

2023 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD IV: ACCOUNTS

Wednesday, 8 November 2023



2023 PART A on Accounts Test Paper

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

RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY.

2023 Overseas Lawyers Qualification Examination

Head IV: Part A on Accounts

Question 1 (25 marks)

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

(7 marks)

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

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

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

(7 marks)

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

(6 marks)

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

(5 marks)

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

End of Part A (Accounts)

2023 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD IV: PROFESSIONAL CONDUCT

Wednesday, 8 November 2023



2023 PART B on Professional Conduct Test Paper

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

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

Question 1 (25 marks)

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

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

(16 marks)

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

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

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

(9 marks)

Question 2 (25 marks)

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

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

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

4. Frank did not discuss the e-mail with David, who was busy on another matter at the time. He did copy the e-mail to him, however, he subsequently noticed that one of the attachments was a note of a brief telephone conversation between himself (Frank) and Mr. Brown.
5. Mega Mining subsequently transferred the HK\$50 million to Woo & Hui. A day after the transfer of the Funds, David and Frank were asked to visit Azure's offices in Central, Hong Kong. They met Mr. Brown and several of his colleagues, who demanded that they arrange for the transfer the HK\$50 million to another bank account designated by them immediately. Mr. Brown also threatened that Azure would sue both David, Frank and the firm and report them to the Law Society if they refused to do so. Mr. Brown e-mailed both of them in the same terms later that day and the following day. Frank eventually arranged for the transfer of the HK\$50 million to the account identified by Mr. Brown.
6. Azure did not obtain the Lloyd's insurance cover. Mega Mining cancelled the contract with Azure and demanded the return of the HK\$50 million. The account to which the HK\$50 million was transferred belonged to a company located outside Hong Kong which has no significant assets or operations. The Funds were subsequently transferred from that account to various other bank accounts in different jurisdictions throughout the world. The landlord of Azure's offices in Central has also just filed a winding-up petition against it. Mega Mining is seeking the return of the HK\$50 million.

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

(20 marks)

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

(5 marks)

Question 3 (25 marks)

Facts (Part A)

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

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

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

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

(5 marks)

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

(9 marks)

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

Facts (Part B)

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

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

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

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

(3 marks)

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

Facts (Part C)

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

(8 marks)

End of Part B (Professional Conduct)