

10. 2017 Papers

BARRISTERS QUALIFICATION EXAMINATION 2017

**PAPER II: Property, Conveyancing; and Equity
PART A: Property and Conveyancing**

QUESTION 1

ABC Ltd ('ABC') owns a block of residential flats (the 'ABC Building') in Tsuen Wan in the New Territories. The block is erected on Tsuen Wan Town Lot No. 1234. Behind the ABC Building, but within ABC's land, is a lane leading from the back door to the public road. Residents of the ABC Building use the lane to gain access to the public road.

The land adjoining ABC's land is Tsuen Wan Town Lot No. 4567 and is owned by DEF Ltd ('DEF'). In 1998, DEF built a block of residential flats on its land (the 'DEF Building'). The DEF Building abuts the public road, but has a back door which opens onto the lane owned by ABC. The DEF Building also has a front door. See the diagram below.

Before DEF built the DEF Building, one of its directors (on behalf of its board) asked a director of ABC whether residents of DEF's Building could walk across ABC's lane to gain access from DEF's Building to the public road. ABC's director (on behalf of its board) agreed that residents of the DEF Building could do so for the duration of the Government Lease of Tsuen Wan Town Lot No. 4567 on condition that DEF would pay one half of the cost of resurfacing the lane. DEF agreed.

The agreement between ABC and DEF was not put into writing, but DEF designed the DEF Building with a back door that opens on to ABC's lane; and on two occasions since 1998, DEF has paid one half of the cost of resurfacing ABC's back lane.

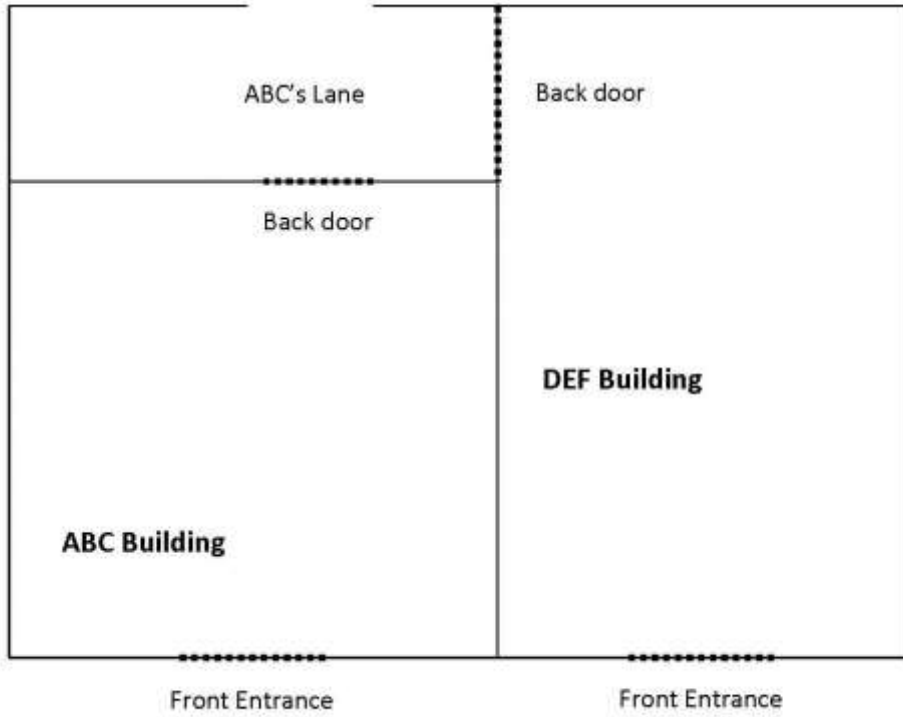
Earlier this year, ABC sold Tsuen Wan Town Lot No. 1234 including the ABC Building and the lane to XYZ Ltd ('XYZ'). XYZ refuses to allow residents of the DEF Building to use the lane and has erected a fence blocking the back door of the DEF Building.

Advise DEF whether DEF and residents of the DEF Building have any rights to continue to use ABC's lane which now belongs to XYZ.

[25Marks]

Question continued on next page.

Diagram for Question 1
Public Road



QUESTION 2

On 1 September 2017, Verity ('Verity') as vendor and Paul ('Paul') as purchaser entered into an Agreement (the 'Agreement') to sell House Number 12 Celestial Villa, Sky Road, Sai Kung (the 'House') to Paul. Celestial Villa is a development of 12 houses.

The Agreement is substantially in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap 219. The completion date is 10 October 2017. The price is HK\$10million and Paul paid Verity a deposit of HK\$2million when the Agreement was signed. The House is held under Conditions of Sale dated 1 July 1996 and has a floor area of 2250 square feet.

Before entering into the Agreement, Paul inspected the House. He particularly liked the living room on the ground floor, which was spacious and bright. At one end of the living room and forming part of it was an area of about 150 square feet covered by a glass roof which extended about 12 feet beyond the external wall of the floors above the living room and looked over a communal garden on the development. The living room has a total area of 350 square feet. Paul told Verity that he was buying the house as his own residence and that he particularly liked the living room.

On 2 September, Verity's solicitor sent Paul's solicitor the title deeds which include an assignment of the property with a plan. Paul's solicitor raised requisitions which Verity's solicitor answered on 4 September.

On 5 October Paul's solicitor raised the following requisition:

Our client's surveyor has inspected the House and advises us that the area in the living room which is covered by a glass roof is an extension to the original building, and that consent to the extension is required under the Buildings Ordinance Cap. 123. Please send us evidence that the necessary consents have been obtained.

Verity's solicitor replied that Verity was not obliged to answer the requisition, but that Verity would remove the extension. Paul refused to complete on 10 October and requires the return of the deposit.

Advise Paul whether Verity has breached the Agreement.

[25Marks]

QUESTION 3

In early 2016, Candy bought Flat 15A on the top floor of Bauhinia Court (the 'Building') from Victor. Bauhinia Court is a block of 30 residential flats built in 1973. Candy particularly liked Flat 15A because it has large windows, which let in a lot of light.

After completing her purchase, Candy was informed by her neighbour that the windows of Flat 15A were enlarged by Victor in 2000 when several other owners also enlarged their windows. After that, Candy looked at the Building from the street and noticed that many windows in the building have been changed so that the exterior of the Building does not have a uniform appearance.

There is a Deed of Mutual Covenant for the Building (the 'DMC'). The DMC does not contain a definition of common parts. The DMC sets out the undivided share allocation which pairs each of the flats with one equal undivided 30th share of and in the land and the Building.

The DMC grants each owner exclusive rights over one of the 30 flats, and reserves to the developer the exclusive use of the roof of the Building. There are no other exclusive use areas.

There are no undivided shares paired with the roof and the developer has not retained any undivided shares. The owners of the Building formed an owners' corporation in 1980 and there is also a building manager. The DMC includes the following covenants:

1. *No owner will alter the external appearance of his flat without the prior consent of the building manager.*
2. *No owner will cut or damage in any way the structural walls of Bauhinia Court.*

Under the DMC, an owner is the person in whom the undivided shares in the premises are vested for the time being.

In late 2016, water started leaking into Candy's flat from the roof. Candy contacted the building manager and asked the manager to arrange for the developer to carry out repairs. However, despite Candy's complaints to the building manager and the developer, the roof has not been repaired and the leakage has continued.

Candy recently received a letter from the owners' corporation complaining about the enlarged windows which breach the above DMC covenants and asking Candy to remove them and restore the windows of Flat 15A to their original size. Candy has never before received any complaint from the building manager or the owners' corporation regarding her windows.

Advise Candy on the following matters:

- (a) **Who is responsible for repairing the roof?** (10marks)
- (b) **Can the owners' corporation obtain an injunction against Candy to force her to restore the windows of Flat 15A to their original size?** (15marks)

[25Marks]

QUESTION 4

In July 2017 Victor was looking for a buyer for his flat known as 6A Grand Vista (the 'Flat'). The Flat was occupied by a tenant (the 'Tenant'), whose lease expired on 18 October 2017. The Tenant offered to buy the Flat but Penny made a higher offer, and on 4 August 2017 Victor as vendor and Penny as purchaser entered into an agreement (the 'Agreement') whereby Victor would sell the Flat for a consideration of HK\$8million with completion on 20 October 2017. Victor agreed to give vacant possession on completion. The Agreement is substantially in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. Clause 4 provides as follows:

Completion shall take place at the offices of the Vendor's solicitors at 5p.m. on 20 October 2017.

Penny's solicitors suggested to Victor's solicitors that completion should take place by way of undertaking. Victor's solicitors agreed to discuss the matter with Victor, but nothing was finalised. Victor's solicitors sent Penny's solicitors a completion statement showing the balance of purchase price to be paid on completion and requested a cashier order made payable to their firm. Victor did not have a mortgage to discharge.

On 19 October 2017, Penny's solicitors made an appointment with Victor's solicitors to complete at 4:30p.m. on 20 October 2017, and on 20 October 2017 Penny's solicitors attended at the offices of Victor's solicitors with a cashier order for the amount due made payable to Victor's solicitors' firm. Victor's solicitors did not hold an assignment executed by Victor, and Penny's solicitors refused to complete. Victor's solicitors also told Penny that the Tenant had not moved out.

On 21 October 2017, Victor entered into a binding provisional agreement to sell the Flat to the Tenant. The Tenant is very keen to stay in possession of the Flat because he has just been diagnosed with a terminal illness.

Advise Penny what cause of action she has against Victor and what remedies are available to her.

[25Marks]

PART B: Equity

QUESTION 5

Carol is an entrepreneur. In July 2015, she set up a company, Smart Appliances Ltd (the “**Company**”), and became its sole shareholder and director. In November 2015, Carol advertised on the Company’s website that it would soon develop a new home movie and sound system (consisting of a processor and 4 surround-sound speakers) that is up to “cinema standard”, and it works well even in compact spaces (so it fits small apartments) and is reasonably priced, as follows:

“Exciting news to movie lovers! We are now raising funds for the development of a new home movie system that allows you to turn your apartment into a cinema in terms of both graphics and sound! It works equally well in living rooms from 150 to 1500 sq ft and is very reasonably priced. Contribute HK\$5,000 (per person) now towards the development in return for one when it is released! Just click the button below and post a cashier’s order to Smart Appliances Ltd! Offer is open until 31 December 2015.

Note: It is scheduled to be released in October 2016.”

By 31 December 2015, HK\$5,000,000 was received from 1,000 contributors, including Jack. The entire sum was deposited into the Company’s bank account (the “**Company’s Account**”), which then had a zero balance.

In March 2016, Stephen (a friend of Carol) settled HK\$5,000,000 on trust for the benefit of his daughter Jennie with Carol as sole trustee. The HK\$5,000,000 was deposited into a trust account in Carol’s name (the “**Trust Account**”), which then had a zero balance.

On various occasions since August 2016, the Company informed the contributors (including Jack) that the development of the movie system was delayed.

