

PCLL Conversion Examination
June 2010
Examiner's Comments
Hong Kong Land Law

The candidates' performance in respect of question 1 was very mixed. Some candidates were well versed in Hong Kong law; others well versed only in English law; and some alas in neither. In fact knowledge of three important Court of Final Appeal decisions were tested in the question.

Part (a) was very straightforward but many candidates were not aware of the relevant time periods.

To answer part (b) satisfactorily candidates should first have identified the ingredients of adverse possession and identified the time period involved - in this case 20 years.

The facts should then be considered. There is a clear difference between fencing and growing vegetables which was missed by many.

Leasing the plot to Jim raised the issue of whether Adam continued in possession. The case of *Cheung Yat Fuk v Tang Tak Hong* [2004] 2 HKLRD 86, CFA, should have been mentioned.

An issue missed by many was whether the possession was adverse to the expressed future intention of the paper title owner; see *Williams Bros Direct Supply Ltd v Raftery* [1958] 1 QB 159.

Adam was willing to pay rent. The CFA held in *Wong Tak Yue v Kung Kwok Wai* (1997-8) 1 HKCFAR 55, CFA, that, unlike the position in England, this prevented a squatter obtaining a possessory title.

The final point on the New territories Leases (Extension) Ordinance required candidates to consider and apply *Chan Tin Shi v Li Tin Sung* [2006] 1 HKLRD 185, CFA.

Some candidates lost marks because they failed to reach any conclusion.

Question 2 is about the nature of ownership of a flat in a multi-storey building and the passing of the benefit and burden of covenants. The question had four parts. Most students could deal with parts (a) to (c) but part (d) was generally badly done. In general candidates must understand the impact of s 41 CPO on the passing of the benefit and burden of covenants.

- (a) Most candidates understood that the owners of flats in a multi-storey building are tenants in common owning undivided shares in the land and the building. Candidates should also have explained that, as tenants in common, flat owners enjoy unity of possession and thus have access to all parts of the building. However, each flat owner has the right to the exclusive use of a flat and is therefore able to exclude all other tenants in common. Candidates should also

have mentioned the importance of owning undivided shares in the land and the building.

- (b) This question requires an explanation of the rules in the Conveyancing and Property Ordinance Cap. 219 (CPO) for the passing of the burden of covenants to Barbara who is not a party to the Deed of Mutual Covenant. Candidates should refer to s 41(3), s 41(2) (a) and (b) and s 39 CPO and should apply case law to decide whether the two covenants relate to land.
- (c) This question requires an explanation of whether the burden of covenants passes to tenants who derive title from a covenantor or a successor in title to a covenantor. In addition candidates should explain whether each of the two covenants is positive or negative. Covenant 1 is positive in nature (it requires expenditure) while covenant 2 is negative. Candidates should also consider whether covenant 2 has been breached.
- (d) This question requires an explanation of the rules in the CPO for the passing of the benefit of covenants. Put another way, can Cecil enforce the covenants? This is a difficult question but as with question (b), students should explain s 41(3), s 41(2) (b) and (c) (noting that the wording in s 41(2) (c) is 'expressed and intended') and s 39 CPO. In view of the wording of s 41(2)(c) CPO candidates should also refer to the legal and equitable rules regarding the passing of the benefit of covenants. As an owner Cecil owns undivided shares in the land and the building and has land to benefit from the covenants.

Question 3 contains 5 unrelated parts. A number of candidates did not answer parts (c) or (e). This might be because they ran out of time or because they did not understand the questions.

(a) This question requires candidates to determine the validity and priority of a written lease and option to renew. The lease is not registrable under s 3(2) Land Registration Ordinance Cap. 128 (LRO) and its priority is governed by the common law rules. A number of candidates did not understand that the lease is a legal lease (see s 4(2)(d) CPO). The option to renew is in writing and is registrable but unregistered and is therefore void under s 3(2) LRO provided Penny is a bona fide purchaser for value. A number of candidates assumed that Penny is a bona fide purchaser for value without applying the law.

(b) Most candidates correctly applied s 5 LRO to determine the dates of registration of the assignment and charging order. Not all candidates were aware of the case law regarding charging orders obtained against an owner in respect of immovable property which the owner had sold before the charging order was obtained.

(c) (i) This question requires a discussion of the nature of the interest created by the Conditions of Grant and an application of s 14(2) CPO. A number of candidates failed to spot the issue in this question. It is vital that candidates understand what is meant by 'Conditions of Sale' 'Conditions of Grant' or 'Conditions of Exchange'.

(ii) This question requires students to know the effect of s 6 New Territories Leases (Extension) Ordinance Cap. 150 on Government leases of land in the New Territories.

(d) Most candidates knew the law relating to fixtures and fittings. In addition they should refer to the decisions in *Elitestone Ltd v Morris & Anor* [1997] 2 All ER 513

and in *Goldful Way Development Ltd v Wellstable Development Ltd* [1998] 4 HKC 679.

(e) Most candidates knew the purpose and nature of t'so and how the land is managed. A number of candidates did not refer to s 15 New Territories Ordinance Cap. 97.