

THE LAW SOCIETY OF HONG KONG
OVERSEAS LAWYERS QUALIFICATION EXAMINATION
2020 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 counsel
- 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 counsel
- Settlement of proceedings

12. **Relations with other Solicitors**

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

13. **Relations with the Bar**

- Instructing counsel
- Court attendances
- Responsibility for paying counsel's fees

14. **Relations with Third Parties**

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

15. **Professional Undertakings**

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

16. **Discipline**

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

17. **Solicitors' Accounts**

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

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

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

MATERIALS

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

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

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

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2. Examiners' Comments on the 2017, 2018 and 2019 Examinations

Examiners' Comments on the 2017 Examination

HEAD IV: Accounts and Professional Conduct

PART A ACCOUNTS

Question 1

This year's question was very straightforward and should not have caused any difficulties to the candidates. They were asked to provide a memorandum to address 6 issues:-

- (i) Question 1(a) - Client account reconciliation – Most of the candidates answered this question by just regurgitating and repeating the relevant provisions and the Rules as well as extracts from the Manual. They failed to give a clear explanation for the rationale as to why a client account reconciliation is required and needed. Some candidates did indeed apply themselves to actually answering the question.
- (ii) Question 1(b) - This was a very obvious question whereby they were asked to advise as to whether a bookkeeper who only worked 10 years ago should be able to sign cheques. Unfortunately, a majority of the candidates did everything possible to try to justify and set out as to why this bookkeeper could be able to sign cheques. Many of them spent time advising that an application for a waiver could be made to the Law Society. Of course, this lacked thought or application in that such waivers will never be granted to bookkeepers who had little experience. In short, they failed to apply themselves and indeed, made it perfectly clear that this particular bookkeeper was totally unsuitable to sign any form of cheques being client or office. Very few candidates recognised the point that most banks here in Hong Kong would not allow anyone to sign any

cheques either office or client without production of a practising certificate.

- (iii) Question 1(c) - This was again very straightforward and dealt with the way in which the sum of money was to be treated. Again, however, many candidates did not apply themselves to the actual facts and did not really address the new Rules.
 - (iv) Questions 1(d) and 1(e) were similar questions regarding opening of bank accounts. Again, there was a lack of application or an attempt to try to answer it by indicating that waivers to the relevant Rules could be obtained.
 - (v) Question 1(f) was reasonably well answered. However, many candidates failed to set out the rationale for why such accounts would be needed. Again, there are many instances of extracts of the Accounting Manual just being copied out.
1. Overall, this was a very straightforward paper and indeed, however, an overall improvement in the answers was noticed. However, the main concern was that those who failed did so due to the fact that they could not answer the question and apply the facts to the actual Rules. Finally, the new procedure implemented, ie the Accounts Question, that Part A being separated from Part B may very well have allowed the candidates to at least complete and answer the question.
 2. Overall, it was concluded that those who failed really deserved to and those who passed did so by at least applying themselves to the issues. However, it was noted there was a lack of candidates who distinguished themselves.

PART B PROFESSIONAL CONDUCT

Question 1

The question comprises five parts.

In respect of *part (a)*, candidates would examine the conduct of a young solicitor Ashley, whether he should have acted for an elderly lady in selling her expensive property on the Peak when the elderly lady appeared to be of ill-health and have been manipulated by her estate agent or other people.

Candidates did reasonably well generally and most were able to score 4 to 6 marks out of the allocated 9 marks.

In respect of *part (b)*, candidates would examine the conduct of Barry, Ashley's supervising partner, who was eager to do the transaction despite his own lack of experience in property transactions. Barry took a few bold steps which are questionable.

Again candidates did reasonably well generally and most were able to score 3 to 4 marks out of the allocated 6 marks.

In respect of *part (c)*, candidates were asked to examine the conduct of Eden, a partner working in the property department of Ashley's former firm, when he disclosed information regarding his former client's connection with the property.

Candidates did not do well. Most would only get 1 out of the allocated three marks. While most could identify Eden's breach of his own duty of confidentiality, very few were able to point out the danger of indiscreet conversations. None was able to further comment that Eden might have a duty to update his former client if the retainer had not yet terminated.

