

## **PCLL CONVERSION EXAMINATION JANUARY 2018**

Title of Paper : Commercial Law – Part A  
Date : 8 January 2018  
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.
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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 2018

## Commercial Law

### **Part A: Sale of Goods**

#### **Question 1 (100 marks)**

Jack Lee enjoys paintball “war” games in Yung Shue O where he regularly goes with his colleagues as a Sunday paintball warrior. Paintball is a game which involves “shooting” at each other with paint. The successful winner is the one who has shot the most amount of non-toxic paint over everyone else without being “hit” himself. Each player comes with his own carefully selected equipment.

On 30th April 2017 Jack purchased a new pair of goggles for the next Sunday game from Wong’s Supplies Ltd (“WS”), a shop in Wanchai selling a wide range of children’s toys including catapults and paintball games equipment. When Jack purchased the goggles, he asked for top-quality goggles that would provide maximum protection for his eyes. He did, mention that he would be using the goggles for paintball games. The owner of WS showed Jack two different pairs of goggles (goggles A and goggles B) that were exhibiting on the sale shelf near the cashier and explained to Jack the advantages and disadvantages of each and that, in his opinion, goggles A were “top of the line” for Hong Kong’s heat and humidity and better as compared to goggles B. Jack inspected both pair of goggles carefully and decided to buy goggles A because of Wong’s opinion. Jack requested 10 pairs of goggles A for his team, however WS said that he only has two goggles A in stock at the moment and will deliver the remaining 8 on the coming Sunday before 10am at Jack’s paintball game venue at Yung Shue O. Jack agreed to this saying that WS delivering the goggles on or before 10am was essential as their game starts at 11am and Jack paid for all 10 goggles and left.

The following Sunday WS did not arrive at the paintball venue until 12pm because they had some issues with the Hong Kong manufacturer. Due to the late delivery, Jack refused to take delivery and insist on the return of the purchased price for the remaining 8 goggles. Jack used the goggles A he purchased from WS in the Sunday paintball warrior games. However, the plastic surround on the goggles broke immediately and a paintball hit him directly in the left eye. Jack is now in hospital as the doctors try to save the sight in his left eye.

In WS’s explanation for the lateness of the delivery of the goggles to Jack, WS explained that it was Hong Kong manufacturer’s fault which caused the late delivery. Unknown to Hong Kong manufacturer, WS and Jack had also negotiated on a ‘sponsorship and logo’ deal where Jack would promote WS’s goggles and WS would profit a great deal. WS is now arguing that due to the fault of Hong Kong manufacturer, WS had lost this opportunity and is claiming against Hong Kong manufacturer for all its lost.

You have sent the goggles for further technical examination. The laboratory tells you that the plastic surround on the goggles is made of a cheap brittle plastic manufactured with poor molding with weak internal voids and a breakage record of almost 100%.

**Advise all parties to their legal rights, obligations and remedies available.**

## **Question 2 (100 marks)**

Andrew owns a store that sells live marine fish as well as antiques. Betty negotiated with Andrew for the purchase of five very expensive Platinum Arowana fish to be delivered to Betty's house next Friday. When next Friday came, Andrew caught five Platinum Arowana from a large fish tank, placed the fish into a container and marked the container to be delivered to Betty with all the necessary information. However, without the fault of any parties, the air conditioning of the lorry broke down and when the Arowana fish arrived at Betty's house, they have all died. Betty refused to pay for the fish and Andrew is arguing that Betty is liable to pay for the fish.

While browsing at Andrew's shop, Betty saw three antique wood pieces that she liked very much. The first piece was shaped like a bowl of which after inquiring the price, Betty purchased it immediately. Unknown to Betty, Andrew had previously entered into an enforceable security agreement with Candy placing a charge over the same piece of bowl shape antique.

The second piece of antique was shaped like a bottle of which had already been sold to Peter, but the antique had not left the possession of Andrew because it was agreed that Peter would come to collect it one week later. Andrew also sold the second piece of antique to Betty without telling her of the true situation.

The third antique piece was placed in Andrew's shop by another customer to solicit price offers. The ultimate purpose was to ascertain the market value of the antique piece with no intention to sale. Andrew was well aware of this. Nevertheless, Andrew sold the third antique piece to Betty for a very high price and now the true owner of the antique is requiring Betty to return the antique piece.

As all the Arowana fish had died on delivery from Andrew, Betty went to Philip's marine shop to buy six Platinum Arowana fish. Betty had specifically told Philip that she is wanting the fish for a breeding programme. Philip assured Betty that the Platinum Arowana fish were "pure-breed". When the fish were delivered, it was found out that three of the six "Platinum Arowana" were actually not Platinum Arowana but a much cheaper version of Arowana and the remaining three true Platinum Arowana were all sterile.

