

**2011 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND  
PROFESSIONAL CONDUCT**

Thursday, 17 November 2011



# HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

## TEST PAPER

17 November 2011

### 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.

# **2011 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.

**2011 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 for the Chief Executive Officer (“CEO”) of a well-known company (“Company”). He has been charged with various offences including bribery and money-laundering. His trial is due to commence on 1 December 2011 in the District Court.
- (a) On 1 October 2011, you instructed Leading Counsel to attend at the District Court in respect of a pre-trial review. You paid to Leading Counsel on the same day the sum of HK\$70,000 in respect of his agreed fee.
- (b) On 3 October 2011, the Company delivered a cheque payable to your Firm in the sum of HK\$150,000 on account of costs.
- (c) On 7 October 2011, your Firm paid HK\$75,000 on account of costs to an investigator who was retained to assist in the defence of the CEO.
- (d) On 31 October 2011, you entered into an agreement with the CEO in respect of fees. He agreed to pay you a fee for all future work including representation at trial in the sum of US\$2 million. The agreed fee included all future disbursements.
- (e) On 3 November 2011, the CEO paid this sum.

**Explain, comment and identify how each of the above should be dealt with in order to comply with the Solicitors’ Accounts Rules.**

**(12 marks)**

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

- (2) Right and Wrong have decided to go into partnership. They have set up their firm in Mongkok. Both of them intend to travel extensively to promote their practice to deal with their clients' matters. For convenience, they had decided to appoint Wrong's girlfriend, Lulu, as a signatory to all of their firm's bank accounts. They were also of the view that in their absence, Lulu would be able to maintain the firm's books of account.

**Comment and advise Right and Wrong upon any issues arising out of the above.**

**(7 marks)**

- (3) Gee and Lee have now decided after many successful years in practice to retire and close their firm at the end of this year. They are concerned in respect of the following issues:-

- (a) They have been advised by their Senior Accounts Clerk that they have 40 entries in their clients' ledgers in respect of old clients with various sums of monies ranging from HK\$150 to HK\$5,000 still held in their client account. They cannot locate any of these clients. The total amounts to HK\$150,000.
- (b) There is still in their client account US\$888,000. This was received on 1 October 2011 by telegraphic transfer. The remitting bank was in New York. Despite making various enquiries, they still have no idea who remitted this sum to the Firm.

**Comment and advise Gee and Lee upon any issues arising out of the above.**

**(6 marks)**

**End of Part A (Accounts)**



## **2011 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)

On the first day of Willie Wai joining Messrs Tiffany Tam & Company (“Firm”), the sole proprietor Tiffany Tam introduced Charlie Cheng to Willie. Charlie had been ordered by Judge Yau of the District Court to file an Answer and a List of Earnings (the “Court Documents”) in an employees’ compensation case. Tiffany told Willie that Charlie had limited financial resources and the Firm would help Charlie in preparing the Court Documents. When Charlie asked Tiffany and Willie how much the Firm would charge him, emphasizing that he just wanted the Firm to prepare the Court Documents and he would do the filing and appearance in Court himself, Tiffany replied, “Don’t worry, Willie will prepare the documents for you first and we will talk about fees later”.

Willie took some brief instructions and prepared the Court Documents in English with many legal terms. The Court Documents were then signed by Charlie. There was no indication that the Firm was acting for Charlie in the Court Documents.

At the end of the Answer there was a Statement of Truth in which Charlie stated he believed the facts in the Answer were true and the opinion expressed in it was honestly held by him. Willie asked his office messenger Mason, who happened to be in the office, to interpret the Court Documents to Charlie; afterwards, Mason certified in the Answer that he had interpreted the contents of the Answer and the Statement of Truth to Charlie. In order not to emphasize the involvement of the Firm, Willie told Mason to put down his own residential address, instead of the Firm’s address, in the Interpretation Certificate of the Answer.

Thinking that this was just *pro bono* work, Willie did not open a file nor keep copies of the Court Documents. No steps were taken to identify Charlie or to verify Charlie’s instructions.

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



When Charlie appeared in person at the District Court hearing a month later, Judge Yau noticed that Charlie did not understand all the Court Documents. Charlie told Judge Yau the Court Documents were prepared by Willie.

**(a) Comment on the respective conduct of Tiffany and Willie in accepting instructions to prepare the Court Documents for Charlie.**

**(17 marks)**

The Firm received a letter from Judge Yau's clerk which set out the following two issues for Tiffany and Willie to answer:

First Issue: Was it appropriate for the Firm, Tiffany and Willie, to undertake limited representation in relation to court litigation to prepare the Court Documents which were usually prepared by legal practitioners and are usually signed by them?

**(b) Discuss this issue.**

**(4 marks)**

Second Issue: Was it appropriate for the Firm, Tiffany and Willie, to prepare the Court Documents in English including legal terms when they were aware that Charlie did not understand the language and the Court Documents were to be used by Charlie in Court proceedings in which Charlie would be acting in person.

**(c) Comment on this issue.**

**(4 marks)**

### Question 3 (25 marks)

In January 2011 Philip was elected chairman of his university's student union. He is passionate about politics and often publicly expresses strong views on matters of public interest. In June 2011 he was surprised to see an article in a Hong Kong Newspaper 'The Daily News', written by a Mr. Tin, criticizing him for being unpatriotic. The Daily News is owned by Bold Publishing Co. ("**Bold**").

