

PCLL CONVERSION EXAMINATION JUNE 2023

Title of Paper : Hong Kong Land Law
Date : 14 June 2023
Time : 1:30 p.m. – 1:45 p.m. (Reading Time)
1:45 p.m. – 3:15 p.m.

Instructions

1. This is an open book examination.
2. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name anywhere in the answer book.
3. Write your answers only in the answer books provided. Start each answer on a separate page of the answer book.
4. This is a one and a half-hour examination. In addition, there is 15 minutes' reading time. Do **NOT** begin writing in the answer book until you are instructed to do so.
5. This paper consists of 6 pages. Candidates are required to attempt any **TWO** out of three questions. Where a question is in two or more parts, all parts must be answered.
6. Candidates must give reasons for all their answers.
7. The total worth of this paper is 100 marks. Each question carries 50 marks.
8. Candidates must score at least 50 out of 100 marks to pass this paper.

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

PCLL Conversion Examination June 2023
Hong Kong Land Law

Question 1 (50 marks)

- (a) A&A Ltd is the owner of a unit on the 5/F (and roof) of a 5-storey building constructed on Marine Lot 299, which is located on Connaught Road West. On the Crown Lease (dated 1st April 1935) of the said lot, there is the following covenant:

"that (the said Lessee) or any other person or persons shall not nor will during the continuance of this demise, use, exercise, or follow, in or upon the demised premises or any part thereof, the trade or business of a Brazier, Slaughterman, Soapmaker, Sugar-baker, Fellmonger, Melter of Tallow, Oilman, Butcher, Distiller, Victualler¹ or Tavern-keeper, Blacksmith, Nightman, Scavenger or any other noisy noisome or offensive trades or business whatever without the previous licence of Her said Majesty signified in writing by the Governor or other person duly authorized in that behalf"

Can A&A Ltd operate a high class restaurant and bar in the said unit in the said Building? Would there be any breach of the said covenant above (including any arguable defence you can think of)? Would there be any measures which A&A Ltd can make to achieve their objective of operating a restaurant and bar in the building on the said lot?

(16 marks)

- (b) Flat 3B is owned by Mr. Chang. Sane Finance Ltd ("the Creditor") had loaned HK\$5 million to Mr. Chang in January 2023 ("the Loan"), and Mr. Chang has been late in making his quarterly repayment instalments to the Creditor. There are rumours spreading that Mr. Chang may be in financial difficulty, and under criminal investigation for various financial crimes in Hong Kong and Mainland China. Upon investigations, the Creditor has discovered the following today:

- There is a mortgage with A-Level Bank, dated 2nd March 2015 for HK\$16 million ("Mortgage A"). It was registered on 3rd March 2015. It is believed Mr. Chang has paid off HK\$8 million of the mortgage.
- There is a charging order of HK\$3 million dated 5th April 2017, in favour of the Street Finance Ltd ("the SF CO"). It was registered on 5th June 2017, and re-registered on 5th April 2022.
- There is a lis pendens registered on 17th May 2023 ("the Lis Pendens"). It concerns the Incorporated Owners of the building which Flat 3B is in, seeking an injunction to remove illegal structures in the balcony of Flat 3B.
- The person close to Mr. Chang has tipped off the Creditor that Mr. Chang is close to obtaining a 2nd mortgage from Bob Bank for Flat 3B for a total amount of HK\$13 million, of which HK\$8 million would be used to pay off Mortgage A. Due to the recent rapid ascent of interest rates, senior management of Bob Bank needs to give

¹ A supplier of victuals, i.e. a person whose business is the provision of food and drink (Shorter Oxford Dictionary)

final approval of the mortgage. The final approval is expected to come through 1-2 weeks later, and only thereafter would monies be released to the respective lawyers of A-Level Bank and Mr. Chang (as stakeholders).

- In the event of a mortgagee (or other creditor) sale of Flat 3B by court order, the expected sale price would be no more than HK\$16 million.

Assuming the Creditor can obtain a charging order nisi within the next 5 days, advise the Creditor on where it stands, in terms of priority, amongst all the other creditors.

