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**HIGHER RIGHTS OF AUDIENCE ASSESSMENT  
IN RESPECT OF CRIMINAL PROCEEDINGS**

**THE WRITTEN EXAMINATION**

**Question paper**

**Time allowed: 2 hours 30 minutes**

**YOU MUST NOT OPEN THIS PAPER UNTIL YOU ARE TOLD TO DO SO**

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**Permitted materials**

- Archbold Hong Kong – Criminal Law, Pleading, Evidence and Practice
- The Hong Kong Solicitors' Guide to Professional Conduct (Vol.1) published by the Law Society
- The Law Society's Code of Advocacy for Solicitor Advocates

**PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY**

1. This written examination comprises one part of the assessment for higher rights of audience. There are 50 marks allocated for this examination.
2. Candidates may use their own copies of permitted materials, including those computer-printed hard copies. This is so even though they may contain annotations or highlighting provided this has been done in the ordinary course of use and reference. However, extra materials, for example, notes prepared specifically for this examination are not to be included. Use of electronic copies of permitted materials through a specified electronic device can be permissible subject to compliance of the requirements set out by the Higher Rights Assessment Board and candidates' declaration that the device does not contain any non-permitted materials or pre-prepared materials which may be of assistance in the examination. In the event of a dispute between the invigilator and a candidate, the decision of the invigilator shall be final.
3. Candidates must ensure that their answers provided in the examination scripts are legible to the examiners. If a candidate's handwriting is considered illegible, his/her written examination script will be assessed on the basis of the legible parts only and the marks awarded accordingly.
4. If, in answering any question in this examination, a significant ignorance of the code of ethics governing solicitors and/or solicitor advocates is revealed, the Higher Rights Assessment Board may determine that it should result in a failure of the overall assessment irrespective of the candidate's marks otherwise.
5. Candidates must not remove this question paper from the examination room.

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### The Case

Mycroft is charged with one count of dishonestly using a computer contrary to section 161(1)(c) of the Crimes Ordinance (Cap. 200) and one count of dealing with property known or believed to represent proceeds of an indictable offence contrary to section 25(1) of the Organized and Serious Crimes Ordinance (Cap. 455).

Digby is charged with one count of dealing with property known or believed to represent proceeds of an indictable offence contrary to section 25(1) of the Organized and Serious Crimes Ordinance (Cap. 455). He is also charged with one count of offering Ludovico an advantage contrary to section 9(2)(a) of the Prevention of Bribery Ordinance (Cap. 201).

Ludovico is charged with one count of accepting an advantage contrary to section 9(1)(a) of the Prevention of Bribery Ordinance (Cap. 201).

The case against the defendants is contained in the document below that is headed “Summary of the Prosecution Evidence”.

The instructions of the defendants are contained in the notes headed “Defence notes”.

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### Summary of the Prosecution Evidence

Betty was tired. Tired of being single and tired of being hurt. In the morning of 5<sup>th</sup> February 2021, she decided that she was going to take control of her life and find her own happiness. She downloaded a renowned and reputable dating app called “lonelyheartsjointogether” on her phone in the hope that she would find a man with whom she could spend the rest of her life. She signed up for an account, put her most attractive picture on her profile and began her quest. After three days of active searching, she began to feel disheartened because she could not seem to find anyone interesting. Then all of a sudden, she received a message in her message inbox:-

*“The beauty that falls so gracefully  
On the sweet canvass that is your face  
Awakens me every night I dream  
Pray, that daylight arrives not  
For the sun cannot fill the abyss  
Your absence has created in me”*

Betty was deeply impressed by this poem. She saw that a handsome man named Hamilton sent it to her. She messaged him and they instantly began a friendship, which very soon became a romantic relationship. Despite this, Betty never met Hamilton in person. Betty was keen to see Hamilton and spend some quality time with him. However, Hamilton, although living in Hong Kong, was very busy with his work. He owned a company which provided agricultural pesticides to farmers in New Zealand. His work pressure was such that he could not in the short term take time to meet up with Betty. They messaged each other frequently for about a month until one day, Hamilton suddenly disappeared. Worried, Betty kept messaging and calling, but there was no response from Hamilton. About two days later on 12<sup>th</sup> March 2021, Hamilton contacted Betty and said that he had some financial troubles in his company and he needed to borrow some money from her. Hamilton told her that he needed HK\$80million to save his company and promised to pay back this amount to Betty within 6 months. Being a successful doctor in Hong Kong, Betty had been earning good income since the start of her career 10 years ago. She was also the daughter of an extremely wealthy and successful property developer. Betty was eager to help Hamilton. He asked Betty to transfer HK\$80million to 4 BVI company accounts all under different names (HK\$20million in each BVI company account) and that it was necessary to do so for tax purposes. Blinded by the love that she had for Hamilton, Betty readily agreed and did so without question the next day on 13<sup>th</sup> March 2021. After that, she never heard from Hamilton again.

