

PCLL CONVERSION EXAMINATION JANUARY 2020

Title of Paper : Commercial Law – Part A
Date : 7 January 2020
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 the answer to each question or sub-question 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 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.
8. The passing mark for this paper is 50 marks.

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PCLL Conversion Examination January 2020

Commercial Law

Part A: Sale of Goods

Question 1 (100 Marks)

Acme agreed to supply 10,000 tonnes of wheat to Beta at a price of USD 200 per tonne. Delivery was to be on 1st February 2019. Beta resold the wheat to Merchants Ltd for USD 400 per tonne.

Advise Beta in each of the following different situations:

- a) On 1st January 2019 Acme informed Beta that it would not be possible to supply the wheat. On this date the market price for wheat was USD 210 per tonne. Beta told Acme “*You must deliver the wheat as agreed as I have already resold it.*” No wheat was delivered by Acme on 1st February 2019. The market price for wheat on this date was USD 230 per tonne. However, Beta is demanding that Acme pays USD 200 per tonne damages, its loss of profit on the resale to Merchants Ltd. **(40 Marks)**
- b) If on 1st February 2019 some of the wheat Acme delivered to Beta was of poor quality what remedies would be available to Beta if Beta had paid the purchase price in advance? **(15 Marks)**
- c) If Acme supplied Beta with 11,000 tonnes of wheat on 1st February 2019 what remedies would have been available to Beta? **(15 Marks)**
- d) If, instead of delivering 10,000 tonnes of wheat on 1st February, Acme agreed to supply the wheat in four equal instalments of 2,500 tonnes, advise Beta as to its remedies if Acme has just delivered the first instalment on time but it contained only 2400 tonnes? **(20 Marks)**
- e) If Beta refused to take delivery on 1st February 2019, what compensation, if any, could Acme claim if on this date the market price was USD 150 per tonne, but two weeks later Acme was able to resell the wheat for USD 300 per tonne? **(10 Marks)**

Question 2 (100 Marks) (Answer all parts)

- a) WTD decides to sell four of its machines. It agrees to sell one of the machines to Finance Ltd subject to the condition that WTD can continue to use the machine in the course of its business. However, WTD then enters into a contract to resell the machine to ZZ. ZZ pays the price and WTD sends an email to ZZ stating “*As you are now the owner please let us know when you want the machine delivered.*” Finance Ltd discovers what WTD has done and obtains an interim injunction stopping delivery of the machine to ZZ. Advise WTD, Finance Ltd and ZZ as to their respective legal positions regarding the machine. **(30 Marks)**
- b) WTD sells the second machine to KC for use in KC’s factory, subject to a retention of title clause that ownership is not to pass until the full price is paid. However, despite not paying any of the price, after two months’ use KC sells the machine to AA who pays KC half the market value for the machine. Advise WTD as to its rights, if any, in relation to the machine. **(25 Marks)**

- c) Regarding the third machine, WTD is approached by Sandra who tells WTD “*These machines are in demand in the Mainland. I can get a buyer there easily. I will sell it there for you in return for 20% of the price as commission.*” WTD agrees. Sandra explains that, in order to comply with Mainland customs law, WTD must sign a form acknowledging the fact that WTD has sold the machine to Sandra. WTD signs the form. Sandra sells the machine to a Mainland buyer who pays Sandra the full price. However, Sandra has disappeared with the money. Advise WTD as to its rights in relation to the machine. **(25 Marks)**
- d) WTD sells the fourth machine to BB. However, three months after delivery, BB has discovered that the machine infringes the patent rights of CC and CC has informed BB that it can no longer continue to use the machine. Advise BB. **(20 Marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2020

Title of Paper : Commercial Law – Part B
Date : 7 January 2020
Time : 10:25 a.m. – 10:35 a.m. (Reading Time)
10:35 a.m. – 11:35 a.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
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PCLL Conversion Examination January 2020

Commercial Law

Part B: Personal Property

Question 1 (100 Marks) (Answer both parts)

- a) Royal supplies leather on a regular basis to Italian Handbags Ltd ('IHL'). IHL uses the leather to make a range of leather products including wallets and handbags. On each occasion the contract is entered into on Royal's terms and conditions which provide as follows:

6.1 Title will not pass under this contract in any leather supplied until all sums owing by you have been paid in full.

6.2 In the event of any sale by you of any leather supplied by Royal the proceeds shall be held by you in trust for Royal until all sums owing by you have been paid in full.

