

PCLL CONVERSION EXAMINATION JUNE 2016

Title of Paper: Civil Procedure
Date: 24 June 2016
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 9 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 June 2016

Civil Procedure

BACKGROUND

You are a solicitor at the firm of Chan & Smith. Your firm is acting for Ms. Rachel Wong (“Ms. Wong”), an actress. Ms. Wong is involved in a dispute with a movie studio, Rainy Films Ltd. (“RFL”) about a movie titled “*Romeo & Juliet: The True Story*” (“the Movie”). Your supervising partner just finished meeting with Ms. Wong and gives you his attendance note (**Document A**).

Answer the following questions with references to the relevant legal authorities where necessary.

Question 1 (25 Marks)

- (A) Ms. Wong wants to oppose RFL’s claim. Assume that she has not taken any formal steps in the legal proceedings since she was served with the Writ. **What Court document will Ms. Wong need to file and serve next and what is the time limit for doing so?** **(5 Marks)**
- (B) You notice that RFL’s Statement of Claim does not have a Statement of Truth. **Under the Rules of the High Court, what are the consequences (if any) of RFL not including a Statement of Truth?** **(5 Marks)**
- (C) You also notice that RFL’s Statement of Claim claims special damages for future loss of profit and wasted expenses, however RFL does not plead any specifics. You need to find out exactly which items of expenses RFL is complaining about, and the amounts, to prepare your case. **Discuss what step(s) Ms. Wong could take to find out these facts. In your discussion, also explain the procedure to be followed.** **(15 Marks)**

Question 2 (25 Marks)

Later in the day, RFL’s solicitors send a fax to your firm (**Document B**).

After discussing the fax with Ms. Wong, she still refuses to perform in the Movie. Ms. Wong believes that the key to her successful career is that she has been able to build and market a virtuous, decent, “child-friendly” image and she is a good role model for

children. Performing in the Movie would cause irreparable and incalculable damage to her career not to mention it would cause her enormous personal embarrassment for being filmed in the nude for the world to see.

She wants to oppose RFL's application for an interlocutory injunction if possible.

Advise Ms. Wong on the relevant legal principles that the Court would apply when deciding RFL's application for an interlocutory injunction and its prospects of success. You may refer to the facts in Question 2 above, Document A, and Document B.

(25 marks)

Question 3 (25 Marks)

A few days later, the local newspapers report that RFL currently faces substantial financial difficulties. RFL's past few movies were enormous failures and have lost massive amounts of money. RFL has recently fired many of its employees and there have been reports that RFL's banks have been pressuring RFL for immediate repayment of some outstanding loans. The newspapers suspect that RFL is running out of money and there is a significant chance that RFL might be at risk of closing down its business completely if things do not improve soon. A company search reveals that RFL is a company incorporated and headquartered in Hong Kong.

Ms. Wong is concerned that if RFL goes into insolvency, then even if she wins the lawsuit, she will not be able to recover any legal costs that she has spent in these legal proceedings against RFL.

(A) Based on the above, advise Ms. Wong about the procedural option that is available to protect her legal costs exposure. In your advice to her, explain the procedures to be followed. State what further information you need (if any).

(10 Marks)

You receive a letter from RFL's solicitors asking if Ms Wong is willing to attempt to settle the dispute through mediation. Ms. Wong thinks that mediation would be a waste of time and money since she absolutely refuses to perform in the Movie. Ms. Wong is also worried that if she appears willing to attempt mediation, it might send RFL the signal that her case is weak and she is desperate to settle.

(B) Advise Ms. Wong on whether or not she should attempt mediation and any advantages and disadvantages of doing so.

(15 marks)

Question 4 (25 Marks)

Pleadings close. Ms. Wong's pleaded case generally follows paragraph 11 of **Document A**.

You are now preparing the case for discovery.

Ms. Wong brings a box of documents to your office for you to review. While reviewing the documents with Ms. Wong, she tells you that **Document C** would cause her a great deal of personal embarrassment with her boyfriend. Also, she feels that **Document D** would hurt her case and her statement about being annoyed with children might harm her career.

She tells you that she does not want to disclose **Document C** and **Document D**.

Advise Ms. Wong on your discovery obligations and how you should deal with Document C and Document D.

(25 Marks)

DOCUMENT A

CHAN & SMITH

Conference Attendance Note

Date & time: 24th June 2016, 11:30am-12:30pm.

Client: Ms. Rachel Wong (“Ms. Wong”)

Prepared by: Mr. John Smith

1. Ms. Wong (age 25) is a talented, up-and-coming actress whose career has skyrocketed recently. She is instructing our firm to represent her in a dispute against a film studio, Rainy Films Ltd. (“RFL”).
2. Ms. Wong began her acting career right after she graduated secondary school. Her first job was at TVC Ltd., a local television network. She was hired by TVC’s managing director, Mr. William Lam (“Mr. Lam”) and her first acting role was to host a new television show called “3-2-1, GO!” for primary school students. “3-2-1, GO!” was incredibly successful and Ms. Wong quickly became a very famous celebrity.
3. Ms. Wong has become so popular that since “3-2-1, GO!” ended in 2014, she receives many offers to act in other television shows and movies. Ms. Wong is currently one of the most sought after young actresses in Hong Kong.
4. In October 2015, Ms. Wong met Mr. Lam again at a charity event. Mr. Lam had changed jobs and is now the managing director of RFL. Mr. Lam told Ms. Wong that RFL was developing an exciting new movie which would be a perfect fit for Ms. Wong’s blossoming career. Ms. Wong was interested to work with Mr. Lam again because he helped start her career back at TVC Ltd.
5. On 10th November 2015, Ms. Wong met with Mr. Lam at RFL’s office. He introduced RFL’s new movie, “*Romeo & Juliet: The True Story*” (“the Movie”) and wanted Ms. Wong to play the lead character of Juliet. There were not many details available as the script was still being finalized. However, Ms. Wong clearly remembers that Mr. Lam reassured her by saying that the Movie would “*give her image a breath of fresh air*”.
6. Ms. Wong was impressed and trusted Mr. Lam’s judgment so she entered into a contract with RFL to perform in the Movie as Juliet (“the Contract”). The script for the Movie would be delivered to her in March 2016 and she was required to start filming the Movie on 15th June 2016.