(16 marks)

- (c) Shaw Sisters Building (“the Building”) was built in 1977. Its DMC (and the first assignment), makes no express reference to the external walls as common area or privately owned. Clause 13 of the DMC is very clear that no person shall make structure alterations whether inside their exclusively owned units or in the common areas. The Building has been well managed by Fong’s Property Services Ltd (“Fong’s”). This was until 2013, when the co-owners incorporated (“the IO”) then replaced Fong’s Property Services Ltd with Chan’s Shell Properties Ltd (“CSF”). CSF and the IO left the Building in disrepair. It was not until after the pandemic, was the management committee of the IO and CSF replaced. Fong’s was reinstated as the manager and has informed the management committee of a problem with the 1/F Unit. The previous management committee and CSF failed to stop the owner of the 1/F, Mr. Chu (“Mr. Chu”) carving out 3 large windows in the external wall on the 1/F façade² (front wall) of the Building. Upon checking the records, indeed there is correspondence where Mr. Chu informed the IO of the proposed modifications of the external walls, and that it would carry ahead unless there were objections. However, the IO nor CSF gave any reply. At the material time, Mr. Chu also had provided proof that the Building Authority permitted the modifications. The IO and Fong’s now seek your advice if there is breach of DMC and, if so, whether the 1/F façade can be restored to its original design.

(18 marks)

Question 2

- (a) Victor is the owner of Flat B on 5th Floor of Happy Building and he listed his flat for sale. Paul was interested to buy Victor’s flat. When Victor and Paul were about to sign the provisional agreement at the agent’s office, Paul recalled his cousin, who has a law degree, told him that a keen purchaser should always delete the double deposit clause to protect the purchaser’s position. Hence Paul requested for the deletion of the double deposit clauses in the provisional agreement. Victor and Paul signed a provisional sale and purchase agreement on 14 April 2023 with the initial deposit of HK\$500,000 paid by Paul on the following terms:-

1. The Vendor, Victor Leung shall sell and the Purchaser, Paul Chan shall purchase Flat B on 5th Floor of Happy Building, 123 Happy Street Hong Kong. (“the Property”).

² Front Wall on the entrance side of the Building

2. The purchase price of the Property shall be HK\$10,000,000, which shall be paid by the Purchaser to the Vendor in the manner as follows:
- i. HK\$500,000 as initial deposit shall be paid upon the signing of this Agreement as deposit;
 - ii. HK\$500,000 shall be paid as the further deposit on 2 May 2023; and
 - iii. HK\$9,000,000 shall be paid on completion on or before 7 July 2023 as balance of purchase price.

On 2 May 2023, Paul forgot to pay the further deposit to Victor. Paul sent a cheque for the further deposit of HK\$500,000 to Victor on 3 May 2023. On 3 May 2023, Victor returned the cheque for the further deposit to Paul with a letter. In the letter, Victor wrote that he regarded Paul had committed a wrongful repudiation of the provisional agreement by failing to pay the further deposit. Hence, Victor would terminate the provisional agreement, forfeit the initial deposit and reserve his rights to claim damages from Paul for his breach of the provisional agreement.

The property market is rising and Victor can easily sell his flat for more than HK\$10,000,000 to another purchaser.

Paul wrote back to Victor on 4 May 2023 claiming that Victor is not entitled to forfeit the deposit. Paul also threatened that he would apply for specific performance of the provisional agreement.

Advise Victor as to the claims raised in Paul's letter of 4 May 2023. **(20 marks)**

- (b) Unlucky Heights ("the Building") was built in 1997. Several years after entering into occupation of its unit Kenneth found that the manager, K2 Management Ltd ("the Manager"), to be very lazy. Further, many co-owners suspect that the manager has been overcharging the co-owners for services supplied to the Building. Upon perusing the DMC, he found a covenant to the effect that the owners may only terminate the Manager's appointment with a resolution supported by 2/3 of the Building's total undivided shares. While Kenneth is very sure he can secure a resolution with over 1/2 of the total undivided shares, he is unsure about 2/3 support. Advise Kenneth on the best course of action in terminating the Manager's appointment. **(12 marks)**
- (c) Developer B in 1972 struck a deal with the government, and exchanged a lot it held on Prince Edward Road West, for a lot on Jordan Road. On 3rd June 1972, it executed the Conditions of Exchange with the government. It subsequently built BB Tower in 1975 on the lot. Did Developer B receive a legal or equitable interest under the Conditions of Exchange in 1972? **(6 marks)**
- (d) Following the facts of (c) above, it is now 2023 and Mr. Chan is the owner of unit 4B of BB Tower. Mr. Chan wishes to sell his flat. How can he prove that he holds the legal interest in his flat. **(12 marks)**

