

PCLL CONVERSION EXAMINATION JANUARY 2023

Title of Paper : Hong Kong Land Law
Date : 5 January 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 7 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 2023

Hong Kong Land Law

Answer Two Questions out of Three

Question 1 (50 marks)

- (a) “Leung Shing Tso” (the “Tso”) is a relatively small Chinese Customary Trust in the New Territories. It holds little land and assets, save for four hectares of land near the border, in the area of Lau Fau Shan/Lung Kwu Tan (“the Land”). The registered managers of the Tso are Gus Leung and Mike Leung (the “Managers”). Through estate agents, the Managers have learnt that the Land is attractive to various property developers in Hong Kong, in light of its “strategic location” and hence development potential.

The Managers told the agent that most of the beneficiaries of the Tso are either residing in the PRC or can no longer be found as they have lost contact with many distant relatives. As they now approach the age of 80s, the Managers intend to ‘wind up’ the Tso by selling off all its properties and distribute the proceeds before they retire and reside in the Mainland. They intend to put up the Land for sale at HK\$15,000,000 which is said to be a bargain when compared to market prices in the locality.

They seek your advice on the intended sale. To constitute a valid sale of the Land, will it be sufficient for the Managers to just sign the draft sale and purchase agreement on behalf of the Tso? If not, what formality or other matters of compliance would be required?

(10 marks)

- (b) Big Spender Ltd (“BS Ltd”) has recently acquired the entire lot of land on which an industrial building (the “Building”) consisting of workshops and storage warehouses has been erected. The government lease, dated 3rd January 1980, stipulates that the “..buildings are not to be used for any purpose other than industrial or godown purposes or both excluding any trade that is offensive trade.”

The newly installed Deputy CEO of BS Ltd, Hugo, has ambitious plans. He plans to convert five floors of the Building to establish one of the largest-scale indoor flower farms. Vertical layers of ‘racks’ are to be installed to hold and grow the flowers. The roots of each ‘plant’ would be submerged into nutrient solutions which are circulated by a pump. The crops will be ‘illuminated’ by LED-powered lightings 24-hours a day. There will also be climate control over the temperature and humidity of the vicinity. At the bottom floor there will be a few aquariums (all over 10m long and 4m high), which will collect water used to irrigate the flowers on the upper floors. The fish in the aquariums will produce waste which can then be pumped back to feed the vegetables above. There will be close monitoring of the flowers and real-time data would be provided to the farmers. The goal is to farm high quality flowers without the use of soil or any access to sunlight. The fish will not be harvested or caught, and are kept purely for the purposes of farming the flowers.

Of these five floors, two floors will be used to grow flowers (i.e. it will house the setup described in the preceding paragraph). Two floors would be used as a production line to arrange and package the flowers. As there is no guarantee that the flowers grown would be sufficient to sustain the business, Hugo intends to sign supply contracts with local farms for particular flowers which could not be grown indoors (such as sunflowers). Once the packaged products are ready, they will be stored in rooms with special ventilation facilities to maintain freshness before they could be transported away. The other floor will be used as laboratory and research facilities for development and testing purposes, an office for accounting/marketing/conferencing purposes and a reception area for visitors.

Hugo is not sure whether the above operations are permissible under the terms of the Government Lease. He would appreciate your legal advice, which he expects will include legal arguments for and against the setting up of the above operations.

(20 marks)

- (c) Unlucky Heights (“the Building”) was built in 1971 and had incorporated in 2010 (the “IO”). The DMC of the Building is silent as to which parts of the Building are common parts, and contains the typical covenant refraining owners of individual units from making any structural alterations and committing waste. Lok, the chairman of the IO, recently received a demand letter from Pearl claiming damages against the IO for personal injuries that she had suffered.

The owner of the sole top floor apartment (“the Penthouse”) and the roof of the Building is Humphrey. Under the title deeds, the Penthouse was assigned five undivided shares of the land upon which the Building has been erected whilst the roof was assigned one undivided share, and Humphrey also acquired the sole and exclusive right to use and occupy the Penthouse and the roof of the Building.

Less than one year ago, Pearl was walking past the entrance of the Building. Loose debris fell from the Building and injured Pearl’s head and she had to be hospitalized for her head injury. She is still in critical condition. The video from the CCTV security camera in the office building opposite to the Building showed that the debris fell from the parapet wall (enclosing wall of the flat roof) at the top of the Building. Police investigation has revealed that the debris matched the wall tiles of the outside of the parapet wall.

The IO seeks your advice on the IO’s liability for the damages claimed by Pearl for the personal injuries that she suffered due to the fallen debris from the Building. Lok is of the opinion that the owner of the rooftop should bear full responsibility. Over the last seven years, the IO and the building manager have received numerous complaints from residents about illegal structures built on the roof. Humphrey has erected large canopies on the outside of the parapet walls and built structures on the roof. The said structures involve structural modifications on the parapet walls, including replacing original parapet walls with taller but thinner walls made of different materials.

