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# **2012 OVERSEAS LAWYERS QUALIFICATION EXAMINATION**

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

**Wednesday, 14 November 2012**



# HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

## TEST PAPER

14 November 2012

### 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.

## **2012 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.**

**2012 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 Mrs. Wong. You have conduct of the case. Mrs. Wong was involved in a traffic accident. She was badly hurt. Counsel was instructed to advise on the merits and evidence. High Court proceedings were instituted by your Firm to recover damages:-
- (a) On the 1<sup>st</sup> October, you received a medical report from Dr. Smith along with his fee note in the sum of HK\$25,000. The firm is not holding any money on account of costs. He requested payment forthwith.
  - (b) On the 5<sup>th</sup> October, you prepared an interim bill to Mrs. Wong. That interim bill was in respect of profit costs of HK\$50,000 and disbursements in the sum of HK\$30,000 including Dr. Smith's fee note.
  - (c) On the 7<sup>th</sup> October, Mrs. Wong delivered a cheque to your Firm in the sum of HK\$20,000 in part payment of the bill. On 12<sup>th</sup> October, your Firm was informed by your bank that the cheque was dishonoured.
  - (d) On the 21<sup>st</sup> October, your Firm received a fee note in the sum of HK\$50,000 from counsel in respect of an advice he had given on evidence and merits as to the case.
  - (e) On the 30<sup>th</sup> October, a mediation took place. The mediation was successful. A global sum of HK\$1.9 million was accepted by Mrs. Wong in full and final settlement of any claims she had arising out of the accident inclusive of costs and interest.

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

- (f) On the 10<sup>th</sup> November, your Firm received the sum of HK\$1.9 million from the insurers. At your request, the cheque was issued in your Firm's name.
- (g) On the 30<sup>th</sup> November, your Firm provided a final fee note and a statement of account to Mrs. Wong. The final fee note was in the sum of HK\$150,000 and there were further disbursements in the sum of HK\$50,000 which included the mediator's costs as well as other miscellaneous matters.

**Explain, comment and identify how each of the above matters should be dealt with by you and in particular, deal with the steps to be taken with regard to the accounting treatment as to reimbursement of any monies to Mrs. Wong.**

**(15 marks)**

- (2) Client cheques and cheque requisitions are common part of one's practice.

**Provide a short memorandum as to the proper steps that need to be taken with regard to the issuing of client cheques to ensure that there is compliance with the Solicitors' Accounts Rules.**

**(5 marks)**

- (3) Online banking is popular and indeed, solicitors' firms are being encouraged by banks to make use of online banking facilities.

**Provide a short memorandum which would assist in ensuring that your Firm complies with Solicitors' Accounts Rules in relation to any matters arising out of online banking.**

**(5 marks)**

**End of Part A (Accounts)**

## **2012 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)

Having completed his training, Alex Ko (“Alex”) joined another law firm Messrs. Beatrice Bow & Company (“Bow & Co.”) as an assistant solicitor. The sole proprietor, Beatrice Bow (“Beatrice”), agreed with Alex that he would be given a basic salary of HK\$4,000 a month and in addition would be paid as commission 70 percent of all receipted bills on cases introduced by him to Bow & Co. Beatrice made it clear to Alex that she would like him to bring in as much ‘business’ as possible. There would be minimal supervision from her as she would have no time to work with him on any matter.

- (a) **Comment on the terms of the employment and the professional conduct of Alex and Beatrice in agreeing to those terms.**

**(3 marks)**

A month ago, Alex received an invitation from his former principal, Calvin Can (“Calvin”), for a drink. During the meeting, Calvin told Alex that he was consulted on a big criminal case with several defendants, two of whom wanted to instruct Calvin’s firm. However, Calvin perceived that there might be a potential conflict between the two defendants since one was charged with manufacturing and the other with trafficking dangerous drugs. Calvin asked whether Alex would be interested in taking over one of the cases of which the defendant was a mainlander named Ding Dong (“Ding”). “This will be your big ticket case, Ding is very rich and he is willing to pay.” Calvin looked serious when he said this to Alex.

At the same time, Calvin wanted to explore whether Alex would be willing to give him personally, not to his firm, 50 percent on the fees paid by Ding to Bow & Co. Alex was delighted with the opportunity, thinking that he could still make a net 20 percent commission from the case, so gladly agreed. “It’s a deal. I will tell Ding’s people to contact you,” said Calvin.

