
2010 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD I: CONVEYANCING

Thursday, 28 October 2010



HEAD I: CONVEYANCING

TEST PAPER

28 October 2010

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 each question in a separate answer book.
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. 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.
7. An examiner will be present for the first 30 minutes of the examination. Any questions relating to the paper must be raised in that period. Questions raised after the first 30 minutes will not be entertained.
8. Do not take either this question paper or any answer books with you when you leave the examination room.

2010 Overseas Lawyers Qualification Examination

Head I: Conveyancing

Question 1 (25 marks)

On 30 June 2010 Peter inspected a shop on the Ground Floor of 6 West Street (the “Property”) and on 3 July 2010 Vicki as vendor and Peter as purchaser entered into an agreement for sale and purchase of the Property for HK\$10 million and Peter paid Vicki’s solicitors as stakeholders a deposit of 10% of the price. The agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. Completion was due to take place on 15 August 2010.

On 4 July Vicki’s solicitors sent the title deeds to Peter’s solicitors. These include an Assignment of the Property with a floor plan of the Property. Peter’s solicitors raised requisitions on 20 July and Vicki’s solicitors answered these on 22 July.

On 2 August Peter’s surveyor inspected the Property and reported to Peter that the building plans show a mezzanine floor above the Property with a floor area equivalent to half the floor area of the Property. However, the surveyor’s inspection of the Property revealed that the mezzanine floor had been extended by building a concrete slab in the void above the Property so that the mezzanine floor now has a floor area the same size as the Property and the whole of the mezzanine floor (original and extended) form the ceiling to the Property. The mezzanine floor is currently in separate ownership from the Property.

(See the next page for a continuation of Question 1)

On 5 August Peter's solicitors raised a further requisition asking for evidence that the consent of the Building Authority had been obtained to the extension of the mezzanine floor. Vicki's solicitors refused to answer the requisition on the ground that it was raised out of time. Later, after they had made enquiries of the Building Authority, Vicki's solicitors sent Peter's solicitors a letter from the Building Authority saying that 'the extension of the mezzanine floor does not warrant prioritized enforcement action at the present time'. Peter refused to complete on the ground that Vicki had failed to answer requisitions satisfactorily and Vicki wants to forfeit Peter's deposit.

Questions:

1.1 Has Vicki breached the agreement for sale and purchase?

(21 marks)

1.2 Vicki has demanded that her solicitors pay her the deposit. Explain the duties of Vicki's solicitors as stakeholders of the deposit.

(4 marks)

Give reasons for all your answers.

Question 2 (25 marks)

On 2 September 2010 Victor as vendor and Pamela as purchaser entered into a provisional agreement for sale and purchase of a residential flat known as Flat 16C Braemar Hill Court (the "Property"). A copy of the provisional agreement is attached. On 3 September Victor's solicitors sent the draft formal agreement to Pamela's solicitors for approval. The formal agreement includes the following term:

The Vendor's title will start with the Government Lease dated 14 May 1970 and an Assignment dated 16 December 1997.

Pamela's solicitors did not accept this term and as a result Pamela did not sign the formal agreement or pay the balance of the deposit on 10 September.

Questions:

- 2.1 Has Pamela breached the provisional agreement for sale and purchase? (9 marks)**
- 2.2 Assume that Pamela has not breached the provisional agreement which is binding on the parties. Pamela wants the Assignment of the Property to be made to Pamela Company Limited. Pamela is the sole beneficial shareholder of the whole of the issued share capital of Pamela Company Limited. Explain Pamela's liability for stamp duty under the Stamp Duty Ordinance Cap. 117. (7 marks)**
- 2.3 Under the provisional agreement for sale and purchase to what extent must Victor produce original title deeds in order to give and show good title? (9 marks)**

Give reasons for all your answers.

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

Question 2

Provisional Agreement

THIS AGREEMENT is made on 2 September 2010

Between

(1) Victor Lee of Flat 2A, Blue Court, Blue Road, Hong Kong (the "Vendor")

And

(2) Pamela Poon of Flat 6B, Red Court, Red Road, Hong Kong (the "Purchaser")

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase Flat 16C of Braemar Hill Court, 15-43 Braemar Hill Road, Hong Kong (the "Property").
2. The purchase price is HK\$13,000,000.00 which the Purchaser will pay to the Vendor in the following manner:
 - (a) HK\$130,000.00 on the signing of this agreement as initial deposit,
 - (b) HK\$1,170,000.00 as the balance of the deposit on 10 September 2010 this date being on or before the signing of a formal agreement for sale and purchase, and
 - (c) HK\$11,700,000.00 as the balance of purchase price on completion on or before 11 October 2010.
3. 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 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.

