

PCLL CONVERSION EXAMINATION JUNE 2018

Title of Paper : Commercial Law – Part A
Date : 22 June 2018
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.

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

PCLL Conversion Examination June 2018

Commercial Law

Part A: Sale of Goods

Question 1 (100 marks)

Moon Limited (**'Moon'**) is a fabric manufacturer and Sun Limited (**'Sun'**) is a garment manufacturer. Both carry on business in Hong Kong. Sun has bought fabric from Moon in the past to make garments for retailers who sell cheap clothes to the mass market.

Sun entered into a contract with Mars Limited (**'Mars'**), a luxury brand retailer in Germany, to manufacture cotton shirts in various colours for Mars's chain of shops. The shirts were to be made of 'pure cotton'. In order to fulfil the Mars contract Sun made a contract (**'the Contract'**) with Moon for the purchase of cotton fabric. During their pre-contract negotiations Sun did not tell Moon about the Mars contract. Sun agreed to buy the cotton fabric at a price which was 50% greater than the price in previous contracts it had made with Moon for cotton fabric. The Contract price agreed was HK\$800,000.

After the fabric was manufactured, Moon notified Sun that it was ready for delivery. Sun's normal practice was to test some of the fabric before accepting delivery to ensure it met the contract specifications. However, as it was under time pressure to fulfill the contract with Mars, Sun decided to forgo the testing and asked Moon for immediate delivery. Sun, without checking the quality of the fabric delivered, made the shirts from the fabric provided by Moon and sent the shirts to Mars.

Mars later informed Sun that it was rejecting the shirts for the following reasons:

1. The shirt fabric was not 'pure cotton' but was in fact 98% cotton and 2% spandex.
2. The fabric shrank when washed at high temperatures.
3. The strength of the fabric was below the limit expected by Mars for its luxury brand shirts.

When Sun informed Moon of Mars's rejection of the shirts, Moon's response was as follows:

1. Spandex actually improved the fabric as it made the garment more comfortable to wear and easier to wash and iron.
2. It would be normal for cotton fabric to shrink at high temperatures and that Sun should have put warning instructions on the labelling and packaging warning consumers not to wash at high temperatures.
3. The fabric strength was of the same level as that agreed in previous contracts Moon had made with Sun for cotton fabric. The strength level Mars was requiring was only expected of high brand goods and before they entered into the Contract, Sun never told Moon that the fabric was required for 'high brand' goods. The fact that the Contract price for the fabric was 50% higher than normal did not alert Moon to this requirement.

Sun accepts the fact that it has broken its contract with Mars and Mars can reject the shirts.

Advise Sun on its rights and remedies, if any, against Moon under the Sale of Goods Ordinance. (100 marks)

Do not consider misrepresentation or breach of express terms of the Contract in giving your advice

Question 2 (100 marks)

Gold Phones Ltd ('GP') is a mobile phone manufacturer. LLT is a key component for the phones it currently makes. GP sent K Products Ltd ('KP'), a supplier of LLT, a purchase order in April stating it wished to buy 10,000 LLT components for HK\$ 300,000. Payment was to be made on delivery which was to be no later than the end of June. KP replied stating it accepted GP's offer. KP had no LLT components in stock. It therefore placed an order for the manufacture of these components with a Korean company.

Advise GP in each of the following situations:

- a) The 10,000 LLT components manufactured in Korea arrived in Hong Kong in May. However before delivery they were all destroyed by a fire at KP's premises. KP has sent an e-mail to GP stating "*As it was not our fault the components were destroyed you must pay us the purchase price HK\$300,000.*" **(40 Marks)**
- b) KP had ordered a total of 20,000 LLT components from the Korean manufacturer (10,000 of which were to be supplied to GP and the remainder to other customers). When the LLT components arrived in early June, KP had placed 10,000 in boxes, with GP's name on them, to one side in KP's warehouse when a fire broke out in the warehouse destroying all 20,000 LLT components. It is not clear how the fire was caused. **(20 Marks)**
- c) When KP delivered 10,000 LLT components to GP at the end of June, GP refused to pay for them. Consequently KP took the goods back to its warehouse. In July KP's warehouse was broken into and the 10,000 LLT components were stolen. **(10 Marks)**
- d) GP entered into an agreement to sell 5,000 mobile phones to Acme Ltd ('A'). The phones were in boxes with A's name on them and it was agreed that A would take delivery at GP's premises and pay for the phones on 1st May. On 1st May A paid the agreed price for the phones to GP but asked GP "*Would you keep our 5,000 phones for one month until our new warehouse is ready?*" GP agreed. On 10th May, as GP was in financial difficulties, it agreed to sell the same phones to Beta Ltd ('B'). B paid GP the agreed price for the phones and GP sent a receipt to B which stated "*Gold Phones Ltd acknowledges receipt of the purchase price for 5,000 phones sold to Beta Ltd on 10th May.*" On 20th May GP became insolvent and both A and B are claiming title to the phones. Advise A and B as to who has title to the 5000 phones. **(25 Marks)**
- e) Would your advice in d) differ in anyway if A collected the phones on 1st May but then returned the phones to GP for safekeeping on 3rd May after A discovered that it had no suitable place to keep the phones until its new warehouse was ready? **(5 Marks)**

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2018

Title of Paper : Commercial Law – Part B
Date : 22 June 2018
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 2018

Commercial Law

Part B: Personal Property

Question 1 (100 marks)

Brian was driving his car Saturday morning when it broke down. He called Johnny, the sole proprietor of Ace Repairs, the garage he has been going to to service and repair his cars for years. Johnny then arranged for his car to be towed to Ace Repairs garage for repairs.

