

**2002 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Tuesday, 5 November 2002





Head IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

5 November 2002

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 Accounts issues and Part B is concerned with Professional Conduct issues. A PASS IN **BOTH PARTS MUST BE ACHIEVED IN ORDER TO PASS THE TEST PAPER OVERALL.**
4. There is ONE question in Part A (Accounts) and there are THREE questions in Part B (Professional Conduct) in this paper. Each question in both Parts must be answered.
5. Part A is worth 20 marks. Part B is worth 80 marks.
6. You must answer:
 - Question 1 (Accounts Part) in Answer Book 1
 - Questions 2 to 4 (Professional Conduct 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 books with you when you leave the examination room.

2002 Accounts and Professional Conduct Test Paper

PART A (Accounts)

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

PLEASE RESTRICT YOUR ANSWERS TO SOLICITORS' ACCOUNTING
ISSUES ONLY.

2002 Overseas Lawyers Qualification Examination

Head IV: Accounts and Professional Conduct

Part A (Accounts)

Question 1 (20 marks)

- A. Flash, Dim and Sum are 3 classmates with 2 years of post admission practice experience. Having worked for different law firms, they have decided to open their new firm in partnership within the next few weeks. All three are positive that they will be able to run a successful practice. However, they have various issues and concerns which they wish to resolve before their partnership firm commences practice.
- B. Flash has a potential client from Dubai who wishes to instruct the new firm. This client wants to place US\$10 million with the firm. The client is keen to consider investment opportunities in Macau, China and Hong Kong. The client has not yet decided on the potential targets for his investments. Flash is very keen to accept the funds. He is worried about the firm's cash flow problems and feels that having access to this money would assist. Indeed, he advised Dim and Sum that the interest on this money will enable the firm to pay wages in the early months of practice. Sum also feels that they could use the money to pay for the renovation costs of their new offices. However, Dim has some reservations as to what use they could make of the money and any interest on it. **(6½ marks)**
- C. Dim's girlfriend Mabel is very keen to assist the three in getting the firm's practice started. Mabel is a well known movie starlet and feels she could assist the partners in setting up and running their intended accounts systems. Mabel is in between film projects and has two months free to help them. Flash feels that with Mabel's background she would be the best possible person to look after the accounts department. Sum feels that since all three of them will be very busy, Mabel could look after the petty cash and be added as a signatory on the bank accounts. Neither Flash, Dim nor Sum are really sure as to what they need to do to set up their systems. All three have some recollection of their Accounts lectures when they studied for their PCLL at university. **(6½ marks)**
- D. Dim has advised his future partners that he is about to be instructed by Harsh and Company ('Harsh') to issue debt collection proceedings in the High Court. Harsh is prepared to provide the new firm with HK\$600,000 on account of costs. Dim has agreed that he would only render a fee note at the conclusion of the proceedings in each case. He is not certain when the cases would be concluded. Flash feels that this is a great arrangement since they could use the monies on account to cover and pay for all disbursements. Sum is of the view that they could issue interim bills. **(4 marks)**

(See over the page for a continuation of Question 1)

- E. Flash, Dim and Sum are looking forward to commencing practice. They are of the view that they would have a grace period to set up their accounting systems and feel that since they are a new firm they would have plenty of time to get to grips with the above issues. **(3 marks)**

Question:

Identify and comment on the issues which arise under each of Paragraphs B to E, restricting your answers to the solicitors' accounts issues only.

(Total 20 marks)

End of Part A (Accounts)

2002 Accounts and Professional Conduct Test Paper

PART B (Professional Conduct)

This Part is worth 80 marks. You must pass this Part and Part A in order to pass this head. Each question must be answered.

Question 2 (25 marks)

