

PCLL CONVERSION EXAMINATION JANUARY 2017

Title of Paper : Commercial Law – Part A
Date : 6 January 2017
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 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.

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PCLL Conversion Examination January 2017

Commercial Law

Part A: Sale of Goods

Question 1 (100 marks)

Size Steel Limited ('SS') is a Hong Kong incorporated company. It sells scrap steel. Best Recycling Limited ('BR') is also a Hong Kong incorporated company. It purchases scrap steel for onward sale to smelting plants in the Mainland.

In August 2016 BR entered into a contract with SS on SS's standard terms and conditions for the purchase of 1,000 tonnes of scrap steel. The price was HK\$ 3,000 per tonne. The steel was to be supplied in 10 equal monthly instalments of 100 tonnes, with the first instalment to be delivered to BR on 1st September 2016. BR had entered into a contract with a Mainland smelting company Great Alloys ('GA') to resell the scrap steel to GA at HK\$ 5,000 per tonne.

The first three instalments were delivered to BR by SS in containers. As BR was under pressure from GA to deliver the scrap steel to GA as soon as possible, BR delivered these instalments to GA without checking the contents of each container.

BR had just received delivery of the fourth instalment from SS when BR was informed by GA that it was rejecting the three instalments so far received because of the high percentage of impurities. Each consignment had contained 20% impurities (comprising wire, dust, stones and plastic). GA stated that while it was normal to expect some impurities in the scrap steel 20% was unacceptably high as it made the steel too expensive to process.

BR checked the fourth instalment and found no impurities. However because of the problems with first three instalments it had lost faith in SS and was worried about losing its good reputation with GA. BR therefore informed SS on 15th December 2016 it was rejecting the first three instalments delivered and also terminating its contract with SS. In its termination email BR stated that, as it was ending its contract with SS, BR no longer wanted delivery of any further instalments and requested SS to collect the four instalments so far supplied. Also it demanded the return of the price paid for each instalment so far received and damages of HK\$ 2 million for the loss of profit on its sub-contract with GA (the difference between the contract price and the resale price).

Responding to BR's complaints SS stated:

1. It denied there was anything wrong with the goods as the impurities could have been easily removed by BR before delivering the steel to GA.

2. As it was scrap steel BR could not expect perfection-there was bound to be some impurities in the steel.
3. BR had acted far too quickly in terminating the contract as there was no certainty there would be any similar problems with the remaining instalments.
4. Even if BR had the right to reject the goods, BR had accepted the goods by reselling and delivering to GA the first three instalments.
5. Even if it was in breach, the amount being claimed was excessive as the market price for scrap metal on 15th December 2016 was HK\$ 4,000 per tonne and thus BR's loss should be only HK\$ 1 million.

Advise BR as to its rights and remedies against SS. (100 Marks)

In your answer focus only on sale of goods law. Do not consider misrepresentation or breach of express terms of the contract in giving your advice.

Question 2 (100 marks)

Miser Limited, ('Miser') a finance company, entered into a hire purchase agreement to sell a car to Bert. The agreement provides that Bert is pay for the car by instalments over two years. After six months Bert stops paying the instalments and sells the car to Carol. Carol keeps the car for six months and then sells to Diane for HK\$20,000. Six months after the sale to Diane, Diane receives a letter on 1st September 2016 from Miser informing her that the car is on hire purchase and asking her to return the car to them or pay them its value. On 15th September 2016 Diane informs Carol that because of the letter from Miser she is returning the car to Carol and requires a refund of her HK\$ 20,000 purchase price. The market value of the car on this date is HK\$ 10,000.

- a) Advise Diane as to her rights against Carol. In particular would it make any difference to your advice that sometime in September Bert paid Miser all the remaining hire purchase payments?

