

THE LAW SOCIETY OF HONG KONG
OVERSEAS LAWYERS QUALIFICATION EXAMINATION
2011 SUPPLEMENTARY INFORMATION PACKAGE
HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

Contents

- 1. Standards, Syllabus and Materials**
- 2. Examiners' Comments on the 2008, 2009 and 2010 Examinations**
- 3. Past Examination Papers (2008 – 2010)**

Important: The test paper for Head IV Accounts and Professional Conduct:

- 1. is open book. Candidates may bring in and refer to any book, document or other written material**
- 2. has a duration of 3½ hours**
- 3. has no specific reading time allocated**
- 4. IS DIVIDED INTO TWO PARTS:
PART A - ACCOUNTS;
PART B – PROFESSIONAL CONDUCT
A PASS IN BOTH PARTS MUST BE ACHIEVED IN ORDER TO
PASS THE TEST PAPER OVERALL**
- 5. has ONE question in Part A and THREE questions in Part B.
Each question in both Parts must be answered.**

1. Standards, Syllabus and Materials

Overseas Lawyers Qualification Examination

HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

Standards, Syllabus and Materials

STANDARDS

Candidates will be expected:-

- (i) to be familiar with the law and rules of professional conduct affecting and governing practice as a solicitor in Hong Kong;
- (ii) to be familiar with the Solicitors' Accounts Rules, in particular the principles relating to solicitors' clients accounts; and,
- (iii) to be able to identify and analyse professional conduct issues (including issues in relation to solicitors' accounts) which may arise in practice, to advise with respect to such issues and to take appropriate decisions on such issues in relation to his and his firm's practice. He will be expected to give comprehensive reasons for his advice and decisions; and
- (iv) to display the knowledge and experience of the above matters.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

1. **Solicitors in Private Practice**
 - Practising Certificates
 - Insurance
 - Solicitors' Practice Rules
 - Supervision of a solicitor's office
 - Fee sharing
 - Restrictions on unqualified persons

2. **Rule 2 of the Solicitors' Practice Rules**
3. **Obtaining Instructions**
 - **Solicitors' Practice Promotion**
 - (a) The Code
 - (b) Unacceptable Practice Promotion
4. **Money Laundering**
5. **Fees**
 - Duty to inform client
 - Estimates and agreed fees
 - Interim bills
 - Bills of costs and disbursements
 - Taxation of costs
 - Suing for fees
 - Overcharging and unreasonable fee arrangements
 - Payments on account of costs and disbursements
 - Contingency fee arrangements
6. **Retainer**
 - Accepting instructions
 - Grounds for refusing to act
 - Duties owed during retainer
 - Termination of retainer
7. **Competence and Quality of Service**
 - Duty to act competently
 - Claims against a solicitor
 - Law Society enquiries and investigations
8. **The Fiduciary Duty**
 - Conflicts of interest
 - Secret profits and gifts from clients

9. **Confidentiality**
 - The duty of confidentiality
 - The duty of disclosure
 - Joint retainers
 - Moving to new employment

10. **Conflicts of Interest**
 - Refusal to accept instructions
 - Conflict arising during retainer
 - Conveyancing transactions - Rule 5C, Solicitors' Practice Rules

11. **The Litigation Solicitor**
 - The solicitor as advocate in civil and criminal cases
 - Duties to the Court
 - Witnesses
 - Settlement of proceedings
 - Legal Aid
 - A solicitor's duties in civil and criminal matters before action commenced or before charges laid
 - Rule 5D letters in criminal cases
 - Contingency fees in criminal and civil matters after commencement of action

12. **Relations with other Solicitors**
 - Contact with the other solicitor's client
 - Reporting misconduct

13. **Relations with the Bar**
 - Instructing Counsel
 - Court attendances
 - Barristers' fees

14. **Relations with Third Parties**

- Duty of fair dealing
- Dealing with unrepresented parties
- Taking oaths, affirmations and declarations

15. **Professional Undertakings**

- Giving and receiving undertakings
- Breach of undertakings
- Undertakings as to costs
- Undertakings in conveyancing transactions

16. **Discipline**

- Powers and role of the Law Society of Hong Kong
- Solicitors' Disciplinary Tribunal

17. **Solicitors' Accounts**

- Client account (management and use of funds therein)
- Firm account (management and use of funds therein)
- Solicitors accounts generally (including relevant Rules and Practice)
- Clients instructions as to funds and duties in respect thereof
- Handling of mixed moneys

MATERIALS

- The Hong Kong Solicitors Guide to Professional Conduct
- The Legal Practitioners Ordinance and all subsidiary legislation
- The Solicitors Accounts Rules
- Manual on Solicitors' Accounting
- The Solicitors Practice Promotion Code
- The Practice Directions 1990 as amended from time to time
- The Code of Conduct of the Bar
- *Sandor & Wilkinson*, 'The Professional Conduct of Lawyers in Hong Kong' (Student edition), LexisNexis, 2008

It is recommended that these materials be brought into the examination.

