

**2020 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD I: CONVEYANCING

Tuesday, 27 October 2020



2020 Overseas Lawyers Qualification Examination

Head I: Conveyancing

Question 1 (25 marks)

On 1 September 2020, Vince Ku (“Vince”) agreed orally with Philip Shi (“Philip”) to sell his flat known as Flat 5B, Wah Hing Mansions, 7 Oaklands Lane, Hong Kong to Philip for the sum of HK\$15 million with vacant possession on completion on 5 October 2020. They also agreed that Philip would pay a 10% deposit to be held by Vince’s solicitors as stakeholder and released to Vince on completion. Vince and Philip each instructed solicitors to act for them. They told their respective solicitors all the terms that had been agreed as set out above.

On 2 September 2020, Philip’s solicitors wrote to Vince’s solicitors as follows:

“Dear Sirs,

We enclose a cheque for HK\$1,500,000 drawn on the Kowloon Bank Ltd. by our client, Philip Shi and payable to your firm as stakeholder in respect of the sale and purchase of Flat 5B, Wah Hing Mansions, 7 Oaklands Lane, Hong Kong (the “Property”). This sum is 10% of the agreed price for the Property and is paid as a deposit to be held by your firm as stakeholder pending completion of the sale on 5 October 2020. Please send us a receipt for this sum together with the draft agreement for sale and purchase.”

Philip’s solicitors signed this letter.

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

On 4 September 2020, Vince’s solicitors sent Philip’s solicitors a receipt for the deposit which reads as follows:

“Received from Philip Shi the sum of HK\$1,500,000 being the 10% deposit on Flat 5B, Wah Hing Mansions, 7 Oaklands Lane, Hong Kong agreed to be sold by Vince Ku to Philip Shi.”

Vince’s solicitors signed this receipt. Subsequently Vince refused to proceed with the sale and he returned the deposit to Philip.

Questions:

Answer the following questions giving reasons for your answers:

1.1 Advise Philip whether he can enforce the oral agreement against Vince.

(15 marks)

1.2 Assume that instead of the correspondence above, Vince (the “Vendor”) and Philip (the “Purchaser”) had signed a binding provisional agreement (the “Provisional Agreement”) for the sale and purchase of Flat 5B, Wah Hing Mansions, 7 Oaklands Lane, Hong Kong. The Provisional Agreement includes the following terms:

“2. The purchase price shall be HK\$15,000,000 to be paid in the following manner:

(i) An initial deposit of HK\$150,000 shall be payable to the Vendor’s solicitor as stakeholder on the signing of this agreement,

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

(ii) *A further deposit of HK\$1,350,000 shall be payable to the Vendor's solicitor as stakeholder on 14 September 2020, that date being on or before the signing of a formal agreement,*

(iii) *The balance of the purchase price shall be payable to the Vendor's solicitor as agent for the Vendor on completion,*

(iv) *The initial and further deposits shall be released to the Vendor on completion.*

.....

8. *If the Vendor fails 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 deposits paid as liquidated damages together with the refund of the deposits paid and the Purchaser shall not take any further action to claim damages or to enforce specific performance."*

1.2(a) Assume that it is 14 September 2020 and the Vendor and the Purchaser have not agreed on the terms of the formal sale and purchase agreement.

Is the Purchaser obliged to pay the further deposit?

(4 marks)

1.2(b) Assume that on 14 September 2020, the Purchaser had nevertheless paid the further deposit but that the parties had failed to sign a formal agreement. Neither party alleges a breach for this failure. On 5 October 2020, the Vendor failed to complete and returned to the Purchaser only the initial and further deposits. **Is the Purchaser entitled to any other remedies against the Vendor?**

(6 marks)

Question 2 (25 marks)

On 30 June 2020, Lee Holdings Limited (“Lee Holdings”) as vendor entered into a binding agreement to sell the legal estate in Flat 3A, Pine Court (the “Property”) to Pansy Poon (“Pansy”) as purchaser for the price of HK\$65 million. Pansy paid a deposit of HK\$6.5 million. The agreement is substantially in the same form as the agreement in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219. Lee Holdings agreed to give vacant possession on completion. Completion was due to take place by 5 p.m. on Friday, 23 October 2020.

Pansy asked Tony Lee (“Tony”), the sole director of Lee Holdings, to allow her to see the Property before completion but Tony refused. Nevertheless, Pansy went to the Property at 4:55 p.m. on Friday, 23 October 2020. When Pansy knocked on the entrance door to the Property, Tony answered the door but did not allow Pansy to go in and inspect. Nevertheless, from the entrance Pansy could see that there were a number of packing cases in the living room and it appeared that they could not be removed by 5 p.m. Tony told Pansy that he would remove the packing cases as soon as possible. However, Pansy did not complete her purchase.

This morning the solicitor for Lee Holdings informed Pansy’s solicitor that Pansy had repudiated the agreement by failing to complete. Lee Holdings had therefore accepted Pansy’s repudiation, terminated the agreement and forfeited Pansy’s deposit. Pansy’s solicitor has now advised Pansy to sue Lee Holdings for damages and to recover her deposit.

