

**THE LAW SOCIETY OF HONG KONG**  
**OVERSEAS LAWYERS QUALIFICATION EXAMINATION**  
**2023 SUPPLEMENTARY INFORMATION PACKAGE**  
**HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT**

**Contents**

- 1. Standards, Syllabus and Materials**
- 2. Examiners' Comments on the 2020, 2021 and 2022 Examinations**
- 3. Past Examination Papers (2020 to 2022)**

**Important: The test paper for Head IV Accounts and Professional Conduct:**

- 1. is open book. Candidates may bring in and refer to any book, document or other written material**
- 2. IS DIVIDED INTO TWO PARTS:  
PART A - ACCOUNTS  
PART B – PROFESSIONAL CONDUCT  
A PASS IN PART A AND PART B MUST BE ACHIEVED IN ONE SITTING TO PASS HEAD IV**
- 3. Part A on Accounts is 1 hour 30 minutes in duration and Part B on Professional Conduct is 2 hours 45 minutes in duration**
- 4. has no specific reading time allocated**
- 5. has ONE question in Part A and THREE questions in Part B. Each question in both Parts must be answered.**



# **1. Standards, Syllabus and Reading List**



# **Overseas Lawyers Qualification Examination**

## **HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT**

### **Standards, Syllabus and Materials**

#### **STANDARDS**

Candidates will be expected:-

- (i) to be familiar with the law and rules of professional conduct affecting and governing practice as a solicitor in Hong Kong;
- (ii) to be familiar with the Solicitors' Accounts Rules, in particular the principles relating to solicitors' clients accounts; and,
- (iii) to be able to identify and analyse professional conduct issues (including issues in relation to solicitors' accounts) which may arise in practice, to advise with respect to such issues and to take appropriate decisions on such issues in relation to his and his firm's practice. He will be expected to give comprehensive reasons for his advice and decisions; and
- (iv) to display the knowledge and experience of the above matters.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

#### **SYLLABUS**

##### **1. Solicitors in Private Practice**

- Practising Certificates
- Insurance
- Solicitors' Practice Rules
- Supervision of a solicitor's office
- Fee sharing
- Restrictions on unqualified persons

##### **2. Rule 2 of the Solicitors' Practice Rules**

3. **Obtaining Instructions**

- **Solicitors' Practice Promotion**
  - (a) The Solicitors' Practice Promotion Code
  - (b) Unacceptable Practice Promotion
  - (c) Recovery agents

4. **Money Laundering**

- Practice Direction P
- The Organized and Serious Crimes Ordinance (Cap 455)
- The Anti-Money Laundering & Counter-Terrorist Financing Ordinance (Cap 615)

5. **Fees**

- Duty to inform client
- Estimates and agreed fees
- Increase of fees during retainer
- Interim bills
- Bills of costs and disbursements
- Taxation of costs
- Recovery of fees
- Overcharging and unreasonable fee arrangements
- Payments on account of costs and disbursements
- Maintenance, champerty and contingency fee arrangements

6. **Retainer**

- Accepting instructions; form and contents of retainer
- Rule 5D letters in criminal cases
- Express and implied retainers; the quasi-client
- Grounds upon which solicitor must decline retainer
- Solicitor limiting liability in the retainer
- Professional and common law duties owed to client during retainer
- Duty to advise on legal aid
- Settlement of actions

- Instruction of advocates
- Termination of retainer
- Solicitor's retaining lien

7. **Competence and Quality of Service**

- Duty to act competently
- Claims against a solicitor
- Law Society enquiries and investigations

8. **The Fiduciary Duty**

- Making secret profit
- Gifts from clients
- Lending to clients and borrowing from clients
- Purchasing property from clients
- The approach of the courts to breach of fiduciary duty

9. **Confidentiality and legal professional privilege**

- The duty of confidentiality
- Joint retainers and the duty of disclosure
- Solicitor joining new firm
- Confidential documents sent to other party by mistake
- Legal professional privilege
  - (a) Solicitor client advice privilege
  - (b) Litigation privilege
  - (c) Solicitor's duty to protect client's privilege
- The approach of the courts to protecting breach of confidentiality and legal professional privilege

10. **Conflicts of Interest**

- Conflict between joint clients
- Conflict between two present clients
- Conflict between client and former client
- Solicitor's duty to decline instructions where there is a conflict of interest

- Conveyancing transactions - Rule 5C, Solicitors' Practice Rules
- The approach of the courts to conflict of interest

#### 11. **The Litigation Solicitor**

- The solicitor as advocate in civil and criminal cases
- Duties to the client
- Duties to the Court before trial
- Duties with respect to affidavits, affirmations and statutory declarations
- Duties to Court when presenting case
- Solicitor's duties in respect of his own and the other party's witnesses
- Duty during examination-in-chief and cross-examination
- Duty not to mislead or deceive the Court
- Duty where solicitor believes client is deceiving the Court or committing perjury
- Duty where client confesses his guilt to solicitor before or during trial
- Conferences with client and advocates
- Settlement of proceedings

#### 12. **Relations with other Solicitors**

- Contact with the other solicitor's client
- Reporting misconduct

#### 13. **Relations with the Bar**

- Instructing barristers
- Court attendances
- Responsibility for paying barrister's fees

#### 14. **Relations with Third Parties**

- Duty of fair dealing
- Dealing with unrepresented parties
- Taking oaths, affirmations and declarations



15. **Professional Undertakings**

- What constitutes a professional undertaking
- Giving and receiving professional undertakings
- Construction of professional undertakings
- Breach of professional undertakings
- Undertakings as to costs
- Undertakings in conveyancing transactions
- Enforcement of professional undertakings

16. **Discipline**

- Powers and role of the Law Society of Hong Kong
- Solicitors' Disciplinary Tribunal

17. **Solicitors' Accounts**

- Client account (management and use of funds therein)
- Firm account (management and use of funds therein)
- Solicitors accounts generally (including relevant Rules and Practice)
- Clients instructions as to funds and duties in respect thereof
- Handling of mixed moneys

18. **Law Society's Code of Advocacy for Solicitor Advocates**

Candidates WILL NOT be examined on the Code of Advocacy for Solicitor Advocates.

**MATERIALS**

- The Hong Kong Solicitors' Guide to Professional Conduct
- The Legal Practitioners Ordinance and all subsidiary legislation
- The Solicitors' Accounts Rules
- Manual on Solicitors' Accounting
- The Solicitors' Practice Promotion Code
- The Practice Directions 1990 as amended from time to time
- The Code of Conduct of the Bar

- *Gary Meggitt*, 'Wilkinson's Professional Conduct of Lawyers in Hong Kong' (Desk Edition), LexisNexis, 2019

**It is recommended that these materials be brought into the examination.**

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## **2. Examiners' Comments on the 2020, 2021 and 2022 Examinations**



## **Examiners' Comments on the 2020 Examination**

### **HEAD IV: Accounts and Professional Conduct**

#### **Part A ACCOUNTS**

##### **Question 1**

1. This was a very straightforward question which was split into 8 different parts. The object of the question was to ensure that the candidates have the ability to address particular issues raised in each sub-section. None of the facts should have caused any difficulties.
2. However, some of the candidates did not read the question carefully and did not realise that they needed to address the accounting issue on an ongoing basis.
3. In particular, there was a considerable amount of confusion by the candidates as to the fact that there were insufficient monies in client account at the appropriate time to ensure that payment could be made out of client account.
4. Hence, basic errors were made as to identifying the exact monies in client account at the relevant time which resulted in fundamental mistakes being made.
5. Some candidates also ventured into irrelevant issues despite being told only to address accounting issues. They decided to raise issues as to conduct vis-à-vis leading counsel's request re his brief.
6. Some of the candidates also failed to read the question carefully in that they did not take into account that the monies paid to leading counsel were on account of future fees and failed to take this into account when dealing with the specific issues they were asked to address.
7. Another issue that caused difficulties to the candidates was that despite there being an agreed fee, i.e. monies due to the firm, they took the view that part of this agreed fee could be used to pay counsel's fees.

8. Some of the candidates who did well were able to provide a continuous accounting of the various issues being raised and in particular, identified the monies that had been received into client account and the monies that were due from the client regarding counsel's fees, etc. However, most candidates missed this point.
9. As can be seen from the marks allocated to item (g) and (h), the objective here was for there to be some discussion as to the final accounting with regard to the monies received and paid and very few were able to provide clear and concise answer to the various issues they were asked to address and deal with.
10. Irrelevant points and lack of application was the main cause for the candidates to a fail. They just repeated the provisions set out in the manual or the rules without applying them to the actual facts that they were asked to address and failed to provide any considered discussion.