**2. Examiners' Comments on
the 2008, 2009 and 2010
Examinations**

Examiners' Comments on the 2008 Examination

Head IV: Accounts and Professional Conduct

Question 1

Some candidates showed little application and indeed, did not take time to read the question with any care and never attempted to provide any analysis or commentary on the various issues that they were examined on.

Too much time was spent on setting out the relevant provisions of the Solicitors' Accounts Rules and extracts from the Accounts Manual without application or further analysis.

Overall, the standard was acceptable.

Question 2

Question 2 sought to examine student understanding on a range of issues including: practice advertising; running of offices; finding, engaging and retaining clients; fees; and advising clients.

The stronger students were able to demonstrate an adequate understanding of most issues. The students who struggled looked to have completed inadequate preparation – they gave vague responses and sometimes incorrect responses.

This question directly raised the issue of Recovery Agents (RAs). The better students were familiar with the announcements of the Law Society on RAs. There were fewer students, this year who seemed to be entirely unaware of the specific issue of RAs. (A few students wrote short essays on champerty and maintenance – without discussing the Law Society commentary on RAs.)

Overall assessment of performance: satisfactory.

Question 3

This question, which involved litigation ethics, was generally well answered. It covered the issues of competence to act, conflict of interest, the need for a written retainer in criminal proceedings, interviewing the other side's witnesses, giving instructions (indeed, inadequate instructions) to counsel too close to the trial date (many candidates missed this point) and deception of the court.

Question 4

Answers to this question ranged from the very weak to the excellent. That many candidates produced rather disappointing answers to this question might be explained by the fact that they answered this question last and were short of time – few candidates failed to finish however.

Part (a) covered pressurising a client to obtain finance from the solicitor's choice of lender and third party instructions. Few candidates were aware of the Law Society's Guidance Note 'Solicitors' Duties in Relation to Security Transactions with Potentially Unduly Influenced Parties'.

Part (b) embraced the solicitor's (and legal executive's) fiduciary duty in context of purchasing property from a client.

Part (c) was a very basic question on money laundering requiring the application of Practice Direction P.

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Examiners' Comments on the 2009 Examination

Head IV: Accounts and Professional Conduct

Question 1

This question was very straightforward and should not have caused the candidates any difficulties. The examiners were surprised by the lack of application and relevance by those candidates who failed to do so.

Overall, the standard was acceptable.

Question 2

Question 2 examined students on a range of issues including: practice advertising; running of offices; finding and engaging clients; advising clients; fees, fee-sharing – and Recovery Agents (RAs).

Good to better students were able to demonstrate an adequate understanding of most issues. The students who struggled looked to have studied inadequately – they gave vague responses and sometimes incorrect responses. A few students mismanaged their time rather badly.

The better students were familiar with the most recent announcements of the Law Society on RAs – and recent relevant case law. A minority were not aware of the specific issue of RAs. A somewhat larger number were not familiar with recent relevant case law.

Overall assessment of performance: satisfactory.

Question 3

This question covered the ethical standards required of trial advocates. It involved issues relating to contingency fees (Principle 4.16, SG), purported exclusion of liability in negligence in the retainer (s 59(2) LPO), solicitor's clerk instructing counsel (Practice Direction F), instruction of counsel without client's consent (commentary 3 of Principle 5.17, SG), competence, withdrawal because fee inadequate, client committing perjury whilst testifying (Principle 10.03) and the standard of proof in disciplinary (*Solicitor v Law Society of Hong Kong* (2008) 11 HKCFAR 117).

The question was generally well answered but there were several notable failures to identify relevant issues and answer the question adequately.

Question 4

This question involved two parts.

The first part involved issues of legal professional privilege and required an understanding of *Three Rivers District Council v Governor and Company of the Bank of England (No 5)* [2002] 3 WLR 667, CA, *Three Rivers District Council v Governor and Company of the Bank of England (No 6)* [2004] 3 WLR 1274, HL and *Akai Holdings Ltd v Ernst & Young (2009)* FACV No 28/2008.

The second part of the question was itself in two parts. The first part covered conflict of interest and required an understanding of the principles laid down in *Prince Jeffri Bolkiah v KPMG* [1999] 2 AC 222, HL. Chinese walls were also relevant. The second part involved conflict between solicitor and client and the sale by the client of property to the solicitor's wife. *Demerera Bauxite Co Ltd v Hubbard* [1923] AC 673, PC was especially relevant to the answer.

In this question there was a great disparity between the performance of candidates who identified the issues and knew the answer and those who had little idea of what the question was about.

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Examiners' Comments on the 2010 Examination

Head IV: Accounts and Professional Conduct

The Examiners are pleased to supply the following report on the 2010 OLQE Head IV Examination in Accounts and Professional Conduct.

