

PCLL CONVERSION EXAMINATION JUNE 2020

Title of Paper : Commercial Law – Part A
Date : 17 June 2020
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 for that part if they answer more than one question from one part.
8. The passing mark for this paper is 50 marks.

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PCLL Conversion Examination June 2020

Commercial Law

Part A: Sale of Goods

Question 1 (100 Marks)

On 1st June 2019 John ordered an ocean going yacht from Yacht Inclusive Limited ('YIL'), a Hong Kong incorporated company. Under the terms of the contract YIL was to design and build the yacht according to John's specifications. In particular John made it clear that the yacht should be capable of reaching a speed of 35 knots. The yacht was completed on 1st January 2020. On 2nd January John carried out a visual examination of the yacht and expressed satisfaction with it. John paid the contract price of HK\$20 million and took delivery of the yacht on 5th January 2020. John then took the yacht on sea trials and found the following faults with it:

1. It was not as fast as it should be given the contract specifications "*Powered by MTU 16V2000te90 main engine of 1826 hp at 2300 rpmn.*" The yacht's engine was examined by an expert and the report revealed the engine's performance was less than these specifications being 1600hp at 2000 rpmn. The engine was also found to be a MTU 16V1500te80 , an older version of the engine specified. As a consequence the maximum speed of the yacht was 30 knots and not the expected 35 knots and the cruising speed was 20 knots and not the expected 30 knots.
2. The air conditioning on the boat kept malfunctioning and could not cope with temperatures above 25°C.
3. There were scratches on the doors of the fitted wardrobes in the main bedroom and the general standard of the paintwork in all rooms was poor.

When John raised these issues with YIL it promised to rectify the problem if the yacht could be left in its possession for three weeks. John agreed to this and left the yacht with YIL on 24th January 2020. However when given possession of the yacht again on 13th February 2020 John found that, while the scratches to the wardrobe doors and deficiencies in the paintwork had been rectified, there had only been a very slight improvement in the speed and the air conditioning was still unreliable.

John wrote to YIL stating he wanted to reject the yacht and get a full refund of the price as well as damages for the fact that the cost of a replacement yacht will be HK\$30 million. A valuation expert's report states that the yacht's resell value in its current condition would be HK\$15 million. An engineer's report states that it would require work costing HK\$2 million to make the yacht comply with the contract specifications.

Advise John as to his rights and remedies under sale of goods law.

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.

Question 2 (100 Marks) (Answer all parts)

- a) Moon informed Star on 1st January 2020 that it wanted to purchase 100 air conditioning units from Star. Star replied that it had only 50 units in stock but could supply the other 50 units when a consignment of 500 units arrived from a supplier in the Mainland.

Moon entered into two contracts with Star, one for the purchase of the 50 units Star had in stock and a second contract for the remaining 50 units from the consignment Star was to receive from the Mainland. The date fixed for delivery under both contracts was 1st April 2020. On 29th March 2020 the 500 units from the Mainland were delivered to Star. Star packed in boxes the 50 units it had in stock and 50 of the units it had received from the Mainland. Star put Moon's name on each box and told Moon that the units were ready for collection from Star's warehouse. Moon paid the agreed price and asked Star to have the 100 units ready for collection at the entrance to Star's warehouse at 9:00 am on 1st April 2020. However on 31st March 2020 a thief broke into Star's warehouse and stole all the units.

Advise Moon as to whether it is entitled to a refund of the price paid under the two contracts and recover damages from Star. **(70 Marks)**

- b) In what way, if any, would your advice in a) differ if Star was aware of the fact that its security system was inadequate but had not taken any measures to improve it? **(10 Marks)**

- c) Star made a contract to supply 20 air conditioning units to Sun. The price was HK\$600,000, payment being made on delivery. Under the terms of the contract ownership passed to Sun at the time the contract was made. Before delivery Star discovered Sun had become insolvent and was therefore unable to pay for the goods. ABC has expressed an interest in purchasing the units from Star for HK \$700,000. Advise Star whether it is legally entitled to sell the units to ABC and keep the HK\$700,000 purchase price. **(20 Marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2020

