

PCLL CONVERSION EXAMINATION JANUARY 2018

Title of Paper: Civil Procedure
Date: 4 January 2018
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 6 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 2018

Civil Procedure

BACKGROUND

Wesler Motors is a brand name for luxurious electronic vehicles manufactured in Germany. Wesler HK Limited (“Wesler”) is a registered company in Hong Kong. It is in the business of selling Wesler electronic vehicles in Hong Kong. Wesler operates 4 showrooms in Hong Kong, one of which is located on the ground floor of Mornington Building, 44 Leicester Road, Wanchai.

On 14 November 2016, an accident (the “Accident”) occurred outside the Wesler Wanchai showroom. That morning, several Wesler Model K vehicles were parked along Leicester Road, outside the Wanchai showroom. A massive digital signboard (the “Signboard”) displayed on the outer wall on one side of Mornington Building, right on top of Wesler’s Wanchai showroom, fell loose, dropped down and collided onto 3 Wesler Model K vehicles parked outside the Wanchai showroom. All 3 vehicles were brand new and owned by Wesler. As a result of the Accident, they were severely damaged beyond repair. The 3 vehicles were valued at HK\$1,000,000 each (i.e. total HK\$3,000,000).

The Signboard was owned by Kensington Entertainment Limited (“Kensington”), a company registered in Hong Kong, in the business of film making and film distribution. After police investigations into the cause of the Accident, Kensington was prosecuted for an offence under section 4B(1) of the Summary Offences Ordinance (Cap 228), for allowing the Signboard to fall from Mornington Building to the danger of any person in a public place. On 14 January 2017, Kensington pleaded guilty to this charge at the Eastern Magistrates’ Court and was fined for HK\$10,000 (the “Conviction”).

The solicitors’ firm, Messrs. Holborns (the “Firm”), have been acting for Wesler since the Accident to assist Wesler in recovering its losses as a result of the Accident. Wesler are keen to recover the total value of the 3 vehicles at the sum of HK\$3,000,000 from Kensington. Since November 2016, the Firm has been investigating the cause of the Accident and liaising and negotiating with Kensington’s solicitors (Messrs. Baker & Knight) to settle the matter out of court.

Question 1 (25 marks)

Answer Question 1 referring ONLY to the background facts above.

- (a) **You are a trainee solicitor in the Firm and your partner asks you to advise on the procedures which Wesler could adopt to negotiate settlement of the matter. In your opinion, what is/are the most effective way(s)? (10 marks)**
- (b) **After more than 12 months of settlement discussions, it appears likely that Kensington would be agreeable to paying Wesler a sum of money in the**

- region of HK\$2,400,000-HK\$2,600,000 in full and final settlement of the matter. However, Wesler have incurred legal costs in the region of HK\$800,000. Whilst Kensington has agreed in principle to pay Wesler reasonable legal costs, the parties have not been able to agree the quantum of such legal costs. Advise Wesler how it may recover such legal costs from Kensington if a settlement in relation to such legal costs is not forthcoming. What documents would Wesler need to file? (10 marks)
- (c) If legal proceedings are to be commenced by Wesler against Kensington for Wesler to recover its losses incurred as a result of the Accident, can Wesler refer to the Conviction in the legal proceedings? If so, what would it need to do if it wishes to refer to/rely on the Conviction? (5 marks)

Question 2 (25 marks)

For this question, assume that Wesler and Kensington were not able to settle the matter. Proceedings had been commenced by Wesler against Kensington on 2 January 2018 in respect of the Accident. Read **DOCUMENT A**, attached. You are assisting Teddy Baker (partner of Messrs. Baker & Knight, Kensington's solicitors).

- (a) Since Kensington wishes to defend the proceedings, advise Mr. Tai what documents Kensington needs to file next and the deadlines for doing so. (8 marks)
- (b) Kensington wishes to take action against CAL for the losses Kensington has suffered in respect of the Accident. How should it do so and list out Kensington's claims against CAL. (7 marks)
- (c) Advise Mr. Tai of the practical factors which Kensington should consider when deciding whether or not to pursue CAL? In your opinion, should Kensington pursue CAL? (10 marks)

Question 3 (25 marks)

If Kensington does not pursue CAL, Mr. Tai wants to dispose of the legal proceedings as soon as possible to save costs. He said that Kensington would be prepared to offer HK\$2,500,000 to Wesler to get rid of the legal proceedings. Please advise Mr. Tai and Kensington:

- (a) What are the procedures available to Kensington if Kensington wants to save costs to dispose of the legal proceedings as soon as possible? What procedure would you advise Kensington to adopt? (15 marks)

- (b) **If Kensington is not able to dispose of the legal proceedings, after pleadings close, what are the steps which need to be taken before the proceedings can be set down for trial? What would be the usual directions ordered by the court?** (10 marks)

Question 4 (25 marks)

Assume that it is now 22 January 2018, 20 days after Wesler issues the Writ endorsed with a Statement of Claim.

