

THE LAW SOCIETY OF HONG KONG
OVERSEAS LAWYERS QUALIFICATION EXAMINATION
2024 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, 2022

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

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2. Examiners' Comments on the 2021, 2022 and 2023 Examinations

Examiners' Comments on the 2021 Examination

HEAD IV: Accounts and Professional Conduct

Part A - ACCOUNTS

Question 1

1. This year's question was a very straightforward one and should not have caused any difficulties to the candidates.
 - (a) This was very straightforward and required a discussion over whether or not a client account with a bank account had to be opened. Many of the candidates raised irrelevant comments and tried to write down everything they knew about the use of and rationale for a client account! There was a general lack of application.
 - (b) This was a more challenging question which required knowledge as to whether or not a client account can be opened outside Hong Kong as well as payment on account of costs by way of Bitcoin. Many of the candidates took the view that it was possible to do so by applying for a waiver of the Rules. However, very few candidates attempted to provide reasons as to why a waiver would be granted. As to Bitcoin, many of the candidates did not have any idea as to how to deal with this issue and did not look at the Rules carefully.
 - (c) This was very straightforward and should not have caused any difficulties but again, some of the candidates did not even attempt to give any considered discussion as to the relevant Rules and Practice Directions and at the same time, some candidates still took the view that the bookkeeper could sign client account's cheques! However, most candidates were able to pass this particular question.
 - (d) This again should have caused no issues and was an easy question to gain marks by identifying the rationale for reconciliation. However, most candidates just went straight to the manual and copied out the relevant section without any thought.

- (e) This was very badly answered by everybody. Indeed, it is clear that no one read the question carefully. Very few knew that each year Certified Public Accountants need to provide a report as to compliance with the Accounts Rules vis-à-vis examining the relevant client account, books, etc. Most of the candidates went on a detailed analysis of the use of management accounts, profit and loss, etc. Most of the candidates failed to pass this question.
2. Hence, overall, taking matters as a whole, this paper should not have caused any difficulties. However, the fact that they could not answer Question (e) resulted in some of the candidates failing the paper. Those who failed lacked knowledge and understanding of the Accounts Rules.

Part B - Professional Conduct

Question 1

This year there are altogether 98 scripts for marking. Out of those 98 candidates, only 24 managed to obtain a mark of 12½ or above in the first marking. The failure rate is very high despite this Q1 of Part B is not difficult.

The question looks at a senior lawyer whose partners had decided to close down the law firm. Candidates were asked to consider on the form and substance of legal practice which the senior lawyer would wish to start afresh. To begin, that senior lawyer would like to set up a one-man sole proprietorship in the same name as the old firm. He would use his family home as his office and engage clients in video conferencing. To him, his home office would be his virtual office and his adult children and wife would be his assistants and secretary respectively from time to time. The senior lawyer would buy a light bus and convert it into his mobile office. He would park the light bus near to police stations or magistracies when his former clerk would bring businesses to him. On the two sides of the light bus, that senior lawyer would post banners stating in golden bold prints that his law firm would be one of the best if not the best and that his law firm would practise all types of legal services.

That senior lawyer would conduct first hand property transactions in the light bus. When he had free time, he would study criminal law which he professed to be quite ignorant of.

Candidates were asked to provide their answers in the form of a draft opinion.

The question provides plenty of prompts to candidates and one would have thought that it would not be too difficult for any candidate to score 12.5 marks and above.

It turns out that the results are appalling. While most of the candidates would have some ideas on what constitutes practice promotion, the limits of doing practice promotion and why the senior lawyer would be in breach if he should proceed onto doing the “virtual office” and “mobile office” in his proposed new practice, there was insufficient depth in most of the answers.

Some candidates simply copied out long passages from the Solicitors' Guide.

The bad result demonstrates the overall quality of the candidates taking the Head IV exam in 2021.

Question 2

This question was concerned with solicitors' professional undertakings and its facts were based upon those of *Angela Ho & Associates (a firm) v Kwong Ka Yin t/a Phyllis KY Kwong & Associates* [2014] HKCU 2774.

The question contained two parts. The first required the candidates to provide a detailed discussion of the issues of professional conduct raised by the actions of a firm of solicitors (Firm A) in breaching a professional undertaking. The second part required them to address what steps, if any, the firm which had received the undertaking (Firm B) could take against Firm A. Despite it being a concerned with an important aspect of a solicitor's practice, only 22% of the candidates achieved a 'pass' mark of 12.5 or more.

With respect to the first part of the question, a significant number of candidates mentioned the issue of undertakings in only a cursory manner, with no little more than a sentence or two. Of those that spent a little more time on the subject, most only managed to identify a couple of the relevant provisions from *The Hong Kong Solicitors' Guide to Professional Conduct* ('SG'). Very few addressed the facts or the SG's provisions or case law in sufficient depth by, for example, discussing the fact that SG Principle 14.08 states that an undertaking is still binding even if it is to do something outside a solicitor's control. It is notable that not one candidate referred to *Angela Ho & Associates (a firm) v Kwong Ka Yin t/a Phyllis KY Kwong & Associates*. Nor did they refer to any other relevant judgments including the recent UK Supreme Court decision in *Harcus Sinclair LLP v Yours Lawyers Ltd* [2021] UKSC 32.

The facts of the question also made it clear that the partner in Firm A was in breach of SG Principles 2.03 and 2.04 for failing to properly supervise his assistant solicitor. Only a few candidates referred to this point in the first part of their answer. Further, most candidates missed a breach of confidentiality, under SG Principle 8.01 and in the retainer, by the assistant solicitor at Firm A in mistakenly sending a note (of a meeting with his client) to Firm B.

Rather than dealing with the pertinent facts and regulatory issues, many candidates discussed various irrelevant points, such as the SG provisions on briefing counsel (SG Chapter 12) and fees (SG Chapter 4). Some candidates wrote, in a very vague fashion, of the need for solicitors to act in ‘good faith’.

As to the second part of the question, few candidates were able to explain that Firm B could apply to the court to exercise its inherent jurisdiction to supervise solicitors by enforcing the undertaking against Firm A; make a complaint to the Law Society; or bring a claim for breach of contract against Firm A. Many mentioned only one or the other of the first two of these three options. Very few discussed the possibility of a contractual claim. Some, erroneously, discussed the inability of barristers to sue for their fees. Some, again, referred to the need for solicitors to act in ‘good faith’.

In summary, the answers given for this question demonstrated that the majority of the candidates were unfamiliar with the professional conduct obligations relating to solicitors’ undertakings, either in their entirety or in any satisfactory detail. Whilst this alone is worrying, there is also the fact that many candidates seemed to be incapable of comprehending the question set before them. The reference to numerous irrelevant matters in their answers revealed that they had not read the exam paper or did not understand what they had read.

Question 3

This was a straightforward question on competence divided into three parts. The first part concerned the issues of professional misconduct arising from a solicitor’s action – and lack of action - in respect of a Warning Notice and an Order from the Buildings Department requiring the demolition of a client’s property. The second part concerned the firm’s decision to bill the client. The third part concerned the firm’s senior partner’s interpretation of its retainer letter and his proposed response to the discovery that the solicitor had been negligent. Despite being a straightforward question, only 16% of the candidates achieved a ‘pass’ mark of 12.5 or more.

