

**2018 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Thursday, 8 November 2018



2018 PART A on Accounts Test Paper

This Part is worth 25 marks. There is one question. You must pass this Part and Part B in one sitting of the Head IV Examination in order to pass this Head.

RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY.

2018 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

A. Y has instructed your Firm to act for him in respect of a purchase of an office unit ("Unit") located in Wanchai for HK\$8,000,000. All "Know Your Client" obligations have been carried out. There is no issue as to the source of funds/monies received by your Firm.

(a) On 3 April 2018, you received a direct transfer from your client in the sum of HK\$80,000 being the initial deposit for the Unit.

(2 marks)

(b) On 3 April 2018, you carried out a land search online with the Lands Registry. The cost was HK\$100.

(2 marks)

(c) On 4 April 2018, the provisional sale and purchase agreement was signed and your Firm sent this, along with its cheque in the sum of HK\$80,000, to the vendor's solicitors.

(2 marks)

(d) On the morning of 2 May 2018, you were informed by Y that a direct transfer of HK\$720,000 had been made. That afternoon, the sale and purchase agreement was signed by Y and your Firm issued a further cheque to the vendor's solicitors in the sum of HK\$720,000.

(3 marks)

(See the next page for a continuation of Question 1)

(e) After receiving the title deeds, certain issues arose as to title. Therefore, Counsel's opinion was obtained which addressed and answered your concerns. You paid Counsel's fee note in the sum of HK\$25,000 on 14 May 2018. Your client sent you a cheque in the sum of HK\$25,000 on 15 May 2018. On 18 May 2018, your bank advised you that this cheque had been returned to drawer. On 20 May 2018, your client sent you an email apologising and told you to re-present the cheque. You did so, and the cheque cleared on 21 May 2018.

(5 marks)

(f) Completion took place on 31 May 2018. Your client provided you with a cashier's order in the sum of HK\$7,200,000 payable to the vendor's solicitors. The client also provided you with a further cheque payable to your Firm in the sum of HK\$150,000 with a note apologising for the difficulties with the last cheque and asking you to use this sum to settle all fees and disbursements in respect of the purchase of the Unit.

(3 marks)

(g) On 1 June 2018, your Firm delivered a bill to your client in the sum of HK\$150,000 in settlement of all costs and disbursements.

(3 marks)

Identify, explain and comment upon how each of the above should be dealt with in order to comply with the Solicitors' Accounts Rules, Cap. 159F and prudent accounting procedure.

(See over the page for a continuation of Question 1)

- B.** Online banking is considered to be a necessity and an essential tool in managing the Firm.

Provide a short note that would enable the Firm to comply with the Solicitors' Accounts Rules, Cap. 159F, in relation to any issues arising from the use of online banking.

(5 marks)

End of Part A (Accounts)

**2018 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Thursday, 8 November 2018



2018 PART B on Professional Conduct Test Paper

This Part is worth 75 marks. You must pass this Part and Part A in one sitting of the Head IV Examination in order to pass this Head. Each question must be answered.

2018 Overseas Lawyers Qualification Examination
Head IV: Part B on Professional Conduct

Question 1 (25 marks)

Two months ago, Andrew's high school classmate Barry, an entrepreneur, called Andrew, who is a solicitor of G & Co., asking whether Andrew was able to act for him in a new matter. Andrew had acted for Barry in a property acquisition a year before.

Barry explained he had been approached by Cyril, the chief executive officer of Digital Ltd., a 'blue-chip' company listed on the Stock Exchange of Hong Kong, to act as a mediator between Evans and Felix, both were substantial shareholders of Digital Ltd.

It was public knowledge that the dispute between Evans and Felix had deteriorated into High Court litigation where Evans was suing Felix and Digital Ltd. and all the directors in Digital Ltd. for substantial damages. The sums involved were in the billions of dollars. Evans had also threatened to wind up Digital Ltd.

Barry showed Andrew an agreement signed between Barry and Digital Ltd. stating that Digital Ltd. would pay Barry US\$10 million if Barry was successful in mediating the dispute between Evans and Felix, signed by Cyril on behalf of Digital Ltd. The agreement stated that Digital Ltd. was willing to pay US\$10 million to an escrow agent pending the outcome of the mediation. Barry asked Andrew whether Andrew's firm G & Co. would be willing to act as the escrow agent to hold the sum on behalf of Barry and Digital Ltd.

Andrew had just joined G & Co. as a junior commercial lawyer. Andrew consulted Gerald, the managing partner of G & Co. Gerald said there was no professional conduct rule against G & Co. acting as an escrow agent.

