

## **PCLL CONVERSION EXAMINATION JANUARY 2016**

Title of Paper: Civil Procedure  
Date: 5 January 2016  
Time: 9:30 a.m. – 9:45 a.m. (Reading Time)  
9:45 a.m. – 12:45 p.m.

### **Instructions**

1. Write your **candidate number** on the cover of each answer book.  
Do **NOT** write your name on 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 3 hour examination. You have an additional 15 minutes for reading.  
Do **NOT** begin writing in your answer books until you are instructed to do so.
5. The passing mark for this paper is 50 marks.
6. This is an open book examination.
7. This paper consists of 7 pages. The paper contains a total of 4 questions worth a total of 100 marks.
8. You must answer **ALL** questions.

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

**PCLL Conversion Examination January 2016**

**Civil Procedure**

**BACKGROUND**

Your firm, Lee, Wilson & Partners, acts for Mrs Candice Chan in a personal injury matter. You are a solicitor. You receive a memorandum from your supervising partner (**DOCUMENT A**).

**QUESTION 1 (30 MARKS)**

You have an initial meeting with Mrs Chan.

**Based ONLY on the information contained in DOCUMENT A, advise Mrs Chan on what factors may be relevant to her in considering whether or not to sue WW and T. Justify your advice with detailed reference to the facts set out in DOCUMENT A.**

**Give this advice referring only to information in Document A and not elsewhere in this paper. In giving your advice, do not consider the merits of the claim(s), nor Practice Direction 18.1.**

**QUESTION 2 (20 MARKS)**

Mrs Chan decides to sue only T and not WW in the Court of First Instance. The two parties exchange pleadings.

You receive a letter from T's solicitors, Damen & Afflict (**DOCUMENT B**). Your supervising partner asks you for your comments on this.

**Advise your supervising partner, referring to relevant law. Do not in giving this advice re-draft any part of DOCUMENT B.**

**QUESTION 3 (20 MARKS)**

Mrs Chan serves a statement of claim on T. T serves on Mrs Chan its intention to defend, though it has not yet served a defence.

Mrs Chan is anxious to secure justice in these proceedings. She is, however, only too aware of escalating costs and the risks inherent in litigation.

She tells you that her friend's son, who is in law school, told her about a procedure called "summary judgment" by which proceedings can be concluded early. She asks you whether this would be suitable for her proceedings.

**With close reference ONLY to the information in DOCUMENT A, advise Mrs Chan on whether she would succeed in an application for summary judgment. Where necessary, state what further information you would need to answer this question.**

#### **QUESTION 4 (30 MARKS)**

Assume that the parties (Mrs Chan and T) proceed to discovery.

Mrs Chan's niece, Cherry, calls Mrs Chan to say she (Cherry) had found a report from Mrs Chan's doctor to Mrs Chan dated 28 January 2014. Mrs Chan had mistakenly left this in Cherry's home some months ago. Cherry asked Mrs Chan whether she wants this report back and said she would be happy to deliver it to Mrs Chan as they live near each other. The report details the results of tests Mrs Chan had taken in mid-December 2013. At the time she had been to see a dermatological specialist (i.e. a skin doctor) about an inflammation on her left arm. In the report the doctor concluded that the cause of the inflammation may have been from "insect bites".

**Advise Mrs Chan on the disclosability and inspectability of this report in these proceedings.**

DOCUMENT A

## MEMORANDUM

**Date:** 5 January 2016  
**Subject:** Candice Chan

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1. We have received instructions from Mrs Candice Chan. Mrs Chan is a housewife. She lives in a private housing estate in the Kim Tam district of the New Territories. Mrs Chan is considering issuing proceedings for personal injuries she sustained from improperly detoxified water.
2. In May 2015, towards the end of Spring and the beginning of Summer, Mrs Chan noticed that she was getting ill in unprecedented ways. She started to run a high fever once a month. Sometimes this was accompanied by vomiting. Blisters appeared all over her body. She saw her family doctor. Her doctor gave Mrs Chan medicine that dealt with these symptoms. But they reappeared, more or less month after month. Her son, Kenny, and her husband showed similar symptoms from time to time. This worried Mrs Chan. Her and her family's health aside, Mr Chan works long hours running a small business in Japanese auto parts that has been struggling in a market in which Japanese cars have been for years uncompetitive against the European market. Moreover, Kenny, who is nine years old, had not been doing well in the local school, so the Chans had this year moved him to a much more expensive private school hoping that he would receive better schooling.
3. By the latter part of 2015, Mrs Chan's doctor decided to subject Mrs Chan to detailed further checks. The results were surprising and troubling. Mrs Chan had fallen prey to a rare bacterium, *Streptococcus Mitis* ("SM"). A laboratory test report that Mrs Chan received noted that 90% of SM cases are caused by consuming water that has not been properly detoxified. In 10% of cases it is caught via being bitten by infected mosquitoes. To catch SM by contaminated water, it is necessary to drink over at least a number of months substantial quantities of water infected by it. (It is thus virtually impossible to catch it, say, from drinking one bottle of infected water.) However, once one consumes a certain amount, infection can occur – and, worst, persist indefinitely.

