
2008 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

Friday, 7 November 2008



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

7 November 2008

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.**

2008 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.

2008 Overseas Lawyers Qualification Examination

Head IV: Accounts and Professional Conduct

Part A (Accounts)

Question 1 (25 marks)

- A. (i) Explain the importance and rationale for a Client Account Reconciliation.
- (ii) What steps should a firm take to ensure that there is compliance with the relevant accounting rules and practice in respect of the Client Account Reconciliation.
- (iii) Your accounts department has informed you that they have received a cash deposit of HK\$100,000.00 into the firm's client account. However, no indication as to the source of the deposit was provided. What steps should be taken?
- (iv) You have now been advised that the HK\$100,000.00 were the agreed costs paid in by A. Drogba in respect of a new matter. How should this sum be treated?

(9 marks)

- B. (i) What do you understand by the term "Management Accounts for a firm of solicitors"?
- (ii) How would such Management Accounts enhance and assist the partners in their running and supervision of the firm's accounting systems and enhancement of profitability?

(7 marks)

- C. Identify the relevant records and books of account which the Solicitors' Accounts Rules require a practice to maintain. Explain (briefly) the reasons why such records and books of account need to be maintained.

(9 marks)

The candidate should limit their answers to the solicitors' accounting issues.

End of Part A (Accounts)

2008 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. Bill Smith (Bill) practised law in Melbourne, Australia for 10 years before moving to Hong Kong five years ago. Bill was admitted as a solicitor in Hong Kong three years ago. All his legal experience in Australia and in Hong Kong has been in Tax Law. Until one year ago, he worked with a Hong Kong firm called Zhang and Zhang (ZZ). At ZZ he worked closely with Emily Chan (Emily), another Tax Law specialist. Last year, Bill and Emily decided to establish their own firm called Smith and Chan (SC). Both Bill and Emily wanted to be “their own boss” and run their own firm. They were confident that they could achieve much faster financial success running a small firm together. Bill and Emily decided to establish the first office of SC in Tsim Sha Tsui.

Bill explained to Emily that one key to rapid success enjoyed by some firms in Melbourne was to take on litigation clients on a “no win – no pay” basis, which was permitted under the professional conduct rules applying there. Bill and Emily met with a friend of Bill, Andrew Quickbucks (Andrew) just as they were setting up SC. Andrew, a businessman from Australia, established a company three years ago in Hong Kong called “Know Your Rights” (KYR). KYR specialized in locating persons who had suffered personal injuries. In each case, KYR undertook a careful initial assessment of the strength of the particular person’s chances of success if they were to launch a personal injury action. If the chances looked good, KYR would guarantee the payment of all legal fees (for that particular client) provided: (A) the client went to a solicitor nominated by KYR; and (B) the client agreed to pay a percentage of any damages awarded to KYR. Bill and Emily agreed with Andrew that SC would be listed as a firm KYR could nominate. Under the agreement they reached, each new (KYR found) client would authorize SC to pay over the agreed share of damages to KYR in each case where the client was successful.

(7 marks)

- B. Following the agreement with KYR, SC prospered quickly. Bill and Emily decided that they could build their practice even faster by advertising the services offered by their firm. They also reasoned that it would be sensible to open two more SC offices (one in Chai Wan and another in Tuen Mun) so clients would not need to travel so far. They discussed these ideas with Andrew who said he could help. Andrew said that KYR could look after the promotion campaign for SC. It was agreed that there would be heavy advertising on buses and in the popular press. KYR drew up these advertisements which said:

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

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

KYR also produced a brochure for SC which referred to certain, notable, identified clients Bill and Emily had worked for when employed by ZZ.

Andrew suggested that SC could pay just 30% of the normal advertising rate charged by KYR – plus 3% of the total turnover of SC per year. Bill and Emily agreed with this arrangement.

(7 marks)

- C. SC fairly quickly found suitable offices for rent in Chai Wan and Tuen Mun. In the case of the Chai Wan office SC negotiated a special arrangement with the landlord, through Ms Leung from the estate agents in charge of renting out the office. First, there would be a discount of 50% on the nominated rent but, to compensate, SC would, in addition, pay 1% of gross turnover from the Chai Wan office each year to the landlord. Bill and Emily also agreed with Ms Leung, that, where SC signed up a client referred by Ms Leung, SC would share 10% of all fee income with Ms Leung with respect to the particular client. SC also made a reciprocal agreement with Ms Leung that, where SC referred a client to Ms Leung and that client purchased a property through Ms Leung, Ms Leung would pay 10% of any commission earned to SC.

(5 marks)

- D. Very soon after this, the new offices were opened. Bill and Emily continued to work in the primary office in Tsim Sha Tsui. SC employed, young, recently qualified solicitors to manage the other two offices in Chai Wan and Tuen Mun. Each office has 25 support staff. In each case, SC also employed some extra part-time (evening) support staff who, during the day, worked with other law firms in Chai Wan and Tuen Mun.

(6 marks)

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

Question 3 (25 marks)

Chris was employed in Hong Kong in a small trading company which received orders from foreign clients (usually large stores) for the supply of clothing. Chris's job was then to place orders for the manufacture of the clothing with factories with offices in Hong Kong, obtain the clothes and have them exported to the foreign buyers. Unknown to his employers, he had a private arrangement with two of the factories that he would receive a "commission" in return for placing orders with them. Chris' employer found out about the commission payments from the factory owners who complained when the company ceased to place orders with the two factories and instead placed orders with different factories. He informed the police.

