

February 2010 e-Quiz

Scenario

Notes to candidates:

- (1) Most of the contents of this e-quiz are adopted from February 2008 e-quiz.*
- (2) Please read the scenario before attempting the questions. The subject matter and names of parties are fictitious.*
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Remarks: In the following questions, the following words have the following corresponding meanings:

“the Authority” means the Estate Agents Authority;
“ the Ordinance” means the *Estate Agents Ordinance*; and
“the Practice Regulation” means the *Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation*.

Mr. Proprietor is a licensed estate agent and the sole proprietor of Sole Pro Agency (“the Firm”), which carries on the business of estate agency in a shop in Hong Kong. In the past few months, business has been extremely brisk. To cope with his expanding business, Mr. Proprietor intends to open two new branches soon. He intends to appoint three new managers for these two new branches, (1) one manager for their effective and separate control, (2) one sales manager, and (3) one human resources manager. He is not certain about the requirements of the Ordinance in relation to these managers, so he asks Miss Secretary to find out from the Authority.

As Mr. Proprietor’s business is expanding, he thinks it is prudent to incorporate a limited company for the running of his business. However, he is not certain about the licensing requirements of a limited company, especially the “fit and proper” requirements. Again, he asks Miss Secretary to find out from the Authority.

Miss Secretary, who is neither a licensed estate agent nor a licensed salesperson, is a secretary of Mr. Proprietor. She has worked for the Firm for many years, but Mr.

Proprietor has refused to promote her to a higher position, having indicated to her that it is because she has to take care of her many children and because recently she has become pregnant. He is even more displeased when Miss Secretary submits to him a request for many days of maternity leave.

Mr. Vendor is the owner of a residential property in Hong Kong (“the Property”). One day, he walks into the Firm’s shop. After some discussions with Mr. Proprietor, Mr. Vendor says he wants to instruct the Firm to place the Property in the market for sale. Upon hearing this and before permitting Mr. Vendor to become his client, Mr. Proprietor gives him some information required under the Practice Regulation.

Mr. Vendor requests Mr. Proprietor to advertise the Property in newspapers for sale. Mr. Proprietor agrees to do so, and he asks Miss Secretary to check the requirements of the Practice Regulation for the issue of the advertisement and prepare a draft advertisement for him.

Mr. Vendor also asks Mr. Proprietor to prepare an estate agency agreement for his signing. Mr. Proprietor says as he is busy then he will prepare it for him later.

On the next day, the for-sale advertisement of the Property is released on the newspaper. Miss Purchaser reads the advertisement. She is interested in purchasing the Property. She visits the shop of the Firm and asks Mr. Proprietor to be her agent in the intended purchase of the Property. Upon hearing this and before permitting Miss Purchaser to become his client, Mr. Proprietor gives her some information required under the Practice Regulation.

After an inspection of the Property accompanied by Mr Proprietor, Miss Purchaser instructs Mr. Proprietor to negotiate for the purchase of the Property from Mr. Vendor. After some negotiations on the terms of the purchase, Mr. Vendor agrees to sell the Property to Miss Purchaser. Mr. Proprietor then draws up a provisional agreement for sale and purchase (“the PASP”) for signing by Miss Purchaser. Miss Purchaser appears to be well educated, and she seems to have a good understanding of the terms of the PASP, so Mr. Proprietor asks her to sign it without giving any explanation to her.

After Miss Purchaser has signed the PASP, Mr. Proprietor asks Mr. Vendor to come to his shop to sign it as well. When Mr. Vendor arrives Mr. Proprietor is out with a client. Miss Secretary attends to Mr. Vendor during Mr. Proprietor’s absence. Mr. Vendor asks her to introduce to him a firm of solicitors to handle the sale of the Property for

him. Miss Secretary introduces to him Messrs. Lawyers, a firm of solicitors (“the Solicitors”) of which Mr. Lawyer is the sole proprietor, because a conveyancing clerk of the Solicitors has promised Miss Secretary that the Solicitors would give her a rebate of 40% of the legal fees paid by clients introduced by her to the Solicitors. Miss Secretary did not disclose this rebate arrangement to Mr. Proprietor nor Mr. Vendor.

