

Examiners' Comments on the 2011 Examination Head IV Accounts and Professional Conduct

The Examiners are pleased to supply the following report on the 2011 OLQE Head IV Examination in Accounts and Professional Conduct.

Dealing first with the individual questions:

Question 1

The Accounts Question that was set this year in our view was again straightforward and should not have caused any difficulties to the candidates.

The standard this year had improved. The candidates who did well were able to identify the areas that were needed to be addressed and were able to answer the question coherently and provided acceptable answers.

However, in respect of those candidates that failed, they were in our view clear failures in that they failed to understand the issues nor made any attempt to apply the relevant principles.

Again, as in past years, those that failed either just did not answer the questions, i.e. they had run out of time or in turn, they just copied out extracts of the rules, the manual, etc. without having any regard to the questions that were being put to them. Those candidates who failed again showed a complete lack of application and knowledge of the relevant Accounts Rules.

Question 2

On 2(a):

This part intends to test candidates' knowledge on a variety of conduct issues upon the commencement of a solicitor client relationship, such as how to:-

- deal with the scope of the retainer;
- advise client on the scope of the retainer;
- deal with cost considerations;
- deal with client who are financially challenged;
- handle lawyer's relationship with client and the court;
- render a proper standard of work;
- assess one's competence;
- delegate work;
- open a file;
- obtain and maintain client's information;
- be a sole proprietor.

Most candidates were able to spot a good number of issues and score more than 8.5 marks out of 17 marks allocated to this part.

On 2(b):

This part asked candidates to discuss whether the judge's concern over limited representation in relation to court litigation is valid. The purpose of this part is to allow candidates to demonstrate their analytical skills; marks have been given to those candidates expressing a well considered view which may be different from the model answer. Disappointingly, most candidates could only achieve a mark of between 1.5 to 2.5 out of the 4 marks allocated to this part.

On 2(c):

This part asked candidates to discuss whether the judge's concern on the firm's preparing Court Documents in English when their client did not understand the language, is valid. As candidates are overseas lawyers wishing to practise in Hong Kong, they will face this language issue sooner or later. Again, some freedom on marking has been given to candidates who have expressed a well considered view different from the model answer. Disappointingly, most candidates could only achieve a mark of between 1.5 to 2.5 out of the 4 marks allocated to this part.

Question 3

Question 3 dealing with the professional duties of advocates was, as usual, generally well answered.

Part (a) involved an issue as to whether the solicitor should refuse the retainer (see SG Principle 5.01).

Part (b) involved straightforward issues as to whether a solicitor can exclude liability for negligence, a possible breach of confidentiality and what constitutes good reason for withdrawing from representation (see Principle 5.22).

Part (c) involved courtroom ethics where the advocate suspects her client is not telling the truth to the court.

Finally Part (d) deals with advocates' immunity.

Question 4

Question 4 was in two parts.

The first part centred around conflict of interest and, in particular, the solicitor's professional duties where he deals with a 'quasi-client' (see *William Allan v Messrs Ng & Co*).

The second part required an analysis of the duties of a solicitor accepting instructions from borrower and surety. Relevant were the Law Society's Guidelines: 'Solicitors; Duties in Relation to Security Transactions with Potentially Unduly Influenced Party'. See also SG Principle 5.04.

These two questions were less well answered although both involved general principles of professional conduct applied to specific situations.

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. In order to ensure that borderline candidates received every possible consideration, the Examiners met at the Law Society offices to review all borderline papers. As a result of this meeting, three candidates' marks were raised to a pass standard.