(See the next page for a continuation of Question 1)

Gerald then told Andrew to ask for a lump sum fee of HK\$2 million as the legal fee to G & Co., to be paid immediately upon the signing of the escrow agreement. Andrew was surprised when Barry agreed to the fee quote immediately. Andrew reported this to Gerald, who was equally surprised, as the work involved would take no more than a few hours.

A meeting was held. Gerald asked Barry why Barry thought he could mediate the dispute successfully. Barry said he knew a very successful businessman Superman Lau, whom Barry referred to as his 'uncle'. Superman Lau might be willing to talk to both Evans and Felix. Because both Evans and Felix were doing business separately with Superman Lau, Barry thought they both would give face to Superman Lau and settle the dispute if requested by Superman Lau to do so.

Gerald asked Cyril why Digital Ltd. was willing to pay such a big sum to Barry. Cyril said the sum was not big at all in view of the potential damage to Digital Ltd. As for Superman Lau, nobody in Digital Ltd. would be able to secure his assistance. Barry then explained that he would not share the sum with Superman Lau. Andrew later obtained all the identification documents regarding Barry and Digital Ltd. and verified them against public records. Andrew then prepared a standard escrow agreement.

On the day of signing, Cyril requested that Digital Ltd. should be replaced by Indigo Ltd., a BVI company. It was too late to obtain advice from BVI lawyers regarding Indigo Ltd. Andrew made Indigo Ltd. the party. Then Barry and Cyril signed the escrow agreement. Two days later a sum of US\$10 million was remitted to G & Co. from Digital Ltd. On the same day, Barry paid G & Co. the sum of HK\$2 million with his personal cheque. Within a week, there was news that Evans had sold all his shares to Felix and the High Court action had been withdrawn by consent.

(See over the page for a continuation of Question 1)

Barry asked Andrew to release the escrow sum of US\$10 million. Andrew consulted Gerald. Based on his experience, Gerald felt something was not right, but Gerald was keen that G & Co. would keep the HK\$2 million. He told Andrew to ensure that Indigo Ltd. would agree to the release. Cyril sent Andrew an e-mail stating that Indigo Ltd. had agreed to the release of the escrow sum. Andrew then instructed G & Co.'s accounts department to release the US\$10 million to Barry the following day.

Two days ago, a party of policemen came to G & Co. Apparently the escrow arrangement was a sham, Indigo Ltd. did not exist. Barry and Cyril were conspiring together to steal US\$10 million from Digital Ltd. They knew beforehand that Evans and Felix were about to reach a settlement. The Board of directors of Digital Ltd. was unaware of the escrow arrangement. The US\$10 million was paid to G & Co. at the request of Cyril on the pretence that the money would be used as a deposit for a property acquisition. Both Barry and Cyril have since left Hong Kong.

The police arrested Andrew and Gerald alleging that they had handled stolen property and participated in money laundering.

(a) Comment on the professional conduct of Andrew. (18 marks)

(b) Comment on the professional conduct of Gerald. (7 marks)

Question 2 (25 marks)

Simon qualified as a solicitor in the UK in 2006 and, having successfully passed the Overseas Lawyers Qualification Examination in 2010, he qualified as a Hong Kong solicitor in 2011. He practises with a medium-sized law firm in Sheung Wan, Hong Kong and, since completing his traineeship in England, his area of practice has always been corporate and commercial work.

In August 2017, Simon was approached by a potential client, Chris, who told him that he had been very much impressed by the firm's website which said that Simon's firm had had a 100% success rate in defending clients charged with serious crimes over the last 5 years.

Chris further explained that he had been charged with a serious criminal offence. Chris explained that, although he had already retained a firm of solicitors in the central business district of Hong Kong, he felt that their fees were too high and he was looking for a replacement solicitor. He said that he had been employed for several years by a prominent logistics company in Hong Kong as their investment controller whose duty had been to invest the company's finances wisely so as to ensure that the company remained financially viable.

Much of the company's income was derived from fees paid by clients who were moving residence from one country to another and who employed the company to move their goods. An audit had recently been conducted of the company's accounts and a considerable sum was found to be missing. The matter had been handed over to the police who discovered that hundreds of thousands of dollars had been paid by way of cheques signed by Chris into a bank account of a company (X company) in which Chris was the sole director and a major shareholder with his wife being a minor shareholder. Chris had been charged with fraud and had been released on a sizeable amount of bail by the District Court.

(See over the page for a continuation of Question 2)

Chris asked Simon for his assistance in defending the charge and Simon, having conducted the usual client identification, verification and due diligence, agreed to take on the case. There was no written retainer and Simon said that his fee for preparing the defence and representing Chris at trial would be about HK\$200,000. Chris observed that this was half of what the firm in Central was going to charge him.

