

**2013 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Monday, 18 November 2013



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

18 November 2013

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.

2013 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.

2013 Overseas Lawyers Qualification Examination
Head IV: Accounts and Professional Conduct
Part A (Accounts)

Question 1 (25 marks)

- A. (i) What do you understand by the term “Bills Issued”? What should such bills contain?
- (ii) Can one issue an interim bill and explain why and under what circumstances?
- (iii) What is meant by an agreed fee? How should agreed fees be treated in the books of account of a firm?
- (iv) Explain the meaning of and describe what a bills delivered book is.
- (v) Why is a firm required to maintain such a book?
- (7 marks)
- B. (i) Why does a firm need to have a system to reconcile the clients’ cash book with the relevant bank statements?
- (ii) What systems should be put in place to implement such reconciliation?
- (iii) How should a firm deal with unpresented cheques?
- (7 marks)

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

- C. The Firm has received a sum of HK\$100,000,000 from a client. All “Know Your Client” obligations have been carried out correctly and the source of funds has been confirmed.

This sum is intended to be used to purchase a property in Yuen Long. The client has not identified the specific property. However, it is anticipated that instructions will be given in the next 3 to 6 months. **How is this sum to be treated in the Firm’s books of account?**

(6 marks)

- D. The Firm wishes to open a clients account and office account in Shanghai with the Bank of China. **Are there any issues arising out of such a course of action? Ensure your answers are limited to Solicitors’ Accounting issues.**

(5 marks)

End of Part A (Accounts)

2013 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)

After passing her OLQE and obtaining her practising certificate as a Hong Kong solicitor on 2 January 2012, Alice Au-yeung (“Alice”) was employed as a solicitor in the commercial department of the international law firm, Bruno & Brunswick (“firm”). Prior to that Alice was a registered foreign lawyer with the firm for over five years.

On 1 August 2012, Alice received a letter from the Law Society’s Conduct Section (“Law Society”). Another letter with similar content had been forwarded by the Law Society to the firm’s managing partner, Charles Cruden (“Charles”) (collectively, “Investigation Letters”). The Law Society stated in the Investigation Letters that it had received a complaint from one David Dao (“David”) about Alice’s competence and claimed that Alice had given him wrong advice in dealing with a notice served on him by the Securities and Futures Commission (“SFC”) in pursuance of Sections 182 and 183 of the Securities and Futures Ordinance (Cap. 571) (“Notice”). David said he had since been advised by a Senior Counsel that in law it was mandatory for him to answer the Notice. SFC had commenced a prosecution against David in the District Court for failing to comply with the Notice.

David and his wife were valuable clients to the firm. David was also the chairman of a corporation listed on The Stock Exchange of Hong Kong Limited. Charles had previously asked Alice to handle David’s personal commercial matters.

Charles asked Alice to explain the events mentioned in the Investigation Letters. Alice recounted that in the evening of 3 January 2012, she accepted David’s invitation to a candle light dinner for two at The Elegance, a famous French restaurant. During the long dinner which did not finish until 1:00 a.m. in the morning, David said he recently received a “stupid” letter from the SFC which said he must answer some questions about a cross-border transaction several years ago. David, being a returnee from South Africa, felt astonished that Hong Kong could be so “backward” and the law did not protect his right of silence.

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

Alice told Charles that she was very drunk at the time and she could not remember what she had said in response. She might have concurred with David's view and said something to the effect that only a fool would answer such intrusive questions.

Next day i.e. 4 January 2012, Alice received a small parcel from David. In it there was a gift wrapped lady's Rolex watch and a note in David's handwriting ("Note"):

"Dear Alice,

You looked absolutely gorgeous last night. Thank you for all your excellent advice.

Love

Dave "

Charles asked the firm's litigation partner, Elvis Eagle ("Elvis") to join him and to advise on how the firm and Alice should respond to the Investigation Letters. Elvis confirmed with Alice that no file had been opened for David on the subject, there was no follow-up work. Elvis was quite content that neither the firm nor Alice had acted professionally for David but he was disturbed by the Note and that the circumstances might still constitute an informal retainer.

