

**2009 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Tuesday, 10 November 2009



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

10 November 2009

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 questions 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.

2009 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.

2009 Overseas Lawyers Qualification Examination

Head IV: Accounts and Professional Conduct

Part A (Accounts)

Question 1 (25 marks)

Bling and Flash are assistant solicitors in the firm of Steady & Co. They have just completed two years of employment and are about to obtain their unconditional practising certificates. Bling and Flash have decided that the way to further their careers and enhance their earning ability is to establish a new firm in the not-too-distant future. They felt "The Flash Bling Partnership" would be the ideal name. However, they recollected that during their studies at University, there are various obligations that may be imposed upon them as set out in the Solicitors' Accounts Rules and other relevant legislation. They therefore have approached you to obtain your comments, advice and views in respect of the following issues:-

- (a) Flash socialized with young and attractive models. One of them he knows quite well, Fifi, and he felt that she would be an ideal person to employ as their receptionist. He was also of the view that since reception may not be too busy, Fifi would be well able to assist with the firm's accounts and with the bookkeeping. Fifi had some years ago completed a very basic bookkeeping course. Bling was delighted with the idea. Since Flash and himself would be busy promoting the firm's new business, he suggested that she should also become a signatory on the various bank accounts of the intended practice. **(8 marks)**
- (b) Bling and Flash were also concerned to ensure that their firm had the latest accounting equipment. They would purchase an up-to-date computer system. Bling was of the view that this would save the need for them to maintain their books of account and make it somewhat easier for Fifi to manage the accounts. Flash was also of the view that online banking would be the best way to effect payments out of their clients' account. **(6 marks)**
- (c) Flash had heard something about disbursements. However, he was somewhat unsure as to the meaning of this concept and he wanted to know how these would be treated in their books of account. In particular, he wanted to give some guidance to Fifi as to how disbursements should be dealt with so as not to contravene the Solicitors' Accounts Rules. **(6 marks)**
- (d) Bling and Flash felt that the issue of ATM cards would enable them to monitor and obtain access to the firm's bank accounts. Since they will both be travelling extensively around the region, they will be able to make cash withdrawals as and when needed. **(5 marks)**

Please comment and advise Flash and Bling in respect of the above issues. Please ensure that your answers are limited to the solicitors' accounting issues.

End of Part A (Accounts)

2009 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) Laura Zhang and Simon Ng are Hong Kong solicitors, admitted over 10 years ago. Two years ago, they established their own firm, Zhang and Ng. Both were well experienced in personal injury work prior to establishing their own firm. The firm maintains four offices which are widely dispersed around the HKSAR – one in Admiralty, one in Mong Kok, one in Shatin and one in Tsuen Wan. In each office, there are junior solicitors doing personal injury work, together with a large number of support staff.
- (b) Two weeks ago, Andrew Hu came to the Mong Kok office of Zhang and Ng and spoke with Simon Ng. Andrew said that his elderly father recently fell over as he was leaving a large restaurant near his home. “It was about 12 noon”, Andrew said. He continued, “They had just washed down the entrance – but there was no warning sign that the floor was wet and slippery. Dad slipped and fell and is now in hospital with a bruised head and a broken arm. I want you to act for my Dad, to recover damages for his injuries from the fall – but I am worried about how much it may cost.” Simon Ng confirmed that Zhang and Ng could certainly act for Andrew’s father. Simon told Andrew not to worry about the cost. Andrew added that it would be best if Simon just spoke with him (Andrew) rather than with his father. Andrew explained his father was still confused about what happened. His memory was not so good – and the fall had made him more confused in his thinking.
- (c) Andrew then said he had another matter to discuss with Simon. Andrew explained that his main job involved selling life insurance door-to-door. His selling area included two large public housing estates in East Kowloon. Because of his work, he regularly came across accident victims of all kinds, many of whom had not sought any legal compensation when this might be available. “Would you be interested if I were to refer some of these victims to Zhang and Ng?” Andrew asked. “Yes” Simon replied. “In that case”, said Andrew, “Can we work out how to make this worthwhile for me? If Zhang and Ng is successful in getting accident-damages for any referred-client, would your firm be willing to pay 20% of the resulting net fee income to me? Will you also ensure that I am paid 10% of any damages award made to any referred-client?” Simon replied, “Yes, I agree to pay 20% of the resulting net fee income to you and I will ensure that you are also paid 10% of any damages award made to a referred-client.”