Dealing with the individual questions:

Question 1

The Accounts Question this year was in the view of the Examiners straightforward and should not have caused any difficulties to the candidates. However, the standard of the answers were disappointing. Many of the candidates failed to make any attempt in applying the relevant principles. There now seems to be a practice to repeat and copy out the rules, the manual and the relevant text without giving any consideration as to applying the relevant principles to the question which they were asked to deal with.

In the view of the Examiners, many of the candidates that failed showed a lack of application and knowledge of the rules.

The Examiners would also mention that it seems that some candidates do not spend any time in reading the question properly and carefully. The Examiners noted at the examination that many candidates just started writing straightaway without even having the opportunity to give a considered thought to the various issues that were being put to them to address.

Question 2

There were four parts to question 2. The purpose of part (a) was to give candidates a flavour of what it might be like when they in future will have to work in an area which they may not be familiar with. Candidates generally did well.

The purpose of part (b) was to focus on what young lawyers sometimes might do in a state of panic. Candidate generally did badly. The important aspect is to identify the fact that even barristers can go wrong with their advice. In the present case, the police's request for a cautioned statement from client had become a request for a confession statement; the complaint letter was sent on that mistaken basis without the solicitor checking and correcting it. Unfortunately none of the candidates had spotted it. Course providers will need to bring out this important aspect as reliance on barristers is quite evident amongst lawyers, sometimes quite blindly.

The purpose of part (c) was to find out whether candidates have a sound understanding of their special professional relationship with barristers, in the conduct of their legal affairs. Candidates did badly. Surprisingly quite a few stated barristers could sue for their fees, which is not the current law in Hong Kong. Course providers probably will have to be told to pay more attention in this regard as close relationship of solicitors with the other branch of the profession will require young entrants to be conversant with the special relationship rules.

The purpose of part (d) was to find out whether candidates have a sound knowledge of the local practice environment in terms of sub-offices or branch office, what to look out for in terms of practice promotion etc. Candidates generally did quite well.

Question 3

Question 3 was generally very well answered. It dealt with the professional duties of advocates.

Part (a) raised issues involving advertising for witnesses, confidentiality and the right of a litigant to decide whether to testify.

Part (b) involved a possible deception of the court and the professional duty of an advocate who suspects that his client is committing perjury. Principle 10.03 was especially pertinent.

Part (c) involved issues of competence and whether an advocate has the right to withdraw for failure to pay an increased fee. Issues as to the availability of legal aid were also relevant.

Question 4

Question 4 involved some basic principles of conflict of interest and legal professional privilege in a somewhat difficult arena.

The factual scenario involved a solicitor acting under a subrogation clause. Part (a) raised the issue of a possible conflict on the part of a solicitor retained under a subrogation clause between his duty to the insurer client and his duty to the insured. *Nishimatsu-Costain-China Harbour Joint Venture v Ip Kwan & Co* [2000] 2 HKC 445, CA, provides useful guidance.

Part (b) raised the question squarely as to who is the client (or clients) in such a situation. Does the solicitor owe a duty of confidentiality to the insured? See *Nicholson v Icepack Coolstores Ltd* [1999] 3 NZLR 475.

The question also requires a discussion as whether there is a conflict of interest on the part of the solicitor between his duty to inform one client and his duty to the other client to keep that same information confidential – commentary 1 of Principle 9.02 was relevant here.

Part (c) was a simple question requiring candidates to identify the role of Chinese walls and their effectiveness in the eyes of the court. A very good answer would have considered the approach of the courts in Hong Kong, England and Wales and perhaps Australia or Canada.

Overall comments

There was general consistency between the standard of answers and the pass rate of Part I and Part II of the examination, although, as with previous years, there was a small number of candidates who passed the Professional Conduct segment of the examination but failed the Accounts segment and vice versa.

3. Past Examination Papers from 2008 to 2010

2008 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

Friday, 7 November 2008



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

7 November 2008

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 question 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.**

2008 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.

2008 Overseas Lawyers Qualification Examination

Head IV: Accounts and Professional Conduct

Part A (Accounts)

Question 1 (25 marks)

- A. (i) Explain the importance and rationale for a Client Account Reconciliation.
- (ii) What steps should a firm take to ensure that there is compliance with the relevant accounting rules and practice in respect of the Client Account Reconciliation.
- (iii) Your accounts department has informed you that they have received a cash deposit of HK\$100,000.00 into the firm's client account. However, no indication as to the source of the deposit was provided. What steps should be taken?
- (iv) You have now been advised that the HK\$100,000.00 were the agreed costs paid in by A. Drogba in respect of a new matter. How should this sum be treated?
- (9 marks)**
- B. (i) What do you understand by the term "Management Accounts for a firm of solicitors"?
- (ii) How would such Management Accounts enhance and assist the partners in their running and supervision of the firm's accounting systems and enhancement of profitability?
- (7 marks)**
- C. Identify the relevant records and books of account which the Solicitors' Accounts Rules require a practice to maintain. Explain (briefly) the reasons why such records and books of account need to be maintained.
- (9 marks)**

The candidate should limit their answers to the solicitors' accounting issues.

