement.

Last year, Winnie was relocated to Hong Kong and, upon the sales pitch of a beautician of a local beauty salon, had similarly purchased a facial plan with that salon by way of instalment payments with her credit card issued by a local bank in Hong Kong. However, not long after the payment of the 1<sup>st</sup> instalment to the bank, Winnie discovered that the beautician had made misrepresentations which induced Winnie to purchase such facial plan. Winnie thus sought to rescind her contract with the beauty salon and also requested the bank to terminate the credit purchase arrangement and stop charging her for future instalment payments.

Whilst Winnie was successful in rescinding her contract with the beauty salon on the ground of misrepresentation, the beauty salon refused to pay any damages or refund any money to Winnie, and in fact went insolvent not long thereafter.

The bank refused to terminate the credit payment arrangement, and told Winnie that it would continue to charge her with the future instalment payments. The bank contended that it was within the contemplation of institutions within the banking industry as well as the Hong Kong Monetary Authority that for instalment payment plans, if the terms of such credit payment arrangement so provide, the credit agreement could survive even when the service contract between the customer and the service supplier came to an end and the customer's payment obligation towards the bank continued. The credit agreement between the bank and Winnie contained express terms to the effect that Winnie "will not be able to stop payment to the Bank even if the goods or services contracted for are not delivered by the merchant", and that if Winnie has any complaint arising from the services supplied by the merchant, Winnie "should resolve the complaint directly with the merchant and the Bank will continue to debit the monthly instalments to [Winnie's] credit card account".

Hong Kong does not have any statutory equivalent to the Consumer Credit Act 1974.

**Advise Winnie as to the prospects of her intended claim against the bank.**

**[25Marks]**

### QUESTION 3

George and Harris are brothers. George is a successful businessman and lives in a house with his own family. Harris, the younger brother, lives in a studio flat, works as a freelance and takes up design and renovation jobs. The two brothers seldom meet each other and are not on particularly good terms.

George recently purchased a commercial premises and intended to renovate it and rent it out as a long term investment. In around August, at a family dinner celebrating the 70<sup>th</sup> birthday of their mother, upon learning of George's recent purchase, Harris said that one of his customers was looking for a lease of a commercial unit for his business. George asked Harris if he could help him to renovate the premises and then to try to rent it out at a monthly rent of HK\$300,000. Harris said he was busy and could not help. Mother asked Harris to consider helping his brother, and George told Harris that if he could help and manage to rent it out at a monthly rent of not less than HK\$300,000, Harris could get 20% of the rent. Harris finally said he agreed to do it for George.

Harris proceeded to renovate the premises for around 2 months and spent a total of HK\$400,000 as renovation cost. George attended the renovation site from time to time and made a few requests over the work which Harris took them on board and made changes. Harris was so devoted to this job that he turned down another renovation job opportunity which he would have taken up and earned a profit of HK\$200,000 but for George's project. Harris showed his customer around the newly renovated premises, and his customer loved its chic design and ambience and agreed to rent it at a monthly rent of HK\$400,000. George then entered into a tenancy agreement with that customer of Harris in November for a fixed term of 3 years at the monthly rent of HK\$400,000.

In February next year, George gave Harris a red packet during the Chinese New Year and thanked him for his help in renovating the premises and renting it out at a good price. A few days later, Harris opened the red packet and found that it contained a cheque drawn in his favor in the sum of HK\$240,000.

Apart from that red packet of HK\$240,000, however, Harris did not receive any further sums from George. When the tenancy was about to expire, Harris heard George saying that it was a satisfactory lease and he received all the rental income without any trouble. George also said that he was not renewing the lease and planning to sell the premises as its market value had gone up quite significantly. Harris then asked George to honour his promise made about 3 years ago to give Harris 20% of the rent George received. George reacted with a surprise look, and told Harris that he could not be serious about the small talks at a family dinner. George remarked that in any event he had already given Harris \$240,000 as a token of appreciation, and Harris should not ask for more. Harris felt aggrieved and contemplates legal action to sue George.

**Advise Harris as to the prospects of his intended claim against George and what if any he could recover.**

**[25Marks]**

## QUESTION 4

In *Holman v Johnson* (1775) 1 Cowper 341, 98 ER 1120, Lord Mansfield said as follows:-

“... No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff’s own stating or otherwise, the cause of action appears to arise *ex turpi causa*, or the transgression of a positive law of this country, there the Court says he has no right to be assisted. It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff.”

Lord Sumption, speaking extra-judicially, stated as follows:-

“... the law of illegality is an area in which there are few propositions, however contradictory or counter-intuitive, that cannot be supported by respectable authorities of the highest levels.”

- “Reflections on the Law of Illegality” [2012] 20 R.L. Rev 1, at p.1

**Discuss the extent to which Lord Mansfield’s statement remains a correct approach on the law of illegality in Hong Kong, in the light of Lord Sumption’s remark and with reference to English and Hong Kong authorities.**

**[25Marks]**

## **PART B (Tort)**

### **QUESTION 5**

Aaron was a regular customer of a bar operated by Castle Ltd. The bar offered “buy one get one free” on all alcohol from 5:00 pm to 8:00 pm on a daily basis. Everyday Aaron would go to the bar and drink alcohol from 6:00 pm to 8:00 pm after work before his personal driver arrived to take him home. His driver usually parked the car approximately 20 metres away from the bar until Aaron got into the vehicle. Before the accident, Aaron was never intoxicated or never in any way acted inappropriately at the bar and always had a good relationship with the staff including the manager, Ben.

On the day of the accident, Aaron attended the bar one hour earlier and began drinking from 5:00 pm to 8:00 pm. He ordered and consumed alcohol 3 times his usual limit and by 7:00 pm it was obvious to all the staff at the bar that he was drunk. He continued to order and drink alcohol from 7:00 pm to 8:00 pm. As he was leaving the bar at about 8:00 pm, Ben observed that Aaron was struggling to walk properly and therefore helped him to leave the bar. After Ben carried him outside the bar, Aaron walked for about 10 metres towards his driver until he fell backwards and suffered serious head injuries.

An expert report showed that had the bar stopped serving alcohol to Aaron from 7:00 pm onwards, there was a 49% chance that he would not have been so intoxicated to the extent that he could not walk properly. On the other hand, the medical report of his treating doctor confirmed that Aaron suffered from a genetic disorder of alcohol intolerance and therefore was unable to say whether it would have made any difference to his intoxicating state had Aaron stopped ordering and/or drinking from 7:00 pm.

**As far as possible with reference to case authorities, and within the confine of the facts as provided hereinabove, please advise Aaron all available and substantive causes of action against Castle Ltd (if any).**

**[25Marks]**

## QUESTION 6

Adam was employed as one of the chefs at a restaurant owned by Cubo Ltd, which in turn was solely owned by Charles. The terms and conditions of employment for each employee at the restaurant (including chefs) were governed by a written contract. It was known to Charles and all staff that Adam had a very timid character and could be an easy target of bullying. Owing to leave granted to various chefs, Charles would from time to time ask Billy to take up the vacant position until the return of the chef in question.

Although Billy would be paid a fixed monthly salary, he was not required to sign any written contract. Whenever Billy worked at the restaurant, he wore his own uniform and used his own equipment, which he brought into work for cooking the dishes in accordance with the recipe provided by the restaurant. It was known to Charles and all the staff at the restaurant that Billy had a hot-tempered character and had previously picked on Adam at work.

In the morning on the day of the incident, a dispute broke out between Adam and Billy whereby Charles had to assign them to work at different parts of the kitchen in order to separate them. As the restaurant became busier at night, Charles re-assigned Billy to work with Adam in the same part of the kitchen. Soon after the re-assignment, Billy subjected Adam to foul-mouthed abuse over the use of kitchen utensils followed by a violent and unprovoked assault. As a result of the incident, Adam sustained very serious injuries.

**As far as possible with reference to case and/or statutory authorities, and within the confine of the facts as provided hereinabove, please advise Adam all available and substantive causes of action against Cubo Ltd (if any).**

**[25Marks]**

## QUESTION 7

A private residential complex known as Delta Court was situated directly opposite another private residence called Camden Court. The two residences were separated by a public road. A 30-metre-tall tree was planted within the lot boundary of Delta Court. The tree was 50 years old with clear signs of decay. One of the residents in Delta Court also kept a large number of rats inside the tree trunk such that the tree had effectively become a home for the rats.

Ava and Bella were twins and residents of Camden Court. At the time of the accident, Ava was on her way to visit a friend in Delta Court and Bella intended to take public transport outside Delta Court. After Ava had entered into Delta Court and as Bella was waiting at the bus stop outside Delta Court, the tree collapsed and fell across the road causing serious injuries to Ava and Bella. The top part of the tree also fell onto the residential complex in Camden Court and the rats therein escaped and entered into the residence causing considerable property damage.

**As far as possible with reference to case and/or statutory authorities, and within the confine of the facts as provided hereinabove, please advise Ava, Bella and the Incorporated Owners of Camden Court all available and substantive causes of action against the Incorporated Owners of Delta Court (if any).**

**[25Marks]**

## QUESTION 8

As far as possible with reference to case and/or statutory authorities, and within the confines of the facts as provided in Questions (5) to (7) above but subject to the following factual assumptions:

- (1) **Question 5:** Assuming Ben had previously told Aaron not to order anymore alcohol at around 7:00 pm and Aaron had refused help from Ben when leaving the bar, please advise Castle Ltd all available and substantive defences (if any)?
- (2) **Question 6:** Assuming Adam struck Billy first causing him very serious injuries and some of the injuries to Adam in fact resulted from Billy acting in self-defence, please advise Cubo Ltd all available and substantive defences (if any)?
- (3) **Question 7:** Assuming Ava mistakenly walked into the cordoned-off area near the base of the tree and Bella ignored the warning not to stand at the prohibited area outside Delta Court, please advise the Incorporated Owners of Delta Court all available and substantive defences (if any) against the cause of actions by Ava and/or Bella?

**[25Marks]**

## PAPER II: Property, Conveyancing; and Equity

### PART A (Property and Conveyancing)

#### QUESTION 1

In January 2016, Alice Au bought Flat 16A Pine Court, Hong Kong (“Flat 16A”) from Barry Lee for a consideration of HK\$15million, which was the market price at that time. Under the agreement for sale and purchase Barry agreed to give good title to Alice. In the subsequent assignment Barry assigned as beneficial owner. Barry had acquired Flat 16A in 2008 under a Deed of Gift from his uncle, Uriah Lee.

Pine Court is a block of 60 residential flats built in 1975. There is a Deed of Mutual Covenant (the “DMC”) which states that corridors and lift lobbies are common parts. The DMC does not state who owns internal walls. The owners of Pine Court, Hong Kong incorporated in 1993. Pine Court is managed by OK Management Ltd.

The DMC includes the following covenants:

1. *No owner will alter the common parts of Pine Court, Hong Kong without the prior consent of the building manager.*
2. *No owner will make any structural alterations to any part of Pine Court, Hong Kong.*

In January 2024, Alice received a letter from the owners’ corporation complaining about the following alterations made to the Flat in 1995 by Uriah Lee who was the owner at the time. The letter states:

*A portion of the corridor outside Flat 16A has been incorporated into Flat 16A. This has been achieved by demolishing the internal walls separating Flat 16A from the corridor and moving the entrance out into the corridor.*

The letter from the owners’ corporation requires Alice to reinstate the demolished walls, move the entrance to Flat 16A back to its original position and vacate the corridor. Alice has refused.

**Answer the following questions giving reasons for your answers:**

- (a) Advise the owners’ corporation whether it can obtain an injunction forcing Alice to carry out the reinstatement work described above and on the likelihood of the court granting an injunction. If you need more information to advise the owners’ corporation state what information you need. (20marks)**
  - (b) Assume that the owners’ corporation obtains the injunction, advise Alice whether she has any remedy in respect of breach of the DMC against Uriah Lee or Barry Lee. (5marks)**
- [25Marks]**

## QUESTION 2

In 2018, Hugo bought a residential flat known as 3B Marina Gardens, Hong Kong (the “Flat”) in his sole name. The price was HK\$16million. Hugo’s wife, Winnie, paid 50% of the purchase price out of her own savings. Hugo borrowed the remaining 50% from the Goodwill Bank Ltd. (“Goodwill”). The loan was secured by a first legal mortgage of the Flat and is repayable by equal monthly instalments of principal and interest. The mortgage includes a restriction on letting without Goodwill’s consent. Hugo and Winnie moved into the Flat on the day on which Hugo completed his purchase and mortgage of the Flat.

In July 2024, Hugo lost his job and he has not paid the monthly instalments of principal and interest since August 2024. Goodwill has sent a letter to Hugo telling him to move out as the Flat will be sold. Goodwill also said that it already has a buyer who has offered HK\$13million. Hugo has replied to Goodwill saying that the Flat is worth much more than HK\$13million and that the property market is going up. Hugo also threatened to stop a sale of the Flat by Goodwill for a price less than HK\$17million.

Winnie has written to Goodwill saying that she has an interest in the Flat and will not move out.

**Answer the following questions giving reasons for your answers:**

- (a) **Advise Goodwill on its rights to take possession and sell the Flat and on the matters raised by Hugo and Winnie. (20marks)**
- (b) **Assume that in July 2024 Hugo and Winnie moved out and that Hugo leased the Flat to Terry for a term of two years starting on 1 August 2024 under a written lease which Hugo and Terry both signed. Terry has just discovered that Hugo did not obtain Goodwill’s consent to the lease. Terry has stopped paying rent, but remains in possession of the Flat. Advise Hugo what action (if any) he can take against Terry to recover unpaid rent. (5marks)**

**[25 Marks]**

### QUESTION 3

Vera owns Flat 2B Villa Marina, Hong Kong (the “Flat”). In August 2024 she advertised it for sale. Peter answered the advertisement, inspected the Flat and agreed with Vera that he would buy the Flat for HK\$9million. Vera and Peter also agreed that two split-level air conditioners (each air conditioner has an air handling unit inside the Flat which is connected by pipes to a condenser which is attached to the exterior wall of the Flat) would be included in the sale and that if completion had not already taken place, Peter would be able to occupy the Flat as licensee from 30 September 2024 when Peter’s lease on his current flat expires.

Vera wrote to her solicitor telling him about the terms of the sale and purchase that she had agreed with Peter and asking him to act for her in connection with the sale. Vera’s letter to her solicitor did not, however, refer to the air conditioners or the fact that Peter would be granted a licence. Vera’s solicitor then prepared a draft agreement for sale and purchase which he sent to Peter’s solicitor under cover of a letter labelled “subject to contract”.

By October 2024, Peter and Vera had not signed an agreement for sale and purchase and Vera received a higher offer for the Flat. Vera does not now wish to proceed with the sale to Peter.

**Answer the following questions giving reasons for your answers:**

- (a) Is there a contract between Vera and Peter for the sale of the Flat? (4marks)**
- (b) Assuming that there is a contract, can Peter enforce it against Vera? (15marks)**
- (c) Assume that in early September 2024 Peter told Vera that he wanted to carry out renovations to the Flat in readiness for moving in on completion of his purchase. Vera agreed and gave Peter the keys. Peter’s contractors started renovations to the kitchen and bathrooms in the Flat. In light of this how do your answers to question 3(a) and 3(b) change, if at all? (6marks)**

**[25Marks]**

## QUESTION 4

On 2 July 2024, Pansy inspected the ground floor and cockloft of 8 Eastern Road, Hong Kong (the “Property”). Later that day, Pansy signed a provisional agreement to buy the Property from Victor and she paid the initial deposit. A copy of the provisional agreement is attached.

