

PCLL CONVERSION EXAMINATION JANUARY 2025

Title of Paper : Hong Kong Land Law
Date : 7 January 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 January 2025
Hong Kong Land Law

Question 1 (50 marks)

- (a) Kennis is a male indigenous villager of a recognized village in the New Territories who wishes to build a small house for himself in the village. He does not, however, own any land in the village.
- (i) Advise him (A) what he must do to secure land upon which to build a small house; and (B) whether any restrictions in respect of the house to be constructed will be imposed. **(10 marks)**
- (ii) Kennis has heard from the village head that he may apply for certificates of exemption. Explain to him (A) the purpose of obtaining these certificates; and (B) whether he has a right to be issued with certificates of exemption. **(8 marks)**
- (iii) The small house has now been constructed in accordance with the statutory requirements and Kennis wishes to sell the house to another indigenous villager. Explain (A) what documents of title he must produce by way of proving his good title; and (B) explain the purpose of each document which must be produced to the purchaser. **(8 marks)**
- (b) In October 2024, Roman agreed to sell his flat in Kennedy Town to Louis for \$20 million. When inspecting the flat Louis noted there were two window-type air-conditioners in the flat and two split-level air conditioners. The split-level air-conditioners were securely attached to an inside wall with bolts. Completion has just taken place and Louis has moved into the flat. Louis is very upset to discover that the two window-type air conditioners and the two split-level air-conditioners have been removed. On checking the applicable sale and purchase agreement and assignment, she sees that no mention of air-conditioners was made in either of them. Does she have any claim to the air-conditioners against Roman? **(14 marks)**
- (c) Gary has just entered into a sale and purchase agreement to purchase a newly constructed flat in North Point from the developer. The developer's solicitor sends Gary the documents of title and Gary notes that the ultimate root of title is Conditions of Sale dated 2019. The developer's solicitor explains to Gary that he will only be receiving the equitable interest in the flat.

Explain why, as a matter of law, Gary will only be receiving the equitable interest in the flat and when, as a matter of law, the equitable interest be converted into a legal estate? Explain how this can best be proved and identify if any document needs to be registered, what this document would be, and why it is necessary? **(10 marks)**

Question 2 (50 marks)

- (a) In early December 2024, Old World Co Ltd ('Old World') agreed orally to sell its commercial premises in Kowloon Tong to Roulette Ltd ('Roulette'). Old World and Roulette identified the premises as Floor 3, Wealthy Investments Building, 88 Sai Kung Road, Kowloon. The agreed purchase price was HK\$55 million with the completion date fixed at 10th January 2025. They also agreed that Old World would give vacant possession at completion and include all the fixtures in the building.

Both parties obtained separate legal representation. There was no preliminary sale and purchase agreement.

Old World's solicitors wrote to Roulette's solicitors on 11th December as follows:

11 December 2024

Dear Sirs

Re Sale of as Floor 3, Wealthy Investments Building, 88 Sai Kung Road, Kowloon

We act for Old World in the sale of the above premises to your client Roulette. We confirm that Old World has agreed to sell the premises to your client for HK\$55 million with completion fixed for 10th January 2025.

We are preparing the formal sale and purchase agreement. Please confirm that you have instructions to act for Roulette and let us know whether your client will be purchasing with the aid of a mortgage.

Yours faithfully
Li and Li Solicitors

Roulette's solicitor wrote back on 16th December:

16 December 2024

Dear Sirs

Re Purchase of Floor 3, Wealthy Investments Building, 88 Sai Kung Road, Kowloon

Thank you for your letter of 11th December 2024. We confirm that we act for Roulette in the purchase of the above premises from your client Old World. We confirm that Roulette will be purchasing the property with the aid of a mortgage from the Standard Chartered Bank.

Yours faithfully
Galbraith Solicitors

One week later Galbraith wrote to Li and Li saying:

20 December 2024

Dear Sirs

Re Purchase of Floor 3, Wealthy Investments Building, 88 Sai Kung Road, Kowloon

We are writing to inform you that our client, Roulette, has decided not to go ahead with the purchase of the above property.

