

## **PCLL CONVERSION EXAMINATION JUNE 2018**

Title of Paper: Civil Procedure  
Date: 20 June 2018  
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 8 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 2018

## Civil Procedure

### BACKGROUND

Anna is your friend and approached you today for your advice. Anna told you the following:

1. She left Hong Kong on 15 December 2017 for a working holiday in Japan. She returned to Hong Kong yesterday, and upon arrival at the Hong Kong International Airport, she tried to withdraw money via ATM from her bank account but she was not able to do so. She immediately made telephone enquiries with her bank and she was told that her account had been “frozen”.
2. When she arrived back home yesterday, her mother handed her a lot of unopened mail. When she opened her mail, she found the following documents which had been all sent to her home address by registered post. All the documents were sent by registered post on the dates of their issuance as set out below:
  - (a) a Writ of Summons issued in the High Court of Hong Kong dated 19 March 2018;
  - (b) an affidavit of service dated 11 April 2018, confirming that the Writ of Summons had been sent to Anna’s home address by registered post on 19 March 2018;
  - (c) a Judgment from the High Court dated 18 April 2018;
  - (d) a Garnishee Order: Notice to Show Cause dated 31 May 2018 together with the supporting affidavit. According to this Notice, Anna is required to attend before a Master of the High Court on 6 July 2018, to “show cause”.
3. Anna had not seen the above documents before. Yesterday was the first time she was aware that proceedings had been commenced against her in the High Court.
4. The Writ of Summons was issued by Hans against Anna. According to the General Indorsement of Claim attached to the Writ of Summons, Hans is claiming against Anna in the sum of \$1.5 million. Hans claims that on 14 February 2017, he advanced an interest-free loan to Anna in the sum of \$1.5 million. According to Hans, Anna had orally agreed to repay the loan on 14 February 2018. She had failed to do so and apart from the \$1.5 million, Hans also claims interest against Anna from 15 February 2018.
5. Anna explains to you that Hans was her ex-boyfriend. On 14 February 2017, after they had a Valentine’s Day dinner at the Ritz Carlton Hotel, Hans accompanied Anna home. At her home, in the presence of Anna’s parents and Anna’s sister, Elsa, Hans wrote a cheque to Anna in the sum of \$1.5 million as her Valentine’s

Day present. The \$1.5 million was therefore a gift and there was never any loan agreement. Anna broke up with Hans in November 2017 and thereafter, went on her working holiday on 15 December 2017. She had not seen Hans since their break-up in November 2017.

5. Anna wants to take steps to dispute Hans' claim.

**Question 1 (25 marks)**

Answer Question 1 referring ONLY to the background facts above.

- (a) **Explain to Anna what is the Writ of Summons and why it is appropriate to be used in this case; and what is the General Indorsement of Claim.** (5 marks)
- (b) **Explain to Anna why a Judgment had been entered against her. Please advise Anna as to whether she would be able to make an application to set aside the Judgment. If so, please also advise her of the requirements of such application and the likely merits of such application.** (10 marks)
- (c) **Explain to Anna what had happened to her bank account. Why was it "frozen" and what is the Garnishee Order: Notice to Show Cause? Does she need to attend the hearing on 6 July 2018 and if so, what does she need to do to have Hans' application dismissed?** (10 marks)

**Question 2 (25 marks)**

Assume that it is now 1 August 2018. On 31 July 2018, Anna's application to set aside the Judgment was heard and she was successful in her application. Today (i.e. 1 August 2018), as she was leaving her apartment building, she had been approached by a man who handed her a sealed envelope, which was addressed to her. When she opened the sealed envelope, she found the Writ of Summons inside. This is the same Writ of Summons dated 19 March 2018, which was issued by Hans against her.

- (a) **Advise Anna why she had been handed the Writ of Summons this morning (1 August 2018).** (3 marks)
- (b) **Advise Anna what she needs to file in order to defend the action and the deadline for doing so.** (6 marks)
- (c) **Advise Anna what are pleadings. What are their purposes?** (6 marks)
- (d) **Advise Anna when the Statement of Claim would be due. What document should Anna file in response to the Statement of Claim? What information**

**should such document contain? What is the deadline for filing such document? (10 marks)**

**Question 3 (25 marks)**

- (a) Assume that it is now 14 December 2018 and pleadings closed today. Anna had just received a letter from Hans' solicitors (see Document A). In principle, Anna believes she should be able to comply with the timetable compiled by Hans' solicitors. However, she is reluctant to be co-operative.