End of Part A (Accounts)

2008 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. Bill Smith (Bill) practised law in Melbourne, Australia for 10 years before moving to Hong Kong five years ago. Bill was admitted as a solicitor in Hong Kong three years ago. All his legal experience in Australia and in Hong Kong has been in Tax Law. Until one year ago, he worked with a Hong Kong firm called Zhang and Zhang (ZZ). At ZZ he worked closely with Emily Chan (Emily), another Tax Law specialist. Last year, Bill and Emily decided to establish their own firm called Smith and Chan (SC). Both Bill and Emily wanted to be “their own boss” and run their own firm. They were confident that they could achieve much faster financial success running a small firm together. Bill and Emily decided to establish the first office of SC in Tsim Sha Tsui.

Bill explained to Emily that one key to rapid success enjoyed by some firms in Melbourne was to take on litigation clients on a “no win – no pay” basis, which was permitted under the professional conduct rules applying there. Bill and Emily met with a friend of Bill, Andrew Quickbucks (Andrew) just as they were setting up SC. Andrew, a businessman from Australia, established a company three years ago in Hong Kong called “Know Your Rights” (KYR). KYR specialized in locating persons who had suffered personal injuries. In each case, KYR undertook a careful initial assessment of the strength of the particular person’s chances of success if they were to launch a personal injury action. If the chances looked good, KYR would guarantee the payment of all legal fees (for that particular client) provided: (A) the client went to a solicitor nominated by KYR; and (B) the client agreed to pay a percentage of any damages awarded to KYR. Bill and Emily agreed with Andrew that SC would be listed as a firm KYR could nominate. Under the agreement they reached, each new (KYR found) client would authorize SC to pay over the agreed share of damages to KYR in each case where the client was successful.

(7 marks)

- B. Following the agreement with KYR, SC prospered quickly. Bill and Emily decided that they could build their practice even faster by advertising the services offered by their firm. They also reasoned that it would be sensible to open two more SC offices (one in Chai Wan and another in Tuen Mun) so clients would not need to travel so far. They discussed these ideas with Andrew who said he could help. Andrew said that KYR could look after the promotion campaign for SC. It was agreed that there would be heavy advertising on buses and in the popular press. KYR drew up these advertisements which said:

Smith and Chan is a new-style Law Firm, expert in almost all areas of legal work. Forget about those old-style Law Firms which give poor, slow service. Use Smith and Chan where the success rate is excellent.

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

KYR also produced a brochure for SC which referred to certain, notable, identified clients Bill and Emily had worked for when employed by ZZ.

Andrew suggested that SC could pay just 30% of the normal advertising rate charged by KYR – plus 3% of the total turnover of SC per year. Bill and Emily agreed with this arrangement.

(7 marks)

- C. SC fairly quickly found suitable offices for rent in Chai Wan and Tuen Mun. In the case of the Chai Wan office SC negotiated a special arrangement with the landlord, through Ms Leung from the estate agents in charge of renting out the office. First, there would be a discount of 50% on the nominated rent but, to compensate, SC would, in addition, pay 1% of gross turnover from the Chai Wan office each year to the landlord. Bill and Emily also agreed with Ms Leung, that, where SC signed up a client referred by Ms Leung, SC would share 10% of all fee income with Ms Leung with respect to the particular client. SC also made a reciprocal agreement with Ms Leung that, where SC referred a client to Ms Leung and that client purchased a property through Ms Leung, Ms Leung would pay 10% of any commission earned to SC.

(5 marks)

- D. Very soon after this, the new offices were opened. Bill and Emily continued to work in the primary office in Tsim Sha Tsui. SC employed, young, recently qualified solicitors to manage the other two offices in Chai Wan and Tuen Mun. Each office has 25 support staff. In each case, SC also employed some extra part-time (evening) support staff who, during the day, worked with other law firms in Chai Wan and Tuen Mun.

(6 marks)

Discuss all the issues of Professional Conduct which arise from the above facts.

Question 3 (25 marks)

Chris was employed in Hong Kong in a small trading company which received orders from foreign clients (usually large stores) for the supply of clothing. Chris's job was then to place orders for the manufacture of the clothing with factories with offices in Hong Kong, obtain the clothes and have them exported to the foreign buyers. Unknown to his employers, he had a private arrangement with two of the factories that he would receive a "commission" in return for placing orders with them. Chris' employer found out about the commission payments from the factory owners who complained when the company ceased to place orders with the two factories and instead placed orders with different factories. He informed the police.