The Company went insolvent in February 2017 and Carol was declared bankrupt in March 2017. The movie system was never delivered to the contributors as promised. The liquidators of the Company soon discovered that the Company never had any substantive business and operations, and had in fact never taken any steps to develop the movie system.

Question continued on next page.

Further investigations revealed the following transactions in Carol's personal bank account (the "**Personal Account**"):

- (1) As of 31 May 2016, there was HK\$3,000,000 in the Personal Account (the entire credit belonged to Carol);
- (2) On 10 June 2016, Carol withdrew HK\$2,000,000 from the Company's Account and deposited into the Personal Account;
- (3) On 30 June 2016, Carol withdrew HK\$4,000,000 from the Trust Account and deposited that amount into the Personal Account;
- (4) On 1 August 2016, Carol withdrew HK\$1,000,000 from the Personal Account to settle her credit card bill of the same amount. The debit was incurred when Carol bought a vintage watch earlier in July 2016. The watch is now worth HK\$1,500,000; and
- (5) On 10 October 2016, Carol withdrew HK\$2,000,000 from the Personal Account and purchased shares which are now worth HK\$3,000,000.

Advise Jack and Jennie.

[25Marks]

QUESTION 6

Ian was a director of Best Bottles Ltd (“**BBL**”), a manufacturer of wine bottles. In 2016, he was tasked by BBL to negotiate with Chateau Belle, a leading wine producer, for the supply of wine bottles to the latter.

The managing director of Chateau Belle indicated to Ian that unless BBL would agree to lower its prices, Chateau Belle would order bottles from a competitor of BBL. Ian then relayed the information to BBL’s board of directors and suggested starting a new, cheaper production line in Cambodia. However, he was blamed by the other directors for making an unrealistic suggestion to cover up his poor negotiation skills. Ian felt extremely frustrated, and on the following day he handed in his resignation letter giving 3 months’ notice.

In the run up to the date of his resignation, Ian shared his frustration with his colleagues. Nick, a mid-level staff member in BBL’s production factory, echoed his discontent with BBL. He said to Ian, “why don’t we set up our own company to get the Chateau Belle contract?” After a few days’ consideration, Ian agreed to the proposal and approached a few other colleagues of BBL to join in the new venture. Nick and all these colleagues then tendered their resignation from BBL (also giving 3 months’ notice).

A week before Ian left BBL, he caused Good Fortune Ltd (“**GFL**”) to be incorporated through a company secretarial firm, and Ian and Nick became directors of GFL. At the same time Ian rented office premises for GFL and recruited a secretary.

After 4 months, when Nick and other former colleagues had also joined GFL, they put together a production line in Cambodia. Ian and Nick invested about HK\$2,000,000 each into GFL. They successfully obtained an order from Chateau Belle to supply wine bottles. A year later, when the order had been successfully completed, GFL obtained a net profit of HK\$2,000,000 after Ian and Nick had each received \$500,000 as directors’ bonus. Chateau Belle was so impressed that it placed a standing order with GFL. The estimated net profits will be HK\$15,000,000 by the end of 2020.

BBL did not obtain any business from Chateau Belle after Ian’s departure. It transpired that the original competitor to BBL withdrew its offer to Chateau Belle, but the prices offered by GFL were more attractive. Due to the loss of this business, BBL went into cash-flow problems, and as a result lost a lucrative contract which would have resulted in a net profit of HK\$10,000,000.

Advise BBL for its potential claims against Ian, Nick and GFL. There is no need to consider potential claims against the other employees.

[25Marks]

QUESTION 7

In 2012, Adrian settled HK\$50,000,000 upon trust (the “Trust”) to provide for his family members. He appointed Theresa (his long-time family friend) as the sole trustee of the Trust.

In 2016, in the course of looking for investment opportunities for the Trust, Theresa came across a valuable painting and considered it to have significant investment potential for the Trust. However, she purchased the painting herself instead at HK\$10,000,000 without informing the Trust or the beneficiaries. In January 2017, she sold it for HK\$12,000,000 and used the entire profits (i.e. HK\$2,000,000) to purchase shares in Hong Kong Insurance. The shares are now worth HK\$3,500,000.

The beneficiaries of the Trust became aware of these matters. If Theresa had informed them of the painting, they would have decided not to purchase it, and they would have consented to Theresa’s own investment in return for a 10% share of any profits.

(a) Advise the beneficiaries. (16marks)

Recently, Theresa discovered that her co-habiting boyfriend Zion had another girlfriend, Debora. Theresa found a copy of a letter from Zion to Debora, saying that he had signed a transfer form transferring all his shares in Kowloon Electricity to Debora, and that she would be able to get the shares without taking any further action. Upon being confronted by Theresa, Zion admitted that he had a relationship with Debora and had intended to send that letter, together with the transfer form, to her.

Feeling devastated, Theresa decided to break up with Zion. Last week, Zion was killed in a car accident. He did not leave a will and died intestate. The share transfer form for the Kowloon Electricity shares (duly signed by Zion) was found amongst his papers in his bedroom.

(b) Advise Debora. (9marks)
[25Marks]

QUESTION 8

On 1 January 2016, Frankie (a well-known tycoon) settled HK\$50,000,000 cash and certain shares of a private company upon trust, appointing Tom and Tiara, both accountants and his close friends, as trustees. The trust deed contains the following clauses:

Clause 3: The trustees may, in their absolute discretion and as they think fit, appoint any individual in the world (except the trustees and the settlor) to receive part or all of the trust assets.

Clause 6: The trustees shall not be liable for any loss howsoever arising, except for those caused by their wilful misconduct.

On 1 March 2016, Frankie wrote a letter marked “confidential” to the trustees saying:

“With no intention to create any binding obligation upon you, I wish that on a date nominated by my wife, you would distribute the trust assets in equal shares to such of my 3 children, Pamela, Quincy and Rosa, who has (have) married (and remained married) as of that date.”

In May 2016, despite strong advice from the trust’s financial advisors to the contrary, the trustees invested HK\$10,000,000 in the shares of Lantau Telecom, a listed company in Hong Kong. The trustees heard, and genuinely believed in, market rumours of an imminent take-over bid of Lantau Telecom, and that its share price would therefore rise dramatically. The take-over bid never materialised. The Lantau Telecom shares are now worth only HK\$8,000,000.

Frankie passed away in April 2017. Shortly thereafter on 1 June 2017, his wife instructed the trustees to distribute the trust assets on the following day (i.e. 2 June 2017). The trustees distributed all the trust assets equally between Pamela (who was married as at that date) and Rosa (who has never married but was in co-habitation with her partner). Quincy, who was married as at that date, did not receive any of the trust assets.

Quincy has demanded the trustees disclose to him any information they have pertaining to the trust.

Advise the trustees.

[25Marks]

BARRISTERS QUALIFICATION EXAMINATION 2017

PAPER III: CRIMINAL LAW, CRIMINAL PROCEDURE & CRIMINAL EVIDENCE

QUESTION 1

You are the assigned Counsel instructed by the Legal Aid Department to represent Sylvia Wong (SW), who faces a single charge of trafficking in a dangerous drug, namely 50grammes of a crystalline solid containing 40grammes of methamphetamine hydrochloride (commonly referred to as Ice) contrary to S4(1)(a) of the Dangerous Drugs Ordinance, Cap. 134. The venue of trial is the Court of First Instance.

On 1st January, 2017, SW was stopped by Customs & Excise Officers at Lo Wu Border control after she had passed Hong Kong Immigration check point. SW was subsequently pulled aside and searched whereupon the Customs Officers found the drugs concealed in SW's underwear. Under caution SW stated that the drugs were for her own consumption.

- (a) **With reference to appropriate authorities what sentence would SW receive if she were convicted after trial and what sentence would she expect to receive if she were to plead guilty during or at the committal proceedings? (5marks)**

SW is a 30year old Hong Kong resident with 5 previous convictions, all for possession of dangerous drugs. On each occasion SW pleaded guilty at the earliest opportunity. SW's instructions are that half the drugs that were seized from her were for her own consumption. When SW was denied bail she underwent a screening test for drugs. The results showed the presence of amphetamines.

- (b) **With reference to authority, advise what steps you should take in correspondence with the Prosecution and whether or not the Prosecution is likely, or not, to accept SW's proposal that half the drugs were for her own consumption? Would your answer differ if SW did not have any previous convictions for dangerous drugs and/ or the test for drugs came back negative? (5marks)**
- (c) **If the Prosecution declines to accept that half the drugs were for self- consumption what would you advise SW to do if she insists that half the drugs were for her own use? (5marks)**
- (d) **SW's instructions are that she wishes to assist the authorities by providing information about drug trafficking activities in her neighbourhood, especially the names of people who employed her to deliver drugs. With reference to authority, what procedure should be adopted and how much reduction in sentence would SW be entitled to if her information was "useful" to the authorities? (10marks)**
[25Marks]

QUESTION 2

You have instructions to represent William Chan (WC) who's been charged with blackmail and claiming to be a member of a triad society. The prosecution's case is that WC claimed to himself to be "Big Brother" of the 14K when he demanded protection money from Jason Tam (JT), the proprietor of the newly opened Tasty Tasty café in Sheung Wan. The demand was for HK\$18,000 per month whereby JT would be protected by WC and his 14K brothers. If JT failed to pay then WC threatened JT that there would be serious consequences.

WC was arrested and remained silent under caution. WC denies the offences and claims that JT has fabricated the charges against him as WC and his colleagues have complained about the quality of the food at JT's café on a number of occasions.

WC says that on the day of the alleged offences he was actually at home all day with his wife and 2 year old son as that was his day off work.

- (a) **What are the statutory provisions governing alibi evidence of the Defendant and/or any witnesses called in support of alibi evidence? What rules govern the Prosecution's ability to disprove alibi?** (10marks)
 - (b) **What is evidence in support of alibi?** (5marks)
 - (c) **What are the consequences if WC fails to comply with any of the statutory requirements?** (5marks)
 - (d) **What consequences are there if WC complies with the statutory requirements but does not call any evidence?** (5marks)
- [25Marks]**

QUESTION 3

Victor Tseng (VT) and Boris Yuen (BY) are jointly charged with one count of burglary contrary to s.11(1)(b) of the Theft ordinance, Cap. 210. The allegation is that the two men burgled Flat C, 2nd Floor Electric Heights, 6 Conduit Road and stole valuables including rings, necklaces s watches and cash. The stolen items have not been recovered.