## **PART B PROFESSIONAL CONDUCT**

### **Question 1**

This year there are altogether 109 scripts for marking. Out of those 109 candidates, only 36 managed to obtain a mark of 12½ or above in the first marking. The failure rate is high despite this Q1 of Part B is not difficult.

The question looks at three solicitors, Andrew, David and Elvis. Andrew, a litigation partner of B&B, was approached by his long lost classmate Charles, who wanted B&B to act for him in developing a drug based on a 'secret formula' and finding professional investors. The circumstances clearly required substantial customer due diligence ("CDD"). Andrew rightly asked his managing partner David and a junior commercial lawyer Elvis to assist him. David rightly asked Elvis to find out as much as possible about Charles, the 'secret formula' and whether Charles was telling them the truth, before accepting Charles as their client.

Elvis met with Charles, obtained documents and made extensive enquiries to establish the veracity of Charles' instructions. Elvis however failed to check whether Charles was a politically exposed person ("PEP"). Elvis took some four months and still the CDD was incomplete.

Andrew was upset, left B&B, set up his own practice and Charles immediately became his first client without completing the CDD. Andrew then sent out letters to all the major corporate clients of his old firm B&B making exaggerated claims about the profitability of Charles' project. Many people put money with Andrew's firm in order to invest in the project; they lost their entire savings when Charles disappeared taking their money with him.

Police executed a search warrant on B&B seeking for documents relating to the project. David asked Elvis to give police the documents taking the wrong view that because Charles was not 'formally' a client of B&B, they could pass the documents to the police.

Candidates were asked to discuss the professional conduct of Andrew, David and Elvis, and what B&B should do regarding the police search.

Most candidates commented on the CDD requirements under Practice Direction P ("PDP") and Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("AMLO") and scored marks. Most candidates however have missed out the requirement under AMLO (and PDP) to check whether Charles was a PEP. Most have identified a quasi-retainer existed between Charles and B&B and therefore an obligation of confidentiality had arisen. Some argued that there was no issue on legal professional privilege because no advice had been given by B&B. While that may be argued, the approach limited those candidates in scoring more marks under section (d).

Many candidates wrote lengthy passages on the competence of Andrew, whether a written retainer was necessary; some suggested that B&B should provide fee estimation. Some wrote the Solicitors' Practice Promotion Code ("SPPC") was breached (wrong because Andrew was promoting Charles' project, not his firm). Quite a number thought Andrew should not accept Charles as a client because Charles was a client of B&B. While not accepting Charles as a client must be right because the CDD about him and his 'secret formula' could not be satisfactorily concluded, it would be wrong to think law firms enjoy some kind of monopoly and no other lawyers can touch their existing clients. Finally, not a small number of candidates thought Charles wanted B&B to help developing the drug as opposed to help him on the legal work in developing the drug and found that objectionable.

There is a feeling that candidates have been coached to take a potshot at the questions and cover all the main topics in the Hong Kong Solicitor's

Guide to Professional Conduct (“SG”) in the answers. While no marks have been deducted for referring to irrelevant issues, no extra marks have been awarded for those wasted efforts.

## **Question 2**

This question had two distinct parts. The first concerned the operation of the SPPC and related parts of SG whilst the second addressed the requirements of PDP.

The scenario upon which the first part of the question was based involved a three-partner general commercial firm which embarked on various practice promotion initiatives. Among these were a change of the firm’s name; distribution of its literature at a chain of restaurants owned by a relative of one of the firm’s assistant solicitors; and a redesign of the firm’s website. All these initiatives raised potential breaches of the SPPC.

Candidates were asked to explain the nature and scope of ‘practice promotion’ and the SPPC’s provisions thereupon. Many were only able to do so in a basic sense and seemed to be unfamiliar with the actual relevant terms of the SG (e.g. SG Principle 3.02) or the SPPC (e.g. rule 1, SPPC). Candidates were also asked to identify what, if any, breaches of the SPPC had been committed by the firm. Many candidates did not identify all the breaches or refer to the relevant requirements of the SPPC. For example, some candidates merely stated that using actors to impersonate satisfied clients in video ‘interviews’ on the firm’s website was ‘unethical’ without explaining why this was so.

The second part of the question dealt with one of the partners of the same firm receiving an unsolicited e-mail from a potential overseas client. This potential client wished to purchase business premises in Hong Kong and intended to deposit US\$3,000,000 into the firm’s bank account as part of that process. Candidates were asked what action the partner should take before accepting the instructions and what he should remain aware of after having done so (if the instructions were accepted).

Although the answers to this second part of question 2 were better than those to the first part, many candidates continued to provide only vague and basic explanations of PDP and related legislation such as AMLO. There was, for example, little detailed explanation of the requirements of, and distinctions between, client identification and verification. Further,



few candidates mentioned the need to keep proper records of this particular transaction for 15 years in accordance with PDP Section A, Item 6.

### **Question 3**

This question concerned a personal injury claim arising out of a motor traffic accident, with candidates being asked to consider issues from the point of view of both the plaintiff and the defendant. Generally speaking, candidates' answers to question 3 were better than those they gave to question 2.

The first part of question 3 addressed the involvement of a recovery agent in the plaintiff's retainer of a firm of solicitors on a contingency fee basis. Most candidates were able to identify the salient issues although only some were able to discuss them in detail. There were, in particular, few references to such authorities as *Unruh v Seeberger* [2007] 2 HKC 609. The competence and conduct of the partner at the firm were also matters for consideration. Although most candidates recognised that - as someone who specialised in employment law - he was not competent to handle personal injury litigation, many did not discuss the details of SG Chapter 6. Moreover, some candidates did not appreciate the fact that solicitors may not exclude or limit their liability in negligence when representing clients in litigation. Other issues raised by the question, such as the correct way to instruct counsel, were dealt with relatively well.

The second part of question 3 dealt with the conduct of the solicitor acting for the defendant. Firstly, the defendant informed him that, if asked during cross-examination, she would deny that she was tired at the time of the accident even though she admitted to the solicitor that she had been exhausted. Most candidates correctly explained that, pursuant to SG Principle 10.03, Commentary 6, there was no obligation upon him to inform the court (or the other side) of the defendant's exhaustion at the time of the accident. They also recognised, however, that he could not knowingly put forward or let his client put forward false information with intent to mislead the court. Most also added that he should advise her not to attempt to mislead the court and, if she refused to accept this advice, he should cease to act for her.

Further, candidates were asked to discuss the fact that, notwithstanding the defendant's refusal to settle, the solicitor agreed to compromise the claim for a payment of \$300,000 to the plaintiff. Many candidates' answers were very brief, possibly reflecting a lack of time having been accorded by them

to deal with this – the last – question of the exam. Some did not answer the question at all. Those candidates who were able to provide a substantive answer explained that the solicitor should have sought the defendant's agreement before settling and most referred to SG Principle 10.17, Commentary 1 and SG Principle 5.12, Commentary 6 here. Unfortunately, some candidates were confused about the consequences for the defendant of the solicitor's actions. There were, in particular, very few references to *Waugh v HB Clifford* [1982] 2 WLR 679 in this regard.

Finally, a minority of candidates mistakenly assumed that the defendant was facing a criminal action in their answers to the second part of question 3. This suggests a worrying lack of attention to detail and preparation on their part.

January 2021

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## **Examiners' Comments on the 2021 Examination**

### **HEAD IV: Accounts and Professional Conduct**

#### **Part A - ACCOUNTS**

##### **Question 1**

1. This year's question was a very straightforward one and should not have caused any difficulties to the candidates.
  - (a) This was very straightforward and required a discussion over whether or not a client account with a bank account had to be opened. Many of the candidates raised irrelevant comments and tried to write down everything they knew about the use of and rationale for a client account! There was a general lack of application.
  - (b) This was a more challenging question which required knowledge as to whether or not a client account can be opened outside Hong Kong as well as payment on account of costs by way of Bitcoin. Many of the candidates took the view that it was possible to do so by applying for a waiver of the Rules. However, very few candidates attempted to provide reasons as to why a waiver would be granted. As to Bitcoin, many of the candidates did not have any idea as to how to deal with this issue and did not look at the Rules carefully.
  - (c) This was very straightforward and should not have caused any difficulties but again, some of the candidates did not even attempt to give any considered discussion as to the relevant Rules and Practice Directions and at the same time, some candidates still took the view that the bookkeeper could sign client account's cheques! However, most candidates were able to pass this particular question.
  - (d) This again should have caused no issues and was an easy question to gain marks by identifying the rationale for reconciliation. However, most candidates just went straight to the manual and copied out the relevant section without any thought.