On 5 July 2024, Victor’s solicitor sent Pansy’s solicitor a draft formal agreement for sale and purchase and the title deeds which do not include an Occupation Permit. On the same day Pansy’s surveyor advised her that the cockloft might not have been authorised by the Building Authority under the Buildings Ordinance, Cap. 123.

On 7 July 2024 Pansy’s solicitor asked Victor’s solicitor for a certified true copy of the Occupation Permit for 8 Eastern Road, Hong Kong. Pansy’s solicitor also informed Victor’s solicitor that she had received expert advice that the cockloft might be unauthorised. Victor’s solicitor replied on 8 July 2024 saying that:

1. the Building Authority had informed him in 1970 that their records for 8 Eastern Road, Hong Kong had been lost, and
2. neither he nor Victor had any information about the cockloft, but that it was present when Victor bought the Property in 1970.

On 9 July 2024, Pansy’s solicitor informed Victor’s solicitor that Victor’s title is defective and that Pansy would not sign the formal agreement or pay the further deposit.

On 10 July 2024, Victor’s solicitor wrote to Pansy’s solicitor saying that the Building Authority had inspected 8 Eastern Road, Hong Kong in 1988 when the Government Lease was renewed and that he would be able to provide written evidence of this before completion. In the same letter, Victor’s solicitor also said that since 1970 the Building Authority had not complained about any unauthorised building works on the Property. Despite this reply Pansy did not sign the formal agreement or pay the further deposit on 14 July 2024

**Can Victor terminate the provisional agreement and forfeit Pansy’s initial deposit?**

**[25Marks]**

*Question continued on next page.*

THIS AGREEMENT is made on 2 July 2024

Between

- (1) Victor Vong of House A, No. 47 Strawberry Road, Hong Kong (the “Vendor”);  
and
- (2) Pansy Poon of Flat 6A Red Gardens, 10 Prince Edward Road, Kowloon (the “Purchaser”)

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase the Ground Floor and Cockloft of 8 Eastern Road, Hong Kong (the “Property”).
2. The purchase price is HK\$50million which shall be paid by the Purchaser to the Vendor in the following manner:
  - (a) HK\$7million on the signing of this agreement as initial deposit,
  - (b) HK\$3million on the signing of a formal agreement for sale and purchase on or before 15 July 2024 as the further deposit,
  - (c) HK\$40million upon completion on or before 30 December 2024 as the balance of the purchase price.
3. The Purchaser will attend at the offices of the Vendor’s solicitor on or before 15 July 2024 to sign the formal agreement for sale and purchase
4. Should the Purchaser fail to sign the formal agreement for sale and purchase in the manner herein contained the initial deposit shall be forfeited to the Vendor who shall then be entitled at his absolute discretion to sell the Property to anyone he thinks fit and the Vendor shall not sue the Purchaser for any liabilities and/or damages caused by the Purchaser’s default.
5. Should the Vendor after receiving the initial deposit paid hereunder fail to sign the formal agreement for sale and purchase in the manner herein contained the Vendor shall immediately compensate the Purchaser with a sum equivalent to the amount of the initial deposit as liquidated damages together with the refund of the initial deposit and the Purchaser shall not take any further action to claim damages or specific performance.
6. The Purchaser will pay the stamp duty in connection with this transaction.

Signed **Victor Vong**

Signed *Pansy Poon*

**END**

## PART B (Equity)

### QUESTION 5

Answer **both** Parts (a) and (b).

Tesla is the sole trustee of a family trust created in 2019 with Bache as the sole beneficiary (Tesla being a family friend). The trust assets comprise a valuable painting and HK\$50million cash deposited in Fortune Bank. The trust deed contains the following clause:

*Clause 3: The trustee is authorised to invest in Hong Kong only.*

In early March 2024, Bache agreed that Tesla should sell the painting. Tesla therefore placed the painting with an auction house (Krissy) for sale. The arrangement was that Krissy was entitled to keep, by way of commission, all sale proceeds in excess of HK\$10million. Before Tesla engaged Krissy, there were already rumours in the news that Krissy were in great financial trouble, but Tesla could not be bothered to investigate nor to look for alternatives.

On 31 March 2024, the painting was auctioned and sold for HK\$13million. Before Krissy was able to pay over the sale proceeds of the painting to Tesla, it was declared insolvent on 1 April 2024.

In May 2024, Tesla invested HK\$20million of the trust money withdrawn from the Fortune Bank account in an investment fund issued and operated in Utopia. In July 2024, the Utopian investment fund was restructured and became based in Hong Kong.

In August 2024, Fortune Bank went into insolvent liquidation and all depositors (including the trust) can only recover 0.5% of the deposits with the bank. The investment fund is now worth only HK\$5million.

**(a) Advise Bache.**

**(b) Would the answer be different if the trust deed contains a clause as follows:**

*Clause 7: The trustee shall be indemnified by the trust fund for any liability for loss howsoever arising from any breaches of his duties, except for those arising from fraud.*

**[25Marks]**

## QUESTION 6

On 1 June 2022, Sally set up a trust appointing Tack, his solicitor, as sole trustee. The trust assets include HK\$50million kept in a segregated bank account (the “**Trust Account**”). Ben and Belle, Sally’s children, are the only default beneficiaries under the trust.

The trust deed contains the following terms:

*Clause 4: The trustee may from time to time but before 31 December 2023 appoint any person (except Sally and the trustee himself) to receive part or all of the trust assets.*

*Clause 5: Subject to any appointment(s) made in accordance with Clause 4, all trust assets shall be distributed to Ben and Belle on 1 January 2024 in equal shares.*

On 20 June 2022, Sally wrote a letter to Tack as follows:

*“This letter is not intended to bind you. I would however hope that it will guide you in exercising your discretion under clause 4 of the trust deed. I would really wish that you distribute HK\$10million under the trust to my personal assistant Sam.*

*This letter is strictly confidential and must not be disclosed to anyone else including Ben and Belle.”*

Sally separately informed Ben and Belle of the setting up of the trust, saying that they can expect to share all the trust assets in equal shares on 1 January 2024. Sally did not inform them about the letter that she wrote to Tack.

Sally passed away in October 2023.

On 20 November 2023, Tack informed Ben and Belle that he would transfer HK\$10million under the trust to Sam, claiming that he was entitled to do so under Clause 4 of the trust deed and it was Sally’s wish. Ben and Belle did not know that Sally had had an affair with Sam, and they were furious that Tack has decided to give a significant sum under the trust to him.

Further, Tack became insolvent on 1 January 2024. The following transactions recently came to light:

- (1) On 1 December 2023, Tack caused HK\$10million to be transferred from the Trust Account to his personal account (the “**Personal Account**”), which had a pre-existing credit balance of HK\$5million;
- (2) On 3 December 2023, Tack withdrew HK\$4million from the Personal Account to buy a diamond necklace for his wife’s birthday;
- (3) On 5 December 2023, Tack transferred HK\$3million from the Personal Account to pay off an outstanding debt that he incurred when he purchased a vintage car (the “**Car**”) in 2021. The purchase price of the Car was HK\$10million.

*Question continued on next page*

The Car is now worth HK\$12million. The necklace is worth HK\$8million.

**Advise Ben and Belle. In particular, they would like to compel Tack to disclose Sally's letter.**

**[25Marks]**

## QUESTION 7

In 2017, Lawrence settled HK\$30million upon trust (the “Trust”) to provide for his family. He appointed Tom (his long-time family friend) as the sole trustee of the Trust. Ray is a solicitor acting for and advising the Trust.

In 2023, in the course of looking for investment opportunities for the Trust, Tom came across a valuable art piece and considered it to have significant investment potential for the Trust. However, he purchased the art piece himself instead at HK\$5million without informing the Trust or the beneficiaries. In January 2024, he sold it for HK\$8million.

On 1 March 2024, Tom instructed Ray “to prepare documentation so that HK\$1million would be paid out from the Trust to Lawrence’s daughter Tweety”. Ray never knew that Lawrence had a daughter, but because Ray was at the same time very busy looking after his new-born baby, he decided not to check but simply trusted Tom. Tweety was in fact Tom’s secret lover.

If Ray had bothered to check the trust deed (which at all material times was kept in his office), he would have found out that Tweety was not a beneficiary under the Trust and hence not entitled to any payment.

On the next day, Tweety received a cheque of HK\$1million by courier. She was surprised by the gift, and saw that the cheque was issued against the Trust (which she had not previously heard of), but she thought that she might have been the winner in a lucky draw which she had earlier taken part (and the cheque represented her prize). She therefore did not ask or check further. She immediately spent half of that sum on a luxurious trip.

The beneficiaries of the Trust recently learnt about these matters. If Tom had informed them of the art piece, they would have decided not to purchase it but would have consented to Tom’s own investment in return for a 20% share of any profits.

**Advise the beneficiaries as to the equitable claims they may have.**

**[25Marks]**

## QUESTION 8

Carol is a director of Fine Wines Ltd (the “**Company**”).

In March 2024, the Company was approached to source for fine wine and champagne in relation to a glamorous celebrity party that was to take place in July 2024. Carol took up the matter on behalf of the Company. She then sought quotes from a number of wine suppliers. One of the wine suppliers which provided a quote, XYZ Ltd, told Carol that “she would be pleasantly surprised” if their quote was accepted. It happened that XYZ Ltd provided the lowest quote, so Carol engaged XYZ Ltd as the wine supplier for the party.

Around 2 weeks later, Carol found that an expensive watch had been delivered to her office “with kind regards from XYZ Ltd”. Carol sold the watch for HK\$100,000 and gifted the sale proceeds to her husband Dom, who then applied them to purchase shares in Peach Ltd. These shares are now worth HK\$500,000.

On 5 May 2024, the Company purchased some luxurious wine glasses for the party from Nice Glasses Ltd (“**NGL**”). The Company paid for the order by way of an electronic transfer of HK\$1 million to NGL’s bank account at Lantau Bank. The Company took delivery of the wine glasses on 12 May 2024.

It recently transpired that, because of an electronic error, the Company’s account was debited twice for the transaction (i.e. a total of HK\$2million was debited from the Company’s account). NGL and Lantau Bank were both declared insolvent on 1 July 2024, although the entire HK\$2million debited against the Company still remains in NGL’s Lantau Bank account.

**Advise the Company.**

**[25Marks]**

**PAPER III: CRIMINAL LAW, CRIMINAL PROCEDURE  
& CRIMINAL EVIDENCE**

**QUESTION 1**

- (a) What is a mixed statement? (5marks)
- (b) Give two (2) examples of when a Court should accept that a statement is mixed. (5marks)
- (c) The general rule is: a witness is not entitled to give evidence of statements on other occasions by the witness in confirmation of his testimony: *Jones v SE and Chatham Ry (1918) 87 LJKB 775 at 779*. What are the four (4) exceptions to the rule against '*Previous consistent statements*'? (5marks)
- (d) What are the conditions that allow a written statement to be tendered into evidence pursuant to section 65B of the Criminal Procedure Evidence, Cap. 221? (10marks)
- [25Marks]**

## QUESTION 2

In arriving at the correct starting point for a sentence, HKSAR v. YIP Wai-yin, CACC 80/2003 (7 July 2004) summarized the different approaches, to be adopted by a Judge in relation to a defendant found with two different types of dangerous drugs, but only charged with a single count of '*Trafficking in Dangerous Drugs*' contrary to section 4 of the Dangerous Drugs Ordinance, Cap. 134.

- (a) List the different approaches a sentencing judge should consider and describe their application to the sentencing of an offender trafficking in 10 grammes of methamphetamine hydrochloride (commonly known as 'ice') and 4 grammes of the less potent dangerous drug, ketamine. (15marks)
- (b) Summarise the different 'cross-checks' or 'tests', to be considered by a Judge who is required to sentence a defendant, charged with a single count of '*trafficking*' involving different types of dangerous drugs, contrary to section 4 of the Dangerous Drugs Ordinance, Cap. 134: '*so that a just sentence is passed*'. See for example the cross-checks or 'tests' referred to in HKSAR v. CHAN Yuk-leong, CACC 318/2013, unreported 8 April 2014. (10marks)
- [25Marks]

### **QUESTION 3**

Your lay client, aged 30 with a clear record, was arrested for three offences that arose out of a domestic violence incident that occurred in his home. That is, he used a kitchen knife to assault his wife and then assaulted the Police officers when they responded to the complaint. He now wishes to be advised on plea bargains and whether representations should be made in relation to the charges he presently faces.

**Advise him on the possible sentences under the legislation, possible venue of trial and any relevant law in relation to the following offences:**

- (a) Assaulting a Police Officer, (i) contrary to section 36(b) of the Offences Against the Persons Ordinance, Cap. 212; and (ii) contrary to section 63 of the Police Force Ordinance, Cap. 232 (9marks)**
  
- (b) Possession of an Offensive weapon, (i) contrary to section 33(1) of the Public Order Ordinance, Cap. 245; and (ii) contrary to section 17 of the Summary Offences Ordinance, Cap. 228. (10marks)**
  
- (c) (i) Wounding with Intent contrary to section 17(1) of the Offences Against the Persons Ordinance, Cap. 212; and (ii) Wounding, contrary to section 19 of the Offences Against the Persons Ordinance, Cap. 212 (6marks)**

**[25Marks]**

#### **QUESTION 4**

**(a) In relation to proceedings directed at the exclusion of the defendant's confession, what is 'the alternative procedure' (6 marks) and its purpose (3 marks)? (9marks)**

**(b) Describe the current practice and procedure that is adopted. (16marks)**  
**[25Marks]**

## QUESTION 5

Jane is on trial in the Magistrates' Court facing a single count of Dangerous driving causing grievous bodily harm. The Prosecution allegation was that Jane drove dangerously and as a result, her car hit a pedestrian who suffered serious injuries.

Mr. Wong, the first prosecution witness, was a minibus driver who saw the incident. In his evidence in court, he said the following (amongst other things):

*"At the time of the accident the road surface was dry, and it was not raining. A light wind was blowing from the north. The defendant's car, a yellow Ferrari, was travelling at about 70 km/h in the inside lane. When her car veered to the left and hit the lamp post I was approximately 20 metres behind it. When the defendant got out of the wrecked car she stood beside it and she was hysterical. I stopped my minibus, ran over to her and asked if she was okay. She replied to me in a shaky voice: "I can't believe what I have done to this car, which I rented yesterday. I was going too fast whilst on the phone."*

*During the few minutes that I stood there talking to her, she appeared to be drunk, and was shaking nonstop. I believe she was in a state of shock."*

- (a) Comment on the admissibility of this evidence given by Mr. Wong. Cite relevant authority, if any, in support of your conclusions. (8marks)**

As part of the defence case Jane wishes to call Mr. Lo to testify on her behalf. In his witness statement Mr. Lo describes himself as being a 'self-trained' expert in the 'certainties concerning chromatography of crystalline crystals' and his expert report provides an opinion on, *inter alia*, the 'deleterious effect of recent exposure to red and purple crystal-light emissions on the cognitive functioning and spatial awareness of drivers involved in high-speed accidents.'

