

**2007 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD I: CONVEYANCING**

Tuesday, 30 October 2007



# **HEAD I: CONVEYANCING**

## **TEST PAPER**

**30 October 2007**

### **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.

# 2007 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

Victor has agreed to sell Pamela Flat 2A Hibiscus Court (the 'Property') subject to the Conditions of Exchange for Inland Lot Number 1234 (the 'Conditions') on which Hibiscus Court is built. Victor and Pamela have signed an agreement for sale and purchase in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap 219, except that Clause 1 reads:

*Victor agrees to sell his interest in the Property to Pamela subject to the Conditions.*

The sale is expressly subject to and with the benefit of the Deed of Mutual Covenant for Hibiscus Court. You act for Pamela. Victor's solicitors have sent you the title deeds (including all those referred to below). All the deeds referred to below are registered in the Land Registry.

### Questions:

Explain whether or not you will raise requisitions based on the following information.

- (a) As Victor's attorney, Alfred executed the assignment of the Property to Victor as purchaser and a mortgage of the Property by Victor as mortgagor to the Goodwill Bank Limited. Both documents are dated 1 March 2001. Victor executed the power of attorney in favour of Alfred on 6 May 1999. All these documents are with the title deeds. **(5 marks)**
- (b) Victor has recently carried out substantial internal renovations at the Property. **(5 marks)**
- (c) There is no certificate of compliance with the title deeds. **(5 marks)**
- (d) On 1 June 1996 Wu Cheong Ying as vendor assigned the Property to Anne Chan as purchaser. Wu Cheong Ying and Anne Chan were separately represented. The immediately preceding assignment is dated 1990 and is made between (1) Ma Lo as vendor and (2) U Ying Cheong as purchaser. The deeds include a statutory declaration by the solicitor who acted for Anne Chan on her purchase in which the solicitor declares that to the best of his knowledge and belief Wu Cheong Ying and U Ying Cheong are one and the same person. **(5 marks)**
- (e) The title deeds include a written declaration of trust dated 2 June 1996 made by Anne Chan. The declaration states that Anne Chan holds on trust for X and Y, that X and Y paid the purchase price when Anne Chan bought the Property and that Anne Chan will assign the Property to X and Y when they attain the age of 18. In 1997 Anne Chan alone assigned the Property to Wong who then assigned to Victor in 2001. **(5 marks)**

**Give reasons for all your answers.**

## Question 2 (25 marks)

On 1 June 2007 Peter and his surveyor inspected the ground floor and cockloft of 6 Western Road (the 'Property'). Later that day Peter as purchaser and Vera as vendor signed a provisional agreement for the sale and purchase of the Property and Peter paid Vera the initial deposit. A copy of the provisional agreement is attached. Peter's surveyor later advised Peter that the cockloft might not have been authorised by the Building Authority.

Vera's solicitors sent the title deeds (which did not include an Occupation Permit) to Peter's solicitors and on 2 June 2007, Peter's solicitors asked them to supply a certified copy of the Occupation Permit for 6 Western Road and told them that a surveyor had advised Peter that the cockloft might not have been authorised by the Building Authority. On 4 June 2007 Vera's solicitors replied that there was no Occupation Permit. Vera's solicitors added that 6 Western Road was built in 1947. They said that when Vera bought the Property in 1970 they acted for her and made enquiries about an Occupation Permit, but the Building Authority informed them that the records had been lost. Vera's solicitors also told Peter's solicitors that the cockloft was present when Vera bought the Property in 1970.

On 5 June 2007 Peter's solicitors informed Vera's solicitors that title was defective because Vera could not produce an Occupation Permit and because the cockloft might be illegal. For these reasons they said that Peter would not sign the formal agreement on 20 June 2007 and they asked Vera to return the initial deposit.

On 6 June 2007 Vera's solicitors replied saying that the Building Authority had inspected 6 Western Road in 1988 when the Government Lease was renewed and that they would be able to provide documentary evidence of this in a few weeks. They also said that since 1970 when Vera bought the Property, the Building Authority had never suggested that there were unauthorised structures on the Property. Vera's solicitors enclosed the draft formal agreement with their letter.

