

THE LAW SOCIETY OF HONG KONG
OVERSEAS LAWYERS QUALIFICATION EXAMINATION
2021 SUPPLEMENTARY INFORMATION PACKAGE
HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

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Important: The test paper for Head IV Accounts and Professional Conduct:

- 1. is open book. Candidates may bring in and refer to any book, document or other written material**
- 2. IS DIVIDED INTO TWO PARTS:
PART A - ACCOUNTS
PART B – PROFESSIONAL CONDUCT
A PASS IN PART A AND PART B MUST BE ACHIEVED IN ONE SITTING TO PASS HEAD IV**
- 3. Part A on Accounts is 1 hour 30 minutes in duration and Part B on Professional Conduct is 2 hours 45 minutes in duration**
- 4. has no specific reading time allocated**
- 5. has ONE question in Part A and THREE questions in Part B. Each question in both Parts must be answered.**

1. Standards, Syllabus and Materials

Overseas Lawyers Qualification Examination

HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

Standards, Syllabus and Materials

STANDARDS

Candidates will be expected:-

- (i) to be familiar with the law and rules of professional conduct affecting and governing practice as a solicitor in Hong Kong;
- (ii) to be familiar with the Solicitors' Accounts Rules, in particular the principles relating to solicitors' clients accounts; and,
- (iii) to be able to identify and analyse professional conduct issues (including issues in relation to solicitors' accounts) which may arise in practice, to advise with respect to such issues and to take appropriate decisions on such issues in relation to his and his firm's practice. He will be expected to give comprehensive reasons for his advice and decisions; and
- (iv) to display the knowledge and experience of the above matters.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

1. Solicitors in Private Practice

- Practising Certificates
- Insurance
- Solicitors' Practice Rules
- Supervision of a solicitor's office
- Fee sharing
- Restrictions on unqualified persons

2. Rule 2 of the Solicitors' Practice Rules

3. **Obtaining Instructions**

- **Solicitors' Practice Promotion**
 - (a) The Solicitors' Practice Promotion Code
 - (b) Unacceptable Practice Promotion
 - (c) Recovery agents

4. **Money Laundering**

- Practice Direction P
- The Organized and Serious Crimes Ordinance (Cap 455)
- The Anti-Money Laundering & Counter-Terrorist Financing Ordinance (Cap 615)

5. **Fees**

- Duty to inform client
- Estimates and agreed fees
- Increase of fees during retainer
- Interim bills
- Bills of costs and disbursements
- Taxation of costs
- Recovery of fees
- Overcharging and unreasonable fee arrangements
- Payments on account of costs and disbursements
- Maintenance, champerty and contingency fee arrangements

6. **Retainer**

- Accepting instructions; form and contents of retainer
- Rule 5D letters in criminal cases
- Express and implied retainers; the quasi-client
- Grounds upon which solicitor must decline retainer
- Solicitor limiting liability in the retainer
- Professional and common law duties owed to client during retainer
- Duty to advise on legal aid
- Settlement of actions

- Instruction of advocates
- Termination of retainer
- Solicitor's retaining lien

7. **Competence and Quality of Service**

- Duty to act competently
- Claims against a solicitor
- Law Society enquiries and investigations

8. **The Fiduciary Duty**

- Making secret profit
- Gifts from clients
- Lending to clients and borrowing from clients
- Purchasing property from clients
- The approach of the courts to breach of fiduciary duty

9. **Confidentiality and legal professional privilege**

- The duty of confidentiality
- Joint retainers and the duty of disclosure
- Solicitor joining new firm
- Confidential documents sent to other party by mistake
- Legal professional privilege
 - (a) Solicitor client advice privilege
 - (b) Litigation privilege
 - (c) Solicitor's duty to protect client's privilege
- The approach of the courts to protecting breach of confidentiality and legal professional privilege

10. **Conflicts of Interest**

- Conflict between joint clients
- Conflict between two present clients
- Conflict between client and former client
- Solicitor's duty to decline instructions where there is a conflict of interest

- Conveyancing transactions - Rule 5C, Solicitors' Practice Rules
- The approach of the courts to conflict of interest

11. **The Litigation Solicitor**

- The solicitor as advocate in civil and criminal cases
- Duties to the client
- Duties to the Court before trial
- Duties with respect to affidavits, affirmations and statutory declarations
- Duties to Court when presenting case
- Solicitor's duties in respect of his own and the other party's witnesses
- Duty during examination-in-chief and cross-examination
- Duty not to mislead or deceive the Court
- Duty where solicitor believes client is deceiving the Court or committing perjury
- Duty where client confesses his guilt to solicitor before or during trial
- Conferences with client and advocates
- Settlement of proceedings

12. **Relations with other Solicitors**

- Contact with the other solicitor's client
- Reporting misconduct

13. **Relations with the Bar**

- Instructing barristers
- Court attendances
- Responsibility for paying barrister's fees

14. **Relations with Third Parties**

- Duty of fair dealing
- Dealing with unrepresented parties
- Taking oaths, affirmations and declarations

15. **Professional Undertakings**

- What constitutes a professional undertaking
- Giving and receiving professional undertakings
- Construction of professional undertakings
- Breach of professional undertakings
- Undertakings as to costs
- Undertakings in conveyancing transactions
- Enforcement of professional undertakings

16. **Discipline**

- Powers and role of the Law Society of Hong Kong
- Solicitors' Disciplinary Tribunal

17. **Solicitors' Accounts**

- Client account (management and use of funds therein)
- Firm account (management and use of funds therein)
- Solicitors accounts generally (including relevant Rules and Practice)
- Clients instructions as to funds and duties in respect thereof
- Handling of mixed moneys

18. **Law Society's Code of Advocacy for Solicitor Advocates**

Candidates WILL NOT be examined on the Code of Advocacy for Solicitor Advocates.

MATERIALS

- The Hong Kong Solicitors' Guide to Professional Conduct
- The Legal Practitioners Ordinance and all subsidiary legislation
- The Solicitors' Accounts Rules
- Manual on Solicitors' Accounting
- The Solicitors' Practice Promotion Code
- The Practice Directions 1990 as amended from time to time
- The Code of Conduct of the Bar

- *Gary Meggitt*, 'Wilkinson's Professional Conduct of Lawyers in Hong Kong' (Desk Edition), LexisNexis, 2019

It is recommended that these materials be brought into the examination.

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2. Examiners' Comments on the 2018, 2019 and 2020 Examinations

Examiners' Comments on the 2018 Examination

HEAD IV: Accounts and Professional Conduct

Part A ACCOUNTS

Question 1

1. This year's question was very straightforward and should not have caused any difficulties at all to the candidates. Overall, the answers were far more focused and fuller than previous years.
2. The questions concerned two parts:-

Part A

- (i) The candidates were asked to address various accounting entries which were straightforward.
- (ii) However, many of the candidates still did not read the question, for example, some still insisted on all about Know Your Client obligations, etc. when it was made perfectly clear that these had been dealt with.
- (iii) The candidates also did not look carefully at the allocations of marks attributable to each particular part. For example, certain candidates spent far much time on answering (a) and did not devote sufficient time to deal with the issues raised in (e) which carried far more weight and marks.
- (iv) One of the issues was the ability of the candidates to recognise the correct treatment of disbursements.
- (v) However, what was worrying was that in respect of (f), the question required the candidates how to deal with a cashier's order which was payable to the vendor's solicitors. Unfortunately, most candidates took the view that it should be paid into clients account! This again showed that the lack of application and the ability to read the question carefully.

Part B

It was very straightforward and required a discussion on online banking and its use as an essential tool in managing a firm. However, many of the candidates failed to answer this in any detail despite the fact that 5 marks was attributable to it and many candidates just copied the relevant extracts from the Accounting Manual.

3. However, overall, the pass rate for the Accounts section was far better than in previous years.

PART B PROFESSIONAL CONDUCT

Question 1

Q1 of Part B required the candidates to comment on the professional conduct of Andrew, a junior commercial lawyer (part (a)) and the professional conduct of Gerald, the managing partner (part (b)), of G & Co. G & Co's release of the escrow money from the firm's trust account to Barry had resulted in G & Co being investigated by police, and Andrew and Gerald being accused of handling stolen property and participating in money laundering.

In part (a), candidates would have to examine the conduct of Andrew in handling an escrow transaction. Whether Andrew had taken appropriate steps in the identification, verification and due diligence of his clients Barry and Digital Ltd, represented by Cyril, its CEO. Whether he had sought proper advice from Gerald in the course of acting. How he was wrong-footed when Digital Ltd was replaced by a BVI company Indigo Ltd on the day of signing the escrow agreement. How he failed to conduct customer due diligence measures on Indigo Ltd, a company which in fact did not exist. 18 marks (out of 25 marks) have been allocated to part (a).

In part (b), candidate would have to examine the conduct of Gerald, whether or not he had properly supervised Andrew, whether his direction to Andrew to accept instructions to act was motivated by greed of a fee of \$2 million. Whether he had suspicion of the escrow transaction; whether he had acted properly when his firm did not stop acting and he did not report his suspicion to JFIU. 7 marks (out of 25 marks) have been allocated to part (b).

