

PCLL CONVERSION EXAMINATION JANUARY 2025

Title of Paper : Business Associations
Date : 3 January 2025
Time : 9:30 a.m. – 9:45 a.m. (Reading Time)
9:45 a.m. – 12:45 p.m.

Instructions

1. This is an open book examination.
2. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
3. Start each answer on a separate page of the answer book.
4. Write your answers only in the answer books provided.
5. This is a three-hour 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 2025
Business Associations

Part A - Must answer BOTH Questions 1 and 2

Question 1 (100 marks)

James and Francis were previously employed by First Fast Food Limited ('FFF'), which operates a restaurant in Kowloon. Recently, due to the economic downturn, both were laid off by FFF. They decided to start a new restaurant together.

James and Francis intended to incorporate a company under the name Cool Cook Company Limited ('CCC') under the Companies Ordinance (Cap. 622) in Hong Kong. James's cousin, Jaden, is a lawyer, so James reached out to him for assistance in incorporating the company. However, Jaden was on his honeymoon and promised to help James set up the company when he returned to Hong Kong next month.

Eager to begin preparatory work before the company was incorporated, Francis ordered a large quantity of lobsters from Hearty Happy Heart Limited ('HHH') last week. However, James was recently offered a senior manager position at FFF and informed Francis yesterday that he no longer wanted to open CCC. The lobsters were delivered to Francis's place this morning, but he did not have the funds to pay HHH.

- (a) HHH is now considering suing James. Advise James. **(70 marks)**
- (b) To what extent would your answer in (a) differ if James had not taken the offer from FFF and Jaden had proceeded to incorporate CCC for James and Francis after the lobsters were delivered? **(30 marks)**

Question 2 (100 marks)

Ace Acquisition (Aberdeen) Limited ('AAA') is a Hong Kong-incorporated company. It has a wholly-owned Hong Kong subsidiary, Ace Acquisition (Bonham) Limited ('AAB'). Tailor Tong Limited ('TTL') entered into a contract with AAB last month to purchase a large quantity of clothes from AAB. Due to shipping issues, the clothes arrived a month late, causing TTL to suffer substantial losses as a result of the late delivery.

When TTL reached out to AAB for compensation, it discovered that AAB was also being sued by numerous other creditors and was likely to become insolvent soon. TTL is now considering suing AAA, as AAA and AAB are essentially the same business entity economically.

Both AAA and AAB operate in the same clothing import business. AAB shares the same office space as AAA, and the two companies have the same directors. Aside from the directors, AAB does not have any full-time employees. After the contract was signed, emails addressed to AAB were occasionally responded to by AAA employees. Additionally, for the past two financial years, AAB has distributed all its profits as dividends to AAA.

Advise TTL. **(100 marks)**

Part B - Must answer ONE question only - Question 3 OR 4

Question 3 (100 marks)

Sweet Sweet Tooth Company Limited ('SST') is a Hong Kong company that owns several popular candy stores in Hong Kong. Marvin and Shirley are childhood friends and they founded SST 30 years ago. Shirley holds 60% of SST's shares, while Marvin owns the remaining shares. There are three directors: Marvin, Shirley, and Shirley's brother, Tim.

Three years ago, SST decided to expand into the pancake business. After careful planning, they opened the first pancake store in Mong Kok, which became very successful and quickly gained popularity. This first pancake store was owned and operated directly by SST.

Despite the success of the pancake store, Marvin was discontented. The idea to expand into the pancake business was his, and he put in significantly more effort than Shirley in operating the store. Additionally, Shirley ensured that Tim served as a director and, with her control of the board, appointed all three of her children as CEO, CFO, and COO of SST, each receiving a salary higher than what they would have earned in an open market. SST had been doing quite well financially but alongside Tim, Shirley blocked Marvin's proposal to distribute dividends for the past two financial years. Marvin believes this was done to prevent him from having sufficient funds to open his own pancake store.

- (a) Advise Marvin if he has valid grounds to apply for the winding-up of SST. **(50 marks)**
- (b) Recently, after securing a large loan from his wealthy aunt, Marvin decided to open his own pancake store in Lok Fu. This pancake store is owned and operated by Super Sugar Pop Limited, a Hong Kong company wholly owned by Marvin. Shirley, feeling betrayed, was upset after learning about this new pancake store from a food blog. Advise Shirley if Marvin has breached any company law. **(50 marks)**

Question 4 (100 marks)

"Company law has always shown some scepticism towards arguments that the company can protect itself through provisions in its constitution against claims from good faith third parties purporting to contract with it." (Paul Davies, *Introduction to Company Law* 2010, p.40)

- (a) In what ways can a company protect itself through provisions in its constitution against claims from good faith third parties purporting to contract with it? **(40 marks)**
- (b) What kind of countermeasures does Hong Kong company law put in place to protect good faith creditors? **(60 marks)**

~ End of Examination Paper ~