

PCLL Conversion Examination
June 2011
Examiner's Comments
Hong Kong Land Law

I am pleased to report that the pass rate after first marking is the highest pass rate yet achieved for this examination. I believe that the education support that is now available and the fact that candidates are fully aware that this paper must be taken seriously have contributed to an improved performance. The pass rate should, however, be still higher. The syllabus is short and the questions can readily be anticipated. Too many candidates still never cite Hong Kong authorities for their answers and rely solely on English cases.

Turning to this year's examination, most candidates answered questions 1 and 2, perhaps because they did not wish to answer that part of question 3 which involved an understanding of the Small House Policy.

To be more specific:

Question 1

This was a conventional question on adverse possession and every issue (there were about seven different issues in all) involved in the question had been examined in previous years. It involved issues as to the applicable duration of adverse possession, when adverse possession begins, what constitutes de facto possession, leasing out by squatter and aggregation of time periods by different squatters in succession. *Chan Tin Shi* was also relevant. The only demanding issue was whether the possession must be adverse to the future intentions of the paper title owner, which is a matter still somewhat uncertain in Hong Kong. The question was generally well answered – probably the best of all three questions.

Question 2

This was a question on contract formalities. The first sub-question involved an oral contract supported, perhaps, by two or three memoranda in writing. It required candidates to identify the required contents of a sale and purchase agreement and to explain that two or more written memoranda could be joined together by way of evidence of an oral contract: see s 3(1), CPO. It also involved the issue whether solicitors had implied authority to sign letters (constituting memoranda) on behalf of their clients. Many candidates missed the joinder issue completely and thereby missed the main point of the question.

The second part of the question involved short-term leases and options to renew in short term leases. It asked about the formalities required for their creation and whether subsequent registration was required. Although the answer could largely be found in the Land Registration Ordinance (which could be brought into the examination), there were some very confused answers.

Question 3

As I mentioned earlier, only a few candidates attempted this question. Those who did either failed miserably or did extremely well. Indeed it was a simple question for candidates who had learnt the Small House Policy requiring no more than an enunciation of the relevant rules.

The second part of the question was a simple issue involving ownership of a flat in a multi-storey building and whether (and if so how) the shares in the building could be subdivided.

Finally there was a simple question on restrictive covenants and modification.

Breach of examination rules

I am disappointed to report that four candidates breached the examination rules by bringing into the examination room unauthorized materials in the form of Ordinances other than those expressly permitted to be brought into the examination. All candidates are reminded to study carefully the examination rules, especially with regard to materials which may be brought into the examination venue. Candidates are reminded that a careful check is carried out by invigilators before the commencement of and during the examination. Any breach will be discovered and punished.