

PCLL CONVERSION EXAMINATION, JANUARY 2011

Title of Paper : Commercial Law – Part A
Date : 3 January 2011
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 a 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.

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UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2011

Commercial Law

Part A: Sale of Goods

Question 1 (100 marks)

Tom decides to buy a beautiful engagement ring for his fiancée, Pamela. He goes to Joe's Jewellery (JJ) and speaks to John, the owner. John says to him: "I buy all my jewels on a floor plan from WorldDiamond (WD), the wholesaler. This is a nice ring – it's yours for \$60,000". Tom buys the ring, giving John a cheque in return. Tom had meant to put some money into his account so the cheque could be met on presentation but unfortunately he forgot to do so. Two days later, the cheque is returned marked "insufficient funds – refer to drawer".

John immediately contacts Tom by phone to discover that a series of extraordinary events have occurred in the past 48 hours. Tom says that he let Pamela see the ring on the same day of purchase. Pamela was so unimpressed that in a fit of rage Tom immediately sold the ring to his friend Peter for cash for \$50,000. Peter wanted to become engaged to his girlfriend, Molly. The same evening Peter gave the ring to Molly as a "little gift to win your heart".

Upon seeing the ring Molly at once agreed to marry him because of his "generous nature". Within 24 hours Molly and Peter had argued so badly that Molly called the wedding off. Molly told Peter "The wedding is off but I am keeping the ring for all of the trouble that you have caused me over the past 2 years".

Advise all the parties.

Question 2 (100 marks)

Tom runs a construction business. He has a lucrative contract to drain the Yuen Long marshes and wants to buy a new Scantravator (and piping) to perform the contract. He thinks that a Scantravator Mark 3 will be sufficient for the job. He goes to HK Scantravators Pty Ltd (HKS) and speaks to Fred, the chief salesman. Tom says: "The water at Yuen Long is particularly muddy – will the Mark 3 be good enough?" Fred says, "I should think so". Tom says: "The piping is a very expensive extra – make sure that you send me 12 pieces in boxes of 3 please". The Scantravator is delivered but Tom soon finds it is not up to the task of handling the muddy water. Upon inquiry, Tom discovers that a Mark 2 "inductor funnel" has been attached to a Mark 3 frame. In addition, the piping has been delivered in boxes of 4. Tom uses the Scantravator for two weeks but is most disappointed with its performance. At the beginning of the third week, while the machine is on site, Bill, a representative of Apex Finance Ltd arrives and demands the return of the Scantravator. He says to Tom: "We provide finance to HKS - they only operate as our bailee and are behind with the payments".

Advise all the parties.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2011

Title of Paper : Commercial Law – Part B
Date : 3 January 2011
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 a 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 2011

Commercial Law

Part B: Personal Property

Question 1 (100 marks)

BigBank has a floating charge over the assets of Cronix Pty Ltd (Cronix), a company which manufactures handbags. Alice, a director of Cronix has also given BigBank a charge over a HK\$1 million deposit which she has with it. Cronix has sent its Bagmaker Mark II off site to Kowloon Electronics for repair and refurbishment and Kowloon Electronics repairs it and uses the machine to make two handbags. Cronix also holds a “purchase note” with respect to 3 tonnes of leather which is at present in Joe’s godown (in which there is stored a total of 5 tonnes of leather).

Advise all the parties with respect to the security and other interests which arise from the transactions.

Question 2 (100 marks)

Fred goes into Bob’s shop to buy some paint. He sees a gold bracelet lying on the floor of the shop, near the entrance. He also sees a gold coin which has been stuck to the wall of the shop with Bluetack (a strong type of adhesive) by a stranger. He carefully removes the coin and puts it in his pocket. He then shows Bob the bracelet and says: “Look what I have found! You keep it for me, and if no-one claims it I will have it back”. He gives the bracelet to Bob who puts it in the pocket of his jacket which has a hole in it. When walking home, Bob loses the bracelet through the hole. Amy finds the bracelet in the street and takes it to Monte’s Jewellery Pty Ltd to have it valued. She already owes Monte’s Jewellery HK\$500 for some earlier repair work he did on her pendant.

Advise all the parties.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION, JANUARY 2011

Title of Paper : Commercial Law – Part C
Date : 3 January 2011
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 a 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 4 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 2011

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks)

The well-known Hong Kong freight forwarding company, FedPack Express Ltd (“FED”) seeks your legal advice. In September 2010 Miss Tung, who runs her own HK business, instructed FED to arrange for goods to be delivered to Taiwan. The goods were duly freighted to Taiwan by FED but the Taiwan customer refused to pay for the transportation charges. The goods have now been returned to Hong Kong and FED seeks payment of freight charges from Miss Tung.

