

**2017 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD I: CONVEYANCING

Thursday, 2 November 2017



2017 Overseas Lawyers Qualification Examination

Head I: Conveyancing

Question 1 (25 marks)

On 4 October 2017 Virginia (the "Vendor") entered into a binding provisional sale and purchase agreement (the "PSPA") whereby she agreed to sell her flat (the "Property") in Repulse Bay to Percy (the "Purchaser") for \$25 million. The Purchaser paid a preliminary deposit of \$250,000 and a further deposit of \$2,250,000. No formal agreement was ever signed but neither party alleges a breach of the PSPA on this ground. Virginia bought the Property in 1983.

The PSPA contains, inter alia, the following terms:

1. *The Vendor agrees to give good title to the Property and will hand over to the Purchaser on completion the original title deeds to the extent required by the common law.*
2. *Completion shall take place on 16 November 2017 at the Vendor's solicitor's office and shall be carried out by way of solicitor's undertakings.*
3. *Time is of the essence.*
4. *The Vendor shall assign the Property as beneficial owner.*
5. *If the Purchaser fails to complete the sale and purchase, the whole of the deposit shall be forfeited by the Vendor.*
6. *If the Vendor fails to complete the sale, all money paid by the Purchaser shall be returned to the Purchaser with damages in the amount of \$5,000,000.*

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

7. *The Purchaser will pay all stamp duty in connection with this transaction.*

The Vendor's solicitor subsequently discovered that the Vendor did not have any of the original title deeds executed during the last 20 years and therefore supplied to the Purchaser certified true copies together with a statutory declaration stating that neither the Vendor nor her solicitor is able to explain the absence of the originals.

Questions:

Answer the following questions giving reasons for your answers:

1.1 In this transaction is the Vendor able to discharge her duty to hand over the original title deeds on completion?

(10 marks)

1.2 Assuming that the Vendor has breached her duty with regard to the original title deeds, advise the Purchaser whether the Purchaser can rescind before completion and recover the damages referred to in clause 6 of the PSPA.

(7 marks)

1.3 Assume for the purpose of this question only that the parties signed a formal sale and purchase agreement on 14 October 2017. Advise the Purchaser how much stamp duty is payable and when it must be paid.

(8 marks)

Question 2 (25 marks)

On 21 August 2017 Paul Poon ("Paul") as purchaser entered into a binding Agreement for Sale and Purchase (the "Agreement") to buy Flat 15A, Hibiscus Court, 25 Prince Edward Road, Kowloon and the roof above Flat 15A (Flat 15A and the roof above it are together referred to as the "Property"). The vendor under the Agreement is Vicki Vong ("Vicki"). Completion is due to take place on 14 November 2017. The owners of Hibiscus Court incorporated in 1985.

Paul inspected the Property before signing the Agreement and Vicki showed him an internal spiral staircase leading from Flat 15A to the roof above it. The roof can also be accessed by a common staircase.

The Agreement is substantially in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. Clause 12 of the Agreement provides as follows:

The Vendor gives no warranties that the Property complies with the Buildings Ordinance Cap. 123 or the Building Regulations and the Purchaser shall not be entitled to raise any requisition or objection or to rescind this agreement or to annul the sale or to claim any compensation or damages from the Vendor in connection with any breach of the Buildings Ordinance or the Building Regulations.

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

The title deeds were delivered to Paul's solicitor on 25 August 2017. Paul's solicitor received a report from Paul's surveyor and on 5 September 2017 raised requisitions including the following requisition:

Paul has been advised by his surveyor that the construction of the spiral staircase leading from the living room of Flat 15A to the roof above is not shown on the approved building plans and that its construction required Building Authority consent because the roof slab was cut. Please send us evidence that the consent of the Building Authority was obtained to its construction. Clause 8 of the Deed of Mutual Covenant ("DMC") for Hibiscus Court also prohibits structural alterations. Please also provide evidence that the DMC has not been breached.

Clause 8 of the DMC provides that owners will not make structural alterations to any part of Hibiscus Court.