It is disappointing that most candidates did not prepare the subject well despite AML/CTF is a serious subject for lawyers in today's practice environment. The Anti-Money Laundering & Counter-Terrorist Financing Ordinance Cap 615 ("AMLO") has been passed into law on 1 March 2018 and lawyers are designated non-financial businesses and professions ("DNFBP"). The Law Society has specifically informed all candidates by its letter of 1 August 2018 that AMLO falls within one of the pieces of legislation for examination under paragraph 12 of Section C of the OLQE Information Package, the syllabus of Head IV has been amended to include AMLO. Indeed the Law Society's above letter may probably be the biggest tip-off in the 2018 OLQE.

Candidates paid more attention to the Law Society's own PDP and less to AMLO. In marking the scripts no distinction was made between the two so long as a candidate could correctly make reference to either the PDP or the AMLO in support of an answer.

Many candidates made general references to a host of irrelevant issues such as the competence of Andrew, which cannot be an issue as he had been supervised by Gerald; the obtaining of a huge fee being a misconduct and the lack of a written agreement on the fee; these cannot be relevant issues as the fee was freely agreed, it was paid and there was no challenge on the fee whatsoever. The real issue is why Barry was willing to pay a big fee for a small job and whether a justifiable suspicion would have arisen because of Barry's willingness to pay such a big fee. Nevertheless some bonus marks ranging from half a mark to two marks were given for good effort. Also bonus marks were given for good presentation.

Question 2

This was a 'stock' question on litigation ethics. Simon was retained to represent his client (charged with a criminal offence) through to trial. The following issues should have been identified and dealt with:

Part (a)

- (i) Simon (and his firm) appear to have breached para 6(f) of the Solicitors' Practice Promotion Code which prohibits solicitors referring to their success rate.
- (ii) A solicitor must not accept instructions to act in a matter where another solicitor is acting for the client in respect of the same matter unless the first solicitor consents: Principle 5.11, SG. This principle does not, however, preclude a solicitor from giving a second opinion without the first solicitor's knowledge but in no circumstances should the second solicitor seek to influence the client to determine the first solicitor's retainer: commentary 2 of Principle 5.11.
- (iii) Is Simon competent? He is a corporate and commercial lawyer and he has accepted a retainer in a criminal case. Principle 6.01, SG, provides that a solicitor owes a duty to his client to be competent to perform any legal services undertaken on the client's behalf. Competence involves more than an understanding of legal principles; it involves an adequate knowledge of the practice and procedure by which such principles can be effectively applied and the ability to put such knowledge to practical effect: commentary 4 of Principle 6.01, SG. Principle 5.03, SG, further says that a solicitor must not act in circumstances where he cannot represent the client with competence; he may act, however, where he instructs competent counsel (see commentary 3 of Principle 5.03, SG), although, even so, he must be able to exercise sufficient care and control in the matter: *Davy-Chiesman v Davy-Chiesman* [1984] 1 All ER 321 (CA). It is doubtful whether Simon is competent to represent Chris.
- (iv) There was no written retainer which is in breach of rule 5D, *Solicitors' Practice Rules*, which requires a written retainer to be provided within 7 days of the oral instructions identifying the instructions given, the services to be provided, the name of the solicitor in charge, the solicitor's fee and counsel's fee; further the signed agreement of the client is required.
- (v) Simon sought advice from Benny (barrister) without his client's authority. Two breaches of Simon's professional duties to his client may be involved. First, although a solicitor has implied authority to brief counsel, a solicitor should advise his client when it is

appropriate to instruct a barrister and obtain the client's authority before doing so: commentary 3 of Principle 5.17, SG. Here counsel has not been briefed to represent Chris but he has been instructed to advise Simon and has given Simon written advice on how best to conduct the defence. If Simon intends to pass Benny's bill for HK\$20,000 to Chris for payment, he should have secured Chris' approval in briefing Benny in advance. Further, since counsel's fees are a disbursement, if substantial, they must be agreed in advance with the client in writing: see commentary to Principle 4.03, SG.

Secondly, Simon has breached his duty of confidentiality to Chris in briefing Benny. Specifically, he has breached Principle 8.01, SG, which provides that a solicitor has a legal and professional duty to his client to hold in strict confidence all information concerning the business and affairs of his client acquired in the course of his professional relationship and must not disclose such information unless disclosure is expressly or impliedly authorized by the client.

- (iv) Re his fee, Simon has provided an estimate when he said that his fee for preparing the defence and representing Chris at trial would be about HK\$200,000. To give an estimate is quite proper but the solicitor must not pitch the estimate at an unrealistically low level solely to attract the client and subsequently charge a higher fee: commentary 3 of Principle 4.01, SG. It is not known whether such was the case here. Oral estimates should be confirmed in writing: Principle 4.04, SG.

Part (b)

Part (b) dealt with the ethics of interviewing an expert who has already been interviewed by the other party (here the prosecution). It is permissible for a solicitor to interview and take statements from any witness or prospective witness at any stage of the proceedings, whether or not that witness has been interviewed or is to be called as a witness by another party: Principle 10.12, SG. This principle is often summarised by saying that 'There is no property in a witness': see *Harmony Shipping Co SA v Saudi Europe Line Ltd* [1979] 1 WLR 1380, CA, 1384, per Lord Denning MR. To avoid accusations of tampering with the witness, however, this should be done in the presence of the lawyer acting for the other party. The limitation is that the expert, when providing a report for the second party, must not disclose anything confidential obtained by the expert from the first party.

Part (c)

Part (c) involved the case where the client admits his guilt to his solicitor before the trial has begun. In brief, if the client confesses that he is guilty of the charge to his solicitor before the trial has begun, the solicitor must decline to act in the proceedings if his client insists on giving evidence in the witness box in denial of his guilt or requires the making of a statement asserting his innocence. The advocate who acts for a client who has admitted his guilt but has pleaded not guilty (as he is so entitled), is under a duty to put the prosecution to proof of its case and may submit that there is insufficient evidence to justify a conviction. Although the advocate may advance any defence open to his client, he must not assert his client's innocence or suggest, expressly or by implication, that someone other than his client committed the offence: commentary 4 of Principle 10.15, SG. Chris, accordingly, may plead not guilty but Simon must explain to him the limitations on the conduct of the defence – namely that Chris may not testify in his defence, attempt to lay the blame on another person or assert his innocence, for example, by running an alibi.

Question 3

- (a) Part (a) involves the complex issue whether it is the duty of an advocate who is aware of a material fact for the hearing of an appeal (here a second expert report on his client's personal injuries showing a profound recovery) which he knows would assist the other party or the court in arriving at the truth to disclose that fact. This issue clearly highlights the tension arising in the adversarial system between counsel's duty to the court and his duty to his client. As a general principle, a solicitor who knows of facts which, or a witness who, would assist his adversary is not under a duty to inform his adversary or the court of this to the prejudice of his client. He must not, however, knowingly put forward or let his client put forward false information with intent to mislead the court: commentary 6 of Principle 10.03, SG. It is suggested that keeping silent about the second expert report and arguing the appeal on the strength of the first expert report would constitute deceiving the court. Solicitors have a professional duty to disclose the second report. If a client refuses to permit a solicitor to do so, he must withdraw. As for the law, this issue arose in *Vernon v Bosley (No 2)* [1997] 1 All ER 614, CA. In this case the plaintiff sued for

personal injuries as a result of nervous shock suffered when his children drowned after a car accident (post-traumatic stress disorder) and substantial damages were awarded. Before the appeal was heard the defendants discovered medical reports made before trial which showed that the plaintiff had substantially recovered from his illness; this had been known to plaintiff's counsel, but had not been brought to the trial court's attention; held that every litigant was under a duty not to mislead the court or his opponent; where the case had been conducted on the basis of certain material facts which were an essential part of the party's case and they were discovered to be significantly different before judgment was given and there was a danger that the court might be misled, it was counsel's duty to advise his client that disclosure should be made and if the client refused to accept that advice, he should not make the disclosure himself but should withdraw from the case (per Stuart-Smith LJ). In such circumstances counsel should disclose the correct facts to his opponent and, unless agreed otherwise, to the judge (per Thorpe LJ).

- (b) The problem in part (b) is that a solicitor must not accept instructions to act as an advocate for a client where it is clear that the solicitor or a member of his firm will be called as a witness on behalf of the client, unless his evidence is purely formal: Principles 5.10 and 10.13, SG. In this case Patrick may be called as a witness to Fred's injuries so he would be disqualified from acting for Fred. The best solution is to call a doctor immediately to inspect Fred's injuries. In this case Patrick would no longer need to be called as a witness.
- (c) This last question involves Jenny's professional duty to the court where she reasonably believes that her client intends to mislead the court. In general, there is no duty upon a solicitor to inquire when he is instructed as to whether his client is telling the truth and it will be for the court to assess the truth or otherwise of the client's statement: commentary 2 of Principle 10.03, SG. When, however, it comes to the knowledge of a solicitor that a client intends to mislead the court by making false statements, the solicitor has a duty to advise the client not to do so and explain the consequences of misleading the court which may amount to a grave criminal offence such as perjury or perverting the course of justice. If the client refuses to accept the advice, the solicitor must cease to act: commentary 3 of Principle 10.03, SG. Applying these principles to the facts, it has not inevitably come to Jenny's knowledge that

Charles intends to mislead the court; rather there are two possibilities; first that Charles told Jenny the truth – that he was present but took no part in the incident so that he is now lying to the court on oath – or, secondly, that he had not told Jenny the truth and was now telling the truth under oath to the court. Jenny needs to find out which is true. She must seek the leave of the judge to speak privately to her client (i.e. in accordance with commentary 6 of Principle 10.12, SG) and ascertain from Charles which is the true case. If Charles says he is now lying to the court, Jenny must cease to act for Charles unless he purges his contempt of court. This must be explained to Charles. Jenny will, of course, need the leave of the court to withdraw, thereby leaving Charles unrepresented at his trial and most likely necessitating the trial dates to be vacated. Alternatively, if Charles now insists that he is telling the truth under oath, Jenny may continue to act for him although she may feel that she is entitled to withdraw on the grounds of a serious breakdown in confidence between her and her client: see commentary 3 of Principle 5.22, SG. (this is not dissimilar to *O’Neil v Hayley (No 1)* [2015] FCCA 2197.