(20 marks)

Question 2 (50 marks)

Wolter Whyte Tower (“the Building”) is located near the Sai Ying Pun MTR station. It is built in the late 1980s. It is 25 storeys high with three units on the 1-25th floors and two ground floor shops. The owners have incorporated (“the IO”) in 2012.

The Building is governed by a document titled: The Deed of Mutual Covenant Of Wolter Whyte Tower (“DMC”). The DMC is one document which contains seven schedules. Covenant 2(a) gives each owner the exclusive use and occupation of his part of the Building. The Building has been managed by Pink Management Ltd since 2019 (“the Manager”). Covenant 9(b) of Schedule 3 of the DMC requires owners to not cause nuisance, annoyance or inconvenience to other owners. Schedule 7 of the DMC is titled “House Rules”, and a rule 24(d) in Schedule 7 reads: “No dog may be brought or kept upon any part of the Estate or the Common Areas of any building therein...”.

Answer the following questions:

- (a) Jane is the owner of Flat 4B of the Building . She has already lived in Flat 4B for 4 years and observed that many of her neighbours are keeping dogs or cats. In 2021, she made enquiries with the Manager of her plans to keep three small dogs as pets. After numerous emails and conversations, no answer was given. Throughout 2022, Jane attended dog shelters and eventually picked three small dogs to be her pets and reside with her in Flat 4B. Last week, Jane received a letter from the Manager asking her to remove her three small dogs from Flat 4B. Moreover, there is a further complaint that her three small dogs have been ‘roaming’ the corridors on the 4th Floor, frightening elderly residents and urinating near the lift lobbies. Jane has admitted to you that there have been such instances but her dogs were leashed, and she always cleans up after them. Jane seeks your help and believes that the Manager is acting unfairly because she knows other residents have kept pet dogs or cats for a number of years already. According to Jane, the owners of at least two units keep significantly larger dogs such as Afghan Hounds and German Shepherds. Jane does not want to lose her pets and so, regardless of the cost, she is prepared to fight her case in court. Advise Jane on not only whether she can keep her pets but also the possible legal actions she may face and the potential defences she may have.

(15 marks)

- (b) The owner of Flats 13B and 13C, Mr. Gus Fong, has since about 2003 demolished the partition wall between the two said units and installed a gate in the corridors leading to the lift lobby. Upon receiving complaints from the Manager, Mr. Fong defended himself by claiming that since he moved into the said flats in 2003, nobody has lived in Flat 13A, and in any event the said gate does not interfere with access to Flat 13A, but only to his own units. Furthermore, according to Mr. Fong, nobody else (particularly other occupants of the Building) ever visits the 13/F corridors, and a retired security guard has informed him that the Manager permitted him to use the said part of the corridors. In respect of the partition wall, Mr. Fong claims that the Building has not collapsed or been structurally compromised since he removed the partition wall. Advise the Manager or Gus Fong of potential breaches of the DMC.

(12 marks)

- (c) Percy has entered into a sale and purchase agreement to purchase Flat 6B of the Building for HK\$7 million and immediately paid HK\$0.7 million as deposit. The vendor is Mr. Victor Lam. The said agreement was executed and registered on 14th November 2022. Completion is to take place on 14th February 2023.

The land search at the time of the signing of the agreement revealed the following:

- Mortgage executed in 2014 in favour of Hong Kong Bank for a loan of HK\$4.5 million (when the Flat was first purchased for HK\$7 million) (“the HK Bank Mortgage”). There is still a sum of HK\$1 million outstanding.
- A charging order absolute dated 1st September 2022 in favour of Mr. Vincent Lam (“Vincent CO”) for a sum of HK\$250,000

However, a land search obtained yesterday revealed the following:

- A lis pendens was registered on 1st December 2022 (“the Lis Pendens”). Your firm has reviewed the writ and it concerns allegations of installing fixtures in the lift lobby (a common area pursuant to the DMC) on the same floor as the said flat. The remedy sought is an injunction to rectify the works.
- A charging order in favour of Goodman Loans Ltd was registered on 2nd December 2022 (“Goodman CO”) for HK\$1.5 million.

Percy is very keen on buying the Flat. She believes she has agreed upon an excellent price, as Victor is facing serious financial difficulty. The market price for Flat 6B in her view should be substantially higher.

Assuming Percy wants to proceed with completing the sale and purchase of Flat 6B, advise her on how to proceed with the purchase of the Flat?

(13 marks)

- (d) Mrs. Chang is the owner of Flats 1A and 1B of the Building. She purchased the two flats many decades ago and has long paid off her mortgage. She is a retired elderly lady who resides in Flat 1B herself but leases out Flat 1A. Since Mrs. Chang lost her husband to a car accident five years ago, she has failed to pay management fees. Violet, a supervisor of the Manager, asks for your advice on the steps she can take to recover the management fees. The management fees in arrears amount to around HK\$180,000. Mrs. Chang is childless and is unemployed. She relies on rent that she collects from the tenant in Flat 1A. The rent is believed to be HK\$15,000 per month.

