

## **PCLL CONVERSION EXAMINATION JUNE 2024**

Title of Paper : Commercial Law – Part A  
Date : 14 June 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 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 2024**  
**Commercial Law**

**Part A: Sale of Goods**

**Question 1 (100 marks) (Answer all parts)**

- (a)(i) AA is the owner of an industrial offset printing machine that it hires out to businesses in the printing trade. In March 2023 AA entered into an agreement with BB under which BB agreed to hire the machine for one year. However, in July 2023, BB, who had been experiencing short term financial difficulties, sold the machine to CC for US\$ 200,000. In November 2023 CC sold the machine to DD for US\$ 150,000. On 30 May 2024 AA contacted DD and demanded the return of the machine. DD immediately contacted CC stating that it wanted to terminate its agreement with CC, due to CC's failure to provide DD with title to the machine, and demanded a refund from CC of the US\$ 150,000 it had paid.

**Advise DD as to its legal position regarding the machine in relation to AA and CC.**  
**(30 marks)**

- (a)(ii) **Would your advice given in (a)(i) regarding CC differ in any way, if on 15 May 2024 BB had entered into a 'settlement' with AA under which it bought the machine from AA by paying AA the full price?** **(10 marks)**

- (b)(i) Simon's father had left him a valuable antique watch in his will. Simon had no idea as to the watch's true value. Therefore, he took the watch to Jane, an antique dealer, to have it valued and also to find a potential buyer for it. Jane informed Simon that the watch was worth HK\$50,000 and she had a potential buyer prepared to pay that price. Jane told Simon "*Leave the watch with me and I will sell it for you in return for 10% commission. Even though I am not the owner, it will make it easier for me to find a buyer if you would sign a letter stating that I own the watch.*" Simon agreed and left the watch and the signed letter with Jane stating she was the owner. In fact, the watch was worth HK\$500,000. Jane met Tony in a hotel and sold the watch to Tony for HK\$500,000. Jane has now disappeared without handing over any of the purchase price to Simon. Simon wishes to know whether he is entitled to recover the watch from Tony.

**Advise Simon.** **(30 marks)**

- b(ii) **Would your advice in b(i) differ in any way if Simon had sold the watch to Jane for HK\$50,000 but Jane never paid the price before selling the watch to Tony at the hotel?** **(10 marks)**

- c) Anne is the owner of a cat, Fluffy. She loves Fluffy very much. Her friend Beryl is also a cat lover and regularly plays with Fluffy when she visits Anne's flat. Six months ago, Anne's mother in Shenzhen became ill and Anne had to make regular trips there to take care of her. On each occasion Anne asked Beryl to look after Fluffy. Beryl is only too happy to do so, saying to Anne "*I love that cat as if it was mine.*" Last month Anne asked Beryl to come to her flat and tells her "*My mother is really sick again. I will need to stay in Shenzhen for a long time. I am so exhausted I can hardly take care of myself*

*just now. You are a good friend and I know you love Fluffy as much as I do. Can you keep her?" Beryl replies "I am happy to do so". One month later when Anne returns to Hong Kong she asks for Fluffy back. She is shocked when Beryl refuses, saying to Anne "Fluffy is mine now".*

**Advise Anne whether she has the right to the return of Fluffy. (20 marks)**

**Question 2 (100 marks) (Answer all parts)**

- (a) Star agrees to purchase 50,000 tonnes of soft red winter wheat from Traders at HK\$1,000 per tonne with delivery on 1 March 2024.

**Advise Star in each of the following different situations:**

- (a)(i) In breach of contract Traders informed Star on 1 February 2024 that the wheat cannot be delivered. The market price on that day was HK\$1,100 per tonne. Star asked Traders to reconsider its decision but, despite these attempts at persuasion, Traders never delivered the wheat to Star. The market price rose to HK\$1,200 per tonne on 1 March and continued to rise to HK\$1,400 per tonne by the end of March. Traders was aware of the fact that Star had bought the wheat to resell to Moon. The resale price Star had agreed with Moon was HK\$1,500 per tonne.