Elvis was concerned that if David should lodge a civil claim against the firm for damages, their denial of having acted for him might be a ground for the insurers to decline indemnity. Charles decided that both the firm and Alice should take a robust stance and reply to the Law Society by simply stating that the firm had no record of acting for David regarding the SFC investigation.

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

On 1 September 2012, the Law Society wrote back, this time only to Alice. The letter asked Alice whether she had acted for David in connection with the Notice (“Request”). Alice took advice from Charles and Elvis, and both suggested that she should write back to the Law Society stating that she was entitled not to answer the Request as the Request had infringed the principle against self-incrimination. Alice followed the advice. There were another two rounds of correspondence when Alice insisted on not replying to the Request based on the advice.

A. Discuss the professional conduct of:

- (i) Alice; and (6 marks)**
- (ii) Charles. (3 marks)**

B. Discuss the stance taken by Alice in respect of the Request, in particular the assertion on the principle against self-incrimination in not answering the Request.

(5 marks)

C. Discuss whether Alice should return the Rolex watch to David.

(3 marks)

On 2 January 2013, the Law Society commenced disciplinary proceedings against Alice for non-compliance of principle 6.04 of the Hong Kong Solicitors’ Guide to Professional Conduct in that she failed to deal with the Request. The Disciplinary Tribunal was constituted on 1 March 2013 and the formal hearing commenced on 1 July 2013. Elvis represented Alice at the hearing. Before the hearing, Elvis reminded Alice not to make any reference to the Note.

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

After the prosecutor completed his opening address, the chairman of the Disciplinary Tribunal turned to Elvis and said, "Mr. Eagle, this self-incrimination defence is nonsense. I am going to adjourn the hearing now; tomorrow, you will tell me whether Ms. Alice Au-yeung has acted for David Dao in connection with the Notice? Take this as the Tribunal's direction to you." Elvis was very shocked and he asked Alice to give him her instruction on how to reply to the Tribunal.

D. Discuss the professional conduct of Elvis. (4 marks)

E. Discuss whether or not Alice should accede to the direction of the Disciplinary Tribunal.

(4 marks)

Question 3 (25 marks)

Charles Yam (“**Charles**”), who is employed as a tram driver, enjoyed spending his free evenings in a bar in Wanchai called “The Grotto”. One evening when he was sitting quietly in the bar talking to a friend of his called Gloria, a man (subsequently identified as Fred) came up to him and accused him of trying to ‘get friendly’ with his girlfriend Gloria. Charles, who had consumed several beers, stood up and told Fred to ‘push off’. A fight ensued in which both Charles and Fred sustained injuries. The police soon arrived and arrested both men. Charles was charged with disorderly conduct and assault.

On the recommendation of a close friend, Adrian, Charles sought advice from Wing & Wong, Solicitors, who had represented Adrian when he had recently purchased a flat in Sai Wan Ho. In fact the firm specialised in conveyancing and commercial matters. Wing, one of the partners in the firm, took instructions from Charles, who told Wing that he had already consulted a firm of solicitors in Central but their quoted fees were too high and he was looking for a cheaper firm.

Wing said to Charles ‘the legal costs will not exceed HK\$40,000’ and Charles said that he would like Wing to take over the case. Wing accordingly agreed to represent Charles at his trial. Charles claimed that he had only been acting in self-defence. There were no subsequent written communications between Wing and Charles.

Wing then asked his clerk, Tam, to instruct Barry, a barrister of two years’ post-admission experience, to represent Charles at his trial. Tam did so and agreed counsel’s fee at HK\$30,000.

- A. Identify any acts of professional misconduct that may have been committed by Wing.**

(15 marks)

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

Four days before the date of the trial, Barry telephoned Wing to say that he had been instructed as junior counsel in an important constitutional case and would be unavailable to represent Charles at the trial. In the light of the short time available, Wing decided to represent Charles himself.

