

**2006 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Friday, 10 November 2006



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

10 November 2006

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. Start each question on a separate page of your answer book.**
- 8. 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.**
- 9. An examiner will be present for the first 30 minutes of the examination. Any question relating to the paper must be raised in that period. Questions raised after the first 30 minutes will not be entertained.**
- 10. Do not take either this question paper or any answer books with you when you leave the examination room.**

2006 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.

2006 Overseas Lawyers Qualification Examination

Head IV: Accounts and Professional Conduct

Part A (Accounts)

Question 1 (25 marks)

- A. (i) What is meant by Client Account Reconciliation? What is the reason for having such a reconciliation?
- (ii) What systems should a firm adopt to ensure that there is an accurate reconciliation of the client's account?
- (iii) What steps should the firm take to ascertain the source of funds that cannot be identified?

(7 marks)

- B. (i) What is meant by disbursements?
- (ii) Describe the accounting treatment of disbursements with reference to the Solicitors' Accounts Rules?
- (iii) Your firm receives HK\$1,000,000 on account of costs. A fee note from a leading Counsel in respect of a potential personal injury action in the sum of HK\$400,000 is received.

How is this sum to be treated in the firm's accounts with respect to payment to be made to leading Counsel?

(7 marks)

- C. Your firm wishes to enhance its relationship with several banks. It has therefore decided to open four new client bank accounts with the relevant banks.

Prepare a memorandum setting out the various steps the firm should take with regard to the opening of such accounts and in particular, set out any consequences that may arise with regard to the Solicitors' Accounts Rules.

(6 marks)

- D. It has been suggested that the management accounts assist the partners in managing and running their firms. Identify those management accounts that you feel are necessary with a brief explanation as to the reasons and rationale of such accounts.

(5 marks)

End of Part A (Accounts)

2006 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. Francis Chang (Francis) successfully completed his Postgraduate Certificate in Laws (PCLL) in Hong Kong three months ago. He immediately joined, as a trainee solicitor, the law firm run by his brother Billy Chang (Billy) and sister, Emily Chang (Emily) based in Prince Edward, both of whom have been qualified for over 10 years. The firm is known as Chang and Chang. Chang and Chang have mostly done conveyancing work and small-scale commercial work. Francis is married to Dora. Dora runs a thriving marketing business. Dora specializes in marketing for professionals like lawyers, engineers, architects and so on.

B. Francis suggests to Billy and Emily that Dora be engaged to draw up and implement a new marketing campaign for Chang and Chang. Billy and Emily agree to this plan being applied for a two year period and, in order to motivate Dora, they also agree that, in addition to Dora being paid a flat fee for her work, she also will be paid an “incentive fee”. The incentive fee, it is agreed, will be 1% of the gross increase in fees (if any) recorded during the two years of the marketing plan’s operation. Dora adopts a range of marketing strategies. These include advertisements for Chang and Chang in the press, around the MTR and on several buses. These advertisements all say that:

“Chang and Chang is a modern up to date law firm expert in the widest range of legal matters. Don’t worry about legal costs – we have ways to take all the risk out of litigation. Bring us your case and see what we can do. Talk to any of our many satisfied clients. Just look at our success rate - we perform better than any of our competitors.”

(7 marks)

C. Dora also recommends that Chang and Chang open two additional branches – one in Shatin and another in Tsuen Wan. She says Chang and Chang need to make themselves more accessible to potential new clients. Billy and Emily agree and the new branches are opened. Billy and Emily continue to be based at the office in Prince Edward. Two young, recently qualified solicitors are recruited to manage each of the two new offices. Each office also has over 20 support staff. Additional part-time (evening) support staff also work at each office who, during the day, work with other law firms in Shatin and Tsuen Wan. The main task for Francis in Chang and Chang is to provide overall supervision of the two new offices. Each office is open six days a week. Francis spends three days each week in Shatin then three days in Tsuen Wan.

(5 marks)

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

- D. Three weeks ago, Simon Strange went to see David Chang (David). David is a real estate agent. Simon went to see David about a new flat Simon had decided to purchase in Shatin. David is the brother of Francis, Billy and Emily. Whilst talking about the flat purchase, Simon told David about his mother Margaret Strange (Margaret) and her recent misfortune. Margaret was on her way, about two weeks before Simon and David met, to catch a train at the MTR station nearest to her home. It appears some other MTR passenger had, some time before, carelessly dropped a fast melting ice cream on the MTR staircase. Margaret did not see this – and slipped and fell very heavily. Simon said he was very worried by all of this - especially as his mother had had to go into hospital. Simon explained that he had been to see a solicitor about the matter – but was not happy with the advice he had been given. David told Simon to stop worrying as he knew an outstanding firm of solicitors, Chang and Chang, who could help him. Chang and Chang, David said, would be able to help him with both completion of his flat purchase and with Margaret’s problem.

Simon made an appointment to see Emily a week later. At the meeting, Simon explained that his mother, who was 78 years old, was still in hospital but was now feeling much better. Emily said it would save time if Simon just told her of all the circumstances of the accident – there was no need for Emily to talk with Margaret. Simon then asked what were the chances of taking any legal action with regard to Margaret’s accident. Simon also asked about the legal costs involved. Emily replied, “I am sure we can win this – and don’t worry about the cost. Our charges will be fully paid by the other side. And if we don’t win, we will look after you!” After the meeting with Simon, Emily called David. “Many thanks for the referral”, she said, adding, “The usual referral fee will be paid at the end of the month.” David responded, “Once the purchase of Simon’s Shatin flat is completed, I will make sure your share of the purchase-commission is sent to you.”