**Advise Star as to its claim in damages against Traders. (15 marks)**

- (a)(ii) The wheat is to be supplied in 5 instalments of 10,000 tonnes each. Star is happy with the first instalment and accepts it. However, in breach of section 16 (3) of the Sale of Goods Ordinance (Cap. 26), 50% of the wheat supplied in the second instalment is unsuitable for use in cake-making, which was Star's intended use.

**Advise Star who now wishes to end its contract with Traders and not take delivery of any further instalments. (15 marks)**

- (a)(iii) The wheat was delivered in one instalment. 75% of it was soft red winter wheat in accordance with the contract and 25% of it was hard red winter wheat in breach of section 15 of the Sale of Goods Ordinance (Cap. 26).

**Advise Star as to its possible options. (10 marks)**

- (b)(i) Bright is a Hong Kong LED bulb manufacturer. One of the key components required to manufacture these light bulbs is a circuit breaker. Bright placed an order for the supply of 50,000 of these components with Dragon, a Mainland component manufacturer. Delivery was to be on 1 April 2024. Dragon delivered 100,000 circuit breakers to Dragon's Hong Kong warehouse on 13 February 2024. 50,000 of these were to be supplied to Bright and the remainder were going to be sent overseas to other customers. On 28 February Dragon placed 50,000 circuit breakers in boxes with Bright's name on the boxes. However, fire broke out that night at Dragon's warehouse destroying all the circuit breakers in the warehouse. Bright is now refusing to pay Dragon for the circuit breakers.

**Advise Dragon as to whether it can claim the price from Bright. (45 marks)**

(b)(ii) **How would your advice differ if**, when Bright made an enquiry to purchase 50,000 circuit breakers, Dragon informed Bright *“That is great as we have exactly 50,000 in our Hong Kong warehouse. You are so lucky, if you had ordered any more there would have had to be a delay while we manufactured the rest. You can collect tomorrow if you want them?”* Bright replied *“That’s great we have a deal.”* However that night, before Bright could collect them, they were stolen from Dragon’s warehouse. **(15 marks)**

**~ End of Examination Paper ~**

## **PCLL CONVERSION EXAMINATION JUNE 2024**

Title of Paper : Commercial Law – Part B  
Date : 14 June 2024  
Time : 3:00 p.m. – 3:10 p.m. (Reading Time)  
3:10 p.m. – 4:10 p.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 the answer to each question or sub-question 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 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.
16. The passing mark for this paper is 50 marks.

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**PCLL Conversion Examination June 2024**  
**Commercial Law**

**Part B: Personal Property**

**Question 1** (100 marks) (Answer all parts)

(a) “TechZone” is an electronics retailer store that offers a wide range of cutting-edge gadgets and devices. Like many other retailers, TechZone relied on suppliers to provide their inventory, and on this particular occasion, TechZone entered into an agreement with “Best Supplier Limited” (“BSL”) to provide it with 100 LEDS TVs as well as 50 meters of gold wiring (“the Goods”). TechZone plans to use the gold wiring to build its fancy “TechZone” gadgets and to sell the TVs. TechZone and BSL entered into a sale and purchase agreement, which contains, *inter alia*, the following terms:

*“4.1 The property of all the Goods supplied shall remain vested in BSL and shall not pass to TechZone until all monies owing to BSL by TechZone, together with all connection, repossession and/or legal costs incurred, have been paid in full.*

*4.2 If the Goods in whole or in part had been re-sold by TechZone before the full payment of the purchase price, the money should be kept by TechZone in a separate account, and TechZone holds the monies in trust for and on behalf of BSL.*

*4.3 If the Goods had been used to be made into or manufactured into another product, the manufactured product remains the property of BSL until full payment of the purchase price.”*

Shortly after entering into the agreement with BSL, TechZone entered into two loan agreements. The first was entered into with Sure Bank for HK\$1.5 million and the second was with Unity Bank for HK\$1 million. As security for both loan agreements, a floating charge agreement was entered into with Sure Bank on 9<sup>th</sup> April 2024 and Unity Bank on 27<sup>th</sup> April 2024 separately, charging all of TechZone’s stocks and inventories.

