

Examiners' Comments on the 2022 Examination

HEAD IV: Accounts and Professional Conduct

Part A - ACCOUNTS

Question 1

This year's question was straightforward. It required the candidates to read the question carefully and apply their knowledge to the specific issues that were being raised.

- (A) (i) This question was split in 3 components and dealt with the issues as to monies being received on account of the Firm's costs as well as an agreed fee in respect of counsel. It is beyond any doubt that the money received has to go into client account and in turn, the real issue here was to consider whether or not there has been sufficient clearance before counsel can be paid. The other issues were dealing with the book entries and providing a receipt. However, many of the candidates raised irrelevant points and assumptions that there may have been a written agreement or a bill delivered and as such, it was possible to make payment into office account or at the same time split the cheque.
- (ii) This should have caused no difficulties. However, many of the candidates just copied out the relevant sections in the manual without applying them to the issues that were before them.
- (iii) Dealing with the cashier's order should not have caused any problems. The issue here is that cashier's orders per se still need to go through the clearing system!
- (B) Many of the candidates did not set out the actual steps the Firm should take to try to find out who paid the money into the client account! They dealt with the steps and the suspense account.
- (C) This again was a straightforward matter as to how to deal with monies that are in client account where one cannot locate the client. Although this was reasonably well-answered, many of the candidates failed to actually list the steps that should be taken to persuade the Law Society that they have made the sufficient enquiries.
- (D) This question should not have covered any difficulties. They had to list and set out the management accounts and how these may assist the Firm's profitability and supervising and running the Firm's accounting system. Again, many of the candidates failed to list the actual management accounts but just gave very general answer without examples.

Those who failed deserved to and again, the failures were all had the same characteristics, lack of application, lack of understanding of the Accounts Rules, fundamental issues with the accounting treatment as well as the inability to offer any

discussion or answer the issues that were put before them. The candidates' pass rate for this question was 70%.

PART B - PROFESSIONAL CONDUCT

Question 1

The question tests the candidates' understanding of some basic principles in professional conduct, particularly those that have been discussed in reported cases.

If candidates have knowledge of the following reported cases they should be able to answer the question quite well:

- *Winnie Lo v. HKSAR* (2012) 15 HKCFAR 16 - On what constitutes and does not constitute champerty and maintenance.
- *HKSAR v. Wong Chi Wai* (2013) 16 HKCFAR 539 - On what is privileged information and perverting the course of justice.
- *Siu Yat Fung Anthony T/A Anthony Siu & Co v. The Joint Tribunal of the Bar Council and The Law Society* [2022] 4 HKLRD 276 - On how to deal with disputes over barrister's fees.

Unfortunately, even though two of the cases are Court of Final Appeal decisions having significant impact on solicitors' practice, the great majority of candidates seem to be not aware of them.

The *Winnie Lo* case confirms that solicitors acting in good faith and took up a case with reasonable merits hoping to recoup costs from the other side at the end of the case is NOT guilty of maintenance. No candidate knows about this.

In the case *Wong Chi Wai*, the barrister trying to stop a solicitor from giving evidence was almost convicted of attempting to pervert the course of justice. Again, no candidate knows about this.

Another point that almost all candidates miss is about the scope of legal aid. Whilst many candidates know that it is a solicitor's duty to advise client of the availability of legal aid, no candidate was able to point out that legal aid does not cover shareholder disputes.

The *Siu Yat Fung Anthony* case is relatively recent and it is not too surprising that many candidates were not aware of it (though quite a number were). Yet even without reading this case, candidates are expected to know how to properly deal with disputes over barrister's fees. Many do not.

Not surprisingly therefore the passing rate is only 35% for this question.

The recommendation is that candidates should read reported cases concerning professional conduct, not just the rules in the Solicitor's Guide to Professional Conduct.

Question 2

This question concerned a criminal matter and the scenario was based loosely on the facts of *HKSAR v Ma Ka Kin* [2021] 4 HKLRD 83.

The question contained two parts. The first part required the candidates to discuss the taking of initial instructions from a client facing serious criminal charges. The second part concerned instructing counsel in the same matter and attending a conference with counsel and the client. Issues relating to competence, confidentiality and loyalty to the client were also raised. Despite the fact that this question concerned relatively basic aspects of a solicitor's practice, under 20% of the candidates achieved a pass mark of 12.5 or more.

With respect to the first part of the question, many candidates appeared to lack any substantive knowledge on taking instructions in a criminal matter. For example, many candidates failed to mention the need for a written retainer in criminal matters as *per rule 5D, Solicitors Practice Rules, Cap 195H* ('SPR'). Many candidates were also surprisingly ignorant of the need to advise the client on fees generally and the availability of Legal Aid in particular. Most candidates noted that the solicitor in the scenario was insufficiently competent, but they did not discuss this in any great detail (i.e. by reference to the relevant provisions in the *The Hong Kong Solicitors' Guide to Professional Conduct*) ("SG"). Many candidates also recognised that the solicitor acted in breach of *SG Principle 10.16* but often discussed this at far too great a length and at the expense of addressing other relevant points.

With respect to the second part of the question, a large number of candidates gave only fleeting attention to the need to instruct counsel in accordance with the SG (in particular, *SG Principle 5.17(3)*). Many candidates also failed to discuss the fact that the solicitor was in breach of his duty of confidentiality. Most candidates recognised that the solicitor was in breach of his obligations under *SG Principle 3.01* and also noted the apparent conflict of interest on his and his firm's part but, again, discussed these points only in a superficial manner.

In summary, the answers given for this question by many candidates demonstrated that they had failed to familiarise themselves sufficiently with the relevant provisions of the SG. Indeed, many candidates did not even identify its relevant provisions on numerous occasions.

Question 3

This question, which was divided into three parts, largely concerned the need to comply with *Practice Direction P* (and its associated legislation) upon the receipt of new instructions. Despite being concerned with important subject matter which should be within the knowledge of most, if not all, solicitors in Hong Kong, the candidates' pass rate for this question was – as with Question 2 – under 20%.

The first part of the question required the candidates to explain what the solicitor in the scenario should do upon being contacted by a prospective new client who had referred to his company's 'current local legal advisors'. Many candidates appeared to be

ignorant of the existence of *SG Principle 5.11* and also of the need to carry out appropriate conflict searches.

The next part of the question addressed the specific steps to be taken pursuant to *Practice Direction P* upon the receipt of new instructions. Although most candidates identified the relevance of *Practice Direction P*, the level of detail demonstrated by many of them on, for example, client identification and verification, was surprisingly poor. Very few candidates set out the relevant steps to be taken with any degree of precision.

The final part of the question dealt, firstly, with a dispute between the client and the solicitor about her fees and a possible complaint against her firm. Very few candidates addressed the provisions in the *SG* relating to these points. The second aspect of the final part of the question concerned the solicitor's discovery, after the event, that the client had been accused in the media of money laundering for drug dealers and others. Many candidates provided only a sketchy discussion of this point and some neglected to do so at all.

As with Questions 1 and 2, many candidates demonstrated very little knowledge of the professional conduct requirements placed upon Hong Kong solicitors.