

**2004 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Thursday, 18 November 2004



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

18 November 2004

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.

2004 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.**

2004 Overseas Lawyers Qualification Examination

Head IV: Accounts and Professional Conduct

Part A (Accounts)

Question 1 (25 marks)

- A. Bill and Ben have been in practice for some years. The current book-keeper had indicated that she intends to resign on 1st January, 2005. Currently the accounts of the firm are maintained manually. Bill and Ben now wish to consider installing a computer client accounting system. They have asked for advice as to what steps should be taken to be sure that their new system would comply with the Solicitors Accounts' Rules.

Prepare a memorandum setting out the various steps that should be taken to implement the switch and set out the various books of accounts that need to be kept.

(5 marks)

- B. Bill mentioned to Ben that he had heard something about the obligations to provide reconciliation of their clients' account each month. He has not heard of this before. He was concerned that they may be in breach of the Solicitors' Accounts Rules.

Please prepare a note that would assist Bill's understanding and the reasons as to why client account reconciliation needs to be undertaken and provide him with the necessary advice as to how this is to be implemented each month.

(5 marks)

- C. Ben has been asked by Bill to ensure that he takes every step to recruit a replacement for the Accounts Clerk who is leaving the firm. Ben recommended that his girlfriend Fifi may fill the position and might be able to assist. Fifi had previously worked as a cashier in a department store before becoming a model. Her modeling career has not really taken off and hence she has some spare time. Ben also feels that she will be able to assist with keeping the books of account. Ben feels she could add some glamour to the office and this would enhance the practice. He indicated to Bill that he is prepared to consider adding her as a signatory to the firms' bank account and letting her take charge of the petty cash.

Please provide a memorandum setting out your views and comments on the intended appointment of Fifi as the Accounts Clerk.

(5 marks)

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

- D. Bill has advised Ben that he has been retained by a new client who is a property speculator from U.S.A. He has been advised that a remittance will be made into their clients' account in the sum of US\$4 million. The client will then be giving instructions as to particular investments that will be made over the next 4-6 months. However, the client will not make a decision for at least six weeks. Ben is of the view that by placing this money on deposit any interest that accrues can be used to make some payments towards the new computer system they intend to install.

Please prepare a memorandum of your views and comments on the intended course of action and please advise on the way in which the sums received should be treated in the firm's books of account.

(5 marks)

- E. Ben advised Bill that the firm has been retained to act for Slippery. Slippery has just been arrested by the ICAC and has been released on bail. He is facing numerous charges contrary to the Prevention of Bribery Ordinance as well as facing various allegations regarding conspiracy to defraud amounting to a total of HK\$25 million. He will be in Court for plea in two weeks' time. The ICAC have agreed to allow him bail subject to suitable cash sureties being provided. Ben has indicated that Slippery is prepared to consider retaining the firm to act but would wish to ensure that they come to some arrangement with regard to fees. He will be prepared to consider paying an agreed retainer of HK\$780,000 and wishes to ensure that some of this sum of money is utilized to cover leading counsel's fees for appearing at the forthcoming bail application. Slippery's associate Flash has indicated he will deliver cash to cover the retainer. Flash however has advised Bill that the cash he will deliver will be in foreign currencies comprising U.S. dollars, Reminbi and Thai Baht. Flash has advised Bill that in view of the currency fluctuation, he will ensure that cash in the foreign currency will be more than enough to cover the initial retainer of HK\$780,000.

Please prepare a memorandum setting out your views and comments on the course of action as stated above and please advise on the way in which the sums received are to be treated in the firm's books of account.

(5 marks)

End of Part A (Accounts)

2004 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. Until fairly recently, Tiger Chan (Tiger) and Lily Smith (Lily) worked (for over 10 years) as employee solicitors for the large firm of Win and Wun. Almost all their work experience with Win and Wun was in conveyancing. About a year ago, Tiger and Lily established their own firm of solicitors, Chan and Smith (CS).
- B. Tiger and Lily knew the economic climate was not easy, but they made various plans to get CS off to a good start. First, they agreed they would engage Puff and Fluff, a professional marketing firm, to put together a marketing campaign for CS. CS told Puff and Fluff to do whatever they thought would work best. Puff and Fluff placed advertisements for CS in the press, around the MTR and on several buses. These advertisements all said: *“Chan and Smith is a new, modern Law Firm – up to date and is an expert in the widest range of legal matters. You may have had very bad experiences with other Law Firms – but you can trust Chan and Smith completely! And Chan and Smith has a very high success rate!”* Puff and Fluff also produced a series of brochures which contained similar wording – and which went on to state that *“Tiger Chan and Lily Smith have worked for many important people in Hong Kong (then followed a list of well-known Hong Kong movie stars and pop singers).”*
- C. The next strategy employed by CS to get off to a strong start was to immediately open four offices in Central, Quarry Bay, Shatin and Tuen Mun. Tiger and Lily worked always at the Central Office. CS employed X, Y and Z, all of whom had been admitted as solicitors in the last year. X is to supervise the Quarry Bay Office, Y the Shatin Office and Z the Tuen Mun Office. Each office also had support staff. The Quarry Bay office had 20 support staff members. The offices in Shatin and Tuen Mun also each employed 20 support staff members. In each of these last two cases, CS also employed some extra part-time (evening) support staff who, during the day, worked with other Law Firms in Shatin and Tuen Mun.
- D. Tiger and Lily had many contacts with real estate agents as a result of their work with Win and Wun. Tiger and Lily agreed with one of their closest contacts, Ms Wang, who worked for a real estate agency in Quarry Bay, that, in cases where CS signed up a client referred by Ms Wang, CS would share 10% of all fee income with Ms Wang with respect to the particular client. CS also made a reciprocal agreement with Ms Wang that, where CS referred a client to Ms Wang and that client purchased a property through Ms Wang, Ms Wang would pay 10% of any commission she earned to CS.

