

**2014 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD IV: ACCOUNTS AND
PROFESSIONAL CONDUCT**

Tuesday, 11 November 2014



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

11 November 2014

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.

2014 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.

2014 Overseas Lawyers Qualification Examination
Head IV: Accounts and Professional Conduct
Part A (Accounts)

Question 1 (25 marks)

A. X has instructed your Firm to represent him at a trial in the Court of First Instance. X has been accused of dealing with the proceeds of a crime amounting to over HK\$700 million.

(i) On 1 April 2014, F, X's wife, paid you a sum of RMB3,000,000 as costs on account.

(2 marks)

(ii) On 2 April 2014, your Firm paid Senior Counsel HK\$1,000,000 for attending a pre-trial review. Trial dates were fixed for 120 days commencing on 1 May 2015.

(3 marks)

(iii) On 1 June 2014, your Firm delivered a bill of costs to X and copied this bill to his wife F. The bill of costs came to HK\$4,000,000 (profit costs) and had included Senior Counsel's fee note for the pre-trial review held on 1 April 2014.

(2 marks)

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

(iv) On 1 August 2014, X decided to engage a famous Queen's Counsel from London. Ms. QC was therefore retained by your Firm. She was prepared to act only on an agreed fee basis. The agreed fee was HK\$50,000,000. This would include all expenses, first-class travel to and accommodation in Hong Kong. Ms. QC's Clerk required the fee note to be paid by no later than 1 November 2014. On 15 September 2014, Z, X's mistress, paid HK\$20,000,000 to your Firm on account of Ms. QC's costs. On 10 October 2014, F paid a further HK\$30,000,000 on account of the costs of Ms. QC and those of your Firm.

(3 marks)

(v) On 12 October 2014, your Firm paid HK\$1,000,000 to a private investigator on account of his costs.

(1 mark)

(vi) On 20 October 2014, you agreed with X that you would continue to charge him on an hourly basis but would cap all of your Firm's profit costs for preparation for trial at HK\$15,000,000. However, it was agreed that in respect of the 120-day trial, your Firm would charge HK\$100,000 for each court day. On 24 October 2014, X told you that monies would arrive in the client account of your Firm to settle your fees. On 30 October 2014, a sum of HK\$27,000,000 was received from DYZ Inc., a company registered in the British Virgin Islands.

(3 marks)

(vii) On 1 November 2014, a cheque for HK\$3,000,000 on account of Junior Counsel's fees was received from F. On 3 November 2014, you were informed by your accounts department that this cheque had been returned to drawer.

(2 marks)

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

(viii) On 5 November 2014, F asked you to re-present the same cheque for HK\$3,000,000. This was done. However, two days later, the bank advised you again that the cheque had been dishonoured. F then delivered a cashier order to your office in the sum of HK\$2,500,000 on 10 November 2014.

(2 marks)

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

[18 marks in total]

B. Flash and Bright have established their new law firm in Wanchai. They have a reputation for representing well-known film starlets. Flash and Bright travel extensively with these starlets in order to protect their interests.

Flash has decided that his girlfriend, Gigi, should be engaged as the Firm's bookkeeper.

Bright, however, has suggested that Lola, his wife, can be a signatory of the Firm's bank accounts.

Flash and Bright agreed that these were very good suggestions.

Comment and advise Flash and Bright upon any solicitors' accounting issues arising out of the above.

(7 marks)

End of Part A (Accounts)

2014 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. YL is an associate solicitor in the Personal Injuries department of Bogart & Co., Solicitors. He was instructed by Madam Chan to handle the fatal traffic accident case of her son, Denio. YL worked out the compensation figures based on the documents about Denio's income and expenditure supplied by Madam Chan and quickly entered into a settlement with the motor insurer of the vehicle that caused Denio's death. However, YL discovered, after the settlement, that he had overlooked a letter from Denio's employer which stated that Denio was supposed to be promoted a month after his accident with a 50% pay rise. YL consulted his supervising partner KC. KC quickly took the letter from YL and shredded it. **Identify the issues of professional conduct in the above scenario and advise YL on what he should or should not do with regard to those issues.**

(12 marks)

- B. 10 years later, YL has become the in-house counsel of a listed company Kornwall Limited ("Kornwall"). One day, his boss Billy, the managing director of Kornwall, instructed him to prepare an announcement and a notice of EGM concerning a proposed substantial acquisition by Kornwall of assets owned by a BVI company NL Limited. Billy told YL that NL Limited was an independent third party. However, YL found from the documents that NL Limited was owned by Nancy Lu, a debuting artiste who was recently reported to have spent a week with Billy in Phuket. **Identify the issues of professional conduct in the above scenario and advise YL on what he should or should not do with regard to those issues.**

(13 marks)

Question 3 (25 marks)

Adam and Frank were employed by Bergers Ltd. (“**the company**”), a fast food chain, to take charge of the company’s accounts section. Following a police investigation Adam and Frank were jointly charged in March 2014 with several breaches of the Prevention of Bribery Ordinance (Cap 201), the charges being related to the issue of false receipts by Adam and Frank for goods which it was alleged, had never been delivered to the company.

