

PCLL CONVERSION EXAMINATION JUNE 2021

Title of Paper : Commercial Law – Part A
Date : 29 June 2021
Time : 1:00 p.m. – 1:10 p.m. (Reading Time)
1:10 p.m. – 2:10 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
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 2021

Commercial Law

Part A: Sale of Goods

Question 1 (100 Marks) Answer all parts

Anna designs and sells handbags. The “Jigsaw” bag is one of Anna’s designs. In January 2021, Betty agreed to purchase 1,000 Jigsaw bags (the “Bags”) from Anna at a total price of HK\$1 million (i.e. at HK\$1,000 per bag). Apart from the “Jigsaw” design, Anna and Betty agreed that the Bags should be in the colour of elephant grey and in the size of 15 inches.

Advise Betty in each of the following situations:

- (a) Anna agreed to deliver the Bags to Betty on 31 May 2021. Betty had already fully paid for the Bags on 31 January 2021 and on 1 February 2021, Betty agreed to sell all the 1,000 Bags to Carmen at a price of \$1,500 each. On 31 May 2021, the Bags were delivered to Betty but on inspection, Betty found that the Bags were light grey in colour and the size of the Bags was 12 inches. Advise Betty of her rights and remedies. **(25 marks)**
- (b) Would your advice in (a) above differ in any way if Betty did not inspect the Bags on delivery and she did not notice the variation in the colour and size of the Bags until 30 June 2021, when the same were inspected by Carmen. **(25 marks)**
- (c) Anna agreed to deliver the Bags to Betty in two instalments, 500 Bags to be delivered on 31 March 2021 and 500 Bags to be delivered on 31 May 2021. On 31 March 2021, Anna duly delivered the first 500 Bags to Betty. Betty was satisfied with this first batch of 500 Bags and accepted delivery. On 31 May 2021, the second batch of 500 Bags were delivered. On inspection, Betty found that the second batch of 500 Bags were light grey in colour and in the size of 12 inches. There was no express agreement between the parties as to when payment of the Bags should be made and Betty has not yet paid for any of the Bags. Advise Betty if she needs to make payment for the Bags. **(25 marks)**
- (d) Anna delivered the Bags to Betty on 31 May 2021 and Betty was supposed to pay for the Bags on 14 June 2021. Betty started to sell the Bags in her shop on 1 June 2021. On 10 June 2021 (before Betty paid for the Bags), Betty received a letter from the solicitors of Dowee Ltd, alleging that Betty was selling the Bags which infringed the trademark of Dowee Ltd and asked Betty to refrain from selling the Bags. If Dowee Ltd’s allegations are true, advise Betty of her remedies against Anna, if any, and whether Betty has to pay for the Bags. **(25 marks)**

Question 2 (100 Marks) Answer all parts

Edward was planning to emigrate to Canada and so he decided to sell his 2019 Mercedes S-Class Saloon (the “Car”). He approached his friend, Fred, who is a second-hand car dealer to ask Fred to help him with the sale. Fred agreed to help Edward on a friendly basis and agreed that he would not charge any commission for the sale. Edward drove the Car to Fred’s showroom and left the Car (together with the registration documents) there to see what offers Fred could obtain.

Advise the specified parties set out in the different scenarios below.

- (a) On 22 June 2021, George went to Fred’s showroom and agreed to buy the Car at \$900,000. George paid a deposit of HK\$50,000 for the Car and it was agreed that the remaining HK\$850,000 would be paid on 2 July 2021 at Fred’s showroom, when George would also be collecting the Car on that day. On 27 June 2021, a fire broke out at Fred’s showroom and the Car was destroyed at the fire. Fred insists that George should pay for the Car. Advise George. **(50 marks)**
- (b) (For this part of the question, ignore the facts set out in part 2(a) above). Edward’s instruction to Fred was not to sell the Car for less than HK\$900,000. Without following Edward’s instruction, Fred’s colleague sold the car to Harry at HK\$400,000. Harry then sold the Car on an online second-hand car website to John and made a profit of HK\$500,000. Advise Edward of his rights and remedies, if any. **(50 marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2021

Title of Paper : Commercial Law – Part B
Date : 29 June 2021
Time : 2:30 p.m. – 2:40 p.m. (Reading Time)
2:40 p.m. – 3:40 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 June 2021

Commercial Law

Part B: Personal Property

Question 1 (100 Marks) (Answer both parts)

- a) Charlie has a savings and checking account in Alpha Bank. He purchased a residential flat five years ago with a mortgage from Alpha Bank. ABC Limited, in which Charlie is a director and major shareholder, has a checking account in Alpha Bank, too. ABC Limited has a revolving loan facility with Alpha Bank, with Charlie acting as a guarantor of that facility. Charlie has opened another savings account for his 5-year-old daughter, Chelsea, in Alpha Bank.

