PCLL Conversion Examination
January 2015
Examiner's Comments
Business Associations

1 (a) This question requires an analysis of the distinction between the concealment and evasion principle stated by Lord Sumption in *Prest v Petrodel* [2013] UKSC 34. But many candidates failed to do that. They merely regurgitated the general law on piercing the corporate veil.

(b) The fact pattern here is largely identical to *Prest v Petrodel* [2013] UKSC 34. Many students were able to answer this question.

(c) The issue here is that it is unclear whether an existing liability has arisen. Terry could be said to be incorporating another company to forestall future liability (ie the law suit by the environmental activists) and this is permissible: *China Ocean Shipping Co v Mitrans Shipping Co Ltd* [1995] 3 HKC 123. This question is generally well-answered.

2. With regards to the liability of Mary, candidates ought to discuss *Bhullar v Bhullar* [2003] EWCA Civ 424 and *O'Donnell v Shanahan* [2009] EWCA Civ 751 and apply the principles to the facts but many did not do that. They should also discuss whether the scope of business test (rejected in *Shanadan*) is defensible. The analysis with regards to the liability of Liz was generally well done. The issue with regards to Sara is whether there was a breach of s 465 of the Companies Ordinance. Candidates should explain whether a non-executive director like Sara should be held to a different standard but many did not.

3 (a) This question requires candidates to analyse and apply the Hampshire Land principle (or fraud exception) but most of them failed to do so. Quite a number completely misconstrued the question.

(b) On the agreement with respect to the New Territories, candidates have to analyse s 116 (5) and s 117 of the Companies Ordinance. But many did not do that. The indoor management rule (Turquand's rule) also has to be analysed. Again, many did not do that. An analysis of apparent authority is also required. On the security interest, candidates have to apply s 117(2)(b) of the CO and analyse the indoor management rule but many did not do that.

4. With regards to the failure to appoint Francis as the CIO, the issue here is whether Francis can sue the company for breach of contract under s 86 of the CO. The relevant case law is *Eley v Positive Assurance Co* (1876) 1 Ex D 20. Many candidates answered this question wrongly. With regards to lending money to the company, the issue is whether Francis can prove that his interests qua member have been unfairly prejudiced under s 724 of the CO as a result of the conduct of the company given that it was his interests qua creditor that were affected. The

facts here are similar to those in *Gamblestaden Fastigheter AB v Blatic Partner Ltd* [2007] UKPC 26. Again, many candidates are ignorant of the case law. With regards to Dan, the issue is whether Dan can prove that his interests qua member have been unfairly prejudiced under s 724 of the CO as a result of the conduct of the company given that it was his interests qua employee that were affected. The facts here are similar to those in *O'Neill v Phillips* [1999] 1 WLR 1092. Again, candidates displayed a poor command of the case law and principles.