

## **PCLL CONVERSION EXAMINATION JANUARY 2017**

Title of Paper: Civil Procedure  
Date: 4 January 2017  
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 8 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 2017**

### **Civil Procedure**

#### **BACKGROUND**

The Tour Eiffel is an elite residential property situated at 12 Elise Avenue, Mount Parker, The Peak, Hong Kong (the “Building”). The Building was built in 2009, and was situated in a prime location on Mount Parker. The Building was exquisitely decorated, and included a highly polished marble floor on the ground floor lobby. The marble floor was the focal point of the Building because it was fitted with only 3 pieces of marble slabs over the entire 8,500 sq. feet of the ground floor lobby.

Pierre Sun (“Mr. Sun”) purchased Flat 15A of the Building in August 2016. Renovation of the flat was finished by the end of September 2016. He then arranged for Move-A-Go to move his furniture and personal belongings into Flat 15A on 15 October 2016. Move-A-Go is a logistics partnership firm owned and run by 2 partners, Strong Chan (“Strong”) and Mighty Lee (“Mighty”).

In the afternoon of 15 October 2016, Strong and Mighty and 2 other members of staff arrived at the Building with Mr. Sun’s furniture and personal belongings at around 3:00 p.m.. There was a lot of large furniture and electrical appliances and around 50 carton boxes. As the service lift had been out of order that week, Mr. Sun’s furniture and personal belongings had to be moved via the lobby and the residents’ lift. The security guard on duty told Strong and Mighty that they would need to take care not to damage the marble floor and specifically that they should not drag Mr. Sun’s furniture and personal belongings across the marble floor.

Around 30 minutes later, Madam Judy Leong (“Madam Leong”), owner of Flat 16A of the Building, was found to have tripped over a small hole, which was visible on the marble floor. She was injured and sent to the hospital for emergency treatment. The injury was quite severe and necessitated a surgery. Madam Leong is a successful freelance wedding planner. As a result of the injury, she was out of business for 6 months and had to decline several business deals. The loss of profits for her business was expected to be around HK\$500,000 and she had incurred medical and other expenses for the treatment of her injury.

Immediately after the incident, when the security guard inspected the marble floor, it was discovered that the marble floor was dented with a lot of small holes, particularly near the residents’ lift area. According to the security guard, the small holes and scratches were not there before the Move-a-Go movers arrived at the ground floor lobby. He saw the movers dragging Mr. Sun’s furniture and personal belongings across the marble floor without lifting them up by their hands or other tools. The movers also used metal trolleys to transfer the larger items, but the metal trolleys were bumping up and down on the marble floor. The security guard further said that the small holes were consistent with the wheels of Move-a-Go’s metal trolleys. Metal trolleys could not be used on the marble

floor without any protective cover, because the marble slabs were so large that they could not bear weight very well. The security guard kept silent when asked whether he had stopped the movers from doing so.

The damage to the marble slabs was too severe to be repaired. As the damaged marble slabs were very large, ultimately a total of 5,000 sq. feet of the marble floor had to be replaced, by 12 workers working for 6 days. A large part of the ground floor lobby had to be cordoned off, and residents of the Building were very dissatisfied about this. In the end, the incorporated owners (the “IO”) of the Building incurred around HK\$800,000 to replace the marble floor.

After the incident, Strong and Mighty refused to be responsible and denied liability for the damage of the marble floor. Mr. Sun tried to contact them through the telephone but they did not answer Mr. Sun’s calls. A business registration search was conducted and it was found that Move-a-Go’s trading address was at Room 1105B, Strength Industrial Building in Lai Chi Kok, Kowloon. A visit to this premises on 20 December 2016 revealed that Move-a-Go’s business seemed to have wound down. The premises appeared empty and a lot of unopened mail was found at the premises.

**Question 1 (25 marks)**

Answer Question 1 referring ONLY to the background facts above.

- (a) The IO of the Building and Madam Leong are keen to recover their losses. They are contemplating legal proceedings against Strong and Mighty. If legal proceedings were to be commenced, who should be the parties to the legal proceedings and how should these parties be named on the writ of summons?

**(10 marks)**

How should the writ of summons be served on the intended defendants?

