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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; and
- 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 Solicitor firm **AB&C**.

You have been approached by **Mr. Lee** in respect of a claim concerning landed property (**the Property**) held by a Hong Kong limited company **X Ltd.**, whose shareholder and director is **Mr. Y**.

Mr. Lee informs you that he believes the Property to be worth about HK\$6,000,000. The formal Rateable Value of the Property is HK\$600,000.

In DCCJ No. 1234 of 2023, Mr. Lee as plaintiff is suing X Ltd., seeking a declaration that the Property is held upon common intention constructive trust for Mr. Lee.

Thus far X Ltd. has been represented by Mr. Y but no leave has been obtained for director to represent the company.

His Honour District Judge Chung by Order dated 01 February 2023 granted leave for the Plaintiff (Mr. Lee) to set the matter down for a 5 day Trial, with 1 hour PTR 6 weeks before Trial.

### **Question 1**

Mr. Lee asks you to check and advise on whether his claim is properly commenced and pursued in the District Court, and whether he needs to move his claim to the Court of First Instance? Explain your answer, identifying the relevant Sections / provisions. **[5 marks]**

Without prejudice to your answer to the above, are there any reasons or advantages for Mr. Lee to take any particular steps? If so, why and what – please explain. **[3 marks]**

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## Question 2

Mr. Lee dies, and you are approached by Mrs. Lee (Mr. Lee's widow). Mrs. Lee seeks advice as to the procedure for continuing the DCCJ claim against X Ltd.. Advise Mrs. Lee as to the steps that should be taken, identifying the relevant provisions. **[6 marks]**

## Question 3

For the purposes of this Question only – assume that Mr. Lee passed away in 2020, and DCCJ No. 1234 of 2023 was being pursued by Mrs. Lee under the title “Estate of Mr. Lee” but with no leave or orders to do so. How does your advice to Mrs. Lee differ from Question 2? **[4 marks]**

## Question 4

Noting that His Honour District Judge Chung by Order dated 01 February 2023 granted leave for the Plaintiff to set down for a 5 day Trial, yet X Ltd. has all along been represented by Mr. Y but with no leave for a director to represent the company; You are instructed to advise on appropriate steps to take to maximise the chances of obtaining an enforceable judgment against X Ltd. in respect of the Property, and any important steps or matters to check. **[8 marks]**

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You are a partner in the Solicitor firm **XY&Z**.

You have been approached by **Mr. A**. There is an action **HCA No. 789 of 2023** where Mr. A and **Mrs. A** (Mr. A's wife) are co-plaintiffs suing **Mr. Z**.

Mr. A informs you that he wishes to divorce Mrs. A, and that he does not agree to continue HCA No. 789 of 2023 together with Mrs. A as co-plaintiff. Further, Mrs. A has informed you that she does not wish to instruct XY&Z at all and will be seeking her own lawyers instead. Mr. A insists that XY&Z represent him in all proceedings.

### **Question 5**

Can XY&Z represent both Mr. A and Mrs. A in HCA No. 789 of 2023? If not, why not, and what steps would you recommend so that Mr. A is able to continue pursuing HCA No. 789 of 2023 against Mr. Z in light of Mrs. A's position. **[4 marks]**

### **Question 6**

Although you do not act for Mrs. A – if Mrs. A wishes to sue Mr. Z in respect of the same matter but takes a position different from Mr. A, what does Mrs. A need to do to pursue such a claim? **[4 marks]**

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Mr. A informs you that in HCA No. 789 of 2023 Mr. A seeks a declaration that Mr. Z holds a certain property 100% for Mr. A beneficially; whereas Mrs. A's position is that the property is held by Mr. Z as to 50% for Mr. A and 50% for Mrs. A.

### **Question 7**

Mr. A seeks your advice as to how the property will be dealt with in HCA No. 789 of 2023 and in future divorce proceedings. Advise Mr. A also as to the broad steps necessary in order to bring together the two sets of proceedings (divorce and Mr. Z), as it is Mr. A's wish to minimise legal costs and avoid duplicity. Mr. A also wishes to know whether the proceedings will be taking place in the High Court, Family Court, or both. Advise Mr. A as to the available avenues and options that you consider appropriate. **[8 marks]**

### **Question 8**

After commencing divorce proceedings FCMC No. 666 of 2023 between Mr. A and Mrs. A, later on Mrs. A passed away after the Petition's Main Suit had been dealt with and Decree Nisi was also granted. Mr. A seeks advice as to whether or not he can continue to pursue the divorce proceedings against Mrs. A or her Estate, in particular for financial ancillary relief? How can Mr. A pursue financial relief against Mrs. A or her Estate? **[8 marks]**

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