

PCLL CONVERSION EXAMINATION AUGUST 2022

Title of Paper : Hong Kong Land Law
Date : 24 August 2022
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 4 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 August 2022

Hong Kong Land Law

Question 1 (50 marks)

- (a) In 1983, three young friends, Alan, Brian and Carol bought a house (“the house”) together in Sheung Shui. They made equal contributions to the purchase price of the house and it was conveyed into their joint names. The assignment did not note their interests.

In 2006, Alan made a will and left all his estate to his brother Derek. Brian and Carol then followed suit and made their respective wills. Brian left his whole estate in his will to his brother Eric. Carol left her whole estate in her will to her sister Frida.

Carol died suddenly last week of a heart attack. Owing to Carol’s sudden death, Alan and Brian decided they had to make plans for their own “shares” in the house. They reached an oral agreement (“oral agreement”) yesterday to the effect that they would from then on have separate ownership of the house, that is, either of them could deal with his own separate share in the house, freely and without reference to the other.

Alan and Brian telephoned their solicitors in Tai Po this morning to make an appointment to discuss their oral agreement. Unfortunately, they were both killed when the mini-bus that Alan and Brian boarded to travel to Tai Po crashed.

There is now a dispute between Derek, Eric and Frida concerning who owns the house. Advise on the ownership of the house. If you require further information to answer this question, state what it is and the reason(s) why it is needed.

(40 marks)

- (b) Now consider the following added facts. On 4th June 2018 a Charging Order *nisi* in respect of one of Alan’s unpaid debts was registered against the house. This charging order was made absolute on 9th July 2018. On 2nd December 2019, both charging orders were discharged. Would your answer differ if these facts were added to the scenario, and, if so, how?

(10 marks)

Question 2 (50 marks)

- (a) In 1968, the property development firm, Dundee International Ltd (“Dundee International”), exchanged a plot of land they had purchased with the Government for a plot in Shatin (“Plot A”) subject to Conditions of Exchange. In 1971, Dundee International purchased the adjacent plot of land from the Government (“Plot B”) subject to Conditions of Sale. Dundee International then built a multi-storey development of flats on the two plots as two towers. Tower 1 was built on Plot A and Tower 2 on Plot B. The flats were sold in 1974. Stephen and Trevor were among the original purchasers. Stephen purchased a flat in Tower A and Trevor purchased a flat in Tower B. Stephen and Trevor have both decided to sell their flats but have been asked questions by prospective purchasers about the nature of their interest in the flats. In particular they have been asked if their interests will differ because the developers obtained Plot A by way of exchange and Plot B by purchase, whether they have legal or equitable interests in their respective flats.

Advise Stephen and Trevor.

(18 marks)

- (b) World Construction Ltd (“World”) was granted a plot of land in Sheung Shui by the Government in 1990 by way of Conditions of Sale. The Conditions of Sale provided that no building might be erected on the land with a height exceeding 50 metres. In 1995, World constructed a building 60 metres in height on the land and an occupation permit was issued by the Buildings Department. In 1998, the land and building were sold to Kung Development Ltd (“Kung”) which completely renovated the building at considerable expense, replacing all windows, moving some internal walls and adding new elevators. The building works were overseen by the Buildings Department and subject to their inspection upon completion to comply with building regulations. Upon completion the Buildings Department issued a new occupation permit and a certificate of compliance for the renovations. In July 2022, Kung received a notice from the Lands Department informing Kung 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.

Kung 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 Kung.

(20 marks)

- (c) Momentai Developers Ltd (“Momentai”) is negotiating to buy a plot of land in Sai Kung 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’. The plot has been divided into two halves. On one half of the land old metal transport containers have

been placed to be used for storage. These have been let to anyone who wants to use self-storage, including local businesses. On the other half of the land a small commercial development has been constructed. Momentai wishes to know whether the description of the land as 'dry cultivation' land permits its use for the storage containers and the constructed commercial premises, as there seems to be no planning or other consent from the Government for this construction.

Advise Momentai.

(12 marks)

Question 3 (50 marks)

Dirk 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 has heard that indigenous villagers may receive certain privileges as regards obtaining land upon which to build and relaxations of building regulations for their houses.

(a) Advise Dirk on the following:

- The three forms of small house grant; in particular, explain how he may buy government land upon which to build a small house;
- What he must establish to prove to the government he is an indigenous villager; and,
- Any restrictions which may be imposed upon the house to be constructed.

(20 marks)

(b) Dirk has heard from the village head that he may apply for certificates of exemption from certain requirements of the Buildings Ordinance for building his small house. Explain to him the purpose of obtaining these certificates and whether he has a right to be issued with these certificates of exemption.

(18 marks)

(c) The small house has now been constructed in accordance with the statutory requirements and Dirk wishes to sell the house to another indigenous villager. Explain what documents of title the purchaser's solicitor should require Dirk to produce by way of proving his good title and explain the purpose of each document which must be produced to the purchaser.

(12 marks)

~ End of Examination Paper ~