

PCLL CONVERSION EXAMINATION AUGUST 2022

Title of Paper : Commercial Law – Part A
Date : 23 August 2022
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 marks if they answer more than one question.
8. The passing mark for this paper is 50 marks.

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PCLL Conversion Examination August 2022

Commercial Law

Part A: Sale of Goods

Question 1 (100 Marks)

Talon Ltd. (“Talon”) entered into a sale and purchase agreement with Moon Sun Ltd. (“Moon”) to purchase 9,000 sets of yoga pants (the “Pants”). Talon chose Moon on the basis of Moon’s excellent reputation for garment manufacturing and no sample was provided by Moon to Talon as part of the purchase. The agreement stated that the Pants were to be delivered in two instalments and the agreement also included a schedule in which there was a detailed description of the Pants, including the requirement for the Pants to be dark blue. It was agreed between Talon and Moon that the total purchase price of HK\$500,000 was only to be paid after Talon received all 9,000 Pants.

Moon manufactured 9,000 sets of Pants, and delivered to Talon, 2,500 sets of Pants as the first instalment. Talon is now complaining that the 2,500 sets of Pants do not conform to the agreement, because 1) the Pants are not fit for use for high intense mountain hiking; 2) one of their numerous employees who used the Pants developed a rash due to wearing them; and 3) instead of dark blue, the colour was light blue. Moon replied to Talon that Moon had not received any such complaints regarding skin problems with its products previously.

Before Moon made the second delivery to Talon, and without knowledge or fault of either of the parties, 1,000 out of the remaining 6,500 Pants were damaged by flooding caused by a typhoon. Further, before Moon made this second delivery and without payment by Talon, Moon became insolvent, and the creditors presented a petition to the court for the winding up of Moon at which time it was discovered that all the remaining 6,500 Pants (including the damaged ones) remained in Moon’s warehouse.

Talon is arguing that they do not need to pay Moon due to:

- a) a breach of the Sale of Goods Ordinance (Cap. 26) implied conditions by Moon; (40 marks)
- b) the contract has become void due to the damage to the Pants caused by the typhoon; and (20 marks)
- c) the risk and property in the Pants in Moon’s warehouse had not passed to Talon. (40 marks)

Are Talon’s arguments legally correct? Please remember to explain in detail your reasoning.

Question 2 (100 Marks)

- a) Daniel owns a mobile phone shop at Sham Shui Po and a temporary stall on Apliu Street. Daniel recently purchased 100 second-hand mobile phones (the “Phones”) from Edison. The purchase took place at Daniel’s Sham Shui Po shop in January 2022.

In February 2022, Alan purchased the Phones from Daniel at his mobile phone temporary stall on Apliu Street. However, Alan had received a request for the return of the Phones as they were stolen items.

- i) Daniel would like to know his rights over the Phones prior to the sale and purchase with Alan; and **(15 marks)**
- ii) Alan would like to know his rights over the Phones against the true owners. **(10 marks)**
- b) The issues with the Phones from Apliu Street had cleared up and Alan now had 100 second-hand mobile phones in his possession which he was desperate to sell. Alan entered into a sale and purchase agreement for the Phones with Candy Ltd. (“Candy”) as the buyer. The Phones were duly delivered and accepted by Candy, but Candy refused to pay for them.
- i) Advise Alan on his potential remedies. **(10 marks)**
- ii) Would your answer be different to b(i), if Candy had not received the phones yet and is now insolvent, and the phones are still in the process of being delivered by DHL. **(20 marks)**
- iii) Would your answer be different to b(i), if Candy had refused delivery of the goods for no justifiable reasons? **(15 marks)**
- c) On 15 March 2022, Alan had entered into an agreement with Cake Ltd to sell 10 tons of sugar at the price of HK\$4,000 per ton to be delivered and paid for on 30 April 2022. However, on 15 April 2022 due to personal reasons, Alan decided not to go ahead with the sugar agreement with Cake Ltd. Alan contacted Cake Ltd and informed them that he will not be completing the sugar agreement. Since 15 April 2022, the market price of sugar had increased from HK\$4,000 per ton to HK\$4,500 per ton.

Advise Cake Ltd. on its remedies against Alan. (30 marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION AUGUST 2022

Title of Paper : Commercial Law – Part B
Date : 23 August 2022
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 August 2022

Commercial Law

Part B: Personal Property

Question 1 (100 Marks)

Nicholas Peltier's daughter takes tennis lessons from Sophia DuBois. Nicholas Peltier pays for these lessons once a quarter by writing a cheque for HK\$3000.00, payable to Sophia DuBois. Sophia DuBois has a bad habit of losing cheques, usually through placing them in her pocket, then forgetting about the cheque when washing the garment, thereby destroying the cheque. This has happened twice before with Nicholas Peltier's cheques. When it happens, Nicholas Peltier writes another one for Sophia DuBois as a replacement.

On 1st November, Sophia DuBois notifies Nicholas Peltier that she can't find the cheque Nicholas Peltier wrote on 30th September, for the quarter then ending. She assumes that it is either lost or destroyed when she washed her clothes. Following his normal procedure Nicholas Peltier writes a replacement cheque and delivers it to Sophia DuBois.

