

PCLL CONVERSION EXAMINATION JANUARY 2021

Title of Paper : Commercial Law – Part A
Date : 5 January 2021
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 January 2021

Commercial Law

Part A: Sale of Goods

Question 1 (100 Marks) Answer both parts (a) and (b)

Perry Jinx (“Jinx”) is a fashion designer based in Hong Kong. Lucky Star Ltd (“Lucky Star”) owns and runs various retail stores in Hong Kong selling electrical goods.

In January 2020, Jinx was approached by Donna Fong (“Donna”), the marketing manager of Lucky Star, to design and manufacture 5,000 T-Shirts for Lucky Star to celebrate the 50th anniversary of Lucky Star’s establishment in Hong Kong.

After some negotiations, it was agreed that Jinx would design an exclusive T-Shirt for Lucky Star for a design fee of HK\$200,000 (the “Design Contract”), which Lucky Star duly paid Jinx at the time the Design Contract was entered into. The design would be supplied to Lucky Star for Lucky Star’s approval by 31 May 2020. Jinx would also be in charge of manufacturing and delivering the T-Shirts to Lucky Star and in this regard, after Lucky Star’s approval of the T-Shirt design, Jinx would provide a sample of the T-Shirt to Lucky Star by 14 June 2020. Once the sample was approved, Jinx would arrange for the manufacture of the T-Shirts and deliver the same to Lucky Star by 30 November 2020. The price of the 5,000 T-Shirts was agreed to be HK\$1 million (the “T-Shirt Contract”).

(a) The Design Contract and the T-Shirt Contract – are they contracts which will fall under the ambit of the Sale of Goods Ordinance (Cap. 26)? (20 marks)

On 25 May 2020, Jinx provided several designs to Donna for Lucky Star’s approval. Lucky Star chose the design with a star logo made from crystals. On 10 June 2020, a sample of the T-Shirt was supplied to Donna for Lucky Star’s approval. On examination, Donna approved the sample on behalf of Lucky Star but requested that the crystals on the T-Shirts be made with genuine Swarovski Zirconia Round Pure Brilliance (White) 1.00 mm crystals (No. 335642). Since Swarovski crystals were more expensive, Jinx and Lucky Star agreed that Lucky Star would pay an additional HK\$200,000 for the price of the 5,000 T-Shirts (i.e. total price payable for the 5,000 T-Shirts would be HK\$1.2 million).

On 28 November 2020, Jinx arranged for the 5,000 T-Shirts to be delivered to Lucky Star and Lucky Star duly paid the price of HK\$1.2 million. Upon examination of the T-Shirts, Donna found that the colour had faded on 1,000 T-Shirts; another 1,000 T-Shirts had various rips and tears on them such that they could not really be worn. What was most disappointing was that Donna later found out that the crystals on all the T-Shirts were not genuine Swarovski.

(b) In relation to the alleged defects in the T-Shirts, with reference to sections 15 to 17 of the Sale of Goods Ordinance (Cap. 26), what obligations are owed from Jinx to Lucky Star? (80 marks)

Question 2 (100 Marks) Answer both parts (a) and (b)

Rose owned an antique “Heart of the Sea” 2-carat diamond (the “Diamond”). Earlier last month, Rose’s husband, Jack, fell ill. In desperate need of cash, on 2 December 2020, Rose entered into an agreement to sell the Diamond to Frank. The price of the Diamond was agreed at HK\$700,000, cash on delivery. Delivery of the Diamond was agreed to be on 15 December 2020. On that date, Rose met up with Frank and delivered the Diamond to Frank. However, Frank only made payment to Rose in the sum of HK\$500,000 in cash, promising to pay Rose the remaining HK\$200,000 by 22 December 2020. Unfortunately, since 22 December 2020, Rose was not able to contact Frank at all and to date, Frank had not made payment of the remaining HK\$200,000.

