
**1999 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Thursday, 4 November 1999



Head IV : ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

4 November 1999

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.

1999 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.

1999 Overseas Lawyers Qualification Examination

Head IV : Accounts and Professional Conduct

Part A (Professional Conduct)

Question 1 (25 marks)

- A. Peter, a wealthy man, asked Sol a solicitor to assist him in a civil claim against Fred. Sol consulted Cheery, a barrister, who specialised in the area. Cheery advised that the action was very unlikely to succeed as the case law was strongly against recovery of Peter's claim. Also the evidence they had at this stage did not look conclusive enough. Peter insisted upon proceeding with the issue of a writ saying: "Even if it is hopeless, I want to go ahead. I want Fred to sweat and waste money on lawyers. If I am lucky, he might even get a heart-attack from all the worry."

Question 1(i) :

What should Sol consider before he issues the writ and what advice ought he give to Peter? (10 marks)

- B. The writ was issued and eventually a trial date was set, without much improvement in the strength of Peter's case. Then, just two weeks before trial, in the morning, the Court of Final Appeal delivered a judgment in another case ('the judgment') that reversed the law and transformed Peter's case from a weak one into a certain winner. Sol and Cheery did not know of the judgment.
- C. A few hours after the judgment was delivered, Sol received a faxed offer of settlement that covered Peter's costs with some minimal extra compensation. Sol rang the defendant's solicitor, Max, and tried to get him to raise the offer. Max said: "I'm sorry. It's the best my client can do and really it's very generous under the circumstances. We are doing it to save the cost and nuisance of trial and my instructions are to withdraw the offer tomorrow. "
- D. Sol and Cheery immediately advised their client to accept the offer, which he did. There was a rapid exchange of faxes resulting in the settlement being signed that same evening. There was the usual clause that the plaintiff would not pursue the claim in any form thereafter and that the settlement was binding on all parties. It was not a settlement requiring court approval and a cheque was handed over in full settlement at the signing ceremony.
- E. Max and his counsel were aware of the judgment when they made the offer; Fred had insisted on a minimal offer despite the likelihood that it would be rejected.

- F. Two days later, Sol and Cheery and Peter found out about the judgment and they realised that Max knew of the judgment when he had made the offer. Peter was very angry and came to see Sol. Peter said, "I could have got much more money if you had done your job! Right?"

Question 1 (ii) :

Advise Sol what issues of conduct and legal liability have arisen on these facts and what are your conclusions about those issues. How should he deal with Peter's question?

(15 marks)

See over page for Question 2

Question 2 (34 marks)

- A. Paul, a pedestrian was injured when Dan, driving his car, knocked him over. Paul retained Sam, a solicitor, to sue Dan in negligence. After the writ was issued, Sam asked Doctor Zed ('Zed'), who had twenty years experience as a physician, to examine Paul and determine the long-term effects of the injuries so that the quantum and particulars of the damages could be finalised. Zed prepared a report, in which he stated that in his opinion, Paul was exaggerating the effects of the injuries and that certain of them had healed completely and that there could not be any continuing pain as claimed by Paul.
- B. Sam showed the report to Paul. Paul was very upset. He said that he would not pay for such a "nonsense" report! Paul insisted that Zed was wrong; he was genuinely suffering pain. Whilst Paul was telling this to Sam, Paul tapped his own nose frequently. Sam had listened to a program the evening before in which it was reported that a group of psychologists in the USA concluded, from observations of video-tapes of President Clinton's behaviour in the Monica Lewinsky Senate Hearings and of O.J. Simpson in his hearings, that there was a 'Pinocchio' effect when people lied. This was signified by the liar frequently tapping his nose. As a result, Sam doubted Paul's honesty.

Question 2 (i) :

What issues of conduct and their consequences have arisen and what would you advise Sam to do now? Explain. (12 marks)

- C. At the same time that Dr. Zed was preparing the report on Paul, he was also preparing reports on a client of Able & Co., Solicitors. Unknown to Zed, Able & Co. was acting for Dan and the third party insurance company (that had instructed Able under the subrogation clause). Dr. Zed's assistant accidentally included the unsigned final draft of the report about Paul, without its front page (and so without the name of the case and requesting solicitor) in the bundle for Able & Co.
- D. Able's secretary put all the papers in the bundle on Able's desk. Able read all the documents, including the report about Paul, but did not realise that it was about Paul until after he had finished reading it. Dan's insurance company had not yet appointed a doctor to examine Paul. Able realised how valuable Dr. Zed's findings were for Dan.
- E. Able did not copy the report. Instead, he intended to send it back to Dr. Zed. He drafted a letter to go with the report. Able's draft letter said: " Dear Dr. Zed, this report on Paul was found to be accidentally included with your report on my client. Incidentally, in your own interests, it may be useful for you to know that, since you are not a solicitor, you do not have to tell Sam & Co. about the mistake. Also, in the circumstances, would you consider being a medical expert witness on behalf of Dan, on the issue of the extent of injury to Paul?"
- F. Able then stopped to think about his intended action.

Question 2 (ii) :

Advise Able what are the ethical issues that he should consider and what he should do now. (17 marks)

- G. Able acted for the insurance company in many cases on the basis of an arrangement that he had made with its in-house legal counsel. The arrangement was that his firm should be one of the firms on the insurance company's short list of four preferred firms, in exchange for an undertaking he had made to the in-house counsel to give free legal advice to twenty members of its staff on private matters, in certain areas of law. He took the in-house counsel out to lunch once every month in the most expensive restaurant in Hong Kong.

