

2024 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD IV: ACCOUNTS

Tuesday, 29 October 2024



2024 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.

2024 Overseas Lawyers Qualification Examination
Head IV: Part A on Accounts

Question 1 (25 marks)

(A) You are a Partner in ABC & Co. Z has instructed you to act for him. Z is facing various charges including conspiracy to defraud and dealing with the proceeds of an indictable offence. His trial is due to commence in the District Court on 14 October 2024. All “Know Your Client” obligations have been carried out and completed.

(i) On 1 August 2024, you received a cheque payable to ABC & Co. in the sum of HK\$500,000 on account of costs from Z. The cheque was postdated to 9 August 2024.

(2 marks)

(ii) On 12 August 2024, you were informed by your accountant that the HK\$500,000 cheque had been dishonoured. You then telephoned Z and advised him as to this fact. He said that he would make arrangements to deliver a new cheque to you as soon as possible. Later on that afternoon at 4:30 p.m., you received by hand a cheque payable to ABC & Co. in the sum of HK\$500,000.

(3 marks)

(iii) On 20 August 2024, a brief fee including all preparation and trial with Counsel in the sum of HK\$1,000,000 was agreed. Counsel had insisted that upon delivery of the brief, part payment of his fees in the sum of HK\$200,000 should be paid. Counsel required the brief to be delivered by no later than 30 August 2024. You also agreed with Z your fees would be HK\$750,000 which would include all preparations and attendance at trial.

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

However, you made it clear to Z that the agreed fee did not include disbursements such as copying, travelling and investigators' fees. You indicated that these would be capped at HK\$120,000. Z agreed that he would make arrangements to ensure that you would receive sufficient funds to cover these items.

(3 marks)

- (iv) On 16 September 2024, your Firm paid the sum of HK\$100,000 to the investigators.

(2 marks)

- (v) On 30 September 2024, your Firm received a cheque in the sum of HK\$1,650,000 on account of further costs.

(2 marks)

- (vi) On 30 October 2024, the trial concluded and Z was convicted.

(2 marks)

Explain, comment and identify how each of the above should be dealt with in order to comply with the Solicitors' Accounts Rules (Cap.159F).

- (B) You received a note from your Senior Partner asking for a memorandum as to all relevant provisions in the Solicitors' Accounts Rules (Cap.159F) in respect of:**

- (i) **dealing with interest on client account; and**

(2 marks)

- (ii) **Rule 7A.**

(2 marks)

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

- (C) Your Firm wishes to open a client account and an office account in Shenzhen, China with The Bank of China.

Are there any issues arising out of such a course of action? Ensure your answers are limited to the Solicitors' Accounting issues.

(3 marks)

- (D) What do you understand by the term “Bills Issued”? What should such bills contain? Explain and describe what a bills delivered book is. Why is a firm required to maintain such a book?

(4 marks)

End of Part A (Accounts)

2024 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD IV: PROFESSIONAL CONDUCT

Tuesday, 29 October 2024



2024 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.

2024 Overseas Lawyers Qualification Examination

Head IV: Part B on Professional Conduct

Question 1 (25 marks)

Adam is one of the three partners at a law firm specializing in conveyancing. One day, Bob approached Adam regarding instructions to help Bob sell his Hong Kong sea-view flat (“the Property”) to Carl.

Bob told Adam that he is a good friend of Carl and that they wanted Adam to represent both of them in the transaction.

Adam happily agreed to the engagement. As the instruction was simple (i.e. just to help with the conveyancing documents for the sale of the property), Adam asked Bob and Carl to attend at his office for a very short meeting solely to conduct all the necessary Know Your Client checks and to obtain the title deeds of the Property for review, and then he started working on the file.

(a) Comment on what issues Adam should be aware of and what steps he should have taken.

(5 marks)

One month into the engagement with Adam, Carl did not like Adam and decided not to continue engaging Adam further in the transaction. Carl decided that the whole transaction was simple to do and that he would not need to hire a lawyer to complete the transaction.

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

Adam proceeded to act for Bob to prepare the Sale and Purchase Agreement ("Agreement"). Bob expressed a strong desire to complete the deal by the following week, so he informed Adam that he would ask Carl to attend at Adam's office to sign all the documents . Bob himself would not be able to attend that meeting as he was out of town, but he expected to be updated as to any developments.

The following Friday, Carl attended at Adam's office and Adam presented the Agreement for Carl to sign. When Carl read the Agreement, Carl remarked that it contained a lot more legal terms than he had imagined it would, and that he really did not understand half of it. Knowing that Bob really wanted to complete the signing that week, Adam requested that Carl should sign the Agreement saying that the terms were standard terms and suggested that Carl could find a lawyer to explain that to him later.