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

- (d) Zhang and Ng decide that they need to begin advertising their firm more widely. They engage a company called “Lucky Advertising”. Laura and Simon give Lucky Advertising a copy of the Solicitors’ Practice Promotion Code (‘SPCC’) and tell Lucky Advertising to plan and implement a campaign, in accordance with the SPCC, that will promote their firm. Lucky Advertising arrange for footpath billboards to be placed directly outside a number of doctors’ surgeries and for leaflets to be given to patients entering and leaving these surgeries. The billboards and the leaflets stress that potential clients can trust Zhang and Ng. They each read as follows: *“Too many solicitors are tricky and untrustworthy – but not Zhang and Ng. If you have suffered personal injury, come first to Zhang and Ng. They are the honest experts in personal injury work!”*
- (e) Michael Fu is an owner-driver of a small delivery van. While driving to Fo Tan two months ago, Michael’s van was involved in a collision with another vehicle. Both Michael and the driver of the other vehicle suffered minor injuries and both vehicles were damaged. Michael’s van is insured by the Excellent Insurance Company (‘Excellent’). Shortly after the accident, Excellent contacted Zhang and Ng and said they would like to retain Zhang and Ng to act for Excellent, in the name of Michael Fu, in accordance with the terms of the insurance policy. Excellent said they wished to deny liability. Zhang and Ng said they would be happy to act on behalf of Michael Fu based on the instructions from Excellent.

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.

(25 marks)

Question 3 (25 marks)

Clement was employed as a driver by Rapid Transport Co Ltd. His normal work involved delivering goods to warehouses. He usually worked the night-shift as the roads were not congested and deliveries were made faster. In the early hours of 15 May 2008 Clement was driving his delivery van along a winding street approaching Fanling when he knocked down an elderly man crossing the road. The man was seriously injured. The police were called and Clement was made to take a breathalysers test, which showed that he had not been drinking any alcohol. The elderly man, whose name was Pang, was taken to hospital unconscious. Fortunately he recovered and several days later he was sufficiently well to be able to talk to the police. He informed them that he had been out playing mahjong with friends and was returning home. A van had come round a bend in the road rather fast and appeared to be swerving on the wrong side of the road. The van had struck him and the next thing he remembered was being in a hospital bed. Clement was charged with dangerous driving. At his trial he maintained that he had not drunk any alcohol and had been driving carefully and within the speed limit. The accident had been the fault of the elderly man who had walked onto the road without looking. He was acquitted.

On the advice of family members Pang sought advice from Mr So, who was a solicitor in the firm of So and So. Mr So was an experienced personal injuries lawyer. Mr So listened to Pang's story and said that his firm would be willing to take up the case. Mr So said that he believed that Pang had a good claim and should commence a civil action against Clement, claiming damages for his personal injuries. Pang told Mr So that he did not have much money, but Mr So said that he should not worry. He would deduct his fee from the damages recovered from Clement. If no damages were recovered, he would only charge a nominal fee. Pang agreed to this suggestion.

Mr So drafted the writ, statement of claim and statement of damages which were duly served upon Clement.

Without consulting Pang, Mr So sent his clerk Ada to instruct Barry, a barrister experienced in criminal litigation, to represent Pang at the trial. Barry agreed to take on the case, agreed his fee with Ada and prepared for the trial.

Having received the writ, statement of claim and statement of damages, Clement made an appointment to see Sylvia, a solicitor working for a large firm of solicitors in Central, who was experienced in personal injury litigation. Clement informed Sylvia that he had already retained a solicitor from a small firm of solicitors in Shatin, but that he was dissatisfied with their services. Sylvia agreed to take over the case. She perused the defence pleading, which had already been served and filed by the solicitors originally retained by Clement, and set about amending the pleading.

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

Clement told her that he worked for Rapid Transport Co Ltd and had been driving the van to Fanling to deliver goods which had only recently arrived at the container port. At the time of the accident he had been driving within the speed limit and had only seen the old man crossing the road when Clement was coming round a corner. Clement had been unable to brake in time and had hit the old man. Clement denied that he had been driving negligently.

Since the case would be heard in the District Court, Sylvia decided that she would conduct the defence herself and that there was no need to brief counsel. Clement agreed. Sylvia told him that her fee would be \$100,000 in total. There was a written retainer which contained a term stating that neither Sylvia nor her firm would be liable in negligence in respect of work undertaken under the retainer.

After the defence pleading had been duly amended Clement wrote to the former firm representing him saying that their services were no longer required.

