
**1998 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Thursday, 5 November 1998



HEAD IV : ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

5 November 1998

Instructions to Candidates

1. The duration of the examination is 3 hours and 30 minutes.
2. 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.**
3. There are THREE questions in Part A (Professional Conduct) and TWO questions in Part B (Accounts) in this paper. Each question in both Parts must be answered.
4. Part A is worth 84 marks. Part B is worth 16 marks.
5. This is an open-book examination.
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.

1998 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.

1998 Overseas Lawyers Qualification Examination

Head IV : Accounts and Professional Conduct

Part A (Professional Conduct)

Question 1 (16 marks)

Sol, a solicitor, was in a light bus when the bus driver, who was driving too fast on a wet road and speaking on his mobile phone, collided with a lamp post. The bus turned over and Sol was slightly injured, but some of the other passengers received more severe injuries. He was taken to the emergency ward of Queen Mary Hospital with six other injured passengers. Whilst they were waiting for treatment Sol spoke to the other passengers who were covered with blood and told them that in his opinion the driver was entirely to blame and that the bus company ought to be sued. He explained that he was a lawyer and he handed out his business card to all of them saying, "My fees will be extra-reasonable if I act for all of you." He asked them for their names and fax numbers and a week later he faxed all the passengers and the relatives of one who had been killed in the accident with a form of retainer. Sol put up posters at three MTR stations showing him dressed as superman and stating, "Sol, the Car Accident Man! A lawyer with plenty of experience is what you need if you are injured. First consultation free."

Consider the facts and advise whether Sol may have acted unprofessionally.

Question 2 (30 marks)

- A. Donald, a director of an established corporate client, Small Limited, came to see Sam, a solicitor. Donald instructed Sam to take action against another corporation, Grand Limited ('Grand') for money allegedly owed to Small Limited. After the interview, Sam sent draft pleadings and associated documents to Brian, a barrister, with instructions "to settle pleadings." Brian considered that one head of claim was legally unsustainable. Also he advised that another head which alleged "deceit" by Grand's Managing Director was not adequately supported by the evidence on the papers supplied to him. Sam responded by demanding that Brian do as instructed as the client's instructions were clear, and if he did not settle the pleadings as instructed Brian would not be briefed for the trial of the action nor could he expect to be paid for his work. Brian then agreed to incorporate all the allegations in the pleadings and to sign them.
- B. After the exchange of documents under automatic Discovery, it was clear that there was nothing to support the allegation of deceit. Sam told this to Donald and said that it was very desirable to have supporting evidence because the plaintiff bore the burden of proof. One week later, Donald came back to Sam with a copy of a letter that Donald said he had only just found in his company files. The copy letter was addressed to the Managing Director of Grand with an appropriate date and signed by Donald. In the letter Donald stated that he wrote "to confirm that" the Managing Director of Grand had told Donald on the phone that "Grand would receive the shipment in a week and that immediate pre-payment would secure the sale of that shipment to Small Limited." Donald told Sam that Small Limited immediately pre-paid for the shipment, but that, contrary to the promise, Grand sent the goods to a competitor of Small Limited. Sam gave the letter to Brian and instructed him to draft an appropriate amendment to the pleadings.
- C. Brian rang Sam and said that he was extremely doubtful about the genuineness of the letter as there was no corresponding document or copy of a reply amongst the discovered documents of the defendant. Sam told Brian to stop making objections all the time and that he had no choice but to terminate the instructions. Brian protested that he was prepared to go ahead and that Sam was bound to instruct him for the trial of the action.

Consider the conduct of Sam and Brian throughout the transaction. What ethical and professional conduct issues have arisen, and how do you think they should have been or might be resolved? If the action proceeds to trial, what could be the consequences to Sam and Brian?

