

PCLL CONVERSION EXAMINATION JUNE 2023

Title of Paper : Commercial Law – Part A
Date : 15 June 2023
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 4 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 June 2023
Commercial Law

Part A: Sale of Goods

Question 1 (100 marks) (Answer all parts)

- (a) Gladys owns a beauty treatment business. She decided to purchase a laser skin care machine for the removal of skin imperfections from Skin Care Technology ('SCT'). During the pre-contract negotiations, the issue of the energy level of the machine was raised. Gladys explained that her customers had a range of skin problems from very minor to some that were quite serious. SCT advised Gladys she should purchase the model SCT Silver that operated at energy levels of up to 1,000mj, as this would be suitable for treating the range of skin conditions Gladys had specified. Before making the contract Gladys obtained further advice from her friend John, a dermatologist, and he assured her that this level of 1,000mj would be suitable for the full range of her customers' conditions including those with serious skin conditions.

Gladys purchased a SCT Silver machine from SCT for HKD 500,000 in November 2022. The contract that she signed stated she was purchasing a "*SCT Silver laser beam machine ...with energy levels of up to 1,000mj....manufactured in Germany.*" Gladys received delivery of the machine in December 2022. However, she found the machine was not effective with five of her customers who had especially bad skin problems. Also with some other customers Gladys found their treatment was taking longer than would have been expected. She also saw on the back of the machine a label saying "Made in China."

In February 2023 Gladys contacted SCT and requested that the machine be tested. After testing SCT informed her that ~~of~~ the machine could only operate up to a level of 800mj. SCT stated that despite this lower level the machine was still perfect for all types of customers and in relation to the five customers whose treatment was unsuccessful SCT replied "*Their condition is very extreme and unusual and not just serious. If you had mentioned their skin problems to us before we sold you the SCT Silver, we would have recommended the far more expensive SCT Gold, which has energy levels of up to 1,500mj. This machine would have cured their problems for sure.*"

When Gladys also mentioned the fact that she was disappointed to discover the machine was made in China and not Germany, SCT replied, "*Yes it is true the SCT Silver was made in China but the Chinese manufacturer has western standards of quality control and the machine is as good, if not better, than one made in Europe.*"

After this discussion, Gladys was so busy that it was not until April 2023 that she wrote to SCT, stating she wanted to terminate the contract and recover the HKD 500,000 purchase money she had paid.

The resale value of the machine is HKD 50,000.

Advise Gladys as to her rights, if any, under the Sale of Goods Ordinance (Cap 26). You do NOT need to consider misrepresentation or breach of express terms of the

Contract in giving your advice.

(85 marks)

- (b) What advice would you give Gladys if two months after receiving delivery of the SCT Silver machine she received a letter from a French company, Alors, stating that the SCT Silver machine infringed its patent and it would be applying to the Hong Kong courts to prevent Gladys using it?

(15 marks)

Question 2 (100 marks) (Answer all parts)

- (a) David was left a valuable painting in his mother's will. As he had financial difficulties he needed to sell it as soon as possible. He invited Amanda, an art dealer, to his home to inspect the painting. After inspection, Amanda agreed to buy the painting from David for HKD 5 million. David agreed to accept payment by cashier's order and, after receiving the cashier's order, David allowed Amanda to take away the painting so that she could display it for sale at her art gallery.

Next day Amanda took the painting to the home of a regular customer, Betty, who agreed to buy the painting for HKD 3 million—that was half the painting's market value. Betty paid cash for the painting and Amanda left the painting with her.

Three days later, David was informed by his bank that the cashier's order was a forgery. David immediately reported this to the police. Amanda has disappeared and cannot be traced. David is demanding that Betty return the painting to him.

Advise Betty as to her rights in relation to the painting.

(30 marks)

- (b) **How would your advice to Betty differ from (a) in each of the following different situations?**

- (i) Amanda took the painting to her art gallery after giving David the cashier's order. Betty, after seeing the painting displayed there, bought it for HKD 3 million and took possession of it.

(10 marks)

- (ii) Amanda, after inspecting the painting, told David she could find a buyer for it. David agreed to let her have possession telling her that "*My bottom line is that I must get at least HKD 5 million for it. In return I will pay you 15% commission.*" Amanda ignored these instructions and sold the painting to Betty for HKD 3 million.

(10 marks)

- (iii) Amanda paid David HKD 5 million in cash for the painting and arranged to collect the painting from David in three days' time. Next day David agreed to sell the painting to Betty for HKD 3 million.

(10 marks)

- (c) Acme Ltd agrees to sell 20,000 camera lenses to Beta Ltd. The agreed price is USD 500,000. As the lenses have to be manufactured, it is agreed that they will be supplied in four equal instalments. The first instalment is delivered but Beta Ltd discovers that 100 lenses are not of merchantable quality. Beta Ltd informs Acme Ltd that due to this breach of contract they are entitled to refuse delivery of the remaining instalments, return to Acme Ltd the instalment delivered and obtain a refund from Acme Ltd of the amount it has paid to date.