On 1<sup>st</sup> June 2024, TechZone’s financial position deteriorated and a winding up proceeding was initiated against it. It was found that 70 LEDS TVs and 20 meters of gold wiring were still at TechZone’s warehouse, together with 20 pieces of fancy “TechZone” gadgets that had been made with the gold wiring from BSL. BSL is insisting on the return of all the 70 TVs, remainder of the gold wiring as well as the fancy “TechZone” gadgets together with the money equivalent of the 30 LEDS TVs that had been sold. Both banks argued that their floating charge takes priority of each other and BSL.

**Advise BSL, Sure Bank and Unity Bank as to their rights and obligations. (80 marks)**

**(b) Would your answer to Question 1(a) be different if it had come to light that both Banks registered their floating charges on 31<sup>st</sup> May 2024? (20 marks)**

**Question 2 (100 marks)**

Sarah approached Metropolitan Bank to inquire about their safe deposit box services and entered into an agreement to use Metropolitan Bank's safe deposit box to hold her valuable jewelry. The agreement entered between Sarah and Metropolitan Bank stated that Sarah would only be able to access the deposit box during office hours and the process to open the box would require one key from Metropolitan Bank and one key from Sarah. A small fee was charged.

Meanwhile, in a different part of the city, a business owner named Mike was looking for financing options to expand his company. He approached Metropolitan Bank for a loan for his company and proposed using the company's accounts receivable as collateral. The Bank agreed, and Mike executed the company's bill of exchange representing the amount owed by the company's customers and served as collateral for the loan in favor of the bank. As Mike's company continued to thrive, the company made the following purchases. First, a "payment-of-intent" in cash for a brand-new sports car, and a cheque drawn to "Property Ltd." as a down payment for a flat he was interested in.

However, unforeseen circumstances struck when one of the company's major customers filed for bankruptcy, leaving the company with a significant outstanding debt and unable to repay the Bank. It was later found out that since the company's financial difficulties, (1) the Bank had set-off the company's financial obligations with the company's saving's account at the Bank and (2) the sports car company had refused to sell the car because Metropolitan Bank had told the sports car company of the financial issues of the company. A phone call was also received from Property Ltd., saying that they have yet to receive the said down payment. When the records were checked, it was found that a company named "Properties Ltd." had received payment for the cheque originally drawn for "Property Ltd.". It was found out that the reason why Properties Ltd. was able to receive payment was because the cheque had been altered very skillfully without detection. The company would like the Bank to return the money.

Back at the Bank, a routine inspection of the safe deposit boxes revealed a shocking discovery. Sarah's jewelry, which had been placed in the safe deposit box, was missing. The Bank immediately launched an internal investigation and found there was a security fault at the Bank's system.

**Advise (i) Sarah as to her likelihood of success in an action for breach of bailment against Metropolitan Bank (45 marks); and (ii) the company's action(s) (if any) against Metropolitan Bank (55 marks).**

**~ End of Examination Paper ~**

## **PCLL CONVERSION EXAMINATION JUNE 2024**

Title of Paper : Commercial Law – Part C  
Date : 14 June 2024  
Time : 4:30 p.m. – 4:40 p.m. (Reading Time)  
4:40 p.m. – 5:40 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 the answer to each question or sub-question on a separate page of the answer book.
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# PCLL Conversion Examination June 2024

## Commercial Law

### Part C: Consumer Credit and Protection

#### Question 1 (100 marks) (Answer all parts)

- (a) Olivia entered into a two-year membership agreement with Dance & Fit (“DF”), which is a dance studio that offers group fitness dance classes including Zumba and funky dance. Olivia decided to join DF because of the wide range of fitness dance classes it offers every day from 7am to 9pm, so she can easily choose to join any classes that suit her busy schedule. When Olivia joined DF’s membership, in order to take advantage of a limited special offer (for a discounted monthly membership fee), she had made a lump sum pre-payment of the monthly fees for the two-year period and had immediately signed a membership agreement with DF (which the office manager had asked her to read carefully before signing).

