

PCLL Conversion Examination
June 2022
Examiner's Comments
Hong Kong Land Law

The PCLL Conversion Examination Hong Kong Land Law was conducted in June 2022. This is an open book examination in which candidates must answer two out of three questions.

Overall Comments

Candidate chose questions to answer relatively evenly, with perhaps the third question on priorities the least popular. The general standard of answers was quite good with a few excellent papers. There were a few very poor papers. These evidenced poor preparation with some parts of questions or complete questions remaining unanswered.

Question Specific Comments

Question 1 was a question about adverse possession. Most candidates who attempted this question did well on the basics, although a few missed the distinction in Hong Kong of the adverse possession in time period against the Government. Most candidates noted that the occupation periods could be aggregated and noted the evidence of factual possession. A relatively common mistake was to fail to use this evidence to argue for an intent to possess. Another issue was a failure to note that Hong Kong has taken a different path to England in its interpretation of a willingness to pay rent by the squatter.

Question 2 concerned deeds of mutual covenant (DMC). Again this was generally answered quite well by those who attempted it, although part (b) was an issue for some candidates. For part (a) candidates had to discuss whether successors in title could be bound by the positive and restrictive covenants in the Deed. Candidates had to explain what a land covenant is and identify if these were land covenants. They had to consider the statutory presumption in section 40(1) CPO and conclude on what covenants would bind both parties and what covenant might not be binding because of the status of the occupier of the property as a tenant and not a successor in title. Part (b), as noted, proved challenging for some candidates as the question asked for the procedure to be followed and examiners were looking for a step by step guide to subdividing the area. Part (c) was answered well by most candidates who attempted this question. Most identified that Mark would only be liable if the breach was of a restrictive condition, if it was continuing and if he adopted the breach. As it seems from the facts that this would be the case, most concluded he would probably be liable.

Question 3 was a question about priorities and was, as noted, probably the least popular attempted question. Those who did attempt this question did quite well on the basic issues in priorities in interests in land. For part (a) most candidates noted that the sale and purchase agreement has priority over the charging order. However, some neglected to follow up by considering that the purchaser still has notice of the charging order because it is registered and is therefore subject to an obligation to discharge the charging order from the 90% residue of the purchase price. In part (b) some assumed that the advice would differ neglecting the principle that what is important is that the beneficial ownership passed under the sale and purchase agreement and therefore the purchaser would be under the same obligation. In Part (c) most candidates noted that the new lender could step into the shoes of the first lender to the extent that the new loan discharged the old loan but would be a subsequent interest for any amount over this original loan. For part (d) most candidates noted that there were two issues to

be considered: did Marilyn have an interest in the property, and was the Bank a bona fide purchaser/mortgagee without notice (actual or constructive) of Marilyn's interest? In considering whether Marilyn had an interest some candidates considered the presumption of resulting trust and some the common intention constructive trust, the better answers considered both. Most candidates who considered the second issue did conclude that the Bank would have constructive notice because of Marilyn's occupation of the property. However, few followed up on how this would affect the Bank's enforcement of its security. This would depend on the extent of Marilyn's interest, if she had one. The Bank would probably be able to get an order for sale to realise its security against any of the property that belonged to Colin, and could pursue Colin for any monies owing after this.