Mr. Lo had concluded that Jane lost control of the car because her ability to drive it properly had been affected by the fact that she had been looking at a red crystal for twenty minutes shortly before the accident as part of her New Age therapy programme.

- (b) Comment on the admissibility of this proposed evidence to be given by Mr. Lo. Cite relevant authority, if any, in support of your conclusions. (10marks)**

One of the police officers, PC 123, who investigated the accident, and who also possesses proper and relevant qualifications, is to be called by the prosecution to give expert evidence on the subject of the braking ability of the vehicle involved in the accident.

Before he is called to testify, however, the trial Magistrate, at the invitation of defence counsel, makes a ruling that this officer's evidence is inadmissible on the sole basis that, "this witness was a member of the investigating team."

*Question continued on next page*

The trial Magistrate rules that this is a clear matter of admissibility holding that "...his obvious and close connection with the investigators..." makes any such evidence automatically inadmissible. The magistrate states that the law is clear on this point.

- (c) **Comment on the correctness or otherwise of the trial Magistrate's ruling on this issue, citing relevant authority/authorities.**

**(7marks)**

**[25Marks]**

## QUESTION 6

Jacob and Fred, who are both 26 years old, are jointly charged with one count of Burglary.

The allegation is that they have burgled a residential flat in Wan Chai and took cash and watches away. These items have not been recovered.

**(a) In the following scenarios:**

**(i) A security guard on patrol saw two males breaking into the burgled premises. He saw the frontal faces of the two men for about 5-10 seconds, from a distance of about 10 feet.**

**a. Assess the admissibility and strength of the evidence.**

**b. Should an identification parade be held?**

**c. If an identification parade was not held, should a dock identification be allowed in Court? (8marks)**

**(ii) The security guard attended an identification parade and picked out Jacob and Fred. At trial, 12 months after the identification parade, he becomes confused and mistakes Jacob for Fred and fails to pick out Fred at all. Assess the admissibility and strength of the evidence. (2marks)**

**(iii) Another security guard also saw the same as his colleague above. He did not attend a formal identification parade before trial. However, this security guard knows both Jacob and Fred as they were former classmates for 3 years in secondary school. Assess the admissibility and strength of the evidence. (3marks)**

**(b) The stolen items have been valued at HK\$400,000. Both Jacob and Fred have 4 previous convictions for burglary and 6 convictions for theft. Advise on venue of trial and possible sentences that they may receive if they were to plead not guilty but be found guilty after trial. (7marks)**

**(c) Jacob and Fred wish to consult you on the procedure if they raise alibi as their defence. What issues regarding alibi could arise at trial and what provisions need to be satisfied by the counsel and solicitors representing the defendants? What direction should be given if it is suggested by the prosecutor that the claim of alibi is false? (5marks)**

**[25Marks]**

## QUESTION 7

Peter, who is 30 years old, faces a charge of Trafficking in a dangerous drug, namely 12 grammes of a solid containing 10 grammes of cocaine. The matter has been transferred to the District Court. A conviction for Trafficking in 10grammes of cocaine would attract a starting point of 5 years' imprisonment.

Today is the plea day, Peter instructs you that he intends to plead not guilty to the charge, but he still wishes to consult his wife about this.

- (a) Peter asks if he can plead not guilty first today and later change his plea to a plea of guilty. Would this have any impact on his sentence? Discuss with reference to authority/authorities (if any) and provide your advice. (6marks)**
- (b) Peter pleads guilty to the charge on plea day, but later wishes to change his plea to one of not guilty. What are the principles that the court will consider in determining whether Peter is allowed to do so? (5marks)**
- (c) If Peter pleads guilty but wishes to challenge the facts, how could he do so? (3marks)**

Peter wishes to provide assistance to the prosecuting authorities. As a result, the authorities were able to arrest and charge Paul for the offence of conspiracy to traffic in a dangerous drug.

- (d) With reference to appropriate authority/authorities what discount, if any, can Peter expect and what principles govern discounts over and above the normal discount from sentence for a guilty plea? (7marks)**
  - (e) What is the appropriate procedure to follow when the sentencing judge is to be informed of Peter's assistance? (4marks)**
- [25Marks]**

## QUESTION 8

You represent Mr. Chen, a Hong Kong resident, in the Magistrates' Court for a mention hearing. This is Mr. Chen's second mention hearing in the court. He appeared in the same court 4 weeks ago for the first time, where the Magistrate agreed with the Prosecution's objections that the offence is serious and there is a risk of absconding. His bail application was refused.

Mr. Chen faced 2 charges of theft, and it is alleged that he, as the person responsible for dealing with finance matters in his company, has stolen HK\$3,000,000 from the company. He was unable to be contacted by the company until his arrest. Mr. Chen has a clear record and is now 50 years' old. His wife is currently a clerk and they have a son who is 2 years old. Both reside in Hong Kong.

Mr. Chen instructs you to renew the bail application again.

- (a) What matters are you entitled to raise in support of the application? (5marks)**
  - (b) What matters may be raised in support of any subsequent application? (5marks)**
  - (c) Mr. Chen asks whether the bail application is likely to succeed. What would you say and why? Identify the factors in favour and those against granting bail in this case. (9marks)**
  - (d) The bail application was refused, and Mr. Chen's case has been adjourned for 2 months for the Prosecution to conduct further investigations. What other avenue(s) are open to Mr. Chen if he wishes to obtain bail, and how would you advise him as to the merits and the steps to be taken? (6marks)**
- [25Marks]**

## **PAPER IV: Hong Kong Legal System, Constitutional and Administrative Law; and Company Law**

### **PART A (Hong Kong Legal System, Constitutional & Administrative Law)**

#### **QUESTION 1**

**To what extent (if any) is the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (HKBL) qualified by the Law of the People's Republic of China on the Safeguarding of National Security of the Hong Kong Special Administrative Region (HKNSL), which was enacted on 30 June 2020 by the Standing Committee of the National People's Congress, added on the same date into Annex III to the HKBL by the Standing Committee of the National People's Congress, and promulgated, for application locally, on the same date by the Chief Executive of the Hong Kong Special Administrative Region? Discuss with reference to the following provisions of the HKNSL and the caselaw interpreting and applying those provisions of the HKNSL:**

“Article 1 This Law is enacted, in accordance with the Constitution of the People's Republic of China, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, and the Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in the Hong Kong Special Administrative Region, for the purpose of:

- ensuring the resolute, full and faithful implementation of the policy of One Country, Two Systems under which the people of Hong Kong administer Hong Kong with a high degree of autonomy;
- safeguarding national security;
- preventing, suppressing and imposing punishment for the offences of secession, subversion, organisation and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security in relation to the Hong Kong Special Administrative Region;
- maintaining prosperity and stability of the Hong Kong Special Administrative Region; and
- protecting the lawful rights and interests of the residents of the Hong Kong Special Administrative Region.

Article 2 The provisions in Articles 1 and 12 of the Basic Law of the Hong Kong Special Administrative Region on the legal status of the Hong Kong Special Administrative Region are the fundamental provisions in the Basic Law. No institution, organisation or individual in the Region shall contravene these provisions in exercising their rights and freedoms.

*Question continued on next page*

Article 3 The Central People's Government has an overarching responsibility for national security affairs relating to the Hong Kong Special Administrative Region.

It is the duty of the Hong Kong Special Administrative Region under the Constitution to safeguard national security and the Region shall perform the duty accordingly.

The executive authorities, legislature and judiciary of the Region shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with this Law and other relevant laws.

Article 4 Human rights shall be respected and protected in safeguarding national security in the Hong Kong Special Administrative Region. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region enjoy under the Basic Law of the Hong Kong Special Administrative Region and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law.

Article 5 The principle of the rule of law shall be adhered to in preventing, suppressing, and imposing punishment for offences endangering national security. A person who commits an act which constitutes an offence under the law shall be convicted and punished in accordance with the law. No one shall be convicted and punished for an act which does not constitute an offence under the law.

A person is presumed innocent until convicted by a judicial body. The right to defend himself or herself and other rights in judicial proceedings that a criminal suspect, defendant, and other parties in judicial proceedings are entitled to under the law shall be protected. No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in judicial proceedings.

Article 6 It is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard the sovereignty, unification and territorial integrity of the People's Republic of China.

Any institution, organisation or individual in the Hong Kong Special Administrative Region shall abide by this Law and the laws of the Region in relation to the safeguarding of national security, and shall not engage in any act or activity which endangers national security.

A resident of the Region who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China in accordance with the law.

.....

Article 8 In order to safeguard national security effectively, the law enforcement and judicial authorities of the Hong Kong Special Administrative Region shall fully enforce this Law and the laws in force in the Region concerning the prevention of, suppression of, and imposition of punishment for acts and activities endangering national security.

.....

*Question continued on next page*

Article 39 This Law shall apply to acts committed after its entry into force for the purpose of conviction and imposition of punishment.

.....

Article 40 The Hong Kong Special Administrative Region shall have jurisdiction over cases concerning offences under this Law, except under the circumstances specified in Article 55 of this Law.

.....

Article 42 When applying the laws in force in the Hong Kong Special Administrative Region concerning matters such as the detention and time limit for trial, the law enforcement and judicial authorities of the Region shall ensure that cases concerning offence endangering national security are handled in a fair and timely manner so as to effectively prevent, suppress and impose punishment for such offence.

No bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security.

.....

Article 47 The courts of the Hong Kong Special Administrative Region shall obtain a certificate from the Chief Executive to certify whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The certificate shall be binding on the courts.

.....

Article 62 This Law shall prevail where provisions of the local laws of the Hong Kong Special Administrative Region are inconsistent with this Law.

.....

Article 65 The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.”

**[25Marks]**

## QUESTION 2

The Chief Executive of the HKSAR announced on television on 20 September 2025 that because of the projected spread into Hong Kong of the airborne and highly contagious Highly Pathogenic Avian Influenza (HPAI) disease from neighbouring regions and international travellers, the HKSAR Government will launch on 1 October 2025 the “Crush HPAI Campaign”.

One of the measures under the “Crush HPAI Campaign” is called “evening localization”. Persons residing in Hong Kong must be in their residential units between 10pm in the evening and 5am in the morning and any person found outside of a radius of 300 metres from his or her residential address will be detained by the police and other authorized officers for handing to public health officers for relocation to a social distancing facility where the person will be subject to public health monitoring within the facility for a period of 14 days. The police and the authorized officers will be authorized to use reasonable force to detain and assist in the relocation of such persons. A person who seeks to leave the social distancing facility without permission of a public health officer will have to remain in the facility for a further period of 14 days counting from the date of his/her attempt to leave without permission. Regulations will be made by the Chief Executive in Council pursuant to the relevant public health legislation.

The Chief Executive has underlined in the television address that the “Crush HPAI Campaign” is necessary to enable Hong Kong to maintain open borders with Mainland China, as well as to receive business and leisure travellers from overseas countries with “a stellar record” in stopping the spread of HPAI, and to facilitate business and leisure travel of Hong Kong residents to these overseas countries, through mutual “travel bubble arrangements”. Earning and maintaining a similar “stellar record” for a considerable period, stressed the Chief Executive, is “absolutely essential” to the Hong Kong economy, particularly its service industries, and preserve and protect Hong Kong’s status as “Asia’s World City”.

**You have received instructions on 21 September 2025 to ADVISE on the compatibility of the “evening localization” measure with the fundamental rights protected under the Basic Law of the HKSAR and the Hong Kong Bill of Rights.**

**Included in the instructions is a transcript of a press briefing given by responsible ministers of the HKSAR Government following the Chief Executive’s television address. The transcript indicates that the Chief Executive’s advisory group of Hong Kong epidemiology and disease control experts has not met with the Chief Executive or the ministers to discuss the public health merits of the measures in the “Crush HPAI Campaign” and that the social distancing facility is a converted exhibition hall of bedspaces set up in an open planned format.**

**Those instructing you asks you in your ADVICE to identify the protected fundamental rights that the “evening localization” measure may infringe or restrict; and to assess the question of compatibility in terms of whether the HKSAR Government could justify the “evening localization” measure before a court of the HKSAR and what remedy or relief a court of the HKSAR may issue in relation to the “evening localization” measure.**

**[25Marks]**

### QUESTION 3

Jack used to run a seafood business specializing in the sale of sashimi and live fish to restaurants, and he retired five years ago. Jack is a fishing enthusiast and has won numerous prizes in local fishing tournaments for many years. He has developed an interest in fishing in reservoirs, and he wants to try fishing in Hong Kong's reservoirs.

Hong Kong's reservoirs form part of Hong Kong's waterworks. Fishing activities within reservoirs are restricted by the Waterworks Regulations, Cap 102A ("**the Regulations**"). The Regulations provide that:-

“41. Fishing under licence

- (1) No person shall fish in waters forming part of the waterworks except under and in accordance with the terms of a fishing licence.
- (2) No person shall catch fish in waters forming part of the waterworks by any means other than by rod and line.
- (3) No person shall use any explosive or toxic substance to catch or destroy fish in waters forming part of the waterworks.

42. Issue of fishing licence

- (1) The Water Authority may, on payment of the fee prescribed in Part 1 of Schedule 1, issue a licence to fish in waters forming part of the waterworks.
- (2) A fishing licence shall—
  - (a) be in such form as may be specified;
  - (b) be valid for the period of time stated therein;
  - (c) be for the use of one rod and line;
  - (d) not be transferable; and
  - (e) be subject to any other condition stated therein.”

Fishing licences are issued by the Water Authority. A Policy on Issue of Fishing Licences ("**the Policy**") is published on the Water Authority's departmental website. It provides for the Water Authority's consideration when deciding whether or not to issue a fishing licence:-

- “1. Fishing licences will only be issued to anglers with extensive experience in leisure fishing. Evidence such as prizes won in fishing tournaments will be regarded as strong support of an applicant's leisure fishing experience.
2. Applicants should ensure that they are not associated with any fish-selling business. For the purpose of preventing profit-making out of leisure fishing activities, any person who is associated with fish-selling business will not be issued a fishing licence.
3. Applicants will be interviewed in due course if appropriate. Each case will be assessed on its merits.”

*Question continued on next page*

Jack wrote to the Water Authority to apply for a fishing licence. The Water Authority rejected Jack's application ("**the Decision to Reject**") without conducting any interview with Jack, and with the following reasons stated:-

"It is noted that you have no prior experience in leisure fishing. The Water Authority considers you unsuitable to be issued a fishing license as your inexperience with leisure fishing may increase the chances of you causing pollution in the reservoirs, fishing with unauthorized means, endangering local marine life, and endangering the public. Further, it is reported by yourself that you were once a fishmonger. The Water Authority is also of the view that your association with the fish-selling business suggests a high tendency of making profits out of fishing in reservoirs and causing overfishing in reservoirs. In the premises, the Water Authority refuses your application."

Jack has instructed solicitors and the solicitors have told Jack that there may be basis to apply for judicial review on the grounds of (i) illegality and (ii) legitimate expectation.