- (e) This was very badly answered by everybody. Indeed, it is clear that no one read the question carefully. Very few knew that each year Certified Public Accountants need to provide a report as to compliance with the Accounts Rules vis-à-vis examining the relevant client account, books, etc. Most of the candidates went on a detailed analysis of the use of management accounts, profit and loss, etc. Most of the candidates failed to pass this question.
2. Hence, overall, taking matters as a whole, this paper should not have caused any difficulties. However, the fact that they could not answer Question (e) resulted in some of the candidates failing the paper. Those who failed lacked knowledge and understanding of the Accounts Rules.

## **Part B - Professional Conduct**

### **Question 1**

This year there are altogether 98 scripts for marking. Out of those 98 candidates, only 24 managed to obtain a mark of 12½ or above in the first marking. The failure rate is very high despite this Q1 of Part B is not difficult.

The question looks at a senior lawyer whose partners had decided to close down the law firm. Candidates were asked to consider on the form and substance of legal practice which the senior lawyer would wish to start afresh. To begin, that senior lawyer would like to set up a one-man sole proprietorship in the same name as the old firm. He would use his family home as his office and engage clients in video conferencing. To him, his home office would be his virtual office and his adult children and wife would be his assistants and secretary respectively from time to time. The senior lawyer would buy a light bus and convert it into his mobile office. He would park the light bus near to police stations or magistracies when his former clerk would bring businesses to him. On the two sides of the light bus, that senior lawyer would post banners stating in golden bold prints that his law firm would be one of the best if not the best and that his law firm would practise all types of legal services.

That senior lawyer would conduct first hand property transactions in the light bus. When he had free time, he would study criminal law which he professed to be quite ignorant of.

Candidates were asked to provide their answers in the form of a draft opinion.

The question provides plenty of prompts to candidates and one would have thought that it would not be too difficult for any candidate to score 12.5 marks and above.

It turns out that the results are appalling. While most of the candidates would have some ideas on what constitutes practice promotion, the limits of doing practice promotion and why the senior lawyer would be in breach if he should proceed onto doing the “virtual office” and “mobile office” in his proposed new practice, there was insufficient depth in most of the answers.

Some candidates simply copied out long passages from the Solicitors' Guide.

The bad result demonstrates the overall quality of the candidates taking the Head IV exam in 2021.

## Question 2

This question was concerned with solicitors' professional undertakings and its facts were based upon those of *Angela Ho & Associates (a firm) v Kwong Ka Yin t/a Phyllis KY Kwong & Associates* [2014] HKCU 2774.

The question contained two parts. The first required the candidates to provide a detailed discussion of the issues of professional conduct raised by the actions of a firm of solicitors (Firm A) in breaching a professional undertaking. The second part required them to address what steps, if any, the firm which had received the undertaking (Firm B) could take against Firm A. Despite it being a concerned with an important aspect of a solicitor's practice, only 22% of the candidates achieved a 'pass' mark of 12.5 or more.

With respect to the first part of the question, a significant number of candidates mentioned the issue of undertakings in only a cursory manner, with no little more than a sentence or two. Of those that spent a little more time on the subject, most only managed to identify a couple of the relevant provisions from *The Hong Kong Solicitors' Guide to Professional Conduct* ('SG'). Very few addressed the facts or the SG's provisions or case law in sufficient depth by, for example, discussing the fact that SG Principle 14.08 states that an undertaking is still binding even if it is to do something outside a solicitor's control. It is notable that not one candidate referred to *Angela Ho & Associates (a firm) v Kwong Ka Yin t/a Phyllis KY Kwong & Associates*. Nor did they refer to any other relevant judgments including the recent UK Supreme Court decision in *Harcus Sinclair LLP v Yours Lawyers Ltd* [2021] UKSC 32.

The facts of the question also made it clear that the partner in Firm A was in breach of SG Principles 2.03 and 2.04 for failing to properly supervise his assistant solicitor. Only a few candidates referred to this point in the first part of their answer. Further, most candidates missed a breach of confidentiality, under SG Principle 8.01 and in the retainer, by the assistant solicitor at Firm A in mistakenly sending a note (of a meeting with his client) to Firm B.

Rather than dealing with the pertinent facts and regulatory issues, many candidates discussed various irrelevant points, such as the SG provisions on briefing counsel (SG Chapter 12) and fees (SG Chapter 4). Some candidates wrote, in a very vague fashion, of the need for solicitors to act in ‘good faith’.

As to the second part of the question, few candidates were able to explain that Firm B could apply to the court to exercise its inherent jurisdiction to supervise solicitors by enforcing the undertaking against Firm A; make a complaint to the Law Society; or bring a claim for breach of contract against Firm A. Many mentioned only one or the other of the first two of these three options. Very few discussed the possibility of a contractual claim. Some, erroneously, discussed the inability of barristers to sue for their fees. Some, again, referred to the need for solicitors to act in ‘good faith’.

In summary, the answers given for this question demonstrated that the majority of the candidates were unfamiliar with the professional conduct obligations relating to solicitors’ undertakings, either in their entirety or in any satisfactory detail. Whilst this alone is worrying, there is also the fact that many candidates seemed to be incapable of comprehending the question set before them. The reference to numerous irrelevant matters in their answers revealed that they had not read the exam paper or did not understand what they had read.

### **Question 3**

This was a straightforward question on competence divided into three parts. The first part concerned the issues of professional misconduct arising from a solicitor’s action – and lack of action - in respect of a Warning Notice and an Order from the Buildings Department requiring the demolition of a client’s property. The second part concerned the firm’s decision to bill the client. The third part concerned the firm’s senior partner’s interpretation of its retainer letter and his proposed response to the discovery that the solicitor had been negligent. Despite being a straightforward question, only 16% of the candidates achieved a ‘pass’ mark of 12.5 or more.

With respect to the first part of the question, whilst most (but not all) candidates recognised that the solicitor had not been competent to deal with the client’s dispute with the Buildings Department, very few considered and analysed the relevant facts, regulatory provisions and case law. Many

candidates did not even refer to any or all of SG Principles 5.03, 5.12 or 6.01. Further, few discussed the fact that the solicitor had not instructed suitable counsel and was also in breach of his duties pursuant to SG Principles 5.03 and 12.03 in respect of the fact that counsel's advice had been incorrect. Some candidates referred to *Davy-Chiesman v Davy-Chiesman* [1984] 1 All ER 321 but not to any other relevant authorities. There was also very little discussion of the fact the solicitor's 'loss' of an important letter from the Buildings Department was a clear breach of SG Principles 5.03, 5.12 and 6.01.

In terms of the solicitor's and the firm's legal liability for the former's negligence, very few candidates mentioned any cases other than *Midland Bank Trust Co Ltd v. Hett, Stubbs and Kemp* [1979] Ch 384. Most candidates failed to discuss legal liability at all.

In respect of the second part of the question, most candidates recognised that any interim bill from the firm should have been agreed in advance with the client as per SG Principle 4.08. It had not and, therefore, the firm could not render a bill until the conclusion of the matter. Many candidates also recognised that the firm had not obtained the client's authority to instruct counsel as per SG Principle 5.17, Commentary 3 and SG Principle 4.03. Some also correctly noted that the retainer letter had set out an agreed or capped fee as per SG Principle 4.02 or 4.05. Many 'correct' answers were, however, lacking in sufficient detail.

As to the third part of the question, many candidates stated that a limitation clause in the firm's retainer was ineffective, but fewer explained why by reference to section 59(2) of the Legal Practitioners Ordinance and SG Principle 6.01, Commentary 7. Only a couple of candidates mentioned section 3 of the Control of Exemption Clauses Ordinance. Finally, whilst many candidates also recognised that the senior partner was incorrect in his belief that the solicitor's negligence could be ignored and that the firm, instead, was obliged to notify both its client and the SIF of this negligent conduct, very few referred to the relevant SG Principles.

As with Question 2, most candidates displayed an ignorance of the detailed relevant regulatory provisions, legislation and case law in relation to the issues addressed by this question. Again, the inability of some candidates to read the question was evident.



## **Overall Comments to Part B on Professional Conduct**

1. The followings were observed:-
  - (a) The various answers show a lack of understanding and knowledge in respect of Professional Conduct. There were numerous errors.
  - (b) The main issue was that the answers were not applicable at all to the actual questions that were posed. The questions were straightforward and could easily have been answered. Many of the answers put forward irrelevant points.
2. Overall, it is noted that the candidates lacked relevant application and knowledge.