- (d) Finally the candidates were tested as to whether they are aware of a recent important judgment: *Fung Hing Chiu Cyril v Henry Wai & Co (a firm)* [2018] 1 HKLRD 808. It was found that they were not!

January 2019

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Examiners' Comments on the 2019 Examination

HEAD IV: Accounts and Professional Conduct

Part A ACCOUNTS

Question 1

1. This year's question was straightforward and should not have caused any difficulties to the candidates.
2. The question was split into two parts.

Part A

- (i) The first part dealt with the part-time bookkeeper being able to sign office and client accounts. Again, the rules in this are straightforward. However, some of the candidates failed to have any real application and understanding of the rules and in particular, dealt with irrelevant information. They did not deal with issues arising out of office money. However, overall, this question was reasonably well-answered.
- (ii) This was a question on client account reconciliation and its meaning. Some of the candidates just repeated and set out the rules without applying these as to the rationale behind them but again, this was reasonably well-answered.
- (iii) This question was very straightforward. However, surprisingly, a few candidates made it clear that HK\$5 million which was in client account could be used to pay expenses, etc.! However, most candidates picked up the essential points.

Part B

Part B dealt with the term "Management Accounts". However, the examiner's concern here was that it seems that many candidates did not give sufficient time to deal with this and set out the reasons for having Management Accounts. However, many of the candidates

just repeated the commentary in the manual without sufficient or little application.

PART B PROFESSIONAL CONDUCT

Question 1

The question focuses on an experienced lawyer Andy who was asked by his managing partner Boris to handle his long term valuable client Calvin's case. Calvin intended to challenge the extradition bill in early 2019. Boris asked David, the firm's litigation partner, to supervise Andy. Boris talked Calvin into paying the firm \$30 million, seemingly as an agreed fee, for preparing the challenge. Because of his own improper reasons, David directed Andy to retain five local matrimonial barristers, paying each a retainer fee of HK\$1 million. Andy did as told. Andy also took the initiative to instruct a London barrister to prepare the paper work. The extradition bill was shelved in June 2019; Boris was upset with Andy incurring HK\$5 million Counsel fees. David suggested Andy to lie to Calvin. Instead Andy decided to come clean with Calvin, who not only was agreeable to pay another HK\$5 million more to cover Counsel fees, he gave Andy an expensive sports car as a reward.

The facts of the case are exaggerated and the marks are 'up for grabs', such as:-

- (a) A solicitor should obtain client's consent before instructing counsel;
- (b) A solicitor may be duty bound to report another solicitor for serious misconduct;
- (c) A general duty of loyalty and not to taking advantage of client;
- (d) A solicitor should return an expensive gift to client.

Candidates would only have to look at the relationship between solicitors and client, relationship between solicitors and barristers, duty to act honestly and duty to maintain confidentiality, how to deal with fee quotes and agreed fee etc. to score a high mark.

Instead many candidates went on a frolic of their own and provided long answers on AMLO, Practice Direction P, competence, handling a criminal case, supervision, client's mental state etc. While no marks have been deducted for referring to those matters, no extra marks have been awarded.

Question 2

The scenario upon which this question was based involved Andrew, a partner in a medium-sized firm who practises personal injury litigation, acting on the instructions of his brother-in-law for a Hong Kong company, the prospective plaintiff in a large-scale commercial dispute. The question was divided into three discrete parts, each of which raised a number of fairly straightforward issues.

The first part of the question required candidates to discuss the fact that Andrew, as a PI lawyer, might not have been competent to handle such a dispute. Most were able to identify this issue but their discussions lacked detail (i.e. they did not explain the meaning of "competence" within the Solicitors' Guide). Most candidates also recognised that there was a potential conflict of interest in respect of Andrew acting for his brother-in-law Bernard. Few of them, however, also noted that a board resolution or other written authorisation, not just Bernard's approval, would be needed for Andrew to act for the company. Most candidates addressed the other issues raised in the first part of the question - relating to the company's prior retainer of another firm; Andrew's purported exclusion of liability; and contingency fees - but detailed explanations were, again, lacking.

The second part of the question concerned Andrew threatening the defendant company with negative media exposure; his relationship with counsel; and his failure to advise his client about the defendant's invitation to mediate. Most candidates identified two or more of these issues but many of them gave answers that reflected a lack of knowledge of the detail of the relevant law and practice.

The third part of the question concerned Andrew's receipt of a communication from the defendant's expert witness which had been intended for the defendant's solicitors. This question raised issues dealt with in *Koay Ai See v St Teresa's Hospital* [2015] HKEC 1053 and related cases. Very few candidates appeared to be familiar with the relevant case law, although they were able to refer to (but not discuss) the relevant Solicitors' Guide commentary. Rather worryingly, some candidates did not appreciate that Andrew ought not to read the expert's communication; inform the defendant's solicitors of what had happened; and return the communication without making a copy.

Question 3

The question is about a solicitor, Larry, who was asked to act for his old school friend Jason and his wife in a share purchase transaction, where the seller, Steve, happened to be Larry's old client whom he knew had some financial problems. Larry then relied mainly on his trainee solicitor to run the deal. Subsequently, Larry was asked by Jason to also act for him in his divorce with his wife. The question ended with the scenario that the seller, Steve, in the share purchase transaction disappeared after he had received a HK\$2 million deposit for the transaction, and Jason received an interim bill from Larry with a large amount of disbursements charged.

The first part of the question concerned various issues which Larry should have considered (i) when he was asked to act for Jason and his wife – Larry should have obtained separate written instructions from Jason's wife, considered the potential conflict of interest between his former client Steve and Larry and his wife, got the agreed capped fee recorded in writing and signed by clients; and (ii) after he had accepted instructions - should carry out instructions with diligence, care and skill instead of passing the whole matter to his trainee solicitor. Most candidates were able to identify the potential conflict of interest issue but their analysis lacked details (e.g. a solicitor has duty to pass all information material to his retainer while trying to avoid disclosure of confidential information concerning another client, otherwise should have declined instructions). Many candidates also did not discuss the duty of confidentiality owed to clients which survives the professional relationship. Regarding the 1% shares in the target company which Jason offered to pay Larry if the share purchase completes, many candidates missed the issue that such contingency fee arrangement is not restricted given that it does not involve the institution of proceedings. Some candidates also confused the due diligence on the target company with due diligence on clients.

The second part of the question required the candidates to discuss the situation where a solicitor is acting for two clients and subsequently a conflict arises between them, exactly where Larry was asked by Jason to act for him in his divorce with his wife. Most candidates briefly discussed the potential conflict of interest, but failed to discuss in detail (e.g. Larry should have ceased to act for both client unless he can continue to act for one client with another's consent and without embarrassment and with propriety).

The third part of the question concerned the interim bill issued to the client by Larry. This is a relatively straightforward question. Most candidates discussed the need to obtain client's agreement in writing before issuing an interim bill, but some failed to further discuss the implications where such agreement is not obtained. Not many candidates discussed the issue relating to the large amount of disbursements incurred and some discussion lacked details.

January 2020

Examiners' Comments on the 2020 Examination

HEAD IV: Accounts and Professional Conduct

Part A ACCOUNTS

Question 1

1. This was a very straightforward question which was split into 8 different parts. The object of the question was to ensure that the candidates have the ability to address particular issues raised in each sub-section. None of the facts should have caused any difficulties.
2. However, some of the candidates did not read the question carefully and did not realise that they needed to address the accounting issue on an ongoing basis.
3. In particular, there was a considerable amount of confusion by the candidates as to the fact that there were insufficient monies in client account at the appropriate time to ensure that payment could be made out of client account.
4. Hence, basic errors were made as to identifying the exact monies in client account at the relevant time which resulted in fundamental mistakes being made.
5. Some candidates also ventured into irrelevant issues despite being told only to address accounting issues. They decided to raise issues as to conduct vis-à-vis leading counsel's request re his brief.
6. Some of the candidates also failed to read the question carefully in that they did not take into account that the monies paid to leading counsel were on account of future fees and failed to take this into account when dealing with the specific issues they were asked to address.
7. Another issue that caused difficulties to the candidates was that despite there being an agreed fee, i.e. monies due to the firm, they took the view that part of this agreed fee could be used to pay counsel's fees.

8. Some of the candidates who did well were able to provide a continuous accounting of the various issues being raised and in particular, identified the monies that had been received into client account and the monies that were due from the client regarding counsel's fees, etc. However, most candidates missed this point.
9. As can be seen from the marks allocated to item (g) and (h), the objective here was for there to be some discussion as to the final accounting with regard to the monies received and paid and very few were able to provide clear and concise answer to the various issues they were asked to address and deal with.
10. Irrelevant points and lack of application was the main cause for the candidates to a fail. They just repeated the provisions set out in the manual or the rules without applying them to the actual facts that they were asked to address and failed to provide any considered discussion.