Later on when Mr. Proprietor returns, Mr. Vendor signs the PASP, and the Property is sold.

After the transaction is completed, Miss Purchaser attends the shop of the Firm and pays the Firm’s commission for her purchase of the Property. Receipts for payment of commission are usually prepared by Miss Secretary, who is now on maternity leave. Mr. Proprietor cannot locate the receipt book and he tells Miss Purchaser that he will send a receipt to her later.

Mr. Vendor refuses to pay any commission to the Firm. Because of an oversight on the part of Mr. Proprietor, Mr. Vendor was not asked to sign any estate agency agreement. Mr. Vendor therefore claims he is not required to pay any commission to the Firm. The PASP signed by Mr. Vendor was a tripartite agreement made amongst Mr. Vendor, Miss Purchaser and the Firm under which Mr. Vendor agreed to pay to the Firm commission for the sale of the Property. Mr. Proprietor therefore believes Mr. Vendor is liable for the commission and demands him to pay.

Questions 1-12

Question 1

1. Which of the following are requirements of the Ordinance in respect of the appointment of the three managers intended by Mr. Proprietor for his two new branches?
 - (i) A sales manager must be appointed for effective and separate control of each office
 - (ii) A human resources manager must be an individual licensed estate agent
 - (iii) A manager for the effective and separate control of a branch must be an individual licensed estate agent
 - (iv) A manager cannot be appointed for the effective and separate control of more than one office or branch office
- A. (i) and (iii) only
 - B. (iii) and (iv) only
 - C. (i),(ii) and (iii) only
 - D. (i), (iii) and (iv) only
 - E. All of the above

Question 2

2. Before a limited company (“the Limited Company”) shall be entitled to be granted an estate agent licence, which of the following must be considered for the time being as a “fit and proper” person by the Authority to hold the licence under the Ordinance?

- (i) The Limited Company
- (ii) All directors of the Limited Company
- (iii) Such directors of the Limited Company as are engaged in its estate agency business
- (iv) All shareholders of the Limited Company

- A. (i) only
- B. (iv) only
- C. (i) and (ii) only
- D. (i) and (iii) only
- E. (ii) and (iv) only

Question 3

3. In refusing to promote Miss Secretary to a higher position because she has to take care of her children and because she is pregnant, the Firm may contravene provisions contained in the following Ordinances:

- (i) Disability Discrimination Ordinance
- (ii) Employment Ordinance
- (iii) Family Status Discrimination Ordinance
- (iv) Sex Discrimination Ordinance

- A. (iv) only
- B. (i) and (iv) only
- C. (ii) and (iii) only
- D. (iii) and (iv) only
- E. (ii), (iii) and (iv) only

Question 4

4. Under the Employment Ordinance, Miss Secretary is entitled to the following continuous period of maternity leave (not counting further periods which may be given to her on account of (a) delay in the expected delivery date or (b) illness or disability arising out of the pregnancy or delivery):
- A. 4 weeks
 - B. 6 weeks
 - C. 8 weeks
 - D. 10 weeks
 - E. 12 weeks

Question 5

5. Which of the following are the requirements under the Practice Regulation relating to the advertisement by the Firm for the sale of the Property?
- (i) Mr. Proprietor shall obtain Mr. Vendor's consent, which can be either verbal or written, prior to the issue of the advertisement
 - (ii) Mr. Proprietor shall obtain Mr. Vendor's written consent prior to the issue of the advertisement
 - (iii) The price stated in the advertisement must not be different from that instructed by Mr. Vendor
 - (iv) The price in the advertisement can be higher but not less than that instructed by Mr. Vendor
- A. (i) and (iii)
 - B. (i) and (iv)
 - C. (ii) and (iii)
 - D. (ii) and (iv)
 - E. None of the above

Question 6

6. Under the Practice Regulation, by which of the following shall the Firm have to enter into an estate agency agreement with Mr. Vendor?
- A. Upon accepting the instruction from Mr. Vendor to place the Property in the market for sale
 - B. Prior to advertising the Property by the Firm
 - C. Prior to arranging inspection of the Property by Miss Purchaser
 - D. Prior to the signing of the PASP by Miss Purchaser
 - E. Prior to the signing of the PASP by Mr. Vendor