Adam and Frank were released on bail and came to the offices of Megarry and Treitel, a well known firm of solicitors specializing in criminal defence and matrimonial work to seek legal representation.

They were interviewed together by Ms. Sin, a partner of the firm. Adam and Frank fully explained the facts to Ms. Sin and claimed that they were innocent and that the goods to which the allegedly false invoices related had, in fact, been delivered to the company and must have been stolen by other employees.

Ms. Sin agreed to represent them at their trial which was fixed to be heard in the District Court in October 2014.

She subsequently interviewed Adam and Frank separately. Adam asked what the firm’s charges would be as he did not have much money and Ms. Sin said that the firm would charge him \$100,000 if he was acquitted and nothing if he was found guilty. Adam readily agreed.

When interviewing Frank, Ms. Sin informed him that the firm would charge Frank an estimated fee of \$50,000 regardless of the outcome of the trial. Frank readily agreed as the fee appeared to be extremely reasonable.

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

There was no written retainer with either Adam or Frank.

The main prosecution witness was Mr. Ham who was the manager of the branch of the company where the alleged offences had taken place. Two weeks before the trial Ms. Sin by chance met Mr. Ham whom she knew because she had previously represented him in his divorce. They went for a drink in a bar in Wanchai and Ms. Sin explained that she was representing Adam and Frank. Mr. Ham said it was a sad business and that he knew Adam's family well as their children attended the same school. He said that he would present the facts as sympathetically as he could as he did not want the pair to go to prison.

One week before the trial Adam informed Ms. Sin that he had found another lawyer to represent him at the trial and that he no longer required her firm's services.

Ms. Sin continued to represent Frank. Frank told Ms. Sin in confidence that he had, in fact, issued false receipts and Ms. Sin told him that, since the burden rested upon the prosecution to prove its case beyond reasonable doubt, there was no need for Frank to plead guilty. Frank informed Ms. Sin that he intended to testify in his defence.

The trial commenced. After the prosecution had closed its case, both Adam and Frank testified in their defence. Both maintained that the receipts for the goods were not false and that the goods had, indeed, been properly delivered to and received by the company.

In her closing speech Ms. Sin told the court that, in her opinion, her client Frank was a good man who could not possibly commit such a crime. She further said that the goods after delivery had probably been stolen by another employee, Simon, who had taken no role in the trial but had been the person in the company responsible for receiving deliveries.

Both Adam and Frank were found guilty.

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

Answer the following question:

Identify any acts of professional misconduct on the part of Ms. Sin.

(25 marks)

Question 4 (25 marks)

A. You are a solicitor in private practice. You have been approached to act in the two following matters.

- (i) You are asked by your daughter to represent her in divorce proceedings in which the custody of her son aged 10 will be called into dispute.
- (ii) You are asked by John, who is the managing director of Commercial Enterprises Ltd. to act for the company in an anticipated litigation. The litigation concerns a lease entered into by the company as landlord which was prepared by your firm and whose validity is now challenged.

Explain whether you would accept each of the retainers and, if not, why not.

(14 marks)

B. Bill, Peter and Frank agreed to form a partnership to offer consultancy services to clients. The three met with their solicitor, Jenny who advised them as to the contents of the partnership agreement and as to the sharing of expenses and profits. The three clients agreed that the expenses and profits would be shared among them equally. Jenny duly recorded in writing what had been agreed at the meeting.

Before the partnership agreement was signed, Bill and Peter met with Jenny in her office and told her that Frank was dropping out and that the partnership agreement would be entered into only by Bill and Peter. The agreement was duly signed.

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

On discovering what had happened, Frank became furious, asserting that the formation of the partnership was his idea. He has commenced an action against Bill and Peter and has subpoenaed Jenny to testify as to what had been agreed in the first meeting when the three clients sought her advice. Frank also seeks discovery of the note of the meeting (“**note**”) taken by Jenny. Bill and Peter object to Jenny testifying and disclosing the note.

Jenny seeks your advice as to whether what was said in the meeting and the note she took is confidential and subject to legal professional privilege.

Advise Jenny whether what was said in the first meeting and the note she took are confidential and subject to legal professional privilege and whether she should give the oral testimony sought as to what had been agreed and disclose her note of the first meeting.

(7 marks)

- C. Legal professional privilege attaches to communications between a solicitor and his client. **Where the client is a large company such as a bank, will all the officers and employees of the company constitute ‘the client’ so that their communications with the solicitor are protected by legal professional privilege?**

(4 marks)

End of Part B (Professional Conduct)