**Advise the parties as to their rights and obligations (if any) with reasons.**

**~ End of Examination Paper ~**

## **PCLL CONVERSION EXAMINATION JANUARY 2018**

Title of Paper : Commercial Law – Part B  
Date : 8 January 2018  
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.
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# PCLL Conversion Examination January 2018

## Commercial Law

### **Part B: Personal Property**

#### **Question 1 (100 marks)**

Mr. and Mrs. Sze is an old couple. They each have an account in their own names with Happily Ever After Bank (“HEA Bank”). They also have a trust joint bank account with HEA Bank. Mr. and Mrs. Sze act as the trustees of the joint bank account, while the beneficiary is their beloved grandson, Barry.

Barry saw an expensive model of a Masarati car being sold at a 40% discount by Benson, however he does not have enough money, so he applied for a loan at HEA Bank, and as security, Mrs. Sze acted as the guarantor of the loan. When Barry could not repay the loan, HEA Bank demanded Mrs. Sze to repay as the guarantor. Mrs. Sze refused to repay the loan amount and HEA Bank set off the amount from the joint trust bank account of Mr. and Mrs. Sze and charged HK\$200.

Mr. Sze was in negotiation with a Mr. Chan on a business deal. Mr. Chan requested Mr. Sze to provide certain financial information to him, of which, Mr. Sze is somewhat reluctant to give. Mr. Chan therefore instructed his bank (Detail Bank) to seek a banker’s reference from HEA Bank on Mr. Sze’s credit worthiness. HEA Bank without asking Mr. Sze told Detail Bank all the details about the trust joint bank account and all information which HEA Bank collected from Mr. Sze’s bank account. Because of this information, Mr. Sze was unable to negotiate a good deal with Mr. Chan. As Mr. Sze was not happy with the current business deal with Mr. Chan, he decided to stop the cheque payment which he made as a deposit to Mr. Chan. He called HEA Bank and countermanded the cheque payment to Mr. Chan. HEA Bank overlooked Mr. Sze’s countermand and the money was transferred to Mr. Chan’s bank account.

**Advise all parties of their legal rights and obligations.**

#### **Question 2 (100 marks)**

Steven runs a computer hardware sales and storage facilities company. His company has a retail shop in Sham Shui Po as well as a large storage warehouse in Sheung Shui. He recently completed a sale of 100 sets of high-end computers with Patrick, of which, the sale had already taken place and the price paid for. However, Patrick was short of storage space and Steven wanting to keep this wealthy customer satisfied, offer to keep Patrick’s 100 sets of computers in his storage facilities for free. Patrick took up this offer and said to Steven that Steven will need to keep the computers in his storage facilities for 3 weeks only. On the second week of the storage duration of Patrick’s computer, an employee of Steven’s company forgot to turn on the security system of the storage facilities after locking up the warehouse. The next morning, all of Patrick’s computers were stolen.

When Patrick came to collect the computers, and found out that all of his computers were gone, he is now claiming Steven for the breach of a bailment relationship.

To be able to purchase the 100 sets of high-end computers to sell to Patrick, Steven had to borrow money from Moneylender. The loan was secured by 200 sets of mid-end computers by way of mortgage. However, unknown to Moneylender, Steven sold 100 (out of the 200) sets of the mortgaged mid-end computers together with 100 sets of low-end computer parts to Janice. In the agreement to sale contract with Janice, it contained, *inter alia*, the following:

- “(1) The computers and computer parts delivered remain the property of Steven’s company until they are paid for;*
- (2) Janice hereby assigns to Steven’s company the proceeds due from any selling of the computers or computer parts delivered until such time as payment is made for them, if in the event that all the computers and computer parts are sold, but the proceeds are not enough to repay the purchase price, Janice is personally liable to pay for the outstanding purchase price;*
- (3) All the computer parts remain the property of Steven’s company even if it is incorporated into or with other computer parts to form one whole computer.”*

Janice had incorporated the 100 sets of low-end computer parts into other machines forming a new and completely different computer, but had not paid for the computers or the computer parts.

**Steven’s company is now in liquidation, advise, Moneylender, Janice, Patrick and other unsecured creditors on their legal rights and obligations.**

**~ End of Examination Paper ~**

## **PCLL CONVERSION EXAMINATION JANUARY 2018**

Title of Paper : Commercial Law – Part C  
Date : 8 January 2018  
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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# PCLL Conversion Examination January 2018

## Commercial Law

### **Part C: Consumer Credit and Protection**

#### **Question 1** (100 marks)

Simon was in need to renovate his home as he was expecting a baby, but he was short of cash. He was having beer with his two friends, Jeremy and David and told them all about the situation. Jeremy who owns a renovating company made a joke and said “I or at least my company can renovate your home, that’s what I do anyway and we are the best in town”. After hearing this, Simon started telling Jeremy all the specifications of the renovation needed. The next day, Jeremy called Simon and said that his company had already bought all the required renovation materials and can start the following Monday, of which Simon said “great, please start as soon as possible”. No more discussion about the renovation was exchanged between Jeremy and Simon.

