

PCLL CONVERSION EXAMINATION JUNE 2017

Title of Paper : Commercial Law – Part A
Date : 27 June 2017
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 June 2017

Commercial Law

Part A: Sale of Goods

Question 1 (100 marks)

Chan Electrics Limited ('Chan') manufactures engines. Advise Chan in relation to each of the following contracts it has entered into:

a) The supply of 10 engines to Golden Limited ('Golden')

Prior to the contract being made Golden's purchasing director, Tony, came to Chan's premises and inspected one of the engines. After inspecting it, he said Golden would like to buy 10 of them. Chan's sales director checked Chan's stock records and told Tony "*You are in luck. We have 11 engines in stock.*" An agreement to purchase 10 engines was then made. Under the terms of the agreement Golden had to collect the machines from Chan's premises. One week after the agreement was made Chan sent the following email to Golden: "*10 engines ready to collect. Please pick them up at your earliest convenience.*" One of Chan's employees then wrote Golden's name on 10 labels and stuck the labels on 10 machines. Golden replied "*Will collect next Monday.*" However Golden did not collect on Monday and on Tuesday a fire broke out and destroyed all the engines (neither party has insurance cover against this loss). Chan seeks payment of the price agreed for the 10 engines from Golden. Advise Chan. **(70 marks)**

b) Would your advice in a) differ in any way if, when the contract for the 10 machines was made, there were no machines in stock and they had to be manufactured by Chan? **(10 marks)**

c) The supply of 1 machine to Silver Limited ('Silver')

Prior to purchasing the machine Silver inspected it and agreed to purchase it subject to Chan carrying out modifications to it. Chan has completed these modifications. However Silver is refusing to take delivery and pay for the machine. Chan wishes to recover the price from Silver. Advise Chan. **(20 marks)**

Question 2 (100 marks)

a) Arthur agreed to supply Betty with 60 suits.
Advise Betty as to her rights in relation to **each** of the following situations:

- i) 65 suits were delivered.
- ii) 55 suits were delivered.
- iii) 61 suits were delivered.

iv) 60 suits were delivered but 30 of them were not of merchantable quality.

v) In what way, if any, would your advice differ in i) to iv) if the contract had provided that the suits were to be delivered in instalments of 10?

(60 marks)

b) AAA agreed to sell to United 10,000 tonnes of wheat, delivery on 15th May 2017, at US\$150 per ton. United had agreed to re-sell the wheat to Beta for US\$ 250 per ton. On 1st May AAA informed United it cannot supply the wheat. On this date the market price was US\$ 170 per ton. The market price was rising and on 15th May 2017 it was US\$200 per ton. However after this date the market price started to fall and by 30th May 2017 it was US\$ 160 per ton.

Advise United as to how much it can claim in compensation from AAA.

(40 marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2017

Title of Paper : Commercial Law – Part B
Date : 27 June 2017
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 June 2017

Commercial Law

Part B: Personal Property

Question 1 (100 marks)

- a) On 1st May Tom purchased goods from Top Business ('TP') on credit for a total price of HK\$ 3 million. Tom was to repay TP by instalments of HK \$50,000 per month. TP was in financial difficulties and on 5th May TP agreed over the telephone to assign the debt to Beth. Beth paid TP HK\$ 2 million in consideration for the assignment. On 20th May Beth sent the following letter to Tom:

"Dear Tom

I have agreed with TP that in consideration of me making a payment to them, you will pay to me all future instalments to be made in respect of the goods sold to you by TP on 1st May. I will therefore be very grateful if, until further notice, you will pay me direct HK\$50,000 per month instead of TP."

*Yours sincerely
Beth"*

No other documents were created by either TP or Beth.

Without Beth's knowledge TP also assigned the debt orally to Ken on 6th May. In consideration of the assignment Ken paid TP HK\$1.5 million on 10th May and Ken informed Tom in writing on the same day of the assignment. Ken had no knowledge of TP's agreement with Beth. No further documents were created by TP or Ken.

Advise Ken whether his assignment takes priority over Beth's. **(50 marks)**

- b) Bob, a builder, entered into an agreement to build a warehouse for Acme Limited ('Acme'). The contract price is HK\$20 million, HK\$15 million of which is payable on completion of the work. The contract provides that in the event of the work not being completed by 31st March 2017 Bob must pay HK\$10,000 liquidated damages for each day of delay. In accordance with the provisions of S9 LARCO Bob assigned the payment obligations of Acme to Delia on 15th March. The warehouse was not completed until 10th April 2017 and to date Acme has refused to pay any money to Delia.