Assess the admissibility and/or strength of the evidence in the following scenarios:

- (a) **Wilson Cheng (WC) a neighbour from Flat F of the 2nd floor saw two young males breaking into the burgled premises when he exited his flat at noon. He saw the faces of the two men for about 10 seconds from a distance of about 40 feet away.**
(5marks)
- (b) **WC attended an identification parade 15days after the burglary and picked out VT and BY. At trial, some 9 months after the identification parade, he becomes confused and mistakes VT for BY and fails to pick out BY at all.**
(2marks)
- (c) **Peter Chan (PC) a security guard at Electric Heights whilst on patrol also saw the same burglary as WC in question (a). PC was ill and therefore did not attend formal identification parade before trial. However, PC knows VT and BY as they are teammates on the local basketball team and play regularly every weekend.**
(3marks)
- (d) **VT and BY raise alibi as their defence. What issues regarding alibi could arise at trial and what provisions need to be satisfied by the lawyers representing the accused?**
(5marks)
- (e) **The value of the stolen items total HK\$125,000. Both VT and BY have numerous extensive convictions for dishonesty related offences. Advise on the venue of trial and possible sentences that VT and BY may receive if they were to plead not guilty but be found guilty after trial. Both VT and BY are over 24 years of age.**
(10marks)
[25Marks]

QUESTION 4

Derek Ha (DH) is arrested for an offence of robbery. There is no direct evidence that DH stole a bracelet from Sara Ma (SM) as alleged by the Prosecution. The only evidence against DH is a verbal admission, a notebook entry detailing the alleged verbal admission and a video- recorded interview conducted the same day as DH's arrest.

Advise on the following scenarios:

Before the admissions were made, PC 510 told DH that the matter was a minor matter and that if he signed the notebook entry and participated in the video recorded interview then he would be released immediately, otherwise he would be detained indefinitely and his girlfriend would be arrested and detained at the police station. He was also assured that the police would write a mitigation letter on his behalf and the most he would receive by way of penalty would be a fine.

- (a) What would your advice be to DH in anticipation of trial and what procedure(s) would be adopted to ensure that the admissions be excluded, given that DH's instructions are that he did not steal the watch from SM? What safeguards are there to ensure improperly obtained admissions/ confessions are excluded from evidence? (10marks)**
 - (b) How would your answer differ if DH was only 14 years old at the time of his arrest and he was arrested at school in full view of his classmates? Further, during the notebook taking and the video- recorded interview there was no guardian present? (5marks)**
 - (c) What sentencing options are available to a court if DH pleaded guilty to the charge of theft bearing in mind DH is only 14 years old with a clear record? (10marks)**
- [25Marks]**

QUESTION 5

- (a) Your lay client Peter Pang (Peter) was convicted after trial in the District Court on five counts of conspiracy to defraud. He was sentenced to a total of six years in prison.

Peter appealed against all of these convictions to the Court of Appeal on the grounds that material evidence had not been considered properly at trial and that inconsistencies between the evidence given by the various prosecution witnesses had not been properly resolved by the trial judge.

Having been refused leave to appeal by a single judge of the Court of Appeal under section 83Y of the Criminal Procedure Ordinance, Cap. 221, Peter renewed the application before the Full Court of the Court of Appeal, who dismissed the appeal and affirmed the convictions.

Peter now wants you to appeal to the Court of Final Appeal on the same grounds, as he is adamant that he is the victim of a ‘degree of injustice’.

He seeks your advice as to the procedure involved, his chances of success and on any other relevant matter. With reference to relevant authorities, if any, what advice would you give him in respect of these issues?

(13marks)

- (b) Having received your advice, Peter would like you to proceed to take his case on appeal to the Court of Final Appeal. He requests that you adduce new evidence at the appeal hearing.

He believes that the new evidence, in the form of statements, will show that he did not enter into any of the conspiracies charged.

This evidence was not available to the trial judge or to the Court of Appeal, and its existence was confirmed only after the Court of Appeal’s decision dismissing the appeal had been delivered.

Peter now seeks your advice as to the likelihood of this evidence being accepted by the Court of Final Appeal. Making reference to relevant authorities, if any, what would you tell him and why?

(8marks)

- (c) **Peter seeks your advice on the issue of costs awards in the event that his application for leave to appeal to the Court of Final Appeal is rejected by the Appeal Committee. With reference to relevant authorities, if any, what would you tell him?**

(4marks)

[25Marks]

QUESTION 6

- (a) With reference to the appropriate Ordinance, how many jurors normally sit on a jury in a criminal trial in the Court of First Instance? (5marks)**
 - (b) Who may be exempted from sitting on a jury? (Candidates are to provide five examples) (5marks)**
 - (c) What is a peremptory challenge, and by whom may it be made? (5marks)**
 - (d) What is a majority verdict? (10marks)**
- [25Marks]**

QUESTION 7

Your client Adam Au (Adam), who is 22 years old, has been arrested, on a Saturday evening, 7 October 2017, for ‘Unlawful Wounding’ contrary to Section 19 of the Offences Against the Person Ordinance, Cap. 212. He is alleged to have chopped Mr. Chan, the security guard at an amusement games arcade (“the Arcade”) in Mong Kok over protection money affairs, according to the officer in charge of the case (“OC Case”).

Adam was questioned by police under caution but denies any involvement in the case. He says he was in the Arcade at the time of the incident only because he is a regular customer there. He knows the victim Mr. Chan as they are always arguing as Adam often like to stay on a bit longer at the Arcade when it was about to close, whereas Mr. Chan simply wants the Arcade to close on time so he can go home. They have had many disputes before.

Adam says he has no idea how the fight started but that he had nothing to do with it and that he accidentally got blood on his hands, feet, clothing and shoes when he and his ‘boys’ went over to help ‘the old guy’. The real assailants had run off after the attack. Adam does not know them. He says that Mr. Chan has “set him up” to “settle old scores between them.”, and possibly because Mr. Chan was worried he could not identify any of his assailants. Adam tells you that he is not worried because he is sure the “whole thing can be settled down as usual, and soon.”

The OC Case refuses to grant Adam bail and tells him that he will have to appear in the Magistracy the following Monday, 9 October 2017, to enter a plea to the charge.

You now represent Adam and visit him in the police cells. He demands to know how long the police can keep him locked up.

(a) What would you tell him? (1mark)

Adam also tells you to get him bail from the police station.

(b) What could you do to secure bail for Adam? (2marks)

Adam eventually appears in the Magistracy the following Monday, 9 October 2017. The court prosecutor tells you that he will not be asking for a plea to be taken and that he needs to seek legal advice on the case. He tells you that the OC Case has objected by memorandum to the grant of bail for Adam.

(c) What information would you seek from the prosecutor? (5marks)

(d) What information would you seek from Adam? (3marks)

Question continued on next page.

Adam now tells you that he wants you to make a bail application for him.

- He tells you that he is single and lives with his parents in a flat in Wanchai which they rent. He has lived there all his life.
- He earns HK\$ 16,000 per month working for a travel agency in Causeway Bay.
- He specializes in arranging package tours to Thailand and Japan.
- He provides his parents with HK\$ 8,000 every month towards the rent.
- His younger sister and elder brother both work in Shenzhen and his elderly grandparents also live there.
- He sends the grandparents HK\$ 2,000 per month.
- He has four previous convictions:
 - He was fined HK\$ 500 for shop theft in 2001;
 - He was fined HK\$ 1,500 for possession of dangerous drugs in 2005;
 - He was fined HK\$ 5,000 for Assault Occasioning Actual Bodily Harm in 2014.
 - He was sentenced to three months in jail in 2016 on an Assault Occasioning Actual Bodily Harm charge. He was released in December 2016.
- He has a girlfriend who is a dancer in a nightclub. She gives him about HK\$ 20,000 per month for his expenses.
- He works between the hours of 2 pm and 10 pm six days a week at the travel agency.
- The girlfriend, who is 17, is willing to put up some money for his bail as are his group of young friends.
- He does not want to put up any cash himself but he will do whatever is necessary to get out.

(e) What would you say on Adam's behalf in applying for bail for him?

(5marks)

(f) What matters would you take into consideration in respect of your submission?

(7marks)

[25Marks]

QUESTION 8

Little Lee (LL) has been arrested on suspicion of ‘unlawful wounding’ contrary to section 19 of the Offences against the Person Ordinance, Cap. 212.

The allegation is that LL attacked the complainant, Kathy Wong during a dispute over a car-parking space in Tai Po, New Territories. The incident took place at 10:00 pm on 13th September 2017. It was raining heavily at the time.

The police allege that when LL and Kathy Wong were arguing in the street he suddenly punched her once in the face, breaking her glasses and causing her to fall over. Kathy Wong struck her head on the pavement and started to scream loudly when she saw blood coming from the back of her head. A number of passers-bys rushed over to help her.

LL then got into his car and drove off at high speed.

LL was arrested a few days later at a routine roadblock. LL denied the offence. The police have now told LL that they intend to have him take part in an identification parade (“ID parade”) to be held next week at Tai Po police station.

LL told the police investigation officer that he did not want to take part but the investigation officer replied that the parade would be held and that LL has nothing to worry as the police always hold an ID parade as part of “standard police investigatory procedure.”

LL has two previous convictions for assault – one for Common Assault in 1997 and one for Assault Occasioning Actual Bodily Harm in 2015.

LL now seeks your advice.

- (a) **What would you advise him as to when a formal ID parade will be conducted by police investigators?** (4marks)
- (b) **Was the investigation officer correct in his assertion that it was standard police procedure?** (1mark)
- (c) **Must LL take part in an identification parade?** (1mark)
- (d) **What are the consequences, if any, if LL does not take part in the identification parade?** (1mark)
- (e) **What would be your advice to LL as to whether he should participate in the identification parade or not, and why?** (4marks)
- (f) **What are the alternative identification methods if LL does not participate in an identification parade?** (5marks)

Question continued on next page

- (g) LL asks you what will happen on the parade. Outline the procedure to him. (6marks)
- (h) What safeguards exist to protect LL's interests on the parade? (2marks)
- (i) If you attend the parade what would be your role and function? (1mark)
- [25Marks]

BARRISTERS QUALIFICATION EXAMINATION 2017

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

Part A (Hong Kong Legal System, Constitutional & Administrative Law)

QUESTION 1

You have been instructed by the Department of Justice to advise on the Hong Kong Basic Law implications of the 2017 Civil Aviation Reform of China (Draft) prepared by the Civil Aviation Administration of China, with the authorization of the Central People's Government.

The 2017 Civil Aviation Reform of China (Draft) recognizes Hong Kong's status as a centre of international and regional aviation under Article 128 of the Basic Law.

Then the 2017 Civil Aviation Reform of China (Draft) states that, to maintain and further improve Hong Kong's status as a centre of international and regional aviation and to ensure the full enjoyment of the economic benefits of the Civil Aviation Reform in all parts of China, flights between Mainland China and Hong Kong are to be re-classified as domestic flights and not international flights, with the proposed benefits that (1) overseas passengers arriving in Hong Kong can transit to flights to all Mainland airports in Hong Kong by going through Mainland arrival clearance only; and (2) passengers can travel from all Mainland airports on flights to Hong Kong without having to go through Mainland exit clearance at the airport of departure.

