

**THE LAW SOCIETY OF HONG KONG**  
**OVERSEAS LAWYERS QUALIFICATION EXAMINATION**  
**2011 SUPPLEMENTARY INFORMATION PACKAGE**

**HEAD I: CONVEYANCING**

**Contents**

- 1. Standards, Syllabus and Reading List**
- 2. Examiners' Comments on the 2008, 2009 and 2010 Examinations**
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**Important: The test paper for Head I Conveyancing:**

- 1. is open book. Candidates may bring in and refer to any book, document or other written material**
- 2. has a duration of 3½ hours**
- 3. has no specific reading time allocated**
- 4. contains FIVE questions. Candidates should answer any FOUR questions only.**

# **1. Standards, Syllabus and Reading List**

# Overseas Lawyers Qualification Examination

## Head I: CONVEYANCING

### Standards, Syllabus and Reading List

#### STANDARDS

Candidates will be expected:-

- (a) to be familiar with the basic concepts and rules of land law, and conveyancing law and practice;
- (b) to be familiar with the practice and procedures of conveyancing in Hong Kong; and
- (c) to be able to respond to problems by identifying the issues, applying relevant law, giving suitable practical advice and by recommending or taking such action as is appropriate in the circumstances including, where appropriate, drafting or amending conveyancing documents.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

#### SYLLABUS AND DIRECTED READING

**The textbooks for Conveyancing are:**

Sihombing and Wilkinson, A Student's Guide to Hong Kong Conveyancing (5<sup>th</sup> ed) (LexisNexis 2007) (Student's Guide).

Sarah Nield and Antonio M. Da Roza, Hong Kong Conveyancing and Property Law Handbook (3<sup>rd</sup> ed) (LexisNexis 2007) (Handbook)

Alice Lee and S.H. Goo, Land Law in Hong Kong (3<sup>rd</sup> Edition) (LexisNexis 2009) (Land Law in Hong Kong)

Reference should also be made to relevant articles in Hong Kong Lawyer, Law Society Circulars, and relevant ordinances and cases.

#### **1. Legal Framework of Conveyancing in Hong Kong**

- (a) The system of landholding in Hong Kong
- (b) The system of conveyancing, including registration under the Land Registration Ordinance
- (c) The meaning of "land"
  - The distinction between fixtures and chattels

- (d) The demarcation of land
  - Sectioning and subdivision
- (e) Government Leases and Conditions
  - **Government leases**
    - Grantee's interest under a Government lease
    - Standard terms in a Government lease including restrictions on alienation
    - Premium and Government rent
    - User restrictions
    - Obligations of the Government
    - Variation of Government leases
  - **Conditions**
    - The different types of Conditions
    - Grantee's interest under Conditions
    - Standard Conditions including restrictions on alienation and obligations to create a Deed of Mutual Covenant
    - Modification of the Conditions
    - Conversion of equitable interest into legal estate
    - The certificate of compliance
  - **Termination of Government Lease/Conditions**
    - Re-entry by Government
      - Relief against re-entry
    - Resumption by Government (excluding assessment of compensation)

Essential Reading

Student's Guide	Chapter 2	Pages 69-131, 143-152
Handbook		Pages 1-7, CP14.01-CP14A.11
Land Law in Hong Kong		Pages 8-28

**2. Deeds of Mutual Covenant**

**(a) The system of multi-unit development ownership in Hong Kong**

- The nature of the interests of unit owners; tenants in common holding undivided shares with right of exclusive occupation of a particular unit
- The need for a Deed of Mutual Covenant and the steps taken to create one

**(b) Guidelines for Deeds of Mutual Covenant**

- The binding nature of Deeds of Mutual Covenant on signatories and non-signatories
- Common terms in Deeds of Mutual Covenant including the allocation (or pairing) of undivided shares and restrictions on re-allocation

**(c) Enforceability of covenants in the Deed of Mutual Covenant against successors in title to owners and against tenants and occupiers**

**(d) Enforcement of the Deed of Mutual Covenant**

Essential Reading

Student's Guide	Chapter 4	Pages 269-291, 296-378
Student's Guide	Chapter 12	Pages 1170-1202
Land Law in Hong Kong Handbook	CP39.01-CP43.11	Pages 520-554

**3. Title**

**(a) The Nature of Title to be made or given**

- **Distinction between the duty to show and the duty to give a good title**
  - What constitutes a good title
- **Duty to show and give a good title**
  - Contract terms relating to the giving and showing of title
  - Variation of duty by express term in sale and purchase agreement
  - The need to produce the originals of deeds dealing solely with the property sold
- **Factors that will vitiate a good title including**
  - Title not in vendor
  - Registered encumbrances
  - Unregistered encumbrances
  - Latent and patent encumbrances
    1. Occupiers rights
    2. Nominations
    3. Mortgages and Charges
    4. Notices and Orders from Government or Competent Authority
  - Defeasible titles including
    1. Breach of Government Lease/Conditions
    2. Substantial enforcement action by Building Authority
    3. Breach of Deed of Mutual Covenant
    4. Under the Bankruptcy Ordinance
  - Matters of mere conveyance
  - Pre-intermediate root defects

Essential Reading

Student's Guide  
Handbook

Chapter 5

Pages 398-503

CP12.01-CP12A.19, CP13.08-CP13.11,  
CP13.22-CP13.23, CP13.38-CP13.44,  
CP60.01-CP61.09, CPS2(A).60

**(b) Proof of title**

- The statutory provisions
  1. The ultimate root - Government Lease/Conditions
  2. The intermediate root
  3. The chain of title (Candidates should be able to read a title diagram)
- Use of recitals in proving title
- Missing and illegible title deeds
- Proof of due execution of documents
  1. Presumptions in aid of proof
  2. Execution of deeds by individuals
  3. Execution of deeds by corporations
  4. Execution of deeds under a power of attorney
  5. Proof of non-revocation of power of attorney
  6. Execution of documents abroad
- Checking signatures for consistency
- Discrepancies in property description
- Time considerations in showing and giving title
- Requisitions on title
  1. Time within which requisitions may be raised
  2. Provision giving vendor the right to annul sale where he is unwilling or unable to answer the requisition
- Acceptance of title
- The vendor and purchaser summons procedure
- Retention of title deeds pending completion

Essential Reading

Student's Guide  
Handbook

Chapter 6

Pages 529-691, 697-742

CP2.01-CP2.36, CP4.01-CP4.16,  
CP12.01-CP12.14, CP12A.01, CP12A.19  
CP13.01-CP13.66, CP19.01-CP23A.24,  
CPS2(A).40-CPS2(A).63

#### 4. The Contract of Sale

**(a) Form of the agreement**

- Note or memorandum
- Part performance
- Preliminary, Provisional and Formal Agreements
- Form 2 of the Third Schedule to the Conveyancing and Property Ordinance

**(b) Preliminary agreements**

- Does the preliminary agreement constitute a binding agreement?
- Common terms including implied terms

**(c) Conditional agreements**

- Effect of 'Subject to contract' heading

**(d) The formal sale and purchase agreement**

- The relationship between the preliminary or provisional and formal agreement
- Common conditions in the formal agreement
  1. Outgoings
  2. Insurance
  3. Condition of property
  4. Title
  5. Documents of title
  6. Payment of deposit and purchase price
  7. Easements and appurtenant rights
  8. Requisitions
  9. Vendor's warranties
  10. Failure by purchaser
  11. Failure by vendor
  12. Completion
  13. Time of essence
  14. Fixtures, fittings and chattels
  15. Entry into possession prior to completion
  16. Conditions in Part A of the Second Schedule to the Conveyancing and Property Ordinance
  17. Sales with vacant possession and sales subject to tenancies, dealing with the deposit paid by the tenant to the landlord
  18. Exclusion of liability for misdescription and misrepresentation.

