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**OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

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**HEAD IV: ACCOUNTS AND  
PROFESSIONAL CONDUCT**

Monday, 2 October 1995



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

### **TEST PAPER**

**2 October 1995**

#### **Instructions to Candidates**

- 1. The examination duration is Three (3) hours, plus 30 minutes reading time.**
- 2. There are THREE questions on this paper. EACH must be answered.**
- 3. This is an Open-Book examination.**
- 4. Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.**
- 5. Do not take either this question paper or any answer booklets with you when you leave the examination room.**

**QUESTION 1 (25 marks)**

- A. Sol was a solicitor, expert in putting together China joint ventures. He advertised in English, American and Hong Kong business journals:

"Sol and Co, Solicitors, Hong Kong, 10 years of setting up successful joint ventures in China. Rated No.1 in the Hong Kong New Law Gazette survey of Joint Venture expertise."

(The Gazette "survey" consisted of interviews with ten top lawyers).

- B. Basil, a new client, responded to the advertisement and asked Sol if his services were confined to legal services. Sol said no, that he could also arrange financing and provide 'know how' and that he had a Bank client which had helped in past deals. Basil then outlined his business plan and said he had a willing partner in China but that an estimated 20 million dollars was required to launch the product.
- C. Basil asked to be introduced to the Bank by Sol. The Bank investigated the proposal and indicated that it might be prepared to finance the joint venture. Sol was then retained by Basil. The written retainer stated Sol would "arrange the necessary finance" and "advise on the viability and provide guidance on the legal aspects of the venture" and "draw up all the necessary documents." The Bank also retained Sol to act as its solicitor "to review the loan agreement to be prepared by the Bank and to advise on the legal implications." Basil personally negotiated with the experienced bank officers and Sol did not participate in these negotiations. The Bank had thoroughly investigated Basil's background before the negotiations began.
- D. One week before the agreement was to be signed Sol had dinner with Basil, who, after a few drinks said, "My China partner is a really good fellow. He can't use all his production quota and there's a substantial percentage he's going to sell to me after my loan is approved by the Bank." Sol was disturbed by this news since the sale of unused quotas is a serious offence in China. Then Basil revealed "how clever" he had been in other deals in China which all were clearly illegal activities.
- E. Basil saw that Sol was troubled and leaned over and said "Don't worry. I'll double your fee and we'll arrange through a nominee for you to have a two percent share in the venture, risk free. How about that!" Sol was very tempted as the firm was currently in some financial difficulties.

**Question**

**Advise Sol about his ethical and legal responsibilities in this matter and the issues raised by the facts. Offer advice on how he ought now to act and whether he may already have been in breach of any principles of conduct.**

**QUESTION 2 (65 marks)**

- A. Alan, a partner in a two partner law firm, acted for 5 (of 10) shareholders of a private family company ("Family Co") in a shareholders' dispute. The dispute had not yet come to litigation and was the subject of negotiation between Alan's client group and the other five shareholders, represented by Barry of another firm of solicitors. Alan's retainer was 'to assist and advise in the negotiation on the matters under dispute and, if necessary assist and advise in any action thereafter.' At the outset, Alan advised his clients orally that his fees would be "reasonable - like they always have been." Alan had two years previously acted for some of his clients with regard to private conveyancing matters. The parties moved steadily towards a satisfactory settlement but certain crucial points were still unresolved.
- B. Two of Alan's clients, Colin and David, who were brothers aged 17 and 20, came to see Alan privately and said that they were concerned about the costs. They said that they wanted to know when the costs reached \$100,000 as they could not afford more than \$20,000 each as their share of the bill. Alan said that they should not worry as the total was unlikely to exceed \$100,000 and, anyway, if it was more he would simply deduct it from the settlement amounts. Alan wrote to his clients twice informing them of 'total costs so far', when they reached HK\$120,000 and HK\$200,000 and asked for payment on account. Soon the amount totalled HK\$300,000 (which costs were fully supported by the time spent and work done).
- C. Alan decided that he would bill his clients for the HK\$300,000 as they had not responded to his requests for money on account. The bill was for "conferences, advice, drafting and negotiation" and was sent on April 15th 1995. Colin rang Alan two days later and said that he and David were surprised and worried about the amount of the bill. Alan said that he shouldn't worry as it would come out of the settlement. Colin said, 'but what if there is no agreement?' Alan said "we will worry about that later."
- D. A dispute arose between Alan's clients as to whether or not the terms of the proposed settlement were acceptable. Barry, acting for the other group of shareholders, imposed a deadline for settlement, - May 1st 1995 - failing which his clients "will issue a petition to wind the company up, which, (Barry said to Alan), would be against the interests of (Alan's) clients." Alan became nervous: his bill was not paid and he feared that his group would not, with unanimity, accept the latest terms imposed. Also Alan was worried because he had had no experience in winding up proceedings.

- E. The settlement offer incorporated (as part of the deal) a transfer of shareholdings from Alan's group to Barry's group, giving Barry's group control of Family Co in exchange for a cash payment of \$2,000,000 ( 2 million dollars). Alan knew that this offer amounted to a severe undervalue of the worth of his client's shares. However three of his clients were anxious to have cash. As he feared, the other 2 of his clients were opposed to the settlement and wished to negotiate further. There was no prospect of further negotiations. Alan very strongly advised the group to accept the existing terms.
- F. One week before the deadline, at a meeting, Alan said that he wished his bill to be settled. His clients sent him a cheque for \$100,000, thereby reducing the bill to \$200,000. He noticed that it was a cheque drawn on Family Co's account. One of his clients was the 'financial controller' of Family Co. Alan paid the cheque immediately into his office account. Two days before the deadline Alan again advised his clients to accept the previous offer; 3 agreed and 2 dissented, the 2 dissenting shareholders being Colin and David. Alan was extremely concerned; he knew that his clients could not afford to contest the winding-up proceedings.
- G. In desperation, Alan told his clients at the final meeting, on April 30th, that unless they paid his bill in full immediately, he would issue a writ for \$200,000 against them. Reluctantly Alan's clients settled the shareholders' dispute at 5:00 p.m. on April 30th 1995, by agreeing to the terms offered by the other group.
- H. They instructed Alan that when he received the cheque from the other group he should hold it in an interest bearing account until further instructions. Alan received a bank cheque. One day later, he put it into his client account and immediately transferred \$200,000 to his office account.

### **Question**

**You are Alan's partner in the firm and after the settlement Alan told you what had occurred. Review and comment upon Alan's conduct during this retainer and raise any concerns you may have.**

**QUESTION 3 (10 marks)**

- A. Sol acted for the defendant in a civil action concerning ownership of shares in a company. Sol telephoned his client, who was overseas on business, about the terms of an offer of settlement to which his client agreed. The action was then settled on terms that the defendant would pay HK\$500,000 to the plaintiff in exchange for the plaintiff transferring the shares to the defendant. Sol telephoned his client with the news and the client said that he would authorise payment to Sol of the HK\$500,000 "in the next couple of days."
- B. Sol faxed the solicitor for the plaintiff: "Upon receipt of a properly executed share transfer, I will undertake to give to the plaintiff a bank cheque for HK\$500,000 in full and final settlement of this action. "

**Question**

**If you were Sol would you have given this undertaking? If not, what would you have done? Explain.**