
2010 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

Wednesday, 10 November 2010



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

10 November 2010

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.

2010 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.

2010 Overseas Lawyers Qualification Examination
Head IV: Accounts and Professional Conduct
Part A (Accounts)

Question 1 (25 marks)

- (1) Your firm has been instructed to act in a conveyancing transaction. Your client is purchasing a property located in the New Territories. The purchase price is HK\$22 million. The client has indicated to you that he will not require a mortgage and completion will take place on 30 November 2010. The following steps by the firm have been taken:-
- (i) On 1 October 2010, a Land Registry search was carried out. This cost HK\$300.
 - (ii) On 3 October 2010, a clerk attended at the Land Registry to collect relevant documents, his travelling expenses were HK\$50. This was paid from petty cash.
 - (iii) On 5 October 2010, the client arranged an electronic transfer from his Cayman Islands' bank account in respect of the 10% deposit that needed to be paid upon signing the sale and purchase agreement. This sum was received into the firm's client account on the following day, however, HK\$300 was deducted as bank costs by the remitting bank and the receiving bank deducted a further HK\$500.
 - (iv) On 7 October 2010, the sale and purchase agreement was signed and the firm paid to the vendor's solicitors the deposit in the sum of HK\$2.2 million being 10% of the purchase price.

(See the next page for a continuation of Question 1)

- (a) Explain and identify how each of the above transactions will be dealt with by the firm in order to comply with the Solicitors' Accounts Rules and identify the relevant entries in the respective books of account and the relevant ledgers of the firm that will be made.**

(12 marks)

- (2) Smith and Weston have decided to enter into partnership. However, they are concerned about certain obligations that may fall upon their shoulders with regard to ensuring that they comply with the Solicitors' Accounts Rules and require your assistance and advice.

(i) In particular, their attention was drawn to a concept known as "Client Account Reconciliation". They do not have any idea what this is about.

(ii) Weston had advised Smith that by good luck he has found a new client who is prepared to engage their firm. This is in respect of a potential Securities and Futures Commission investigation and possible breaches of various Securities Regulatory Rules and insider dealing. The client is prepared to pay HK\$20 million on account of costs. Smith was of the view that this would be of great assistance to the firm since such a payment would meet the cash flow difficulties that they are facing and would ensure that they had sufficient funds available to pay the first month's wages and to settle the decoration costs that had been incurred. Smith was of the view that he would be able to agree some further costs with the client.

- (b) Comment and advise Smith and Weston upon any issues arising out of the above. Ensure that your answers are limited to solicitors' accounting issues.**

(8 marks)

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

- (3) (i) Smith and Weston were of the view that if their practice was as successful as they hoped, large sums would be paid by their clients into their client account. They feel that they might be able to make use of the interest which will accrue to increase their respective drawings.
- (ii) Weston was also of the view that in order to promote their firm, they should consider opening a client account in the Cayman Islands. He considered that some of his clients, if asked for money on account would prefer to make payment to an offshore bank account.
- (c) **Comment and advise Smith and Weston upon any issues arising out of the above. Ensure that your answers are limited to solicitors' accounting issues.**

(5 marks)

End of Part A (Accounts)

2010 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)

Colin Ko (“**Ko**”) was trained as a trainee solicitor in Hong Kong at an international law firm serving mainly in the firm’s international trade department.

Six months ago and soon after his admission as a solicitor, Ko found employment as an assistant solicitor with a small local firm Messrs. Willard Wong & Company. The sole proprietor Willard Wong (“**Wong**”) was lazy and reliant on Ko. Whenever Wong found a client troublesome, he would ask Ko to take over, saying it would be good experience for Ko.

Three months ago, one of Wong’s important clients, a famous Hong Kong businessman KS Lin (“**Lin**”), came up to see Wong and asked Wong to handle his traffic case. After being involved in a car crash, Lin was arrested for careless driving by the police and he indicated to Wong that he might plead guilty to the offence if charged. However Lin was concerned that he might be imprisoned if charged also with drink driving as he was found by police to be highly intoxicated at the scene of the car crash.

Ko had no experience whatsoever in criminal law; worse, he did not know how to refuse Wong’s request. In order to pass the matter over to Ko, Wong praised Ko profusely in front of Lin, saying “Colin has years of experience in criminal litigation, a traffic case to him is just a piece of cake. No worries, he will get you off”. Ko felt very embarrassed but he did nothing to correct what Wong said.

