

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 4th 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.