

## **PCLL CONVERSION EXAMINATION, JANUARY 2010**

Title of Paper : Commercial Law – Part A  
Date : 4 January 2010  
Time : 9:00 a.m. – 9:10 a.m. (Reading Time)  
9:10 a.m. – 10:10 a.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 an one-hour examination.
5. This is an open book examination.
6. Reading time for this paper is 10 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 2 pages, including two questions. Candidates are only required to answer **ONE** question out of two. A total of 100 marks may be awarded. Candidates will score zero marks for that part if they answer more than one question from one part.
8. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK  
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2010

Commercial Law

**Part A: Sale of Goods**

**Question 1 (100 marks)**

Tom steals Fred's vintage watch which is worth \$5000. He sells it for \$1000 to Albert, a pawnbroker, who runs a small second-hand shop in Central. Albert puts it in his window with a sign which says, "Going cheap to a good home - \$2000". Felicity buys the watch for \$2000 with a cheque which is not met on presentation. When Albert is told by his bank that the cheque has been dishonoured, he tells his wife, and rings the HK Pawnbrokers' Association. Meanwhile, Felicity has sold the watch to Bill, her neighbour, when they meet for yum cha at a restaurant in Central. Bill puts it in his safety deposit box at the bank, and gives the key to his girlfriend, Ethel, saying "Here is something for you!" Advise the parties. If you need to know more facts to advise, please state them.

**Question 2 (100 marks)**

Hong Kong Organic Fruit Company Pty Ltd ("HKOF") supplies organic fruit to customers across Hong Kong. Ben is the managing director. Millie, a top chef at Plaza Restaurant, needs some pears for a special dessert she is making to enter into the Hong Kong Master Chefs' Dessert Competition. She visits the HKOF factory and looks at a sample of Hunan pears which retail for HK\$2000 per 50 grammes. She tells Ben about the competition, and he says, "Our pears are the best in the business – all are from the top pear trees in Hunan". She takes a 50 gm bottle away and tries it out and is happy with the result. She then orders by fax "300 gm of finest Hunan pears". She telephones Ben and says. "The pears are very expensive so make sure that you send me 50 gm bottles". By mistake, when the order is filled Millie is sent five 60 gm bottles, rather than six 50 gm bottles. She opens and uses two bottles on making the dessert. Unfortunately, the pears are in fact from Hainan and are not nearly so good. They can be used for the dessert but cost only HK\$500 per 50 grammes. Millie does not win a prize, and Plaza Restaurant loses business. Advise Millie.

**~ End of Examination Paper ~**

## **PCLL CONVERSION EXAMINATION, JANUARY 2010**

Title of Paper : Commercial Law – Part B  
Date : 4 January 2010  
Time : 10:25 a.m. – 10:35 a.m. (Reading Time)  
10:35 a.m. – 11:35 a.m.

### **Instructions**

9. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
10. Start each answer on a separate page of the answer book.
11. Write your answers only in the answer books provided.
12. This is an one-hour examination.
13. This is an open book examination.
14. Reading time for this paper is 10 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
15. This paper consists of 2 pages, including two questions. Candidates are only required to answer **ONE** question out of two. A total of 100 marks may be awarded. Candidates will score zero marks for that part if they answer more than one question from one part.
16. The passing mark for this paper is 50 marks.

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PCLL Conversion Examination January 2010

Commercial Law

**Part B: Personal Property**

**Question 1** (100 marks)

“The right to possession of a chattel is always relative”. Discuss this statement with detailed reference to the decided cases on the rights of the legal occupier of premises in the event that a third party finds a chattel belonging to an unknown stranger upon the premises.

**Question 2** (100 marks)

Kowloon Widgets Pty Ltd (“KW”) is a customer of Bigbank and has borrowed heavily from it. Metal Suppliers Pty Ltd (“MS”) supplies a large amount of raw material on retention of title terms to KW to make the widgets. Advance Machinery Pty Ltd (“AM”) frequently services the heavy equipment used to make the widgets in AM’s workshop. AM takes the machinery away to its workshop where it repairs the machinery. Bigbank has the following security:

- (a) a “charge” over a deposit of HK\$2 million which KW has made with it;
- (b) a floating charge over the assets and undertaking of KW.

Prepare a memorandum which for the general counsel of Bigbank which discusses:

- (1) the validity of the charge over the deposit;
- (2) the basis in equity of the floating charge;
- (3) the position of MS if the charge is crystallized;
- (4) the position of AM if the charge is crystallized.

**~ End of Examination Paper ~**

## **PCLL CONVERSION EXAMINATION, JANUARY 2010**

Title of Paper : Commercial Law – Part C  
Date : 4 January 2009  
Time : 11:50 a.m. – 12:00 p.m. (Reading Time)  
12:00 p.m. – 1:00 p.m.

