

PCLL CONVERSION EXAMINATION JANUARY 2019

Title of Paper : Commercial Law – Part A
Date : 7 January 2019
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 2019

Commercial Law

Part A: Sale of Goods

Question 1 (100 marks)

- a) Tim wanted to purchase a 1930 Rolls Royce Phantom II (**‘Rolls-Royce’**) classic car. However there were none available. Tim therefore entered into a contract with Kowloon Vintage Car Restorers (**‘KVC’**) in April 2018. Under the terms of the contract KVC agreed to reconstruct a 1930 Rolls-Royce using original parts. Tim paid the agreed price of HK\$5 million and the contract provided that the reconstruction work would be completed by September 2018. The Rolls-Royce was delivered to Tim on 16th September 2018. During the first month that Tim had the car he discovered the following:

The engine was not in fact from a 1930 model, it was in fact a 1926 Rolls Royce Phantom I engine.

The window screen wipers did not always work.

There was a scratch on the front seat passenger door.

There was sometimes a problem when changing gears.

When these problems were raised with KVC in October 2018 KVC’s response was:

“Sorry it proved impossible to find a 1930 engine. However the 1926 one fitted is just as good and in the classic car trade you can still legitimately sell it as a 1930 model. Regarding your other complaints, these are just teething troubles which must be expected with such a complicated piece of engineering. It is not like buying a brand new model off a production line. Leave the car with us and we will put everything right.”

Tim replied *“Ok I will give you a chance.”* and left the car with KVC for repair.

In November 2018 when KVC returned the Rolls-Royce to Tim, the scratch had been fixed but there were still problems with the wipers and the gears. KVC again offered to try and cure these problems but Tim preferred to take the car to another repairer, MA Motors, which fixed the wipers but informed Tim that the only way the gear problem could be rectified would be by replacing the existing gear system at a cost of HK\$100,000. However Tim had by now decided he no longer wished to keep the Rolls-Royce and informed KVC on 18th December 2018 he wanted a refund. However to date KVC has refused to refund the price paid.

Due to the faults with the car the market value of the Rolls- Royce on the delivery date 16th September 2018 was HK\$4.5 million. However since then the market price for classic cars in Hong Kong has undergone a sharp decline and the value of the vehicle in January 2019 has fallen to HK\$3 million.

Advise Tim who wants to return the Rolls-Royce to KVC and obtain a refund of the price. (80 Marks)

- b) In what way, if any, would your answer differ if three weeks before delivery, when almost all the work had been completed, a fire broke out at KVC's premises through no fault of either party and the Rolls-Royce was destroyed? (20 Marks)

Question 2 (100 marks)

- (a) Amanda inherited a diamond from her aunt. She decided to sell it. She met Bert at a party. Bert told Amanda that he was a diamond broker and had a number of clients who were "... desperate to buy the right diamond at the right price". Amanda asked Bert to come to her home to inspect the diamond. Bert did so and told her that as it had a few flaws a realistic price for it would be HK\$500,000. Amanda agreed to sell the diamond to Bert at that price and allowed Bert to take away the diamond after receiving a cashier's order for the price. Three days after receiving the cashier's order Amanda was told by the bank that the cashier's order was a forgery. Amanda immediately reported the matter to the police. Bert one week later then arranged a meeting at the coffee shop of a Kowloon hotel with Celia. Celia agreed to buy the diamond from Bert for HK\$1 million. She paid Bert the price and took possession of the diamond. One week later she sold the diamond to Diane for HK\$1.5 million. Advise Amanda, Celia and Diane on their legal position in relation to the diamond. (50 Marks)

- (b) Would your advice in (a) differ in any way if:

Celia had a term in her contract with Diane "No guarantee is given that the seller has title to the diamond."? (10 Marks)

- (c) Tony is a car dealer. He sells a second-hand car to Victor. Victor pays the price but it is agreed that before taking delivery Tony will carry out some repairs to the vehicle. While the repairs are being carried out Walter visits Tony's showrooms. After explaining to Tony the type of vehicle he is after Tony tells him "I have just the one for you." and takes Walter to his repair shop and shows him the car he had sold to Victor. Walter likes the car and agrees to buy it and pays the agreed price to Tony. Tony tells Walter "When the repairs are finished I will contact you so you can come and collect it." One week later Walter is informed by Tony "Your car is ready." However when Walter goes to Tony's premises he finds them closed and Tony has disappeared.

