

# 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.

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