Question 7

7. Under the Practice Regulation, before Miss Purchaser signs the PASP, Mr. Proprietor is required to:
- (i) Explain to her the meaning of such clause(s) of the PASP as he thinks necessary
 - (ii) Explain to her the meaning of such clause(s) of the PASP as she may request
 - (iii) Explain to her the meaning of each clause of the PASP
 - (iv) Draw to her attention the meaning of any essential terms and provisions of the PASP
 - (v) Recommend her to seek legal advice if she does not understand his explanation under (iii) and (iv) above
- A. (i) only
 - B. (ii) only
 - C. (ii) and (iv) only
 - D. (iii) and (iv) only
 - E. (iii), (iv) and (v) only

Question 8

8. Under the Practice Regulation, what information Mr. Proprietor should give to Mr. Vendor and Miss Purchaser before Mr. Proprietor shall cause or permit them to become clients of the Firm?

- (i) Mr. Proprietor is a licensed estate agent
- (ii) Mr. Proprietor is the sole proprietor of the Firm
- (iii) The number of the estate agent's licence of Mr. Proprietor
- (iv) The validity period of the estate agent's licence of Mr. Proprietor

- A. (i) only
- B. (i) and (iii) only
- C. (i) and (iv) only
- D. (i), (ii) and (iii) only
- E. All of the above

Question 9

9. Not being a licensed estate agent or licensed salesperson, which of the following items of work can Miss Secretary perform without committing any breach of the Ordinance?

- (i) Enquiring with the Authority on matters relating to the appointment of the managers for the two new branches and the licensing requirements of a limited company
- (ii) Preparing the draft advertisement of the Property for the Firm
- (iii) Preparing receipts to clients for commission paid

- A. (iii) only
- B. (i) and (ii) only
- C. (ii) and (iii) only
- D. All of the above
- E. None of the above

Question 10

10. If Miss Secretary accepts from the Solicitors a rebate of the legal fees paid by Mr. Vendor to the Solicitors, which of the following consequences may follow?

- (i) She will be in breach of Section 14(2) of the Practice Regulation
- (ii) She will be in breach of section 36(1)(a)(vi) of the Ordinance (which relates to disclosure to a client of pecuniary interest, etc.)
- (iii) She will be in breach of section 5 of the Prevention of Bribery Ordinance
- (iv) She will be in breach of section 9 of the Prevention of Bribery Ordinance

- A. (iv) only
- B. (i) and (iii) only
- C. (i) and (iv) only
- D. (ii) and (iii) only
- E. (ii) and (iv) only

Question 11

11. Under the Practice Regulation, when should the Firm give to Miss Purchaser a receipt after her payment of commission?

- A. Immediately
- B. As soon as is practicable
- C. Within 24 hours
- D. Within 48 hours
- E. Within a reasonable time

Question 12

12. Under the Ordinance, which of the following statements is/are correct in regard to the Firm's claim against Mr. Vendor for commission?

- (i) The Firm has no right to claim any commission from Mr. Vendor
- (ii) The Firm can rely on the PASP and claim commission from Mr. Vendor
- (iii) The Firm can rely on equity and claim commission from Mr. Vendor
- (iv) So long as the Firm had performed services for Mr. Vendor, the law will compel him to pay commission to the Firm

- A. (i) only
- B. (ii) only
- C. (iii) only
- D. (ii) and (iii) only
- E. (ii), (iii) and (iv) only

Answer Guide for e-quiz – February 2010

Note :

1. This answer guide is prepared by the Professional Development Section and provides the correct answers to the questions of the February 2010 e-quiz.
2. In this answer guide:
 - “the Authority” means the Estate Agents Authority;
 - “ the Ordinance” means the Estate Agents Ordinance; and
 - “the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.
3. The copyright of the e-quiz, this answer guide and all supporting materials belongs to the Estate Agents Authority and the aforesaid may be reproduced by candidates for the purpose of attempting the questions only. No reproduction of the aforesaid for any other purpose is allowed without the prior written consent of the Estate Agents Authority.