- (a) **Wesler filed an application for summary judgment against Kensington. Advise Mr. Tai and Kensington what this application is about and whether this application is likely to succeed. Advise Mr. Tai and Kensington what Kensington would need to do if it wishes to contest this application.** (10 marks)
- (b) **If Wesler succeeds in this application, what are the likely orders which the court would grant in favour of Wesler?** (4 marks)
- (c) **Mr. Tai tells you that Kensington owns 2 bank accounts in Hong Kong. It also owns its warehouse premises in Lai Chi Kok where expensive filming equipment are stored. Its registered office premises in Causeway Bay are rented. Kensington does not own other assets but Mr. Tai and his wife together own over 20 properties in Hong Kong. Mr. Tai wants to know what might happen to these assets if Kensington loses the summary judgment application.** (11 marks)

DOCUMENT A

Baker & Knight
Meeting Note

Date: 3 January 2018

Client: Kensington Entertainment Ltd (“Kensington”)

Matter: Claim by Wesler HK Limited re: Accident at Mornington Building on 14 November 2016

Prepared by: Teddy Baker (“TB”) (Partner)

1. This morning, I met with Tai Lo Ban (“Mr. Tai”), who is a managing director of Kensington.
2. Mr. Tai handed some documents to TB. 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\$3 million. The Statement of Claim pleaded a claim that arose out of the Accident on 14 November 2016. The claim was for the total value of the 3 Wesler vehicles which were damaged beyond repair as a result of the Accident. Wesler alleges that Kensington, as owner of the Signboard, was negligent in allowing the Signboard to fall from its frame.
3. The Writ of Summons was dated 2 January 2018. Wesler is the Plaintiff and Kensington is the Defendant in the action. Mr. Tai said that the Writ was left at the reception desk of Kensington’s office in Causeway Bay, which is also its registered office address.
4. Mr. Tai said he wants to defend the proceedings. Mr. Tai believes that the Accident was not Kensington’s fault. Although Kensington owned the Signboard, the advertisement space on the external wall of Mornington Building was rented from Circle Advertisements Limited (“CAL”). The frame on which the Signboard was installed was owned by CAL. Mr. Tai said that the Signboard was put up on 1 November 2016 by CAL.
5. Mr. Tai said that Signboard fell from the frame because the frame was old and rusty and because he suspected that CAL might not have installed the Signboard properly. However, when the police investigated the matter after the Accident, CAL’s director, Jason Chow (“JC”), was nowhere to be found. The police told Mr. Tai that the Immigration Department’s records showed that JC left Hong Kong on 15 November 2016 and had not returned to Hong Kong since. As the

- police were not able to locate JC, who was the sole director of CAL, the police prosecuted Kensington instead. Kensington eventually pleaded guilty to the offence under section 4B(1) of the Summary Offences Ordinance (Cap. 228), to avoid trouble.
6. Mr. Tai said his staff had visited CAL's registered office address in Mongkok towards the end of November 2016 but it appeared that CAL had closed down.
 7. Mr. Tai said that he was very furious about the disappearance of JC. Kensington had actually paid for and rented the advertisement space where the Signboard was put up for a period of 6 months. The space was prime advertisement space and Kensington paid CAL \$300,000 a month for the space (i.e. HK\$1,800,000 for 6 months). The Signboard had only been up for 2 weeks when the Accident occurred.
 8. Mr. Tai said that Kensington would want to defend the proceedings brought by Wesler. Mr. Tai felt that Kensington had done nothing wrong and in fact Kensington was also a victim of the Accident. Mr. Tai, on behalf of Kensington, instructed TB to act for Kensington in respect of the proceedings.

Teddy Baker

TB

END OF PAPER