**Solicitors have asked you to advise in conference on the merits of an application for judicial review with Jack. Consider the merits of the possible grounds of review and write a note on the matters you would discuss with Jack and the solicitors during conference.**

**[25Marks]**

## QUESTION 4

Fiona is a patient with late-stage tuberous sclerosis complex (“TSC”), which is a rare disease. There are around 200 patients diagnosed with TSC currently in Hong Kong. Among various treatment options, it is recently discovered that Zortress, a new drug, may be the most effective cure for patients with late-stage TSC.

The Medical Fund (“**the Fund**”) is a fund established for the purpose of providing monetary grants for the benefit of needy patients. The Hospital Authority is responsible for the administration of the Fund under the Hospital Authority Ordinance, Cap 113. The Fund is funded by the government.

The website of the Fund states that:-

“Having regard to the philosophy that no one should be prevented, through lack of means, from obtaining adequate medical treatment, the Fund intends to provide financial assistance to needy patients as far as possible.”

Fiona wants to use Zortress for treatment but was told that each course of Zortress treatment costs HK\$20,000 per month, which she cannot afford. Unfortunately, Zortress was classified as a “self-financed item without safety net” under the Fund, i.e. not covered by the Fund because of the limited medical evidence on its benefits over available alternatives.

Fiona wrote a letter to the Chief Executive of the Hospital Authority describing her pain and asked the Chief Executive to add Zortress into the list of drugs covered by the Fund. Her story was reported in a newspaper.

Fiona’s letter and story attracted widespread attention in society. The Chief Executive of the Hospital Authority wrote back to Fiona. Below are excerpts of the letter:-

“Dear Fiona, I am so sorry to hear about your illness. The list of drugs supported by the Medical Fund is under ongoing evaluation by relevant experts. In your case, in recent medical developments, more evidence has emerged to support Zortress to be of significant clinical benefits to TSC patients like you. After further evaluation done by relevant medical experts, we are going to include Zortress into the list of drugs covered by the Medical Fund. You can make an application to the Medical Fund after the announcement.”

Upon receipt of the letter, Fiona decided that she would not look into alternative sources of funding for the Zortress treatment (such as setting up a crowd-funding appeal). A month after the letter was received by Fiona, the Fund announced that Zortress is now covered by the Fund, subject to the following criteria:-

- “1. Funding is available to patients with a kidney tumor caused by TSC with a diameter longer than 5cm.
2. Funding is available to patients with a brain tumor caused by TSC.
3. Other TSC patients would still have to pay for Zortress out of their own pockets.”

*Question continued on next page.*

Despite Fiona's serious conditions, the Fund will not cover the expenses of Zortress treatment for her, as she has a liver tumor. She is disappointed at the Fund's decision not to cover the expenses of Zortress for all TSC patients ("**the Decision**"). According to the Fund, it does not cover the Zortress expenses for all TSC patients, because "according to the medical experts' judgment, Zortress is the most effective for TSC patients with a kidney or brain tumor."

Fiona has received preliminary advice from those instructing her that she may potentially make an application on the basis of (i) legitimate expectation and (ii) irrationality.

**Fiona intends to apply for judicial review against the Decision. Solicitors have briefed you to settle the Notice of Application for Leave to Apply for Judicial Review (Form 86). The instructions of the solicitors are stated in the paragraphs above. Settle the Form 86 by inserting the necessary facts, submissions and authorities under the heading of "*Grounds on which relief is sought* (if there has been any delay, include reasons here)".**

**[25Marks]**

## PART B (Company Law)

### QUESTION 5

Amos is an interior designer, carrying on business in Chai Wan through Designs Limited, a company in which he and his wife Betty (who does not take and has never taken part in the running of the business) are equal shareholders.

At a party held by his solicitor, Charles, Amos is introduced to David, another client of Charles. David is the sole owner of Renovit Limited, a company based in Yau Ma Tei specialising in renovation of property and Timberr Limited, also based in Yau Ma Tei, engaged in supplying materials to the building trade. Amos and David get on well. After the party, they meet up for dinner several times and, in a series of discussions held during those dinners and also during several rounds of golf at David's club, they decide that they will form a new company, Specialisations Limited, which will carry out renovation projects. The design work for such projects will be carried out by Designs Limited, whilst Renovit Limited will carry out the building work, with materials supplied by Timberr Limited.

By a written shareholders' agreement, Amos and David agree that:

- (1) The shares in Specialisations Limited will be held equally by Designs Limited and by Renovit Limited;
- (2) Each of Amos and David will be executive directors of Specialisations Limited, as will Charles (who agrees to be appointed but who is not a party to the shareholders' agreement) whose role on the board is to provide legal advice;
- (3) Each of them will be entitled to full accounting and other information about Specialisations Limited;
- (4) Profits and losses of Specialisations Limited will be shared equally between them;
- (5) There is to be no change in the business of Specialisations Limited unless each of them agrees.
- (6) All disputes arising out of or relating to the shareholders' agreement would be resolved by arbitration administered by the Hong Kong International Arbitration Centre.

Specialisations Limited is incorporated shortly afterwards. Its Articles of Association are in the same form as the Model Articles for Private Companies Limited by Shares (Companies (Model Articles) Notice (Cap 622H), Schedule 2).

Amos works hard for Specialisations Limited and secures a number of lucrative contracts for it on Hong Kong Island. Business expands so that Specialisations Limited is able to employ 12 members of staff and purchases for the sum of HK\$3,000,000 a truck which has been specially fitted out for use in the building trade, with specialised features including an electric lift and crane for moving building materials, power generating equipment and hydraulic stabilisers. As a result, the businesses of Designs Limited, Renovit Limited and Timberr Limited also expand. The monthly management accounts produced by Amos and supplied to David show substantial profits being generated by Specialisations Limited.

*Question continued on next page.*

After several months however it is apparent that David is not making (and indeed has never made) any efforts to obtain work for Specialisations Limited, and simply relying on Amos to bring in business and contracts for it. Amos sends an email to David complaining of this situation, but David ignores it. Some eight months later, Charles informs Amos that he is too busy to remain as director and wishes to resign. Amos calls a meeting of the board of Specialisations Limited and, notwithstanding David's objections, by the majority votes of Amos and Charles, Betty is appointed as director of Specialisations Limited, whereupon Charles resigns.

Amos and Betty then call another board meeting of Specialisations Limited which David does not attend, despite receiving notice. At that meeting, Amos and Betty resolve to appoint Betty as Chief Executive of Specialisations Limited at a salary of HK\$150,000 per month.

On being notified of these resolutions, David complains strenuously to Amos about the appointment of Betty as director and Chief Executive, of which he strongly disapproves, especially since she has no relevant skills or experience. He also complains that Specialisations Limited, although clearly shown as very profitable in the monthly management accounts and draft audited financial statements supplied to him, has not declared any dividends. However, Amos rejects his complaints, asserting that since David has neither been involved in running Specialisations Limited nor made any efforts to get business for it, he has to accept the decisions of the board majority. David's response is that he will not accept decisions taken by Amos and Betty without his (David's) consent.

Angry at Amos's response, David causes Timberr Limited to set up an interior design division, based in Shatin. To David's delight, Timberr Limited obtains several large contracts, which he procures Renovit Limited to carry out. The profits of Renovit Limited and Timberr Limited increase sharply as a consequence.

Some time later, Amos and Betty find out about Timberr Limited's new business. Almost immediately, they set up another company, Vixen Limited, to specialise in property renovation and Amos starts to procure renovation projects to be carried out by Designs Limited and Vixen Limited, rather than through Specialisations Limited. Without consulting David, in her capacity as Chief Executive, Betty (on Amos's instructions) procures Specialisations Limited to sell its truck to Vixen Limited at the depreciated value of the truck in Specialisations Limited's books, namely HK\$100,000. David believes that the market value of the truck is at least HK\$2,500,000.

**David seeks your advice as to his rights and potential remedies.**

**[25Marks]**

## QUESTION 6

Lavinia Limited is a company incorporated under the laws of the British Virgin Islands. It has 2 shareholders, Martha and Norman (holding one share each). Martha is and has at all material times been the sole director of Lavinia Limited, but she usually discusses its business affairs with Norman, who is her husband.

Martha and Norman have one daughter, Olivia, who is 25 years of age. Olivia is and has at all material times been the Company Secretary of Lavinia Limited, and its bookkeeper, having undertaken a degree in accountancy at a well-known respected university.

Lavinia Limited is engaged in the business of selling ethnic jewellery obtained by Martha from India. Although they have a home in Hong Kong, Martha and Norman spend almost all of their time in India where Martha is engaged in sourcing jewellery for Lavinia Limited (though she usually discusses the purchases with Norman). The largest supplier of jewellery to Lavinia Limited is Petrovia Limited, based in Chennai, India. Martha signs all documents for Lavinia Limited (such as orders, cheques and customs documents) whilst she is in India, and its bank account is maintained with the Trade Bank Limited in Chennai.

In the past, Lavinia Limited was very profitable and traded from a rented shop in Tsim Sha Tsui. However, more recently profits declined to the point where Lavinia Limited had to give up the shop and for the last 3 years it has hired rooms in various hotels in Hong Kong (for not more than a few days at a time) to sell its jewellery. However, despite these measures and reducing its sales force to only one person, Roberta, Lavinia Limited has failed to turn around its fortunes and its losses have increased further.

On reviewing the management accounts for the calendar year 2023, which she did in January 2024, Olivia came to the conclusion that Lavinia Limited was insolvent and that it had no choice but to cease trading. However, because she knew that Lavinia Limited was very dear to Martha, and did not want to upset her mother, she did not say anything to her, in the hope that Martha would come to that realisation herself. She also delayed sending the management accounts to Martha and Norman, only doing so in March 2024.

When Martha saw the figures, she also came to the view that Lavinia Limited might be insolvent and unable to survive. However, whilst she was studying the management accounts Norman, who was bringing her a cup of tea, after glancing momentarily at the figures, told Martha that his view was that she should “carry on” for the time being “to see what happens”. Martha, taking the view that she was a jewellery salesperson and not an accountant, decided to adopt Norman’s view.

In addition to a large order placed in January 2024 with Petrovia Limited, in April 2024 after Norman had persuaded Martha to carry on, Martha (after a further discussion with Norman) placed another large order with Petrovia Limited, and orders with other jewellery suppliers based in India, particularly Southernjewel Limited. All of these orders were on 60 days’ credit.

*Question continued on next page.*

When the jewellery was offered for sale by Lavinia Limited at the Xsquare Hotel in June 2024, it proved unpopular, so on Olivia's instructions, it was heavily discounted by Roberta, who managed to sell all of it as a result. However, after paying for the rooms at the Hotel and all other debts owed to creditors based in Hong Kong, there were insufficient funds left over to discharge any of Lavinia Limited's substantial remaining debts, including those owed to Petrovia Limited and Southernjewel Limited. Martha has heard that these companies are determined to pursue every avenue to recover the sums due to them.

**You are asked to advise each of Lavinia Limited, Martha, Norman, Olive and Roberta as to whether and if so what liabilities they might have or what remedies might be available against them in Hong Kong.**

**[25Marks]**

## QUESTION 7

MK Ltd is a private company limited by shares that was established by Melanie in 2005 for import and sale of Korean fashion items in Hong Kong.

In 2010, Melanie sought to obtain a capital injection into MK Ltd from some business acquaintances (Shirley and Jojo) for the purpose of expanding the business of MK Ltd. For that purpose, new shares were issued to Shirley and a company (Josie Enterprises Ltd) controlled by Jojo. Following the share issue, Melanie held 45% of the shares in MK Ltd; Josie Enterprises Ltd held 35%; and Shirley held 20%.

As part of the above arrangements, Melanie was issued with 10% of the shares in Josie Enterprises Ltd in 2010 and a provision (Article 30) was added to the articles of association of Josie Enterprises Ltd to protect Melanie's interests in the company and to avoid take-over by a third party. Article 30 provides that for so long as Melanie holds at least 10% of the shares in Josie Enterprises Ltd, she would have the right to appoint a director to the board of Josie Enterprises Ltd and would have pre-emption rights in relation to transfers of shares of other shareholders and in relation to issues of new shares.

After Melanie was issued with 10% of the shares in Josie Enterprises Ltd, she appointed herself as a director of the company pursuant to Article 30. Following the issue of the shares, Jojo held 70% of the shares, and another shareholder, Connie, held the remaining 20%. Jojo and Connie were also directors of the company.

At the time of the above arrangements, a shareholders' agreement was also entered into between Melanie, Jojo, Connie and Josie Enterprises Ltd, pursuant to which the parties agreed not to amend or repeal Article 30 of the articles of Josie Enterprises Ltd without the consent of Melanie.

Since 2022, the relationship between Melanie and Jojo deteriorated appreciably.

In February 2024, a general meeting of Josie Enterprises Ltd was held. At the meeting, Jojo and Connie voted in favour of a resolution repealing Article 30 of the company's articles. No notice of meeting had been given to Melanie and she had not consented to the repeal of Article 30.

In March 2024, Melanie discovered what happened in February. She now seeks your advice in relation to whether the general meeting resolution repealing Article 30 is valid.

**Advise Melanie.**

**[25Marks]**

## QUESTION 8

Subsidiary Co Ltd (“the Subsidiary”) is a private company limited by shares, and is wholly owned by Parent Co Ltd (“the Parent Company”).

The Subsidiary was originally engaged in manufacturing. In 2020, there were some explosions at the factory premises owned by the Subsidiary (“the Events”), which resulted in significant property damage in the surrounding areas as well as causing physical injuries to employees and others in the vicinity. There was also a serious leakage of dangerous and carcinogenic chemicals into the neighbourhood, which were liable to cause diseases for persons exposed to the chemicals.

Prior to the Events in 2020, the then directors of the Subsidiary (“the Former Directors”) had known that there were serious risks of a major accident happening in relation to the dangerous chemicals stored at the Subsidiary’s premises and had failed to take adequate precautions to ensure safety and to prevent fire or other hazards. The Parent Company was also aware of those risks but did not take any steps to require the Subsidiary to implement any controls or safety systems regarding the storage of the chemicals.

After the Events in 2020, the Parent Company replaced the directors of the Subsidiary with new directors (“the New Directors”). The Subsidiary also ceased its manufacturing business, which was sold to another operating subsidiary of the Parent Company (for full value).

The Subsidiary continued to exist for the purpose of paying compensation to the victims of the Events. As there continued to be new cases of victims developing diseases from exposure to the carcinogenic chemicals, it was likely that the Subsidiary would become liable to new claimants for at least another decade.

In May 2023, the Subsidiary engaged in a reduction of capital on the basis of a solvency statement signed by all the New Directors and a special resolution approving the reduction passed by the Parent Company as the sole shareholder of the Subsidiary. Pursuant to the reduction, 75% of the share capital in the Subsidiary was cancelled and returned to the Parent Company.

By January 2024, the number of victims of the Events claiming against the Subsidiary surged significantly. By March 2024, the Subsidiary no longer had sufficient assets to meet liabilities owing to claimants.

Chiu is a victim of the Events who was recently diagnosed with a disease caused by the Events. Chiu seeks advice on whether he would still be able to obtain full compensation despite the Subsidiary’s present financial state.

