

PCLL CONVERSION EXAMINATION JANUARY 2023

Title of Paper: Commercial Law – Part A
Date: 4 January 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. The 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 marks if they answer more than one question.
8. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2023

Commercial Law

Part A: Sales of good

Answer One Question out of Two

Question 1 (100 Marks) (Answer all parts)

- (a) Amanda sells a yacht to Tony. Tony uses the yacht for one year and then receives an email on 1 November 2022 from AB Finance, which says, *“We are the owner of the yacht and you must return it to us. Two years ago, we sold the yacht on hire purchase terms to Amanda. However as Amanda has never paid all the hire purchase instalments the yacht still belongs to us and you must return it to us.”* Tony is very angry at the contents of this email and contacts Amanda on 2 November stating that he is terminating the contract with Amanda and demanding the return of the purchase price from her. Amanda replies saying, *“There is no way you can get your money back as you have had the yacht for over a year. I have had temporary cash flow problems that got me behind with my instalments but I will pay the remaining balance due to AB Finance by the end of the week.”* On 5 November, Amanda pays off the balance and exercises her option to purchase the yacht.

Advise Tony who no longer wishes to keep the yacht and wants a refund of the purchase price from Amanda. **(30 MARKS)**

- (b) Arthur purchases an app from Fantasy for his mobile phone. The app is downloaded directly onto his phone. The app contains a virus that results in Arthur’s phone becoming unusable. What rights, if any, does Arthur have against Fantasy under s16 Sale of Goods Ordinance? **(10 MARKS)**

- (c) Golden purchases from Cloth, a shirt manufacturer, 15,000 cotton shirts. The shirt sizes that Golden purchases are 5,000 small, 5,000 medium and 5,000 large. **Advise Golden in EACH of the following DIFFERENT situations:**

(i) Golden receives 6,000 small, 4,000 medium and 5,000 large shirts from Cloth. What rights, if any, does Golden have against Cloth? **(15 MARKS)**

(ii) Golden has resold the shirts to Silver in France. Silver informs Golden that it is rejecting the shirts because the buttonholes on some of the shirts are too wide. Golden accepts the fact that some of the shirts are not of merchantable quality and wishes to know in relation to its contract with Cloth whether it is entitled to reject (a) all the shirts, (b) only those shirts where the buttonholes are too wide, or (c) none of the shirts. **(15 MARKS)**

(iii) The shirts are to be delivered by Cloth in two instalments. When the first instalment is delivered, Golden discovers that many of the shirts in this instalment have defective buttonholes. If Golden rejects the first instalment on the grounds that the shirts are not of merchantable quality, is it within its rights to inform Cloth it will not take delivery of the second instalment which is due to arrive next month? **(15 MARKS)**

(iv) Golden contracts to buy 10,000 more shirts from Cloth. The price is HK\$500 per shirt. Delivery is scheduled to be on 1 May 2022. On 10 April 2022, Cloth informs Golden that it cannot supply the shirts. The market price for similar shirts on 10 April 2022 is HK\$600 per shirt but the market price on 1 May is HK\$800 per shirt. Golden has resold the shirts to Silver for HK\$900 per shirt. Advise Golden as to how much it is likely to recover from Cloth in damages. **(15 MARKS)**

Question 2 (100 Marks) (Answer all parts)

(a) Acme, a Hong Kong manufacturer, received a request to supply 10,000 components to BTT, a Hong Kong business. Acme checked and discovered it already had 9,000 of these components in stock and, to fulfil BTT's order, needed only manufacture 1,000 components more. Acme and BTT then entered into an agreement for the sale of the 10,000 components to BTT. Delivery was scheduled to be on 1 June 2022. BTT was to collect the components from Acme's premises. Acme manufactured the 1,000 components and placed them in boxes, along with the boxes containing the remaining 9,000 components that it had in stock, in a separate part of Acme's warehouse for BTT to collect. BTT's name was on each box. Every box was sealed. On 30 May all the boxes containing the components were stolen from Acme's warehouse. Under the terms of the agreement, BTT had already paid Acme a 10 % deposit and the remaining 90% was to be paid on collection by BTT. BTT informed Acme that as BTT was now under no legal obligation to pay for the components, BTT was entitled to the return of its deposit and BTT did not have to pay the balance due to Acme.

Advise Acme as to its rights and remedies against BTT. **(40 MARKS)**

(b) Would your advice in (a) differ in any way if the agreed collection date was 29 May but BTT did not come to collect the components on this date and the components were stolen on 30 May? **(10 MARKS)**

(c) Gladys goes to Food, her local supermarket, and after selecting the goods she wishes to buy takes them in a trolley to the checkout. Gladys informs the cashier that the goods are to be delivered to her home. After paying for the goods at the checkout, she leaves the goods with the cashier for home delivery by Food. Next day Food's delivery van is

involved in an accident with a bus and all the goods in the van, including the goods that were to be delivered to Gladys, are destroyed.

