

PCLL CONVERSION EXAMINATION JUNE 2011

Title of Paper : Civil Procedure
Date : 27 June 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**

Civil Procedure

PART A

Question 1 (10 marks)

Jane commenced an action against Mary in the High Court on 1 June 2011 for damages for breach of contract. On 2 June 2011, Jane served the Writ of Summons on Mary by registered post to Mary's last known address.

- (a) **If Mary does not acknowledge service of the proceedings before the deadline, when is the earliest date on which Jane can enter default judgment against Mary?**
(5 marks)
- (b) **What procedure(s) should Jane follow if she wishes to enter default judgment against Mary?**
(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)

On 1 June 2010, Fitz commenced a claim against George in the High Court. Fitz's claim was a simple debt claim for a sum of HK\$1.8 million plus interest.

On 1 September 2010, George made a sanctioned payment into court in the sum of HK\$800,000. Fitz did not accept this sanctioned payment into court.

On 1 December 2010, George wrote a letter to Fitz. The letter was marked "without prejudice save as to costs". In the letter, George made an offer to settle the action in the sum of HK\$1.2 million, inclusive of interest, with costs to be agreed. This offer was open for 21 days but Fitz did not accept the offer.

The action proceeded to trial and on 1 June 2011, the trial judge awarded Fitz damages in the sum of HK\$1 million, inclusive of interest.

In light of the above facts, what is the most appropriate costs order to be made by the trial judge in respect of costs of the action?
(10 marks)

Please explain your answer and state, if you consider it necessary, what further information you would need in order to answer this question.

Question 3 (10 marks)

Kitty is ordinarily resident in the Malaysia. Earlier this year, she visited Hong Kong as a tourist. During her stay in Hong Kong, she was hit by a lorry. As a result of the accident, she sustained serious injuries to her back and had undergone surgery in Hong Kong. She still required intensive medical treatment after she returned to Malaysia and as a result of her

injury, she lost her job and wants to sue the negligent lorry driver in Hong Kong for damages but would need to borrow some money to do so as she has spent all her savings on her medical treatment. She was also told by a friend that if she were to commence proceedings in Hong Kong, she should be concerned about something called “security for costs”.

Advise Kitty:

- (a) **what is meant by “security for costs”; and** (3 marks)
- (b) **whether she should be concerned about “security for costs” if she were to commence proceedings in Hong Kong against the negligent lorry driver.** (7 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)

Elizabeth is a well known actress. In 2007, Elizabeth signed a management contract with Phillips Management Limited (“Phillips”) for a period of 5 years (expiring in December 2012). During the contractual period, Elizabeth would have to pay 40% commission to Phillips for all the work which she would undertake as an actress. Last month, it was rumoured that Elizabeth had signed a new management contract with another management company. Yesterday, Phillips commenced an action in the High Court to sue Elizabeth for breach of contract, alleging that Elizabeth has unilaterally terminated her management contract with Phillips by entering into a new management contract with another manager.

As Elizabeth’s manager, Phillips is in possession of many documents concerning Elizabeth’s private affairs. Elizabeth is concerned that Phillips may disclose these documents during the proceedings to damage her reputation.

Elizabeth said that she had just signed a new contract with a new management company, Darcy Management Limited (“Darcy”), last week. She had kept this secret and since her new contract with Darcy contains very strict confidentiality clauses, she is confident that Phillips would not be able to get hold of a copy of the same.

Advise Elizabeth:

- (a) **whether Phillips would be able to disclose the documents concerning her private affairs in the proceedings to damage her reputation; and** (5 marks)
- (b) **whether she has to disclose to Phillips a copy of her new management contract with Darcy in the course of the proceedings.** (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.

PART B

Question 5 (30 marks)

Anne is 14 years old. In January this year, on her way to school, she was hit by a private van. She was rendered unconscious immediately after the accident and sustained brain damage as a result. As a result of her injuries, she has to undergo regular medical treatment and therapy. She is unable to recall what had happened at the time of the accident. After some enquiries made at the accident scene by her parents, Mr. and Mrs. Wong, they found out from some eye witnesses that Anne might have crossed the road whilst disobeying the pedestrian traffic lights. However, the driver of the private van might also have exceeded the speed limit at the time of the accident.

