

**2006 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD I: CONVEYANCING**

Thursday, 26 October 2006



# **HEAD I: CONVEYANCING**

## **TEST PAPER**

**26 October 2006**

### **Instructions to Candidates :**

- 1. The duration of the examination is 3 hours and 30 minutes.**
- 2. This is an open-book examination.**
- 3. There are FIVE questions in this paper.  
ANSWER ANY FOUR QUESTIONS ONLY.**
- 4. You must write your answers to any of:**
  - Questions 1, 2 and 3 in Answer Book 1**
  - Questions 4 and 5 in Answer Book 2**
- 5. IF YOU ATTEMPT MORE QUESTIONS THAN YOU HAVE BEEN INSTRUCTED TO ANSWER :**
  - (a) THE EXAMINERS WILL MARK ALL QUESTIONS THAT HAVE BEEN ATTEMPTED AND NOT DELETED; AND**
  - (b) IN COMPUTING YOUR FINAL MARK, THE EXAMINERS WILL COUNT THE MARKS FOR THE NUMBER OF QUESTIONS THAT YOU WERE INSTRUCTED TO ANSWER TAKING INTO ACCOUNT THE ANSWERS WITH THE LOWEST SCORES.**
- 6. Start each question on a separate page of your answer book.**
- 7. Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.**
- 8. An examiner will be present for the first 30 minutes of the examination. Any question relating to the paper must be raised in that period. Questions raised after the first 30 minutes will not be entertained.**
- 9. Do not take either this question paper or any answer books with you when you leave the examination room.**

# 2006 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

On 1 October 2006 Vera entered into a formal agreement for sale and purchase to sell Peter her residential property known as ‘The Box’, Lot 1234 in Demarcation District 22 in Tuen Mun (“the Property”) for the sum of HK\$4 million. There was no prior provisional agreement. The house is held under a Block Government lease for a term of 75 years from 1 July 1898 with a right to renew for a further term of 24 years less the last three days. The formal agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap 219 and states that completion will take place on 1 November 2006. The agreement also provides that Peter will pay all stamp duty on the transaction.

Vera’s solicitor sent the title deeds to Peter’s solicitor on 12 October. They included a Land Registry certified copy of an assignment made in 1950. The 1950 assignment is the intermediate root of title and deals solely with the Property. On 13 October Peter’s solicitor raised a requisition asking for the original of the 1950 assignment. Vera’s solicitor replied that the original had been lost. Peter’s solicitor agreed not to demand the original, but asked instead for a statutory declaration explaining the loss. Initially Vera’s solicitor agreed, but later Vera’s solicitor replied saying:

*“We are not able to obtain the statutory declaration that you require and we are instructed by Vera that the sale of the Property will be annulled unless you withdraw your requisition by 24 October.”*

Peter’s solicitor then wrote to Vera’s solicitor a second time asking for a statutory declaration explaining the loss of the 1950 Assignment. Vera’s solicitor then wrote to Peter’s solicitor informing him that Vera, relying on the terms of the formal agreement, had annulled the sale.

### Questions:

Answer the following questions giving reasons for all your answers:

- (a) Should Peter have asked for evidence that the Block Government lease is still subsisting even though the term has expired? **(3 marks)**
- (b) Can Peter obtain specific performance? **(16 marks)**
- (c) Advise Peter on his obligation to pay stamp duty on the transaction. **(6 marks)**

## Question 2 (25 marks)

On 15 September 2006 Violet entered into a binding formal agreement (“the Agreement”) to sell Flat 6A Waterloo Heights, 41 Waterloo Road to Paul ‘for the residue of the term of years created by the Government Lease of Kowloon Inland Lot No 3456’. The formal agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap 219. The agreed price is HK\$30 million and Paul has paid a deposit of HK\$5 million. The balance is payable on completion which will take place on 2 November 2006.

On 1 October 2006 Violet’s solicitor sent to Paul’s solicitor the title deeds and documents shown in the attached title diagram, with the exception of the 1975 Assignment. Violet’s solicitor also sent the Articles of Association of Waterloo Limited and Napoleon Limited and a certified copy of a statutory declaration in respect of the Power of Attorney dated 1 February 1994.

### Questions:

Answer the following questions giving reasons for all your answers.

- (a) Clause 8 of the Agreement states:

*“Title will commence with the Government Lease.”*

Is Violet obliged to show Paul the 1975 Assignment?

**(3 marks)**

- (b) The Articles of Waterloo Limited provide that the seal of the company shall be affixed ‘in the presence of a person authorised by the board of directors.’

