

# **PCLL Conversion Examination**

**January 2023**

## **Examiner's Comments**

### **Business Associations**

#### **General comments**

The standard of papers in this sitting of the Business Associations Conversion Examination was slightly below average overall.

The questions are designed to test the abilities of the candidates to identify legal issues that practitioners encounter in practice and to apply relevant company law principles to these issues. With this being an open book exam, the knowledge of blackletter law is less important.

The majority of the candidates have finished the paper. A few candidates have exhibited a very good understanding of the law and answered the questions brilliantly. However, some candidates struggled to identify the legal issues. These candidates often just wrote about general principles without applying them properly to the relevant issues.

Here are the comments on how candidates answered each question:

#### **Question 1**

Candidates generally did not do well for this question. Many candidates failed to identify the relevant company law issue, namely, the issue pre-incorporation contract under the Companies Ordinance and common law principles. They should discuss the potential applicability of the statutory provision, followed by analysis on common law should the case fall out of the scope of the statute. The discussion on the partnership issue was generally better. However, with the facts of the question based on those in *Keith Spicer Ltd v Mansell* [1970] 1 All ER 462, one of the leading cases in partnership law, it is expected that candidates should have had more in-depth discussion on the issue of partnership formation. In addition, very few candidates managed to discuss the presumptions under the Partnership Ordinance as well as the issue on the distribution of partnership assets.

#### **Question 2**

Candidates generally performed quite decently for this question which tests candidates' understanding on both the legal effects on Articles of Association and authority of the company's agent. On the legal effects of the articles, most candidates identified the proper legal issues and applied the relevant laws correctly. On the authority issue, candidates would benefit from organizing their answers more structurally. For example, they should discuss the availability of actual authority first, before proceeding to discuss the applicability of the relevant statutory provision under the Companies Ordinance and then the indoor management rule under the *Turquand* case.

### **Question 3**

Candidates also generally performed well for Question 3b which centers on unfair preference, but did not fare as well for Question 3a. Most candidates managed to identify the issue of unfair preference, discussed the required elements of the principle, and applied to the facts reasonably. It is important for the candidates to discuss each of these elements and only those who did manage to do so scored good marks for this part of the question. Question 3a tests candidates understanding on the applicability of the Hong Kong insolvency regime on foreign companies. While most of the students identified this being the issue, few of them managed to refer to the relevant statutory provisions.

### **Question 4**

A number of candidates attempted this question. Although this question leaves a lot of room for candidates to express their view on the values and problems of limited liability, it is essential that they discuss *both* statements. Unfortunately, that was not always the case. In addition, many candidates just wrote about limited liability generally without formulating a view on either statement. Only very few candidates could interpret the statements properly and critically assess them with support from case laws and statutes.