Advise Gladys as to whether she is entitled to a refund. **(20 MARKS)**

- (d) Acme agrees to sell components to Tom. The contract contains the following terms:
“The buyer must pay for the goods 30 days after delivery. Until payment is made ownership of the goods remains with the seller.”

Three days after delivery Tom, who is in financial difficulties, meets Victor at a dinner party and agrees to resell the goods to Victor. Victor takes delivery and pays Tom the agreed price. Tom becomes bankrupt four weeks later without paying Acme for the goods. Acme is demanding that Victor return the goods to Acme

Advise Acme as to its rights and remedies against Victor. **(15 MARKS)**

- (e) Acme agrees to sell goods to CD. CD is to pay for the goods by cashier's order. Acme delivers the goods to CD on 4 June after presentation of the cashier's order. Acme discovers on 6 June the cashier's order is a forgery and immediately informs the police. Acme has discovered that CD sold the goods to EF on 7 June.

Advise Acme as to its rights and remedies against EF. **(15 MARKS)**

PCLL CONVERSION EXAMINATION JANUARY 2023

Title of Paper: Commercial Law – Part B

Date: 4 January 2023

Time: 3:05 p.m. – 3:15 p.m. (Reading Time)

 3:15 p.m. – 4:15 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. The 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 marks if they answer more than one question.
8. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2023

Commercial Law

Part B: Personal Property

Answer One Question out of Two

Question 1 (100 Marks) (Answer all parts)

- (a) With the COVID-19 entry restriction being relaxed for the entry of persons into the HKSAR, Alvin saw a business opportunity for the coming Chinese New Year 2023 and decided to provide and sell Chinese turnip cakes. He entered into a sale of goods contract with Bal Veg Ltd. (“Bal”) for the sale and purchase of 10 tons of Chinese white turnips. It was agreed between Bal and Alvin that the turnips would be delivered by DHL acting as Bal’s delivery agent. During the delivery of the turnips by DHL, Alvin refused to pay the contract price due to a disagreement that arose between Bal and Alvin. As such, Bal contacted DHL and requested the return of the turnips. However, as DHL had not delivered the turnips, Bal refused to pay DHL their delivery fee. DHL refused to return the turnips to Bal and alleged that they have a lien on the turnips until payment by Bal of their delivery charge.

Advise the parties as to the legal effect of DHL’s alleged lien and how it differs from a pledge. (20 marks)

- (b) As it was December 2022 Alvin was still determined to make his turnip cakes. He entered into an agreement with Overpriced but Fast Ltd. (“Overpriced”) for 10 tons of Chinese white turnips. In addition to entering into the sale and purchase agreement, Alvin and Overpriced also agreed to execute a security agreement, titled “Pledge Agreement”. Under this agreement, Alvin pledged his truck to Overpriced. Alvin, however, needed his truck for his own business and kept his truck under his possession for use in his daily work.

Alvin received the 10 tons of turnips from Overpriced and started making his turnip cakes. However, after using 5 tons of turnips and turning them into turnip cakes, Alvin realized that the price of the turnips supplied by Overpriced was too high and he was unable to pay for them. Alvin further found out that he was not making any profit, because he could not find buyer for the turnip cakes and they remained in his warehouse. Alvin has decided to file for bankruptcy and in determining the ownership of the turnips and turnip cakes, the following clause was found in the agreement:

“

Clause 5.1 Overpriced retains title to the Chinese turnips as delivered to Alvin, until full payment of the purchase price.

Clause 5.2 Overpriced retains title to all products that were created, made or otherwise produced from the use of the Chinese turnips, until full payment of the purchase price.

Clause 5.3 If in the event the Chinese turnips or its manufactured products were sold, Alvin remains personally liable for the full payment of the purchase price, disregardless of the proceeds amount from the sale of the Chinese turnips and/or its manufactured products.

....”

Advise Overpriced on the legal effect of the “Pledge Agreement”, whether Overpriced has title to the turnips and the turnip cakes and the legal effect of Clause 5. (80 marks)

Question 2 (100 Marks) (Answer all parts)

- (a) The sports equipment shop, “Dan Sport Ltd” (“Sport Shop”) had been a customer of Best Bank Ltd. (“B Bank”) for over 10 years. Recently, Dan, the owner of Sport Shop decided to open a personal account with B Bank too. Dan met with the bank manager of B Bank and showed an interest in opening a current account and the need for the use of a safe deposit box at B Bank. The safe deposit box usage agreement contains the following, terms :

“

Clause 2 To access the safety deposit box, the customer’s key and B Bank’s key must be used at the same time to unlock the safety deposit box door.