Before Carl signed, Carl asked about the mortgage situation of the Property. He expressed concern about the discharge of any outstanding mortgages before completion. Since Bob had expressed a strong desire to complete the deal within that week, Adam believed Bob would ensure that the mortgage would be discharged soon. Therefore, without discussing with Bob, Adam told Carl that the discharge would be done within 14 days of the Agreement.

Carl asked if there was anything else he should be aware of. Without further thought, Adam assured and told him that on behalf of his firm, he unconditionally gives Carl the "undertaking on the usual terms", and that Carl needed not worry. Having heard Adam's responses, Carl signed the Agreement.

- (b) Discuss the issues including but not limited to actions Adam should have considered or should or should not have taken, and the liability of the partners in Adam's firm.**

(17 marks)

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

As Adam was completing this deal for Bob, he discovered that he had no more physical space in his office cabinet to store the documents and files.

He noticed that there was an old conveyancing file containing not only the file notes but also the title deeds and original documents completed five years ago. Over a period of 6 months, Adam tried to call the client to return the title deeds and original documents to the client. However, despite his attempts, he could not contact the client. Therefore, he decided to discard the file (by securely destroying it) to free up space in his cabinet for upcoming cases.

(c) Comment on what issues Adam should be aware of and what steps he should have taken.

(3 marks)

Question 2 (25 marks)

Charlie has been employed by the Hong Kong Purple Minibus Ltd. (“the Bus Company”) to drive its minibuses for 15 years. In April 2023, at about the time of his 50th birthday, the visual acuity of his left eye started to deteriorate. He visited an optician, who prescribed him a pair of spectacles. The optician also told him that his vision could worsen; that he should visit him again in six months; and that he should avoid driving. Charlie did not tell the optician that he was a driver with the Bus Company. He also needed to work to pay the rent on his family’s flat (his wife only has a part-time job as a cleaner and they have two school-age children), so he continued driving minibuses for the Bus Company. He didn’t consult the optician again even though he thought his eyesight had worsened.

On 12 November 2023, whilst he was driving his minibus in Kowloon, Hong Kong, he failed to notice a change in the traffic lights at a junction and struck an elderly pedestrian, Mr. Woo, who was crossing the road at the time. Mr. Woo sustained broken ribs, a broken arm and was rendered unconscious. He was taken to hospital and Charlie was subsequently prosecuted for careless driving and suspended from work without pay.

Charlie visited the offices of Jen & Partners, a small two-partner firm, where his niece works as a secretary. He spoke to Andrew, a newly-qualified solicitor (as neither of the partners were available). Andrew orally agreed to represent Charlie at his trial for careless driving, which was listed in the Magistrates’ Court, for a ‘reduced’ fee of \$50,000 in return for Charlie agreeing not to hold Jen & Partners liable in the event that he was convicted. Charlie also told Andrew that he would borrow the money from friends and family members.

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

Charlie told Andrew about his problem with his eyesight. Andrew explained that this could affect Charlie's defence but said that he would 'do some research' as to how it should be dealt with at the trial. Taking a short break from the meeting with Charlie, Andrew called his old law school friend, Michael (who had won the prize for the best marks in PCLL criminal litigation). Andrew asked Michael if he would have to mention Charlie's poor eyesight to the court and Michael said that there was "no duty to mention eyesight at all".

Andrew then returned to the meeting and told Charlie that he did not need to mention his poor eyesight in court. He also advised Charlie that (i) he should plead not guilty and (ii) he should give evidence at the trial (In particular, Andrew remarked 'Magistrates want to hear the truth from a defendant, not a story from his lawyer'). He finished the meeting by telling Charlie not to worry and added that 'everything will be fine'.

After the meeting, Andrew placed an advertisement in a local newspaper asking for anyone who had witnessed the accident and could confirm that it was either Mr. Woo's fault or that of another motorist to contact him. The advertisement also mentioned that anyone who was prepared to testify in court would receive 'financial compensation'. Four people responded to the advertisement but, after speaking to each of them, Andrew concluded that none of them would be able to help Charlie's defence.

(a) Identify any acts of professional misconduct on the part of Andrew.

(16 marks)

(b) Critically assess Michael's advice to Andrew.

