

PCLL Conversion Examination
January 2021
Examiner's Comments
Hong Kong Land Law

This examination paper covered a wide range of examination topics and required candidates to answer two out of a total of three questions.

To help candidates reflect upon their own examination performance, the Examiner's Comments are set out below:

Common Mistakes

- (1) Regurgitation of pre-prepared answers to past questions: The examination syllabus might be the same but candidates should not expect the examination questions they were attempting to be identical to previous ones.
- (2) Insufficient "Hong Kong elements" or none at all in the answers: The examination was on "Hong Kong Land Law" and hence there were "Hong Kong elements" in each question. Some candidates mentioned either insufficient relevant Hong Kong law and/or decided cases or none at all in their answers.
- (3) Bad time management: Some candidates wrote numerous pages to answer their first question but could only manage half a page to answer the last one as they ran out of time towards the end.
- (4) Writing too much irrelevancies: Quite a few candidates wrote a lot about what they knew, regardless of its relevance to the question, instead of writing precisely and concisely about the specific legal issues arising from each question.

Legal Issues relating to each question

Question 1(a)

This question required students to explain the impact, if any, the events stated in the question might have on the title to the flat. Relevant issues included the right of survivorship in a joint tenancy; severance, if any, of a joint tenancy by a will or a charging order; the doctrine of notice; the presumption of advancement; the meaning of "occupation" and whether Fred's showing David round the flat and negotiating the purchase price on behalf of Alan amounted to estoppel if Fred were to assert any equitable interest he might have in the flat.

Relevant statutory provisions included sections 2 and 5(2) of the Conveyancing and Property Ordinance (Cap 219) ("CPO").

Relevant decided cases included *Williams v Hensmen* (1861) 1 J & J 546, *Malahon*

Credit Co Ltd v Siu Chun Wah Alice [1988] 1 HKLR 196, *Wong Chim Ying v Cheng Kam Wing* [1990] 1 HKC 418, *Abbey National Building Society v Cann* (1990) 2 WLR 832, *Ho Wai Kwan v Chan Hon Kuen* ([2015] HKEC 132, *Lee Tso Fong v Kwok Wai Sun and Another* [2008] 4 HKLRD, *Chan Chui Mee v Mak Chi Choi, Neslon and Others* [2008] HKCFI 810, *Mo Ying v Brillex Development Ltd* [2016] HKCFA 36 and similar cases.

Question 1(b)

This question required candidates to discuss how and why the priority of a tenancy agreement and an option to renew could be procured. The question was quite well attempted by many candidates. Some of them failed to score full marks because they omitted to mention section 4 of the Land Registration Ordinance (Cap 128) (“LRO”).

Relevant statutory provisions included section 4 of the CPO, sections 3(2) and 4 of the LRO (Cap 128) (“LRO”).

Relevant decided cases included *Chiap Hua Flashlights Ltd v Markfaith Investment Ltd* [1989] HKCA 233 and similar cases.

Question 2(a)

This question required candidates to advise about “adverse possession”, a much often examined topic. Some candidates lost marks because their answers were too brief and/or they omitted to include the “Hong Kong elements”, such as whether the adverse possessor’s right could have been affected by the extension of the Government Lease.

Relevant statutory provisions included section 8(1), 7(2), 13 and 17 of the Limitation Ordinance (Cap 347), the New Territories (Renewable Government Leases) Ordinance (Cap 152) and the New Territories Leases (Extension) Ordinance (Cap 150).

Relevant decided cases included *Powell v McFarlane* (1979) 38 P & CR452, *Wong Tak Yue v Kung Kwok Wai David and Another* [1998] HKCFA 36, *Chan Tin Shi & Others v Li Tin Sung & Others* [2006] HKCFA, *Shing Luen Fat v Shing Chi Ping* [2014] HKCA 669 and similar cases.

Question 2(b)

This question required candidates to discuss an “easement”, which is part of the definition of “land” in section 2 of the CPO. Keen, as an owner of an office unit of Healthy Centre (“the building”), could only ask for a “quasi-easement” from Clean as Keen could not claim an easement over the land that he co-owned with others, that is, the land on which the building stood. An “express contractual quasi-easement” as per *Kung Ming Tak Tong Co Ltd v Park Solid Enterprises Ltd and Another* [2008] 5 HKLRD 441 should have been requested from Keen, failing which candidates should discuss the possibility of an “implied contractual quasi-easement” by applying the principles under *Wheeldon v Burrows* (1879) LR 12 Ch D 31.

Some candidates thought that the question was about the use of the common areas and/or enforcing the covenants in a Deed of Mutual Covenant (“DMC”). This was incorrect because Unit 2 was all the time owned by Clean and after its “demolition”, the path which used to be part of the demolished Unit 2 was still privately owned by Clean. It did not form part of any common areas co-owned by all unit owners and was therefore outside the cope of the DMC.

Even if they omitted any discussion of an easement, marks were still awarded to those candidates who could recognize that the path was privately owned and was not part of the common areas governed by the DMC.

Relevant statutory provisions and decided cases included sections 2, 4(1) and 16(1) of the CPO.

Relevant decided cases included *Wheeldon v Burrows* (1879) LR 12 Ch D 31, *Re Ellenborough Park* [1955] 3 ALL ER 667, *Kung Ming Tak Tong Co Ltd v Park Solid Enterprises Ltd and Another* [2008] 5 HKLRD 441 and similar cases.

Question 3(a)

This question required candidates to discuss whether certain covenants contained in a DMC could bind an owner or a tenant, or both, even though they were not the original parties to the DMC. This question was well attempted by many candidates.

Relevant statutory provisions included sections 41(2), (3), (5) and (6) of the CPO and section 23 of the Building Management Ordinance (Cap 344) (“BMO”).

Relevant decided cases included *P & A Swift Investment v Combined English Stores Group* [1989] AC 632, *Supreme Honour Development Ltd v Lamaya Ltd and Another* [1991] HKCA 209, *Discovery Bay Services Management Ltd v Buxbaum* [1994] HKDC 3 and similar cases.

Question 3(b)

This question required candidates to discuss, amongst other things, whether a partition wall between two flats would form a “common part” of a building and also whether the proposed user of one of the flats as a health studio would breach the DMC.

Some of the answers were too brief, probably because this was the last question they attempted and candidates ran out of time by the time they reached this question.

Relevant statutory provisions included sections 17, 41(2) and (3) of the CPO and sections 2, 16, 34I and Schedule 1 of the BMO.

Relevant decided cases included *Donald W Shields v Mary Chan* ([1971] HKCFI 78, *Spark Rich (China) Ltd v Valrose Ltd* [1999] HKCA 457, *Central Management Ltd v Light Field Investment Ltd and Another* [2011] 2 HKLRD 34, *The Incorporated Owners of Westlands Garden v. Oey Chiou Ling and Another* [2011] 2 HKLRD 421, *Tam Sze Man and Another v Incorporated Owners of Shan Tsui Court* [2011] HKCA 216 and similar cases.

Final Comment

The legal issues mentioned above are non-exhaustive. Marks were still awarded to issues raised by candidates not mentioned above, so long as they made legal sense to the markers in light of the facts supplied.