

PCLL Conversion Examination
June 2021
Examiner's Comments
Business Associations

General comments

The standard of papers in this sitting of the Business Associations Conversion Examination was, overall, average, with some candidates capable of providing coherent legal analysis.

As examiners, we expect candidates to be able to identify the legal issues in questions. Then the candidates should identify the law (in particular, the current version of the statute) that is relevant to the issues. The candidates should also ask what the law means for their clients or advisees base on the facts as set out in the questions. The examination questions are designed to resemble as closely as possible what candidates may come across in practice.

Majority of the candidates finished the paper. Here are the comments on how candidates answered each question.

Question 1

Only few candidates did well in this question and more than half of the candidates completely missed the issues set out in this question. Candidates were expected to identify that the creation of the floating charge in this case potentially amounts to unfair preference and could be set aside by the liquidator if all elements of unfair preference and demonstrated a clear understanding of the relevant legislation. Candidates were expected to apply the current law into the facts. However, there were a number of candidates who completely misinterpreted the question and failed to identify this as a question in relation to unfair preference.

Question 2

Question 2 was a question which involved the law of partnerships and the possible liability of partners for the actions of their partners. The better answers gave a general introduction to the law of partnership and general principles of the partnership and then developed the discussion of the rights of those contracting with a partner as against other partners, the principles of agency and the partners' rights inter se. Although many candidates gave reasonable descriptions of the law of partnership those who did not do so well tended to have failed to apply the identified law to the facts.

Question 3

This question was on the whole fairly well answered. This question was about the articles of association and its enforceability (namely, about (a) the enforceability of the articles by the

outsiders, (b) the enforceability of the articles amongst shareholders themselves and (c) the alteration of articles). Most candidates explained the principles well. There were a few candidates with very good answers showing an in-depth understanding of the relevant sections of the Companies Ordinance (Cap 622) and the case law. Again, candidates were expected to apply the law to the facts in this question.

Question 4

Almost those who attempted this question identified the principle of majority rule laid down in *Foss v Harbottle* and how the court is traditionally reluctant to interfere in the internal management affairs of the company.

Those candidates who gave good answers were able to cite the relevant statutory provisions of statutory derivative action and unfair prejudicial remedy and discussed thoroughly the conditions which the court would grant leave by making reference to the relevant case laws.

Those candidates who gave relatively poor answers simply cited the relevant statutory provisions and cases without further elaborating on the analysis and what courts would consider in determining whether to intervene or grant leave for the action to proceed.