(40 marks)

Advise Acme Ltd.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2023

Title of Paper : Commercial Law – Part B
Date : 15 June 2023
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.
2. Start the answer to each question or sub-question on a separate page of the answer book.
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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.
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PCLL Conversion Examination June 2023
Commercial Law

Part B: Personal Property

Question 1 (100 marks)

Eva, a history professor in Hong Kong, is spending a semester in Europe to teach a course there. Before she left Hong Kong, she took her car to her friend, Will, who agreed to take care of the car while she is away. The car is parked at the parking garage of Will's residence.

A month later, Will was laid off from his job and became unemployed. He asked Eva if he could use Eva's car so he could be an Uber driver while looking for another job. Will offered to give 10% of the money he makes as an Uber driver to Eva. Eva agreed. However, she told Will that she had a piece of luggage in the trunk of the car and asked Will to remove it from the trunk and safekeep it for her until her return. Will took the luggage into his home and kept it in the closet in his bedroom.

Will was putting fuel in the car one day, and received a coupon for a free car wash and waxing for filling up a full tank of petrol. Never able to resist a freebie, Will immediately drove over to line up for the car wash. However, there was a long queue. The owner of the petrol station, Nick, told Will that it would be at least a two-hour wait. Nick suggested that, to take advantage of the coupon, which was only good on the same day, Will could park the car outside the petrol station and leave the key with him, and he would work on the car the next morning and call Will when it was done. Will was in a hurry to go to his girlfriend's birthday dinner, so he reluctantly left the car key with Nick and rushed to take the MTR to meet his girlfriend.

Will picked up the car from Nick the next morning and continued to use the car as an Uber driver for another month until he found a new job.

Eva has now returned to Hong Kong and came to pick up the car and the luggage stored at Will's home. Unfortunately, Will's home was burglarised the night before and the luggage is now missing. The luggage was locked, and some valuable handwritten manuscripts were inside. Also, upon examining the car, Eva found that her brand new tyres had been replaced by cheap and worn ones, her state-of-the-art stereo system is missing, and there is a big scratch on the front passenger door. Eva unlocked the glove compartment (with the only key, which she took with her to Europe) and was devastated to find that the diamond ring she hid there is gone, too.

It was later determined that on the night Will left the car at Nick's shop, Nick's former employee (who is now nowhere to be found) broke into Nick's shop, took the key to Eva's car, and stole the stereo system and changed the tyres. Nobody knows what happened to the diamond ring and what caused the scratch.

Advise Eva on her rights against Will and Nick and any claims she may have against them in respect of the damage to the car and the loss of the various items and assess the merits of these claims.

(100 marks)

Question 2 (100 marks) (Answer all parts)

Dressed To Kill Company Limited (“DTK”) is a clothing company in Hong Kong. A few years ago, it borrowed HK\$10 million from Lion Bank as working capital. As part of the loan facility package, the parties signed a debenture (“Lion Bank Debenture”) which contains the following clauses:

“3.01 DTK charges to Lion Bank by way of fixed charge as a continuing security for the payment and discharge of the Secured Obligations all DTK’s rights to and title and interest in all machinery, vehicles, computers, office and other equipment and chattels (excluding stock-in-trade)....

4.01 DTK covenants with Lion Bank that DTK shall not (without prior consent in writing of Lion Bank) create any mortgage, pledge, charge, debenture, lien or other encumbrance upon the undertaking and assets hereby charged ranking in priority to or pari passu with this Debenture.”

Two years later, DTK wished to borrow funds to finance its expansion into the children’s apparel market, this time from Tiger Bank. Tiger Bank requested DTK to grant a floating charge over DTK’s book debts to Tiger Bank as security for the proposed loan.

(a) Can DTK grant a floating charge over DTK’s book debts to Tiger Bank given the above clauses in the Lion Bank Debenture? Please explain your answer. (15 marks)

(b) Why did the drafter of the Lion Bank Debenture exclude stock-in-trade in Clause 3.01? What should be done if Lion Bank would like to include stock-in-trade as security for the loan? (20 marks)

The negotiations between DTK and Tiger Bank fell through and DTK did not expand into the children’s apparel market. For a variety of reasons, DTK’s business kept deteriorating. It fell behind in paying taxes, as well as failing to pay its fabric suppliers and employees. It obtained extensions from Lion Bank a few times to pay the periodic principal and interest payments under the Lion Bank Debenture. Lion Bank began to worry about DTK’s ability to repay its debt obligations and asked for additional security, namely, a floating charge over DTK’s book debts. After extensive negotiations, in May 2022, Lion Bank lent another HK\$1 million to DTK in exchange for DTK’s granting a floating charge over its book debts to Lion Bank as security for all outstanding debt obligations owed by DTK to Lion Bank.

