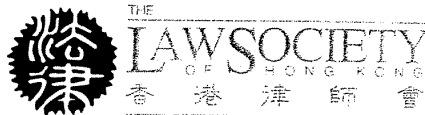


**2001 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND  
PROFESSIONAL CONDUCT**

Monday, 5 November 2001



## **Head IV: ACCOUNTS AND PROFESSIONAL CONDUCT**

### **TEST PAPER**

**5 November 2001**

#### **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 80 marks. Part B is worth 20 marks.
6. You must answer:
  - Questions 1 to 3 (Professional Conduct Part) in Answer Book 1
  - Question 4 (Accounts Part) in Answer Book 2
7. Each question has the value noted on the Test 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.
8. Do not take either this question paper or any answer booklets with you when you leave the examination room.

## **2001 Accounts and Professional Conduct Test Paper**

### **PART A (Professional Conduct)**

**This Part is worth 80 marks. You must pass this Part and Part B in order to pass this Head. Each question must be answered.**

# 2001 Overseas Lawyers Qualification Examination

## Head IV: Accounts and Professional Conduct

### Part A (Professional Conduct)

#### Question 1 (30 marks)

Question 1 is divided into two parts (a) and (b). Answer both parts (a) and (b).

- A. Vincent is a litigation partner in Wongs, a HK firm of solicitors. Vincent attended a legal conference in the USA and met Chase, a partner in Lawsters, a US firm of attorneys. Lawsters has a client property developer, Goldflats Inc. ('Goldflats'), a US company, which specialises in selling investment properties in California to HK residents. As a result of the economic downturn in HK, a large number of HK purchasers have defaulted on their staged repayments to Goldflats. Lawsters wishes to instruct Wongs to recover monies owed to Goldflats by the defaulting property purchasers in Hong Kong.
- B. Chase instructs Vincent to recover payments due from 115 property purchasers. Chase proposes that Wongs receive 15% of monies recovered as their fees. Vincent counter proposes a fixed fee of HK\$10,000 per claim plus 12.5% of monies recovered. Chase accepts this proposal.
- C. Vincent sends letters before action to the 115 defaulters warning them that he will reveal their names to the HK press if they do not pay up. After lengthy correspondence and negotiation with the defaulters, Vincent is successful in recovering the monies owed from 75 of the defaulters. In respect of the remaining defaulters, Vincent commences civil proceedings.
- D. The Defendant in one of the actions brought by Vincent on behalf of Goldflats is a Mr Lee ('Lee'), a well-known racehorse owner, who is represented by Savvys, HK solicitors. In the Defence it is pleaded that Lee is entitled to rescind the purchase contract due to misrepresentation of material facts. As this action is to proceed to trial, Vincent instructs a female criminal law barrister, Jane, whom he finds very attractive, to advise on evidence.
- E. Two months before the trial is due to begin, Vincent, who is also a race horse owner, is introduced to Lee at the Jockey Club by a mutual friend. Vincent and Lee converse about racing. However, after a few drinks, the conversation moves on to Goldflats' legal action against Lee. Lee admits to Vincent that he would like to settle the case brought against him by Goldflats as it is taking up too much of his time and is proving very expensive. A few days later Vincent writes a "without prejudice" letter to Savvys suggesting a tentative settlement figure of 70% of the amount claimed by Goldflats in the action against Lee

and stating that, although he does not yet have his client's instructions regarding settlement, he is prepared to recommend settlement to Goldflats on this basis. A week later Vincent receives an envelope addressed to Wongs. He opens it to find a letter from Savvys to Lee, which he reads. In the letter, Savvys advise Lee that he should accept the settlement figure of 70% of the amount claimed in the action which Vincent put forward in his earlier letter, as they were intending to advise Lee, on the basis of Counsel's opinion, to make a payment into Court of the higher figure of 80% of the amount claimed, rather than proceeding to trial. Vincent carefully reseals the envelope and gets his trainee solicitor to post it through Lee's home letterbox. A day later, Vincent sends a fax to Savvys saying that in fact Goldflats are not prepared to settle the action against Lee at 70% of the amount claimed, but would accept 75%. Lee agrees through Savvys to settle the action against him at this higher figure.