### Questions:

- (a) Peter refused to sign the formal agreement and pay the further deposit on 20 June 2007. Was he entitled to refuse? **(13 marks)**
- (b) Assume that Peter was not entitled to refuse to sign the formal agreement and pay the further deposit. Can Vera forfeit the initial deposit? **(6 marks)**
- (c) Assume that Vera has breached the provisional agreement. Can Peter retain the title deeds to the Property until Vera returns his initial deposit? **(6 marks)**

**Give reasons for all your answers.**

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

## Provisional Agreement for Sale and Purchase

THIS AGREEMENT is made on 1 June 2007

Between the Vendor - Vera Vong of Flat D, 16<sup>th</sup> Floor, Red Mansions, 15 Red Road, Hong Kong and

the Purchaser - Peter Poon of Flat 6A Blue Gardens, 12 Blue Road, Kowloon

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase the Ground Floor and Cockloft of 6 Western Road, Hong Kong (the 'Property').
2. The purchase price is HK\$22,000,000.00 which shall be paid by the Purchaser in the following manner:
  - (a) HK\$4,000,000.00 to the Vendor on the signing of this agreement as initial deposit,
  - (b) HK\$4,000,000.00 as further deposit to the Vendor on the signing of a formal agreement for sale and purchase on or before 20 June 2007.
  - (c) HK\$14,000,000.00 being the balance of purchase price on completion.
3. The Purchaser will sign a formal agreement for sale and purchase on 20 June 2007 failing which the Purchaser will be in breach of this Agreement.
4. Completion will take place on 3 December 2007.
5. Should the Purchaser fail to complete the purchase in the manner herein contained the initial deposit shall be forfeited to the Vendor who shall then be entitled at his absolute discretion to sell the Property 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.
6. 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.
7. The Purchaser will pay the stamp duty in connection with this transaction.

*Vera Vong*

Signed \_\_\_\_\_

*Peter Poon*

Signed \_\_\_\_\_

### Question 3 (25 marks)

Valour Limited ('V') as vendor and Profit Limited ('P') as purchaser have signed a binding agreement for the sale and purchase of the 6<sup>th</sup> Floor of Hong Kong House (the 'Property') a commercial building in Tsim Sha Tsui. Both P and V are incorporated in Hong Kong. The consideration is HK\$20 million. P has paid a ten per cent deposit. V's mortgage in favour of the Friendship Bank Limited ('Friendship') will be redeemed on completion. To finance the purchase P will borrow HK\$18 million from the Goodwill Bank Limited ('Goodwill'). The loan will be secured by a first legal mortgage on the Property.

The agreement for sale and purchase is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap 219. The agreement provides that vacant possession will be given on completion, that completion will take place between 9.00 a.m. and 5.00 p.m. on 10 November 2007 and that P will pay all stamp duty. You act for both P and Goodwill. V and Friendship are separately represented.

#### Questions:

- (a) V's solicitor has asked that completion take place by way of undertaking. Advise P about this and on any terms you would impose on V if P agrees to complete by way of undertaking. **(9 marks)**
- (b) What post completion formalities will you complete for P and Goodwill and within what time limits? **(5 marks)**
- (c) What evidence will you require from V's solicitors that the assignment in favour of P is validly executed by V? **(5 marks)**
- (d) Assume that P completed its purchase and mortgage last year but recently arranged to refinance the loan from Goodwill. The Abacus Bank Limited ('Abacus') agreed to lend P HK\$18 million on the security of a first legal mortgage of the Property. P drew down the loan from Abacus on 2 October 2007 and repaid Goodwill on the same day. On 4 October 2007 Beacon Limited ('Beacon') obtained a charging order nisi against P which it registered against the Property in the Land Registry on 5 October 2007. Goodwill executed a Discharge on 7 October 2007 which was registered in the Land Registry on 18 October 2007 and P executed a mortgage of the Property in favour of Abacus on 7 October 2007 which was registered in the Land Registry on 23 October 2007. Between Abacus and Beacon, who has priority? **(6 marks)**

**Give reasons for all your answers.**

#### Question 4 (25 marks)

Rose Villas (the 'Building') is a development of 12 townhouses A, B, C, D, E, F, G, H, I, J, K and L and car parks A to L built in 1996. Each townhouse has a small garden. Each owner holds one equal undivided 12<sup>th</sup> share of and in Inland Lot Number 3456 (the 'Land') and of and in the Building together with the right to the exclusive use occupation and enjoyment of one of the townhouses with its garden and one car park subject to and with the benefit of a Deed of Mutual Covenant registered in the Land Registry by Memorial Number UB123789 (the 'DMC').

The Land is held for the residue of the term of years created by a government lease deemed issued under Conditions of Sale Number 231 dated 1 May 1995.

