

Examiners' Comments on the 2024 Examination

Head IV: Accounts and Professional Conduct

Part A - ACCOUNTS

Question 1

The question was straightforward and should not have caused any difficulties to the candidates. The question was divided into 4 parts:-

- (A) This question dealt with 6 specific transactions regarding a representation of a client with regard to receipt of monies, classification, payment of disbursements, dishonour of a cheque, bills and general accounting principles. The objective of the question was to ascertain the candidates' knowledge on how the actual payments in and out were to be dealt with, identified and entered in the accounts books and the relevant book entries. Again, this should not have caused any difficulties.
- (B) This question dealt with interest received in client account as well as Rule 7A. In respect of interest, this was regarding the new Rule 6A which deals with holding monies on account of costs and the interest that would be applicable. Unfortunately, many candidates did not realise that the current Rule was suspended due to the low interest rate. Rule 7A dealt with the relevant authority required for drawing money from client account. Many of the candidates just copied out the Rules without any application.
- (C) This was a question regarding opening a client account and an office account in Shenzhen with The Bank of China. Most of the candidates were able to deal with this. However, some got confused with regard to office account.
- (D) This question concerned what bills issued meant and what those bills should contain and an explanation as to the bills delivered book and the rationale for the firm maintaining such a book. The difficulty here is that this was the last question. Some candidates ran out of time. However, many just copied the extracts from the Manual without application.

However, overall, most candidates had no difficulties in passing. They were able to identify the issues and put forward a reasonable discussion and an application in respect of each of the points they were asked to address.

The pass rate this year for the Account question was 71%.

However, those who failed deserved to do so. In short, they lacked knowledge. They had a little application to the issues that they were asked to address. They just copied out sections of the relevant Rules and failed to consider the relevance to the issues that they were asked to address.

I also noticed that this year, many candidates failed to manage their time properly and various questions and the sub-parts were not answered. In short, in my view, those who failed had no knowledge of the Accounts Rules and lacked the ability to apply the facts to the relevant issues.

Part B – PROFESSIONAL CONDUCT

Question 1

The question was straightforward and should not have caused any difficulties to the candidates. The question was divided into 3 parts:-

- (A) This question was for 5 marks. It dealt with conflict of interest and consent of parties, in the conveyancing context. The objective of the question was to ascertain the candidates' knowledge on SG 9.05 and Practice Direction A.12 and the practical steps to take to overcome conflict of interest in conveyancing transactions. Again, this should not have caused any difficulties.
- (B) This question was for 17 marks, and should have discussed the following 4 areas:
 - a. SG 13.06 in relation to allowing an unrepresented purchase to obtain legal advice before signing an agreement. This is straightforward and was for 1 mark. However, some candidates wrote about conflict, which should have already been covered in section (A) of Question 1
 - b. Undertakings generally. Candidates should identify that Adam has given 2 undertakings to Carl (i.e. relating to the mortgage and relating to the "usual terms"), and should have discussed SG 14.01 and its relevant commentary about the binding nature of an undertaking, and liability of a solicitor and a firm in the context of undertakings and breach of undertakings.
 - c. Undertaking regarding the discharge of the mortgage. Candidates should have noticed that Adam gave an undertaking with respect to the discharge of the mortgage, and that he did not check with Bob on whether it could actually be done. Candidates should have discussed 14.09 and points would also have been given if they discussed Practice Direction A.13 and Circular 14-411.
 - d. Undertaking regarding the "usual terms" and its ambiguity and issues as highlighted in SG 14.

Many candidates failed to identify that there were 2 separate undertakings. Most candidates had difficulty identifying the issues regarding the 'usual terms' undertaking. There was also some who did not apply the rules to the facts and merely recited the rules.

- (C) This question was for 3 marks and dealt with issues relating to storage and destruction of conveyancing files. Most candidates were able to identify the relevant circular but many failed to specify the actual steps that Adam should have taken to deal with the situation.

The Undertaking question has been known to be difficult in the past, and this year it was no different. Overall, most candidates had difficulties in identifying and discussing the relevant issues relating to undertakings in part B of the Question. Most candidates

were able to identify the issues and put forward a reasonable discussion for part A and C of the Question.

Those who failed showed an inability to identify the issues presented in the question and showed a lack of knowledge on the relevant rules. They had a little application to the issues that they were asked to address. Some just copied out sections of the relevant Rules and failed to consider the relevance to the issues that they were asked to address.

Question 2

This question concerned issues of professional conduct arising from the conduct of a defence in a criminal matter. It was generally answered relatively well by the candidates, 60% of whom achieved a 'pass' mark of 12.5 or more out of 25.

The question was divided into three separate sections. The first section required the candidates to address the conduct issues arising from an initial meeting between a solicitor and a client who had been prosecuted for careless driving. Most candidates recognized that the solicitor may not have been competent to take on the matter, albeit some neglected to refer to the relevant Principles of the Solicitors' Guide, including Principle 6.01, Commentary 4. They also identified the need for the solicitor to give the client appropriate advice on fees (including Legal Aid) and to confirm the retainer in writing. In terms of the substance of the solicitor's advice to the client, the majority of the candidates noted that he was in breach of his obligation, pursuant to Principle 10.16, to advise the client of his right to decide how to plead and whether to give evidence. Most candidates failed, however, to identify the potential conflict of interest between the solicitor and the client and the breach of the solicitor's duty of confidentiality vis-à-vis speaking to a law school friend about the case.

The second section of the question concerned the solicitor's friend's advice about the client's testimony. Many candidates answered that the advice was simply incorrect. In doing so they failed to appreciate and discuss the exact provisions of Principle 10.03 and Principle 10.03, Commentary 6.

The third section of the question required the candidates to identify any acts of professional misconduct by the solicitor in relation to his conduct of the trial and thereafter. Most candidates answered this section correctly albeit their answers lacked detail insofar as identifying the Principles of the Solicitors' Guide relating to the cross-examination of witnesses and examination and cross-examination of the client. Similarly, most candidates answered that the solicitor should not have accepted a gift from the client after the successful conclusion of the trial but many failed to refer to Principle 7.05 when doing so.

In conclusion, the candidates provided better answers to this question than those provided to equivalent questions in the last two to three years' Head IV examinations. That said, there remained an inability on the part of many candidates to discuss the relevant matters in any detail and a significant number (i.e. 40%) were unable to achieve a pass mark on a question which dealt with a quite straightforward and everyday matter of professional practice.

Question 3

1. Most candidates did well in the Practice Direction P part although only a few of them could identify correctly the source of power of the Law Society to deal with non-compliance.
2. Candidates should pay more attention to the wording of the questions asked failing which their answers would contain a lot of irrelevancies. Whilst that would not cause them to lose marks, it would affect the candidate's end result as a lot of valuable examination time would have been wasted. For instance, if the question asked a candidate to answer by reference to a particular set of rules, it would not be helpful for the candidate to include references to other sets of rules in their answers.
3. Examiners are required to mark the exam scripts strictly in accordance with the approved Marking Scheme in order to ensure overall fairness to all candidates. Therefore, there is little room for discretion.
4. Paying more attention to the wording of the questions asked also means confining one's answer to the factual situation set out in the question. Candidates often try to "elaborate" on the facts set out in the question and go on to discuss novel / alternate factual situations not asked by the Examiner. Likewise, time was wasted and no marks were gained.