

Examiners' Comments on the 2015 Examination

Head IV: Accounts and Professional Conduct

Accounts Question

Question 1

1. The question this year was very straightforward and indeed, should not have caused difficulties to any of the candidates.
2. However, it was disappointed in the fact that those who failed did so badly and lacked any form of application, knowledge, etc.
3. Many of the candidates did not read the question and tried to embark upon discussions of conduct, money laundering, etc. when it was perfectly clear that the candidates were requested to limit their answers to the accounting rules and issues.
4. Overall, however, this year's question was better answered (but only just) from previous years.
5. The failure rate is also subject to candidates having to pass Question 1 and Questions 2, 3 and 4. This obviously does cause difficulties.
6. However, the question was a very fair and straightforward one.

Professional Conduct Questions

Question 2

Q2 seeks to test the candidates' ability to analyze the conduct of a young lawyer in dealing with a new client's very serious (bribing unnamed Chinese officials and money laundering) and complicated (fixed for 70 days hearing) criminal case under the strong pressure of his senior to bring in substantial costs to the firm. Most candidates were able to detect the 'competence' issue. Most could point out that the lawyer should be mindful of his confidentiality duty, the possibility of undue influence, the need to seek client's consent before approaching his barrister friend. The need to explain and advise the client on possible issues on costs and disbursements.

Most candidates did not advance from that basic position to achieving a better score by pointing out that the lawyer should find out from the client what was the real reason(s) for the change of solicitors; when the answer was not forthcoming whether he should accept instructions; when the lawyer was incompetent both in terms of time and experience whether he should decline accepting instructions despite his senior was eager that he should act.

Many candidates had gone into irrelevant aspects and written long passages stating:

- a. The young lawyer should obtain the consent of the former law firm before he should act. The consent requirement could not be an issue. It was clearly stated the lawyer had obtained all the papers from the client's previous solicitors etc.
- b. The young lawyer should advise the client on legal aid; that could not be an issue. There was nothing to suggest the client was financially incapable of paying the firm the upfront fee.
- c. Third party instructions; when that could not be an issue because there was nothing in Q2 to suggest that Chinese senior official was giving instructions to the lawyer regarding the client's criminal case.
- d. The lawyer was sharing or intending to share secret profits with the junior counsel, there was nothing in Q2 to suggest the junior counsel would allow the lawyer to have a share of his counsel fee.
- e. The \$30 million 'up front' deposit payment constituted sufficient suspicion for the lawyer to invoke money laundering reporting provisions. The payment was in the form of a cashier order meaning the money came from a bank which would have dealt with the issue beforehand. That could not be an issue.
- f. The compliance with Rule 5D (Solicitors' Practice Rules), when it was clearly stated in Q2 that the client had signed 'a proper fee agreement' with the firm.
- g. There is a kind of 'auto pilot' approach which is worrying.

Question 3

This was a conventional question on litigation ethics. The question contained only one issue that had never been examined in previous papers.

The question involved the following issues:

Part (a):

- (1) Whether a solicitor should accept a retainer from a family member;
- (2) Competence to act;
- (3) The need to avoid bold and confident assurances;
- (4) Giving the client the best information about the fee;
- (5) Contingency fees; and
- (6) Gift to solicitor from client

Part (b):

- (1) Solicitor advocate acting for client who may have admitted his guilt to the solicitor;

- (2) Insisting client pleads not guilty;
- (3) Impugning the character of third parties;
- (4) Fabricating evidence; and
- (5) Expressing a personal opinion.

The question was (as usual) generally well answered.

Question 4

This question largely involved issues relating to the fiduciary relationship between solicitor and client and conflict of interest.

Part (a) involved the following issues:

- (1) Joint representation of vendor and purchaser;
- (2) Obtaining a personal benefit from client's transaction and making a secret profit; and
- (3) Purchasing property from client.

Part (b) raised the following issues:

- (1) Putting pressure on client to borrow from solicitor's choice of lender;
- (2) Implied retainers; and
- (3) Solicitor acting for lender bank, borrower and guarantor in loan transaction.