Having spent some time studying the law relating to criminal fraud, Simon felt that he needed some expert advice and, without consulting Chris, he approached Benny, a barrister, who specialises in criminal litigation. Benny gave Simon written advice on how best to conduct the defence and sent a fee note to Simon for HK\$20,000 for professional services performed.

Answer the following questions:

- (a) **Identify any acts of professional misconduct committed by Simon.**
(17 marks)
- (b) All parties are now preparing for the trial. Simon realizes that he will need expert evidence in relation to the keeping of the accounts. He wishes to seek the advice of Mr. Wong who is the Chief Accountant employed by Chris' company. He telephones Mr. Wong who says that he has already given an expert report to the prosecution who have informed him that they do not intend to call him as a witness at the trial. **Is Simon at liberty to meet Mr. Wong and obtain an expert report from him? If so, would there be any limits on what Mr. Wong could say in his expert report for the defence at trial?**
(4 marks)

(See the next page for a continuation of Question 2)

- (c) The first day of the trial in the District Court has arrived. At a last minute meeting with Chris, Chris tells Simon that the accusations against him are all true but he still wishes to plead not guilty and speak out to defend himself. **Is Chris at liberty in such circumstances to plead not guilty and what advice must Simon give him as to the future conduct of the defence?**

(4 marks)

Question 3 (25 marks)

A. You are a solicitor practising with a firm in Central, Hong Kong. Your client Mr. Ting was injured in an accident when knocked down by a bus and sustained injuries to his head, legs and chest. On your advice, he sued both the driver of the bus and the bus company claiming substantial damages for personal injuries caused by their negligence. The trial came on 4 years after the accident and you produced on behalf of your client an expert's report on his injuries. The report stated, *inter alia*, that your client's legs were so severely injured that he would, in the expert's opinion, never walk again. He would also probably be unable to work again due to his head injuries which had impaired his mental abilities.

At first instance your client was awarded damages of \$5 million.

The defendant then appealed. Two years later the appeal was set down for hearing before the Court of Appeal. You have just received a second report from your expert (the same expert who provided the report for the trial) to say that, after a recent examination of your client, your client had, unexpectedly, made a spectacular recovery both in respect of his leg and head injuries. He can now walk with the aid of a stick and he may be able to do work that does not involve much walking.

(a) Do you have a legal and professional obligation to bring this second report to the attention of the defendant and the court?

(9 marks)

(See the next page for a continuation of Question 3)

B. Patrick is a solicitor specialising in criminal litigation. One night, he is called to Wanchai Police Station to see an old client Fred who is once again in trouble with the police. This time he has been charged with criminal damage to property – notably smashing the window of a supermarket whilst drunk. Patrick enters the cell where Fred is being held and Fred bursts out: "Patrick, I am so pleased to see you. Look what the police have done to me." He unbuttoned his shirt and showed red abrasions on his chest. "See. The police have beaten me up."

(b) What challenges will this cause to Patrick, if any, if he is to accept a retainer to represent Fred in his defence at his trial? What action should Patrick take, if any?

(5 marks)

C. Jenny is a solicitor in private practice who has been retained to act for Charles in his defence in the District Court to a charge of criminal damage to property – notably damage to Bill Hui's car when it had been parked outside a bar in Lan Kwai Fong, Hong Kong. Jenny is an experienced criminal defence advocate.

Charles had been released on bail and Jenny met him in her office in January 2018 when Charles told her that that he had been drinking in Lan Kwai Fong on 9 December 2017 with a group of friends. Bill Hui (whom he knew and disliked from previous encounters) had driven up and had made some disparaging remarks about the bar in which Charles and his friends had been drinking. Several of Charles' friends had left the bar and began to damage Bill Hui's car. Charles assured Jenny that he had not personally been involved and, sensing trouble had immediately left the bar and had taken no part on damaging

(See over the page for a continuation of Question 3)

Bill Hui's car. He had been arrested next day at his place of work and had been told that Bill Hui had identified him as one of the perpetrators of the damage.

The trial has now begun and Charles has been charged together with four others. Charles decided to testify in his defence but, when examined in chief by Jenny, in contradiction to what he had told Jenny when providing a statement in her office, he said that he had never gone to Lan Kwai Fong on the evening in question and had spent that evening with his girlfriend watching television.

(c) What ethically should Jenny do? (8 marks)

D. Normally any fee dispute between a solicitor and his or her client will go to taxation on a solicitor and own client basis.

(d) Explain whether a solicitor and client are at liberty to agree in the retainer to submit any fee dispute between them to arbitration and whether such an agreement will be enforced by the courts.

(3 marks)

End of Part B (Professional Conduct)