Describe the nature of the parties' relationship with Alpha Bank. (30 marks)

- b) Last month, Charlie went furniture shopping and purchased a recliner chair with a cheque drawn on his own checking account at Alpha Bank. The cheque is dated five days from the date of the purchase, when the chair is to be delivered to Charlie's home, and is payable to Comfy Sofa Limited in the amount of HK\$28,888. There are two parallel lines “//” across the front of the cheque enclosing the words “account payee only.”

Charlie received a call from Comfy Sofa Limited the day before the scheduled delivery date and was told that due to an error in their company's inventory system, the chair Charlie purchased was actually out of stock and a new shipment would not arrive until the following month. Charlie was disappointed and angry and called Alpha Bank to put in a “stop payment order” for the cheque. Alpha Bank paid that cheque the following day despite the stop payment order.

The business of ABC Limited has fallen on hard times. ABC Limited wishes to borrow from Omega Bank to ease its liquidity crunch. From the information provided by ABC Limited, Omega Bank learned about ABC Limited's banking relationship with Alpha Bank. Omega Bank sent a request to Alpha Bank for further details on ABC Limited's financial condition, citing ABC Limited's obligation on the loan application it submitted to provide the requested information to Omega Bank. Alpha Bank complies with the request and furnishes details on ABC Limited's financial condition to Omega Bank.

The loan negotiation between ABC Limited and Omega Bank fell through, and ABC Limited is getting deeper into financial trouble. Noticing that the credit balance in ABC Limited's checking account is not enough to meet the loan payment due Alpha Bank in three days, Alpha Bank refuses to pay a cheque Charlie wrote to draw from his personal checking account.

The monthly mortgage payment on Charlie's flat is due today, Alpha Bank debits funds in Charlie's savings and checking account based on a standing instruction from Charlie. However, as there are not enough funds in that account, Alpha Bank debits funds from Chelsea's savings account to cover the deficiency.

Advise all parties of their rights and obligations. (70 marks)

Question 2 (100 Marks) (Answer all parts)

Glassy Heart Limited ("GHL") is a glass manufacturing company in Hong Kong. It would like to borrow HK\$2 million for its working capital needs from Kowloon Bank. After due diligence and negotiations with GHL, Kowloon Bank is considering taking one of the following as security for the loan:

- a pledge of GHL's old manufacturing equipment (now left idle in a warehouse) or
 - a floating charge over GHL's book debts
- a) Describe the differences between the above pledge and floating charge and advise the bank on which one is more favourable. **(35 marks)**
- b) Kowloon Bank decided to take a floating charge over GHL's book debts as security interest for the loan. It conducted a search at the Companies Registry and found out that there was a floating charge over GHL's book debts granted to NT Bank last year. What does this mean for Kowloon Bank? What should it do now? **(20 marks)**
- c) Instead of taking the security interest described above, Kowloon Bank and GHL executed a debenture on May 22, 2021, whereby GHL granted Kowloon Bank a floating charge over GHL's stock-in-trade as security for the HK\$2 million loan. What must be done to perfect this floating charge? What is the purpose of this step? **(15 marks)**
- d) Today is June 29, 2021. The step described in your answer to c) above has not taken place. What are the ramifications for each party? Advise them of their options. **(30 marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2021

Title of Paper : Commercial Law – Part C
Date : 29 June 2021
Time : 4:00 p.m. – 4:10 p.m. (Reading Time)
4:10 p.m. – 5:10 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 June 2021

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 Marks) (Answer both parts)