Paul’s solicitors have obtained a copy of the 1975 Assignment from the Land Registry. The 1975 and 1985 Assignments have been sealed with the seal of Waterloo Limited and signed by Winnie Ho whose capacity is not stated. Should Paul raise a requisition on the execution by Waterloo Limited of:

- (i) the 1975 Assignment? and  
(ii) the 1985 Assignment?

**(6 marks)**

- (c) Should Paul ask for the original of the Power of Attorney dated 1 February 1994?

**(4 marks)**

- (d) The statutory declaration referred to above is made by James Wong. In it he declares that he did not at the date of the Discharge dated 1 March 1996 know of any revocation of the Power of Attorney dated 1 February 1994. Should Paul raise a requisition in connection with the statutory declaration?

**(4 marks)**

- (e) Should Paul ask to see a certificate of compliance?

**(3 marks)**

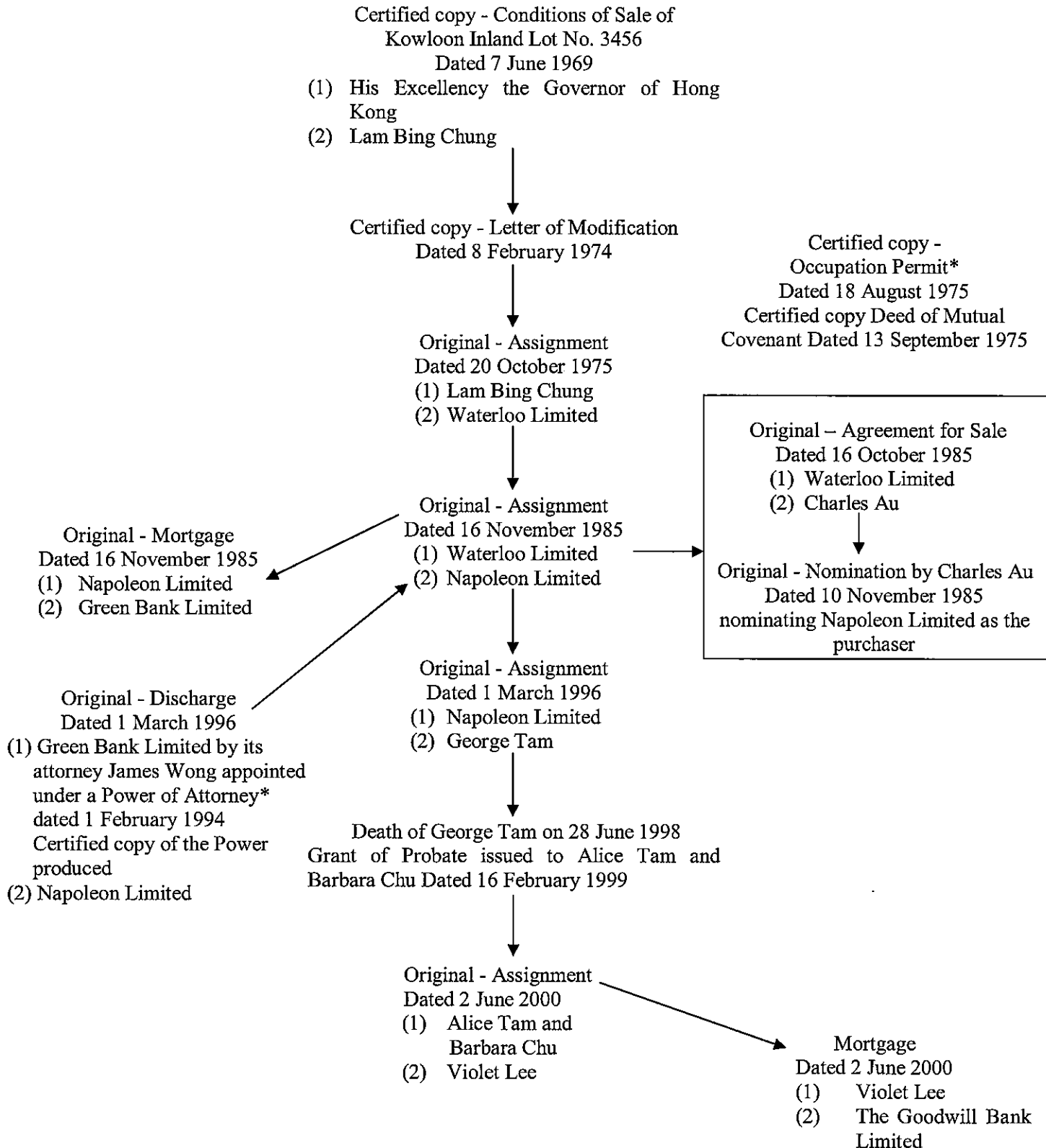
- (f) By his will George Tam gave his residuary estate, less debts and administration expenses, to his daughter Dora who was five at the date of his death. George also provided in his will that Flat 6A Waterloo Heights should not be sold until Dora had reached the age of 18. Should Paul raise a requisition on the Assignment dated 2 June 2000?

