

2016 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

Wednesday, 16 November 2016



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

16 November 2016

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.**
- 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.**

2016 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.

2016 Overseas Lawyers Qualification Examination
Head IV: Accounts and Professional Conduct
Part A (Accounts)

Question 1 (25 marks)

- A. Bill (who is on bail) has instructed you to act for him. He is facing charges of conspiracy to defraud, false accounting and dealing with the proceeds of an indictable offence. His trial is due to commence in the High Court on 1 June 2017.
- (i) On 1 August 2016, you received a cheque payable to your Firm in the sum of HK\$200,000 on account of costs from Bill. The cheque was post-dated to 10 August 2016. (2 marks)
- (ii) On 3 August 2016, you agreed a fee of HK\$100,000 with Junior Counsel in respect of a Pre-trial Review ("PTR") which has been fixed for 17 August 2016. You also agreed with Bill that your Firm's fees for the PTR will be HK\$75,000 (inclusive of disbursements). (2 marks)
- (iii) On 11 August 2016, you were informed by your accountant that the HK\$200,000 cheque had been returned to the drawer. You called Bill who apologised and told you that he would make arrangements to effect payment. Later on that day at around 4:45 p.m., you received a cashier's order drawn on HSBC in the sum of HK\$1,000,000. Attached to that note was a yellow sticker which read "Apologies, this will keep you going". You recognised Bill's handwriting on the sticker. (3 marks)

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

- (iv) On 25 August 2016, your Firm paid HK\$300,000 to Data Limited. Data Limited is a company which specialises in the processing of trial documents.

(1 mark)

- (v) On 15 September 2016, you agreed a brief fee with Leading Counsel in the sum of HK\$3,000,000 and Junior Counsel in the sum of HK\$1,500,000. Both Counsel insisted on receiving their briefs along with payment by no later than 30 September 2016. At the same time, you agreed your fees for all preparation up to and including the first day of trial in the sum of HK\$2,000,000. However, you made it clear to Bill that this sum did not include disbursements such as copying, processing, investigators' fees and anticipated these to be in the sum of HK\$800,000. Bill agreed with the above fees and informed you that payment would be made by the end of the month.

(2 marks)

- (vi) On 29 September 2016, you received a cashier's order in the sum of HK\$7,000,000 from Bill. Bill had previously told you that he had made arrangements for his "good friend" to make a payment on account of your past and some future costs.

(5 marks)

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

15 marks

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

B. You have received a note from your Senior Partner asking for a memorandum as to the relevant provisions in the Solicitors' Accounts Rules in respect of:-

- (i) Dealing with interest on client account; **(3 marks)**
- (ii) Rules 7A; and **(4 marks)**
- (iii) Rule 10(5A). **(3 marks)**

Prepare the memorandum.

End of Part A (Accounts)

2016 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)

Abel is a junior commercial lawyer in the international law firm Baron & Company (the "**Firm**"). The managing partner is Charles and the litigation partner is Dickson. Dickson is handling an appeal against conviction on behalf of Evans, a wealthy businessman, in a money laundering case.

Abel had on several occasions seen Evans in the lobby of the Firm when he came up to meet Dickson. On those occasions, Evans was accompanied by Freeman, another well-known businessman in Hong Kong.

A month ago, Dickson introduced Freeman to Abel and asked Abel to handle a share sale transaction for Freeman. Upon taking instructions, Abel understood that Freeman wanted to acquire the entire issued capital of a British Virgin Islands' company in the name of Gillian & Company Limited (the "**Company**").

As the consideration for the shares was \$50 million, Abel sought additional information on the transaction from Freeman. Freeman was quite offended by Abel's questioning and that was why he deliberately gave Abel false answers to show his dissatisfaction. For example:

- (a) When asked about the source of funds, Freeman said most of the \$50 million were casino winnings;
- (b) When asked about the purpose of the transaction, Freeman said he simply liked the name of the Company;
- (c) When asked about his relationship with the sellers of the Company, Freeman said they were his poor relatives; and

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

(d) Regarding other questions, Freeman said 'ask Dickson'.