- F. While working together on the case, the barrister, Jane, and Vincent have begun a relationship together. Jane's former fiancé, Roger, is very jealous and confronts Vincent and Jane in a bar one night. Roger insults Jane and Vincent punches him. Roger falls, hitting his head on the marble counter of the bar and suffers a fractured jaw and loses some teeth. Vincent is prosecuted and found guilty of assault, occasioning actual bodily harm. He receives a suspended sentence of 6 months' imprisonment. The Law Society decides that the Disciplinary Tribunal should investigate Vincent's conduct.

**Questions:**

- (a) **Review the facts in paragraphs A-E and explain the matters and issues of professional conduct which may arise.** (22 marks)
- (b) **Advise on what issues of professional conduct arise in paragraph F and discuss, with reasons, what is likely to be the outcome of the Disciplinary Tribunal hearing. What recourse will Vincent have against any decision made by the Tribunal?** (8 marks)

## **Question 2 (25 marks)**

Igor, a solicitor, was approached by Joe Smith, who asked whether Igor would defend him against a charge of wounding which had been set down for trial in the District Court in 8 weeks' time. Igor briefly discussed the case with Joe, but Joe told him that he was very short of money. Igor told him that his charges would be very reasonable (in fact about \$10,000 for the hearing) and that Joe should try and borrow the money required from a relative. Joe went away and returned several days later saying that his sister had agreed to lend him the money. Igor agreed to represent Joe.

Joe informed Igor that the charge had arisen out of a brawl just outside a bar in Wanchai which had occurred six months previously. He told Igor that the complainant had attacked him and that he had struck the complainant with his fist whilst acting in self defence. Joe informed Igor that he had three previous convictions for common assault.

The trial commenced and the prosecution called two witnesses. The first prosecution witness was Dr Wong, a medical doctor. His statement, which had been served on Igor before the trial, stated that, in his opinion, the victim had received wounds to his upper arm which had been caused by a knife. Just before he was due to go into court, Igor had seen Dr Wong in the court corridor and had asked him whether the injuries could have been caused on an earlier occasion before the fight outside the bar. The doctor said "Certainly not!"

The second prosecution witness was the complainant himself. During cross-examination Igor put to the complainant that he was lying and that the fight had been started by the complainant. He put to the complainant that Joe had been acting in self defence in punching him and that Joe had not attacked the complainant with a knife. Further, the injuries to the complainant's upper arm had been caused by the complainant's wife during a domestic argument the previous day. Both allegations were strenuously denied by the victim. The prosecution's case then closed.

Joe had already informed Igor that he strongly wished to testify and tell his side of the story, but Igor had told Joe that he, Igor had total control of the case and he refused to allow Joe to testify. He told Joe that, since the defence had put Joe's character in issue by calling the victim a liar, if Joe testified he could be cross-examined regarding his character and previous convictions. Despite intense pressure from Igor, however, Joe insisted on testifying.

Half way through Joe's testimony the court adjourned for the day and Igor went to meet Joe. Igor said he had just been informed by Joe's girl friend that Joe had a previous conviction for wounding which Joe had never mentioned to Igor. Igor said he would immediately withdraw from representing Joe at trial if such were true. Joe denied this.

The trial resumed and the defence called no further witnesses. Both sides closed their respective cases. Joe was convicted of wounding. The judge was then informed by the prosecution of Joe's three previous convictions for assault and Joe was sentenced to one year's imprisonment.