Question 3 (38 marks)

- A. After 15 years of marriage and one 13-year-old child Harry and Wendy agreed in a friendly way to separate now and to divorce later, after their child reached 16 years of age. Together they drafted a separation agreement including an agreement for property settlement. Harry saw his solicitor Sam, who had been looking after legal matters affecting Harry's successful business enterprises for ten years. Harry asked Sam to advise him and his wife and to prepare a "proper" and enforceable agreement. Sam said that he could not act for the both of them, but that he would see them.
- B. Harry and Wendy came to see Sam and showed him their agreement. Sam had no experience with such agreements. He told them that, " from my previous experience it looks fair, but I would like to call in the senior partner of the firm who also has experience to discuss it." They agreed. Harry said that he would be the one paying the legal fees for preparing the agreement and asked Sam what would be the cost. Sam told him that it all would be charged at his hourly rate.
- C. Harry and Wendy had two more consultations with Sam. The senior partner did join in the discussion and proposed various options. A central matter, which was agreed, was that their child would remain in the matrimonial home and live with Harry until he reached 16 years of age. Then the house would be sold and the proceeds divided equally between Harry and Wendy. The senior partner advised them that, since a child was involved, it might be best if the court approved the agreement. Sam sent copies of the final draft agreement to Harry and Wendy separately and Wendy phoned back and said it was satisfactory. Then Harry came to see Sam and asked him to modify the agreement to provide that when their child turned 16, Harry had the option to either sell or not to sell the matrimonial home. He said, "If you fix it by tomorrow morning I'll double your fee. I am going on a long business trip tomorrow. " Sam said, "Just wait 5 minutes and it will be done." He changed the draft agreement and Harry signed it immediately. Sam witnessed Harry's signature. Harry said that there was no need to send the modified agreement to Wendy for approval. He told Sam to ask her to come in and sign. The next day Wendy came to the office and signed without reading the document. Sam witnessed her signature.
- D. A few weeks later the court approved the Agreement. Sam prepared a draft bill for costs and disbursements with a sum for his time-charges. The senior partner reviewed the bill and re-drafted it to include his time, which had the effect of doubling the bill. Harry rang Sam a few days later protesting that he had no idea that the bill would include the senior partner's time. Sam managed to calm Harry. A week later, Harry paid the bill and also sent to Sam a cheque made out to Sam personally for the same amount as the fee. Sam paid the cheque into his personal account.

(Please see paragraph E on page 5)

- E. Two and a half years later ~~years later~~, Harry told Sam that he and Wendy had agreed to divorce and asked Sam to prepare the papers and handle the matter generally. Sam asked Wendy to come to his office so that he could serve the divorce application on her. When Wendy came, she said that she was concerned only about the arrangements for their son. Sam reviewed the separation agreement with her and 'reminded' her that their son could stay in the matrimonial home with Harry after he turned 16. Wendy was shocked. She said, "I had no idea that Harry could keep the house. Property prices are shooting up, the house is already worth double its value 2 years ago and I need the funds to set up a house for myself and my son!" Sam told her that there was nothing that could be done.

Review Sam's conduct throughout this transaction and discuss the ethical issues that arise.

End of Part A (Professional Conduct)

1998 Accounts and Professional Conduct Test Paper

PART B (Accounts)

This Part is worth 16 marks. There are two questions, each worth 8 marks. You must pass this Part and Part A in order to pass this Head. Each question must be answered.

PLEASE RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY

Question 1 (8 marks)

Sol receives HK\$3,045,000 in cash from his client, Wong. HK\$50,000 is for payment of Sol's bill on a completed matter. The remainder relates to a different matter and is to be held by Sol pending Wong's further instructions. Sol pays the HK\$3,045,000 into client account. Later, instead of transferring the HK\$50,000 fees to office account, Sol uses the money to settle an unrelated debt for the same amount by writing a cheque from client account to his friend, Mr. Luk. In the meanwhile, Wong is involved in criminal activity in China. He is arrested and sentenced to ten months in prison. During Wong's trial and imprisonment Sol cannot get instructions.

What accounts issues arise from the above facts ? Explain your answer.

Question 2 (8 marks)

Sol is given a cheque by Leung. 16% of the cheque is part payment of the bill Sol sent to Leung recently. 33% is a payment on account of costs to be incurred in another matter on behalf of Leung. 40% is money from Leung's wife for whom Sol is acting as solicitor in the purchase of a business for Mrs. Leung exclusively. 10% is for payment into a trust Leung has set up for his baby daughter's university fees (Sol acts as trustee). 1% is an overpayment in error because Leung is bad at maths.

Advise Sol whether or not he can accept the cheque and, if yes, advise him as to the disposition of the various sums. Explain your answer.

End of Part B (Accounts)