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Mycroft was sitting in his office in Kwun Tong, happily sipping his iced lemon tea whilst he enjoyed his afternoon. He was the chairman of his own company Forget Me Not Limited. He had just received HK\$80million from a woman named Betty a few hours ago. The next day on 14<sup>th</sup>

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March 2021, he issued 4 cheques (each HK\$20million) from the 4 BVI company accounts (which were all under his control) into which Betty deposited HK\$80million. He asked his staff Digby to deposit the 4 cheques to Digby's own personal account for a short while as Mycroft needed first to sort out his finances before putting the money into his account. Digby did so accordingly on the same day. 2 days later on 16<sup>th</sup> March 2021, Mycroft talked to Digby and told him that he had sorted out his finances and was ready to have Digby transfer him back HK\$80million into Mycroft's own personal account in Barnaby Bank. Digby did so accordingly.

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Digby wanted to settle down and marry his girlfriend Ruth. As Mycroft was a demanding boss who was very mean with money, Digby was only hired as part time staff at Forget Me Not Limited, earning HK\$20,000 per month. As a result, he had to find other ways to make money. He started a Portuguese chicken restaurant last year. As he was earning good money last year as a restaurant owner, he bought a property in Kowloon Tong to celebrate his engagement to Ruth. The property was mortgaged to Wealthy Bank and he was loaned 60% of the property price.

This year, as a result of the collapse in the economy, his business suffered significantly. With no customers at his restaurant every night, he had been making a loss every month. He had also incurred debts for maintaining the finance of his restaurant during this difficult period. On 18<sup>th</sup> March 2021, Digby went to talk to Ludovico, his bank manager at Wealthy Bank, to talk about his financial problems and that he could not make the mortgage payments without a re-mortgage. Ludovico told him that as a matter of policy, Wealthy Bank did not grant re-mortgages. However, Ludovico said that he would refer Digby to another bank – Barnaby Bank – for a re-mortgage of Digby's property. In return for this, Ludovico wanted a commission of HK\$300,000 from the loan for the referral. Digby was extremely strained financially, so he readily agreed to Ludovico's proposal. 2 weeks later on 1<sup>st</sup> April 2021, his re-mortgage application at Barnaby Bank was approved. He received a loan of HK\$2million, of which he transferred HK\$300,000 to Ludovico that same day.

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It had been three weeks since Betty last heard from Hamilton. She realized by now that what seemed to her to be the perfect man turned out to be a fraudster. Heartbroken, she reported the case to the police. After a month of investigation, the police finally located a man in Kwun Tong named Mycroft who was operating an online profile under the name of Hamilton on the dating app "lonelyheartsjointogether". Mycroft was subsequently arrested by the police on 6<sup>th</sup> May 2021. Mycroft's phone was seized by the police. Mycroft also consented to the police searching the contents of his phone and gave the police the password to his phone. The police officer who seized Mycroft's phone, DPC9898, did not hand in the phone to the police station for storage after seizure. Instead he took it home with him along with Betty's mobile phone. When he gave a copy of his

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police notebook recording the handling of exhibits, it was found that a page was torn out of his notebook.

Under caution when arrested for their respective offences, all defendants remained silent. They are all on bail.

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## **Defence notes - Mycroft**

### **Family background**

Mycroft was born in Wales. He was 35 at the time of the offences.

His education level was university.

He is single and lives alone. His parents live in Wales.

