

---

**2007 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

---

**HEAD IV: ACCOUNTS AND  
PROFESSIONAL CONDUCT**

Friday, 9 November 2007



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

## **TEST PAPER**

**9 November 2007**

### **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.**

## **2007 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.

## 2007 Overseas Lawyers Qualification Examination

### Head IV: Accounts and Professional Conduct

#### Part A (Accounts)

#### Question 1 (25 marks)

Flash and Gordon decided to go into partnership and will open their firm in Central. Flash and Gordon have each been in practice for just over 2 years and intend to leave their existing firms at the earliest opportunity. However, they both recollect, during their days at university and during practice that there are certain accounting rules they need to abide by with regard to setting up a firm. In particular, they are concerned about certain issues with regard to the Solicitors' Accounts Rules. They feel that in order to enhance their practice, to assure that they have no difficulties and that they are profitable, they would consider the following:-

A. Flash's mother, Mrs. Star, has offered to assist to look after and maintain their books of account. She had some ten years ago managed a karaoke bar. Mrs. Star has also indicated that she intended to engage Winkle and Sparky (who had worked as hostesses at the karaoke bar) on a part-time basis. Flash is also of the view that his mother will sign cheques in respect of the office and clients' account and manage the petty cash. Flash and Gordon are delighted that they have managed to recruit such safe hands to look after their books of account.

**(8 marks)**

B. Gordon has managed to persuade Roman Rovitch, a well known industrialist, to provide them with new business. Roman wishes the new firm to handle various litigation and commercial matters. Gordon has persuaded Roman to provide a sum of HK\$5 million on account of costs in respect of the new business which the firm will undertake. The decorators have just completed the fit out of their new offices and substantial sums are due to them. Gordon is of the view that he is able to make use of the interest that would come from the monies received on accounts of costs to ensure that the fit-out fees can be paid. However, Roman has made it clear that although he is going to make an immediate payment on account of costs, he does not wish to pass over any files for a period of 6 to 8 weeks. Again, Gordon feels this is not going to cause any difficulties since this will undoubtedly assist the firm's cash flow during the early days of their practice.

**(8 marks)**

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

C. Flash has also managed to obtain a new client, Randolph Biggs, who is facing serious criminal charges. Randolph has agreed to pay on account of costs and disbursements a sum equivalent to HK\$1.5 million. Flash has agreed to engage leading London counsel to advise on some preliminary issues. Counsel has indicated he requires an agreed fee of GBP15,000.00 in order to advise. Flash is very keen to ensure that London Counsel's fee is paid immediately so as to encourage his involvement in the case. Flash is somewhat concerned as to how the accounts rules are applicable to this payment in respect of the sums received. Randolph subsequently advised Flash that the payment on account would be by way of 3 equal deposits in different currencies. In respect of one of the deposits he would wish to pay U.S. dollars into an account in the Turks and Caicos Islands. He asked Flash to open a US dollar account in that jurisdiction. The rest of the monies will be paid in cash in RMB, Thai Baht and Indian Rupees over a two week period to their Hong Kong office.

**(9 marks)**

**Please comment and advise Flash and Gordon in respect of all the solicitors' accounting issues arising from the facts set out above and in A – C**

**End of Part A (Accounts)**

**2007 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. Recently, April Leung (April) and Dorothy Tang (Dorothy) established their own firm, Leung and Tang (LT). The Head Office of LT is in Mong Kok. April and Dorothy had both previously worked for a large firm called Wang & Wang (WW). What they both did at WW, mostly, was commercial property conveyancing.
- B. April and Dorothy thought a lot about how to make their new practice successful. They decided that, in the very competitive environment, substantial and effective advertising would be vital to get LT off to a good start. Karl Chang (Karl) is a businessman. April and Dorothy had both done conveyancing work, whilst at WW, for Karl. Karl had been pleased with their work. When Karl found out that they were about to set up a new firm, he congratulated them both and asked April and Dorothy out to lunch. At the lunch, April and Dorothy mentioned their aim to advertise LT strongly. Karl said he may be able to help as one of his many businesses (Excellent Promotions) was involved in the advertising industry. Fairly soon April and Dorothy agreed with Karl that Excellent Promotions would do all the advertising for LT. It was further agreed that there would be heavy advertising on buses and in the popular press. These advertisements would say:

*Leung and Tang is a modern, "new arrival" Law Firm, expert in almost all areas of legal work. Forget about those old-style Law Firms which give poor, slow service. Use Leung and Tang where the success rate is excellent.*

Karl suggested that LT could pay just 50% of the normal advertising rate charged by Excellent Promotions – plus 2% of the total turnover of LT in the first two years of the operation of the practice. April and Dorothy, concerned to conserve their cash flow, quickly agreed with this arrangement.

