

PCLL CONVERSION EXAMINATION JANUARY 2020

Title of Paper : Business Associations
Date : 8 January 2020
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 Part A and Part B. A total of 300 marks may be awarded.
8. Part A contains two compulsory questions. Candidates must answer **ALL** questions. There is **NO** element of choice. Part A is worth 200 marks.
9. Part B contains two questions. Candidates are only required to answer **ONE** question out of two. Part B is worth 100 marks.
10. 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 2020

Business Associations

Part A (answer BOTH Question 1 and Question 2)

Question 1 (100 marks)

JV Mine Ltd (JV) is 60% owned by Hayden, with the remaining shares held equally between Paul, Carrie and Alex. Hayden, Beatrice and Carrie are directors of JV. In 2015, Carrie was approached by his friend, Mr Chesterman, who has a geology qualification, to make a further major investment by JV, to enable it to develop a new copper mine. The directors delegated to others, including Mr Chesterman, a second geologist, the task of obtaining the technical information about the amount of copper that might be able to be mined. The report prepared for the directors indicated that the proposed investment in the mine should be very successful. Queried by the directors about the optimistic forecasts, Mr Chesterman assured them that all appears to be in order. However, some of the information had been negligently prepared and JV eventually incurred a loss of more than HK\$3 million.

Paul is also a partner of Pro-equip, a partnership business which he owns with his wife, and imports mining tractors from Europe. Expecting that mining activities would increase in the next two years, the board of directors of JV had decided to order four mining tractors and entered into a contract with Pro-equip to supply them.

In January 2016, Hayden engaged in a business negotiation on behalf of JV with state government (the State) to further extract new mines in the State. The representative of the State told Hayden that they were not going to award new extraction right to JV but was willing to offer it to Hayden in his own personal capacity. Hayden then set up another company with his sister to take up the new extraction right contract with the State and earned a profit of HK\$2 million.

Alex has become discontent with how JV is being managed. Advise him.

(100 marks)

Question 2 (100 marks)

a) Does the corporate form exist primarily for the purpose of enabling groups of people to come together to carry out a commercial venture or undertaking over time? Give reasons for your answer. **(25 marks)**

b) Red Mine Ltd (Red Mine) is a wholly owned subsidiary of ABC. Red Mine has few, if any, assets of its own. In 2016, an employee of Red Mine went on to the land adjoining its mine site and left the gate open. A valuable experimental flock of Dorper sheep escaped from the adjacent land and were lost. Assuming the neighbour has a claim in tort, can he recover from Red Mine? From ABC? In what circumstances might a court be willing to 'pierce the corporate veil' and make a parent company liable for damages caused by a subsidiary? **(75 marks)**

Part B (answer EITHER Question 3 or Question 4)

Question 3 (100 marks)

Beatrice, Ada and Phillip are shareholders of PSL Ltd (PSL) established in 2014, specializing in the sale of expensive handbags and accessories which they import from Europe. Beatrice holds 25% of the shares, Ada holds 35% and Phillip holds 40%. Casper, Ada's husband, who owns a courier company is responsible for delivering goods for PSL. In order to safeguard their own interests, the following clauses were inserted into the articles of association of PSL:

- (i) Casper's courier company is to be the sole courier and delivery company for PSL.
- (ii) In the event of a shareholder wishing to leave PSL, she should first offer those shares to the existing shareholders who would be bound to take them at an agreed price.

By early 2016, due to a decreasing number of tourists, businesses started to deteriorate and disputes began to occur amongst the shareholders. Ada has divorced with Casper and she no longer wants Casper's company to provide courier services for PSL. All the other shareholders agreed and instructed someone else.

Beatrice feels that the business has no prospect and wants to sell her shares to Ada and Phillip. However, Ada and Phillip have declined.

Phillip has opened another retail outlet with her brother in Mong Kok, selling accessories. Beatrice believes this is the main reason why Phillip is no longer interested in the affairs of PSL and blames the deterioration of the business on Phillip. Beatrice has since become frustrated with Phillip and intends to evict him from PSL. Beatrice attempts to incorporate into the articles, a clause that any shareholder who competes with the company could have his/her shares acquired by the majority.

Advise the parties.

(100 Marks)

Question 4 (100 marks)

“The principal objective of shareholders’ remedies is to control divergences of interest between managers and shareholders. Shareholders’ remedies are one of several mechanisms which attempt to control the severity of the divergence of interest between managers and shareholders”.

Critically examine the above statement in relation to the law on minority shareholders’ protection in Hong Kong.

(100 marks)

~ End of Examination Paper ~