- (a) Tom, who is now 50 years old, has had a difficult relationship with his father, Sam. Sam loves Tom very much and has said on many occasions that he would do anything he can for his son. However, Sam has also expressed great disappointment and anger because all of Tom's business ventures to date have ended in failure. Tom meets his father for lunch and explains to him that he has had a great idea for a startup business that will produce health apps. Tom tells his father "*As you know I have no capital so I want you to be my business partner. I need HK\$5 million to hire some software developers to enhance the quality of the apps I have created. Will you agree to become my business partner? In return for your HK\$5 million investment, you can have 10% of the profits.*" Sam is very reluctant to agree to become Tom's business partner, as he knows, given his son's business record, that there is a strong possibility that the business might fail and not only would Sam lose the HK\$5 million but, as a partner, he would be liable for all the partnership's debts. When Sam tells Tom that he does not think he will invest in his new business Tom screams, "*It's my last chance to make a success with my life and you are my only hope. If you turn me down, life will not be worth living and I will kill myself.*" Shocked at this outburst and because he loves his son very much and wants to help him as much as possible Sam replies, "*I have changed my mind. I will agree to be your business partner on the terms you have stated.*" Tom then produces a partnership agreement that contains these terms and Sam signs the agreement without reading it. Sam immediately transfers HK\$5 million to Tom.

Five days after signing the agreement Sam meets Tom's ex-wife, Amy. Amy tells Sam "*You have made a big mistake in making the partnership agreement. There is no chance Tom's business will be successful. I know for a fact that the HK\$5 million you have given him is going to be used to pay off his existing debts.*"

Sam checks and discovers that what Amy has said is true.

Advise Sam as to whether he can rescind the partnership agreement with Tom.

(70 Marks)

- (b) Tom also persuaded Sam to guarantee a bank loan. Sam asks your advice as to the legal effect of the following terms in the agreement:

"8.1 The Guarantor shall not be entitled to stand in the place of the Bank in respect of any security or money and shall not in priority to the Bank seek to enforce repayment from the Debtor in respect of any amount which may have been paid by the Guarantor to the Bank. The Bank may place to the credit of a suspense account for so long as it considers desirable any money received under this Guarantee without any obligation to apply it towards discharge of the Debtor's Obligations."

(15 Marks)

8.2 *The Guarantor agrees that the Bank may from time to time without discharging or in any way diminishing the liability of the Guarantor hereunder and without the assent or knowledge of the Guarantor renew, determine, vary or increase any credit or facilities or the terms or conditions in respect of any transaction with the Debtor.*” (15 Marks)

Question 2 (100 Marks) (Answer all parts)

- (a) Garage Limited (‘Garage’) has a business selling and repairing cars. Advise Garage as to the legal effect of the clauses detailed below that are contained in its written contracts with customers in each of the following situations:
- (i) Garage sells a car to Albert. Albert is purchasing the car for family use as well as for use in his capacity as a part-time Uber driver. The contract that Albert signed contained the following clause: *“Should any vehicle sold have any defects the seller shall repair the vehicle free of charge to the buyer’s satisfaction. However, under no circumstances can there be a refund of the price.”* (35 Marks)
- (ii) Garage sells a transit van to Barry. Barry is very keen on camping and fishing and has decided that a transit van, which has no seats in the back, but lots of storage space for his equipment and for overnight sleeping, is far more useful for these purposes than a car. The contract which Barry signed contained the same clause as in (i) above. (10 Marks)
- (iii) Garage enters into a contract with Gladys for the repair of her car. As part of this contract Garage will replace her car’s gearbox and carry out checks to ensure that her car is roadworthy and will pass the annual government vehicle examination test. The written contract Gladys signs contains the following clause *“Under no circumstances will Garage Limited be responsible for the quality of any repair work or the quality of any parts fitted or the failure to detect that any vehicle inspected is not in a roadworthy condition.”* (30 Marks)
- (b) On 2 January 2021, Tina, who had lost a large amount of money gambling and needed a loan urgently, went to Tong Wong Pawnshop (‘TWP’). TWP is a licensed pawnbroker. Tina pawned her watch in return for a HK\$ 50,000 loan. As further security for the loan, TWP insisted that Tina handed over her bank deposit account book. TWP supplied Tina with a pawn ticket. One week later when Tina complained she has not been informed of the interest rate TWP informed her it was 3.5% per month.
- On 2 April 2021, Tina went back to TWP and asked for the agreement to be extended, as she was not yet in a position to repay the loan. TWP agreed. However, when Tina went back to TWP on 2 June 2021 to repay the money, TWP informed her that she could not have the watch back as it has now become TWP’s property.
- Advise Tina. (25 Marks)

~ End of Examination Paper ~