Case 2

Joe owns a dry cleaning business in Tsim Sha Tsui. Irma is an investor in Joe’s business. Kong is Joe’s brother-in-law who owned one vacant commercial premises in Kennedy Town.

In October last year, Joe aspired to open a second dry cleaning shop and he approached Kong. Over lunch in a dim sum restaurant on 26th October, the following words were exchanged:

Joe: You know about my plans to expand the dry cleaning business. Because we are family, I thought we might be able to help each other out.

Kong: You need my vacant Kennedy Town shop?

Joe: That’s right. It would be perfect. You cannot find a tenant, but I could take it for two years starting 1st January and pay you monthly rent on the basis of 25% of my gross takings at that shop. Irma can vouch for me.

Kong: Sounds good – it’s a deal. [They shook hands].

The next day, Kong asked Irma if she would guarantee Joe’s rental obligations on the Kennedy Town shop in exchange for Joe being given possession of the premises. Irma replied with a letter in which she thanked him for his willingness to help Joe and concluded with the following words: ‘Joe has always been a reliable businessman, and I stand by him in all his ventures’.

No written contract between Joe and Kong has ever been prepared.

Joe took possession of the shop on 1st January this year but has not made any monthly rental payments. He says that there is not enough business to make any profits from the Kennedy Town shop, although he has had gross takings of about $40,000 per month. In any event, Joe says, there was only a ‘family arrangement’ and ‘no proper contract’.

Kong seeks your advice as to whether he has a contract with Joe and, if so, whether Irma is liable for Joe’s rental obligations. (10%)

Would your answer be different if, at the 26th October meeting, Kong had concluded the conversation with the words: ‘Sounds good - we have a deal after we finalise a written contract.’(10%)