

PCLL CONVERSION EXAMINATION JUNE 2011

Title of Paper : Commercial Law – Part A
Date : 29 June 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 June 2011

Commercial Law

Part A: Sale of Goods

Question 1 (100 marks)

On Day 1 Bobby says to Alice, “I am going to give you my old gold watch which is in the glove box of my car. Come to think of it you can have the car as well. Here are the keys to the glove box”. On Day 2, before he delivers the car to Alice, Bobby changes his mind and decides to sell it and the watch. He goes to the Yuen Long Car Market where he sells the car to Carl, forgetting the watch is in the glove box. Carl gives him a “valuable ruby” in return for the car, and within the hour has sold the car to Dave at the same market. Later that day Bobby visits a jeweler and discovers the “ruby” is worthless. He tries to contact Carl without success, but does ring the Yuen Long Car Market to advise them. On Day 3, Dave takes the car to Freddy’s Car Yard where he leaves it to be valued. Freddy sells the car to Greg for a fair price. Greg finds the watch in the glove box. Advise all the parties.

Question 2 (100 marks)

Adam, an expert photographer, wants to buy some special isotonic batteries for his new Polysite camera. He only wants two batteries because he suspects they will be very expensive. He visits Bill’s Camera’s Pty Ltd in Central and speaks to Chris, the man on duty. “I need two good isotonic batteries for my Polysite camera, can you recommend some for me? I need them by Saturday because I have two weddings to shoot, and I am intending to enter one set of wedding photos in the Wedding-of-Hong Kong contest”. Chris says, “I will have to send away for them but I recommend the Draxel batteries as the best”. Adam pays and leaves his address but to his horror, the batteries (in a pack of six) only arrive on Wednesday, and they are not isotonic, even though they are the same price. He tries them out but they are too magnetic for the camera and burn out its disc. In addition, of course, he could not use the camera to photograph the weddings, or enter the contest. He wants to sue Bill’s Camera Pty Ltd. Advise him.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2011

Title of Paper : Commercial Law – Part B
Date : 29 June 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 June 2011

Commercial Law

Part B: Personal Property

Question 1 (100 marks)

- (a) “The collecting bank may be liable for conversion of a third party cheque paid in by a customer but statute has intervened to provide a measure of protection”. Discuss. (50 marks)
- (b) Albert finds a gold bracelet which has been dropped by Belinda in the street. He takes it to Charming Jewellers for it to be valued. While it is there, a burglar, Dan, breaks in to the shop and steals it and gives it to his mother, Edith, for her birthday. Discuss the relative title to the bracelet, and any claim which Albert may have against Charming Jewellers. (50 marks)

Question 2 (100 marks)

BigBank has taken a floating charge over the assets of Amber Pty Ltd (“Amber”), a company which makes plastic flowers. It has also taken a “fixed charge” over Amber’s book debts. In addition, Amber has given a charge to BigBank over a deposit of HK\$1 million which it has made with BigBank. Amber uses plastic which it takes on retention of title (“ROT”) terms from its supplier, ChinaPlast. Amber also issues “sold” notes which entitle the customer holding one to delivery of a certain number of flowers upon giving seven days’ notice to it.

Advise BigBank on the following questions:

- (a) the validity of a charge over the book debts (including practical advice to ensure the charge is effective); (25 marks)
- (b) the theoretical issues that arise with taking a charge over a deposit, and the validity of the charge over the deposit under Hong Kong law; (25 marks)
- (c) the priority of the floating charge over the ROT plastic in the event BigBank needs to appoint a receiver. (25 marks)
- (d) the position of a customer holding a “sold” note in the event of Amber’s insolvency. (25 marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2011

Title of Paper : Commercial Law – Part C
Date : 29 June 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 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 June 2011

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks)

Fancy Cars Ltd [“FC”] is an exporter and importer of motor vehicles in and out of Hong Kong for sale to wealthy customers. FC contracted with Transport International [“TI”] for shipment of 4 Rolls Royce cars to Shanghai by ship. TI has an “unsecure” Depot 1 in Kwun Tong where all sealed containers are kept for a temporary period during daylight hours immediately before being loaded onto ships for transport.

If TI has to store any sealed containers overnight for its customers the Manager of TI always insists that a TI driver must take the sealed containers to its “maximum security” Depot 2.

In Depot 2 the containers are protected by guards, guard dogs, electric fence and search lights 24 hours a day.

The sealed containers with the Rolls Royce were delivered to Depot 1. The Manager instructed the driver to move the sealed containers to Depot 2 as soon as possible but the driver forgot to do so. During the early hours of the morning thieves stole the 4 Rolls Royce cars.

The Chairman of the Board of TI seeks your legal advice on the exemption clause and limitation clauses in its standard form contract on which TI now wishes to rely. The Chairman shows you the original quotation sent to FC and the relevant contract signed by both parties for the shipment of the cars to Shanghai.

At the foot of TI’s quotation in small print there is a statement that

“All business is transacted subject to the standard terms of business of the company obtainable on request”.

Clause 4 of the standard terms expressly allows TI to subcontract its business.

Clause 15 provided that TI was contracting not only on its own behalf but also on behalf of, inter alia, its subcontractors.

Clause 13 (a) is an exemption clause as follows:

The company shall only be responsible for the goods whilst they are in its actual custody and under its actual control, and the company shall not be liable for the loss or damage to goods or failure to deliver the goods unless it is conclusively proved that that such loss or failure to deliver the goods occurred whilst the goods were in the actual custody of the company and under its actual control and that such loss or damage or failure to deliver was due to the willful neglect or default of the company or its own servants.

Clause 14 is a limitation clause limiting the total award of damages to US\$500 per package.

The Chairman of the Board tells you that in his opinion the failure was negligent but not deliberate and willful in any way and that the driver responsible is a competent and trusted employee with many years experience in the transport business. Please advise on the legal effect of Clauses 13 and 14 and whether TI can rely on them in the circumstances.

Question 2 (100 marks)

“Speaking generally a man who carries on a money-lending business is one who is ready and willing to lend to all and sundry provided they are from his point of view, eligible.” (*Litchfield v Dreyfus* per Farewell J). How far does this represent the law relating to money lending in Hong Kong?

~ End of Examination Paper ~