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

- E. Two months ago, Ms Wang was speaking with a client, Harold Hardluck (Harold) about purchasing a new flat. Harold, in the middle of this conversation, suddenly confided to Ms Wang that he was involved in a complex taxation dispute with the Inland Revenue Department which was listed to be heard in the Inland Revenue Board of Review. Harold mentioned he had already been to see a solicitor – but was unhappy with the advice he had received. Ms Wang told Harold to stop worrying as she knew an outstanding firm of solicitors, CS, which he could consult. That day, Harold made an appointment to see Lily a week later. A few days prior to that meeting with Lily, Harold, after having had a few drinks in Lan Kwai Fong, slipped on a narrow public stairway when walking in the rain to his flat in Mid-Levels. He was badly concussed and had to be hospitalized. Harold, in something of a daze, phoned Lily from hospital to tell her of his misfortune. “Don’t worry” said Lily, “I will just come and visit you at the hospital - and we can talk about your tax problem there”. Lily visited the hospital. Harold was still too dazed to discuss his tax problem properly. Lily said, “CS is really pleased to have you as client!” “Don’t worry about anything, I will write to the Inland Revenue Department immediately, delay the Board hearing and sort out your tax problem”. “Your tax problem is easy to solve - I am sure we will win your case.” Harold asked, “How much will this cost?” Lily replied, “Don’t worry about the cost, what CS charges will easily be paid for out of the tax we will save you. And if we don’t win, we will look after you!”

Question:

Discuss all the issues of Professional Conduct which arise from the above facts.

(25 marks)

Question 3 (25 marks)

- A. Len runs a high profile solicitor's practice in Central. In December last year he was eating a late dinner at his desk when he received a telephone call from his wife. She told him that a man she had met briefly had just telephoned her and asked for Len to meet him at the police station in Central. The man had told Len's wife he had been arrested and had been charged with murder.
- B. Len immediately went to the police station and met with the man, whose name is Joe. Joe appeared to Len to be in a state of shock. He was dazed and disorientated and kept repeating himself. He told Len the police had come to his home early that evening after he called them to report his wife had been injured. Joe told Len he recalled having a fight with his wife because the dinner she was preparing was late but he could not recall how she was injured. He repeatedly said that all he could remember was his wife had picked up a chopper and threatened him with it. He said after that he could not remember anything else until he called the police. He also told Len that he was a diabetic; he had taken his insulin that day, but had been drinking alcohol in the afternoon and had not eaten anything for lunch or dinner. He asked Len to defend him against the charge.
- C. The policeman in charge of the case told Len that when the officers arrived at the house they found Joe's wife dead with several deep cuts to her body lying on the floor in the living room. There was a bloodied chopper lying next to the body.
- D. Len told Joe that he would represent him at his first appearance before the magistrate the next day. He also told him that if the matter went to trial in the High Court he could act for him as an advocate in the preliminary hearing but that he would need to instruct Counsel for the trial. He told Joe he estimated his fee to prepare for and appear in a preliminary inquiry and to instruct Counsel at the trial would be no more than \$20,000. He said that he was unsure how much Counsel would charge for appearing in the trial but that he could determine this later. He then left the police station and went home to prepare for the hearing in the Magistrates' Court.
- E. After a couple of adjournments of the case, at the request of the police, the magistrate set a date for the preliminary inquiry. The weekend before the inquiry Len played golf with his friend the Honorable Mr Justice Flynn of the High Court. Len mentioned the case briefly to his friend and told the Judge he thought he had hit on a defence which may help get his client acquitted of murder. He outlined the defence to the Judge.