4. Following these findings, it occurred to Mrs Chan that being the family member who spent by far the most time at home, the problem could be in the water supply of her home. She paid for tests to be carried out on this. Sure enough, the tests reported that her home's water supply contained several thousand times the concentration of SM permitted by Government health and safety legislation.
5. Mrs Chan's further investigations revealed two things. First, she learned that there is only one source of water to her block. This is a local water containment centre, with huge vats and a small reservoir, which is only 3 minutes' walk from her home in Kim Tam. A Hong Kong-incorporated company called Wong's Waterworks Limited ("WW") runs this centre. WW had run a profitable business in Hong Kong for decades, though recently its returns have declined as Hong Kong environmental policies have shifted towards relying on water supplies from other countries. Moreover, within the company, WW has over the last year had to spend millions of dollars upgrading its technology to comply with Hong Kong and international water supply standards.
6. Mrs Chan also learned that WW retains a Hong Kong-incorporated company, Toxfree Limited ("T"), to detoxify the water at the water containment centre before it is distributed via a network of piping to neighboring households for consumption. T was in the news recently because its lawyers had made various mistakes in the renewal of its general insurance policy, potentially exposing it to various major claims for which it could turn out to be uninsured.
7. While Mrs Chan has been able to an extent to control the symptoms of SM, she has never completely recovered from it. Doctors tell her that around 40% of patients are able to overcome SM via their natural immune responses. Almost all who do recover in this way are non-smokers. Mrs Chan has for years been a smoker and remains one. Her monthly treatment for SM comes to thousands of dollars. Worse, the toxins from SM will likely require constant dialysis and a battery of drugs as only via these measures can SM toxins be periodically removed from her body. She expects to spend at least HK\$1 million dollars over the next couple of years on treatment. She is bitter over the situation and is certain that WW and / or T are to blame for it.

**END OF DOCUMENT A**

# DAMEN & AFFLICT

Solicitors and Notaries Public

41-45/F, The Good Shepherd Building, 8 Hollywood Street, Central, Hong Kong SAR

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Messrs Lee, Wilson & Partners  
28 / F, Jolly Centre  
De Nero Street  
Admiralty  
Hong Kong

Your ref: CandiceChan 9274/Roth

1 April 2016

Dear sirs

## **CANDICE CHAN -v- TOXFREE LIMITED (AD/TM/88952/2016 (AM19))**

We refer to this matter and previous telephone and written correspondence on it. With the parties entering the stage of pleadings in this matter, we would like to take this opportunity to clarify with you some basic principles so that the parties can avoid any misunderstanding and thus expedite the proceedings.

1. You indicated in telephone correspondence that you will be pleading different versions of facts. This is not permissible. Your client must allege only one set of facts in her story. She must stick with this version to the proceedings' conclusion.
2. Moreover, once the parties have served and filed pleadings, there is no application the parties can make, no matter how unreasonable they may think the other side's pleadings, to bring alleged absurdities in the pleadings to the court's attention in the hope that the proceedings can be brought to an end before trial.
3. We have indicated that we will be denying most, if not all, your allegations against our client. When we do so in our defence, we need not explain why. Moreover, whatever we do not admit or deny in our defence we will be taken only to not admit.
4. However, if your client does not respond to what our client says in its defence by way of a reply, your client will be taken to have admitted everything our client says in its defence.
5. We remind you it is requirement that you plead costs specifically should you seek these against our client.

Yours faithfully

*Damen & Afflict*

**Damen & Afflict**

**END OF DOCUMENT B**