

Examiners' Comments on the 2003 Examination

Head I: Conveyancing and Landlord and Tenant

This report contains observations made by examiners on the performance of candidates in the examination. It is not intended to be an exhaustive list of problems. The comments are provided to help candidates with their preparation and with examination technique.

The headings indicate general categories of weakness.

Failure to follow the examination rubric

Candidates are required to answer all questions. Omissions of one or more parts of a question can make the difference between success and failure in marginal cases.

Candidates must answer the question set. Many questions required reasons to be given in support of conclusions. In such cases it is not sufficient merely to provide a conclusion such as "yes" or "no", without further explanation.

Inadequate information

Some scripts contained very little information and no authorities at all. This suggests either failure to comprehend the subject or inadequate preparation. It is not appropriate for candidates to assume that an open book examination dispenses with the need for proper preparation.

Candidates are advised to pay attention to the number of marks allocated to a question. For instance Question 4(a) carried 10 of the 20 marks allocated while question 5 Part A(a) carried 12 out of the 20, but many candidates failed the questions because of lack of information on those parts.

Failure to direct information to the question

Candidates are required to address issues raised by the question. Some candidates spent too long on unnecessary introductions which were not directed to those issues. In a few cases candidates merely copied out provisions of legislation rather than explaining and applying the law, particularly on questions 4 and 5.

Failure to identify key issues

Failure to spot key issues results in omissions of relevant law. Identifying the wrong issue leads to irrelevance. Too much irrelevance indicates that a candidate has not understood the issues raised by the question. No marks are awarded for omissions or irrelevance.

Examples

Question 1 – no consideration of the effect of a limiting clause; and no discussion of the relationship between inspection and due diligence in relation to late requisitions. A few candidates failed to discuss the deposit issue, either at all or in adequate depth.

Question 2

(b) – the issue in this question concerned the vendor’s duty to show clearly the number of shares allocated to the flat, not the quite different issue of transfer of an exclusive use area without any shares.

(c) - the issue here was whether the grant of probate and the schedule annexed thereto were documents of title. The grant happened to be a pre-intermediate root document, which led some candidates to discuss the irrelevant issue of the vendor’s duty to answer requisitions properly raised in respect of such documents.

(d) – some candidates thought this question concerned proof of death and payment of estate duty, whereas it related to the proper procedure on requisitions in respect of a transfer by a Personal Representative.

Question 3

(c) – few candidates seemed to be aware of the decisions in *South China Amusement* or *Incorporated Owners of Cheong Wang* that the roof would become a common area.

(d)(ii) – Discreet Property Management Ltd is a Management Corporation and not an Owners’ Corporation (OC), so that references to the powers of an OC under the Building Management Ordinance were irrelevant.

Question 4

(a) – omissions here included failure to discuss, either at all or adequately: power of sale and related issues; why powers were implied; effect of the Bank’s conduct; and what should be done to deal with an occupier unwilling to give up possession.

(b)(ii) – only a few candidates considered the relevance of the “all monies” charge with regard to the amount of indebtedness being in excess of the original amount advanced.

Question 5

Part A(a) – many candidates failed to discuss, either at all or adequately, the issue of primary user, and the effect of short notice. Some candidates were aware of the relevant law but failed to apply it correctly to the question. The facts clearly state that the notice was collected on 22 July 2003, but many answers contained irrelevant discussions of the possibility that it might have been received before that date.

Part A(b) – most candidates were familiar with the grounds of opposition but few dealt with the change in the law which explains why the landlord could rely upon a ground not stated in Form CR 101.

Failure to cover issues in sufficient depth

In some cases correctly identified issues were not fully explained. For instance:

Question 2

(c) - some candidates knew the *Chun Hon Wai* case but failed to apply it correctly to the facts. Few if any candidates discussed *Sze King Lun* which was directly in point on the facts.

(e) - only a few candidates mentioned the use of a letter of confirmation by the bank, which in practice is the usual way to prove non-revocation of a Power of Attorney given by banks.

Question 3

(b) – many candidates were aware of *Supreme Honour* but did not apply it correctly to the facts.

(e) – few candidates explained the locus standi point and many failed to explain the meaning of structural alterations, either at all or correctly. It is not sufficient to state that the courts apply a layman’s meaning to the term.

Errors of law

The following errors of law occurred in a number of scripts:

Question 1 – incorrect statement of law in the context of deposits exceeding the conventional 10%: many candidates either did not know or did not understand the judgment of the Court of Final Appeal in *Polyset v Panhandat*.

Question 2

(a) – inability to identify the intermediate root of title document.

(f) – many candidates clearly did not understand the new section 23A of the Conveyancing and Property Ordinance (CPO). It did not apply to this question since the Sale and Purchase Agreement was executed before the date on which the amendment came into force, ie 9 May 2003. Mistaken reliance upon it resulted in a failure to explain what the vendor should do to show good title.

(g) – s23A was applicable here but a number of candidates stated that it did not apply. The error seems to have arisen because of a failure to distinguish between the Sale and Purchase Agreement, the date of which determines whether s23A is applicable – in this case it was after 9 May 2003- and an Assignment, which is irrelevant to deciding that the section applies.

Question 3(d)(ii) – as in previous examinations many candidates continue to confuse a Management Corporation with the Owners' Corporation registered under the Building Management Ordinance. There was no Owners' Corporation in this question.

Question 4(c)(ii) – most candidates got this wrong and were obviously unaware of section 53 of the CPO.

#74532