

PCLL CONVERSION EXAMINATION JUNE 2022

Title of Paper : Commercial Law – Part A
Date : 29 June 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 June 2022

Commercial Law

Part A: Sale of Goods

Question 1 (100 Marks) (Answer all parts)

Advise Mr. Chan in relation to each of the following transactions but do not discuss the matter of pecuniary damages:

(a) Mr. Chan purchased an antique clock from Tom who owns a clock antique shop for half the price that the clock was worth. The transaction happened at around 9pm at night at Mr. Chan's home. Tom used his business's invoice and receipt for the transaction. The true owner of the antique clock is now demanding the return of the antique clock from Mr. Chan saying that Tom was only supposed to seek potential buyers. Mr. Chan does not wish to return the clock and wonders if he must do so.

(45 marks)

(b) Mr. Chan also entered into an agreement to purchase from Tom an antique pocket watch. New information has come to light recently that, the pocket watch was a stolen item which the thief sold to Tom at the Tom's shop premise in Mong Kok. Mr. Chan would like to know whether he has good title to the pocket watch.

(15 marks)

(c) Mr. Chan recently completed a purchase of a Ferrari GTS from Second Car Co. but wanted to change the colour of the Ferrari. After full payment and the necessary Transport Department form to effect registration of the car in his name had been completed by Mr. Chan and had been given to Second Car Co. for submission to the Transport Department, Mr. Chan did not take possession of the Ferrari but left it with Second Car Co. and tasked them to change the colour. Without permission from Mr. Chan, Second Car Co. delayed submitting the form to the Transport Department, and sold the Ferrari to Mr. Li. Mr. Chan is very upset and wants to know whether he or Mr. Li is the owner of the Ferrari GTS.

(20 marks)

(d) Mr. Chan's brother gave him a Lamborghini STO as a birthday gift last year. Since his birthday, Mr. Chan had been using the Lamborghini and had completed all necessary registration of the Lamborghini to be registered under his name. However, recently, Mr. Chan's brother has requested the return of the Lamborghini saying that because no consideration had been given by Mr. Chan, the car is still 'legally' the brother's property.

(20 marks)

Question 2 (100 Marks)

Alan is a facemask manufacturer in Hong Kong and during the outbreak of COVID 19 in 2020 Alan received three times his normal orders for facemasks. As a result, Alan entered into a contract of sale with Barry for the sale and purchase of 500kg of facemask nylon and 500kg of facemask cotton to be delivered and paid for every month separately for ten (10) months starting January 2021.

For the first to fifth deliveries, Barry delivered on time and in accordance with the agreement. On the sixth and seventh deliveries, Barry delivered 510kg of facemask nylon and facemask cotton instead of 500kg. As demand for facemasks was still high, Alan still accepted delivery but only paid the contract price that was equivalent to 500kg worth of materials. However, when Barry continued to deliver 510kg instead of 500kg for the eighth and ninth deliveries, Alan alleged a breach of s.32 of the Sale of Goods Ordinance (Cap. 26) and refused to accept these deliveries or to pay for them. However, Alan did not inform Barry of his refusal of the eighth and ninth deliveries but instead left the nylon and cotton outside the warehouse. Due to heavy rain, the goods were all destroyed. Before the tenth delivery date, Alan informed Barry that he no longer wanted the goods and will not accept delivery of the final instalment.

With the fifth wave of COVID 19, Alan received three additional orders from two new shops, namely, Cathy's shop and Daniel's shop. Alan entered into a contract of sale with Cathy to provide Cathy with 100 boxes of grade 3 mask in March. Alan was unable to deliver in March but Cathy informed him she would accept delivery in April, However, Alan delivered the masks to Cathy in May and Cathy rejected them. The contract between Daniel and Alan stipulated that 50 boxes of masks should be delivered and paid for per month, for a period of 5 months. The contract specified that the masks must be of grade 4 quality and purple in colour. However, for the first three deliveries, the masks were of grade 3 (lower) quality and were deep blue. Daniel refused to accept them and informed Alan he did not want to receive delivery of the remaining two instalments.

