

**PCLL Conversion Examination**  
**January 2022**  
**Examiner's Comments**  
**Business Associations**

**General comments**

The standard of papers in this sitting of the Business Associations Conversion Examination was 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. Some candidates have exhibited a superior understanding of the law and answered the questions brilliantly. However, those candidates who just wrote about general principles without applying them properly to the legal issues did not do well.

Here are the comments on how candidates answered each question:

**Question 1**

Of the four questions, this is probably the one that candidates had the worst performance on average. A number of candidates could not identify the relevant issue, piercing the corporate veil, especially in Question 1b. This is surprising considering that the Question 1b is based on the facts of *Gilford Motor v Horne*, a classic case on piercing the corporate veil that has been cited repeatedly by courts in both Hong Kong and England. For those candidates who have identified the piercing issue, some of them did not manage to analyze the distinction between the evasion of existing liabilities (which is not allowed) and the avoidance of future liabilities (which is allowed).

**Question 2**

Candidates generally performed quite well for this question which tests candidates' understanding on both directors' duty of care and fiduciary duty. On director's duty of care, most candidates referred correctly to the relevant statutory provision and recognized that there are now both a subjective as well as an objective standard imposed on directors. Some candidates can improve on separating their analyses on these standards to further clarify their answers. On fiduciary duty, candidates usually manage to identify the issue of potential conflict of interests, though not all of them could elaborate their answers by drawing analogy to relevant cases.

### **Question 3**

Candidates also generally performed well for Question 3 which centers on unfair preference. Most candidates managed to identify the issue of unfair preference, discussed all the required elements of the principle, and applied to the facts reasonably. However, some candidates failed to discuss some of the elements. In addition, a small number of candidates confused the fixed charge in question with floating charge and ended up discussing the issue of invalidity of floating charge instead. Another common mistake committed by some candidates was their failure to refer to the current law.

### **Question 4**

Only a small number of candidates attempted this question. While most of these candidates managed to describe the general differences between the common law and statutory regimes of derivative action, few had shown an advanced understanding of the topic. For example, very few candidates were aware of the issues on double derivative action and choice of law, and how they were handled under the statutory regimes.