
**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

Permitted materials

- Hong Kong Civil Procedure (the Hong Kong White Book Vol. 1 & Vol. 2);
- 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.
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.

The case

You are a partner in the Solicitor firm Messrs. Aaron Betty & Co. (“**AB&C**”). You represent Mr. Lee.

Mr. Lee has commenced a District Court Action (DCCJ No. 1234 of 2021; “**the Debt Action**”) against Mr. Ho, alleging that Mr. Lee had lent HK\$2 million to Mr. Ho, and Mr. Lee seeks repayment from Mr. Ho. There are banking documents showing that Mr. Lee transferred HK\$2 million to Mr. Ho on 20 June 2013. Mr. Ho lives in New Zealand and rarely visits Hong Kong.

Mr. Ho, represented by Messrs. Xi Yip & Za (“**XY&Z**”), has filed a defence and counterclaim (“**the Property Counterclaim**”) alleging that Mr. Lee and Mr. Ho had entered into a co-investment joint venture, and Mr. Lee’s HK\$2 million (which Mr. Ho accepts was received by him) was injected into the Property purchase, and is now represented by an equity share in the Property. In the Property Counterclaim Mr. Ho seeks determination as to the parties’ respective shares / percentages in the Property. The Property’s Rateable Value is HK\$10 million.

The Questions

Question 1

Mr. Lee wishes to know, was Mr. Ho correct to bring the Property Counterclaim in the District Court, and what steps can Mr. Lee take if he wishes to oppose or object to the Property Counterclaim being pursued in the District Court? **[8 marks]**

Question 2

If no particular steps are taken pursuant to Question 1 (i.e. no applications are made to address the question of jurisdiction), and both the Debt Action and the Property Counterclaim proceed to Trial in the District Court and a Judgment is handed down, has the District Court acted *ultra vires*? **[4 marks]**

Question 3

For the purposes of this Question only, assume that both the Debt Action and the Property Counterclaim were brought in the Court of First Instance instead of the District Court. Mr. Lee informs you that Mr. Ho has approached him and asked whether Mr. Lee agrees to transfer all proceedings to the District Court instead. Mr. Ho says that his lawyers (XY&Z) have informed him that the High Court Action can be transferred to the District Court. Mr. Lee wishes to have your advice as to whether it is possible for the High Court Action to be transferred to the District Court. What is your advice to Mr. Lee? If Mr. Ho's suggestion is not possible, why not? If it is possible – what are the preconditions and steps that need to be taken? **[6 marks]**

Question 4

Trial took place in the District Court and Judgment was handed down in favour of Mr. Ho. Mr. Lee wishes to pursue an Appeal and asks what procedures need to be taken in order to do so. **[4 marks]**

Question 5

After taking the steps you have advised pursuant to Question 4, you have prepared the Notice of Appeal and AB&C have served XY&Z with the Notice of Appeal 1 day before the time limit for service. XY&Z then wrote back to AB&C and stated that although they were Mr. Ho's Solicitors on the record for the first instance trial, XY&Z do not have instructions to accept service of the Notice of Appeal and are no longer in contact with Mr. Ho. Can AB&C insist that there was good service of the Notice of Appeal? If not, what steps need to be taken to ensure the Appeal is properly constituted? **[12 marks]**

Question 6

Mr. Lee has passed away, leaving a Son and no spouse. Mr. Lee did not leave any Will. Mr. Lee's Son lives in New Zealand and is acquainted with Mr. Ho. Mr. Lee's Son has been approached by Mr. Ho, who wishes to settle all legal proceedings between Mr. Lee and Mr. Ho. The Appeal has not yet been heard, but is due to be heard in 3 months' time. Mr. Lee's Son has reached an in principle agreement with Mr. Ho, and wishes to settle all of Mr. Lee's litigations. However, Mr. Ho has stated that he will only entertain a settlement if the deed of settlement is executed at least 1 month before the Appeal, for otherwise Mr. Ho will have to incur the Costs of the Appeal and will no longer be willing to settle on the agreed terms; the agreed terms will be withdrawn by Mr. Ho if the deed is not executed by then. What steps would you advise Mr. Lee's Son to take in order to pursue the settlement with Mr. Ho before it is withdrawn? What are the relevant rules and procedures? **[8 marks]**

Question 7

Mr. Lee's Son wishes to administer Mr. Lee's Estate, and in the course of applying for grant, the Registrar has pointed to Sections 46 and 47 of the Probate & Administration Ordinance (Cap.10) and enquires whether Mr. Lee's Son agrees to provide a guarantee. Mr. Lee's Son asks for your advice as to whether he has to provide a guarantee as per the Registrar's requisition and also seeks your advice on whether he can answer the Registrar's requisition and obtain grant without providing a guarantee. **[8 marks]**

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