**(5 marks)**

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

## QUESTION 2

### **Title Diagram of Flat 6A, 41 Waterloo Road, Kowloon**



The documents marked \* are not registered in the Land Registry.

### **Question 3 (25 marks)**

In March 2006 Vigour Limited (“Vigour”) and Polar Limited (“Polar”) entered into negotiations for the sale by Vigour to Polar of a small 15 storey office building in Central, known as Katherine House. Vigour was in the process of renovating the building and was asking a price of HK\$100 million for the building after renovation. Vigour told Polar that it would take three months to complete the renovation. Polar was not able to carry out a full inspection of the property due to the renovation work, but Vigour told Polar that each floor had 5,000 square feet of usable floor area. Polar agreed orally to buy Katherine House for HK\$100 million, to pay 10% of the purchase price on the signing of a formal agreement, a further 20% one month after signing the formal agreement and the balance on completion which would take place within 14 days after Vigour giving Polar written notice that the renovations had been completed. Vigour then instructed its solicitors to prepare the formal agreement.

Polar entered into negotiations with the Goodwill Bank to obtain a loan. However, the negotiations were delayed and as a result Polar did not sign the formal agreement. However, Polar assured Vigour that the deal would go through and in April Polar issued a cheque to Vigour for 10% of the purchase price. Vigour issued a receipt for the cheque. The receipt stated that the deposit was paid in respect of the sale of Katherine House by Vigour to Polar for a consideration of HK\$100 million.

At Polar's request, Vigour subsequently agreed several changes to the renovation plans. For example, on the top floor, where Polar planned to locate the office of its Chief Executive, Vigour installed a directors’ dining room and bar. Vigour completed the renovations in July 2006 and sent written notice to Polar to complete the purchase. Polar refused to complete saying that it had no obligation to do so. Polar demanded the return of its deposit.

#### **Questions:**

Answer the following questions giving reasons for all your answers.

- (a) Can Vigour obtain specific performance of the oral agreement between Vigour and Polar?

**(16 marks)**

- (b) The Goodwill Bank’s standard mortgage form contains a term that the Borrower irrevocably appoints the Bank to be its attorney for the purposes of carrying out the borrower’s obligations. Can this appointment be made irrevocable?

**(3 marks)**

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

- (c) The draft formal agreement prepared by Vigour's solicitor contains a clause in the following form:

*"This agreement sets out the full agreement of the parties and no warranty or representation has been made or given by the Vendor prior to the signing hereof. If any such warranty or representation express or implied has been made the same is hereby withdrawn."*

Would you have accepted this term if acting for Polar?

**(6 marks)**

#### **Question 4 (25 marks)**

Carol has signed a Provisional Agreement for Sale and Purchase (“the Provisional Agreement”) to buy Adam’s house (“the house”). A copy of the Provisional Agreement is attached.

Answer the following questions giving reasons for all your answers. **You act for Carol.**

- (a) The following facts (i) to (iii) are applicable only to this question (a):
- (i) Carol and Adam did not sign the formal agreement for sale and purchase on 25 October 2006 as their respective solicitors could not agree upon the terms thereof;
  - (ii) Carol refused to pay the further deposit on 25 October 2006; and
  - (iii) today is 26<sup>th</sup> October 2006 and you have just received a letter from Adam’s solicitor informing you first that his client has determined to repudiate his sale and secondly that a cheque for HK\$900,000 payable to Carol as liquidated damages is enclosed with the letter being the refund of the initial deposit paid under the Provisional Agreement and an additional sum equivalent to the amount of the initial deposit.

Carol still wishes to proceed with her purchase of the house. Advise her.

**(6 marks)**

- (b) When Carol went to view the house, she met Adam, who described himself as the owner of the house. Adam introduced Carol to Danny and Eve respectively as his father and girlfriend. The Land Registry search reveals that Adam is the sole legal owner of the house and that there is no subsisting mortgage. What precautionary steps, if any, are required to deal with Carol’s knowledge of the presence of Danny and Eve at the house?

**(7 marks)**

- (c) What precautionary steps, if any, are required to deal with Carol’s knowledge of the presence of Danny and Eve at the house if Danny and Eve are Adam’s tenants under a tenancy agreement for a term starting on 1<sup>st</sup> April 2006 and ending on 31<sup>st</sup> December 2008 with an option for Danny and Eve to renew their tenancy for a further term of 6 months on the expiry of the existing term?

