Overseas Lawyers Qualification Examination

HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

Standards, Syllabus and Materials

STANDARDS

Candidates will be expected:-

(i) to be familiar with the law and rules of professional conduct affecting and governing practice as a solicitor in Hong Kong;

(ii) to be familiar with the Solicitors' Accounts Rules, in particular the principles relating to solicitors' clients accounts; and,

(iii) to be able to identify and analyse professional conduct issues (including issues in relation to solicitors' accounts) which may arise in practice, to advise with respect to such issues and to take appropriate decisions on such issues in relation to his and his firm's practice. He will be expected to give comprehensive reasons for his advice and decisions; and

(iv) to display the knowledge and experience of the above matters.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

1. **Solicitors in Private Practice**

- Practising Certificates
- Insurance
- Solicitors' Practice Rules
- Supervision of a solicitor's office
- Fee sharing
- Restrictions on unqualified persons

2. **Rule 2 of the Solicitors' Practice Rules**

3. **Obtaining Instructions**

- **Solicitors' Practice Promotion**
  - (a) The Solicitors' Practice Promotion Code
  - (b) Unacceptable Practice Promotion
  - (c) Recovery agents

4. **Money Laundering**

- Practice Direction P
- The Organized and Serious Crimes Ordinance (Cap 455)
- The Anti-Money Laundering & Counter-Terrorist Financing Ordinance (Cap 615)

5. **Fees**

- Duty to inform client
- Estimates and agreed fees
- Increase of fees during retainer
- Interim bills
- Bills of costs and disbursements
- Taxation of costs
- Recovery of fees
- Overcharging and unreasonable fee arrangements
- Payments on account of costs and disbursements
- Maintenance, champerty and contingency fee arrangements

6. **Retainer**

- Accepting instructions; form and contents of retainer
- Rule 5D letters in criminal cases
- Express and implied retainers; the quasi-client
- Grounds upon which solicitor must decline retainer
- Solicitor limiting liability in the retainer
- Professional and common law duties owed to client during retainer
- Duty to advise on legal aid
- Settlement of actions

- Instruction of advocates
- Termination of retainer
- Solicitor's retaining lien

7. **Competence and Quality of Service**

- Duty to act competently
- Claims against a solicitor
- Law Society enquiries and investigations

8. **The Fiduciary Duty**

- Making secret profit
- Gifts from clients
- Lending to clients and borrowing from clients
- Purchasing property from clients
- The approach of the courts to breach of fiduciary duty

9. **Confidentiality and legal professional privilege**

- The duty of confidentiality
- Joint retainers and the duty of disclosure
- Solicitor joining new firm
- Confidential documents sent to other party by mistake
- Legal professional privilege
  - (a) Solicitor client advice privilege
  - (b) Litigation privilege
  - (c) Solicitor's duty to protect client's privilege
- The approach of the courts to protecting breach of confidentiality and legal professional privilege

10. **Conflicts of Interest**

- Conflict between joint clients
- Conflict between two present clients
- Conflict between client and former client
- Solicitor’s duty to decline instructions where there is a conflict of interest

- Conveyancing transactions - Rule 5C, Solicitors' Practice Rules
- The approach of the courts to conflict of interest

11. **The Litigation Solicitor**

- The solicitor as advocate in civil and criminal cases
- Duties to the client
- Duties to the Court before trial
- Duties with respect to affidavits, affirmations and statutory declarations
- Duties to Court when presenting case
- Solicitor's duties in respect of his own and the other party's witnesses
- Duty during examination-in-chief and cross-examination
- Duty not to mislead or deceive the Court
- Duty where solicitor believes client is deceiving the Court or committing perjury
- Duty where client confesses his guilt to solicitor before or during trial
- Conferences with client and advocates
- Settlement of proceedings

12. **Relations with other Solicitors**

- Contact with the other solicitor's client
- Reporting misconduct

13. **Relations with the Bar**

- Instructing barristers
- Court attendances
- Responsibility for paying barrister’s fees

14. **Relations with Third Parties**

- Duty of fair dealing
- Dealing with unrepresented parties
- Taking oaths, affirmations and declarations

15. **Professional Undertakings**

- What constitutes a professional undertaking
- Giving and receiving professional undertakings
- Construction of professional undertakings
- Breach of professional undertakings
- Undertakings as to costs
- Undertakings in conveyancing transactions
- Enforcement of professional undertakings

16. **Discipline**

- Powers and role of the Law Society of Hong Kong
- Solicitors' Disciplinary Tribunal

17. **Solicitors' Accounts**

- Client account (management and use of funds therein)
- Firm account (management and use of funds therein)
- Solicitors accounts generally (including relevant Rules and Practice)
- Clients instructions as to funds and duties in respect thereof
- Handling of mixed moneys

18. **Law Society's Code of Advocacy for Solicitor Advocates**

Candidates WILL NOT be examined on the Code of Advocacy for Solicitor Advocates.

MATERIALS

- The Hong Kong Solicitors' Guide to Professional Conduct
- The Legal Practitioners Ordinance and all subsidiary legislation
- The Solicitors' Accounts Rules
- Manual on Solicitors' Accounting
- The Solicitors' Practice Promotion Code
- The Practice Directions 1990 as amended from time to time
- The Code of Conduct of the Bar

- *Gary Meggitt*, 'Wilkinson's Professional Conduct of Lawyers in Hong Kong' (Desk Edition), LexisNexis, 2022

It is recommended that these materials be brought into the examination.

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