With respect to the first part of the question, whilst most (but not all) candidates recognised that the solicitor had not been competent to deal with the client’s dispute with the Buildings Department, very few considered and analysed the relevant facts, regulatory provisions and case law. Many

candidates did not even refer to any or all of SG Principles 5.03, 5.12 or 6.01. Further, few discussed the fact that the solicitor had not instructed suitable counsel and was also in breach of his duties pursuant to SG Principles 5.03 and 12.03 in respect of the fact that counsel's advice had been incorrect. Some candidates referred to *Davy-Chiesman v Davy-Chiesman* [1984] 1 All ER 321 but not to any other relevant authorities. There was also very little discussion of the fact the solicitor's 'loss' of an important letter from the Buildings Department was a clear breach of SG Principles 5.03, 5.12 and 6.01.

In terms of the solicitor's and the firm's legal liability for the former's negligence, very few candidates mentioned any cases other than *Midland Bank Trust Co Ltd v. Hett, Stubbs and Kemp* [1979] Ch 384. Most candidates failed to discuss legal liability at all.

In respect of the second part of the question, most candidates recognised that any interim bill from the firm should have been agreed in advance with the client as per SG Principle 4.08. It had not and, therefore, the firm could not render a bill until the conclusion of the matter. Many candidates also recognised that the firm had not obtained the client's authority to instruct counsel as per SG Principle 5.17, Commentary 3 and SG Principle 4.03. Some also correctly noted that the retainer letter had set out an agreed or capped fee as per SG Principle 4.02 or 4.05. Many 'correct' answers were, however, lacking in sufficient detail.

As to the third part of the question, many candidates stated that a limitation clause in the firm's retainer was ineffective, but fewer explained why by reference to section 59(2) of the Legal Practitioners Ordinance and SG Principle 6.01, Commentary 7. Only a couple of candidates mentioned section 3 of the Control of Exemption Clauses Ordinance. Finally, whilst many candidates also recognised that the senior partner was incorrect in his belief that the solicitor's negligence could be ignored and that the firm, instead, was obliged to notify both its client and the SIF of this negligent conduct, very few referred to the relevant SG Principles.

As with Question 2, most candidates displayed an ignorance of the detailed relevant regulatory provisions, legislation and case law in relation to the issues addressed by this question. Again, the inability of some candidates to read the question was evident.

Overall Comments to Part B on Professional Conduct

1. The followings were observed:-
 - (a) The various answers show a lack of understanding and knowledge in respect of Professional Conduct. There were numerous errors.
 - (b) The main issue was that the answers were not applicable at all to the actual questions that were posed. The questions were straightforward and could easily have been answered. Many of the answers put forward irrelevant points.
2. Overall, it is noted that the candidates lacked relevant application and knowledge.

January 2022

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Examiners' Comments on the 2022 Examination

HEAD IV: Accounts and Professional Conduct

Part A - ACCOUNTS

Question 1

This year's question was straightforward. It required the candidates to read the question carefully and apply their knowledge to the specific issues that were being raised.

- (A) (i) This question was split in 3 components and dealt with the issues as to monies being received on account of the Firm's costs as well as an agreed fee in respect of counsel. It is beyond any doubt that the money received has to go into client account and in turn, the real issue here was to consider whether or not there has been sufficient clearance before counsel can be paid. The other issues were dealing with the book entries and providing a receipt. However, many of the candidates raised irrelevant points and assumptions that there may have been a written agreement or a bill delivered and as such, it was possible to make payment into office account or at the same time split the cheque.
- (ii) This should have caused no difficulties. However, many of the candidates just copied out the relevant sections in the manual without applying them to the issues that were before them.
- (iii) Dealing with the cashier's order should not have caused any problems. The issue here is that cashier's orders per se still need to go through the clearing system!
- (B) Many of the candidates did not set out the actual steps the Firm should take to try to find out who paid the money into the client account! They dealt with the steps and the suspense account.
- (C) This again was a straightforward matter as to how to deal with monies that are in client account where one cannot locate the client. Although this was reasonably well-answered, many of the candidates failed to actually list the steps that should be taken to persuade the Law Society that they have made the sufficient enquiries.
- (D) This question should not have covered any difficulties. They had to list and set out the management accounts and how these may assist the Firm's profitability and supervising and running the Firm's accounting system. Again, many of the candidates failed to list the actual management accounts but just gave very general answer without examples.

Those who failed deserved to and again, the failures were all had the same characteristics, lack of application, lack of understanding of the Accounts Rules, fundamental issues with the accounting treatment as well as the inability to offer any

discussion or answer the issues that were put before them. The candidates' pass rate for this question was 70%.

PART B - PROFESSIONAL CONDUCT

Question 1

The question tests the candidates' understanding of some basic principles in professional conduct, particularly those that have been discussed in reported cases.

If candidates have knowledge of the following reported cases they should be able to answer the question quite well:

- *Winnie Lo v. HKSAR* (2012) 15 HKCFAR 16 - On what constitutes and does not constitute champerty and maintenance.
- *HKSAR v. Wong Chi Wai* (2013) 16 HKCFAR 539 - On what is privileged information and perverting the course of justice.
- *Siu Yat Fung Anthony T/A Anthony Siu & Co v. The Joint Tribunal of the Bar Council and The Law Society [2022] 4 HKLRD 276* - On how to deal with disputes over barrister's fees.

Unfortunately, even though two of the cases are Court of Final Appeal decisions having significant impact on solicitors' practice, the great majority of candidates seem to be not aware of them.

The *Winnie Lo* case confirms that solicitors acting in good faith and took up a case with reasonable merits hoping to recoup costs from the other side at the end of the case is NOT guilty of maintenance. No candidate knows about this.

In the case *Wong Chi Wai*, the barrister trying to stop a solicitor from giving evidence was almost convicted of attempting to pervert the course of justice. Again, no candidate knows about this.

Another point that almost all candidates miss is about the scope of legal aid. Whilst many candidates know that it is a solicitor's duty to advise client of the availability of legal aid, no candidate was able to point out that legal aid does not cover shareholder disputes.

The *Siu Yat Fung Anthony* case is relatively recent and it is not too surprising that many candidates were not aware of it (though quite a number were). Yet even without reading this case, candidates are expected to know how to properly deal with disputes over barrister's fees. Many do not.

Not surprisingly therefore the passing rate is only 35% for this question.

The recommendation is that candidates should read reported cases concerning professional conduct, not just the rules in the Solicitor's Guide to Professional Conduct.

Question 2

This question concerned a criminal matter and the scenario was based loosely on the facts of *HKSAR v Ma Ka Kin* [2021] 4 HKLRD 83.

The question contained two parts. The first part required the candidates to discuss the taking of initial instructions from a client facing serious criminal charges. The second part concerned instructing counsel in the same matter and attending a conference with counsel and the client. Issues relating to competence, confidentiality and loyalty to the client were also raised. Despite the fact that this question concerned relatively basic aspects of a solicitor's practice, under 20% of the candidates achieved a pass mark of 12.5 or more.