6.3 In the event of the goods supplied by Royal being used by you to make any new product, title will not pass to you in the new product until all sums owing by you have been paid in full.

Miser Bank has a floating charge over all of IHL's assets.

IHL has recently become insolvent. Royal is owed HK\$ 1 million for unpaid leather. Royal was permitted by the liquidator to carry out an inspection of IHL's premises. This inspection revealed that Royal had on IHL's premises HK\$ 200,000 worth of Royal's leather. IHL had paid Royal for half this leather. There was also on the premises finished and unfinished handbags and wallets worth HK\$ 2 million. In addition, Royal has discovered that IHL is in possession of HK\$100,000. This was the amount IHL received when it sold some of the leather supplied by Royal to another handbag manufacturer.

Advise Royal as to its legal position given IHL's insolvency. (80 Marks)

- b) Acme Ltd was in financial difficulties. On 1st November 2018 its two directors Alan and Barry authorised Acme Ltd to execute a debenture containing a floating charge over the whole undertaking of the company as security for a HK\$ 5 million loan Alan and Barry had previously made to Acme Ltd as well as for a further capital injection of HK\$ 2 million. The debenture was duly registered on 30th November 2018. On 1st September 2019 a trade creditor applied to have Acme wound up and the company was wound up on 1st December 2019.

Advise Alan and Barry as to the legal effect of their charge. (20 Marks)

Question 2 (100 Marks) (Answer all parts)

- a) Tim was going to be out of Hong Kong for two months and as he wanted to make sure that his car would be safe while he was away, Tim entered into a contract with Car Protection Ltd ('CP') which agreed to look after the vehicle. Tim handed over the keys to CP and CP agreed to bring the car to Hong Kong Airport for Tim to collect on his return. CP then entered into an agreement with Safe Cars Ltd ('SC') which agreed to keep Tim's car on SC's premises. The contract between CP and SC contained a clause which stated "*Under no circumstances shall SC be liable for any loss or damage to any vehicle while on SC's premises.*"

SC had recently acquired a vacant plot of land in Sheung Shui as a temporary car park which it used for both short and long term parking. The site had a fence running around it but there was no security barrier at the exit. There was simply a small hut for the benefit of an attendant who was responsible for receiving payments. A CP employee took Tim's car to SC's car park, locked the car and retained the keys.

When Tim returned to Hong Kong he discovered that CP had become insolvent and that his car had disappeared. When he asked SC to explain the reason for this SC replied "*It's a total mystery, we have no idea why your car is no longer in our car park. Anyway we are protected by the exclusion clause in the contract we made with CP.*"

Advise Tim as to his legal position under the law of bailment. (60 Marks)

- b) Tim left his valuable antique watch with Fixit, a jeweler, for repair. It was agreed that he could have it returned on 1st February. However he received a phone call from Fixit that the watch could not be returned on this date as Fixit had selected Tim's watch, because of its uniqueness, to feature in a promotional video an agency was shooting for Fixit. Tim was very angry but Fixit refused to hand the watch over on 1st February. The watch was returned to Fixit on 5th February and that evening was destroyed by a fire at Fixit's premises.

Advise Tim. (20 Marks)

- c) **Can a pledge be created over the following? Give reasons for your answers.**

- i. share certificate.
- ii. bill of exchange.
- iii. bill of lading.
- iv. bank account.