### **Work**

Mycroft was a graduate with a degree in Business and Finance. Unfortunately, it had been very difficult for him to find employment in Hong Kong with the collapse of the economy. Since graduating 10 years ago, he had worked as a waiter in a restaurant and was very soon promoted to be the restaurant manager. However, he did not feel that he was earning enough. So 2 years ago, he set up his own finance company which helps people with their investments. He handles his clients' investment portfolios. As his company is just a start-up, he is trying to save costs by minimizing his staff numbers. He only hires Digby as a part-time staff in his company.

Mycroft did not come from a wealthy family. His parents had to work 15 hours every day in order to make enough money to fund his education at university. For this reason, he is highly ambitious and very driven in making money. He wishes eventually to become a property mogul in Hong Kong. He wishes to have the financial capability to invest in as many properties in Hong Kong and earn as much as possible in the shortest time available.

### **Criminal Record**

Mycroft has a clear criminal record.

### **The plea and the instructions**

Mycroft intends to plead NOT GUILTY to the both counts against him.

Mycroft does have a big online presence. Because of his good looks, he has accumulated a high number of followers on his various social media accounts. He recently downloaded a dating app on his mobile phone called "lonelyheartsjointogether" and has started a profile to look for a long-term girlfriend.

He uses the name Hamilton because he feels that the name Hamilton would get him more girls than his real name. Although he does not use his real name, he does use his real picture as the

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profile picture on the app. He has tried talking to a few girls on this dating app, but nothing has come of it.

He understands that the allegation against him now is that he tried to obtain money from a woman named Betty. He did talk to Betty and borrowed HK\$80million from her. This money was intended for his business, which was going through a rough patch. He had every intention to pay back the money. He had bought the lottery that week and the prize money was HK\$100million and he was confident with his meticulous calculations of algorithms that he was going to win the lottery.

He went silent on Betty about a month after talking to her because coincidentally that was the point at which he had encountered some financial difficulties, so he had to put all his concentration into his work. He was at the time looking for a girlfriend in good faith. He strenuously denies the allegation.



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## **Defence notes – Digby**

### **Family background**

Digby was born in Hong Kong. He was 30 at the time of the offences.

His education level was secondary school.

He lives with his girlfriend Ruth in a house in Kowloon Tong.

### **Employment**

He works part-time for Mycroft in Mycroft's investment company and has been doing so for a year. As Mycroft's company was only started 2 years ago, he had to limit expenses. As a result, he could only hire Digby as a part-time and pay him HK\$20,000 per month. Digby is mainly responsible for administrative work within the company. He is also the only employee in the company.

Given high living expenses in Hong Kong, Digby could not survive on just HK\$20,000 per month. He had to find other ways to make more money. So he started his own Portuguese chicken restaurant last year, which to his surprise became a popular hotspot for chicken fanatics. Food critics and bloggers were regularly visiting his restaurant and his food received highly positive reviews. As a result, he was making large profits. However, with the pandemic and the consequent economic decline, business has significantly dropped and he is making substantial losses every month.

### **Living arrangements**

As Digby was doing very well with his restaurant last year, he bought a house in Kowloon Tong as an engagement present for his girlfriend Ruth. He bought the property with a 60% mortgage loan from Wealthy Bank. He made his mortgage repayments on time last year. However, this year he found it difficult to make the mortgage repayments and as a result, he had to talk to his bank manager Ludovico about it.

### **Criminal record**

Digby has a clear record.

### **The plea and instructions**

Digby intends to plead NOT GUILTY to the both counts against him.

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He was just taking orders from his boss Mycroft. He had no reason to believe that the HK\$80million was tainted.

Digby thought that the arrangement he had with Ludovico was one that was outside the scope of the business of Wealthy Bank i.e. the re-mortgage as Wealthy Bank does not grant re-mortgages. As he thought that it was just an independent arrangement that was between them both, he did not think there was anything illegal about it.

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## **Defence notes - Ludovico**

### **Family background**

Ludovico was born in Portugal. He was 45 at the time of the offence.

His education level was university level.

He is married.

### **Digby**

Ludovico has been working at Wealthy Bank since his graduation 20 years ago. Because of his sociable disposition, he is very popular at work both amongst his colleagues and clients. One particular client that he grew very close to was Digby. He met Digby a year ago when he first visited Digby's Portuguese chicken restaurant. As Ludovico grew up in Portugal, he knew good Portuguese chicken. He was amazed by the authenticity of the Portuguese chicken at Digby's restaurant. Since then, he has been a regular customer and as a result, Digby and Ludovico became very good friends.