**(6 marks)**

- (d) By mutual agreement Adam and Carol did not sign a formal agreement. Adam’s solicitor wants to complete by way of undertaking and has asked for the whole of the balance of purchase price to be paid to Adam’s solicitor’s firm. Adam does not have a mortgage to discharge. What precautionary steps, if any, should be taken on completion?

**(6 marks)**

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



## Question 4

### Provisional Agreement for Sale and Purchase

THIS AGREEMENT is made on the 20 October 2006.

Between the Vendor - Adam Tam of Flat 6B Bauhinia Court, 26 Bauhinia Road, Hong Kong  
the Purchaser - Carol Poon of Flat 10A Green Gardens, 16 Prince Edward Road, Kowloon

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase 110 Kent Road, Kowloon Tong, Kowloon ("the house").
2. The purchase price is HK\$45,000,000.00 which shall be paid by the Purchaser in the following manner:
  - (a) HK\$450,000.00 on the signing of this agreement as initial deposit.
  - (b) HK\$4,050,000.00 as further deposit, shall be paid to the Vendor's solicitors upon the signing of a formal agreement for sale and purchase on 25 October 2006.
  - (c) HK\$40,500,000.00 shall be paid as the balance of purchase price on completion on or before 20 November 2006.
3. Should the Purchaser fail to complete the purchase in the manner herein contained the deposit shall be forfeited to the Vendor who shall then be entitled at his absolute discretion to sell the house to anyone he thinks fit and the Vendor shall not sue the Purchaser for any liabilities and/or damages caused by the Purchaser's default.
4. Should the Vendor after receiving the initial deposit paid hereunder fail 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 initial deposit as liquidated damages together with the refund of the initial deposit and the Purchaser shall not take any further action to claim damages or to enforce specific performance.
5. The Purchaser will pay the stamp duty in connection with this transaction.

*Adam Tam*

Signed \_\_\_\_\_

*Carol Poon*

Signed \_\_\_\_\_

### Question 5 (25 marks)

In 1999 Value Realty Limited (“Value”) built Healthy House (“the Building”) a ten storey commercial building on Inland Lot 2468 (“the Land”). The Land and the Building were divided into 102 equal undivided shares: 10 of these shares were allocated to each floor and 2 of them were allocated to the roof. Each floor of the Building is served by a lift and has toilets for men and women.

Purchaser X bought 12 equal undivided 102<sup>nd</sup> shares from Value together with the right to the exclusive use of the whole of the 10<sup>th</sup> Floor (including the toilets and lift lobbies), the roof of the Building and the right to name or rename the Building. Following completion of the assignment to X, Value and X entered into a Deed of Mutual Covenant (“the DMC”) which was registered in the Land Registry. Value retained the remaining undivided shares. The DMC includes the following terms:

*“The right to the exclusive use occupation and enjoyment of any part of the Land or the Building shall not be sold, assigned, mortgaged, charged, or otherwise dealt with separately from the undivided shares with which the same is held.”*

*“X has the right to name or rename the Building.”*

*“Every owner of undivided shares agrees to observe and perform the covenants contained in this Deed.”*

*“Every owner of undivided shares will keep clean and in good repair that portion of the Building of which he has the exclusive use.”*

*“No owner of undivided shares will create a nuisance or annoyance to other owners or occupiers of the Building.”*

### Questions:

Answer the following questions giving reasons for all your answers:

- (a) X wants to sell to Y one half of the 10<sup>th</sup> Floor and the whole of the roof. The DMC contains no restriction on the sale of half a floor. Y will have the right to use, in common with X, the toilets and lift lobbies on the 10<sup>th</sup> Floor. X and Y will enter into a Sub Deed of Mutual Covenant. Given the above facts, what terms should the Sub Deed of Mutual Covenant contain? Who are the parties to the Sub Deed of Mutual Covenant?

**(10 marks)**

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

- (b) The sale to Y took place. Y registered the assignment of half of the 10<sup>th</sup> Floor and the whole of the roof against the 10<sup>th</sup> Floor, but not against the roof. X then sold the remaining half of the 10<sup>th</sup> Floor to Z. In the same assignment X also assigned 2 equal undivided 102<sup>nd</sup> shares to Z with the exclusive right to use the roof. Z registered its assignment against the 10<sup>th</sup> Floor and the roof. Y has just found out that Z is erecting an advertising sign on the roof. Advise Y.

**(5 marks)**

- (c) Value has now let the 9<sup>th</sup> Floor of the Building to Fancy Food Limited which recently opened a restaurant there. The term of the tenancy is 4 years starting on 1 September 2006. Fumes from Fancy Food's kitchen now permeate the 10<sup>th</sup> Floor. Y and Z both find the smell of cooking unbearable. How can they remedy the situation?

**(10 marks)**

**END OF TEST PAPER**