Question 1

1. Which of the following are requirements of the Ordinance in respect of the appointment of the three managers intended by Mr. Proprietor for his two new branches?

- (i) A sales manager must be appointed for effective and separate control of each office
- (ii) A human resources manager must be an individual licensed estate agent
- (iii) A manager for the effective and separate control of a branch must be an individual licensed estate agent
- (iv) A manager cannot be appointed for the effective and separate control of more than one office or branch office

- A. (i) and (iii) only
- B. (iii) and (iv) only**
- C. (i),(ii) and (iii) only
- D. (i), (iii) and (iv) only
- E. All of the above

Answer to Question 1:

- (1) Under S.38(1) of the Ordinance, a licensed estate agent shall ensure that his business at every one of his offices is under the *effective and separate control* of a manager appointed by him, and such manager shall be an individual and a licensed estate agent.
- (2) S.38(1) applies to a manager appointed for the effective and separate control of an office only. It does not apply to a sales manager or a human resources manager or indeed any other kind of manager. There is no requirement in the Ordinance for a manager other than one appointed for the effective and separate control of an office to be a licensed estate agent.
- (3) However, a manager appointed under S.38(1) may control the business of one office only. He may not also control the business of another office of the same estate agent, or one or more offices of another estate agent. If he does, then the requirements under S.38(1) shall not be regarded as complied with.
- (4) Therefore the answer is B.

Question 2

2. Before a limited company (“the Limited Company”) shall be entitled to be granted an estate agent licence, which of the following must be considered for the time being as a “fit and proper” person by the Authority to hold the licence under the Ordinance?

- (i) The Limited Company
- (ii) All directors of the Limited Company
- (iii) Such directors of the Limited Company as are engaged in its estate agency business
- (iv) All shareholders of the Limited Company

- A. (i) only
- B. (iv) only
- C. (i) and (ii) only**
- D. (i) and (iii) only
- E. (ii) and (iv) only

Answer to Question 2:

- (1) Under S.20 of the Ordinance, a company shall not be eligible to be granted or to hold or continue to hold an estate agent’s licence unless-
- (a) each of the company’s directors for the time being is, in the opinion of the Authority, a fit and proper person for the purposes of the Ordinance;
 - (b) the Authority otherwise considers the company a fit and proper person to hold an estate agent’s licence.

Under S.18(2)(1)(a) of the Ordinance, no person making an application in accordance with subsection (1) shall be entitled to be granted the licence sought in the application unless the Authority considers that-

- (i) the person is a fit and proper person to hold the licence; and
- (ii) in the case of a company making an application for the grant of an estate agent’s licence, each of the company’s directors for the time being is a fit and proper person for the purposes of this Ordinance.

In other words, both the company and all of its directors must fulfil the “fit and proper” requirement.

- (2) In determining whether a director of a company is a “fit and proper” person, the Authority shall have regard to the following:
- (a) (A) where the person is an individual, the fact that the person is an undischarged bankrupt, or has within the 5 years immediately prior to the day on which the EAA considers the matter, made a composition or scheme of arrangement with his creditors;
(B) where the person is a company, the fact that such company is in liquidation or is the subject of a winding-up order, or there is a receiver appointed in relation to it, or that it has, within the 5 years immediately prior to the day on which the EAA considers the matter, entered into a composition or scheme of arrangement with its creditors;
 - (b) the fact that the person is a director or officer of a company for the time being disqualified under the Ordinance for holding a licence, or was a director or officer of that company at the date when the company was so disqualified;
 - (c) the fact that the person is a mentally disordered person or patient within the meaning of section 2 of the Mental Health Ordinance;
 - (d) any conviction of the person in Hong Kong or elsewhere of any offence (other than an offence under the Ordinance) involving fraud, corruption or dishonesty; and
 - (e) any conviction of the person of any offence under the Ordinance in respect of which he has been sentenced to imprisonment (whether suspended or not).
- (3) In determining whether a company is “fit and proper”, the Authority shall have regard to the following:
- (a) the fact that the company is in liquidation or is the subject of a winding-up order, or there is a receiver appointed in relation to it, or it has, within the 5 years immediately prior to the day on which the Authority considers the matter, entered into a composition or scheme of arrangement with its creditors; and
 - (b) any conviction of the company under the Ordinance.
- (4) Therefore the answer is C.