*Question continued on next page.*

**Advise Chiu in relation to the following:**

- (a) Can the Parent Company be directly liable to compensate the victims of the Events? Explain your answer. (5marks)**
- (b) Can the Former Directors be personally liable to the Subsidiary in relation to the losses suffered by the Subsidiary arising from the Events? Explain your answer. (6marks)**
- (c) Can the Parent Company be personally liable to the Subsidiary in relation to the losses suffered by the Subsidiary arising from the Events? Explain your answer. (2marks)**
- (d) Can the New Directors be personally liable to the Subsidiary in relation to the 2023 reduction of capital? Explain your answer. (9marks)**
- (e) Can the Parent Company be personally liable to the Subsidiary in relation to the 2023 reduction of capital? Explain your answer. (3marks)**

**In your answer, please confine your discussion to applicable company law principles. You do not need to discuss purely tort law principles.**

**[25Marks]**

## **PAPER V: Civil Procedure and Civil Evidence, and Professional Conduct**

### **PART A (Civil Procedure and Civil Evidence)**

#### **QUESTION 1**

Bank A rents capacious storage space to house infrastructure and offices that supports its extensive e-commerce and online banking system in Greater China and Southeast Asia region. Company B was one of Bank A's landlords, and they entered into a tenancy agreement on 3 October 2023 ("**Tenancy Agreement**").

On 20 June 2024 (Monday), Company B issued a notice ("**Termination Notice**") pursuant to the terms of the Tenancy Agreement alleging that as a result of Bank A's breach, the Tenancy Agreement would be terminated on 27 June 2024 (Monday).

On 21 June 2024 (Tuesday), Bank A (a) commenced an action against Company B ("**Hong Kong Action**") (b) issued a writ of summon with a general indorsement and (c) obtained an inter partes hearing on 24 June 2024 (Friday).

Company B's counsel attended the hearing on 24 June 2024, but there was insufficient time to file responsive evidence. At the hearing on 24 June 2024, the Judge granted an interlocutory injunction to restrain Company B from (a) acting on the Termination Notice and (b) precluding Bank A's staff to enter the premises to relocate the infrastructure and offices to other premises. You are instructed to advise Company B.

- (a) **Advise on the legal principles governing this particular application for interlocutory injunction. (4marks)**
- (b) **Advise on Bank A's duty of disclosure required in this application, including the content and extent of such duty. (6marks)**
- (c) **Supposing Bank A is in breach of any duty to disclose, when to complain about such breach and the consequence of the same? (8marks)**
- (d) **Advise on the procedure for Company B to apply to discharge the injunction on the ground of material non-disclosure. (4marks)**
- (e) **Supposing that (i) Bank A disclosed the Tenancy Agreement provides that HKSAR High Courts have non-exclusive jurisdiction (ii) Bank A did not disclose the fact that on 15 June 2024 (Wednesday) Company B commenced an action against Bank A in the Guangdong Province Court ("**Guangdong Action**") alleging that Bank A's breach of the Tenancy Agreement was part of a wider conspiracy against Company B (iii) Bank A did not disclose that it had lodged a jurisdiction challenge in the Guangdong Action, advise Company B on the merits of the argument that Bank A made a material non-disclosure. (9marks)**

*Question continued on next page.*

- (f) Advise Company B on the law and procedure concerning an application to stay the Hong Kong Action in favour of the Guangdong Action, and the evidence Company B would need to put together to support the application. (9marks)
- (g) Supposing Company B wanted to include in its evidence correspondence it had with Bank A including (i) Company B's letter of 20 May 2024 asserting Bank A had failed to pay rent in the past 2 months (ii) Bank A's reply of 21 May 2024 marked "without prejudice" asking for time to pay the rent (iii) Company B's letter of 23 May 2024 marked "without prejudice" refusing to give further time and (iv) Bank A's letter of 24 May 2024 marked "without prejudice" denying it was in breach, and counter proposing a repayment schedule, advise Company B on whether the letters are admissible. (10marks)

Answers must include all relevant jurisdictional and procedural provisions and be supported by authorities.

[Total 50Marks]

## QUESTION 2

Miss Poon Chor Gam (“P”) is an aspiring singer whose career started to take off last year. She hired Mr. Deng Piu (“D1”) to help out as her personal assistant to arrange her publicity and other events. After some time, D1 became close to P and, due to P’s busy schedule, ended up taking care of all of P’s matters, including financial matters.

A few months ago, P suddenly received notification that pursuant to her instructions, HK\$2,000,000 of funds in her personal account with BaiBai Bank Ltd. (“B”), a Hong Kong bank, had been transferred by telegraphic transfer to the bank account of a company in Macau named Deng Wai S.A.R.L. (“D2”). P also realised that HK\$800,000 in petty cash was missing from the safe in her studio.

While P has had some past business dealings with D2, P had not authorised, and there was no reason for, the funds to be taken from the safe, or for funds to be transferred to D2.

P’s solicitor, Mr. Sun Tai Yeung (“S”) prepared a Writ and Statement of Claim making claims (including claims in equity) against D1 and D2, which were filed in the District Court and served on D1 at his address in Hong Kong. Service out of the same on D2 was granted *ex parte* by a Master as against D2, also on the basis of papers prepared by S.

D2 then instructed Hong Kong solicitors and counsel to set aside P’s order for service out on D2. The application was heard before a Judge 7 days ago, and was granted in an oral *ex tempore* judgment delivered at the hearing in which he expressed very negative views about the strength of P’s case against D2.

P wishes to appeal against the decision of the Judge. You are to proceed on the basis of grounds of appeal that have been drafted by S, which he has provided to you in order for you to draft a Notice of Appeal. At this stage, P will not be raising any new points or law or evidence on appeal.

**Advise P as to the following aspects of law and procedure of the intended appeal:**

- (a) Whether and how he should seek leave to appeal and before what Court(s), as well as the reasons for your conclusion; (8marks)**
- (b) The general approach of the Courts in assessing whether to allow:**
  - (i) An application for leave to appeal; and (3marks)**
  - (ii) Whether to allow the appeal proper; (3marks)**
- (c) When, and why, the Court of Appeal is first likely to have to deal with P’s appeal or any application related thereto, and the procedure and duties that P should observe in relation to preparing for and conducting such, as well as any procedure that D2 has to follow. (12marks)**

P was eventually successful before the Court of Appeal. As D2 had filed some other proceedings against P in the High Court making claims against P, the case in the District Court was eventually transferred to the High Court to be heard together with D2’s other claims. Consolidated pleadings were ordered and filed whereby P remained the plaintiff, and D2’s claims against P were pleaded as part of its Counterclaim.

*Question continued on next page.*

After close of pleadings, P applied for summary judgment against D1 for the HK\$800,000, which D1 opposed by way of his 1<sup>st</sup> affirmation. 7 days before the hearing of the application, D1 sought leave to file and rely at the hearing on his 2<sup>nd</sup> affirmation, in response to what he claimed were new allegations that had been made in P's reply affirmation ("**the Evidence Application**"). P opposed and opposes the Evidence Application.

Further, in D1's Skeleton and at the hearing, D1 sought to resist summary judgment on the grounds that P lacked clean hands, saying such were based on facts set out in D1's 1<sup>st</sup> affirmation, and which P had not explicitly denied. D1's Defence does not allege those facts or allege that P lacked clean hands.

- (d) Advise on whether, and why or why not, D1 should be permitted to rely on P's alleged lack of clean hands in resisting the summary judgment application. (6marks)**

The Judge heard both applications and considered the further application *de bene esse*. In a written judgment she granted P summary judgment against D1 for all of P's claims and dismissed the Evidence Application as the affirmation did not add anything to the matters in her judgment.

7 days later, D1 filed a Notice of Appeal against the order of the High Court Judge which appealed the Judge's decision to grant summary judgment, and to dismiss the Evidence Application.

- (e) Advise P on whether D1 can appeal against the decision refusing the Evidence Application, and on what steps P should take in relation thereto. (6marks)**

In D2's Defence and Counterclaim it was pleaded that the HK\$2,000,000 payment to D2 was justified and authorised by a contract between P and D2 and hence that D2 was not liable to repay such or damages to P, and that D2 was further entitled to HK\$3,500,000 damages due to P's other breaches of that contract.

Shortly after the close of pleadings P, with a view to ensuring she covered all relevant topics in her Witness Statements, sought and obtained an order that D2 file and serve Answers to P's Request for Further and Better Particulars of D2's Defence and Counterclaim ("**Answers**") within 14 days of the order. Shortly before that deadline, P and D2 jointly applied to the Court for a further order which was granted in the following terms:

*"Unless the 2<sup>nd</sup> Defendant do file, and serve on the Plaintiff, [the Answers], on or before 5:30pm on [last Thursday's date, which was another 14 days from the original deadline], the 2<sup>nd</sup> Defendant's Defence and Counterclaim be struck out and the Plaintiff be at liberty to apply for judgment against the 2<sup>nd</sup> Defendant with costs of the action."*

*Question continued on next page.*

No document was served by D2 on P last Friday. The following Monday morning, D2 issued a summons which was served on P at around noon that day, referencing *RHC O. 2 r. 4*. The summons sought an extension of time to a date 14 days after the date of the summons, to file and serve the Answers (a copy of which was attached to the summons), and that costs be provided for by the Court.

The summons was supported and accompanied by affirmations of D2's lawyer (a sole practitioner) and also his litigation clerk. Those affirmations **(i)** Admitted that D2 had been unable to file and serve the Answers last Friday and accepted that this was solely due to the fault of D2's solicitors and not D2 itself **(ii)** Stated the reason for the failure was that heavy rain that afternoon had disrupted transport from around 4:15pm onward, which meant that the clerk (being the sole litigation clerk and who had tried unsuccessfully to find a taxi from 4:40pm to 5:00pm) elected to take the tram, resulting in his only arriving at the relevant counter at 5:35pm (which had by that time closed) and **(iii)** asked the court to allow relief as sought in the summons in order for D2 to be able to advance its Defence and Counterclaim.

- (f) Assuming that no other evidence will be filed in relation to the application, advise P on the nature of the order, the likely nature of D2's application including why D2 has issued it, on the Court's likely approach when disposing (and hence also the strength and likely outcome) of D2's application. (12marks)**

**Answers must include all relevant jurisdictional and procedural provisions and be supported by authorities.**

**[50Marks]**

## PART B (Professional Conduct)

### QUESTION 3

**Discuss all issues of professional conduct which may arise from these facts in respect of Adrian's conduct, with reference to the Code of Conduct of the Bar Association of Hong Kong. Please also state how you would handle the matter(s) in place of Adrian.**

Adrian was called to the Hong Kong Bar in 2023 and joined ABC Chambers in 2024.

Upon joining ABC Chambers, Adrian's secretary Betty included the following statement under Adrian's profile on the website of ABC Chambers which was visible to the public online:

*"Adrian was called to the Hong Kong Bar in 2023. Adrian is developing a broad civil and criminal practice. Adrian is very knowledgeable and many have testified that Adrian is probably one of the best Counsel called in 2023. Since his practice at the Bar, Adrian has appeared and defended 5 clients in the Magistracy Court charged with various offences and 4 of them have resulted in an acquittal."*

On 20 January 2024, Cindy, a banker and one of Adrian's best friends, informed Adrian that Cindy's colleague Daniel was requested by the Hong Kong Police to attend an interview regarding a wounding incident. Cindy informed Adrian that Daniel was extremely nervous and asked Adrian to provide a brief legal advice to Daniel free of charge as a friend. Although Adrian has never met Daniel before, considering that Cindy was one of Adrian's best friends, Adrian agreed to meet Daniel and provide legal advice for free.

On 22 January 2024, Daniel and Cindy attended the chambers of Adrian after work hours. During the meeting, Daniel informed Adrian that the Hong Kong Police suspects Daniel to be involved in a wounding incident that took place at Happy Bar in Lan Kwai Fong on 18 January 2014. Daniel then informed Adrian that on 18 January 2024, Daniel and a friend went to a bar in Lan Kwai Fong for drinks. During their time at the bar, Daniel and his friend had an argument with some unknown individuals who appeared to be drunk. Daniel denied injuring anyone and says that his friend did assault someone at the bar with a glass bottle. Daniel then gave further detailed background of himself and the incident on 18 January 2024 at Happy Bar. After hearing Daniel, Adrian explained to Daniel in detail the elements for a charge of wounding and the criminal procedure in Hong Kong and advised him to exercise his right to remain silent at the interview with the Hong Kong Police.

At the conclusion of the meeting, Daniel told Adrian that he was appreciative of Adrian's advice and he felt guilty not paying Adrian anything as the advice rendered by Adrian was detailed and thorough. On his own volition, Daniel took out cash in the sum of HK\$5,000 and gave it to Adrian. Adrian replied that it was not necessary to pay him anything as Cindy was a good friend of his and he was simply helping a friend.

Daniel however insisted on paying Adrian and said the HK\$5,000 was not fees for the meeting but simply for Adrian to have a nice meal. Adrian was uncertain as to whether he should receive the sum of HK\$5,000 and informed Daniel he will think about it.

*Question continued on next page*

On 31 January 2024, Adrian received a call from a solicitor from XYZ firm to appear for Frank (who was given bail) at a Magistracy Court on 6 February 2024 for mention to seek an adjournment to obtain papers from the Hong Kong Police. Adrian was told that Frank was charged with wounding that took place somewhere in Hong Kong. With his fees agreed and back sheet delivered to Adrian, Adrian was instructed to appear for Frank on 6 February 2024.

On 5 February 2024, Adrian received a call from Daniel. Daniel informed Adrian that Frank had informed him that Frank (via Frank's solicitors) has instructed Adrian to act for him. Daniel informed Adrian that Frank was in fact the friend who attended Happy Bar with Daniel on 18 January 2024. Daniel also informed Adrian that Frank was charged as the 1<sup>st</sup> Defendant while Daniel himself was also charged to appear on 6 February 2024 as the 2<sup>nd</sup> Defendant in the same case with one count of wounding. Daniel repeated to Adrian that it was Frank who hit someone with a glass bottle and that Daniel did not injure anyone. Daniel proposed to Adrian to encourage Frank to admit his guilt in exchange for no prosecution against Daniel. Daniel promised to Adrian that he will buy Adrian a "larger and nicer meal" if Frank is willing to do that. Daniel also informed Adrian that in the event Frank is unwilling to admit his guilt, he may consider becoming a prosecution witness to testify against Frank.

Having heard Daniel's information, Adrian is unsure whether he should continue to represent Frank at the mention on 6 February 2024.

**[50Marks]**

## QUESTION 4

**Discuss the issues of professional conduct that are raised in relation to the facts below:**

Central Chambers (“the Chambers”) is an established set of barristers’ chambers located in Central, comprising members of different levels of seniority.

Recently, Barristers A, B, and C joined the Chambers.

On their arrival, A, B and C received an invitation from their common friend working in the media to participate in a live variety show (“the Show”) on the Mainland, modelled after “The Apprentice”. The Show, in the legal series, features mock trials where participants like A, B and C are invited to act as counsel.

Apparently, A and B are drawn to the opportunity for practice promotion by participating in the Show, seeking to increase their ‘visibility’. They are undoubtedly also attracted by the financial remuneration offered to them.

C is however reluctant and has a mixed views and therefore declines to participate immediately.

As part of their contracts, A and B are required to write their own scripts for the Show and participate in promotional advertisements. A notable clause in their contracts mandates that they comply with the producers’ requests, which may compromise their professional autonomy.

