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**2015 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

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**HEAD IV: ACCOUNTS AND  
PROFESSIONAL CONDUCT**

Thursday, 12 November 2015



# HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

## TEST PAPER

12 November 2015

### Instructions to Candidates:

1. The duration of the examination is 3 hours and 30 minutes.
2. This is an open-book examination.
3. This paper is divided into two parts: Part A is concerned with Accounts issues and Part B is concerned with Professional Conduct issues. A PASS IN BOTH PARTS MUST BE ACHIEVED IN ORDER TO PASS THE TEST PAPER OVERALL.
4. There is ONE question in Part A (Accounts) and there are THREE questions in Part B (Professional Conduct) in this paper. Each question in both Parts must be answered.
5. Part A is worth 25 marks. Part B is worth 75 marks.
6. You must answer:
  - Question 1 (Accounts Part) in Answer Book 1
  - Questions 2 to 4 (Professional Conduct Part) in Answer Book 2.
7. Start each question on a separate page of your answer book.
8. Each question has the value noted on the Test 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.
9. An examiner will be present for the first 30 minutes of the examination. Any questions relating to the paper must be raised in that period. Questions raised after the first 30 minutes will not be entertained.
10. Do not take either this question paper or any answer books with you when you leave the examination room.

## **2015 Accounts and Professional Conduct Test Paper**

### **PART A (Accounts)**

**This Part is worth 25 marks. There is one question. You must pass this Part and Part B in order to pass this Head.**

**RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY.**

**2015 Overseas Lawyers Qualification Examination**  
**Head IV: Accounts and Professional Conduct**  
**Part A (Accounts)**

**Question 1 (25 marks)**

A. X has instructed your Firm to act for him in the purchase of a house in the New Territories. All "Know Your Client" obligations have been carried out and there is no issue as to the source of monies received by your Firm.

(i) On 1 April 2015, you carried out a land search. The cost of the land search was HK\$25.00.

**(2 marks)**

(ii) On 3 April 2015, you received from X, a cheque for HK\$500,000 being the sum that was due to be paid upon signing the Provisional Sale and Purchase Agreement.

**(1 mark)**

(iii) On 4 April 2015, the Provisional Sale and Purchase Agreement was signed and HK\$500,000 was paid to Z, the vendor.

**(3 marks)**

(iv) On 5 April 2015, your Firm paid HK\$500 in respect of obtaining various photographs of the house.

**(1 mark)**

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

(v) On 16 April 2015, the Sale and Purchase Agreement was signed and X provided you with a cashier's order for HK\$5,000,000 in favour of your Firm being the balance of the deposit due to Z. On the same day, the Firm issued a cheque payable to Z's solicitors.

**(2 marks)**

(vi) After receiving the title deeds, you raised questions as to title. A serious dispute took place as to whether title was proved. X was very keen to complete. Therefore, he asked that Leading Counsel be instructed to advise whether title was good. Leading Counsel insisted on being paid a retainer of HK\$150,000. Your Firm paid this sum on 10 May 2015.

**(4 marks)**

(vii) On 15 May 2015, Leading Counsel advised that title was defective. Thereafter, an agreement was reached with Z's solicitors that the purchase would not take place. On 17 May 2015, you received a cheque from Z's solicitors in the sum of HK\$5,500,000 being the return of the deposits.

**(2 marks)**

(viii) On 18 May 2015, your Firm delivered a bill to X in the sum of HK\$190,000 in respect of your profit costs and HK\$150,525 in respect of disbursements. On the same day your Firm issued a cheque in the sum of HK\$5,159,475 payable to X.

**(4 marks)**

**Explain, comment and identify how each of the above should be dealt with in order to comply with the Solicitors' Accounts Rules.**

**[19 marks in total]**

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

**B. What do you understand by the term “Management Accounts” for a firm of solicitors? How would such Management Accounts enhance and assist the partners in their running and supervision of the firm’s accounting systems and enable the firm to enhance profitability?**

**(6 marks)**

**End of Part A (Accounts)**

**2015 Accounts and Professional Conduct Test Paper**

**PART B (Professional Conduct)**

**This Part is worth 75 marks. You must pass this Part and Part A in order to pass this Head. Each question must be answered.**

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

Two months ago, Adrian, an associate with an international law firm, received a call from Chan Chimin, Charles ("**Charles**"), a senior official in the Ministry of Commerce, Mainland China. Charles asked Adrian whether he could quickly meet with his friend Du Linquin, David ("**David**") who had been arrested by the Independent Commission Against Corruption ("**ICAC**") and prevented from leaving Hong Kong.

Two days later, Adrian met with David. David had been arrested for and charged with the offences of bribing unnamed Chinese officials and money laundering. The trial against David had been set down in the High Court for 70 days starting from 5 January 2016.