To introduce the re-classification and realize the above benefits under the 2017 Civil Aviation Reform (Draft), the Central People's Government has, at the same time, proposed to the HKSAR Government that: (1) Two areas in the Hong Kong International Airport be designated as Mainland Clearance Areas (MCAs, one catering for passengers transitting to the Mainland and the other catering for passengers arriving from the Mainland) that are to be regarded as outside the territorial limits of the HKSAR; (2) Mainland officers shall be stationed in the MCAs to conduct the Mainland clearance related duties (such as immigration, customs and quarantine) and they shall conduct such duties pursuant to and enforcing all relevant Mainland laws; and (3) The HKSAR laws shall only apply in the MCAs in respect of specified matters concerned with the proper operation of the airport and aircrafts in the MCAs.

The instructions require you to identify each and every provision of the Basic Law that these proposals are likely to impinge; to evaluate whether the proposals may contravene any of the provisions of the Basic Law so identified; and to suggest arrangements on the part of the HKSAR Government and on the part of the Central Authorities that can mitigate or remove the potential conflicts (if any).

[25Marks]

QUESTION 2

The Court of Appeal stated in *BI v Director of Immigration* [2016] 2 HKLRD 520 (8 March 2016) the following in paragraphs 107 and 108:

“107. In our judgment, the court should acknowledge that immigration control involves decisions of high political as well as socio-economic contents which should be accorded with a broad margin of discretion in accordance with well established principles of judicial review.

108. In light of the Appeal Committee's decision in *Aguilar Elmedorial v Director of Immigration*, we would not rule out completely the possibility of mounting a judicial review based on irrationality (or *Wednesbury* unreasonableness). However the courts must have regard to the wide discretion of the Director in assessing the merits of such a challenge and humanitarian consideration is only relevant in the context of whether an applicant merits exceptional treatment against a policy of stringent immigration control.”

The Court of First Instance stated in *Comilang v Director of Immigration* (HCAL 45/2014, 12 January 2016) the following in paragraph 200:

“200. ... In common law, the court in reviewing in public law a public authority's decision would adopt a standard of review which would correspond with the degree or gravity of the impact of that decision on the affected applicant. At the one end is the standard of conventional *Wednesbury* test ... where no human rights are engaged. At the other end (where human and fundamental rights are engaged and said to be violated), the court would adopt what we now generally describe as the proportionality (or justification) test. In between, the court would review with increasing vigilance a subject decision which has increasingly grave and adverse impact on the affected person's interests (but short of referable human rights) to see if that decision should be quashed, but still and only in my view in the *Wednesbury* sense.

What it means however is that, the graver the decision has an impact on the affected person, the more vigilant and closely the court would look at the reasons of and all matters taken into account by the decision maker to see if there is *Wednesbury* unreasonableness in that decision, including for example, whether certain matters or factors should or should not be taken into account as a matter of relevance, and whether there is procedural impropriety.”

Given that both statements were made in the context of judicial review of a decision of the Director of Immigration on whether an immigrant applicant should be granted permission to remain in Hong Kong to live with a family member already living in Hong Kong lawfully, assess both statements, by reference to recent case law both in Hong Kong and elsewhere concerning the *Wednesbury* unreasonableness ground in judicial review of administrative decisions, in order to answer the following questions:

- (a) **Whether the two statements are in conflict with each other, and if so, on which matter(s); and**

Question continued on next page

- (b) **Which statement should state or approximate the common law of Hong Kong for**

the HKSAR courts' judicial review jurisdiction in respect of substantive review of administrative decisions. Please explain your choice with reasons and citation of authorities.

[25Marks]

QUESTION 3

Mr. Leung Kwok Hung was elected in the general election held in September 2016 to be a member of the Legislative Council (“LegCo”). Before he could validly assume the office, he was mandatorily and constitutionally required under Article 104 of the Basic Law to take the legislative oath (“Oath”) to swear to uphold the Basic Law and to swear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China. The content of the Oath as well as the consequence for non-compliance are prescribed in the Oaths and Declarations Ordinance (Cap. 11) (“ODO”).

On 12 October 2016, after being called by the Clerk to take the Oath, Mr. Leung, wearing a black t-shirt with the words “Civil Disobedience” printed thereon, walked down the hallway to the table, carrying an opened yellow umbrella with words “End One-Party Dictatorship” in his right hand and a paper board showing the words “NPC 831 Decision” in his left hand and shouted in Cantonese “Umbrella Movement! Indomitable! Civil Disobedience! Without Fear!...”. He later read the Oath in Cantonese in a truncated manner. About one second after reading out the Oath, he shouted “Revoke NPC 831 Decision! I want Dual Universal Suffrage! ...”

The Clerk effectively regarded the oath purportedly taken by Mr. Leung as valid. The Chief Executive and the Secretary for Justice brought the case to the court, contending that the way and manner in which Mr. Leung purported to take the Oath on 12 October 2016 was not in compliance with the legal requirements of BL104 and the ODO, and in law amounted to declining or neglecting to take the Oath when requested to do so. As a matter of law, Mr. Leung has therefore been disqualified since 12 October 2016 from assuming the Office and could not be permitted to retake the Oath thereafter.

The NPCSC issued its Interpretation of Article 104 of the Basic Law on 7 November 2016, which is, in Mr. Leung’s view, a supplement rather than an interpretation of Article 104 of the Basic Law.

Mr. Leung lost his case before the Court of First Instance and was disqualified as a LegCo member. After obtaining legal aid for appeal, he comes to seek your advice on the following issues:

- (a) **Whether the NPCSC has authority to interpret Article 104 of the Basic Law, and what is the NPCSC’s approach of interpretation? (7marks)**
- (b) **If the NPCSC has authority to interpret Article 104, whether the Interpretation should be applicable to his case, and whether the whole interpretation is binding on Hong Kong courts and why? (11marks)**
- (c) **Whether there is any chance to win by relying on the principle of non-interference? (7marks)**

[25Marks]

Question continued on next page

(The NPCSC Interpretation of Article 104 is as follows:

“1. ‘To uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China’ and to bear ‘allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China’ as stipulated in Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, are not only the legal content which must be included in the oath prescribed by the Article, but also the legal requirements and preconditions for standing for election in respect of or taking up the public office specified in the Article.

2. The provisions in Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China that ‘When assuming office’, the relevant public officers ‘must, in accordance with law, swear’ bear the following meaning:

(1) Oath taking is the legal prerequisite and required procedure for public officers specified in the Article to assume office. No public office shall be assumed, no corresponding powers and functions shall be exercised, and no corresponding entitlements shall be enjoyed by anyone who fails to lawfully and validly take the oath or who declines to take the oath.

(2) Oath taking must comply with the legal requirements in respect of its form and content. An oath taker must take the oath sincerely and solemnly, and must accurately, completely and solemnly read out the oath prescribed by law, the content of which includes ‘will uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China’.

(3) An oath taker is disqualified forthwith from assuming the public office specified in the Article if he or she declines to take the oath. An oath taker who intentionally reads out words which do not accord with the wording of the oath prescribed by law, or takes the oath in a manner which is not sincere or not solemn, shall be treated as declining to take the oath. The oath so taken is invalid and the oath taker is disqualified forthwith from assuming the public office specified in the Article.

(4) The oath must be taken before the person authorized by law to administer the oath. The person administering the oath has the duty to ensure that the oath is taken in a lawful manner. He or she shall determine that an oath taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is valid, and that an oath which is not taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is invalid. If the oath taken is determined as invalid, no arrangement shall be made for retaking the oath.

3. The taking of the oath stipulated by Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China is a legal pledge made by the public officers specified in the Article to the People’s Republic of China and its Hong Kong Special Administrative Region, and is legally binding. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law. An oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with law.”)

QUESTION 4

Food hawkers used to be on many streets of Hong Kong, especially in areas such as Mong Kok and Tsim Sha Tsui. Most of them were unlicensed and unhygienic. The Government started to enforce the relevant laws strictly against unlicensed hawkers in 2011. As a result, the number of food hawkers drastically decreased. There were virtually no food hawkers on the streets of Hong Kong since 2012.

As a response to the society's call for the return of food hawkers and a means to attract more visitors to Hong Kong, the Government announced the introduction of food trucks in 2012. At a press conference, the Commissioner for Food Trucks ("the Commissioner") announced a new plan:

"We have heard your demands. Street food is an integral part of Hong Kong's culture. We will implement a policy that allows for a limited number of licensed food trucks beginning at the start of 2013. We will invite all interested parties to apply for a licence, which will allow them to serve food from a food truck at the designated area. The food trucks are only part of the plan. While they operate, we will develop an amusement park around the designated area as a means to increase the flow of visitors. The ultimate goal is to develop an all-inclusive recreational community."

When asked at the press conference whether the plan would more favor fast-food chain restaurants as they are more resourceful and competitive at price in operating food trucks, the Commissioner said:

"All applications are merits based. We look at whether the proposed types of food sold can represent Hong Kong. We have mechanisms to aid smaller businesses, and generally, we give priority to personal and small businesses as we find that they can usually better represent the Hong Kong culture."

As a matter of practice, four licences were granted each year from 2013 to 2016. There were 18 licensed food trucks around the designated area by the end of June 2017.

On 1 August 2017, the Government announced that the building of the amusement park will be suspended indefinitely. Any completed parts of the amusement park will be converted to spaces for more food trucks. By mid-September 2017, 20 additional licences were issued, of which 18 were granted to fast-food chain restaurants instead of personal and small businesses.

Fiona was granted a licence in 2016. She invested a lot in the operation of the food truck as she envisioned that her homemade candies and treats would be a bestseller if the food truck would be situated next to an amusement park. She now feels that the indefinite suspension of the amusement park development will be a huge blow to her business.

Bryan was granted a licence in 2014. Given that the number of food trucks will be doubled and that most of the new food trucks would be owned by fast-food chain restaurants, Bryan worries that he will be put out of business because his high priced gourmet burgers and organic chicken tenders cannot compete with the prices of the fast-food chain restaurants.

Please advise both Fiona and Bryan whether, and how they can apply for judicial review against the Government, and also the merits of their case respectively.

[25Marks]

Part B (Company Law)

QUESTION 5

Emporium Ltd (“the Company”) is a private company limited by shares. The Model Articles for private companies apply to the Company.

The shareholders of the Company are Amy, Brandon, Carice and Desmond. Amy and Brandon each hold 30% of the Company’s shares, while Carice and Desmond each hold 20% of the Company’s shares.

When the Company was originally formed, the two directors of the Company, as named in the incorporation form for registration of the Company, were Brandon and Desmond.

In February 2016, the board passed a resolution to appoint Carice as an additional director.

At the Company’s annual general meeting held in May 2016, there was no re-appointment of Carice as director. However, Carice continued to act as director with the acquiescence of all the shareholders.

By the end of 2016, the Company’s shareholders were divided into two warring camps: Amy and Brandon on the one side, and Carice and Desmond on the other. Carice and Desmond complained that Brandon had transferred assets of the Company to another entity, AB Ltd, for no consideration. The sole director of AB Ltd is Brandon.