- (a) (i) **Advise Rose as to what remedy she may have against Frank.** (40 marks)
- (ii) **In what way would your advice in (a)(i) differ if Rose still had possession of the Diamond?** (20 marks)
- (b) **Would your advice to Rose in (a)(i) be different if:**

On 15 December 2020, Frank paid Rose HK\$700,000 by cash cheque but that cheque bounced. Rose tried to contact Frank but she was not able to reach him. Since Jack was very sick in the hospital, Rose did not have time to report the matter to the police. On 18 December 2020, Rose noticed a newspaper report, reporting that multi-millionaire, Mrs. Molly Pennybag, acquired the Diamond at an online auction website at a bargain of US\$200,000. (40 marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2021

Title of Paper : Commercial Law – Part B
Date : 5 January 2021
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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Commercial Law

Part B: Personal Property

Question 1 (100 Marks) (Answer both parts)

Question 1(a) (50 marks)

Toby leases an apartment to Rosa under a two-year lease for \$15,000 a month. Unfortunately, Toby was diagnosed with lung cancer recently. In order to obtain a \$150,000 loan from Donna to pay for various diagnosis and targeted therapy, Toby signed a written agreement with Donna on December 8, 2020 whereby Toby assigns to Donna the lease payments of \$15,000 a month from Rosa for 10 months. Written notice was sent to Rosa a week later on December 15, 2020 to instruct Rosa to send the next 10 lease payments to Donna.

Unknown to Donna, Toby assigned Rosa's lease payments again on December 11, 2020, this time to Steve orally in exchange for some additional cash. Steve sent a written notice to Rosa the same day, informing her of the assignment and directing her to deposit the lease payments into his bank account instead of Toby's.

Which assignment has priority? Please fully explain your answer.

Question 1(b) (50 marks)

Karen took her heirloom 5-carat loose diamond to Sophie's Jewellery to set. The owner of the store, Sophie, upon learning that the diamond did not have a grading certificate, suggested that she obtain one. "Having a grading report and certificate will get you a much better price should you decide to sell it, and you should do that before the diamond is set." Karen readily agreed and asked Sophie to arrange for the diamond to be sent to a branch of DIA lab near Sophie's shop for grading. When Sophie sent the diamond to DIA lab to be graded, she was told that there was a backlog in their branch, so Sophie agreed to have the diamond sent to DIA's other location in Central for grading instead in order to meet Karen's deadline. Sophie received the diamond with a grading certificate back from the Central branch of DIA in two weeks and finished the setting in another two weeks, all as scheduled.

When Karen came to the store to pick up the diamond, she noticed upon examination under the microscope a scratch across the top of the diamond. Sophie acknowledged that the scratch was not there when Karen brought the diamond to her shop, but it was not clear when and how the diamond was damaged. Karen is furious and refuses to pay Sophie. Sophie refuses to return the diamond to Karen without getting paid for her setting work and the money she advanced to pay DIA on Karen's behalf.

Discuss the rights and remedies of the parties.

Question 2 (100 Marks) (Answer both parts)

Question 2(a) (40 marks)

To secure a working capital loan from Kowloon Bank (“KB”), ABC Limited (the “Company”) grants a fixed charge over its receivables to Kowloon Bank. Its debenture contains the following provision:

“The Company will not create any encumbrance on or sell or dispose of the Charged Assets or any part thereof, and it will pay into the designated account in KB all moneys which it may from time to time receive in respect of the Charged Assets promptly upon receipt.”

A year later, the Company grants a fixed charge over its receivables to another bank, NT Bank (“NTB”) as security for another loan. The debenture in connection with this loan contains language similar to the above. In addition, the Company is required to obtain the consent of NTB upon any withdrawal from the designated NTB account for the receivables.

Both charges have been duly registered in compliance with the relevant provisions in the Companies Ordinance (Cap. 622). The Company later went into liquidation. As between KB and NTB, which bank has priority over the receivables? Please fully explain your answer.

Question 2(b) (60 marks)

Your friend, Thomas, just started a computer components business. In the standard sales contract that he uses to supply computer components to his customers, there is the following provision:

“Seller shall retain full title to the goods sold hereby notwithstanding delivery until full payment has been received by Seller.”

