

**PCLL Conversion Examination**  
**June 2015**  
**Examiner's Comments**  
**Business Associations**

**1. Question 1:**

This question on the circumstances under which the corporate veil can be pierced was generally well answered. Candidates displayed a good command of the legal principles and case law.

**2. Question 2:**

Very few candidates attempted this question. There the issue is whether the delinquent directors and their accomplices can attribute their wrongdoing to the company in order to bar its claim against them for breach of duty. As a matter of principle and policy, the injustice and absurdity of barring the company's claim on such attribution ground should be obvious. But many candidates were not aware of the legal principle.

**3. Question 3:**

This question was generally not well answered. Although candidates displayed a reasonable good knowledge of the legal principles, many did not apply the law correctly to the facts in the question. The facts here are similar to those in *Foster Bryant Surveying Ltd v Bryant* [2007] BCC 804. Many candidates wrote in their exam scripts that Ben has breached his fiduciary duties without paying close attention to the facts in the question. All that Ben did was to agree to be retained by Prosperity after his resignation became effective. He did nothing more. His resignation was not planned with an ulterior motive. He did not seek employment or any business from Prosperity. It was offered to him. So long as he remained honest and neither exploited nor took any property of the company, he should not be held liable for breach of fiduciary duties. Even if the innocence of his resignation is not free of doubt, it is well arguable on the authorities that it is opposed to liability to account, where is there no active competition or exploitation of company property while Ben remained a director.

**4. Question 4:**

This question was fairly well answered. But a number of candidates still failed to understand the different remedies that are available to address wrongs done to shareholders personally versus the wrongs done to the company. For those candidates who understood the law, a number of them did not apply the law correctly to the facts. Short of breach by a director of his or her duty of care and skill, there is prima facie no unfairness to a shareholder in the quality of the management turning out to be poor. So the fact that Mary and Jane made "unsound" commercial decisions is not a sufficient ground for Jack to invoke s 724. But the sale of the company's property at an undervalue to a company owned by Mary and Jane is a ground for Jack to successfully invoke s 724.