

PCLL CONVERSION EXAMINATION JANUARY 2025

Title of Paper : Commercial Law – Part A
Date : 6 January 2025
Time : 1:00 p.m. – 1:10 p.m. (Reading Time)
1:10 p.m. – 2:10 p.m.

Instructions

1. This is an open book examination.
2. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
3. Start the answer to each question or sub-question on a separate page of the answer book.
4. Write your answers only in the answer books provided.
5. This is a one-hour 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 mark if they answer more than one question.
8. The passing mark for this paper is 50 marks.

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PCLL Conversion Examination January 2025
Commercial Law

Part A: Sale of Goods

Question 1 (100 marks) (Answer all parts)

- (a) Fruit Bar Limited ('FB') owns a number of juice bars in Hong Kong and wished to purchase some juice from Squash Limited ('S'). During negotiations before making the contract Tony, the managing director of FB, visited S and was given a range of its juices to try. Tony was impressed with the taste. During the visit Tony also informed S's managing director, Amanda, that as it was unpredictable how quickly the juice would be sold, it was important that the juice should last in good condition for at least 4 months before being sold. Amanda said nothing in reply.

FB then entered into two contracts. The first contract was for 10,000 litres of apple juice and 10,000 litres of mango juice. However FB discovered that in fact 10,050 litres of apple juice and 9500 litres of mango juice had been delivered. When Tony confronted Amanda about this difference she replied "*You are actually lucky as apple juice is actually more popular than mango juice so it should sell quicker. Anyway the difference is too minor to worry about.*"

When the 10,000 litres of orange juice was delivered under the second contract it was immediately placed in storage. As FB was very busy, no inspection was ever made of the orange juice delivered. Three months after delivery when the orange juice was sold for the first time customers complained that the juice tasted rotten. A test revealed that because of deterioration it was unfit for human consumption. When Tony confronted Amanda about this she replied "*This is not my problem as it is recognized in the juice industry that the maximum length of time that fresh juice can last for is two months and I never specifically promised you it could last any longer.*"

Under both contracts the price FB agreed to pay for the juice was HK\$20 per litre. However the current market price is HK\$25 per litre.

Advise FB as to its rights and remedies under the Sale of Goods Ordinance Cap.26 in relation to each contract. (70 marks)

- (b) **In what way, if any, would your advice differ if under both contracts the juice was to be delivered in 5 instalments, each instalment being separately paid for?** The first instalment under each contract was fine and FB sold all the juice. However in relation to the second instalment of the apple and mango juice contract, FB discovered 2,010 litres of apple juice and 1,990 litres of mango juice had been delivered and not the agreed amount of 2,000 litres of each. In relation to the orange juice contract some of the orange juice in the second instalment tasted rotten. **(30 marks)**

Question 2 (100 marks) (Answer all parts)

- (a) Tom is a keen collector of paintings by the artist Zhang. At a dinner with a business colleague, Jane, Jane told Tom that one of her friends, Linda, was also a keen collector of Zhang's works and had a painting by him that she wanted to sell in order to help her finance her daughter's forthcoming wedding. Jane arranged for Tom to meet Linda at Linda's home. Tom inspected the painting, confirmed it was by Zhang and on 1 November 2024 paid Linda HK \$500,000 for the painting and took possession of it.

One month later Tom was shocked when he received a letter from a firm of solicitors representing Bill. The letter stated that the Zhang painting is owned by Bill and that four months ago Bill had sold the Zhang painting to Linda. Rather than paying money to Bill, Linda had given Bill a painting by a well-known artist Yang in exchange for the Zhang painting. However two weeks later on 1 September 2024 when Bill decided to have the Yang painting valued for insurance purposes, Bill discovered it was a fake. He immediately reported the matter to the police as he was unable to trace Linda.

Advise Tom whether he has title to the Zhang painting. (35 marks)

- (b) **Would your advice in (a) above differ in any way if Linda was an art dealer? (15 marks)**

- (c) ABB manufactures microwave ovens in Hong Kong. The most important component is a magnetron switch. ABB urgently required 5,000 of these switches and contacted Chan, a Hong Kong importer, as to whether he had any in stock. Chan replied "*I have only 2,500 in stock but I can get you another 2,500 from the Mainland.*" ABB makes two contracts, the first for the 2,500 switches that Chan already has in stock and the second for the remaining 2,500 switches that will come from the Mainland. ABB agrees to collect all 5,000 switches in three days' time. Two days later the 2,500 switches arrive from the Mainland and Chan places them to one side in his warehouse along with the other 2,500 he already has in stock. All the switches are packed in boxes. Chan posts a notice on a wall beside the boxes saying '*ABB to collect tomorrow*'. However that night a fire breaks out at Chan's warehouse and all the switches are destroyed.

Advise ABB who wishes to know whether it has to pay for the switches. (40 marks)

- (d) Anne is the owner of a valuable antique diamond necklace. Beth is an antique dealer. Beth thinks she can find a buyer for the necklace and enters into an agreement with Anne to purchase the necklace on a sale or return basis. Beth's friend Carol likes the necklace and Beth agrees to allow her to wear the necklace at a party Carol is going to attend. On the way back from the party a thief steals the necklace from Carol and to date it has not been traced.