Clause 3 Personal identification must be checked and correspond to B Bank’s record before anyone may be allowed access into the safety deposit box area.

Clause 4 The fee for the use of the safety deposit box is HK\$500 per year.

....”

Advise Dan as to whether the safety deposit box agreement is a bailment or a licence and what obligations, if any, are imposed on B Bank to ensure the safety of items deposited in the box” (20 marks)

- (b) Dan continued and completed his current account opening procedures with B Bank and received his personal cheque book.

Dan went to his usual Tuesday poker game night and suffered a big loss of HK\$200,000. To pay the debt, he used Sport Shop's cheque account and wrote a cheque for HK\$200,000 to the creditor. B Bank misread the cheque account number and debited the money for the payment of the HK\$200,000 cheque from Dan's personal current account instead. As a result, when Dan's wife checked Dan's personal account monthly statement, she found HK\$200,000 had been debited. She then called B Bank to make an enquiry as to why the sum had been debited. B Bank informed Dan's wife about Dan's gambling habits. She was shocked as she did not know Dan gambled.

The Wednesday after the poker game night, Dan decided to sell more sports equipment to cover the loss of the HK\$200,000 he had suffered the night before. He went to Second Fitness, a gym and fitness company, to sell some high-tech sport equipment. The manager, Elsa said the company would be interested to purchase the equipment for the amount of HK\$200,000, but could only pay by cheque. Dan agreed and delivered the equipment to Second Fitness and in return, received a duly authorized signed cheque payable to Dan. On the face on the cheque, the cheque was for the amount of HK\$200,000 and there was nothing strange or obviously wrong with the cheque. One week later, Dan received a phone call from B Bank saying that Second Fitness was requesting for the return of the HK\$200,000 from Dan because the amount on the cheque had been altered from HK\$20,000 to HK\$200,000 by Elsa manually and without authorization. It was found out that the reason why Elsa was able to alter the amount on the cheque without being detected, was because there were spacing available when the authorized signatory drew and signed the cheque. However, the alterations were not apparent.

Advise Dan and Second Fitness as to their rights and obligations concerning the different events in Question 2(b). (80 marks)

- End of Examination Paper -

PCLL CONVERSION EXAMINATION JANUARY 2023

Title of Paper: Commercial Law – Part C

Date: 4 January 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.
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. The 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 marks if they answer more than one question.
8. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2023

Commercial Law

Part C: Consumer Credit and Protection

Answer One Question out of Two

Question 1 (100 Marks) (Answer all parts)

Lisa broke up with her boyfriend about six months ago and has since been suffering from insomnia, anxiety and depression. After advice from a friend that exercises might help with her mental issues, Lisa went for a trial boxing session about four months ago with Joe, who was a personal trainer working at Ultra Fitness. Lisa told Joe about her mental issues and having delusions of seeing strangers following her. Joe recommended Lisa to take some personal training sessions with him which would help to alleviate her mental stress. Lisa agreed and signed an agreement to buy 20 personal training sessions at Ultra Fitness in September 2022.

Last month, Lisa had a panic attack during her personal training session with Joe and kept screaming that she saw some “bad guys” following her and wanting to attack her. Joe calmed Lisa down and said she had to train more with him so that she could protect herself against the “bad guys”. Joe told Lisa that she had already completed the 20 personal training sessions and urged Lisa to purchase an additional 200 training sessions: *“You need to train more with me so that I can train you up to protect yourself from those “bad guys” who wanted to attack you, otherwise you might be in danger.”* With Joe’s persuasion and trusting Joe could train her up to protect herself from the “bad guys”, Lisa decided to buy 200 additional personal training sessions and signed another agreement with Ultra Fitness in early December 2022.

During the personal training session yesterday with Joe, Lisa hurt her back while using a weight machine to do some exercises, as Joe was busy texting his girlfriend and did not realize that the weight was set at a much heavier weight level than Lisa usually used. Lisa’s sister, Vicky, took Lisa to see a doctor and the doctor said Lisa had injured her back and would need to do physiotherapy for at least three months.

Lisa told Vicky about her experience at Ultra Fitness in the past few months and Vicky was shocked.

- (a) Vicky went with Lisa to Ultra Fitness this morning and found out from the manager there that Lisa had only completed 18 personal training sessions with Joe so far and had not started using any of the 200 additional training sessions that she purchased in December 2022. Lisa feels that she has been tricked and now wants to cancel all the unused training sessions and get a refund of the money she paid.

Advise Lisa as to whether she can rescind the agreements with Ultra Fitness.

