

PCLL CONVERSION EXAMINATION JANUARY 2016

Title of Paper : Business Associations
Date : 8 January 2016
Time : 9:30 a.m. – 9.45 a.m. (Reading Time)
9:45 a.m. – 12:45 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a three-hour examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 3 pages, including four questions. Candidates are required to answer **THREE** questions out of four. Where a question is in two or more sub-sections, all sub-sections must be answered. A total of 300 marks may be awarded.
8. Each question is worth 100 marks.
9. The passing mark for this paper is 150 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2016

Business Associations

Question 1 (100 marks)

Blue Aquariums Ltd (“Blue Aquariums”) is a supplier of aquariums and other items necessary for the keeping of tropical fish. Blue Aquariums supplied \$2 million worth of aquariums and other items to Tropical Fish Ltd (“Tropical Fish”) six months ago. Tropical Fish has not paid for the aquariums and other items despite repeated demands for payment by Blue Aquariums. Tropical Fish claims that it did not receive all of the aquariums it had ordered and some it did receive are defective.

The directors of Blue Aquariums have approached you for advice. One of the directors of Blue Aquariums informs you that he believes they should issue Tropical Fish with a statutory demand for payment as this will stop them disputing the supply and quality of the parts. Also it is known that Tropical Fish does not have the money to pay the amount at present but is expecting a substantial sum from a customer in 12 weeks.

Advise the directors of Blue Aquariums on the following:

- (1) the company winding up procedure that may be available against Tropical Fish in this case. (70 marks)**
- (2) the possible grounds of opposition Tropical Fish may raise against the winding up order based upon these facts. (30 marks)**

Question 2 (100 marks)

Chang & Co is a law firm with three partners- Anne, Mary and Felicity. In an annual auditing exercise it was discovered that HK\$10m was missing from the partnership’s clients’ account established to hold clients’ funds. It was discovered that Felicity had been stealing clients’ money from the clients’ account for almost a year. Anne and Mary were not involved and had no idea that Felicity was stealing money from the account. Some of the clients have started personal actions against Chang & Co, Anne, Mary and Felicity.

Mary has been negotiating with the firm’s catering supplier for delivery of champagne for the firm’s functions. Mary has entered into contracts for 10 cases of expensive champagne. The champagne has been delivered to the partnership. Felicity signed for it but it cannot be found and it is presumed that Felicity has stolen the champagne.

Advise Anne and Mary as to their position and potential liability for the stolen funds and champagne. Please focus your answer on partnership law principles rather than laws dealing with solicitors’ duties to clients.

Question 3 (100 marks)

Super Clean Products Ltd (“Super Clean”) distributes cleaning products. Super Clean is the wholly owned subsidiary of White Pharmaceuticals Ltd (“White Pharmaceuticals”), a company that manufactures cleaning products.

Employees of Super Clean negligently labelled boxes and tins of cleaning products which they distributed as “non-toxic” and “safe for household use”. The cleaning products inside were toxic and intended only for industrial use. These products were sold by many innocent retailers throughout Hong Kong. Many people have now developed illnesses directly linked to the use of these cleaning products including skin diseases and conditions and various forms of cancer. Super Clean has settled the first series of claims by those who bought the cleaning products and suffered illness, but there are likely to be more claims linked to the use of the incorrectly labelled tins of cleaning products.

The directors of White Pharmaceuticals are worried that there may be many more claims against Super Clean for negligence. The directors of White Pharmaceuticals incorporate another company, Dazzling Clean Ltd, and sell the assets of Super Clean to the new company. Super Clean has insufficient funds to meet any further compensation claims.

Discuss the concept of the corporate veil using decided cases and advise those suffering the adverse effects of the cleaning products if they may claim against White Pharmaceuticals and/or Dazzling Clean Ltd.

Question 4 (100 marks)

Colin is a director of Public Relations Solutions Ltd (“PRS”), a company which provides public relations advice and runs advertising campaigns for companies seeking to do business in the People’s Republic of China.

Colin was approached recently by Smoke4Fun Ltd (“Smoke4Fun”) to provide consultation on an advertising campaign for the domestic market of Hong Kong. PRS has never considered providing services for the domestic market and the matter has never been discussed at its board meetings. Colin told Smoke4Fun’s representatives that they should employ the services of PRS but the representatives informed him that it was their company’s policy not to use public relations firms and that they would only employ him in a personal capacity. Colin accepted the consultancy and has been working for Smoke4Fun for the last six months.

The other directors of PRS are Iain, Joyce and Stan. Each of the four directors owns 25% of the company’s shares. PRS has not been making a profit for the last year. Iain and Joyce attribute this to the lack of involvement of Colin in the business. Iain, Joyce and Stan decide that they should set up a new business without Colin. The three form a new company called Reputation Consultancy Ltd (“Reputation Consultancy”) in which they are the only directors and the only shareholders.

At the next board meeting of PRS a resolution is passed to sell PRS’ premises, equipment and stock in trade to Reputation Consultancy. Reputation Consultancy purchases the assets for marginally less than the market value.

Advise Colin, Iain, Joyce and Stan as to any duties they may have breached to PRS and if there are any remedies that may be available against them individually and/or as a group.

~ End of Examination Paper ~