On 6 September 2017 Vicki's solicitor replied as follows:

Our client drew Paul's attention to the spiral staircase when he inspected the Property. In addition your attention is drawn to clause 12 of the Agreement. Accordingly we are not obliged to reply to this requisition. However, Vicki wishes us to point out that the spiral staircase was present when she bought the Property in 1990 and that she has not received any complaints from anyone.

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

Questions:

Answer the following questions giving reasons for your answers:

2.1 Has Vicki breached the Agreement?

(18 marks)

2.2 Assuming that Vicki has breached the Agreement by failing to give good title, explain whether Paul can terminate the Agreement and claim damages and explain how the damages will be calculated.

(7 marks)

Question 3 (25 marks)

On 12 October 2017 Sandy So ("Sandy") as vendor and Peter Poon ("Peter") as purchaser entered into the attached provisional agreement for the sale and purchase of Flat 3A, Pine Court, 3 Pine Road, Hong Kong (the "Property"). Sandy and Peter each instructed a solicitor and Sandy's solicitor prepared the draft formal agreement which was sent to Peter's solicitor on 16 October 2017. In the meantime Peter's solicitor had searched against the Property in the Land Registry and discovered that an uncompleted agreement for sale and purchase dated 15 September 2017 (the "First Agreement") is registered.

When asked about the First Agreement, Sandy's solicitor told Peter's solicitor that it had been cancelled and that a cancellation agreement would be signed and registered shortly. Peter's solicitor asked for the cancellation agreement to be registered before Peter would sign the formal agreement or pay the further deposit. Sandy's solicitor said that this was not possible and asked for the formal agreement to be signed by 24 October 2017.

On 20 October 2017 Peter's solicitor wrote to Sandy's solicitor as follows:

Our client insists that a cancellation agreement in respect of the First Agreement be registered against the Property before he will sign the formal agreement or pay the further deposit.

On 21 October 2017 Sandy's solicitor replied as follows:

The cancellation agreement in respect of the First Agreement will be registered as soon as possible but not before 24 October 2017. Nevertheless, please ask your client to sign the formal agreement and pay the further deposit by 24 October 2017.

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

Peter did not sign the formal agreement or pay the further deposit on 24 October 2017 and on 25 October 2017 Sandy's solicitor wrote to Peter's solicitor saying that Peter had breached the terms of the provisional agreement and that Sandy had forfeited Peter's deposit.

Questions:

Answer the following questions giving reasons for your answers:

3.1 Can Peter claim specific performance of the provisional agreement?

(8 marks)

3.2 Assume for the purposes of this question that Peter signed the formal agreement drafted by Sandy's solicitor and that on 24 October 2017 Peter's solicitor sent the signed formal agreement to Sandy's solicitor with a cheque made payable to Sandy's solicitor for the further deposit. The signed formal agreement and cheque were sent under cover of a letter which imposed on Sandy's solicitor an undertaking to return the formal agreement signed by the vendor within 5 days. Sandy's solicitor paid the cheque for the further deposit into his client account, but on 1 November 2017 Sandy's solicitor wrote to Peter's solicitor saying that Sandy did not want to proceed. Sandy's solicitor returned to Peter's solicitor a cheque for the total sum of HK\$1,400,000 representing the sum of the initial deposit, the further deposit and compensation equal to the initial deposit. **Can Peter claim specific performance of the provisional agreement?**

(12 marks)

3.3. What are the duties of a stakeholder ?

(5 marks)

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

Provisional Agreement for Sale and Purchase referred to in Question 3

THIS AGREEMENT is made on 12 October 2017

Between the Vendor - Sandy So of Flat D, 16th 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 Flat 3A, Pine Court, 3 Pine Road, Hong Kong (the 'Property').
2. The purchase price is HK\$12,000,000.00 which shall be paid by the Purchaser to the Vendor in the following manner:
 - (a) HK\$200,000.00 as initial deposit to the Vendor on the signing of this agreement,
 - (b) HK\$1,000,000.00 as further deposit to the Vendor's solicitor as stakeholder on the signing of a formal agreement for sale and purchase on 24 October 2017,
 - (c) HK\$10,800,000.00, being the balance of purchase price, on completion.
3. The parties shall sign the formal agreement for sale and purchase on or before 24 October 2017.

