

PCLL CONVERSION EXAMINATION JUNE 2021

Title of Paper : Business Associations
Date : 30 June 2021
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 5 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 2021

Business Associations

Part A (answer BOTH Question 1 and Question 2)

Question 1 (100 marks)

Kancow Bakery Limited (“KBL”) was incorporated in 2015 which runs a chain of bakery shops in Hong Kong.

Due to the pandemic, KBL did not do well in the past two years. In November 2019, KBL obtained a 36-month term loan of HK\$4.5 million from Kowloon Bank (the “Bank”) on an unsecured basis. KBL managed to repay the monthly instalments to the Bank until September 2020 when it started having serious cash flow problems.

In October 2020, KBL received a statutory demand from the Bank threatening to resort to winding up proceedings if KBL did not comply with the statutory demand. After several rounds of negotiations between the Bank and the directors of KBL, it was clear to the Bank that KBL was not in a position to make any repayment. The outstanding loan owing to the Bank as at 31 October 2020 was HK\$2.5 million. The Bank believed that if KBL was put into liquidation, the Bank might only recover a small portion of the outstanding loan. Thus the Bank agreed to give KBL more time to repay the loan but insisted that KBL should execute a document granting the Bank security over all the different classes of its assets for the repayment of the existing loan. If KBL refused to take this arrangement, the Bank would proceed to present a winding up petition against KBL. As a result, KBL executed a debenture (the “Debenture”) which created a floating charge over all KBL’s assets on 2 December 2020. The Debenture was duly registered at the Companies Registry on 30 December 2020.

On 5 January 2021, a creditor of KBL presented a winding up petition against KBL on the ground that it was unable to pay its debt. A winding up order was accordingly made on 10 June 2021.

Advise the liquidator whether he can challenge the validity of the Debenture under s266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32).

Question 2 (100 marks)

Amy, Michael and Fanny are the partners of Paradise Wedding which offers personal introduction dating services through organising dinners and provides wedding arrangement services in Hong Kong. Paradise Wedding holds a valid business registration certificate but it is not registered with the Companies Registrar.

In an annual auditing exercise, it was discovered that HK\$10 million was missing from Paradise Wedding's clients' account established to hold clients' funds. It was discovered that Fanny had been stealing clients' money from the clients' account for almost a year. Amy and Michael were not involved and had no idea that Fanny was stealing money from the account. Some of the clients have started personal actions against Paradise Wedding, Amy, Michael and Fanny.

Michael has been negotiating with Paradise Wedding's catering supplier for delivery of champagne for its functions. Michael has entered into contracts for 10 cases of expensive champagne. The champagne has been delivered to Paradise Wedding. Fanny signed for the delivery but the champagne cannot be found and it is presumed that Fanny has stolen the champagne.

Advise Amy, Michael and Fanny as to their position and potential liability under the partnership law principles for the stolen funds and champagne.

Part B (answer **EITHER** Question 3 or Question 4)

Question 3 (100 marks)

Pink Lady Limited (the “Company”) is a Hong Kong private limited company which specializes in the sale of expensive women fashion jewellerys and hair accessories.

Vivien, Melody and Margaret are the shareholders of the Company and their respective shareholdings are 40%, 40% and 20%. In addition, GoGoGo Courier, which is owned by Anthony, is responsible for delivering goods for the Company.

Since Anthony has never entered into any contract, written or oral, with the Company for providing the delivery services for the Company, in order to safeguard Anthony’s interests, the following clause was inserted into the Company’s articles:

“GoGoGo Courier is to be the sole courier for delivering goods for the Company.”

In addition to the above insertion, Vivien, Melody and Margaret also agreed to insert the following clause into the Company’s articles:

“In the event of a shareholder wishing to leave the Company, such shareholder should first offer her shares to the other shareholders who are bound to purchase the shares at such sum to be determined by the auditors of the Company.”

By early 2020, due to a decreasing number of tourists, the Company’s business started to deteriorate. In order to save costs, all shareholders agreed and instructed a cheaper delivery and courier service provider to provide courier services for the Company.

Recently, Margaret has opened a retail outlet in Hong Kong selling lady accessories including women fashion watches and jewellerys. Vivien is extremely angry about this and she believes that this is the main reason why Margaret is no longer interested in the affairs of the Company and blames the deterioration of the Company’s business on Margaret.

Vivien has since become frustrated with Margaret and intends to evict her from the Company. Vivien attempts to incorporate into the Company’s articles, a clause that any shareholder who competes with the Company could have her shares acquired by the majority.

Alternatively, Vivien wants to quit and sell all her shares in the Company to Margaret and Melody. However, both Margaret and Melody have refused to take up Vivien's shares.

Advise the parties. (Candidates are not required to discuss any action for unfair prejudice under the Companies Ordinance (Cap 622))

Question 4 (100 marks)

Some people say, “... *a company's decisions are made on the basis of majority rule and that the Court will generally not interfere in the process*”.

Critically examine the above quoted statement in relation to the protection of minority shareholders' rights in Hong Kong.

~ End of Examination Paper ~