

PCLL CONVERSION EXAMINATION JANUARY 2017

Title of Paper : Business Associations
Date : 9 January 2017
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**

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Business Associations

Question 1 (100 marks)

Fortune Ltd is a wholly owned subsidiary of Forward Ltd. Fortune Ltd is in the business of marketing and selling healthy Chinese sausages. Forward Ltd has sole control over the health and safety policies and procedures of the items sold by Fortune Ltd. Many consumers, one of whom is John, suffered food poisoning after buying and consuming the sausages from Fortune Ltd. The sausages were contaminated because of the failure of Forward Ltd to put in place proper health and safety procedures in connection with the preparation of the sausages. Fortune Ltd has no assets. All the assets are held by Forward Ltd. **Advise whether the court can lift the corporate veil and order Forward Ltd to compensate John.**

Fortune Ltd sold hundreds of Chinese sausages to several retail businesses, one of which is Happy Ltd. Happy Ltd purchased the sausages from Fortune Ltd on the basis of a brochure provided by Fortune Ltd. The brochure touted the health benefits of the sausages as they contain Chinese herbs. The information turned out to be inaccurate due to the negligence of the chief marketing officer of Forward Ltd who furnished the information. **Advise whether the court can lift the corporate veil and order the chief marketing officer and Forward Ltd to compensate Happy Ltd.**

Question 2 (100 marks)

John is one of the directors of Gucci Ltd, a company that only markets and sells luxury good items. On a Saturday morning, while he was shopping in the Gucci shop in Landmark Mandarin Oriental in Central, he was greeted by a long-time customer of Gucci, Fanny. Fanny owns and manages a hedge funds business that invests only in mining companies. Fanny approached John and asked him whether he would be interested to invest in her hedge fund business. John readily agreed and subsequently made substantial profits. **Advise John whether he has breached his duties as a director.**

After shopping for a few hours in Gucci, John went to Mo Bar in Landmark Mandarin Oriental for a drink. While enjoying his martini, he overheard a conversation by a group of businessmen seated at a table next to him. One of them said that the export and import of multi-vitamin products will be the “next big thing” in Mainland China. John decided to buy multi-vitamin products from overseas and sell them to Mainland Chinese customers. **Advise John whether he has breached his duties as a director.**

Question 3 (100 marks)

Benny initially held all of the shares of Evita Ltd (the “Company”) and was its sole director. Peter was employed by the Company in 2014 as a clerk. Benny was pleased with Peter’s performance and promoted him. In early 2015, Peter received 20% of the Company’s shares and was made a director. In May 2015, Benny informed Peter that Peter would eventually take over the management of the Company’s business from him and at that time he would receive 40% of the profits. In December 2015, Benny retired from the board and Peter became the sole director. The Company was profitable for a while but subsequently, the Company made significant losses. In June 2016, disappointed with Peter’s management, Benny appointed himself as the managing director and took over the management of the company. Peter was informed that he would no longer receive 40% of the profits but he would only receive his salary and dividends on his 20% shareholding. In December 2016, Peter found out that Benny pledged the Company’s assets as a security for a personal loan that he took from HSBC in November 2016. **Advise Peter.**

Question 4 (100 marks)

Jane and Joe set up a business selling antique products in January 2015. They orally agreed that consent from both parties will be required for any transaction that exceeds HK\$15,000. Business flourished. They needed extra capital in order to open a new shop. They approached Jason for help in December 2015. Jason agreed to invest \$3 million. It was agreed among all the parties that Jason will receive 15% of the net profit as interest payment every month; will have veto rights over all major decisions; and will receive monthly financial updates. In January 2016, Jane orally agreed with Karen to sell an antique vase for HK\$50,000. Karen made the payment but did not receive the vase. Jane absconded with the money and is nowhere to be found. **Advise Karen whether she can pursue an action against Joe and Jason.**

Joe and Jason decided to set up Antique Products Ltd in June 2016. Both of them are the directors and held shares in equal amount. Business subsequently became unprofitable due to the bad economy. Jason requested that the loan he made in December 2015 be repaid. One month after the principal was repaid by Antique Products Ltd, it became insolvent. **Advise the liquidator as to the validity of the payment of the principal to Jason.**

~ End of Examination Paper ~