The parties to the DMC are (1) the developer of the Building as the owner of 11 equal undivided 12<sup>th</sup> shares together with the right to the exclusive use occupation and enjoyment of townhouses (with gardens) A to K inclusive and car parks A to K inclusive and the first purchaser of 1 equal undivided 12<sup>th</sup> share together with the right to the exclusive use occupation and enjoyment of townhouse L with its garden, and car park L. After completing the DMC, the developer sold each of the townhouses (with its garden) and with one car park subject to and with the benefit of the DMC. Each townhouse with its garden and car park has since been sold several times. In 1999 Alpha bought townhouse A with its garden and car park A and Beta bought townhouse B with its garden and car park B.

The DMC includes the following terms:

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

- 1. No owner of undivided shares will use or cause or suffer to be used the premises of which he has exclusive use for any illegal or immoral purpose or for any purpose which may be a nuisance or annoyance to other occupiers of Rose Villas.*
- 2. No owner of undivided shares will make any alteration or addition to the premises of which he has exclusive use so as to alter the external appearance of the premises.*
- 3. No owner of undivided shares will sell, assign, mortgage, charge, or otherwise deal with the exclusive use occupation and enjoyment of the Land or any part thereof or the Building or any part thereof separately from the undivided shares with which the same is held.*

In 2001 Alpha erected a corrugated iron canopy covering the whole of the roof of townhouse A. No one objected at the time and other owners had previously erected canopies on their roofs. However Alpha's canopy is by far the largest of them. Alpha's canopy has since rusted and created unsightly brown stains on the outside walls of townhouse A. The stains are visible from the living room window of townhouse B.

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

In 2005 Beta let townhouse B to Thomas for a term of two years. The tenancy agreement contains a covenant by Thomas that he will not breach the terms of the DMC. Last year Alpha suspected that Thomas was using townhouse B for the purposes of manufacturing heroin. This is a criminal offence, but Alpha took no action. Recently, however, Thomas was convicted of manufacturing heroin at townhouse B.

**Questions:**

- (a) Can Alpha enforce covenant 1 against Thomas or Beta? If so, what remedies are available to Alpha?
- (b) Can Beta enforce covenant 2 against Alpha? If so, what remedies are available to Beta? **[(a) and (b) 18 marks]**
- (c) Alpha wants to sell his car park separately from his townhouse. Advise him. **(7 marks)**

**Give reasons for all your answers.**



## Question 5 (25 marks)

Winner Limited ('Winner') owns Palatial Gardens, a 12 storey development of twelve luxury residential flats erected on Inland Lot Number 9876 (the 'Land'). Flats 1 to 10 inclusive are let under written tenancy agreements each for a fixed two-year term with an option to renew for a further term of two years at a market rent at the start of the option term.

Flat 11 is let to Terry. Winner agreed with Terry that Terry would have a four-year term starting on 1 January 2007 and ending on 31 December 2010 at a monthly rent of HK\$50,000. Winner also granted Terry an option to renew for a further term of two years at a market rent at the start of the option term. Terry moved into the flat without signing a written tenancy agreement and although Winner has asked him to sign, Terry has not done so. Nevertheless Terry pays his rent promptly every month. Flat 12 is let to Sally. Sally has a written tenancy agreement for a two-year term with an option to renew for a further term of two years at a rent to be agreed between her and Winner.

Each tenant has paid Winner a tenancy deposit equal to twice the monthly rent and in each case Winner has agreed to repay the deposit to the tenant at the end of the term. That agreement is in the written tenancy agreements. Winner agreed orally with Terry to repay the deposit at the end of Terry's term.

Two years ago Winner erected a small prefabricated house on the roof of Palatial Gardens. Winner uses the house as a storeroom for company papers. Winner did not obtain any consents before erecting the house.

Winner is now negotiating with Port for the sale to Port of Palatial Gardens subject to the tenancies referred to above.

### Questions:

- (a) During negotiations Port has stipulated that the contract must contain a term that Winner will on completion of the sale hand over all tenancy deposits. Advise Winner. **(7 marks)**
- (b) The tenants have heard that Winner is negotiating the sale and want to know whether their tenancies and options will bind Port. Advise the tenants of all 12 flats. **(8 marks)**
- (c) Explain whether the small prefabricated house is likely to affect the sale and what steps (if any) Winner should take to protect its own interests. **(10 marks)**

**Give reasons for all your answers.**

**END OF TEST PAPER**