
**2000 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Thursday, 9 November 2000



Head IV : ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

9 November 2000

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 ONE question 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.**

2000 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.

2000 Overseas Lawyers Qualification Examination

Head IV : Accounts and Professional Conduct

Part A (Professional Conduct)

Question 1 (32 marks)

- A. Bricks & Co ("Bricks") are a Hong Kong ("HK") firm of solicitors specialising in construction litigation. In their brochure, they describe themselves as being voted the No 1 construction litigation firm in HK based on a survey carried out by the HK Contractors' Association in conjunction with a HK law periodical. Bricks are keen to obtain work from Japanese contractors in HK and recently engaged a consultant to the firm called Polyglot. Polyglot is a HK solicitor and a former sole practitioner who speaks fluent Japanese. (Polyglot receives a basic monthly salary from the firm with a 20% commission on bills paid for clients introduced). Bricks have also placed an advertisement, repeating the description of themselves in their brochure, in a Japanese construction industry magazine circulating in Japan. Polyglot translated the advertisement into Japanese. Unbeknown to Bricks' senior partner, Bill Bricks ("Bill"), Polyglot added a further sentence stating that Bricks provide a better service to the HK construction industry than any other firm in HK. Polyglot sent this advertisement as a mail shot to a number of Japanese contractors in HK inviting them to a lunch which he will host at an expensive Japanese restaurant.

Question :

- (a) **Comment on the practice promotion issues raised in paragraph A.** (7 marks)
- B. At the lunch, Polyglot gets on particularly well with Mr Glass ("Glass"), the managing director of Glazedover HK Ltd, ("Glazedover"), the subsidiary of a Japanese company, Glazedover Japan Ltd, who specialise in the manufacture and installation of plate glass windows in high rise buildings, and Mr Slinko ("Slinko"), one of Glazedover's managers. Glass later contacts Polyglot to arrange a meeting with him to discuss a current problem. Slinko also asks Polyglot out for a drink so that they can discuss a private matter. (Refer to paragraph G for details).
- C. Before the meeting, Polyglot introduces Glass to Bill. As Glass hardly speaks any English, Bill asks Polyglot to meet with Glass, who instructs him as follows. Glazedover were specialist sub-contractors to the main contractor, Sky High Eng Co Ltd. ("Sky"), in the building of a new multi-storey leisure complex near the airport. The complex is topped with an amazing glass dome. Sky chose Glazedover as their sub-contractor as they reputedly have the expertise to manufacture and install large sheets of highly resilient, curved plate-glass. This is important as the complex is close to the airport and must be both shatter- and sound proof. Glass informs Polyglot that the sub-contract works were completed over 3 months ago, but Glazedover have not been paid the contract sum of \$5.5 million. This is because Sky are still in dispute with the developers over delays which occurred during the Stage 2 works which did

not involve Glazedover. The developers have withheld payments to Sky. This is evidenced by the correspondence produced by Glass in which Sky continually asks for Glazedover's forbearance. The correspondence contains no criticism of Glazedover's work.

- D. Glass says that Glazedover's cashflow is being affected and that they cannot wait for payment any longer. After looking at the sub-contract and documents, Polyglot advises Glass at a second meeting that Glazedover has a very good case against Sky and should be able to obtain summary judgment against Sky once a writ has been issued, assuming there is no response to a letter before action. (The sub-contract does not contain an arbitration clause). Glass asks Polyglot about legal costs as he has never instructed HK solicitors before, since he is new to Hong Kong. Before the meeting Polyglot estimated that, on the basis of his charging rate and the probable time involved, the costs of issuing proceedings and dealing with the Order 14 summary judgement application will be in the region of \$100,000. Motivated by the commission he will earn, he tells Glass that costs will be no more than \$200,000 and asks for this amount on account which Glass pays by cheque. Polyglot gets Glass to sign the firm's standard form retainer letter in English setting out the firm's time cost charging rates, which is the usual way the firm bills its clients. He does not translate the letter for Glass and tells him that he need not worry about reading it as it is just a formality for the file. He puts the letter on the file in case Bill asks to see the agreement, but does not give Glass a copy. He then drafts and signs a receipt in Japanese which states :

"Received the sum of \$200,000 being money on account of the estimated costs of \$200,000 of legal proceedings against Sky"

and he gives this to Glass.