- A. Tiger Ho is a partner in a small firm with two other partners. The firm's name is Ho and Associates. Recently, a new client was shown into Tiger Ho's office. He was an elderly man named Max Wong. Wong explains to Ho that he is a wealthy man. Wong then said, "I want to make a will leaving everything to my son and nothing to my wife or daughter. They have not been good to me." Ho advised the client as to possible claims against the estate by the wife and/or daughter under the Inheritance (Provisions for Family and Dependants) Ordinance. During the interview Wong gives Ho some information about the property and paintings that Wong owns, but Wong seems to have difficulty recalling the details of all of these assets. Wong says that it was his son's idea that Wong should make a will and that he should be named as the executor. Wong's son told him to go to Ho and Associates. As the interview progresses, Ho notices Wong becoming increasingly vague, which Ho decides must be because of Wong's age. Ho makes no further enquiries about this.
- B. Ho confirms that he is free to act for Wong. Wong asks how much this work will cost. Ho replies "Don't worry about the cost. I will look after you." Ho then asks Wong for \$8,000 on account of costs. Wong gives Ho a cheque for this amount, which is deposited into the client account of Ho and Associates.
- C. Ho and Associates decided in a recent meeting to invest money in a modest advertising campaign aimed at attracting new clients. They instructed an advertising company "Legal Advertisements" to promote the firm by advertising the firm on local taxis and also to prepare a brochure to be kept in reception and to be mailed to current and former clients of the firm.
- D. The advertisement that appeared on the side of the taxis includes a caption which said **'Do you need a family lawyer? Instruct the experts – Ho and Associates!'** (Legal Advertisements had not sought Ho and Associates' prior approval to the advertisement's contents.)
- E. The brochure stated in the introduction that there was no type of case that Ho and Associates could not handle and their success rate in family law actions was the best. It then listed the names of ten former clients and the amounts of money that had been recovered for each of them in family law litigation by Ho and Associates.
- F. Also as part of their campaign to increase business Ho and Associates recently opened a new office in Tai Koo Shing. Ho and Associates hired Mary White, a one year, post-admission solicitor to run this office. Mary runs this office on her own assisted by seven clerks.

Question:

Analyse and comment on the issues of Professional Conduct that arise from the above facts.
(25 marks)

Question 3 (25 marks)

- A. Alex was charged with the criminal offence of operating a vice establishment after police last week raided a nightclub he managed in Mongkok. He made an appointment with Sam, the principal solicitor of a small law firm in Central called Sam and Associates. Sam had represented several clients on similar charges, often conducting the trials himself.
- B. At their meeting in Sam's office, Alex discussed the case with Sam. Alex described the police raid and the information he had provided to them on his arrest. Sam gave some initial advice and an estimate of fees likely to be incurred should the matter proceed to a contested trial. He stated he would appear himself as advocate at trial. The estimate he gave to Alex was that the total bill would not exceed \$50,000.
- C. Ten days later, Alex received a letter from Sam and Associates summarizing the instructions Alex had provided and stating: "We confirm the cost of defending this matter will not likely exceed \$50,000." Alex did not respond to this letter.
- D. Later that month Alex pleaded not guilty to the charge and his case was listed for trial in the Magistracy. In preparation for the trial Sam asked Alex to bring two of the hostesses employed by the nightclub at the date of the raid to his office for interview. Alex told Sam that those hostesses had been telephoned by police and had agreed to give statements at the Mongkok police station the next day. Sam interviewed the hostesses together and discussed with them the types of questions the police would be likely to ask them. He asked them what their answers were likely to be. The girls were distressed at the prospect of talking to the police. One of the girls said she was afraid she would get into trouble from the police and may lose her job. Sam told the girls that nobody would get into trouble as long as it was made clear to the police that any vice activity at the nightclub occurred without the knowledge or consent of the management. He said it would be useful for the girls to make affidavits for use at the trial confirming that, to their knowledge, Alex was unaware of any vice at the club. Sam asked his trainee solicitor Marie to sit with the girls and prepare affidavits with them. The girls executed the affidavits and these were placed on Sam's case file. Sam then sent Alex a bill for \$25,000 for time spent preparing the case for trial.
- E. Two months later, the trial commenced. After the prosecution had closed their case, Sam called Alex to give evidence. Alex's evidence in chief finished at 4:00pm on Friday afternoon. Instead of allowing the prosecution to commence cross examination of Alex, the Magistrate adjourned the case part heard to Monday. Alex and Sam left the court together and Sam invited Alex to have dinner with him. Alex agreed.