(13 marks)

Question:

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

Question 3 (25 marks)

A. Mr Li is a solicitor in a small niche legal practice involved in the financial investments of wealthy individuals. He advises on tax, property and commercial transactions. Last week he received a telephone call from a client, Mr Mok. Mok told Li that he had an acquaintance, an overseas businessman, who wished to be introduced to a solicitor's firm in Hong Kong. He told Li he had given this man the firm's contact details and Li should expect to hear from him soon. Li thanked Mok for his referral. A couple of days later Li received a telephone call from a man who said his name was Mr Jeffries and who told Li he was calling from the Cayman Islands, on referral from Mok. He told Li he wished to purchase commercial property in Hong Kong and would like Li to advise him on a suitable property. He told Li he would wire to the firm's client account, from his bank in the Cayman Islands, euro 11 million to facilitate the transaction. Li said he thought he could easily facilitate a suitable deal and gave Jeffries the firm's account details.

(10 marks)

B. A few days later Li telephoned Mok and asked him out for a drink, to thank him once again for his referral. Over drinks Mok asked what the instructions from Jeffries related to. Li told Mok the instructions were to make a property investment on Jeffries' behalf and he would therefore need to look for a commercial property valued at about HK\$100 million. Mok told Li that he was, at that time, trying to consolidate some of his own investments and he had been hoping to get a particular commercial property in Shatin off his hands, which was valued at about that sum. Li told Mok he would mention the property to Jeffries.

(9 marks)

C. The next day Li emailed Jeffries, advising him that he had found a suitable property for his investment and named the property in Shatin. Jeffries was pleased to hear of the arrangement and instructed Li to proceed with the purchase. Li had the property valued at Mok's request and discovered it was, in fact, only worth about HK\$80 million. He did not mention this fact to Jeffries and the transaction was completed with Li's firm acting for both purchaser and vendor at a purchase price of HK\$95 million.

(6 marks)

Question:

Discuss all the issues of professional conduct which arise from the above facts.

Question 4 (25 marks)

- A. Jerry Man is a newly qualified solicitor in criminal practice in Central. He has relatives in the real estate development business and through them has just received instructions to act for a client in a criminal case. The client is a well-known Hong Kong construction company and is charged with allowing waste from a building site to enter and pollute a stream in the New Territories. Man has met with the managing director of the company and the site manager and taken some initial instructions. The company is developing a residential estate and building a golf course, in close proximity to the stream. The company denies liability for polluting the stream. Man has advised the pair that they should give evidence at the trial on behalf of the company. **(4 marks)**
- B. The trial was set down for a 3 day hearing in the Tuen Mun Magistrates' Court. Whilst preparing for trial Man read the file and noted that 3 officers from the Environmental Protection Department (EPD) would be called by the prosecution, along with one environmental science expert from Hong Kong University. Man was not sure that he understood some of the scientific principles relied on in the expert's statement so he decided to clarify his uncertainties. He telephoned the Science Faculty of Hong Kong University and asked to speak to the expert. Man was put through to the expert and asked him to elaborate on some of the statements he had made in his report. The expert was happy to assist Man and spent two hours on the telephone with him explaining his views on pollution and the possible liability of Man's client for the damage done to the stream. **(4 marks)**
- C. On the morning of the trial, an officer from the EPD gave evidence in examination in chief that he had followed a trail of dirty water running from an area close to the construction site, to the stream, and had taken samplings of both, for examination. The dirty water showed the presence of chemicals commonly found in construction waste. In the afternoon the expert witness for the prosecution gave evidence that such chemicals would be likely to harm the plants and animals living in the stream. Man commenced his cross examination of the expert at 3pm on the first day of the trial but was unable to complete his examination by 4.30pm. The case was adjourned to the following day. Man left the court and looked for a taxi to take him back to his office. He was waiting at the taxi stand when the expert witness pulled up next to him, in a private car. The expert offered him a lift back to Central. Man gratefully accepted the ride as he was particularly keen to talk to the expert about how to get his son a place at Hong Kong University in the coming year. **(4 marks)**

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

D. The next day Man completed his cross examination of the expert and asked for a short adjournment before continuing with the defence case. His request was allowed and Man talked to the two company representatives outside. The managing director of the company was unhappy with Man's cross examination of the first EPD officer. He pointed out that Man had not put to him that one of the many other developers in the area could have caused the pollution of the stream. Man told him that he did not think that this was a sensible assertion, given the fact that the EPD officer had given evidence that the trail of water had come from close to their site. The managing director demanded that Man request to have the officer recalled for further cross examination. Man said that such a request would be highly unusual and refused to accede to the demand. He told the managing director that as the solicitor, he alone would decide the tactics for winning the case. The managing director became extremely angry and told Man he would make the request of the court himself, when he was called to give evidence. Man returned to court and told the magistrate that he would not be calling any witnesses for the defence and closed his case. The company was convicted of the offence.

(9 marks)

E. At the sentencing hearing the Prosecutor outlined the possible sentencing options available to the magistrate but failed to mention that the managing director of the company had a previous conviction for a similar offence, whilst working for another construction company. Man did not correct the mistake.

(4 marks)

Question:

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

End of Part B (Professional Conduct)

