

THE UNIVERSITY OF HONG KONG
FACULTY OF LAW

Course code and title : JDOC1002 Law of Contract II
Session : 2023–2024, Semester 2
Date of examination : 9 May 2024
Time of examination : 2:30pm – 5:30pm

This paper has 5 (five) pages (including this page).

Instructions to candidates:

This paper contains 3 (three) questions in total.

Answer ALL 3 (three) questions.

Each question is of equal value.

Materials, aids and instruments permitted to be used in this examination:

This is a computer-based examination.

Candidates are permitted to refer to any printed/handwritten materials in the examination.

Internet searching and crowdsourcing from group messages, online forums or social media, etc. are strictly forbidden.

Question 1

Timothy Green (“**Green**”) is an English football star, popular around the world, including in Hong Kong.

In February, it was announced that the English national football team will be coming to Hong Kong to play a one-off friendly international match against the Hong Kong football team on 1 May. Promoters Inc (“**Promoters**”) is the party responsible for organising and promotion of the match. Promoters is also the party selling tickets to spectators to see the match.

Promoters engaged in a large publicity campaign in Hong Kong to advertise the match. Billboards and other advertisements publicised in Hong Kong heavily promoted Green as the drawcard for the match. All the advertisements and promotional material for the match contained the following text:

“See Timothy Green and the English team showcase their magic against Hong Kong on 1 May. This is a once in a lifetime opportunity to see Green in action in Hong Kong. Get your tickets now!”

Tickets for the match sold out very quickly because of the publicity campaign promoting Green’s participation in the match. If Green was not playing, it is unlikely that the match would be sold out.

Tong was one of the lucky persons who was able to purchase tickets from Promoters to see the match. Tong is a fan of the English football team and his favourite player is Green. Accordingly he was every eager to see Green and England play in Hong Kong.

On 25 April, the team lists were announced for the match. Green was not named in the team list for England. Promoters confirmed that Green was not playing due to an injury.

Tong was furious after hearing this news. He heard rumours that Promoters was already aware of Green’s injury condition in February but had hidden the news until a few days before the match. Tong became so angry that he no longer wished to see the match. On 26 April, he contacted Promoters for a refund of the ticket. Promoters refused to give any refund.

Tong seeks your advice on whether there is any lawful ground to return his ticket and obtain a full refund. Advise Tong.

Question 2

Casey is a Cantopop singer and songwriter in Hong Kong. She started her career in 2022 when she was 18 years old and freshly out of High School. As an unknown artist at that time, she was extremely happy when Marco, an experienced and highly sought-after artist manager in the Hong Kong and Asian music industry, agreed to be Casey's manager and agent.

The agency/management agreement between Casey and Marco was a 30-page written document setting out the terms of their 5-year contract. Marco outlined to Casey some of the main terms of the contract (including period of the contract, services Marco would provide, and Marco's remuneration as manager and agent, calculated on the basis of both a base fee payable monthly and a percentage of Casey's gross earnings as a singer and artist). Marco told Casey that the other terms in the contract are just standard terms which he includes in all the contracts with his artists and all Casey needs to do is to sign the document. Without reading the contract, Casey signed immediately.

Casey's career took off very quickly and, within a year, she became the most popular Cantopop artist in Hong Kong and South-East Asia. Casey, however, came to discover that, despite her high music sales and success in the music industry, she was not earning much money at all. She aired her concerns to an acquaintance in the music industry, who then had a look at Casey's contract with Marco. It was only then (in January 2023) that Casey realised that under the contract, all copyright in Casey's songs written during the period of the contract vested in Marco and that Marco's percentage cut of the earnings of Casey was double the amount of what is standard in the industry. The acquaintance did tell Casey though, that it is widely known in the industry that Marco does impose such terms in his agency/management contracts.

Casey was very unhappy about the situation. For the remainder of 2023, Casey did not write any more new songs and she declined most of the concert performance and publicity opportunities which Marco procured for her. She did record a few songs written by others, but her recording and performance output in 2023 was considerably less than that in 2022 and also considerably less than the usual output of other active Cantopop artists in the industry.