In respect of *part (d)*, candidates would have to consider the conduct

of Fanny, the solicitor who acted for the buyer in the transaction. Fanny made known to Barry her *personal* view on a particular requisition she raised.

Once again, this was an indiscreet conversation between lawyers but without involving client's confidential information. While one might have hoped that Fanny did not make that comment in the first place, it is a question whether the indiscreet conversation represented Fanny's honest belief, whether it had misled Barry, what would be the consequence in professional conduct regarding an honest opinion which has been badly taken by the opposing party?

Candidates did badly. Those who could marginally touch on the truthfulness of Fanny's statement would be given 1 out of the allocated 3 marks. Most candidates mistakenly took the view that Fanny had been incompetent. Fanny only surmised that as her client was to redevelop the land lot, whether there was a certificate of compliance regarding the existing building would be a non-issue. Others went on to suggest there was breach of confidentiality. That could not be right as Fanny was just expressing her own opinion.

In respect of *part (e)*, candidates were asked what Ashley and Barry should do when faced with the buyer's extraordinary request of a huge price reduction or else he would cancel the transaction.

Surprisingly many candidates did badly. On average most could only get 2 out of the allocated 4 marks.

In all, the candidates did poorly in this question.

Question 2

This was the 'usual' question on trial ethics involving solicitor Frank. The question also involves Frank's duty when counsel Charles is instructed.

Part (a)

- (i) The first issue to determine was who was the client: it might be Edith alone or Edith and Wong or Edith and ABC. This might simply be a case of third party instructions from Wong (and/or ABC) on behalf of Edith in which case Edith is probably the only client. In this case Frank must obtain written instructions from Edith that she wishes him (and Charles) to act for her: Principle 5.06, SG. This has not been done.

Is Wong also a client?

- (ii) Turning now to Frank, is Frank so emotionally involved in the case so as to impair his objectivity: see commentary 2 of Principle 7.02, SG? See *Chan Wai Shan v Ocean Park Corpn* (2009) HCPI No 644/2006; *Au Leung Shuet Hung v Au Wing Lun* [2012] 1 HKC 392 and *Windsor-Essex Children's Aid Society v BD* [2013] OJ 481.
- (iii) A written retainer is required for criminal matters: rule 5D, Solicitors' Practice Rules.
- (iv) Frank should have secured Edith's agreement to the instruction of Charles as counsel before Charles was instructed: commentary 3 of Principle 5.17, SG.
- (v) Re the fee, on taking instructions a solicitor should normally give his client the best information he can under the circumstances about the likely costs of the matter. For Frank simply to tell Wong that he will charge Edith only a modest fee is a serious breach. Further, Frank's fee was never discussed with Edith. Charles' fee (a disbursement) should have been agreed with Edith in writing if substantial: commentary to Principle 4.03, SG.

- (vi) Instructing Charles. Frank, when instructing counsel, must ensure that counsel instructed is competent for the particular case: *Re A (a minor)* [1988] NLJLR 79, CA.
- (vii) Charles should have been approached in the first instance by Frank and not by his clerk. Further, Charles' fee should have been negotiated directly with Frank and not with Frank's clerk. According to Practice Direction F1(3), whenever counsel is instructed, he should always be approached in the first instance by the instructing solicitor and not by his clerk and only such instructing solicitor, and not the clerk, is entitled to negotiate a fee with counsel or his clerk. This obligation has been breached.
- (viii) Frank should not keep from Charles the true facts and should probably disclose Wong's relationship with Edith to Charles (is it relevant?).
- (ix) A solicitor must refuse to act as a surety or stand bail for a person for whom he or any partner in his firm is acting as solicitor or agent: Principle 10.19, SG, and failure to comply with this duty will render Frank liable to disciplinary action.

This question was generally well answered.

Part (b)

A very straight-forward question on the solicitor's duty where the client confesses her guilt before the trial begins. The client asks how this will affect the presentation of her defence at trial.

