

**PCLL Conversion Examination
January 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

This question required a discussion of three possible types of business vehicles namely, limited liability company, general partnership and limited partnership. Good answers include an in-depth discussion of the role of partners/shareholders/directors and their respective liabilities and right to participate in the management of the business. Candidates were generally weaker in their discussion of limited partnership. Most candidates were able to give a recommendation as to the most suitable form of business vehicle that suits the business as set out in the facts and were able to support their recommendation with good reasons.

Question 2

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 fixed 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. 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 3

This question was in relation to corporate veil and the circumstances in which the corporate veil may be lifted. Candidates were expected to apply the law to the facts of the question and determine whether the Court could lift the corporate veil under specific circumstances. Generally speaking, candidates were able to apply the law to the facts in the question and were able to include an in-depth discussion of the relevant case law.

Question 4

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.