In February 2008 Chris was charged with contravening several provisions of the Prevention of Bribery Ordinance (Cap 201) and sought help from his friend Sid, who was a solicitor in private practice specializing in matrimonial work. Sid agreed to take on the case although he had previously acted for Chris' employer in a civil matter relating to the dismissal of a former employee of the company. There was no written retainer. Sid interviewed Chris and assured him that he would handle the defence case effectively. The trial was set down in the District Court for 20 June 2008. In early March 2008, Sid by chance met in a bar at the Conrad Hotel Mr Wong who was the owner of one of the factories which had been involved in supplying clothes to Chris. Sid knew that Mr Wong would be an important prosecution witness. At Mr Wong's invitation Sid joined Mr Wong for a drink. Sid told Mr Wong that he was representing Chris and asked Mr Wong about Chris' relationship with the factory's owners. Mr Wong said that his business had declined significantly since Chris no longer placed orders with the factory. Sid said that Chris was in big trouble and he hoped that Mr Wong would "go easy on Chris" in his evidence at Chris' trial. Mr Wong said that he liked Chris and did not want to see him put in prison.

On 15 June Chris approached Betty, a barrister with considerable experience in criminal litigation and asked Betty to take on the case. Betty agreed. Sid sent instructions to Betty which simply said: "Here is the witness statement taken from Chris; please represent him at his trial". Betty secured copies of the relevant witness statements from the prosecution and arranged an urgent interview with Chris on 18 June. At the interview Betty said that she had looked at Chris' witness statement and the witness statements provided by the prosecution and was of the opinion that Chris had no defence and should plead guilty. Chris refused and Betty said that she would have to withdraw unless Chris agreed to plead guilty. When Chris continued to refuse, Betty withdrew from representing Chris.

The trial was close and Sid decided that his only course of action was to represent Chris himself. Sid arranged an urgent meeting with Chris and advised him to plead not guilty. Chris readily agreed. Sid then suggested to Chris that he should tell the court that the "commission" payments received by Chris were not related to the orders placed with the factories, but had been made as payment to Chris' wife for advice she had given them as to the design of clothing suitable for sale to foreign customers. Chris hesitantly agreed.

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

The trial began and Sid represented Chris. Chris testified that the commission payments had in fact been made as payment for services provided by Chris' wife and his wife testified in support of this story. The trial judge did not, however, believe Chris or his wife and Chris was convicted.

Answer the following question providing authority for your answer.

Identify any acts of professional misconduct on the part of Sid.

(25 marks)

Question 4 (25 marks)

- (a) Damon wished to borrow money to set up a new business and retained Sean, a solicitor in a small practice, to assist him in setting up the business. Sean advised Damon that Damon would require a substantial loan for the purpose and further advised that Kowloon Bank was the most suitable bank to approach for the loan. Damon said that he had had previous dealings with Kowloon Bank and had not been impressed with their services. Sean said that he would only be willing to continue to assist Damon in setting up the business if Damon dealt with Kowloon Bank for the purpose of securing the necessary loan. Damon then reluctantly approached Kowloon Bank (the bank) with a view to obtaining the loan.

Damon discussed the loan with the bank's solicitor, Sylvia. Sylvia told him that the bank would be prepared to lend the required money to Damon if he could provide a suitable surety. Damon responded a few days later saying that his grandmother was prepared to act as surety and provided copies of his grandmother's bank statements, which showed that she was quite wealthy. Sylvia prepared the necessary papers for the loan together with the surety agreement and handed them to Damon. Damon returned three days later, handed over the surety agreement duly signed by his grandmother. Damon and the bank's representative signed the loan agreement. The bank, accordingly, lent the money to Damon which was to be repaid over a period of 2 years by installments. Damon paid the first five installments, but then defaulted and made no further payments. It appeared that he had left Hong Kong and could not be traced.

The Bank, therefore, sought to enforce the surety agreement against Damon's grandmother. She refused to pay, however, saying that she had not understood that she had agreed to stand as surety for the debt.

- (i) **Has Sean committed any acts of professional misconduct?**
(3 marks)
- (ii) **Explain what professional duties rested upon Sylvia in respect of the grandmother's signing of the surety agreement and whether Sylvia has breached any of these professional duties.**
(7 marks)

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

- (b) Charles owned a flat in North Point and went to Green & Co, a firm of solicitors with whom he had had previous dealings, for advice as to its sale. He was first referred to a legal executive, William, who specialized in conveyancing matters and explained that he wished to sell his flat. William was particularly interested as he urgently wished to purchase a flat in North Point for his aged mother. Charles was then referred to Siu Lun, who was an assistant solicitor in the same firm, and Siu Lun agreed to carry out the necessary conveyancing procedures. Siu Lun asked William to check the title carefully and William did so. William was satisfied that Charles' title to the flat was good and Siu Lun, who had supervised William's work, duly informed Charles that the title to his flat was good. William then told Charles that he himself would very much like to purchase the flat. Charles agreed. William and Charles asked Siu Lun to arrange the sale of the flat to William who had retained another firm of solicitor to act for him. The flat was eventually assigned to William.

