

PCLL Conversion Examination
June 2023
Examiner's Comments
Business Associations

General comments

The general standard in this sitting of the examination was fair. The main reasons for the failures were (i) unfamiliarity and/or failure to identify the legal issues required to be discussed, (ii) the failure to apply the relevant facts of the scenarios to the legal principles and (iii) simply listing out or copying of large chunks of materials/cases from textbooks instead of answering directly the questions posed (often requiring some discussion or evaluation and analysis of the facts and or/circumstances of the case, and making a recommendation/giving advice).

Below are some specific comments on each question.

Question 1

This question required candidates to discuss whether the company in question should be liable for a breach of a restrictive covenant by its directors and shareholders. Relevant cases where the corporate veil has been lifted in similar situations should be discussed and applied. Most notably, the case of *Gilford Motor Co v Horne* [1933] 1 Ch 935 should be analysed and applied to the facts of the question. Candidates can also discuss the intentions of Amy and Betty in setting up the company. Candidates who answered this question well were able to discuss the principles of *Salomon* generally, discuss the law and recent trends on lifting the corporate veil including the discussion of relevant cases and apply the applicable law to facts of this question and come up with a sensible and logical conclusion.

Question 2

The answer to this question is two-fold. First of all, candidates should discuss whether the actions of Amy and Betty were in breach of any of their directors' duties to the company. Candidates were expected to cite the relevant case law and provisions in the Companies Ordinance (Cap. 622) to support their conclusions. This part of the question was generally answered quite well. The second part of the question required candidates to discuss the relevant remedies available to Candy. Since the question specified that Candy asks to be bought out by Amy and Betty, candidates were expected to discuss the remedy under section 724 of the Companies Ordinance (Cap. 622) and the possibility/effectiveness of a derivative action.

Question 3

Candidates were required to discuss the effectiveness of the two floating charges under sections 266 and 267 of Cap. 32 and whether they could be set aside as unfair preference. This question was generally quite fairly answered and good candidates were able to discuss each of the relevant elements, applying the facts of the scenario to the applicable law.

Question 4

This was a relatively straightforward question requiring students to comment on the law on lifting the corporate veil and the law on limited partnerships. This question was generally answered quite well with the better candidates specifically commenting on the advice given in the question (whether the law on lifting the corporate veil is unprincipled and whether it is more preferable to set up a limited partnership instead and the pros and cons of doing so). The better candidates were able to give sound advice to Fred and George about how they should set up their business.