In February 2017, on the strength of the votes of Carice and Desmond, a board resolution was passed for the Company to commence legal proceedings against Brandon and AB Ltd in respect of the transfer of assets to AB Ltd. A further board resolution was passed authorizing Desmond to engage solicitors to act for the Company in the legal proceedings. Pursuant to that authorization, Desmond retained the firm of solicitors, Brown and McCabe, to act for the Company.

At the annual general meeting of the Company held in May 2017, Amy and Brandon utilized their majority votes at the general meeting to pass a resolution to ratify Brandon’s acts in respect of the transfer of assets to AB Ltd. A further resolution was passed at the general meeting for the Company to discontinue the legal proceedings initiated against Brandon.

Your advice is sought on each of the following:

- (a) Are Brandon and AB Ltd liable to the Company in respect of the transfer of assets of the Company to AB Ltd? (12marks)**
- (b) (i) Was Carice validly acting as a director at the time of the board meeting in February 2017? (5marks)**

Question continued on next page.

- (ii) Assuming that Carice was not validly acting as a director at the time of the board meeting in February 2017, are the solicitors, Brown and McCabe, entitled to enforce the retainer agreement against the Company to recover their fees and disbursements? (4marks)
- (c) Is the resolution passed at the general meeting to discontinue the legal proceedings valid? (4marks)

[25Marks]

QUESTION 6

In 2010, Fung incorporated a private company limited by shares, SmartGo Ltd (“the Company”). The Company was formed to operate a business providing vehicle transportation services with the use of a smartphone app.

Initially, Fung was the sole director of the Company and also the sole shareholder, holding 1000 shares.

In 2011, the Company obtained a loan from T Bank for HK\$10,000,000. The loan was secured by a fixed charge over land and specified chattels owned by the Company and a floating charge over all other assets of the company. The charges were duly registered.

In 2012, the business of the Company required a further injection of funds. Fung asked a friend, Chang, to invest in the Company.

The Company issued 1000 preference shares to Chang for a total amount of HK\$5,000,000. The preference shares conferred on Chang a right to fixed dividends each year of 10%.

Fung and Chang executed a shareholders’ agreement. The agreement contained a clause providing that, if the Company does not pay dividends in any year because there are no distributable profits, then the Company would grant an interest-free loan to Chang of an amount equal to 10% of the capital contributed to the Company by Chang. The clause provided further that the Company would not have a right to recall the loans without the unanimous approval of the shareholders.

For the financial years ending 31 March 2015 and 31 March 2016, the Company did not have any distributable profits and no dividends were paid to the shareholders for those two years.

Pursuant to the shareholders’ agreement, two loans of HK\$500,000 each were made to Chang in respect of those two financial years.

In 2013, Fung had provided a loan of HK\$10,000,000 to the Company.

In January 2016, Fung provided a further loan of \$3,000,000 to the Company. In return, the Company granted to Fung, as security for both this loan and the 2013 loan, a charge over the entire undertaking of the company. The charge was duly registered. At the time of the granting of the charge, the Company was already insolvent.

In February 2017, on a petition filed by a trade creditor, the court ordered the Company to be wound up on the ground of insolvency.

The assets of the Company at the time of winding up include land, chattels and book debts.

Question continued on next page.

The creditors and outstanding amounts owed by the Company are as follows:

T Bank:	HK\$10,000,000
Fung:	HK\$13,000,000
Employees:	HK\$1,000,000
Trade creditors:	HK\$2,000,000

T Bank had also appointed a receiver to enforce its charges.

Your advice is sought on each of the following:

- (a) Is the liquidator entitled to recover the total amount of HK\$1,000,000 which had been advanced to Chang in 2015 and 2016?
(8marks)**
- (b) Is the charge granted to Fung in January 2016 valid?
(6marks)**
- (c) As between the receiver, the liquidator and the creditors of the Company, outline and explain the order of priority to repayment out of the Company's assets.**

(11marks)

[25Marks]

QUESTION 7

Big Explosion Limited (“**BEL**”) is a company incorporated in Bermuda. It is registered in Hong Kong under Part 16 of the Companies Ordinance (Cap. 622) and is listed on the Main Board of the Stock Exchange of Hong Kong Limited under stock code 0210.

BEL is an investment holding company and its subsidiaries (most of which are incorporated in the PRC) carry on the business of natural gas exploitation and distribution in the PRC. In its annual report the BEL group is said to be headquartered in Hong Kong with its head office in One Exchange Square in Central.

The single largest shareholder of BEL is Gunter, who is the founder, chairman of the board and chief executive officer of the BEL group. Gunter (himself and through entities associated with him) holds 45% of the issued shares of BEL.

Vulture Fund Inc (“**VFI**”) is a strategic investor in BEL, which holds 10% of the issued shares in BEL.

There are 2 investment banks each holding 5% of the issued shares in BEL. They have never taken any part in the management or affairs of BEL and have expressed no interest to do so.

As for the remaining 35% of the issued shares, it is not known who their holders are (none of them reach the 5% threshold as to require disclosure), although VFI suspects (but is not able to prove) that some of them may be associated with or are nominees of Gunter.

The board of directors of BEL (“**Board**”) consist of 6 directors – Gunter (chairman and executive director); his son Gerald (executive director); his daughter Geraldine (executive director); and May, Mable and Marlene, all independent non-executive directors brought in by Gunter.

Management of BEL is handled by the executive directors and the senior management staff of BEL, many of whom are hired by Gunter and have been with BEL since its founding days. The Board meets each quarter and exercises supervision over management. The Board has a general mandate from the annual general meeting in 2017 to allot, issue and deal with up to 20% of the total issued share capital of BEL. The general mandate has never been exercised and is still valid.

Shares in BEL have been trading consistently within the range of \pm HK\$10 in the past 2 years.

The outlook of the natural gas industry is very positive, because of the high demand for this form of new and clean energy and the relatively scarce supply (compared to petroleum).

Question continued on next page

At the Board meeting held on 1 July 2017, a resolution was passed unanimously to bring in a new investor, Deep Pak Cement Limited (“**Deep Pak**”), by allotting 20% of the total issued shares in BEL to Deep Pak at a price of HK\$5.00 per share on the grounds that:

1. It is considered desirable that BEL should diversify its business and develop a new line of business in cement making which is expected to capture the opportunities presented by “One Belt, One Road” and the infrastructure projects associated with it.
2. Deep Pak is said to be a key player in the cement industry in the PRC.
3. Although the subscription price contains a discount from the latest trading price of BEL shares, it is justified in light of uncertainties in the business performance associated with a key subsidiary of BEL in the PRC, Boomingdale Limited (“**Boomingdale**”), which is said to have experienced certain regulatory problems with the PRC authorities.
4. Financial analysis of the BEL group has been carried out and proposed discount has been considered against that by an independent financial advisor, Capital Appraisal Partners, in a report (“**CAP Report**”) which confirmed the discount to be a reasonable one in the circumstances.

As no shareholders’ approval is required for the allotment, BEL proceeded with the allotment on 4 July 2017, following which the shareholding of VFI in BEL was diluted to 6.75%.

VFI only learnt about the allotment in the announcement made by BEL on 11 July 2017 and is deeply concerned for a number of reasons:

1. VFI has made inquiries and it appears that little is known about Deep Pak and there is no basis to suggest that it is a key player in the cement industry in the PRC.
2. The very substantial discount in the subscription price does not seem to be justified given the share price performance of BEL in the past 2 years and the booming prospects of the natural gas industry. VFI has never heard of Capital Appraisal Partners and is not sure what criteria it adopted in the CAP Report.
3. There seems to be no business rationale for BEL to develop a line of business which is entirely new and has no connection with or synergies with BEL’s own business.
4. Moreover, VFI has been in active discussions with the Board for BEL to invest into a business which VFI has an interest in, namely the tanker business, which is ancillary to the natural gas business (natural gas is transported by ocean-going tankers). The discussions have progressed to an advance stage, but parties are in loggerheads over the price at which BEL is to invest and the board control in the tanker business and are in stalemate recently. VFI is deeply unhappy that BEL is now partnering with another company (Deep Pak) instead of VFI.
5. Given the opaqueness to Deep Pak, VFI is suspicious of, though it has no proof at this stage, that Deep Pak may be associated with Gunter in some way.

Question continued on next page

After reading the announcement, VFI has sought to approach the Board for information, both orally and in writing. None of its requests have been heeded by the Board.

VFI is coming to you for advice. VFI wishes to know:

(a) Whether there is any means under the Companies Ordinance for it to carry out a meaningful investigation into the allotment? If so, how should that be done?
(14marks)

(b) After investigation, what are the options open to it as against BEL, the Board and Gunter, assuming it does not want to wind up BEL?
(11marks)
[25Marks]

QUESTION 8

Almighty Sports Limited (“**ASL**”) is a company incorporated in the British Virgin Islands. It is an investment holding company. It has a Hong Kong incorporated subsidiary, Almighty International Limited (“**International**”), which in turn holds a PRC sub-subsidiary, Almighty Resources Limited (“**Resources**”). Through these companies ASL carried on a substantial business in the field of manufacturing and export of sports products. The ASL group is owned and controlled by 2 brothers, Andrew and Raymond, who are Hong Kong residents and directors of each of these companies.

International is the trading company in the group responsible for trading in the core business of sports goods. Resources hold the manufacturing plants in the PRC which carry out the manufacturing operations.

The most significant assets of the group are the 2 manufacturing plants in Guangxi, PRC (“**Guangxi Factory**”) which carry out the core business of manufacturing sports products.

International has its registered office in Hong Kong which has a staff of 20 that carries on the trading business and performs treasury functions for the group companies. Its registered office is treated as the office and headquarter of the group companies.

Resources has its registered office in the PRC. It employs a staff of 1,000 in its registered office and the Guangxi Factory.

ASL has its registered office in the BVI. It has no staff. To the extent that any decisions need to be made, they are done by way of paper resolutions signed by Andrew and Raymond and prepared by the Hong Kong office staff. Andrew and Raymond travel frequently to the Guangxi Factory to supervise the operations there, but when they are in Hong Kong they will always return to the Hong Kong office, where they use as a base to meet clients, lenders and potential investors. Their name cards for ASL bear the address of International’s Hong Kong office.

ASL is the borrower of banking facilities advanced by the Incorporated Bank of Armenia (“**Bank**”), which is licensed and carries on banking business in Hong Kong.

As at 1 July 2017, ASL was indebted to the Bank in the sum of HK\$70million, and the total amount of borrowings from all Hong Kong bank creditors (including the Bank) exceeded HK\$150million.

A substantial number of customers of ASL are Middle Eastern clients and the trade sanctions recently imposed by the US as well as the political inability in the region have adversely affected the business of ASL and the financial circumstances of the group deteriorated drastically.