PART B PROFESSIONAL CONDUCT

Question 1

This year there are altogether 109 scripts for marking. Out of those 109 candidates, only 36 managed to obtain a mark of 12½ or above in the first marking. The failure rate is high despite this Q1 of Part B is not difficult.

The question looks at three solicitors, Andrew, David and Elvis. Andrew, a litigation partner of B&B, was approached by his long lost classmate Charles, who wanted B&B to act for him in developing a drug based on a 'secret formula' and finding professional investors. The circumstances clearly required substantial customer due diligence ("CDD"). Andrew rightly asked his managing partner David and a junior commercial lawyer Elvis to assist him. David rightly asked Elvis to find out as much as possible about Charles, the 'secret formula' and whether Charles was telling them the truth, before accepting Charles as their client.

Elvis met with Charles, obtained documents and made extensive enquiries to establish the veracity of Charles' instructions. Elvis however failed to check whether Charles was a politically exposed person ("PEP"). Elvis took some four months and still the CDD was incomplete.

Andrew was upset, left B&B, set up his own practice and Charles immediately became his first client without completing the CDD. Andrew then sent out letters to all the major corporate clients of his old firm B&B making exaggerated claims about the profitability of Charles' project. Many people put money with Andrew's firm in order to invest in the project; they lost their entire savings when Charles disappeared taking their money with him.

Police executed a search warrant on B&B seeking for documents relating to the project. David asked Elvis to give police the documents taking the wrong view that because Charles was not 'formally' a client of B&B, they could pass the documents to the police.

Candidates were asked to discuss the professional conduct of Andrew, David and Elvis, and what B&B should do regarding the police search.

Most candidates commented on the CDD requirements under Practice Direction P ("PDP") and Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("AMLO") and scored marks. Most candidates however have missed out the requirement under AMLO (and PDP) to check whether Charles was a PEP. Most have identified a quasi-retainer existed between Charles and B&B and therefore an obligation of confidentiality had arisen. Some argued that there was no issue on legal professional privilege because no advice had been given by B&B. While that may be argued, the approach limited those candidates in scoring more marks under section (d).

Many candidates wrote lengthy passages on the competence of Andrew, whether a written retainer was necessary; some suggested that B&B should provide fee estimation. Some wrote the Solicitors' Practice Promotion Code ("SPPC") was breached (wrong because Andrew was promoting Charles' project, not his firm). Quite a number thought Andrew should not accept Charles as a client because Charles was a client of B&B. While not accepting Charles as a client must be right because the CDD about him and his 'secret formula' could not be satisfactorily concluded, it would be wrong to think law firms enjoy some kind of monopoly and no other lawyers can touch their existing clients. Finally, not a small number of candidates thought Charles wanted B&B to help developing the drug as opposed to help him on the legal work in developing the drug and found that objectionable.

There is a feeling that candidates have been coached to take a potshot at the questions and cover all the main topics in the Hong Kong Solicitor's

Guide to Professional Conduct (“SG”) in the answers. While no marks have been deducted for referring to irrelevant issues, no extra marks have been awarded for those wasted efforts.

Question 2

This question had two distinct parts. The first concerned the operation of the SPPC and related parts of SG whilst the second addressed the requirements of PDP.

The scenario upon which the first part of the question was based involved a three-partner general commercial firm which embarked on various practice promotion initiatives. Among these were a change of the firm’s name; distribution of its literature at a chain of restaurants owned by a relative of one of the firm’s assistant solicitors; and a redesign of the firm’s website. All these initiatives raised potential breaches of the SPPC.

Candidates were asked to explain the nature and scope of ‘practice promotion’ and the SPPC’s provisions thereupon. Many were only able to do so in a basic sense and seemed to be unfamiliar with the actual relevant terms of the SG (e.g. SG Principle 3.02) or the SPPC (e.g. rule 1, SPPC). Candidates were also asked to identify what, if any, breaches of the SPPC had been committed by the firm. Many candidates did not identify all the breaches or refer to the relevant requirements of the SPPC. For example, some candidates merely stated that using actors to impersonate satisfied clients in video ‘interviews’ on the firm’s website was ‘unethical’ without explaining why this was so.

The second part of the question dealt with one of the partners of the same firm receiving an unsolicited e-mail from a potential overseas client. This potential client wished to purchase business premises in Hong Kong and intended to deposit US\$3,000,000 into the firm’s bank account as part of that process. Candidates were asked what action the partner should take before accepting the instructions and what he should remain aware of after having done so (if the instructions were accepted).

Although the answers to this second part of question 2 were better than those to the first part, many candidates continued to provide only vague and basic explanations of PDP and related legislation such as AMLO. There was, for example, little detailed explanation of the requirements of, and distinctions between, client identification and verification. Further,

few candidates mentioned the need to keep proper records of this particular transaction for 15 years in accordance with PDP Section A, Item 6.

Question 3

This question concerned a personal injury claim arising out of a motor traffic accident, with candidates being asked to consider issues from the point of view of both the plaintiff and the defendant. Generally speaking, candidates' answers to question 3 were better than those they gave to question 2.

The first part of question 3 addressed the involvement of a recovery agent in the plaintiff's retainer of a firm of solicitors on a contingency fee basis. Most candidates were able to identify the salient issues although only some were able to discuss them in detail. There were, in particular, few references to such authorities as *Unruh v Seeberger* [2007] 2 HKC 609. The competence and conduct of the partner at the firm were also matters for consideration. Although most candidates recognised that - as someone who specialised in employment law - he was not competent to handle personal injury litigation, many did not discuss the details of SG Chapter 6. Moreover, some candidates did not appreciate the fact that solicitors may not exclude or limit their liability in negligence when representing clients in litigation. Other issues raised by the question, such as the correct way to instruct counsel, were dealt with relatively well.

The second part of question 3 dealt with the conduct of the solicitor acting for the defendant. Firstly, the defendant informed him that, if asked during cross-examination, she would deny that she was tired at the time of the accident even though she admitted to the solicitor that she had been exhausted. Most candidates correctly explained that, pursuant to SG Principle 10.03, Commentary 6, there was no obligation upon him to inform the court (or the other side) of the defendant's exhaustion at the time of the accident. They also recognised, however, that he could not knowingly put forward or let his client put forward false information with intent to mislead the court. Most also added that he should advise her not to attempt to mislead the court and, if she refused to accept this advice, he should cease to act for her.

Further, candidates were asked to discuss the fact that, notwithstanding the defendant's refusal to settle, the solicitor agreed to compromise the claim for a payment of \$300,000 to the plaintiff. Many candidates' answers were very brief, possibly reflecting a lack of time having been accorded by them

to deal with this – the last – question of the exam. Some did not answer the question at all. Those candidates who were able to provide a substantive answer explained that the solicitor should have sought the defendant’s agreement before settling and most referred to SG Principle 10.17, Commentary 1 and SG Principle 5.12, Commentary 6 here. Unfortunately, some candidates were confused about the consequences for the defendant of the solicitor’s actions. There were, in particular, very few references to *Waugh v HB Clifford* [1982] 2 WLR 679 in this regard.

Finally, a minority of candidates mistakenly assumed that the defendant was facing a criminal action in their answers to the second part of question 3. This suggests a worrying lack of attention to detail and preparation on their part.

January 2021

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3. Past Examination Papers from 2018 to 2020

**2018 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Thursday, 8 November 2018



2018 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.

2018 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

A. Y has instructed your Firm to act for him in respect of a purchase of an office unit ("Unit") located in Wanchai for HK\$8,000,000. All "Know Your Client" obligations have been carried out. There is no issue as to the source of funds/monies received by your Firm.

(a) On 3 April 2018, you received a direct transfer from your client in the sum of HK\$80,000 being the initial deposit for the Unit.

(2 marks)

(b) On 3 April 2018, you carried out a land search online with the Lands Registry. The cost was HK\$100.

(2 marks)

(c) On 4 April 2018, the provisional sale and purchase agreement was signed and your Firm sent this, along with its cheque in the sum of HK\$80,000, to the vendor's solicitors.

(2 marks)

(d) On the morning of 2 May 2018, you were informed by Y that a direct transfer of HK\$720,000 had been made. That afternoon, the sale and purchase agreement was signed by Y and your Firm issued a further cheque to the vendor's solicitors in the sum of HK\$720,000.

(3 marks)

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

(e) After receiving the title deeds, certain issues arose as to title. Therefore, Counsel's opinion was obtained which addressed and answered your concerns. You paid Counsel's fee note in the sum of HK\$25,000 on 14 May 2018. Your client sent you a cheque in the sum of HK\$25,000 on 15 May 2018. On 18 May 2018, your bank advised you that this cheque had been returned to drawer. On 20 May 2018, your client sent you an email apologising and told you to re-present the cheque. You did so, and the cheque cleared on 21 May 2018.

(5 marks)

(f) Completion took place on 31 May 2018. Your client provided you with a cashier's order in the sum of HK\$7,200,000 payable to the vendor's solicitors. The client also provided you with a further cheque payable to your Firm in the sum of HK\$150,000 with a note apologising for the difficulties with the last cheque and asking you to use this sum to settle all fees and disbursements in respect of the purchase of the Unit.

(3 marks)

(g) On 1 June 2018, your Firm delivered a bill to your client in the sum of HK\$150,000 in settlement of all costs and disbursements.

