

**Law of Associations
Examiners Comments
March 2020**

Question 1

This question required consideration of sections 127-130 of the *Corporations Act* dealing with the indoor management rule.

Most students did not understand the significance or adequately consider whether there was a “dealing” pursuant to section 128 (1) allowing the Bank to make the assumptions in section 129 of the *Act*.

Students were also required to consider section 129 containing the assumptions that the Bank could make (assuming that section 128 (1) was satisfied) having regard to the facts in the question. Many students failed to recognise the major assumptions having regard to the facts.

Students were required to recognise that an important issue in the question was whether the Bank could make the assumptions in section 129 (assuming s 128(1) was satisfied) pursuant to sections 128(3) and 128(4) of the *Act* and *whether* the Bank had “actual knowledge” or “actual suspicion”.

Question 2

This question was concerned with directors’ duties pursuant to section 181 of the *Corporations Act*.

Question 3

This question was in two parts, namely the liability of unincorporated non profit associations at common law and under the *Associations Incorporation Act 2009 (NSW)*.

In relation to unincorporated non profit associations, the answer specifically required a consideration of the common law proposition set out in *Cameron v Hogan* unless it came under one of the exceptions at common law.

The second part of the question required an analysis of the relevant sections of the *Associations Incorporation Act* to highlight the difference between unincorporated associations and incorporated associations and to explain whether relevant sections of the *Act* would change your advice on the facts in the question and why.

Question 4

This question required an analysis of section 232 and 233 of the *Corporations Act*.

The question required reference to the test of oppression in section 232 by reference to relevant cases and how those principles applied to the facts in the question. Students should then have considered section 233 having regard to the fact that a provisional liquidator was appointed prior to the hearing on oppression.

Question 5

This question concerned partnership and needed to be answered in two parts.

Firstly, the question required a consideration of whether a partnership existed pursuant to section 1 and section 2 of the *Partnership Act* and by reference to relevant case law.

The second part of the question required a consideration of liable of partners for the actions of other partners. This required to consider and to properly apply to the question the elements of section 5 of the *Partnership Act*

Question 6

This question required an analysis of sections 236 and 237 of the *Corporations Act* dealing with derivative actions.

Reference should have been made to section 236 of the *Act* regarding standing to bring an application under 237 and to consider the requirements in section 237(2) of the *Act*.

Students should have recognised that section 237(3) provides the circumstances in which there is a rebuttable presumption that granting leave would not be in the “best interests of the company” and determining whether that section applied to the facts in the question.

