

PCLL CONVERSION EXAMINATION JUNE 2010

Title of Paper : Civil Procedure
Date : 28 June 2010
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 June 2010

Civil Procedure

PART A

Question 1 (10 marks)

Aragorn commenced an action against Bilbo in the High Court and issued a Writ of Summons, with a General Indorsement of Claim attached, on 1 June 2010. On the same day, the Writ, with the Indorsement of Claim and the prescribed form for acknowledgment of service of the Writ was served by registered post to Bilbo's last known address. Bilbo collected the Writ from his letter box on 10 June 2010. On 20 June 2010, Aragorn also served Bilbo with a Statement of Claim.

Bilbo wishes to contest the proceedings.

(a) When is the deadline for Bilbo to acknowledge service of the proceedings? (5 marks)

(b) When is the deadline for Bilbo to file his Defence? (5 marks)

Please explain your answers and state, if you consider it necessary, what further information you would need in order to answer the above questions.

Question 2 (10 marks)

Your friend, Merry, has approached you for advice this morning. According to Merry, on 3 September 2009, Sauron sold to him an antique ring for HK\$ 1.6 million. At the time Merry bought the ring, Sauron told Merry that the ring was from the Qing Dynasty and had been worn by the Emperor Qian Long. Merry was later told by Sotheman's Auction House that the ring was fake. Merry therefore commenced a claim against Sauron in the High Court early this year to recover the sale price of the ring together with interest and cost. Sauron's defence was that the ring was genuine.

According to Merry, the Court directed last week that the parties exchange experts' reports covering the genuineness of the ring within 3 weeks. Merry is not sure why an expert report is required. He is wondering whether he could ask his brother, Pip, who works at an antique shop to provide an expert report confirming that the ring was fake.

Advise Merry:

(a) Why an expert report is required; (2 marks)

(b) Whether he should ask Pip to act as expert in his case; and (4 marks)

(c) If Pip is not the appropriate expert, what he can do in relation to the Court's direction that experts' reports be exchanged within 3 weeks? (4 marks)

Please explain your answers and state, if you consider it necessary, what further information you would need in order to answer the above questions.

Question 3 (10 marks)

Sam is ordinarily resident in the UK. When he came to Hong Kong for a holiday last summer, he suffered from acute appendicitis and had his appendix removed in the Prince William Hospital in Hong Kong. When he returned to the UK, he still suffered from stomach pains and after some medical examinations, his doctor found out that a surgical instrument was present in his body. Since he had only ever undergone one surgical operation, it was clear that the surgical instrument was left in his body during the operation at the Prince William Hospital last summer. In September 2009, he underwent a second operation to have the surgical instrument removed from his body.

Last month, he commenced a personal injuries action in the District Court against the Prince William Hospital for damages for medical negligence. As soon as the Writ was issued and his Statement of Claim served on the Prince William Hospital, Sam's solicitors received a letter from the Prince William Hospital, requesting Sam to pay security for costs in the sum of HK\$1 million. Sam is shocked at the amount of HK\$ 1 million. He said that he has already used up half of his savings to appoint his solicitors in Hong Kong to commence the claim against Prince William Hospital and that there is no way in which he would be able to pay the sum of HK\$1 million.

Advise Sam:

- (a) **What the security for costs application is about; and** (4 marks)
- (b) **Whether he would be able to successfully resist the application for security for costs.** (6 marks)

Please explain your answers and state, if you consider it necessary, what further information you would need in order to answer the above questions.

Question 4 (10 marks)

Legolas commenced proceedings against Gimli in the District Court in February 2010 for damages for breach of contract. In respect of the proceedings, Gimli was informed by his solicitors that the next step would be discovery and that Gimli would need to disclose all the documents which he possesses in respect of the case. Gimli is concerned about the disclosure of (i) a letter from his solicitors to him in which his solicitors advised him that the chances of a successful defence were slim and (ii) a letter which he wrote to Legolas prior to commencement of the proceedings offering to settle the case for the sum of HK\$40,000. Legolas did not accept his offer and commenced the proceedings shortly thereafter.

Advise Gimli:

- (a) **of his discovery obligations; and** (4 marks)
- (b) **whether he has to disclose the two letters mentioned above in the course of the proceedings.** (6 marks)

Please explain your answers and state, if you consider it necessary, what further information you would need in order to answer the above questions.

PART B

Question 5 (30 marks)

In May 2009, Rosie commenced an action against Tom at the District Court, claiming damages in the sum of \$800,000. In September 2009, Tom made a sanctioned payment into Court in the sum of \$500,000 in satisfaction of all of Rosie's claims.

- (a) What is a sanctioned payment into Court? Explain to Rosie what would happen if she accepted this sanctioned payment into Court. (5 marks)**

The sanctioned payment into Court was not accepted by Rosie. At the trial of the action in June 2010, the trial judge granted judgment in favour of Rosie in the sum of \$400,000 together with interest in the sum of \$20,000. The trial judge also made an order *nisi* that Rosie should have the costs of the action.

- (b) You are now advising Tom. Based on the above information, comment on the costs order made by the trial judge. In particular, was the costs order appropriate? If not, what should be the appropriate costs order to be awarded by the trial judge? Please explain your answer and state, if you consider it necessary, what further information you would need in order to answer the question. (15 marks)**

Rosie is not satisfied with the judgment and wishes to appeal against the amount of the award (i.e. the quantum) granted by the trial judge.

- (c) Advise Rosie whether she can appeal against the quantum of the award and the procedure for doing so. 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)

Earlier this year, Frodo entered into a contract with Saruman for the sale of 100 diamond rings by Frodo to Saruman for a total sum of HK\$1.5 million. Saruman duly paid the deposit of HK\$400,000 under the contract and Frodo duly delivered the diamond rings to Saruman pursuant to the contract on 30 March 2010. Pursuant to the contract, Saruman had to make payment of the remaining sum of HK\$1.1 million by 14 April 2010. To date, Saruman had failed to make payment under the contract. Frodo is considering whether he should commence proceedings to recover the outstanding sum of HK\$1.1 million against Saruman.

- (a) Advise Frodo whether he should commence proceedings against Saruman. What factors should Frodo consider when making such decision? 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)**
- (b) If Frodo decides to commence proceedings, advise him briefly of the steps which he would need to take, in the ordinary course of events, to take the case to trial. Please explain your answer and state, if you consider it necessary, what further information you would need in order to answer the question. In relation to this part of the question, you may assume that Saruman has an arguable defence so**

that there is no need for you to discuss Summary Judgment in your answer to this question. (10 marks)

Assume that it is now 15 July 2010. Frodo eventually decided to commence proceedings against Saruman on 1 June 2010. Saruman did not acknowledge service of the proceedings and Frodo obtained a default judgment against Saruman on 12 July 2010 for the sum of HK\$1.1 million together with interest and costs. Today, Frodo was informed by Saruman's assistant, Mr. Orc, that Saruman is planning to leave Hong Kong at the end of the month. According to Mr. Orc, Saruman is planning to sell his flat in Isengard Tower on the Peak and is about to transfer all his assets to Canada, where he plans to emigrate. Saruman's assets include a bank account in the Shire Bank with HK\$300,000 standing to his credit and his flat at Isengard Tower, the market value of which is HK\$10 million, but subject to an outstanding mortgage in the sum of around HK\$9.5 million. Frodo is not sure whether Saruman owns other assets.

- (c) **Advise Frodo what he should do with the default judgment. 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)**

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