*(See over the page for a continuation of Question 2)*

On Joe's instructions Igor lodged an appeal against the conviction and also applied for bail pending appeal. On the day of the bail application he met Joe's girlfriend outside the court. On their way into the building she dropped her purse and two air tickets fell out. At a meeting with Joe before the hearing, Joe specifically instructed Igor not to offer to surrender his passport as a condition of bail. Igor secured bail for Joe pending appeal without having to surrender his passport or answer any questions about Joe's travel plans.

**Question:**

**Comment on the issues of professional conduct which arise from Igor's conduct.**

**(25 marks)**

### **Question 3 (25 marks)**

**Answer both parts (a) and (b).**

- (a) Donald was employed by Hong Kong Tasty Pizza Take-away Co ('Tasty Pizza') as a delivery boy. In June 2000 when delivering two Hawaiian pizzas with extra cheese and olives his scooter negligently collided with an almost new Mercedes car owned and driven by Pat. Pat's car sustained substantial damage to the bodywork and bonnet and he threatened to sue Tasty Pizza. Tasty Pizza was insured by Worldwide Insurance Co ('Worldwide') who, in accordance with a term in the policy of insurance, appointed Butcher & Co, a firm of solicitors, to act for them in respect of the accident. Having interviewed Donald, Sol, a junior solicitor employed by Butcher & Co, advised Worldwide to offer \$120,000 by way of compensation to Pat, who readily accepted the money in full settlement.

Three weeks after the settlement, Sol met Donald in a bar in Lam Kwai Fong and told him of the terms of the settlement and that he would not, therefore, be required to appear in court. Donald, who had been drinking rather heavily, expressed considerable delight and told Sol in confidence that, in fact, Pat's car had been badly damaged before the collision and that he and Pat had staged the accident to recover the costs of repair from the insurance company.

Questions:

#### **Part (a)**

- (i) **First, does Sol have a duty to inform Worldwide of what he had been told in confidence by Donald in the bar? Secondly, is Sol entitled to do so? (5 marks)**
- (ii) **Now assume that the next day Sol did inform Worldwide of what he had been told by Donald in the bar and Worldwide immediately instructed Sol to commence proceedings against Donald for the recovery of the \$120,000, having discovered that Pat has sold the Mercedes car and has left Hong Kong permanently.**

**What action should Sol take in respect of his instructions from Worldwide to commence proceedings against Donald? (5 marks)**

- (iii) **A civil action has now been commenced by Worldwide against Donald for the recovery of the money paid by Worldwide to Pat. Worldwide are represented by Yip and Co, Solicitors. Yip serves a subpoena on Sol to testify against Donald. Can Sol be required to disclose to the court what he was told by Donald in the bar? (5 marks)**

*(See over the page for Part (b))*



- (b) Brian worked as an Assistant Solicitor in the Hong Kong firm of Wong and Wong. The firm was suffering financial problems and, to find more clients, Brian sent out an e-mail to all their present and former clients saying “We are offering special rates for the next six months; just compare our charges and do yourself a favour; bring us your business”.

As a result of the e-mail, Kevin came to consult Brian. He said that he had purchased a flat from Grand Vista Ltd (Grand Vista) two months previously, but had discovered after completion that the title to the flat was encumbered by a repairing order issued by the Building Authority which required repairs to be carried out to an overhanging balcony.

Brian advised Kevin that he had a good cause of action against Grand Vista and, on Kevin’s instructions, wrote a letter to Grand Vista seeking compensation. Grand Vista replied in a letter headed “without prejudice” offering a settlement of \$100,000, which was rather less than the sum required to effect full compliance with the repairing order. The letter from Grand Vista stated that the offer would remain open only for one week after receipt. Brian read the letter but, before he had the opportunity of consulting Kevin, he, Brian, was called to attend to urgent business in Canada and left the letter with his conveyancing clerk to deal with. The clerk, without consulting Kevin and noticing that the settlement offer expired the following day, wrote to Grand Vista accepting the offer on behalf of Kevin.