January 2022

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## **Examiners' Comments on the 2022 Examination**

### **HEAD IV: Accounts and Professional Conduct**

#### **Part A - ACCOUNTS**

##### **Question 1**

This year's question was straightforward. It required the candidates to read the question carefully and apply their knowledge to the specific issues that were being raised.

- (A) (i) This question was split in 3 components and dealt with the issues as to monies being received on account of the Firm's costs as well as an agreed fee in respect of counsel. It is beyond any doubt that the money received has to go into client account and in turn, the real issue here was to consider whether or not there has been sufficient clearance before counsel can be paid. The other issues were dealing with the book entries and providing a receipt. However, many of the candidates raised irrelevant points and assumptions that there may have been a written agreement or a bill delivered and as such, it was possible to make payment into office account or at the same time split the cheque.
- (ii) This should have caused no difficulties. However, many of the candidates just copied out the relevant sections in the manual without applying them to the issues that were before them.
- (iii) Dealing with the cashier's order should not have caused any problems. The issue here is that cashier's orders per se still need to go through the clearing system!
- (B) Many of the candidates did not set out the actual steps the Firm should take to try to find out who paid the money into the client account! They dealt with the steps and the suspense account.
- (C) This again was a straightforward matter as to how to deal with monies that are in client account where one cannot locate the client. Although this was reasonably well-answered, many of the candidates failed to actually list the steps that should be taken to persuade the Law Society that they have made the sufficient enquiries.
- (D) This question should not have covered any difficulties. They had to list and set out the management accounts and how these may assist the Firm's profitability and supervising and running the Firm's accounting system. Again, many of the candidates failed to list the actual management accounts but just gave very general answer without examples.

Those who failed deserved to and again, the failures were all had the same characteristics, lack of application, lack of understanding of the Accounts Rules, fundamental issues with the accounting treatment as well as the inability to offer any

discussion or answer the issues that were put before them. The candidates' pass rate for this question was 70%.

## **PART B - PROFESSIONAL CONDUCT**

### **Question 1**

The question tests the candidates' understanding of some basic principles in professional conduct, particularly those that have been discussed in reported cases.

If candidates have knowledge of the following reported cases they should be able to answer the question quite well:

- *Winnie Lo v. HKSAR* (2012) 15 HKCFAR 16 - On what constitutes and does not constitute champerty and maintenance.
- *HKSAR v. Wong Chi Wai* (2013) 16 HKCFAR 539 - On what is privileged information and perverting the course of justice.
- *Siu Yat Fung Anthony T/A Anthony Siu & Co v. The Joint Tribunal of the Bar Council and The Law Society* [2022] 4 HKLRD 276 - On how to deal with disputes over barrister's fees.

Unfortunately, even though two of the cases are Court of Final Appeal decisions having significant impact on solicitors' practice, the great majority of candidates seem to be not aware of them.

The *Winnie Lo* case confirms that solicitors acting in good faith and took up a case with reasonable merits hoping to recoup costs from the other side at the end of the case is NOT guilty of maintenance. No candidate knows about this.

In the case *Wong Chi Wai*, the barrister trying to stop a solicitor from giving evidence was almost convicted of attempting to pervert the course of justice. Again, no candidate knows about this.

Another point that almost all candidates miss is about the scope of legal aid. Whilst many candidates know that it is a solicitor's duty to advise client of the availability of legal aid, no candidate was able to point out that legal aid does not cover shareholder disputes.

The *Siu Yat Fung Anthony* case is relatively recent and it is not too surprising that many candidates were not aware of it (though quite a number were). Yet even without reading this case, candidates are expected to know how to properly deal with disputes over barrister's fees. Many do not.

Not surprisingly therefore the passing rate is only 35% for this question.

The recommendation is that candidates should read reported cases concerning professional conduct, not just the rules in the Solicitor's Guide to Professional Conduct.

## Question 2

This question concerned a criminal matter and the scenario was based loosely on the facts of *HKSAR v Ma Ka Kin* [2021] 4 HKLRD 83.

The question contained two parts. The first part required the candidates to discuss the taking of initial instructions from a client facing serious criminal charges. The second part concerned instructing counsel in the same matter and attending a conference with counsel and the client. Issues relating to competence, confidentiality and loyalty to the client were also raised. Despite the fact that this question concerned relatively basic aspects of a solicitor's practice, under 20% of the candidates achieved a pass mark of 12.5 or more.

With respect to the first part of the question, many candidates appeared to lack any substantive knowledge on taking instructions in a criminal matter. For example, many candidates failed to mention the need for a written retainer in criminal matters as *per rule 5D, Solicitors Practice Rules, Cap 195H* ('SPR'). Many candidates were also surprisingly ignorant of the need to advise the client on fees generally and the availability of Legal Aid in particular. Most candidates noted that the solicitor in the scenario was insufficiently competent, but they did not discuss this in any great detail (i.e. by reference to the relevant provisions in the *The Hong Kong Solicitors' Guide to Professional Conduct*) ("SG"). Many candidates also recognised that the solicitor acted in breach of *SG Principle 10.16* but often discussed this at far too great a length and at the expense of addressing other relevant points.

With respect to the second part of the question, a large number of candidates gave only fleeting attention to the need to instruct counsel in accordance with the *SG* (in particular, *SG Principle 5.17(3)*). Many candidates also failed to discuss the fact that the solicitor was in breach of his duty of confidentiality. Most candidates recognised that the solicitor was in breach of his obligations under *SG Principle 3.01* and also noted the apparent conflict of interest on his and his firm's part but, again, discussed these points only in a superficial manner.

In summary, the answers given for this question by many candidates demonstrated that they had failed to familiarise themselves sufficiently with the relevant provisions of the *SG*. Indeed, many candidates did not even identify its relevant provisions on numerous occasions.

## Question 3

This question, which was divided into three parts, largely concerned the need to comply with *Practice Direction P* (and its associated legislation) upon the receipt of new instructions. Despite being concerned with important subject matter which should be within the knowledge of most, if not all, solicitors in Hong Kong, the candidates' pass rate for this question was – as with Question 2 – under 20%.

The first part of the question required the candidates to explain what the solicitor in the scenario should do upon being contacted by a prospective new client who had referred to his company's 'current local legal advisors'. Many candidates appeared to be

ignorant of the existence of *SG Principle 5.11* and also of the need to carry out appropriate conflict searches.

The next part of the question addressed the specific steps to be taken pursuant to *Practice Direction P* upon the receipt of new instructions. Although most candidates identified the relevance of *Practice Direction P*, the level of detail demonstrated by many of them on, for example, client identification and verification, was surprisingly poor. Very few candidates set out the relevant steps to be taken with any degree of precision.

The final part of the question dealt, firstly, with a dispute between the client and the solicitor about her fees and a possible complaint against her firm. Very few candidates addressed the provisions in the *SG* relating to these points. The second aspect of the final part of the question concerned the solicitor's discovery, after the event, that the client had been accused in the media of money laundering for drug dealers and others. Many candidates provided only a sketchy discussion of this point and some neglected to do so at all.

As with Questions 1 and 2, many candidates demonstrated very little knowledge of the professional conduct requirements placed upon Hong Kong solicitors.

### **3. Past Examination Papers from 2020 to 2022**





# **2020 OVERSEAS LAWYERS QUALIFICATION EXAMINATION**

## **HEAD IV: ACCOUNTS**

**Wednesday, 11 November 2020**





## **2020 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.

**2020 Overseas Lawyers Qualification Examination**  
**Head IV: Part A on Accounts**

**Question 1 (25 marks)**

You are a solicitor and have received instructions to act for Z in respect of an investigation regarding corruption by the Independent Commission Against Corruption. All “Know Your Client” obligations have been carried out. There are no issues as to the sources of funds/monies received by your Firm.

**Identify, explain and comment upon how each of the below should be dealt with in order to comply with the Solicitors’ Accounts Rules (Cap.159F) and prudent accounting procedure:**

- (a) At 10 a.m. on 1 April 2020, you received a signed retainer letter from Z enclosing a cheque on account of costs and anticipated disbursements in the sum of HK\$800,000 payable to your Firm.

**(3 marks)**

- (b) At 6 p.m. on 1 April 2020, you called Leading Counsel (“LC”) (who had reputation of being the star of the criminal bar), hoping to retain him. LC told you that he had heard that the Prosecution was also considering retaining him on fiat. He required a retainer letter signed by your Firm with a cashier’s order of HK\$1 million by noon on 2 April 2020. LC agreed that if he was briefed, then the HK\$1 million would be used on account of his future fees. If he was not briefed, then the monies received would not be returned. At 11 a.m. on 2 April 2020, you sent a retainer letter and the cashier’s order (HK\$1 million) to LC’s chambers.

