

**1997 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Monday, 3 November 1997



THE
LAW SOCIETY
OF HONG KONG
香港律師會

HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

3 November 1997

Instructions to Candidates

1. The duration of the examination is 3 hours and 30 minutes.
2. This is an open-book examination.
3. This paper is divided into two Parts : Part A is concerned with Professional Conduct issues and Part B is concerned with Accounts issues. **A PASS IN BOTH PARTS MUST BE ACHIEVED IN ORDER TO PASS THE TEST PAPER OVERALL.**
4. There are **THREE** questions in Part A (Professional Conduct) and **FOUR** questions in Part B (Accounts) in this paper. **EACH** question in both Parts must be answered.
5. Part A is worth 84 marks. Part B is worth 16 marks.
6. Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.
7. Do not take either this question paper or any answer booklets with you when you leave the examination room.

1997 Accounts and Professional Conduct Test Paper

PART A (Professional Conduct)

This Part is worth 84 marks. You must pass this Part and Part B in order to pass this Head. Each question must be answered.

1997 Overseas Lawyers Qualification Examination

Head IV : Accounts and Professional Conduct

Part A (Professional Conduct)

Question 1 (16 marks)

- A. Sol was a commercial litigation solicitor in Max & Co. He was a close friend of Dan, whom he had known since High School and who was also a solicitor. Dan was charged with indecent assault on a lady on a MTR train, to be tried in the Magistrates' court. Dan pleaded not guilty. He retained Max & Co. and requested that Sol be his advocate.

What should Sol consider before he decides to act as Dan's advocate ?

- B. Sol decided that he would be Dan's advocate in the trial, after Dan told him that there had been a mistake. He said that he had been in the same train carriage as the complainant but he had never touched her; she had mistakenly identified him as the man who had indecently touched her. The day before the trial Sol was told by the police that because a solicitor was the defendant, an experienced counsel was going to prosecute the case. An hour before the trial was to begin, the prosecuting counsel supplied to Sol an outline of the victim's statement and in it the victim explained that she was certain of the identification as she had immediately protested to Dan and that he had apologised. When Dan was shown the statement he said to Sol that he had accidentally touched her, due to the press of the crowd in the carriage at peak hour. Dan was worried and asked Sol whether he might be willing to testify in the trial on his behalf as to his good character.

What should Sol now consider and what is your advice to him ?

Question 2 (24 marks)

- A. Sam, a solicitor, received a phone call from Nellie, his niece, who was a professional private nurse. She asked him if he could help her in the matter of the transfer to her of an apartment. Sam agreed. She then came to his office accompanied by Peter, a 75 year old man who had to use a walking frame and who had difficulty in speaking but otherwise was alert and sensible. Peter told Sam that Nellie had looked after him for ten years after he had a stroke (a brain seizure) that had left him paralysed and only because of her care he was able to walk again. He wanted to express his thanks by transferring his apartment to her for a nominal price of five thousand dollars and in consideration of the care and comfort that Nellie had given to him. He said that he was determined that Nellie should have the apartment now. He added that he had no surviving family and Nellie had promised that they would both continue to live in the apartment and that she would look after him for the rest of his life; Nellie nodded. Sam asked Peter if he was absolutely certain and clear about his instructions and Peter said, "Yes." Sam then agreed to prepare the transfer.
- B. Nellie then asked Sam, who was quite wealthy, if he (Sam) would help her to pay off the small outstanding mortgage that remained on the apartment. Sam agreed.
- C. Nellie rang Sam at his home that evening and told him that she was quite anxious to have the transfer settled quickly as she wanted to modify one bedroom so that she and her boyfriend (who wished to live with her) would be more comfortable. The transfer was signed by Peter and Nellie four days later in the presence of Sam. Immediately afterwards, Sam said to Nellie that, "Peter seems to be rather tired?" Nellie explained that Peter was taking an anti-histamine tablet for an allergy and it made him a little bit drowsy. Peter and Nellie then left Sam's office.

Consider and comment upon Sam's conduct throughout the transaction. In doing so, advise Sam about the possible consequences of his actions. Also offer your opinion on how he, perhaps, should have responded.