In December 2023, Marco confronted Casey about her lack of dedication. Casey replied that this level of work is all that she will be doing for the remainder of the term of the 5-year contract.

In January 2024, Marco's lawyers served a letter on Casey, (i) claiming that Casey has repudiated the contract with Marco, and (ii) giving notice of Marco's intention to initiate legal proceedings against Casey seeking \$100 million in damages and also an order for specific performance requiring Casey to, inter alia, write, record and release new songs and to take up the performance and publicity opportunities which Marco procures for her.

Casey now seeks your advice on the above matters. Advise Casey.

Question 3

Electronics Co Ltd (“**ECL**”) is a Hong Kong manufacturer of electronics “smart devices” for home and business use. ECL manufactures its smart devices for international electronics companies. ECL has a number of long-term contracts with such companies, ranging from two to five year terms, guaranteeing a minimum level of supplies to the various purchasers.

ECL’s smart devices all utilise high end “next generation” computer chips produced by Chips Inc (“**Chips**”). Chips held a dominant market position in the sale of the next generation chips and was the sole supplier of such chips to Hong Kong companies from 2018 to 2023.

On 1 January 2021, ECL and Chips entered into a 2-year contract (“**the First Supply Contract**”) for Chips to supply next generation computer chips to ECL. The end date of the contract was 31 December 2022. In October 2022, ECL and Chips began negotiations for the purpose of renewal of the supply contract for another 2-year term.

During the negotiations, Chips claimed that ECL owed \$1 million under the First Supply Contract which had not yet been paid. ECL disputed its liability for those amounts, pointing to inaccuracies in invoices issued by Chips. Chips, however, stood by its claims, but was willing to reduce the amount payable to \$800,000 “as a token of goodwill”. ECL was under financial pressure and did not wish to pay any of that amount at all. Chips then stated to ECL that, unless ECL paid the \$800,000, then Chips will not agree to the renewal of the supply contract.

As ECL had contractual commitments to supply smart devices to its own international customers, ECL reluctantly agreed to pay the \$800,000 to Chips. The payment was made in December 2022.

ECL and Chips then signed a renewal of the supply contract, with the new contract (“**the Second Supply Contract**”) taking effect from 1 January 2023 for a fixed period of two years.

In March 2023, Chips contacted ECL, requesting ECL to pay \$200,000 which Chips said was still due under the First Supply Contract. When ECL sought clarification on what this amount was for, Chips replied that it was for the balance of the \$1 million discussed the previous year. Chips said that, on further reflection, no discount should be given to ECL and hence ECL should pay that balance. Chips did not indicate any negative consequences for ECL if ECL declines to pay. However, ECL agreed to make the payment (and did so in March), believing that this was necessary to ensure preservation of the commercial relationship between the parties.

In April 2023, Chips requested that ECL agree to an increase of 10% of the contract price under the Second Supply Contract. Chips explained that economic conditions have led to an increase in their costs and that accordingly the increase in price was necessary. Chips

said to ECL that if ECL refused to agree to the increase, then Chips will immediately terminate the Second Supply Contract.

The Second Supply Contract did not contain any term permitting early termination by either party. However, as ECL was anxious to ensure that it could still receive supplies of next generation chips from Chips, ECL agreed to the increase of 10% of the contract price for the Second Supply Contract.

In January 2024, SuperTech Ltd, an emerging technology company, came onto the market with its own next generation chips which were superior to those of Chips.

As a result of such market developments, ECL is re-assessing its position with Chips.

ECL seeks your advice on the following: whether it is entitled to recover the amounts of \$800,000 and \$200,000 paid to Chips respectively in December 2022 and March 2023, and whether ECL is bound by the agreement in April 2023 to pay the 10% increased contract price under the Second Supply Contract.

Advise ECL. In your answer, you may assume that, contrary to the claims of Chips, the \$1 million was not actually owed by ECL to Chips under the First Supply Contract, but Chips had made the claim in a genuine belief that the amount was owed by ECL.

END OF PAPER