

Examiners' Comments on the 2013 Examination

Head IV: Accounts and Professional Conduct

The Examiners have pleasure in supplying the following joint report on the 2013 OLQE Head IV Examination in Accounts and Professional Conduct.

The examination performance was, once again, disappointing. The overall pass rate was 42%. Unusually, more candidates failed the Professional Conduct section of the paper than the Accounts section.

Question 1

This year's question was straightforward and should not have caused any difficulties to the candidates. The areas examined were not complicated.

The Examiners have the following observations:-

1. Those candidates who passed were able to clearly identify the issues and provide reasonably structured and reasonable answers. The quality of the candidates who passed was not inspiring.
2. Those who failed lacked the necessary application and again, they just regurgitated chunks of the relevant Rules, Practice Directions, etc. without any attempt to engage the principals to the facts that were put to the candidates to address.
3. Candidates were asked to confine their answers to the Solicitors' Accounts Rules and accounting issues and yet they felt the need to embark upon other matters such as Know Your Client, money laundering, etc. Some candidates also felt the need to go forward and look at the new Rules (which were not in force) and bring these into play in an attempt to impress.
4. Many of the candidates were just reproducing paragraphs from the Rules and Practice Directions that were not really relevant to the points being examined.
5. Whilst the Examiners were invigilating the exam, they noticed that many candidates brought into the exam room model answers that must have been prepared by the course providers and were just copying these out!

However, the Examiners repeat the same remarks they have made over the past years. The Examiners take the view that the candidates do not really give enough attention or respect to Question 1.

Question 2

This year's Q2 has been broken down into five parts, A, B, C, D and E. Most of the candidates scored between 9 and 16 marks.

Part A:

Part A(i) intended to examine candidates' knowledge on the formation of a retainer, competence and reasonable care, and the taking of gift items.

Candidates generally did well with this part and most were able to score 3 marks (out of 6 marks) and above.

Part A(ii) intended to examine candidates' knowledge about the supervisory role of a managing partner. Again candidates generally did well. Most could score two out of three marks.

There were quite a few who suggested that either the young solicitor should report her managing partner *or* the managing partner should report the young solicitor, to the Law Society for misconduct. Also a number of candidates were excited about making a report of the 'claim' to the Law Society Indemnity Fund. No marks were deducted, those candidates simply wasted their valuable examination time.

Part B:

Part B intended to find out whether candidates were aware of the latest Court of Appeal decision in *A Solicitor v. The Law Society of Hong Kong* (CACV 60/2012). Three candidates could clearly identify the case. Each got a bonus mark. A good number could identify one's membership with the Law Society as relevant to the issue. The actual scoring of marks in Part B was generally speaking less than satisfactory.

Part C:

In view that Part B could be difficult, Part C was designed to be compensatory and generous in awarding marks. Most candidates were adamant that the young lawyer should return the lady Rolex watch despite she has kept that item for months. The great majority scored the full three marks.

Part D:

Most candidates were able to identify the conflict of interest when the firm's litigation partner acted for the young solicitor at the Disciplinary Tribunal hearing. His duty as a solicitor advocate and towards his client, the young solicitor, was actively discussed. The performance was above average.

Part E:

This part is difficult as the conundrum created by the obiter of Woo JA (as he then was) that a solicitor might be "entitled to claim the privilege against self-incrimination in the proceedings before the Tribunal either under section 65 or section 10 of the Evidence Ordinance" is still unsettled in our case law. No candidate was able to spot this issue and this part was worst attempted by most candidates.

Question 3

This question covered courtroom ethics.

In Part (a) the Issues involved included solicitor's competence to take on a case, giving proper instructions to counsel, the need for a written retainer in criminal matters, the professional duty to give a client the best information about the fee, instructing counsel without the client's consent and counsel receiving instructions from the solicitor's clerk rather than from the solicitor himself.

Part (b) involved the issues of a solicitor acting where a member of his firm might be called as a witness in the case, withholding information from his client and putting pressure on the client not to testify.

Part (c) involved solicitor's fees and whether the estimate was pitched at an unrealistically low level.

This question was, as usual, well answered.

Question 4

This question was in three parts.

Part (a) involved the question as to what a solicitor should do when he receives documents from the other party which he should realise were privileged and sent to him by mistake.

Part (b) involved the issue of partial waiver of professional privilege and was based upon the recent decision of the Court of Appeal in *Citic Pacific Ltd v Secretary for Justice* [2012] 2 HKLRD 701, [2012] 4 HKC 1. Few candidates knew this case but could have reached the right answer based upon general legal principles.

This question was very badly answered.

Part (c) involved conflict of interest where a solicitor moves to a new firm. It was based on the well-known principle in *Prince Jeffri Bolkiah v KPMG* [1999] 1 All ER 517, HL.