Yours faithfully
Galbraith Solicitors

You are a solicitor in the employment of Li and Li, Solicitors. Advise your client Old World whether it can enforce the oral agreement against Roulette.

(32 marks)

(b) Now assume that the above correspondence had been headed 'Subject to Contract'. Explain with case authority the meaning and effect of this expression in this context. Does all correspondence in negotiations have to be headed with this expression to gain similar effect? **(6 marks)**

(c) Big Cash Development Co Ltd ('Big Cash') has been negotiating to purchase a shop and storage unit in a development in Mong Kok. During negotiations in response to enquiries from Big Cash, the vendor, Mike Chao, has revealed that he has enclosed part of the common parts at the back of the shop and storage unit for his own use. After further enquires, Mike Chao has told Big Cash that this was without permission of any other unit owners and that there is an express condition in the development's deed of mutual covenant against enclosing common parts of the development. Mike has assured Big Cash that it cannot be held responsible for the breach as it was committed by him.

Advise Big Cash whether it will be responsible for the breach committed by Mike Chao and whether any enforcement action can be taken against Big Cash as a successor in title from Mike Chao.

What condition could Big Cash include in the contract for sale and purchase for Mike Chao to provide assistance if the covenant is enforced? **(12 marks)**

Question 3 (50 marks)

In 1956, Mr Xi purchased a small house ('the Property') near Yuen Long in the New Territories in which he lived with his son Mark. The Property included a large garden in which Mr Xi grew bananas and papaya. The adjacent plot ('the Plot') was Government land which had not been leased by anyone and which was surrounded by a fence which had fallen over in many places. The Plot was uncultivated with just wild flowers and trees growing on it. After some years Mr Xi decided that, as the land was not being put to any use by anyone, he would use the land as an extension to his fruit garden. In 1957 Mr Xi dug up the wild flowers and began to plant fruits on part of the Plot. In 1958 Mr Xi cut down the small trees and began using the whole plot for growing fruit. In 1960 he repaired the fence and put up a notice saying 'Private-Trespassers Keep Out'. Mr Xi died in 1975 and his son Mark inherited all his assets. Mark continued to grow fruit on the Plot. In 1985 Mark sold the Property to Patrick his neighbour. Patrick wanted to buy the Plot as well but Mark would only lease the Plot to Patrick for a monthly rent. Patrick used the Plot to continue to grow fruit. Patrick died in 1994 and Mark took the Plot back and carried on growing fruit on it. In 1996, Mark leased the Plot to Fabulous Storage Ltd to store their containers on the land on an annual renewable tenancy at the monthly rental of \$16,000. This arrangement, with subsequent rental increases, continued until March 2024 when Mark received an eviction notice from the Lands Department of the Government of HKSAR ("the Government") alleging he had no title to the land and giving notice that the Plot was going to be used by the Government for the construction of a much needed housing development.

Answer the following questions:

- (a) On the facts as explained above and ignoring the issues raised in parts (b) and (c) of this question, advise Mark whether he will succeed in resisting the Government's eviction demands. **(30 marks)**
- (b) The Government has now raised the issue of the effect of the New Territories Leases (Extension) Ordinance (Cap 150). The Government argues this Ordinance created a new lease when it came into effect in 1980 and any period of possession must date from the creation of the new lease. Advise Mark how such an argument might be considered by the court. **(6 marks)**
- (c) The Government has raised the further issue of the return of the New Territories to Mainland China in 1997, arguing that this return also provides a break in any possession period as any interest or title acquired or claimed against the Hong Kong Colonial Government had come to an end and could not be enforced against the PRC Government as reversioner of the original New Territories lease. Advise Mark how to respond to this argument. **(6 marks)**
- (d) How, if at all, would the likelihood of his success in question (a) above be affected if Mark had said in cross-examination during the trial that he would have been willing to pay rent to the Government for use of the Plot? **(8 marks)**

~ End of Examination Paper ~