**Advise Anna about the contents of the letter, whether she should agree with Hans' solicitors procedural suggestions, pointing out any errors and/or inaccuracies. (12 marks)**

- (b) Eventually, there was a court order for exchange of witness statements by 31 January 2019. During this period, Anna's father was suffering from cancer and her mother was busy looking after him. Anna wanted to tender witness statements from herself and her sister, Elsa, as Elsa had witnessed Hans writing the cheque of \$1.5 million and announcing to her family that this was a Valentine's Day gift to her. However, both Anna and Elsa had been very busy because of her father's illness and Anna missed the deadline of 31 January 2019. Anna then received another letter from Hans' solicitors (see Document B).

**Comment on the contents of this letter and advise Anna what she can do if a sanction had been imposed for her failure to file Elsa's and her witness statements. (13 marks)**

**Question 4 (25 marks)**

Assume it is now 30 May 2019. Anna had been representing herself throughout the proceedings.

The case proceeded to trial and was heard by Mr. Justice Chung on 13 May 2019. The trial lasted 1 day. The judgment was handed down on 20 May 2019 and Hans was successful in his claim. Chung J found that Anna was not a credible witness. Hans was awarded \$1.5 million plus interest from 15 February 2018 onwards.

However, Anna is very dissatisfied with the decision. She feels that Chung J. was biased against her. Furthermore, 2 days ago, she had been approached by Olaf. Olaf was Hans' personal assistant and was fired by Hans last week. Olaf tells Anna that he possesses a handwritten note from Hans which will ruin Hans (see Document C). Olaf said that although Hans had given him the original note and Hans did not keep a copy of the same, Hans should still have disclosed this note at the discovery stage but he did not do so.

- (a) **Please comment on whether Hans should have disclosed Document C during the discovery stage. (10 marks)**

- (b) **Please advise Anna what she should do in order to lodge an appeal against the judgment of Chung J. In addition, is it likely that Anna would be successful in her appeal against Chung J's finding that she was not a credible witness? Can she adduce Document C at the appeal hearing? (15 marks)**

**DOCUMENT A**

***Kristoff & Sven***

20/F., Iceland House  
16 Ice House Street  
Central, Hong Kong

To: Ms. Anna Au  
14A Arendelle Court  
15 Jubilee Street  
Sheung Wan  
Hong Kong

14 December 2018

Dear Ms. Au,

**Re: HCA 1199 of 2018 – Hans Ho v. Anna Au**

As you are aware, we act for Mr. Hans Ho in relation to the above matter.

We write to explore whether we can agree the directions in this case to avoid having to attend court for a Case Management Summons. This will save time and costs for all parties concerned.

As pleadings close today, we remind you that the next step in the proceedings is discovery. Given that this is a factual dispute and the parties do not have much documents at hand, we propose the following timetable:

1. That the parties file and serve their List of Documents by 21 December 2018; and
2. That the parties file and serve their witness statements by 31 January 2019.

We believe that these are the only directions required to prepare the case for trial. If you agree with such directions, please let us know in writing. We will then prepare a Consent Summons to set out the above agreed directions.

Please note if you confirm your agreement to the above directions in writing, this will dispense with the parties' obligations to file a Timetabling Questionnaire.

After the above directions are complied with, we will proceed to set the case down for trial in the running list.

We look forward to hearing from you.

Yours faithfully,  
*Kristoff & Sven*  
Kristoff & Sven

**DOCUMENT B**

***Kristoff & Sven***

20/F., Iceland House  
16 Ice House Street  
Central, Hong Kong

To: Ms. Anna Au  
14A Arendelle Court  
15 Jubilee Street  
Sheung Wan  
Hong Kong

1 February 2019

Dear Ms. Au,

**Re: HCA 1199 of 2018 – Hans Ho v. Anna Au**

As you are aware, we act for Mr. Hans Ho in relation to the above matter.

According to the Case Management Order of Master Ko, the parties were supposed to file and serve their witness statements yesterday. We have already arranged for our client's witness statements to be filed and served but we note that your witness statements are still outstanding.

Unless we receive your witness statements by 8 February 2019, we will take out an application before the Court for an unless order. If you continue to default, at the hearing for the unless order, we will ask the court for a sanction that your defence be struck out and for judgment to be entered in favour of our client with interest and costs.

Yours faithfully,

*Kristoff & Sven*

Kristoff & Sven

**DOCUMENT C**

**STRICTLY PRIVATE AND CONFIDENTIAL - FOR THE EYES OF THE  
RECIPIENT, OLAF WONG, ONLY!**

Olaf,

Thank you for helping me buy Valentine's day presents for Ariel, Belle and Jasmine. However, you have forgotten to help me buy a present for Anna! I had nothing to give her at our Valentine's day dinner last night. It was such an embarrassment! At the end, when I arrived at her home, I had no choice but to write her a cheque in the sum of \$1.5 million as her Valentine's Day present.

Please make sure that you transfer \$1.5 million into my current account asap.

I am now going to Macau with Jasmine and will not be returning to the office today.

Hans

15 February 2017

**END OF PAPER**