### **Criminal record**

Ludovico has a previous record for shop theft in 2016 which he never disclosed to his employer Wealthy Bank.

### **The plea and instructions**

Ludovico intends to plead NOT GUILTY to the count against him.

Ludovico thought that the arrangement he had with Digby was one that was outside the scope of the business of Wealthy Bank i.e. the re-mortgage as Wealthy Bank does not grant re-mortgages. As he thought that it was just an independent arrangement that was between them both, he did not think there was anything illegal about it.

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
CRIMINAL CASE NO.46 OF 2021

HKSAR

V

MYCROFT (1<sup>st</sup> accused)

DIGBY (2<sup>nd</sup> accused)

LUDOVICO (3<sup>rd</sup> accused)

**Charged as follows -**

First Count (against 1<sup>st</sup> accused)

STATEMENT OF OFFENCE

Cap. 200  
Sec. 161(1)(c)

Accessing to computer with criminal or dishonest intent, contrary to section 161(1)(c) of the Crimes Ordinance, Cap.200, Laws of Hong Kong

PARTICULARS OF OFFENCE

Mycroft, on the 12<sup>th</sup> day and 13<sup>th</sup> day of March 2021, obtained access to a computer with a view to dishonest gain for himself.

Second Count (against 1<sup>st</sup> accused)

STATEMENT OF OFFENCE

Cap. 455  
Sec. 25(1) and (3)

Dealing with property known or reasonably believed to represent proceeds of an indictable offence, contrary to section 25(1) and (3) of the Organized and Serious Crimes Ordinance, Cap. 455, Laws of Hong Kong

PARTICULARS OF OFFENCE

Mycroft, on 14<sup>th</sup> day of March 2021 and 16<sup>th</sup> day of March 2021, in Hong Kong, knowing or having reasonable grounds to believe that property,

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namely the sum of \$80,000,000 Hong Kong currency, in whole directly represented the proceeds of an indictable offence, dealt with the said property.

Third Count (against 2<sup>nd</sup> accused)

STATEMENT OF OFFENCE

Cap. 455  
Sec. 25(1) and (3)

Dealing with property known or reasonably believed to represent proceeds of an indictable offence, contrary to section 25(1) and (3) of the Organized and Serious Crimes Ordinance, Cap. 455, Laws of Hong Kong

PARTICULARS OF OFFENCE

Digby, on 14<sup>th</sup> day of March 2021 and 16<sup>th</sup> day of March 2021, in Hong Kong, knowing or having reasonable grounds to believe that property, namely the sum of \$80,000,000 Hong Kong currency, in whole or in part directly or indirectly represented the proceeds of an indictable offence, dealt with the said property.

Fourth Count (against 2<sup>nd</sup> accused)

Cap. 201  
Sec. 9(2) (a)

Offering an advantage to an agent, contrary to section 9(2)(a) of the Prevention of Bribery Ordinance, Cap. 201, Laws of Hong Kong

PARTICULARS OF OFFENCE

Digby, on 18<sup>th</sup> day of March 2021 to 1<sup>st</sup> April 2021, in Hong Kong, without lawful authority or reasonable excuse, offered an advantage, namely a commission of \$300,000 Hong Kong currency to an agent of Wealthy Bank, namely Ludovico, as an inducement to or reward for or otherwise on account of the said Wealthy Bank having done an act in relation to his principal's affairs or business namely approving Digby's re-mortgage application.

Fifth Count (against 3<sup>rd</sup> accused)

Cap. 201  
Sec. 9(1) (a)

Agent accepting an advantage, contrary to section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201, Laws of Hong Kong

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PARTICULARS OF OFFENCE

Ludovico, on 18<sup>th</sup> day of March 2021 to 1<sup>st</sup> April 2021, in Hong Kong, without lawful authority or reasonable excuse, accepted an advantage, namely a commission of \$300,000 Hong Kong currency to an agent of Wealthy Bank, namely Ludovico, as a reward for or otherwise on account of the said Wealthy Bank having done an act in relation to his principal's affairs or business, namely approving Digby's re-mortgage application.