- E. Glass asks Polyglot to proceed with the action against Sky with as much speed as possible as he does not want to reveal to his parent company in Japan that there is a problem in HK. When Sky fail to reply to the letter before action, Polyglot immediately issues a writ. Sky then file a Notice of Intention to Defend. Although Polyglot promised Glass at their second meeting that he would issue an Order 14 summons immediately the Notice of Intention to Defend is filed, he gets tied up with other work and a business trip to Japan and does not get round to doing this until 2 weeks later. When he comes to swear the affirmation in support of the application, Glass is dismayed that the summons has been issued late, but is too polite to say anything. Four days before the Order 14 hearing, Sky file an affirmation which alleges that a day after the issue of the Order 14 summons a considerable number of glass panels in the dome shattered as a plane took off and that they have a substantial claim for breach of contract against Glazedover, as the sub-contract provided that the glass in the dome was to be shatter-proof. Glass confirms that this has happened and Polyglot advises Glass that Glazedover will not now succeed on the Order 14 summons, and that the action will have to proceed unless Glazedover want to settle with Sky. Glass wants to proceed with the action as he maintains the glass shattered due to the faulty installation by Sky of supporting struts in the dome. Polyglot informs Glass that the costs will now be much higher than the original \$200,000 first estimated as the matter is now far more complicated. He now translates and gives Glass a copy of the firm's standard retainer letter which Glass signed at the first meeting. (No second retainer letter was issued by Glass.) Glass is confused, but

accepts what Polyglot says. Polyglot continues work on the case. Sky file a Defence and Counterclaim. With Glass's approval, Polyglot instructs an old college friend, who is an engineer, to provide a preliminary report, informing Glass that his friend is a particular expert on glazing. Using the report, Polyglot drafts and files a Reply and Defence to the Counterclaim ("the Reply").

- F. A week after the Reply has been filed Polyglot is called to a meeting with Glass and the senior directors of Glazedover Japan, who have become aware of the problems in HK and have flown over. They are furious that unbeknown to them proceedings were issued in HK as they prefer to negotiate rather than litigate. The directors inform Polyglot that they have decided to instruct Bricks' rivals, Mortar & Co ("Mortar") and that Bricks are to pass all the papers to Mortar. They say that Mortar have looked at the Reply and maintain that it will have to be substantially amended as it is badly drafted and the technical issues concerning glazing are, in part, incorrect. Polyglot denies this and informs them that they will have to pay the firm's costs to date, less the \$200,000 already received on account. He prepares a bill amounting to \$700,000 based on his time costs and including disbursements and sends it to Mortar. Mortar sends a copy of the receipt for the \$200,000 to Bricks alleging that Glazedover's liability for costs, if any, should not exceed that figure and that in any event the matter has been handled negligently.

Question :

- (b) **Analyse and comment on the issues of conduct which have arisen from Polyglot's handling of the case. (You need not raise any issues concerning the supervision of Polyglot by the firm's partners. Nor do you have to deal with the issue of whether Bricks has a lien on the papers.)**

(20 marks)

- G. At the contractors' lunch, Polyglot also met one of Glazedover's general managers, Slinko, who asked to meet Polyglot for a drink. (See paragraphs A and B). In a bar, Slinko tells Polyglot that he owes \$500,000 to a Macau casino whose owners are chasing him for payment through their solicitors, Ying and Co ("Yings"). He needs short term finance for this amount as he expects to receive funds of \$1 million from relatives in Japan to settle his debts. Polyglot tells Slinko that he has an old school friend who works for a HK finance company, through whom he has arranged short term finance for clients before. Slinko agrees to pay Polyglot a personal bonus of \$20,000 in addition to paying Bricks' legal costs if he can arrange the loan and prevent legal proceedings from being issued against him, which would lead to his dismissal from Glazedover. Polyglot contacts his friend, who confirms that he should be able to arrange this finance. After some correspondence between Bricks and Yings, in which Polyglot confirms that Slinko's debts will be settled shortly once the loan has come through, Yings then send Polyglot a draft writ which they say they will issue in 24 hours unless Slinko's debts are paid. Mindful of the \$20,000 promised to him if he prevents legal proceedings from being issued, Polyglot sends a letter on Bricks' notepaper to Yings as follows:

(See over the page for Question 1 (c))

“As you know we act for Mr Slinko. We are instructed by our client to confirm that our firm has arranged a short term loan in the sum of \$500,000 on his behalf. We undertake to pay your firm this sum on behalf of our client by close of business tomorrow.”