What is the legal effect of this provision? What legal advantages does it give the seller?

Advise Thomas whether it is possible to include additional clauses to the above retention of title provision to improve further Thomas’s position as a seller and discuss the likely treatment of such additions by the court.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2021

Title of Paper : Commercial Law – Part C
Date : 5 January 2021
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 January 2021

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 Marks) (Answer both parts)

A bankruptcy petition was filed against Tina on 30 November 2020 and a bankruptcy order was made on 30 December 2020. The trustee in bankruptcy now seeks your advice on the following two loans that Tina entered into.

- a) Tina was in financial difficulties due to running up significant debts after gambling unsuccessfully in Macau. She was under considerable pressure to repay these debts and threats had been made to her, warning her that her life was in danger if she did not repay. Tina borrowed an interest free loan of HK\$ 1 million from her Uncle Sam on 3 March 2017. It was agreed that she would repay it on 8 July 2018. However, Tina failed to do so. Uncle Sam was at first quite relaxed about her failure to repay the loan, but he gradually became more persistent in his demands for payment, explaining to her that he needed the money to finance his daughter's wedding. After winning some money on a gambling trip to Las Vegas, Tina repaid the loan to Uncle Sam on 13 February 2019. **(50 Marks)**
- b) Tina took out a second loan of HK\$ 500,000 from John on 1 February 2020. Tina's friend Amanda recommended John to her. Amanda stated, "*John for many years has only been willing to lend money to family members but in recent years he has extended this to include friends of family members too. As you are in that category, I am sure he will be willing to lend to you. John is a very nice man; you will like him. However I should warn you he is tough when it comes to lending money and charges high interest rates.*" In Tina's case, the interest rate was 60% per annum. The day after completion of the agreement, he gave Tina a copy of the contract. Tina repaid the first two instalments totalling HK\$20,000 but has not repaid any further sums to date. **(50 Marks)**

Question 2 (100 Marks) (Answer all parts)

Brenda, a professional model and a keep-fit enthusiast, entered into a one-year gym membership agreement with Superfit. Before making the contract she was given a tour of the facilities and then given a written contract to sign. A Superfit employee told her “*Take your time, read it carefully before you sign.*” Brenda read it through quickly and signed, as she was anxious to use Superfit’s facilities as soon as possible, since she was going for an audition the following week for a lucrative modelling contract and wanted to tone her body beforehand.

Brenda seeks your advice in relation to the following problems she has experienced at Superfit.

- a) After one month, Superfit announced that their opening hours were being changed. The gym would now open at 9.00 am instead of 6.00 am. Brenda was very unhappy about the change, as she likes to start her day with an early morning workout. However, when she complained to Superfit their response was “We are perfectly entitled to make this change as very few members were using the gym early morning and clause 3 of the agreement you signed states ‘*Superfit reserves the right to alter its hours of business if found necessary.*’ ” Brenda is incensed with this change and wishes to cancel her gym membership or at least receive a price reduction. **(60 Marks)**
- b) Brenda had left her watch worth HK\$ 100,000 in a locker before one of her training sessions. When she came back to the locker she found the locker door open and the watch missing. Superfit admit that the lock on her door was defective but are refusing to give her any compensation due to the fact that there was a notice in the changing room which stated “*WARNING - All valuable personal items should be left at home. We regret we cannot be liable for the loss or damage of any item of personal property with a value above HK\$5,000.*” Brenda is demanding that Superfit compensate her for the loss of her watch. **(20 Marks)**
- c) Superfit has a shop within the gym selling fitness equipment to members. Brenda purchased a rowing machine from the shop. However, after only two weeks’ use a serious fault developed in the machine. When Brenda demanded a refund Superfit replied “We agree that the machine is not of merchantable quality but you are only entitled to a replacement” and referred Brenda to a notice on the wall of the shop which states “*Our policy concerning defective goods – we are happy to replace any defective goods but no refunds can be given.*” **(20 Marks)**

~ End of Examination Paper ~