

## **PCLL CONVERSION EXAMINATION JANUARY 2011**

Title of Paper : Civil Procedure  
Date : 4 January 2011  
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 on 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 5 pages, including Part A and Part B. A total of 100 marks may be awarded.
8. Part A consists of four short questions. Candidates must answer ALL four questions. Part A is worth 40 marks.
9. Part B consists of two long questions. Candidates must answer ALL two questions. Part B is worth 60 marks.
10. 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 2011

## Civil Procedure

### **PART A**

#### **Question 1 (10 marks)**

Tom, who is now 28 years old, was hit while crossing Prince Edward Road by a car driven by Jimmy in June 2010. At the time he was hit Tom was walking in the middle of a cross walk under broad daylight. As a result he suffered seriously injuries to his head and back. Jimmy was at the time of the accident driving a car belonging to his employer Pesticides. In September 2010, Tom commenced a lawsuit in the High Court against Jimmy and Pesticides seeking damages in the sum of \$3.5m.

Last week, Pesticides made a sanctioned payment into court in the sum of \$2.1m, such sum being in satisfaction of all Tom's causes of action in the proceedings. A Notice of Sanctioned Payment was served on Tom's solicitors on the same day.

#### **Advise Tom:**

- (a) **What he should need to do if he decides to accept the sanctioned payment; (4 marks)**
- (b) **What are the consequences if he decides to accept the sanctioned payment; and (3 marks)**
- (c) **What are the consequences to Tom for not accepting the sanctioned payment? (3 marks)**

#### **Question 2 (10 marks)**

- (a) **What are the underlying objectives of the Rules of High Court? What do they aim to achieve? (4 marks)**
- (b) **Give 3 examples of how the High Court could exercise its power to achieve its underlying objectives. Briefly explain your answer. (6 marks)**

#### **Question 3 (10 marks)**

On 1<sup>st</sup> November 2010, summary judgment in the sum of \$2m was awarded by the Court in favour of Mary against Envirotech Limited ("Envirotech"), a company incorporated in Hong Kong. Mary's solicitors possesses the following information in relation to Envirotech:

- It has 3 shareholders, A, B and C;
- A owns a flat in Happy Valley which he purchased in January 2010 for \$4.5 m with a mortgage of \$3m;
- Envirotech operates a business selling environmental equipments and accessories and had purchased a warehouse in Kwun Tong for \$1.5m in 2008 with 70% mortgage with HSBC; and

-Envirotech has one trade debtor owing it \$800,000.

**Advise Mary how she could/should enforce the summary judgment against Envirotech in accordance with the Rules of the High Court. (10 marks)**

**Question 4 (10 marks)**

ABC Limited (“ABC”) is the owner and landlord of the premises known as 4<sup>th</sup> Floor, Malahon Industrial Bldg in Kowloon Bay. XYZ Limited (“XYZ”) is the tenant under a 3-yr tenancy commencing 1<sup>st</sup> January 2009. XYZ operated a printing factory in the premises with 12 sets of machineries. Since 1<sup>st</sup> July 2010, XYZ has failed to pay monthly rentals totaling \$600,000. When demanded by ABC, Carol, the sole director/shareholder of XYZ, told ABC that XYZ would not be paying the outstanding rent since she will be retiring from her business and she is arranging for the machineries to be sold to one of her acquaintances in China and the machineries will be relocated to a location in China in the following week. ABC also learned that most of XYZ’s staff will be leaving their employment soon, and that the total value of the machineries is about HK\$1m.

**Please advise ABC whether a mareva injunction is the appropriate relief to be sought. Please also explain whether the requirements for a Mareva Injunction are satisfied. (10 marks)**

**PART B**

**Question 5(30 marks)**

Your firm represented HDC Limited (“HDC”) in a High Court action against MFS Services Limited (“MFS”), commenced in December 2010. HDC is a retailer in cellular phones while MFS is a supplier of telephone equipment and products. HDC claimed that it had suffered losses totaling HK\$1.5m arising from a breach by MFS of a supply contract between the parties wherein HDC agreed to purchase and MFS agreed to supply 1,000 new cellular phones on or before 31<sup>st</sup> July 2010. The phone were subsequently delivered on 25<sup>th</sup> August 2010. In this action, HDC alleged late delivery against MFS, as well as claiming that the cellular phone delivered were defective.

MFS, on the other hand, argued that there was no late delivery as the parties had agreed orally to postpone the delivery date to 31<sup>st</sup> August 2010. It further denied that the cellular phones it supplied to HDC were of defective quality. Instead, MFS alleged that the alleged defects were caused by improper handling and storage of the cellular phones by HDC.