With respect to the first part of the question, many candidates appeared to lack any substantive knowledge on taking instructions in a criminal matter. For example, many candidates failed to mention the need for a written retainer in criminal matters as *per rule 5D, Solicitors Practice Rules, Cap 195H* ('SPR'). Many candidates were also surprisingly ignorant of the need to advise the client on fees generally and the availability of Legal Aid in particular. Most candidates noted that the solicitor in the scenario was insufficiently competent, but they did not discuss this in any great detail (i.e. by reference to the relevant provisions in the *The Hong Kong Solicitors' Guide to Professional Conduct*) ("SG"). Many candidates also recognised that the solicitor acted in breach of *SG Principle 10.16* but often discussed this at far too great a length and at the expense of addressing other relevant points.

With respect to the second part of the question, a large number of candidates gave only fleeting attention to the need to instruct counsel in accordance with the *SG* (in particular, *SG Principle 5.17(3)*). Many candidates also failed to discuss the fact that the solicitor was in breach of his duty of confidentiality. Most candidates recognised that the solicitor was in breach of his obligations under *SG Principle 3.01* and also noted the apparent conflict of interest on his and his firm's part but, again, discussed these points only in a superficial manner.

In summary, the answers given for this question by many candidates demonstrated that they had failed to familiarise themselves sufficiently with the relevant provisions of the *SG*. Indeed, many candidates did not even identify its relevant provisions on numerous occasions.

Question 3

This question, which was divided into three parts, largely concerned the need to comply with *Practice Direction P* (and its associated legislation) upon the receipt of new instructions. Despite being concerned with important subject matter which should be within the knowledge of most, if not all, solicitors in Hong Kong, the candidates' pass rate for this question was – as with Question 2 – under 20%.

The first part of the question required the candidates to explain what the solicitor in the scenario should do upon being contacted by a prospective new client who had referred to his company's 'current local legal advisors'. Many candidates appeared to be

ignorant of the existence of *SG Principle 5.11* and also of the need to carry out appropriate conflict searches.

The next part of the question addressed the specific steps to be taken pursuant to *Practice Direction P* upon the receipt of new instructions. Although most candidates identified the relevance of *Practice Direction P*, the level of detail demonstrated by many of them on, for example, client identification and verification, was surprisingly poor. Very few candidates set out the relevant steps to be taken with any degree of precision.

The final part of the question dealt, firstly, with a dispute between the client and the solicitor about her fees and a possible complaint against her firm. Very few candidates addressed the provisions in the *SG* relating to these points. The second aspect of the final part of the question concerned the solicitor's discovery, after the event, that the client had been accused in the media of money laundering for drug dealers and others. Many candidates provided only a sketchy discussion of this point and some neglected to do so at all.

As with Questions 1 and 2, many candidates demonstrated very little knowledge of the professional conduct requirements placed upon Hong Kong solicitors.

Examiners' Comments on the 2023 Examination

HEAD IV: Accounts and Professional Conduct

Part A - ACCOUNTS

Question 1

The question this year was split into 4 separate parts. The question was very straightforward and should not have caused any difficulties to any of the candidates.

- (A) The fundamental issue in respect of Part A was to ensure that the candidates were fully aware as to how to treat the cashier's order and the payment in. The main thrust of the question was directed as to interest due to the large sum of money. However, most candidates did not even touch or address the interest issue. Instead, many of them embarked upon irrelevant and uncalled for commentary as to the way to deal with payment to Counsel and investigators. Since the question did not particularise any information as to when or if payment was to be made, all those comments irrelevant and showed a lack of understanding, especially having regard to (D).
- (B) Again, this should have been very straightforward and very obvious to all candidates and in particular, many of them tried to come up with justification as to why Fifi, the girlfriend, who has no accounting experience could be employed! However, most candidates did set out the relevant rules and addressed the issues.
- (C) This question was in respect of client account reconciliation. Most candidates just copied the relevant extracts from manual and did not really go into any detail nor apply these. Many candidates did not discuss the rationale or reasons for the reconciliation.
- (D) This question asked for an analysis of the concept of disbursements and the various types and how the relevant book entries should be dealt with in respect of addressing these. Some of the candidates tried to go into question (A) and utilise the facts there to answer this part. However, they did not identify nor analyse the actual classification.

Overall, the pass rate was acceptable. Most candidates were able to answer and deal with the relevant points. However, those that failed did so due to lack of application, knowledge and relevance.

PART B - PROFESSIONAL CONDUCT

Question 1

The question this year was split into 2 separate parts. The question was very straightforward and should not have caused any difficulties to any of the candidates.

- (a) The fundamental issue in respect of Part (a) was to ensure that the candidates were fully aware of the Mandatory Requirements under Practice Direction P (PDP), particularly in relation to client identification and client verification. The candidate should have been able to assess whether client verification was required and list out the actions to take to conduct client identification and client verification and understand that law firms should adopt a risk-based approach in determining the level of information to be obtained. Many candidates did not set out the actions and approach that should be taken.

Candidates should also be able to recognise that ABC is asked to act for the company instead of Jane and to take the necessary actions to identify the beneficial owners. As a matter of practicality, candidates should have outlined what would be considered a beneficial owner, but not many specified the definition that persons holding over 25% of the shares should have been subject to client due diligence.

Candidates should also be aware of the situations which require enhanced Client Due Diligence to be conducted. Discussion of whether Jane is a “high risk” persons by reference being a politically exposed person (PEP) should have been made, particularly in respect of whether her husband calls into the definition of non-Hong Kong PEP. Many candidates were able to identify that Jane was a PEP.

- (b) Again, this should have been very straightforward and very obvious to all candidates. The question relates to a u-turn transaction with many indicators of a suspicious transaction. Candidate should have identified paragraph 126 of the PDP. Not all candidates were able to identify this. Candidates should then conclude that a Suspicious Transaction Report should be made. Many candidates were able to identify this need. Reference should have been made to the relevant Ordinances, the duty of Confidentiality under 8.01 and the exceptions to this duty. Not all candidates could identify the duty of confidentiality and the exemptions. Candidates should also be mindful of the obligations to pass on to his client and use all information which is material to the subject matter of the retainer, but also consider whether there is such a need under the ordinances, and the offence of tipping off. A good number of candidates noted that they had to avoid tipping off but not many identified the basis for this.

Some candidates were able to answer and deal with the relevant points. However, those that failed did so due to lack of application, knowledge, and relevance.

Question 2

This question was concerned with solicitors' professional undertakings. It was based loosely on the facts of *Global Marine Drillships Ltd v William La Bella & Others* [2014] EWHC 2242 (Ch).

The question comprised two parts, the first part required the candidates to identify and discuss the relevant provisions of *The Hong Kong Solicitors' Guide to Professional Conduct* ('SG') as they pertained to the solicitors in the question scenario who had failed to abide by a professional undertaking. The second part required them to discuss the possible courses of action available to the recipients of the undertaking. It therefore resembled the typical circumstances of a broken professional undertaking which may be encountered in practice.

Unfortunately, only 40% of the candidates achieved a 'pass' mark of 12.5 or more. This is a better result than for Head IV examination questions relating to professional undertakings in recent years but is still lower than one would expect of experienced practitioners.

With respect to the first part of the question, many candidates failed to identify the crux of the question and, instead, discussed entirely irrelevant issues such as Practice Direction P or the need for solicitors to behave with 'good faith' towards their peers. Many of those candidates who recognised that the question concerned professional undertakings only discussed the provisions of *SG Chapter 14* in a superficial manner, albeit others did so with enough detail to achieve a pass mark. Some candidates gave the question more attention and achieved much better marks as a result.

