

PCLL CONVERSION EXAMINATION JANUARY 2024

Title of Paper : Commercial Law – Part A
Date : 4 January 2024
Time : 1:30 p.m. – 1:40 p.m. (Reading Time)
1:40 p.m. – 2:40 p.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 mark if they answer more than one question.
8. The passing mark for this paper is 50 marks.

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PCLL Conversion Examination January 2024
Commercial Law

Part A: Sale of Goods

Question 1 (100 marks) (Answer all parts)

- (a) Argo Limited (“Argo”), a Hong Kong company, wanted to purchase face masks which meet the KN95 standard. To meet this standard, the face mask must filter at least 95% of non-oily airborne particles. Argo approached Lion Limited (“Lion”), a Mainland mask manufacturer. During the course of negotiations, Argo was provided with four KN95 masks that Lion had manufactured. Argo’s testing of the masks confirmed that they met the KN95 standard. Argo then entered into a contract governed by Hong Kong law with Lion for the purchase of 500,000 masks of KN95 standard at a price of US\$2 per mask. Lion delivered the 500,000 KN95 standard masks to Argo on 1st December 2023. Argo had contracted to resell the masks to Rouge, a French company. Argo sent the masks to Rouge in France without inspecting them. However, on 30th December 2023 Rouge informed Argo that it was rejecting the masks as the testing conducted in France had revealed that half of the masks only had an 85% particle filtering efficiency and therefore did not meet the KN95 standard. An 85% filtering efficiency does provide considerable protection against viruses but it is not as great as the KN95 standard.

Advise Argo who wishes to reject the masks, obtain a refund of the price and recover damages from Lion for breach of contract as to its rights and remedies under the Sale of Goods Ordinance (Cap. 26). In your answer focus only on sale of goods law. Do not consider misrepresentation or breach of express terms of the contract in giving your advice. (70 marks)

- (b) Advise who has good title to Agnes’s jewellery in each of the following three situations.

(i) Agnes leaves a ring with Tony, a jeweller, for repair. The jeweller sells the ring to Mary. (10 marks)

(ii) Agnes leaves a necklace with Tony, a jeweller, and asks him to find a buyer at no less than HK\$50,000. Tony sells the necklace to Eve for HK\$25,000. (10 marks)

(iii) Agnes sells a bracelet to Tony, a jeweller, for HK\$50,000. Tony agrees to pay her in one week’s time but Agnes gives him possession of the bracelet. Tony then sells the bracelet to another jeweller, Adam, who pays Tony HK\$100,000 and takes possession of the bracelet. (10 marks)

Question 2 (100 marks) (Answer all parts)

Scanda Limited (“Scanda”) supplies office furniture to businesses. A fire has recently destroyed its showroom and adjoining warehouse. The cause of the fire is unknown. Scanda seeks your advice as to its legal position in relation to each of the following customers, who had paid in full but not yet received the furniture they had purchased at the time the fire broke out:

- (i) Jane, after going to Scanda’s showroom and inspecting some office chairs for her business’s new premises two days before the fire, agreed to purchase ‘50 Galaxy Ergonomic Office Chairs.’ On checking its stock Scanda informed Jane “*You are very lucky as we have got 55 of these chairs in stock. We will deliver to you in three days’ time.*”
(40 marks)
- (ii) How, if at all, would your advice differ from i) above, if Jane had agreed to collect the chairs from Scanda and, on the day before the fire, they were left in Scanda’s warehouse with a note attached saying “*Sold to Jane, all paid for, Jane will collect.*”? **(20 marks)**
- (iii) Tony was impressed by a boardroom table on display in Scanda’s showroom. He did not want to buy this display model and, as there was none in stock, it was agreed that he would purchase a brand new one that Scanda would order from the manufacturer in Finland. The boardroom table arrived at the warehouse two days before the fire broke out.
(10 marks)
- (iv) Brenda agreed to purchase the boardroom table that was on display at Scanda’s showroom.
(20 marks)
- (v) How, if at all, would your advice differ from iv) above if Scanda had agreed to deliver the boardroom table to Brenda before the fire but had failed to do so? **(10 marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2024

Title of Paper : Commercial Law – Part B
Date : 4 January 2024
Time : 3:00 p.m. – 3:10 p.m. (Reading Time)
3:10 p.m. – 4:10 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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**PCLL Conversion Examination January 2024
Commercial Law**

Part B: Personal Property

Question 1 (100 marks) (Answer all parts)

(a) Wedding Band Limited (“WBL”) provides wedding and other event planning services and live music gigs at weddings, parties, and corporate events. WBL has a savings and current account with Saybrook Bank. Cindy, WBL’s sole director, is the signatory to the WBL account. Cindy has also opened a savings account at Saybrook Bank for her newborn baby, Justin.