Have William and Siu Lun committed any acts of professional misconduct? If so identify them.

(5 marks)

- (c) Soon afterwards Siu Lun met a new client, James Babayaro, who said he lived in Nigeria. James said that he had come to Hong Kong to purchase property on the Peak on behalf of another (unnamed) person and handed Siu Lun a banker's draft for a substantial sum of money. James asked Siu Lun to deposit the money in the firm's client account and await further instructions as to the intended purchase.

What should Siu Lun do as a matter of professional conduct?

(10 marks)

End of Part B (Professional Conduct)

**2009 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD I: CONVEYANCING

Thursday, 29 October 2009



HEAD IV: ACCOUNTS AND PROFESSIONAL CONDUCT

TEST PAPER

10 November 2009

Instructions to Candidates:

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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.

2009 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.

2009 Overseas Lawyers Qualification Examination

Head IV: Accounts and Professional Conduct

Part A (Accounts)

Question 1 (25 marks)

Bling and Flash are assistant solicitors in the firm of Steady & Co. They have just completed two years of employment and are about to obtain their unconditional practising certificates. Bling and Flash have decided that the way to further their careers and enhance their earning ability is to establish a new firm in the not-too-distant future. They felt “The Flash Bling Partnership” would be the ideal name. However, they recollected that during their studies at University, there are various obligations that may be imposed upon them as set out in the Solicitors’ Accounts Rules and other relevant legislation. They therefore have approached you to obtain your comments, advice and views in respect of the following issues:-

- (a) Flash socialized with young and attractive models. One of them he knows quite well, Fifi, and he felt that she would be an ideal person to employ as their receptionist. He was also of the view that since reception may not be too busy, Fifi would be well able to assist with the firm’s accounts and with the bookkeeping. Fifi had some years ago completed a very basic bookkeeping course. Bling was delighted with the idea. Since Flash and himself would be busy promoting the firm’s new business, he suggested that she should also become a signatory on the various bank accounts of the intended practice. **(8 marks)**
- (b) Bling and Flash were also concerned to ensure that their firm had the latest accounting equipment. They would purchase an up-to-date computer system. Bling was of the view that this would save the need for them to maintain their books of account and make it somewhat easier for Fifi to manage the accounts. Flash was also of the view that online banking would be the best way to effect payments out of their clients’ account. **(6 marks)**
- (c) Flash had heard something about disbursements. However, he was somewhat unsure as to the meaning of this concept and he wanted to know how these would be treated in their books of account. In particular, he wanted to give some guidance to Fifi as to how disbursements should be dealt with so as not to contravene the Solicitors’ Accounts Rules. **(6 marks)**
- (d) Bling and Flash felt that the issue of ATM cards would enable them to monitor and obtain access to the firm’s bank accounts. Since they will both be travelling extensively around the region, they will be able to make cash withdrawals as and when needed. **(5 marks)**

Please comment and advise Flash and Bling in respect of the above issues. Please ensure that your answers are limited to the solicitors’ accounting issues.

End of Part A (Accounts)

2009 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) Laura Zhang and Simon Ng are Hong Kong solicitors, admitted over 10 years ago. Two years ago, they established their own firm, Zhang and Ng. Both were well experienced in personal injury work prior to establishing their own firm. The firm maintains four offices which are widely dispersed around the HKSAR – one in Admiralty, one in Mong Kok, one in Shatin and one in Tsuen Wan. In each office, there are junior solicitors doing personal injury work, together with a large number of support staff.
- (b) Two weeks ago, Andrew Hu came to the Mong Kok office of Zhang and Ng and spoke with Simon Ng. Andrew said that his elderly father recently fell over as he was leaving a large restaurant near his home. “It was about 12 noon”, Andrew said. He continued, “They had just washed down the entrance – but there was no warning sign that the floor was wet and slippery. Dad slipped and fell and is now in hospital with a bruised head and a broken arm. I want you to act for my Dad, to recover damages for his injuries from the fall – but I am worried about how much it may cost.” Simon Ng confirmed that Zhang and Ng could certainly act for Andrew’s father. Simon told Andrew not to worry about the cost. Andrew added that it would be best if Simon just spoke with him (Andrew) rather than with his father. Andrew explained his father was still confused about what happened. His memory was not so good – and the fall had made him more confused in his thinking.
- (c) Andrew then said he had another matter to discuss with Simon. Andrew explained that his main job involved selling life insurance door-to-door. His selling area included two large public housing estates in East Kowloon. Because of his work, he regularly came across accident victims of all kinds, many of whom had not sought any legal compensation when this might be available. “Would you be interested if I were to refer some of these victims to Zhang and Ng?” Andrew asked. “Yes” Simon replied. “In that case”, said Andrew, “Can we work out how to make this worthwhile for me? If Zhang and Ng is successful in getting accident-damages for any referred-client, would your firm be willing to pay 20% of the resulting net fee income to me? Will you also ensure that I am paid 10% of any damages award made to any referred-client?” Simon replied, “Yes, I agree to pay 20% of the resulting net fee income to you and I will ensure that you are also paid 10% of any damages award made to a referred-client.”