- (b) **Comment on the above fee-sharing arrangement and the professional conduct issues involved.**

**(5 marks)**

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

Two days later, without any notice, a person appeared at Bow & Co. telling Alex that he was asked by Ding to see him. The man refused to identify himself but once inside Alex's room, he produced a paper bag, from which he poured onto Alex's desk several stacks of HK\$1,000 notes. "Here is a total of Hong Kong \$2 million in cash. My boss said you can speak to Calvin about other arrangements." Without saying another word the man left the office. Alex rang up Calvin who already knew what had happened. Calvin spoke in a whisper to Alex, "When can I have my HK\$1 million? You know, there will be more to come."

Impressed by what Calvin told him, Alex hurriedly counted a million dollar cash notes, took those to Calvin's office personally and handed the cash over to Calvin who immediately shuffled them into a desk drawer. Back in his office, Alex passed the remaining HK\$1 million in notes to Beatrice, who was delighted with what Alex had done. Both Alex and Beatrice did not discuss about opening a file for this case or any related matters; Beatrice just left those to Alex and Alex did nothing.

**(c) Comment on the conduct of Alex in receiving the payment of HK\$2 million and the conduct of Alex and Calvin in dealing with the said sum, and the professional conduct issues involved.**

**(6 marks)**

Ding passed a message to Alex that he would like to see him at the Sing Aloud Hotel in Shenzhen. Alex went there and was directed to go up to the presidential suite on the top floor of the hotel. Once inside, he saw a large man wearing sunglasses sitting on a big sofa, flanked by five or six bodyguards. The man was Ding.

Ding was courteous and polite to Alex and said he didn't realize Alex could be so young. Ding explained to Alex that in fact he had been granted bail in this criminal case of dangerous drug manufacturing which was due to be heard in a month's time in the Wanchai District Court. Alex said he knew that and he already had all the prosecution papers. Alex wanted to appear in the trial as he was confident of his own advocacy skills.

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



Ding said that was quite beside the point. Ding wanted Alex to apply to the Court to postpone the trial date. Ding pointed at his left foot and said it was twisted when he played golf a week ago. “You can’t expect me to hop across the Shenzhen checkpoint like Liu Xiang.” Alex said he understood the message perfectly. Then one of Ding’s bodyguards gave Alex a number of medical reports which suggested Ding was suffering from several serious health conditions, including a terminal lung cancer and a malignant brain tumour.

Back in Hong Kong, Alex made an application to the District Court to postpone the trial of Ding indefinitely due to his bad health. At the hearing, he produced the medical reports to the Court and informed the Judge that he had personally met Ding, who was evidently inconvenienced by his medical conditions. The Judge asked Alex whether Ding looked really that ill to him. Alex replied, “Ding said to me he couldn’t walk past the Shenzhen checkpoint by himself.” With great reluctance but relying on Alex’s submissions and the medical reports he produced, the Judge ordered a separate trial of Ding on dates to be fixed.

Ding was very happy with the result and within days, Alex received another HK\$2 million in cash from Ding. As Calvin did not ring him to ask for his fifty per cent, Alex kept the whole sum himself, without handing any of it to Bow & Co.

**(d) Comment on the conduct of Alex in his dealings with Ding and the Court and in his handling of the second sum of HK\$2 million, and the professional conduct issues involved.**

**(11 marks)**

### **Question 3 (25 marks)**

Wilfred Wong (“Wilfred”) was employed by Greenspan Shipping Co. Ltd. (“Greenspan”) to drive a lorry carrying containers from the container port at Kwai Chung to their destinations. On 4 February 2012 he was told to collect a container from the port and transport it to a destination in Yuen Long. The container was duly loaded onto his lorry and he began his journey. Whilst turning a corner the lorry overturned and the container fell from the lorry hitting a cyclist whom Wilfred was overtaking. The cyclist was unfortunately killed. The police investigated the accident and concluded that Wilfred had been driving too fast. Wilfred was charged with causing death by dangerous driving.

He sought advice from his friend Stella, a solicitor whose practice over the last 10 years had largely involved conveyancing work. She agreed to represent him. Without consulting Wilfred, Stella asked her clerk to approach Ben, a barrister who had completed his pupillage just four weeks earlier. Having agreed a fee with Stella’s clerk, Ben agreed to represent Wilfred at his trial in the District Court.

Stella then told Wilfred that he would have to pay at least HK\$100,000 for her and Ben’s fees but Wilfred said that he did not have ‘that kind of money’. Since Wilfred was her friend, Stella informed Wilfred two weeks later that she would charge Wilfred HK\$80,000 if the case was successful but only HK\$40,000 if the case was lost. The fee was not confirmed in writing. Wilfred reluctantly agreed, saying that he would try to borrow the money from his father. Two weeks later Stella met Wilfred and told him that she was confident that he would be acquitted.

