

## **Examiners' Comments on the 2007 Examination**

### **Head I: Conveyancing**

The majority of candidates were well prepared for this examination and were able to cite relevant authorities. The paper focuses on contract, title, completion and deeds of mutual covenant. The least popular question was Question 5.

#### **Question 1**

This question concerns the purchaser's investigation of title and the right to raise requisitions. Candidates should refer to the purchaser's contractual rights.

- (a) Title passes by an assignment even if the purchaser does not execute and it is not essential to raise a requisition on execution of the assignment. Similarly a purchaser is not usually concerned with execution of a discharged mortgage.
- (b) Candidates understood the potential title problems created by unauthorised building works but should also have considered whether they could frame a requisition given the limited facts.
- (c) The contract terms indicate that the vendor is selling an equitable interest.
- (d) Candidates should consider the title problem created by the signature discrepancy and the form of the statutory declaration.
- (e) Trustees of a bare trust have no power to sell.

#### **Question 2**

- (a) Candidates should consider the potential title problems, the purchaser's obligation to sign the formal agreement and pay the further deposit and that the vendor has until completion to prove title.
- (b) Most candidates said that Vera must be able to justify the large initial deposit. In this connection they should refer to the long completion date.
- (c) In this question a knowledge of legal practice is useful. In practice the vendor usually sends the deeds to the purchaser's solicitors on their undertaking to return the deeds on demand. If the undertaking is not imposed, the purchaser has a lien on them for the return of the deposit. Candidates should know that the title deeds belong to the vendor until completion when the vendor passes them to the purchaser subject to the right to retain any that relate to retained property.

### Question 3

- (a) Candidates should show that they understand the difference between formal completion and completion by undertaking and whether the contract excludes formal completion. Most candidates know about the potential problems caused by completing by undertaking and the steps that should be taken to protect the purchaser (Condition 13 of Part A Second Schedule to the Conveyancing and Property Ordinance Cap 219, the split cheque arrangement, the Law Society qualifications in the undertaking and the need to agree the form of the undertaking before completion). Candidates should also mention the need to register the agreement at the Land Registry.
- (b) A surprising number of candidates lost marks because they failed to mention all formalities and time limits. The purchaser should stamp the assignment with ad valorem duty (non-residential property) and register the assignment and mortgage at the Land Registry and particulars of the Mortgage at the Companies Registry.
- (c) Candidates must take into account the need for the purchaser to prove proper execution by the vendor in the future. Thus if the vendor does not execute so that s 20(1) and 23 of the Conveyancing and Property Ordinance Cap 219 can be relied on, the purchaser must consider what evidence of proper execution should be placed with the deeds.
- (d) Abacus repays the amount due to Goodwill and is entitled in equity to a transfer of Goodwill's mortgage. Beacon is not a purchaser under s 3(2) of the Land Registration Ordinance Cap 128.

### Question 4

Alpha and Beta are both successors in title to the parties to the Deed of Mutual Covenant. Most candidates know the rules for the passing of the benefit and burden of covenants. In addition candidates should consider in part (a) the meaning of 'suffering to be used' and in part (b) the issue of waiver. Candidates should also consider remedies.

- (c) Candidates should consider the need for the car park to be sold with undivided shares, the need for reallocation and whether the Deed of Mutual Covenant restricts reallocation or sale of the car park separately from the house.

### Question 5

- (a) Most candidates knew that the obligation to repay the tenancy deposit does not run with the land. Not all candidates referred to the possibility of novating the obligation.
- (b) Some candidates did not recognise that Terry has an equitable lease but that the option may be unenforceable because the agreement is oral. Sally's option may be void for uncertainty because the rent is 'to be agreed between the parties'.
- (c) Candidates should consider possible breaches of the Buildings Ordinance Cap 123 and the Deed of Mutual Covenant and drafting a clause in the agreement for sale barring the purchaser's right to raise requisitions. Candidates might consider the danger of signing a binding agreement for sale without legal advice and whether the house is a fixture.