On 4th November, Nicholas Peltier receives his most recent bank statement from State Bank. He did not check the bank statement until 1 month later and upon examining the statement, Nicholas Peltier notices that the cheque he wrote to Sophia DuBois on 30th September, has cleared and been deducted from his account. Nicholas Peltier obtains a copy of the cheque from State Bank and notices that the cheque has no endorsement of Sophia DuBois and was written to Sophia DoBois. Nicholas Peltier contacts Sophia DuBois and she indicates to him that she neither received cash for the cheque nor had it credited to her bank account. Nicholas Peltier is worried that his account will soon have a second HK\$3000.00 payment subtracted, which will place Nicholas Peltier in the position that some of the cheques he recently wrote will bounce. He, therefore, notified State Bank not to clear the cheque he wrote to Sophia on the 1st November. However, to Nicholas' dismay, the bank had already cleared the 1st November cheque and the money had been paid. Knowing this, Nicholas requested the bank to repay the amount of money equivalent to the amount of the 1st November cheque to him. However, State Bank referred Nicholas to the following signed account opening document that, inter alia, said:

"The bank's statement of my current account will be confirmed by me without delay. In the case of absence of such confirmation within a fortnight after its receipt by me, the bank may take the said statement as approved by me."

Advise Nicholas on his rights and obligations against the bank and the bank's rights and obligations. (100 marks)

Question 2 (100 Marks)

a) Sandy and Bill are good friends and Bill will soon be going on a vacation to the USA. Sandy has a brother that lives in the USA and would like to give him a birthday gift. Sandy asked if Bill would be so kind to bring the gift to the USA. Bill agreed to take the gift to the USA for Sandy and has agreed to deliver the gift to Sandy's brother at his house. Bill delivered the gift to Sandy's brother and when the brother opened the gift, the gift was broken. Sandy is now wishing to sue Bill for breach of his duties as a bailee. Bill is alleging that he is not liable as he was a gratuitous bailee.

i) Advise Sandy and Bill. **(40 marks)**

ii) Would your answer be different if, instead of delivering the gift to the brother's house, Bill delivered the gift to the brother's workplace and the gift was stolen at the brother's workplace? **(10 marks)**

b) Before Bill started his vacation, he wanted to make sure that he had enough cash to spend and gamble in Vegas, so he asked Philip for a loan. Philip was unsure about the loan and asked Bill for some kind of security. Bill said he would use the shares in his company as security and would pledge them to Philip as security for the loan. Philip would like to know what a pledge is and is worried that the shares cannot be pledged because they are a chose in action.

Advise Philip. **(30 marks)**

c) Philip owes Henry some money and has agreed with Henry that as a repayment, Philip would assign the debt Bill owed Philip to Henry.

Advise Henry as the legal effect of this agreement. **(20 marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION AUGUST 2022

Title of Paper : Commercial Law – Part C
Date : 23 August 2022
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 August 2022

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 Marks)

- a) Peter is a Marvel movie fan. He entered into a contract with M Studios Ltd. and purchased a life-size Iron Man electronic figure to be installed in his home for his own enjoyment. When the figure arrived, it was missing a signature piece and was badly installed. Peter is terribly upset and would like to complain to the Consumer Council. Peter is now asking you whether the Consumer Council will take on his complaint and if the Council would, what kind of assistance he is entitled to expect and what kind of information would be required from Peter in lodging the complaint. **(20 marks)**
- b) Would your answer to Qu. 1(a) be different if Peter purchased the figure for his business using the name of his business? **(5 marks)**
- c) Peter has a consultancy firm that was set up as a partnership. The partners are Peter and Sandra and they each own 50% of the consultancy firm. In May 2020, the consultancy firm borrowed a sum of HK\$1 million from First Bank and secured it through an assignment over its book debts in May 2020. Sandra had also contributed to keep the consultancy firm above water during the difficult business conditions caused by COVID by providing a HK\$1 million unsecured loan to the consultancy firm in August 2021. In February 2022, Peter and Sandra felt that the consultancy firm would not survive the fifth wave of COVID-19. Noticing that there was enough money in the consultancy firm's bank account to repay only one of the loans that the consultancy firm owes and the consultancy firm had insufficient other assets for repayment of liabilities, they had made the decision to repay Sandra's HK\$1 million loan in March 2022. The consultancy firm went into bankruptcy in May 2022.
- i) Advise the Official Receivers in respect of the consultancy firm's decision to repay Sandra's loan. **(65 marks)**
- ii) Would your answer be different in Qu. 1(c)(i) above if the loan was made by Sandra's spouse? **(10 marks)**

Question 2 (100 Marks)

- a) Adam is the managing director of Vacuum Clean Ltd. ("VC Ltd"), a cleaning company that specializes in cleaning carpets. VC Ltd enters into two signed contracts with Vacuum Store Ltd. ("VS Ltd"), a company that sells and repairs vacuum cleaners.
1. A contract to purchase five industrial carpet cleaning vacuums; and
 2. A contract to purchase one cordless handheld vacuum for Adam's personal use.

After receiving the five carpet vacuums and the handheld vacuum, VC Ltd found them to be defective and not of merchantable quality. VC Ltd. would like to reject them and seek damages. In both the agreements for the vacuums, the following term, *inter alia*, was found:

"Clause 7.1 If there are any complaints regarding the service or quality of goods sold by or provided by Vacuum Store Ltd., such complaint must be lodged with Vacuum Store Ltd. within four days of receipt of the service or delivery of the goods. Vacuum Store Ltd. will not be liable or responsible for the quality of any goods or services provided by or sold by Vacuum Store Ltd. after the four-day period."

VC Ltd would like to take legal actions against VS Ltd.

Advise VS Ltd as to the legal effect of Clause 7.1. if notification was not made within the four-day period. (80 marks)

- b) Esther purchased a vacuum from VS Ltd some time ago, and her vacuum is out of the warranty period. Esther has now brought the vacuum to VS Ltd for repair. In the repair agreement between Esther and VS Ltd, there is the following term:

"Clause 4.1 Vacuum Store Ltd. do not guarantee the quality of work nor will be held liable for work done on any vacuums."

The repair of Esther's vacuum was badly done and damaged the vacuum beyond repair and Esther is required to buy a new one.

Advise Esther as to her rights. (20 marks)

~ End of Examination Paper ~