Advise Anne who is demanding that Beth pays her the price of the necklace. (10 marks)

PCLL CONVERSION EXAMINATION JANUARY 2025

Title of Paper : Commercial Law – Part B
Date : 6 January 2025
Time : 2:30 p.m. – 2:40 p.m. (Reading Time)
2:40 p.m. – 3:40 p.m.

Instructions

9. This is an open book examination.
10. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
11. Start the answer to each question or sub-question on a separate page of the answer book.
12. Write your answers only in the answer books provided.
13. This is a one-hour examination.
14. 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.
15. 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 mark if they answer more than one question.
16. The passing mark for this paper is 50 marks.

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PCLL Conversion Examination January 2025

Commercial Law

Part B: Personal Property

Question 1 (100 marks) (Answer all parts)

Home Sweet Home Limited (the “Company”) is a furniture store that was set up in 2015 by two siblings, Hansel and Gretel, who are also its directors. During the first year of its operation, the Company was not able to borrow from commercial banks given its limited operating history, so it obtained from Hansel a HK\$2 million unsecured on-demand shareholder loan as working capital.

The Company proved to be quite popular among middle class families, and it opened two additional locations near major estates along the MTR lines. To finance the expansion of its business, the Company obtained from Panda Bank a HK\$6 million loan secured by a floating charge over all the Company’s assets and undertaking. The Panda Bank debenture was executed on 31 December 2018, but Adrian, the lawyer working on the Panda Bank loan documents went on an extended leave of absence right after the execution of the debenture and forgot to register the charge.

In addition, the Company acquired a competitor furniture store for HK\$13 million. The purchase was partially financed by a HK\$5 million loan from Eagle Bank, secured by a floating charge over the Company’s book debts. The debenture was executed on 16 January 2019 and was registered with the Companies Registry on 25 January 2019.

Upon his return from leave on 1 February 2019, Adrian realized that he did not register the Panda Bank charge.

Question 1(a)

Discuss the registration requirement and the consequences of non-compliance. What is the likely result if Adrian applies for an extension? Explain. (30 marks)

Question 1(b)

For the purposes of Question 1(b), assume instead that Adrian registered the Panda Bank charge on 29 January 2019.

The Company’s business began to go downhill in 2020 because of the COVID-19 pandemic. To ease its escalating cash flow problem, Gretel lent HK\$1 million to the Company on 30 October 2020 and was granted a floating charge over the Company’s assets and undertaking on the same day. Feeling deprived over Gretel having security over her loan to the Company, Hansel requested security for his 2015 loan to the Company. As a result, the Company granted Hansel a floating charge over the Company’s assets and undertaking as well on 24 November 2020. Both charges were duly registered.

The business of the Company further deteriorated in 2021 and it failed to pay its suppliers and the banks. On 10 December 2021, a supplier of the Company filed a petition to the court to wind up the Company. A winding up order was issued by the court on 14 February 2022.

Advise Panda Bank, Eagle Bank, Hansel, and Gretel on their rights and priority with respect to the Company's assets upon liquidation. (70 marks)

Question 2 (100 marks) (Answer all parts)

Amanda and Sonia were roommates in university and have remained good friends even after Sonia dropped out after the first year. She called Amanda last month to announce that her boyfriend, Chris, just proposed to her, and they are planning a destination wedding in Bali in February. She also told Amanda about her new business venture of buying goods from Taobao and selling them on Amazon. "You won't believe how easy it is to make money just by shopping all day!" she said, "Things are going phenomenally well on all fronts; I just need a little cash flow help to pay for the wedding and the new business. Can you lend me HK\$300,000 for a few months dear?"

Hearing the hesitancy in Amanda's voice, she offered to give Amanda as security for the loan any one of the following:

1. Her 2.8 carat diamond engagement ring with a receipt from De Beers of HK\$260,000.
2. A personal cheque posted-dated 13 June 2025 payable to Amanda in the amount of HK\$300,000 signed by Sonia, with two parallel lines "/" across the front.
3. A document signed by Sonia assigning to Amanda HK\$300,000 of the HK\$500,000 debt Sonia's brother owes her.
4. Share certificates for 80,000 shares in Alpha Limited, a listed company in Hong Kong, with duly signed blank share transfer documents. At the close of trading yesterday, the shares were worth HK\$302,050.

Question 2(a)

Never able to say no to a friend, Amanda agreed to lend HK\$300,000 to Sonia. Which of the above should she choose? Discuss the nature and merits of each of the proposed items as security for Amanda's loan to Sonia. (80 marks)

Question 2(b)

Assume for the purposes of Question 2(b) that Sonia only offered Amanda the diamond engagement ring as described in 1. above as security for the loan and Amanda accepted it. Amanda put the diamond ring in a shoe box that she uses as a jewelry box where she puts her necklaces, earrings, and other jewelry. The shoe box is placed on top of a chest of drawers in Amanda's bedroom.