**(4 marks)**

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

- (c) On 6 April 2020, Z requested that payment of HK\$25,000 be made by you to Investigators Enterprises Limited (“the Investigators”) which he had instructed to prepare a confidential report that would assist his defence.

**(2 marks)**

- (d) On 17 April 2020, Z was charged and brought to court that afternoon. You instructed LC and his Junior Counsel (“JC”) to appear at Eastern Magistracy. LC advised you that his fee would be HK\$250,000 and JC would require a brief of HK\$125,000. You agreed to these fees and in turn, took the back sheets duly signed to court. After court, LC and JC sent their respective fee notes by email to your Firm.

**(3 marks)**

- (e) By 18 April 2020 this case was becoming complicated and difficult. You agreed with Z that your fees would be HK\$3 million and this would cover all work of your Firm excluding disbursements from 1 April 2020 to 1 June 2020. You instructed your secretary to send a fee note to Z. This was done at 5 p.m. on 18 April 2020.

**(3 marks)**

- (f) On 20 April 2020, your accounts department told you that a sum of HK\$3 million was noted on your Firm’s online banking statements. This was by way of a cheque deposit.

**(2 marks)**

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

- (g) On 22 April 2020, you were advised by the Department of Justice that at the next hearing, they would be asking to have Z's case committed to the High Court for trial. All committal bundles were ready to be served. A further committal hearing on 5 May 2020 had been fixed. You decided that LC and JC would require fees to review the committal bundles and attend in court on 5 May 2020. You therefore asked Z to ensure that a further HK\$2 million was paid to cover their fees. Z said he would require time to raise this sum and suggested you use the HK\$3 million he had paid to you to cover LC and JC's fees for the next hearing. You called LC and JC and asked them to each agree a fee for reading all papers and appearing at the committal hearing. LC said that his fee would be HK\$1.5 million and JC expected HK\$750,000. Both LC and JC agreed that this would cover all of their work until this matter reached the High Court. You felt that this was reasonable and Z agreed.

**(4 marks)**

- (h) On 11 May 2020, you received a cheque from Z for HK\$1 million and a further cheque from Z post-dated to 30 May 2020 in the sum of HK\$1 million.

**(4 marks)**

**End of Part A (Accounts)**

# **2020 OVERSEAS LAWYERS QUALIFICATION EXAMINATION**

## **HEAD IV: PROFESSIONAL CONDUCT**

**Wednesday, 11 November 2020**







## **2020 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.**

**2020 Overseas Lawyers Qualification Examination**  
**Head IV: Part B on Professional Conduct**

**Question 1 (25 marks)**

In late January 2020, Andrew, a litigation partner in the firm B&B, received a call from his high school classmate, Charles, who told him that he had just secured a “secret formula” which could cure Covid-19. Charles wanted to meet Andrew to discuss how to find investors to develop a drug based on the formula.

Andrew immediately arranged for his managing partner David, as well as junior solicitor Elvis from the commercial department, to meet with Charles. At the February meeting, Charles explained that he had obtained the “secret formula” from a monk, who discovered a wild plant in the mountains with magical curing powers. Charles asked if the firm could help him find professional investors.

Andrew thought this would be a big opportunity for the firm to develop a biotechnology practice as well as making some handsome legal fees. David was more cautious, especially when he learned from Andrew that he did not know much about Charles as the two had not seen each other for over ten years. Before agreeing to accept Charles as a client of B&B, David tasked Elvis to find out as much as possible about Charles, the “secret formula” and whether Charles was telling the truth about the healing effects of the wild plant.

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

Elvis met Charles on several occasions in February and March, and received documents from him which Charles said were official certificates issued by test laboratories concerning successful treatment of Covid-19 cases using herbal medicine derived from the “secret formula”. Elvis tried hard to seek confirmation from sources and the test laboratories but without success. In April, Charles threatened to take his project to another law firm as no progress was made by B&B. Andrew was very upset with David and he left B&B in July to set up his own practice in the name of A&Co. Immediately, Charles became the first client of A&Co.

In late July, A&Co sent out letters to all the major corporate and commercial clients of B&B stating that Andrew was in charge of an exciting pharmaceutical project which could save millions from the rampage of Covid-19. The letter stated it was a “once in a lifetime” opportunity for professional investors to make handsome gains with their investments in the trust set up by Charles.

Today, police officers came to B&B to execute a search warrant on the firm, seeking in particular all documents and files in connection with Charles and the “herbal drug project”. The police told David and Elvis that many people had put their entire savings with A&Co to invest in the “herbal drug project”, and Charles disappeared with tens of millions of the investors’ money missing.

Elvis was unwilling to pass over the documents he collected from Charles to the police. He also spoke privately with David as to whether he should tell the police B&B had no documents whatsoever regarding the “herbal drug project”.

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

David said that as no retainer had been signed between Charles and B&B, Charles was not even a former client of B&B and the firm owed no duty towards Charles whatsoever.

Elvis followed David's instruction and passed all files and all papers to the police.

- (a) Comment on Andrew's professional conduct.**

**(7 marks)**
- (b) Comment on David's professional conduct.**

**(7 marks)**
- (c) Comment on Elvis' professional conduct.**

**(5 marks)**
- (d) Explain what B&B should have done regarding the papers relating to Charles, either provided by him or sent to him, when the police asked for those documents.**

**(6 marks)**

## **Question 2 (25 marks)**

Albert, Bernard and Caroline are the partners of Wong & Associates (“Firm”). They formed the Firm many years ago and they are all over 20 years qualified. Albert specialises in residential and commercial conveyancing; Bernard is a litigator (mainly personal injury) and Caroline carries out wills and probate work.

In 2019, the Firm recruited Diana as an assistant solicitor. Diana was keen to be promoted to the partnership and decided that it would help her cause if she could bring in some business to the Firm. Her first suggestion was to update the name of the Firm to ‘Supreme Legal Partners’. The partners agreed to this change.

She also spoke to her grandfather who owns several restaurants across Hong Kong. Her grandfather agreed that the Firm’s brochures could be distributed to patrons at the restaurants and that its logo could appear on restaurant receipts and invoices together with the words ‘The law firm that delivers delicious results’.

Diana then approached a printer and a website designer about producing new ‘modern-looking’ versions of the Firm’s brochures and website. Both now feature photographs of all the partners taken by a professional photographer at court buildings and other Hong Kong landmarks. The photographs are accompanied by descriptions of their respective experience and practices. The new brochures also feature favourable comments by ‘satisfied clients’, which Diana copied from correspondence with the Firm from real clients.

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

In addition, the website designer arranged for videos of interviews with ‘clients’ (all played by actors), in which they told an ‘interviewer’ (also played by an actor) about how the Firm had solved their legal problems - from setting up a small business to recovering compensation for unfair dismissal – much more quickly and for much lower fees than other firms they previously retained. These are all on the website.

**Discuss:**

- (a)    **any ethical issue(s) arising from Diana’s promotional plans;**  
(6 marks)
- (b)    **any ethical issues specifically relating to the content of the new brochures and website.**  
(6 marks)

Shortly after the new website went online, Albert received the following e-mail:

*My name is Carlos Juarez. I am a director of the International Latin American Dancing Society (‘the Society’), a non-profit making organisation based in Buenos Aires, Argentina. The Society promotes Latin American dance, with training courses and competitions, throughout the world.*

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

*The Society is thinking of buying premises for a dance centre in Hong Kong and your firm's website caught our attention. We need a reliable lawyer with whom we can entrust our funds. Subject to your agreement below, the Society will render you a power of attorney by which you are authorised to act for and on our behalf in this matter.*

*To show that we are serious with the purchase, we shall deposit US\$3,000,000 with your firm, which can be used to pay for the initial deposit once we agree on the target premises. Please, therefore, give me the number of your designated account so that we can arrange the transfer without delay. We will let you know shortly our further instructions.*

**Explain:**

- (c) What action Albert should take before deciding to accept these instructions;**

**(7 marks)**

- (d) Of what should Albert remain aware if he decides to accept the instructions.**

**(6 marks)**

### **Question 3 (25 marks)**

Emily Chan (“Emily”) works at a bank in Central. On 12 November 2019, she had been in the office continuously for over two days working on a major loan transaction. Despite being very tired she decided to drive home at about 11.00 p.m. rather than get a taxi.

Whilst driving through Mid-Levels, she overlooked a red light and struck a pedestrian. Emily got out of her car to discover that the pedestrian, Fred, was seriously injured. Emily called for an ambulance and the police. Both arrived and Fred was taken to hospital, where he was found to have suffered a fractured skull, three broken ribs, a broken leg and numerous contusions. The police interviewed Emily and took her statement. There was no lawyer present. She was not asked about, and did not mention, the fact that she had been working continuously for over two days and was exhausted at the time of the accident.