Abel was terrified when he found out the Company did not carry on any business dealing; it was a 'ready-made' company recently bought by the sellers who were two Filipino-Chinese.

Abel began to suspect the \$50 million could be proceeds of an indictable offence committed by Evans and that Freeman merely acted as a channel for Evans.

Abel mentioned his concerns to Dickson. Abel suggested that the Firm should make a report to the Joint Financial Intelligence Unit (the "JFIU") as he suspected that the \$50 million now sitting in the client account of the Firm represented actual proceeds of crime, and that he and the Firm might be accused of dealing with that money unlawfully.

Because of his professional relationship with Evans and Freeman, Dickson knew that they were good friends and that Freeman stood as surety for Evans in his bail pending appeal. Dickson also knew that Freeman had been very successful in investing in the Philippines.

Dickson asked Freeman why he wanted to purchase the Company. Freeman told Dickson that the Company had recently entered into a Memorandum of Understanding ("MOU") with the Government of Philippines for real estate development rights in Manila. That underlying real estate business was extremely profitable. Evans gave Dickson a copy of the non-binding MOU.

Dickson passed the copy MOU to Abel. Abel became even more concerned about the share sale transaction, saying the MOU was "a sham". Dickson warned Abel not to do anything silly; by that, Abel understood Dickson wanted him not to report the transaction to the JFIU. Abel immediately asked Dickson to release him from acting in the share sale transaction.

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

The next day, Dickson and Abel went to consult Charles. Dickson mentioned that overnight he had telephoned a London Queen's Counsel who said that in the United Kingdom the prosecution would have to prove a purpose on the defendant's part which came very close to proof that he knew the property was actually tainted. Dickson denied that he had any such knowledge.

Charles realized that making a report to the JFIU would infuriate Freeman. He knew as a fact that the Firm was making very good profits from Evans' criminal appeal. Charles suggested that Abel draw up the completion documents and then pass the file on the share sale transaction back to Dickson.

After returning the file to Dickson, Abel focused on other cases and he did not report the transaction to the JFIU.

Dickson was totally convinced that the share sale was genuine and lawful. Dickson completed the transaction and he did not report it to the JFIU.

After the meeting, Charles became more and more concerned with whether Abel might later lodge a complaint with the Law Society against him. After the transaction was completed, Charles immediately made a report to the JFIU without informing Dickson and Abel.

A. Comment on the professional conduct of Abel.

(9 marks)

B. Comment on the professional conduct of Dickson.

(9 marks)

C. Comment on the professional conduct of Charles.

(7 marks)

Question 3 (25 marks)

James Ting ("James") was an accountant employed by a large firm of accountants in Hong Kong. He was rather good at badminton and played regularly for his team known as 'the Accounting Shuttlers'. One evening in June 2016 he drove his Mercedes car to a badminton match in Tsuen Wan. He and his team played well and won the match against the local Tsuen Wan badminton team. After the match he drank two bottles of beer celebrating with his teammates at a local bar. He then collected his car to drive to Hong Kong Island where he lived.

Whilst driving home he felt tired and sleepy. At about 10:00 p.m. he drove into the back of a car that had stopped at traffic lights. The car was driven by Jenny Smith ("Jenny"), a school teacher born in Australia.

Jenny suffered whiplash injuries to her neck and injuries to her legs and she was taken to hospital for treatment. Most unfortunately, Jenny was pregnant at the time of the crash and the shock of the crash caused her, whilst in the hospital, to abort her unborn baby. James did not suffer any injuries but was naturally shaken by the incident and very upset that Jenny had lost her unborn baby.

Two months later Jenny, on the advice of her friend Pat, went to a firm of recovery agents for assistance. The recovery agent told Jenny that he would finance her action against James by paying her legal fees and disbursements in return for 20% of any damages recovered. The recovery agent also said that Jenny must retain the law firm chosen by him. The law firm would then pay the recovery agent from any award of damages recovered as agreed between the law firm and the recovery agent. Jenny readily agreed since she was short of cash.