(50 Marks)

- (b) When Vicky and Lisa were at Ultra Fitness this morning, they told the manager about Lisa's back injuries and said Ultra Fitness should be responsible for Lisa's physiotherapy cost. The manager pointed them to the following clause in the agreement which Lisa had signed but never read:

"All trainers at Ultra Fitness are qualified trainers, but all exercises involve risks and Ultra Fitness shall in no circumstances be responsible for any personal injuries occurring at Ultra Fitness' premises."

Advise Lisa as to the legal effect of this clause. (20 Marks)

- (c) Lisa also told Vicky that she owes Joe money. When Joe asked Lisa to purchase the 200 additional personal training sessions in early December 2022, Lisa told Joe that she could not afford to pay HK\$140,000 up front for all those additional sessions. Joe said to Lisa *"Don't worry Lisa, you just need to pay Ultra Fitness HK\$10,000 now, and I can help you settle the remaining HK\$130,000 with Ultra Fitness first. I am always willing to help my loyal clients if they have difficulty in paying the package fees. You can pay me back HK\$130,000 after 12 months and you just need to pay me interest at the rate of 50% per annum every month. I am giving you a favourable rate, I normally charge my other clients 55% interest"*. Lisa agreed with the proposed arrangement and signed a note which sets out the agreed payment terms with Joe. The first interest payment is due to be payable next week. Vicky thinks the payment terms are outrageous and asked Lisa not to pay the upcoming interest payment.

Regardless of whether the agreements can be rescinded as per your advice under part (a) above, advise Lisa if the loan from Joe was effective (in particular, explain all relevant implications under the Money Lenders Ordinance (Cap. 163) in respect of this loan). (30 Marks)

Question 2 (100 Marks) (Answer all parts)

- (a) Morris works in a family business, Gourmet One Ltd, run by his father David. Gourmet One operates a chain of restaurants in Hong Kong. Last month, David asked Morris to go to CE Bank to pass a document to their relationship manager, Frank. Frank met Morris for the first time, he said *"Your father is very conservative and Gourmet One has just been investing in the stock markets all these years, you should consider our new financial product "Protected Performance Bond" (the Bond), this is one of the best and safest financial products I have seen in recent years, it's linked to some crypto assets which are very popular and lucrative nowadays, you will get back the money you invest in the Bond in just a month, and the profits you will make is linked to the value of these crypto assets which has already gone up in value for more than 30% since last month"*. Without thinking too much, Morris agreed to use Gourmet One's account to invest HK\$400,000 in the Bond.

Morris received a call this morning from Frank informing him that due to a crash in the crypto market, the value of the Bond has depreciated 90% in value. Morris was shocked as he thought the money invested in the Bond would be protected and did not realize that they could make such a big loss.

Morris found the following clauses in the standard form contract which he had signed on behalf of Gourmet One with CE Bank for investing in the Bond:

“10.1 The Customer acknowledges that this Agreement has not been entered into in reliance wholly or partly on any statement, representation or recommendation made by or on behalf of the Bank.

10.2 All transactions and investments for the Customer’s accounts will be for the sole account and risk of the Customer, and the Bank will not be responsible for any losses suffered in relation to any such transactions or investments.”

Advise Morris as to the legal effect of these clauses in the contract if he would like to seek remedy to cancel the contract. (50 Marks)

- (b) Morris does not want David to find out about the losses from the investment in the Bond, so he decided to borrow a loan of HK\$400,000 from Big Brother Finance (which is a licensed money lender under the Money Lenders Ordinance (Cap.163)) and persuaded his best friend, Joseph, to provide a guarantee for this loan. Morris promised Joseph that he would use his savings to repay the loan. However, instead of putting this HK\$400,000 to Gourmet One’s bank account to cover the investment loss, Morris used the money to invest in some Hong Kong stocks hoping to “make the money back”. Unfortunately, Morris made more losses in the stock market and could not repay the loan. After discussing with Big Brother Finance, it was agreed that the loan amount would be increased to HK\$1,600,000 and the time for repayment of the loan would also be extended. Joseph was not aware of any of these changes.

The following clause was included in the deed of guarantee signed by Joseph with Big Brother Finance:

“The Bank may, without any consent from the Guarantor and without affecting this Guarantee, grant, renew, vary, increase, extend, release or determine any facilities or credit given or to be given to the Debtor or the terms and conditions relating thereto and agree with the Debtor as to the application thereof”.

In light of the above facts and this clause, advise Joseph whether his liability to Big Brother Finance under the deed of guarantee would be affected. (30 Marks)

- (c) Morris lost more money in the stock market and defaulted on the loan. Big Brother Finance demanded Joseph under the guarantee to pay the outstanding amount of the loan, which Joseph did and had fully discharged the guarantee.

Advise Joseph as to his rights against Morris. (20 Marks)

- End of Examination Paper -