**(e) Signing of contract**

**(f) Breach of contract**

- Remedies for breach
  1. Damages
  2. Rescission
  3. Specific performance
  4. Liquidated damages clauses and penalty clauses
  5. Forfeiture of deposit and relief against forfeiture

**(g) Stamp Duty and Certificates of Value**

Essential Reading

Student's Guide	For (a) (b) (c)	Chapter 8	Pages 792-816, 829-833 Pages 847-889
Student's Guide	For (d)	Chapter 11	
Student's Guide	For (e)	Chapter 8	Pages 879-884
Student's Guide	For (f)	Chapter 8 Chapter 15	Pages 901-908 Pages 1064-1514, 1519-1528
Student's Guide	For (g)	Chapter 12	Pages 1202-1204 and Pages 1309-1316
Land Law in Hong Kong		Chapter 2	Pages 55-81
Handbook		CP3.01-CP3.24, CP6.01-CP6.13, CPS2(A).01-CPS2(A).86, CPS3(2).01-CPS3(2).23	

**5. The Assignment**

**(a) The form of the assignment**

**(b) Contents of the assignment**

- Date
- Parties
- Recitals
- Consideration and receipt clause
- Covenants for title
- Words of grant
- Parcels
- Easements
- Exceptions and Reservations
- Habendum
- Apportionment of Government rent
- Covenants
- Stamp duty and certificates of value

**(c) Form 1 of the Third Schedule to the Conveyancing and Property Ordinance**

Essential Reading

Student's Guide  
Handbook

Chapter 12  
CP16.01-CP18.18, CP24.01-CP24.05,  
CP35.01-CP35.34,  
CPS1(1).01-CPS1(4).08,  
CPS3(1).01-CPS3(1).21

Pages 1101-1204

**6. Mortgages and Charges**

**(a) Nature of mortgages and charges**

**(b) Form of the mortgage or charge**

**(c) Types of mortgage**

**(d) Contents of a legal mortgage or charge**

- Covenants of mortgagor
- Events of Default under the Fourth Schedule to the Conveyancing and Property Ordinance
- Form 4 of the Third Schedule to the Conveyancing and Property Ordinance

**(e) Registration and priority**

**(f) Remedies of legal mortgagee**

- Sale
- Foreclosure
- Possession
- Appointment of a receiver
- Action on the covenant to repay

Essential Reading

Student's Guide

Chapter 13

Pages 1209-1213, 1256-1291,  
1295-1308

Land Law in Hong Kong

Chapter 15

Pages 595-599,  
638-686

Handbook

CP44.01-CP56.23, CPS1(5).01-CPS1(5).27,  
CPS3(4).01-CPS3(4).12, CPS4.01-CPS4.54

**7. Completion**

**(a) Methods of completion**

- Completion in person (Formal completion)
- Completion by post
- Completion by undertaking  
- The Law Society's series of undertakings

**(b) The Time for completion**

**(c) Registration and Priority**

- Which documents are registrable?
- Time within which registration must be effected
- The effect of registration and failure to register
- The manner of registration

Essential Reading

On completion

Student's Guide	Chapter 14	Pages 1309-1328, 1334-1359
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On registration

Student's Guide	Chapter 14	Pages 1360-1405
Land Law in Hong Kong Handbook	Chapter 6 CP18.01-CP18.18, CPS2(A).77 – CPS2(A).86, LR1.01-LR17.04	Pages 245-306

## **2. Examiners' Comments on the 2008, 2009 and 2010 Examinations**

## **Examiners' Comments on the 2008 Examination**

### **Head I: Conveyancing**

Most candidates have a good knowledge of the subject and of Hong Kong case law and are able to apply their knowledge to answer problem questions. The questions of stamp duty and covenants for title were slight weaknesses.

#### **Question 1**

- (a) Leases of land in the New Territories expiring in 1997 are extended (and not renewed) to 2047.
- (b) Answers should discuss the effect of registering the certificate of compliance.
- (c) Candidates should be aware that certified copies of most deeds can be bought from the Land Registry but they must appreciate the need to produce originals dealing solely with the property.
- (d) Most candidates knew that the property passed by survivorship and that only evidence of death is required. No one mentioned the possibility of legal severance – see s 8 CPO.
- (e) The common law rules of priority apply when the competition for priority is between an unwritten unregistrable interest and a written interest. Many candidates did not state the common law rule of priority.
- (f) Most candidates knew that the purchaser must ask the vendor to produce the articles of association.

#### **Question 2**

- (a) Some candidates did not deal with the priority between the charging order and DEF's mortgage. Very few candidates mentioned the effect of a sale by the mortgagee – see s 53 CPO.
- (b) Answers were good. Candidates should have referred to the power to sell in paragraph 8 of the 4<sup>th</sup> Schedule to the CPO. This power is widely drafted.
- (c) Everyone knew that the opening of the external wall might breach the Buildings Ordinance and the Deed of Mutual Covenant. However, not everyone explained how this affected title. The solution is to disclose the defect in title in the sale and purchase agreement and bar requisitions. The mortgagee gives limited covenants for title in the assignment.

### Question 3

- (a) Answers were good. Candidates spotted most of the issues – the binding nature of the PA, whether the PA required the parties to enter into an FA, the vendor’s attempt to introduce a new term into the PA, whether the purchaser had to pay the further deposit if he did not sign the FA, whether the purchaser was late completing and whether he could nominate another to take up the assignment, whether the PA excluded specific performance and whether the purchaser was ready, willing and able to complete.
- (b) Answers were mixed. Some did not mention the nomination or that further duty is not payable when the purchaser nominates his or her spouse. Some did not mention the need for a certificate of value. Others did not mention the nominal duty payable on the assignment.
- (c) The answer is based on a decided case.

### Question 4

- (a) Answers were good. Candidates should mention the vendor’s obligation to reply to requisitions and discuss the potential title problem referred to in the requisition. Candidates should consider waiver in relation to each requisition.
- (b) Most candidates considered the need to buy undivided shares in the land and building and for this reason to consider whether reallocation is permitted.

### Question 5

- (a) Answers were good. Most candidates knew the law regarding forfeiture of deposits.
- (b) Answers were good. Most knew the principles on which damages are assessed and were able to apply them to the facts.
- (c) Answers were mixed. Most candidates were able to discuss the covenants for title. Some did not say that the vendor’s liability is qualified or that the purchaser has the benefit of covenants given by the vendor’s predecessor in title.

## **Examiners' Comments on the 2009 Examination**

### **Head I: Conveyancing**

Overall performance on this paper was very good. Candidates know the law and are able to apply it. The odd candidate missed out a question or part of a question. In these cases, it was difficult for the candidate to earn enough marks on the questions attempted to reach the pass mark.

Credit is given for the correct identification of issues, correct statements of the law and the application of the law to the facts. Candidates should refer to relevant legislation and cases.

