

PCLL CONVERSION EXAMINATION JUNE 2025

Title of Paper : Hong Kong Land Law
Date : 18 June 2025
Time : 1:00 p.m. – 1:15 p.m. (Reading Time)
1:15 p.m. – 2:45 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 5 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 2025
Hong Kong Land Law

Question 1 (50 marks)

Aaron, Barry and Carol have been friends since high school. In 2009, the three friends joined the same university. They decided that it would be convenient and a sensible investment if, instead of renting accommodation, they bought a flat near the university ("the flat") together. They each had some savings and were assisted by their families and so were able to buy the flat without mortgaging it. They made equal contributions to the purchase price and they decided they should share the flat. The Assignment specified that they purchased as joint tenants.

In 2010, Aaron made a will and left all his estate to his brother Derek. Aaron did not tell Barry and Carol that he had made a will.

The three friends have continued to live together in the flat without incident until 1 April of this year, when Aaron died of a heart attack.

Carol and Barry were very upset by the death of their friend and it made them consider their own property including their own "shares" in the flat. They reached an oral agreement on 1 May to the effect that they would from then on have separate ownership of the flat, that is, either of them could deal with his own separate share in the flat, freely and without reference to the other.

Carol and Barry made an appointment with their solicitor in Central on 6 May to discuss and engross their oral agreement. Unfortunately, on their way to the meeting with the solicitor they were involved in a road traffic accident when the taxi they were travelling was crashed. Both were killed in the crash. Barry's sole heir is his mother, Karen, and Carol's heir is her brother Malcolm.

A dispute has now arisen between Derek, Karen and Malcolm over the ownership of the flat. Derek claims that, although the Assignment specified that the three purchased the flat as joint tenants, this merely indicates the legal ownership of the flat, not the beneficial ownership, and therefore he is entitled to Aaron's third share in the flat because of Aaron's will. Karen and Malcolm agree that the Assignment is determinative of both legal and equitable interests in the flat. They are in dispute, however, about whether they should share the flat equally or if only one of them is entitled to the whole of the flat.

Advise Derek, Karen and Malcolm on the following:

- (i) Was the flat purchased as joint tenants or tenants in common at law and in equity?
(15 marks)
- (ii) Did Aaron's disposition of his "share" of the flat in his will to Derek take effect? Would your advice have been different if Aaron had told Barry and Carol about his will and his intention to give his share in the flat to Derek?
(15 marks)

- (iii) If Aaron's purported testamentary disposition did not affect the ownership of the flat, did Barry and Carol's oral agreement affect their own interests in the flat? **(10 marks)**
- (iv) If Barry and Carol's agreement did not affect their ownership of the flat, who, Karen or Malcolm, is now entitled to the flat? **(10 marks)**

If you require further information to answer this question, state what it is and the reason(s) why it is needed.

Question 2 (50 marks)

- (a) In 2023, a Hong Kong property developer, Xenon Developments Ltd ("Xenon") developed a block of 50 residential flats on Inland Lot No. 360 ("the Lot"). The block is called 'Lucre Buildings' ("the Building"). In 2024, Hilda bought Flat 1 of the Building from Xenon. The purchase included one equal undivided 50th share of and in the Lot and the Building together with the right to the exclusive use of Flat 1.

Xenon and Hilda then executed a Deed of Mutual Covenant for the Building ("DMC"). The DMC allocates one equal undivided 50th share of and in the Lot and the Building to each flat in the Building and provides that its owner has the right to the exclusive use of such flat. The DMC was registered in the Land Registry.

Explain the legal relationship between the owners of the flats in the Building.

(15 marks)

- (b) Explain the doctrine of part performance in the context of an agreement for the sale and purchase of land and provide two examples of acts that are likely to be held by the court as constituting part performance in this context. **(20 marks)**
- (c) James Chan has come to ask your advice about some land he is occupying in the New Territories. James explains that it is Government land and that his father leased land adjacent to this land since 1990. In 1991, James's father moved his fences and enclosed about 500 square meters of an adjacent plot of Government land. James's father cultivated the land and built a small hut on the land, although he did not have permission to do this. Indeed, the Government seems completely unaware of his father's occupation of the land. James's father passed away in 2020 and James inherited the leased plot. He has continued to occupy the Government land as well. Before he passed away, James's father explained that James could claim the land by way of adverse possession, but as it was Government land, he would have to occupy it for 60 years. This means that he will have to have uninterrupted occupation until 2051.

James has been concerned about what would happen in 2047, but last year he read about the Extension of Government Leases Ordinance (Cap. 648), which was gazetted on 5 July 2024. This Ordinance extends most Hong Kong leases for a further 50 years until 2097. The Ordinance provides in section 12:

"... on the expiry of an applicable lease covered by an Extension Notice, unless the applicable lease is specified in a Non-extension List published in relation to the Extension Notice, the term of the applicable lease is extended, as from the day following its expiry date, for a term of 50 years without payment of any additional premium."

It also clarifies in subsection (3) that the extension of an applicable lease “does not create a new lease of the land that is the subject of the applicable lease.”

James would like your advice on whether he will be able to rely on this Ordinance and his continued occupation of the land until 2051 to extinguish the Government’s title to the land.

[For the purposes of this question you do not have to explain the doctrine of adverse possession, just the likely effect of the new legislation upon the accrual of time for the doctrine.] **(15 marks)**

Question 3 (50 marks)

- (a) Colin owns a flat in Quarry Bay. The flat is in a multi-storey building on land that the Government granted to the developer Tourmaline Development Ltd under Conditions of Exchange dated 1972.
- (i) Explain what is meant by Conditions of Exchange distinguishing Conditions of Exchange from Conditions of Sale. **(2 marks)**
 - (ii) Did Tourmaline Development Ltd receive a legal or equitable interest under the Conditions of Exchange in 1972? **(5 marks)**
 - (iii) It is now 2025 and Colin wishes to sell his flat. How can he prove that he holds the legal interest in his flat? **(6 marks)**
 - (iv) Would your answer to (iii) above differ if the Conditions of Exchange had been dated 1969? **(4 marks)**
- (b) In 1990 a plot of land in Shatin was granted to Elite Construction Ltd (“Elite”) by way of Conditions of Sale. A restrictive term in the Conditions of Sale provided that no building might be erected on the land with a height exceeding 60 metres. In 1986, Elite constructed a building 65 metres in height on the land and an occupation permit was issued by the Buildings Department. In 1995, the land and building were sold to Wing Lin Development Ltd (“Wing Lin”) which demolished the building and constructed a replacement building 70 metres in height. Again, an occupation permit was issued by the Buildings Department. This month Wing Lin received a notice from the Lands Department informing it that the restrictive term as to the maximum permitted height in the Conditions of Sale had been breached and requiring the building to be demolished.

Wing Lin seeks your advice as to:

- (i) whether it is bound by the restrictive term; and
- (ii) whether it has any defence against an action by the Government to require the demolition of the building.

Advise Wing Lin. **(20 marks)**

(c) Galleon Developers Ltd (“Galleon”) is considering whether to purchase a vacant plot of land in Yuen Long in the New Territories. The land was originally granted by Government under a Block Crown lease dated 1907, which contained the usual covenants. In the Schedule to the Block Crown lease, the land is described as “dry cultivation”. Your client wishes to know:

- (i) whether the plot can be used for the construction of a hotel; and
- (ii) whether the plot can be used to store containers and old vehicles.

Advise Galleon on these two issues.

(13 marks)

~ End of Examination Paper ~