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**2005 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

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**HEAD IV: ACCOUNTS AND  
PROFESSIONAL CONDUCT**

Friday, 11 November 2005



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

## **TEST PAPER**

**11 November 2005**

### **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.**

## **2005 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.

# **2005 Overseas Lawyers Qualification Examination**

## **Head IV: Accounts and Professional Conduct**

### **Part A (Accounts)**

#### **Question 1 (25 marks)**

Flash and Jacko have just completed two (2) years as solicitors. They have decided to open their own firm, "Flash & Co." ("the Firm"), upon obtaining their unconditional practising certificates. They request your advice and comments in respect of the following issues.

(a) Since Flash and Jacko will be very busy promoting their new firm, Flash's wife has agreed to come in on a part time basis to look after the books of account and sign cheques.

**(6 marks)**

(b) Jacko is of the view that online banking will be the most efficient way forward in maintaining their books of account.

**(6 marks)**

(c) Flash has a new client who will deposit US\$40 million in respect of an intended purchase of a property in the U.S.A. The purchase of property will not be completed until June 2006. Flash feels that he will be able to make use of this sum to pay for the installation of the new computer systems which they intend to install as well as pay for the decoration costs.

**(7 marks)**

(d) In order to enhance the profitability of the Firm and ensure that their drawings are increased, they wish to seek further assistance from you as to suitable accounting systems which should be installed and followed in order to achieve their objectives.

**(6 marks)**

**Please comment and advise Flash and Jacko in respect of all the solicitors' accounting issues arising from the facts in (a) – (d) above.**

**End of Part A (Accounts)**

## **2005 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)

After a hard day's work in the Inland Revenue Department, Terence left his office at 7:00 p.m. to go for a drink with some of his friends in Lan Kwai Fong. An argument between Terence and a fellow drinker in the bar over a rather trivial matter led to a heated discussion and later to shouting and abusive behaviour. A few glasses were smashed and the police were called. Terence was taken to one side and questioned by Senior Constable Ip. Terence was rather upset at the questioning and pushed the police officer backwards causing him to fall over. Terence was subsequently charged with assaulting a police officer in the execution of his duty contrary to section 63 of the *Police Force Ordinance*.

Terence realised that he needed legal assistance and asked Samuel, a solicitor, to assist him. Samuel and Terence had been friends for some time as they both belonged to the same badminton club. Samuel was experienced in conveyancing, but had no experience at all in criminal matters. No written retainer was entered into.

Since Samuel knew little about how to defend criminal proceedings, he decided that it would be prudent to instruct counsel. Without consulting Terence Samuel asked his reliable clerk Queenie to instruct a barrister. Queenie decided to instruct her friend Louise who had just completed her pupillage. There was a further reason why Louise was chosen as counsel; she had been in the Lan Kwai Fong bar at the time the argument had taken place and had been standing next to Terence when he pushed the police officer. Queenie instructed Louise and a fee of \$25,000 was agreed, which was marked on Louise's brief.

At their first conference, Terence told Louise that he had pushed the police officer because the officer had said that tax collectors were 'a menace to society'.

The case was set down to be heard in the Eastern magistrates court on August 10, 2005. A few days before the trial Samuel met Fanny at a badminton match and thought that he recognised her. They started to chat and Fanny said that she had been in the bar on the night that Terence had pushed over the police officer. She also said that she had been summoned to testify at Terence's trial as a witness for the prosecution. Samuel eagerly asked her what she intended to say and Fanny told him the gist of the evidence she intended to give. Samuel duly reported this conversation to Louise.

On the day before the trial Louise met Terence for a conference and Louise told Terence that he must not testify as doing so would be likely to be detrimental to the defence case. Terence angrily said that he wanted the truth to be brought out in public that the police officer had insulted members of the Inland Revenue Department, but Louise said that no magistrate would believe the allegation and Terence should not testify. Terence reluctantly agreed.

### Questions:

- (i) identify any breaches of his professional obligations by Samuel. (10 marks)
- (ii) identify any breaches of her professional obligations by Louise. (10 marks)

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

The trial came on for hearing before the magistrate. The main prosecution witness was Senior Constable Ip who testified that he had been questioning Terence when Terence became upset and pushed him over for no apparent reason. In cross-examination Louise merely asked the witness whether he was sure that Terence had had no good reason for his aggressive action. The police officer replied that he was sure that was the case.

Terence was convicted. Terence then sought the advice of another counsel Geoffrey, who advised him to appeal and his conviction was upset on appeal on the grounds of Louise's flagrantly incompetent advocacy.

Terence now wishes to sue Louise for her negligent conduct of the defence.

**(iii) Advise Terence with authority whether he will be likely to succeed in his action against Louise and whether Louise will be able to rely on immunity from suit in defence of the action.**

**(5 marks)**

### Question 3 (25 marks)

A. Mary Zhou and her brother John Zhou were both admitted to practice in Hong Kong in 1994. One year ago, they set up their own firm, Zhou and Zhou (ZZ), which specializes in personal injury work. ZZ now has three offices – one in Central, one in Prince Edward and one in Shatin. In each office, there are a number of junior solicitors doing personal injury work, together with a number of support staff. The Shatin ZZ office is open five nights per week. Cherry Law, who works as a legal secretary for a different law firm in Shatin during the day, also works at the Shatin ZZ office, on a part-time basis, several nights each week.