**(5 marks)**

- C. April and Dorothy thought that one real growth area in legal work in Hong Kong was Personal Injury (PI) litigation. They decided that LT would make PI work a major focus. To make a success of PI work they decided to recruit many general office staff so that they could manage a high volume of PI work from the outset. Dorothy's brother Donald, had two vacant shops, one in Tsuen Wan and another in Aberdeen. April and Dorothy agreed to rent both shops to set up branch LT offices. The operating hours of these branches were set at 7pm to 11pm, seven days per week. This was done, first, to be convenient for potential clients. Secondly, LT staffed these two branches with general staff from other nearby law firms, who were looking for second jobs in the evening. They also chose general staff who specialized in PI work. As the general staff were so experienced, April or Dorothy usually would just drop in to each branch for an hour or so, one night per week. Donald agreed to take a 10% share of the profits arising from each LT branch in lieu of rent.

**(6 marks)**

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

D. A few months after the first lunch with Karl, there was a second lunch. April and Dorothy told Karl that business was slow. Karl said he was sure he could help. He had another company called "Legal Support". Legal Support provided financial backing usually to persons who had suffered personal injuries so that those persons could afford to take legal action to recover damages. Legal Support had a very good network to locate such potential claimants. Legal Support would review their claims and, if they looked strong, Legal Support would guarantee the payment of all legal fees provided: (A) the client went to a solicitor nominated by Legal Support; and (B) the client agreed to pay a percentage of any damages awarded to Legal Support. LT, Karl said, could become a Legal Support nominated firm. Under the usual contract, the client would also authorise LT to pay over the agreed share of damages to Legal Support (assuming a successful outcome).

(6 marks)

E. April and Dorothy accepted Karl's suggestion and quite soon business improved greatly as Legal Support nominated LT as their preferred firm in many cases. One PI client who came to LT through Legal Support was Thomas Nip (Thomas). Thomas was pleased with the PI work which LT did for him. Thomas told April that his elderly father (Gordon), who resided in a nursing home for the aged, had recently received an adverse Tax Assessment from the Hong Kong Inland Revenue Department (IRD). This assessment related to alleged non-payment of a large amount of profits tax some years ago, when Gordon was running his own business. April immediately said, "Don't worry – LT can help". April then asked Thomas for all the details of the tax dispute. After Thomas explained these, April said, "This should be fine, I will write to the IRD this week to explain why Gordon is not liable to pay any prior-year Profits Tax." "But", said Thomas, "How much will the LT fees be?" "Don't worry about the fees", said April, "they won't be too high".

(8 marks)

**Discuss all the issues of Professional Conduct which arise from the above facts. If you feel that further information is required, please explain what that information is – and why it is required.**



### Question 3 (25 marks)

Ronald had been employed for many years by Creative Signs Ltd (Creative Signs), a Hong Kong company whose work involves the designing and manufacturing of signs and fixing them in place for customers who wish to advertise their businesses. Some signs were affixed to the front of shops or offices and others were designed to hang free above the pavement extending from the buildings. In October 2006 Patrick, who owned a new restaurant called 'Happy Seafood', which was due to open for business in Mongkok just before Christmas, instructed Creative Signs to design an illuminated sign advertising the restaurant. Creative Signs did so and Patrick was pleased with the design which showed smiling sharks and lobsters surrounded by flashing lights. Just after Ronald reached his place of work on 12 November 2006 Creative Signs' manager asked Ronald to fix this sign so that it hung above the street outside the entrance to the 'Happy Seafood' restaurant. Ronald had done similar work on many occasions before and knew the required techniques to make the sign hang safely. However, he had been out celebrating his birthday the night before with friends and had only returned home to his flat at 6.00 am giving him just time for a quick wash and shave before going to work. He felt ill and, through lack of sleep, rather dizzy. With the assistance of two junior colleagues he affixed the sign with some difficulty and informed Patrick that the work had been completed. Patrick was pleased with the sign. Unfortunately Ronald had failed to fix several screws securely into the wall of the restaurant and later that evening, when a strong wind was blowing, the sign fell from its wall support seriously injuring Mrs Wong a passer-by.

Mrs Wong was taken to hospital by ambulance and was found to have sustained head and back injuries. She consulted Sally, a solicitor in private practice, who specializes in conveyancing work. Mrs Wong explained that she had been shopping in Mongkok when a sign above a restaurant called 'Happy Seafood' had fallen on her head. Mrs Wong said that she had very little money and asked whether the litigation would involve a great deal of expense on her part. Sally said that, since the case was 'a clear winner', she would arrange it that Mrs Wong would only pay her from any damages that Mrs Wong was awarded in the litigation. Sally provided no written retainer but told Mrs Wong that a personal injury action should be brought against Ronald alone.

The statement of claim was drafted by Sally claiming general damages for personal injuries sustained as a result of Ronald's negligence. The statement of claim also included a claim for loss of amenity alleging that Mrs Wong, as instructed and as confirmed by an expert report, was no longer able to pursue her favourite hobby of Spanish dancing.