#### **Question 1**

- 1.1 This concerns s 3 of the Conveyancing and Property Ordinance Cap.219. Candidates must consider whether Victor or his lawful agent has signed a memorandum of the oral agreement. Victor's solicitor has implied authority to sign letters on behalf of Victor. The letter signed by Victor's solicitor does not contain all the agreed terms. Candidates should consider whether another document can be joined or whether the missing terms are implied.
- 1.2 Candidates should discuss whether the agreement attracts stamp duty, the rate of duty, the time for payment, the liability (both parties liable) and the obligation to sign an agreement containing certain information set out in s 29B(5) Stamp Duty Ordinance Cap. 117.

#### **Question 2**

- 2.1 M Bank Ltd derives title from Alvin who is a party to the Deed of Mutual Covenant. Candidates should consider whether the burden of covenants passes to M Bank Ltd. This requires a discussion of ss 40 and 41(3) and (2) Conveyancing and Property Ordinance and in particular whether the three covenants relate to land or are purely personal.
- 2.2 The burden of positive covenants does not pass to tenants. Candidates should consider whether the three covenants are positive or restrictive.
- 2.3 Candidates should consider ss 41(2) and (3) Conveyancing and Property Ordinance and in particular whether Wealthy Ltd has land to benefit. Candidates should also consider whether covenants can be enforced between the original parties to the Deed of Mutual Covenant.

### **Question 3**

- 3.1 Candidates should consider whether Vera is obliged to reply to Peter's requisition. In this connection candidates should consider Vera's contractual obligations (and in particular those contained in Part A of the Second Schedule to the Conveyancing and Property Ordinance), the effect of Clause 12 and whether it limits Vera's obligation to reply to Peter's requisition on the spiral staircase and whether Peter has waived the right to raise requisitions on the spiral staircase by signing the agreement after inspecting the property. Candidates should also consider briefly whether the requisition is properly raised and for this reason should consider whether the consent of the Building Authority is required to the construction of the spiral staircase under the Buildings Ordinance Cap. 123.
- 3.2 Candidates should consider whether there is any breach by Vera of the covenants for title implied in the assignment from Vera to Peter and Vera's qualified liability under the covenants. The facts indicate that one of Vera's predecessors in title breached the Government Lease.

### **Question 4**

- 4.1 Candidates should recognise that the clause is inconsistent with the terms of the binding provisional agreement and consider its impact on the Purchaser. In this connection it is relevant that the clause may have the effect of excluding the Purchaser's remedies for misrepresentation, that the Purchaser has not inspected the flat and that the Vendor told the Purchaser the floor area of the flat.
- 4.2 The option should be registered at the Land Registry to protect its priority. Candidates should discuss s 3(2) Land Registration Ordinance Cap. 128 and consider the effect of the Purchaser's notice of the option and his agreement with the tenant.
- 4.3 The provisional agreement is binding. Candidates should consider whether failure by the Purchaser to sign the provisional agreement would amount to breach. In this connection, the provisional agreement does not include an obligation to sign the formal agreement and the vendor sent the formal agreement only two days before the date referred to as the date for signing.

### **Question 5**

- 5.1 The land is in the New Territories. Candidates should be familiar with the legislation by which the option to renew is exercised and the legislation extending New Territories leases that expired in 1997.

- 5.2 This requires discussion of the nature of the interest held under Conditions, the effect of compliance with conditions precedent under s 14(1) Conveyancing and Property Ordinance and the provisions regarding deemed compliance in s 14(3).
- 5.3 In this case, there is deemed compliance with the conditions precedent on the commencement of the Conveyancing and Property Ordinance.
- 5.4 This requires discussion of section 5(2) of the Conveyancing and Property Ordinance, the application of the doctrine of notice in determining the priority between various land interests and, the need to obtain written confirmation from Polly's mother that she waives her rights in favour of the mortgagee. She should be independently advised when giving her waiver or consent. Candidates might also discuss the presumption of advancement and whether in this case the mortgagee would be deemed to have notice of the mother's interest when the mortgage is created.
- 5.5 The purchaser cannot rely on ss 20(1) and 23A(2) of the Conveyancing and Property Ordinance. Although the Vendor has produced the Articles, the Purchaser cannot rely on ss 23 or 23A(1). The next step is for the Purchaser to require the Vendor to produce a certified copy of the board resolution authorising Nicholas Chan and Nicola Wong to witness the affixing of the seal. The title will be defective if evidence of due execution is unavailable.
- 5.6 Candidates should consider ss 20(1) and 23 Conveyancing and Property Ordinance and whether s 20(1) applies to a foreign company.

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# Examiners' Comments on the 2010 Examination

## Head I: Conveyancing

### Question 1

- 1.1 The requisition is raised out of time. Candidates should refer to vendor's title obligations under the agreement for sale and purchase and apply the rules regarding late requisitions. Although most candidates were able to state the rules, not all candidates applied them to the facts – for example they did not consider whether the requisition went to the root of title or whether the purchaser could, with due diligence, have discovered it earlier. Candidates could also consider whether the purchaser had waived the right to raise requisitions.
- 1.2 Stakeholders apply the stake according to the agreement. Some candidates mentioned Condition 13 of Part A of the 2<sup>nd</sup> Schedule to the *Conveyancing and Property Ordinance (CPO)*. This is an agency rather than a stakeholder provision.

### Question 2

- 2.1 Most candidates stated that the provisional agreement is binding and that the purchaser is not obliged to accept a new term in the provisional agreement although not all stated that the intermediate root offered is less than 15 years old. Most discussed whether payment of the further deposit is linked to signing or is independent of signing.
- 2.2 This question was not particularly well done. Candidates should mention that the agreement and nomination are both chargeable agreements because they relate to residential property. Both the agreement and nomination attract ad valorem stamp duty. Candidates should also mention the time limit for paying duty and that a certificate of value is necessary in this case.
- 2.2 This question requires a discussion of sections 13 and 13A *CPO* and the fact that the vendor must produce originals of documents which deal only with the property the subject of the agreement. Not all candidates explained that the duty to produce originals is part of the vendor's duty to give good title.

### Question 3

- 3.1 This requires candidates to consider the date of the Conditions and s 14 *CPO*. Section 14 provides that on compliance there is conversion of the equitable interest to a legal interest and deemed issue of the Government lease. A purchaser requires evidence of compliance.
- 3.2 Candidates should refer to the New Territories Leases (Renewable Crown Leases) Ordinance and the New Territories Leases (Extension) Ordinance.
- 3.3 Most candidates knew the title problems associated with occupiers. Not all stated correctly the rule that an equitable interest binds everyone except the

bona fide purchaser for value of the legal estate without notice of the equitable interest. The occupier should be required to give written consent to the sale or written confirmation that she has no interest. Candidates should also consider the need for independent legal advice to ensure that the occupier is not subject to undue influence.

- 3.4 Candidates should note that the articles have been provided, compare the method of execution with the sealing provisions and discuss the application of sections 23A (2), 23A(1) and 23 *CPO*.

#### Question 4

##### **This was the least popular question**

- 4.1 This question concerns s 3 *CPO*. Candidates should consider whether there is a concluded oral agreement. The parties must have agreed all terms essential to an agreement for lease and all terms the parties intend to include in their agreement for lease. If there is a concluded oral agreement, candidates should consider whether the agreement is in writing or evidenced in writing and signed by or on behalf of the party to be charged. The letter dated 7<sup>th</sup> May might be a memorandum of the oral agreement. Candidates should consider whether the draft lease can be read with the letter to form a complete memorandum.
- 4.2 This question concerns the priority of the two agreements under the *Land Registration Ordinance* and the exercise of the court's discretion when deciding whether to award specific performance.

