

Examiners' Comments on the 2016 Examination

Head IV: Accounts and Professional Conduct

Introduction

This year's pass rate was very slightly under 50% which is, of course, disappointing.

Part A Accounts

Question 1

1. The paper this year was very straightforward. Part A of Question 1 asked the candidates to deal with accounting issues and there was a series of transactions to be followed through. Part B of Question 1 dealt with the amendments to the Accounts Rules.
2. Many of the candidates failed to read the question carefully nor did they look at the actual marks attributable to each part. Again, they spent a lot of time dealing with anti-money laundering as well as Know Your Client obligations as opposed to dealing with the actual accounting issues as stipulated.
3. The application was poor in that they did not read the question and then deal with the accounting issues that they were asked to address especially with the way in which payments out should be made.
4. Part B of Question 1 was simple. However, many of the candidates failed to discuss the issues in any detail and many ran out of time. They also just copied out the new provisions without thinking or discussing the changes.
5. Overall, those candidates who knew what they were doing answered the paper reasonably well and dealt with the points.

Part B Professional Conduct

Question 2

Part A of Q2 intended to examine candidates' knowledge on the Law Society's Practice Direction P ("PDP") on Anti-Money Laundering ("AML"), sections 25 and 25A of the Organized and Serious Crimes Ordinance ("OSCO") and how those matters would relate to a solicitor's practice in a commercial transaction when there is reasonable ground to believe, or to suspect, that any property in the transaction might represent a person's proceeds of an indictable offence, when that solicitor (i.e. Abel) is an employee only.

Most candidates could identify the transaction in question would raise PDP concerns, require an enhanced due diligence and consideration on whether to act or to cease to act. Most however failed to state why Abel was justified in his suspicion and why his

suggestion to his senior to make a report to JFIU was proper. Most were unable to state Abel's duty under OSCO would go no further than to report his suspicion to his partners (s.25A(4)OSCO).

Part B of Q2 intended to examine candidates' knowledge on (a) the CFA's judgment in *HKSAR vs Yeung Ka Sing, Carson*, a 2016 leading case on AML. How a senior solicitor (i.e. Dickson) should assess whether or not a reasonable ground existed for him to believe (or to suspect) the property in question (i.e. \$50 million) represented the proceeds of an indictable offence AND (b) the divergence between UK and Hong Kong on AML approach.

Dickson, a partner of the Firm, took a different view from Abel his junior. For Dickson to reach a proper conclusion that 'a reasonable ground' did not exist, Dickson would have to consider not only the exculpatory matters, he should also bring on board in his assessment the inculpatory matters, in forming the view whether a reasonable ground on belief or suspicion would exist. Most candidates were unable to demonstrate an understanding of that approach. A few were able to point out the divergence between UK and Hong Kong on AML cases but only superficially.

Part C of Q2 intended to examine candidates' knowledge on the responsibility of a managing partner, viz Charles, why he was wrong when he decided to continue the transaction when his decision was compromised by financial interests to the Firm. Charles made a report after completing the transaction. Part C asked candidates to comment whether Charles' delayed reporting to JFIU was fatal, also whether he should inform his colleague regarding his report to JFIU.

Candidates' answers:

Most candidates failed to demonstrate a sufficient knowledge of AML, PDP and OSCO. Only a few mentioned the CFA judgment in *Carson Yeung*. Most were too ready to report all three solicitors to the Law Society for misconduct.

Q2 itself is not difficult. The importance of understanding AML in the context of one's practice as a Hong Kong solicitor is unquestionable. The CFA judgment in *Carson Yeung* has been widely reported and discussed. Finally, AML is part of the OLQE syllabus.

Question 3

This was the usual question on litigation ethics.

Part A involved a solicitor attracting business by way of a recovery agent, competence, advice on legal aid, counsel approached at first instance by solicitor's clerk (not the solicitor personally), and retaining counsel without the client's consent.

Part B involved a solicitor attempting to exclude liability in negligence and s 59(2) Legal Practitioners Ordinance.

Part C centred around a solicitor acting for a client where it was likely that he would be emotionally involved in the proceedings and accepting instructions where another solicitor had already been retained.

Part D involved a possible deception of the court and how a solicitor should respond where he believes his client intends to commit perjury in court.

The question was well answered across the board.

Question 4

Part A involved conflict of interest issues and the solicitor's duty of loyalty to his former client in the context of a solicitor being retained by two co-accused persons and one co-accused subsequently retaining a different solicitor.

Part B was a straightforward question involving a solicitor acting for both vendor and purchaser in a conveyancing transaction where a conflict of interest subsequently arises.

There is a second part to the question which raises the issue whether the solicitor, once he has decided to cease to act for both parties, can continue to act for one party in an unrelated matter.

Answers were mixed and it is suspected that shortage of time may have caused some candidates to answer this question superficially.

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