

PCLL CONVERSION EXAMINATION JANUARY 2022

Title of Paper : Hong Kong Land Law
Date : 11 January 2022
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 2022

Hong Kong Land Law

Question 1 (50 marks)

(a) Alan owns a flat in Wan Chai. The flat is in a multi-storey building on land that the Government granted to the developer Gold Fortune Ltd under Conditions of Exchange dated 1972.

(i) Explain what is meant by Conditions of Exchange distinguishing Conditions of Exchange from Conditions of Sale. **(3 marks)**

(ii) Did Gold Fortune Ltd receive a legal or equitable interest under the Conditions of Exchange in 1972? **(4 marks)**

(iii) It is now 2021 and Alan 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 1985 a plot of land in Sham Shui Po was granted to Mega Construction Ltd ('Mega') 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 50 metres. In 1986, Mega constructed a building 55 metres in height on the land and an occupation permit was issued by the Buildings Department. In 1996, the land and building were sold to Chelsea Development Ltd ('Chelsea') which demolished the building and constructed a replacement building 60 metres in height. Again, an occupation permit was issued by the Buildings Department. This month Chelsea 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.

Chelsea 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 Chelsea.

(20 marks)

(c) Harmony Developers Ltd ('Harmony') is considering whether to purchase a vacant plot of land in Tai Po in the New Territories. The land was originally granted by Government under a Block Crown lease dated 1906, 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 as a dump for old cars.

Advise Harmony on these two issues.

(13 marks)

Question 2 (50 marks)

(a) Michael 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) Michael has heard from the village head that he may apply for a certificate of exemption. Explain to him (A) the purpose of obtaining this certificate; and (B) whether he has a right to be issued with a certificate of exemption. **(8 marks)**

(iii) The small house has now been constructed in accordance with the statutory requirements and Michael 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 November 2018, Timothy agreed to sell his flat in Kennedy Town to Louis for HK\$10 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 in. 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 Timothy? **(14 marks)**

(c) In 2018, Ziggurat Developments Ltd (Ziggurat) developed a block of 20 residential flats on Lot 789. The block is called 'Healthy Buildings'. In 2019, Yasmine bought Flat number 1 Healthy Buildings from Ziggurat. The purchase included one equal undivided 20th share of and in Lot 789 and of and in Healthy Buildings together with the right to the exclusive use of Flat 1.

Ziggurat and Yasmine then executed a Deed of Mutual Covenant for Healthy Buildings ('DMC'). The DMC provides that each owner has the right to the exclusive use of the flat allotted to their parcel of undivided shares. The DMC was registered in the Land Registry.

Explain the legal relationship between the owners of the flats in Healthy Buildings. **(10 marks)**

Question 3 (50 marks)

- (a) In early December 2021, Emperor Co Ltd ('Emperor') agreed orally to sell its commercial premises in Kowloon Tong to Liberty Ltd ('Liberty'). Emperor and Liberty identified the premises as Floor 8, Good Fortune Building, 88 Prince Edward Street, Kowloon. The agreed purchase price was HK\$55 million with the completion date fixed at 5th January 2022. They also agreed that Emperor 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.

Emperor's solicitors wrote to Liberty's solicitors on 14th December as follows:

14 December 2021

Dear Sirs

Re Sale of as Floor 8, Good Fortune Building, 88 Prince Edward Street, Kowloon

We act for Emperor in the sale of the above premises to your client Liberty. We confirm that Emperor has agreed to sell the premises to your client for HK\$55 million with completion fixed for 5th January 2022.

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

Yours faithfully

Chan and Chan Solicitors

Liberty's solicitor wrote back on 16th December:

16 December 2021

Dear Sirs

Re Purchase of Floor 8, Good Fortune Building, 88 Prince Edward Street, Kowloon

Thank you for your letter of 14th December 2021. We confirm that we act for Liberty in the purchase of the above premises from your client Emperor. We confirm that Liberty will be purchasing the property with the aid of a mortgage from the Standard Chartered Bank.

Yours faithfully

Wright and Hassel Solicitors

One week later Wright and Hassel wrote to Chan and Chan saying:

23 December 2021

Dear Sirs

Re Purchase of Floor 8, Good Fortune Building, 88 Prince Edward Street, Kowloon

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

Yours faithfully

Wright and Hassel Solicitors

You are a solicitor in the employment of Chan and Chan, Solicitors. Advise your client Emperor whether it can enforce the oral agreement against Liberty.

(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) 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. **(12 marks)**

~ End of Examination Paper ~