With respect to the second part of the question, some candidates explained all the alternative courses of action available to the recipients of the undertaking but most mentioned just one or two e.g. making a complaint to the Law Society. Others failed to address the question at all.

In conclusion, most of the candidates failed to demonstrate an adequate familiarity with the professional conduct obligations relating to Hong Kong solicitors' undertakings.

Question 3

The question is split into 3 parts covering various principles set out in *The Hong Kong Solicitors' Guide to Professional Conduct*. Overall, most of the candidates are able to identify the relevant principles. The difference between good and bad answers generally lies in the quality of the analysis and application.

3(a)(i)

This is a straight-forward question on the issue of competence. Most candidates are able to identify the relevant principles. However, quite a number of them have failed to discuss them by reference to the facts given adequately but instead wasted time on referring to irrelevant rules (e.g. the rules on fees).

3(a)(ii)

This is the part of Question 3 that is performed most poorly. Many candidates argued that Jason (i.e. the solicitor in question) should not take up the case. In reaching such conclusion, many of them only focused on the facts which are not favourable to Jason and failed to take into account the favourable facts. Marking was done strictly according to the Marking Scheme. One or two candidate (s) was / were able to point out that since Jason has only qualified for 5 years, there is scope for him to expand his practice area into litigation and he should be encouraged to do so because if he did not make a start, he would never have the experience. This point is not covered in the Marking Scheme but it demonstrates the talent of the candidate(s) who argued that Jason should take up the case.

If sufficient regard was paid to all relevant facts, it should not be difficult to reach the preferred conclusion that Jason could take up the case despite the initial shortcomings which he (i) openly and voluntarily discussed with the client and (ii) suggested good ways to overcome.

3(b)

This is a straight-forward question on gift and most candidates are able to identify the relevant principles. Many candidates simply identified and copied the relevant rules without any elaboration or discussion of the relevant facts. Better answers would (i) identify how the relevant rule extends to a solicitor's employees and/or (ii) discuss whether Jason was in fact "inviting a gift" from client with reference to the number of boxes of moon cakes and the manner in which Jason requested for them.

3(c)

This question canvasses various issues including confidentiality, exclusion of liability for professional misconduct and the duty to report misconduct.

Most candidates have no problem with identifying the breach of confidentiality. However, most of them have not discussed the relevant facts adequately. It is not difficult to pick up that Amy was a journalist and hence disclosure of confidential information to her would be particularly risky, but some candidates failed to highlight this and only a handful of candidates managed to go further and discuss whether the case information was / could have been in the public domain yet (The Facts suggested that no demand letter was issued).

As to the other issues namely the exclusion of liability for professional misconduct and the duty to report other solicitors' misconduct to The Law Society of Hong Kong, these should be very obvious and straight-forward to the candidates. Most candidates are able to identify them.

3. Past Examination Papers from 2021 to 2023

**2021 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Tuesday, 16 November 2021



2021 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.

2021 Overseas Lawyers Qualification Examination
Head IV: Part A on Accounts

Question 1 (25 marks)

Lewis and Max are solicitors and have worked together at a well-known magic circle law firm for many years. However, they have not been offered partnership. They have decided to resign and their intention is to open their own firm. They intend to offer a boutique service regarding advising in respect of regulatory issues affecting crypto-currencies and other exotic investment products.

They are very confident that their existing clients will follow them. However, Lewis and Max are worried about the obligations they will face in complying with the Solicitors' Accounts Rules (Cap. 159F) and various accounting issues.

Identify, explain and comment on how each of the following situations/scenarios should be dealt with in order to comply with the Solicitors' Accounts Rules (Cap.159F) and prudent accounting procedure. All Know Your Client and Anti-money laundering procedures have been cleared.

(a) Lewis and Max have decided that they do not wish to open a client account with a bank.

(3 marks)

(b) A potential client has told Lewis and Max that they would wish to settle bills and pay money on account of costs by way of Bitcoin and they insist that the firm opens a bank account in the Cayman Islands.

(5 marks)

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

(c) Lewis' good friend, Valtteri, has asked whether he can work part-time at their new firm as their bookkeeper. He has been a racing driver but feels he can easily learn what is needed to do. Lewis knows him well. Since Lewis will be travelling extensively, he feels very comfortable in hiring Valtteri. Max agrees that he is the best person to sign cheques.

(6 marks)

(d) Lewis has told you that he has heard about "client account reconciliation". He wants to know what this is all about. He feels that if he does not hold or deal with client money, he needs not to bother with this.

(6 marks)

(e) Max has told you he is aware that each year the firm has to engage some accountants to produce a report to the Law Society. He knows nothing about this. However, he hopes that Valtteri will produce the report.

(5 marks)

End of Part A (Accounts)

**2021 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Tuesday, 16 November 2021



2021 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.

2021 Overseas Lawyers Qualification Examination
Head IV: Part B on Professional Conduct

Question 1 (25 marks)

A month ago, Albert Low (“Albert”) came to consult your senior partner, Beatrice Shaw (“Beatrice”). Beatrice asked you to join the meeting to take notes and to assist her.

Albert, aged 65, is the senior partner of the law firm, Albert Low & Co. All the partners of Albert Low & Co. have decided to close down the law firm. Albert wanted Beatrice to advise him. Albert told Beatrice that he still wished to continue ‘some form’ of legal practice which would be very different from what Albert Low & Co. was doing.

Albert did not want to shoulder the heavy financial burden of renting an office and hiring staff. He would however comply with all Law Society practice requirements, including the keeping of solicitor indemnity insurance.

Albert’s idea was to set up a one-man sole proprietorship. It would still be called Albert Low & Co. in order to retain as much as possible the clients and contacts of the dissolved firm. The address of the sole proprietorship would be that of a secretarial service company which serves many other customers. The secretarial service company would provide him with telephone reception service.

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

Albert would use the family home as his office. When a client wants to meet with him, Albert would always request a video conference. Albert would switch on a virtual background showing that he was sitting in a grand office with rows of law books behind him. Albert said that would be his “virtual office”. He would ask his adult children to appear in his video conferences as his legal assistants taking notes. His wife would come in from time to time as his secretary. If a physical meeting was needed, Albert would conduct in-person meeting in what he described as his “mobile office”.

Albert would buy a light bus and convert that into his “mobile office”. The “mobile office” would be equipped with wireless internet connection, a fax machine and a printer. On one side of the light bus, Albert would post a huge banner of him sitting in his grand “virtual office”. Beneath the banner would be a statement in golden bold print stating: ‘Albert Low & Co., One of the Best Law Firms if not the Best’. On the other side of the light bus, there would be posted information about his new law firm, stating that it would practise all types of legal services.

Albert said he was interested in promoting two types of legal services. On real estate transactions, Albert would concentrate on getting instructions from first-sale buyers. Albert knew several estate agents. Albert would drive his light bus and park it close to the developers’ sale offices. Whenever an estate agent could find an interested first-sale buyer, the estate agent would invite that person to board the light bus and meet with Albert. Albert would explain to that person the laws relating to first sales and the terms of the provisional agreement.

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

When a purchaser instructs Albert to act, he would arrange the signing of documents in his “mobile office”. Albert said he would charge normally and he would not share his fees with estate agents.

