
**2003 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Monday, 10 November 2003



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

10 November 2003

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 25 marks. Part B is worth 75 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.

2003 Accounts and Professional Conduct Test Paper

PART A (Accounts)

This Part is worth 25 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.

2003 Overseas Lawyers Qualification Examination

Head IV: Accounts and Professional Conduct

Part A (Accounts)

Question 1 (25 marks)

- A. **Identify and set out which clients accounts' records a solicitor should keep and those that must be maintained. Explain briefly the purpose and rationale for each record.** (6 marks)
- B. X & Co. acts for Rich Co. Ltd in respect of an intended acquisition of a public listed company. The acquisition will be completed in 3 to 4 months' time. A sum of HK\$2,500,000 was received by X & Co. on account of costs. An indication was given to Rich Co. Ltd by X & Co. that this sum should be sufficient to cover the legal costs of the work to be done by X & Co.
- (i) **Describe and identify by reference to the books of accounts how the sum of HK\$2,500,000 would be treated by X & Co. upon receipt.** (2 marks)
- (ii) **What use can X & Co. make of the HK\$2,500,000 in respect of the disbursements to be incurred in an intended due diligence exercise?** (2 marks)
- (iii) **X & Co. wishes to issue an interim bill for HK\$1,250,000 to enable them to make use of the money to pay their indemnity insurance policy. Can they do so? Please comment and advise.** (3 marks)
- C. (i) The partners of X & Co. have completed an exercise to destroy closed files. In accordance with the Law Society's guidelines and circulars, there are 10 files that now may be closed. However, upon reviewing their accounting records, they note that, in respect of these files, there are various sums of between HK\$5,000 and HK\$25,000 still standing in their clients' account due to each respective client. They have been unable to contact these clients. In order to resolve this matter, the partners take the view that they are entitled to render fee notes to each of the clients in respect of maintaining their files over the relevant period of time and those fee notes would enable them to absorb the money standing in those clients' account. They take the view that this is the only way in which they are able to finalise the matter. (7 marks)

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

- (ii) The partners have also instructed their bookkeeper to arrange for ATM cards in respect of their clients' bank accounts to be issued to each partner. They feel that such cards will enable the partners to monitor their clients' accounts and assist them in making withdrawals by way of cash from various ATM machines.
(5 marks)

Please comment and advise the partners of X & Co. in respect of all the solicitors' accounting issues arising from the facts in (i) and (ii) above.

End of Part A (Accounts)

2003 Accounts and Professional Conduct Test Paper

PART B (Professional Conduct)

This Part is worth 75 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. James Lee runs a small law practice in Central. He has been qualified for fifteen years and has handled a substantial number of criminal trials, including doing appearance work as a solicitor advocate in the Magistrates' and District Courts.
- B. On 9 March 2003, he was retained to make a bail application for a man arrested on drug trafficking charges. The day before the application in the Magistrates' Court, he met his client, Andrew Chan, at the police station in Central where Andrew was being held in custody. Andrew told James he had been arrested going through Customs at Hong Kong airport when his baggage was searched. He had arrived on a flight from Australia and Hong Kong Customs officers had found 500 grammes of heroin stowed under a false floor in his suitcase. He was immediately charged and taken into custody.
- C. Andrew was desperate to receive bail at his application listed for the following day. James asked Andrew if he had any savings in Hong Kong to secure his bail. Andrew said all his accounts were kept in Australia but that he had a brother living in Hong Kong who had a healthy bank balance and who may agree to act as his surety. Andrew gave James his brother's contact details.
- D. After the interview, James contacted Andrew's brother, Paul, and asked him to come to his office in Central to discuss Andrew's case. Paul met with James but told him he was not prepared to act as a surety for Andrew because he did not want to risk losing his savings. However, he told James that he had brought with him a bag containing HK\$5 million owed to Andrew by a business associate. He suggested that James could put up this money to secure Andrew's bail. James advised Paul that a defendant in criminal proceedings cannot offer the court a personal recognizance and that any money offered to the court as a recognizance for bail would have to belong to someone else who acted as surety. James suggested that Paul could deposit the money in his own bank account and could then act as surety without any risk to his own funds. Paul agreed to this plan and stated that he would deposit Andrew's money in his account immediately.
- E. At Andrew's bail application on 10 March 2003 James told the magistrate that Paul could act as Andrew's surety for bail up to the sum of HK\$5 million. As evidence of this, James handed up to the court Paul's bank book showing a balance of HK\$5 million. The magistrate was not convinced that Andrew did not still represent a flight risk and refused bail. The case was transferred to the District Court for trial. The date of 10 May 2003 was set down for Andrew to appear in the District Court.
- F. Before leaving the court, James met with Andrew and told him he would send him a bill for his fee for the application. Andrew said he hoped James would be available to defend him at his trial and James replied that he thought he would be free.

