

## Examiners' Comments on the 2010 Examination

### Head IV: Accounts and Professional Conduct

The Examiners are pleased to supply the following report on the 2010 OLQE Head IV Examination in Accounts and Professional Conduct.

Dealing with the individual questions:

#### Question 1

The Accounts Question this year was in the view of the Examiners straightforward and should not have caused any difficulties to the candidates. However, the standard of the answers were disappointing. Many of the candidates failed to make any attempt in applying the relevant principles. There now seems to be a practice to repeat and copy out the rules, the manual and the relevant text without giving any consideration as to applying the relevant principles to the question which they were asked to deal with.

In the view of the Examiners, many of the candidates that failed showed a lack of application and knowledge of the rules.

The Examiners would also mention that it seems that some candidates do not spend any time in reading the question properly and carefully. The Examiners noted at the examination that many candidates just started writing straightaway without even having the opportunity to give a considered thought to the various issues that were being put to them to address.

#### Question 2

There were four parts to question 2. The purpose of part (a) was to give candidates a flavour of what it might be like when they in future will have to work in an area which they may not be familiar with. Candidates generally did well.

The purpose of part (b) was to focus on what young lawyers sometimes might do in a state of panic. Candidate generally did badly. The important aspect is to identify the fact that even barristers can go wrong with their advice. In the present case, the police's request for a cautioned statement from client had become a request for a confession statement; the complaint letter was sent on that mistaken basis without the solicitor checking and correcting it. Unfortunately none of the candidates had spotted it. Course providers will need to bring out this important aspect as reliance on barristers is quite evident amongst lawyers, sometimes quite blindly.

The purpose of part (c) was to find out whether candidates have a sound understanding of their special professional relationship with barristers, in the conduct of their legal affairs. Candidates did badly. Surprisingly quite a few stated barristers could sue for their fees, which is not the current law in Hong Kong. Course providers probably will have to be told to pay more attention in this regard as close relationship of solicitors with the other branch of the profession will require young entrants to be conversant with the special relationship rules.

The purpose of part (d) was to find out whether candidates have a sound knowledge of the local practice environment in terms of sub-offices or branch office, what to look out for in terms of practice promotion etc. Candidates generally did quite well.

### **Question 3**

Question 3 was generally very well answered. It dealt with the professional duties of advocates.

Part (a) raised issues involving advertising for witnesses, confidentiality and the right of a litigant to decide whether to testify.

Part (b) involved a possible deception of the court and the professional duty of an advocate who suspects that his client is committing perjury. Principle 10.03 was especially pertinent.

Part (c) involved issues of competence and whether an advocate has the right to withdraw for failure to pay an increased fee. Issues as to the availability of legal aid were also relevant.

### **Question 4**

Question 4 involved some basic principles of conflict of interest and legal professional privilege in a somewhat difficult arena.

The factual scenario involved a solicitor acting under a subrogation clause. Part (a) raised the issue of a possible conflict on the part of a solicitor retained under a subrogation clause between his duty to the insurer client and his duty to the insured. *Nishimatsu-Costain-China Harbour Joint Venture v Ip Kwan & Co* [2000] 2 HKC 445, CA, provides useful guidance.

Part (b) raised the question squarely as to who is the client (or clients) in such a situation. Does the solicitor owe a duty of confidentiality to the insured? See *Nicholson v Icepack Coolstores Ltd* [1999] 3 NZLR 475.

The question also requires a discussion as whether there is a conflict of interest on the part of the solicitor between his duty to inform one client and his duty to the other client to keep that same information confidential – commentary 1 of Principle 9.02 was relevant here.

Part (c) was a simple question requiring candidates to identify the role of Chinese walls and their effectiveness in the eyes of the court. A very good answer would have considered the approach of the courts in Hong Kong, England and Wales and perhaps Australia or Canada.

### **Overall comments**

There was general consistency between the standard of answers and the pass rate of Part I and Part II of the examination, although, as with previous years, there was a small number of candidates who passed the Professional Conduct segment of the examination but failed the Accounts segment and vice versa.