Title of Paper : Commercial Law – Part B
Date : 17 June 2020
Time : 2:55 p.m. – 3:05 p.m. (Reading Time)
3:05 p.m. – 4:05 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 2020

Commercial Law

Part B: Personal Property

Question 1 (100 Marks)

Skimania Limited (“Skimania”) manufactures and sells skiwear in Hong Kong. Its sole shareholder, Amy, lent the company \$1 million when the business was first set up. A few years later, to finance its expansion, Skimania went to HK Bank for a \$12 million loan. This loan transaction was documented in a Loan and Security Agreement (“LSA”) signed by Skimania and HK Bank on May 22, 2017. The agreement was registered with the Companies Registry on June 15, 2017.

The LSA contains, inter alia, the following provisions:

4.01 Skimania, as beneficial owner, hereby charges to HK Bank as continuing security for the payment of all moneys and the discharge of all obligations and liabilities hereby covenanted to be paid or otherwise hereby secured by way of (i) a first fixed charge the inventory of Skimania and (ii) a first floating charge over all the other assets and undertakings of Skimania.

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7.06 Skimania covenants with HK Bank that ...Skimania shall not (without prior written consent of HK 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 Agreement...”

A year later, Skimania needed more working capital and obtained a \$3 million loan from Zen Bank (“Zen”). Zen’s lawyers did a search and retrieved a copy of the LSA before Zen signed the loan agreement with Skimania. This loan is secured by a fixed charge over Skimania’s manufacturing equipment. The charge document was signed and registered with the Companies Registry on November 28, 2018.

Skimania’s business began to suffer in 2019 due to keen competition and poor management. Amy became worried about her shareholder loan, so she asked Skimania for security for the loan. Skimania signed a debenture granting Amy a floating charge over all of Skimania’s assets and undertakings on February 4, 2019. The debenture was filed with the Companies Registry three weeks later.

Skimania’s business suffered another significant blow in the first quarter of 2020 with the COVID-19 pandemic. It is now behind in its payments under the various loan agreements. A petition to wind up Skimania was filed on May 3, 2020 and the court subsequently granted a winding up order.

Advise the liquidator as to the order in which the assets of Skimania should be distributed.

Question 2 (100 Marks) (Answer both parts)

Winnie was in need of some quick cash to cover her gambling debt, so she borrowed \$100,000 from her next-door neighbour, Carrie. As security for the loan, Winnie granted Carrie what she called a “share pledge” whereby she gave the share certificate for shares she owns in Lucky Ltd. and corresponding duly signed blank share transfer documents to Carrie.

Question 2(a) (25 marks)

Why is “share pledge” a misnomer? What kind of security interest was actually granted? Explain in detail.

Question 2(b) (75 marks)

Last week, Carrie read in the news that Lucky Ltd. has been involved in some accounting scandal and will soon be delisted from the stock exchange. Its stock price plummeted 40% in a day, so Carrie went over to Winnie’s flat to return the share certificate and transfer documents and demanded other forms of security for her loan.

Carrie obtained three things from Winnie as security for her loan:

1. A document signed by Winnie, stating that half of the \$60,000 debt owed to her by their mutual friend, Judy Lee, is assigned to Carrie.
2. A personal cheque signed by Winnie, with two parallel lines “//” across the front enclosing the words “account payee only”, post-dated July 2, 2020, payable to Carrie in the amount of \$20,000.
3. A vase Winnie inherited from her mother, worth, according to Winnie, around \$50,000.

This morning, Carrie telephoned Judy Lee to tell her about the debt assignment. Judy Lee informed Carrie that Denise, another friend, telephoned a week ago to notify Judy Lee that Judy Lee’s debt owed to Winnie has been assigned to Denise.

Meantime, Winnie just learned from her sister that the vase is actually an antique from the Ming Dynasty and is worth at least \$2 million. She called Carrie immediately and wanted to get the vase back in exchange for another post-dated cheque of \$50,000. Unfortunately, one of the windows in Carrie’s living room was left open last night during the typhoon and the strong wind knocked over the vase, which was placed right next to the window, and it is now shattered in pieces.