(See the next page for a continuation of Question 2)

- G. At 10:30 am on 10 May 2003, James was working in his office when he received a call from a District Court clerk. The clerk told him that District Court Judge Vong required James to appear before her immediately. James rushed to court where Judge Vong told him that he was on the record as the solicitor acting for Andrew. Judge Vong asked James why he had not appeared for Andrew that morning when his case was called. James told the Judge that he had received no definite instructions to act for Andrew in the District Court and that he had not been paid for his appearance in the Magistrates' Court. He said he was not prepared for a trial in the District Court. Judge Vong told James that Andrew had entered a plea of not guilty and ordered James to prepare for Andrew's trial due to commence a week later.
- H. The next day, James met with Andrew, who was still in custody. He talked over the police evidence with Andrew and asked him whether he still wanted to plead not guilty. Andrew insisted that he wanted to go to trial because someone had placed the drugs in his suitcase and he was innocent. James then outlined to Andrew his fees for appearing in a trial. Andrew said he did not have much money left as his brother had spent most of the HK\$5 million while he was in custody. James suggested to Andrew that he should think very hard about offering a plea of guilty as his fee for a plea in mitigation would be much cheaper than for a contested trial. Andrew said he would think about this overnight.
- I. The next morning, Andrew telephoned James and said another brother had loaned him some money and he could pay James' fee for the trial.
- J. The afternoon before the trial commenced, James contacted the Department of Justice and asked for a record of any prior convictions Andrew may have. The Department of Justice sent James a record of Andrew's convictions showing two offences of illegal gambling. James showed Andrew the record and asked if it was accurate. Andrew replied that he had been convicted of possession of 2 tablets of ecstasy in the Magistrates' Court 6 months earlier and was surprised the offence did not appear on his record. James did not alert the Prosecution to the omission.
- K. On the second day of Andrew's trial, James called Andrew to give evidence in his defence. During his examination in chief, Andrew stated that he had no knowledge the heroin was in his suitcase and that someone must have planted it there. James asked Andrew if he had ever been in trouble with the police before. Andrew answered that he had been convicted of some minor gambling offences, but he hated drugs and had never had anything to do with them.

Question:

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

(25 marks)

Question 3 (25 marks)

- A. Maggie Mok (Maggie), a one year qualified solicitor, recently took up a new position at the firm of Wong and Tam (W&T). She told W&T at interview that she was seeking a challenging job. W&T sent Maggie to manage their new office in Tseung Kwan O.
- B. The W&T Tseung Kwan O office has a staff of 22 legal clerical staff and 7 secretaries, plus Maggie. Maggie was given sole responsibility for managing the office. No other W&T solicitor visits the office. A W&T brochure claims that their conveyancing service is “not only an expert service but faster, cheaper and, most important, better than that of any competitors”. The brochure also lists the names and phone numbers of several “satisfied clients”.
- C. Shortly after starting her new job, Maggie was approached by Mrs Chan. According to a police report, Frank Fu was the driver of a car involved in an accident. Mrs Chan, a pedestrian, was injured in the accident. She suffered a fractured collarbone. This is the first time Mrs Chan has ever visited a solicitor. Mrs Chan wants to know whether she may have a personal injury claim as a result of the accident. Mrs Chan tells Maggie that she is a divorced single parent with two young children to support. Mrs Chan also tells Maggie that she is unemployed and has financial problems and that she was crossing the road without paying much attention to the traffic, her mind being occupied by family problems.
- D. Maggie tells Mrs Chan that she has a very good case and cannot lose. Maggie recommends issuing a writ against Frank Fu. Mrs Chan asks how much this will cost. Maggie replies that the costs of the proceedings will be about \$100,000.
- E. Some days later, Maggie is approached by a newspaper reporter who is writing a story on a client of W&T. After some discussion, Maggie agrees with the reporter that she will provide some detailed “juicy information” from her files about this client provided that she, Maggie, is not mentioned as the source. The reporter, in turn, promises to arrange a series of free advertisements in the newspaper for W&T. Maggie does not mention any of this to the client.
- F. It turns out Maggie has severe financial problems. To deal with these, she “borrows” money several times from Client Accounts held by W&T. This is discovered and reported to the Law Society of Hong Kong by a senior partner of W&T.