**Question:**

**Part (b)**

**On the above facts, what issues of professional conduct arise and what acts, if any, constitute professional misconduct on the part of Brian and Wong and Wong? (10 marks)**

**End of Part A (Professional Conduct)**

## **2001 Accounts and Professional Conduct Test Paper**

### **PART B (Accounts)**

**This part is worth 20 marks. There is one question. You must pass this Part and Part A in order to pass this Head.**

**PLEASE RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING ISSUES ONLY.**

#### Question 4 (20 marks)

Mike has been a partner of a law firm (Mike & Co.) for many years. He received a call from Flash inviting him to lunch. During lunch, Flash advised Mike that he has just completed 2 years as a solicitor and is about to receive an unconditional practising certificate from the Law Society and he intends to set up his own law firm, Flash & Co. Flash indicated that he has 4 or 5 substantial clients and he believes he will do very well. However, he wished Mike to give him some advice in respect of the future running of his practice. Flash advised Mike he is aware of the Solicitors' Accounts Rules but really has not got time to read them. He is considering using his girlfriend's mother as a part time bookkeeper. During the course of lunch, the following issues were discussed:-

- (a) Flash was not sure as to which accounting system he was going to utilise but he felt all he needed to do was to have two separate cheque books for office and client account and he felt that would be sufficient to comply with the Accounts Rules.
- (b) Flash advised Mike that his new client (Runaway) needed Flash to accompany him on a business trip to California. The trip would take some 3 to 4 weeks. Flash was really keen to go since he would be flying first class and staying in the best hotels and would be visiting Las Vegas. Flash advised Mike that whilst he was away, his girlfriend and her mother would be able to look after the accounts and in particular he would arrange for her to be signatory on both the office and clients' accounts. He would also sign postdated cheques on both accounts.
- (c) Flash also advised Mike that he recollected that whilst he was reviewing the Law Society circulars on the internet, there were some recent Practice Directions regarding "reconciliation" of clients' ledgers and clients' accounts. Flash said he had no idea what this meant but did not believe it was very important.
- (d) Flash was also very enthusiastic about a new client. Rambo runs 8 fitness centres here in Hong Kong. However, he is under investigation by the ICAC in respect of conspiracy to defraud his customers. There is an ID parade in 2 weeks' time. Flash advised Mike that Rambo was so keen to retain his services that he is prepared to pay a HK\$1 million retainer in respect of the forthcoming criminal representation. Flash indicated that this is an agreed fee for all work that may be carried out by him in respect of the case. Flash feels that he has no alternative other than to place the HK\$1 million in his client account. However, he needs to make use of this money in order to set up his practice.
- (e) Flash also indicated that he and his best friend Slippery were about to enter into a property deal. They had seen a flat that they intended to purchase for HK\$2 million. Flash indicated that since he was about to open his new firm, he would be able to do all the conveyancing at no cost. Indeed, in his pocket, he had a cheque from Slippery payable to himself in the sum of HK\$1 million. Since he was not going to commence practice until next week, he would first pay the money into his personal account and then when he had time, he would make payment into his firm's account to enable the property

to be purchased. In respect of his own share of the purchase price, he would borrow this from his girlfriend's mother. However, he was not really sure as to the best way to deal with these deposits and his contribution.

Flash also indicated to Mike that he had great plans for his new firm. Subject to the bank providing him with suitable funding, he would be prosperous and very successful.

Mike advised Flash that he did have some concerns and felt that Flash needed assistance and some advice.

On returning to his office, Mike felt obliged to try and assist and help Flash in respect of the Solicitors' Accounts Rules and relevant Practice Directions. He started to dictate a memorandum.

**Question:**

**Please prepare a memorandum to Flash dealing with all issues arising from the discussions at lunch. Please ensure that you strictly limit your answers to the Solicitors' Accounts Rules and relevant Practice Directions. (20 marks)**

**End of Part B (Accounts)**