Discuss the nature of the securities granted and the potential rights and remedies of the parties.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2020

Title of Paper : Commercial Law – Part C
Date : 17 June 2020
Time : 4:20 p.m. – 4:30 p.m. (Reading Time)
4:30 p.m. – 5:30 p.m.

Instructions

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PCLL Conversion Examination June 2020

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 Marks) (Answer both parts)

- (a) Jane is very close to her elder brother Tom as their parents died in car accident when Jane was 13 and Tom looked after her during her teenage years and supported her through university. She often said to him “*I would do anything for you.*” Tom’s business was in financial difficulty and in June 2017 Jane agreed to act as a guarantor of a HK\$ 5 million loan Tom obtained from Kowloon Lending Bank (KLB). One of the terms of the guarantee agreement was that Jane charge her home to KLB as security for the loan. Another term provided that “*The Bank may in its absolute discretion as it thinks fit and without the consent of the Guarantor and without releasing or reducing or otherwise affecting whatsoever the liability of the Guarantor under this Guarantee or the validity of the security hereby created enter into, renew, vary or determine any agreement or other arrangement with the Debtor or any other person.*” In June 2019 Tom entered into an agreement with KLB to increase the loan to HK\$ 15 million. Jane was not informed of the increase. In May 2020 Tom’s business failed. Tom is insolvent and cannot repay the outstanding HK \$13 million he owes to KLB under the loan agreement. KLB has now informed Jane that in accordance with the terms of the guarantee agreement they wish to sell her home in order to recover the HK\$ 13 million owing.

Advise Jane.

(85 Marks)

- b) Would your advice differ in any way if the following clause was in the guarantee agreement between Jane and KLB “*The Guarantor unconditionally agrees to repay all monies, obligations and liabilities now or at any time hereafter due, owing or incurred to the Bank by the Debtor whether on any banking or other account or otherwise in whatever manner and whether actual or contingent and in whatever currency and in whatever name, style or form and whether as principal debtor or as surety*”?

(15 Marks)

Question 2 (100 Marks) (Answer all parts)

- a) As Diana is required to work from home due to the COVID-19 restrictions she decided to upgrade her PC. She purchased a new model from ABC. However a serious fault developed in the PC shortly after she purchased it and she asked ABC for a refund of the purchase price. However ABC, while agreeing that the PC is not of merchantable quality, are refusing to do so referring Diana to a term in the contract she signed which states *“It is regretted that under no circumstance can money be refunded if the goods supplied to you are defective. We will repair or replace at our discretion.”*

Advise Diana as to the legal effect of this clause.

(40 Marks)

- (b) Diana has a room in her home that she uses as her office. The air conditioning unit in this room has been causing her problems as water has been dripping from the unit. She contacted Ace, an air conditioning specialist, and asked them to solve the problem. Ace’s engineer inspected the unit and informed Diana that it was defective and needed replacing. Diana agreed to pay Ace HK\$15,000 for the installation of a new unit. However the new unit also drips water. Diana then engaged a new air conditioning engineer who informed her that there was absolutely nothing wrong with the new unit or the old one and that water dripping problem was due to defective pipes attached to the unit, a fault which *“any competent engineer should have noticed.”* Diana is demanding Ace refund her the HK\$15,000. However Ace is refusing to do so relying on a term in the agreement it made with Diana which states *“Under no circumstances is Ace liable for any loss or damage sustained by a customer.”*

Advise Diana as to the legal effect of this clause.

(20 Marks)

- (c) Diana is a keen football fan and last December entered into a two-year agreement with Top, a Hong Kong cable television company, under which she subscribed to all their television football channels. However for the last four months there has been no live football due to the cancellation of all games because of COVID-19. When she contacted Top and requested a partial refund of her subscription payments Top refused and referred her to their standard terms and conditions which state that *“In the absence of our negligence or deliberate wrongful act, we will not be liable to you for any delay, disruption or suspension of, and/or any failure to provide, any content which is attributable to an event or circumstance beyond our reasonable control.”*

Advise Diana as to the legal effect of this clause.

(40 Marks)

~ End of Examination Paper ~