During their discussions about the Show, A and B have decided to inflate their legal skills ‘a bit’ in order to give some theatrical effect and more importantly, to make them stand out from the other participants. They have also made disparaging remarks about the competence of their competitors.

Over time, A and B have frequently highlighted their posh lifestyle and showcased expensive watches, etc. in an attempt to project a glamorous image. However, it is clear that they have not actually disclosed the dollar-and-cent figures of their earnings.

To make things look ‘real’, A and B have proceeded to disclose the identities of their prominent clients during the Show, with details of their cases.

Part of the promotional strategy for the Show requires A and B to wear wig and gown and pose, again to add theatrical effects to stimulate the audience. Despite concerns within the Chambers about the implications for their professional image, nonetheless, A and B have to comply with the producers’ demands in order not to breach their contracts.

The filming of the Show spans over a year, requiring significant time and commitment from A and B out of their legal practice.

*Question continued on next page*

Meanwhile, C adopts a different course and continues to work. Now that he has secured tenancy with the Chambers, he has also become friend with another junior barrister, J, in the Chambers. J confesses that she has overlooked the need to take out professional indemnity insurance for the previous year of practice and is now extremely worried about the default. C then analyses the potential implications with J and gives her advice.

**[50Marks]**

**PART C (ADVOCACY)**

**HCA                    /2024**

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE**

**ACTION NO.                    OF 2024**

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**Between**

**DAMIEN PESTROVITCH**

*Plaintiff*

**and**

**JULIAN MONG  
PETUNIA MONG  
APEX W.M.G. LIMITED**

*1<sup>st</sup> Defendant  
2<sup>nd</sup> Defendant  
3<sup>rd</sup> Defendant*

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**INSTRUCTIONS TO COUNSEL**

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Counsel is instructed to appear for the Plaintiff at 10 a.m. on the 1<sup>st</sup> day of November 2024 before the Honourable Mr. Justice Pang on an urgent *ex parte* application for the issue of a Mareva injunction.

The following documents from instructing solicitors are enclosed:

1. An attendance note by Mr. Anthony Leong, partner of Messrs. Leong, Leung and Lui, Solicitors and Notaries with documents from the lay client;
2. A draft generally indorsed Writ of Summons.

Counsel is asked to prepare a skeleton argument in support of the application and also to prepare a draft Order.

No affidavit as yet been prepared due to the extreme urgency of the matter. Counsel should therefore make reference in the course of oral submissions, if appropriate, to any required undertakings.

Counsel should note that oral submissions in support of the application are to last no more than 20 minutes.

Dated this 22<sup>nd</sup> day of October 2024.

Leong, Leung and Lui  
***Leong, Leung and Lui,***  
***Solicitors and Notaries***  
*LG2, HKBA TOWER*  
*Queensway Hong Kong*  
*Tel: 44335566*  
*Fax : 44335567*  
*e-mail: LLL@law.org.hk*

### **Attendance Note**

Attending is Mr. Damien Pestrovitch (“Damien”) with our supervising partner Mr. Anthony Leong. Damien was introduced to our firm by his uncle, Mr. Bartholomew Pestrovitch (Senior) in 2020. Mr. Pestrovitch (Senior) was a long-term and much-valued client of the instructing solicitors. Four years ago he went into retirement and after having travelled extensively throughout the world, he settled in India where he has established an ashram for stray and wild dogs. He now sees himself as India’s ‘Dog Whisperer’, tackling the overpopulation of untamed stray dogs. Damien has tried to contact him on several occasions for advice on this matter but Mr. Pestrovitch (Senior) a.k.a. ‘Mohandas’ is incommunicado.

### **The Action**

Damien is seeking a Mareva injunction against Mr. Julian Mong (“Julian”) and his wife Ms. Petunia Mong (“Petunia”). This being a derivative action on behalf of APEX W.M.G. Limited (“APEX”), the company has been joined as the 3<sup>rd</sup> Defendant in order that it will be bound by the judgment in the action.

### **The Client**

This is the first matter in respect of which we have been instructed to act for Damien. He is a 50% shareholder and one of the two directors of APEX. The other 50% shareholder and director of APEX is Julian.

### **Background of APEX**

APEX was set up by Mr. Pestrovich (Senior) 18 years ago. It is a company incorporated in Hong Kong limited by shares. Upon retirement Mr. Pestrovitch (Senior) appointed Damien as Managing Director. Damien has now explained the background and ideals of APEX. Extracts from the company’s brochure are included below:

*“The company currently manages approximately US\$180million in assets for more than 800 individual, corporate and institutional client relationships.*

*The Apex Wealth Management Group assures the benefits of financial independence remain within our clients' reach. We provide clients with timely and valuable investment advice through guidance and objective points of view. We offer clients a wide range of trust, investment and insurance products and services, which through the years have provided superior solutions toward achieving their individual financial goals.*

*APEX has developed dedicated teams of professionals to provide support and advice on various trust services. APEX also has a group of experienced investment professionals who manage client relationships, as well as, investment services that offer a full range of investment and insurance products. Through our management teams we provide clients with support for their daily activities, monitor their investment performances, provide reports, analyze financial goals and assess their long-term objectives.”*

The business of APEX offers a complete array of investment products and services. It is comprised of a group of specialized teams of consultants dedicated to providing a wide array of financial and investment solutions and services to meet the various and unique needs of their client base. The company has earned the distinction of being recognised by the industry worldwide as “a fully integrated team of highly skilled professionals, who share a common vision and are recognized as the “trusted provider of choice”. The annual profit for the company since 2018 was in the region of US\$8-10million.

When Damien was appointed Managing Director he had little experience in the field, but over the past few years has developed a keen interest in the area of financial consulting and advising and has attended many workshops and training seminars on the topic. He, however, sees his role more as a Marketing Manager promoting and marketing the company, bringing in high-profile and high-net-worth individual and institutional clients.

### **Business Partner – Mr. Julian Mong**

Damien was able to focus on this role in marketing as he relied heavily on Julian who is now also a director of APEX and who jointly holds shares in APEX. Julian was employed 10 years ago by Mr. Pestrovitch (Senior). He had previously worked in Canada and was recruited originally as a junior consultant – handling small funds. He is one of the longest serving members of APEX. He climbed the career ladder to senior consultant eight years ago. Julian is described as ‘charismatic and captivating’ and clients are always keen to return to him for additional services. Staff generally respect him as the leader of the organisation.

### **New Investment Project**

In 2018, Julian persuaded Damien to make him a business partner and a director of APEX. Julian convinced Damien that whilst he was focused on marketing, Julian would with his experience and ability, supervise the growing team of consultants. Additionally, as Julian was handling the portfolios of the high net worth clients, he needed the status which went with the title and role of director. Damien confided in Julian and trusted him as his right hand man and acceded to this proposal. Damien became close to the Mong family, particularly to Julian’s wife Petunia, and their son Barron.

### **The Mongs’ Background**

Damien provided some background details of the Mongs. Julian and Petunia are Canadian Citizens and hold Canadian Passports. They have a town house in Canada which was a gift from Petunia’s mother. He was aware that some of Julian’s family members live in Canada. Julian had met Petunia at college in Vancouver. Her family has a chain of jewellery stores there. Barron, their eight year old son, was sent to boarding school in Canada last year due to his asthmatic condition worsening with the high levels of pollution in Hong Kong. He enjoys it there and is not lonely as he visits his relatives on the weekends and holidays. Petunia has made it known that she wants to have more children but not in Hong Kong due to the pollution and unhealthy lifestyle. When in Hong Kong the Mongs live in a flat which they purchased four years ago at the Bel Air which is a prestigious residential development in the Southern District of Hong Kong. The flat was valued then at HK\$18million, and they took out a 70% mortgage from Hang Seng Bank. They also own a flat which is rented out and located in Sai Wan Ho. This property was a gift from Julian’s father and is worth approximately HK\$7.2million.

### **‘Triple-in-Five’ Investment (“TIF”)**

In 2019 Julian approached Damien with a proposal for a new fund project and promotion to be known as the “Triple in Five” or “TIF” – Triple your worth and assets in five years with APEX. It was a very attractive investment with guaranteed returns. Damien gave his approval to the setting up of this fund.

In February 2020 the TIF project was launched. A large number of new clients were secured by APEX as result. Julian was responsible for handling only the top clients with investment portfolios of US\$10million or above. He advised Damien that a separate bank account should be opened solely for TIF funds and the latter agreed with this. A premium investment account with Hong Kong Asia’s Bank was opened with A/C Number 001-887-76655448-8.

Clients registered with APEX and paid a consultancy fee of 2.5% of the value of their portfolio. Payments were made by cheque to ‘APEX TIF’.

### **The New Team**

In April 2020 Julian informed Damien that the TIF fund was very popular and that they needed to hire additional staff to assist with its management and control – including an accounts manager. Julian recommended Petunia for this position as she was a chartered accountant. Damien agreed to this appointment and to the expansion of the management team.

New consultants were then hired. Their contract terms stipulated that they would work as consultants only for APEX in Hong Kong. They could however continue to work on any overseas projects they chose with their overseas employers. Damien reasoned that as he was keen to expand to overseas markets and to obtain overseas clients, once he had more knowledge and experience, he did not want to lose the networking potential which this new team of consultants might well bring him.

The dynamic new team were:

|                              |  |
|------------------------------|--|
| Adrienne Lo – from Australia | Derek Staninski – USA                        |
| Raj Sharma – USA             | Pierre Boutolin – France                     |
| Neville Darcy III - UK       | Gu Wei Zan – China                           |
| Hu Fuling – China            | Nora Lim – Singapore (consultant & accounts) |

Each consultant was to receive a basic salary of HK\$78,000 per month and a commission of 0.5% of the investment portfolio of each client whose business they secured for TIF.

### **Management and Operation of APEX**

Up to 2020 all investments had to be personally authorized by Damien. He accepts that this was largely a rubber stamp exercise but he did in fact review the investments. All company cheques and cheques for payment of staff salaries had to be co-signed by Julian and Damien, and no transfers over HK\$500,000 were permitted without Damien's authorisation. The portfolios of new clients had to be approved by Damien within 10 days of them signing up.

### **New Business Opportunities in USA**

During this time Damien travelled extensively as he was establishing new businesses in New York, Chicago, and Miami in the area of real estate. He was working with the likes of Dionna Trump, niece of property magnate Donald Trump and other property tycoons. During 2019 to 2024 he only spent a few months per year on aggregate in Hong Kong.

As a result of the expansion of APEX, increases in staff numbers and his overseas commitments, Damien was unable to maintain a hands-on approach to the business of APEX. He allowed Julian to deal with the day-to-day-operation of the business. Julian was required to produce a quarterly report on the business for Damien. With respect to co-signing cheques, initially Damien would sign blank cheques for Julian's use whilst he was overseas. However, as his overseas travel was not always predictable the previous practice of co-signing cheques was abandoned in February 2020 and in January 2023 Julian was given authority to issue cheques on behalf of the business himself.

### **APEX Office Relocated**

Six months ago Julian contacted Damien on the phone and advised him that the landlord of their office complex in International Monetary Tower, Central, had given notice that the rent would be increased by 130% to HK\$184,000 per month. Julian was furious and said he refused to allow the profits of the business to be wasted on a greedy landlord. He told Damien that he had already made some enquires and located an ideal office at the same rate as the existing rent in a neighboring building. They could give two weeks notice as the landlord already had a new tenant willing to pay the extortionate rates.

The new office was in Queensway and APEX moved two weeks later. Removal announcements were placed in local Chinese and English press as well as the leading Financial and Asian Business magazines. **See attached.**

### **Transfer of HK\$500,000**

Four months ago, Julian contacted Damien again and sounded quite distressed on the phone. He explained that his mother was very ill and that all his money was tied up in Chinese ‘H’ shares and thus not readily available. He requested to borrow money from the business which could be deducted from his salary. Damien agreed and said that this would be no problem, but asked Julian to follow up the request with an e-mail so there would be written confirmation of the loan. It was only when Damien read the e-mail that he discovered the loan was for HK\$500,000. He immediately called Julian and asked how his mother was as he had not been aware that his mother had such a serious illness. **A copy of the e-mail is attached.**

### **TIF Clients – Complaints and Praise**

In the same month Damien attended the Hong Kong Chamber of Commerce Overseas luncheon in New York. At the luncheon he met with some of APEX’s clients who told him that they were very happy with the projected returns as shown on the monthly portfolio statements issued on behalf of TIF and asked if the project would be repeated. Damien was pleased to hear this. At the time he confessed he really did not understand how the fund operated and how it was able to generate such an excellent rate of return. He never suspected any impropriety in the handling of the funds by Julian.

Damien therefore could not understand the irate calls he received in July this year from four clients about the failure of the TIF fund to deliver anything like the promised returns. He informed the clients that Julian being the Director in-charge would personally handle the matter immediately. He contacted Julian who appeared to be unaware that four clients had been unhappy with the projected performance of the fund and said *“it must be one of the smaller funds handled by the other consultants, I will personally handle it, not to worry I’ll take care of it”*.

Damien thought nothing more of it.

### **Damien's Return to Hong Kong**

In late August of this year Damien contacted Julian and said he would be in Hong Kong for a few days at the beginning of October and wanted to have a briefing with him, meet with all the staff and review plans for new projects.

It was then that Julian informed Damien that unfortunately he would be in Canada with Petunia visiting his mother, as she was still very ill. However, Ms. Nora Lim, his top consultant and Deputy Director, would keep him up to speed.

Damien explained to instructing solicitors that he was originally not intending to return to Hong Kong until December this year, but the relocation of the office and delay in receiving the quarterly reports for 2024 from Julian had triggered his decision to return to Hong Kong earlier than expected to check on the company.

On his departure from JFK airport Damien had picked up 'Asian Business Magazine for Magnates' (May 2024 edition) and noticed an advertisements promoting a New Dynamic Team at Summit Asia Limited – a well known investment company in Asia. The new team consisted of four members of his APEX staff: Derek Staninski, Raj Sharma, Pierre Boutolin and Gu Wei Zan. He immediately called Julian but was re-directed to his voicemail. He left a message. He decided he did not want to approach Ms. Nora Lim or any of the other staff to find out what happened until he had had a face-to-face explanation from Julian. He could not recall any e-mail, telephone call or update in the last quarterly report about staff changes. He did recall a suggestion by Julian of improving staff incentives but this had not been followed up.

Damien arrived Hong Kong in the late afternoon on 27<sup>th</sup> September 2024 and was at his hotel when Ms. Nora Lim contacted him and informed him that there was a cocktail party being hosted by their top client this evening and that they should both attend as Julian was out of town. Damien agreed and joined her at the Four Seasons Hotel where the cocktail party was held.

At the cocktails Mr. Travis Li, an IT mogul, greeted Damien and Ms. Nora Lim, by saying he was impressed by how Damien treated his staff. He continued by saying "*Well Julian must have been making big money for someone to get such a good bonus! I want him to work some of his magic for me*". When Damien asked why this was, Mr. Travis Li replied by

saying, “Mong and his lovely wife Petunia were in a very good mood, when I saw them several nights ago, leaving the Empress Suite at the Venetian Resort in Macau”. Damien then left the cocktail party and called Julian and Petunia’s mobile phones but received the message that they were switched off.