(3 marks)

Identify, explain and comment upon how each of the above should be dealt with in order to comply with the Solicitors' Accounts Rules, Cap. 159F and prudent accounting procedure.

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

- B.** Online banking is considered to be a necessity and an essential tool in managing the Firm.

Provide a short note that would enable the Firm to comply with the Solicitors' Accounts Rules, Cap. 159F, in relation to any issues arising from the use of online banking.

(5 marks)

End of Part A (Accounts)

**2018 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Thursday, 8 November 2018



2018 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.

2018 Overseas Lawyers Qualification Examination
Head IV: Part B on Professional Conduct

Question 1 (25 marks)

Two months ago, Andrew's high school classmate Barry, an entrepreneur, called Andrew, who is a solicitor of G & Co., asking whether Andrew was able to act for him in a new matter. Andrew had acted for Barry in a property acquisition a year before.

Barry explained he had been approached by Cyril, the chief executive officer of Digital Ltd., a 'blue-chip' company listed on the Stock Exchange of Hong Kong, to act as a mediator between Evans and Felix, both were substantial shareholders of Digital Ltd.

It was public knowledge that the dispute between Evans and Felix had deteriorated into High Court litigation where Evans was suing Felix and Digital Ltd. and all the directors in Digital Ltd. for substantial damages. The sums involved were in the billions of dollars. Evans had also threatened to wind up Digital Ltd.

Barry showed Andrew an agreement signed between Barry and Digital Ltd. stating that Digital Ltd. would pay Barry US\$10 million if Barry was successful in mediating the dispute between Evans and Felix, signed by Cyril on behalf of Digital Ltd. The agreement stated that Digital Ltd. was willing to pay US\$10 million to an escrow agent pending the outcome of the mediation. Barry asked Andrew whether Andrew's firm G & Co. would be willing to act as the escrow agent to hold the sum on behalf of Barry and Digital Ltd.

Andrew had just joined G & Co. as a junior commercial lawyer. Andrew consulted Gerald, the managing partner of G & Co. Gerald said there was no professional conduct rule against G & Co. acting as an escrow agent.

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

Gerald then told Andrew to ask for a lump sum fee of HK\$2 million as the legal fee to G & Co., to be paid immediately upon the signing of the escrow agreement. Andrew was surprised when Barry agreed to the fee quote immediately. Andrew reported this to Gerald, who was equally surprised, as the work involved would take no more than a few hours.

A meeting was held. Gerald asked Barry why Barry thought he could mediate the dispute successfully. Barry said he knew a very successful businessman Superman Lau, whom Barry referred to as his 'uncle'. Superman Lau might be willing to talk to both Evans and Felix. Because both Evans and Felix were doing business separately with Superman Lau, Barry thought they both would give face to Superman Lau and settle the dispute if requested by Superman Lau to do so.

Gerald asked Cyril why Digital Ltd. was willing to pay such a big sum to Barry. Cyril said the sum was not big at all in view of the potential damage to Digital Ltd. As for Superman Lau, nobody in Digital Ltd. would be able to secure his assistance. Barry then explained that he would not share the sum with Superman Lau. Andrew later obtained all the identification documents regarding Barry and Digital Ltd. and verified them against public records. Andrew then prepared a standard escrow agreement.

On the day of signing, Cyril requested that Digital Ltd. should be replaced by Indigo Ltd., a BVI company. It was too late to obtain advice from BVI lawyers regarding Indigo Ltd. Andrew made Indigo Ltd. the party. Then Barry and Cyril signed the escrow agreement. Two days later a sum of US\$10 million was remitted to G & Co. from Digital Ltd. On the same day, Barry paid G & Co. the sum of HK\$2 million with his personal cheque. Within a week, there was news that Evans had sold all his shares to Felix and the High Court action had been withdrawn by consent.

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

Barry asked Andrew to release the escrow sum of US\$10 million. Andrew consulted Gerald. Based on his experience, Gerald felt something was not right, but Gerald was keen that G & Co. would keep the HK\$2 million. He told Andrew to ensure that Indigo Ltd. would agree to the release. Cyril sent Andrew an e-mail stating that Indigo Ltd. had agreed to the release of the escrow sum. Andrew then instructed G & Co.'s accounts department to release the US\$10 million to Barry the following day.

Two days ago, a party of policemen came to G & Co. Apparently the escrow arrangement was a sham, Indigo Ltd. did not exist. Barry and Cyril were conspiring together to steal US\$10 million from Digital Ltd. They knew beforehand that Evans and Felix were about to reach a settlement. The Board of directors of Digital Ltd. was unaware of the escrow arrangement. The US\$10 million was paid to G & Co. at the request of Cyril on the pretence that the money would be used as a deposit for a property acquisition. Both Barry and Cyril have since left Hong Kong.

The police arrested Andrew and Gerald alleging that they had handled stolen property and participated in money laundering.

(a) Comment on the professional conduct of Andrew. (18 marks)

(b) Comment on the professional conduct of Gerald. (7 marks)

Question 2 (25 marks)

Simon qualified as a solicitor in the UK in 2006 and, having successfully passed the Overseas Lawyers Qualification Examination in 2010, he qualified as a Hong Kong solicitor in 2011. He practises with a medium-sized law firm in Sheung Wan, Hong Kong and, since completing his traineeship in England, his area of practice has always been corporate and commercial work.

In August 2017, Simon was approached by a potential client, Chris, who told him that he had been very much impressed by the firm's website which said that Simon's firm had had a 100% success rate in defending clients charged with serious crimes over the last 5 years.

Chris further explained that he had been charged with a serious criminal offence. Chris explained that, although he had already retained a firm of solicitors in the central business district of Hong Kong, he felt that their fees were too high and he was looking for a replacement solicitor. He said that he had been employed for several years by a prominent logistics company in Hong Kong as their investment controller whose duty had been to invest the company's finances wisely so as to ensure that the company remained financially viable.

Much of the company's income was derived from fees paid by clients who were moving residence from one country to another and who employed the company to move their goods. An audit had recently been conducted of the company's accounts and a considerable sum was found to be missing. The matter had been handed over to the police who discovered that hundreds of thousands of dollars had been paid by way of cheques signed by Chris into a bank account of a company (X company) in which Chris was the sole director and a major shareholder with his wife being a minor shareholder. Chris had been charged with fraud and had been released on a sizeable amount of bail by the District Court.

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

Chris asked Simon for his assistance in defending the charge and Simon, having conducted the usual client identification, verification and due diligence, agreed to take on the case. There was no written retainer and Simon said that his fee for preparing the defence and representing Chris at trial would be about HK\$200,000. Chris observed that this was half of what the firm in Central was going to charge him.

Having spent some time studying the law relating to criminal fraud, Simon felt that he needed some expert advice and, without consulting Chris, he approached Benny, a barrister, who specialises in criminal litigation. Benny gave Simon written advice on how best to conduct the defence and sent a fee note to Simon for HK\$20,000 for professional services performed.

Answer the following questions:

- (a) **Identify any acts of professional misconduct committed by Simon.**
(17 marks)
- (b) All parties are now preparing for the trial. Simon realizes that he will need expert evidence in relation to the keeping of the accounts. He wishes to seek the advice of Mr. Wong who is the Chief Accountant employed by Chris' company. He telephones Mr. Wong who says that he has already given an expert report to the prosecution who have informed him that they do not intend to call him as a witness at the trial. **Is Simon at liberty to meet Mr. Wong and obtain an expert report from him? If so, would there be any limits on what Mr. Wong could say in his expert report for the defence at trial?**
(4 marks)

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

- (c) The first day of the trial in the District Court has arrived. At a last minute meeting with Chris, Chris tells Simon that the accusations against him are all true but he still wishes to plead not guilty and speak out to defend himself. **Is Chris at liberty in such circumstances to plead not guilty and what advice must Simon give him as to the future conduct of the defence?**

(4 marks)

Question 3 (25 marks)

A. You are a solicitor practising with a firm in Central, Hong Kong. Your client Mr. Ting was injured in an accident when knocked down by a bus and sustained injuries to his head, legs and chest. On your advice, he sued both the driver of the bus and the bus company claiming substantial damages for personal injuries caused by their negligence. The trial came on 4 years after the accident and you produced on behalf of your client an expert's report on his injuries. The report stated, *inter alia*, that your client's legs were so severely injured that he would, in the expert's opinion, never walk again. He would also probably be unable to work again due to his head injuries which had impaired his mental abilities.

At first instance your client was awarded damages of \$5 million.

The defendant then appealed. Two years later the appeal was set down for hearing before the Court of Appeal. You have just received a second report from your expert (the same expert who provided the report for the trial) to say that, after a recent examination of your client, your client had, unexpectedly, made a spectacular recovery both in respect of his leg and head injuries. He can now walk with the aid of a stick and he may be able to do work that does not involve much walking.

(a) Do you have a legal and professional obligation to bring this second report to the attention of the defendant and the court?

(9 marks)

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

B. Patrick is a solicitor specialising in criminal litigation. One night, he is called to Wanchai Police Station to see an old client Fred who is once again in trouble with the police. This time he has been charged with criminal damage to property – notably smashing the window of a supermarket whilst drunk. Patrick enters the cell where Fred is being held and Fred bursts out: "Patrick, I am so pleased to see you. Look what the police have done to me." He unbuttoned his shirt and showed red abrasions on his chest. "See. The police have beaten me up."

(b) What challenges will this cause to Patrick, if any, if he is to accept a retainer to represent Fred in his defence at his trial? What action should Patrick take, if any?

