

Examiners' Comments on the 2008 Examination

Head IV: Accounts and Professional Conduct

Question 1

Some candidates showed little application and indeed, did not take time to read the question with any care and never attempted to provide any analysis or commentary on the various issues that they were examined on.

Too much time was spent on setting out the relevant provisions of the Solicitors' Accounts Rules and extracts from the Accounts Manual without application or further analysis.

Overall, the standard was acceptable.

Question 2

Question 2 sought to examine student understanding on a range of issues including: practice advertising; running of offices; finding, engaging and retaining clients; fees; and advising clients.

The stronger students were able to demonstrate an adequate understanding of most issues. The students who struggled looked to have completed inadequate preparation – they gave vague responses and sometimes incorrect responses.

This question directly raised the issue of Recovery Agents (RAs). The better students were familiar with the announcements of the Law Society on RAs. There were fewer students, this year who seemed to be entirely unaware of the specific issue of RAs. (A few students wrote short essays on champerty and maintenance – without discussing the Law Society commentary on RAs.)

Overall assessment of performance: satisfactory.

Question 3

This question, which involved litigation ethics, was generally well answered. It covered the issues of competence to act, conflict of interest, the need for a written retainer in criminal proceedings, interviewing the other side's witnesses, giving instructions (indeed, inadequate instructions) to counsel too close to the trial date (many candidates missed this point) and deception of the court.

Question 4

Answers to this question ranged from the very weak to the excellent. That many candidates produced rather disappointing answers to this question might be explained by the fact that they answered this question last and were short of time – few candidates failed to finish however.

Part (a) covered pressurising a client to obtain finance from the solicitor's choice of lender and third party instructions. Few candidates were aware of the Law Society's Guidance Note 'Solicitors' Duties in Relation to Security Transactions with Potentially Unduly Influenced Parties'.

Part (b) embraced the solicitor's (and legal executive's) fiduciary duty in context of purchasing property from a client.

Part (c) was a very basic question on money laundering requiring the application of Practice Direction P.

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