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

The recovery agent then approached David, a newly qualified solicitor employed by the law firm of So and So, who agreed to the arrangement between Jenny and the recovery agent. David, whose speciality was family law, was subsequently retained by Jenny under the firm's usual written retainer. At their first interview Jenny told David that she had stopped her car at traffic lights but the car behind her had failed to stop in time and had driven into the back of her car causing her personal injuries, including aborting her unborn child, and damage to her car. David said that he would represent Jenny in an action claiming compensation for her personal injuries and damage to her car.

David informed Jenny that his firm would commence an action in the District Court. He sent the required notice before action and subsequently arranged for the service of a writ endorsed with a statement of claim on James. Without consulting Jenny, David asked his clerk to approach Bill, a barrister specialising in personal injury litigation. David's clerk negotiated the fee with Bill who agreed to take on the case.

Having received the writ and statement of claim, James retained the services of a firm of solicitors, Ping & Pong. Ping & Pong agreed to represent James in his defence and he signed a written retainer with the firm. One of the terms of the retainer was that James agreed that the firm would not be liable for any negligence in respect of the work undertaken by the firm. The firm's fees were also agreed. Ping & Pong were experienced in personal injury litigation.

James was, however, unhappy with these terms and sought the advice of his sister, Pretty, who was a solicitor in the firm of C, P and M. She had wide experience in personal injury litigation. She advised James that he would be better off by retaining her as his solicitor and she would handle his case personally on a pro-bono basis. She said that there was no need for counsel to be instructed as the trial would take place in the District Court. She also said there was no need for a written retainer since James

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

was 'family'. She emphasized that she would devote all her best endeavours to his defence since James had been very upset, particularly because Jenny had lost her baby which also caused her, Pretty, much sadness. She said she would defend James 'for the sake of the family's honour and peace of mind'.

Answer the following questions:

- A. Identify any acts of professional misconduct committed by David.**

(11 marks)

- B. Identify any acts of professional misconduct committed by Ping and Pong.**

(3 marks)

- C. Identify any acts of professional misconduct committed by Pretty.**

(7 marks)

James told Pretty that he had been drinking beer before the crash and was sleepy and asks her whether this must be revealed to the court and the other party. He says that, if asked in cross-examination during the trial, he intends to deny the fact.

- D. Advise Pretty as to her professional obligations as James' solicitor with regard to this information before and during the trial.**

(4 marks)

Question 4 (25 marks)

- A. Peter is a solicitor employed by the firm of Chan and Chan. He specializes in criminal litigation. He was retained jointly by Tim and Wesley who had been charged with money laundering through a well-known local bank. Tim held the position of director of his company whereas Wesley was a mid-ranking employee of the company. They met Peter together and explained to him that the money in question had been deposited in the bank for the proper purpose of investing in Hong Kong real estate. Wesley told Peter that he had deposited the money in the bank on the instructions of Tim, 'his boss'.

Tim informed Peter that he alone had previously been involved in several similar transactions with the same bank and had never got into any trouble. Tim, however, has been advised by the company's solicitor that he should refrain from any similar acts in the future as such might be viewed by the police as money laundering. Both clients said that they wished to testify at their trial. Peter prepared their defences for the trial accordingly.

Two months before the scheduled trial date, Tim told Peter that he was unhappy with Peter's handling of the case and had retained a different firm to represent him at the trial.

- (i) **Advise Peter whether he may ethically continue to represent Wesley at the trial.**

(8 marks)

- (ii) **Would your advice differ if Tim had informed Peter of his change of solicitor only two days before the trial was scheduled to begin?**

(4 marks)

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

B. You are a solicitor in private practice. You are acting for Mr. Wong in his divorce from Mrs. Wong. In the light of the impending divorce, Mr. Wong has decided to purchase a flat in the newly constructed Seaside Gardens in North Point and he has retained you to act for him. You have also been retained to represent the vendor, Mega Development Ltd. In checking the title to the flat, you have discovered that the block has been constructed in breach of the height restriction in the Conditions of Sale which would render the vendor's title defeasible. You have informed the vendor who tells you not to disclose the defect in title to the purchaser.

(i) What are your ethical obligations to both the vendor and the purchaser?

(10 marks)

(ii) Given your advice in (i) above, are you entitled to continue to act for Mr. Wong in the divorce?

(3 marks)

End of Part B (Professional Conduct)