The writ and statement of claim were served on Ronald who sought legal aid for his defence. Legal aid was granted and the case was briefed out to Francis, who was an experienced litigation solicitor. Ronald explained to Francis that he had not slept the night before the accident and had felt dizzy and unwell when fixing the sign. No mention of this was made in Ronald's witness statement which was provided to the plaintiff when witness statements were exchanged.

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

The trial was set down in the District Court in April 2007. The day before the trial Sally was told by a colleague in her office that he had seen Mrs Wong buying a Spanish dance dress and shoes in a shop in Wanchai which made Sally conclude that Mrs Wong was exaggerating her injuries. Sally was aware of a solicitor's overriding duty as an officer of the court and, having considered the matter, concluded that to continue a claim in respect of loss of amenity might amount to deceiving the court. At the commencement of her opening speech, therefore, she informed the court that the plaintiff would no longer be pursuing any claim for loss of amenity. The presentation of the plaintiff's case proceeded according to Sally's plan and she closed the plaintiff's case.

The defence case opened and Francis called Ronald to testify. During the examination-in-chief Francis did not ask Ronald about his conduct the night before the accident nor how he felt on the day the accident had occurred. Ronald testified that he was experienced in fixing signs and that the accident had been caused because of an unusually strong gust of wind. Ronald was then cross-examined by Sally who asked what Ronald had been doing the night before the accident. Ronald testified that he had gone out for dinner with a friend and had been home in bed by 11.00 pm. When asked how he felt when fixing the sign, Ronald replied that he had felt in good health. The trial was then adjourned until the next day when Francis would commence his re-examination. The same evening Francis met Ronald in his office and asked him why he had told the court that he was in good health on the day of the accident. Ronald told him to 'mind his own business'. The trial resumed the following day and Francis said that he had no questions to ask by way of re-examination.

When the trial had concluded the judge, Mr Justice Fair, awarded substantial damages in favour of Mrs Wong but, of course, made no award in respect of her loss of amenity. Unfortunately, as Ronald had very little money, Mrs Wong's judgment remained largely unsatisfied.

**Citing authority from the Solicitor's Guide and case law, answer the following questions:**

- (a) Identify any acts of professional misconduct on the part of Sally.**  
**(18 marks)**
- (b) Identify any acts of professional misconduct on the part of Francis.**  
**(7 marks)**

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

Paul and Mary, who had been recently married, wished to purchase a flat in their joint names and they both signed a binding provisional sale and purchase agreement in an estate agent's office to buy a modest flat overlooking the harbour in Aberdeen by way of a joint tenancy. Paul went to see Sean, who was a recently qualified solicitor in private practice employed by a large firm of solicitors Wong, Wing and Wang ('WWW') to ask him to carry out the conveyancing transaction and assist with obtaining a mortgage. The flat in question was an old flat which had been constructed in 1976. The vendor was Chan. Sean agreed to act for Paul and Mary. Sean subsequently telephoned Chan to arrange a site visit and Chan asked Sean whether he would represent him also in the transaction to save money. Sean agreed. The transaction was completed smoothly within three months and Paul, Mary and Chan were very pleased with the quality of Sean's work.

Twelve months later Paul and Mary found they were in temporary financial difficulty in meeting the mortgage repayments and they consulted Sean again. Sean, who was now on good terms with Paul and Mary, agreed to lend them \$100,000 for six months at the rate of interest of 6%.

Unfortunately, the marriage between Paul and Mary was not a happy one and two years later Mary came to see Sean and asked Sean to act for her in divorce proceedings. Sean agreed and filed a divorce petition against Paul. Paul retained solicitor Nancy to act for him and she drafted the reply. Shortly afterwards Nancy left her firm to join Sean's firm (WWW) and Paul was obliged to instruct a fresh solicitor John to act for him. John is very concerned about Nancy joining Sean's firm, although he has been informed that Nancy has been assigned by WWW to work solely on preparing documentation for a large construction project in the firm's Tai Po office.

**(a) Identify any acts of professional misconduct by Sean.**

**(10 marks)**

**(b) (i) What legal action, if any, would you suggest John should take in respect of the divorce proceedings as a result of Nancy joining WWW and what are its chances of success?**

**(4 marks)**

**(ii) What remedial action might WWW take to enable the firm to continue to act for Mary?**

**(4 marks)**

During the course of the divorce proceedings the judge ordered discovery of certain documents relating to the financial affairs of both parties. In the course of complying with the court order by mistake John sent to Mary's solicitor a copy of a letter written by John to Paul advising that Paul should conceal the fact that he had just inherited a large sum of money from his grandfather.

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

**(c) (i) What should Mary's solicitor ethically do on receipt of this letter?**  
**(3 marks)**

**(ii) What remedy might John seek from the courts?**  
**(4 marks)**

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