After taking brief instructions from Lin, Ko asked Lin to sign a retainer letter, a form which his firm used for property transactions. When Lin asked how much handling the whole case would cost him, Ko replied “not more than \$20,000”, thinking Lin would plead guilty to careless driving at the first court date.

- (a) Comment on the conduct of Wong and Ko in accepting instructions to act for Lin. (8 marks)**

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

Ko accompanied Lin to the police station. The police asked Lin questions under caution. Lin did not know whether he should answer the questions or not and turned to Ko for help. Remembering what he learned in criminal law, Ko advised Lin to remain silent.

A few days later, a very angry Lin rang Ko saying the police had decided to charge him with drink driving and dangerous driving; Lin feared that if convicted, he might be imprisoned. Lin blamed Ko for wrongly advising him to remain silent. Lin thought that because he had been uncooperative, the police decided to charge him with both drink driving and dangerous driving.

Afraid that he would lose his job, Ko did not tell Wong about his telephone conversation with Lin, instead he went to consult his schoolmate James Ting (“**Ting**”) who had just started a career at the Bar doing mainly minor criminal cases. Ting had never done a traffic case himself and was eager to do one. Ting did not want Ko to look down on him, thinking that Ko would instruct him to defend the case if he gave Ko the impression that he was experienced in traffic cases.

Ting advised Ko to write a strong letter to the Department of Justice complaining against the police for deciding to charge Lin because Lin followed Ko’s advice not to give a confession statement. Ting drafted the letter and passed it to Ko together with his fee note of \$5,000. Ko sent the letter out to the Department of Justice without asking Lin. Later, he sent a copy of the letter to Lin for record.

On advice by the Department of Justice, and without giving Lin the reasons, the police informed Lin that all charges against him would be dropped.

(b) Comment on the conduct of Ko in handling Lin’s traffic case.

(5 marks)

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

Lin was happy with the result but he was angry with Ko whom he learned had no experience in criminal law. When Ko asked Lin to pay Ting's fee note, Lin retorted, "I have paid you the agreed fee of \$20,000, you can pay your own tuition fees". Ko returned the counsel's fee note to Ting with a hand written note "hard luck James, client refused to pay you, fee note returned, thanks for the generous help". Ting was outraged and decided to sue both Messrs. Willard Wong & Company and Ko personally for his fees in the District Court. He lodged a writ without giving Ko and his firm a warning letter.

(c) Comment on the conduct of Ko in dealing with Ting's fee; was it proper for Ting to sue Ko and Messrs. Willard Wong & Company for his fee?

(5 marks)

Meanwhile, Wong decided to open a branch office, and he asked Ko to be responsible for and supervise the operation of the branch office. The branch office employed 5 secretaries, two of whom were part time, and 15 clerks. Some of the clerks were paid on a commission basis meaning those clerks did not have a fixed salary; they would introduce cases to the firm and in return the firm would pay them 40 percent of the receipted bills. Ko printed on his new name cards the following words "specialist in traffic cases".

(d) Comment on the conduct of Wong and Ko regarding the branch office.

(7 marks)

Question 3 (25 marks)

- (1) Chan was employed by Second Bus Company as a driver. He had worked for them for more than 10 years. As he got older he realized that his eyesight was progressively deteriorating and he wore ever stronger spectacles when driving. He became very worried that his vision was no longer good enough to drive safely even when he wore his strongest spectacles, but he did not tell his employer because his family needed the income he brought home from his work and he feared losing his job.

At 11.15 a.m. on Saturday 9 May 2009 he was driving his bus in Mongkok when he struck a cyclist driving in the same direction as the bus. The cyclist was disabled by the accident.

Chan was subsequently prosecuted for careless driving.

Chan approached Simon, a solicitor who specializes in criminal work, to represent him at his trial which was listed in the District Court. Chan told Simon about his deteriorating eyesight and that he had not seen the cyclist before the accident. Simon said that this was a fact which might damage Chan's defence and that he would give it further thought. Simon then telephoned Benjamin, a friend of his who used to practise as a barrister, and asked him whether, in his opinion, he had a duty to draw the court's attention to his deteriorating eyesight, but Benjamin advised him that there was no duty to do so. Simon accordingly informed Chan that he did not need to mention his deteriorating eyesight to the court. Simon advised Chan to plead not guilty and Chan readily agreed. Simon also told Chan that the law required him to give evidence under oath in his defence.