(5 marks)

C. Jenny is a solicitor in private practice who has been retained to act for Charles in his defence in the District Court to a charge of criminal damage to property – notably damage to Bill Hui's car when it had been parked outside a bar in Lan Kwai Fong, Hong Kong. Jenny is an experienced criminal defence advocate.

Charles had been released on bail and Jenny met him in her office in January 2018 when Charles told her that that he had been drinking in Lan Kwai Fong on 9 December 2017 with a group of friends. Bill Hui (whom he knew and disliked from previous encounters) had driven up and had made some disparaging remarks about the bar in which Charles and his friends had been drinking. Several of Charles' friends had left the bar and began to damage Bill Hui's car. Charles assured Jenny that he had not personally been involved and, sensing trouble had immediately left the bar and had taken no part on damaging

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

Bill Hui's car. He had been arrested next day at his place of work and had been told that Bill Hui had identified him as one of the perpetrators of the damage.

The trial has now begun and Charles has been charged together with four others. Charles decided to testify in his defence but, when examined in chief by Jenny, in contradiction to what he had told Jenny when providing a statement in her office, he said that he had never gone to Lan Kwai Fong on the evening in question and had spent that evening with his girlfriend watching television.

(c) What ethically should Jenny do? (8 marks)

D. Normally any fee dispute between a solicitor and his or her client will go to taxation on a solicitor and own client basis.

(d) Explain whether a solicitor and client are at liberty to agree in the retainer to submit any fee dispute between them to arbitration and whether such an agreement will be enforced by the courts.

(3 marks)

End of Part B (Professional Conduct)

**2019 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Tuesday, 12 November 2019



2019 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.

2019 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

- (A) Frank and Lucy are working together as Associate Solicitors and have now decided to leave their existing firm. They have decided to set up in practice on their own account by way of a partnership. They are very concerned over changes that they understand have been made to the Solicitors' Accounts Rules and do not wish to face any difficulties with regard to their practice. They have also been advised it is very likely that the Law Society Monitoring Accountant will be paying them a visit to ensure that they are complying with the Solicitors' Accounts Rules.

They have asked you to assist and prepare a memorandum and advice which would enable them to deal with various issues below that are causing concern to them.

- (i) Lucy's mother used to work as a part-time bookkeeper in an accounting firm some 15 years ago. She has not worked since. She is prepared to come in on a part-time basis to help them with their accounts and bookkeeping. Both of them felt that this was a good idea and have asked for your views. Both Frank and Lucy will be travelling extensively trying to obtain business which will include numerous trips to the Mainland as well as to other jurisdictions. Therefore, they intend that the client account would be looked after by Lucy's mother and she will deal with all issues and requisitions and sign cheques. She will control the petty cash.

(6 marks)

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

- (ii) They have heard of the term "client account reconciliation". They are somewhat puzzled by this and have little idea of what it is about. Again, they felt that Lucy's mother will be able to assist.

(6 marks)

- (iii) One of Frank's clients whom he acted for at their old firm wishes to engage Frank and Lucy to assist and advise in respect of litigious matters that are arising from time to time in his company's affairs. He is prepared to pay them HK\$5 million by way of a general retainer. Frank and Lucy are delighted since this money will be sufficient to cover their cash flow during the first few months of their practice in paying staff and covering declaration and lease obligations as well as their living expenses.

(6 marks)

- (B) (i) 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?**

(4 marks)

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

- (ii) The Firm has in its client account the sum of HK\$500,000 on behalf of Mr. X, the Firm's client. That client cannot be found, contacted or located.

Consider the above and advise upon any issues or steps to be taken. (3 marks)

End of Part A (Accounts)

**2019 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Tuesday, 12 November 2019



2019 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.

2019 Overseas Lawyers Qualification Examination
Head IV: Part B on Professional Conduct

Question 1 (25 marks)

In April this year, Andy's managing partner Boris asked Andy to join him in meeting with one of his most valuable clients, Calvin. Calvin was in his seventies; he returned to Hong Kong in 1975 after he had killed an official in his native village on the Mainland. While Calvin had no proof that the Mainland authority was seeking his extradition to the Mainland, Calvin had never travelled to the Mainland since returning to Hong Kong. Calvin had built a very successful property development business in Hong Kong and was assessed by Forbes to be the 52nd most wealthy person in Hong Kong with a total net worth of around HK\$10 billion.

In March 2019, the Chief Executive of Hong Kong approved the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill (the "Bill") and the Government wanted to push the Bill through the legislature before the end of that legislative year.

Calvin was extremely concerned that once the Bill was passed, the Chinese Authority would immediately seek for his surrender back to the Mainland for the homicide case; hence he wanted Boris to advise him what measures he could take to defeat or at least delay the passing of the Bill.

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

Andy took a very dim view of Boris, whom he believed would only focus on how to make more money from his clients. At the meeting, which was joined by David, the litigation partner of the firm, Boris exaggerated how familiar he was with extradition laws, asserted that he had very strong personal relationships with various senior Government officials and leaders in the local political parties, and said he could lobby those people to gain a very advantageous position for Calvin.

Calvin said he never wanted to leave Hong Kong if that could be avoided. Calvin explained that he needed at least five more years to plan his exit from Hong Kong. Boris immediately told Calvin that he could guarantee him a five-year delay in the passage of the Bill. Apart from carrying out the most formidable lobby campaign work, he would gather his best legal team, pointing to David and Andy, to mount effective legal battles to frustrate the passing of the Bill.

Calvin asked Boris how much money would that cost him; almost spontaneously, Boris said, "Around \$30 million if paid immediately." Calvin sighed, then drew a cheque for \$30 million in favour of the firm, adding, "So this would be the agreed fee." Boris was very happy on seeing the cheque and said, "Of course, of course."

After the meeting, David instructed Andy to approach five Hong Kong counsel David had selected and issued retainers to each of the five Hong Kong counsel, agreeing to pay each \$1 million as a retainer fee. Andy did as told. Upon checking the Bar List, Andy was surprised to note that all the five counsel specialized in matrimonial and divorce matters. He later found out that David owed those counsel huge sums on unpaid counsel fees regarding cases David handled for his other clients.

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

Andy had practised as a litigator in London for ten years before returning to Hong Kong. With the help of an experienced London barrister, Andy was able to prepare a draft notice of application for leave to apply for judicial review, which Andy intended to file on behalf of Calvin once the Bill was passed.

In June this year, Government announced that the Bill would not be proceeded with. Instead of feeling happy for Calvin, Boris felt that he should have asked for more money from Calvin. Boris became very angry when Andy told him in the presence of David that he had committed a total of \$5 million on Hong Kong counsel fees and Boris threatened to dismiss Andy for his 'mistakes'. At that juncture, David said Andy could tell Calvin that the Hong Kong counsel had all done a lot of work and Calvin should pay the firm another \$5 million to defray the counsel fees.

Andy met Calvin in a coffee shop and he told Calvin that he had done substantial work for Calvin with the help of a London barrister. He did not ask any of the five Hong Kong counsel to assist because Andy did not believe those five Hong Kong counsel would be able to render any meaningful assistance to him. Andy told Calvin that he was afraid that he would be dismissed by Boris if Calvin would not pay \$5 million for the Hong Kong counsel fees.

On hearing that, Calvin laughed. He drew a cheque for \$5 million in favour of the firm and gave that to Andy. Calvin further passed Andy a car key, saying, "Look, that new red sports car outside the coffee shop is now yours." Without waiting for Andy's response, Calvin left the coffee shop.

(A) Comment on Andy's professional conduct in handling the case.

(12 marks)

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

(B) Comment on Boris' professional conduct in handling the case.
(8 marks)

(C) Comment on David's professional conduct in handling the case.
(5 marks)

Question 2 (25 marks)

Andrew is a partner in the medium-sized firm of Cheung & Partners who practises personal injury litigation. His brother-in-law, Bernard, is the managing director of Kong Printing (Hong Kong) Limited ("Kong Printing").

In late 2018, Andrew and Bernard were at a family dinner when Bernard asked for Andrew's help. He explained that Kong Printing had entered into a written Business Purchase Agreement with Omni Comprehensive Printing Limited ("Omni") to purchase the assets of Omni's subsidiary, Kennedy Town Printing and Publishing Limited ("the Business") - including its premises, fixed assets and book debts - for a total consideration of HK\$100 million. The Business Purchase Agreement contained standard warranties from Omni, as vendor, in relation to the Business and its assets, which were deemed repeated as at the Completion Date of 1 March 2018.

Bernard explained that the Business had proved to be 'a disaster'. There were numerous problems with the premises, the printing equipment and its customers 'deserting' it for other printing and publishing suppliers. This had caused wider financial problems for Kong Printing. Bernard was thinking of suing Omni for breach of the Business Purchase Agreement but his current solicitors, who had negotiated it for Kong Printing and conducted the due diligence, had advised against it when asked. Bernard wanted Andrew's advice and assistance.

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

Andrew agreed to help on the basis that he and his firm would not be liable for any of its assistance or advice in the matter. In return, he would charge only for the firm's work in the event that any claim against Omni was successful at trial (or by any settlement agreement). Bernard agreed to Andrew's terms.

(A) Discuss any issues of professional misconduct raised by Andrew's actions. (14 marks)

Andrew writes a letter before action to Omni on Kong Printing's behalf, threatening to issue proceedings and to inform the local press and regulatory authorities of its 'shady business practices' if Omni does not compensate Kong Printing for its losses arising from the purchase of the Business. Andrew refers, in the letter, to his 'extensive contacts in the Hong Kong media'.