Advise the parties of their rights and obligations (if any) but do not discuss the matter of pecuniary damages.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2022

Title of Paper : Commercial Law – Part B
Date : 29 June 2022
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 marks 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 2022

Commercial Law

Part B: Personal Property

Question 1 (100 Marks) (Answer all parts)

Fuji Japan Restaurant Ltd. (“Fuji”) is a high-end restaurant situated in Causeway Bay. Due to the COVID-19 social distancing measures by the government, it has run into some cash flow difficulties. It would like to borrow HK\$1 million from Express Bank. After negotiations, Express Bank agrees to lend Fuji the HK\$1 million provided one of the following securities could be provided:

1. a floating charge over Fuji’s book debts; or
 2. a mortgage over Fuji’s cooking utensils.
- a) Advise Fuji as to the differences between the above securities and which security is more beneficial to Fuji as an ongoing running business. **(25 marks)**
- b) Fuji and Express Bank had come to an agreement to enter into a floating charge over Fuji’s book debts. Unknown to Express Bank, Fuji had already entered into another floating charge with First Bank over its book debts two days prior, but no record of it is showing on the Companies Registry. Does this mean Express Bank will have priority over First Bank’s floating charge if Express Bank registers its floating charge today? **(20 marks)**
- c) Express Bank registered the floating charge against Fuji’s book debts within the time limit. Express Bank also found out that First Bank’s floating charge against Fuji’s book debts was not registered within the time limit, does this mean that First Bank’s floating charge is ineffective against Fuji and who has priority? **(30 marks)**
- d) Fuji has become insolvent and is now in liquidation. Before Fuji went into liquidation, it entered into a fixed charge over its book debts with Last Bank. The fixed charge was entered into after the two floating charges in b) above and was duly registered. What is the effect of the fixed charge against Express and First Bank and how can they protect their priority at the time of the execution of the fixed charge? **(25 marks)**

Question 2 (100 Marks) (Answer all parts)

Aden runs a perfume business and is hopeful of his business' future. He decides to buy an expensive machine ("Machine") for his workshop. In negotiation with Beauty Ltd. Aden was offered the follow options in order to purchase the Machine:

1. to enter into a hire-purchase agreement for a period of 5 years for the Machine;
or
 2. to enter into a sale and purchase agreement with retention of title clauses.
- a) Aden has no idea of the differences between the two options and has come to you for the answer. **Advise Aden as to the nature of a hire-purchase agreement and his obligations under it as well as the legal effect of retention of title clauses in a sale and purchase agreement. (35 marks)**
- b) Aden had decided to go with the sale and purchase agreement with the use of retention of title clauses. The sale and purchase agreement with Beauty Ltd. for the Machine contained, *inter alia*, the following provisions:

"8.1 Notwithstanding delivery of the Machine, the property in the Machine shall remain the property of Beauty Ltd. until the full purchase price had been paid and, in the event, the full purchase price is unpaid, the Buyer is liable for the amount to Beauty Ltd." **(15 marks)**

Advise Beauty Ltd. as to the effectiveness of the above clause.

- c) In addition to the Machine, Aden entered into a second sale and purchase agreement with Beauty Ltd. for the purchase of 5000 perfume glass bottles, 5 tons of dried flowers and 5000 pieces of gold stickers (the "Items"). The second sale and purchase agreement for the Items contained, *inter alia*, the following provisions:

"8.1 Notwithstanding delivery of the Items, the property and any proceeds from the sale of the Items shall remain the property of Beauty Ltd. until full payment of the purchase price.

8.2 In the event that the Buyer uses the Items in some manufacturing, construction process or is mixed with other goods, the manufactured, constructed or mixed goods and/or items is the property of Beauty Ltd."

After receiving the Machine and the Items above, Aden immediately used all the dried flowers and made them into perfume. The 5000 perfume glass bottles had been placed into gift boxes (without perfume being filled into them) as part of a decorative item and the gold stickers remained unused. But before Aden made any repayment, Aden had gone into bankruptcy. **(50 marks)**

Advise Beauty Ltd. as to the effectiveness of the above clauses.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2022

Title of Paper : Commercial Law – Part C
Date : 29 June 2022
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.
19. Write your answers only in the answer books provided.
20. This is a one-hour examination.
21. This is an open book examination.
22. 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.
23. 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 marks if they answer more than one question.
24. The passing mark for this paper is 50 marks.

