

## **Examiners' Comments on the 2025 Examination**

### **Head IV: Accounts and Professional Conduct**

#### **Part A - ACCOUNTS**

##### **Question 1**

The paper this year was very straightforward and should not have caused any difficulties.

Many of the candidates just copied out large parts of the Manual, the Rules and the Guide without any application and did not take any steps to apply the factual matrix to the relevant principles.

Examiners were also very concerned over the poor handwriting, the numerous crossing-outs and the lack of coherent and considered analysis. Dealing now with each of the parts

- (A) This should have been very straightforward. Despite the candidates being asked to deal with the accounting issues, quite a few candidates decided to embark upon detailed analysis of crypto currencies, bitcoin and the risks to the Firm in acting for such clients! Indeed, there were many irrelevant points raised. The issue here was very simple both Z and P would clearly not appropriate people to be employed to deal with the accounts having regard to their experience and their relationships with each of the Partners. A considerable number of candidates also came to the conclusion that P could be a signatory on the Firm's bank accounts. This obviously is very disappointing.
- (B) This question was how the management accounts could assist the firm, etc. Most of the candidates just listed the management accounts by copying the Manual but did not attempt to set out to apply why those specific management accounts could assist. Indeed, many of them did not even refer to bills delivered and costs collected!
- (C) This was very straightforward and should not have caused again any difficulties. There were 3 parts:-
  - (i) dealt with the need to have a client's bank account;
  - (ii) dealt with the fact that monies had been received but they had difficulties in ascertaining to which client it belonged; and
  - (iii) dealt with an existing client who had disappeared or could not be found or heard of for many years and has monies in client account. Again, in respect of answering the points, they just copied the relevant parts of the Manual without really trying to address the issues.
  - (iv) This dealt with online banking. Some candidates did not even deal with online banking but talked about computerised accounts. Again, the majority of the candidates just went to the Manual and copied out the relevant provisions without identifying the issues or setting out what needs to be done to comply with the Rules!

The results were disappointing. Clearly the candidates who failed did not have the necessary knowledge nor did they understand Solicitors' Accounts Rules.

## **Part B – PROFESSIONAL CONDUCT**

### **Question 1**

This question concerned issues of professional conduct arising from the actions of several solicitors in relation to a commercial dispute. It was generally answered poorly by the candidates, with only 20% achieving 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 conduct issues arising from an initial telephone conversation between a solicitor and a prospective client who also happened to be her cousin. In the event the solicitor’s cousin did not retain her to act in relation to the dispute but she was subsequently retained by his opponents. Many candidates recognised the potential conflict of interest between a solicitor and a client who was also a relative. Many also recognised the potential conflict arising from her subsequent retainer by the opposing parties. Unfortunately, very few candidates explained the nature of the conflicts in sufficient detail by reference to the relevant Solicitors’ Guide Principles and cases such as *Allan v Ng Co (a firm)* [2012] 2 HKLRD 160.

The second section of the question concerned a second and third solicitors’ conduct on behalf of the cousin. This section addressed several related issues including the Solicitors Practice Promotion Code (“SPPC”); fee arrangements; and a principal’s liability for both a junior solicitor’s (i) lack of competence and (ii) improper conduct in relation to the preparation of a list of documents for discovery. Again, many candidates were aware of the broad generalities of these issues but did not demonstrate the level of detail to be expected of a reasonably competent Hong Kong solicitor. Of greater concern was the number of candidates who seemed unaware of the ethical implications of the destruction or withholding of discoverable documents.

The third section of the question required the candidates to consider whether it was appropriate for a solicitor to accept a valuable gift from a client. Most candidates answered this question satisfactorily.

In conclusion, most of the candidates failed to demonstrate adequate knowledge of the relevant provisions of the Solicitors’ Guide and related case law on a diverse range of important issues. This resulted in a very low number of ‘passes’.

### **Question 2**

1. Part (a) of Question 2 meant to ask Candidates a straightforward question on the minimum requirements of office supervision but a fair number of Candidates misunderstood the question to be one on competence of a solicitor and / or supervision of a trainee solicitor.
2. Since Part (a) carries 10 marks (out of 25 marks), those who misunderstood this part of the Question would have a serious problem with attaining the passing mark. Candidates are therefore reminded to keep a cool mind, read the Facts carefully and identify properly which area(s) of the Conduct Guide is / are the Question set on before jumping into a conclusion in haste.