In February 2008 Chris was charged with contravening several provisions of the Prevention of Bribery Ordinance (Cap 201) and sought help from his friend Sid, who was a solicitor in private practice specializing in matrimonial work. Sid agreed to take on the case although he had previously acted for Chris' employer in a civil matter relating to the dismissal of a former employee of the company. There was no written retainer. Sid interviewed Chris and assured him that he would handle the defence case effectively. The trial was set down in the District Court for 20 June 2008. In early March 2008, Sid by chance met in a bar at the Conrad Hotel Mr Wong who was the owner of one of the factories which had been involved in supplying clothes to Chris. Sid knew that Mr Wong would be an important prosecution witness. At Mr Wong's invitation Sid joined Mr Wong for a drink. Sid told Mr Wong that he was representing Chris and asked Mr Wong about Chris' relationship with the factory's owners. Mr Wong said that his business had declined significantly since Chris no longer placed orders with the factory. Sid said that Chris was in big trouble and he hoped that Mr Wong would "go easy on Chris" in his evidence at Chris' trial. Mr Wong said that he liked Chris and did not want to see him put in prison.

On 15 June Chris approached Betty, a barrister with considerable experience in criminal litigation and asked Betty to take on the case. Betty agreed. Sid sent instructions to Betty which simply said: "Here is the witness statement taken from Chris; please represent him at his trial". Betty secured copies of the relevant witness statements from the prosecution and arranged an urgent interview with Chris on 18 June. At the interview Betty said that she had looked at Chris' witness statement and the witness statements provided by the prosecution and was of the opinion that Chris had no defence and should plead guilty. Chris refused and Betty said that she would have to withdraw unless Chris agreed to plead guilty. When Chris continued to refuse, Betty withdrew from representing Chris.

The trial was close and Sid decided that his only course of action was to represent Chris himself. Sid arranged an urgent meeting with Chris and advised him to plead not guilty. Chris readily agreed. Sid then suggested to Chris that he should tell the court that the "commission" payments received by Chris were not related to the orders placed with the factories, but had been made as payment to Chris' wife for advice she had given them as to the design of clothing suitable for sale to foreign customers. Chris hesitantly agreed.

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

The trial began and Sid represented Chris. Chris testified that the commission payments had in fact been made as payment for services provided by Chris' wife and his wife testified in support of this story. The trial judge did not, however, believe Chris or his wife and Chris was convicted.

Answer the following question providing authority for your answer.

Identify any acts of professional misconduct on the part of Sid.

(25 marks)

Question 4 (25 marks)

- (a) Damon wished to borrow money to set up a new business and retained Sean, a solicitor in a small practice, to assist him in setting up the business. Sean advised Damon that Damon would require a substantial loan for the purpose and further advised that Kowloon Bank was the most suitable bank to approach for the loan. Damon said that he had had previous dealings with Kowloon Bank and had not been impressed with their services. Sean said that he would only be willing to continue to assist Damon in setting up the business if Damon dealt with Kowloon Bank for the purpose of securing the necessary loan. Damon then reluctantly approached Kowloon Bank (the bank) with a view to obtaining the loan.

Damon discussed the loan with the bank's solicitor, Sylvia. Sylvia told him that the bank would be prepared to lend the required money to Damon if he could provide a suitable surety. Damon responded a few days later saying that his grandmother was prepared to act as surety and provided copies of his grandmother's bank statements, which showed that she was quite wealthy. Sylvia prepared the necessary papers for the loan together with the surety agreement and handed them to Damon. Damon returned three days later, handed over the surety agreement duly signed by his grandmother. Damon and the bank's representative signed the loan agreement. The bank, accordingly, lent the money to Damon which was to be repaid over a period of 2 years by installments. Damon paid the first five installments, but then defaulted and made no further payments. It appeared that he had left Hong Kong and could not be traced.

The Bank, therefore, sought to enforce the surety agreement against Damon's grandmother. She refused to pay, however, saying that she had not understood that she had agreed to stand as surety for the debt.

- (i) **Has Sean committed any acts of professional misconduct?**
(3 marks)
- (ii) **Explain what professional duties rested upon Sylvia in respect of the grandmother's signing of the surety agreement and whether Sylvia has breached any of these professional duties.**
(7 marks)

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

- (b) Charles owned a flat in North Point and went to Green & Co, a firm of solicitors with whom he had had previous dealings, for advice as to its sale. He was first referred to a legal executive, William, who specialized in conveyancing matters and explained that he wished to sell his flat. William was particularly interested as he urgently wished to purchase a flat in North Point for his aged mother. Charles was then referred to Siu Lun, who was an assistant solicitor in the same firm, and Siu Lun agreed to carry out the necessary conveyancing procedures. Siu Lun asked William to check the title carefully and William did so. William was satisfied that Charles' title to the flat was good and Siu Lun, who had supervised William's work, duly informed Charles that the title to his flat was good. William then told Charles that he himself would very much like to purchase the flat. Charles agreed. William and Charles asked Siu Lun to arrange the sale of the flat to William who had retained another firm of solicitor to act for him. The flat was eventually assigned to William.

Have William and Siu Lun committed any acts of professional misconduct? If so identify them.

(5 marks)

- (c) Soon afterwards Siu Lun met a new client, James Babayaro, who said he lived in Nigeria. James said that he had come to Hong Kong to purchase property on the Peak on behalf of another (unnamed) person and handed Siu Lun a banker's draft for a substantial sum of money. James asked Siu Lun to deposit the money in the firm's client account and await further instructions as to the intended purchase.

What should Siu Lun do as a matter of professional conduct?

(10 marks)

End of Part B (Professional Conduct)