In brief, if the client confesses her guilt to her solicitor before the trial has begun, the solicitor must decline to act in the proceedings if his client insists on giving evidence in the witness box in denial of her guilt or requires the making of a statement asserting her innocence. The solicitor is, however, under a duty to put the prosecution to proof of its case and may submit that there is insufficient evidence to justify

a conviction. Although the solicitor may advocate any defence open to the court, he must not assert his client's innocence or suggest, expressly or by implication, that someone other than his client committed the offence: commentary 4 of Principle 10.15, SG.

Several considerations arise. Is Edith really guilty of the offence in law? Frank must make sure of this and advise Edith accordingly. Secondly, he should inform Edith that she is still entitled to plead not guilty. Frank is entitled to put the prosecution to strict proof of guilt and, if he is so instructed, by way of mitigation to explain that Edith had taken the money to pay for her mother's operation and had intended to pay back the money within one year. He must not, however, permit Edith to testify as to her innocence, try to lay the blame on another person or put forward any false alibi or defence.

Question 3

Question 3 involved two questions on conflict of interest and one on professional undertakings.

Part (a)

The first question involved the interesting issue whether it is proper for a lawyer to be involved in an appeal where the lawyer's own negligence is at issue.

Would it be proper for Stella to represent Global in an appeal against the Court of First Instance's refusal to reduce the award of damages on the basis of Patrick's contributory negligence? Probably it would not because Stella might be held legally responsible in negligence for the failure to plead contributory negligence on Patrick's part if the appellate judgment goes against Global. Any immunity Stella may have as an advocate (which is probably none after *Hall v Simons* [2000] 3 All ER 673, HL!) will not extend to advice on settling the pleadings: see *Saif Ali v Sydney Mitchell & Co (a firm)* [1980] AC

198, HL. She has, accordingly, a personal interest in the outcome of the appeal and her objectivity might be impaired: see *Afkos Industries Pty Ltd v Pullinger Stewart (a firm)* [2001] WASCA 372 (the candidates were not expected to know this case).

Part (b)

This question involved representing jointly father, mother and son injured in a car crash where the father's negligent driving might become an issue by way of a counterclaim.

There is no reason in principle why you should not agree to a joint retainer of father, mother and son. However, the defendant Mr Yip may seek in his defence to lay all (or some) of the blame on Peter by alleging contributory negligence on Peter's part by breaking hard to avoid hitting the dog on the road. If such might be substantiated, Paul and Mary require separate representation as they may seek (Paul through his next friend), to recover some (or all) of the damages from Peter if Peter's negligence is found either to have caused or contributed to the accident. Paul and Mary should, therefore, be advised to seek separate representation (facts based on *Re Louis Gordon Sabeau* [2016] OJ No 5340 which the candidates were not expected to know).

Part (c)

This was a very straightforward question on undertakings which could be answered simply by identifying and applying the relevant provisions in the Guide.

An undertaking is any unequivocal declaration of intention made orally, or in writing or by conduct addressed by a solicitor to someone who reasonably places reliance on it: commentary 1 of Principle 14.01, SG.

For an undertaking to be enforceable, it must be given in unequivocal

terms and the SG provides that the wording and extent of any undertaking should be carefully considered before it is given since a solicitor becomes personally bound by an undertaking given by him: commentary 1 of Principle 14.02, SG.

Is Sally's firm bound by the undertaking? According to Principle 14.01, SG, an undertaking is binding upon the solicitor personally and, if given in the course of practice, also binds her firm. Further, commentary 4 of Principle 14.01, SG, provides that, where a partner gives an undertaking on behalf of her firm, the undertaking binds her personally and the firm.

As regards Sally's arguments:

- (i) First, she has argued that the undertaking is not legally or ethically binding on her since it was given to a family member by way of a personal letter and not under the firm's letterhead. Commentary 2 of Principle 14.01 provides that a solicitor is personally bound by an undertaking given by her in her personal capacity. Despite the fact that the undertaking had been given by way of a personal letter, the undertaking was given in unequivocal terms and, looked at objectively, it was given by Sally in her capacity as solicitor (she had been retained by Aunt Winnie). Yet cf *Geoffrey Silver & Drake v Baines* [1971] 1 QB 396 and *SH Chan & Co v DS Cheung & Co* [1999 2 HKC 541.
- (ii) As regards Sally's second argument, an undertaking is still binding even if it is to do something outside the solicitor's control: Principle 14.08, SG. Commentary 1 of Principle 14.08, SG, further provides that it is no defence to a complaint of professional misconduct that the undertaking was to do something outside the solicitor's control (for example, that it was dependent upon action being taken by a third party and that the action has not been taken unless the undertaking was suitably qualified. In this case it was not so qualified.