7. Ms. Wong received the script in March 2016. She was shocked and appalled to discover that the Movie was an erotic-themed version of the traditional love story and aimed at audiences aged 18 and above. According to the script, Ms. Wong would be required to engage in vulgar dialogue, perform extremely violent acts and be portrayed as a promiscuous criminal. There was also a scene where Ms. Wong would appear completely in the nude.
8. The next day, Ms. Wong had an urgent meeting with RFL to complain that RFL had misled her about the nature of the Movie to attract her to sign the Contract. She complained that the Movie would not “*give her image a breath of fresh air*” at all but would instead destroy her wholesome and virtuous image which was crucial to her career. Ms. Wong told RFL that she refused to work on the Movie and was rescinding the Contract immediately. RFL explained that they were depending on her to star in the Movie and insisted that she be ready to start filming according to the Contract.
9. On 15th June 2016, Ms. Wong still refused to perform. RFL could not begin filming the Movie without her. Over the next few days RFL tried to persuade Ms. Wong to change her mind and perform, but she still refused.
10. Finally, on 23rd June 2016, RFL issued a Writ from the High Court and served it personally on Ms. Wong at her home in Hong Kong. The Writ contains a Statement of Claim alleging that Ms. Wong is in breach of the Contract by failing to perform in the Movie. RFL claims damages for wasted expenses and loss of profits for the Movie.
11. In our conference, I gave Ms. Wong my preliminary advice that she should fight the case on the grounds that RFI had made a misrepresentation to her that the Movie would “*give her image a breath of fresh air*”.

END OF DOCUMENT A

DOCUMENT B

RICHARDSONS & CO., Solicitors

BY FAX

24th June 2016, 2:30pm.

**Re: Rainy Films Ltd.'s ("RFL") action against Ms. Rachel Wong ("Ms. Wong"),
dispute over *Romeo & Juliet: The True Story* ("the Movie")**

Dear Sirs,

We understand that your firm represents Ms. Wong in this matter.

We would like to point out the following:

1. RFL has incurred substantial expenses to hire actors, staff and equipment, among other things, for the filming of the Movie which are now being wasted. They are forced to stand around idle while waiting for your client to perform her job as promised in the Contract.
2. Ms. Wong is the most popular young actress in the market. It would cost a lot of money for RFL to hire another actress at this late stage. The Movie will also earn less revenue if RFL uses a less popular actress.
3. Therefore, unless your client cooperates *immediately*, we shall apply to the Court for an **interlocutory injunction** to force her to perform in the Movie.

We look forward to receiving your reply.

Yours sincerely,

Richardsons & Co., Solicitors.

END OF DOCUMENT B

DOCUMENT C

From: Rachel Wong <RRCC123@starvigates.com>
To: Jennifer Riley <Riles4ever@snacomail.com>
Sent: 23rd June 2016, 10:16pm
Subject: Re: Lunch tomorrow?

Hi Jen!

Yeah, I am free for lunch tomorrow but can we make it a bit later, maybe around 1:30pm? I need to meet with my lawyers in Central in the morning about fighting this stupid lawsuit from RFL that I told you about when I called just now.

By the way, I remember you said you did some acting work for RFL a few years ago. Did they mislead you on anything when they first interviewed you? Did you have any dealings with William Lam of RFL? It might really help my case if you have any useful information. Let's talk about it at lunch!

Love you,
Rachel

From: Jennifer Riley <Riles4ever@snacomail.com>
To: Rachel Wong <RRCC123@starvigates.com>
Sent : 23rd June 2016, 9:34pm
Subject: Lunch tomorrow?

Hi Rach!

I cannot believe that you had dinner with Johnny! Does your boyfriend know? You better not let him find out! Let's have lunch tomorrow!

Jen

END OF DOCUMENT C

DOCUMENT D

From: Rachel Wong <RRCC123@starvigates.com>
To: Wendy Rogers <wrogers@bronnfilms.com>
Sent: 2nd December 2015, 2:30pm
Subject: New movie offer from Bronnfilms

Dear Wendy,

Thank you so much for meeting with me today at your Bronn Films Studio. I am very interested and flattered by your offer to star in your new movie “*Robots*” next June.

I understand your point that “*Robots*” has “mature themes” targeting adult audiences. As I mentioned today, I have been getting a little bored of my “good girl” stereotype and this movie might be the perfect opportunity to give my career a *fresh* image. I am so bored of dealing with little children all the time (they can be so annoying)!

Also, I might have a scheduling conflict with another movie that I am supposed to make with Rainy Films Ltd. next year. Perhaps I can think of a way to get out of that deal.

Let me have a few days to think about your offer.

Yours sincerely,
Rachel

END OF DOCUMENT D