On criminal law practice, while Albert was not familiar with that area at all, his former clerk has since become very successful in procuring clients, getting instructions from those who were accused or charged with petty criminal offences. That clerk told Albert that Albert could park his light bus near police stations or magistracies, the clerk would bring business to him. Albert wanted to collaborate with that clerk, he would drive his light bus to locations pre-arranged by the clerk. When there is no work, he would study criminal law in his “mobile office”. Albert said he would not reward the clerk for the introduction work.

After the meeting with Albert, Beatrice told you that she was concerned whether Albert could use the name of the closed firm as his new firm’s name and whether he could operate as a one-man sole proprietor without a supporting staff. She was also very uneasy with Albert’s business plan. Beatrice asked you to conduct research into what Albert has suggested at the meeting and prepare a draft opinion for her.

Today Beatrice asked you for that draft opinion.

State your answer in the form of a draft opinion on Albert’s ideas regarding his new law firm.

(25 marks)

Question 2 (25 marks)

The firm of Chow & Chan acts on a variety of matters for Megabiz (Hong Kong) Limited (“Megabiz”), one of which is a very acrimonious court claim against another company. Unfortunately, the partner responsible for this litigation fell seriously ill. In the circumstances, Chow & Chan instructed another Hong Kong firm - Jen & Associates - to take over the handling of the litigation from them. The written retainer was signed on behalf of Chow & Chan.

Since then, Chow & Chan have remained involved in the litigation to co-ordinate matters and instruct Jen & Associates on behalf of Megabiz. Andrew, the senior partner of Chow & Chan, has been the focal point of this co-ordination. As he is not himself a litigator, most of the day-to-day work has been conducted by Frank, a senior associate in the firm’s litigation department.

Three months before the trial, Frank asked Jen & Associates to instruct senior and junior counsel to appear for Megabiz. Frank also confirmed these instructions with Megabiz. During a telephone conversation between Frank and Hilary, a solicitor at Jen & Associates, she informed Frank that an undertaking to pay costs on account was required before Jen & Associates would issue the briefs to counsel. Later that day, Frank sent an e-mail to Hilary that contained the following passage:

“We undertake to pay the requested costs on account (inclusive of Senior Counsel’s, Junior Counsel’s and Solicitor’s fees) to your firm by way of two instalments. The first instalment will be paid by close of business [seven days before the trial] and the second instalment will be paid on or before close of business on [the first day of the trial].”

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

Frank did not discuss the e-mail with Andrew, who was busy on another matter at the time. He did, however, copy the e-mail to him. Andrew subsequently noticed that one of the attachments to that e-mail was a note of a brief telephone conversation between himself and a director at Megabiz on an unrelated matter.

Jen & Associates proceeded to instruct senior and junior counsel and both they and counsel carried out the necessary preparatory work for trial. Payment of the first instalment was not made and the following day (i.e. six days before the trial), a Notice of Change of Solicitors in the case was filed on behalf of Megabiz, replacing Jen & Associates with the firm of Leung, Chow & Leung. The new solicitors instructed another set of counsel to appear at the trial on Megabiz's behalf. When the senior partner of Jen & Associates called Chow & Chan to complain, he was told by Andrew and Frank that they had no funds with which to pay them and that they were following their client's instructions.

Jen & Associates have incurred HK\$200,000 in costs in preparing for trial and the senior and junior counsel have issued fee notes to the firm for HK\$1,000,000 and HK\$350,000 respectively as per their briefs.

(a) Discuss the issues of professional conduct that are raised by Andrew and Frank's actions.

(20 marks)

(b) What steps, if any, may Jen & Associates have against Andrew and Frank?

(5 marks)

Question 3 (25 marks)

Emily is a newly appointed associate solicitor in the commercial litigation department of Lau & Lau, a medium-sized firm. She has taken over several files from George, who recently retired from the practice.

Whilst Emily was reviewing the files, which were in a total mess, she came across a matter in which the firm is acting for the owner of a house. The Buildings Department issued a Warning Notice and, subsequently, an Order requiring its demolition because its construction was not authorised under the Buildings Ordinance (Cap. 123). The first item in the file was the firm's standard retainer letter, which the client had counter-signed, stating that the expected fees and disbursements to be incurred would not exceed HK\$50,000 in total.

Emily also found George's instructions to Henry, a barrister, regarding the appropriate response to the Warning Notice and Order, and a fee note from him for HK\$40,000 which has been settled. No bill, however, has been sent to the client as yet. Emily worked with Henry at her previous firm, having instructed him in a few insurance coverage disputes.

Henry advised that the Warning Notice was in error. George simply replicated that advice in a letter to the Buildings Department. Following the receipt of the Order, George sent a Notice of Appeal to the Secretary to the Appeal Tribunal a day before the 21-day deadline.

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

George subsequently received a draft Statement of Particulars setting out the full details of the appeal from Henry, which replicated the contents of Henry's earlier advice. George merely copied the same without any amendment and sent it to the Secretary to the Appeal Tribunal within a day of receiving it.

There is no further correspondence with the client after the initial retainer letter, except for brief letters from the client attaching the Warning Notice and Order and from George attaching the Notice of Appeal (from the Order) for the client to sign. In particular, there is no substantive advice or references to Henry in George's letters to the client. Emily noted that no date had been set for the hearing of the Appeal and decided that it would be an appropriate time to bill the client for the work done thus far.

A few days after preparing and sending the bill to the client, Emily was told by George's former secretary that she had found some correspondence that had been left inside his desk. One item was a letter from the Buildings Department in response to George's letter based on Henry's advice. The letter preceded the issuing of the Order. Emily noted the Building Department's assertion that the client's house was not exempted from the application of the Buildings Ordinance, contrary to what Henry had advised. In addition, it referred to the fact that Henry (and George) had relied upon a decision that had been overruled by the Court of Appeal last year.

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

Emily decided to speak to Martin, the senior partner. He referred her to the firm's standard terms of services, which were set out in the retainer letter:

“Our civil liability relating to the legal advice and services we provide shall not exceed the amount of any and all fees payable to us by the client.

Subject to the above, we accept liability to pay damages in respect of any loss or losses suffered by the client as a direct result of the provision of our legal advice and services.”

Martin added, “Don't worry about it. We're in the clear. No need to tell anybody. See what happens at the tribunal.”

- (a) What issues of professional misconduct arise from George's action?**
(15 marks)
- (b) What issues arise from Emily's decision to bill the client?**
(5 marks)
- (c) Comment on Martin's interpretation of the retainer letter and his proposed course of action.**
(5 marks)

End of Part B (Professional Conduct)

**2022 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Wednesday, 9 November 2022



2022 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.

2022 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

(A) Y has instructed your Firm to act for him and to appear in court with regard to an application for security for costs. You have carried out all Know Your Client obligations and have cleared all conflict checks. You have asked Y for HK\$200,000 on account of costs in respect of the coming hearing. These costs would be by way of an agreed fee of HK\$100,000 for your Firm and HK\$100,000 for Counsel.

(i) On 1 April, 2022, a cheque payable to your Firm in the sum of HK\$200,000 was received. On the same date, Counsel has made it clear that he will need to have been paid HK\$100,000 before he will start any work. You instruct your accounts department to prepare a cheque payable to Counsel and ask your secretary to ensure this is urgently sent to him.

