



PCLL Conversion Notes

Quick, easy and effective notes for PCLL Conversion Examinations!

Hong Kong Commercial Law Notes & Model Exams

1st Edition
For use with
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TABLE OF CONTENTS

1. INTRODUCTION.....	4
A. How to use Conversion Notes	4
B. Abbreviations	4
2. PART A: SALE AND ACQUISITION OF GOODS	5
A. Transfer of Title.....	5
i. Nemo dat - “transferee can never get a better title than that of the transferor”	5
ii. Exceptions to nemo dat.....	5
iii. Legal and Equitable Interest.....	5
B. Sale of Goods	7
i. Application of SOGO	7
ii. Whether contract of sale of goods.....	8
iii. Duties of Sellers and Buyers, Express and Implied Terms.....	8
1) Duties of Seller	8
2) Duties of the Buyer.....	9
iv. Implied Terms.....	11
1) Implied undertaking as to title.....	11
2) Sale by Description and Sample (private sale as well as business)	11
3) Implied undertaking as to quality or fitness for purpose (business seller)	11
4) Implied condition that goods are fit for particular purpose (business seller).....	12
5) Sale by Sample	13
6) Exclusion of Implied Terms.....	13
v. Passing of Property	13
vi. Applicable nemo dat exceptions	14
vii. Remedies.....	15
1) Seller: Unpaid seller (any part of price unpaid S40(1)) against the goods:.....	15
2) Seller: Personal remedies	16
3) Remedies of the Buyer.....	17
4) Deposits	18
C. Non-sale Acquisitions: nemo dat and Gifts	19
i. Applicable nemo dat exceptions	19
ii. Gifts - Conditions Gifts - Gifts of Future Property	19
3. PART B: PERSONAL PROPERTY	20
A. Personal Property and Interests in Personal Property	20
i. Types of Personal Property	20
1) Chose in Possession	20
2) Chose in Action.....	20
ii. Ownership (especially mere equities)	20
1) Legal Ownership.....	20
2) Equitable Ownership.....	20
3) Co-ownership.....	20
4) Equity (or mere equity)	20
iii. Possession.....	21
1) Finders’ possessory interests.....	21
2) Occupier’s rights.....	21
iv. Bailment.....	21
1) Possession by bailee	21
2) Bailee must have consented to the possession of the chattel	21
3) Bailor must have superior interest in the chattel.....	21
v. Bailee’s duty.....	22
vi. Rights of bailee against 3 rd parties.....	22
vii. Legal and Equitable Assignment.....	22
B. Credit and Security.....	22
i. Types of Security	22



ii.	Pledges.....	22
	1) Possession.....	22
iii.	Liens	23
	1) Possession.....	23
iv.	Mortgages (other than of land).....	23
v.	Bills of Sale - Fixed and Floating Charges	23
	1) Fixed charge	23
	2) Floating Charge.....	23
vi.	Registration of charges under <i>Companies Ordinance</i>	23
	1) Priority Date of Registration	23
	2) Effect of Registration	24
	3) Consequence of Non-Registration.....	24
	4) Charge over land.....	24
vii.	Crystallisation and events triggering crystallisation.....	24
viii.	Priority of charges.....	24
ix.	Invalidation of floating charge.....	24
	1) A floating charge is valid under s267 if:.....	25
	2) A floating charge is invalid under s267 if:.....	25
x.	Retention of Title (ROT) / <i>Romalpa</i> Clauses.....	25
	1) <i>Romalpa's</i> Case	25
	2) "All monies" ROT clauses	25
	3) Extinguishing title.....	25
xi.	Set-off.....	25
xii.	Assignments of Choses in Action: Statutory, Legal and Equitable.....	25
	1) Equitable assignment.....	26
	2) Requirements for a Valid Equitable assignment.....	26
	3) Statutory/ legal assignment.....	26
xiii.	Assignments- Rules of Priority.....	26
xiv.	Negotiable Instruments: Bills of Exchange	26
	1) What are Bills of Exchange?.....	26
	2) Examples of bills of exchange	26
	3) Bills of Exchange Ordinance.....	27

4. PART C: CONSUMER CREDIT AND PROTECTION.....27

A.	Regulatory Framework.....	27
	i. Money Lenders Ordinance and Pawnbrokers Ordinance	27
	ii. Function and Power of Consumer Council, Funds for Litigation and Group Litigation Consumer Council	28
	1) Main Duties.....	28
B.	Consumer Credit.....	31
	i. Law of Guarantees	31
	1) The legal nature of a guarantee	31
	2) Guarantee and indemnity distinguished.....	31
	3) Types of guarantees.....	32
	4) The contract of guarantee	32
	5) Relations between creditor and surety (guarantor).....	32
	6) Relations between surety and principal debtor - rights against principal debtor	33
	7) Relations between co-sureties- rights against co-guarantors	34
	8) Discharge of guarantor's liability	34
C.	Consumer Protection.....	34
	i. Unconscionable Contracts Ordinance (UCO).....	34
	1) Matters to be considered by the court in assessing unconscionability.....	34
	2) Relief where contract unconscionable.....	35
	3) Cases.....	35
	ii. Control of Exemption Clauses Ordinance (CECO).....	37
	iii. Supply of Services (Implied Terms) Ordinance (SSO).....	40
	iv. Money Lenders Ordinance (MLO) - <i>Consumer transactions only!</i>	42



1)	Schedule 1 Part 1 - Exempted Persons.....	45
2)	Schedule 1 Part 2 Exempted Loans.....	46
v.	Protection of vulnerable consumers: Misrepresentation, Undue Influence, Duress.....	46
1)	Duress.....	46
2)	Undue Influence.....	47
3)	Misrepresentation.....	47
4)	Remedies.....	48
vi.	Doctrine of relation back and fraudulent preference.....	49
1)	Bankruptcy Ordinance (BO) - Personal insolvency.....	49
2)	Unfair Preferences.....	50

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!