FED has presented Miss Tung with an airway bill for transportation costs amounting to \$250,000 and demands the full payment from Miss Tung in Hong Kong.

In support of its claim FED relies on two separate standard conditions in the freight forwarding business.

Clause 1 is set out in English (but not Chinese) on the back of the Airway Bill;

Airway Bill (on back)

Clause 1 Responsibility for payment

Even if you give us different payment instructions you will be primarily responsible for all charges, including transportation charges and possible surcharges, customs and duties assessments including fees related to our payment of the same.

You will also be responsible for any costs we may incur in returning your shipment to you or warehousing pending disposition.”

FED also relies on Clause 1 set out in English (but not Chinese) on the back of the Standard Conditions of Carriage sent to Miss Tung. FED’s Standard Conditions of Carriage (on back) provide as follows:

Clause 1

If the recipient of the goods fails to pay any of the transportation charges whatsoever the sender of the goods is ultimately liable.”

Miss Tung agrees that she entered into the contract with FED for transportation of the goods to Taiwan. However she says that she signed the contract at the request of the Taiwan customer on the understanding that the customer would pay all the transport charges. Miss Tung apparently, agreed this position verbally with FED before signing the contract.

Miss Tung does agree that the existence of terms and conditions on the back of the contract and airway bill were drawn in a general way to her attention. However says that she did not bother to read them and, even if she had read them, she would not have understood them since she cannot read English.

Finally, Miss Tung argues that Clause 1 on the back of the Standard Contract of Carriage and Clause 1 on the back of the Airway Bill relied on by FED are completely unenforceable by reason of the *Control of Exemption Clauses Ordinance* (Cap 71). She therefore refuses to pay any of the charges and has told FED to deal directly with the customer in Taiwan.

Please advise FED on the operation of the *Control of Exemptions Clauses Ordinance* (Cap 71), and on whether FED is liable for unconscionable behaviour.

Question 2 (100 marks)

On the Ground Floor of Lucky Mansions, a block of flats in Shatin is an old bowling alley that is no longer in use with a floor area of 24,000 square feet. On 20 August 2010 Wellfit's Managing Director, Mr Charles Wong, viewed the property. Noticing the strange layout Charles made enquiries as to what the property had been used for. The Vendor told him that it had been a bowling alley but could be used for commercial purpose. On 22 August 2010 Charles viewed the property again and over a cup of coffee the Vendor produced the following documents:

1. A letter from a firm of Hong Kong architects dated August 1st 2009 applying to the Shatin District Land Office to amend the property from bowling alley to general commercial use subject to the usual Government Conditions
2. A typical layout plan and master plan in relation to this type of application
3. A letter from the Shatin District Land Office dated 1 December 2009 to the architects stating that the Government had, in principle, no objection to the conversion
4. A land search in respect of the property dated 21 August 2010

On 27 August 2010 Charles made an offer to buy the property for HK\$18,000,000 (eighteen million) and Charles signed a Standard Provisional Agreement. Upon signing the Standard Provisional Agreement Charles paid the initial 10% of the Purchaser's deposit to the Vendor's solicitor with the second deposit due to be paid on 30 September 2010.

The Standard Provisional Agreement contained the following relevant clauses:

- Clause 5-The property is sold on as "as is" basis.
- Clause 6-Should the Purchaser fail to complete the purchase the deposit will be forfeited to the Vendor who in its absolute discretion shall have the right to sell the property
- Clause 7-Should the Vendor fail to complete the vendor will return the deposit to the Purchaser together with a sum equivalent to the same amount as liquidated damages

- Clause 13-supersedes ALL prior negotiations, representations, understanding and agreement of the parties

During the next 2 weeks Charles became concerned at the status of the application for change of use of the property from bowling alley to general commercial use. Charles therefore refused to pay the 2nd deposit on 30 September 2010 and now wanted to call off the deal. He has terminated his relationship with his own firm of solicitors as he feels they have no experience in this area of the law.

You are now instructed in this matter and Charles tells you that, as Managing Director of Wellfit Ltd, he entered into the contract as a result of and in reliance on the Vendor's representations. He tells you that the vendor represented to him when showing him the property on two occasions that the property could be used for general commercial use, including restaurants, supermarkets, health clubs. The Vendor also showed him the correspondence between the architects and the Shatin District Land Office.

But Charles is worried about the effect of Clause 13 of the Standard Provisional Agreement and also the fact the Vendor used the word "could" when making the representations about the change of use.

Charles seeks your advice as to whether he can call off the deal which he understands involves "rescinding the contract" and claiming back the initial 10% deposit. Please advise Charles on the effect of Clause 13 and whether the Purchaser can rescind the contract based upon the Vendor's representations.

~ End of Examination Paper ~