This morning when Amanda opened the shoe box, she was shocked that the diamond ring was missing. Upon probing, Amanda's sister confessed that she took it last night to wear it to her graduation ball. As the ring was a bit big for her fingers, it must have fallen off somewhere and she could not find it.

Sonia was furious about the loss of the diamond engagement ring, and so was her fiancé. In fact, Chris blamed Sonia for losing the ring and called off the wedding and broke up with her. Sonia is now holding Amanda responsible for the cost of the wedding of over HK\$500,000 in addition to the cost of the ring.

Discuss the rights and remedies of Sonia against Amanda.

(20 marks)

~ End of Examination Paper ~

PCLL CONVERSION EXAMINATION JANUARY 2025

Title of Paper : Commercial Law – Part C
Date : 6 January 2025
Time : 4:00 p.m. – 4:10 p.m. (Reading Time)
4:10 p.m. – 5:10 p.m.

Instructions

17. This is an open book examination.
18. 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 January 2025
Commercial Law

Part C: Consumer Credit and Protection

Question 1 (100 marks) (Answer all parts)

- (a) Jenny graduated from the university two years ago, but she had not been able to find a job since graduation. While Jenny was desperate to make some money, she fell for a scam on social media recently and lost all her savings. Jenny wanted to take out a loan to finance her daily expenses before she finds a job and only ABC Financial Ltd (“ABC”) was willing to grant her a loan of HK\$200,000 (the “ABC Loan”) on the condition that Jenny’s mother Mrs Kwok would provide a personal guarantee for the loan. Jenny asked her mother for help and said to Mrs Kwok *“If you don’t help me mom, there is no point for me to live in this world anymore.”* Shocked at what Jenny said, Mrs Kwok was very worried and immediately told Jenny *“You are my everything darling, don’t be silly, I would do anything for you.”* Mrs Kwok went to ABC’s office the next day to meet with their finance manager and signed the guarantee agreement for the ABC Loan.

Jenny’s father passed away a few years ago and left a flat for Mrs Kwok where she and Jenny are currently living in. Mrs Kwok is worried that their residential home might be affected by giving this personal guarantee if Jenny cannot repay under the ABC Loan.

Advise Mrs Kwok. If there is any further information you would need in order to advise Mrs Kwok, please state what that information is and how it would affect your advice. (40 marks)

- (b) Assume for the purpose of Question 1(b) that the ABC Loan was granted by ABC to Jenny on 5 November 2023 and a personal guarantee was given by Mrs Kwok for the ABC Loan on the same day. Jenny continued to be unemployed and was under considerable pressure to make interest payments under the ABC Loan. So Jenny took out another loan of HK\$80,000 from her friend Lily on 5 April 2024 to alleviate her financial difficulties. However, she defaulted on repayment of this loan and Lily filed a bankruptcy petition against Jenny on 29 November 2024 and a bankruptcy order was made on 27 December 2024.

What actions (if any) can the trustee in bankruptcy take in light of the following facts?

- (i) Jenny bought a pearl necklace which is worth HK\$20,000 for her mother’s birthday on 3 May 2022.
- (ii) Jenny defaulted on an interest payment due in May 2024 under the ABC Loan, and ABC threatened to enforce the guarantee against Mrs Kwok if Jenny did not settle the interest payment within a week. To avoid affecting her mother in any way, Jenny paid the overdue interest in the amount of HK\$24,000 to ABC on 6 June 2024.

(60 marks)

Question 2 (100 marks) (Answer all parts)

- (a) Claire saw a secondhand seven-seater car for sale in an online advertisement last month. She made some enquiries online and then met with the seller, Jacky and had a test-drive of the car. Claire really liked the car and the test drive had also gone well. She asked Jacky if the car had been involved in any major accident or collision in the past and Jacky said “*No, it has never been involved in any accident and I have taken the car to the authorized dealer for an annual checkup every year since I bought it.*”

Claire thought it was a good bargain as the car also seemed to be very well maintained. Claire then searched online and found a garage called “Gin’s Motors” which advertised that it was an expert in inspecting secondhand cars. Claire paid Gin’s Motors HK\$2,000 to inspect Jacky’s car. A clause in the contract with Gin’s Motors stated “*Under no circumstances is Gin’s Motors liable for any loss or damage sustained by a customer.*” After inspection, Gin’s Motors said “*It is all good, the car has not been involved in any major collision or damage before, the engine and other parts all work well, you can go ahead and complete the purchase.*” Claire then entered into an agreement to purchase the car from Jacky and paid him the agreed price.

Last week when Claire drove the car, a sliding door suddenly malfunctioned and would not close. Claire took it to a car repair shop and was told that the car’s door had previously been repaired as it still had a slight dent which “*any competent garage should have noticed*”. The car repair shop owner said that the car must have been involved in a major collision in the past.

Advise Claire if she has any remedy against Jacky. (50 marks)

- (b) **Advise Claire if she has any remedy against Gin’s Motors. (50 marks)**

~ End of Examination Paper ~