Question 3

3. In refusing to promote Miss Secretary to a higher position because she has to take care of her children and because she is pregnant, the Firm may contravene provisions contained in the following Ordinances:

- (i) Disability Discrimination Ordinance
- (ii) Employment Ordinance
- (iii) Family Status Discrimination Ordinance
- (iv) Sex Discrimination Ordinance

- A. (iv) only
- B. (i) and (iv) only
- C. (ii) and (iii) only
- D. (iii) and (iv) only**
- E. (ii), (iii) and (iv) only

Answer to Question 3:

- (1) The Sex Discrimination Ordinance (the SDO) applies to discrimination on the grounds of sex, marital status and pregnancy. Under ss.8(a) and 11(2)(a) of the SDO it is unlawful for an employer to discriminate against a female employee on the ground of her pregnancy, by refusing or deliberately omitting to afford her access to opportunities for promotion. Therefore it is discrimination under the SDO for Mr. Proprietor not to promote Miss Secretary on the ground of her pregnancy.
- (2) Under S.2 of the Family Status Discrimination Ordinance (the FSDO), “family status”(家庭崗位) means the status of having responsibility for the care of an immediate family member, and “immediate family member”(直系家庭成員) means a person who is related to the person by blood, marriage, adoption or affinity.

Under S.8(2) of the FSDO, it is unlawful for an employer to discriminate against an employee who has family status, by refusing or deliberately omitting to afford that person access to opportunities for promotion.

Therefore it is family status discrimination under the FSDO for Mr. Proprietor not to promote Miss Secretary on the ground that she has to take care of her many children.

Therefore the answer is D.

Question 4

4. Under the Employment Ordinance, Miss Secretary is entitled to the following continuous period of maternity leave (not counting further periods which may be given to her on account of (a) delay in the expected delivery date or (b) illness or disability arising out of the pregnancy or delivery):
- A. 4 weeks
 - B. 6 weeks
 - C. 8 weeks
 - D. 10 weeks**
 - E. 12 weeks

Answer to Question 4:

Under the Employment Ordinance, if a female employee is employed under a continuous contract, she is entitled to maternity leave. An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract. Maternity leave is the aggregate of the following periods:

- (1) a continuous period of 10 weeks;
- (2) if delivery of the child occurs later than the expected date, a further period equal to the number of days from the day after the expected date to the actual date of delivery; and
- (3) an additional period of not more than four weeks on grounds of illness or disability arising out of the pregnancy or delivery.

Therefore the answer is D.

Question 5

5. Which of the following are the requirements under the Practice Regulation relating to the advertisement by the Firm for the sale of the Property?
- (i) Mr. Proprietor shall obtain Mr. Vendor's consent, which can be either verbal or written, prior to the issue of the advertisement
 - (ii) Mr. Proprietor shall obtain Mr. Vendor's written consent prior to the issue of the advertisement
 - (iii) The price stated in the advertisement must not be different from that instructed by Mr. Vendor
 - (iv) The price in the advertisement can be higher but not less than that instructed by Mr. Vendor
- A. (i) and (iii)
B. (i) and (iv)
C. (ii) and (iii)
D. (ii) and (iv)
E. None of the above

Answer to Question 5:

Under Section 9 of the Practice Regulation, in respect of a residential property, a licensed estate agent shall obtain a vendor's *written* consent prior to the issue of an advertisement, and the price must not be different from that instructed by the client. Therefore the answer is C.

