

**2017 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS**

**Tuesday, 7 November 2017**



## **2017 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.**

## 2017 Overseas Lawyers Qualification Examination

### Head IV: Part A on Accounts

#### Question 1 (25 marks)

X and Y have opened a new law firm. They will be the only partners and they will not employ any other solicitors. They are aware that the Solicitors' Accounts Rules (Cap. 159F) have recently been amended and require your advice to them in respect of the following issues. **Provide a memorandum to address the following:-**

- (a) Client Account Reconciliation – They do not have any idea as to what this means. They want this explained.

**(5 marks)**

- (b) They will both be travelling extensively and wish to ensure that their bookkeeper, who did work for another law firm some 10 years ago and has just returned to work, can sign any cheques that are needed.

**(5 marks)**

- (c) They have received a cheque in the sum of HK\$2,000,000 by way of an agreed fee (HK\$1,000,000) for work they are about to do and the balance on account of costs for future work and disbursements.

**(5 marks)**

- (d) They have asked if they must open a client account with a bank.

**(3 marks)**

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

(e) They wish to open a client account at a bank in Shanghai to make it easier for their clients located in the Mainland to pay monies on account of costs.

**(3 marks)**

(f) They have heard that Management Accounts may assist them. They wish to know what is meant by Management Accounts and whether these would be of any use to their firm and why.

**(4 marks)**

Ensure that your answers are limited to Solicitors' Account Rules and you can assume that all Know Your Client obligations have been completed.

**End of Part A (Accounts)**

**2017 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL  
CONDUCT**

**Tuesday, 7 November 2017**



## **2017 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.**

**2017 Overseas Lawyers Qualification Examination**  
**Head IV: Part B on Professional Conduct**

**Question 1 (25 marks)**

Ashley joined his principal Barry, who practised as a sole proprietor, soon after Ashley's admission as a solicitor. Ashley was glad when Cameron asked him whether he would be able to handle the sale of one of the most expensive properties on the Peak. Cameron was the estate agent for Debra, the owner of the property.

Cameron explained to Ashley that Debra now lived in UK, she was 88 years old and a bit deaf, and Debra had authorised Cameron to sell the property if her asking price of \$2 billion was met. Cameron said he had found a Mainland buyer who was eager to buy that property. The difficulty for Cameron was that he needed to convince Debra that Ashley had the necessary experience to handle the sale of her property.

Ashley spoke to Barry, suggesting that he would have to decline the opportunity to work on the transaction as he did not have the required experience. Barry disagreed, saying that their former firm did many major property transactions and some were worth in the billions. Although Barry himself was not involved in those transactions, Barry said surely they could quote those as references as he was a former senior partner of that firm. Barry later supplied Ashley with a list of property transactions and told Ashley to show that list to Cameron.

Cameron immediately arranged a video conference for Ashley to speak with Debra. Debra looked quite ill on the screen. She was in a hospital bed and breathing oxygen through a tube. Cameron shouted in a loud voice telling Debra that Ashley was a very well-known property lawyer in Hong Kong and he had done many similar transactions successfully.

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

Debra did not look attentive or responsive. Then somebody in the background said that Debra understood everything and Debra agreed to appointing Ashley as her lawyer in the property transaction.

Ashley approached Eden for help. Eden was a partner in the property department of Ashley's former firm. On hearing what Ashley told him, Eden said he was astonished that the sale price of that property could be so low as one of his clients, the famous tycoon Mr. Li, had offered \$2.5 billion for the property just six months ago and that offer was rejected by Cameron as being too low. When Ashley relayed that information to Barry, Barry told Ashley it was not their problem.

Requisitions on the title of the property were raised by Fanny, a solicitor acting for the Mainland buyer. One of the requisitions was about the absence of the certificate of compliance with the conditions in the government grant in respect of one of the three houses in the property built after 1980. Ashley asked Cameron whether he knew anything about that. Cameron said according to his experience, some old buildings on the Peak did not have those certificates because the owners did not bother to apply for them. When Ashley suggested that he should write to the government departments to enquire, Cameron immediately stopped him, warning him the terrible consequence to the sale if a negative reply was received from the government. Ashley asked Barry for guidance. Barry rang up Fanny and Fanny said as her client would redevelop the property after the purchase, the certificate of compliance to her was not an issue. Barry told Ashley not to write to the government departments.