A few hours after Polyglot has arranged for this letter to be delivered by hand to Yings, Polyglot's old school friend rings him from the finance company to tell him that the loan to Slinko has been blocked by his superiors. Polyglot rings Slinko's office to find that Slinko left for Japan that morning, claiming that his mother is desperately ill.

Two days later, Bricks are served with the writ now issued by Yings. With the writ is a letter from Yings calling upon Bricks to honour the undertaking. Bill questions Polyglot who admits that he gave the undertaking. Bill is furious as he already blames Polyglot for losing the Glazedover case to Mortar and tells Polyglot that he's dismissed and that he will have to meet the undertaking himself.

Question :

- (c) **Advise Bricks on their liability on the undertaking.**

(5 marks)

Question 2 (32 marks)

- A. Clara's husband had died in an accident without making a will. Clara consulted Sol, an experienced litigation solicitor and partner in Bull & Partners. She told him that her husband had been killed in an accident three months ago and he had not made a will. She told him that her husband had owned a bus company together with her husband's brother, Gus and that Gus had continued to run the company after her husband died. She alleged that her husband had personally owned four of the buses and that she had asked Gus to hand over the buses to her and to account for all the profits from them. He had refused, saying that the buses were leased to 'his' company and she had no right to them or the income from them.
- B. Sol advised her to sue Gus but Clara said that she had no money for the lawyers' fees. Sol suggested that she obtain Legal Aid and told her that he was on the Legal Aid panel of solicitors. Clara obtained a Legal Aid Certificate for the action and retained Sol.
- C. Sol handed the file to Ted, a trainee solicitor, because Sol was busy with another matter. Sol told Ted to interview Clara, get all the facts and send a letter of demand. Ted did interview Clara but forgot to draft and send the letter. After three months Clara asked Sol what had happened? She said, "That thief Gus has not given me a cent!" Sol checked the file and quickly sent a letter to Gus demanding that he hand the buses over to Clara "and all the income derived therefrom, otherwise we will have no choice but to report this and certain other matters to the police."
- D. There was no reply. Sol asked Ted to prepare a brief to advise and settle pleadings for Barry, a Barrister. Sol had briefed Barry in previous matters, usually relating to company law. Ted prepared the brief including notes of the interview he had conducted with Clara and sent the brief to Barry. Barry looked over the brief and noticed that the interview with Clara was inadequate. He had a holiday planned for the following week and thinking that the writ and statement of claim needed to be filed quickly to comply with the Rules of the High Court, he drafted these documents and sent them to Sol. Sol was still busy on another matter so he passed the brief back to Ted without reading the documents Barry had drafted and told Ted to file and serve the documents on Gus. Then a firm of solicitors, Ox & Co, notified Ted that they represented Gus and that they were moving to strike out the writ as Clara was named plaintiff when the Estate of her deceased husband should have been nominated. At the hearing, the judge allowed the amendment but ordered the costs of the hearing against Clara, saying that the error "was a matter between Clara and her legal representatives."
- E. The next day, a legal aid officer, who was a Hong Kong solicitor and a good friend of Sol, rang Sol and told him that he had revoked the Legal Aid Certificate as he suspected that Clara had "knowingly made a false representation" to him in obtaining the certificate. Sol knew this was a summary offence under the Legal Aid Ordinance. The officer said that when she applied for legal aid, Clara had told him that she did not yet have the grant of letters of administration. He now suspected that to be untrue. He said, "Don't tell her, but confidentially, I have asked the police to investigate."

