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

THE WRITTEN EXAMINATION

Question paper

Time allowed: 2 hours 30 minutes

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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; and
- The Law Society's Code of Advocacy for Solicitor Advocates

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 of 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.
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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.

The case

You are a partner in the Solicitor firm Messrs. Aaron Betty & Co. (“**AB&C**”). You represent Mr. Lee, approaching you after a series of failed litigations. His former Solicitors were Messrs. XY&Z (“**XY&Z**”).

Mr. Lee is a third generation New Yorker, and he was born and has lived in USA his entire life. He became embroiled in litigation against a Hong Kong Company (“**HKC**”), against a background of commercial dealings.

In 2018, Mr. Lee commenced HCA No. 1234 of 2018 (“**HCA2018**”) against HKC, claiming damages in the sum of HK\$10 million. HKC successfully sought modest security for costs against Mr. Lee. In 2019, HKC included a counterclaim in HCA2018 against Mr. Lee which included claims for damages and injunctions. The eventual result of HCA2018 was that by Judgment handed down in 2021, Mr. Lee’s main claim was dismissed and HKC’s counterclaim succeeded, with Judgment in favour of HKC against Mr. Lee for damages, injunction and costs. There was an unsuccessful appeal by Mr. Lee which was entirely dismissed with costs.

Mr. Lee informs you that he has no assets in Hong Kong, and does not intend to comply with any of the Judgments including payment of damages or costs. Mr. Lee recognizes that he is in breach of the injunction but emphasizes that he does not intend to come to Hong Kong.

In January 2022, HKC issued originating summons for contempt proceedings (“**OS2022**”) against Mr. Lee, who instructed XY&Z to refuse to accept service. In March 2022, HKC obtained a substituted service order by delivery to XY&Z.

Mr. Lee was advised by XY&Z that – because OS2022 are a new set of proceedings with its own HCMP action number separate and distinct from HCA2018 and given Mr. Lee’s absence from Hong Kong, XY&Z advised that HKC requires leave to serve OS2022 out of the jurisdiction upon Mr. Lee in USA.

The Questions

Question 1

Mr. Lee seeks your advice as to the correctness (or not) of XY&Z's former advice, with full explanations. In particular, advise on the following two aspects with reasons and explanations but they may not be exclusive in your advice to Mr. Lee –

- (a) whether or not leave to serve out of jurisdiction is required for OS2022;
- (b) whether or not the Hong Kong Court has power / jurisdiction to make an order for substituted service of OS2022 by delivery to XY&Z. **[10 marks]**

Question 2

For the purposes of this Question only – assume that Mr. Lee lives in Macao (rather than USA); How would your advice differ with regards to the need (or not) for leave to serve out of jurisdiction and in relation to service requirements. **[3 marks]**

Question 3

For the purposes of this Question only – assume that (i) you are advising HKC (*i.e.* Mr. Lee's opponent), (ii) Judgment in HCA2018 was handed down 12 days ago and that (iii) Messrs. XY&Z still remain Mr. Lee's Solicitors on the Court record in HCA2018.

HKC wishes to bring an appeal to seek higher damages. You have prepared the Notice of Appeal and have served XY&Z with the Notice of Appeal by delivering the same to the offices of Messrs. XY&Z, whom Mr. Lee has instructed to reject service. XY&Z then wrote back and stated that although they were Mr. Lee's Solicitors on the record in HCA2018, XY&Z do not have instructions to accept service of the Notice of Appeal and are no longer in contact with Mr. Lee.

XY&Z also state that in their view the Notice of Appeal constitutes a new set of proceedings with its own CACV number separate and distinct from HCA2018,

therefore they are entitled to reject service, as with any new set of proceedings; and because Mr. Lee lives abroad, leave to serve out of jurisdiction is also required.