Question 6

6. Under the Practice Regulation, by which of the following shall the Firm have to enter into an estate agency agreement with Mr. Vendor?
- A. Upon accepting the instruction from Mr. Vendor to place the Property in the market for sale
- B. Prior to advertising the Property by the Firm**
- C. Prior to arranging inspection of the Property by Miss Purchaser
- D. Prior to the signing of the PASP by Miss Purchaser
- E. Prior to the signing of the PASP by Mr. Vendor

Answer to Question 6:

Under S.6(1) of the Practice Regulation, a licensed estate agent who acts for a vendor shall enter into an estate agency agreement with the vendor-

- (a) within 7 working days after accepting an instruction to sell or lease the residential property concerned;
- (b) prior to advertising the property for sale or lease; or
- (c) prior to signing an agreement for sale and purchase or a lease of the property, whichever is the *earlier*.

Therefore the answer is B.

Question 7

7. Under the Practice Regulation, before Miss Purchaser signs the PASP, Mr. Proprietor is required to:

- (i) Explain to her the meaning of such clause(s) of the PASP as he thinks necessary
- (ii) Explain to her the meaning of such clause(s) of the PASP as she may request
- (iii) Explain to her the meaning of each clause of the PASP
- (iv) Draw to her attention the meaning of any essential terms and provisions of the PASP
- (v) Recommend her to seek legal advice if she does not understand his explanation under (iii) and (iv) above

- A. (i) only
- B. (ii) only
- C. (ii) and (iv) only
- D. (iii) and (iv) only
- E. (iii), (iv) and (v) only**

Answer to Question 7:

Under S.13(1) of the Practice Regulation, a licensee shall, before a client of the licensee who is not legally represented enters into an agreement for sale and purchase or a lease of a residential property – (a) explain to the client the meaning of *each* clause of the agreement or lease, and draw to his attention the meaning of any

essential terms and provisions thereof, and (b) recommend that the client seek legal advice if the client does not understand any part of the explanation given under paragraph (a).

Therefore the answer is E.

Question 8

8. Under the Practice Regulation, what information Mr. Proprietor should give to Mr. Vendor and Miss Purchaser before Mr. Proprietor shall cause or permit them to become clients of the Firm?

- (i) Mr. Proprietor is a licensed estate agent
- (ii) Mr. Proprietor is the sole proprietor of the Firm
- (iii) The number of the estate agent's licence of Mr. Proprietor
- (iv) The validity period of the estate agent's licence of Mr. Proprietor

- A. (i) only
- B. (i) and (iii) only**
- C. (i) and (iv) only
- D. (i), (ii) and (iii) only
- E. All of the above

Answer to Question 8:

Under S.5 of the Practice Regulation, a licensed estate agent shall not cause or permit a person to become his client before the person is informed (1) that the agent is a licensed estate agent and (2) of the number of the estate agent's licence held by the agent. Therefore the answer is B.

Question 9

(4) Not being a licensed estate agent or licensed salesperson, which of the following items of work can Miss Secretary perform without committing any breach of the Ordinance?

- (i) Enquiring with the Authority on matters relating to the appointment of the managers for the two new branches and the licensing requirements of a

limited company

- (ii) Preparing the draft advertisement of the Property for the Firm
- (iii) Preparing receipts to clients for commission paid

- A. (iii) only
- B. (i) and (ii) only
- C. (ii) and (iii) only
- D. All of the above**
- E. None of the above

Answer to Question 9:

The definition of “estate agency work” in S.2(1) of the Ordinance is as follows:

“estate agency work”(地產代理工作) means “any work done in the course of business for a client-

- (a) being work done in relation to the *introduction* to the client of a third person who wishes to acquire or dispose of a property, or to the *negotiation* for the acquisition or disposition of a property by the client; or
- (b) being work done, *after* the introduction in the course of that business to the client of a third person who wishes to acquire or dispose of a property or the negotiation in the course of that business for the acquisition or disposition of a property by the client, *in relation to the acquisition or disposition*, as the case may be, of the property by the client.”

Therefore in determining whether a particular item of work is or is not estate agency work, one should consider if it is related to:

- (1) the *introduction* to a client of a third person,
- (2) the *negotiation* for the acquisition or disposition of a property,
- (3) (after such introduction or negotiation) the *acquisition* or *disposition* of the property.

Preparing the draft newspaper advertisement of the Property for the Firm and preparing receipts to clients for commission paid in itself are clerical works and should not be considered as being related to procuring a purchaser for *introduction* to Mr. Vendor. Therefore these items of work are not estate agency work.

