

PCLL Conversion Examination
June 2020
Examiner's Comments
Hong Kong Land Law

This paper followed the usual format for this examination. Candidates were required to answer two questions from three. The paper offered candidates a sufficiently wide range of topics from within the syllabus to illustrate their knowledge, understanding and application of Hong Kong land law. It should not be too difficult to score a pass mark in aggregate but it was not easy to get high marks either. Each question deliberately had a part to identify the high flyers. There were some good answers – which were concise and precise, covering the issues comprehensively and analysing the facts well. Those not performing so well suffered from the same issues already noted repeatedly in previous years – failure to apply the law to the given facts, failure to answer the question, time wasted for irrelevant law and/or facts.

Question 1

This question had three parts. Part (b) should be the most straightforward one. However, a number of students missed out the reference to *Walsh v Lonsdale* (1882) 21 Ch D 9 in (b)(i) and so fell short of the full mark. For (b)(ii), candidates were expected to elaborate on the term ‘conditions precedent’ in CPO s 14(1) to include compliance of those positive conditions with no breach of any restrictive one. An even better answer should have *Tai Wai Kin v Cheung Wan Wah Christina* [2004] 3 HKC 198 cited and explained.

Part (a) expected candidates to first identify the key issue: fixtures versus fittings, and then discuss the relevant tests: e.g. the purpose and the degree of annexation. Candidates had to apply and discuss, in turn, whether the window-type air-conditioners and the split-level one were fixtures and hence, included in the sale and purchase of the land, with proper authorities in support in order to achieve a high mark.

The key issue in part (c)(i) was whether the restrictive covenant on user has been breached. It required first whether advertising might qualify for the meaning of ‘industrial purpose’: see e.g. *Mexx Consolidated (Far East) Ltd v AG* [1987] HKLR 1210, followed by a discussion on the extent of the non-permitted user: see e.g. *Donald Shields v Mary Chan* [1972] HKLR 121. A number of candidates missed out the second aspect of the answers. An even better answer included appropriate factual enquiries, e.g. the size of building, area for advertising and that for manufacturing, in reaching a conclusion.

Question 2

Part (a)(i) required candidates to identify the requirements for correspondence to be considered a memorandum and thus actionable as a lease: CPO s 3(1), and apply these to the given facts with appropriate authorities including, e.g., *World Food Fair v Hong Kong Island Development Ltd* [2007] 1 HKLRD 498 in support. It also required

candidates to consider case law including, e.g. *Well Lock Ltd v Reserve Investments Ltd* (2013) DCCJ 2111/2011, on the authority of solicitors signing documents.

Part (a)(ii) expected correct application of LRO ss 3(2), 4 and 5 and relevant case law, e.g. *Keep Point Development Ltd v Chan Chi Yim* [2000] 2 HKLRD 145 in determining the priority between lessee and the mortgagee bank. A small number of candidates mistakenly referred to LRO s 5A on registration of a charging order. More missed the point that mere notice of a prior registrable but unregistered instrument is insufficient to establish lack of bona fide.

With regard to part (b)(i), a number of candidates missed out CPO s 4(1) and mistakenly cited s 5(1)(b) as s 5(b). For part (b)(ii), some candidates were apparently not aware of CPO s 9(3).

Part (c) required candidates to identify the consequences of joint tenancy and, in particular, the principle of survivorship. Candidates then had to note the procedure for severance at law: CPO s 8, or in equity: CPO s 8(2). A number of students missed the relevance of registration in case of severance by notice or instrument.

Question 3

The key issue in part (a) was whether the burden of the covenants had passed to a successor-in-title. It required candidates to explain the principles regarding the running of covenants: CPO s 41(2) and 41(3). Candidates were expected to differentiate between land and personal covenants and apply to each of the three given covenants appropriately. An even better answer would include references and discussion on CPO ss 40 and 41(9). Bonus mark was given to appropriate reference to BMO.

Part (b) related to the running of covenants to a lessee. Apart from applying CPO s 41(2) and 41(3), candidates were expected to differentiate between positive and negative covenants: CPO s 41(5) and 41(6), and apply to each of the three given covenants appropriately. An even better answer would include an enquiry of whether lease itself might contain any similar covenants to be enforced by the landlord against him. Bonus mark was given to appropriate reference to BMO.

The issue in part (c) was to what extent a developer might enforce any DMC covenant after it had disposed of all its undivided shares: CPO s 41(2)(c), 41(8) and *Lee Hysan Estate Company Ltd v Skyheart Ltd* [1997] 1 HKC 313. Again, this required differentiation between land and personal covenants.