

PCLL CONVERSION EXAMINATION JUNE 2020

Title of Paper : Hong Kong Land Law
Date : 16 June 2020
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 4 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 June 2020

Hong Kong Land Law

Question 1 (50 marks)

- (a) In April 2020, Jerome agreed to sell his flat in Chai Wan to Alicia for \$12 million. When inspecting the flat, Alicia noted that there were two window-type air-conditioners and one split-level air conditioner in the flat. The split-level air conditioner was securely attached to an inside wall with bolts. Completion has just taken place. To her dismay, Alicia discovered that all the air conditioners have been removed. Neither the sale and purchase agreement nor the assignment refers to any of these air-conditioners. Advise Alicia?

(18 marks)

- (b) Fred has entered into a sale and purchase agreement to purchase a newly constructed flat in Kowloon from the developer. The ultimate root of title is an Agreement for Conditions of Sale dated in 2011 (the 'Conditions of Sale'). Fred has been informed that he will only be acquiring an equitable interest in the flat.

- (i) Explain why Fred will only be acquiring an equitable interest. Would your answer differ if the Conditions of Sale had been dated in 1968?

(4 marks)

- (ii) When will the equitable interest be converted into a legal estate? How should this be proved? Does any document need to be registered?

(8 marks)

- (iii) Assume that the ultimate root of title was an Agreement for Conditions of Exchange rather than the Conditions of Sale. Explain the difference between Conditions of Exchange and Conditions of Sale.

(4 marks)

- (c) Forward Development Ltd ('Forward Development') has just purchased a plot of land from the Government of the Hong Kong Special Administrative Region ('HKSAR') for development.

- (i) The grant of this plot of land contains a covenant ('the covenant') that requires the land to be used 'only for industrial purposes'. Advise Forward Development whether it may use any building constructed on the land partly for printing magazines and partly for advertising those magazines.

(12 marks)

- (ii) What remedy or remedies, if any, would be available to the Government of HKSAR if the court ruled that there had been a breach of the covenant?

(4 marks)

Question 2 (50 marks)

- (a) In March 2020, Harry Hsu ('Harry') and Tony Tong ('Tony') negotiated the terms on which Harry would grant Tony a lease of Harry's flat known as Flat 16A Bauhinia Court, Hong Kong (the 'Flat'). Eventually they agreed to enter into a lease starting on 1 May 2020 for a term of four years at a monthly rent of HK\$85,000.00. In April, Harry's solicitor sent the following letter to Tony.

Dear Mr. Tong

We act for Harry Hsu, who has agreed to let Flat 16A Bauhinia Court to you for a term of four years starting on 1 May 2020 at a monthly rent of HK\$85,000. We will shortly send you the lease for signature.

Harry's solicitor signed the letter. However, no agreement for lease or lease was ever signed and Harry has now refused to let the Flat to Tony.

- (i) Explain whether Tony can enforce the oral agreement for lease against Harry?
(20 marks)
- (ii) Assume that both Harry and Tony executed the lease under seal on 1 May 2020. The lease is not registered in the Land Registry and on 15 June 2020 Harry mortgaged the Flat by way of legal charge to the Nanyang Commercial Bank Ltd ('NCB') to secure a loan of HK\$8 million. NCB knew about Tony's lease when it took the legal charge. NCB then registered the legal charge on 20 June 2020. Explain who has priority, Tony or NCB.
(10 marks)
- (b) Alan wants to create a trust over his flat known as Flat 7, Pine Court, Hong Kong (the 'Flat'), in favour of his children and to appoint his friends, Beatrice and Carrie, to be the trustees of the trust. Alan holds the Flat under a Government Lease.
- (i) What are the formalities required for creating the trust and appointing the trustees?
(8 marks)
- (ii) Will Beatrice and Carrie hold the Flat as joint tenants or tenants in common?
(4 marks)
- (c) In 2006, Flat 17B Serena Mansion, Hong Kong (the 'Flat') was assigned to Mr. and Mrs. Tam as joint tenants. Mr. Tam wishes now to give his interest in the Flat under his will to his son. Can this be done? If so, how and why?
(8 marks)

Question 3 (50 marks)

In 2017, Predominant Limited ('Predominant') constructed a 30-storey block of 240 residential flats on Tuen Mun Town Lot No. 1234. The block is called 'Predominant Gardens'. Whilst Predominant Gardens was being constructed, Jenny bought from Predominant one equal undivided 240th part or share of and in Tuen Mun Town Lot No. 1234 and Predominant Gardens together with the right to the exclusive use and occupation of Flat A on the 10th Floor (the 'Flat').

Predominant and Jenny then executed a Deed of Mutual Covenant for Predominant Gardens (the 'DMC'). Amongst other terms the DMC contains the following covenants by all owners of undivided shares in the lot (the 'DMC covenants') that:

- they will not allow their flats or other areas of which they have exclusive use to fall into disrepair;
- they will not obstruct the common parts of Predominant Gardens; and
- they will not employ any contractor other than Predominant Design Ltd (a company wholly-owned by Predominant) to carry out any repairs, maintenance, improvements or decorations to their flats or other areas of which they have exclusive use.

The DMC also provides that each owner has the right to the exclusive use of the flat allotted to his undivided shares under the DMC. The DMC was registered in the Land Registry.

Predominant thereafter sold the remaining 239 flats to individual purchasers who each bought one equal undivided 240th part or share of and in Tuen Mun Town Lot No. 1234 and Predominant Gardens together with the right to the exclusive use and occupation of a particular flat.

Jenny sold the Flat to Benny last month. Answer the following questions, giving reasons for your answers:

- (a) Can the DMC covenants be enforced against Benny? **(25 marks)**
- (b) If Benny grants a lease of the Flat to Tommy, can the DMC covenants be enforced against Tommy? **(13 marks)**
- (c) Can Predominant enforce the DMC covenants against any of the flat owners? **(12 marks)**

~ End of Examination Paper ~