Signed by the Vendor

Victor Lee

Signed by the Purchaser

Pamela Poon

Question 3 (25 marks)

This morning Vera and Frank signed an agreement for sale and purchase of a property (the “Property”) at Lovely Building (the “Building”) with completion in two months’ time. Vera is the purchaser and Frank is the vendor. The Property is located in the New Territories and the land concerned is Sha Tin Town Lot No. 123 (the “Land”) which is held from the Hong Kong Government under Conditions of Grant No. 789 dated 18 September 1970 (the “Conditions of Grant”) for a term of 75 years from 1 July 1898 with a right of renewal for a further term of 24 years less the last three days.

Vera inspected the Property before signing the agreement. During her inspection she met Maria, who was introduced to her as Frank’s mother.

Among the title deeds there is an Assignment (the “Assignment”) dated 23 May 1993 sealed with the Common Seal of Fannie & Freddie Company Limited (the “Company”) signed by a Fannie Ma and a Freddie Mak whose capacities are not stated. The Articles of Association of the Company provide: ‘The seal of the Company shall be affixed in the presence of two persons authorised by the board of directors’.

Questions:

With reference to the above facts, answer the following questions:

- 3.1 Is the interest held under the Conditions of Grant legal or equitable?**
(5 marks)
- 3.2 Whatever interest was held under the Conditions of Grant, did the interest end on 30 June 1973?**
(3 marks)

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

- 3.3 Should Vera's solicitors raise a requisition about Maria's presence in the Property? (7 marks)**
- 3.4 Is a requisition necessary in respect of the Company's execution of the Assignment in the following circumstances:**
- 3.4.1 The Assignment is dated 23 May 1993? (2 marks)**
- 3.4.2 The Assignment is dated 2 January 2000? (3 marks)**
- 3.4.3 The Assignment is dated 23 May 2003? (5 marks)**

Give reasons for all your answers.

Question 4 (25 marks)

In May 2010, Lim Investments Ltd. (“Lim”) were in negotiations with Tiny Tim Stores Ltd. (“TT”) concerning the proposed grant of a lease of Unit 317 in the Tolo Plaza Shopping Centre (“Unit 317”) for a term of ten years from 1 September 2010.

At a meeting on 5 May 2010, Alvin Au of Lim and Boris Bui of TT discussed the parties to the lease and the terms of the lease including the property to be demised, the commencement and duration of the term, the rent payable and the duration of a rent free period. Eventually Lim and TT agreed the precise extent of the property to be demised, the duration of the lease and commencement and the rent to be paid. Alvin Au and Boris Bui had authority from their respective boards to sign a contract once agreement had been reached. No document recording the agreed terms was produced or signed at this meeting.

The next day, 6 May, TT’s solicitors wrote to Lim’s solicitors confirming the terms that had been agreed and asking for a draft lease. Lim’s solicitors wrote back on 7 May as follows:

7 May 2010

Dear Sirs,

We confirm that we act for Lim Investments Ltd. which has agreed to let Unit 317 Tolo Plaza to your client for a term of ten years starting on 1 September 2010 at a monthly rent of HK\$100,000. We enclose the draft lease.

Lim’s solicitors signed this letter. Neither letter was marked “subject to contract”.

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

By 10 July, the negotiations concerning the lease had broken down. Lim had declared to TT its intention to grant a lease of Unit 317 to another party. On 25 July, Lim granted a lease under seal of Unit 317 to Vong Computers (“Vong”). Vong registered the lease at the Land Registry on 27 July. TT has not made any attempt to register anything at the Land Registry.

Questions:

4.1 Can TT enforce the agreement for lease against Lim?

(13 marks)

4.2 What effect would TT’s failure to register its agreement have if TT later seeks specific performance of any agreement that it might have had with Lim?

(12 marks)

Give reasons for all your answers.

Question 5 (25 marks)

Chan Investments Ltd. (“Chan”) developed La Caprice, an apartment complex and in 1999 Chan sold to Geraldine 1 equal undivided 100th share of and in the land on which La Caprice is built and the apartment complex together with the right to the exclusive use occupation and enjoyment of Apartment 32B. Chan and Geraldine then entered into a Deed of Mutual Covenant (the “DMC”).

Thereafter Chan sold most of the remaining apartments in La Caprice. Every assignment was of undivided shares and exclusive use rights and was made ‘subject to and with the benefit of the DMC’. The DMC was registered in the Land Registry. The DMC includes the following covenants by all owners of undivided shares:

- *No owner will keep any pets in La Caprice,*
- *Every owner will pay management charges in proportion to the number of undivided shares owned by them.*

Last year the owners of apartments in La Caprice incorporated under the Building Management Ordinance Cap.344. Geraldine has leased Apartment 32B to Terry and mortgaged it to M Bank Ltd.

Questions:

5.1 Can the Incorporated Owners enforce the above DMC covenants against Terry and M Bank Ltd.?

(10 marks)

(See the next page for a continuation of Question5)

5.2 The DMC contains a right for Chan to rename La Caprice. Can Chan enforce this right?

(5 marks)

5.3 Has the benefit of the above DMC covenants passed to apartment owners who are not parties to the DMC?

(10 marks)

Give reasons for all your answers.

END OF TEST PAPER