Wing had received copies of the statements of all prosecution witnesses. Two prosecution witnesses, who had been in The Grotto at the time of the fight, clearly said that Charles had been the aggressor. Wing decided not to show these statements to Charles in case they upset him.

Wing also noticed that one of these prosecution witnesses worked as a translator in his firm.

Two days before the trial Wing informed Charles that it was essential that Charles did not testify at the trial since his credibility might be shaken in cross-examination. Charles reluctantly agreed.

B. Identify any further acts of professional misconduct that may have been committed by Wing.

(8 marks)

At the end of the trial Charles was convicted on both charges. He received a fee note from Wing for HK\$80,000.

C. Is Charles bound to pay Wing & Wong this fee?

(2 marks)

Question 4 (25 marks)

- A. Patrick Co. Ltd. (“**Patrick**”) commenced an action against Douglas Co. Ltd. (“**Douglas**”) claiming damages for breach of a commercial agreement entered into between the two companies to establish a high-class bread and cake shop in Hong Kong. Patrick was represented by P Solicitors and Douglas by D Solicitors. The writ was duly served and both parties exchanged pleadings. The parties then prepared for automatic discovery, but a trainee solicitor employed by D Solicitors, acting without supervision, included in the list of documents which could be inspected by P Solicitors correspondence (“**the correspondence**”) between Douglas and D Solicitors which identified, inter alia, the perceived weaknesses in Douglas’ case and suggested tactics for settling the dispute.

The correspondence also revealed details as to a possible sanctioned offer by D Solicitors. P Solicitors duly inspected the documents disclosed by D Solicitors in the office of D Solicitors and made photocopies which they took away. It was only when these documents were subsequently inspected in his office by the solicitor in charge of Patrick’s case that he realized that the correspondence had been disclosed in error.

- (i) **As a matter of professional conduct, what action should P Solicitors take in respect of the correspondence?**

(5 marks)

- (ii) **As a matter of law, what action should D Solicitors prudently take to recover the correspondence? What is the likely outcome of such action by D Solicitors?**

(5 marks)

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

- B. A large Hong Kong company, Global Assets Investments Ltd. (“**Global Assets**”), was suspected of being involved in improper conduct and was subject to an investigation by the Securities and Futures Commission (“**the Commission**”). In furtherance of its statutory powers, the Commission required Global Assets to produce all relevant records to the Commission. Global Assets did so and the documents disclosed included privileged communications between Global Assets and its solicitors, privilege thereby being waived by Global Assets. The police have now demanded that the Commission hands over to them all the documents received from Global Assets including the privileged documents. Global Assets, through their solicitors, demanded that the Commission does not hand over the privileged documents to the police.

Identify the issues arising from the above facts and advise Global Assets as to whether an application for an injunction to restrain the Commission from handing over the privileged documents to the police is likely to succeed.

(5 marks)

- C. The marriage between Prudence and Fred has been an unhappy one for several years and Prudence eventually decided to seek a divorce. Prudence retained a solicitor, Lucy, who was a partner in High & Lo, a large firm of solicitors, to act for her in her divorce application. Lucy accordingly filed and served a divorce petition against Fred. Fred retained solicitor Fung of LPC Lawyers to act for him and he drafted the reply. Shortly afterwards Fung left LPC Lawyers to join Lucy’s firm High & Lo and Fred was obliged to instruct a fresh solicitor Joseph to act for him. Joseph is very concerned about Fung joining Lucy’s firm High & Lo, although he has been informed that Fung has been assigned by High & Lo to work solely on preparing documentation for a large China construction project in the firm’s Shanghai office.

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

Advise Fred and Joseph whether they are likely to be able to prevent High & Lo continuing to represent Prudence in the divorce proceedings.

(10 marks)

End of Part B (Professional Conduct)