Pleading have just closed. There are the following documents in the HDC file at your firm:

- (1) A copy of a letter from HDC to MFS dated 5<sup>th</sup> September 2010 complaining about the late delivery and defective quality of the cellular phones and MFS’s reply a week later on 12<sup>th</sup> September 2010.
- (2) A copy of a letter sent to your firm by HDC attaching a the copy of a handwritten note by its employee John (who had allegedly agreed on the postponement of delivery dates), written on 15<sup>th</sup> September 2010. The note stated that John remembered there was a discussion of the postponement of the delivery dates between him and MFS’s

staff, and that he had agreed to postpone the delivery date to 31<sup>st</sup> August 2010. The note was prepared by John at the written request of HDC since HDC was investigating the matter internally, after having received the reply letter from MFS dated 12<sup>th</sup> September 2010 as mentioned in (1) above. HDC does not want this internal handwritten note to be disclosed to MFS, and had already shredded the original handwritten note.

- (3) Photographs of a sample of the cellular phones taken on 1<sup>st</sup> September 2010.
  - (4) A letter from your firm to an expert, Brown, who would comment on the alleged defective quality of the cellular phones.
  - (5) An investigation report prepared by Brown to HDC dated 15 October 2010 setting out the results of the investigations carried out by Brown on the cellular phones. The report stated that the cellular phones contained defects caused either by some parts inside the cellular phones or might have become defects due to the improper handling and storage by HDC after taken delivery.
- (a) **State whether each of the abovementioned documents are to be included in HDC's List of Documents. If so, which part of the List of Documents should each of the documents be listed. Please explain your answer and state, if you consider it necessary, what further information you would need in order to answer the questions. (20 marks)**

Assuming that the parties had attended a case management conference last week, and the following directions were made by the Court:

- (1) that the parties serve and file their witness statements on or before 15<sup>th</sup> January 2011;
- (2) that the parties file and serve their expert's reports dealing with the issue on defects of the cellular phones on or before 28<sup>th</sup> February 2011;
- (3) that a pre-trial review be held on 15<sup>th</sup> March 2011.

One of the HDC's employees who is most familiar with the facts of the disputes, Larry, is no longer employed by HDC. Larry is unable to provide a witness statement on fact until some time in early February 2011. Also as the expert, Brown, would be out of town until the end of February 2011, he is unable to finalize his report until the mid-March 2011.

- (b) **Advise HDC whether it should seek extensions of time to file and serve Larry's witness statement and Brown's expert report. And if so, whether such applications are likely to be successful. Please explain your answer and state, if you consider it necessary, what further information you would need in order to answer the question. (10 marks)**

**Question 6 (30 marks)**

Designs Co is a sole proprietorship operated by Nancy for her garment manufacturing and export business. The business was started in April 2010 in Hong Kong by Nancy, after she had quitted her job with her employer for 10 years, Penney Limited (a multinational giant in the garment industry).

Designs Co's first order came from a Singaporean importer of garments, TSL Company Ltd ("TSL"). When Peter, the managing director of TSL, visited Hong Kong in July 2010, he entered into a purchase contract on behalf of TSL with Designs Co under which TSL agreed to purchase 10,000 pairs of jeans ("the Jeans") from Designs Co at HK\$1,600,000 ("the Contract"). A deposit of \$500,000 was paid pursuant to the Contract. Designs Co delivered the Jeans to TSL. However, TSL failed to pay the remaining contract price of \$1.1m despite repeated demands by Designs Co. Designs Co is considering commencing legal action against TSL to recover the outstanding sum but Nancy is not sure what factors she should take into account when considering the matter. As she had used up most of her savings to meet the order, she is therefore also concerned about the costs of litigation.

- (a) Please advise Nancy (Designs Co) in light of the above information. Please explain your answer and state, if you consider it necessary, what further information you would need in order to answer the question. (20 marks)**

Nancy eventually commenced proceedings against TSL in the Court of First Instance in October 2010. The parties had just completed the filing of their pleadings in relation to the proceedings.

In TSL's Defence and Counterclaim, TSL admitted a sale contract had been entered into in July 2010 and admitted that the Jeans were delivered but argued that the Jeans were delivered late. As a result of the late delivery, TSL was also late in delivering the Jeans to its retail customers and had to offer substantial discounts totaling \$500,000 for the Jeans. As such TSL counterclaimed against Nancy/Designs Co for \$500,000.

In Nancy's reply, she admitted that the delivery of the Jeans was late.

Nancy wants to know whether the matter can now proceed to trial as she wants to recover the amount owed by TSL as soon as possible. If the matter is not yet ready for trial, Nancy wants to know the steps which she would have to take in order to bring the matter to trial.

- (b) Please advise Nancy/Designs Co in light of the above information. Please explain your answer and state, if you consider it necessary, what further information you would need in order to answer the question. (10 marks)**

**~ End of Examination Paper ~**