A month later, by which time he had returned home from hospital, Fred was telephoned by a man called George who said he would pay his legal fees (including disbursements) if Fred decided to sue Emily. George asked for 25% of any damages recovered in the claim in return for his financial assistance. He added that Fred would have to instruct a law firm chosen by George. He assured Fred that this firm, Dimm & Partners (“Firm”), had an excellent record in winning personal injury cases. The Firm would pay Fred 75% and George 25% of any damages it recovered from Emily. It would not bill Fred any legal fees. George explained that even 75% of his likely damages would still be ‘a lot of money’. Fred agreed to George’s suggestion as he had been unable to return to work as a courier since the accident, needed to pay for physiotherapy, and was short of cash.

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



George then approached Henry, a partner at the Firm, who agreed to the arrangement (NB this was not the first time that the Firm had done this) and he, whose speciality was employment law, was subsequently retained by Fred. One of the terms of Fred's retainer with the Firm was that the Firm would not be liable for any legal or regulatory liability in respect of the work it carried out for Fred.

When they met, Fred told Henry that he had been walking on a pedestrian crossing with the signal in his favour when Emily's car 'speeded towards me and hit me'. The next thing he remembered was waking up in a hospital bed. Henry said that he would represent Fred in a claim for compensation for his personal injuries. He told Fred that he would commence the claim in the District Court and that he was '99% certain' to win. He sent the required notice before action and subsequently arranged for the service of a writ endorsed with a statement of claim on Emily.

Henry also asked his clerk to approach Jonathan, counsel specialising in personal injury litigation and Henry's clerk negotiated the fee with Jonathan who agreed to take on the case for a fixed fee of HK\$100,000.

**(a) Identify any acts of professional misconduct committed by Henry and the Firm.**

**(15 marks)**

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

Having received the writ and statement of claim, Emily decided to instruct Cheung, Chow & Hui (“CCH”) to represent her in the claim. Kevin, an experienced personal injury litigation solicitor at CCH, met Emily. Kevin said that CCH would represent her at the trial for an agreed fee of HK\$250,000. There was no written retainer and no provision for the payment of disbursements or costs on account.

Emily told Kevin that she had been working very long hours at the bank and had been very tired when she was driving home. She asked whether these facts could be ‘kept confidential’.

Emily then suggested that she could claim that she was 'fully awake and alert' if she was asked in cross-examination about her state at the time of the accident.

Kevin said that there was no duty to inform the Court of her tiredness if it never came up, and that, if it did, then anything Emily said about it at all would be a matter for her alone.

**(b) Identify any acts of professional misconduct committed by Kevin.**

**(5 marks)**

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

Kevin discussed with Emily the possibility of settling the claim, but Emily said she did not wish to do so. Notwithstanding her views, Kevin corresponded with Henry and they agreed to settle Fred's claim for HK\$300,000.

- (c) Discuss whether Kevin acted professionally in negotiating the settlement and whether it is binding on Emily.**

**(5 marks)**

**End of Part B (Professional Conduct)**



**2021 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS**

**Tuesday, 16 November 2021**



## **2021 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.

# **2021 Overseas Lawyers Qualification Examination**

## **Head IV: Part A on Accounts**

### **Question 1 (25 marks)**

Lewis and Max are solicitors and have worked together at a well-known magic circle law firm for many years. However, they have not been offered partnership. They have decided to resign and their intention is to open their own firm. They intend to offer a boutique service regarding advising in respect of regulatory issues affecting crypto-currencies and other exotic investment products.

They are very confident that their existing clients will follow them. However, Lewis and Max are worried about the obligations they will face in complying with the Solicitors' Accounts Rules (Cap. 159F) and various accounting issues.

**Identify, explain and comment on how each of the following situations/scenarios should be dealt with in order to comply with the Solicitors' Accounts Rules (Cap.159F) and prudent accounting procedure. All Know Your Client and Anti-money laundering procedures have been cleared.**

- (a) Lewis and Max have decided that they do not wish to open a client account with a bank.**

**(3 marks)**

- (b) A potential client has told Lewis and Max that they would wish to settle bills and pay money on account of costs by way of Bitcoin and they insist that the firm opens a bank account in the Cayman Islands.**

**(5 marks)**

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

- (c) Lewis' good friend, Valtteri, has asked whether he can work part-time at their new firm as their bookkeeper. He has been a racing driver but feels he can easily learn what is needed to do. Lewis knows him well. Since Lewis will be travelling extensively, he feels very comfortable in hiring Valtteri. Max agrees that he is the best person to sign cheques.

(6 marks)

- (d) Lewis has told you that he has heard about "client account reconciliation". He wants to know what this is all about. He feels that if he does not hold or deal with client money, he needs not to bother with this.

(6 marks)

- (e) Max has told you he is aware that each year the firm has to engage some accountants to produce a report to the Law Society. He knows nothing about this. However, he hopes that Valtteri will produce the report.

(5 marks)

**End of Part A (Accounts)**



**2021 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL  
CONDUCT**

Tuesday, 16 November 2021



## **2021 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.**

**2021 Overseas Lawyers Qualification Examination**  
**Head IV: Part B on Professional Conduct**

**Question 1 (25 marks)**

A month ago, Albert Low (“Albert”) came to consult your senior partner, Beatrice Shaw (“Beatrice”). Beatrice asked you to join the meeting to take notes and to assist her.

Albert, aged 65, is the senior partner of the law firm, Albert Low & Co. All the partners of Albert Low & Co. have decided to close down the law firm. Albert wanted Beatrice to advise him. Albert told Beatrice that he still wished to continue ‘some form’ of legal practice which would be very different from what Albert Low & Co. was doing.

Albert did not want to shoulder the heavy financial burden of renting an office and hiring staff. He would however comply with all Law Society practice requirements, including the keeping of solicitor indemnity insurance.

Albert’s idea was to set up a one-man sole proprietorship. It would still be called Albert Low & Co. in order to retain as much as possible the clients and contacts of the dissolved firm. The address of the sole proprietorship would be that of a secretarial service company which serves many other customers. The secretarial service company would provide him with telephone reception service.

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

Albert would use the family home as his office. When a client wants to meet with him, Albert would always request a video conference. Albert would switch on a virtual background showing that he was sitting in a grand office with rows of law books behind him. Albert said that would be his “virtual office”. He would ask his adult children to appear in his video conferences as his legal assistants taking notes. His wife would come in from time to time as his secretary. If a physical meeting was needed, Albert would conduct in-person meeting in what he described as his “mobile office”.

Albert would buy a light bus and convert that into his “mobile office”. The “mobile office” would be equipped with wireless internet connection, a fax machine and a printer. On one side of the light bus, Albert would post a huge banner of him sitting in his grand “virtual office”. Beneath the banner would be a statement in golden bold print stating: ‘Albert Low & Co., One of the Best Law Firms if not the Best’. On the other side of the light bus, there would be posted information about his new law firm, stating that it would practise all types of legal services.

Albert said he was interested in promoting two types of legal services. On real estate transactions, Albert would concentrate on getting instructions from first-sale buyers. Albert knew several estate agents. Albert would drive his light bus and park it close to the developers’ sale offices. Whenever an estate agent could find an interested first-sale buyer, the estate agent would invite that person to board the light bus and meet with Albert. Albert would explain to that person the laws relating to first sales and the terms of the provisional agreement.

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

When a purchaser instructs Albert to act, he would arrange the signing of documents in his “mobile office”. Albert said he would charge normally and he would not share his fees with estate agents.

On criminal law practice, while Albert was not familiar with that area at all, his former clerk has since become very successful in procuring clients, getting instructions from those who were accused or charged with petty criminal offences. That clerk told Albert that Albert could park his light bus near police stations or magistracies, the clerk would bring business to him. Albert wanted to collaborate with that clerk, he would drive his light bus to locations pre-arranged by the clerk. When there is no work, he would study criminal law in his “mobile office”. Albert said he would not reward the clerk for the introduction work.

After the meeting with Albert, Beatrice told you that she was concerned whether Albert could use the name of the closed firm as his new firm’s name and whether he could operate as a one-man sole proprietor without a supporting staff. She was also very uneasy with Albert’s business plan. Beatrice asked you to conduct research into what Albert has suggested at the meeting and prepare a draft opinion for her.

Today Beatrice asked you for that draft opinion.