3. Part (b) of Question 2 is also a straightforward question on prohibition of sharing profit costs with an unqualified person. Most Candidates were able to identify the relevant prohibition in the Solicitors' Practice Rules and the Conduct Guide but a few Candidates gave (the same) wrong answer that a trainee solicitor is also a solicitor so there was no breach of the Rules / the Guide. Part (b) of Question 2 carries 9 marks (out of 25 marks) so likewise, a wrong conclusion like the aforesaid may cause the relevant Candidates to fail the Question.
4. Most Candidates did well for the rest of the Question (which only carry 6 marks in total) but again, some very basic mistakes were made. For instance, a fair number of Candidates said that Bankruptcy was a criminal offence and / or it was an offence which involved dishonesty. Fortunately (for those who got it wrong), each of the last 3 parts of the Question only carries 2 marks so the overall adverse effect is relatively small.
5. Examiners would recommend Candidates to pay attention to the mark distribution of various parts of a particular question at the examination. There is a reason why such information is provided in the Question.

### **Question 3**

The paper this year was very straightforward and should not have caused any difficulties.

This question concerned issues of professional conduct arising from the actions of two solicitors in relation client inception and the handling of the case. It was generally answered poorly by the candidates, with only 25% achieving a 'pass' mark of 12.5 or more out of 25.

Many of the candidates just copied out large parts of the Rules and the Guide without any application and did not take any steps to apply the factual matrix to the relevant principles.

The question was divided into six separate sections.

- 1) The first section required the candidates to address AML issues. The Solicitor's KYC actions are lacking and candidates should have identified Practice Direction P and the mandatory requirements under Table A of Practice Direction P. Furthermore, Candidates should have noted section 25 of the Practice Direction and should have discussed the Applicable Circumstances in the question, and the verification steps that Simon should have undertaken pursuant to Annexure 3 of Practice Direction P, section 105 and 106 of Practice Direction P.
- 2) The second section addresses conduct issues arising from the client's intended breach of law and the client's request to the lawyer to help her with perjury. Candidates should have discussed basic concepts such as being an officer of the court and the solicitors own reputation and the reputation of the profession (Solicitor's Guide to Professional Conduct ("SG") 1.01, 1.03, 5.02, 10.3 and Rule 2 of the Solicitors' Practice Rules) and candidates should have identified

that there may be a chance under certain circumstances that Simon would have to cease to act (SG 10.05)

- 3) The third section relates to affirmations and attestations. Candidates should have noted that there is different treatment between the two, and that lawyers overseas can attest to documents but cannot administer oaths outside of Hong Kong. Many candidates only identified one or the other, and did not recognize that administration of oaths cannot be done outside of Hong Kong.
- 4) This fourth section relates to issues arising from Simon (as partner) and Mike (as a registered foreign lawyer) and the liabilities they face. Candidates should have identified that Simon is a partner and will be prima facie responsible for acts and omissions of the firm (SG 2.03) Candidates should have noted that Mike is a registered foreign lawyer and is also bound by the SG and that he should not be advising on HK laws pursuant to Foreign Lawyers Registration Rules, Rule 12 (Cap. 159S). Candidates should also have queried whether Mike had exercised diligence, care and skill in preparing the advice. He had only just generated an answer using AI and did not check it and just sent it off to the client. (SG 5.12) The fact that the lawyers discussed the case in the elevator is also contrary to SG 8.01 and the candidates should have discussed the facts along with the relevant SG commentary.
- 5) This fifth section requires candidates to comment on any issues and consequences arising from this scenario for Simon and any steps he should take, and candidates should have noted SG 5.12 and SG 8.01 commentary 34, and should have set out that Simon should have informed Daniel to seek independent legal advice (SG 6.02), along with promptly inform insurers of the potential claim from Daniel (SG6.3), and the need to return papers to Daniel (SG 5.23) and the need to make and keep a copy of the documents to facilitate investigation and handling by insurers (SG 6.03 and Circular 12-475 on retention).
- 6) The last section requires candidates to comment on the issues arising in this scenario and what actions Simon should take in relation to finding out that the client is a non-Hong Kong PEP. Candidate should discuss why the client has become a PEP and what steps Simon should take thereafter (E.g. on-going EDD, should seek approval from the management or senior partner to continue an existing business relationship, etc.).

In conclusion, most of the candidates failed to demonstrate adequate knowledge of the relevant provisions of the Solicitors' Guide and related case law on a diverse range of important issues. This resulted in a very low number of 'passes'.