Question 2 (iii) :

Consider and advise Able whether this arrangement is 'proper'. (5 marks)

See over page for Question 3

Question 3 (25 marks)

- A. Mark was one of the directors of Bang Bang Music Ltd. ('BBM') and he wanted action fast! He felt that his two fellow directors were always too slow to make up their minds about important matters. He remembered an advertisement in a local music magazine by a solicitor's firm. He found it. It read :

"One of the leading copyright firms in Hong Kong.

Moon Sol & Co, Solicitors.

15 years experience in copyright registration and infringement.

Fast response. No waiting.

First consultation is free. The most reasonable hourly rates in Hong Kong."

- B. On Friday morning he went immediately to the firm where he was shown into Sol's office. The senior partner, Moon was away for five days. Moon was the only solicitor in the firm with actual infringement experience. He had handled 12 cases in 12 years of practice. Sol, who left the infringement work to Moon, was the registration expert, having handled 100 copyright and design registrations in his six years of practice; he had joined this firm three years ago. Sol knew something about infringement cases as Moon had sometimes told him how he had handled some of the cases. The firm had begun an advertising campaign because the firm urgently needed more litigation business.
- C. Mark gave Sol his business card and then told him that Hit Song Ltd., a Hong Kong based company, was pirating his company's CD's and selling them in China. He said that Hit Song had 200,000 pirated CD's in their warehouse ready for shipment in the next two days. Sol advised Mark that an Anton Piller order, which would result in all the CD's being seized, should be issued immediately. Mark said, "Do it! If it can be done swiftly I will give you twice your usual fee!"
- D. Sol prepared an affidavit from Mark's instructions and had it sworn to by Mark. An Anton Piller order was obtained against the usual cross-undertakings to damages and an undertaking "to issue a writ forthwith." Hit Song's warehouse and office were raided that same evening and the alleged pirated CD's and associated documents were seized.
- E. Ted, the owner of Hit Song, who was in China at the time, was told about the raid and seizure by an employee that night. He arrived back in Hong Kong on Saturday morning and went straight to Sol's office and angrily confronted him. "I've lost three million dollars in orders because of your lying client!" Sol said, "What do you mean?" Ted said, "You ask him. We had those CD's legitimately!" Sol said, " I'll check it."
- F. With Ted in his office, Sol quickly phoned Mark, but was told by his secretary that he was out of town and she had strict instructions not to try to contact him. Mark would return in three days. Sol looked through the seized documents and found letters and a draft contract. They clearly showed that BBM and Hit Song had been negotiating a distribution contract and that there had been a dispute which resulted in Mark writing a letter to Ted saying, " Return our CD's or else!"

- G. Sol was very worried. He said to Ted, "Let's talk about the problem." Ted said, "I've got a solicitor you know." Sol said, "Look, you can see him later. We may be able to settle this now without more legal expense."

Identify and discuss the issues raised by all the facts. Advise Sol about his conduct, the possible consequences to him and his client and what he should do now?

End of Part A (Professional Conduct)

1999 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)

- A. Solicitor Mak went to Shatin racetrack with his young niece and son. He unexpectedly met an ex-client, Peter. Peter is a heavy gambler and he had just won HK\$500,000. He gave the \$500,000 to Mak, in a Park n' Shop bag and told him, "I'll come to your office tomorrow and tell you about my new business venture. I would like to take your legal advice. This money is the amount I need for the deposit in the new venture. Here, you take it so I don't gamble it away tonight." Peter also gave Mak some hot tips for races later that night.
- B. Mak took the money. Trusting in Peter's tips he bet \$21,000 on the first horse tipped. \$20,000 came from the Park n' Shop bag. Mak also loaned \$5,000 from the bag to his son to bet on the tip. The tipped horse didn't even finish the race. Mak was keen to recoup the lost money, so he bet \$40,000 on the next tipped horse. Again the stake money came from the Park n' Shop bag. The tipped horse finished last. Mak then became sensible and stopped betting. He gave the bag containing the remaining money to his niece to look after for the rest of the evening.
- C. The next day Mak replaced the 'lost' \$65,000 with cash of his own and hid the Park n' Shop bag in a cupboard in his office, awaiting Peter's visit. That afternoon Peter telephoned and explained that he had to go to Shanghai for sixteen days but that he would see Mak upon his return.
- D. When Peter returned he told Mak that the business venture was off and asked for the return of his money. Mak gave Peter the bag from the cupboard. Just before he left the office Peter said, "I like my privacy, so don't record any of this please." Mak assured him that as he never actually became a client there was nothing to record.

What potential and actual issues arise from the above facts under the Solicitors Accounts Rules? Be sure to strictly limit your answer to solicitors' accounts issues.

See over page for Question 2

Question 2 (8 marks)

- A. Man and Ho are partners in the solicitors' firm of Tsui & Co. With another partner, Tong, they are trustees of the Chen Foundation - a trust established to save Hong Kong's architectural heritage. However, the Foundation uses the law firm of Wong & Wong as its solicitors.
- B. Man visited a very rich, very old client, Mr. Rich, to discuss and review the work done by Man on a tax and probate-planning scheme for Mr. Rich. At the end of the discussion, Man presented an interim bill for \$50,000 to Mr. Rich. Mr. Rich immediately gave a cheque to Man for \$110,000. Mr. Rich said, "Use this to pay all your legal fees in respect of your work on the scheme. If there is any extra left over, please take it as a donation to the Chen Foundation."

With regard to issues arising under the Solicitors' Accounts Rules, what should Man do with the money?

End of Part B (Accounts)