(signed)

Senior Assistant Director of Public Prosecution  
For and on behalf of the Secretary for Justice

Date: 30<sup>th</sup> May 2021

To: Mycroft (1<sup>st</sup> accused)  
Digby (2<sup>nd</sup> accused)  
Ludovico (3<sup>rd</sup> accused)

TAKE NOTICE that you will answer to the Indictment whereof this is a true copy at the High Court, Queensway, Hong Kong, on the 1<sup>st</sup> day of June, 2021.

.....  
Registrar

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**PERSONAL DATA  
HONG KONG POLICE FORCE  
STATEMENT/REPORT**

Report No.: RN 12099202

Kwun Tong Police Station

*Name of informant/witness* : Betty *C.C.C. No.*  
*Age* : 40  
*Sex* : Female  
*Identity Document Type & No.* : [REDACTED]  
*Address* : [REDACTED]  
*Tel. No.* : [REDACTED]  
*Occupation* : Doctor at Happy Hospital  
*DOB* : [REDACTED]  
*Nationality & Dialect* : English  
*Taken by* PC4938 *in* English *language from* 1815 – 1930 *hours on* 04-04-2021 *at* RHQ Room 156  
*Interpreter* : --

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States:-

I am willing to make a statement to the Police. The statement I am about to make is true to the best of my knowledge and belief and I make it knowing that if I wilfully state anything which I know to be false or do not believe to be true, I may be liable to prosecution for a criminal offence.

Signed.....Betty  
Witnessed by .....--  
Interpreted by .....--

1. I am the abovementioned person Betty. I am single. I was born in Hong Kong and have been educated up to postgraduate level.
2. My parents are extremely wealthy. My father is an extremely well-known and successful property developer in Hong Kong.
3. I am a doctor working at Happy Hospital. I have been at this job position for 10 years.

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4. I am so tired of unsuccessful relationships. I want to settle down. I decided one day on 5<sup>th</sup> February 2021 to sign up for an online profile on a reputable dating app “lonelyheartsjointogether”. I put my most beautiful picture forward as a profile photo, hoping to attract the most handsome and promising bachelor. I looked around at the profiles of the men on the site for three days – there was no one in particular that interested me. I was about to give up after three days of searching online when suddenly I received a poem in my message inbox that read as follows:-

*“The beauty that falls so gracefully  
On the sweet canvass that is your face  
Awakens me every night I dream  
Pray, that daylight arrives not  
For the sun cannot fill the abyss  
Your absence has created in me”*

5. I was deeply impressed by this poem. I found out that a handsome man Hamilton sent it. I messaged him and a friendship instantly began between us. The friendship very quickly turned into a romantic relationship.
6. Despite the romantic relationship, we never met up. We frequently messaged or called each other every day for a month, but then one day all of a sudden, he disappeared. I was very worried. I thought something tragic had happened to him. I kept calling him and sending him messages but he never picked up my calls or read my messages. I was desperate.
7. Then two days later on 12<sup>th</sup> March 2021, Hamilton contacted me and said that he had some financial troubles in his company and he needed to borrow some money from me. He said that he needed HK\$80million to save his company and promised to pay back this amount to me within 6 months. He explained that the reason he had not been in touch the last 2 days was because he was caught up with handling the problems in his business.



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8. As I did not have any financial troubles – in fact I have considerable financial resources – I was keen to help Hamilton, especially when I thought that he was the love of my life. Hamilton asked me to transfer HK\$80million to 4 BVI company accounts (HK\$20million in each account) which were all under different names. He said that this was for tax purposes. Blinded by the love that I had for him, I readily agreed and did not question anything. I transferred the money as he asked the next day on 13<sup>th</sup> March 2021.
9. Since then, I never heard from Hamilton again. I tried calling and messaging him, but there was no response from him. I was absolutely heartbroken and was crying at home everyday. After 3 weeks, I had to grapple with the reality that I was conned by this man, who turned out to be a fraudster. I then reported the case to the police.

I have read the above statement, consisting of 3 pages in English, each signed by me. I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it out of my own free will.