**State your answer in the form of a draft opinion on Albert’s ideas regarding his new law firm.**

**(25 marks)**

## Question 2 (25 marks)

The firm of Chow & Chan acts on a variety of matters for Megabiz (Hong Kong) Limited (“Megabiz”), one of which is a very acrimonious court claim against another company. Unfortunately, the partner responsible for this litigation fell seriously ill. In the circumstances, Chow & Chan instructed another Hong Kong firm - Jen & Associates - to take over the handling of the litigation from them. The written retainer was signed on behalf of Chow & Chan.

Since then, Chow & Chan have remained involved in the litigation to co-ordinate matters and instruct Jen & Associates on behalf of Megabiz. Andrew, the senior partner of Chow & Chan, has been the focal point of this co-ordination. As he is not himself a litigator, most of the day-to-day work has been conducted by Frank, a senior associate in the firm’s litigation department.

Three months before the trial, Frank asked Jen & Associates to instruct senior and junior counsel to appear for Megabiz. Frank also confirmed these instructions with Megabiz. During a telephone conversation between Frank and Hilary, a solicitor at Jen & Associates, she informed Frank that an undertaking to pay costs on account was required before Jen & Associates would issue the briefs to counsel. Later that day, Frank sent an e-mail to Hilary that contained the following passage:

*“We undertake to pay the requested costs on account (inclusive of Senior Counsel’s, Junior Counsel’s and Solicitor’s fees) to your firm by way of two instalments. The first instalment will be paid by close of business [seven days before the trial] and the second instalment will be paid on or before close of business on [the first day of the trial].”*

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

Frank did not discuss the e-mail with Andrew, who was busy on another matter at the time. He did, however, copy the e-mail to him. Andrew subsequently noticed that one of the attachments to that e-mail was a note of a brief telephone conversation between himself and a director at Megabiz on an unrelated matter.

Jen & Associates proceeded to instruct senior and junior counsel and both they and counsel carried out the necessary preparatory work for trial. Payment of the first instalment was not made and the following day (i.e. six days before the trial), a Notice of Change of Solicitors in the case was filed on behalf of Megabiz, replacing Jen & Associates with the firm of Leung, Chow & Leung. The new solicitors instructed another set of counsel to appear at the trial on Megabiz's behalf. When the senior partner of Jen & Associates called Chow & Chan to complain, he was told by Andrew and Frank that they had no funds with which to pay them and that they were following their client's instructions.

Jen & Associates have incurred HK\$200,000 in costs in preparing for trial and the senior and junior counsel have issued fee notes to the firm for HK\$1,000,000 and HK\$350,000 respectively as per their briefs.

- (a) Discuss the issues of professional conduct that are raised by Andrew and Frank's actions.**

**(20 marks)**

- (b) What steps, if any, may Jen & Associates have against Andrew and Frank?**

**(5 marks)**

### **Question 3 (25 marks)**

Emily is a newly appointed associate solicitor in the commercial litigation department of Lau & Lau, a medium-sized firm. She has taken over several files from George, who recently retired from the practice.

Whilst Emily was reviewing the files, which were in a total mess, she came across a matter in which the firm is acting for the owner of a house. The Buildings Department issued a Warning Notice and, subsequently, an Order requiring its demolition because its construction was not authorised under the Buildings Ordinance (Cap. 123). The first item in the file was the firm's standard retainer letter, which the client had counter-signed, stating that the expected fees and disbursements to be incurred would not exceed HK\$50,000 in total.

Emily also found George's instructions to Henry, a barrister, regarding the appropriate response to the Warning Notice and Order, and a fee note from him for HK\$40,000 which has been settled. No bill, however, has been sent to the client as yet. Emily worked with Henry at her previous firm, having instructed him in a few insurance coverage disputes.

Henry advised that the Warning Notice was in error. George simply replicated that advice in a letter to the Buildings Department. Following the receipt of the Order, George sent a Notice of Appeal to the Secretary to the Appeal Tribunal a day before the 21-day deadline.

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



George subsequently received a draft Statement of Particulars setting out the full details of the appeal from Henry, which replicated the contents of Henry's earlier advice. George merely copied the same without any amendment and sent it to the Secretary to the Appeal Tribunal within a day of receiving it.

There is no further correspondence with the client after the initial retainer letter, except for brief letters from the client attaching the Warning Notice and Order and from George attaching the Notice of Appeal (from the Order) for the client to sign. In particular, there is no substantive advice or references to Henry in George's letters to the client. Emily noted that no date had been set for the hearing of the Appeal and decided that it would be an appropriate time to bill the client for the work done thus far.

A few days after preparing and sending the bill to the client, Emily was told by George's former secretary that she had found some correspondence that had been left inside his desk. One item was a letter from the Buildings Department in response to George's letter based on Henry's advice. The letter preceded the issuing of the Order. Emily noted the Building Department's assertion that the client's house was not exempted from the application of the Buildings Ordinance, contrary to what Henry had advised. In addition, it referred to the fact that Henry (and George) had relied upon a decision that had been overruled by the Court of Appeal last year.

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

Emily decided to speak to Martin, the senior partner. He referred her to the firm's standard terms of services, which were set out in the retainer letter:

*"Our civil liability relating to the legal advice and services we provide shall not exceed the amount of any and all fees payable to us by the client.*

*Subject to the above, we accept liability to pay damages in respect of any loss or losses suffered by the client as a direct result of the provision of our legal advice and services."*

Martin added, "Don't worry about it. We're in the clear. No need to tell anybody. See what happens at the tribunal."

- (a) What issues of professional misconduct arise from George's action?**  
**(15 marks)**
- (b) What issues arise from Emily's decision to bill the client?**  
**(5 marks)**
- (c) Comment on Martin's interpretation of the retainer letter and his proposed course of action.**  
**(5 marks)**

**End of Part B (Professional Conduct)**

**2022 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS**

**Wednesday, 9 November 2022**



## **2022 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.**

## **2022 Overseas Lawyers Qualification Examination**

### **Head IV: Part A on Accounts**

#### **Question 1 (25 marks)**

(A) Y has instructed your Firm to act for him and to appear in court with regard to an application for security for costs. You have carried out all Know Your Client obligations and have cleared all conflict checks. You have asked Y for HK\$200,000 on account of costs in respect of the coming hearing. These costs would be by way of an agreed fee of HK\$100,000 for your Firm and HK\$100,000 for Counsel.

(i) On 1 April, 2022, a cheque payable to your Firm in the sum of HK\$200,000 was received. On the same date, Counsel has made it clear that he will need to have been paid HK\$100,000 before he will start any work. You instruct your accounts department to prepare a cheque payable to Counsel and ask your secretary to ensure this is urgently sent to him.

**(5 marks)**

(ii) On 3 April, 2022, you were advised by your accounts clerk that Y's cheque had been dishonoured. You immediately called Y and made it clear that you were very upset and angry. Y said he would make immediate arrangements to deliver a cashier's order to your Firm in the sum of HK\$200,000.

**(3 marks)**

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

- (iii) On 4 April, 2022, a cashier's order in the sum of HK\$200,000 made payable to your Firm was received.

**(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.**

- (B) Your accounts clerk has indicated to you that there was a deposit made in the sum of HK\$200,000 paid into your Firm's client account. He is not able to identify the client or the file into which the deposit relates.

**What steps should you take to ensure that you comply with the relevant Solicitors' Accounts Rules?**

**(3 marks)**

- (C) Your Firm has, in its client account, the sum of HK\$250,000 that was being held on behalf of X, your Firm's client. X can no longer be contacted or located. **Advise what steps the Firm should take.**

**(5 marks)**

- (D) **What do you understand by the term "Management Accounts" for a firm of solicitors? How might such Management Accounts enhance and assist the partners in the running and supervision of a firm's accounting systems and enable a firm to operate efficiently?**

**(6 marks)**

**End of Part A (Accounts)**

# **2022 OVERSEAS LAWYERS QUALIFICATION EXAMINATION**

## **HEAD IV: PROFESSIONAL CONDUCT**

**Wednesday, 9 November 2022**



## **2022 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.**



**2022 Overseas Lawyers Qualification Examination**  
**Head IV: Part B on Professional Conduct**

**Question 1 (25 marks)**

Stark is an associate solicitor working in the firm of Thor & Co. under the supervision of Thor, a sole proprietor, doing mainly conveyancing work.