Question 3 (50 marks)

- (a) Lo & Behold Building (“the Building”) was constructed in 1979 and is situated in a relatively quiet side of Sheung Wan. It has a deed of mutual covenant (DMC) and only recently incorporated in March 2023 (“the IO”). The IO employs a manager for the building, Margins Management Ltd (“the Manager”). Mr. Gun is the recently appointed chairperson of the management committee of the IO.

The DMC does not contain any plan or verbal description of the common parts of the building.

The covenant and provisions in the DMC include the following:

1. The external walls are common parts;
2. No structural alterations are to be made to any flat;
3. No alteration is to be made to the external appearance of the building;
4. No owner or occupier may interfere with the common parts of the building;
5. No owner or occupier shall cause nuisance or annoyance to any other owner or occupier of the building; and
6. No structures or fixtures or items shall be affixed to the external walls of the Building.

Between 2010 to 2023, the Building was poorly managed as many of the owners were indifferent as to the living conditions and only was interested in selling their flat quickly for a profit. It was not until after formation of the IO, did the IO and the Manager properly consider the many problems in the building. The IO and the Manager seek your advice on the following:

- (i) Mr. Chan of Flat 12B had erected a mobile phone antenna on the external wall (just next to Flat 12B’s living room window). Since 2013, he has received HK\$1000 each month from a middleman arranging for installation of mobile phone antennas on behalf of various mobile network operators. The IO asks for your opinion on whether there are breaches of the DMC, and if so, what remedies are available to the IO. **(20 marks)**
- (ii) The House Rules of the Building are drafted and regularly updated by the Manager. The House Rules are contained in a booklet which is available for each owner’s perusal in the lift lobby, and also on the Manager’s website. The House Rules and the covenants in the DMC are silent as to whether owners may keep pets. Throughout the years many owners have kept all sort of pets, mostly cats and dogs. There have never been any complaints about pets until Mr. Lung moved in. Mr. Lung, who recently purchased 2 units of the Building, has a small dog who has caused trouble to other owners. Mr. Lung has a habit of walking his dog in the hallways, fire exit staircases, and lift lobby of the Building. There have been instances of the said dog biting or frightening young children, and soiling of hallways and fire exit staircases.

The Manager have received numerous complaints from residents regarding Mr. Lung’s dog. They seek your advice on what they can do. **(14 marks)**

(iii) A land search reveals that the land on which the Building sits is on Inland Lot 123 on a 999-year term Crown Lease lease signed on 3rd January 1912. Explain whether it would be necessary for a potential purchaser of a unit of the Building to demand for production of a ‘certificate of compliance’ from its existing owner in proving title/ownership? **(6 marks)**

(b) Bosco, the owner of Flat B on 15th Floor of Happy Building intended to sell her flat. On 1 June 2023, he met his neighbor, Kelly in the lift lobby. Bosco told Kelly his intention to sell his flat. Kelly immediately offered to buy Bosco’s property at HK\$14 million. Bosco was taken by surprise but immediately said yes to Kelly. Bosco immediately took out a piece of paper from his brief case and wrote the following and signed on the paper:

Kelly Cheung agrees to buy from Bosco Wong Flat B on 15th Floor of Happy Building at HK\$14 million.

Dated 1 June 2023

Signed: *Kelly Cheung*

Bosco is having second thoughts on selling at that price, as just last week there was a transaction price for a flat with the exact same layout and just one floor below him sold at HK\$15 million. Can Bosco back out of his deal with Kelly? **(10 marks)**

~ End of Examination Paper ~