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

Questions:

- (i) **Discuss all the issues of professional conduct that arise from the above facts.**

(20 marks)

- (ii) **Summarise the professional conduct disciplinary process which will apply in the case of Maggie Mok, together with the likely penalty that may be applied.**

(5 marks)

Question 4 (25 marks)

- A. Wilfred had been friends with his solicitor, Tim, for more than 10 years. Wilfred is a businessman who wants to raise funds for his wine business. He has negotiated a substantial loan from Mega Bank ('the Bank') to expand his business, but has been informed by the Bank (who is separately represented by a firm of solicitors) that he needs to find a guarantor of the loan. Wilfred comes to Tim's office in Central and tells him that his mother is willing to act as guarantor. He shows Tim the Bank's documentation and asks him whether the loan agreement and guarantee agreement are fair and should be accepted.

Tim peruses the documentation and assures Wilfred that they are standard documents and advises him to proceed with the loan. Wilfred then tells Tim that his mother is outside in the waiting area and he asks whether she can come in to sign the guarantee agreement. Tim agrees. Tim greets Wilfred's mother and asks to see her identity card. Having satisfied himself that the lady is Wilfred's mother, Tim invites her to execute the guarantee, which she does, and Tim witnesses it. Wilfred and his mother then thank Tim and leave. Tim sends his bill to Wilfred for the advice given.

It is now six months later and Wilfred has failed to pay Tim's bill. Further, Wilfred has defaulted on three repayment installments of the loan. A clause in the loan agreement provides that, if the borrower fails to repay one or more installments, the full sum outstanding will become immediately repayable. All attempts by the Bank to contact Wilfred with a view to restructuring the loan repayment schedule have failed and the Bank has now decided to seek legal redress against Wilfred and his mother. The Bank instructs its solicitors to recover the outstanding loan sum from Wilfred and his mother. Wilfred's mother has written to the Bank saying that Wilfred has disappeared and that she refuses to pay on the grounds that Wilfred had pressured her to execute the guarantee.

Questions:

- (i) **Explain and identify in respect of the facts above the professional conduct duties and obligations resting on Tim (a) in relation to Wilfred and (b) in relation to Wilfred's mother.**
(10 marks)
- (ii) **Explain and identify in respect of the facts above the professional conduct duties and obligations resting upon the solicitor acting for the Bank.**
(3 marks)

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

- B. Development Trading Co Ltd ('Development Trading') retained Quick and Slow, Solicitors, to act for them in a negligence action. Quick and Slow were, however, very dilatory in pursuing the claim as a result of which the claim was time-barred under the Limitation Ordinance and was dismissed by the court. Development Trading complained to the Law Society about Quick and Slow's conduct and a disciplinary tribunal was established to hear and decide upon the complaint. The chairman of the tribunal was Mr Good, a conveyancing partner of Good & Honest, Solicitors. Mr Slow of Quick and Slow was found to have been responsible for unacceptable delay in fulfilling his client's instructions and was censured.

Development Trading have now retained Good & Honest to represent them in an action against Quick & Slow for damages for negligence in respect of the action which had been dismissed on the grounds that Quick & Slow had failed to prosecute the action with proper expedition. Quick & Slow have, however, applied for an injunction to restrain Good & Honest from acting for Development Trading. Good & Honest propose that a suitable 'Chinese Wall' be put in place.

Question:

Identify all the issues of professional conduct arising out of the above facts and advise whether the court is likely to grant an injunction against Good & Honest.

(12 marks)

End of Part B (Professional Conduct)