**(5 marks)**

- (b) Advise them of the pre-action considerations which they should take into account when deciding whether they should commence legal proceedings to recover their losses. State what further information you need, if any. There is NO need to discuss Practice Direction 18.1.

**(10 marks)**

**Question 2 (25 marks)**

For this question, assume that proceedings had been commenced on 27 December 2016 in respect of the incident described in the background facts above. Read **DOCUMENT A**, attached.

- (a) Since Strong wishes to defend the proceedings, advise him what documents he needs to file next and the deadlines for doing so.

**(8 marks)**

- (b) What can Strong do to obtain a copy of the visitor's register of the Building and the CCTV recording of the lobby on the day of the incident? **(10 marks)**
- (c) If Strong is able to identify the 2 repairmen, what should he do to seek recourse against them? **(7 marks)**

**Question 3 (25 marks)**

Assume that it is now 15 March 2017. Strong was not able to locate the 2 repairmen. The proceedings continued on and pleadings have closed. The parties have not taken any step after filing their pleadings. Although Strong is still defending the proceedings, he is now acting in person as he cannot afford John Smith & Co's fees. You have agreed to assist him.

- (a) Strong received a letter from the Plaintiff's solicitors. An extract of the letter is attached as **DOCUMENT B**. Advise Strong about the contents of the letter, whether he should agree with the solicitor's procedural suggestions, pointing out any errors and/or inaccuracies. **(14 marks)**
- (b) Strong also received a Timetabling Questionnaire and a Mediation Certificate from the Plaintiff's solicitors. Advise Strong:
- (i) What are these documents; and **(8 marks)**
- (ii) What he needs to do in response. **(3marks)**

**Question 4 (25 marks)**

- (a) Strong tells you that before John Smith & Co ceased to act for him, John Smith had advised him to make a sanctioned payment to try and resolve the matter as soon as possible, before legal costs escalated. He was not sure what this was. Explain to him how this works and whether he should make this sanctioned payment. If so, how should he work out the amount to pay into court? **(10 marks)**
- (b) Strong tells you that he owns the following assets:
- (i) he recently purchased a Tesla Model S electric car and it is worth around HK\$400,000 in the second hand market;
- (ii) an account with the HSBC bank with a savings account with around HK\$50,000 credit but he also owed the bank around HK\$30,000 in his credit card account;
- (iii) a carparking space in Lai Chi Kok, near his office and this carparking space is currently valued at HK\$500,000;

- (iv) he and his family lives in a rented flat in Tuen Mun; and
- (v) he recently inherited HK\$800,000 from his great aunt in Canada. The sum of money had been remitted to him from the executor of his great aunt's estate last week. He did not tell anyone about this money and he has it hidden away in a secret bank account which he has not told anyone about, not even his wife and family. He is concerned that he may need to disclose the details of this account.

Strong wants to know what might happen to his assets if he loses the case. He said that if judgment were awarded against him and he did not pay up, what would happen to his assets? If the judgement is not in his favour, can he just leave Hong Kong with the money from his aunt and not return? Please advise Strong. **(15 marks)**

**(PTO for Document A)**

**DOCUMENT A**

**John Smith & Co.**  
**Meeting Note**

Date: 3 January 2017

Client: Move-A-Go, a partnership firm

Matter: Claim re: Incident at The Tour Eiffel (15 October 2016)

Prepared by: John Smith (“JS”) (Partner)

