

**PCLL Conversion Examination**  
**June 2011**  
**Examiner's Comments**  
**Commercial Law**

This Report is divided into five parts. The first part provides a general introduction to the standard of the scripts. Parts 2,3 and 4 of the Report set out the major problems encountered by candidates in Parts A, B and C of the June 2011 Commercial Law exam.

**1. Introduction**

The standard of the candidates' scripts for Part A (Sale and Acquisition of Goods) is high. This high standard on the Part A scripts remains absolutely consistent with that achieved by students in Part A over the past 3 sets of exams that I have had the opportunity to mark and review and I congratulate those involved.

I am also pleased to say that the standard of the candidates' scripts for Part C (Consumer Credit and Protection) was much better than in January 2011 whilst the standard of the Part B (Personal Property) scripts dropped considerably.

The lower standard achieved in Part B is not, however, the result of the topics or syllabus becoming more difficult but because of the technical detail asked in the questions set by the examiners in June 2011. Put simply, the questions in Part B may have appeared more difficult to some students as they required a closer analysis of a broader range of topics under exam conditions.

Overall the standard of English was good and only one student wrote in pencil creating a chaotic impression with a script that was extremely difficult to read. Could the Board perhaps consider informing all candidates that, in future, any answer written in pencil will not be considered for marking?

Candidates' handwriting was also, with one or 2 notable exceptions, much easier to read than in previous years and students are clearly getting the message that handwriting is important when presenting a complex set of ideas to examiners.

**2. Comments on Part A (Sale and Acquisition of Goods)**

Some candidates who failed in Part A did not even attempt to answer a question or mismanaged their time. Those candidates who mismanaged their time were unable to get many marks for a question in which they could only just write one or two paragraphs.

Not many students even attempted Question 1 as it involved a complex fact pattern and required students to discuss in detail the legal consequences of the gift from Bobby to Alice as an "incomplete gift" and the legal consequences of Bobby "bartering" the car to Carl in exchange for a "valuable" ruby. When Carl sold the car in market overt to Dave the title was only voidable. Was the title successfully "avoided" by Bobby before Dave got a fresh title? When Dave left the car with Freddy the *nemo dat* rule would apply since Freddy was not a mercantile agent. When Greg found the watch he obtained only a possessory title subject to any other

existing relative title and also subject to Dave's claim to the car and, including the contents, in the market overt.

Students, however, did well on Question 2 as it concerned a familiar area of the law involving the merchantability, fitness for purpose breach of description in the *Sale of Goods Ordinance* and the measure of damages available under the first and second rules in *Hadley v Baxendale*.

### **3. Comments on Part B (Personal Property)**

Some of the students who failed in Part B also mismanaged their time which is, of course, a general problem for all students facing pressure under exam conditions. Part B contained difficult legal issues for students to analyze but generally the candidates performed well. The failures were spread evenly over Questions 1 and 2.

Question 1 was divided into two parts.

- In Question 1(a) some students were clearly unfamiliar with section 86 of the *Bills of Exchange Ordinance* and failed to discuss issues relating to statutory protection and the tort of conversion.
- In Question 1(b) those students who failed could not identify that the title was relative at all times since Belinda had legal title throughout.

Question 2 was extremely detailed and broad in application.

- In 2(a) all students successfully analyzed the problem of having a fixed charge over receivables since Spectrum Ltd.
- In 2(b) some students failed to discuss section 15A LARCO and *re Chargecard* in any meaningful way.
- In 2(c) all students understood the issues relating to the non-passing of property under retention of title clause.
- However in 2(d) some students struggled to explain the consequences of *Re Wait* and *Re Goldcorp*.

Despite the difficulty of Question 2 many students demonstrated great facility in identifying and solving problems relating to personal property and passing of title.

### **4. Comments on Part C (Consumer Credit and Protection)**

The passing rate for Part C was exceptionally good for this group of candidates. This may be because the fact pattern was clear without too many *dramatis personae* or economic actors to raise theoretical issues.

In Question 1 the facts were loosely taken from the Court of Final Appeal case *Bewise Motors Co Ltd v Ho King Container Services Ltd*[1998] 2 HKLRD 645 CFA but without any sub-bailment. Those few students who failed on Question 1 did not discuss the effect of the small print at the end of the contract or even whether Clause 13 of the contract was incorporated the exemption clause. They also failed to discuss the meaning of "willful negligence and default of

company or its servants” and failed to analyze the relationship between the two business entities involved. However many students were able to demonstrate excellent substantive knowledge and problem-solving skills by exploring Clauses 4 and 15 before advising on the effect of Clauses 13 and 14 and the possibility of a previous course of dealings between the parties.

Students answered Question 2 in depth and detail although not many students appear to choose an essay question in an exam of this sort. The examiners were particularly impressed by those students who critically evaluated the relevant sections of the *Money Lenders Ordinance* with comments and case law illustrating issues in Hong Kong consumer protection and public policy.