(See over the page for a continuation of Question 3)

- F. The case concluded the following Tuesday and Alex was convicted. During the defence case, the girls' affidavits were produced to the Court as defence exhibits and adopted by the witnesses. Under cross examination, one of the two girls who had produced such an affidavit had admitted she had signed the affidavit because she felt pressured by Sam to support her employer. Alex was sentenced to 12 months imprisonment. Sam immediately filed a notice of appeal and applied for bail pending appeal.
- G. The court was reluctant to grant bail without a large sum of cash bail and a surety. Sam asked for a short adjournment to seek instructions. Alex told Sam he had committed most of his savings to pay for the trial fees. Sam's final bill had come to \$80,000. Alex said he could not think of anyone who would be willing to act as his surety. He said if he could get bail he would be able to arrange a bank loan and would then instruct Sam to act for him on appeal. Sam told Alex not to worry, he would pay the cash bail and get Marie (the trainee solicitor) to act as surety for Alex. Marie acted as surety and Alex was granted bail. Alex instructed Sam to act for him on appeal.

Question:

Analyse and comment upon the issues of professional conduct that have arisen from Sam's handling of Alex's case.

(25 marks)

Question 4 (30 marks)

- A. Francis is an assistant solicitor employed by the firm of Hong and Kong. He is a young energetic man who, in his spare time, plays football for his local church team. After a hard match some weeks ago, whilst drying himself after taking a shower, he carried on a conversation with one of his fellow players, Chan. Noticing that Chan seemed especially pleased with himself, Francis asked why Chan was so happy. Chan, knowing that Francis was a solicitor, replied that he had only that morning received some rather exciting news, but he insisted that Francis keep this news to himself. Explaining that he was a partner in a property development firm, he said that he had just learned that an old private residence on the Peak was about to be put on the market at a particularly modest price. His firm was very keen to purchase it and build a block of six flats on the site. He said that he just needed some legal advice as to whether there were any height restrictions affecting the site. Francis said that, although he was not a conveyancing solicitor, he would check out the issue immediately. Chan thanked him and they departed.

The next morning, Francis consulted his senior partner, Rich, who was a specialist in conveyancing. Francis explained the content of the conversation with Chan. Rich said he would deal with the matter. Rich checked the relevant Outline Zoning Plan and Crown lease and concluded that there were no height restrictions affecting the site. Without mentioning the fact to Francis, and without communicating with Chan, Rich made an offer for the Peak residence which was accepted, and a binding preliminary agreement was signed between Rich and the owner of the Peak residence. The purchase was indeed at a very favourable price. Chan has just discovered these facts and is very upset.

Questions:

- (i) **What issues of professional conduct arise in relation to Francis's actions?** (6 marks)
- (ii) **What issues of professional conduct arise in relation to Rich's actions?** (6 marks)
- (iii) **Does Chan have any remedy against either Francis or Rich?** (6 marks)
- B. James is a solicitor acting for Robust Importation Co Ltd ("Robust") which is engaged in the business of importing and selling videos and CDs. Great Films Ltd ("Great Films") is engaged in the business of making films. Great Films has issued a writ against Robust alleging inter alia that Robust is importing and selling "pirated" videos of its films. Great Films is seeking an injunction and damages for breach of copyright.

(See over the page for a continuation of Question 4)

In the course of discovery, James, by mistake, permitted Great Films' solicitors to inspect and copy a memo written by one of the directors of Robust addressed to James instructing James to destroy invoices relating to certain named videos which fall within Great Films' list of allegedly pirated videos.

You are the solicitor acting for Great Films. The memo referred to above has been brought to your attention and you intend to use the memo for the purposes of the copyright action. You have just received a letter from James pointing out that the memo was revealed by mistake and insisting that it be returned immediately. Further, the letter threatens injunctive relief if the memo is not returned.

Question:

Write a short memo to your senior partner identifying the Professional Conduct issues and making recommendations vis-à-vis the threatened action. Give full reasons for your answer.

(7 marks)

- C. You are a solicitor whose client Fiona is seeking damages for personal injuries sustained in an accident allegedly caused by the negligent driving of a car by Bill. You have commenced proceedings on behalf of Fiona and pleadings are now deemed to have closed. As required by the Rules of the High Court you have attached a medical report by Dr Wong and statement of special damages to the statement of claim.

The most significant injury sustained by Fiona was to her head and Dr Wong's medical report stated in the prognosis that he expected Fiona's brain damage not to improve substantially and her brain functions to be permanently damaged. Dr Wong has called you to advise you that Bill's solicitor has contacted him and asked to meet with him. Bill's solicitor has suggested to Dr Wong that he (i.e. Dr Wong) may change his view after their discussion. Dr Wong wants to know what he should do.

Question:

What advice will you give to Dr Wong having regard to the rules of Professional Conduct?

(5 marks)

(Total 30 marks)

End of Part B (Professional Conduct)