(10 marks)

Question 3 (50 marks)

Landry Apartments (“the Building”) was built by Loud Assets Ltd (“the Developer”) in Causeway Bay in 1988.

Slicker Properties Ltd is the building manager (“the Manager”) for the Building and it is wholly owned by the Developer. While the owners have yet to incorporate, residents have been keen on making the Building a better place to live in. There is active participation in owners’ meetings.

Other than retaining the three G/F shops, the Developer sold all units in 1989. The three said G/F shops share a corridor and lift lobby with all the other owners. Despite the fact that the Deed of Mutual Covenant governing the Building (“the DMC”) designated the external walls as common parts, the Developer retained an exclusive right to use the external walls to erect signs and advertisements. Undivided shares of the land upon which the Building now stands were allocated to all units but none was assigned to the external walls.

Answer the following questions:

- (a) Two years ago, two vending machines have been set up in the G/F corridors leading to the lift lobby. It has been confirmed the two vending machines were set up by the Developer for its own profits. The Manager has received complaints from many owners, but it has defended the Developer’s action with the claim that there is still ample room for residents to pass by the corridor. Able is an owner of two units in the Building and has come to you for advice on whether he and the other owners have a meritorious claim against the Developer for the obstruction caused by the installation of the said vending machines. Advise them. **(12 marks)**
- (b) In 2016 the Developer sold two of its G/F shops in the Building to Mr. Yeung. The assignment was registered and there was no reference therein to the right to use external walls for erecting signs and/or advertisements. Later in 2016, the Developer sold its remaining G/F shop to Ms. Lam. The assignment was registered and there was also no reference therein to the right to use the external walls.

Explain who owns the rights to erect signs or advertisements on the external wall.

(8 marks)

- (c) Over the past two years, under the pandemic, the Manager’s employees have done a poor job enforcing management fees and pursuing owners of units who have fallen into arrears of payment of management fees. The land search of Flat 4C reads as follows:
- A Mortgage dated 2nd May 2015 in favour of the Hong Kong Bank for a loan of HK\$3 million (“HK Bank Mortgage). It was registered on 3rd May 2015, and discharged on 3rd May 2017.

- A Charge for HK\$150,000, dated 27th February 2017 in favour of the Manager (“Manager’s Charge”). This charge was created pursuant to the express covenants in the DMC. It was first registered on 1st March 2017, and re-registered on 5th May 2022
- A Mortgage in favour of Kowtow Ltd for a loan of HK\$6 million dated 1st May 2017, and registered on 3rd April 2017 (“Kowtow Mortgage”). HK\$2 million was used to repay the HK Bank Mortgage, and it was discharged. It is believed that about HK\$4 million of the Kowtow Mortgage is still outstanding.
- A charging order for HK\$600,000 dated 5th June 2017 in favour of the Mr. Brown (“Brown’s Charge”). It was registered on 5th June 2017, and re-registered on 4th June 2022.

You are asked to advise the Manager on their position in respect of Flat 5B of the Building. The Manager has heard rumours that the current owner is facing undergoing serious financial difficulties and other creditors have initiated enforcement proceedings, including the eventual order of sale of Flat 4C. The most optimistic appraisal for Flat B is currently HK\$4 million. **(15 marks)**

- (d) With years of savings derived from his earnings as a construction worker and plumber, Charles purchased an old village house from an indigenous village nearby a slope within Demarcation District 413 (the “Old House”) since 1980. The House was built within a lot at a sloped terrain known as “*Remaining Portion of Section F Lot 5432 of DD 413*” (the “Lot”).

The Lot is governed under the usual terms and covenants provided under a Block Government Lease including the “*Watford Covenant*” and *Melhado* clause.

Being the owner of the Lot, Charles thought that the Old House was too dilapidated and serious water seepages problems existed during typhoon seasons which gave him too much trouble in maintaining them. He therefore hired contractors to demolish the Old House in early 2021 while living in a rented accommodation outside.

Charles was very impressed by the speedy construction of temporary ‘modular’ buildings since the onset of COVID-19. Upon the advice given by his fellow workers and with a view to save costs, Charles thought that it would be far cheaper for him to use a container to build his own “modular” home. The container can be easily transported into the Lot and become erected/fitted out by Charles himself. This could save him a lot of costs, which dispenses with the need for him to hire an architect and/or other builders to draw plans, submit them to the authorities and ‘build’ them by excavating the ground.

Charles plans to buy his own container and transport it to the land, and seeks to fit them out internally with domestic facilities to become his own residence in January 2023. Upon hearing of his father’s plans, his daughter, Isabella, seeks your advice on the legal compliance aspects in carrying out this ‘plan’. Advise Charles and Isabella whether Charles would be in breach of any obligations of the Government Lease, the relevant risks of enforcement and the consequences therefrom. **(15 marks)**

- End of Examination Paper -