A year ago, Stark met Natasha on a social occasion. Natasha told Stark that she had invested in a company called Doggie Beauty Limited (“Doggie”), which was in the business of pet grooming, as a minority shareholder. The majority shareholder was Thanos. Disagreements arose between Natasha and Thanos. Thanos excluded Natasha from Doggie’s business and refused to return her investment money to her. Stark vaguely remembered what he learned from law school about protection of minority shareholders and told Natasha that she could file an unfair prejudice petition against Thanos, compelling Thanos to buy out her shares. Natasha said she had no money to pay for the legal work. Stark said that was no problem. His firm (Thor & Co.) would act for Natasha if Natasha was willing to become his girlfriend. He told Natasha that he believed Natasha’s case had good merits. Stark even agreed to take care of the disbursements such as counsel fees, expecting all his costs and disbursements to be recovered from Thanos. But he told Natasha that in the unlikely event that Natasha lost the case, he and Thor & Co. would not be liable and she could not make any complaints. Natasha agreed and started dating Stark.

**(a) Comment on Stark’s conduct above.**

**(9 marks)**

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

Not knowing much about litigation practice, Stark engaged a barrister, Hulk, who was his law school buddy, to do the case for Natasha and substantially delegated all the work to Hulk. Hulk also agreed to issue his fee notes only upon completion of the case. After Stark filed the claim drafted by Hulk, Thanos, through his solicitors, offered to pay Natasha HK\$500,000 to settle the case. However, Stark thought this was too low and did not bother to report the offer to Natasha. He instructed Hulk to continue to prosecute the case.

One of the issues at trial was whether Natasha had diverted business from Doggie to a competing business named Perfect Cat Limited, which Natasha was suspected to be involved in. Natasha told Stark that another solicitor firm, Scarlet & Co., had helped her to form Perfect Cat Limited. Stark told Natasha not to worry. He would write a letter to Scarlet & Co. warning them not to give evidence for Thanos or disclose Natasha's involvement with Perfect Cat Limited because this information was privileged.

After the trial, Natasha's case was dismissed as the judge found her evidence not credible. Natasha was ordered to pay indemnity costs to Thanos. Stark told Natasha not to worry as he would lodge an appeal for Natasha and she would surely win. However, Natasha became doubtful and broke up with Stark. At that point, Thor discovered Stark's dealings with Natasha and Hulk. He fired Stark immediately.

**(b) Comment on Stark's conduct above.**

**(6 marks)**

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

Subsequently Natasha sued Thor & Co. for negligence and lodged a complaint with the Law Society against Thor & Co. for mishandling her case. Hulk also threatened to sue for his unpaid counsel fees. Thor wanted to deny both the liabilities for negligence and counsel fees. Thor thought Hulk's fees were exorbitant in terms of his seniority and the quantity and quality of his work.

**(c) Advise Thor on Natasha's negligence claim and the Law Society's complaint.**

**(4 marks)**

**(d) Advise Thor how to deal with Hulk's claim for counsel fees.**

**(6 marks)**

## Question 2 (25 marks)

Andy (aged 19) worked at a small restaurant “The Golden Shark” in North Point in Hong Kong near to the public rented flat, which he shares with his mother and younger sister, Bernice (aged 15). Andy is the family’s sole wage earner. In January 2021, Andy’s colleague at the restaurant, Clive, asked Andy if he would accept delivery of a parcel from overseas for him.

Clive explained that he couldn’t have the parcel delivered to his own home as he shared a letter box with another person and there had been a number of thefts from it. Andy agreed in return for gift of HK\$1,000 from Clive “To buy something for your mother”.

No one was at home when the parcel was delivered and a notification card was left in Andy’s letter box. Although the address was correctly stated, the recipient named on the card was a “Mr. David Wong”. Bernice collected the notification card on her return home from school and gave it to Andy, who then called Clive to tell him of its arrival. Clive asked Andy to meet his “friend” named Dave at Kennedy Town MTR Station. Andy did so and gave the card to a man identifying himself as Dave.

The following day, Andy was arrested by police officers. It transpired later that the parcel contained a significant quantity of heroin and Andy was charged with trafficking dangerous drugs in contravention of the Dangerous Drugs Ordinance (Cap. 134). Clive and Dave have also been arrested, charged and face trial.

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

Shortly after Andy's arrest, the manager at the restaurant told Andy's mother that "The owners won't employ drug dealers" and told her that Andy had been sacked. He added, however, that he knew a good law firm that might be able to help. Andy was subsequently visited in custody by Edward, a newly qualified solicitor with Chan, Chan & Chan. Edward told Andy that he had carried out some research before their meeting and advised Andy that he would be liable upon conviction to an enormous fine and imprisonment for life. He also told Andy that it would be "a waste of time" to apply for bail. Edward urged Andy to plead guilty as he "had no chance of avoiding prison" but a guilty plea may get him a lighter sentence. Despite this negative advice, Andy agreed to retain Edward but decided not to confess yet.

**(a) Discuss the issues of professional conduct raised by Edward's actions.**

**(12 marks)**

After meeting Andy, Edward consulted a partner in his firm, Gordon, and they agreed that they should involve counsel, who would be able to convince Andy that his position was hopeless. Edward asked his secretary to call Henry, a friend of his from university who had been called to the Bar and practised a mixture of criminal and personal injury litigation. Henry agreed to visit Andy with Edward and to try and persuade him that he should plead guilty. Gordon also called the manager of "The Golden Shark", who said that the restaurant would cover the cost of Edward's and Henry's work on the case provided that Clive, the manager's cousin, was acquitted and no one else from the restaurant was implicated in any alleged drug offences.

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

Edward and Henry subsequently visited Andy and gave him the following document to sign:

*"I shall plead guilty to all the charges laid against me on the above date. My legal advisers have fully explained my situation to me and I would like to express my willingness to assist the 2<sup>nd</sup> Defendant [Clive] as he is innocent of any charges against him.*

*I and the 2<sup>nd</sup> Defendant were acquainted at a restaurant where we worked together. At the time of my arrest by the police, I was in a confused state and I confirm that the 2<sup>nd</sup> Defendant is innocent. I also confirm that he never asked me to receive any parcel for him.*

*Finally, if the authorities drop the charges against the 2<sup>nd</sup> Defendant, I will plead guilty to all the charges against me."*

Despite much effort by both Edward and Henry, Andy refused to sign the document.

- (b) Discuss the issues of professional conduct raised by Edward's and Gordon's actions.**

**(10 marks)**

Following the meeting with Edward and Henry, Andy decided to instruct another firm of solicitors. That firm advised him to plead not guilty and, after trial, he was acquitted. A delighted Andy sent the senior partner an antique tea service that had been in the family for many generations in thanks.

- (c) Discuss any practice issues that arise from the gift of the antique tea service.**

**(3 marks)**

### Question 3 (25 marks)

Angela is a partner in Aslem & Wong, a medium-sized commercial firm, who specialises in corporate and commercial work, especially for Information Technology start-ups. She has dealt with initial public offerings, mergers and acquisitions and related transactions for Information Technology companies in both Hong Kong and in other jurisdictions, including England & Wales and Singapore. Earlier today, she received the following e-mail:

*“Dear Angela,*

*I am the managing director of Electroplosion, a leading Korean eSports company, and we are looking to invest in eSports companies in Hong Kong. We have identified Majix Games (Hong Kong) Limited (“Majix”) as a potential partner but, unfortunately, our negotiations have been delayed by technicalities raised by our current local legal advisors. We are looking to invest HK\$100m in Majix and turn it into a major eSports hub for Hong Kong and Southern China. I shall call you by Zoom tomorrow to discuss our case if I may. Please let my secretary know a convenient time and appropriate contact details.*

*Regards*

*Jeong-hoon”*

Angela doesn’t know anything about Majix but she has heard of Electroplosion. Also, one of her partners has excellent contacts in Korea.

- (a) Explain what Angela should consider and any steps she should take before accepting any retainer from Electroplosion.**

**(5 marks)**

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

**(b) Explain what steps she should take upon deciding to accept the retainer.**

**(10 marks)**

The proposed investment fell through at the last minute as the owners of Majix decided to enter into a partnership with a rival to Electroplosion instead. Nevertheless, Electroplosion paid Angela's considerable fees (and disbursements) to Aslem & Wong. Unfortunately, Electroplosion then criticised Angela for causing the deal to be concluded with the rival company. In order to avoid lengthy and potentially embarrassing litigation, Aslem & Wong agreed to reimburse over half of the fees.

Shortly afterwards, Angela's trainee showed her an article from an electronic gaming website with the following headline:

*"esports scandal sees Korean Giant accused of game fixing and money laundering"*

The report goes on to give details of various scams on Electroplosion's hosted-online games involving stolen credit cards. It is suggested that some of the stolen funds have been directed to drug traffickers and even terrorist groups. Dozens of streamers (i.e. players) and staff at Electroplosion have been implicated.

**(c) Discuss the issues of professional conduct arising from the above facts.**

**(10 marks)**

**End of Part B (Professional Conduct)**