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

- F. The preliminary inquiry took place in February and Len acted as Joe's advocate in the Magistrates' Court. The magistrate committed Joe to stand trial in the High Court. Len sent Joe a bill for \$25,000 for his fees "to date". Joe telephoned Len and told him he was not currently in funds as his brother-in-law was contesting his wife's will and he had not worked since his arrest. Len said he could not brief Counsel for the trial and could not continue to work on the case until he paid him the outstanding sum. Joe told him he had no choice but to ask Len to return the file papers to him so he could get another solicitor but Len refused, claiming he had the right to keep the file until the bill was settled. After a few days Joe convinced his sister to pay Len's fees and he recommenced work on the file.
- G. Len briefed an experienced criminal Counsel, Tim Ho, as Counsel for Joe's trial. Len then began to interview witnesses for the defence. He located a medical doctor called Dr Irwin and asked him to meet with Joe. After the meeting with Joe the doctor met separately with Len. He told Len he could give evidence that Joe may have lost control of himself on the night his wife was killed, whilst in a state of hypoglycemia. He said however he could not be sure this had occurred because he had not had the chance to examine Joe that night. Len told the doctor that he thought Joe was definitely in a state of high anxiety when he had met him at the police station on the night of the arrest. He told the doctor it would be very helpful if he could emphasize Joe's likely unstable state that night in his evidence at trial.
- H. The trial came on for hearing in the High Court. The prosecution called its witnesses and after it closed its case Ho called Irwin. The doctor gave evidence that Joe had told him he was a diabetic and had been drinking on the day his wife was killed because he was depressed about the state of his marriage. Len had instructed Ho to ask Irwin whether he could comment on Joe's likely state on the night of his arrest and the doctor replied that it was probable Joe had suffered a hypoglycemic episode. Joe gave evidence consistent with his instructions to Len.
- I. Joe was convicted and sentenced to 15 years imprisonment. He asked Len whether he could appeal against his conviction and Len replied that he would consider his case. Six weeks after the trial Joe's daughter, Anna, telephoned Len and asked him whether the case could be appealed. Len had not looked at the papers as he had been working on some new clients' cases. He realized that the time limit for filing Joe's appeal to the Court of Appeal had expired but told Anna that he had filed the papers and they would hear the results of the application soon. He immediately filed for an extension of time for leave to appeal. The Court of Appeal rejected the extension of time application. Len telephoned Anna and told her the Court had denied the appeal on the merits of the case. He then sent Joe a final bill.

Question:

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

(25 marks)

Question 4 (25 marks)

- A. William, a solicitor, was married to Emma. Emma had a brother called Peter. Peter came to see William one day in his office and informed him that he had a great plan to make some big money by purchasing a significant shareholding in a public company called Gametech Ltd (“Gametech”) which manufactured computer games. He had received information that the business of Gametech was about to take off in a big way as a company in America was particularly interested in its products. He invited William to act as his solicitor in fulfilling his plan and William agreed. Peter further asked William to lend him \$500,000 at 3% interest per annum for twelve months. Once the scheme bore fruit he would repay the money borrowed together with the interest due and give William one quarter of the profit by way of fees.

Unknown to Peter, William already held shares in Gametech.

William, wishing to support his brother-in-law, agreed to the plan and Peter bought the shares. The shares duly increased significantly in price and Peter made a large profit. Peter, whose relationship with Emma had now turned sour, repaid the loan and interest due, but refused to give William his one quarter share of the profits. William has now come to you, a solicitor, for advice as to what action he should take.

Questions:

- (i) What issues of professional conduct have arisen in respect of William’s actions?
(9 marks)
- (ii) Should you report William’s conduct to the Law Society?
(4 marks)

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

- B. William had entered into a binding sale and purchase agreement to sell his flat in North Point to Henry and to give and show good title to that flat. He retained the solicitors' firm of Good and Better to act for him in carrying out the transaction. Good and Better was a firm consisting of two partners, Mr Ho and Mr Wong. Mr Ho met William and told him that he would be responsible for the necessary conveyancing work. On the roof of the flat was a small shed which William used as a storeroom.

Having inspected the flat Henry's solicitor raised a requisition requiring proof that the shed was not an unauthorised structure. After consulting William, Mr Ho replied saying 'I undertake that we will demolish the shed before completion'. Two weeks later Mr Ho left the firm to set up as a sole practitioner.

A structural engineer employed by William inspected the shed and informed William and Mr Wong (who had now taken over the conveyancing work) that the shed was not an unauthorised structure and William had no obligation by way of giving good title to demolish the shed. Mr Wong accordingly wrote to Henry's solicitor saying that they no longer agreed to demolish the shed. Henry's solicitor insisted that the shed be demolished.

Questions:

- (i) As a matter of professional conduct is Mr Ho obliged to ensure that the shed is demolished? (8 marks)
- (ii) As a matter of professional conduct is Mr Wong obliged to ensure that the shed is demolished? (2 marks)
- (iii) Would your answer differ if Mr Ho had said 'I undertake on behalf of my client that the shed will be demolished before completion'? (2 marks)

End of Part B (Professional Conduct)