#### Question 5

- 5.1 Terry and M Bank Ltd derive their title from one of the parties to the DMC. The issue is whether the burden of the covenants has passed. Most candidates applied s 41(3) and (2) *CPO*. A number of candidates also discussed the passing of the benefit which is not strictly required by the question. Under s 41(5) the burden of positive covenants cannot be enforced against tenants. The covenant to pay management charges is positive because it requires the payment of money.
- 5.2 Most candidates knew that a naming right has been held to be a personal right although not all discussed the reason for this decision. The right is enforceable only between the parties to the DMC.
- 5.3 This question concerns the passing of the benefit of the covenants. This requires a discussion of s 41(2)(c) and the wording 'expressed and intended'. The wording should prompt a discussion of the equitable rules for the passing of the benefit. In equity the benefit may pass by assignment, annexation or under a building scheme. A few candidates mentioned that the benefit of the DMC had been assigned.

March 2011

### **3. Past Examination Papers from 2008 to 2010**

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# 2008 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

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## HEAD I: CONVEYANCING

Tuesday, 28 October 2008



# **HEAD I: CONVEYANCING**

## **TEST PAPER**

**28 October 2008**

### **Instructions to Candidates :**

1. The duration of the examination is 3 hours and 30 minutes.
2. This is an open-book examination.
3. There are FIVE questions in this paper.  
**ANSWER ANY FOUR QUESTIONS ONLY.**
4. You must write your answers to any of:
  - Questions 1, 2 and 3 in Answer Book 1
  - Questions 4 and 5 in Answer Book 2
5. **IF YOU ATTEMPT MORE QUESTIONS THAN YOU HAVE BEEN INSTRUCTED TO ANSWER :**
  - (a) **THE EXAMINERS WILL MARK ALL QUESTIONS THAT HAVE BEEN ATTEMPTED AND NOT DELETED; AND**
  - (b) **IN COMPUTING YOUR FINAL MARK, THE EXAMINERS WILL COUNT THE MARKS FOR THE NUMBER OF QUESTIONS THAT YOU WERE INSTRUCTED TO ANSWER TAKING INTO ACCOUNT THE ANSWERS WITH THE LOWEST SCORES.**
6. Start each question on a separate page of your answer book.
7. Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.
8. An examiner will be present for the first 30 minutes of the examination. Any question relating to the paper must be raised in that period. Questions raised after the first 30 minutes will not be entertained.
9. Do not take either this question paper or any answer books with you when you leave the examination room.

# 2008 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

On 1 October 2008, Alan Man and Amy Wong (the 'Vendors') entered into a binding Agreement for Sale and Purchase (the 'Agreement'), which is in the same form as Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219, to sell their property in the New Territories (the 'Property'), which is owned by them as joint tenants free from encumbrances, to Beryl Lam (the 'Purchaser'). Completion is due to take place on 30 November 2008.

The Property is held under Conditions of Sale (the 'Conditions of Sale') dated 8 May 1972 for a term of 99 years less the last three days from 1 July 1898.

### Questions:

Answer the following questions:

- (a) For how long can the interest under the Conditions of Sale be enjoyed? (2 marks)
- (b) What is the interest, legal or equitable, now held under the Conditions of Sale? If there is missing information, state what it is. (4 marks)
- (c) The Vendors have mislaid all the title deeds for the Property and are unable to find them, though all of them have been registered in the Land Registry. How will the Vendors give and show title to the Purchaser? (5 marks)
- (d) If one of the Vendors dies before completion, who should execute the Assignment of the Property to the Purchaser? What must be produced as evidence of the right and ability of the person or persons to execute the Assignment? (4 marks)
- (e) The Purchaser inspected the Property before she signed the Agreement. During her inspection, she met an old man called George, who was introduced to her by the Vendors as their uncle. How should the Purchaser's solicitor handle this information? (5 marks)

*(See over the page for a continuation of Question 1)*

- (f) An assignment in the chain of title dated 1 August 2004 is executed by Abacus Limited. The company seal of Abacus Limited has been affixed in the presence of one signatory. Should the Purchaser raise a requisition? (5 marks)

**Give reasons for all your answers.**

## Question 2 (25 marks)

On 2 January 2006 Mary Mao mortgaged her flat at 6A Hibiscus Court (the 'Flat') to the ABC Bank Limited ('ABC') to secure a loan of HK\$3 million. ABC registered their mortgage in the Land Registry on 28 January 2006.

On 6 March 2008 Mary Mao borrowed HK\$3 million from the DEF Bank Limited ('DEF'). DEF made the loan to enable Mary Mao to pay off the loan from ABC of which HK\$2.5 million was still outstanding. DEF took a mortgage over the Flat to secure a loan of HK\$3 million. The mortgage was dated 27 March 2008 and registered in the Land Registry on 20 April 2008. ABC discharged their mortgage on 27 March 2008 and the Discharge was also registered in the Land Registry on 20 April 2008.

Mary Mao agreed to repay each of the loans by equal monthly payments of principal and interest. ABC's and DEF's mortgages are by deed and are in the form set out in Form 4 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. In each case the legal date of redemption is 6 months from the date of the mortgage.

On 8 March 2008 Cherry Limited obtained a charging order against the Flat which it registered in the Land Registry on 20 March 2008.

On 1 May 2008 Mary Mao let the Flat to Tom Tang for a term of two years. She did this without informing DEF. In August, September and October this year Mary Mao failed to make the repayments due to DEF.

In late August 2008 DEF discovered the letting and gave Tom Tang notice to pay rent to it as mortgagee. Tom has been paying the rent to DEF since then but the monthly rent does not cover the monthly mortgage repayments.

### Questions:

- (a) Can DEF sell the Flat with vacant possession free from encumbrances?  
(15 marks)
- (b) Assume that DEF is able to sell the Flat and advise DEF on the conduct of the sale.  
(5 marks)
- (c) Assume that Mary Mao has opened the external wall of the Flat to create a new window and advise DEF on the conduct of the sale.  
(5 marks)

Give reasons for all your answers.

### **Question 3 (25 marks)**

On 25 September 2008 Victor Vong as vendor ('Victor') and Paul Pong as purchaser ('Paul') signed a Provisional Agreement in respect of Flat 16A Green Gardens (the 'Property'), a residential flat built in 1975. A copy of the Provisional Agreement is attached. Paul did not register the Provisional Agreement in the Land Registry.

On 27 September 2008 Victor's solicitor sent Paul's solicitor a draft formal agreement for sale and purchase and the title deeds to the Property. The proposed formal agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219 except that Clause 4 provides that completion will take place by 5 p.m. on 25 October 2008 and that completion will take place by way of solicitors' undertakings.

Paul's solicitor did not accept that completion would take place by way of solicitors' undertakings. Victor's solicitor refused to omit this provision and Paul did not sign the formal agreement or pay the further deposit. On 25 October 2008, Paul's solicitor sent a cashier order to Victor's solicitor for the sum of HK 4,950,000.00 together with an Assignment for execution by Victor. The Assignment was in favour of Paul and his wife Nancy, Paul having signed a Nomination requesting Victor to execute the assignment in favour of Paul and Nancy as joint tenants. Paul sent a certified copy of the Nomination with the cashier order.

Victor refused to complete because Paul had not signed the formal agreement and paid the further deposit and also because Paul's solicitor's messenger arrived at Victor's solicitor's office at 5.15 p.m. on 25 October 2008. The cashier order was returned to Paul's solicitors with the Assignment unsigned by Victor.