Can you insist that there was good service of the Notice of Appeal? Advise HKC as to whether the Appeal has been properly commenced; If not, advise on what steps need to be taken to ensure the Appeal is properly constituted and to effect service.
[6 marks]

One of the litigations that Mr. Lee is involved in against HKC is a defamation claim that Mr. Lee has brought against HKC. Mr. Lee wishes to have a jury trial, and HKC has agreed to the same and the parties have entered into a consent summons for trial by jury, including directions for Mr. Lee to give evidence by way of VCF during such trial. The Court has considered the consent summons and a Master has directed that the application be dealt with by a judge in chambers.

Question 4

Mr. Lee telephones you seeking advice, startled and confused, as to why the Court has not made order in terms of the consent summons already, which was agreed to by all parties. Mr. Lee says XY&Z advised him that for defamation actions, the norm is for the action to be tried with a jury if one party so chooses. Explain to Mr. Lee why a Master has directed that the application be dealt with by a judge in chambers, and in broad terms the matters that need to be prepared for the hearing before a judge in chambers. **[5 marks]**

For the purposes of **all remaining Questions below** – assume that today’s date is 05 March 2022, and the Judiciary has on 04 March 2022 (yesterday) announced GAP (General Adjournment of Proceedings) for the period from 07 March 2022 to 11 April 2022 as follows – *“During this GAP period the court will only carry out the business as set out in Annexes 1 and 2 until further notice unless otherwise directed. In respect of ongoing court hearings for all civil proceedings and appeals, including remote hearings, subject to the court’s directions and the provisions below, they will continue. In respect of all court hearings or trials for civil proceedings originally listed in the GAP period, subject to the court’s directions, they will be dealt with by paper disposal or remotely or be re-fixed. The court may give directions as appropriate”*.

Annex 1 includes *“Civil proceedings directed by the Court to be conducted remotely or disposed of on papers”*.

The Hearing of the Consent Summons was listed to be heard on 08 March 2022. You (on behalf of Mr. Lee) and your opponent (for HKC) have already lodged Skeleton Submissions and all parties were already prepared for the Hearing. Mr. Lee telephones you in a panic during the weekend (05-06 March 2022) asking for advice.

Question 5

Advise Mr. Lee as to what is likely to happen in respect of the Hearing originally listed to be heard on 08 March 2022, in particular whether or not Mr. Lee should attend Court on that date. **[3 marks]**

Question 6

Mr. Lee wishes to ensure that the Consent Summons is dealt with and determined as soon as practicable. Advise Mr. Lee as to his available options and the broad steps that should be taken in respect of each option. **[6 marks]**

For the purposes of **all remaining Questions below** – assume that the Court has already by Order granted directions for Mr. Lee to give evidence by way of VCF during the Trial, which was fixed for Trial before a Judge (without Jury) in the Court of First Instance from 08 April 2022 with 11 days reserved (i.e. until 22 April 2022).

Mr. Lee points out that he already has obtained directions to give evidence by VCF, and therefore he believes it should be the case that the Trial falls within the GAP exceptions. In any event, Mr. Lee’s main aim and purpose is to insofar as possible maximise the likelihood that the Trial Dates are secured so that the Trial proceeds.

Question 7

Advise Mr. Lee whether the Trial will proceed as scheduled; if not, why not, and what are the options available to Mr. Lee. **[4 marks]**

Question 8

Mr. Lee wishes to ensure that the Trial will proceed and has instructed you to write to the Court clarifying the position. Advise Mr. Lee on relevant factors that the Court may take into account and which should be included in such a letter to the Court and what are the options open to the Court. **[5 marks]**

Question 9

Bearing in mind that preparations have already been made (including all technical arrangements) for the Trial in respect of Mr. Lee’s VCF connection from USA (only), advise on the broad steps and preparations that need to be made in respect of a remote trial (should one be directed) concentrating in particular on preparations and steps for VCF connections. **[6 marks]**

Question 10

Mr. Lee asks for your advice on what hardware and software he needs to purchase and what internet connection he needs, in order to carry out his VCF connection. **[2 marks]**

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