(signed)

-End-

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**PERSONAL DATA  
HONG KONG POLICE FORCE  
STATEMENT/REPORT**

Report No.: RN 12099202

Kwun Tong Police Station

*Name of informant/witness* : Hamish *C.C.C. No.*  
*Age* : 30  
*Sex* : Male  
*Identity Document Type & No.* : [REDACTED]  
*Address* : [REDACTED]  
*Tel. No.* : [REDACTED]  
*Occupation* : DPC9898  
*DOB* : [REDACTED]  
*Nationality & Dialect* : English  
*Taken by* PC7374 *in* English *language at* 1000 – 1100 *hours on* 08-05-2021 *at* Room 156  
*Interpreter* : --

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States:-

I am willing to make a statement to the Police. The statement I am about to make is true to the best of my knowledge and belief and I make it knowing that if I wilfully state anything which I know to be false or do not believe to be true, I may be liable to prosecution for a criminal offence.

Signed DPC9898  
Witnessed by --  
Interpreted by --

1. I am the abovementioned person DPC9898. I joined the Hong Kong Police Force on 6<sup>th</sup> April 2013. I am currently attached to the Kwun Tong Criminal Investigation Department Team 3.
2. On 6<sup>th</sup> May 2021, I was on shift duty from 1100 hours to 2300 hours. At 1205 hours, I received instructions by DPC2200 to go to Flat A, 3/F, No. 26 Wong Chan Street, Kwun Tong to assist with the seizure of exhibits in a case of "Obtaining property by deception". At 1210 hours on the same day, I arrived at the abovementioned location with PC3789.

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3. At 1220 hours on the same day, PC3789 arrested Mycroft Llewellyn (HKID: xxxxxx(7), DOB: xxxxxxxx, later known as AP) for “obtaining property by deception”. Under caution, he remained silent. I seized AP’s mobile phone and asked if he would consent to the police searching the contents of his phone. In response to my question, AP answered, “I have nothing to hide, so search all you like. The number password to my phone is 1234.” At 1225 hours on the same day, I seized AP’s mobile phone as exhibit.
  4. At 1230 hours on the same day, PC3789 and I took AP together with the exhibit to go to Kwun Tong Police Station in police van VE 2890. At 1235 hours, we arrived at the Kwun Tong Police Station.
  5. At 1240 hours, I brought AP to the Duty Officer DO/CPS SGT. Chan and reported the facts of the case.
  6. At 1245 hours, I issued Pol. 153 to AP which he read and signed.
  7. At 1250 hours, I took over the investigation for AP.
  8. At 1255 hours, I conducted a record of interview with AP at Interview Room No. 3. Under caution, AP remained silent. At 1300 hours on the same day, I concluded the interview with AP.
  9. At 1315 hours on the same day, I handed over to AP a copy consisting of 2 pages of his record of interview. He signed and confirmed his receipt of this.
  10. At 1400 hours on the same day, AP was released under police bail.
  11. At 1410 hours on the same day I took photos of the exhibit. I did not hand over the Defendant’s phone to the Duty Officer for storage. I also went to the police exhibits room afterwards and took out the Victim’s phone. I took both the Defendant’s phone and Betty (the victim)’s phone home for the night to read the messages inside. I wanted to read the messages inside overnight, as I wanted to know more about the case so that I can help my team investigate better.

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12. The next day on 7<sup>th</sup> May 2021 at the beginning of my shift 1100 hours, I returned the Victim's phone to the exhibits room and placed the Defendant's phone to the Duty Officer DO/CPS SGT. Wong for storage.

I have read the above statement, consisting of 3 pages in English, each signed by me. I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it out of my own free will.

(signed)

-End-

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### The Questions

#### **Question 1**

The case was set down for trial. On the first day of the trial, Prosecution realized that the Court of Final Appeal has recently ruled in a decision that section 161(1)(c) of the Crimes Ordinance does not apply to the use of one's own computer. As a result of this, the Prosecution wishes to amend the charge against Mycroft to obtaining property by deception contrary to section 17 of the Theft Ordinance (Cap. 210). You are the solicitor-advocate for Mycroft. What is the position in law on amendment of charges **[3 marks]**; and what are the merits of any objections raised by the Defence on amendment? **[2 marks]**

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
CRIMINAL CASE NO.46 OF 2021

HKSAR

V

MYCROFT (1<sup>st</sup> accused)

DIGBY (2<sup>nd</sup> accused)

LUDOVICO (3<sup>rd</sup> accused)

**Amended Charged as follows -**

First Count (against 1<sup>st</sup> accused)

STATEMENT OF OFFENCE

Cap. 210  
Sec. 17(1)

Obtaining property by deception, contrary to section 17(1) of the Theft Ordinance (Cap. 210), Laws of Hong Kong.

