

PCLL CONVERSION EXAMINATION JUNE 2020

Title of Paper : Business Associations
Date : 19 June 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 4 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 June 2020

Business Associations

Part A (answer BOTH Question 1 and Question 2)

Question 1 (100 marks)

JV Property Ltd (JV) is 60% owned by Paul, with the remaining shares held equally between Beatrice, Carrie and John. Paul, Beatrice and Carrie are directors of JV. The company specializes in property investment in Hong Kong and beyond. In 2017, Carrie was approached by her friend, Ms Isabella, who has been an experienced property agent for more than ten years, to invest in commercial properties in Dublin, Ireland. Ms Isabella advised Carrie about the potential of Dublin in becoming a top financial centre in Europe after Brexit and that the value of commercial properties would increase by more than 30% in the next three years. The directors delegated to others, including Ms Isabella, a second property agent, the task of obtaining commercial property market information about Dublin. The report prepared for the directors indicated that the proposed investment should be very successful. Queried by the directors about the optimistic forecasts, Ms Isabella assured them that all appeared to be in order. Based on the report, the company invested an equivalent of 2 million Euro to acquire properties in Dublin. Yet by 2019, the Euro has depreciated by almost 15% and due to the recent pandemic, overall property values in Dublin has dropped by more than 10%.

Beatrice is also a partner of Goodland property (Goodland), a property agency business which she owns with her husband. In 2018, JV asked Goodland to act as its property agent for the sale of a luxury villa. The villa was sold for HK\$30 million and JV paid Goodland a commission fee of HK\$300,000.

In January 2018, Paul engaged in a business negotiation on behalf of JV with Sir William to acquire a commercial property at Hong Kong East. Sir William informed Paul secretly that he was not going to sell JV the property but was willing to offer it to Paul in his own personal capacity due to long-term friendship. Paul then set up another company with his wife to purchase the property. In January 2019, Paul and his wife sold the property and earned a profit of HK\$2 million.

John has become discontent with how the company is being managed. Advise him.

(100 marks)

Question 2 (100 marks)

Blue Star Ltd (Blue Star) is a wholly owned subsidiary of XYZ. Blue Star has few, if any, assets of its own. In June 2018, an employee of Blue Star knocked down a pedestrian while making delivery for the company. As a result of the accident, the pedestrian became semi-paralyzed. Assuming the pedestrian has a claim in tort, can he recover from Blue Star? From XYZ? 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?

(100 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 used 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 his 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)

Honki Construction Engineering Co Ltd (Honki) is a Hong Kong based construction company. On 1 February 2016, Honki entered into a contract with Daida Property Development Co (Daida) whereby the former promised to carry out a construction project in Shatin for the latter. On 10 February 2016, Honki entered into an agreement with TA Construction Ltd (TA), whereby the Shatin project was subcontracted to the latter. On 15 February 2017, Honki made a full repayment of HK\$2,000,000 to Five Star Cement Co Ltd (Five Star), one of the former's trade creditors. On the same day, Honki discharged an unsecured loan owed to David, one of Honki's directors.

Generous Banking Co Ltd (the Bank) is one of Honki's bankers from which overdraft facilities have been obtained. On 15 March 2017, when Honki's current account with the Bank remained overdrawn, a disgruntled creditor presented a winding up petition against Honki. On 16 March 2017, upon TA's completion of the Shatin project and the request of Honki, Daida made a direct payment to TA.

The petition against Honki was advertised on 17 March 2017 in a local newspaper and on 20 March 2017 it came to the notice of Bob, the manager of the Bank. The Bank, however, did not require Honki to operate a separate account but continued to accept payments into the company's current account. The bank did not apply to the court for a prospective validation order. On 21 March 2017, the Bank advanced a loan of HK\$200,000 to Honki, which amount was used for making repayments to the latter's other creditors.

Advise Beatrice, the liquidator of Honki.

(100 marks)

~ End of Examination Paper ~