Question continued on next page

ASL's sales volume declined substantially (estimated to be 24% lower in the fiscal year ended March 2017 than the fiscal year ended March 2016), it began to suffer from liquidity problems and started defaulting on due bills, and its own projection was that it would suffer from cash shortfall ranging from HK\$166,000 to around HK\$1million per month between April and October 2017.

In light of the deteriorating financial circumstances and performance of ASL, the Bank and the other bank creditors attempted to conduct a review of ASL's financial status through independent financial advisers with a view to considering a debt-restructuring. Andrew and Raymond were agreeable to this course then.

At the same time, Andrew and Raymond also identified a white knight, Frederick, who expressed interest in taking over the business or becoming a substantial investor therein, as Frederick has substantial connections in the sports products industry in Europe and he believes he could monetize those connections for the ASL business and turn it around.

However these discussions were overtaken by events which occurred in August 2017, when the Guangxi Factory was seized by the local authorities following complaints from unpaid workers who were laid off from the Guangxi Factory.

The seizure of the Guangxi Factory triggered a series of events – the trade creditors of Resources were alerted and gathered outside the seized factory, Andrew and Raymond have fled the jurisdiction and refused to disclose their whereabouts, the Hong Kong office is closed and there is no one to finalize the documents relating to goods shipped by the group companies to enable payment for the same to be obtained from the paying banks. It also transpires that rental for the Hong Kong office have been outstanding for some months and the landlord has threatened to re-enter.

As the Bank's loans are substantially unsecured, the Bank is very concerned that the seizure of the Guangxi Factory and the sale or dissipation of the assets therein would severely jeopardize its ability to recover its loans. Although the Bank cannot locate Andrew and Raymond, it is able to establish contact with Frederick who continues to express an interest to take over the ASL group. The Bank is hopeful that if the assets of the Guangxi Factor can be protected and ASL can be restructured with Frederick taking over, that would enhance the recoverability of its loans.

The Bank has come to you for advice. Please advise the Bank on how to achieve the goals identified above.

[25Marks]

BARRISTERS QUALIFICATION EXAMINATION 2017

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

Part A (Civil Procedure and Civil Evidence)

QUESTION 1

Anita Ho booked her wedding banquet at Splendor Restaurant owned by SKD Limited. Anita's father paid a deposit of HK\$500,000.

The day before the wedding there was a fire in the kitchen that set off the sprinklers flooding the restaurant where some flowers had been delivered for Anita's banquet. SKD has a fire insurance policy with Galaxy.

SKD immediately notified Galaxy closing the restaurant to investigate and carry out repairs. SKD provided Galaxy with a quotation of HK\$780,000 for repairs but six weeks ago Galaxy repudiated liability and rejected the claim. SKD still sent copies of all invoices and receipts to Galaxy for payment.

Anita managed to find an alternative venue for her wedding banquet but it was an inferior hotel function room with a set menu not to her taste costing HK\$300,000 more than Splendor Restaurant. Anita had paid her florist HK\$400,000 for flowers to decorate the restaurant and the bouquets.

Anita commenced HCA 324/2017 serving the Writ and Statement of Claim on SKD ten days ago. The particulars of damage pleaded are "*return of HK\$500,000 deposit and damages of HK\$700,000 for flowers and hotel plus HK\$1,000,000 for distress and disappointment caused by dream wedding being ruined.*"

SKD is willing to refund the deposit. SKD does not know what the HK\$700,000 covers. The hotel should have been cheaper than Splendor Restaurant. SKD also questions how much of the florists bill was for the bridal party flowers and whether the flowers may have been used at the hotel. It wants to see proof of all matters. SKD refuses to pay any damages for distress.

SKD notified Galaxy of HCA 324/2017, copied all documents served and sought representation and an indemnity for the action.

Last week Galaxy avoided the policy, rejected the claim and refused to provide SKD with representation for the action. The policy contains an arbitration clause that requires service of a Notice to Arbitrate and to appoint an arbitrator within 3 months of any dispute. SKD would like to delay HCA 324/2017 until Galaxy agrees to cover the costs.

Question continued on next page

- (a) Advise SKD of all procedural steps it must take, when and why, how it may protect its position and of any applications it may take out in respect of HCA 324/2017. You should cite relevant rules and authorities. (34marks)
- (b) Advise whether or not to seek further and better particulars and, if so advised draft the request. (8marks)
- (c) Advise what steps SKD should take in respect of Galaxy. (8marks)

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

[50Marks]

QUESTION 2

Sabrina Li has just changed solicitors from Woo and Partners (“Woo”) to Fung & Fung (“Fung”). Howard Woo, his partner James Bennet and other solicitors in the firm including Warren Morgan successfully brought and conducted proceedings for her against Terrence Tang for fraud.

In November 2015, the Court of First Instance gave judgment in her favour for HK\$32million plus interest and costs. Tang appealed. In October 2016, the Court of Appeal dismissed his appeal awarding costs to Li. Tang was granted leave to appeal to the Court of Final Appeal, but in July 2017 the CFA handed down judgment dismissing the appeal, upholding the judgment with costs of and occasioned by the appeal and costs below to be paid by Tang to Li.

Before proceedings commenced Li had told Howard Woo that Tang was a wealthy businessman who owned opulent offices in Admiralty, drove expensive sports cars and lived in Blacks Link.

Upon service of the Writ Tang telephoned Li and told her she would never recover a cent from him. The inter parties solicitors correspondence had become hostile so Li decided to talk to Tang directly to try and reach a settlement. However, when she went to his offices they were closed and Tangs name had been removed from the door and the directory at the ground floor lobby of the building. Before the CFI trial Li told Warren Morgan of her attempt to approach Tang personally only to find his offices were closed and that to put an end to the matter before trial she would accept HK\$28million. She was advised that given Tangs attitude any concession by her at that stage may be seen a sign of weakness so she never made any offers of settlement in any form.

Tang did not offer to settle or make payments into Court except for HK\$400,000 as security for costs of the CFA appeal as a condition of grant of leave to appeal. Li had a senior junior throughout and also Senior Counsel in the CFA. Woo had advised her to instruct Senior Counsel for the CFA, but he did not even apply for a certificate for two Counsel in the written costs application or submissions. Her costs exceed HK\$3million which she also wants to recover plus interest.

Li thought she had to wait until after the CFA decision to enforce judgment. After the CFA judgment Tangs solicitors ceased to act for him and Tang could not be found so Li asked Woo to conduct a property search of the Admiralty office only to discover Tang had sold it in February 2016.

A concern that Woo had failed to protect her position throughout caused her to change solicitors to Fung. Fung have discovered Tang had also owned the property in Blacks Link where he had lived but that he sold that property in September 2017. Li is now considering taking action against her former solicitors because she fears she has an empty judgment.

Question continued on next page

You are instructed to advise Li.

- (a) **What should Li have been advised and when in order to protect herself in respect of damages and costs? Your advice should include the steps that could have been taken, on what basis and at what stage of the proceedings citing relevant procedures, rules and authorities. (35marks)**
- (b) **What action may Li take in respect of her former solicitors? Your advice should give particulars of any proceedings including who should be joined as parties. You should identify any cause of action and, in light of (a) above, particulars of any breach you may be able to plead on Li's behalf. (15marks)**

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

[50Marks]

Part B (Professional Conduct)

QUESTION 3

Part A

Fenton, a barrister, is instructed by his girlfriend Eugenia, partner of Eugenia Chan & Co, to defend the lay client Antoine Chan who is to stand trial in the Court of First Instance in 1 week's time. Antoine has been charged with 10 counts of obtaining property by deception, 16 counts of false accounting and 30 counts of obtaining a pecuniary advantage by deception. The charges arise out of Antoine's alleged involvement in a "Madoff-style" Ponzi scheme involving the doctoring of financial statements and the purchase and sale of non-existent shares in offshore property companies.

Fenton, who was called to the Bar "about a year ago" thinks to himself that the case is a bit complicated but tells Eugenia, a patent lawyer, that he will take the case on because he is obliged to under the 'cab rank rule.'

Fenton, with the aid of Eugenia and her firm, dives into full preparation for the case, burning the midnight oil every night before the trial begins. He holds several conferences with instructing solicitors and the lay client (who has been granted bail).

Fenton's instructions are that Antoine lacked any dishonesty with regards to the offences as he had believed throughout the entire series of transactions that the whole scheme that he was engaged in was above board and legitimate. His business partner Diego, who now lives in Costa Rica, had assured him repeatedly that this was the case at the time – he has telephone records to prove this. Fenton is dubious as to Antoine's innocence as Eugenia told him that he was "guilty as hell" but he figures that even if he fails in defending him, then nothing will be wrong.

At trial, Fenton cross-examines the prosecution's forensic accountant and suggests to him that had he done his job properly and not in a totally amateurish fashion it would have been clear that the real culprit in the case was Diego. Fenton suggests to this witness that the forensic analysis of the company accounting documents was unprofessional and random and that "Diego is living in a mansion in Costa Rica with the stolen proceeds, probably sipping a Mai Tai this minute." Fenton continues that "the accountant is to blame for letting the real fraudster go free."

Fenton further asks the accountant if he has ever been accused of "cooking the books". The trial judge intervenes and tells the witness that he need not answer that question.

At the end of the day, in the middle of the accountant's cross-examination, Fenton runs into the accountant in the lift of the High Court building. He whispers to the accountant reassuringly that he should not take Fenton's questions personally as they are all just "for show" for his client and he did not really mean any of it.

At the conclusion of the trial the jury convicts Antoine. He is sentenced to 10 years' imprisonment.

Question continued on next page

After the sentencing, Fenton tells Antoine that he need not worry as he will win the appeal as the trial judge had made at least two serious errors during his summing up to the jury.

Discuss all issues of professional conduct, which arise on the above facts in respect of Borat's conduct, with reference to the Revised Code of Conduct of the Bar of the HKSAR (2017).
(25marks)

Part B

Charles the barrister is instructed by the Duty Lawyer Service to act for Mr Zabeel, who has been arrested for loitering in a public place.

Mr Zabeel is a prominent political activist in Hong Kong, constantly appearing in the press and writing letters to the Chief Executive, Legislative Council members and senior members of the Judiciary seeking the end of political persecution for immigrants in Hong Kong.

Charles is the third barrister appointed to represent Mr Zabeel. The first and second barristers, Adam and Barry, respectively withdrew from representing Mr Zabeel, informing the Duty Lawyer Service that they were unable to obtain coherent instructions from their client and that "he refused to listen to or take our advice." With little choice, the Duty Lawyer Service did not stand in their way.

Charles, appearing at the start of the trial, tells the magistrate that he too is unable to obtain instructions from Mr Zabeel and seeks leave to withdraw from the case. Charles secretly believes that his client is guilty in any case.

Mr Zabeel, in open court, objects to this suggestion and insists that, being a criminal case, his liberty is at stake. Charles tells the magistrate that his client urged him not to introduce any defence evidence, nor challenge any of the prosecution witnesses and he decided that he could not carry out his duties. The magistrate immediately tells Charles that he must carry on. Charles protests and then asks for a ten minute break.