One month after Olivia had joined DF’s membership, DF announced certain changes, which include a change of its operating hours to 8am to 8pm (instead of 7am to 9pm), and the cancellation of Zumba classes. Olivia was very upset about these changes because she usually joined the 7am classes before she went to work and Zumba was also one of her favourite classes. When Olivia complained to DF’s office manager about these changes, the manager said Olivia had signed the membership agreement with the following clause:

*DF has the sole discretion in making any changes to its operating hours and class schedule from time to time.*

**Advise Olivia as to the legal effect of the above clause.**

**(40 marks)**

- (b) Olivia went to a botanical garden last week. She bought an admission ticket for HK\$150. Olivia paid an extra HK\$100 to rent a hammock for an hour on which she could lie down and relax in the glass house inside the botanical garden. When she was getting on the hammock, the string tying the hammock to the tree suddenly broke and Olivia fell onto the floor and broke her ankle. As she fell, Olivia’s mobile phone also broke. Olivia went to see a doctor and attended a few physiotherapy sessions for her sprained ankle. She wanted to claim for compensation from the botanical garden for her medical expenses and the cost of her mobile phone. However, while the manager of the botanical garden apologized for the defective hammock, he said the garden is unable to give her any compensation because of what she had agreed. The manager pointed Olivia to the back of her entry ticket which stated:

*“A condition of entry is to comply with the terms and conditions which are displayed in the botanical garden (the **Garden**).”*

There is a small notice displayed at one corner of the hammock area stating:

*“CAUTION – Be careful when you get on and off the hammock, the Garden shall not be responsible for any injuries of any person suffered or any loss or damage to any property within the Garden.”*

**Advise Olivia as to the legal effect of the above clauses in relation to her claims.**

**(60 marks)**

**Question 2 (100 marks) (Answer all parts)**

- (a) Maria is divorced and has an only son Jon who lives with her. Maria always said to her friends that Jon is her everything. Jon does not have a full-time job. He had been going to Macau quite often last year as he had a group of friends who were all into playing poker at the Casinos there. Jon came home one day telling Maria that he had lost a lot of money from gambling and had applied for a loan of HK\$300,000 from Big Lending Bank (“BLB”), but BLB would only agree to lend him the money if Maria would act as a guarantor. Maria was very worried about Jon and immediately agreed. Maria went to BLB’s Central branch with Jon the next day. BLB did not enquire further as Maria said she fully understood the liability of a guarantor, and Maria proceeded to sign all the relevant documents that BLB had asked her to sign.

Yesterday Maria received a letter from BLB demanding payment of HK\$600,000 under the guarantee. Maria called BLB to enquire and was told that Jon increased the loan to HK\$600,000 six months ago and he had already defaulted on interest payments to BLB for the past two months. The banker at BLB also referred Maria to the following clause in the guarantee agreement which she had signed:

*“The Bank may in its absolute discretion, without the consent of the Guarantor and without releasing or reducing or otherwise affecting the liability of the Guarantor under this Guarantee, vary, renew, enter into or determine any agreement or other arrangement with the Lender or any other person.”*

**Advise Maria if BLB can enforce the guarantee against her.**

**(70 marks)**

- (b) Assume for the purpose of this Question 2(b) that Jon had never taken a loan from BLB. Instead, when Jon told Maria that he had lost a lot of money from gambling, Maria suggested Jon borrow money from her friend Judith. Judith has inherited a large sum of money from her family and it is well-known among her friends that she’s always willing to “lend a helping hand” and lend money to friends and relatives if they are in need. Judith never bothered to obtain any money lenders licence as she thought she was just helping friends and relatives out. After discussions between Maria, Jon and Judith, Judith agreed to provide Jon with a one-year HK\$300,000 loan at an interest of 30% per annum, without the need of any guarantor as Judith said she had known Maria for a long time. To record the details of the loan, Maria got a note pad and wrote down Jon’s name as the borrower, the loan amount, interest rate and repayment date of the loan and asked Jon to sign it.

Jon is unable to repay the loan to Judith.

**Advise Jon as to the legal effect of the Money Lenders Ordinance (Cap. 163) in relation to the loan. (30 marks)**

**~ End of Examination Paper ~**