

PCLL CONVERSION EXAMINATION JUNE 2022

Title of Paper : Hong Kong Land Law
Date : 28 June 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 June 2022

Hong Kong Land Law

Question 1 (50 marks)

In 1953, Mr Tang purchased a small house ('the property') near Yuen Long in the New Territories in which he lived with his son Dirk. The property included a large garden in which Mr Tang grew bananas, pomelo 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 Tang 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 1958 Mr Tang dug up the wild flowers and began to plant fruits on part of the plot. In 1959 Mr Tang 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 Tang died in 1975 and his son Dirk inherited all his assets. Dirk continued to grow fruit on the plot. In 1980 Dirk sold the property to Norman his neighbour. Norman wanted to buy the plot as well but Dirk would only lease the plot to Norman for a monthly rent. Norman used the plot to continue to grow fruit. Norman died in 1984 and Dirk took the plot back and carried on growing fruit on it. In 1986, Dirk leased the plot to Ding Transport Ltd to store their containers on the land on an annual renewable tenancy at the monthly rental of \$8,000. This arrangement, with subsequent rental increases, continued until March 2021 when Dirk 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 Dirk 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 Dirk 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 Dirk 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 Dirk 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)**

Question 2 (50 marks)

Gold Luck Mansions ('the building') is a multi-storey building which was constructed in Causeway Bay in 2014. It contains fifty-five floors. According to the occupation permit the first three floors of the building must be used for commercial use and the fourth to fifty-fifth floors for residential use. The whole of the ground floor is occupied by a supermarket and three shops and the whole of the first floor is occupied by a firm of accountants. Flat 12D on the twelfth floor is owned by Mr Chin and has been let to Raisha Tsang ('Raisha') on a three-year lease which will expire in 2023.

The deed of mutual covenant for the building provides, inter alia, that:

- (i) Every owner must pay the required management fees as provided for in the deed of mutual covenant.
- (ii) No owner may carry out any structural alterations to his or her flat without the consent of the Buildings Department.
- (iii) No owner shall interfere with the common parts of his or her flat or convert the common parts to his or her own use.

The deed of mutual covenant was executed under seal by the developer of the building and Michael Ellis who was the first purchaser of a flat in the building to be sold.

Answer the following questions:

- (a) Are both Mr Chin and Raisha bound by the covenants (i) not to make structural alterations and (ii) to pay management fees? **(26 marks)**

- (b) The firm of accountants, which occupies the first floor, intends to move out and wishes to divide up the first floor (to which 100 undivided shares of the lot upon which the building now stands have been allocated by the deed of mutual covenant) into four separate units. The units will then be sold to four different persons/companies to use for commercial purposes.

Explain to the firm of accountants the legal mechanism and procedure by which such division should be effected bearing in mind that new common parts will need to be created. You may ignore any building issues. **(12 marks)**

- (c) Mark is intending to purchase one of the shops on the ground floor. He notes that the vendor EasiClean Ltd ('EasiClean') has breached the deed of mutual covenant by enclosing part of the common parts at the back of its unit for its own use. Advise Mark whether he will be responsible for the breach committed by EasiClean. **(12 marks)**

Question 3 (50 marks)

- (a) Patrick decided to immigrate to Tahiti with his family and put his luxury flat in Kennedy Town up for sale. On 8 April 2022, Adam entered into a binding sale and purchase agreement to purchase the flat for HK\$30 million and paid a deposit of 10% of the agreed purchase price. On 2 May 2022, the sale and purchase agreement was registered at the Land Registry. On 21 April 2022, Lucky Bat Lending Ltd ('Lucky Bat') registered a charging order nisi over the flat by way of enforcement of a judgment that Lucky Bat had obtained against Patrick. Adam seeks your advice as to what legal consequences the charging order will have if Patrick executes the assignment in accordance with the sale and purchase agreement. Advise Adam. **(12 marks)**
- (b) Would your advice differ if the sale and purchase agreement had only been registered on 27 May 2022? Explain your answer. **(3 marks)**
- (c) In 2010, Ming Logistics Ltd ('Ming') inspected a unit in a commercial building in Tuen Mun which it wished to purchase from its owner. Having entered into a binding sale and purchase agreement to purchase the unit, Ming obtained a mortgage loan of HK\$6 million from the National Farming Bank ('Farming Bank'). The purchase was duly completed and the mortgage was duly registered. In 2017, Anders successfully sued Ming for HK\$4 million and secured a charging order nisi over the unit by way of execution of the judgment. The charging order was registered within one month. On 1 June 2022, Ming approached the Commercial Bank to obtain a further loan by way of second mortgage of HK\$1.5 million which Ming intends to use, first, to discharge Farming Bank's mortgage (the sum outstanding is HK\$1 million) and, secondly, to provide some extra liquidity for its business. Commercial Bank has come to you, its solicitor, for advice as to whether, if it lends HK\$1.5 million to Ming partly to discharge Farming Bank's mortgage, the charging order will take priority over its mortgage and to what extent. Advise Commercial Bank. **(10 marks)**
- (d) Colin and Marilyn are husband and wife. In 2016, they decided to buy a flat in Sai Kung for HK\$5 million. Marilyn had inherited a large sum of money from her aunt and provided the whole purchase price. The flat was duly purchased (without the assistance of a mortgage), duly assigned to Colin, and registered in Colin's sole name. Two years later the flat was mortgaged to Turpis Bank to raise funds for Colin's business. Does Marilyn have any interest in the flat and, if so, will Turpis Bank take free of that interest? **(25 marks)**

~ End of Examination Paper ~