

Examiners' Comments on the 2012 Examination Head IV Accounts and Professional Conduct

The Examiners have pleasure in supplying the following joint report on the 2012 OLQE Head IV Examination in Accounts and Professional Conduct.

The examination performance of the candidates was rather disappointing (once again) with the pass rate falling to 44%.

Question 1

1. This year's question in the view of the Examiners was a very straightforward one. The questions were not complicated and indeed, the candidates should have had every opportunity to address and deal with the relevant points.
2. However, the answers were somewhat disjointed and again lacked application. It seems as if many students did not read the questions and just copied out the relevant provisions of the Accounts Rules and the Manual which they had before them without applying them to the actual facts. Indeed, there was little attempt to even answer some of the questions in Part A of Question 1.
3. There were obviously some basic areas vis-à-vis monies that should have been paid into clients account as opposed to office account and it seems as if there is a lack of appreciation of the particular rules with regard to what can and cannot be put into clients account!

Question 2

Question 2 comprises of four parts. This question intends to test the candidates on a wide range of professional conduct issues which have a special Hong Kong flavor. Such as the minimum wage, PD P, Rule 5D, DTRPO and OSCO, as well as the general common law principles on professional conduct.

Sharing of professional fees has been approached from two different angles, viz sharing between a principal and a newly qualified solicitor and sharing between two solicitors of different firms. In respect of the latter, the Examiners are happy to note that quite a number of candidates had spotted the sharing was between two solicitors in their personal capacity, not between their two firms, and that sharing was problematic.

In general, the candidates gave a modest performance on Question 2. Most of the marks achieved were between 9 and 17, with a small number failing badly. Only one candidate had achieved 19½ marks. No one was able to go beyond 20 marks.

On individual parts, most could achieve 1 to 2 marks in 2(a). About 4 candidates spotted the Minimum Wage Ordinance issue and they were each given half a mark as bonus.

Most could achieve 2 to 2½ marks in respect of 2(b). The big surprise is with the candidates' overall performance in 2(c). The average score is high – between 3 to 5 out of 6, two to three even achieved 6 marks.

The performance of candidates dropped significantly when it came to 2(d). The average marks achieved were between 4 to 7.

Overall, candidates were strong in spotting potential money laundering and other related practice issues in 2(c), which is gratifying in view of some big money transactions nowadays are effected in cash. Candidates were less confident in their duties towards the Courts (ie 2(d)). With the advent of solicitor advocates in higher courts, may be it is time more attention will be paid by young lawyers to matters concerning advocacy and their conduct vis-à-vis the Judiciary.

Question 3

This was a question on the ethical rules governing litigation and courtroom advocacy. It was reasonably well answered.

The first part of the question involved issues of competence, gaining the client's approval before instructing counsel, solicitor getting his clerk to contact counsel and negotiate the fees with him directly, giving proper information about costs, advice on legal aid, contingency fees and making bold assurances about the outcome of the case.

The second part involved the ethical principles governing approaching the other party's witness and offering payment to that witness to change his testimony. It also involved putting undue pressure on a client to plead guilty.

Question 4

This question was generally poorly answered. It was the impression of the Examiners that many candidates left this question to the last and appeared to have little time to answer it thoroughly.

The question was in two parts. The first part involved a solicitor being instructed by two co-accused persons and then one co-accused instructing another lawyer. The issue was whether the lawyer was entitled to continue to represent the remaining co-accused. The question required candidates to consider issues of conflict of interest and whether the lawyer had relevant confidential knowledge about the co-accused who had found alternative representation.

The second part of the question involved first identifying the ethical restrictions on solicitors representing both vendor and purchaser in a conveyancing transaction and secondly discussing whether it was ethically proper for a solicitor to accept a substantial gift from his client.