



PCLL Conversion Notes
Quick, easy and effective notes for PCLL Conversion Examinations!

Hong Kong Commercial Law Notes

2018
1st Edition



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1. INTRODUCTION

A. HOW TO USE CONVERSION NOTES

The Hong Kong Commercial Law Notes are formatted into a step-by-step guide, which you can use as a checklist in your exams to ensure that every element of the exam question is answered. You may find the Table of Contents to be a quick and useful overview of the law to be applied.

You should also answer the exam question using the ILAC method, which will ensure your answer is comprehensive.

- | | |
|-------------------|--|
| Issue | State the legal issue relevant to the problem |
| Law | Identify the relevant case law and legislation |
| Analysis | Analyse and apply the law to the legal issue. This is the most important part, so ensure your legal analysis is very thorough. |
| Conclusion | Form a conclusion based on your analysis and application of the law, giving some practical advice to the hypothetical client. |

It is very important to spend time perfecting your analysis section, as this is the part that examiners are most interested in. Do not worry if you reach the correct conclusion (there often isn't one clear answer) – examiners will give more weight to your legal analysis, and sometimes may even reward answers that propose an innovative and unconventional answer!

2. PART A: SALE AND ACQUISITION OF GOODS

A. TRANSFER OF TITLE

i. NEMO DAT - "TRANSFEEE CAN NEVER GET A BETTER TITLE THAN THAT OF THE TRANSFEROR"

- S23(1): where goods are sold by a person who is not the owner (or with consent/authority of owner), the buyer acquires no better title to the goods than the seller had, unless the owner is by his conduct precluded from denying the seller's authority to sell. (i.e. representation by the owner that the purchaser is dealing with ostensible owner OR an ostensible agent.)

ii. EXCEPTIONS TO NEMO DAT

- **Estoppel:** a representation to the buyer that the seller is the owner's agent to sell the goods or a similar rep that the seller is the owner of the goods.
 - E.g Apparent authority/ Ostensible authority= the authority of an agent as it appears to others, regardless of any limit to the agent's actual authority agreed to between principal and agent: *Metal Manufacturers v Lewis*
 - Apparent authority operates by way of estoppel; any person giving the impression that an agent has authority is estopped from denying that the agent had authority: *Roma Corp v Proved Tin*
 - SITUATION
 - (1) Owner putting the agent



- in possession of prop with consent
 - In actual possession at the time of transaction
 - (2) representation that AGENT is the owner and HAD authority to sell (e.g. *Lloyds & Scottish Finance v Williamson*: Lloyds did what they could to induce any person buying the car from Peerless to believe that Peerless was the owner by the authorizing Peerless to sell it as owner) AND ALSO expressly authorized the agent to sell (although later cancelled) (whether sold in the ordinary course of business is irrelevant)
 - Result: s23(1) applies → the owner is by his conduct precluded from denying the seller's authority to sell
- **Sale by mercantile agent** under S3 Factors Ordinance (FO)
 - S23(2) SOGO → Nothing in SOGO shall affect the provisions of the FO.
 - S2 FO: mercantile agent means a mercantile agent having, in the customary course of his business as such agent, authority to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.
 - Requirements for this exception to apply:
 - Transaction initiated by a mercantile agent
 - MA must be in actual possession of the goods OR the document of title to the goods at the time of transaction
 - MA must obtain possession with consent of owner
 - MA must receive goods in capacity as MA
 - Sale must take place in ordinary course of business
 - Buyer must take goods in good faith and without notice that the sale was made without the owner's authority
 - SITUATION:
 - (1) Owner putting the agent
 - In possession of prop with consent
 - In actual possession at the time of transaction
 - (2) sale took place in the ordinary course of business
 - (3) representation that AGENT is the owner and HAD authority to sell BUT NEVER actually expressly authorized the SALE (e.g. armed the seller with documents: *Eastern Distributors v Goldring*)
 - Result: Factors Ordinance 3(1) applies → sale by mercantile agent is as valid as if expressly authorized by owner AND purchaser acted in good faith! → exception under s23(2) → the owner is by his conduct precluded from denying the seller's authority to sell. So even if the owner sold it subsequently to a 3rd party → 3rd party had NO title.

iii. LEGAL AND EQUITABLE INTEREST

- Finders has a right of possession against all but the rightful owner: *Armory v Delamirie*
- *Parker v British Airways* (finding bracelet in lounge)
 - Finder of a chattel acquires no right unless it has been abandoned or lost and he takes it into his care and control
 - Abandonment= intentional giving up or relinquishment of title manifested in some appropriate outward form of conduct.
 - Finder has an obligation to take measures that are reasonable to acquaint the true owner.
 - Occupier of **land** has rights superior to a finder over chattels in or **attached to the land** (or attached to a building)



- Occupier of **building** has rights superior to a finder over chattels **upon or in** (but not attached) if before the chattel is found, he has manifested an intention to exercise control over the building and things which may be in or upon it.
- *Waverley v Fletcher (metal detector in park case)*
 - Occupier of land- chattels unattached to land, must exercise control.
 - **Only an anticipated user of the facility can claim for the goods found.**
 - What permission was given by the occupier to the finder to be on the land? Were they doing something permitted by the occupier? If they were, then they get to keep the goods.
- *Tamworth*
 - Analyse from perspective of spectrum or continuum- occupier's premises that are locked, and public park.
 - However, here, the occupier let others on the property all the time so no control.
- **Other equitable interests**
 - The right of a buyer prior to completion
 - A fixed or a floating charge over chattels or chose in action
 - The interest under an equitable assignment of a chose in action
 - A failed attempt to create legal title
- **Legal assignments: s9 LARCO-** *Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided that if the debtor, trustee or other person liable in respect of such debt or chose in action has had notice that such assignment is disputed by the assignor or any one claiming under him or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled to call upon the several person making claim thereto to interplead concerning the same, or he may pay the same into the court under and in conformity with the provisions of any Ordinance relating to trustees.*
 - **Legal assignments** therefore require assignment of the whole (absolute); assignment to be in writing, and notice must be given in writing to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim debt or chose in action.
 - Assignments falling short of the statutory meaning are 'equitable'.
- **Equitable assignment:**
 - An assignment in equity can rise in the following situations:
 - a) property is legal property and either:
 - i) it is not capable of assignment at law; or
 - ii) there has been a failed attempt to assign the property at law;



We hope you have enjoyed this short preview of the Hong Kong Commercial Law Notes. Don't forget to check out the Study Tips we have on our website at <http://www.pcllconversion.com>!