Question 3 (44 marks)

- A. Sam, a partner in Mess and More, Solicitors, was the principal advisor on legal matters to Can Do Corporation, an internationally known toy company. Can Do had manufacturing centres in China and the Philippines. The managing director of Can Do, Fizz, met Sam and instructed him to assist in the obtaining of a loan of HK300 million dollars from Banque Beta, a French merchant bank which had an office in Hong Kong. Fizz told Sam that the deal had already been negotiated. It was for "replacement and upgrading of machinery and buildings" and only the paper work remained to be done. Fizz's secretary sent a copy of the Minutes of the relevant Board of Directors' meeting to Sam together with the letter of offer from the bank.
- B. Sam did not read the Minutes which recorded a heated discussion among the directors about Can Do's current debt and the disastrous failure of a much promoted new toy line into which the company had sunk almost all of its cash reserves. The company also had borrowed heavily. Fizz had recommended that the company obtain a loan "to tide it over its temporary difficulties." A director pointed out that nobody would lend on that basis and Fizz then suggested that the loan could be obtained for "machinery and building development", which was agreed to by all the directors.
- C. The in-house counsel for Banque Beta contacted Sam and said that he was newly arrived in Hong Kong and that, as there were only formalities left to be done, he would appreciate it if Sam would assist him in ensuring that the documentation that he had prepared satisfied Hong Kong law. Sam and he agreed in writing for a flat fee of 60,000 dollars for Sam's estimate of eight hours work.
- D. Immediately after the loan agreement was signed, Fizz told Sam that he and his fellow directors were, unfortunately, just about to go to a secret location to discuss the future strategy of the company and would be out of touch for a week.
- E. The bank rang Sam the next morning and said that the money was available. Sam asked whether it could be paid that afternoon by a cheque payable to his firm. The bank agreed. Sam then received the cheque from the bank, paid it into client account, transferred it to the firm's office account and after deducting his fees, placed it in a short-term high yield account under his own name. Five days later Fizz returned. He was surprised that the money had been paid whilst he was away and asked for an immediate transfer of the money to the company's bank account. Sam did so and accounted to Can Do, "for the interest for five days, calculated at the current standard Hong Kong and Shanghai Bank deposit earning rate." Sam then transferred the remaining interest of two hundred thousand dollars to his personal account.
- F. Sam left for a short holiday. His partner, Max, read the Can Do file, including the Minutes of the meeting in which the directors resolved to seek the loan. As a result of what he read, he investigated further and discovered all the facts.

Advise Max about the ethical and legal issues arising and in the light of your analysis advise Max what action he could and should take.

1997 Accounts and Professional Conduct Test Paper

PART B (Accounts)

This Part is worth 16 marks : 4 marks are allocated for each question. You must pass this Part and Part A in order to pass this Head. Each question must be answered.

Question 1

Sol & Co has HK30 million dollars in its client account of which twenty thousand is held for client Lee. Sol & Co has to make a payment of thirty thousand dollars on behalf of Lee to another party.

How should the transaction be done. Explain briefly. If there is an alternative method describe it.

Question 2

Sol & Co receive fifty thousand dollars by cheque made out to the firm from Wong (who is not a client) in payment of his debt to Sol & Co's client, Lee. Lee is pressing hard for the quickest possible payment to himself. He asks for the cheque to be endorsed to him immediately.

- (i) How should Sol & Co do the transaction ?**
- (ii) If the cheque were made out to Lee, would your answer to (i) be different ? Explain.**

Question 3

In a conveyancing transaction, a solicitor acted for the purchaser and for the mortgagee, a bank, which just prior to completion sent to the solicitor the mortgage advance.

- (i) Where should the cheque be placed and in which account should it be entered ?**
- (ii) The completion took place. How should the mortgage money be dealt with in the books of account of the firm ?**

Question 4

- (i) A solicitor received ten thousand dollars from Lee as an advance in connection with his proposed litigation action. The solicitor paid it into office account. Was this correct? Explain.**
- (ii) Ten day later, counsel sent an invoice to the firm for his fees for an opinion regarding the Lee litigation. Should it be paid from client account ? Explain.**