David had previously engaged a criminal law firm, a barrister and a senior counsel who specialized in criminal law. David told Adrian that Charles advised him to change to Adrian's firm because in Charles' opinion, David should use a big international law firm to explain the intricacies of the business dealings he did in Mainland China and why no criminality was involved in the transactions.

Later that afternoon, Adrian met his good friend Elliot Evans ("**Elliot**"), a junior barrister. Adrian lamented that he probably would have to let go of a well-paid criminal case since he was already 'up-to-his-neck', working on several heavy litigation cases. After learning what had transpired, Elliot remarked that Adrian was silly not to take up the case. "I can do it for \$20 million 'all-in' and you can collect another \$20 million as your fees. I will look after you, don't be such an idiot!"

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



The next day, Adrian spoke with Frank Freeman ("**Frank**"), Adrian's supervising partner. To Adrian's surprise, Frank wanted Adrian to take up the case. Frank said while Elliot's fee would be \$20 million, the firm should ask for \$30 million for counsel's fee 'to provide a safety margin'. The firm's own fee would be \$30 million. Frank reassured Adrian that the firm would be able to support him.

Adrian immediately called David, telling David that the firm would be agreeable to accept his instructions at the 'all-in' fee of \$60 million and Adrian added that the firm wanted an 'upfront' deposit of \$30 million before he would commence work. Later that day, David visited the firm and Adrian signed a proper fee agreement with David.

Two days later, Adrian received an envelope from David's office. The envelope contained a cashier's order of \$30 million in the name of the firm and nothing else. Adrian asked the chief accountant of the firm to make out a receipt, stating David as the firm's client and the subject matter being David's High Court criminal case.

Adrian obtained all the papers from David's previous solicitors and passed a photocopy set to Elliot. Two days later, Elliot called Adrian asking why Adrian did not tell him the case had five defendants, the other four all said they carried out various work according to David's instructions. "This is going to be a 100-day trial". Elliot strongly recommended that a senior counsel should be retained to lead him. Elliot mentioned Gordon Goodman SC ("**Gordon**").

Adrian hurriedly called Gordon's clerk who told him that Gordon would charge one and a half times what Elliot would charge. Adrian was terrified. He reckoned the total fees would now be around \$100 million.

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

Adrian rang David and told him that due to the unexpected complexity of the case, he had to reluctantly tell him that the total fee should be \$100 million. Adrian asked David to pay him another \$20 million as further costs. David said he would talk to Charles first.

Two days later, Adrian received a letter from David. In the letter David said he previously deposited \$30 million with Adrian's firm to pay the preliminary deposit for a property on the Peak. Now that the offer had been declined, David asked Adrian to return the \$30 million. Adrian was devastated; he reported what happened to Frank. Frank was furious. Frank told Adrian to disregard both Elliot's suggestion to engage a senior counsel and David's request to refund the \$30 million.

**A. Comment on the professional conduct of Adrian and what he should have done.**

**(13 marks)**

**B. Comment on the professional conduct of Frank.**

**(12 marks)**

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

Martin Man ("**Martin**") had joined the Hong Kong civil service immediately after leaving university in 1990 and had worked his way up the ranks to become a senior officer in the Immigration Department. In January 2014 he received an unexpected visit from members of the Independent Commission Against Corruption ("**ICAC**") who told him they were investigating allegations of corruption in the Immigration Department. More specifically, it became clear that Martin himself was suspected of accepting bribes in return for granting favours to applicants for immigration status.

In November 2014 Martin sought legal advice from his brother Tom who is a solicitor advocate and partner in a large firm of solicitors in Central. Although Tom is now a specialist advocate in personal injury and matrimonial litigation, he had, in his junior days, represented clients in criminal litigation. Tom was very sympathetic and told Martin that he would be pleased to give him any legal assistance and representation he could, saying that, if any disgrace fell upon Martin, it would reflect badly on the whole family and might affect his own reputation. He said, "My dear Martin, try not to worry. I am totally confident that we will get you off."

In January 2015 Martin was charged with several offences under the Prevention of Bribery Ordinance. In essence the charges alleged that Martin had accepted bribes in return for granting favours to persons seeking immigration status. Martin was granted bail.

When Tom and Martin met in January 2015 in Tom's office, Tom told Martin that, since he was 'family', there would be no written retainer and Tom would give him a reduction of 30% off his usual fee. Indeed, he said, if, which was only a remote possibility, Martin was convicted, he would charge no fee at all. Martin, who by this time had been suspended from his post, said he was very grateful. He also said that, if he was acquitted, he would give Tom a present of his Mercedes car by way of gratitude.

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

**A. Identify and comment upon any possible acts of professional misconduct committed by Tom.**

**(14 marks)**

At a subsequent meeting in Tom's office in February 2015 Martin told Tom that it was true that he had accepted sums of money from some persons seeking immigration status and that he regretted what he had done. He said that he had felt sorry for the persons involved and wanted to help them.