About two hours later, Brian received a call from Johnny who told him the battery in his car was dead and needed to be replaced. Johnny told Brian he would have to order the replacement battery from the authorised dealer which would take a few days. He also asked whether, in the meantime, Brian would like the tyres to be changed (as they were quite worn) and a few other items of maintenance to be done. Brian told Johnny to go ahead. No document was executed in respect of these repairs and services. As was their practice with their regular customers like Brian when the repair and service bill reaches a certain amount, Johnny would arrange the car to be waxed, washed and the interior vacuumed and cleaned for no extra charge.

On Tuesday when the battery had been replaced and the other maintenance items effected, Johnny sent the car to CarKlean Centre, a business (owned and operated by Paul, an old friend) whom Johnny had always used for car cleaning services. Before having the car driven to CarKlean Centre, Johnny saw a shopping bag in the backseat of the car which contained a brand new expensive-looking handbag. He phoned Brian immediately about it and Brian said “please as a personal favour to me, take care of the handbag until I come to collect the car”. Johnny said “sure, no problem” and took the bag containing the handbag into his office for safekeeping. When he left the garage that evening, he forgot to lock his office. On Wednesday morning, Johnny found his garage was broken into during the night and the handbag had been stolen. Unknown to Johnny, there was a diamond ring in the glove compartment of the car. The glove compartment was locked and could only be opened with a key which Brian kept with him. When the car was at CarKlean Centre, the glove compartment was broken into and the diamond ring taken. CarKlean Centre had a clause in their cleaning contract with Ace Repairs excluding liability for loss of items stored in cars left at their centre (the legal effectiveness of this exemption clause is not disputed). The car was delivered back to Ace Repairs on Wednesday morning.

When Brian came to pick up his car Wednesday afternoon, he was upset to find both the handbag and the diamond ring gone. He also found the right end of the chassis damaged. It was later determined that the chassis was damaged when it was at the CarKlean Centre on Tuesday.

Brian and Johnny got into a heated argument about the responsibility for the loss and damage which ended with Brian refusing to pay the repair bill and Johnny refusing to let

the car leave Ace Repairs until full payment of the repair bill and storage charges for the time the car is detained.

Advise Brian on his rights against Ace Repairs and CarKlean Centre and any claims he may have against them in respect of the damage to the car and the loss of the various items in his car and assess the merits of these claims.

Question 2 (100 marks)

Golden Enterprises Limited (“the Company”) applied to Prosperous Bank, a licensed bank (“the Bank”), for a \$2,000,000 loan (“the Loan”). After investigating the financial situation of the Company, the Bank decided to lend the requested amount subject to security being given. On 6 February 2018 when the loan was advanced to the Company, a debenture (“the Debenture”) was executed by the Company in favour of the Bank. The Debenture was duly authorised and executed by Peter Fong, one of the Company’s directors (and its major shareholder). The Debenture was timely and duly registered at the Companies Registry.

The Debenture created in favour of the Bank (i) a first fixed charge over all book debts of the Company, present and future and (ii) a first floating charge over the undertaking and all the assets, present and future, of the Company, wherever situated, other than its book debts.

In the Debenture, the Company covenanted that:

- (a) it will not create any encumbrance on the whole or any part of the charged assets or sell or dispose of the whole or any part of the charged assets; and
- (b) it will promptly pay into its bank account with the Bank all moneys which it may from time to time receive in respect of all book debts upon receipt.

In the middle of April 2018, the Company was experiencing cash flow problems. Peter Fong advanced a shareholder’s loan of \$1,000,000 (“the Shareholder’s Loan”) to assist the Company. The Company executed a debenture on 25 April 2018 giving Peter a fixed charge over all the office equipment of the Company to secure this shareholder’s loan. The debenture creating the fixed charge was duly authorised and executed and it was timely and duly registered at the Companies Registry.

Both the Loan and the Shareholder’s Loan have not been paid. The Bank has just discovered Peter’s fixed charge of 25 April 2018. As the Bank is apprehensive of the Company’s increasing fragile financial state, the Bank is now considering appointing a receiver to enforce its security. The most valuable assets of the Company are its book debts and its office equipment.

Advise the Bank on the effectiveness of the charges the Company created in favour of the Bank.

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JUNE 2018

Title of Paper : Commercial Law – Part C
Date : 22 June 2018
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 4 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 2018

Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks)

Benson and Annie are husband and wife. Benson owns 100% of a small company called Cornerstone Limited (“the Company”), a Hong Kong private company, which has been doing quite well and he is its sole director. Annie is in no way involved with the Company and knows almost nothing about its operations. Annie owns the flat that both she and Benson live in. The flat is worth HK\$5,000,000 and is unencumbered.

