

## **Examiners' Comments on the 2014 Examination**

### **Head IV: Accounts and Professional Conduct**

#### **Accounts Question**

##### **Question 1**

1. Many of the answers lacked application. For example, the instructions given to the candidates in each of the questions were very clear and unequivocal. They were told to deal with the accounting issues. However, the majority of the candidates decided despite instructing not to, gave detailed and lengthy discussion on conduct issues and on Know Your Client obligations and money-laundering issues. None of this was required. This in itself shows a lack of care and application.
2. Those who failed provided answers were exceptionally shallow and showed a lack of understanding and comprehension of the Accounts Rules. Many of the candidates took the view that the office account can be used as clients account and vice versa. The problem was that many of them showed a lack of understanding of the basic fundamentals applicable to the Accounts Rules. However, this seems to be a trend that seems to continue each year.
3. Part B of Question 1 asked the candidates to deal with a very simple and straightforward matter as to who can sign cheques. The question postulated whether or not a starlet/actress and a wife of one of the partners who has no knowledge of the Accounts Rules could be entrusted with the signing on both office and client accounts cheques. Indeed, it seems as if the candidates tried to do their very best to try to find ways in which these particular persons could sign! Hence, it showed a lack of application or understanding or inability to come with a robust answer to a very straightforward question.

#### **Professional Conduct Questions**

4. This year the answers were found to be very poor and their application and understanding of the issues that the candidates had been asked to address were lacking in thought.

##### **Question 2**

5. The first part of this question embraced issues involving the fiduciary duty of a solicitor to his client where the solicitor acted negligently towards his client. The client should, of course, have been advised to seek independent advice and report made to the Solicitors' Indemnity Fund.
6. The second part involved in-house solicitors and their duty when told to issue what might be a false statement. A good answer would deal with the solicitor's duty as an officer of the court and his duty not to involve himself in criminal activity.

### Question 3

7. This was the 'usual' question on the duties of a litigation solicitor. Most of the issues had been covered in previous examination papers.
8. The question embraced the need for a written retainer in a criminal case, the duty not to agree a contingency fee, the duty to advise on legal aid, giving an oral estimate of the fee (which might have been pitched at an unrealistically low level), possible conflict of interest where one of two joint clients withdraws his instructions, possible conflict of interest in defence solicitor having acted previously for a prosecution witness (this was a new issue), defence solicitor meeting a prosecution witness in the absence of his legal representative, consequences of possible confession of guilt by client to his solicitor, an advocate's duty not to express his personal opinion when conducting a case in court and, finally, naming in open court a third party whose character would thereby be impugned.

### Question 4

9. This question was in three parts. The first part involved two issues. The first was whether a solicitor should accept or reject a retainer to act for a family member. The second issue was whether a solicitor should accept or reject a retainer to act for a client when the solicitor's own conduct and competence in acting for that client was being called into question. Both questions had recent relevant case authority but candidates were not expected to know these authorities and could answer the questions satisfactorily by application of general ethical principles relating to conflict of interest.
10. The second question involved confidentiality and legal professional privilege between joint clients. Again there was relevant case authority which the candidates were not expected to know.
11. The third question was on *Three Rivers District Council v Bank of England (No 5)* wherein candidates were asked to identify who was/were the client(s) for the purpose of legal professional privilege where the 'client' was a large corporation.

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