(4 marks)

B. ZZ has been quite successful. They now have enough surplus funds available to do some significant advertising. ZZ engage a company called “Legal Promotions” to advise them on how best to market ZZ. Mary and John give Legal Promotions a copy of the Solicitors’ Practice Promotion Code and tell Legal Promotions to plan and implement a campaign that will promote ZZ as a leading PI firm. Legal Promotions place a number of advertisements in newspapers and on the MTR and they also produce a set of brochures. All these advertisements stress that potential clients can trust ZZ by asking – and answering - the same question: *“Can you trust a solicitor to look after you if you have suffered personal injury? Unfortunately the answer is “NO” – unless you put your trust in Zhou and Zhou, the experts in personal injury legal claims.”*

(3 marks)

C. (i) Billy Lam is an owner driver of a small delivery van. While driving to Heng Fa Chuen on the Eastern Corridor one month ago, Billy’s van was involved in a collision with another vehicle. Both Billy and the driver of the other vehicle suffered minor injuries and both vehicles were damaged. Billy’s van is insured by the Impulse Insurance Company (Impulse). Shortly after the accident, Impulse contacted ZZ and said they would like to retain ZZ to act for Impulse, in the name of Billy Lam, in accordance with the terms of the insurance policy. Impulse instructed ZZ that they wished: (a) to deny any liability for the accident; and (b) to seek to recover the costs of Billy’s medical expenses and the cost of repairs to Billy’s van. ZZ said they would be happy to act on behalf of Billy Lam based on the instructions from Impulse.

(4 marks)

(ii) One week ago, Impulse telephoned to say that they had decided not to fight the Billy Lam case any longer – they had decided to admit full liability. ZZ advised Billy Lam of this. Billy said he was totally unhappy about this. Billy explained that the police were about to charge him with dangerous driving and that he wanted ZZ to defend him. Billy was also worried that, if liability were admitted in the civil matter, it may make things worse for him on the criminal charge.

(6 marks)

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



D. Two weeks ago, Paul Tang came to the Prince Edward office of ZZ and spoke with Mary Zhou. Paul said that his elderly mother recently fell over as she was entering a super-market near her home. Paul went on, "It was about eight in the morning. My Mum had just finished her exercises in the park. She went to the super-market to buy a paper. The super-market had just washed down the entrance – but there was no warning sign that the floor was wet and slippery. She fell quite badly. Mum is now in hospital with concussion and a broken leg. I want you to act for my Mum, to recover damages for her injuries from the super-market – but I am worried about how much it may cost." Mary Zhou said ZZ could certainly act for Paul's Mum and she told Paul not to worry about the cost. Paul added that it would be best if Mary just spoke with him, Paul, rather than with his mother. Paul explained his mother was still confused about what happened. Her memory was not so good – and the fall had made her somewhat more muddled in her thinking. Mary told Paul she was happy, in the circumstances, just to deal with him rather than his mother. She said Paul should just write down all the details of the accident and they would work from that.

**(8 marks)**

**Question:**

**Discuss all the issues of Professional Conduct which arise from the above facts. If you feel further information may be required, explain what this is and why it is needed.**

#### **Question 4 (25 marks)**

- A. Samuel Fung is the principal solicitor of Fung and Associates, a small general practice Hong Kong law firm. Last week an old friend of Samuel and long time client of Fung and Associates, Anita Lam, visited Fung's office to give him instructions regarding the drafting of her new will. She told Fung that she planned to leave half of her estate to "Hong Kong Dog Rescue" (a charity, recognised in Hong Kong, supporting abandoned dogs) and half to her daughter, Mia Lam. She told Fung she had previously made a will naming James Lam, her brother, as a beneficiary but that, as they had argued over his gambling habits over the past few months, she wished to change her will and leave James nothing.
- (6 marks)**
- B. She told Fung that she also wanted to make him, as her friend and solicitor, a gift under the will. She reminded Fung of a Chinese vase which he had always admired in her home. She told him she had been given the vase many years before by her mother's family in China. She told Fung that she thought the vase was not particularly valuable but that she wanted to give it to him under the will to recognise Fung's hard work and friendship over the years. Fung told Anita that there was no need to bequeath him a gift under the will, but as she insisted he agreed to draft the will according to her instructions. Anita also instructed Fung that both her father and aunt, Jack and Eunice Lam, would be the executors of the will.
- (6 marks)**
- C. After Fung had completed drafting the will, he arranged a date for an appointment with Anita to allow her to check the will and sign it. However on the day of the appointment Fung was required to attend court to apply for an urgent injunction in another case and asked his trainee solicitor, Alice, to keep the appointment with Anita. When Anita arrived with her daughter Mia for the appointment Alice explained that Fung had been called away and showed Anita the will. Anita was satisfied with the will and Alice and Mia witnessed Anita's signature on it.
- (7 marks)**
- D. Five years later Anita died in an unexpected accident. Fung received a message from his secretary stating Anita's brother James had telephoned enquiring whether the firm had a copy of Anita's will. Fung had known James for many years and returned the call immediately. Fung confirmed to James that the firm had a copy of Anita's will. James asked Fung when probate would be likely to be granted. James also told Fung he was pressed to meet gambling debts he owed. Fung told James that probate may take some time but that he should not rely on the estate to pay his debts as he was not a beneficiary under Anita's will.
- (6 marks)**

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

**Question:**

**Advise Fung whether he has breached any duties of professional conduct or rules of the Hong Kong Solicitors' Guide to Professional Conduct.**

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