B. ABBREVIATIONS

The Hong Kong Commercial Law Notes will refer frequently to the following using abbreviations.

Full Term	Abbreviation
Sale of Goods Ordinance	SOGO
Factors Ordinance	FO
Mercantile agent	MA
Law Amendment and Reform (Consolidation) Ordinance	LARCO
Control of Exemption Clauses Ordinance	CECO
Money Lenders Ordinance	MLO
Unconscionable Contracts Ordinance	UCO
Pawnbrokers Ordinance	PO
Supply of Services (Implied Terms) Ordinance	SSO
Misrepresentation Ordinance	MO
Bankruptcy Ordinance	BO
Companies Ordinance (Cap. 622)	CO
Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)	CO (Cap 32)



2. PART A: SALE AND ACQUISITION OF GOODS

A. TRANSFER OF TITLE

i. NEMO DAT - "TRANSFEREE 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 property with consent
 - In actual possession at the time of transaction
 - 2. Representation that the 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: s 23(1) applies → the owner is by his conduct precluded from denying the seller's authority to sell
- **Sale by mercantile agent** under s.3 Factors Ordinance (FO)
 - Section 23(2) SOGO → Nothing in SOGO shall affect the provisions of the FO.
 - Section 2 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)
 - 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 property with consent
 - In actual possession at the time of transaction
 - 2. sale took place in the ordinary course of business
 - 3. representation that the 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 have a right of possession against all but the rightful owner: *Armory v Delamirie*
- *Parker v British Airways*



- 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*
 - 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 which do not meet the above requirement will only take effect as 'equitable' assignments.
- **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;
 - b) property is future property (legal or equitable)
 - c) consideration has passed (legal or equitable property)
 - d) property is equitable property
 - Equity requires an intention to assign (which depends on the facts of each individual case) and either a perfect gift (that is an out-and-out transfer) or consideration for the promise to transfer. In the case of a thing in possession, a perfect gift passes title without any need for consideration.
 - In order to effect an assignment of an equitable interest, no particular form of words is necessary so long as the intention to assign is made clear. All that is necessary is that the debtor should be given to understand that the debt has been made over by the creditor to some third person. But no document can effect an assignment of an equitable interest unless it results in a vesting of the interest in the assignee, so that after notice of it is given to the trustee, the latter becomes a trustee of the interest for the assignee: *William Brandt's Sons v Dunlop*
 - **Future Property** - Future property is only assignable in equity and only if there has been valuable consideration for the assignment: *Norman v FCT*



- What emerges from **Tailby v Official Receiver (1888)** is that where:
 - “A” for valuable consideration agrees to assign, or purports presently to assign, an expectancy, or future property, to “B”, and;
 - the consideration has been paid, or executed, and;
 - A acquires property which falls within the description of that which he agreed, or purported presently, to assign, then in equity that property vests in B as soon as it is acquired by A and can be identified, without any further assurance by A and without any action by B.
- Unless expressly agreed by the parties, the courts have resisted attempts to introduce the concept of equitable ownership into the **sale of goods**. An agreement for the sale of goods does not of itself vest equitable ownership in the buyer: he either acquires a legal title or acquires nothing beyond a mere contractual right: *R Good*.
- In *Re Wait*, P bought from S 500 tons of wheat out of 1000 tons on board a ship. P paid S but S went bankrupt before the 500 tons purchased by P had been appropriated from the bulk. S’s trustee claimed the whole 1000 tons as assets in the bankruptcy on the ground that no property in the 500 tons had passed to P (passing of property in unascertained goods only when ascertained). On the other hand, P claimed that there had been an equitable assignment which gave him a pro rata equitable interest in the bulk. A majority of the court decided against P. In an important obiter, Atkin LJ stated that there could be **no place for equitable interests in goods within the confines of an ordinary contract of sale**, because the **SOGO** contains a **complete code** of law in respect of contracts for the sale of goods.
 - Although Atkin LJ’s view was not wholly shared by the other majority member of the court, it has, nevertheless, been applied by Oliver J in *Re London Wine* and has been endorsed in *Leigh & Sullivan v Aliakmon*.

B. SALE OF GOODS

i. APPLICATION OF SOGO

- S.62(2): **common law rules apply** except in so far as they are inconsistent with SOGO.
- S.3: SOGO applies only to **contracts for the sale of goods** whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. (May be partly in money)
 - S.2: A contract of sale includes an **agreement to sell** and a **sale**.
 - S.10: The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties. If price not determined, a reasonable price must be paid.
 - S.11: Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided: Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer, he must pay a reasonable price.
 - S.11(2): Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.
- S.2: “**goods**” includes all chattels personal (not chattels real) other than things in action (intangibles) and money (but coin as collector’s item is ‘goods’ *Moss v Hancock*). The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.



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