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**HIGHER RIGHTS OF AUDIENCE ASSESSMENT  
IN RESPECT OF CIVIL PROCEEDINGS**

**THE WRITTEN EXAMINATION**

**Question paper**

**Time allowed: 2 hours 30 minutes**

**YOU MUST NOT OPEN THIS PAPER UNTIL YOU ARE TOLD TO DO SO**

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### **Permitted materials**

- Hong Kong Civil Procedure (the Hong Kong White Book)
- The Hong Kong Solicitors' Guide to Professional Conduct (Vol. 1) published by the Law Society
- The Law Society's Code of Advocacy for Solicitor Advocates
- Code of Conduct of the Bar of the Hong Kong Special Administrative Region

### **PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY**

1. This written examination comprises one part of the assessment for higher rights of audience. There are 50 marks allocated for this examination.
2. Candidates may use their own copies of permitted materials, including those computer-printed hard copies. This is so even though they may contain annotations or highlighting provided this has been done in the ordinary course of use and reference. However, extra materials, for example, notes prepared specifically for this examination are not to be included. Use of electronic copies of permitted materials through a specified electronic device can be permissible subject to compliance with the requirements set out by the Higher Rights Assessment Board and candidates' declaration that the device does not contain any non-permitted materials or pre-prepared materials which may be of assistance in the examination. In the event of a dispute between the invigilator and a candidate, the decision of the invigilator shall be final.
3. Candidates must ensure that their answers provided in the examination scripts are legible to the examiners. If a candidate's handwriting is considered illegible, his/her written examination script will be assessed on the basis of the legible parts only and the marks awarded accordingly.
4. If, in answering any question in this examination, a significant ignorance of the code of ethics governing solicitors and/or solicitor advocates is revealed, the Higher Rights Assessment Board may determine that it should result in a failure of the overall assessment irrespective of the candidate's marks otherwise.
5. Candidates must not remove this question paper from the examination room.

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## The Questions

You are a partner in the firm **AB&C**. You have Higher Rights of Audience and have conducted a number of High Court Trials in the Court of First Instance.

You have a long term client – **Mr. Lee**. You have handled legal matters for Mr. Lee since 2000; i.e. for more than 20 years. A particularly memorable case was one in 2005 where Mr. Lee was cross-examined and was found by the High Court Judge to be a credible and honest witness.

One of the more recent matters in which AB&C are instructed by Mr. Lee, is High Court CFI case HCA No. 64 of 2022. Mr. Lee is the Plaintiff suing the Defendant for breach of contract and the Defendant also has a Counterclaim against Mr. Lee.

During the Trial and cross-examination of Mr. Lee, the Defendant’s counsel accused Mr. Lee of “*making up facts*”.

Near the end of Mr. Lee’s oral evidence, the Trial Judge asked Mr. Lee “*Have you given evidence or been cross-examined before?*”, to which Mr. Lee answered “*No*”.

### **Question 1**

Outline the steps you should take in light of what has just transpired – namely, Mr. Lee just gave an answer to the Trial Judge that

- (a) was not what you expected; **[2 marks]** and
- (b) you know to be untrue. **[2 marks]**

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After Trial, Judgment was reserved, and in due course Judgment was handed down. The Trial Judge held against Mr. Lee, finding him to be an incredible and dishonest witness. The Defendant was successful in the Counterclaim, and obtained an award of HK\$9m against Mr. Lee.

## **Question 2**

Mr. Lee wishes to appeal against the Trial Judge's Judgment. Does Mr. Lee need to apply for leave to appeal? Explain your answer and provide authorities. **[2 marks]**

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Mr. Lee has been looking around for alternative law firms. Mr. Lee shows you a pamphlet for a law firm **XY&Z**, advertising “*Appeals to the Court of Appeal from HK\$100,000*”.

Mr. Lee asks you to conduct the Appeal for HK\$100,000. You decline to do so, but consider in the future adopting the advertising method used by XY&Z, since it was successful in enticing Mr. Lee after all. AB&C also have pamphlets, and you think it might be a good idea to advertise “*Wills from HK\$2,000*” for AB&C.

### Question 3

Is this form of advertising (show pricing ‘from HK\$N’) permissible? Identify the relevant rules. **[2 marks]**

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The Defendant enforced the Judgment against Mr. Lee; Mr. Lee had thus far not paid any part of the Judgment sum awarded to the Defendant.

On **16 October 2022** the Defendant obtained an order for oral examination of Mr. Lee under Order 49B rule 1A. Mr. Lee was ordered to provide copies of various financial documents ("**the Disclosure Order**") which was endorsed with Penal Notice. Despite Mr. Lee providing voluminous documents, the Defendant was not satisfied.

On **18 April 2023** oral examination of Mr. Lee took place before a Master. It became clear during the oral examination that Mr. Lee had failed to fully comply with the Disclosure Order. The Defendant's counsel said that they intended to seek an order for imprisonment of Mr. Lee.