WBL landed a project to be the event planner and to provide live music entertainment for the 90th birthday party of the famous tycoon, Big Yau, next year. Excited about the opportunity to perform in front of the city’s wealthiest crowd, Cindy ordered a new PA system and an amplifier on behalf of WBL. As the supplier of the PA system and amplifier required a deposit, Cindy provided a cheque drawn on WBL’s current account at Saybrook Bank. The cheque was dated two weeks later (when WBL is supposed to receive a deposit from Big Yau) and has two parallel lines “//” across the front of the cheque with the words “account payee only” in between the lines.

To make sure their grand patriarch will have an impeccable birthday celebration, the Yau family inquired about WBL’s reputation and financial condition with Saybrook Bank. As the Yau family is one of the most important clients of Saybrook Bank, the bank manager revealed to the Yau family that WBL operates on a shoestring budget and often has no more than a four-digit balance in its account. As a result, the Yau family called off the deal with WBL and hired another company.

Devastated by this sudden news, Cindy immediately contacted Saybrook Bank to put in a “stop payment order” for the cheque for the PA system and amplifier. Saybrook Bank paid that cheque despite the stop payment order the following day, but as there was not enough funds in WBL’s current account, Saybrook Bank debited funds from Justin’s account to cover the deficiency.

Describe the nature of the parties’ relationship with Saybrook Bank and advise all parties of their rights and obligations. (70 marks)

(b) Why is bailment still a helpful concept to a plaintiff who has incurred loss or damage to personal property when remedies in contract or tort are available. (30 marks)

Question 2 (100 marks)

Rachel is a free-lance interior designer. She works out of her apartment in Repulse Bay, which she rents for \$50,000 a month from Ross. Pursuant to the lease agreement between Rachel and Ross, Rachel paid a security deposit of \$100,000 (the “Security Deposit”). The lease agreement provided that if there was no antecedent breach of the terms in the lease agreement, the Security Deposit would be refunded to Rachel without interest within seven days after the end of the lease term.

On December 3, 2023, Rachel went to a high school reunion dinner and sat next to Monica, who has recently set up a charity to help children with depression. After listening to Monica’s moving accounts on how she quit her job to work full time for children in need, Rachel agreed to assign half of the Security Deposit to Monica as a donation to this worthy cause. Rachel wrote out the assignment on a piece of paper, dated and signed it and gave it to Monica. The following day, Rachel called Ross to inform him of the assignment and gave him Monica’s bank account number.

On December 8, 2023, Rachel saw an evening gown that cost \$40,000 at The Landmark. Rachel was low on cash and had exceeded the credit limit on all her credit cards, but thinking that the evening gown would be just perfect for the upcoming holiday parties, she persuaded her next-door neighbor, Chandler, to buy Rachel’s right to the Security Deposit for \$40,000. Rachel gave Chandler a copy of the lease agreement to prove that the Security Deposit is worth \$100,000. Chandler went to an ATM machine, withdrew \$40,000, and gave it to Rachel. Chandler sent a letter to Ross on the same day notifying Ross that Rachel has assigned all her rights in and to the Security Deposit to Chandler.

Rachel’s father is terminally ill and has been in the hospital for over a month. His medical bills have exceeded \$80,000. On December 12, 2023, Rachel assigned the Security Deposit to her cousin, Phoebe, in exchange for \$80,000 to pay for her father’s medical bills. As Rachel had to be in the hospital to attend to her father, her brother Joey signed and dated a deed of assignment on behalf of Rachel. Phoebe sent Ross an e-mail on the same day notifying him of the assignment.

The lease agreement expired on January 3, 2024, and Rachel delivered vacant possession of the apartment back to Ross. Rachel, in breach of the lease agreement, did not pay the last month’s rent to Ross. Also, upon inspection of the apartment, Ross found out that the shower stall was broken and will cost \$8,000 to repair.

What are the parties’ rights with respect to the Security Deposit? Assume that none of the assignees knows about the other assignments.

(100 marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2024

Title of Paper : Commercial Law – Part C
Date : 4 January 2024
Time : 4:30 p.m. – 4:40 p.m. (Reading Time)
4:40 p.m. – 5:40 p.m.