Omni's solicitors rebut the letter before action, denying any liability on their client's part. Andrew had intended to draft the Writ and Statement of Claim himself but he is unable to do so because he is too busy preparing for an imminent trial in another case. He instructs Charles Lam, a barrister with whom he has worked before, to settle the pleadings. Charles does so quite promptly and Andrew proceeds to serve the same on Omni's solicitors without paying a great deal of attention to the contents.

A defence is duly served on behalf of Omni. At the same time a 'without prejudice' letter is also received by Andrew from Omni's solicitors suggesting mediation. Andrew believes that this is a ploy by Omni to delay the progress of

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

the claim. He also recalls that Bernard had criticised lawyers in the past for 'inventing' mediation as another way to increase fees. He therefore decides not to incur Bernard's impatience or anger by telling him about Omni's solicitors' suggestion. Andrew subsequently completes the mediation certificate, indicating that Kong Printing does not intend to attempt mediation.

(B) What further issues of professional conduct have been raised by Andrew's conduct?

(6 marks)

The matter continues without any mediation or meaningful settlement negotiations. Both sides serve their lists of documents and exchange witness statements. It was decided at the Case Management Conference that each side could serve expert's reports on quantum of damages prepared by appropriately qualified accountants. David Lee was appointed on behalf of Kong Printing and Edward Leung on behalf of Omni.

About a week prior to the date set for the exchange of experts' reports, Fred, Andrew's assistant solicitor, receives an e-mail message from George Wong, an accountant. The message is headed 'Kong v Omni' and the text appears to be directed to the partner at Omni's solicitors' firm who is dealing with the claim on their behalf. The e-mail has an attachment entitled 'Draft Report – Quantum'. Fred reads the attachment, which is a marked-up version of Edward Leung's report containing a critique of his findings and offering advice on amendments by George Wong. Andrew does not know why he has received this e-mail. He speaks to Andrew, who suggests that they tell Bernard about this 'goldmine'.

(C) What action should Andrew and Fred take in relation to this e-mail message and the attachment?

(5 marks)

Question 3 (25 marks)

Larry runs a small law firm which mainly advises on matrimonial, conveyancing and general commercial matters. Larry met his primary school friend, Jason, in an alumni gathering in August 2019. At the gathering, Jason told Larry that he and his wife, Jude, were going to buy a Hong Kong company called Parker Wine Limited ("Parker Wine") which operates a retail wine cellar in Hong Kong and that they were very excited because the company had very good potential in growing and might even expand into China. Jason and Jude will each purchase 50% of the shares in Parker Wine from its current sole shareholder, Steve Lee.

Jason asked Larry if he could act for Jason and Jude in the share purchase as Larry was the only lawyer friend he knew and trusted, and that they had no idea how to deal with all those paperwork in order to complete the deal. Larry agreed but told Jason that the fees would be at least HK\$200,000 to act for both him and Jude for this kind of matter. After some negotiations, Jason and Larry agreed with a fee of HK\$200,000 and, on top of that, Larry would be given 1% of the shares in Parker Wine if the deal completes successfully. Larry found out from discussions with Jason that the seller Steve Lee was actually Larry's former client.

The day after the alumni gathering, Larry received an e-mail from Jason, attaching a draft share purchase agreement which Steve's lawyers had sent him. Larry forwarded the draft agreement to his trainee solicitor, Audrey, and asked her to dig out some precedents from the firm's old files on transactions that it had advised on in the past few years and compare the draft against them. Audrey said she would try to ask some friends for precedents as well since she

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

had not dealt with any share purchase before. Audrey remembered Steve Lee for whom their firm acted last year. Steve had problems with the banks and defaulted on some loans, and almost went bankrupt. Audrey told Larry that she was a bit concerned as Steve seemed like a crook to her, but Larry reassured her that things would be all right.

Audrey asked Larry whether they were supposed to do some kind of due diligence check on Parker Wine as that's what she learnt in law school. Larry thought for a second and just said Jason had not mentioned about it so he had probably done some checks on the company already.

Since then, Audrey has been mainly involved in the negotiation of the share purchase agreement with Steve's lawyers, and the transaction is scheduled to complete in early December 2019.

One morning in October 2019, Larry received a phone call from Jason telling him that he and Jude had decided to divorce, but they would continue to be business partners for Parker Wine, so that it would not affect the share purchase. Jason asked Larry to act for him in the divorce as he would want custody of their son, Jerry, and he knew Jude would definitely fight for custody too. Larry agreed to act.

Last week, Larry received another phone call from Jason telling him that Steve Lee had disappeared. A deposit of HK\$2 million had already been paid to Steve for the share purchase. Jason said they had tried every method to get hold of Steve, but his phone line was cut and he had even moved out from his apartment. Steve's secretary told Jason that the landlord of Parker Wine's Wanchai shop was also looking for Steve because the company had apparently

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

been late in paying rent since six months ago and had still not paid last two months' rent. Jason told Larry that another friend of Jason's had recently said that Steve was a crook and had been in financial difficulties for some time. Jason asked if Larry knew about it when Steve was Larry's client. Larry just said, "Look, he was my client and I can't tell you anything about him." Jason was furious and hung up the phone.

Jason received an interim bill from Larry this morning on the costs incurred to date on the share purchase for both Jason and Jude. Jason was shocked to find that they were charged an amount of HK\$60,000 for disbursements additional to the fee of HK\$200,000.

Discuss, with reference to the facts provided, all the relevant issues relating to professional conduct and legal duties arising from the scenarios above, in particular:

- (A) What issues should Larry have considered and/or action(s) should he have taken when he was asked by Jason to act for him and Jude in the share purchase, and after he had accepted the instructions?**

(14 marks)

- (B) What issues should Larry have considered and/or action(s) should he have taken when he was asked by Jason to act for him in his divorce from Jude?**

(5 marks)

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

(C) What rights and/or obligations do Jason and Jude have in relation to the interim bill issued by Larry?

(6 marks)

End of Part B (Professional Conduct)

**2020 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Wednesday, 11 November 2020



2020 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.

2020 Overseas Lawyers Qualification Examination
Head IV: Part A on Accounts

Question 1 (25 marks)

You are a solicitor and have received instructions to act for Z in respect of an investigation regarding corruption by the Independent Commission Against Corruption. All “Know Your Client” obligations have been carried out. There are no issues as to the sources of funds/monies received by your Firm.

Identify, explain and comment upon how each of the below should be dealt with in order to comply with the Solicitors’ Accounts Rules (Cap.159F) and prudent accounting procedure:

(a) At 10 a.m. on 1 April 2020, you received a signed retainer letter from Z enclosing a cheque on account of costs and anticipated disbursements in the sum of HK\$800,000 payable to your Firm.

(3 marks)

(b) At 6 p.m. on 1 April 2020, you called Leading Counsel (“LC”) (who had reputation of being the star of the criminal bar), hoping to retain him. LC told you that he had heard that the Prosecution was also considering retaining him on fiat. He required a retainer letter signed by your Firm with a cashier’s order of HK\$1 million by noon on 2 April 2020. LC agreed that if he was briefed, then the HK\$1 million would be used on account of his future fees. If he was not briefed, then the monies received would not be returned. At 11 a.m. on 2 April 2020, you sent a retainer letter and the cashier’s order (HK\$1 million) to LC’s chambers.

(4 marks)

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

(c) On 6 April 2020, Z requested that payment of HK\$25,000 be made by you to Investigators Enterprises Limited (“the Investigators”) which he had instructed to prepare a confidential report that would assist his defence.

(2 marks)

(d) On 17 April 2020, Z was charged and brought to court that afternoon. You instructed LC and his Junior Counsel (“JC”) to appear at Eastern Magistracy. LC advised you that his fee would be HK\$250,000 and JC would require a brief of HK\$125,000. You agreed to these fees and in turn, took the back sheets duly signed to court. After court, LC and JC sent their respective fee notes by email to your Firm.

(3 marks)

(e) By 18 April 2020 this case was becoming complicated and difficult. You agreed with Z that your fees would be HK\$3 million and this would cover all work of your Firm excluding disbursements from 1 April 2020 to 1 June 2020. You instructed your secretary to send a fee note to Z. This was done at 5 p.m. on 18 April 2020.

(3 marks)

(f) On 20 April 2020, your accounts department told you that a sum of HK\$3 million was noted on your Firm’s online banking statements. This was by way of a cheque deposit.

(2 marks)

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

(g) On 22 April 2020, you were advised by the Department of Justice that at the next hearing, they would be asking to have Z's case committed to the High Court for trial. All committal bundles were ready to be served. A further committal hearing on 5 May 2020 had been fixed. You decided that LC and JC would require fees to review the committal bundles and attend in court on 5 May 2020. You therefore asked Z to ensure that a further HK\$2 million was paid to cover their fees. Z said he would require time to raise this sum and suggested you use the HK\$3 million he had paid to you to cover LC and JC's fees for the next hearing. You called LC and JC and asked them to each agree a fee for reading all papers and appearing at the committal hearing. LC said that his fee would be HK\$1.5 million and JC expected HK\$750,000. Both LC and JC agreed that this would cover all of their work until this matter reached the High Court. You felt that this was reasonable and Z agreed.

