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**1996 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

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**HEAD IV: ACCOUNTS AND  
PROFESSIONAL CONDUCT**

Friday, 1 November 1996



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

### **TEST PAPER**

**1 November 1996**

#### **Instructions to Candidates**

- 1. The examination durations is three (3) hours, plus 30 minutes reading time.**
- 2. There are FOUR questions in this paper. EACH must be answered. The paper is divided into Part A and Part B. Part A contains 3 compulsory questions. Part B consists of one question (Question 4 of the paper) concerned directly with Accounts issues. The question is valued at 15 marks. In order to pass this Head you must achieve at least 5 marks in Question 4 as well as pass the test paper overall.**
- 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.**

**Overseas Lawyers Qualification Examination 1996**  
**Head IV : Accounts and Professional Conduct**

**Part A**

**Question 1 (60 marks)**

- A. Sam, a solicitor, had a long-established relationship with Victor, a businessman, and his wife Dora based upon doing professional work for them as well as through social contact. Victor inherited land in the New Territories and built a luxury house on it, for himself and Dora. Then he and Dora divorced. Victor decided to sell the house to Ned his nephew and instructed Sam. Ned asked Sam to also act for him in the purchase and Sam agreed. The price had been agreed and both Victor and Ned were anxious to have the deal concluded quickly. Sam told Victor that for the sake of their friendship he could give Victor a "special price" for the conveyancing, "half of the usual fee."
- B. Sam's search of the title revealed that there was a *lis pendens* registered against the title by Dora who claimed a half-share in the house and who was represented by another firm of solicitors. The draft assignment required that Victor pass "good title" to Ned. Sam told Ned about the problem and said he would speak to Victor about it. Victor said that he knew about the *lis pendens* but that he could "fix it up" with Dora. Sam then told Ned that it appeared that there would be "no problem", so Ned executed the assignment and paid the whole of the purchase price to Sam. Sam put the money into client account. Sam then immediately drew from that account half his fees for the transfer and placed it into his office account.
- C. The next day, Victor rang Sam and asked him to see himself and Dora for lunch as Dora didn't understand what Victor was asking her to do. At lunch Sam explained that unless the *lis pendens* was lifted the transfer could not take place. Victor said to Dora that if there was no sale there would not be any money available to satisfy her claim. Sam said, "As a friend, I don't think that it's in your best interests to keep the threat of action registered, particularly since I'm not sure if you can prove your claim." Victor then nodded and said "Yes. Dora, if you lift the *lis pendens* I will give you half the sale price just as soon as I receive it." Dora then said that she was persuaded and would instruct her solicitors to lift the *lis pendens* just as soon as she received the money.
- D. After Dora left, Victor told Sam that he wanted the money quickly. Sam said that when the assignment was registered he would pay half to Victor and the other half to Dora. Victor said that it would be better if Sam would pay the whole of the purchase price first into Victor's business account. Victor promised that he would immediately transfer half to Dora. Sam, who had by now drunk a bottle of wine with his lunch, agreed. Victor asked Sam if he would put it in writing and Sam wrote on a napkin "I promise to pay the whole of the purchase moneys to Victor upon registration of the assignment." Victor then executed the assignment and Sam lodged it for registration.

- E. The next morning Sam rang Dora. She told him, "Sorry Sam. I have changed my mind. I have spoken to my solicitors and I think that my half share is worth a lot more than what Victor is offering. He is selling cheap because he needs the cash to solve his business debts." Shortly afterwards, Victor rang Sam and asked him whether he had paid the money into his bank account yet. Sam said he had not and now could not because Dora had changed her mind. Victor became very angry and declared that Sam must give him the purchase money.

**Question**

**Advise Sam about his conduct during the transaction with particular emphasis on the professional conduct matters arising and, where appropriate, his legal liabilities.**

**Question 2 (10 marks)**

A. The following advertisement appeared in 'Asian Week':

Sol, Moon & Co. Solicitors - "Leaders in Litigation!"

- \* 25 years experience in commercial and corporate litigation
- \* specialists in trade-mark and design dispute resolution in East Asia
- \* we offer a free first consultation and reasonable fees
- \* our satisfied clients will be named upon request
- \* Fax or phone [Hong Kong] [852-2345678]

B. Sol, Moon & Co is a two partner firm with four assistant solicitors, begun 10 years ago. Its main business has been conveyancing (the result of Sol's connections with construction companies) but now the firm plans to increase its litigation work. Moon has had five years of intense experience of a complex piece of corporate litigation and the other solicitors, between them, have had twenty years experience in minor commercial disputes. One assistant solicitor has dealt with intellectual property matters fairly regularly since he joined six years ago. It was he who also faxed the advertisement to twenty companies who were not clients.

**Question: What issues arise from Sol, Moon & Co's practice promotion and what is your opinion of its conduct?**

**Question 3 (15 marks)**

Frank who had been an assistant solicitor in Firm A's commercial department moved to Firm B and a year later, to Firm C. Whilst in Firm A, Frank had helped in a very minor way in the merger of Zed Corp. and Why? Corp. A year after his move to Firm C's commercial department Frank was speaking to the senior litigation partner Max, who told him that the firm was acting for some members of the Board of Directors of Why? / Zed Corporation in an action against others of the Board for allegedly defrauding the company. "This will mean big business for us for a long time", said Max, "and we need it; our litigations billing has been very poor until now."

**Question: What, if anything, should Frank consider and do? Explain fully.**

**PART B**

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**Part B consists of one question, directed at accounts issues. It is worth 15 marks. In order to pass this Head of the examination you must achieve 5 marks or better in the question.**

**PART B**

**Question 4 (15 marks)**

**NB: there are [5] marks awarded for each of situations A, B and C**

You have recently been given the responsibility in your firm for enquiring that the firm is complying with the Solicitors' Accounts Rules. Satisfy yourself that the firm's book-keeping system is working satisfactorily.

In relation to the matters selected for review, you have been asked to:-

1. State your view as to whether office or client money is involved and explain your view by reference to the appropriate Solicitors' Accounts Rule, if any, and what should be done with the money; and
2. Indicate whether a legitimate alternative treatment under the Solicitors' Accounts Rules exists.

You may assume that, unless stated to the contrary, all cheques received by your firm have been made out in the firm's name.

For example:-

On behalf of a client, Mr. Wong, your firm paid HK\$400 in cash, to another firm of solicitors in respect of photocopying charges. Your firm holds HK\$5,000 for Mr. Wong in the client account.

- (i) Because payment was for a small amount and in cash, it seems likely that the money used came from petty cash: which is office money.
- (ii) HK\$400 could then be transferred into your firm's office bank account out of the money you are holding for Mr. Wong in your client account using the provisions of Rule 7(a)(ii) of the Solicitors' Accounts Rules.
- (iii) Alternatively if the HK\$400 had not been paid in cash, the firm could have used the client account money it is holding for Mr. Wong.

**The situations A, B and C that you are obliged to review are:-**

- A. The receipt of written instructions from your client, Mrs Dim, that the funds held by your firm on her behalf are to be used to discharge the HK\$15,500 owed to the firm by her son, Sum, in respect of profit costs and disbursements. The firm holds HK\$30,000 for Mrs Dim.
- B. The payment of HK\$11,000 to private investigators used by your firm in connection with client Tam's trade mark infringement case. The private investigators were instructed by your firm and so billed the firm direct. The firm holds HK\$50,000 on behalf of Tam.
- C. The receipt of a cheque for HK\$17,000 from client Yan, with whom had been agreed an all inclusive fee of HK\$32,000 for the services to be provided by your firm.

**This is the end of this test paper**