#### **Questions:**

- (a) Can Paul obtain specific performance of the Provisional Agreement?  
(16 marks)
- (b) Assume that Paul completes his purchase. How much stamp duty must he pay on the transaction and when is it payable?  
(5 marks)
- (c) Assume that Paul completes his purchase on 30 October 2008 and registers the Assignment on 5 December 2008. When Paul's solicitor registers the Assignment, he discovers that a charging order nisi against Victor Vong was obtained on 5 November 2008 and registered against the Property on 6 November 2008. Who has priority, Paul or the chargee under the charging order?  
(4 marks)

**Give reasons for all your answers.**

*(See the next page for a continuation of Question 3)*

## Provisional Agreement for Sale and Purchase

THIS AGREEMENT is made on 25 September 2008

Between the Vendor - Victor Vong of Flat 16A Green Gardens, 16 Green Road, Hong Kong and

the Purchaser - Paul Pong of Flat 10B Crimson Court, 12 Crimson Road, Kowloon

The Vendor and the Purchaser agree as follows:

1. The Vendor sells Purchaser purchases 16A Green Gardens, 16 Green Road, Hong Kong (the 'Property').
2. The purchase price is HK\$5,000,000.00 which shall be paid by the Purchaser in the following manner:
  - (a) HK\$ 50,000.00 to the Vendor on the signing of this agreement as initial deposit,
  - (b) HK\$ 450,000.00 as further deposit to the Vendor on the signing of a formal agreement for sale and purchase on or before 5 October 2008,
  - (c) HK\$ 4,500,000.00 being the balance of purchase price on completion.
4. Completion will take place on 25 October 2008.
5. Should the Vendor after receiving the initial deposit paid hereunder fail to complete the sale in the manner herein contained the Vendor shall immediately compensate the Purchaser with a sum equivalent to the amount of the initial deposit as liquidated damages together with the refund of the initial deposit.
6. The Purchaser will pay the stamp duty in connection with this transaction.

*Victor Vong*

Signed \_\_\_\_\_

*Paul Pong*

Signed \_\_\_\_\_

## Question 4 (25 marks)

On 10 October 2008 Vicki as vendor ('Vicki') and Peter as purchaser ('Peter') signed a binding agreement for sale and purchase in respect of Flat A on the 10<sup>th</sup> Floor of Cosy Court (the 'Flat') and the roof which is above the Flat (the 'Roof'). The agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219.

Completion will take place on 10 November 2008. Vicki's solicitor sent the title deeds to Peter's solicitor on 4 October 2008 and Peter's solicitor raised the following requisitions on 15 October 2008.

1. *We note that the Occupation Permit for Cosy Court states that there are 3 flats on each floor but that the Deed of Mutual Covenant for Cosy Court states that there are 4 flats on floors 1 to 6 and 3 flats on floors 7-10. Please send evidence that the Building Authority has approved the construction of an additional flat on floors 1 to 6.*
2. *When Peter inspected the Flat on 30 September, he noticed that the kitchen had been extended into a light well in Cosy Court. Peter's surveyor informs us that this extension requires Building Authority approval, please send us evidence that Building Authority approval was obtained.*

### Questions:

- (a) The approvals referred to in requisitions 1 and 2 were not obtained. How should Vicki's solicitor reply to each of the requisitions?

**[Requisition 1 (11 marks) Requisition 2 (8 marks)]**

- (b) Could the Roof be purchased separately from the Flat? If you need more information to answer this question say where you will find it.

**(6 marks)**

**Give reasons for all your answers.**

### Question 5 (25 marks)

On 30 June 2008 Vera Vong as vendor (the 'Vendor') and Patrick Wong as purchaser (the 'Purchaser') signed a binding agreement for sale and purchase of a house (the 'House') built in 2000 by Valuable Estates Limited ('Valuable'). The agreement between the Vendor and the Purchaser is in the form of agreement set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. Clauses 2, 3 and 4 of the agreement are as follows:

2. *The purchase price is the sum of HK\$15,000,000.00*
3. *A deposit of HK\$2,000,000.00 shall be paid by the Purchaser to the Vendor on the signing of this Agreement and the balance of purchase price shall be paid on completion.*
4. *Completion shall take place at the offices of the Vendor's solicitors on 15 August 2008.*

The Vendor and Purchaser were separately represented and the Purchaser paid the stamp duty on the agreement. The Purchaser also registered the agreement for sale and purchase in the Land Registry. Between June and August the Purchaser suffered heavy losses on the stock market and on 15 August 2008 failed to complete.

The Vendor continued to make the mortgage repayments that were due under her mortgage of the House to the Goodwill Bank Limited but she tried to resell the House. Eventually in early October an estate agent introduced a buyer, Barbara, and the Vendor and Barbara signed an agreement for sale and purchase of the House (also in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219) for the price of HK\$12,000,000.00. The agreement was completed on 15 October when the Vendor as beneficial owner assigned the House to Barbara.

#### Questions:

- (a) Can the Vendor forfeit the Purchaser's deposit? (5 marks)
- (b) Can the Vendor claim damages and how will they be calculated? (10 marks)
- (c) Shortly after completing her purchase Barbara received advice from a building surveyor that site coverage restrictions in the Government Lease were breached when the House was built. The Government Lease was made between (1) the Government of Hong Kong and (2) Valuable. Valuable sold to the Vendor as beneficial owner. Barbara believes that the threat of enforcement action under the Government Lease makes the House less valuable. Does Barbara have any redress against the Vendor or Valuable? (10 marks)

Give reasons for all your answers.

**END OF TEST PAPER**

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# 2009 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

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## HEAD I: CONVEYANCING

Thursday, 29 October 2009



# **HEAD I: CONVEYANCING**

## **TEST PAPER**

**29 October 2009**

### **Instructions to Candidates :**

- 1. The duration of the examination is 3 hours and 30 minutes.**
- 2. This is an open-book examination.**
- 3. There are FIVE questions in this paper.  
ANSWER ANY FOUR QUESTIONS ONLY.**
- 4. You must write your answers to each question in a separate answer book.**
- 5. IF YOU ATTEMPT MORE QUESTIONS THAN YOU HAVE BEEN INSTRUCTED TO ANSWER :**
  - (a) THE EXAMINERS WILL MARK ALL QUESTIONS THAT HAVE BEEN ATTEMPTED AND NOT DELETED; AND**
  - (b) IN COMPUTING YOUR FINAL MARK, THE EXAMINERS WILL COUNT THE MARKS FOR THE NUMBER OF QUESTIONS THAT YOU WERE INSTRUCTED TO ANSWER TAKING INTO ACCOUNT THE ANSWERS WITH THE LOWEST SCORES.**
- 6. Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.**
- 7. An examiner will be present for the first 30 minutes of the examination. Any questions relating to the paper must be raised in that period. Questions raised after the first 30 minutes will not be entertained.**
- 8. Do not take either this question paper or any answer books with you when you leave the examination room.**

# 2009 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

Victor Vong ('Victor') agreed orally to sell a residential flat known as Flat 6 Hibiscus Court, 6 Western Road, Hong Kong (the 'Property') to Paul Poon ('Paul') for HK\$7 million with completion on 2 November 2009. Paul paid Victor a deposit of HK\$70,000 and Victor gave Paul a receipt which states:

*Received from Paul Poon a deposit of HK\$70,000 in connection with the sale and purchase of my flat for HK\$7 million.*

Victor also agreed to give vacant possession on completion and to give and show good title to the Property. Victor and Paul each instructed solicitors to act and Victor's solicitor wrote the following letter to Paul's solicitor:

*I act for Victor Vong who has agreed orally to sell Flat 6 Hibiscus Court, 6 Western Road, Hong Kong to Paul Poon with completion on 2 November 2009. I enclose a draft agreement for sale and purchase.*

The letter is not marked 'subject to contract'. Victor's solicitor signed the letter. However, neither Paul nor Victor signed the agreement for sale and purchase.

