

PCLL CONVERSION EXAMINATION JUNE 2016

Title of Paper : Business Associations
Date : 23 June 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 June 2016

Business Associations

Question 1 (100 marks)

Sedgwick Limited is a private company limited by shares incorporated in Hong Kong. Sedgwick Limited's main business is investment in commercial buildings for capital appreciation and rental income. Sedgwick Limited owns a number of commercial properties in Causeway Bay and Tai Koo Shing and funded the purchase price for the commercial properties.

Mr. Wong is the sole shareholder and director of Sedgwick Limited. Mr. Wong and Mrs. Wong recently divorced and Mr. Wong was ordered by the court to pay a substantial sum to his wife. Mr. Wong had no more money and personal assets to pay such sums. Mrs. Wong now seeks assets from Sedgwick Limited, arguing that Mr. Wong's liability can be met with Sedgwick Limited's assets.

Advise whether the Court could lift the corporate veil and order Sedgwick Limited to pay the dues owed by Mr. Wong to his wife Mrs. Wong. What additional information do we need to find out? What are the circumstances in which the corporate veil will be lifted?

Question 2 (100 marks)

Amy Chan provided private English tutorial lessons to primary school students on a part-time basis for the past five years. Recently, she is contemplating setting up her own English tutorial school. Amy Chan's closest friend, Jane Lee, is supportive of her new plan. Jane owns substantial personal assets and is considering investing in Amy Chan's new English school if the school requires additional financing. However, as Jane works full time as a secondary school teacher, she does not want to actively participate in the management. Jane would like to join only as a passive investor.

Amy and Jane are considering what type of business vehicle would best suit their business plan. They are considering three possible type of business vehicles: (A) limited liability company; (B) general partnership and (C) limited partnership.

Consider these three forms of business vehicles. Advise Jane as an investor what is her potential liability in respect of debts of the business and her right to participate in management for each of these three type of business vehicles.

Question 3 (100 marks)

Asia Health Food Limited is a limited liability company incorporated in Hong Kong in January 2014. Its main business is to sell and distribute quality health food supplies to retailers and distributors in Hong Kong. Asia Health Food Limited is a wholly-owned subsidiary of Global

Health Food Limited, a global health food supplies trading company based in New York. Michael and John are the two directors of the Asia Health Food Limited.

In January 2016, Asia Health Food Limited was seeking to renegotiate an important contract with a long-term client. Michael found that John had sought to take the contract for himself, by making his own advances to the client. John did not disclose any of this to Michael nor Asia Health Food Limited. Ultimately, neither Asia Health Food Limited nor John got the contract.

Advise whether John had acted in breach of their duties as directors. Explain your answer.

Question 4 (100 marks)

Elite Bookstore Ltd (the “Company”) was incorporated in 2002. It runs a book shop in Causeway Bay since 2002 on rented premises. In the past two years, the Company did not do well in business due to high operating costs. The only valuable asset owned by the Company is an office unit in Wanchai which was not subject to any mortgage.

In May 2013, the Company obtained a 36-month term loan of HK\$2 million from Bank of Rochester (the “Bank”) on an unsecured basis. The Company managed to repay the monthly installments to the Bank until March 2014 when it started having cash flow problems.

In April 2014, the Company received a statutory demand from the Bank threatening to resort to winding up proceedings if the Company did not comply with the statutory demand. After several rounds of negotiation between the Bank and the directors, it was clear to the Bank that the Company was not in a position to make any repayment. The outstanding loan owing to the Bank as at 30 April 2014 was HK\$1 million. The Bank believed that if the Company was put into liquidation, the Bank might only recover a small portion of the outstanding loan. Thus the Bank agreed to give the Company more time to repay the loan but insisted that the Company should execute a fixed charge (over the office unit) in favour of the Bank as security for the repayment of the existing loan. If the Company refused to take this arrangement, the Bank would proceed to present a winding up petition against the Company. As a result, the Company executed the fixed charge on 20 May 2014. This charge was duly registered at the Companies Registry and Land Registry on 31 May 2014.

On 3 June 2014, a former employee of the Company presented a winding-up petition against the Company on the ground that it was insolvent and unable to pay its debts. A winding up order was accordingly made on 3 October 2014.

Advise the liquidator whether he can challenge the validity of the fixed charge.

~ End of Examination Paper ~