

## **PCLL CONVERSION EXAMINATION JUNE 2017**

Title of Paper : Business Associations  
Date : 22 June 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**

## PCLL Conversion Examination June 2017

### Business Associations

#### **Question 1 (100 marks)**

Elegant Construction Ltd is a real estate company that specializes in the construction of luxury houses. It owns all of the shares of two subsidiaries, Elegant Marketing Ltd (which markets the luxury houses) and Elegant Sales Ltd (which is responsible for selling the houses). The directors and senior management are the same in all three companies. Any transaction involving any of the two subsidiaries that is worth more than \$20 million requires the approval of all the directors of the subsidiary in question and Elegant Construction. Elegant Sales sold a house worth \$21 million to a buyer pursuant to a sale and purchase agreement under which Elegant Sales and the buyer are the only parties. But severe structural defects were subsequently discovered that required the house to be pulled down and rebuilt. The buyer sued Elegant Sales but found out that it has no assets other than its office premises that is valued at \$5 million. Most of the assets are owned by Elegant Construction. The buyer has asked the court to lift the corporate veil so that Elegant Construction would be held liable. **Critically analyse whether the court should lift the corporate veil.**

#### **Question 2 (100 marks)**

Each of Ben, Gary and Kevin owns 30%, 30% and 40%, respectively, of the shares in Johnson Ltd, a company that sells gourmet wine (the “Company”). All three of them are the directors of the Company. A provision in the Company’s articles of association states that the Company’s business is to be restricted to selling gourmet wine and that diversification of the Company’s business (through acquisition) must be approved by at least 65% of the shareholders. Consider the following scenarios:

- a. An opportunity to acquire a company (call it X) whose business is outside the scope of the Company’s business becomes publicly known. All of the directors of the Company were of the view that it would be good for the Company to acquire X. But as shareholders, Gary and Kevin refused to consent to the acquisition in order that they could pursue the acquisition for themselves. Did Gary and Kevin breach their fiduciary duties to the Company? **(25 marks)**
- b. Would your answer to question (a) above be the same if the opportunity to acquire had come to the attention of Gary and Kevin other than in their capacities as directors? **(25 marks)**
- c. Suppose that the opportunity to acquire X has instead come to the notice of the Company because the owner of X approaches the board of the Company. The board and the shareholders of the Company decide that it might be in the interests of the Company to effect the acquisition of X because its business, while outside the scope of the Company’s business, presents synergies with the latter. Suppose that the owner of X provides confidential information to the board to enable the Company to make an offer. Ben tried to pursue the acquisition for himself. Did Ben breach his fiduciary duties? **(25 marks)**

- d. Suppose that the board having looked carefully at the potential acquisition decides for commercial reasons not to proceed. Ben then took up the opportunity for himself without the informed consent of the board or the general meeting. Did Ben breach his fiduciary duties? **(25 marks)**

**Question 3 (100 marks)**

John, Betty, Ken and Martha are shareholders of Success Ltd (the “Company”). John and Martha are the directors of the Company. The Company has been making substantial losses since 2013 but John and Martha continue to increase their salaries at the rate of 15% every year. Further, contrary to advice from its financial consultant, John and Martha caused the Company to invest in two overseas ventures (which they thought would be profitable) in 2016. However, the overseas ventures have not been successful, further compounding the Company’s losses. As a result, the Company was in dire need of financing in January 2017. The Company was not able to procure any loan from any bank but Betty was willing to lend money to the Company provided that the interest rate was triple that of the market rate. Out of desperation, John and Martha caused the Company to enter into a loan agreement with Betty in February 2017. The Company subsequently defaulted on its April 2017 interest payment and was required by the loan agreement to cease all its business. Soon thereafter the Company was on the verge of insolvency.

**Critically analyse the remedies that are available to Ken in order to address the wrongs done to him personally.**

**Question 4 (100 marks)**

JJ Ltd is an oil rig company. Paul, the sole director and shareholder, undertook certain actions that caused the company to engage in certain actions that resulted in damage to the environment. The result is that JJ Ltd, not Paul, was fined by the authorities pursuant to an environmental statute. This was because the statute only imposes liability on the company, not directors, shareholders and employees. The fine caused the company to be insolvent. The liquidator acting on behalf of JJ Ltd then sued Paul for breach of duties. Paul alleged that the liquidator is precluded from suing him because his acts have been attributed to JJ Ltd in order to render it liable under the statute. **Critically analyse whether Paul’s acts should be attributed to JJ Ltd in order to bar the liquidator from suing him.**

**~ End of Examination Paper ~**