

Examiners' Comments on the 2009 Examination

Head IV: Accounts and Professional Conduct

Question 1

This question was very straightforward and should not have caused the candidates any difficulties. The examiners were surprised by the lack of application and relevance by those candidates who failed to do so.

Overall, the standard was acceptable.

Question 2

Question 2 examined students on a range of issues including: practice advertising; running of offices; finding and engaging clients; advising clients; fees, fee-sharing – and Recovery Agents (RAs).

Good to better students were able to demonstrate an adequate understanding of most issues. The students who struggled looked to have studied inadequately – they gave vague responses and sometimes incorrect responses. A few students mismanaged their time rather badly.

The better students were familiar with the most recent announcements of the Law Society on RAs – and recent relevant case law. A minority were not aware of the specific issue of RAs. A somewhat larger number were not familiar with recent relevant case law.

Overall assessment of performance: satisfactory.

Question 3

This question covered the ethical standards required of trial advocates. It involved issues relating to contingency fees (Principle 4.16, SG), purported exclusion of liability in negligence in the retainer (s 59(2) LPO), solicitor's clerk instructing counsel (Practice Direction F), instruction of counsel without client's consent (commentary 3 of Principle 5.17, SG), competence, withdrawal because fee inadequate, client committing perjury whilst testifying (Principle 10.03) and the standard of proof in disciplinary (*Solicitor v Law Society of Hong Kong* (2008) 11 HKCFAR 117).

The question was generally well answered but there were several notable failures to identify relevant issues and answer the question adequately.

Question 4

This question involved two parts.

The first part involved issues of legal professional privilege and required an understanding of *Three Rivers District Council v Governor and Company of the Bank of England (No 5)* [2002] 3 WLR 667, CA, *Three Rivers District Council v Governor and Company of the Bank of England (No 6)* [2004] 3 WLR 1274, HL and *Akai Holdings Ltd v Ernst & Young (2009)* FACV No 28/2008.

The second part of the question was itself in two parts. The first part covered conflict of interest and required an understanding of the principles laid down in *Prince Jeffri Bolkiah v KPMG* [1999] 2 AC 222, HL. Chinese walls were also relevant. The second part involved conflict between solicitor and client and the sale by the client of property to the solicitor's wife. *Demerera Bauxite Co Ltd v Hubbard* [1923] AC 673, PC was especially relevant to the answer.

In this question there was a great disparity between the performance of candidates who identified the issues and knew the answer and those who had little idea of what the question was about.

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