(See over the page for Questions 2 (a) and (b))

- F. Sol rang Clara and asked her to come to his office urgently as her Legal Aid certificate had been revoked. She came together with a man whom she introduced as her “good friend, Li and I want him to be with me for this discussion.” Sol explained the reason for the revocation and that it was an offence to make a false representation. Clara said that the solicitors she had retained to apply for the grant had told her, two weeks before she applied for legal aid, that “ ‘the grant was going to be, but was not yet obtained’, or something like that.” She went on: “So naturally I told the Legal Aid Officer that I did not have the grant.”
- G. Li then said, “Clara wants to know whether you will go ahead with the action if she pays you at the end of it?” Clara nodded and Sol said, “Yes. I agree. Don’t worry, it looks to me that you will be a sure winner. And if we don’t win everything, I’ll charge you reasonably. If we win nothing, you won’t have to pay me.”

Question :

- (a) **Review the facts so far and explain the matters and issues of professional conduct that have arisen. Offer your views on how all the issues might have been resolved.**

(22 marks)

- H. A week later Sol received an urgent phone call from Clara saying that she was at the police station with Li and she was being questioned by the police. Sol told her to say nothing and to ask the officer in charge to speak to him. They all arranged to meet at Sol’s office straight away. Clara looked very frightened. Detective Inspector Wong introduced himself and then demanded that Sol tell him what his client had told him about her application for grant of administration and when she had done so. Sol said that it was confidential information as Wong well knew and that he could only tell him if his client gave up the confidentiality. Wong said angrily, “You are being deliberately obstructive! You know that you have no right to assist a criminal! You are in danger of being prosecuted yourself!” He then beckoned to Li and whispered something to him. Li then asked Clara to go outside the office with him for a moment. A minute later they came back and Clara said to Sol, “You can tell the policeman everything!” She then began to cry.

Question :

- (b) **Now review all the facts again in the light of what has occurred in paragraph H and explain to Sol what issues of professional conduct have now arisen. Advise him on what he should have done or ought now to do.**

(10 marks)

Question 3 (20 marks)

Francis had been employed by Heavy Transport Company Ltd ("Heavy Transport") a company registered in Hong Kong. In May 2000, he was driving Heavy Transport's lorry out of the company's premises when he struck and seriously injured one of Heavy Transport's employees, Peter. Peter instructed a firm of solicitors, Sue and Win, to commence action against Heavy Transport for damages for the personal injuries he sustained in the accident.

Answer questions (a) - (c) which are based upon these facts.

Heavy Transport are insured by Noble Insurance Co Ltd ("Noble Insurance") and the claim was referred to them. Clause 15 of the contract of insurance provided:

"The insurers shall be entitled if it so desires to take over and conduct in the name of the insured the defence or settlement of any claim and shall have full discretion in the conduct of the action and the insured shall give all information and assistance as the insurers shall require."

Noble Insurance notified Heavy Transport that they intended to take over the conduct of the defence. They also informed Heavy Transport that they reserved the right to maintain that the accident was not covered by the contract of insurance.

In June 2000, the writ from Sue and Win was received and Noble Insurance instructed their solicitors, Defend & Co, to defend the claim. Defend & Co filed the defence and automatic discovery took place.

Later in June, Noble Insurance notified Heavy Transport that they had recently discovered that the 'employee' Francis had not actually been employed by Heavy Transport as at the date of the accident but had been filling in for a sick colleague. They therefore considered themselves no longer bound by the insurance policy. A clause in the policy of insurance provided that any dispute as to whether the insurance company was bound by the policy had to be resolved in Court. Accordingly Noble Insurance applied to the Court of First Instance of the High Court for a declaration that they were not bound to indemnify Heavy Transport in respect of this accident. Noble Insurance instructed Defend & Co to act for them in this application.

Heavy Transport has now accused Defend & Co of having a conflict of interest in acting for them in the defence of the personal injuries claim and against them in the application for the declaration.

Question :

(a) Advise Heavy Transport.

(10 marks)

Heavy Transport informs you that Sue and Win used to act for them in defending personal injury claims against their drivers. You decide to write to Sue and Win asking them to cease to act for Peter on the grounds of conflict of interest. Sue and Win write back saying that, although the solicitor who used to handle Heavy Transport's litigation business is still a partner in their firm, he no longer works in the firm's litigation department but is wholly involved in commercial

(See over the page for Questions 3 (b) and (c))

work. Sue & Win also say that that same solicitor who previously handled Heavy Transport's work has agreed to give an undertaking not to divulge any information he might have gained whilst representing Heavy Transport to any other member of the firm.