#### **Question 4**

Mr. Lee asks you to advise him in relation to the Defendant's threat to imprison him. How will the Defendant be able to do so in the context of civil proceedings? Explain and set out the relevant authorities together with relevant grounds. **[4 marks]**

Mr. Lee is afraid of potential embarrassment and asks you to advise as to whether proceedings can be made 'not open to public'? **[2 marks]**

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Eventually the Defendant decided to pursue imprisonment of Mr. Lee, and made an application on **16 May 2023** to imprison Mr. Lee on the basis that he failed to comply with the Disclosure Order and his conduct during the oral examination (**“the Application”**).

Separately, given his financial troubles, Mr. Lee fell behind repayments (of his other financial obligations) and his other creditors petitioned for Bankruptcy. The matter came before a Master, who made a Bankruptcy Order on **01 June 2023**.

With Mr. Lee now bankrupted, the Defendant is growing more and more frustrated, and hence decided to pursue the Application to imprison Mr. Lee in the hope that such a threat, or the actual imprisonment itself, will incentivize Mr. Lee to satisfy the Judgment and pay up.

The Defendant’s Application came before a Master on **22 August 2023**, and the Master held in favour of the Defendant and decided to make an order for imprisonment of Mr. Lee for 2 months.

### **Question 5**

Mr. Lee really does not want to go to prison, and asks you to advise as to how he can best avoid imprisonment. He wishes to appeal the decision and overturn and set aside the order for imprisonment. Mr. Lee asks you to consider all reasonably viable avenues to keep him out of prison and asks that you advise on his prospects. Set out the broad grounds of appeal that would feature in the Notice of Appeal. **[8 marks]**

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Mr. Lee has no more costs on account at AB&C, and your other partners are growing impatient that you are spending so much time and attention on Mr. Lee when the likelihood of AB&C receiving remuneration is rather low. Your partners would rather you spend time and attention on cases that pay.

### **Question 6**

You feel pressure to cease acting for Mr. Lee altogether, with no costs on account and no hope that he will replenish. Set out the factors and rules that you would take into account in deciding what to do or how to go about doing it. You should also consider factors that are relevant when reporting back to your other partners at AB&C. **[5 marks]**



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Some years later, Mr. Lee is discharged from bankruptcy. Given that you have known Mr. Lee for over 20 years, you know him well. Recently you have noticed that his mental state is not as sharp as it once was, and you are concerned about the quality of his instructions.

You are aware that when it comes to Wills, the ‘test’ is *Banks v. Goodfellow*; but you represent Mr. Lee in all sorts of matters.

### **Question 7**

Given that you act for Mr. Lee generally, on many different matters; and that you have noticed deterioration of his mental state – set out the relevant ‘tests’ that you would consider and apply when deciding whether Mr. Lee’s instructions can be accepted or whether he requires assistance. **[5 marks]**

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You have considered the matter and satisfied yourself that you consider Mr. Lee to lack mental capacity.

His wife approaches you to seek advice on what she should do in the circumstances, in particular, with regards to Mr Lee's medical care.

Mr. Lee having been bankrupted in the past, he is now no longer a person with substantial wealth and is unlikely to be able to afford private legal representation. You consider that Mr. Lee qualifies for Legal Aid, and you recommended that Mrs. Lee try to apply for Legal Aid for Mr. Lee.

### **Question 8**

In suggesting that Mrs. Lee / Mr. Lee apply for Legal Aid, explain and advise them as to the scope / coverage that their Legal Aid application ought to cover, and the applications / claims / causes of action to be pursued in their Legal Aid application, paying particular attention to the mental health issues of Mr. Lee. Assist them by setting out the appropriate steps that will or ought to be taken once Legal Aid has been granted. **[6 marks]**

### **Question 9**

The Director of Legal Aid refused the application by Mrs. Lee on behalf of Mr. Lee. They wish to appeal and ask you to advise as to the steps and procedures. They are also wary that the first appeal may not be successful, and ask you to also advise on the steps and procedures of the 'second appeal'. **[2 marks]**

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Mr. Lee wishes to challenge one of your bills – the bill is dated **01 June 2022** and was issued pursuant to an agreement in writing signed by Mr. Lee dated **01 June 2021**. The material clause of the written agreement is – “the fees of AB&C shall be \$1m in respect of work done for Mr. Lee in HCA No. 123 of 2020”.

### **Question 10**

Can Mr. Lee challenge the bill? How much of the bill is Mr. Lee liable for? Provide the relevant authorities or statutory provisions. **[3 marks]**

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### Question 11

For the purposes of all remaining questions – assume that Mr. Lee has never been bankrupted before. How would your answer differ? Can Mr. Lee challenge the bill? How much of the bill is Mr. Lee liable for? Provide the relevant authorities or statutory provisions. **[3 marks]**

### Question 12

How would your answer differ if the material clause of the written agreement is – “the fees of AB&C shall be \$1m in respect of work done for Mr. Lee in the year 2020 for GG Ltd. other than litigation”. GG Ltd. is a company owned by Mr. Lee. Can Mr. Lee or GG Ltd. challenge the bill? How much of the bill is Mr. Lee liable for? Provide the relevant authorities or statutory provisions. **[4 marks]**

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