### Questions:

1.1 If Victor now refuses to sell to Paul, can Paul enforce the oral agreement against Victor?

(18 marks)

1.2 Assuming that Paul can enforce the oral agreement, what are Victor's and Paul's obligations in relation to the transaction under the Stamp Duty Ordinance Cap.117?

(7 marks)

**Give reasons for all your answers.**

## **Question 2 (25 marks)**

Wealthy Ltd developed a block of 40 residential flats on Lot 987. The block is called 'Wealthy Gardens'. Alvin bought one equal undivided 40<sup>th</sup> share of and in Lot 987 and of and in Wealthy Gardens together with the right to the exclusive use of Flat 1.

Wealthy Ltd and Alvin then executed a Deed of Mutual Covenant for Wealthy Gardens (the 'DMC'). The DMC contains, in addition to other terms, covenants by all owners of undivided shares:

- that they will not allow their exclusive use areas to fall into disrepair; and
- that they will not use the flats for any purpose other than residential purposes; and
- that they will not use any contractor other than Wealthy Ltd to carry out any repairs, improvements or decorations in or to their exclusive use areas.

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

Alvin then charged Flat 1 by way of legal mortgage to M Bank Ltd. Wealthy Ltd sold the remaining 39 flats to individual purchasers who each bought one equal undivided 40<sup>th</sup> share of and in Lot 987 and of and in Wealthy Gardens together with the right to the exclusive use of a particular flat.

### **Questions:**

2.1 M Bank Ltd is about to enter into possession of Flat 1 under its legal charge and requires advice as to whether the above DMC covenants can be enforced against it. Advise M Bank Ltd.

**(15 marks)**

2.2 If M Bank Ltd, under the powers contained in the legal charge, takes possession and grants a lease of Flat 1 to Tony, can the DMC covenants be enforced against Tony?

**(5 marks)**

2.3 Can Wealthy Ltd enforce the DMC covenants against any of the flat owners?

**(5 marks)**

**Give reasons for all your answers.**

### Question 3 (25 marks)

On 20 August 2009 Peter as purchaser entered into a binding Agreement for Sale and Purchase (the 'Agreement') to buy Flat 15A Hibiscus Court and the roof above Flat 15A, (Flat 15A and the roof above it are together referred to as the 'Property') from Vera as vendor. Completion is due to take place on 14 November 2009. The Agreement is substantially in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219 but Clause 12 of the Agreement provides as follows:

*The Vendor gives no warranties that the Property complies with the Buildings Ordinance Cap.123 or the Building Regulations. The Purchaser has inspected the Property and accepts in all respects the physical state, condition and finishes of the Property and the Purchaser shall not be entitled to raise any requisition or objection or to rescind this agreement or to annul the sale or to claim any compensation or damages from the Vendor in connection therewith.*

Before signing the Agreement, Peter inspected the Property with Vera. Vera showed Peter the access to the roof above Flat 15A via a spiral staircase leading from the living room of Flat 15A. On the roof there is a small structure covering the staircase opening.

The title deeds were delivered to Peter's solicitor on 25 August 2009. Peter's solicitor raised requisitions on title on 26 August 2009 and Vera's solicitor replied satisfactorily on 28 August. However, after receiving a report from Peter's architect, who advised that the spiral staircase and the roof opening above the spiral staircase is not shown on the approved building plans, Peter's solicitor sent the following requisition to Vera's solicitor on 10 October 2009.

*Please send us evidence that the consent of the Building Authority was obtained to the construction of the spiral staircase leading from the living room of Flat 15A to the roof above Flat 15A and the structure on the roof.*

On 11 October 2009 Vera's solicitor replied as follows:

*Vera drew Peter's attention to the spiral staircase when he inspected the Property. In addition your attention is drawn to clause 12 of the Agreement. Accordingly we are not obliged to reply to this requisition. However, Vera wishes us to point out that the spiral staircase was present when she bought the Property in 1990.*

*(See the next page for a continuation of Question 3)*

**Questions:**

3.1 Can Peter refuse to complete the purchase?  
(18 marks)

**(18**

3.2 If the sale and purchase is completed by an assignment and Peter discovers after completion that the roof structure breaches the height restriction in the Government Lease, are any remedies available to him?

**(7 marks)**

**Give reasons for all your answers.**

#### **Question 4 (25 marks)**

On 20 October 2009 Adam Au (the ‘Vendor’) entered into a provisional agreement to sell Flat 1 Windy Court, 1 Windy Road (the ‘Flat’) to Boris Bui (the ‘Purchaser’). The Purchaser did not inspect the Flat before signing but the Vendor told the Purchaser that the sale was subject to a written lease for a term of two years. The lease contains an option to renew for a further term of one year at the same rent. The Purchaser spoke to the tenant under the lease over the telephone and assured him that he would honour the lease and the option. The Vendor also told the Purchaser that the Flat has a floor area of 1,000 square feet. A copy of the provisional agreement is attached. The Vendor and the Purchaser have each instructed a solicitor to act and Adam’s solicitor has drafted a formal agreement.

The formal agreement contains the following clause:

*This Agreement comprises all the terms agreed between the parties hereto and no warranty or representation express or implied is or has been made or given by the Vendor or any person on his behalf relating to the Flat before this Agreement. If any such warranty or representation express or implied has been made the same is withdrawn or deemed to have been withdrawn immediately before the parties entered into this Agreement.*

#### **Questions:**

- 4.1 Advise the Purchaser whether to accept the above clause. (7 marks)
- 4.2 Neither the lease nor the option to renew is registered at the Land Registry. Advise the Purchaser whether he is bound by them. (9 marks)
- 4.3 Disregard Questions 4.1 and 4.2 when answering this question. The Vendor’s solicitor sent the draft formal agreement to the purchaser’s solicitor on 26 October 2009. The Vendor’s solicitor has not yet produced the title deeds. The Purchaser wants to delay signing the formal agreement. Is the Purchaser obliged to sign the formal agreement on 28 October? (9 marks)

**Give reasons for all your answers.**

*(See the next page for a continuation of Question 4)*

## **Question 4**

### **Provisional Agreement**

THIS AGREEMENT is made on the 20 October 2009

Between

- (1) The Vendor, Adam Au of Flat A, 3<sup>rd</sup> Floor, 47 Stubbs Road, Hong Kong;
- And
- (2) The Purchaser, Boris Bui of Flat 6A Red Gardens, 10 Prince Edward Road, Kowloon.