(3 marks)

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

The trial was listed before Magistrate Chow in June 2024. At the trial, the prosecution called Mr. Woo to testify and he was subsequently cross-examined by Andrew, who decided to be very aggressive in his approach. He asserted that the lights had been 'green' for Charlie when the accident took place; and that Mr. Woo ran across the road to get to the local Jockey Club; and that Mr. Woo was under the influence of alcohol at the time.

During Charlie's examination-in-chief, Andrew did not ask him about his eyesight and Charlie did not mention it either. During his cross-examination, however, Counsel for the prosecution asked Charlie if he suffered from any conditions that might impair his driving ability. Charlie simply replied 'No'.

Charlie was acquitted and paid the fee of \$50,000 to Andrew. He was so pleased to be acquitted that he also presented Andrew with an antique vase that had been in his family for over 100 years.

(c) Identify any further acts of professional misconduct on the part of Andrew in relation to his conduct of the trial and thereafter.

(6 marks)

Question 3 (25 marks)

1. Alex is the sole-proprietor of a law firm in Central, Hong Kong. Business has been slow and Alex is looking for more legal work anxiously. Alex is the only solicitor in the firm.
2. On Monday, he was visited by a new client called Barry who said that he was referred to Alex by a mutual friend, Terry.
3. Barry said he would like Alex to act for him in the acquisition of the business currently run by Company X and to provide tax advice to him in relation to the said acquisition. Barry told Alex that his bottom line was to pay no more than HK\$90 million for the transaction but the final purchase price would depend on how negotiations would proceed with Company X. Company X operates a number of restaurants in Hong Kong known collectively as “The Fine Dinning Group”. Barry also indicated that he might not need any financing to complete the transaction.
4. Alex was glad to receive instructions from Barry so he quickly typed up a retainer letter with Barry named as the client without asking for any identification and without doing any verification. Alex and Terry had been good friends for many years so Alex had faith in a referral by Terry. Barry signed the retainer letter and left Alex’s firm. A further meeting between them was scheduled for Thursday of the week.
5. The retainer letter signed had a provision to the effect that Alex’s firm may terminate the retainer at any time if it is of the opinion that a conflict of interest has arisen as between Barry and the firm for whatever reason. Alex regarded such clause as offering enough protection to his firm in the circumstances.

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

- (a) What actions should Alex have taken in relation to Barry prior to entering into a retainer letter with him? Answer by reference to any Practice Direction issued by The Law Society of Hong Kong (“the Law Society”) and elaborate on the procedures required. Candidates need not answer by reference to any particular legislation in Hong Kong.

(10 marks)

- (b) What possible action may the Law Society take against Alex if he fails to take any of the actions covered by your answer to question (a) above? Also, answer what the source of power of the Law Society is when taking such action. Answer by reference to the provisions set out in any Practice Direction issued by the Law Society and the principles set out in The Hong Kong Solicitors’ Guide to Professional Conduct Volume 1, Third Edition. Candidates need not answer by reference to any particular legislation in Hong Kong.

(3 marks)

6. On Tuesday, Alex had lunch with his friend, Joseph who owns and operates a restaurant in Central, Hong Kong. Alex told Joseph over lunch that he had just received instructions to act for Barry in the acquisition of the restaurant business run by Company X at a maximum price of HK\$90 million and to provide the incidental tax advice to Barry. Joseph congratulated Alex on obtaining such a good set of instructions as The Fine Dinning Group was well known in the restaurant business. Joseph also told Alex that Barry was a rising star.

- (c) Identify and discuss any professional conduct issues and risks arising out of the conversation over lunch.

(4 marks)

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

7. On Wednesday, when Alex was studying the company search of Company X, he suddenly realised for the first time that Company X was previously known as Company Y. The name change occurred 2 years ago. After doing an internal conflict search, Alex found out that his firm had acted for Company Y (now known as Company X) 5 years ago. The relevant instructions were to acquire a few small restaurants for Company Y (now known as Company X).
8. The discoveries on Wednesday explained why Alex was not aware of a problem before he signed a retainer with Barry on Monday. Worst of all, Alex found that he was in possession of a lot of confidential information (i.e. financial information, negotiation tactics and business strategies etc.) with regard to Company X (previously known as Company Y). All such information was contained (i) in the physical file which Alex had opened for Company Y (now known as Company X) 5 years ago and (ii) in the computer system of the firm. Such confidential information would be adverse to the interests of Company X (formerly known as Company Y when Alex acted for them) if it was disclosed to Barry in the current transaction which Alex had been retained for.
- (d) Identify the professional conduct problems which Alex was facing on Wednesday and recommend the best course of action for him to take.**

(8 marks)

End of Part B (Professional Conduct)