(a) Identify any acts of professional misconduct committed by Mr So.
(10 marks)

(b) Identify any acts of professional misconduct committed by Sylvia.
(5 marks)

The case was set down for hearing in the District Court in September 2009. Two days before the hearing date Sylvia told Clement that the case was much more complicated than she had anticipated and that her fee had to be increased to \$200,000. Clement protested that he did not have this amount of money available, but Sylvia said that she would be unable to continue to act unless the increased fee was agreed. Clement reluctantly agreed, saying that he would have to borrow the extra money from a friend.

Clement then told Sylvia that, in fact, he had not told her the full truth. He explained that he had not slept the day before the accident and had briefly fallen asleep whilst driving, causing him to fail to see the old man when he was crossing the road. Sylvia said that there was no need to tell the court this fact.

(c) Identify any further acts of professional misconduct committed by Sylvia.
(3 marks)

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

The plaintiff's case proceeded as expected. Then Sylvia opened the defence case. Clement was called to testify and was examined in chief by Sylvia. When Sylvia asked Clement about the night of the accident, Clement said that he had not been able to stop in time to avoid striking the old man. Sylvia then asked Clement whether he had been wide awake at the time of the accident and Clement confirmed that he had been. After Sylvia's examination in chief, Clement was cross-examined by Barry and the parties closed their respective cases.

- (d) Identify any further acts of professional misconduct committed by Sylvia.**
(4 marks)
- (e) Now assume that Mr So is facing misconduct proceedings before a Solicitors' Disciplinary Tribunal in respect of his actions identified above. Explain what standard of proof the Tribunal must apply in adjudicating whether or not Mr So has been guilty of professional misconduct.**
(3 marks)

Question 4 (25 marks)

- (a) Magic Company Ltd ('Magic') is a large company whose business involves the sale and purchase of old flats and houses which can be purchased relatively cheaply and which, after renovation and refurbishment, can be sold at a good profit margin. Magic's directors suspected that one of their employees was defrauding the company by paying excessive fees to a company, Renovation Ltd ('Renovation'), which specialised in renovating old properties. Renovation's business was run by Mr Fang ('Fang'). Magic employed a private firm of fraud investigators, Discovery Ltd ('Discovery') to investigate whether any fraud was being committed by Fang on Magic. Magic set up a small group of three senior employees to deal with Discovery and assist them in their investigations. Discovery interviewed the three senior employees ('the team') and several other employees of Magic and wrote a report ('the report') about the fraud. The report was in two parts. The first contained statements from the team designated to deal with Discovery ('part A of the report') and the second part ('part B of the report') contained statements from other employees consulted. As a result of the contents of the report Magic decided to commence a civil action against Fang for damages for fraud. The employee allegedly involved was dismissed.

Action was duly commenced against Fang by Magic. After close of pleadings mutual discovery took place in which Magic made discovery of the report, but claimed that the whole report (both Parts A and B) was protected from disclosure by legal professional privilege.

Advise Magic as to whether both Part A and Part B of the report are protected from disclosure by reason of (i) legal advice privilege and (ii) litigation privilege.

(13 marks)

- (b)
- (i) Peter was employed as an assistant solicitor by the small firm of Smith and Smith, Solicitors ('Smith and Smith'). One of the firm's clients was Wishwell Construction Ltd ('Wishwell') which retained Smith and Smith to act for them in arbitration proceedings against Wing In Construction Ltd ('Wing In'). Peter had not been personally involved in the arbitration proceedings and, before the arbitration proceedings had been concluded, Peter left Smith and Smith to work for Sue and Win, the firm of solicitors representing Wing In in the arbitration. Wishwell has now applied for an injunction to restrain Sue and Win for continuing to act for Wing In in the arbitration proceedings. **Advise Sue and Win as to whether they will be required to cease to act for Wing In and what measures, if any, they should be advised to put in place to assist them in resisting the application by Wishwell and whether such measures are likely to be successful.**

(6 marks)

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

- (ii) Peter has a client Frederick Ong ('Frederick') whom he has recently successfully represented in difficult matrimonial proceedings. Frederick is a good friend of Mary, Peter's wife. Mary had informed Frederick that she was looking for a flat on Hong Kong Island as their present flat in Tai Po was too far from Peter's new office. Six weeks after Peter's bill for the matrimonial work had been duly paid, Frederick telephoned Peter saying that he had agreed to sell his flat in North Point to Mary and wants Peter to act for him in the sale of the flat to Mary for the rather generous price of \$2 million. **Explain to Peter the ethical and common law provisions affecting whether he is permitted to act for Frederick (and Mary) in the sale of the flat by Frederick to Mary. In particular, Peter wishes to be sure that Frederick would not subsequently be able to have the transaction set aside if he changed his mind after the sale to Mary had been completed.**

(6 marks)

End of Part B (Professional Conduct)