

PCLL CONVERSION EXAMINATION JANUARY 2011

Title of Paper : Hong Kong Land Law
Date : 6 January 2011
Time : 2:30 p.m. – 2:45 p.m. (Reading Time)
2:45 p.m. – 4:15 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is **NOT** an open book examination. However, candidates are allowed to bring into the examination a copy of the Conveyancing and Property Ordinance and the Land Registration Ordinance. The Ordinances may not be annotated but can be highlighted. No other materials are allowed.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 4 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2011

Hong Kong Land Law

Question 1 (50 marks)

In December 2010 Loretta Lee ('Loretta') and Tom Tong ('Tom') negotiated the terms on which Loretta would grant Tom a lease of Loretta's Flat 6A Bauhinia Gardens (the 'Flat'). Eventually they agreed to enter into a lease starting on 1 January 2011 for a term of four years at a monthly rent of HK\$15,000.00 payable monthly in advance. They also agreed that the lease would include 3 split level air conditioners currently installed in the Flat. Tom and Loretta did not sign an agreement for lease but Loretta's solicitor prepared the lease and in December 2010 sent it to Tom with the following letter.

Dear Mr. Tong

We act for Loretta Lee who has agreed to let Flat 6A Bauhinia Gardens to you for a term of four years starting on 1 January 2011. We enclose the draft lease. Please execute the lease and return it to us before 1 January 2011.

The lease is very short and contains details of the premises, the parties, term and rent. There is no reference to the air conditioners. The letter was signed by Loretta's solicitor. Tom executed the lease and returned it to Loretta's solicitors but Loretta has refused to sign the lease.

- (a) Can Tom enforce the oral agreement for lease against Loretta? (30 marks)
- (b) (i) Assume that both Tom and Loretta execute the lease under seal. The lease is dated 23 December 2010. Tom does not register the lease in the Land Registry and on 28 December 2010 Loretta mortgages the Flat by way of legal mortgage to the Goodwill Bank Ltd ('Goodwill') to secure a loan of HK\$1 million. Goodwill knew about Tom's lease. Goodwill registers its mortgage on 11 January 2011. Who has priority, Tom or Goodwill? (12 marks)
- (ii) Tom and Sara orally agree that Tom will sublet the Flat to Sara for a term of two years starting on 1 January 2011 at a monthly rent of HK\$18,000. They do not sign a lease but Sara moves in.
Can Sara enforce a lease for a term of two years against Tom? (6 marks)
Is Sara's lease legal or equitable? (2 marks)

Question 2 (50 marks)

Wealthy Ltd developed a 20 storey office building on Inland Lot 123. The block is called 'Wealthy Plaza'. Wealthy Ltd assigned Floor 1 Wealthy Plaza to A and Wealthy Ltd and A entered into a Deed of Mutual Covenant ('DMC'). Wealthy Ltd then sold all other Floors in Wealthy Plaza to individual owners. Each assignment was made 'subject to and with the benefit of the DMC'. B bought Floor 2, C bought Floor 3 and D bought Floor 4.

The DMC contains the following covenants by the owners:

1. that they will pay monthly management charges; and
2. that they will not create a nuisance or annoyance to other occupiers of Wealthy Plaza.

Answer the following questions giving reasons for your answers:

- (a) Explain the nature of ownership of a Floor in Wealthy Plaza under the assignment and the DMC. (8 marks)
- (b) B has mortgaged Floor 2 to M Bank Ltd. Can the above DMC covenants be enforced against M Bank Ltd? (17 marks)
- (c) C granted a lease of Floor 3 to Tom. Can the above DMC covenants be enforced against Tom? (10 marks)
- (d) D wants to divide Floor 4 into two units and sell one unit and retain the other. Explain whether D can do this and if so, the steps he should take. (15 marks)

Question 3 (50 marks)

- (a) Alan owns land in the New Territories which is held from the Hong Kong Government under Conditions of Grant No 789 dated 18 September 1966 for a term of 75 years from 1 July 1898 with a right of renewal for a further term of 24 years less the last three days. Explain whether Alan's interest has expired. (8 marks)
- (b) Bea owns a flat which she holds under Conditions of Sale dated 1 January 1971. Explain whether Bea has a legal or equitable interest in her flat. (10 marks)
- (c) Celia owned a four storey building in Wanchai which was built on a plot of land she held under Conditions of Sale dated 1965. The Conditions of Sale contain a restrictive covenant that the land is to be used for the construction of a building not exceeding four storeys in height. In 1980 Celia sold the land and the four storey building to Great Buildings Ltd which demolished the four storey building and built a 20 storey building on the land. Great Buildings Ltd has recently received a letter from the

Government informing them that the Conditions of Sale have been breached and that the Government intends to re-enter the land. Advise Great Buildings (15 marks)

- (d) Harry and Wilma decided to buy a flat. Eventually they found a flat they liked (the 'Flat'). They each provided one half of the purchase price from their individual savings but the Flat was assigned to Harry alone. The assignment was dated 1 June 2008. After completing their purchase they moved in. In 2009, without informing Wilma, Harry mortgaged the Flat by way of legal mortgage to the ABC Bank Ltd which registered their mortgage in the Land Registry. Before taking the mortgage the ABC Bank sent their valuer to inspect the Flat but Wilma was at work when the valuer called. Earlier this year Harry defaulted on the mortgage repayments and the ABC Bank Ltd wants to take possession of the Flat as it is entitled to do under the mortgage. Wilma refuses to move out. Explain who has priority, Wilma or the ABC Bank Ltd. (17 marks)

~ End of Examination Paper ~