- (a) The Company was in need of funds to expand its operations. The Company applied to the Continental Bank (“the Bank”) for a loan. The Bank agreed to lend HK\$1,000,000 to the Company to be repaid in 3 years’ time if Annie would execute a demand guarantee for the loan. In late December 2017, Benson took Annie to meet the bank manager of the Bank, David. When the matter of the demand guarantee came up, Annie voiced her discomfort in giving it and asked to speak to Benson alone. David then left the conference room. Annie asked Benson what would happen if the loan could not be repaid and Benson assured her she should not have to worry about that because “it would never ever happen” and that she should trust him on it. Annie said she of course trusted Benson as she always had. When David came back into the conference room, Annie said she was ready to sign the demand guarantee. After David briefly explained to Annie the details of the loan and the demand guarantee, the loan document and the demand guarantee were duly executed and the Bank advanced the amount of HK\$1,000,000 to the Company.

In the middle of February 2018, the Company asked for and obtained from the Bank a further advance of HK\$500,000 and an extension of the loan repayment period by a further year, increasing the loan amount to HK\$1,500,000 to be repaid in 4 years’ time. This was all done without any consultation with Annie.

The Company has now defaulted in interest payment on the loan from the Bank prompting the latter to demand repayment of the loan. The Bank has also called on Annie on her demand guarantee to pay the amount of HK\$1,500,000.

Advise Annie on her liability to the Bank in relation to the guarantee. **(65 marks)**

- (b) In April 2018, Benson found himself in a tight cash flow situation. He was unsuccessful in applying to any bank or financial institution for a loan. Benson finally was able to obtain a personal loan of HK\$300,000 from Golden Opportunities (“GO”), an import and export business owned by an acquaintance, John, who has been known to lend money from time to time to “his friends”. However, almost all of those taking loans from him have no doubt John was just using these opportunities to make money for himself. On the loan from GO, Benson agreed to repay the loan by monthly instalments and pay interest of 4½ % per month on the monthly instalments.

Benson defaulted on the May instalment payment. GO has now sent Benson a letter demanding repayment of the loan and interest. The demand letter had attached to it a note detailing the particulars of the loan. Other than this note, Benson has never received a copy of the loan document he signed with GO for the loan or any document relating to the loan.

Advise Benson on the loan from GO.

(35 marks)

Question 2 (100 marks)

- (a) Sam, a consultant surgeon, had HK\$100 million to invest. He held a number of meetings with Trudy, a wealth manager advisor of Rich Bank ('RB'). Sam was impressed with Trudy's expertise in financial matters and her general professionalism. Sam made it clear to Trudy that he was a conservative investor and wanted to invest his money in only low risk financial products. Trudy drew up a list of investments and acting on her statement that "*In my view here are some of the best low risk investments available.*" Sam invested his HK\$100 million in the financial products recommended by Trudy.

One year later the value of these investments slumped to HK\$1 million. Sam has recently discovered that the products recommended to him by Trudy were in fact very high risk investments. At a meeting with RB, Sam expressed his dissatisfaction with the advice and demanded that RB compensate him for his losses. However RB informed him that it is in no way liable for the losses Sam has sustained because of the terms contained in the contract Sam signed with RB. This contract is headed *General Terms* and applicable to "*All accounts established with, and all services provided by, the Bank.*" The contract is lengthy, running to 50 clauses. Sam remembers being given the contract to take home to read before signing but he was too busy at work and never actually read it before he signed. Sam does not recall any attempt being made at any time by anyone from RB to explain the terms to him. The particular clause that RB is relying on to justify its refusal to compensate Sam states:

In respect of all transactions entered into by you or by the Bank on your Instructions or on your behalf, you understand and agree that:

- (i) you make your own judgment and decisions in relation to investment or trading transactions;*
- (ii) the Bank assumes no duty to give advice or make recommendations;*
- (iii) if the Bank makes any suggestions or recommendations, it assumes no responsibility for your portfolio or for any investments or transactions made in reliance on such suggestions or recommendations;*
- (iv) any risk associated with and any losses you suffered as a result of the Bank entering into any transactions or investments on your behalf are for your account only;*

(v) *the Bank is in no way liable for any losses you suffered due to any failure by the Bank to take reasonable care in providing any advice to you .*

Advise Sam.

(90 marks)

(b) In what way, if any, would your advice differ if Sam's wholly-owned company which owns and runs a dry cleaning business is instead the Bank's customer and it wanted to invest the HK\$ 100 million in low risk investments in order to ensure that the business had sufficient capital for an expansion in a few years' time? **(10 marks)**

FOR THE AVOIDANCE OF DOUBT YOU ARE NOT REQUIRED AS PART OF YOUR ANSWER TO QUESTION 2 TO DISCUSS THE CODE OF CONDUCT FOR PERSONS LICENSED BY OR REGISTERED WITH THE SECURITIES AND FUTURES COMMISSION

~ End of Examination Paper ~