The private van is owned by a partnership firm, “Bingley Delivery & Logistics” (the “Firm”). At the time of the accident, the van was driven by Charles, one of the partners of the Firm. Charles provided a statement to the police but the police have refused to provide a copy of the statement to Mr. and Mrs. Wong due to privacy reasons. Charles has refused to discuss the accident with Mr. and Mrs. Wong, claiming that he was prohibited from doing so by his insurers. Yesterday, when Mr. Wong tried to look for Charles again at the Firm’s business premises, he found out that the premises had been abandoned. Mr. and Mrs. Wong are now unable to locate Charles.

Mr. and Mrs. Wong want to commence legal proceedings against the Firm to recover damages as a result of the injuries sustained by Anne pursuant to the accident. However, at the moment, they do not have sufficient information about the accident to decide whether they ought to proceed with the claim. They are also aware that legal proceedings may be expensive, complex and time consuming.

- (a) **What factors should Mr. and Mrs. Wong consider when deciding whether they should commence legal proceedings against the Firm? (10 marks)**
- (b) **If Mr. and Mrs. Wong were to commence legal proceedings, who should be the parties to the proceedings? (5 marks)**
- (c) **If Mr. and Mrs. Wong were to commence legal proceedings, briefly outline the main procedures that they would have to go through in order to take the case to trial. There is no need to go through the detailed procedure for personal injuries actions in Practice Direction 18.1. (8 marks)**
- (d) **If legal proceedings are commenced and contested, are there any ways to resolve the case quickly without having to go to trial? (7 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 6 (30 marks)

Lydia comes to you for advice. Lydia tells you that:

In January 2011, Lydia’s ex-boyfriend, William, commenced a claim against her in the District Court for the sum of HK\$600,000 for breach of a loan agreement.

Lydia acknowledged service of the proceedings and in February 2011, she filed a simple Defence to William's claim, which mainly consisted of bare denials.

In May 2011, Master Gardiner of the District Court granted William a summary judgment against Lydia in the sum of HK\$600,000 together with interest and costs.

Lydia ignored the summary judgment.

In the end of May 2011, Lydia went on a business trip to London. Lydia returned to Hong Kong yesterday and found out that she was not able to withdraw any money from her bank account with Bank of China. Bank of China told her that all the funds in her account totalling HK\$150,000 were paid to William last week pursuant to a court order.

Lydia believes she has a defence to the action but at the time, did not have time to instruct a solicitor to assist her to file a Defence and to resist the summary judgment application. She wants to appeal against the summary judgment.

If she is not able to successfully appeal against the summary judgment, she is concerned that William may find out about her assets and get hold of them. Such assets include:

- (1) her bank account in London with a credit balance of £10,000 (around HK\$125,000);
- (2) her flat in Tuen Mun which she purchased last year for HK\$5 million. The flat is subject to an 80% mortgage to the HSBC. She lives in this flat with her husband and a 2-year-old son.
- (3) her sports car, with a current market value of HK\$200,000.
- (4) her bank account in the Yuen Long branch of Hang Seng Bank. Lydia has recently opened this secret bank account. She has only deposited HK\$10,000 into this bank account but she does not want anyone to find out about it.

Lydia's husband has just set up a new IT business. The business is wholly owned by Lydia's husband and owns very expensive, state-of-the-art IT equipment. Lydia is concerned that William may carry out enforcement procedures to disrupt her husband's business and/or to get hold of these expensive equipment.

Advise Lydia:

- (a) **what had happened to her Bank of China account;** (5 marks)
- (b) **what are the procedures to appeal against the summary judgment and the likelihood of success of such appeal; and** (10 marks)
- (c) **whether William would be able to find out about her and her husband's assets and if so, what he may do to them to enforce the summary judgment.** (15 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.

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