

**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)