Instructions

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Part C: Consumer Credit and Protection

Question 1 (100 marks) (Answer all parts)

Paul and Patsy will get married next year. They are planning to renovate an apartment in Tung Chung, which is solely owned by Paul, so that they can live there together after they get married. Paul and Patsy met the project manager, Jason, of a contractor called Top Design and Construction Ltd (“Top Design”) about six months ago. Jason told Paul and Patsy: “*Our company has renovated a few other units with exactly the same layout and structure in your building before. You can consider enlarging the master bedroom of your apartment by knocking down the existing wall between your master bedroom and study room. Many of our clients have done the same thing and they are really pleased with a bigger master bedroom. We know how to make it right and it will be absolutely fine and safe. You can trust our company with that!*”

Paul and Patsy were persuaded by Jason and loved the idea of a bigger master bedroom. Paul decided to engage Top Design as contractor for the renovation project. The renovation project was estimated to cost over HK\$1 million. About six months ago, Paul obtained a loan of HK\$1 million for one year from Phoenix Bank to finance the renovation project of his apartment. Phoenix Bank had requested a personal guarantee for the loan from Patsy. Patsy agreed immediately as the loan would be used to fund the renovation project of their new home.

The renovation project completed last month. Paul posted some photos of the apartment (with a few photos showing the enlarged master bedroom) in the social media. However, there were a few comments left in the post saying that the wall which was knocked down was a structural wall and hence it was illegal to remove it without the Buildings Department’s approval. Paul told Jason about the comments. After checking with Top Design’s senior engineer, it was revealed that Top Design had actually renovated a few units in a different building of the same residential complex before and had mixed up the layout and structure of Paul’s unit with those other units. The wall which was knocked down was indeed a structural wall, the removal of which might affect the structure and safety of the whole building. Paul received a letter yesterday from the Buildings Department which stated their suspicion that there is unauthorized building works in Paul’s apartment and that it would conduct a full investigation.

- (a) Paul is furious about what he has found out. He looked at the service agreement which he had signed with Top Design and found the following clause:

The Client acknowledges and agrees that in entering into this Agreement it has not relied and is not relying on any representations, warranties or other statements whatsoever, whether written or oral from or by Top Design and Construction Ltd other than those expressly set out in this Agreement.

Advise Paul on the legal effect of this clause. (80 marks)

- (b) Paul purchased a set of high quality stereo system and some design furniture for the new apartment. Paul requested Phoenix Bank to increase the loan amount to HK\$1.5

million and grant him an extension of the loan for six months. Phoenix Bank agreed with Paul's requests. Patsy was not aware of these changed terms.

Assume that one year has passed, Paul defaulted on the repayment of the loan. Phoenix Bank demanded Patsy under her personal guarantee to pay the outstanding amount of the loan.

Advise Patsy if Phoenix Bank can enforce the guarantee against her.

(20 marks)

Question 2 (100 marks) (Answer all parts)

- (a) Monica took some dresses from a model agency (which she works for) to Lucky Laundry for dry cleaning last week. When Monica dropped off the dresses, the shopkeeper asked her to read and sign a short contract before she paid for the dry cleaning service. When she picked up the dresses this morning, she was shocked to find that two of the dresses were damaged (one with a small hole on the dress, while the other one's colour had faded).

Monica found the following clause in the contract which she had signed with Lucky Laundry:

"In laundering and dry cleaning we cannot guarantee against colour loss and shrinkage; or against damage to weak and tender fabrics. Lucky Laundry's liability with respect to any damaged items shall not exceed HK\$20 per garment regardless of brand or condition."

Advise Monica the legal implications of the above clause.

(65 marks)

- (b) Monica established a retail shop selling high-end clothes which she imports from Korea in early 2022. However, her business was not doing too well and she has been struggling with paying the high rent for her shop which is located at a prime location. When Monica went to visit her grandfather in March 2023, she saw her grandfather's antique watch in a drawer when she was looking for medicine for him. Monica thought she would just "borrow" her grandfather's watch and return it later without him knowing. Monica took the antique watch to Fat Choi Pawnshop (the "Pawnshop") on 1 April 2023, which is a licensed pawnbroker in Hong Kong. Monica pawned the watch in return for a HK\$100,000 loan at an interest rate of 3.5% per month. The Pawnshop gave Monica a pawn ticket.

On 20 July 2023, Monica went back to the Pawnshop requesting for an extension of the loan as she was not yet ready to repay the loan. The Pawnshop agreed to extend the loan after Monica had paid off the interest then due, but said they would need to charge an additional extension fee of HK\$5,000. The Pawnshop asked Monica to keep her original pawn ticket and just bring it back for redemption within 4 months.

What are the relevant implications under the Pawnbrokers Ordinance (Cap. 166) in light of the facts above?

(35 marks)

~ End of Examination Paper ~