

PCLL Conversion Examination
June 2015
Examiner's Comments
Commercial Law

The examiner note the general improvement of legibility of the examination scripts and general use of full sentences in answering questions.

It is however a disappointment that many of the students were still merely citing case names as authorities for the principles or legal arguments without actual application of the case or explanation of the use of them. However, an improvement is seen.

There was a decrease in the use of English legislation. Most of the students referred to Hong Kong legislation.

Part A (Sale and Acquisition of Goods)

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

Question 1

Question 1 is based on the Sale of Goods Ordinance (Cap. 24) ("SOGO") and required students to discuss in detail the rules as set out in sections 18-20 of the SOGO as well as its application and explanation together with the relationship to passing of property.

Students need to explain the application of sections 18 and 19. Students would be required to discuss the application of the five rules in s. 20 of the SOGO making effort in the explanation and application together with case law on the understanding of "deliverable state", "unascertained/future goods" and "unconditional appropriation".

Students are required to explain the relationship of passing of property and risk and application of s. 22 of SOGO. In discussing the relationship of risk and property, the students should discuss the differences between property and possession and how it is applicable to risk.

In discussion the exceptions to the relationship of risk and property, the question required discussion of examples and applications e.g. the difference of common carrier and non-common carrier.

Question 2

Question two was a problem type question based on the buyer and seller's duties for performance of a sale of goods contract and required students to discuss several issues.

The issues of whether time was of the essence for the sale of goods contract needed to be discussed together with the relevant sections in the SOGO. In the discussions of time of essence, the students are required to explain with case law possible ways in which time of essence terms may be waived with relevant case law.

The rules as to delivery and its application with relevant sections of the SOGO should also be discussed. In addition, students should discuss the duties of a buyer in refusing to accept delivery and what should a buyer do. The legal rule of *de minimis* and its application with case law should be discussed and applied to explain the duties of the buyer in the current question.

The last issue that should be discussed are the seller's remedies with the relevant sections of the SOGO and case law.

Part B (Personal Property)

Part B consisted of two problem type questions. Question 1 was on the process of assignment and Question 2 mainly on retention of title clause ("ROT") with other security issues.

Question 1

This question required students to identify the types of personal property by describing a chose in possession and a chose in action. It required the full explanation of an assignment both in terms of assignment in law and an assignment in equity, noting at the same time the application of s.9 of the Law Amendment Reform Consolidation Ordinance. The discussion should be applied to the current case situation and explain the possible outcome.

The elements required for discussion were less, but it was more difficult to spot the correct direction to discuss.

Question 2

In question 2, there were three particular issues for discussion. First, a ROT and its application with relevant cases. The student should discuss whether clause 5.2 was a

ROT and the implications if it was not. Good students would also discuss the doctrine of tracing with relevant case law in advising the clients.

Second, in the situation of security, the issues were the floating and fixed charges by U Bank and the bailment relationship. In the discussion of the charges, the students should identify the nature of each of the floating and fixed charge and the rule of priority as applied. Third, in the application of the question, the nature of the “pledge” would be required to be discussed and identification of a bailment relationship with a discussion of the duties of the bailor and the bailee. An additional issue for students to discuss was the issue of a possible lien which was dependent upon whether payment was paid by the neighbor.

Part C (Consumer Credit and Protection)

Part C again consisted of each a problem type question as well as an essay.

Question 1

Question 1 consisted of three separated events each giving rise to one or more issues.

14 May 2014

The students need to discuss the kind of security it was and lay out the differences between a pledge from other form of securities. As the situation involved a pawnbroker, students are required to refer to the Pawnbrokers Ordinance (ss 11 -17 and Schedule 1) in the discussion of the rights of the pledger and pledgee as well as the loan amount and the result of non-repayment with relevant case law.

16 July 2014

The relationship (the kind of security) between the parties must be established. After the establishment of the kind of security as mortgage, students should distinguish between an equitable mortgage and a legal one. Students could also discuss whether the borrower was a moneylender or a bank.

The second issue for discussion was undue influence. Students must explain the application of undue influence with case law.

1 Aug 2014

Students should discuss Philip’s right to redemption and Bank’s rights to foreclose, sell or other potential remedies available with relevant case law.

Question 2

Question 2 mainly dealt with the Unconscionable Contracts Ordinance (“UCO”) and the Control of Exemption Clauses Ordinance (“CECO”).

The question would require students to explain the applicability of the UCO with particular focus on “unconscionable”. The answer should consist of an explanation of the consequences of breaching the UCO, all of which should accompany with relevant sections and case law.

Regarding the CECO, the applicability would need to be explain with relevant sections and case law. Particular application should be placed on the definition and explanation of “reasonableness”.

The students should be able to answer the question and explain how the UCO and the CECO protect consumers.