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



Two days before completion, Fanny rang Ashley saying the buyer's lending bank refused to lend money to the Mainland buyer because there was no certificate of compliance for one of the three houses in the property. Fanny said the buyer could complete without bank financing, but the price would have to be reduced to \$1.5 billion to reflect the title defect. If the seller did not agree with the reduction in price, her client was willing to cancel the transaction.

Ashley panicked and asked Barry for help. Barry lost his temper and scolded Ashley, saying he was the most useless lawyer he had ever come across.

Ashley and Barry told Cameron about this development. Cameron said Debra would not sell below \$2 billion. Cameron suggested to Ashley and Barry that they should pay the difference of \$0.5 billion out of their own pockets in order to complete the transaction.

- (a) Comment on the conduct of Ashley. (9 marks)**
- (b) Comment on the conduct of Barry. (6 marks)**
- (c) Comment on the conduct of Eden. (3 marks)**
- (d) Comment on the conduct of Fanny. (3 marks)**
- (e) Advise what Ashley and Barry should do to handle Fanny's and Cameron's requests. (4 marks)**

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

Frank is a solicitor in private practice who has specialised in criminal litigation for many years. He is also a keen member of a local mah-jong club in Kowloon. Over the years he has professionally carried out considerable commercial work for ABC Trading Company Ltd. ("ABC") whose managing director Wong he has known as a friend and fellow mah-jong player for over 15 years.

Wong has just come to meet Frank at Frank's office explaining that he has a problem. He says that one of his employees, Edith, has been arrested and is in police custody at Wanchai Police Station charged with stealing \$50,000 from ABC. Wong explains that he believes that the matter had been reported to the police by another employee, Mary, with whom Edith had had a recent argument over office space. Mary had accused Edith of receiving preferential treatment in that Edith had been allocated by Wong a larger working space in the office than Mary.

Wong tells Frank that he has checked the company's books of account and it does appear that Edith had taken \$50,000 from the bank account of ABC without the company's permission. Wong says that he does not care because the sum of money stolen is relatively small and that he confidently expects that Edith intends to repay the money. Wong adds that the whole matter is very embarrassing as he has a close personal relationship with Edith (she has been his lover for two years) and he does not want his wife to find out. Wong earnestly requests Frank to secure Edith's release as soon as possible.

Frank tells Wong that he greatly sympathises with his predicament and will do whatever he can to help Wong and Edith. He has been friendly with Wong's wife (also through the mah-jong club) and does not want their marriage to be put in jeopardy.

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

Frank says that he will take up Edith's application for bail and her defence at trial. He also advises that counsel should immediately be instructed to secure bail for Edith. He recommends Charles who is newly qualified and enthusiastic. Frank suggests that Charles should not be informed about Wong's relationship with Edith since Charles does not need this information when making the bail application. Wong readily agrees to both the recommendation and suggestion. Frank says that he will act as a surety in the bail application and that he will charge Edith only a modest fee since Wong is his friend. Frank then asks his clerk to contact Charles and negotiate the fee with him.

Charles was duly instructed the same day and Frank and Charles went to interview Edith in the Police Station. Edith said that she was very pleased to be represented by them. There was no written retainer and the fee for Frank and Charles was not discussed.

**(a) Identify acts of professional misconduct committed by Frank.**

**(19 marks)**

Now assume that Edith was granted bail and the case has proceeded to trial in the District Court. Frank has decided to represent Edith personally. Edith tells Frank that she stole the money only to pay for her mother's hip transplant operation and that she had always intended to repay it within the next 12 months. She asks Frank how this will affect the presentation of the defence case by Frank and, in particular, whether she is obliged to plead guilty.

**(b) Advise Edith.**

**(6 marks)**

### Question 3 (25 marks)

- A. Stella, a solicitor advocate, had been instructed to act for Global Logistics Co. Ltd. ("Global") against whom Patrick had commenced a personal injury action. Patrick, who worked as an accountant in Kowloon, had been returning home on his bicycle after work when he had been struck by a delivery van owned by Global and driven by Mr. Chan. Patrick had sustained serious personal injuries. A witness who had seen the accident confirmed in a statement to the police that the van had struck Patrick from behind.