(20 Marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2020

Title of Paper : Commercial Law – Part C
Date : 7 January 2020
Time : 11:50 a.m. – 12:00 p.m. (Reading Time)
12:00 p.m. – 1:00 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
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Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 Marks) (Answer all parts)

- a) Chan is an employee of Wong, a diamond broker. Wong owned a diamond with a market value of HK\$1 million. A potential buyer wished to inspect the diamond. Wong instructed Chan to take the diamond to the customer for inspection. Chan instead took the diamond to ABC, a licensed pawnbroker, and pawned the diamond for HK\$ 90,000. ABC never asked to see any details of Chan's identity before entering into the agreement. Chan has disappeared and three months later Wong has now traced the diamond to ABC and is demanding its return. Wong has just discovered that Chan had a history of dishonesty. Chan did supply references to Wong before Wong employed him but Wong never attempted to verify these references before employing Chan.

Advise ABC as to its legal position.

(20 Marks)

- b) Agnes, who is a fashion model, was having a facial treatment at Pretty, a beauty salon. She was finding it very relaxing. Half way through the treatment the beautician said to Agnes *"As you are clearly enjoying this why not sign up for our one year Diamond Membership Programme which will entitle you to 52 facial treatments. This will give you a 20% discount on the normal price."* The beautician then produced an agreement for Agnes to sign and Agnes did so without reading it. She paid the membership fee of \$100,000 by credit card. One week later Agnes, who had been very busy, took the time to read the agreement and discovered that while there was indeed a 20% reduction on the normal price, she was not entitled to any refund if she was unable within the year to have all her facial treatments. As Agnes works outside Hong Kong for long periods of the year she will not have sufficient time for more than 20 facials and thus the Diamond Membership Programme is not suitable for her. When she informed Pretty that she wanted to cancel the agreement she was informed that this was not possible especially because the contract she signed gave her a three-day cooling-off period to cancel the agreement which she had not taken advantage of.

Advise Agnes who wishes to cancel the agreement.

(50 Marks)

- c) To supplement his income Martin lends money to relatives and friends. His brother's best friend Norman was in urgent need of a \$100,000 loan. On 7th September Martin agreed to lend Norman the money at an interest rate of 48% per annum. The money was lent to Norman on 13th September. On 15th September Martin prepared the written details of the agreement, signed it and sent a copy to Norman. Norman is refusing to repay the loan.

Advise Norman if there are any defences available to him under the Moneylenders Ordinance.

(30 Marks)

Question 2 (100 Marks) (Answer all parts)

- a) The board of Acme Ltd ('Acme'), a Hong Kong incorporated company, were very pleased with the performance of their employee Tony, Acme's top salesperson, who in recent weeks had been responsible for winning a number of very lucrative contracts for the company. As a result, Acme decided to reward Tony by purchasing a Ferrari 812 Superfast for Tony's private use. Acme entered into a contract to purchase a Ferrari 812 Superfast from Italian Cars Ltd ('IC') at a price of HK\$5,318,000. Clause 18 of the contract stated "*In the event of any vehicle sold by us proving defective Italian Cars Ltd agrees to repair it free of charge. However, it is regretted that no refund of the purchase price can be given under any circumstances.*" One week after delivery the Ferrari broke down. An independent engineer's report concluded that the fault was very serious and the Ferrari was not of merchantable quality. However when Acme demanded a refund from IC, IC informed Acme "*Unfortunately because of Clause 18 of the contract you signed we cannot give you a refund.*"

Advise Acme as to the legal effect of Clause 18. (50 Marks)

- b) Would your advice in a) differ if the reason why Acme purchased the car was that, apart from private use, Tony would be required to use the car when meeting potential customers. Acme believes that if Tony takes potential customers out for a drive in the Ferrari this would impress them so much that it will lead to an increase in the number of sales that Tony will make for Acme. (10 Marks)

- c) Tony recently joined Keep Fit ('KF') fitness centre. He left his expensive watch in a locker in the changing room but when he came back from the gym he found that the locker was open and his watch gone. Tony discovered that the reason why his watch was stolen was because the lock was defective. KF had known about this problem for a number of weeks but had made no attempt to replace the defective lock. When Tony complained KF referred Tony to a term in his membership contract which states "*Keep Fit shall not be liable for any loss, damage or destruction to a member's property no matter how caused.*"

Advise Tony as the legal effect of this clause. (40 Marks)

~ End of Examination Paper ~