During the break, Charles telephones his friend who works as a political reporter for the Daily News and tells him to send some photographers to the Court to take some pictures of Hong Kong's political maverick as the trial is about to begin and he "will be convicted for sure."

The trial commences shortly thereafter and, on the basis of the lack of instructions that Charles is able to obtain, Mr Zabeel is convicted. During sentencing, Charles tells the magistrate that but for the magistrate's incompetent decision to insist that Charles continue to represent him, his client would have been acquitted. A fine of HK\$1,000 is imposed. When he leaves the court, Charles makes sure that the photographers get some close ups of him and his client.

Discuss all issues of professional conduct, which arise on the above facts in respect of Charles' conduct, with reference to the Code of Conduct of the Bar of the HKSAR.

(25marks)
[50Marks]

QUESTION 4

Advise Betty in respect of any conduct issues arising from the following facts:

Betty is a practising barrister in Swire Chambers in Hong Kong. Every summer she has student interns working alongside her. One of her former interns, Peter has since graduated and completed all of the academic and legal training requirements for admission as a barrister of the High Court of the Hong Kong SAR.

He has today contacted Betty by email asking her whether she could review court papers relating to his application for admission and urgently advise him by confidential email on an issue he has in connection to his application.

Betty receives and reads all of the papers relating to Peter's Notice of Motion for admission as a barrister. These include the notification of the decision of the Secretary for Justice rejecting his application for admission on the grounds that Peter does not meet the 'fit and proper person' criterion. The papers disclose that when he was 19 years old, Peter was convicted and sentenced to 14 days' imprisonment for the indecent assault of a 14 year old girl on the MTR.

Betty, a strong advocate for animal welfare reform, has also been approached by the Hong Kong Veterinary Surgeons Board to provide it with legal advice from time to time on matters arising from various Board activities. Betty is keen to support the Board's work and proposes to do so on a voluntary, part time basis.

Betty is almost finished writing a journal article comparing animal welfare laws in the region. The article is to be published in the Kowloon Law Journal. As part of her biography description accompanying this article, Betty has described herself as a practising barrister working out of Swire Chambers. The journal has indicated that it intends to publish the article together with a photograph of Betty wearing full court dress (bands, wig, and gown) standing beside the brass nameplate outside her Chambers building in Des Voeux Road.

After publication of her journal article, a local television channel approached Betty and asked her to appear on a current affairs show as part of a panel of experts. The proposed topic for discussion by the panelists is the defendant's legal position in a pending appeal against sentence following his conviction early this month under the **Prevention of Cruelty to Animals Ordinance (Cap 169)** for operating a so-called 'puppy mill' in Lo Wu. At the Court of First Instance the defendant was sentenced to the maximum penalty of a HK\$100,000 fine and a 6-month custodial sentence.

Betty's spouse, Bobby is also a barrister. They have each been instructed on opposite sides of the same child custody case. Betty has been instructed to represent the father. Betty's instructing solicitor is unable to attend a scheduled conference with the lay client. Betty decides to record the meeting on her iPhone.

Question continued on next page.

During the conference, Betty's lay client told her that if the court does not award him custody of the children then he will make sure that no one else has custody. Seeing the look of shock on Betty's face, he quickly told her to keep that information to herself.

Subsequently, during counsel-to-counsel discussions with Bobby regarding these custody proceedings, Betty told Bobby that she had advised her lay client, the child's father, against making a particular application. Despite her advice, the father insisted on proceeding with the application. Betty's instructing solicitors have now received a letter from the mother's solicitors making a claim against them for wasted costs for the application on the basis that this application was made against Betty's advice. From this it seems clear that Bobby has revealed to his instructing solicitors matters which he and Betty had discussed.

Betty has reviewed substantial amounts of material disclosed to her in respect of the custody matter. These include financial records relating to the various business interests of her client which have been used to demonstrate her client's ability to support the children. Betty has today received instructions in an unrelated civil claim against one of his companies. Some of the disclosed material to which she is already privy through the custody case is likely to assist her new client.

As the lengthy custody case progresses and becomes increasingly acrimonious, it transpires that Betty has a court appearance clash with another case on which she has recently been instructed to appear. Both matters are to be heard on the same day. Whereas the custody matter is now part heard, the clashing case is a serious criminal matter in which the defendant, if found guilty, will most likely face a long custodial sentence. This case promises to be complex, demanding and professionally rewarding for Betty.

[50Marks]

BARRISTERS QUALIFICATION EXAMINATION 2017

PAPER V: CIVIL EVIDENCE, CIVIL PROCEDURE, PROFESSIONAL CONDUCT AND ADVOCACY

PART C (ADVOCACY)

Instructions to Counsel

You will appear as counsel for the Plaintiff at 5:00p.m. on the 27th day of October 2017 before the Honourable Mr. Justice Pang on an urgent *ex parte* application for a Mareva injunction.

You have received the following documents from your instructing solicitors:

1. An attendance note by Chapman Mao, partner of Messrs. Chan, Cheung and Poon, Solicitors and Notaries;
2. A draft generally indorsed Writ of Summons;

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

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

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

FACTS

Instructing solicitors were approached earlier today by Mr. J.U. Kim (“Kim Junior”), a leading local entrepreneur and businessman, who is also the son of the prominent property magnate J.I. Kim (“Kim Senior”). Kim Senior is a long-term and much-valued client of Messrs. Chan, Cheung and Poon.

Kim Junior’s primary business venture was the establishment, in January 2000, of an exclusive club and the provision of recreational sailing and cruising services for what he described as the “social elite” and “local celebrities and socialites”. He is a shareholder and a director of the corporate entity known as “Kim’s Clubs and Cruises Limited” (the “Company”).

Shares in the Company are jointly held by Kim Junior and Denny Reedman, his friend from his Swiss university days and now his business partner. The club and cruise business has had an average annual turnover of HK\$5,000,000. However for the past year the annual turnover dropped to approximately HK\$1,500,000.

Denny’s main responsibility is the management of both the club premises and the cruise services. He controls the day-to-day operation of the business. His responsibilities include:

- a) Hiring, training and managing the employees who include *inter alia*, bartenders, security guards, cleaners, valets, concierge staff, chefs, sommeliers, guest disc jockeys and entertainers;
- b) Catering finances including payment for food and beverages delivered by suppliers;
- c) Financial management including utility bills, insurance, MPF payments, staff wages and incidental costs;
- d) PR duties including hosting functions, meeting and greeting, liaison with performers and guests for special themed event evenings;
- e) Other duties as and when they arise.

During the past eighteen months Kim Junior has been preoccupied with a new project known as, “Life’s Nuclei” which features a chain of lifestyle centres including a spa and fitness centre, a holistic treatment centre and a theme restaurant. These are called respectively “Nucleus Spa”, “Nucleus Fitness”, and “Nucleus Food”.

Kim Junior has recently been traveling extensively throughout China and Middle East to meet potential investors and to make inspection visits to similar operations.

As a result of these recent heavy commitments he has become less involved in the management and supervision of the club and cruise business. In order to facilitate prompt payment to suppliers and to cover incidental expenses he left a number of signed blank cheques with Denny.

Denny was authorized to use these to draw funds in Kim Junior’s absence in case of urgency to meet legitimate business expenses. Kim Junior has been so busy with his new project that he has not had the opportunity to visit the club since the beginning of the year.

Kim Junior stated that about seven months ago whilst he was in Iran visiting the Enrichment Spas near the Fordow village, he had received an urgent call from Denny. Denny had explained that Ms. Cocoa Li, the famous singer, was planning her wedding and had decided to hold the reception at the club; this to be followed by a Harbour cruise for her guests. She had requested that Denny organise the event and had specifically requested that Christina Aguilera be contracted to sing at the reception.

Denny had spoken to Christina's agents and they had agreed to the proposal but had required a sum amounting to 50% of the singer's fee to be paid as a deposit. As Cocoa was at the time on a yoga retreat in the Himalayas she could not be reached to provide the deposit monies. Denny had then asked Kim Junior if he could urgently transfer the deposit sum from his personal account by internet banking so that Denny could secure Christina's services.

Denny explained to Kim Junior that this would be great PR for the club and that the club was likely to make a healthy profit from the venture.

Kim Junior immediately made the transfer of HK\$700,000 to the Company account for Denny to use as the deposit for Christina's engagement.

Kim Junior has now secured private investors and a loan from China Construction Bank to fund his new project.

He has also experimented with some of the designs for the spa concept and décor on his own flat.

During the renovation of his penthouse nine months ago, he adapted his kitchen, roof garden and bathrooms to match the proposed style of the "Life's Nuclei" project.

The penthouse was featured in Home & Lifestyle Journal in June 2017. It described Kim Junior as the "owner and eclectic designer of a sensuous pad consisting of 3,000 square feet and a roof garden which was a serene haven in the heart of HK".

Kim Junior had purchased the penthouse which is located in the New Territories in November 2008 for HK\$2,000,000. He obtained a mortgage of 90% from Hung Seng Bank and took a loan from a former business partner for the remaining 10%. Kim Junior is aware that a neighbouring flat of similar size had recently sold for HK\$5,800,000. There had been a bank mortgage control since 2008, for properties valued upwards of HK\$5,000,000 the maximum mortgage is now 50%.

Kim Junior provided some information about Denny.

He met Denny at university in Switzerland. Denny's entire family is in the US and he previously managed a restaurant in Chicago called "The Bulls". Denny had on several occasions expressed his hope to own it one day and had kept in touch with the current owner.

Denny's wife Mary who is also from Chicago is an interior designer and caterer. She runs her business from their home in Stanley and earns on average HK\$10,000 a month. She gave birth to triplets two years ago. After giving birth she suffered post-partum depression and spent eight months in the US. Since she returned to Hong Kong she has often said she missed not having her family nearby to offer support.

She has also often said that the quality of life is much better and healthier in the US than in Hong Kong. She has made it clear that she wants to return to US as she is keen for her children to grow up accustomed to their culture as they are African American ethnically.

About two weeks ago, Kim Junior returned from overseas and visited the club. Denny was then in Macau for several days sourcing entertainers for an upcoming event. He had delegated all management duties to Toby Kukoc the deputy manager.

Kim Junior had a meeting with Toby to get an update on the state of the club.

He noticed that only a few staff were on duty and that the club appeared unkempt and run down. He also noticed that the menu had not been changed since he had last visited nine months ago; that several fresh flower arrangements had been removed and that the pond and water features at the entrance had no exotic fish in them. He also noticed that no entertainers or disc jockeys had been billed on the promotion board.

He asked Toby about this and was told that many of the staff had had their employment terminated approximately five months ago. Additionally the few who remained had had to accept heavy wage cuts. Toby said morale was low but they were told by Denny that there was no choice as the company was suffering severe financial difficulties. The weekly flower arrangements had been cancelled and the club's eight golden carp had been sold to a collector of the fish.

