

PCLL CONVERSION EXAMINATION AUGUST 2022

Title of Paper : Business Associations
Date : 25 August 2022
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**

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Business Associations

Part A (answer **BOTH** Question 1 and Question 2)

Question 1 (100 marks)

Thomas owned a large piece of land in Taipo. Thomas planned to build a commercial recreational park which featured Olympic standard facilities for skateboarding. Advised by his lawyer, he incorporated a new Hong Kong limited private company, Skateboard Fun Limited (“SF”), to carry out the project so as to take advantage of limited liability. Upon the incorporation of SF in January 2021, he transferred the piece of land in Taipo to SF. SF also owned all other assets relating to the project, including a deposit of HK\$2 million in a bank account. Thomas is the sole shareholder, the sole director and in fact, at the early stage of the project, the only employee of SF.

Mary has loaned Thomas HK\$1 million in March 2021 which would be due for repayment in March 2022 (the “Loan”). Since SF is not in operation yet, Thomas has no cash to repay Mary.

- (a) Can Mary recover against SF instead under Hong Kong company law?
(50 marks)

- (b) To what extent will your answer in (a) be different if SF was incorporated as an unlimited company instead?
(20 marks)

- (c) To what extent will your answer in (a) be different if Thomas had HK\$3 million in his bank account as of February 2022 but transferred all of it to SF right before the due date of the Loan?
(30 marks)

Question 2 (100 marks)

TTT Limited (“TTT”) is a Hong Kong incorporated private company that operates a watersport teaching school in Sai Kung. Peter is an executive director of TTT who has been in charge of the day-to-day operations of TTT for the past three decades. The other directors are Tony and Sally. The sole shareholder is Jay.

On behalf of TTT, Peter has been purchasing scuba diving gears from Good Sporting Goods Limited (“GSG”) for the past ten years. Earlier this year, to prove his worth before his retirement at the end of the year, Peter planned to expand TTT’s business to the operation of a new fitness center. He thus ordered a set of expensive gym equipment from GSG for a total of HK\$30 million (the “Transaction”). The Transaction was the largest single transaction between TTT and GSG ever. In fact, the annual purchase from GSG by TTT has never exceeded HK\$100,000 before the Transaction. In addition, Tony and Sally had communicated to all suppliers (including GSG) prior to the Transaction that Peter would retire at the end of the year. However, it was not until after GSG’s delivery of the equipment at the doorstep of TTT that Tony and Sally learned of the Transaction.

- (a) Tony and Sally now claim that Peter was not in the position to represent TTT to enter into the Transaction and refuse to authorize TTT to pay GSG. Advise GSG.
(50 marks)
- (b) To what extent will your answer in (a) be different if the facts are to change as follow?

The board of directors had approved the Transaction, but the Articles of TTT prohibits the board from entering into any transaction exceeding HK\$2 million without the approval of the shareholders’ meeting. Jay also did not approve the transaction. GSG had received a copy of TTT’s Articles in an unrelated transaction previously.

(50 marks)

Part B (answer EITHER Question 3 or Question 4)

Question 3 (100 marks)

Queenie is an executive director of Tempura King Limited, a company incorporated in Hong Kong that runs the famous Tempura King Restaurant in Central. It is part of Queenie's job to do marketing research for Tempura King Limited and to build connections with Japanese chefs. It did not take her long in the job to realize that there was a big potential market in Japanese pancake stores in Hong Kong. Utilizing the connections she built up at Tempura King Limited, she hired a famous Japanese chef to start the pancake business in Hong Kong under the business name of Pancake Queen. The store is operated by Pancake Queen Limited, a Hong Kong private company wholly-owned by Queenie. Pancake Queen has proved to be a huge success and has opened new stores all over Hong Kong within the first year of operation.

Queenie has never informed her fellow directors at Tempura King Limited about her involvement in Pancake Queen. However, she continues to serve diligently as a director at Tempura King Limited. In fact, Queenie has done her job so well at Tempura King Limited that the company has recorded the largest profit in company history in the past financial year.

- (a) Is Queenie liable to Tempura King Limited under Hong Kong Company law?
(70 marks)
- (b) To what extent will your answer in (a) be different if Tempura King Limited suffered a big loss due to Queenie's putting all her time in running Pancake Queen instead?
(30 marks)

Question 4 (100 marks)

"A central part of company law is... concerned with providing a framework of rules which, on the one hand, constrains the potential abuse by directors of their powers, whilst on the other hand does not so constrain the directors that the efficiency gains from having a strong centralised management are dissipated."

Discuss the relevant framework provided under Hong Kong company law and critically assess its efficiency.

(100 marks)

~ End of Examination Paper ~