

PCLL CONVERSION EXAMINATION, JANUARY 2015

Title of Paper : Commercial Law – Part A
Date : 8 January 2015
Time : 9:00 a.m. – 9:10 a.m. (Reading Time)
9:10 a.m. – 10:10 a.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 each answer 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 2 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.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2015

Commercial Law

Part A: Sale of Goods

Question 1 (100 marks)

Explain the recourses which a seller of a sale of goods contract may have against a buyer.

Question 2 (100 marks)

Jeremy is a very talented musician. Daniel would like to propose to his girlfriend and asked Jeremy to write a romantic song for him. Jeremy had decided to charge Daniel HK\$5,000 for the song. Jeremy and Daniel entered into an agreement where the song was required to be delivered to Daniel on or before 25th December 2014.

At the same time, Daniel would like to practise playing on a guitar so that he would be able to play and sing the song on the date of his proposal. He entered into an agreement in relation to the guitar titled “Hire purchase agreement” with Susan in her home which she sells many things. Unknown to Daniel, Susan does not own the guitar as Susan borrowed it from her next door neighbor. The option clause in the “Hire purchase agreement” also states that Daniel must pay all hiring fees and once all hiring fees are paid, the guitar belongs to Daniel.

One day when Daniel was practising on the hired guitar in the park, Susan’s next door neighbor came up to Daniel, said the guitar actually belonged to him, took the guitar and ran away. At the same time, Daniel’s girlfriend broke up with him over the telephone. With the departure of his girlfriend, Daniel saw no need for the romantic song and therefore cancelled the agreement with Jeremy. But Jeremy had already completed the song and has written it on a piece of very special paper.

Jeremy is very upset and is alleging that Daniel breached a sale of goods contract in relation to the song because the song was written on paper that Jeremy provided and wants to hold Daniel liable under the Sale of Goods Ordinance. Daniel is arguing that the agreement between him and Jeremy is not a sale of goods contract. At the same time, Daniel would like to sue Susan for the breach of the “Hire purchase agreement” and is alleging that it is actually a sale of goods contract, therefore is governed by the Sale of Goods Ordinance. Daniel is also alleging that he is entitled to be protected under the exceptions to the *nemo dat quod non habet* as against the neighbor in relation to the guitar. Susan is alleging that as a bailee she has a right to deal with the guitar in whatever way she wants during the term of the bailment.

Advise the parties to their rights and obligations (if any).

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2015

Title of Paper : Commercial Law – Part B
Date : 8 January 2015
Time : 10:25 a.m. – 10:35 a.m. (Reading Time)
10:35 a.m. – 11:35 a.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 each answer 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.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2015

Commercial Law

Part B: Personal Property

Question 1 (100 marks)

Ball Ltd is a company that manufactures and sells world-class quality basketballs. On 1 August 2014, Ball Ltd entered into a contract with Rubber Ltd, a rubber supplier. The contract stipulated that Rubber Ltd will make five shipments, each consisting of 300 pounds of Grade A1 rubber, to Ball Ltd each month for five months. The Grade A1 rubber will be delivered to Ball Ltd's warehouse on the 8th of each month beginning on 8 September 2014. The total value of the contract was HK\$10,200,000. The contract also contained the following provisions, *inter alia*:

“...9.2) Notwithstanding delivery, the property in the products shall remain in the seller until the buyer has paid the price of such property and any other sums owing from buyer to seller in full until all amounts are duly paid to seller.

9.3) If any of the products are incorporated in or used as material for other goods before payment, the property in the whole of such other goods shall be and remain with the seller until such payment has been made and all the seller's rights hereunder in the products shall extend to those other goods.

9.4) Until the seller is paid in full for all the products, the relationship of the buyer to the seller shall be fiduciary and seller shall have the right to trace the proceeds thereof...”.

On 15 August 2014, Ball Ltd concluded a loan with Solution Bank in the amount of HK\$10,500,000. The loan was secured with a fixed charge, registered on 30 August 2014, on the company's current and future book debts. The loan agreement also contained a floating charge on all other assets of the company. On 8 September 2014, the first shipment of Grade A1 rubber was delivered and Ball Ltd paid for the shipment. On 10 October 2014, Rubber Ltd delivered the second shipment of Grade A1 rubber, which was received, paid for, and placed in Ball Ltd's warehouse. On 25 October 2014, 400 pounds of the rubber was used in the manufacturing process to make approximately 250 basketballs. On 15 November 2014, all 250 basketballs were sold for a total amount of HK\$87,500.

On 21 November, 2014, Ball Ltd was unable to pay its loan to Solution Bank and went into liquidation. A receiver was appointed, who took possession of all of the company's assets in satisfaction of outstanding debts.