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

Simon then placed an advertisement in a local newspaper asking for any witness who saw the accident and could confirm that the accident had been the fault of the cyclist to come and see him. Nobody responded to the advertisement.

The trial was listed before HH Judge Tough in September 2009. At the trial the prosecution called the disabled cyclist to testify and he was subsequently cross-examined by Simon. When the prosecution case closed Simon called Chan to testify. Chan testified that the cyclist had been at fault. When Chan was being cross-examined counsel for the prosecution asked him how good his eyesight was and Chan replied that it was fine when he wore spectacles.

After the close of the cross-examination Simon said that he had no questions by way of re-examination.

Chan was acquitted.

(a) Without considering the issue raised in (b) below, identify any acts of misconduct on the part of Simon.

(8 marks)

(b) Was Benjamin's advice that Simon had no duty to inform the court about Chan's poor eyesight correct? What, if anything, should Simon have done when Chan responded to prosecuting counsel's question about his eyesight, saying that it was fine when he wore spectacles?

(9 marks)

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

- (2) Notwithstanding Chan's acquittal at the criminal trial, the cyclist wished to pursue a civil action against Chan claiming damages for personal injuries.

A civil action was duly commenced against Chan in the District Court.

Chan, being pleased with Simon's performance in the criminal trial, asked Simon to represent him in the personal injuries action and Simon agreed. Chan said that he did not have much money and Simon told Chan that he estimated his fees to be about \$30,000 for the trial. Chan said that he could just afford up to \$30,000 but no more.

Shortly before the trial Simon, realising that he had already expended many hours in appearing at case management summonses and the pre-trial review, informed Chan that he would only continue with the case if he received \$100,000 as his fee. Chan said that he could not afford to pay \$100,000 and Simon withdrew.

Chan represented himself at the civil hearing and lost his case. Substantial damages were awarded against Chan with costs.

- (c) Identify any further acts of professional misconduct on the part of Simon.**

(8 marks)

Question 4 (25 marks)

Pat was the managing director of Quick Shipping Co. Ltd. (“**Quick**”) whose business comprised carrying cargo by sea to different countries. In September 2008 Quick was employed by Logistics Company of Hong Kong (“**Logistics**”) to ship a quantity of furniture from Hong Kong to Shanghai. Quick was insured by Marine Insurance Co. Ltd. (“**Marine**”) and the contract of insurance contained a subrogation clause which authorized Marine to conduct any litigation on behalf of Quick. There was also a clause in the contract of insurance which provided that Marine would not be liable for any loss sustained as a result of ‘gross negligence on the part of Quick or its employees’.

Whilst the furniture was en route to Shanghai rain water entered the hold and the furniture was severely damaged. Logistics commenced an action in the High Court of Hong Kong against Quick claiming damages for their loss. Quick notified Marine who instructed Li & Li to act for them.

Although Li & Li were presently acting for another client in a civil action against Quick for the recovery of an unpaid loan, Li & Li agreed to act for Marine to defend the action by Logistics. Li & Li filed a defence to Logistics’ claim stating that the damage had been caused by a typhoon which was an ‘act of God’ for which Quick was not responsible under the contract of carriage.

Li & Li’s handling solicitor was Clara. Clara interviewed Pat who told her, in confidence, that reportedly some of the crew members had been drinking heavily on the night of the typhoon and he believed that the crew had not properly closed and secured the doors to the hold. This had led to rain entering the hold and damaging the cargo of furniture. Pat specifically said that Clara should not communicate this information to Marine.

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

(a) Have Li & Li acted properly in agreeing to represent Marine in defending the action against Quick?

(5 marks)

(b) Assuming that Li & Li have been properly retained by Marine, what should Clara do? Is she duty bound to inform Marine of the information which has been given to her in confidence by Pat?

(12 marks)

(c) Explain the use of 'Chinese Walls'. Do you believe that they can ever be effective for a solicitors' firm who wish to oppose an application by a former or existing client to disqualify it from acting against that client on the ground of conflict of interest arising from possession of confidential information which might be detrimental to that client?

(8 marks)

End of Part B (Professional Conduct)