(70 Marks)

- b) Would your advice differ in anyway if the agreement between Miser and Bert was a conditional sale agreement and not a hire purchase agreement? (30 Marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2017

Title of Paper : Commercial Law – Part B
Date : 6 January 2017
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.
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PCLL Conversion Examination January 2017

Commercial Law

Part B: Personal Property

Question 1 (100 marks)

a) ABC Limited ('ABC') is a company which makes and sells furniture. It has a factory in Ma On Shan and a shop in Shatin. Business at the shop has been good in recent years. ABC therefore decided to expand the company's business. It obtained an unsecured loan of HK\$1million from its director Tom. ABC then obtained a loan of HK\$ 10 million from Big Bank ('Big'). In return for the facility, Big asked for a security package that comprised the following:

- a fixed charge over ABC's factory in Ma On Shan (the current market value of the factory is HK\$5 million)
- a fixed charge over the receivables of the business and a floating charge over its proceeds (which are to be deposited into an account with Big).

Despite the cash injection, ABC got into serious financial difficulty and on 13th December 2015, it created a floating charge over all its assets in favour of Tom. On 1st November 2016, a winding up petition was presented. Employees of ABC are currently owed HK\$ 1 million in unpaid wages for September and October 2016 and the Inland Revenue is owed HK\$ 1.5 million as undischarged tax liability. Outstanding book debts are worth HK\$2 million and HK\$ 500,000 has been paid into an account at Big.

Advise the liquidator as to the order of priority in relation to payments to the creditors of ABC on its winding up. **(70 Marks)**

b) If a bank creates a floating charge over all the assets of a company in what way, if at all, is its legal position enhanced in the case of the company's insolvency by having a negative pledge and an automatic crystallisation clause in the charge?

(30 Marks)

Question 2 (100 marks)

ZZ Limited ('ZZ') is a supplier of aluminium sheets. In its standard terms and conditions is the following clause:

"Title to all goods supplied (and any products manufactured from our goods or the proceeds of sale of such goods), is retained by the seller until the full price is received for these and any other goods supplied by us to our customer"

ZZ supplied 500 sheets of aluminium to Wong Limited ('Wong') which was given 75 days credit. Shortly after taking delivery Wong went into liquidation. Advise Wong's liquidator in respect of each of the following situations:

- a) ZZ seeks to take possession of 200 of its aluminium sheets which remain on Wong's premises at the date of its liquidation. **(25 Marks)**
- b) The day before its liquidation Wong had taken delivery of a further 100 aluminium sheets from ZZ and paid for these 100 sheets the full cash price on delivery. The sheets remain unaltered in its possession. **(15 Marks)**
- c) ZZ seeks to take possession of 100,000 cans on Wong's premises which were manufactured from 200 of ZZ's aluminium sheets as well as copper and zinc provided by other suppliers. Each can comprises 90% aluminium, 5% copper and 5% zinc. **(30 Marks)**
- d) ZZ seeks to recover HK\$ 500,000 from Wong which is the amount Wong received from customers when it sold to them cans made from 100 of ZZ's aluminium sheets. **(30 Marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2017

Title of Paper : Commercial Law – Part C
Date : 6 January 2017
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.
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Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks)

Explain the legal effect of each of the following clauses contained in a Bank's guarantee contract:

1. *The Bank may without the consent of the guarantor and without releasing or reducing the liability of the Guarantor under this Guarantee vary any agreement with the Debtor or enter into any new or increased facility with the Debtor or increase any rate of interest.*
(50 marks)
2. *The Guarantor agrees that if any of the Debtor's obligations are at any time void or unenforceable against the Debtor the Guarantor will be liable to the Bank as primary obligor by way of indemnity for the same amount as that for which the Guarantor would have been liable had the Debtor's Obligations not been void or unenforceable.*
(20 marks)
3. *The Guarantor shall not be entitled to any share in any security held by the Bank in respect of the Debtor's Obligations or to stand in the place of the Bank in respect of any security.*
(20 Marks)
4. *The Guarantor shall not in competition with the Bank or in priority to the Bank seek to enforce repayment in respect of any amount which may have been paid by the Guarantor to the Bank.*
(10 Marks)

Question 2 (100 marks)

“Given the widespread practice of adopting unfair terms in standard form consumer contracts, it is argued that the UCO [Unconscionable Contracts Ordinance] as the only local legislation designed to catch such terms (other than exemption clauses) is woefully inadequate and ineffective.” Lee Mason September 2014 Hong Kong Lawyer

Explain and discuss this statement

~ End of Examination Paper ~