

PCLL Conversion Examination
January 2015
Examiner's Comments
Commercial Law

The level of English was generally good and the presentation of the scripts themselves with almost all students writing legibly. The examiner noted none of the student wrote in pencil and all wrote in full sentences (a part from parts of the question which students were clearly running out of time).

The examiner noted that many of the students still merely cited case names as authorities for the principles or legal arguments, but did not provide further explanation or application of the authorities to the case in question. This in effect means that the applications were poorly done on those answers.

The examiner would like to further stress the importance of citing Hong Kong legislation and not UK Acts. Some students still relied on and quoted the UK Acts and hence those students shows a lack of understanding of Hong Kong commercial law.

Students did relatively well for all three parts of the examination. Traditionally, students were slightly weaker in in Part C (Consumer Credit and Protection) where the topics are generally more based on Hong Kong legislations.

Examiner's General Comments

Part A (Sale and Acquisition of Goods)

Part A consisted of one essay type question and one problem type question.

For question 1, the question required students to have the knowledge of the full extent of type of remedies available. Students were required to identify and discuss both the real remedies and personal remedies that is available to the parties of a sale of goods contract. In addition, the relevant knowledge and definitions are also required in the mist of the discussion e.g. The definition of what is an unpaid seller. Students were required to point to the sections in the Sales of Good Ordinance (e.g. S. 43 Unpaid seller's lien; s. 46 Right of stoppage in transit; and s. 50 Re-sale etc). In addition to the real remedies students were also required to discuss in length the person remedies available and its application (ss. 51 (Action for price) and 52 (Damages for non-acceptance)). In discussing the person remedies, students were required to discuss in length and in detail of the assessment of damages (i.e. the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract. Therefore not necessary the contract price.) Further, students were require to explain what is an available market for the goods in question (i.e. the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed for delivery, then at the time of the neglect or refusal to deliver). All the principles and concepts should be discussed with relevant case law.

For students who did not do so well in this question mainly was not on not understanding the law but did not discuss the actual remedies available or only discussed part of the remedies available.

Question 2 for a problem type question based on the type of contract in question. Students were required to distinguish between a sale of goods contract from a contract for services and a hire purchase agreement to a sale of goods contract. Students' knowledge on the duties and rights of a bailee and bailor in a bailment relationship were also tested with a knowledge of the application of the nemo dat rule and the implied terms of a sale of goods contract.

Students who did not do so well in this question tend not to be able to distinguish between the different types of contracts or unable to spot all the relevant issues that were present in the question.

Part B (Personal Property)

Part B consisted of two problem type questions. Question 1 was mainly on Retention of Title (Romalpa) Clause and Question 2 was on securities. The majority of students attempted Question 1 on Retention of Title Clause rather than Question 2 on securities. Some students who attempted Question 1 on retention of title failed to spot all the issues or mismanaged their time. Most of the student failed to recognize and discuss the issue of tracing and for students who did poorly was partly because they did not discuss in full the possibilities and application of the retention of title clause in different situations – which were required. Question 1 also had minor issues on charges and the registration thereof.

As Question 2 was more focused on one particular topic – type of securities, However, it did required student to discuss different types of securities – Mortgage, charge, liens and pledges. In understanding and discussing the issues, good students would discuss the Pawnbroker's Ordinance and the effect of each of the different securities in each of the different situations. Students who did poorly fall into two categories. The first is the inability to spot the correct issues and may have discussed the wrong type of securities. The second is the ability to spot the correct securities but did not further elaborate how the security would or should work.

Part C (Consumer Credit and Protection)

Part C again consisted of each a problem type question as well as an essay. Question 1 was a problem type question, which focused on the Money Lender's Ordinance while question 2 was an essay type question focused on the guarantee.

Question 1 required students to use the Money Lender's Ordinance extensively to discuss whether Loans 4 ease Ltd is a moneylender under Money Lender's Ordinance s 2 and registration under MLO s 4. Nature of agreement between May and Loans 4 ease Ltd and the nature of interest rates. Other issues includes the discussion of the definition and impact of Loans R Us Ltd sending a statutory demand letter to William and whether the terms of the statutory demand letter constitute a violation of Money Lender's Ordinance s 22(1). Students were also required to discuss whether the threats by Loans 4 ease Ltd can be considered 'duress' and the consideration of the

whole agreement or parts of the agreement as unconscionable under UCO.

Question 2 of this part required students to discuss the differences between a guarantor and surety, in particular the surety's primary obligation as compare to the guarantor's a primary obligation and what is if the primary obligor fails to perform. Students were required to define the features of a guarantee and the powers and obligations of the guarantor and explain them in detail.

Good students would further discuss the duties of money lender to surety under the Money Lenders Ordinance.