Toby also said that several of the waiters had been forced to stand in as disc jockeys and that the club had not used any entertainers or local or overseas disc jockeys for several months.

Kim Junior had not authorised any of this nor had he been informed of any of these changes or developments.

As far as he was aware the company had all along been making a healthy profit.

At the end of the meeting, Toby asked Kim Junior if he could make out cheques to allow payment to be made to several suppliers as they had not been paid for over five months. They had continued to make deliveries and to supply goods and services but had been doing so on credit and had been charging interest at high rates for the privilege.

Kim Junior asked Toby where all the business' money had gone, but Toby stated that he had no idea as Denny had not discussed this with him.

Kim Junior asked Toby about the profits from the wedding party for which Christina Aguilera was to have been flown in to sing two love songs for the guests. Toby explained that Denny had cancelled the event explaining to Toby that the club did not have the capacity to handle such a huge wedding party. Toby had been amazed at this as the club was large enough to handle the party with ease.

Kim Junior immediately called Denny who did not answer the call. He had then left numerous messages on Denny's voicemail. None of the calls were answered. Toby told Kim Junior that he had not heard from Denny for about a week.

Kim Junior made enquiry with the bank, HSBC, about the state of the Company's accounts. The Company had two principal accounts which it used for the operation of the business: savings account No. 832-5-78657865 and current account No. 832-5-78657869.

Kim Junior and Denny are the only authorised signatories and any transfer or withdrawal of not more than HK\$300,000 can be authorised by either of them. Kim Junior had asked the bank to provide him with copies of all cheques issued by the Company over the value of HK\$50,000 over the last three years.

The bank had informed Robert that it would need approximately ten days to meet his request. The bank manager had further explained that the bank would charge HK\$100 per copy cheque. Kim Junior had agreed to pay these charges.

Two days ago the bank informed Kim Junior that copies of the cheques were then available for collection and that the bank charges totalled HK\$13,000. Kim Junior then cancelled all his appointments for the day and personally collected the cheques. He had then spent the next day and a half at the Company's office checking the accounts and records. He specifically checked the copies of the cheques against the handwritten entries on the stubs in the cheque books.

He was very disturbed to discover that several cheque payments recorded therein as having been made to Walkers Wine Company, Chi Chi Cleaning Services and to 'X N Entertainment' Agency had not, in fact, been issued in favour of these entities but had been made payable to Denny and Mary. Walkers Wine Company, Chi Chi Cleaning Services and 'X N Entertainment' Agency respectively had supplied the beverages and alcoholic drinks, cleaning services and had provided disc jockey services and entertainers for the club.

Details of the cheques:

Date of Cheque	Cheque Number	Payee	Amount (HK\$)	Cheque Stub
15/3/2016	853122	Mary Reedman	\$160,000	Walkers Wine Company
20/6/2016	853164	Mary Reedman	\$280,000	Chi Chi Cleaning Services
12/7/2016	853169	Denny Reedman	\$80,000	XN Entertainment Agency
*9/10/2016	853267	Denny Reedman	\$120,000	XN Entertainment Agency
11/11/2016	853269	Mary Reedman	\$210,00	Walkers Wine Company
2/2/2017	855011	Mary Reedman	\$190,000	Chi Chi Cleaning Services
4/7/2017	855143	Mary Reedman	\$300,000	Walkers Wine Company
28/8/2017	855146	Denny Reedman	\$200,000	Walkers Wine Company

* Kim Junior is unsure if this cheque was actually paid to the supplier. He had contacted them and is awaiting their reply.

Kim Junior has confirmed that Mary is not employed by the club and that she has never provided any services for the company.

He also confirmed that the company bank statements revealed that on 22 March 2017, HK\$700,000 had been transferred from Kim Junior's personal account to the Company current account through internet banking. This entire sum had then been withdrawn over the following three days. No other details are yet available.

Kim Junior discovered among the documents in Denny's office a Judgment against Mary as defendant ordering her to pay the sum of HK\$680,000 in damages and costs for breach of contract. The judgment was dated 20 September 2017 and Mary had been ordered to pay the sum within fourteen days of that date.

He had also discovered a fax sent from a Chicago property agents firm indicating that the restaurant which Denny had previously managed was listed as being for sale. A copy of the fax is attached.

Kim Junior had left several messages on Mary's voicemail at her home in Stanley and on her mobile phone. She has not returned his calls.

Kim Junior explained that he was concerned about the missing funds and wanted to find out if Denny and Mary had left Hong Kong. He informed instructing solicitors that he was aware that they jointly owned their 1,000sft home at Flat 2B, 66 Stanley Main Street, Hong Kong. They had bought it in January 2016 for HK\$3,000,000 with the assistance of a 70% mortgage loan from The Standard Chartered Bank.

Mr. Mao canvassed with Kim Junior his potential claims against Denny and Mary. He advised that the issuance of a Mareva Injunction should be considered and advised that counsel be instructed in the matter. Mr. Leong asked Kim Junior to provide HK\$300,000 as costs on account in the event that he would wish to proceed with the matter. Kim Junior confirmed his instructions and said he would deposit the sum the next day.

Mr. Mao will endeavour to prepare a file of exhibits but these will not be available in time for the hearing. Mr. Mao would like Counsel to consider any other means of preserving and safeguarding Kim Junior'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.

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. of 2017

Between

J.U. Kim

Plaintiff

and

Denny Reedman

1st Defendant

Mary Reedman

2nd Defendant

Kim's Clubs and Cruises Limited

3rd Defendant

WRIT OF SUMMONS

To the 1st and 2nd Defendants both of Flat 2B 66 Stanley Main Street, Hong Kong AND to the 3rd Defendant whose registered office is at 1st Floor, Cheuk Tsui Centre, 88 Lung Street, Stanley, 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.

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

Issued from the Registry of High Court this day of Year

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's claim against the 1st Defendant is for:
 - (a) an account of all monies belonging to the Plaintiff which had been misappropriated by the 1st Defendant in breach of fiduciary duty and/or trust;
 - (b) an order for payment by the 1st Defendant of all sums found to be due on the taking of such account under (a);
 - (c) an Order that the 1st Defendant do repay the Plaintiff the sum of HK\$1,100,000.00 as monies had and received by the 1st Defendant to the 3rd 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 1st 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 HK\$1,100,000.00 on trust for the Plaintiff;
 - (g) interest pursuant to Section 48 of the High Court Ordinance;
 - (h) costs; and
 - (i) further or other reliefs

2. The Plaintiff's claims against the 2nd Defendant are for:-
 - (a) an account of all monies belonging to the Plaintiff which had been misappropriated by the 2nd Defendant in breach of fiduciary duty and/or trust;
 - (b) an order for payment by the 2nd Defendant of all sums found to be due on the taking of such account under (a);
 - (c) the sum of HK\$1,140,000.00 being the amount of money unlawfully paid to the 2nd Defendant being money had and received by the 2nd Defendant to the 3rd 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 2nd Defendant is holding all monies belonging to the Plaintiff which had been misappropriated by the 1st Defendant in breach of trust including the said sum of HK\$1,140,000.00 on trust for the Plaintiff;

(g) interest pursuant to Section 48 of the High Court Ordinance;

(h) costs, and

(i) further or other reliefs.

3. This being a derivative action brought on behalf of the 3rd Defendant and the 3rd Defendant is joined as a party so that it is bound by the results thereof.

Dated the day of 2017

Solicitor for the Plaintiff



PORIRUA ESTATE AGENTS
10 BOARDS STREET
BRONZEVILLE, CHICAGO, IL 60534
TEL: 773.702.1234 FAX: 773.702 3456

Fax To: Denny Reedman, CEO, Kim's Club and Cruises Ltd.

Fax Nos.: 852 - 2813 9494

Fax From: Isaiah Toms

Fax Nos: 773.702.3456

Date: 14 October 2017

Pages including this one: 1

Dear Denny,

Bad Boy Pistons

Following up on your enquiry, we have good news!

Joe's son has finally decided to sell the restaurant. His asking price is US\$360,000 but this is negotiable and not inclusive of commission.

Please contact me asap as there is a lot of interest in the restaurant.

Best wishes to Mary and the kids.

Warm regards,

Isaiah

11. Useful Research Information

Listed below is information which it is hoped will be of some use to candidates in their preparation for the Barristers Qualification Examination.

Hong Kong Law Reports

Hong Kong Law Publications

Sweet and Maxwell Asia

16/F Cityplaza 3

Taikoo Shing, HK

Tel: (852) 3762 3227

Fax: (852) 2520 6646

Website: www.sweetandmaxwell.com.hk

Hong Kong Law related websites

Legal Information sites:

- World Legal Information Institute (**WorldLII**): <http://www.worldlii.org/>
- Hong Kong Legal Information Institute (**HKLII**): <http://www.hklii.org/>
- Australasian Legal Information Institute (**AustLII**): <http://austlii.edu.au/>
- British and Irish Legal Information Institute (**BAILII**): <http://www.bailii.org/>
- Pacific Islands Legal Information Institute (**PacLII**): <http://www.paclii.org/>

Access to all these Legal Information Institutes is free: they are independent, non-profit and University-based.

Professions:

Hong Kong Bar Association

www.hkba.org

Law Society of Hong Kong

www.hklawsoc.org.hk

Law Schools:

Hong Kong University

<http://www.hku.hk/law/>

City University

www.cityu.edu.hk/slsw/eng/index/

Chinese University

<http://www.cuhk.edu.hk/law/>

Government:

HKSAR Government homepage
www.info.gov.hk

List of Government Organisations
www.info.gov.hk/orgindex.htm

Department of Justice
www.doj.gov.hk

Judiciary
www.judiciary.gov.hk

Legal Aid Department
www.lad.gov.hk

Legislative Council
www.legco.gov.hk

Law Reform Commission
www.hkreform.gov.hk

Securities and Futures Commission
www.hksfc.org.hk

Privacy Commissioner's Office
www.pco.org.hk

Monetary Authority
www.hkma.gov.hk

Hong Kong Legal Resources:

Basic Law of HKSAR & Related Judgments
www.basiclaw.gov.hk

Bilingual Laws Information System (BLIS)
www.legislation.gov.hk

Court of Final Appeal Judgments
<http://legalref.judiciary.gov.hk/lrs/common/ju/judgment.jsp?L1=FA#H1>

HKSAR Government Gazette
www.gld.gov.hk/cgi-bin/gld/egazette/index.cgi?lang=e&agree=0

General Legal Resources:

www.findlaw.com
www.legalmediagroup.com
www.lexisnexis.com
www.lexisone.com

Hong Kong Bookshops

Bloomsbury Bookshop

Rm 1202, 12/F, Chung Sheung Building
9-10 Queen Victoria Street
Central, Hong Kong
Tel: (852) 2526 5387
Fax: (852) 2877 0755
Website: www.bloomsbury.com.hk

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