

PCLL CONVERSION EXAMINATION JUNE 2015

Title of Paper : Commercial Law – Part A
Date : 26 June 2015
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 2 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.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination June 2015

Commercial Law

Part A: Sale of Goods

Question 1 (100 marks)

The *Sale of Goods Ordinance* (Cap. 24) lays down harsh rules relating to the passing of property and passing of risk.

Critically evaluate the statement.

Question 2 (100 marks)

A Seller (“S”) and a Buyer (“B”) entered into a sale of goods contract in relation to the sale and purchase of 500 tons of tissue paper. The sale of goods contract specified that the tissue paper should be delivered to the buyer in 5 separate deliveries of 100 tons each on the 1st of each month.

Due to heavy rain, S delivered the first batch of 100 tons of tissue paper on the 2nd of the first month and B accepted without asking any questions or refusing delivery. On the second delivery, S delivered to B 102 tons of tissue paper on the 1st of the second month. On the 3rd delivery, S delivered 105 tons of tissue paper on the 3rd of that particular month. But on the 4th delivery, when S delivered 100 tons of tissue paper on the 3rd of the month (the fourth month), B refused to take delivery of the goods. B alleged that S had breached the sale of goods contract by late delivery (from previous deliveries), the amount delivered in total was over the agreed amount, that B is entitled to rescind the contract as per the Sale of Good Ordinance (Cap. 24) and receive compensation. Nevertheless, S did not contact B but just left the 4th delivery of tissue paper at B’s door steps.

On the last delivery, when the delivery lorry was on the way to B, the driver of the lorry received a call from S that he should not give the goods to B because B had not paid under the contract and had gone into liquidation. Because the lorry driver had not been paid, the lorry driver refused to deliver the goods back to S and now the delivery is with the lorry driver. B’s liquidators are arguing that as the property of the goods had passed to them, the paper should be delivered to the liquidators.

Advise the parties of their rights and obligations (if any).

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2015

Title of Paper : Commercial Law – Part B
Date : 26 June 2015
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.
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.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination June 2015

Commercial Law

Part B: Personal Property

Question 1 (100 marks)

Evan owned two flats in Hong Kong and he lives in one flat and rents the other flat to his brother, James. Evan was planning to get married and borrowed HK\$200,000 from James. It was agreed between Evan and James that James would start to pay half the price of the original rent after Evan's wedding to repay the loan. It was calculated that, if James paid half the rent for five year, the loan would be completely repaid.

After paying half the rent for 3 months, James decided to pay the rent in full again and continued to pay in full despite the reminder from Evan that he was only required to pay half the rent. Unfortunately, James died from a car crash.

After James' death, Evan was as his sole executor (from the will) and the next of kin of James now attempted to recover the remaining debt from Evan.

Discuss whether Evan is required to repay the remaining loan with relevant case law and legislation.

Question 2 (100 marks)

UPE Ltd is a new business and it purchased office furniture from BAU Ltd. In the Sale and Purchase Agreement between UPE and BAU, the contract contained the following clause, *inter alia*:

“ ...

Clause 5.1 BAU retains the ownership of the goods until full payment by UPE;
Clause 5.2 In the event that the goods are sold to fulfill the contract price payable by UPE and such sold amount does not satisfy the contract price as originally payable by UPE, UPE is still liable to make up the difference between the sold price and the contract price....”

After entering into the Sale and Purchase Agreement with BAU, UPE was short of capital and went to U Bank for a loan of HK\$1,000,000. The loan was secured with a fixed charge (and properly registered thereafter) on UPE's current and future book debts. The loan agreement also contained a floating charge on UPE's copyright materials and a “pledge” of all of UPE's assets.

UPE's date for opening was one week after the schedule date of the delivery of the office equipment. Because UPE knew its offices would not be ready, it had an agreement with

the office next door, whereby the neighbor would keep the office equipment in the neighbor's office until the day of UPE's opening for a total price of HK\$5,000.

On the day of UPE's opening, UPE's neighbor refused to return the furniture to UPE. Subsequently UPE was not able to pay its loan to U Bank and went into liquidation. A receiver and liquidator was appointed, who took possession of all UPE's assets in satisfaction of the loan.

BAU is arguing that the receiver and liquidator had no right to take the furniture as it belong to BAU. The neighbor is alleging that the furniture belongs to the neighbour.

Advise the parties of their rights and obligations (if any).

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2015

Title of Paper : Commercial Law – Part C
Date : 26 June 2015
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.
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 2 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.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination June 2015

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks)

Philip is a solicitor who works for the law firm of Wong and Wong Ltd (WWL) in Central. Philip has over 20 years of experience in commercial law but has not been named a partner at his law firm, something that Philip is not happy about because he feels he deserves to be partner. Philip lives with his wife, Sandy, at a luxury condominium. Philip and Sandy also jointly own a second home valued at HK \$3,000,000. His monthly rent for the luxury condominium is HK \$45,000. The value of the luxury condominium is HK \$15 million. The following events took place in 2014:

- 1) *14 May 2014* – Sandy wants to go on a seven-day cruise to Europe in early Jan 2015 with her sister. The total price of the cruise is HK \$550,000. Philip does not have the money so Sandy decides to pawn her 5 carat diamond ring to pay for the trip. Sandy believes the ring is worth at least HK \$750,000. Sandy goes to Pawns RUs Ltd, a reputable company located near her home, and gives the manager her ring. The manager gives Sandy a receipt for the transaction and HK \$650,000 in cash. Sandy takes the money to Kai Tak Cruise Terminal and purchases the seven-day cruise trip. Five lunar months go by. Sandy never picks up her ring from Pawns RUs Ltd. The manager sells the ring for HK \$950,000 and kept the proceeds.
- 2) *16 July 2014* – Philip decided to take out a small-business loan so he can officially start his own law firm. He goes to Ready Bank and Trust Ltd (RBTL) and completes a loan agreement for the amount of HK \$2,000,000 to cover all start-up expenses. Under the agreement as security for the loan, Philip handed over the deed of the second home to RBTL. The loan document also contained a provision for a fixed charge over Philip's condominium. Philip in obtaining the loan or providing the securities did not ask Sandy or seek her approval.
- 3) *1 November 2014* – When the monthly repayments begin on 1 November 2014, Philip tells RBTL that he has spent all the loan money and is not able to repay the loan due to financial difficulties with the new business.

Advise the parties of their rights/obligations and remedies.

Question 2 (100 marks)

Discuss the assertion that courts may set aside contracts and/or clauses and other dealings on the ground of “unconscionable conduct” and “unreasonableness” and explain how this protects consumers.

~ End of Examination Paper ~