

PCLL CONVERSION EXAMINATION JUNE 2010

Title of Paper : Hong Kong Land Law
Date : 29 June 2010
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 book provided.
4. This is a one and a half-hour examination.
5. This is **NOT** an open book examination. However, candidates are allowed to bring into the examination copies 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 and includes three questions. Candidates are 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 June 2010

Hong Kong Land Law

Question 1 (50 marks)

- (a) What is the period required for a squatter to obtain title by adverse possession against (i) the Government; and (ii) a private landowner? (10 marks)
- (b) A small plot of land (Plot A) in the New Territories had been in the ownership of Idle Development Co Ltd ('Idle'), a land developer, since 1980. It was surrounded by a low wire fence erected by Idle. Plot A had been left vacant as Idle intended to try to acquire an adjacent plot of land so that it could construct a major housing development on the two adjacent sites after amalgamating them.

Adam, a farmer, owned a small agricultural plot of land with a vegetable garden next to Plot A on the other side and Adam realised that he could easily and profitably extend his vegetable garden onto Plot A. In 1984 Adam removed about 10 feet of Idle's fencing and started growing vegetables and flowers on the whole of Plot A. In 1986 he replaced the demolished 10 foot strip of fence with his own fence and constructed a small gate in the fence to which he attached a lock.

Adam briefly let Plot A to his friend Jim for 6 months for \$5,000 whilst he was ill and unable to tend his vegetable garden in 2000. During this period Jim continued to grow vegetables and flowers on Plot A. After the six month period Adam retook possession and continued his farming activities as before.

In 2007 Idle acquired the land adjacent to Plot A and, intending to use the amalgamated plots for development, tried to evict Adam. Adam claimed that he had acquired a possessory title to Plot A. Idle contended that Adam had not acquired a possessory title and, even if he had, that title had come to an end in 1997 as a result of the *New Territories Leases (Extension) Ordinance*. In court Adam agreed that he would have been willing to pay rent to Idle for the use of the land if Idle had demanded such rent.

You are the judge. What would you decide? Has Adam acquired a possessory title to the land? Make sure in answering that you deal with all issues that could be raised by counsel for both parties. (40 marks)

Question 2 (50 marks)

Wealthy Ltd developed a block of 20 residential flats on Inland Lot 123. The block is called 'Wealthy Heights'. Wealthy Ltd assigned Flat 1 Wealthy Heights to Alvin and Alvin and Wealthy Ltd entered into a Deed of Mutual Covenant ('DMC') which was registered in the Land Registry. Wealthy Ltd then sold all other flats in Wealthy Heights to individual owners. Each assignment was made 'subject to and with the benefit of the DMC'. Barbara bought Flat 2, Cecil bought Flat 3 and David bought Flat 4.

The DMC contains the following covenants by the owners:

1. that they will not allow their flats to fall into disrepair; and
2. that they will use their flats for residential purposes only.

Answer the following questions giving reasons for your answers:

- (a) Explain the nature of ownership of a flat in Wealthy Heights under the assignments and the DMC. (10 marks)
- (b) Can the above DMC covenants be enforced against Barbara? (15 marks)
- (c) David granted a lease of Flat 4 to Tom. Tom is using Flat 4 to give piano lessons in the evenings and Flat 4 is in a very poor state of repair. Can the above DMC covenants be enforced against Tom? (10 marks)
- (d) Cecil lives in Flat 3 which is below Flat 4. There is water leaking from Flat 4 into Flat 3 because of damage to the bathroom floor in Flat 4. Has the benefit of covenant 1 passed to Cecil? (15 marks)

Question 3 (50 marks)

- (a) In 2009 Larry granted Tony a lease of Larry's flat in Kowloon for a term of two years starting on 1 January 2009 containing an option to renew for a further term of two years at a market rent. The lease was in writing but not under seal. Tony did not register the lease or the option in the Land Registry. In January 2010 Larry sold the flat to Penny. The sale was expressly subject to the lease and option and Penny has registered her assignment in the Land Registry. Is Penny bound by Tony's lease and option to renew? (10 marks)
- (b) In 2008 Victor sold his flat to Pansy. The assignment in her favour is dated 1 March 2008 and Pansy registered it in the Land Registry on 22 April 2008. Cherry obtained a charging order against Victor on 5 March 2008 and registered it in the Land Registry on 6 March 2008. Who has priority, Pansy or Cherry? (10 marks)
- (c) Clara owns a house in the New Territories which she holds under Conditions of Grant dated 1 July 1969. The Conditions entitle her to a Government lease for a term which ends three days before 30 June 1997.
- (i) How can Clara show an intended purchaser that she can sell a legal estate in the house? (6 marks)
- (ii) For how long can Clara enjoy the interest in her house? (4 marks)
- (d) In April 2010 Susan agreed to sell Barry her ground floor flat and garden and they signed a binding agreement for sale and purchase. Completion is due to take place tomorrow. Barry has discovered that Susan is about to remove a greenhouse from the garden. The greenhouse was resting on its own weight in the garden of the flat and occupies about half of the garden area. It can be removed and rebuilt elsewhere. The agreement for sale and purchase makes no mention of the greenhouse. Is Barry entitled to the greenhouse? (10 marks)
- (e) (i) Explain the purpose and nature of a t'so. (6 marks)
- (ii) How is t'so land managed and how can it be sold? (4 marks)

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