The next morning Damien went to the new APEX office and was startled to see the premises. It consisted of many small cubicles and had cheap furniture and two small plastic signboards advertising Fidelity Secretarial Services and APEX. There was no receptionist and only a few staff were at work.

He then contacted Ms. Nora Lim and when she arrived he asked her about the staff and offices.

### **Staff**

Ms. Nora Lim explained that six months ago Julian informed staff of a change in their contractual terms. They were now allowed to freelance with any company in Hong Kong or overseas. They would no longer receive a fixed salary but would receive a 0.05% commission of the value of the portfolio of any client who signed up with them.

Most of the staff were quite happy with the arrangements as some apparently had been freelancing on the side and found that this was more lucrative. Two staff members had already resigned and left Hong Kong. These were Hu Fuling and Neville Darcy III. Adrienne Lo refused the new terms and remains employed on the old contract terms. The rest are freelancing in Hong Kong and overseas. Ms. Nora Lim received a pay rise as vice-managing director and a 0.5% commission of the values of any investment portfolio she secures for APEX.

The remaining staff worked from their cubicles and the rest of the office space had been rented out to Fidelity Secretarial Services.

Damien demanded to see the accounts and both he and Ms. Nora Lim went through the accounts and files. The results were alarming and confusing.

### **The Discovery**

The following was discovered:

1. Only 12 of the 20 TIF clients whose policies had matured had received their payments. According to the records a total of US\$38million was still owed to clients and this was payable to them between October and December 2024;
2. The designated TIF account with Hong Kong Asia's Bank A/C Number 001-887-76655448-8 only had a balance of HK\$215,000;
3. There were no records of any new clients or outstanding investment policies;
4. APEX business bank accounts showed a balance of HK\$172,000;
5. Cheque stubs show salary cheques had been made out to the consultants for the past six months. Copies of the cheques show that the cheques were made out to Petunia and Julian; **see table attached**;
6. Rental (inclusive of management fees) of HK\$80,000 had been paid to La Salle Management Company;
7. Deposit slips show cheque payments by Fidelity Secretarial Services in the sum of HK\$68,000 had been deposited into an unknown account on a monthly basis since March 2024; **see table attached**;
8. Three cheque stubs drawn on the APEX accounts in the sum of HK\$78,000, HK\$156,000 and HK\$100,000 had been made out to Petunia; **see table attached**.

Damien was livid and contacted the auditors and arranged for a full audit of the accounts. He asked them to obtain from the bank copies of the cheques and details of the unknown bank account into which transfers and deposits had been made. He made an appointment to see instructing solicitors. He thought about calling the police but did not want APEX's reputation tarnished by Julian's deceit.

### **The confession**

At this time Ms. Nora Lim confessed to Damien that she was aware that Julian had taken a loan from APEX but had been told by him this was with the full authority of Damien. She was unaware that Damien had not authorized the changes in staff terms and office relocation.

She was told by Julian that Damien was very supportive of his new ventures in the casino business.

She confessed that she had been having a secret romantic relationship with Julian for two years. He had made plans that once he had enough money for her and him to retire they would live in Canada and operate an organic farm located near the beach. They were planning to raise their children there.

Last night she was so upset to hear that Julian was with his wife in Macau. She felt she had been cheated and she wanted to confront him. She left the cocktail party and went straight to his home in the Bel Air.

She was shocked to be told that Julian no longer lived there and he had sold the property two months ago. She told the occupants that she had heard Julian's mother was ill and wanted to bring some herbal medicine for her. The occupants gave her his forwarding address – Flat 2B 66 Sai Wan Ho Street, Hong Kong.

(Damien requested instructing solicitors to conduct a land search. This will be conducted later today. The results will be sent to counsel as soon as it is received.)

Damien demanded the forwarding address and went there with Ms. Nora Lim.

On the way he asked Ms. Nora Lim about Julian's new business projects. She told him that Julian invested in a casino in Macau in 2022. He told her that he had decided that the casino business was the best way to make money, he had heard the earnings from one night in Macau was the equivalent of two weeks earnings in Las Vegas.

Julian complained to Ms. Nora Lim that he was fed up with having to “*kow tow*” and cater to the big wigs. He wanted to live life in the fast lane. The casino business was very appealing to him. He expressed his desire to start afresh and said Canada would be an ideal place for this. However recently he seemed quiet and appeared stressed; he explained to Nora it was due to family problems. She did not pry further.

In discussing these matters with Damien, Ms. Nora Lim recalled that several months ago she had accidentally picked up Julian's computer memory stick (it was identical to hers) and

when trying to locate a file she came across scanned bank statements in PDF format. She did not pay any attention to them at that time.

### **The Mongs' Property and Casino**

When Ms. Nora Lim and Damien arrived at the address in Sai Wan Ho, they found Barron at home playing Mahjong with his grandmother. Damien asked Barron where his parents were and was told that they were on a short holiday. Barron said he was in Hong Kong for a break before returning to school in Canada. When Ms. Nora Lim asked him how his grandmother was he said, "*Fine, as you can see she keeps beating me at Mahjong*".

Ms. Nora Lim then asked if she could collect some papers for the office. The helper showed her the study where the home office was.

Amongst the papers she discovered the following:

- 1) E-mail in the rubbish bin from the solicitors of the investors of Sai Casino in Macau;
- 2) An e-mail for the purchase of shares in Super Cruise Ship & Floating Casino in Canada.

Damien looked around to see if he could locate any documents or data storage devices so that he could check into them, but could not find any.

Upon leaving the flat Damien asked the helper how the other grandmother was, she replied that she had passed away two years ago.

### **Consequences**

Damien has independent auditors checking the accounts of APEX but strongly believes the business faces bankruptcy. He is very worried about his uncle and his family's reputation. He is also concerned about the missing funds and wants to find out if Julian and Petunia are in Macau or have left Hong Kong. He has convinced himself that the TIF fund was all a scam and that Julian must have used other client's funds to pay the TIF policies and to line his pockets.

Damien now suspects that he has been duped by Julian for a long time and that the TIF may have been a ploy to get quick money. He believes there was an intention to cheat some of the

TIF clients and hiring Petunia in accounts was all part of the plan to swindle him and the business. He is embarrassed that as an international business executive he was so severely defrauded, he insists that the loan of HK\$500,000 be included in the claim. He fears that the Mongs may leave or already have left Hong Kong for Canada to render them immune from any judgment against them.

He said he did not want the police involved, he just wanted recovery of the missing funds and wanted Julian out of his life.

Damien would pay for the legal fees. He owns three properties in New York, a residential duplex on the upper East side valued at US\$8million, and an office block in Brooklyn, valued at US\$28million. He has taken out second mortgages on both those properties. The remaining property, a warehouse with an adjoining loft apartment in the meatpacking District at Gansevoort Market, is currently being considered in negotiations for sale to a developer at approximately US\$5.5million, but he does not want this information revealed as it is still being negotiated. He has taken out a loan from New Manhattan Bank for US\$18million, for renovations for the office block in Brooklyn.

### **Action**

Mr. Leong canvassed with Damien his potential claims against Julian and Petunia. Mr. Leong advised that the issuance of a Mareva injunction should be considered and counsel be instructed in the matter. Mr. Leong asked Damien to provide HK\$800,000 as costs on account in the event that he would wish to proceed with the matter. Damien confirmed his instructions and said he would deposit the sum with our firm the next day.

Mr. Leong will endeavour to prepare a file of exhibits but these will not be available in time for the hearing. Mr. Leong would like counsel to consider any other means of preserving and safeguarding Damien's rights.

Instructing solicitors authorise counsel to provide any necessary undertaking to the court to the effect that affidavits and supporting documents and relevant exhibits will be filed and served as soon as possible.

**DOCUMENTS SUPPLIED BY CLIENT**  
**AND INSTRUCTING SOLICITORS**

- A. E-mail Re: Sai International Casino & Resort
- B. Table of Cheques issued by APEX/Table of Rental Payments by FSS
- C. E-mail from Super Cruise Ship & Floating Casino in Canada
- D. APEX Relocation Notice
- E. Fax Re: Sale of Bel Air
- F. E-mails RE: Loan of HKD\$500,000

A

Page 1 of 3

I Solicitor \_\_\_\_\_

**From:** [I Solicitor](#)

**To:** [J.Mong](#)

**Sent:** Tuesday, September 25, 2024 10:36 AM

**Subject:** Re: Outstanding Payments : Sai International Casino & Resort

Dear Mr. Mong,

Thank you for your e-mail.

We have been informed that you are in Macau locating an 'investor' to purchase your share of SICR.

Please be informed that our clients will accept no more delays in payment.

They will not accept payments by instalments.

Should you fail to meet the deadline for payments we will have no choice but to seek recovery for the outstanding amount. Our clients have indicated that should an investor be interested in your share of SICR we will arrange for transfer of the shares and if there is any shortfall in price (including interest from the loan) this difference in price will be recovered from you.

You have requested that we further 'stall' the recovery of the sum. We have already delayed recovery by three weeks. No further delays are possible, as you are fully aware of the impending renovations and re-design of Sai Casino.

The outstanding sum of USD\$ 12.16million is due 5<sup>th</sup> October 2024, 5:00pm

Yours sincerely,

*I. Solicitor*

Mat Mo Yeung & Spence Solicitors & Notaries  
33 Tin Fun Road  
12th Floor  
Central  
Hong Kong

Tel : 852 3434 3434

Fax: 852 7979 7979

----- Original Message -----

**From:** [J. J. Mong](#)

**To:** [Solicitor](#)

**Sent:** Monday, September 24, 2024 11:39 PM

**Subject:** RE: Outstanding Payments : Sai International Casino & Resort

Dear Mr. I. Solicitor,

Thank you for your e-mail. I apologise you were unable to contact me by mobile phone, it has been out of order and is currently being repaired, my sim card was destroyed and I am using a temporary phone till it is repaired.

Thank you for the good news.

So as I understand it, the deadline for payment is 5<sup>th</sup> October 2024. Any possibility of stalling it for a further few days? I have a very interested investor who will pay more than the asking figure, but he needs some time to arrange the financing. Would payments in three instalments over the next three months be acceptable?

Let me know

Yours faithfully

Julian Mong

----- Original Message -----

**I Solicitor**

---

**From:** [I Solicitor](#)

**To:** [J.Mong](#)

**Sent:** Friday, September 21, 2024 8:36 AM

**Subject:** Outstanding Payments : Sai International Casino & Resort

Dear Mr. Mong,

We write further to our letter dated 14<sup>th</sup> September 2024 and your phone call to us on 15<sup>th</sup> September 2024.

You requested an extension to pay the outstanding amount.

We have tried to return your phone calls on three occasions to discuss this matter but we have had no response. You asked us to contact and discuss the arrangements your wife Petunia in case we were unable to get hold of you, she also did not respond to our calls.

The investors have agreed to grant you an extension.

As you are aware our clients have been very accommodating to you since you agreed to purchase 25% shares in SICR in 2022.

They made favourable arrangements for a loan for you to pay the outstanding amount. You have been fully aware that the SICR has not made the profits expected but suffered heavy losses in the three years of operation. You agreed with the investors in May 2024 that SICR needed to be revamped in order to lure the big gamblers from PRC.

The renovations and expansion to include a Disney style resort & spa is scheduled to commence after the end of the Golden Week holidays in October. The loan must be repaid by then.

You were advised to find another investor to replace you and you requested copies of SICR's brochures and investors promotional literature. We arranged FEDEX couriers the same day of the request but they were refused at your place of address.

Please arrange for literature to be collected from our offices. Please advise us of the details of the new investor if and when you secure the deal.

Payment amount is provided below for your reference

- a) 25% share in SICR – total USD\$ 23million
- b) Loan of \$8million taken out 3 January 2024 at 6.5% per month
- c) Paid USD\$15million 2 December 2023

Outstanding Total to date: USD\$12.16million

Yours sincerely,

***I. Solicitor***

Mat Mo Yeung & Spence Solicitors & Notaries  
33 Tin Fun Road  
12th Floor  
Central  
Hong Kong  
Tel : 852 3434 3434  
Fax: 852 7979 7979

**B****CHART OF CHEQUES ISSUED BY APEX**

| <b>PAYEE ON CHEQUE STUB</b> | <b>CHEQUE NUMBER</b> | <b>DATE</b>                 | <b>AMOUNT</b>     | <b>NAME ON CHEQUE</b> | <b>CHECKED BY BANK/COMMENTS</b>   |
|-----------------------------|----------------------|-----------------------------|-------------------|-----------------------|---|
| Petunia Mong                | 556677               | 1 <sup>st</sup> March 2024  | <b>HKS78,000</b>  | Petunia Mong          | Possibly her salary?  |
| Boutolin, Pierre            | 566677               | 1 <sup>st</sup> April 2024  | <b>HKS78,000</b>  | Petunia Mong          | BP confirmed he did not receive this cheque   |
| Darcy III, Neville          | 576677               | 1 <sup>st</sup> April 2024  | <b>HKS280,000</b> | Darcy III, Neville    | Unable to confirm if DN received cheque as he is overseas and we are unable to locate him |
| Fuling, Hu                  | 586677               | 1 <sup>st</sup> April 2024  | <b>HKS367,000</b> | Fuling, Hu            | Unable to confirm if HF received cheque as he is overseas and we are unable to locate him |
| Lo, Adrienne                | 596677               | 1 <sup>st</sup> April 2024  | <b>HKS86,000</b>  | Lo Adrienne           | Received by LA  |
| Sharma, Raj                 | 606677               | 1 <sup>st</sup> April 2024  | <b>HKS78,000</b>  | Julian Mong           | # SR can not recall if he receive this cheque. It has been added to the claim             |
| Staninski, Derek            | 616677               | 1 <sup>st</sup> April 2024  | <b>HKS78,000</b>  | Julian Mong           | SD confirmed he did not receive this cheque   |
| Lim, Nora                   | 626677               | 1 <sup>st</sup> April 2024  | <b>HKS118,000</b> | Lim, Nora             | Received by LN  |
| Zan ,Wei                    | 636677               | 1 <sup>st</sup> April 2024  | <b>HKS78,000</b>  | Julian Mong           | ZW confirmed he did not receive this cheque   |
| Boutolin, Pierre            | 736677               | 1 <sup>st</sup> May 2024    | <b>HKS78,000</b>  | Petunia Mong          | BP confirmed he did not receive this cheque   |
| Darcy III, Neville          | 74667                | 1 <sup>st</sup> May 2024    | <b>HKS78,000</b>  | Petunia Mong          | Unable to confirm if DN received cheque as he is overseas and we are unable to locate him |
| Fuling, Hu                  | 75667                | 1 <sup>st</sup> May 2024    | <b>HKS78,000</b>  | Julian Mong           | Unable to confirm if HF received cheque as he is overseas and unable to locate            |
| Lo, Adrienne                | 76667                | 1 <sup>st</sup> May 2024    | <b>HKS78,000</b>  | Lo, Adrienne          | Received by AL  |
| Sharma, Raj                 | 77667                | 1 <sup>st</sup> May 2024    | <b>HKS78,000</b>  | Petunia Mong          | SR confirmed he did not receive this cheque   |
| Staninski, Derek            | 78667                | 1 <sup>st</sup> May 2024    | <b>HKS78,000</b>  | Petunia Mong          | SD confirmed he did not receive this cheque   |
| Lim, Nora                   | 79667                | 1 <sup>st</sup> May 2024    | <b>HKS188,000</b> | Lim, Nora             | Received by LN  |
| Boutolin, Pierre            | 92667                | 1 <sup>st</sup> June 2024   | <b>HKS78,000</b>  | Julian Mong           | BP confirmed he did not receive this cheque   |
| Darcy III, Neville          | 93667                | 1 <sup>st</sup> June 1 2024 | <b>HKS78,000</b>  | Julian Mong           | Unable to confirm if DN received cheque as he is overseas and we are unable to locate him |