Questions :

(b) Advise Heavy Transport whether they have grounds for objecting to Sue and Win continuing to act for Peter.

(6 marks)

(c) Assuming that both Sue and Win and Defend & Co are in breach of the Solicitors Guide to Professional Conduct, briefly explain the role of the court, if any, in enforcing these professional obligations.

(4 marks)

End of Part A (Professional Conduct)

2000 Accounts and Professional Conduct Test Paper

PART B (Accounts)

This part is worth 16 marks. There is one question. 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 (16 marks)

- (A) Jim is a partner of the six partner firm of Law & Co and has an important client, Kurt, who lives overseas and communicates with Jim by e-mail and telephone only.

Prior to Kurt leaving Hong Kong after his last visit, Jim told Kurt that he, Kurt, owed Law & Co \$125,000 in outstanding legal fees and disbursements but that 'for accounting purposes' a bill would not be issued to Kurt until the new financial year and this bill would be e-mailed to Kurt. No such bill has ever been issued or sent.

- (B) Jim told Kurt the sum was made up of incorporation costs of BVI companies by the accounting firm Billet & Co for which copies of invoices to Law & Co of \$25,000 were handed to Kurt by Jim at the meeting, and that the \$100,000 in addition was concerning time charges for advice given by the Law and Co to Kurt.
- (C) Kurt agreed these figures and promised he would remit funds to Law & Co to cover the money due to Law & Co plus the disbursements of Billet & Co. Kurt said the remit would include a further sum which Jim should use if required 'for anything that comes up where money needs to be paid'.
- (D) Shortly after his departure from Hong Kong Kurt remitted \$500,000 to the firm account of Law & Co by telex transfer from his bank direct to the bank of Law & Co at which time Jim was on holiday in Bali.
- (E) Jim called Law & Co from Bali a week after the remit and spoke to Jude, an accounts clerk, who informed him of the in-bound funds in the firm account. Jim told her as it was the end of the month she was to move \$375,000 to the client account of Kurt, pay \$10,000 to Billet & Co as part payment of the BVI company matters, and use the remaining \$115,000 to help meet payroll expenses so the firm did not exceed its overdraft facility.
- (F) A \$10,000 cheque to Billet & Co prepared by Jude was signed by Angel who was the Law & Co office administrator and a signatory on the firm account, but who was not a solicitor. It was sent by mail to Billet & Co as 'part payment' of the bill regarding the BVI companies Kurt had instructed be incorporated. Angel also moved \$375,000 to the client account and retained \$115,000 in the firm account based upon her discussions with Jude.
- (G) A week later Jim was given a perfectly legitimate stock tip he could not resist. Being short of funds, he instructed Angel by telephone from the beach in Bali to draw up a cheque for \$400,000 in favour of Key Brokers from the client account to meet a bill already delivered to the office of Law & Co, personally payable by Jim to Key Brokers, for 200,000 shares at \$2 each in HKSARLAW.com.
- (H) He instructed that \$375,000 should be stated in the client account records as 'share purchase' and drawn from the client account of Kurt, the remaining \$25,000 to be from 'any other client with costs on account' and again stated as 'share purchase'.

(See over the page for continuation of the question)

- (I) On his return to Hong Kong ten days later Jim finds that Law & Co have been served with papers from the Small Claims Tribunal for \$15,000 due and payable to Billet & Co and an e-mail from Kurt awaits him instructing Jim to take \$300,000 in cash from his client account, place it in a plain briefcase, and personally deliver it to a Mr Y Y Wong at Room 2828 Laundry Building, Central, within 24 hours.
- (J) In the interim, HKSARLAW.com has gone public and the 200,000 shares now registered in the name of Jim have risen from \$2/share to \$12/share today having a freely tradeable value of \$2.4 million; a gain of \$2 million.

Question :

Discuss the practice issues involved.

(16 marks)

End of Part B (Accounts)