Questions:

Answer the following questions giving reasons for your answers:

2.1 Can Pansy obtain specific performance of the agreement? (14 marks)

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

2.2 How would your answer to question 2.1 above change if this morning Lee Holdings had entered into a binding agreement to sell the Property to Betty Bau?

(6 marks)

2.3 Assume for the purpose of this question only that Pansy completes her purchase. Lee Holdings has executed the Assignment in favour of Pansy as follows:

Signed by Tony Lee on behalf of Lee Holdings Ltd.)

in the presence of:) *Tony Lee*

There is no witness.

Should Pansy require any further evidence of proper execution of the Assignment by Lee Holdings?

(5 marks)

Question 3 (25 marks)

By virtue of a binding Agreement for Sale and Purchase (the “Agreement”) signed two weeks ago, Pearl Wong (“Pearl”) agreed to purchase the office unit of Steven Sun (“Steven”) known as Room C, 8th Floor, Joyous Commercial Building, Sheung Wan, Hong Kong (the “Property”) which provides, amongst other things, that a good title will be sold and completion will take place on 1 December 2020.

The title documents which affect the Property are as follows (in chronological order):

- (1) Agreement and Conditions of Sale No. UB8938 dated 2 January 2002
- (2) Occupation Permit dated 5 August 2004
- (3) Deed of Mutual Covenants dated 17 September 2004 (Memorial No. UB6543920)
- (4) Certificate of Compliance dated 20 November 2004 (Memorial No. UB7659430)
- (5) Assignment with Plan dated 28 December 2004 (Memorial No. UB7852931)
- (6) Assignment dated 31 July 2005 (Memorial No. UB8654210)
- (7) Mortgage dated 8 October 2006 (Memorial No. 06100804367890)
- (8) Receipt on Discharge of a Charge dated 9 October 2019 (Memorial No. 19100998743276)

Items (1) to (4) inclusive of the above list affect the whole of Joyous Commercial Building (the “Building”) and items (5) to (8) relate solely to the Property. Items (5) and (6) both provide that the Property is sold subject to and with the benefit of item (3).

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

Questions:

Answer the following questions giving reasons for your answers:

3.1 What kind of interest, legal or equitable, is held under the Agreement and Conditions of Sale No. UB8938?

(3 marks)

3.2 Must Steven produce the originals of items (1), (3) and (6), namely, the Agreement and Conditions of Sale No. UB8938, the Deed of Mutual Covenants Memorial No. UB6543920 and the Assignment Memorial No. UB8654210 to prove and give good title? Will Pearl be entitled to reject title if the originals of these documents have all been lost?

(12 marks)

3.3 Pearl has just discovered that the Building Authority issued an order last week to the co-owners of the Building under section 24 of the Buildings Ordinance, Cap.123 regarding an unauthorised structure on the roof of the Building. There is no such entry in the latest land search in respect of the Property obtained from the Land Registry this morning. Neither the ownership nor the exclusive right to use the roof has ever been specifically assigned to any party. **What impact, if any, will such an order have on the title to the Property? If you require further information to answer this question, state what information you need and why you need it.**

(10 marks)

Question 4 (25 marks)

In September 2020, Stan as vendor and Patrick as purchaser signed an agreement for sale and purchase (the “Agreement”) of Flat 15A, May Court (“Flat 15A”) for a consideration of HK\$30 million. May Court is a block of 30 residential flats built in 1973. Patrick inspected Flat 15A before signing the Agreement and liked it because it is very spacious. Completion is due to take place on 30 November 2020.

The Agreement is substantially in the same form as the agreement in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219 except that it also contains the following Clause 12:

“The Purchaser has inspected Flat 15A and will not raise any requisitions or object to title in connection with any unauthorised alterations or illegal structures at Flat 15A.”

There is a Deed of Mutual Covenants for May Court (the “DMC”). The DMC contains a definition of common parts. This definition states that corridors and lift lobbies are common parts, but it does not say anything about internal walls. The DMC includes the following covenants:

- “1. No owner will alter the common parts of May Court without the prior consent of the building manager.*
- 2. No owner will make any structural alterations to any part of May Court.”*

The owners of May Court incorporated in 1993.

