

PCLL CONVERSION EXAMINATION JUNE 2015

Title of Paper : Business Associations
Date : 23 June 2015
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)

Awfully Chilli Ltd, a company incorporated in Hong Kong, is the parent company of a group of wholly owned subsidiaries. Some of these produced chilli sauce in mainland China and others marketed the chilli sauce in various countries including Singapore. Hundreds of claimants have been awarded damages by a court in Singapore for food poisoning as a result of consuming the chilli sauce. The defendant is one of Awfully Chilli's subsidiaries that is based in Singapore. Subsequently, however, the defendant became insolvent.

Critically analyse whether the judgment by the Singaporean court can be enforced against Awfully Chilli by evaluating whether Awfully Chilli and the subsidiaries should be treated as one unit and whether the subsidiaries were used as a façade concealing the true facts.

Question 2 (100 marks)

John and Tony are the sole directors and shareholders of Wealthy Ltd, a real estate development company. They, together with a mutual friend, Richard, caused Wealthy Ltd to enter into a series of contracts with Peter a tycoon under which Wealthy Ltd would sell certain units of apartments to him. In connection with these contracts, John and Tony arranged for a sum amounting to 10% of the purchase price (which would be deducted from the purchase price) to be paid to them and Richard. Wealthy Ltd subsequently went into insolvency. The liquidator sued John and Tony for breaches of fiduciary duties and Richard for the tort of conspiracy. But the defendants argued that Wealthy Ltd is precluded from suing them because of the illegality defence (*ex turpi causa* – no action may be founded on illegal or immoral conduct), that is, Wealthy Ltd's claim against them is barred by reason of the wrongful nature of its conduct under the control of John and Tony.

Critically analyse whether the wrongful acts and knowledge of John, Tony and Richard should be attributed to Wealthy Ltd for the purpose of defeating the latter's claim against them.

Question 3 (100 marks)

Ben was forced out of the company "Geeky Ltd" (which produces and sells computer gadgets) by his business partner and co-director, Edmund, who was the majority shareholder. Ben resigned in order to preserve the relationship between him and Edmund. During his notice period, the company's client (Prosperity Ltd) asked Ben to continue his service for Prosperity after his departure from the company. Ben agreed by setting up a new company a few days before his resignation took effect. And when it took effect, he started to provide service for Prosperity. Previously, Prosperity had channeled all its work exclusively to "Geeky Ltd" under an exclusivity contract but the contract expired without renewal a few days before Ben's resignation took effect. Prosperity only wanted the services of Ben and Edmund and not anyone else.

Critically examine whether Ben has breached his duties as a director.

Question 4 (100 marks)

Jack is one of the shareholders of Happy Ltd, a company controlled by Mary and Jane who are also the directors. Mary and Jane made a series of unsound investment decisions over the years. As a result, the company's profit steadily eroded. In addition, recently, Mary and Jane caused Happy to enter into a transaction with another company of which they are directors and shareholders, the result of which is that Happy transferred a key property at an undervalue.

Critically analyse the remedies that are available to Jack in order to address the wrongs (if any) that have been committed against: (a) him personally as a member and (b) the company.

~ End of Examination Paper ~