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase Flat 1 Windy Court, 1 Windy Road, Hong Kong (the 'Flat').
2. The purchase price is HK\$5,800,000.00 which shall be paid by the Purchaser to the Vendor in the following manner:
  - (a) HK\$58,000.00 on the signing of this agreement as initial deposit,
  - (b) HK\$522,000.00 on the signing of a formal agreement for sale and purchase on 28 October 2009 as the balance of the deposit,
  - (c) HK\$5,220,000.00 upon completion on 20 November 2009 as the balance of the purchase price.
3. The Flat is sold subject to a Tenancy Agreement dated 4 January 2009 between (1) the Vendor as landlord and (2) Terry To as tenant.
4. Should the Purchaser fail to complete the purchase in the manner herein contained the deposit shall be forfeited to the Vendor who shall then be entitled at his absolute discretion to sell the Flat to anyone he thinks fit and the Vendor shall not sue the Purchaser for any liabilities and/or damages caused by the Purchaser's default.
5. Should the Vendor after receiving the initial deposit paid hereunder fail to complete the sale in the manner herein contained the Vendor shall immediately compensate the Purchaser with a sum equivalent to the amount of the initial deposit as liquidated damages together with the refund of the initial deposit and the Purchaser shall not take any further action to claim damages or to enforce specific performance.
6. The Purchaser will pay the stamp duty in connection with this transaction.

**Signed** Adam Au

**Signed** Boris Bui

**Question 5 (25 marks)**

On 1 April 2009 Polly as purchaser signed an agreement for sale and purchase in respect of a flat (the 'Flat') at Perfect Building (the 'Building') erected on Tuen Mun Town Lot No 839 in the New Territories (the 'Land'). The Land is held from the Hong Kong Government under Conditions of Grant No 409 dated 4 August 1958 (the 'Conditions of Grant') for a term of 75 years from 1 July 1898 with a right of renewal for a further term of 24 years less the last 3 days. The Conditions of Grant contain a restriction against alienation (the 'restriction against alienation') of the whole or any part of the Land before compliance with all conditions precedent contained in the Conditions of Grant.

**Questions:**

- 5.1 For how long can the interest under the Conditions of Grant be enjoyed?  
(3 marks)
- 5.2 What interest, legal or equitable, is held under the Conditions of Grant?  
(4 marks)
- 5.3 Will the sale of the flat to Polly be prohibited under the Conditions of Grant in view of the restriction against alienation? If not, when was the prohibition removed?  
(3 marks)
- 5.4 Polly intends to borrow 70% of the purchase price on the security of a mortgage of the Flat. She will use her savings to pay 10% of the price and her mother will pay 20% of the price. Polly's mother will be living with her at the Flat after completion. On the basis of this information, what precautionary steps (if any) should Polly's intended mortgagee or its solicitor take?  
(6 marks)

*(See the next page for a continuation of Question 5)*

- 5.5 The title deeds include an Assignment of the Flat dated 14 June 2006 from Good Profits Company Limited ('Good Profits') as vendor. The Assignment has been sealed with the common seal of Good Profits and signed by Nicholas Chan and Nicola Wong whose capacities are not stated.

The Articles of Association of Good Profits provide:

*The seal of the Company shall be affixed in the presence of a person or persons authorized by the board of directors.*

You act for Polly. Will you raise a requisition regarding execution of the Assignment by Good Profits?

**(5 marks)**

- 5.6 How would your answer to question 5.5 differ (if at all) if in the Assignment Nicholas Chan and Nicola Wong are described as directors but Good Profits is a company incorporated in the British Virgin Islands?

**(4 marks)**

**Give reasons for all your answers.**

**END OF TEST PAPER**

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# 2010 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

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## HEAD I: CONVEYANCING

Thursday, 28 October 2010



# HEAD I: CONVEYANCING

## TEST PAPER

28 October 2010

### Instructions to Candidates:

1. The duration of the examination is 3 hours and 30 minutes.
2. This is an open-book examination.
3. There are FIVE questions in this paper.

ANSWER ANY FOUR QUESTIONS ONLY.

4. You must write your answers to each question in a separate answer book.
5. IF YOU ATTEMPT MORE QUESTIONS THAN YOU HAVE BEEN INSTRUCTED TO ANSWER:

(a) THE EXAMINERS WILL MARK ALL QUESTIONS THAT HAVE BEEN ATTEMPTED AND NOT DELETED; AND

(b) IN COMPUTING YOUR FINAL MARK, THE EXAMINERS WILL COUNT THE MARKS FOR THE NUMBER OF QUESTIONS THAT YOU WERE INSTRUCTED TO ANSWER TAKING INTO ACCOUNT THE ANSWERS WITH THE LOWEST SCORES.

6. Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.
7. An examiner will be present for the first 30 minutes of the examination. Any questions relating to the paper must be raised in that period. Questions raised after the first 30 minutes will not be entertained.
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# **2010 Overseas Lawyers Qualification Examination**

## **Head I: Conveyancing**

### **Question 1 (25 marks)**

On 30 June 2010 Peter inspected a shop on the Ground Floor of 6 West Street (the “Property”) and on 3 July 2010 Vicki as vendor and Peter as purchaser entered into an agreement for sale and purchase of the Property for HK\$10 million and Peter paid Vicki’s solicitors as stakeholders a deposit of 10% of the price. The agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. Completion was due to take place on 15 August 2010.

On 4 July Vicki’s solicitors sent the title deeds to Peter’s solicitors. These include an Assignment of the Property with a floor plan of the Property. Peter’s solicitors raised requisitions on 20 July and Vicki’s solicitors answered these on 22 July.

On 2 August Peter’s surveyor inspected the Property and reported to Peter that the building plans show a mezzanine floor above the Property with a floor area equivalent to half the floor area of the Property. However, the surveyor’s inspection of the Property revealed that the mezzanine floor had been extended by building a concrete slab in the void above the Property so that the mezzanine floor now has a floor area the same size as the Property and the whole of the mezzanine floor (original and extended) form the ceiling to the Property. The mezzanine floor is currently in separate ownership from the Property.

*(See the next page for a continuation of Question 1)*

On 5 August Peter's solicitors raised a further requisition asking for evidence that the consent of the Building Authority had been obtained to the extension of the mezzanine floor. Vicki's solicitors refused to answer the requisition on the ground that it was raised out of time. Later, after they had made enquiries of the Building Authority, Vicki's solicitors sent Peter's solicitors a letter from the Building Authority saying that 'the extension of the mezzanine floor does not warrant prioritized enforcement action at the present time'. Peter refused to complete on the ground that Vicki had failed to answer requisitions satisfactorily and Vicki wants to forfeit Peter's deposit.

### **Questions:**

**1.1 Has Vicki breached the agreement for sale and purchase?**

**(21 marks)**

**1.2 Vicki has demanded that her solicitors pay her the deposit. Explain the duties of Vicki's solicitors as stakeholders of the deposit.**

**(4 marks)**

**Give reasons for all your answers.**

## **Question 2 (25 marks)**

On 2 September 2010 Victor as vendor and Pamela as purchaser entered into a provisional agreement for sale and purchase of a residential flat known as Flat 16C Braemar Hill Court (the "Property"). A copy of the provisional agreement is attached. On 3 September Victor's solicitors sent the draft formal agreement to Pamela's solicitors for approval. The formal agreement includes the following term:

*The Vendor's title will start with the Government Lease dated 14 May 1970 and an Assignment dated 16 December 1997.*

Pamela's solicitors did not accept this term and as a result Pamela did not sign the formal agreement or pay the balance of the deposit on 10 September.