PARTICULARS OF OFFENCE

Mycroft, on the 12<sup>th</sup> day and 13<sup>th</sup> day of March 2021, in Hong Kong, dishonestly obtained from Betty a sum of \$80 million Hong Kong dollars with the intention of permanently depriving the said Betty thereof by deception, that is by falsely representing that he needed to borrow money for his company and would return the said sum within 6 months.

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### Question 2

- a. The Court has allowed for the amendment of charge. Mycroft is now charged with obtaining property by deception contrary to section 17(1) of the Theft Ordinance (Cap. 210). He intends to maintain his plea of not guilty. You are the solicitor-advocate for the Prosecution. During trial, Betty gave evidence as a prosecution witness. You can assume that she gave evidence consistent with the version of events stated in her witness statement. Mycroft also chose to give evidence. You can assume his evidence is consistent with his instructions under his Defence Notes. Taking into account the elements of the offence, please assess the merits of Mycroft's case vis-à-vis section 17(1) of the Theft Ordinance. **[5 marks]**
- b. You are now the solicitor-advocate representing Mycroft. Bearing in mind the charge of obtaining property by deception that Mycroft faces, please assess the merits of his case vis-à-vis section 25 of Organized and Serious Crimes Ordinance (Cap. 455). **[3 marks]**

### Question 3

Police officer DPC9898 took both Mycroft's phone and Betty's phone home for an evening. He wanted to read the messages inside the phones. Subsequently when the police extracted the messages from the dating app "lonelyheartsjointogether", they used the contents of these messages on both Mycroft and Betty's phones to implicate Mycroft in his charge of obtaining property by deception. It was also found that a page of DPC9898's notebook documenting the handling of these exhibits was torn out. You are the solicitor-advocate for Mycroft. Mycroft has had a chance to look through these messages – he tells you that some of these messages shown to be sent from his phone were not written by him. How would you argue against the chain of evidence vis-à-vis the messages extracted? **[5 marks]**

### Question 4

Digby elected to give evidence. You can assume that he gave evidence consistent with the version of events stated in his Defence notes. You are the solicitor-advocate for the Defence. Bearing in mind the mens rea for dealing with proceeds of an indictable offence, what are the merits of Digby's case on the issue of mens rea? **[6 marks]**

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### Question 5

Ludovico has a previous criminal record of shop theft in 2016. He gave evidence during trial. In the course of his evidence in chief, he put forward his version of events without giving evidence on his character. During cross-examination, the Prosecution questioned him on his previous conviction. During the Prosecution's case, Ludovico's solicitor-advocate never accused the prosecution witnesses for lying. Please explain the current position in the law as to the latitude of Prosecution in raising previous convictions of a defendant in the course of their cross-examination. What is the relevant law that allows for the Prosecution to raise previous convictions of a defendant? **[2 marks]** In this particular case, was it proper for the Prosecution to raise this and why? **[2 marks]**

### Question 6

- a. You are the solicitor-advocate for Ludovico. What are the merits of Ludovico's case? Please state the position in law prior to giving your analysis. **[5 marks]**
- b. You are the solicitor-advocate representing Digby. Would his defence be any stronger than Ludovico's? It is not necessary for the purpose of this particular question to state the current position of the law. **[4 marks]**

### Question 7

After Betty gave evidence, she continued going to court to watch the trial until the closing submissions of the Defence solicitor-advocate for Mycroft. She became very angry listening to the closing submissions. She left court after the closing submissions to go to Lane Crawford in Pacific Place at Admiralty. She bought a kitchen knife from Lane Crawford and waited outside the entrance of High Court. As Mycroft came out of High Court at the end of the court hearing, Betty rushed up to Mycroft and stabbed Mycroft in the stomach with the knife. Mycroft had to be sent by ambulance to the hospital and suffered several punctures in his gall bladder. He died 2 hours later. After the stab, Betty was immediately arrested by the police and charged with murder. You are the solicitor-advocate for Betty. She is pleading not guilty. What are the merits in Betty's case? Please find below the indictment against Betty and her instructions. **[7 marks]**



IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
CRIMINAL CASE NO.47 OF 2021

HKSAR

V

BETTY

(Accused)

**Charged as follows -**

First Count

STATEMENT OF OFFENCE

Cap. 212  
Sec. 2

Murder, contrary to Common Law and punishable  
under section 2 of the Offences Against the  
person Ordinance, Cap. 212

PARTICULARS OF OFFENCE

Betty, on the 30<sup>th</sup> day of June 2021, murdered  
Mycroft.