Advise Victor and Walter as to who is the owner of the car. (30 Marks)

- (d) Would your advice in (c) differ if Victor took the car away with him, after purchasing it from Tony, but later returned it to Tony for the agreed repairs to be done before Tony sold it to Walter? (10 Marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2019

Title of Paper : Commercial Law – Part B
Date : 7 January 2019
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 2019

Commercial Law

Part B: Personal Property

Question 1 (100 marks)

Woodie's Furniture Limited ("WFL"), a Hong Kong private company, owned and operated a business known as "Woodie's Furniture" which sold wooden furniture products. These products were very popular with newly married couples looking for value for money. WFL's furniture products were sold in two different packaging – in one, the furniture had been fully assembled but in the other, only the necessary wood boards are sold without assembly but with "easy to assemble" instructions for the consumer. The latter packaging was priced at least 30% lower than the former.

Quality Suppliers Limited ("QSL") supplied wood boards to WFL for these furniture products. QSL made the wood boards according to WFL's specifications. WFL and QSL had executed a master exclusive sole and supplier agreement ("the Master Agreement") for these supplies which contained, inter alia, the following clauses:

Clause 6:

- (A) *Notwithstanding delivery, the property in the Wood Boards shall remain in QSL until WFL has paid in full the price of the Wood Boards and any other sums owing from it to QSL.*
- (B) *Insofar as WFL may receive any monies from any third party in respect of WFL's sale of the Wood Boards, it shall strictly account to QSL for these monies.*
- (C) *If any of the Wood Boards is incorporated in other goods, the property in the whole of such Wood Boards shall be and remain with QSL until full payment of any amounts due to QSL has been made and all QSL's rights under this Agreement in the Wood Boards shall extend to those other goods.*

During the last year, due to various incidents relating to the quality of WFL's furniture products, the demand for these products fell sharply. WFL is now in liquidation and a liquidator has been appointed.

WFL owes QSL:

- (i) HK\$3,000,000 on unpaid invoices for the wood boards supplied to WFL; and
- (ii) the judgment amount of HK\$150,000 QSL had obtained against WFL for storage and other charges WFL made erroneously against QSL.

QSL has not found any of the wood boards they had supplied to WFL in their original form anywhere in WFL's possession. QSL now claims for the following in reliance on Clause 6 in the Master Agreement:

- (a) 3,000 pieces of WFL's furniture products which have been fully assembled but not yet sold sitting in WFL's factory premises; and
- (b) HK\$2,000,000 in WFL's bank account being proceeds from the sale of WFL's furniture products.

Advise the liquidator on QSL's claims.

Question 2 (100 marks)

Elite Consultants Limited ("ECL"), a Hong Kong private company, provides business consultancy services. Its major asset is the fee income it receives from its sizeable clientele. ECL wanted to expand its operations and approached Conservative Credit Bank Limited ("CCB"), a licensed bank in Hong Kong, for a loan of HK\$2,500,000. After due diligence, CCB decided to grant the requested loan ("the Loan") on the condition that ECL would create a fixed charge over its book debts to secure the Loan and also an unsecured loan of HK\$500,000 CCB previously advanced to ECL ("the Advance"). ECL agreed and the relevant facility letter and a debenture ("the Debenture") creating the fixed charge over book debts were duly executed on 1 March 2018. The Debenture was duly and timely registered at the Companies Registry on 12 March 2018.

In the Debenture, ECL covenanted that:

- (a) *it will not further encumber any part of the charged assets nor sell or dispose of any part of the charged assets; and*
- (b) *it will hold all the book debts it collects in trust for CCB and pay the same to CCB as and when it directs in writing.*

It turned out the expansion of operations was a bad idea and ECL encountered extreme financial difficulties in the last quarter of 2018. The employees who had not been paid their salaries for August, September, October 2018 in the total amount of HK\$1,000,000 filed a winding-up petition on 20 November 2018 thus commencing the winding-up process. ECL was found to be insolvent and a winding up order was made on 4 December 2018 when a liquidator was appointed.