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PCLL Conversion Examination June 2022

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 Marks) (Answer all parts)

- a) Alistair has just turned 18 years old and has recently started a start-up tech company. Alistair lives with his father, Benny in Benny's solely owned house. Benny is a single parent and has been the sole provider for Alistair all his life. Benny wanted to build a solar panel roof top on his house but did not have enough money to pay for it, so Benny decided to apply for a loan from Cash Bank. Cash Bank knew what the loan was for but would only lend the money to Benny if Alistair would act as the guarantor of the loan. Benny told Alistair of Cash Bank's requirement and Benny kept saying that he had been the sole support throughout Alistair's life and that it was time Alistair repaid Benny. After the conversation, Alistair executed the guarantee without asking any further questions (Cash Bank did not meet with Alistair to discuss the terms of the guarantee nor ask Alistair to seek independent legal advice). Two months after the grant of the initial loan, Cash Bank agreed to increase the loan to Benny by 50% but Alistair was not made aware of this increase.

Advise Alistair as to his liability to the Bank under the guarantee agreement.

(75 marks)

- b) Alistair's business partner in the start-up tech company is Danny and they each own 50% of the shares in the company. Danny and Alistair had been friends for over ten years and Alistair has always admired Danny. Danny called Alistair asking for help as Danny was in deep debt to loan sharks and said that he needed to borrow money to repay the debts otherwise Danny would be killed. Alistair was very concerned about Danny's safety. Danny told Alistair that they can borrow the money using all their shares as security through a joint loan from Easy Bank but that Danny will be solely responsible to repay the loan. Alistair, believing and trusting Danny entered into a loan agreement and security agreement over the shares with Easy Bank. In the meeting with Easy Bank, Alistair told Easy Bank that the money was meant to contribute to the company for working capital purposes. Easy Bank explained the terms and conditions to Alistair and asked him to seek independent legal advice.

Danny did not however repay the loan and has disappeared, with Easy Bank now enforcing on the security and asking Alistair for repayment.

Advise Alistair.

(25 marks)

Question 2 (100 Marks) (Answer all parts)

Elenore went to Thai M Ltd. for a massage and she found it very enjoyable. During the massage and while the masseuse was persuading Elenore to purchase the Diamond Club massage package (which was at a relatively high price), the masseuse said that all the masseuses at Thai M Ltd. were licensed masseuses. After the massage, Elenore was persuaded and purchased the Diamond Club Thai 100 massage package.

After the purchase, Elenore used her 100 sessions to get Thai massages at Thai M Ltd. After the massage sessions, she eventually felt a sharp pain in her lower back. She went to see a doctor immediately and the diagnosis was that the pain had been caused due to wrong pressure that had been placed on her lower back during the massage given by Thai M Ltd. Elenore later also found out that the masseuses at Thai M Ltd. were not licensed. In reading the terms and conditions as laid out in the Thai massage sessions purchase agreement between Elenore and Thai M Ltd. which Elenore had signed but never read until now, you found the following clauses:

“Clause 4.1 Thai M Ltd. will not be responsible for any loss of personal property within the premises of Thai M Ltd.

Clause 4.2 Thai M Ltd. will not be responsible for any personal injury or death caused negligently by Thai M Ltd. or its employees and/or staff.”

- a) Advise Elenore on:
- i. Whether Elenore has any claim on the sub-standard service of Thai M Ltd. **(10 Marks)**
 - ii. The effect of the clauses on her claim against Thai M Ltd. for her lower back injury. **(15 Marks)**
 - iii. What claims Elenore might have in relation to the statement regarding the licensed masseuses. **(10 Marks)**
- b) Would your answer to a)ii. above be different if, instead of her personal injury, her iPhone was stolen by another customer of Thai M Ltd.? **(20 Marks)**
- c) Due to her lower back injury, Elenore fell behind on her monthly installments on her new car. The car dealer called Elenore and said that if she did not make good the monthly installments immediately, they would re-possess the car. Elenore called Loans 4 Ease Ltd (“L4”), a company not licensed under the Money Lenders Ordinance, but well known for lending money quickly. Elenore heard about the company through a friend’s recommendation. Elenore’s friend told her that L4 is a Hong Kong registered company and had been in the lending business for over 10 years.

Elenore spoke with Mr. Tiger, the manager of L4 and agreed to a two-year loan for the amount of HK \$150,000. It was also agreed that the interest rate would be 49% per annum. Both parties signed an agreement. Elenore was never given a copy of the agreement and was only given a memorandum that contained half of the terms of the agreement. The memorandum contained the personal particulars of Elenore, the interest rate, and information concerning the loan including the amount and repayment date.

Elenore is unable to repay the loan to L4. She would like to know if the loan was an effective loan and whether Loans 4 Ease Ltd. has breached the Money Lenders Ordinance (Cap. 163).
(45 Marks)

~ End of Examination Paper ~