Advise Solution Ltd and Rubber Ltd on their respective rights and remedies.

Question 2 (100 marks)

Susan owns the place of business and operates Greetings Ltd., a shop that sells greeting cards, gift items, and specially-manufactured jewellery. The following events took place in 2014 with respect to Susan and her company:

1) *2 January 2014* – Susan was unable to pay her January 2014 rent in the amount of HK\$25,000 for the flat she rents near Ho Man Tin. She goes to a local shop, gives the owner-operator a wedding ring worth HK\$30,000, and receives HK\$30,000 in cash plus a receipt. She then pays her January 2014 rent. Susan never returns to collect her wedding ring. After five months, the shop owner sells the wedding ring for HK\$75,000 and kept the money.

2) *8 February 2014* – Greetings was not making as much of a profit as Susan expected. Susan is having a hard time paying the bills and needs some help. She goes to More Bank and takes out a loan for HK\$75,000 to help with business expenses. The loan agreement states Susan must repay the loan by 8 June 2014 in full. She gives the bank a deed to her shop. On 7 June 2014, Susan tells the manager of More Bank Ltd she cannot repay the loan. More Bank threatens to take legal action.

3) *5 July 2014* – Susan wins the Hong Kong Lottery valued at HK\$500,000. She is very happy and decides to throw a large celebration party. She decides that she will use HK\$250,000 for the party and use the remainder to pay her suppliers. Greetings Ltd has an installment contract with each of three suppliers for paper and jewellery products. One supplier, Supplier.com Ltd still has not been paid for the July 2014 and August 2014 shipments. Unfortunately, the cost of the party exceeded Susan's lottery winnings. She is unable to pay any of her suppliers in July, August, September and October.

Advise the parties of their potential rights and remedies.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION, JANUARY 2015

Title of Paper : Commercial Law – Part C
Date : 8 January 2015
Time : 11:50 a.m. – 12:00 p.m. (Reading Time)
12:00 p.m. – 1:00 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 each answer 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.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2015

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks)

May is a solicitor who currently lives with her parents, Mr and Mrs Law in Kowloon Tong. In August 2013, May started working as a solicitor at a new law firm, called Sun & Sun, with a monthly salary of HK \$65,000. Mr and Mrs Law decided it was time for May to be an independent and responsible adult. In an effort to help May, Mr and Mrs Law agreed to find a new apartment for May and paid the rental payments for one year. The rental payments on May's new apartment are HK \$15,500 per month, which includes rent and utility bills. Feeling confident and finally independent, May also decided to purchase a new 2014 Volkswagen Beetle. Mr and Mrs Law paid a deposit of HK\$100,000 to the car dealer. May was responsible for the remaining monthly installments of HK\$27,500, from October 2013.

May paid the installments payments on the car in October, November, and December 2013. Starting in January 2014, due to additional unexpected expenses, May was unable to pay the monthly installments on the 2014 Volkswagen Beetle. On 20 Jan 2014, the car dealer called May and said that if she did not make the monthly installments immediately, they would re-possess the car and initiate legal action. May called Loans 4 ease Ltd, a well-known company that lends money. May heard about the company through a friend's recommendation. May's friend told her that Loans 4 ease Ltd. had a Hong Kong business license and had been in the loan-making and loan-servicing business for over 10 years.

May spoke with Tiger, the manager of Loans 4 ease Ltd. On 15 Jan 2014, May agreed to the following terms on a two-year loan: 1) amount of loan (principal): HK \$150,000; 2) interest rate 49% per annum; 3) Repayment commencement date: 1 Feb 2014 via automatic bank transfer in the amount of HK \$18,625 per month; and 4) late payments: subject to a 25% interest charge on top of normal interest rate. Both parties signed a memorandum. Tiger gave May a copy of the memorandum and a copy of the signed bank transfer agreement.

Between Feb and July 2014, May continued to face financial and personal difficulties, including losing her job in July 2014. On 1 August 2014, when Loans 4 ease Ltd attempted to make an automatic withdrawal for the monthly payment of HK \$18,625, the payment was not successful. Loans 4 ease Ltd. immediately sent May a formal statutory demand letter urging payment and charged her an additional 50% interest for the August 2014 payment. They also demanded full payment of the remaining loan balance, with no possibility of paying by installments.

Advise the parties of their potential rights and remedies.

Question 2 (100 marks)

Explain the differences between a ‘guarantor’ and a ‘surety’ and lay out the powers and responsibilities of a personal guarantor as compared to a surety in the *Money Lenders Ordinance (Cap. 163)*.

~ End of Examination Paper ~