The trial was set down in the District Court in July 2015. Tom told Martin that he must plead not guilty and testify in his defence, protesting his innocence.

**B. Identify and comment upon any further possible acts of professional misconduct committed by Tom.**

**(5 marks)**

The trial was conducted in the District Court in July 2015. The prosecution called several witnesses to testify that they had applied for immigration status and had been invited by Martin to transfer the sums of money in question into a bank account in Martin's name in New Zealand. Tom put to them in cross-examination that they had been told to make these payments by a junior colleague of Martin, Phil, who also worked in the same Department, and that Martin knew nothing of these payments. The witnesses denied this.

In his closing speech Tom told the judge that he had known Martin all his life and that no one could be more honest than Martin.

**C. Identify and comment upon any further possible acts of professional misconduct committed by Tom.**

**(6 marks)**

#### **Question 4 (25 marks)**

- A. Selina is a solicitor in private practice. She deals mainly with conveyancing, probate and bankruptcy work. In June 2015 a former client Connie came to her office saying that she was in serious financial difficulties and needed legal advice as to how to avoid bankruptcy. She told Selina that she owned a flat in Causeway Bay which had been valued for mortgage purposes two years earlier at \$7 million. She said that she was intending to go straight to an estate agent to have the flat put up for sale at a price of \$6.5 million. Selina realized that the property market had risen quite significantly since 2013 and that the purchase price of \$6.5 million was a real bargain. She told Connie to wait for 24 hours before going to the estate agent and said that she could probably find an immediate cash buyer for \$6.2 million and avoid estate agent's fees. Connie agreed.

Selina then telephoned her sister Fiona, who was an investment banker, about the prospect of buying Connie's flat at such a bargain price. Fiona was very keen and immediately agreed to purchase the flat for \$6.2 million. Fiona said that she would, by way of gratitude, reward Selina with a payment of \$500,000 for arranging the purchase. Selina drew up the sale and purchase agreement and invited Connie and Fiona to attend her office at 9:30 am the next day. When they arrived, Selina explained to Connie that Fiona was willing to purchase the flat (without needing to obtain any mortgage) for \$6.2 million and Connie said that she was pleased to secure such a quick cash sale. Connie and Fiona both signed a retainer with Selina. The sale and purchase agreement was then signed by Connie and Fiona and completion was agreed to take place within 10 days. After completion Fiona duly paid the sum of \$500,000 to Selina.

*(See over the page for a continuation of Question 4)*

- (i) Identify any acts of professional misconduct committed by Selina. You may assume that the conveyancing fees charged by Selina to Connie raise no professional conduct issues and that no issues of negligence on the part of Selina arise.

(11 marks)

- B. The next day another client visited Selina's office. He introduced himself as Chris and explained that he needed to borrow a substantial sum of money urgently to pay off his debts. He sought Selina's advice as to how best to negotiate with his several creditors. Selina advised Chris to go to the Bank of West Asia ("**the Bank**"), where her brother Bill worked as the Bank's in-house solicitor, to secure the loan. She said that, in her experience, the Bank was the most likely bank to grant the loan on reasonable terms. Chris said that he had always banked with the Hong Kong and Beijing Bank and preferred to approach them, but Selina insisted that he should go to the Bank instead. She said that she would be willing to continue to assist Chris in negotiating with his creditors only if Chris obtained the loan from the Bank.

Chris then approached the Bank to seek the loan. He discussed the loan with an employee of the Bank who informed him that the Bank would be prepared to lend the required money to Chris only if he could provide a suitable surety. Chris responded a few days later saying that his aged step-mother was prepared to act as surety and provided copies of his step-mother's bank statements, which showed that she was quite wealthy. Bill, Selina's brother, as the bank's in-house solicitor, prepared the necessary papers for the loan together with the surety agreement and handed them to Chris. Chris returned three days later with his step-mother and handed over the surety agreement duly signed in advance by his step-mother. Bill asked the step-mother whether she was happy

*(See the next page for a continuation of Question 4)*

to act as surety and she nodded. Chris and the Bank's representative duly signed the loan agreement in Bill's presence. The Bank, accordingly, lent the money to Chris which was to be repaid over a period of 4 years by installments. Chris paid the first five installments, but then defaulted and made no further payments. It appeared that he had fled from Hong Kong to avoid his creditors and could not be traced.

The Bank, therefore, sought to enforce the surety agreement against Chris' step-mother. On legal advice, she refused to pay, complaining through her solicitor that she had not understood that she had agreed to stand as surety for her step-son's debt. Indeed, she claimed, she did not know what a surety was.

- (i) **Identify any acts of professional misconduct committed by Selina.**  
(4 marks)
- (ii) **Explain what professional duties rested upon Bill in respect of Chris' step-mother's signing of the surety agreement and whether he has breached any of his professional duties.**  
(10 marks)

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