Simon’s wife, Amy was having serious back pain due to the pregnancy. To smooth the pain, she went to Susan’s massage salon for a pregnancy massage. After choosing the desired massage, Amy was given a ‘declaration form’ to sign. Amy declared the stage of her pregnancy, signed the form and paid for the massage. At the back of the declaration form were, *inter alia*, the following terms.

- “1. All terms and conditions displayed at the cashier counter applies to this contract; ...
5. Susan’s massage salon is not responsible for any lost and/or injury that occurred within the salon, whether or not the lost and/or injury was caused by Susan’s massage salon or its staff deliberately or negligently.”

Amy’s handbag was stolen from the locker which she kept it and Amy’s arm was burnt and had to go to the hospital to receive medical treatment, because the massage staff over heated the massage stone that she was using. Amy would like to claim Susan’s massage salon for the loss of her stolen handbag and her burnt arm. However, unknown to Amy, there was a small notice at the back of Susan’s massage salon cashier counter saying “Take care of your own property. Susan’s massage salon will not be responsible for any stolen or lost property.”

Simon’s financial situation got worst, so he decided to talk to David again. David owns a financial company and in the business of lending money. David lends HK\$500,000.00 to Simon, but the interest rate was set at 85% per annum. Simon failed to repay the loan and David is chasing him for the repayment of the HK\$500,000.00 plus interest. At the same time, Jeremy is asking Simon to pay for the work done for the renovation, however, Simon was shocked as he and Jeremy never discussed on a price. Further the renovation took 2 months longer than it would reasonably take.

**Advise Simon and Amy on their legal position.**

## **Question 2 (100 marks)**

Allen Wong and Ada Chan had been married since 2007 and are the two directors and shareholders of Water Sport Ltd. (“WS Ltd”), a mid-size company that had been relatively successful since 2012 in Hong Kong. Recently, Allen saw an opportunity to expand WS Ltd.’s business further and decided that it needed more cash flow, Allen therefore met with a Loan Officer, Mr. Lam at the Kowloon City branch of HKL Bank to apply for a HK\$8 million loan. Mr. Lam is a personal friend of Allen as they play basketball together every week.

In making the application for the loan, Allen and Ada showed Mr. Lam the relevant company documents, including the profit and loss accounts for the past two years and the business plan. Mr. Lam was satisfied with the documents and agreed that HKL Bank would provide a HK\$ 8 million loan on condition that the two directors provide a joint and several personal guarantee for the HK\$8 million and that the guarantee be secured by a fixed charge over Ada’s property in Kowloon Tong. In informing Ada about the security and guarantee, Mr. Lam said to Allen and Ada:

*“Don’t worry, the security and the guarantee is just a formality, and it will never result in any personal liability on your part. However, in my job as the Loan Officer, I have to tell you that you should get your own independent legal advice on the guarantee. I am not acting for you or your wife and I am not advising either of you on any legal matters or consequences.”*

Allen and Ada signed the Loan Agreement for and on behalf of WS Ltd. for the HK\$8 million and the guarantee immediately. Ada was a little hesitant in signing the security over her property, but was assured by Allen that everything was going to be alright. Allen also said that he knew Mr. Lam as a friend and that he trusted Mr. Lam. However, Allen and Ada did not get independent legal advice because they were confident in WS Ltd.’s ability to repay the loan and Mr. Lam as a friend.

Three months later, WS Ltd. defaulted on its monthly loan repayment and on the fourth month in default, HKL Bank issued a demand to WS Ltd for full payment of the HK\$8 million. On the fifth month in default HKL Bank issued a letter of demand to Allen and Ada as guarantors for the full payment of the outstanding loan. The letter of demand stated:

*“You are the joint and several guarantors in support of the HK\$8 million loan from HKL Bank and WS Ltd, we now make formal demand on you to make immediate payment of all outstanding amounts within 7 days of this letter, failing which we will enforce the security over the Kowloon Tong property of Ada Chan.”*

Ada now comes to seek your legal advice. Ada tells you that she was pressurised by her husband, Allen in signing the loan agreement, the guarantee and particularly the security over her Kowloon Tong property. She further tells you that she has not been involved in WS Ltd’s business as she leaves the running of the business entirely to her husband.

**Advise Ada on her legal position.**

**~ End of Examination Paper ~**