### **Questions:**

- 2.1 Has Pamela breached the provisional agreement for sale and purchase? (9 marks)**
- 2.2 Assume that Pamela has not breached the provisional agreement which is binding on the parties. Pamela wants the Assignment of the Property to be made to Pamela Company Limited. Pamela is the sole beneficial shareholder of the whole of the issued share capital of Pamela Company Limited. Explain Pamela's liability for stamp duty under the Stamp Duty Ordinance Cap. 117. (7 marks)**
- 2.3 Under the provisional agreement for sale and purchase to what extent must Victor produce original title deeds in order to give and show good title? (9 marks)**

**Give reasons for all your answers.**

*(See the next page for a continuation of Question 2)*

## Question 2

### Provisional Agreement

THIS AGREEMENT is made on 2 September 2010

Between

(1) Victor Lee of Flat 2A, Blue Court, Blue Road, Hong Kong (the "Vendor")

And

(2) Pamela Poon of Flat 6B, Red Court, Red Road, Hong Kong (the "Purchaser")

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase Flat 16C of Braemar Hill Court, 15-43 Braemar Hill Road, Hong Kong (the "Property").
2. The purchase price is HK\$13,000,000.00 which the Purchaser will pay to the Vendor in the following manner:
  - (a) HK\$130,000.00 on the signing of this agreement as initial deposit,
  - (b) HK\$1,170,000.00 as the balance of the deposit on 10 September 2010 this date being on or before the signing of a formal agreement for sale and purchase, and
  - (c) HK\$11,700,000.00 as the balance of purchase price on completion on or before 11 October 2010.
3. Should the Purchaser fail to complete the purchase in the manner herein contained the initial deposit shall be forfeited to the Vendor who shall then be entitled at his absolute discretion to sell the Property to anyone he thinks fit and the Vendor shall not sue the Purchaser for any liabilities or damages caused by the Purchaser's default.
4. Should the Vendor after receiving the initial deposit paid hereunder fail to complete the sale in the manner herein contained the Vendor shall immediately compensate the Purchaser with a sum equivalent to the amount of the initial deposit as liquidated damages together with the refund of the initial deposit and the Purchaser shall not take any further action to claim damages or to enforce specific performance.
5. The Purchaser will pay the stamp duty in connection with this transaction.

Signed by the Vendor

*Victor Lee*

Signed by the Purchaser

*Pamela Poon*

### **Question 3 (25 marks)**

This morning Vera and Frank signed an agreement for sale and purchase of a property (the “Property”) at Lovely Building (the “Building”) with completion in two months’ time. Vera is the purchaser and Frank is the vendor. The Property is located in the New Territories and the land concerned is Sha Tin Town Lot No. 123 (the “Land”) which is held from the Hong Kong Government under Conditions of Grant No. 789 dated 18 September 1970 (the “Conditions of Grant”) for a term of 75 years from 1 July 1898 with a right of renewal for a further term of 24 years less the last three days.

Vera inspected the Property before signing the agreement. During her inspection she met Maria, who was introduced to her as Frank’s mother.

Among the title deeds there is an Assignment (the “Assignment”) dated 23 May 1993 sealed with the Common Seal of Fannie & Freddie Company Limited (the “Company”) signed by a Fannie Ma and a Freddie Mak whose capacities are not stated. The Articles of Association of the Company provide: ‘The seal of the Company shall be affixed in the presence of two persons authorised by the board of directors’.

#### **Questions:**

**With reference to the above facts, answer the following questions:**

- 3.1 Is the interest held under the Conditions of Grant legal or equitable? (5 marks)**
- 3.2 Whatever interest was held under the Conditions of Grant, did the interest end on 30 June 1973? (3 marks)**

*(See the next page for a continuation of Question 3)*

- 3.3 Should Vera's solicitors raise a requisition about Maria's presence in the Property? (7 marks)**
- 3.4 Is a requisition necessary in respect of the Company's execution of the Assignment in the following circumstances:**
- 3.4.1 The Assignment is dated 23 May 1993? (2 marks)**
- 3.4.2 The Assignment is dated 2 January 2000? (3 marks)**
- 3.4.3 The Assignment is dated 23 May 2003? (5 marks)**

**Give reasons for all your answers.**

#### **Question 4 (25 marks)**

In May 2010, Lim Investments Ltd. (“Lim”) were in negotiations with Tiny Tim Stores Ltd. (“TT”) concerning the proposed grant of a lease of Unit 317 in the Tolo Plaza Shopping Centre (“Unit 317”) for a term of ten years from 1 September 2010.

At a meeting on 5 May 2010, Alvin Au of Lim and Boris Bui of TT discussed the parties to the lease and the terms of the lease including the property to be demised, the commencement and duration of the term, the rent payable and the duration of a rent free period. Eventually Lim and TT agreed the precise extent of the property to be demised, the duration of the lease and commencement and the rent to be paid. Alvin Au and Boris Bui had authority from their respective boards to sign a contract once agreement had been reached. No document recording the agreed terms was produced or signed at this meeting.

The next day, 6 May, TT’s solicitors wrote to Lim’s solicitors confirming the terms that had been agreed and asking for a draft lease. Lim’s solicitors wrote back on 7 May as follows:

*7 May 2010*

*Dear Sirs,*

*We confirm that we act for Lim Investments Ltd. which has agreed to let Unit 317 Tolo Plaza to your client for a term of ten years starting on 1 September 2010 at a monthly rent of HK\$100,000. We enclose the draft lease.*

Lim’s solicitors signed this letter. Neither letter was marked “subject to contract”.

*(See the next page for a continuation of Question 4)*

By 10 July, the negotiations concerning the lease had broken down. Lim had declared to TT its intention to grant a lease of Unit 317 to another party. On 25 July, Lim granted a lease under seal of Unit 317 to Vong Computers (“Vong”). Vong registered the lease at the Land Registry on 27 July. TT has not made any attempt to register anything at the Land Registry.

**Questions:**

**4.1 Can TT enforce the agreement for lease against Lim?**

**(13 marks)**

**4.2 What effect would TT’s failure to register its agreement have if TT later seeks specific performance of any agreement that it might have had with Lim?**

**(12 marks)**

**Give reasons for all your answers.**

### **Question 5 (25 marks)**

Chan Investments Ltd. (“Chan”) developed La Caprice, an apartment complex and in 1999 Chan sold to Geraldine 1 equal undivided 100<sup>th</sup> share of and in the land on which La Caprice is built and the apartment complex together with the right to the exclusive use occupation and enjoyment of Apartment 32B. Chan and Geraldine then entered into a Deed of Mutual Covenant (the “DMC”).

Thereafter Chan sold most of the remaining apartments in La Caprice. Every assignment was of undivided shares and exclusive use rights and was made ‘subject to and with the benefit of the DMC’. The DMC was registered in the Land Registry. The DMC includes the following covenants by all owners of undivided shares:

- *No owner will keep any pets in La Caprice,*
- *Every owner will pay management charges in proportion to the number of undivided shares owned by them.*

Last year the owners of apartments in La Caprice incorporated under the Building Management Ordinance Cap.344. Geraldine has leased Apartment 32B to Terry and mortgaged it to M Bank Ltd.

### **Questions:**

**5.1 Can the Incorporated Owners enforce the above DMC covenants against Terry and M Bank Ltd.?**

**(10 marks)**

*(See the next page for a continuation of Question5)*

**5.2 The DMC contains a right for Chan to rename La Caprice. Can Chan enforce this right?**

**(5 marks)**

**5.3 Has the benefit of the above DMC covenants passed to apartment owners who are not parties to the DMC?**

**(10 marks)**

**Give reasons for all your answers.**

**END OF TEST PAPER**