(signed)

Senior Assistant Director of Public Prosecution  
For and on behalf of the Secretary for Justice

Date: 15<sup>th</sup> July 2021

To: Betty (Accused)

TAKE NOTICE that you will answer to the Indictment  
whereof this is a true copy at the High Court,  
Queensway, Hong Kong, on the 1<sup>st</sup> day of August,  
2021.

.....  
Registrar

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## **Defence notes – Betty**

### **Family background**

Betty was born in Hong Kong. She was 40 at the time of the offence.

Her education level was postgraduate level.

She is a doctor, single.

### **Personal life**

Betty has been in many unsuccessful relationships. She recently downloaded a dating app on her phone called “lonelyheartsjointogether” in the hope of finding someone with whom she could spend the rest of her life. She met Hamilton online after she received a heartfelt poem from him. She felt that there was instant chemistry and very quickly fell deeply in love with him. As Hamilton was always very busy, she was never able to meet him in person during the month that they first started interacting online.

When Hamilton wanted to borrow money from Betty, she agreed with no hesitation as she was blinded by love. She earns a good income as a doctor. Additional to that is the fact that she is the daughter of an extremely successful and wealthy property developer. For this, she was in no desperate need of money. She realized afterwards that Hamilton was only interested in her because of her money. She was heart-broken and cried at home everyday.

### **Criminal record**

Betty has a clear record.

### **The plea and instructions**

Betty intends to plead NOT GUILTY to the count against her.

Betty decided that she could not just cry everyday. She needed to see the person that played her and took her money. She needed to look into his eyes and tell him that he was a swine of a human being. That – as she thought at the time – would give her the closure that she needs to move on.

So after giving evidence in Court for the Prosecution, she stayed in Court and continued watching the trial as a member of the public. Since being in Court, she learnt that Hamilton was actually a fake name Mycroft used in order to get money from her. This made her feel angrier than she was already for having her feelings hurt. What escalated her anger were the closing submissions of Mycroft’s solicitor-advocate. She found that the reasons that he gave in the attempt to persuade

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the jury to acquit his client were forced and highly ridiculous. She felt rage building up inside her against Mycroft. She did not understand how someone could toy with her emotions purely for money. The more she heard from Mycroft's legal representative, the angrier she became.

After Mycroft's solicitor-advocate finished his closing submissions, Betty left court and went to Lane Crawford in Pacific Place at Admiralty. She bought a kitchen knife from Lane Crawford and waited outside the entrance of High Court. As Mycroft came out of High Court at the end of the court hearing, Betty rushed up to Mycroft and stabbed Mycroft in the stomach with the knife. She was extremely hurt by Mycroft and had a sudden loss of control in her emotions and actions. She was arrested by the police immediately for murder. She did not intend to kill Mycroft.

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### Question 8

In the course of summing up the Defendant's evidence, the trial Judge said the following way:-

*“During the course of the Defendant's cross-examination, the Prosecution asked Ludovico about his previous conviction of shop theft. Given that he has a previous conviction, he is not considered somebody with a good character. Members of the jury, you may wish to take this into account when assessing the credibility of the Defendant when he explained his version of events in the witness stand. You may also consider this previous conviction in assessing the likelihood of whether he has committed the present offence.”*

After the jury's deliberation, the jury returned a unanimous verdict of guilty in the case of Ludovico. You are the solicitor-advocate for Ludovico. On the basis of the Judge's summing up and bearing in mind that the Prosecution explored this with Ludovico under cross-examination, what basis do you have for grounds of appeal? **[6 marks]**

- End -

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**YOU MUST NOT REMOVE THIS QUESTION PAPER  
FROM THE EXAMINATION ROOM**

