

**PCLL Conversion Examination**  
**January 2020**  
**Examiner's Comments**  
**Hong Kong Land Law**

This paper followed the usual format for this examination with candidates required to answer two questions from three. The paper was designed to offer candidates a wide range of topics from within the syllabus to illustrate their knowledge, understanding and application of Hong Kong land law. It should not be too difficult to score a pass mark in aggregate but it was not easy to get high marks either. Each question deliberately had a part to identify the high flyers. There were some good answers – which were concise and precise, covering the issues comprehensively and analysing the facts well. Those not performing so well suffered from the same issues that have been noted in previous years – failure to apply the law to the given facts, failure to answer the question, time wasted for irrelevant law and/or facts. Question 1 was the most popular question whereas Question 2 was the least.

**Question 1**

This question had three parts. Part (c) should be the most straightforward one. An adequate answer should identify the nature of the interest held under the Conditions of Sale in the question with reference to CPO s 14(2). An even better answer would deal with the fact that no certificate had been issued and registered, which was of no consequence: *Minchest Ltd v Lau Tsui Kwai* [2008] 2 HKC 283.

Part (b) expected firstly a discussion on whether Pancy would be bound by the covenant on user under the Deed of Mutual Covenant if she would become the owner of the flat in question. Good candidates were able to apply the relevant CPO provisions including ss 40(1), 41(2)(b) and 41(3). A couple of cases could have been cited in support of the answers that (i) a covenant on user is a land covenant (e.g. *Marten v Flight Refuelling Ltd* [1962] Ch 115); and (ii) a covenant is intended to benefit the land of the covenantee where it relates to the covenatee's land (e.g. *Supreme Honour Development ltd v Lamaya Ltd* [1991] HKC 198. This part then required appropriate application of *Donald Shields v Mary Chen* [1972] HKLR 121. The facts given were deliberately sketchy and incomplete; hence, candidates were asked to identify any further information in order to answer the question. The issue was the extent of the non-permitted user. Additional information such as the number of rooms in the flat and how many hours daily or weekly the flat would be so used would be relevant.

Part (a) might look straightforward at first sight but turned out to be worst answered so far as this question is concerned. A significant number of candidates mistakenly stated that Rebecca and Victor were tenants-in-common; hence, concluding that Victor would still have a share in any sale proceeds obtained. Apart from explaining Rebecca's interest in terms of resulting and/or common intention constructive trust which was an equitable interest over Victor's mere legal title, only a few candidates correctly cited *Abbey*

*National Building Society v Cann* [1990] 2 WLR 832 as the key to the correct answer that the HSBC would take priority over everyone else.

## **Question 2**

Part (a) was an essay question, the answer to which however needed not be too long. Broadly, the quotation is reasonably accurate but it also requires qualification to be exact. Candidates were asked to illustrate with two examples. Equal credit was given for all sensible suggestions. Common ones used by the candidates include: (i) a comparison between the LRO and the Land Titles Ordinance which is yet to be in force; (ii) while LRO does not produce or effect title, it provides evidence and assist in tracing title; (iii) LRO however does not record all transactions; (iv) a discussion on LRO ss 3(1), 5 and 5A. Better candidates were able to relate their examples to the quotation.

Part (b) expected candidates to differentiate and separately deal with: (i) the oral tenancy; and (ii) the option. The oral tenancy was exempt from the requirement of writing and from registration, whether it was for 3 years or only 2 years. It would be a matter of evidence if Peter/Ponderland would like to take possession by the end of June 2020. A number of candidates misinterpreted the part on the option but considered that, erroneously, part of the term of the original tenancy and concluded, wrongly, that the tenancy for a total term of over 3 years not in writing and not registered was void.

Part (c) was poorly answered. Most candidates missed *Re Yasaki International Co Ltd* [1993] 1 HKC 349 regarding the position of Easy Credit. For BEA, most candidates were right to rely on LRO s 17 but a better answer would also deal with the possibility of BEA re-registering before the assignment to Ponderland. Registration of the HSBC's charge took effect the day after registration (LRO s 5A) which had to be paid off before or at completion.

## **Question 3**

Part (a) was a question mainly on 'small house'. The facts given including the background and the dimensions of the house should/could be referred to for this purpose. Candidates who were able to spot this generally had no problem in dealing with the relevant issues arising from the facts: (i) reason for a large down-payment and delay before an agreement for sale would be signed; (ii) other formalities and requirements; and (iii) problems with building on the roof or extending the ground floor or the balconies. Some students missed out the point about using the adjacent land which should be straightforward. Such land might well be the intended site of another 'small house' or may be private land owned by another. There might also be difficulties over access to the house in the absence of any right of way.

Part (b) involved adverse possession; particularly, whether Mr. Tung Fai or Fred (or both together) had acquired possessory title to the land by adverse possession. While candidates were generally good at reciting the law, few were able to set out and explain clearly the various possible scenarios and arguments. Some even mistakenly stated the

limitation period to be 60 years. A better answer should include any reasonable counter-argument for Prosperous, particularly that the possession was not adverse since it might not contravene Prosperous' intended future use, and doubt over such counter-argument in light of *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419 (HL).