The witness also said that Patrick had not been wearing any safety helmet at the time of the accident. The defence pleading had been drafted by Stella. When the case came to trial in the Court of First Instance, Stella appeared as a solicitor advocate by way of representing Global. Judgment was given in favour of Patrick and substantial damages were awarded for the pain and suffering caused by his personal injuries. The Court of First Instance had ruled, however, that the damages should not be reduced by reason of Patrick's failure to wear a safety helmet since contributory negligence on Patrick's part had not been pleaded in the defence pleading.

- (a) **Taking onto account Stella's duty to the Court, would it be proper for Stella to represent Global in an appeal against the Court of First Instance's refusal to reduce the award of damages on the basis of Patrick's contributory negligence?**

**(5 marks)**

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

- B.** In July 2016 Peter and Mary, who were husband and wife, decided to take their son Paul, aged 5, for a day in the Sai Kung countryside. Peter agreed to take them in his car. Whilst driving near Sai Kung Peter braked hard to avoid a dog which had run into the road and a car driven by Mr. Yip drove into the back of Peter's car. Peter, Paul and Mary all suffered serious personal injuries.

They have all come to you, a solicitor specializing in personal injury litigation and wish to instruct you to act for them jointly in pursuing an action against Mr. Yip in negligence.

- (b) Should you agree to act jointly for Peter, Paul and Mary? What considerations should you take into account in reaching your decision?**

**(9 marks)**

- C.** Sally is a partner in the medium-sized solicitors' firm of Win & Lose. She specialises in commercial work. One day whilst having dinner with her family, her brother Bill, who holds a degree in Environmental Studies from Harvard, told her that he had a great idea as to how to make a lot of money out of recycling rubbish washed in from the sea. He said that he needed to buy a large warehouse and expensive machinery for the project but did not have the money to do so. Sally suggested they approached rich Aunt Winnie who had always been very fond of Bill since he had been very small. Bill and Sally went to visit Aunt Winnie. Bill explained to Aunt Winnie his idea and she was enthusiastic and agreed to lend him \$5 million to purchase the warehouse and the necessary machinery for recycling the rubbish.

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

Bill agreed that Aunt Winnie would receive 10% of any net profit made from the project over the next 5 years. Sally was retained by Bill and Aunt Winnie under the firm's standard retainer letter to draft the loan agreement by which Bill agreed to pay back the money to Aunt Winnie within 5 years together with interest at 4% per annum and to give her additionally a 10% share of any net profit made over the next 5 years. After they both signed the loan agreement in Sally's office Aunt Winnie handed a cheque to Bill for \$5 million and Bill banked it.

Three months later Bill withdrew all \$5 million from his bank and unexpectedly left Hong Kong. Neither Aunt Winnie, Sally nor anyone else seems to know where he has gone. Aunt Winnie was, not surprisingly, concerned in case he had run off with her money without intending to repay and wrote to Sally expressing this concern.

Sally replied by personal letter (i.e. not on the firm's letterhead):

"Don't worry, Aunt Winnie. I am totally confident that Bill has just gone overseas to increase his understanding of rubbish recycling and, to demonstrate my confidence, I undertake to be responsible for the repayment of my brother's debt immediately if he fails to return within 3 months."

Unfortunately, Bill did not return and after 6 months Aunt Winnie demanded that Sally and her firm honoured the undertaking. When Sally refused, Aunt Winnie threatened to report the matter to the Law Society.

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

Sally has come to you, a fellow solicitor, for legal advice. She maintains:

- (i) that the undertaking is not binding on her since it was given to a family member by way of a personal letter and not under the firm's letterhead;
  - (ii) that the undertaking is not enforceable against her personally since whether or not Bill repays the debt is outside her control;
  - (iii) that the undertaking is not binding on her personally as she does not have \$5 million and is financially unable to comply with the undertaking;  
and
  - (iv) that the undertaking is not binding on her firm.
- (c) **In the light of Aunt Winnie's threat to report Sally to the Law Society and taking into account each of Sally's four arguments separately, in your opinion are Sally and her firm professionally liable to comply with the undertaking?**

**(11 marks)**

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