(5 marks)

(ii) On 3 April, 2022, you were advised by your accounts clerk that Y's cheque had been dishonoured. You immediately called Y and made it clear that you were very upset and angry. Y said he would make immediate arrangements to deliver a cashier's order to your Firm in the sum of HK\$200,000.

(3 marks)

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

(iii) On 4 April, 2022, a cashier's order in the sum of HK\$200,000 made payable to your Firm was received.

(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.

(B) Your accounts clerk has indicated to you that there was a deposit made in the sum of HK\$200,000 paid into your Firm's client account. He is not able to identify the client or the file into which the deposit relates.

What steps should you take to ensure that you comply with the relevant Solicitors' Accounts Rules?

(3 marks)

(C) Your Firm has, in its client account, the sum of HK\$250,000 that was being held on behalf of X, your Firm's client. X can no longer be contacted or located. **Advise what steps the Firm should take.**

(5 marks)

(D) **What do you understand by the term "Management Accounts" for a firm of solicitors? How might such Management Accounts enhance and assist the partners in the running and supervision of a firm's accounting systems and enable a firm to operate efficiently?**

(6 marks)

End of Part A (Accounts)

**2022 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Wednesday, 9 November 2022



2022 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.

2022 Overseas Lawyers Qualification Examination
Head IV: Part B on Professional Conduct

Question 1 (25 marks)

Stark is an associate solicitor working in the firm of Thor & Co. under the supervision of Thor, a sole proprietor, doing mainly conveyancing work.

A year ago, Stark met Natasha on a social occasion. Natasha told Stark that she had invested in a company called Doggie Beauty Limited (“Doggie”), which was in the business of pet grooming, as a minority shareholder. The majority shareholder was Thanos. Disagreements arose between Natasha and Thanos. Thanos excluded Natasha from Doggie’s business and refused to return her investment money to her. Stark vaguely remembered what he learned from law school about protection of minority shareholders and told Natasha that she could file an unfair prejudice petition against Thanos, compelling Thanos to buy out her shares. Natasha said she had no money to pay for the legal work. Stark said that was no problem. His firm (Thor & Co.) would act for Natasha if Natasha was willing to become his girlfriend. He told Natasha that he believed Natasha’s case had good merits. Stark even agreed to take care of the disbursements such as counsel fees, expecting all his costs and disbursements to be recovered from Thanos. But he told Natasha that in the unlikely event that Natasha lost the case, he and Thor & Co. would not be liable and she could not make any complaints. Natasha agreed and started dating Stark.

(a) Comment on Stark’s conduct above.

(9 marks)

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

Not knowing much about litigation practice, Stark engaged a barrister, Hulk, who was his law school buddy, to do the case for Natasha and substantially delegated all the work to Hulk. Hulk also agreed to issue his fee notes only upon completion of the case. After Stark filed the claim drafted by Hulk, Thanos, through his solicitors, offered to pay Natasha HK\$500,000 to settle the case. However, Stark thought this was too low and did not bother to report the offer to Natasha. He instructed Hulk to continue to prosecute the case.

One of the issues at trial was whether Natasha had diverted business from Doggie to a competing business named Perfect Cat Limited, which Natasha was suspected to be involved in. Natasha told Stark that another solicitor firm, Scarlet & Co., had helped her to form Perfect Cat Limited. Stark told Natasha not to worry. He would write a letter to Scarlet & Co. warning them not to give evidence for Thanos or disclose Natasha's involvement with Perfect Cat Limited because this information was privileged.

After the trial, Natasha's case was dismissed as the judge found her evidence not credible. Natasha was ordered to pay indemnity costs to Thanos. Stark told Natasha not to worry as he would lodge an appeal for Natasha and she would surely win. However, Natasha became doubtful and broke up with Stark. At that point, Thor discovered Stark's dealings with Natasha and Hulk. He fired Stark immediately.

(b) Comment on Stark's conduct above.

(6 marks)

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

Subsequently Natasha sued Thor & Co. for negligence and lodged a complaint with the Law Society against Thor & Co. for mishandling her case. Hulk also threatened to sue for his unpaid counsel fees. Thor wanted to deny both the liabilities for negligence and counsel fees. Thor thought Hulk's fees were exorbitant in terms of his seniority and the quantity and quality of his work.

(c) Advise Thor on Natasha's negligence claim and the Law Society's complaint.

(4 marks)

(d) Advise Thor how to deal with Hulk's claim for counsel fees.

(6 marks)

Question 2 (25 marks)

Andy (aged 19) worked at a small restaurant “The Golden Shark” in North Point in Hong Kong near to the public rented flat, which he shares with his mother and younger sister, Bernice (aged 15). Andy is the family’s sole wage earner. In January 2021, Andy’s colleague at the restaurant, Clive, asked Andy if he would accept delivery of a parcel from overseas for him.

Clive explained that he couldn’t have the parcel delivered to his own home as he shared a letter box with another person and there had been a number of thefts from it. Andy agreed in return for gift of HK\$1,000 from Clive “To buy something for your mother”.

No one was at home when the parcel was delivered and a notification card was left in Andy’s letter box. Although the address was correctly stated, the recipient named on the card was a “Mr. David Wong”. Bernice collected the notification card on her return home from school and gave it to Andy, who then called Clive to tell him of its arrival. Clive asked Andy to meet his “friend” named Dave at Kennedy Town MTR Station. Andy did so and gave the card to a man identifying himself as Dave.

The following day, Andy was arrested by police officers. It transpired later that the parcel contained a significant quantity of heroin and Andy was charged with trafficking dangerous drugs in contravention of the Dangerous Drugs Ordinance (Cap. 134). Clive and Dave have also been arrested, charged and face trial.

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

Shortly after Andy's arrest, the manager at the restaurant told Andy's mother that "The owners won't employ drug dealers" and told her that Andy had been sacked. He added, however, that he knew a good law firm that might be able to help. Andy was subsequently visited in custody by Edward, a newly qualified solicitor with Chan, Chan & Chan. Edward told Andy that he had carried out some research before their meeting and advised Andy that he would be liable upon conviction to an enormous fine and imprisonment for life. He also told Andy that it would be "a waste of time" to apply for bail. Edward urged Andy to plead guilty as he "had no chance of avoiding prison" but a guilty plea may get him a lighter sentence. Despite this negative advice, Andy agreed to retain Edward but decided not to confess yet.

(a) Discuss the issues of professional conduct raised by Edward's actions.

(12 marks)

After meeting Andy, Edward consulted a partner in his firm, Gordon, and they agreed that they should involve counsel, who would be able to convince Andy that his position was hopeless. Edward asked his secretary to call Henry, a friend of his from university who had been called to the Bar and practised a mixture of criminal and personal injury litigation. Henry agreed to visit Andy with Edward and to try and persuade him that he should plead guilty. Gordon also called the manager of "The Golden Shark", who said that the restaurant would cover the cost of Edward's and Henry's work on the case provided that Clive, the manager's cousin, was acquitted and no one else from the restaurant was implicated in any alleged drug offences.

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

Edward and Henry subsequently visited Andy and gave him the following document to sign:

“I shall plead guilty to all the charges laid against me on the above date. My legal advisers have fully explained my situation to me and I would like to express my willingness to assist the 2nd Defendant [Clive] as he is innocent of any charges against him.