DTK’s business never recovered. On 12 April 2023, a court petition was filed to wind up DTK, and a winding up order was subsequently issued on 13 June 2023.

(c) How should the assets of DTK be distributed in liquidation? (50 marks)

(d) Would your answer to (c) above be different if the lender, instead of Lion Bank, was one of DTK’s directors, Ms. Tracy Lu? (15 marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2023

Title of Paper : Commercial Law – Part C
Date : 15 June 2023
Time : 4:30 p.m. – 4:40 p.m. (Reading Time)
4:40 p.m. – 5:40 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
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PCLL Conversion Examination June 2023
Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 Marks) (Answer all parts)

John is married but he has started seeing a mistress, Suzie, since two years ago when they met at a party. Last year, Suzie told John that she planned to open her own nail salon and wanted to take out a HK\$800,000 loan from ABC Bank to finance her business, but ABC Bank would only lend to Suzie if she found a guarantor for the loan. Suzie asked John to act as a guarantor for the loan, but John said he did not want to incur any additional liability as he already needed to pay off the mortgage of his matrimonial home. Suzie said to John *“I need you to be the guarantor, darling, I am sure you would help me out. Look, I have never complained about being a mistress of yours, I don’t think you would want me to tell your wife about our relationship, would you?”* John then reluctantly agreed to act as a guarantor of the loan which Suzie obtained from ABC Bank. John just told ABC Bank over a phone call that he was a close friend of Suzie and wanted to help her out, and he fully understood the liability of a guarantor. ABC Bank did not enquire further and proceeded with signing the loan and guarantee documents with Suzie and John.

- (a) Suzie spent most of the borrowed money on decorating her nail salon, but her nail salon business has not been doing too well. John just received a letter from ABC Bank demanding that he pay an amount of HK\$500,000 under the guarantee. This is the outstanding amount Suzie failed to pay under the loan agreement. John has recently lost almost HK\$1 million from gambling in Macau in April 2023, so there’s no way he can make the demanded payment to ABC Bank.

Advise John if ABC Bank can enforce the guarantee against him?

(45 Marks)

- (b) John has been unable to pay his debts including mortgage payments and credit card bills (after he suffered huge losses from gambling in Macau in April 2023). In addition, he also owed his mother HK\$200,000 which he borrowed from her last year. In order to try to pay off his debts, John sold his well-loved antique vase to his friend Jacky for HK\$500,000 last week. The antique vase is currently worth over HK\$1 million in the market. With the money he got from the sale of the antique vase, John then paid back HK\$200,000 to his mother to cover her medical expenses incurred as a result of a stroke she had last month. A bankruptcy petition was filed against John and a bankruptcy order was made yesterday.

What actions (if any) can the trustee in bankruptcy take in light of the above facts?

(55 Marks)

Question 2 (100 Marks) (Answer all parts)

- (a) Ben and a few of his colleagues went to Tai Po last week for cycling as part of their company's team building activity. They each rented a bicycle from a shop called "Bike X". When Ben was cycling down a slope, he found the brakes were not working and as a result he crashed into the bushes on the side of the road and broke his leg. The following clause was included in the bicycle rental agreement which Ben had signed but was not aware of when signing:

"In consideration of Bike X renting the Customer a bicycle, the Customer releases and discharges Bike X from any and all liability or claims for injury, illness, death or loss of or damage to property which the Customer may suffer while renting this bicycle and participating in cycling."

Advise Ben on the legal effect of this clause. If you need further information to advise Ben, please state what the relevant missing information is.

(55 Marks)

- (b) For the purpose of this part (b) question, assume that Ben was not injured in the accident due to the malfunctioning of the brakes of the bicycle rented from Bike X. Instead Ben broke his watch which is worth HK\$100,000 when he fell down from the bicycle. **In what way, if any, would the advice given to Ben in part (a) differ.**

(15 Marks)

- (c) Bike X is a business operated by Peter which only started operation in January 2023. In order to finance the purchase of bicycles for Bike X's bicycle rental business, Peter persuaded his aunt, Rachel (who is the wife of a famous tycoon in Hong Kong), to lend him HK\$500,000 by paying her an interest rate of 52% per annum. To do Peter a favour, Rachel reluctantly agreed. However, since the incident involving Ben had been widely posted by Ben and his colleagues in social media, Bike X has lost many customers and its revenue has dropped significantly as a result. Peter defaulted in the latest interest payment to Rachel. **What are the relevant implications of this loan advanced by Rachel to Peter under the Money Lenders Ordinance (Cap. 163)?**

(30 Marks)

~ End of Examination Paper ~