### **Instructions**

17. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
18. Start each answer on a separate page of the answer book.
19. Write your answers only in the answer books provided.
20. This is an one-hour examination.
21. This is an open book examination.
22. Reading time for this paper is 10 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
23. This paper consists of 3 pages, including two questions. Candidates are only required to answer **ONE** question out of two. A total of 100 marks may be awarded. Candidates will score zero marks for that part if they answer more than one question from one part.
24. The passing mark for this paper is 50 marks.

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# PCLL Conversion Examination January 2010

## Commercial Law

### **Part C: Consumer Credit and Protection**

#### **Question 1 (100 marks)**

On 20 Dec 2009, Bobby went to a furniture shop called, “Connichati”, at Causeway Bay. He asked the sales lady in the shop about the leather sofa set that caught his fancy.

The sales lady, Sally, told Bobby that the sofa set was an Italian hand-made leather sofa set of the latest design; and it was now on a special Christmas sale, its price having been reduced from \$60,000 to \$30,000.

Bobby was impressed as he is usually with everything made in Europe. He decided to purchase the sofa set.

Sally was naturally pleased to seal the deal but she told Bobby, “Sir, this display set is the only sofa set of its kind in Hong Kong, and it is sold, “as is, where is”. Furthermore, all sale items are sold on a non-refundable and non-exchangeable basis.”

Sally and Bobby concluded the sale and purchase of the sofa set when Bobby paid in cash against Connichati’s invoice which Bobby was required to sign. Stamped in bright red on the invoice were the words, “ITEMS SOLD ON DISCOUNT CANNOT BE RETURNED OR EXCHANGED.”

Also printed prominently on the invoice was the following clause:

*“Clause 3.1 Connichati is not responsible for the buyer’s reliance of any statement made by us or by any of our sales staff. It is the sole responsibility of the buyer of any of our products to inspect it carefully and seek proper advice before buying.*

*Clause 3.2 All sales representations in whatever form, whether said or written, do not form part of this sale and purchase contract. Terms contained on this invoice constitute the entire contract between Connichati and the buyer.”*

There are also other clauses printed on the invoice, but which are irrelevant for present purposes, as they relate to matters such as time and mode of delivery, etc.

On 24 Dec 2009, the sofa was delivered to Bobby’s home, just in time for Bobby’s Christmas Eve party. Unfortunately for Bobby, one of his guests, Timothy, pointed out to him that very evening that Bobby’s new sofa was a very commonplace product imported from Vietnam. In fact, it was manufactured in the factory operated by Timothy, who proudly announced that he sold at least 500 such sofa sets in Hong Kong in the last six months for a price of about \$5,000 each.

On Christmas Day, Bobby went to the shop and confronted Sally, demanding a refund. Sally insisted that no request for refund or exchange would be entertained, but that Bobby should speak to Connichati’s in-house legal counsel if Bobby was not satisfied.

You are Connichati's in-house legal counsel. Bobby has just sent you a written demand setting out the above facts and requiring a full refund of the \$30,000 purchase price.

Advise Connichati.

**Question 2 (100 marks)**

You are consulted by Mr. Bobby Chan who runs a one-man company in Hong Kong Chan Chicken Exports Ltd ["the Company"].

The Company runs a frozen chicken business and exports large quantities of frozen chicken from Hong Kong to Shenzhen.

Since 2005 the Company has used a very small and cheap Hong Kong transport firm The Good Transport Company "GTC" for deliveries to Shenzhen. Their rates have to date been extremely cheap in comparison with other transport firms in Hong Kong.

The arrangements for transport of the goods are as follows. GTC signs a contract with the Company to transport the frozen chicken and then arranges for a driver to transport the goods to by lorry from Kwan Chung Container Port China. Over the past 4 years there have been no problems with delivery of the goods.

The contract for each consignment of goods is always attached to the cargo receipt issued to The Company at the time of the consignment of goods for delivery.

Bobby Chan is now being extra careful and is worried that the Company may be at risk from the following exemption clause in GTC's standard printed contract.

*"Clause 6*

*The owner of the goods shall be responsible for the damage done to the goods during loading and unloading; the consignor shall purchase its own insurance.*

*If during the consignment the goods are damaged due to any traffic accident, theft or burglary, fire and water flood, driver's negligence and other disaster not resistible by human beings, our company shall not be responsible and the transportation charges are still payable."*

The contract is governed by Hong Kong law as both parties have their place of business in Hong Kong and Clause 6 relates to the goods themselves and not to the container.

1. What are the factors, that a Hong Kong court would take into account if required to interpret the validity of Clause 6? (50 marks)
2. In your view is GTC able to enforce Clause 6 under Hong Kong law? Please explain your answer. (30 marks)
3. What would you advise if Clause 6 also purported to exempt GTC from any liability for death or personal injury resulting from negligence? (20 marks)

**~ End of Examination Paper ~**