**(a) Identify any acts of professional misconduct on the part of Stella.**

**(17 marks)**

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

The trial was set down for early September 2012. Two weeks before the trial was due to begin Ben was taken ill and Stella decided to represent Wilfred on her own, relying on the notes prepared by Ben.

Stella learned that there was only one prosecution witness, Stan, who, according to the witness statement which had been supplied to Stella, claimed to have seen the accident and had stated that Wilfred's lorry had been 'going rather fast' at the time of the accident. Stella went to see Stan at his home and, having identified herself, asked him whether he was sure of his estimate of the lorry's speed. She stressed to him that estimating the speed of moving vehicles was very difficult and his evidence might lead to her client facing a term of imprisonment. Indeed, if convicted, he might no longer be able to support his children at school. She finally said that she would pay him HK\$10,000 if he would testify that he could not recall the speed of the lorry at the time of the accident. Stan angrily told her to leave without answering her questions.

Stella met Wilfred two days before the trial was scheduled to begin and told him that she had considered his case and that he had no choice but to plead guilty since that would lead to a substantial reduction in any likely penalty. Wilfred reluctantly agreed and duly pleaded guilty at the trial. He was sentenced to two years' imprisonment.

**(b) Identify any further acts of professional misconduct on the part of Stella.**

**(8 marks)**

#### Question 4 (25 marks)

- (a) Chan and Wong were good friends who lived in adjacent flats in Mongkok. In June 2012 Chan and Wong were both arrested and charged with trafficking in dangerous drugs. On the advice of their friend Yang, they jointly retained a well-known solicitor Sam, who was a criminal lawyer of many years' experience. Sam visited Chan and Wong in the police cells and interviewed them separately. Their stories were very similar. Chan told Sam that they had been asked by a friend, whom he refused to name, to carry two suitcases from a flat in North Point to a house in the New Territories. Chan had been promised HK\$10,000 for delivering the suitcases safely. Chan had asked his friend Wong to assist him and said to Wong that he would pay him \$1,000 for his help. Indeed, Chan said that before the pair had undertaken the task, he had told Wong that the suitcases contained foreign currency which had been brought across the border by a friend of his. Wong, when interviewed separately, confirmed this. They both said that, when they received the suitcases, both suitcases had been locked and they had been given no keys. Each said that he believed the suitcases contained money. Shortly after leaving the North Point flat with the suitcases, they had been stopped by police and taken to the police station. There, the suitcases had been forcibly opened and had been found to contain a significant quantity of dangerous drugs. They had both protested their innocence but had been charged with trafficking. Sam agreed to represent them in their defence and they both agreed to joint representation.

Chan told Sam in the absence of Wong that he had been paid on several previous occasions to carry suitcases to the same address in the New Territories but said it was Wong's first involvement. Chan also told Sam in an interview in the absence of Wong that he had three previous convictions for drug offences. Chan and Wong each told Sam that they wished to testify in their defence.

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

One week before the trial was due to begin in the District Court, Chan informed Sam that he had decided to retain a different lawyer who had been recommended to him. Sam then met Wong who said that he wanted Sam to continue as his advocate in the trial.

**(i) Explain the professional obligations of Sam in deciding whether to continue to represent Wong in these circumstances.**

**(7 marks)**

**(ii) What would be the likely approach of the court to Sam continuing to act for Wong?**

**(4 marks)**

**(iii) Would your answer differ if Sam handed over the defence to a fellow solicitor in his firm who was suitably experienced in criminal defence work?**

**(4 marks)**

**(b)** Vince retained the firm of Hi and Lo, Solicitors (“Hi and Lo”), to act for him in the sale of his flat in Sai Kung. The solicitor responsible was Fung. Vince told Fung that the flat was 10 years old and that he had purchased it 5 years previously. Vince said that he believed a fair price would be HK\$7 million. The flat was duly advertised in an estate agent’s office. One week later Vince was approached by Philip, who was employed as a paralegal in Hi and Lo, who told Vince that he wanted to live in Sai Kung and was interested in purchasing the flat. Philip visited the flat with Vince and agreed to purchase it. Fung acted for both Vince and Philip in the sale and purchase and the flat was assigned to Philip.

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

**(i) Identify any issues of professional misconduct on the part of Fung.**

**(6 marks)**

**(ii) If challenged, would the transaction be upheld by the court?**

**(4 marks)**

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