Therefore the answer is D.

Question 10

10. If Miss Secretary accepts from the Solicitors a rebate of the legal fees paid by Mr. Vendor to the Solicitors, which of the following consequences may follow?

- (i) She will be in breach of Section 14(2) of the Practice Regulation
- (ii) She will be in breach of section 36(1)(a)(vi) of the Ordinance (which relates to disclosure to a client of pecuniary interest, etc.)
- (iii) She will be in breach of section 5 of the Prevention of Bribery Ordinance
- (iv) She will be in breach of section 9 of the Prevention of Bribery Ordinance

A. (iv) only

B. (i) and (iii) only

C. (i) and (iv) only

D. (ii) and (iii) only

E. (ii) and (iv) only

Answer to Question 10:

Section 14(2) of the Practice Regulation and section 36(1)(a)(vi) of the Ordinance apply to licensees only. As Miss Secretary is not a licensee, they do not apply to her.

Section 5 of the Prevention of Bribery Ordinance (the PBO) applies to public servants only.

Under S.9(1) of the PBO, it is an offence for an agent, without lawful authority or reasonable excuse, to solicit or accept an advantage as an inducement to, or reward for, or on account of his doing or forbearing to do any act in relation to his principal's affairs.

Under the PBO, 'Principal' includes an employer, and 'Agent' includes any person employed by or acting for another.

Mr. Proprietor is the principal of Miss Secretary. Therefore she may be in breach of section 9 of the PBO if she were to accept the rebate from the Firm.

Therefore the answer is A.

Question 11

11. Under the Practice Regulation, when should the Firm give to Miss Purchaser a receipt after her payment of commission?

- A. **Immediately**
- B. As soon as is practicable
- C. Within 24 hours
- D. Within 48 hours
- E. Within a reasonable time

Answer to Question 11:

Under S.14(3) of the Practice Regulation, a licensed estate agent shall issue a written receipt to a client *immediately* for any commission paid by the client. Therefore the answer is A.

Question 12

12. Under the Ordinance, which of the following statements is/are correct in regard to the Firm's claim against Mr. Vendor for commission?

- (i) The Firm has no right to claim any commission from Mr. Vendor
- (ii) The Firm can rely on the PASP and claim commission from Mr. Vendor
- (iii) The Firm can rely on equity and claim commission from Mr. Vendor
- (iv) So long as the Firm had performed services for Mr. Vendor, the law will compel him to pay commission to the Firm

- A. **(i) only**
- B. (ii) only
- C. (iii) only
- D. (ii) and (iii) only
- E. (ii), (iii) and (iv) only

Answer to Question 12:

Section 45(1) of the EAO provides that, where an estate agent undertakes to perform agency work for a client, a right or other cause of action for damages or other relief or

remedy shall lie at the suit of the agent if and only if:

- (1) a prescribed estate agency agreement (Form 3,4,5, or 6) has been properly executed; and
- (2) the agent was a licensed estate agent at the time when the estate agency agreement was entered into.

Section 45 applies to residential properties only. Therefore in respect of a residential property a licensed estate agent cannot recover his commission unless the prescribed form of estate agency agreement has been executed. This is so even if a client has signed a tripartite provisional agreement for sale and purchase whereby he agrees to pay commission to the estate agent.

In the case of *Easy Property Co.Ltd v Hau King Kuen* [2004] 1 HKLRD 155, a licensed estate agent (the agent) claimed unpaid commission from the vendor of a property, pursuant to a tripartite provisional agreement for sale and purchase executed by the vendor, the purchaser and the agent whereby the vendor agreed to pay the agent commission. The agent had also prepared an estate agency agreement, but the vendor had failed to sign it. It was held, by the District Court, that the legislative policy behind section 45 was that an estate agent could institute proceedings only where there was in place a valid estate agency agreement as opposed to a mere provisional sale and purchase agreement which did not meet the requirements of section 45. Further, the agent could not resort to rules of equity to circumvent or override such policy. Therefore the agent could not recover the unpaid commission.

Therefore the answer is A.