Advise Delia regarding her entitlement to the HK\$15 million owing by Acme. **(50 marks)**

Question 2 (100 marks)

- a) *“Bailment is a redundant concept in personal property law and, in the event of a legal dispute concerning loss or damage to the plaintiff’s goods, as he will have other remedies open to him, there will be no need for him to rely on bailment.”*

Critically evaluate this statement.

(60 marks)

- b) Star Limited (‘Star’) has imported some frozen meat from Brazil which must be kept at a temperature of -18°C in order to prevent the meat becoming unfit for human consumption. Star entered into a contract with Sun Limited (‘Sun’) under which Sun agreed to store the meat for Star until it is sold. As Sun did not have the capacity to store the meat it entered into an agreement with Moon Limited (‘Moon’) for Moon to store the meat. However Moon failed to store the meat at the required temperature and it went bad. As Sun has become insolvent Star wishes to sue Moon for the value of the meat.

Advise Star.

(20 marks)

- c) In what way, if any, would your advice in b) differ if there was a clause in the Sun-Moon contract excluding Moon’s liability for negligence? **(20 marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2017

Title of Paper : Commercial Law – Part C
Date : 27 June 2017
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 June 2017

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks)

Matt entered into a one year contract for membership of Exercise Supreme ('ES'), a fitness centre. Before entering into the agreement he was given a tour of the facilities and was especially impressed by the fact that it opened at 6 a.m. to allow him time to exercise before starting work. After the tour he was given an agreement to sign. He signed the agreement without reading it. Three months after joining the following have happened:

1. ES has informed members that the opening hours are going to be changed and the centre will now open at 8 a.m.
2. Matt's expensive watch was stolen from his locker. Matt had been complaining for some time that there was problem with the lock and that his locker was not secure but no attempt had been made by ES to fix it.

When Matt complained to ES about these matters and threatened to bring a claim against ES in the Hong Kong courts he was told by ES there was nothing he could do because of the following clauses in the contract he signed:

- "6. We have the right to change the opening hours at any time at our discretion.*
- 7. We are not liable for any loss or damages to members' property no matter how caused.*
- 10. In the event that any dispute arises out of this contract the courts of Singapore have exclusive jurisdiction to hear such disputes."*

- a) Advise Matt as to his remedies, if any, against ES. **(80 marks)**
- b) Would your advice differ in any way if Matt was a professional athlete? **(20 marks)**

Question 2 (100 marks)

- a) Consider what effect the Moneylenders Ordinance would have, if any, in relation to the following transactions:
 - i) John enters into a written agreement for a loan from Give, a licensed moneylender. The annual percentage rate is 48%. John seeks your advice as to whether he is bound by the loan agreement as he considers the interest is far too high and the agreement does not state his address or the date and place of making the agreement. **(20 marks)**

ii) Martin is lent money by Miser Bank at an interest rate of 55% APR. (5 marks)

- b) Alice has a diamond worth HK\$1 Million stolen from her home. The diamond is eventually traced to the premises of Li, a licensed pawnbroker. Li states that five months previously a young man came to his shop wishing to pawn the diamond. The young man stated that his name was Wong and he was the owner of the diamond. He produced a sales invoice from a jeweller with his name Wong as buyer on it as proof he was the owner. The invoice looked genuine and Li also asked to see the man's ID card to verify his name was Wong. After Li checked the ID card he reached an agreement with Wong whereby the diamond was pawned to Li for HK\$300,000. Wong has not shown up since then.

Advise Alice and Li to their rights in relation to the diamond. (25 marks)

- c) (i) Jane is a teacher and her husband is in sole charge of the family business. Jane always follows his judgment on business matters. In 2010 Jane's husband entered into an agreement with Top Bank ('TB') to borrow HK\$3 million for use in the business. As part security for the loan Jane entered into a guarantee agreement with TB. Under the terms of this agreement Jane's liability was capped at HK\$2 million. In 2015 TB agreed with Jane's husband to increase the loan to HK\$6 million. It was stated in the revised loan agreement that it superseded and cancelled the 2010 agreement and that security for the loan included Jane's HK2 million guarantee. No request was made to Jane to enter into any fresh guarantee agreement but Jane's husband did tell her about the increased loan and how essential it was for the business that the bank loan be increased.

Last month TB wrote to Jane informing her that as it was owed HK\$4 million by her husband, which he has not paid, she must honour her guarantee obligations and pay TB HK\$2 million.

Advise Jane. (40 marks)

- (ii) In what way, if any, would your advice differ if the 2010 guarantee agreement contained the term "*The Guarantor agrees that the Lender may from time to time without in anyway affecting the liability of the Guarantor increase the Borrower's credit.*" (10 marks)

~ End of Examination Paper ~