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

- (d) Zhang and Ng decide that they need to begin advertising their firm more widely. They engage a company called “Lucky Advertising”. Laura and Simon give Lucky Advertising a copy of the Solicitors’ Practice Promotion Code (‘SPCC’) and tell Lucky Advertising to plan and implement a campaign, in accordance with the SPCC, that will promote their firm. Lucky Advertising arrange for footpath billboards to be placed directly outside a number of doctors’ surgeries and for leaflets to be given to patients entering and leaving these surgeries. The billboards and the leaflets stress that potential clients can trust Zhang and Ng. They each read as follows: *“Too many solicitors are tricky and untrustworthy – but not Zhang and Ng. If you have suffered personal injury, come first to Zhang and Ng. They are the honest experts in personal injury work!”*
- (e) Michael Fu is an owner-driver of a small delivery van. While driving to Fo Tan two months ago, Michael’s van was involved in a collision with another vehicle. Both Michael and the driver of the other vehicle suffered minor injuries and both vehicles were damaged. Michael’s van is insured by the Excellent Insurance Company (‘Excellent’). Shortly after the accident, Excellent contacted Zhang and Ng and said they would like to retain Zhang and Ng to act for Excellent, in the name of Michael Fu, in accordance with the terms of the insurance policy. Excellent said they wished to deny liability. Zhang and Ng said they would be happy to act on behalf of Michael Fu based on the instructions from Excellent.

Discuss all the issues of Professional Conduct which arise from the above facts. If you feel further information may be required, explain what this is and why it is needed.

(25 marks)

Question 3 (25 marks)

Clement was employed as a driver by Rapid Transport Co Ltd. His normal work involved delivering goods to warehouses. He usually worked the night-shift as the roads were not congested and deliveries were made faster. In the early hours of 15 May 2008 Clement was driving his delivery van along a winding street approaching Fanling when he knocked down an elderly man crossing the road. The man was seriously injured. The police were called and Clement was made to take a breathalysers test, which showed that he had not been drinking any alcohol. The elderly man, whose name was Pang, was taken to hospital unconscious. Fortunately he recovered and several days later he was sufficiently well to be able to talk to the police. He informed them that he had been out playing mahjong with friends and was returning home. A van had come round a bend in the road rather fast and appeared to be swerving on the wrong side of the road. The van had struck him and the next thing he remembered was being in a hospital bed. Clement was charged with dangerous driving. At his trial he maintained that he had not drunk any alcohol and had been driving carefully and within the speed limit. The accident had been the fault of the elderly man who had walked onto the road without looking. He was acquitted.

On the advice of family members Pang sought advice from Mr So, who was a solicitor in the firm of So and So. Mr So was an experienced personal injuries lawyer. Mr So listened to Pang's story and said that his firm would be willing to take up the case. Mr So said that he believed that Pang had a good claim and should commence a civil action against Clement, claiming damages for his personal injuries. Pang told Mr So that he did not have much money, but Mr So said that he should not worry. He would deduct his fee from the damages recovered from Clement. If no damages were recovered, he would only charge a nominal fee. Pang agreed to this suggestion.

Mr So drafted the writ, statement of claim and statement of damages which were duly served upon Clement.

Without consulting Pang, Mr So sent his clerk Ada to instruct Barry, a barrister experienced in criminal litigation, to represent Pang at the trial. Barry agreed to take on the case, agreed his fee with Ada and prepared for the trial.

Having received the writ, statement of claim and statement of damages, Clement made an appointment to see Sylvia, a solicitor working for a large firm of solicitors in Central, who was experienced in personal injury litigation. Clement informed Sylvia that he had already retained a solicitor from a small firm of solicitors in Shatin, but that he was dissatisfied with their services. Sylvia agreed to take over the case. She perused the defence pleading, which had already been served and filed by the solicitors originally retained by Clement, and set about amending the pleading.

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

Clement told her that he worked for Rapid Transport Co Ltd and had been driving the van to Fanling to deliver goods which had only recently arrived at the container port. At the time of the accident he had been driving within the speed limit and had only seen the old man crossing the road when Clement was coming round a corner. Clement had been unable to brake in time and had hit the old man. Clement denied that he had been driving negligently.

Since the case would be heard in the District Court, Sylvia decided that she would conduct the defence herself and that there was no need to brief counsel. Clement agreed. Sylvia told him that her fee would be \$100,000 in total. There was a written retainer which contained a term stating that neither Sylvia nor her firm would be liable in negligence in respect of work undertaken under the retainer.

After the defence pleading had been duly amended Clement wrote to the former firm representing him saying that their services were no longer required.