ECL has about HK\$3,000,000 in assets, almost all of which consist of book debts owed to ECL, but owed about HK\$4,500,000 in debts to creditors including CCB and the employees. ECL has not repaid CCB any part of the Loan or the Advance. ECL has also not paid its employees since August 2018.

Advise CCB on how it may recover the Loan and the Advance.

Assume that the Companies Ordinance, Cap 622 and the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap32 (including the amendments which came into effect on 13 February 2017) are in effect at all the times mentioned in this exam question.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2019

Title of Paper : Commercial Law – Part C
Date : 7 January 2019
Time : 11:50 a.m. – 12:00 p.m. (Reading Time)
12:00 p.m. – 1:00 p.m.

Instructions

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PCLL Conversion Examination January 2019

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks)

Donald Tsui was a sole proprietor of a chain of coffee shops. The business started in the Summer of 2017 quite promisingly but then after some very bad business decisions and extremely poor management in early 2018, things started going drastically downhill. During September 2018, Donald's business was experiencing great difficulties paying off its trade creditors. The shops started closing one after the other until finally, everything collapsed with the filing of a bankruptcy petition on 27 December 2018 by one of Donald's larger creditors. A bankruptcy order was then made against Donald on 4 January 2019.

The trustee in bankruptcy investigated Donald's financial affairs in the period leading up to the filing of the bankruptcy petition and found the following transactions had occurred:

- (a) NQA Credit Bank ("NQA"), a licensed bank in Hong Kong had lent to Donald an amount of HK\$1,000,000 in November 2016. The loan was unsecured and was due to be repaid in September 2018. When the due date arrived, Donald was unable to repay the loan. Donald pleaded with NQA to extend the loan for another year and after much negotiation, NQA agreed to do so but only if Donald were to mortgage his portfolio of listed company shares to them. The documentation for the share mortgage was duly executed on 17 September 2018.
- (b) When Donald was looking for funds to start off his coffee shop business, one of his closest friends, Priscilla Lee, lent him HK\$500,000. There was no specific date of repayment for the loan. Priscilla, a coffee enthusiast, then became involved in Donald's business and was employed as the manager of its largest coffee outlet in Causeway Bay. In early December 2018 when Donald was in financial difficulties with his creditors threatening to sue him for non-payment of sums owing to them, Donald repaid Priscilla her loan to him in full. Priscilla did not say anything to Donald about the outstanding loan but he decided to repay the loan to her anyway as he had become romantically involved with her by that time.

Advise the trustee in bankruptcy on the legal effect of these transactions.

Question 2 (100 marks)

Explain the legal effect of each of the following clauses:

- a) Adam enters into a one year membership contract at Healthy Fitness Centre ('HFC'). The one year membership fee is HK\$24,000 which Adam pays. After two months Adam is very unhappy when HFC reduces its opening hours and closes the swimming pool. However when Adam requests that he be released from his

contract and receives a partial refund of his membership fee HFC refuses to agree and refers Adam to Clause 6 of the agreement he signed.

Clause 6 provides “*HFC reserves the right at its sole discretion to change the opening hours of the club and no refunds can be given if the club is unable to provide the full range of services for reasons outside its control.*” **(35 marks)**

- b) Adam in his second week of membership had his wallet stolen from his locker when an employee of HFC opened his locker with a master key, after a man claiming to be Adam had told the employee he had lost his key. When Adam complains HFC refers Adam to Clause 7 of the agreement he signed which states “*HFC is not liable for any loss, damage or theft of a member’s property however caused.*” **(20 marks)**
- c) Tina who lives on the Peak enters into a contract for the purchase of a helicopter from Helisales Limited, a Hong Kong incorporated company. She intends to use the helicopter on a regular basis for commuting between her home and the casino she owns in Macau. A term in the contract provides “*Helisales regrets that under no circumstances can a refund of the price be given.*” Tina is unhappy with the helicopter, there are numerous defects and she wants to know what is the legal effect of the ‘no refunds’ clause. **(35 marks)**
- (d) Maureen wants to know what is the legal effect of the following sign she sees displayed in a clothes shop. “*Make sure you try on clothes before you buy. We regret we have a strict policy that we will not exchange or replace any clothes purchased*” **(10 marks)**

~ End of Examination Paper ~