

**PCLL Conversion Examination**  
**June 2017**  
**Examiner's Comments**  
**Business Associations**

Question 1

1. Most candidates were able to state the law on separate legal personality and the circumstances under which the veil can be pierced.
2. But many candidates did not distinguish (or analogise) the facts in *Adams v Cape Industries* to those in the problem question.

Question 2

1. Most candidates did not answer this question properly. The case in point is *Wilkinson v West Coast Capital* [2005] EWHC 3009.
2. On 2(a), the no-conflict rule does not apply as Gary and Kevin were entitled as shareholders to block the acquisition by the Company because votes are property rights and shareholders can generally vote as they please: *Pender v Lushington* (1877) 6 Ch D 70. This is the case even though it might be in the interests of the Company to make the acquisition and although they are the directors. Gary and Kevin did not breach their duties as directors because they voted as shareholders.
3. On 2(b), the conclusion will be the same as 2(a) if the opportunity had come to the attention of Gary and Kevin other than in their capacities as directors. Being able, acting perfectly properly, to block such acquisition as shareholders, there is therefore no relevant conflict of interests. There is no breach of duties.
4. On 2(c), the majority of students could answer this question. The better ones identified it as a maturing business opportunity and also analysed *Regal (Hastings) Ltd v Gullifer* [1976] 2 AC 134.
5. On 2(d), many candidates omitted mentioning *Poon Ka Ma Jason v Cheng Wai Tao* [2015] HKEC 114.

Question 3

1. The question requires candidates to critically analyse the remedies that are available to Ken in order to address the wrongs *done to him personally*. This means that candidates have to analyse unfair prejudice and winding up on just and equitable ground. But there are still a number of candidates who wrote about derivative action. And many candidates adopted a kitchen sink approach whereby they tried to discuss all the remedies. This reflects a failure to comprehend and answer the question.
2. Many candidates also failed to apply the law on unfair prejudice to the facts. They are good at regurgitating the law. But not good at application.

#### Question 4

1. This question concerns attribution. The relevant cases are *Bilta (UK) Ltd v Nazir (No 2)* [2015] 2 WLR 1168 and *Safeway Stores Ltd v Twigger* [2010] EWCA Civ 1472. Most candidates failed to discuss these two cases and therefore did not do well.