I and the 2nd Defendant were acquainted at a restaurant where we worked together. At the time of my arrest by the police, I was in a confused state and I confirm that the 2nd Defendant is innocent. I also confirm that he never asked me to receive any parcel for him.

Finally, if the authorities drop the charges against the 2nd Defendant, I will plead guilty to all the charges against me.”

Despite much effort by both Edward and Henry, Andy refused to sign the document.

(b) Discuss the issues of professional conduct raised by Edward’s and Gordon’s actions.

(10 marks)

Following the meeting with Edward and Henry, Andy decided to instruct another firm of solicitors. That firm advised him to plead not guilty and, after trial, he was acquitted. A delighted Andy sent the senior partner an antique tea service that had been in the family for many generations in thanks.

(c) Discuss any practice issues that arise from the gift of the antique tea service.

(3 marks)

Question 3 (25 marks)

Angela is a partner in Aslem & Wong, a medium-sized commercial firm, who specialises in corporate and commercial work, especially for Information Technology start-ups. She has dealt with initial public offerings, mergers and acquisitions and related transactions for Information Technology companies in both Hong Kong and in other jurisdictions, including England & Wales and Singapore. Earlier today, she received the following e-mail:

“Dear Angela,

I am the managing director of Electroplosion, a leading Korean eSports company, and we are looking to invest in eSports companies in Hong Kong. We have identified Majix Games (Hong Kong) Limited (“Majix”) as a potential partner but, unfortunately, our negotiations have been delayed by technicalities raised by our current local legal advisors. We are looking to invest HK\$100m in Majix and turn it into a major eSports hub for Hong Kong and Southern China. I shall call you by Zoom tomorrow to discuss our case if I may. Please let my secretary know a convenient time and appropriate contact details.

Regards

Jeong-hoon”

Angela doesn't know anything about Majix but she has heard of Electroplosion. Also, one of her partners has excellent contacts in Korea.

(a) Explain what Angela should consider and any steps she should take before accepting any retainer from Electroplosion.

(5 marks)

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

(b) Explain what steps she should take upon deciding to accept the retainer.

(10 marks)

The proposed investment fell through at the last minute as the owners of Majix decided to enter into a partnership with a rival to Electroplosion instead. Nevertheless, Electroplosion paid Angela's considerable fees (and disbursements) to Aslem & Wong. Unfortunately, Electroplosion then criticised Angela for causing the deal to be concluded with the rival company. In order to avoid lengthy and potentially embarrassing litigation, Aslem & Wong agreed to reimburse over half of the fees.

Shortly afterwards, Angela's trainee showed her an article from an electronic gaming website with the following headline:

"esports scandal sees Korean Giant accused of game fixing and money laundering"

The report goes on to give details of various scams on Electroplosion's hosted-online games involving stolen credit cards. It is suggested that some of the stolen funds have been directed to drug traffickers and even terrorist groups. Dozens of streamers (i.e. players) and staff at Electroplosion have been implicated.

(c) Discuss the issues of professional conduct arising from the above facts.

(10 marks)

End of Part B (Professional Conduct)

**2023 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Wednesday, 8 November 2023



2023 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.

2023 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 new matter. He was recently arrested by the Police in respect of allegations arising out of the National Security Law. He is presently on bail. He wishes to ensure he obtains the best possible representation and requires an opinion from a London King's Counsel as to the strategy and tactics to be adopted. He wishes to instruct Senior Counsel and Junior Counsel here in Hong Kong. He also wishes to engage investigators. You have asked him to make an initial payment of HK\$15 million on account of costs. You received from his office a cashier's order drawn on The Hongkong and Shanghai Banking Corporation Limited in favour of your Firm in the sum of HK\$15 million. You instruct your accounts staff to bank the cashier's order. All Know Your Client obligations have been correctly satisfied.

(7 marks)

(B) X and Z are in partnership of the Firm. They have become very busy over the past months which has resulted in numerous new files being opened. The Firm's accountant is about to go on maternity leave and they need to ensure that there is sufficient cover. Z has indicated that his new girlfriend, Fifi, used to work as a part-time bookkeeper in a small trading company some 15 years ago. Fifi has not worked since. Z advised X that Fifi was prepared to come in on a part-time basis to help with the accounting and bookkeeping. Both X and Z were delighted with this suggestion and they felt this would enable sufficient cover since Z and

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

X need to travel extensively. Therefore, X and Z are of the view that the client account could be looked after well by Fifi and she will be able to deal with all issues and requisitions and sign such cheques as may be necessary. Fifi would also be able to look after petty cash as well as deal with all matters arising out of office account.

(7 marks)

(C) X has told Z that he has heard about “client account reconciliation”. X would wish to know more about this.

(6 marks)

(D) Z is concerned as to how to deal with the Accounting Rules that are relevant to the treatment of disbursements. He has heard of different types of disbursements and is at a loss as to how the relevant book entries should be dealt with in respect of addressing these issues.

(5 marks)

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

End of Part A (Accounts)

**2023 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Wednesday, 8 November 2023



2023 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.

2023 Overseas Lawyers Qualification Examination
Head IV: Part B on Professional Conduct

Question 1 (25 marks)

1. Alan is a solicitor at ABC Solicitors (“ABC”). Alan was tasked to meet with Jane whom he had never met, a rich client who used the firm personally 15 years ago but has not instructed ABC for the past 10 years.
2. Alan met Jane on Tuesday. During the meeting, Jane revealed that she just established a Hong Kong limited company with a friend (each holding 50%) and the company intends to buy a health product business. Jane wanted Alan to act for their company in the upcoming transaction. Jane also shared the happy news that she is now married to a senior government minister of a highly volatile state. She revealed that there was a civil war there but that her husband had it under control, so she could go ahead with the expensive honeymoon that her husband had planned.
3. After some pleasant conversation, Alan summarized the instructions and prepared to end the meeting. As Jane was an existing client, and Alan knew that the partners of ABC highly valued Jane as a past client, Alan did not ask for any identification, and he did not run any verification.

(a) What actions and approach should Alan/ABC have taken in relation to Jane?

(16 marks)

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

4. Before Jane left the meeting, Jane shared that her good friend, Tron, would like to engage ABC as well. Within half-an-hour of Jane leaving, Alan received a call from Tron. Tron wanted ABC to represent him to sell his company, called XYZ Company (“XYZ”), on an urgent basis because he needed the funds to buy 123 Company. Tron also wanted Alan to handle the related acquisition of 123 Company.
5. Alan excitedly drew up the engagement letter, completed the client identification and verification works, and Tron promptly signed it and paid HK\$8,000,000 as costs on account. Though the estimated legal fees were only HK\$2,000,000, Tron said he felt more comfortable providing additional costs on account. The reason for this, he said, was that there were funds ready for use for any complications in the deal.
6. A week later, Alan received a request from Tron for the repayment of HK\$5,000,000 back to him due to ‘urgent personal reasons’. As Alan was arranging with ABC’s accounts department staff to transfer HK\$5,000,000 to Tron, Alan read a news article that XYZ had been a front for drug trafficking, and that Tron, being the sole director and shareholder of XYZ, was under investigation by the police.

(b) What issues arise in respect of Tron and what actions should Alan take?

