

PCLL CONVERSION EXAMINATION JANUARY 2021

Title of Paper : Hong Kong Land Law
Date : 4 January 2021
Time : 2:30 p.m. – 2:45 p.m. (Reading Time)
2:45 p.m. – 4:15 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 5 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2021

Hong Kong Land Law

Question 1 (50 marks)

Alan has just signed an agreement (“the agreement”) to sell his flat in Tin Hau (“the flat”) to David. The agreement includes the following terms:

- (i) A good title will be sold.
- (ii) Vacant possession of the flat will be delivered at completion.

According to the information supplied by David (some of which he gathered from Fred, Alan’s father), the land search and the title deeds, the following events have taken place in respect of the flat:

- (1) Alan and a former girlfriend, Mary, executed an Assignment in 2010 to purchase the flat as joint tenants of both the legal and equitable interests therein.
- (2) Mary made a will in 2013 and named Gloria, her mother, as the sole executrix and beneficiary of her estate.
- (3) A Charging Order *nisi* in respect of one of Alan’s unpaid debts was registered against the flat on 23rd May 2014 and was made absolute on 30th June 2014. On 2nd November 2015, both charging orders were discharged.
- (4) Mary died of cancer in early 2016.
- (5) Fred moved into the flat in late 2016.
- (6) Alan started dating Lucy in early 2017 and since then, she has been visiting Alan at the flat and staying overnight occasionally.
- (7) Fred showed David round the flat and negotiated the purchase price on behalf of Alan.

Answer the following questions and give reasons for your answers:

- (a) Discuss, with reference to relevant case authorities and statutory provisions, whether or not any of the abovementioned events (1) to (7) and/or his knowledge thereof may affect David’s ability to acquire a good title and obtain vacant possession of the flat at completion.

(40 marks)

- (b) How, if at all, would your answer to Question 1(a) above be different if Fred and Lucy are not Alan’s father and girlfriend respectively but instead they have jointly rented the flat from Alan under a three-year tenancy agreement (which commenced two months ago) together with a right to renew the term of the tenancy for one more year upon expiry of the present term? If you require further information to answer this question, state what it is and the reason(s) why such information is needed.

(10 marks)

Question 2 (50 marks)

- (a) In 1996, Ben started farming on a piece of land (“the land”) in the New Territories. He built a wooden shed soon after in order to store his farming tools and the toys of his three children, who started using part of the land as their playground. Ben also built a fence around the land and installed a locked gate at the entrance.

The land is held from the Government of the Hong Kong SAR under a Block Government Lease dated 2nd June 1904 for a term of 75 years from 1st July 1898 with a right of renewal for a further term of 24 years less the last 3 days. The title deeds of the land show that its owner is Owen, who inherited the land in 1995 from his deceased father. Owen usually resides in England and seldom visits Hong Kong.

Owen has just received an offer from Penny to buy the land. One of her conditions of offer (“the condition”) is that Owen must deliver vacant possession of the land at completion. If Owen accepts Penny’s offer, evaluate, with reference to relevant case authorities and statutory provisions, his chances of success in fulfilling the condition.

(25 marks)

- (b) Healthy Centre (“the building”) was erected on Inland Lot No 34 in 2005.

According to the Deed of Mutual Covenant (“the DMC”) relating to the building, 1/360th equal undivided part or share of and in the building and Inland Lot No 34 has been allocated to each of the office units of the building.

On 18th November 2005, Clean Company Limited (“Clean”) purchased the whole of the 16th floor of the building, which consists of 3 office units, namely, Units 1 to 3, to run its business.

Ten years ago, to create more open space and with the consent of both the Building Authority and the Manager of the building, Clean employed workmen to “demolish” the whole of Unit 2. After the “demolition” of Unit 2, the staff and customers of Clean have been using a path (“the path”), which used to be part of the floor of the now demolished Unit 2, as a shortcut to the lift lobby and the toilets on the 16th floor.

Clean, fearing an economic downturn in Hong Kong, has agreed to sell Unit 3 to Keen Buyer Limited (“Keen”).

Advise Keen, with reference to relevant case authorities and statutory provisions, the steps (if any) it should take to ensure that after completion of its purchase of Unit 3, Keen and its successors in title will have an express right to use the path. If no such express right is procured from Clean at completion, will Keen, as the new owner of Unit 3, and its successors in title still be entitled to use the path? If so, what is the legal term used to describe such a right of way?

(25 marks)

Question 3 (50 marks)

Jack owns two flats (respectively “Flat 1” and “Flat 2”) at Hope Garden (“the Building”) constructed on Marine Inland Lot No 298 (“the Lot”). The Building was first built in 1993 and the flats have changed hands several times since.

When Jack bought both Flat 1 and Flat 2 from Mona, their previous owner, he executed an Assignment dated 4th September 2000, which expressly stated, amongst other things, that it was ““subject to and with the benefit of a Deed of Mutual Covenant (“DMC”) relating to the Building””.

The DMC was dated 2nd March 1993 and the parties thereto were Hope Co Ltd (as the developer), Nancy Chan (as the purchaser of the first flat of the Building to have been sold) and Diligence Management Limited (as the Building Manager). The terms of the DMC include the following:

- (i) The Building Manager is empowered to manage the Building and enforce the provisions of the DMC.
- (ii) All management and other charges relating to the Building shall be paid by all owners in proportion to their respective undivided shares of and in the Building and the lot upon which the Building was erected.
- (iii) No owner shall make any structural alteration to the flat of which he has the exclusive, use and occupation.
- (iv) No owner shall keep any pets.
- (v) No owner shall use the flat of which he has the exclusive use, occupation and enjoyment for any purpose other than as a private residence and shall not conduct any trade or business or profession or calling whatsoever therein.
- (vi) No owner shall create any noise which may be a nuisance or annoyance to the other occupiers of the Building.

Jack and his family reside at Flat 1. Flat 2 has been rented out to Terry at a monthly rent of HK20,000 under a written tenancy agreement, which also provides for Terry to pay the management charges for Flat 2.

An Owners’ Corporation in respect of the Building has been properly formed under the Building Management Ordinance (Cap 344).

Answer the following questions. You must give reasons for your answers.

- (a) Jack and his family have been kept awake lately because the dog of Danny, one of their neighbours, keeps barking every night. When confronted by the Building Manager, Danny argues that he is not bound by any provisions of the DMC because he is not a party to it. Furthermore, the management charges for Flat 2 have not been paid for the past three months. Explain whether or not the Building Manager is entitled to enforce the DMC against Danny for the noise made by his dog and demand from both Jack and Terry payment of the outstanding management charges for Flat 2.

(25 marks)

- (b) Jack recently told Jill, his other neighbour, his plans (“the plans”) to remove the partition wall between Flat 1 and Flat 2 upon the expiry of Terry’s tenancy and use one of the rooms in Flat 2 as a “health studio” for Jack’s daughter to give yoga classes now and again. When Danny heard about the plans, he immediately sent a complaint to the Building Manager. Advise the Building Manager of the circumstances in which the plans may breach any statutorily implied or abovementioned express provisions of the DMC.

(25 marks)

~ End of Examination Paper ~