Philip, on the advice of the student union, consulted Frank, a solicitor practising in Central. Frank said that it sounded as if Philip had been defamed, but regretfully told him that he was not willing to take on his case since it was 'politically sensitive' and might affect his firm's income. He suggested that Philip should seek the services of Steven who also was a practising solicitor. Philip then approached Steven who agreed to take on the case. Philip signed a written retainer with Steven which provided that Steven would not be liable in negligence for any advice or action taken on behalf of Philip. Steven advised Philip that there was no need for a barrister to be instructed since the action would be commenced in the District Court.

A defamation action was duly commenced against Mr. Tin who wrote the allegedly defamatory article. Pleadings and witness statements were exchanged. The gist of the defence case was that the words published were true. Three months before the trial was scheduled to begin, Steven received an anonymous letter enclosing a photograph of Philip wearing a T-shirt saying 'Free Tibet' standing on the steps of the Potala Palace in Lhasa. Steven showed this photograph to Philip who admitted that the photograph appeared to be of him, but said it must be a forgery since he had never visited Tibet or owned such a T-shirt. Steven was still concerned and showed the anonymous letter and photograph to a friend Mong, who worked in the Hong Kong Immigration Department, and asked for his advice. Mong subsequently checked the immigration and passport office records (to which he had access in his professional

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

work) which showed that Philip had visited Tibet on three occasions in the last five years. When Steven received this information, he felt that he was being deceived by his client and, without informing him of the information he had received from Mong, he told Philip that he would have to withdraw from representing him. Steven then sent Philip a bill of costs based upon the number of hours that he had worked on the case to date.

Philip was annoyed and approached another solicitor, Amanda, who agreed to accept a retainer in the matter. Amanda asked Steven for Philip's case file which Steven duly sent to Amanda. Amanda read the file, which contained the anonymous letter and photograph together with a file note of what Steven had been told by Mong. Amanda prepared for the hearing and made no application to amend the writ or pleadings.

The trial against Mr. Tin began and Philip was called as a witness by Amanda. Philip maintained that he had never been involved in unpatriotic activities. During cross-examination by the defence, he was asked whether he had ever been to Tibet and he responded that he had never been there. Amanda did not re-examine him. The existence of the anonymous letter and photograph was not mentioned to the court and it appeared that defence counsel was not aware of their existence.

The judge awarded substantial damages in favour of Philip.

Unfortunately the defendant Mr. Tin had already left Hong Kong leaving behind no assets and Philip was unable to secure execution of his judgment.

**Answer the following questions providing authority for your answers:**

- (a) **Has Frank committed any acts of professional misconduct? If so, identify them.**

**(2 marks)**

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

**(b) Has Steven committed any acts of professional misconduct? If so, identify them.**

**(12 marks)**

**(c) In cross-examination Philip informed the court that he had never been to Tibet. In view of the photograph (which is on file) and the file note of the information received from Mong that Philip had made several visits to Tibet and having heard Philip's response, what should Amanda do ethically?**

**(5 marks)**

**(d) If Amanda has negligently represented Philip in failing to join Bold as a co-defendant, will she be immune from suit at the hands of Philip?**

**(6 marks)**

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

- (a) Freda and Jimmy Chan had been married for 20 years. In February 2011 Freda decided to commence divorce proceedings against Jimmy on the grounds of irretrievable breakdown of the marriage. She retained Quick and Fast to represent her. After the first consultation Freda felt that the firm showed a lack of sympathy when dealing with her instructions and she asked her sister Felicity to look for another law firm to take over her case. Felicity telephoned another law firm Slow and Lazy and spoke to one of their senior solicitors Spike who was experienced in handling matrimonial disputes. Felicity told Spike that her sister was looking for a firm of solicitors to assist her in her divorce proceedings against her husband Jimmy Chan and briefly outlined the salient facts leading up to the breakdown of their marriage. Spike did not take any notes of the conversation but told Felicity that his charging rate was \$3,500 per hour. Felicity thanked him and said that she would pass on this information to her sister. Neither Felicity nor Freda communicated with Spike again.

Two months later Jimmy, having received a divorce petition from Freda's newly retained lawyers, has now come to Spike's firm and asked Spike whether he will represent him in his defence to the petition. Spike recalls the conversation with Felicity. **What should he do?**

**(13 marks)**

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

- (b) Gary was a young man whose ambition was to establish his own photography business. He approached Rich Bank (“the bank”) and asked for a loan of \$4 million to set up his business in Kowloon. The bank agreed to provide banking facilities provided the loan was properly secured. Gary asked his mother (his father had died some years before) to guarantee the loan by charging her flat (which was worth about \$4 million) to the bank. She agreed. His mother was invited to attend a meeting at the bank at which the bank’s solicitor Amy was present. In order to ensure that the transaction was effective, Amy had been instructed by the bank to act for the mother as well as the bank in the security arrangement. Amy met Gary and his mother and explained to them both the effect of the charge pointing out the most important clauses in the charge. She explained to the mother that, if Gary defaulted in repayment of the loan, the bank would enforce the charge. The mother said that she understood. She handed the mother a document headed ‘Warning Notice’ which the mother read. She then invited the mother to sign the facility letter and execute the charge in favour of the bank. The mother duly signed the letter and executed the charge. Three years later Gary’s business was in trouble and the bank sought to enforce the charge. Gary’s mother is very distressed at the thought of losing her flat. She has little money and tells you she would have nowhere to live.

**Identify any issues of professional misconduct arising on the part of Amy.**

**(12 marks)**

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