(4 marks)

(h) On 11 May 2020, you received a cheque from Z for HK\$1 million and a further cheque from Z post-dated to 30 May 2020 in the sum of HK\$1 million.

(4 marks)

End of Part A (Accounts)

**2020 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Wednesday, 11 November 2020



2020 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.

2020 Overseas Lawyers Qualification Examination
Head IV: Part B on Professional Conduct

Question 1 (25 marks)

In late January 2020, Andrew, a litigation partner in the firm B&B, received a call from his high school classmate, Charles, who told him that he had just secured a “secret formula” which could cure Covid-19. Charles wanted to meet Andrew to discuss how to find investors to develop a drug based on the formula.

Andrew immediately arranged for his managing partner David, as well as junior solicitor Elvis from the commercial department, to meet with Charles. At the February meeting, Charles explained that he had obtained the “secret formula” from a monk, who discovered a wild plant in the mountains with magical curing powers. Charles asked if the firm could help him find professional investors.

Andrew thought this would be a big opportunity for the firm to develop a biotechnology practice as well as making some handsome legal fees. David was more cautious, especially when he learned from Andrew that he did not know much about Charles as the two had not seen each other for over ten years. Before agreeing to accept Charles as a client of B&B, David tasked Elvis to find out as much as possible about Charles, the “secret formula” and whether Charles was telling the truth about the healing effects of the wild plant.

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

Elvis met Charles on several occasions in February and March, and received documents from him which Charles said were official certificates issued by test laboratories concerning successful treatment of Covid-19 cases using herbal medicine derived from the “secret formula”. Elvis tried hard to seek confirmation from sources and the test laboratories but without success. In April, Charles threatened to take his project to another law firm as no progress was made by B&B. Andrew was very upset with David and he left B&B in July to set up his own practice in the name of A&Co. Immediately, Charles became the first client of A&Co.

In late July, A&Co sent out letters to all the major corporate and commercial clients of B&B stating that Andrew was in charge of an exciting pharmaceutical project which could save millions from the rampage of Covid-19. The letter stated it was a “once in a lifetime” opportunity for professional investors to make handsome gains with their investments in the trust set up by Charles.

Today, police officers came to B&B to execute a search warrant on the firm, seeking in particular all documents and files in connection with Charles and the “herbal drug project”. The police told David and Elvis that many people had put their entire savings with A&Co to invest in the “herbal drug project”, and Charles disappeared with tens of millions of the investors’ money missing.

Elvis was unwilling to pass over the documents he collected from Charles to the police. He also spoke privately with David as to whether he should tell the police B&B had no documents whatsoever regarding the “herbal drug project”.

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

David said that as no retainer had been signed between Charles and B&B, Charles was not even a former client of B&B and the firm owed no duty towards Charles whatsoever.

Elvis followed David's instruction and passed all files and all papers to the police.

- (a) Comment on Andrew's professional conduct.**

(7 marks)
- (b) Comment on David's professional conduct.**

(7 marks)
- (c) Comment on Elvis' professional conduct.**

(5 marks)
- (d) Explain what B&B should have done regarding the papers relating to Charles, either provided by him or sent to him, when the police asked for those documents.**

(6 marks)

Question 2 (25 marks)

Albert, Bernard and Caroline are the partners of Wong & Associates (“Firm”). They formed the Firm many years ago and they are all over 20 years qualified. Albert specialises in residential and commercial conveyancing; Bernard is a litigator (mainly personal injury) and Caroline carries out wills and probate work.

In 2019, the Firm recruited Diana as an assistant solicitor. Diana was keen to be promoted to the partnership and decided that it would help her cause if she could bring in some business to the Firm. Her first suggestion was to update the name of the Firm to ‘Supreme Legal Partners’. The partners agreed to this change.

She also spoke to her grandfather who owns several restaurants across Hong Kong. Her grandfather agreed that the Firm’s brochures could be distributed to patrons at the restaurants and that its logo could appear on restaurant receipts and invoices together with the words ‘The law firm that delivers delicious results’.

Diana then approached a printer and a website designer about producing new ‘modern-looking’ versions of the Firm’s brochures and website. Both now feature photographs of all the partners taken by a professional photographer at court buildings and other Hong Kong landmarks. The photographs are accompanied by descriptions of their respective experience and practices. The new brochures also feature favourable comments by ‘satisfied clients’, which Diana copied from correspondence with the Firm from real clients.

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

In addition, the website designer arranged for videos of interviews with ‘clients’ (all played by actors), in which they told an ‘interviewer’ (also played by an actor) about how the Firm had solved their legal problems - from setting up a small business to recovering compensation for unfair dismissal – much more quickly and for much lower fees than other firms they previously retained. These are all on the website.

Discuss:

(a) any ethical issue(s) arising from Diana’s promotional plans;
(6 marks)

(b) any ethical issues specifically relating to the content of the new brochures and website.
(6 marks)

Shortly after the new website went online, Albert received the following e-mail:

My name is Carlos Juarez. I am a director of the International Latin American Dancing Society (‘the Society’), a non-profit making organisation based in Buenos Aires, Argentina. The Society promotes Latin American dance, with training courses and competitions, throughout the world.

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

The Society is thinking of buying premises for a dance centre in Hong Kong and your firm's website caught our attention. We need a reliable lawyer with whom we can entrust our funds. Subject to your agreement below, the Society will render you a power of attorney by which you are authorised to act for and on our behalf in this matter.

To show that we are serious with the purchase, we shall deposit US\$3,000,000 with your firm, which can be used to pay for the initial deposit once we agree on the target premises. Please, therefore, give me the number of your designated account so that we can arrange the transfer without delay. We will let you know shortly our further instructions.

Explain:

- (c) What action Albert should take before deciding to accept these instructions;**

(7 marks)

- (d) Of what should Albert remain aware if he decides to accept the instructions.**

(6 marks)

Question 3 (25 marks)

Emily Chan (“Emily”) works at a bank in Central. On 12 November 2019, she had been in the office continuously for over two days working on a major loan transaction. Despite being very tired she decided to drive home at about 11.00 p.m. rather than get a taxi.

Whilst driving through Mid-Levels, she overlooked a red light and struck a pedestrian. Emily got out of her car to discover that the pedestrian, Fred, was seriously injured. Emily called for an ambulance and the police. Both arrived and Fred was taken to hospital, where he was found to have suffered a fractured skull, three broken ribs, a broken leg and numerous contusions. The police interviewed Emily and took her statement. There was no lawyer present. She was not asked about, and did not mention, the fact that she had been working continuously for over two days and was exhausted at the time of the accident.

A month later, by which time he had returned home from hospital, Fred was telephoned by a man called George who said he would pay his legal fees (including disbursements) if Fred decided to sue Emily. George asked for 25% of any damages recovered in the claim in return for his financial assistance. He added that Fred would have to instruct a law firm chosen by George. He assured Fred that this firm, Dimm & Partners (“Firm”), had an excellent record in winning personal injury cases. The Firm would pay Fred 75% and George 25% of any damages it recovered from Emily. It would not bill Fred any legal fees. George explained that even 75% of his likely damages would still be ‘a lot of money’. Fred agreed to George’s suggestion as he had been unable to return to work as a courier since the accident, needed to pay for physiotherapy, and was short of cash.

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

George then approached Henry, a partner at the Firm, who agreed to the arrangement (NB this was not the first time that the Firm had done this) and he, whose speciality was employment law, was subsequently retained by Fred. One of the terms of Fred's retainer with the Firm was that the Firm would not be liable for any legal or regulatory liability in respect of the work it carried out for Fred.

When they met, Fred told Henry that he had been walking on a pedestrian crossing with the signal in his favour when Emily's car 'speeded towards me and hit me'. The next thing he remembered was waking up in a hospital bed. Henry said that he would represent Fred in a claim for compensation for his personal injuries. He told Fred that he would commence the claim in the District Court and that he was '99% certain' to win. He sent the required notice before action and subsequently arranged for the service of a writ endorsed with a statement of claim on Emily.

Henry also asked his clerk to approach Jonathan, counsel specialising in personal injury litigation and Henry's clerk negotiated the fee with Jonathan who agreed to take on the case for a fixed fee of HK\$100,000.

(a) Identify any acts of professional misconduct committed by Henry and the Firm.

(15 marks)

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

Having received the writ and statement of claim, Emily decided to instruct Cheung, Chow & Hui (“CCH”) to represent her in the claim. Kevin, an experienced personal injury litigation solicitor at CCH, met Emily. Kevin said that CCH would represent her at the trial for an agreed fee of HK\$250,000. There was no written retainer and no provision for the payment of disbursements or costs on account.

Emily told Kevin that she had been working very long hours at the bank and had been very tired when she was driving home. She asked whether these facts could be ‘kept confidential’.

Emily then suggested that she could claim that she was 'fully awake and alert' if she was asked in cross-examination about her state at the time of the accident.

Kevin said that there was no duty to inform the Court of her tiredness if it never came up, and that, if it did, then anything Emily said about it at all would be a matter for her alone.

(b) Identify any acts of professional misconduct committed by Kevin.

(5 marks)

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

Kevin discussed with Emily the possibility of settling the claim, but Emily said she did not wish to do so. Notwithstanding her views, Kevin corresponded with Henry and they agreed to settle Fred's claim for HK\$300,000.

(c) Discuss whether Kevin acted professionally in negotiating the settlement and whether it is binding on Emily.

(5 marks)

End of Part B (Professional Conduct)