

**2019 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Tuesday, 12 November 2019



2019 PART A on Accounts Test Paper

This Part is worth 25 marks. There is one question. You must pass this Part and Part B in one sitting of the Head IV Examination in order to pass this Head.

RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY.

2019 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

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

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

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

(6 marks)

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

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

(6 marks)

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

(6 marks)

- (B) (i) What do you understand by the term "Management Accounts" for a firm of solicitors? How would such Management Accounts enhance and assist the partners in their running and supervision of the firm's accounting systems and enable the firm to enhance profitability?**

(4 marks)

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

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

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

End of Part A (Accounts)

**2019 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Tuesday, 12 November 2019



2019 PART B on Professional Conduct Test Paper

This Part is worth 75 marks. You must pass this Part and Part A in one sitting of the Head IV Examination in order to pass this Head. Each question must be answered.

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

Question 1 (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12 marks)

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

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

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

Question 2 (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

(6 marks)

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

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

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

(5 marks)

Question 3 (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14 marks)

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

(5 marks)

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

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

(6 marks)

End of Part B (Professional Conduct)