(a) Identify any acts of professional misconduct committed by Mr So.
(10 marks)

(b) Identify any acts of professional misconduct committed by Sylvia.
(5 marks)

The case was set down for hearing in the District Court in September 2009. Two days before the hearing date Sylvia told Clement that the case was much more complicated than she had anticipated and that her fee had to be increased to \$200,000. Clement protested that he did not have this amount of money available, but Sylvia said that she would be unable to continue to act unless the increased fee was agreed. Clement reluctantly agreed, saying that he would have to borrow the extra money from a friend.

Clement then told Sylvia that, in fact, he had not told her the full truth. He explained that he had not slept the day before the accident and had briefly fallen asleep whilst driving, causing him to fail to see the old man when he was crossing the road. Sylvia said that there was no need to tell the court this fact.

(c) Identify any further acts of professional misconduct committed by Sylvia.
(3 marks)

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

The plaintiff's case proceeded as expected. Then Sylvia opened the defence case. Clement was called to testify and was examined in chief by Sylvia. When Sylvia asked Clement about the night of the accident, Clement said that he had not been able to stop in time to avoid striking the old man. Sylvia then asked Clement whether he had been wide awake at the time of the accident and Clement confirmed that he had been. After Sylvia's examination in chief, Clement was cross-examined by Barry and the parties closed their respective cases.

- (d) **Identify any further acts of professional misconduct committed by Sylvia.**
(4 marks)
- (e) **Now assume that Mr So is facing misconduct proceedings before a Solicitors' Disciplinary Tribunal in respect of his actions identified above. Explain what standard of proof the Tribunal must apply in adjudicating whether or not Mr So has been guilty of professional misconduct.**
(3 marks)

Question 4 (25 marks)

- (a) Magic Company Ltd ('Magic') is a large company whose business involves the sale and purchase of old flats and houses which can be purchased relatively cheaply and which, after renovation and refurbishment, can be sold at a good profit margin. Magic's directors suspected that one of their employees was defrauding the company by paying excessive fees to a company, Renovation Ltd ('Renovation'), which specialised in renovating old properties. Renovation's business was run by Mr Fang ('Fang'). Magic employed a private firm of fraud investigators, Discovery Ltd ('Discovery') to investigate whether any fraud was being committed by Fang on Magic. Magic set up a small group of three senior employees to deal with Discovery and assist them in their investigations. Discovery interviewed the three senior employees ('the team') and several other employees of Magic and wrote a report ('the report') about the fraud. The report was in two parts. The first contained statements from the team designated to deal with Discovery ('part A of the report') and the second part ('part B of the report') contained statements from other employees consulted. As a result of the contents of the report Magic decided to commence a civil action against Fang for damages for fraud. The employee allegedly involved was dismissed.

Action was duly commenced against Fang by Magic. After close of pleadings mutual discovery took place in which Magic made discovery of the report, but claimed that the whole report (both Parts A and B) was protected from disclosure by legal professional privilege.

Advise Magic as to whether both Part A and Part B of the report are protected from disclosure by reason of (i) legal advice privilege and (ii) litigation privilege.

(13 marks)

- (b)
- (i) Peter was employed as an assistant solicitor by the small firm of Smith and Smith, Solicitors ('Smith and Smith'). One of the firm's clients was Wishwell Construction Ltd ('Wishwell') which retained Smith and Smith to act for them in arbitration proceedings against Wing In Construction Ltd ('Wing In'). Peter had not been personally involved in the arbitration proceedings and, before the arbitration proceedings had been concluded, Peter left Smith and Smith to work for Sue and Win, the firm of solicitors representing Wing In in the arbitration. Wishwell has now applied for an injunction to restrain Sue and Win for continuing to act for Wing In in the arbitration proceedings. **Advise Sue and Win as to whether they will be required to cease to act for Wing In and what measures, if any, they should be advised to put in place to assist them in resisting the application by Wishwell and whether such measures are likely to be successful.**

(6 marks)

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

- (ii) Peter has a client Frederick Ong ('Frederick') whom he has recently successfully represented in difficult matrimonial proceedings. Frederick is a good friend of Mary, Peter's wife. Mary had informed Frederick that she was looking for a flat on Hong Kong Island as their present flat in Tai Po was too far from Peter's new office. Six weeks after Peter's bill for the matrimonial work had been duly paid, Frederick telephoned Peter saying that he had agreed to sell his flat in North Point to Mary and wants Peter to act for him in the sale of the flat to Mary for the rather generous price of \$2 million. **Explain to Peter the ethical and common law provisions affecting whether he is permitted to act for Frederick (and Mary) in the sale of the flat by Frederick to Mary. In particular, Peter wishes to be sure that Frederick would not subsequently be able to have the transaction set aside if he changed his mind after the sale to Mary had been completed.**

(6 marks)

End of Part B (Professional Conduct)

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)