- (iii) As regards Sally's third argument, commentary 2 of Principle 14.08, SG, provides that, if an undertaking involves the payment of money, a solicitor must decide whether he is able to give such an undertaking since he can be required to discharge this out of his own and his partners' resources. It is no defence that Sally cannot afford to fulfill the undertaking personally through lack of money.

- (iv) As regards the question whether her firm (and fellow partners) are bound, the undertaking is binding on her firm provided it has been given in the course of Sally's practice: Principle 14.01, SG (see also commentary 4 of Principle 14.01, SG). The undertaking appears to have been given in the course of her practice (she had been professionally retained to draft the agreement between Bill and Aunt Winnie) so that her firm (and fellow partners) will also be liable to honour the undertaking.

January 2018

Examiners' Comments on the 2018 Examination

HEAD IV: Accounts and Professional Conduct

Part A ACCOUNTS

Question 1

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

Part A

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

Part B

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

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

PART B PROFESSIONAL CONDUCT

Question 1

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

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

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

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

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

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

Question 2

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

Part (a)

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

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

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

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

Part (b)

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

Part (c)

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

Question 3

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

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

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

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

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

January 2019

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Examiners' Comments on the 2019 Examination

HEAD IV: Accounts and Professional Conduct

Part A ACCOUNTS

Question 1

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

Part A

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

Part B

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

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

PART B PROFESSIONAL CONDUCT

Question 1

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

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

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

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

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

Question 2

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

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

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

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

Question 3

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

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

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

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

January 2020

3. Past Examination Papers from 2017 to 2019

**2017 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Tuesday, 7 November 2017



2017 PART A on Accounts Test Paper

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

RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY.

2017 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

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

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

(5 marks)

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

(5 marks)

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

(5 marks)

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

(3 marks)

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

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

(3 marks)

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

(4 marks)

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

End of Part A (Accounts)

**2017 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Tuesday, 7 November 2017



2017 PART B on Professional Conduct Test Paper

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

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

Question 1 (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

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

Question 2 (25 marks)

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

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

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

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

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

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

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

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

(19 marks)

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

(b) Advise Edith.

(6 marks)

Question 3 (25 marks)

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

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

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

(5 marks)

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

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

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

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

(9 marks)

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

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

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

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

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

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

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

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

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

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

(11 marks)

End of Part B (Professional Conduct)

**2018 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Thursday, 8 November 2018



2018 PART A on Accounts Test Paper

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

RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY.

2018 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

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

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

(2 marks)

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

(2 marks)

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

(2 marks)

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

(3 marks)

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

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

(5 marks)

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

(3 marks)

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

(3 marks)

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

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

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

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

(5 marks)

End of Part A (Accounts)

**2018 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Thursday, 8 November 2018



2018 PART B on Professional Conduct Test Paper

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

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

Question 1 (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Question 2 (25 marks)

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

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

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

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

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

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

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

Answer the following questions:

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

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

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

(4 marks)

Question 3 (25 marks)

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

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

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

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

(9 marks)

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

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

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

(5 marks)

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

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

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

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

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

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

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

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

(3 marks)

End of Part B (Professional Conduct)

**2019 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD IV: ACCOUNTS

Tuesday, 12 November 2019



2019 PART A on Accounts Test Paper

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

RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY.

2019 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

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

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

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

(6 marks)

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

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

(6 marks)

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

(6 marks)

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

(4 marks)

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

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

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

End of Part A (Accounts)

**2019 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: PROFESSIONAL
CONDUCT**

Tuesday, 12 November 2019



2019 PART B on Professional Conduct Test Paper

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

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

Question 1 (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12 marks)

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

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

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

Question 2 (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

(6 marks)

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

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

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

(5 marks)

Question 3 (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14 marks)

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

(5 marks)

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

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

(6 marks)

End of Part B (Professional Conduct)