(9 marks)

Question 2 (25 marks)

1. Mega Mining (Hong Kong) Limited (“Mega Mining”) wanted to purchase specialist mining equipment for the purpose of looking for rare earth metals in remote areas of Central Asia (“the Project”). It sought a bank loan in order to do so. The bank demanded that Mega Mining obtain appropriate insurance for the Project as a condition of the loan.
2. Mega Mining then asked Azure Brokers Limited (“Azure”) to obtain the necessary insurance from Lloyd’s of London (“Lloyd’s”). Mr. Brown, Azure’s managing director, assured Mr. Green, Mega Mining’s CEO, that this could be arranged for an appropriate fee. Azure instructed David, a partner of Woo & Hui, assisted by Frank, a senior associate solicitor, in respect of the matter. Mega Mining instructed Jen & Partners as their solicitors. All appropriate professional obligations relating to the receipt of new instructions were complied with by each firm.
3. It was agreed between Woo & Hui and Jen & Partners that Mega Mining would provide HK\$50 million to Azure in order for it to obtain the requisite insurance at Lloyd’s. In an e-mail to a solicitor at Jen & Partners, Frank stated:

“I confirm that upon receipt of funds in the sum of HK\$50 million (“the Funds”) into our client account, we will hold and deal with the Funds solely and strictly to be used for the sole purpose of a purchase of an insurance policy for the Project. I shall provide you with independent evidence, sufficient and satisfactory to confirm to you that this insurance policy has been issued.”

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

4. Frank did not discuss the e-mail with David, who was busy on another matter at the time. He did copy the e-mail to him, however, he subsequently noticed that one of the attachments was a note of a brief telephone conversation between himself (Frank) and Mr. Brown.

5. Mega Mining subsequently transferred the HK\$50 million to Woo & Hui. A day after the transfer of the Funds, David and Frank were asked to visit Azure's offices in Central, Hong Kong. They met Mr. Brown and several of his colleagues, who demanded that they arrange for the transfer the HK\$50 million to another bank account designated by them immediately. Mr. Brown also threatened that Azure would sue both David, Frank and the firm and report them to the Law Society if they refused to do so. Mr. Brown e-mailed both of them in the same terms later that day and the following day. Frank eventually arranged for the transfer of the HK\$50 million to the account identified by Mr. Brown.

6. Azure did not obtain the Lloyd's insurance cover. Mega Mining cancelled the contract with Azure and demanded the return of the HK\$50 million. The account to which the HK\$50 million was transferred belonged to a company located outside Hong Kong which has no significant assets or operations. The Funds were subsequently transferred from that account to various other bank accounts in different jurisdictions throughout the world. The landlord of Azure's offices in Central has also just filed a winding-up petition against it. Mega Mining is seeking the return of the HK\$50 million.

(a) Discuss the issues of professional conduct that are raised by David and Frank's actions.

(20 marks)

(b) Discuss what action(s) Mega Mining or Jen & Partners may take against David and Frank.

(5 marks)

Question 3 (25 marks)

Facts (Part A)

1. Jason has qualified as a solicitor for 5 years. He is the sole proprietor of the firm. Almost 100% of Jason's work since qualifying has been general commercial work. He has never handled a civil litigation case before.
2. This afternoon, one of his former clients, Mr. X, visited Jason's office and asked Jason to sue Mr. Y for defamation. Both Mr. X and Mr. Y are high-profile business leaders in Hong Kong.
3. Although Jason had not handled any civil litigation cases before, let alone a defamation case, he would like to take up this case as it is bound to attract a lot of media attention. Jason believes that any publicity will raise the profile of his firm.
4. He carefully explained to Mr. X that although he had not handled any civil litigation before, he was confident to take up this matter as (a) he had received basic training in civil procedures at Law School, (b) he was not too busy at the moment so he would have ample time to work on this case, and (c) most importantly, he was going to brief a barrister, Mr. Chan, to help. Jason went on to explain that Mr. Chan had substantial experience in defamation cases and had just won a libel case for his lay client in the Court of Final Appeal. Jason added that Mr. Chan, the barrister, would be briefed to help Jason every step of the way in Mr. X's case. That means apart from advising on strategy and evidence, Mr. Chan would draft all essential documents starting from the demand letter and down to the pleadings.

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

5. However, Jason also made it very clear to Mr. X that notwithstanding the briefing of Mr. Chan, he himself would not take a back-seat role. He would check everything drafted by Mr. Chan carefully to see if there is any obvious error and consider all advice from Mr. Chan to the best of his own abilities before accepting the same. He hoped Mr. X would give him the opportunity to handle this high-profile litigation under the arrangements aforesaid. Mr. X agreed to the proposal from Jason and signed a retainer letter prepared by Jason later on.

(a)(i) Identify and discuss any professional conduct issues which you see if Jason were to take up this new case under the circumstances aforesaid.

(5 marks)

(a)(ii) Should Jason take up the case? Identify the relevant conduct rules, coming to your own conclusion and elaborate by reference to the Facts (Part A). Also comment on whether the plan to instruct Mr. Chan, the barrister solves any potential professional conduct problems.

(9 marks)

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

Facts (Part B)

6. When Mr. X was about to leave Jason's office, Jason suddenly recalled that one of the businesses which Mr. X ran was a moon cake manufacturing and retail business which Jason helped him to acquire 2 years ago. Jason said to Mr. X before he left his office that:

"I am sure your moon cake business is doing well, by the way, it would be nice if you could kindly send me some samples of your moon cakes for my staff members and my relatives. I am sure they will all enjoy it. I think 6 or 8 boxes to arrive before the Mid-Autumn Festival would be ideal, we will give you our feedback after the Festival."

Jason was thinking of ending the meeting with a friendly gesture when he said that, he was also in a good mood as a new retainer had been signed. Mr. X said nothing in reply and left the office. Jason planned to brief Mr. Chan on the following day.

- (b) Identify and discuss any professional conduct issues arising directly from the Facts (Part B) set out in Paragraph 6 above.**

(3 marks)

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

Facts (Part C)

7. Later that night, Jason had dinner with his wife, Christine, his brother, Patrick, who was also a solicitor in Hong Kong and Amy, the new girlfriend of Patrick. Patrick told Jason that Amy was a journalist.
 8. Jason told Christine, Patrick and Amy that he had just been retained by Mr. X to handle a high-profile defamation case against Mr. Y. Everybody at the table said “wow” as they all recognised that both Mr. X and Mr. Y were public figures. Jason went on to tell Christine, Patrick and Amy details of Mr. X’s case and his bottom line for accepting a settlement.
 9. Patrick was concerned that Jason had no litigation experience and asked, what if the proposed action did not go well and Mr. X turned around to make a complaint to The Law Society of Hong Kong against Jason for his lack of experience in civil litigation? Jason told Patrick not to worry about that as he had inserted a provision into his firm’s retainer letter with Mr. X to the effect that Mr. X knew about Jason’s lack of experience in litigation and Mr. X agreed not to make any complaint to The Law Society of Hong Kong no matter what happened in the proceedings covered by this retainer. Jason went on to say that he felt safe as this provision effectively excluded his liability for any professional misconduct.
- (c) Identify and discuss the professional conduct issues arising out of the Facts (Part C) set out in Paragraphs 7 to 9 above. Note in particular Patrick’s position and advise what has to be done on his part.**

(8 marks)

End of Part B (Professional Conduct)