|                    |       |                             |                   |                    |   |
|--------------------|-------|-----------------------------|-------------------|--------------------|---|
| Fuling, Hu         | 94667 | 1 <sup>st</sup> June 2024   | <b>HKS78,000</b>  | Julian Mong        | Unable to confirm if HF received cheque as he is overseas and we are unable to locate him |
| Lo, Adrienne       | 95667 | 1 <sup>st</sup> June 2024   | <b>HKS130,000</b> | Lo, Adrienne       | Received by AL  |
| Sharma, Raj        | 96667 | 1 <sup>st</sup> June 2024   | <b>HKS78,000</b>  | Petunia Mong       | SR confirmed he did not receive this cheque   |
| Staninski, Derek   | 97667 | 1 <sup>st</sup> June 2024   | <b>HKS78,000</b>  | Julian Mong        | SD confirmed he did not receive this cheque   |
| Lim, Nora          | 98667 | 1st June 2024               | <b>HKS128,000</b> | Lim, Nora          | Received by LN  |
| Petunia Mong       | 99667 | 22 June 2024                | <b>HKS156,000</b> | Petunia Mong       | Petunia Mong<br>Possibly her salary?  |
| Boutolin, Pierre   | 11767 | 1 <sup>st</sup> July 2024   | <b>HKS78,000</b>  | Petunia Mong       | BP confirmed he did not receive this cheque   |
| Darcy III, Neville | 12767 | 1 <sup>st</sup> July 2024   | <b>HKS78,000</b>  | Petunia Mong       | Unable to confirm if DN received cheque as he is overseas and we are unable to locate him |
| Fuling, Hu         | 13767 | 1 <sup>st</sup> July 2024   | <b>HKS78,000</b>  | Petunia Mong       | Unable to confirm if HF received cheque as he is overseas and we are unable to locate him |
| Lo, Adrienne       | 14767 | 1 <sup>st</sup> July 024    | <b>HKS78,000</b>  | Lo, Adrienne       | Received by AL  |
| Sharma, Raj        | 15767 | 1 <sup>st</sup> July 2024   | <b>HKS78,000</b>  | Petunia Mong       | SR confirmed he did not receive this cheque   |
| Staninski, Derek   | 16767 | 1 <sup>st</sup> July 2024   | <b>HKS78,000</b>  | Petunia Mong       | SD confirmed he did not receive this cheque   |
| Thong Lim, Nora    | 17767 | 1st July 2024               | <b>HKS98,000</b>  | Thong Lim<br>Nora  | Received by LN  |
| Boutolin, Pierre   | 22767 | 1 <sup>st</sup> August 2024 | <b>HKS78,000</b>  | Julian Mong        | SR confirmed he did not receive this cheque   |
| Darcy III, Neville | 23767 | 1 <sup>st</sup> August 2024 | <b>HKS78,000</b>  | Julian Mong        | Unable to confirm if DN received cheque as he is overseas and we are unable to locate him |
| Fuling, Hu         | 24767 | 1 <sup>st</sup> August 2024 | <b>HKS78,000</b>  | Julian Mong        | Unable to confirm if FN received cheque as he is overseas and we are unable to locate him |
| Lo, Adrienne       | 26767 | 1 <sup>st</sup> August 2024 | <b>HKS78,000</b>  | Lo, Adrienne       | Received by LA  |
| Sharma, Raj        | 28767 | 1 <sup>st</sup> August 2024 | <b>HKS78,000</b>  | Petunia Mong       | SR confirmed he did not receive this cheque   |
| Staninski, Derek   | 29767 | 1 <sup>st</sup> August 2024 | <b>HKS78,000</b>  | Petunia Mong       | SR confirmed he did not receive this cheque   |
| Thong Lim, Nora    | 30767 | 1 <sup>st</sup> August 2024 | <b>HKS108,000</b> | Thong Lim,<br>Nora | Received by LN  |
| Zan ,Wei           | 32767 | 1 <sup>st</sup> August 2024 | <b>HKS78,000</b>  | Petunia Mong       | ZW confirmed he did not receive this cheque   |

|                  |        |                                |                    |              |   |
|------------------|--------|--------------------------------|--------------------|--------------|---|
| Petunia Mong     | 556677 | 18th August 2024               | <b>HK\$100,000</b> | Petunia Mong | Possibly her salary                         |
| Boutolin, Pierre | 566677 | 1 <sup>st</sup> September 2024 | <b>HK\$78,000</b>  | Petunia Mong | BP confirmed he did not receive this cheque |
| Lo, Adrienne     | 596677 | 1 <sup>st</sup> September 2024 | <b>HK\$86,000</b>  | Lo Adreinne  | Received by AL                              |
| Sharma, Raj      | 606677 | 1 <sup>st</sup> September 2024 | <b>HK\$78,000</b>  | Julian Mong  | SR confirmed he did not receive this cheque |
| Staninski, Derek | 616677 | 1 <sup>st</sup> September 2024 | <b>HK\$78,000</b>  | Julian Mong  | SD confirmed he did not receive this cheque |
| Lim, Nora        | 626677 | 1 <sup>st</sup> September 2024 | <b>HK\$118,000</b> | Lim, Nora    | Received by LN                              |
| Zan ,Wei         | 636677 | 1 <sup>st</sup> September 2024 | <b>HK\$78,000</b>  | Julian Mong  | ZW confirmed he did not receive this cheque |

**Julian Mong – 10 payments of \$78,000 = \$ 780,000**

**Petunia Mong – confirmed 12 payments of \$78,000 = \$ 936,000**

## **TABLE OF RENTAL PAYMENTS BY FSS**

| <b>Cheque issued by</b> | <b>Date</b>      | <b>Amount</b> | <b>Deposit Slip Details</b> | <b>Details about Bank Account</b>   |
|-------------------------|------------------|---------------|-----------------------------|---|
| FSS Limited             | 2 April 2024     | \$68,000      | SCB Bank<br>AC# 9998880     | Unknown bank Account<br>APEX has no known bank account with South China Bank          |
| FSS Limited             | 1 March 2024     | \$68,000      | SCB Bank<br>AC# 9998880     | Unknown bank Account<br>APEX has no known bank account with South China Bank          |
| FSS Limited             | 1 June 2024      | \$68,000      | SCB Bank<br>AC# 9998880     | Unknown bank Account<br>APEX has no known bank account with South China Bank          |
| FSS Limited             | 2 July 2024      | \$68,000      | HKI Bank<br>AC# 11144455    | Unknown bank Account<br>APEX has no known bank account with Hong Kong Investment Bank |
| FSS Limited             | 1 August 2024    | \$68,000      | SCB Bank<br>AC# 9998880     | Unknown bank Account<br>APEX has no known bank account with South China Bank          |
| FSS Limited             | 1 September 2024 | \$68,000      | HKI Bank<br>AC# 11144455    | Unknown bank Account<br>APEX has no known bank account with Hong Kong Investment Bank |
| FSS Limited             | 1 October 2024   | \$68,000      | SCB Bank<br>AC# 9998880     | Unknown bank Account<br>APEX has no known bank account with South China Bank          |

**TOTAL : HKD\$ 476,000**

C

----- Original Message -----

*Jason Swan SCSFCC*

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**From:** J SWAN

**To:** J.Mong

**Sent:** Saturday, September 22, 2024 2:36 AM

**Subject:** Ready to Invest? We're Ready to have you on board!

Dear Julian,

It is with the greatest of pleasure that we now invite you to invest in Super Cruise & Floating Casino Canada.

Mr. Jackson CEO and I were very impressed by your close connections to Asia especially Macau. Your pledge to bring one hundred clients every month from the People's Republic of China and Taiwan is very appealing to us.

We have considered your proposal to purchase shares to the value of \$24million Canadian dollars and would like to invite you to join the company as a major investor. We would like to discuss this with you in person.

Please let us know when you will be returning to Canada so we can make necessary arrangements.

Hope the lovely Petunia and cheeky Barron are in the best of health and we so look forward to seeing you all on the Super Cruise very soon.

With the greatest of respect

Yours truly

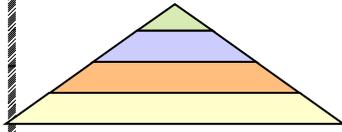
Jason

**Jason Swan MD**

Super Cruise & Floating Casino Canada.



**D**



APEX – Taking you to the Top

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***RELOCATION NOTICE***

*Please be informed with effect from 18 March 2024, our offices will be relocated to the address stated below: All telephone, fax numbers and e-mail addresses will remain unchanged.*

*Due to the relocation, our internet consulting services will be unavailable from 17<sup>th</sup> March 2024 8am to 18<sup>th</sup> March 2024 6pm. We apologise for any inconvenience caused to you.*

*15<sup>th</sup> Floor Rooms 1501-1508*

*China Finance Place*

*800 Queensway*

*Hong Kong*

**E**

**Leong, Leung and Lui,  
Solicitors and Notaries**  
LG2, HKBA TOWER  
Queensway Hong Kong  
Tel: 44335566 Fax : 44335567  
e-mail: LLL@law.org.hk

**FAX TO: Mr. Damien Pestrovitch**

**FAX NO: 78787879**

**FAX FROM: Arthur Leong**

**FAX NOS: 44335567**

**DATE: 22nd October 2024**

**No. of pages: 2**

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**Message:**

**Dear Mr. Pestrovitch,**

**Re :APEX**

***We have conducted a search at the Lands Registry and have discovered that the Bel Air property has not been sold but given as a gift to a Ms. Patricia Chan.***

***The property was jointly owned by Mr. Julian Mong and Ms. Petunia Mong, and was given as a gift to Patricia Chan on 2 June 2024. The property is valued at HKD\$ 15.8 million. Our inquiries reveal that Ms. Patricia Chan is the younger sister of Ms. Petunia Mong.***

**Yours faithfully,**

**Leong, Leung and Lui,**

## F

----- Original Message -----

**From:** [Damien Pestrovitch Jrn.](#)

**To:** [Julian Mong](#)

**Sent:** Friday, July 07, 2024 1:11 PM

**Subject:** Request for Loan

Dear Julian,

I am truly sorry to hear about your mother. I hope Barron and Pet are coping well.

Yes, this is to confirm that I will of course authorise the loan on the terms in your e-mail. Please take care and please let me know if there is anything I can do to help.

Regards,

Damien

Sent via BlackBerry® from 3

----- Original Message -----

**From:** [Julian Mong](#)

**To:** ['Damien Pestrovitch Jnr.](#)

**Sent:** Thursday, July 05, 2024 5:25 PM

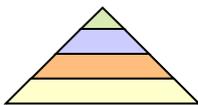
Dear Damien,

Thank you so much for being so understanding it was good to caht with you on the phone.

I write with reference to your authorising a loan of \$500,000 from APEX to me today. The sums will be repaid by deductions from my monthly salary starting from a date to be agreed upon.

Kindest regards,

Julian



**APEX – Taking you to the Top**

*Julian Mong Managing Director*

*APEX Wealth Management Group*

*15th Floor Rooms 1501-1508*

*China Finance Place*

*800 Queensway*

*Hong Kong*

*Tel: 852 8866 7733*

*Fax: 852 8866 7734*

*E-mail address: [julianmong@apex.hk.org](mailto:julianmong@apex.hk.org)*

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION NO. OF 2024

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Between

DAMIEN PESTROVITCH

*Plaintiff*

and

JULIAN MONG  
PETUNIA MONG  
APEX W.M.G. LIMITED

*1<sup>st</sup> Defendant*  
*2<sup>nd</sup> Defendant*  
*3<sup>rd</sup> Defendant*

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WRIT OF SUMMONS

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To the 1<sup>st</sup> and 2<sup>nd</sup> Defendants both of Flat 2B 66 Sai Wan Ho Street, Hong Kong AND to the 3<sup>rd</sup> Defendant whose registered office is at 15th Floor Rooms 1501-1508, China Finance Place, 800 Queensway, Hong Kong

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Registry to the High Court the accompanying ACKNOWLEDGEMENT OF SERVICE stating therein whether you intend to contest these proceedings or to make an admission.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings or to make an admission, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

\*[If you intend to make an admission, you may complete an appropriate form enclosed in accordance with the accompanying Directions for Acknowledgment of Service.]

Issued from the Registry of High Court this                      day of                      2024

*Registrar*

Note: This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

IMPORTANT: Directions for Acknowledgement of Service are given with the accompanying form

## **ENDORSEMENT OF CLAIM**

1. The Plaintiff claims against the 1<sup>st</sup> Defendant for:-
  - (a) an account of all monies belonging to the Plaintiff which had been misappropriated by the 1<sup>st</sup> Defendant in breach of fiduciary duties and/or trust;
  - (b) an order for payment by the 1<sup>st</sup> Defendant of all sums found to be due on the taking of such account under (a);
  - (c) an order that the 1<sup>st</sup> Defendant do repay the Plaintiff the sum of US\$38,000,000.00 and HK\$1,756,000.00 as monies had and received by the 1<sup>st</sup> Defendant to the 3<sup>rd</sup> Defendant's use;
  - (d) further or alternatively damages for breach of contract and/or fiduciary duties and/or breach of trust;
  - (e) further or in the alternative, damages for deceit;
  - (f) a declaration that the 1<sup>st</sup> Defendant is holding all monies belonging to the Plaintiff which had been misappropriated by him in breach of fiduciary duties and/or trust including the said sum of US\$38,000,000.00, HK\$1,756,000.00 on trust for the Plaintiff;
  - (g) interest pursuant to Section 48 of the High Court Ordinance (Cap. 4);
  - (h) costs; and
  - (i) further or other reliefs.
  
2. The Plaintiff claims against the 2<sup>nd</sup> Defendant for:-
  - (a) an account of all monies belonging to the Plaintiff which had been misappropriated by the 2<sup>nd</sup> Defendant in breach of fiduciary duties and/or trust;
  - (b) an order for payment by the 2<sup>nd</sup> Defendant of all sums found to be due on the taking of such account under (a);

- (c) the sum of HK\$1,141,200.00 being the amount of money unlawfully paid to the 2<sup>nd</sup> Defendant being money had and received by the 2<sup>nd</sup> Defendant to the 3<sup>rd</sup> Defendant's use;
- (d) further or alternatively damages for breach of trust;
- (e) further or in the alternative, damages for deceit;
- (f) a declaration that the 2<sup>nd</sup> Defendant is holding all monies belonging to the Plaintiff which had been misappropriated by her in breach of trust including the said sum of HK\$1,114,200.00 on trust for the Plaintiff;
- (g) interest pursuant to Section 48 of the High Court Ordinance (Cap. 4);
- (h) costs, and
- (i) further or other relief.

Dated the    day of                    2024.

Solicitors for the Plaintiff