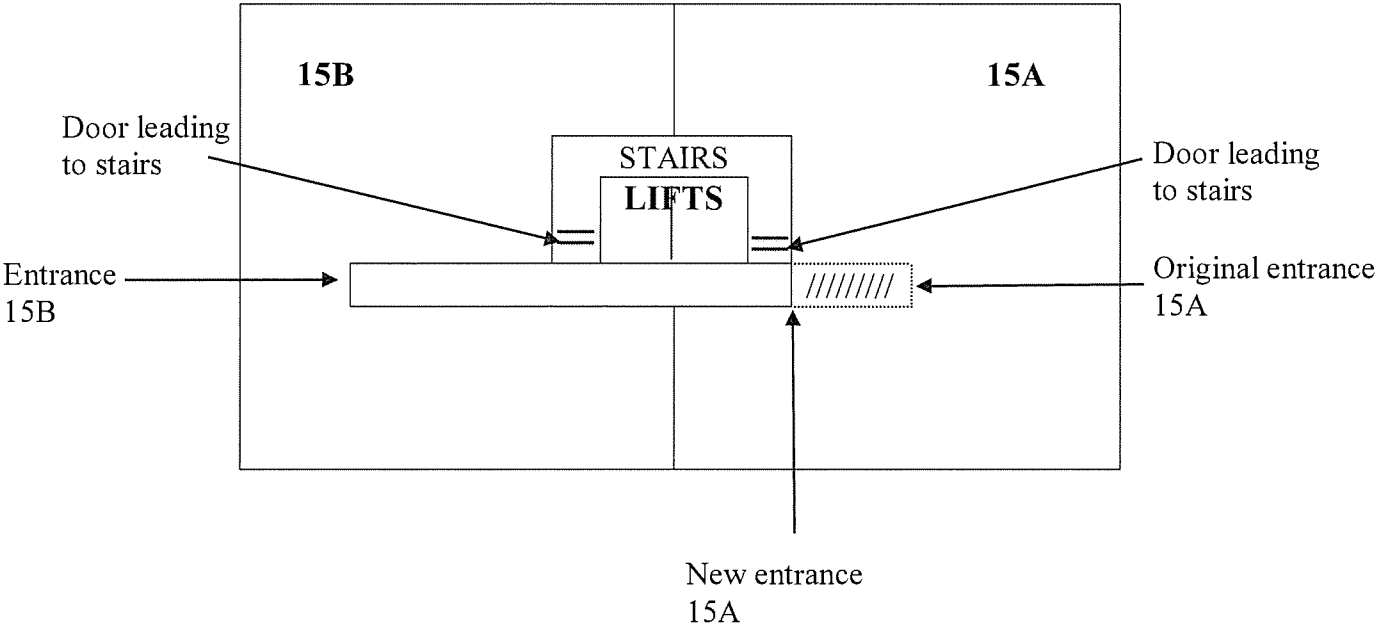
After signing the Agreement, Patrick discovered that in 1995, Stan’s predecessor in title had demolished two walls inside May Court separating Flat 15A from the corridor and had moved the entrance to Flat 15A. The walls that have been demolished are shown by dotted lines on the plan below, which was drawn by Patrick’s surveyor, and the original and new entrances are marked. The effect of these alterations is that a portion

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

of the corridor shown hatched black on the plan has been incorporated into Flat 15A.

Last week Stan’s solicitor sent Patrick’s solicitor the title deeds. The deeds do not include a layout plan. Patrick’s solicitor immediately raised requisitions including a requisition asking Stan’s solicitor for evidence that the alterations do not breach the Buildings Ordinance, Cap. 123 or the DMC. Stan’s solicitor has refused to answer this requisition on the ground that the Agreement contains Clause 12.

Plan of 15th Floor, May Court



Questions:

Answer the following questions giving reasons for your answers:

- 4.1 Analyse the ways in which the above facts indicate that Stan’s title might be defective. (15 marks)

- 4.2 Explain the effect of Clause 12 of the Agreement on the Vendor’s duty to give and show title. (10 marks)

Question 5 (25 marks)

Victor Siu (“Victor”) is planning to sell his solely-owned property at Mid-Levels, Hong Kong (the “Property”). He first bought the Property by signing a Provisional Agreement for Sale and Purchase on 4 May 2019, signing a Formal Agreement for Sale and Purchase on 18 May 2019 and executing an Assignment on 28 June 2019.

Victor’s sons, Sam and Sunny, both of whom are not Hong Kong permanent residents, are interested in buying the Property for the price of HK\$21 million. According to the Deed of Mutual Covenants, the Government Grant and the Occupation Permit relating to the Property, its user is residential. Sam already owns a residential flat in Wanchai, Hong Kong.

Victor, Sam and Sunny are planning to sign an Agreement for Sale and Purchase of the Property (the “Agreement”), which will be the only agreement signed by the parties on 5 November 2020. The Agreement will include a term that completion will take place on 27 November 2020.

Questions:

Answer the following questions giving reasons for your answers:

5.1 Will any ad valorem and/or other stamp duties be payable on the Agreement? If so, what is/are the amount(s) payable? If you require further information to answer this question, state what information you need and why you need it.

(11 marks)

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

5.2 Sam has an unmarried partner, Sophia, who is a Hong Kong permanent resident. How, if at all, will your answer to Question 5.1 above differ if, instead of selling to Sam and Sunny, Victor sells the Property (on the same terms) to Sam and Sophia?

(7 marks)

5.3 Victor also owns a flat (the “Flat”) with his wife, Wendy, as joint tenants. Victor has made a valid will naming Sam as the sole executor and beneficiary of his estate. Sunny is the sole executor and beneficiary of Wendy’s estate under her valid will. Owing to his financial difficulties, Victor started borrowing from Vampire Credit Company Limited (“Vampire”) earlier this year. Last month Vampire obtained and registered a charging order against the Flat in respect of Victor’s unpaid debts. Victor and Wendy died in a car crash yesterday and the order of their deaths is unknown. **Who will now own the Flat? If you require further information to answer this question, state what information you need and why you need it.**

(7 marks)

END OF TEST PAPER