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1. This morning, JS met with Mr. Strong Chan (“SC”), who is a partner of Move-A-Go, a logistics firm.
2. SC handed some documents to JS. The documents consisted of a Writ of Summons endorsed with a Statement of Claim. The Writ of Summons was issued in the High Court for damages in the sum of HK\$1.5 million. The Statement of Claim pleaded a claim that arose out of an incident on 15 October 2016 at the Tour Eiffel (the “Building”), when Move-A-Go was alleged to have damaged the marble floor at the lobby of the Building when they were moving a Mr. Sun’s furniture and personal belongings negligently. The claim was for the replacement of the damaged marble floor (HK\$800,000) and damages in relation to personal injuries suffered by a Madam Judy Leong (HK\$700,000), which occurred as a result of the incident.
3. The Writ of Summons was dated 27 December 2016 and SC was named as one of the defendants on the Writ. SC said that he received the Writ on 27 December. The Writ was left at Move-A-Go’s office at Room 1105B, Strength Industrial Building in Lai Chi Kok and he collected it that day. SC said that he remembered very clearly that he opened the envelope addressed to him, containing the Writ of Summons, on the evening of 27 December 2016. This was because that was the first day he returned to his office after a 2-week holiday in Bali. SC explained that he went to Bali with his family and his partner, Mighty Lee’s family from 12-26 December 2016 and his business was closed during this period. Therefore when he returned to the office on the evening of 27 December 2016, there were a lot of unopened mail left at the premises.
4. SC said that on the day of the incident, Move-A-Go was retained by Mr. Sun to move his furniture and personal belongings into the Building.
5. After the security guard of the Building accused him and his staff for causing damage to the marble floor, he had immediately taken photographs of the

damaged marble floor. He showed JS such photographs. He also showed JS photographs of the metal trolleys owned by Move-A-Go. Upon review of the photographs, it appears that the damage to the marble floor does not really match with the wheels of the metal trolleys. The holes in the marble floor looked a lot smaller than the large wheels of the metal trolleys.

6. Further, SC told JS that he and his staff were very professional and would never cause damage to any property when moving things. On the date of the incident, whilst he was moving Mr. Sun's furniture and personal belongings, he said that he had witnessed 2 repairmen enter the Building. They were carrying a trolley of heavy equipment with them and whilst entering the lobby, one of them was too busy looking at his phone and bumped into some of Mr. Sun's furniture that were placed in the lobby at the time. As a result of the bump, the heavy equipment fell from the repairmen's trolley onto the floor. As the equipment was quite heavy, it made a loud noise when it fell onto the marble floor. The repairmen then picked up the equipment quickly and entered the lift. They were heading to the 10<sup>th</sup> floor. Shortly after this, the accident to Madam Leong occurred. The security guard then spotted the holes on the marble floor and accused SC and his staff of causing the damage.
7. SC explained that all guests had to register their name and HKID card and company details when they entered the Building. SC also noticed CCTV cameras in the lobby and the lift. He was sure that the incident and the repairmen's entry into the Building lobby were recorded. That day, when he was leaving the Building, he demanded to see the Building's visitors' register and the CCTV playback of the incident. The security guard refused to show them to him because of privacy reasons. The security guard informed him that the visitor's register and the CCTV recording belonged to Maison Building Management Limited ("Maison"), the company which manages the Building.
8. SC said that now that he had received the Writ of Summons, he wanted to defend the proceedings. SC wants to instruct the firm to assist him in this matter and wondered whether the firm could assist him in identifying the 2 repairmen, who should be the persons to blame for the incident.

*John Smith*  
JS

**DOCUMENT B**

**EXTRACT OF LETTER TO STRONG FROM THE PLAINTIFF'S SOLICITORS**

15 March 2017

Dear Mr. Chan,

**HCA 299 of 2016 – Incident at the Tour Eiffel on 15 October 2016**

As you are aware, we act for the Plaintiff in the above action. We are aware that you are currently acting in person. As such we are writing to you to alert you of your obligations:

- (i) Discovery will be the next step in the proceedings. In order to fulfill this obligation, you need to send to us copies of all the documents which you have relating to the incident as soon as possible. Please note that any file in electronic format is also classified as a “document”.
- (ii) We have already instructed an expert engineer, Dr. Philip Tam of HKUST to act as our expert in the matter. He has already examined the damaged marble floor and will render his report soon. In his report, he will comment on the likely cause of the damage to the marble floor. To save costs and expenses, we suggest that you instruct Dr. Tam jointly with us. As an expert, Dr. Tam is subject to the Code of Conduct for Expert Witnesses (Appendix D to the Rules of the High Court) and you should not be concerned about his impartiality.
- (iii) Once we have completed the above procedures – i.e. discovery and filing of expert report, we should be in a position to set down the case for trial. Our estimate is that the trial would take 2 days. Please let us know if you agree with our estimate.

We look forward to hearing from you.

Yours faithfully,

Ho, Luk & See  
Solicitors

**END OF PAPER**