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

4. The Vendor's solicitor may release the further deposit to the Vendor provided that the balance of the purchase price is sufficient to discharge the existing legal charge.
5. Completion will take place on 29 November 2017.
6. If the Purchaser shall fail to complete the purchase in accordance with the terms and conditions herein contained, the deposit(s) paid by the Purchaser shall be absolutely forfeited by the Vendor and the Vendor shall then be entitled at his absolute discretion to resell the property and the Purchaser shall not then sue the Vendor for any liabilities or damages or enforce specific performance.
7. If the Vendor shall fail to complete the sale in accordance with the terms and conditions herein contained, the Vendor shall immediately refund the deposit(s) paid by the Purchaser and pay to the Purchaser a sum equivalent to the said deposit(s) and this agreement shall be terminated.
8. The Purchaser will pay the stamp duty in connection with this transaction.

Sandy So

Signed _____

Peter Poon

Signed _____

Question 4 (25 marks)

By virtue of a binding Provisional Agreement for Sale and Purchase (the "Agreement") signed last week, Rose Lee agreed to purchase Simon Wong's residential flat in Happy Building, Kowloon (the "Flat").

The Agreement includes the following terms:

- (1) *The Vendor shall sell and the Purchaser shall buy a good title.*
- (2) *Completion shall take place on or before 20 December 2017.*
- (3) *Vacant possession shall be delivered on or before completion.*

Your firm represents Rose Lee. The law firm of Hide & Seek represents Simon Wong.

Questions:

Answer the following questions giving reasons for your answers:

4.1 The following are found among the title deeds supplied by Hide & Seek:

- (i) The original of the Release (the "Release") dated 15 April 2003 by Bingo Bank Ltd. (the "Bank") in favour of Simon Wong, who was named as the borrower in a Mortgage dated 30 June 2002 in favour of the Bank. The Release was executed by Tom Chan as an Attorney of the Bank.

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

- (ii) A certified copy of the Power of Attorney (the "Power of Attorney") dated 1 April 2002 executed by the Bank (as a company incorporated in Hong Kong) appointing Tom Chan as its attorney to execute, amongst other things, releases and reassignments. The Power of Attorney was sealed with the common seal of the Bank and signed by Billy Kwong whose capacity is not mentioned.

The Articles of Association of the Bank supplied by Hide & Seek provide: 'The seal of the Bank must be affixed only in the presence of its Managing Director and be authorized by the board of directors.'

No board resolution of the Bank has been supplied. **Will it be necessary for you to raise any requisitions to ensure due execution of the Release and the Power of Attorney?**

(7 marks)

- 4.2 Would your answer to question 4.1 above be different if, instead of being a company incorporated in Hong Kong, the Bank was incorporated in the British Virgin Islands?**

(3 marks)

- 4.3** Before signing the Agreement, Rose Lee visited and inspected the Flat. When she was at the Flat, she saw a photograph taken by Simon Wong with his mother Mabel. Simon told Rose that Mabel also resided at the Flat with him. **Would you raise a requisition in light of this information to protect Rose's interest?**

(6 marks)

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

4.4 Would any part of your answer to question 4.3 above be different if, instead of seeing her photograph with Simon Wong, Rose met Mabel in person at the Flat and was introduced to her as a prospective purchaser, but Mabel gave no response and hurried off to work?

(4 marks)

4.5 Would you raise a requisition if the Deed of Mutual Covenant relating to Happy Building has allocated $1/20^{\text{th}}$ equal undivided share of and in Happy Building and the land upon which it stands to the first flat sold by the developer (which is not the Flat) and the remaining $19/20^{\text{th}}$ equal undivided shares to the developer itself? If further information is required to enable you to answer this question, state what it is and the reasons that this information is needed.

(5 marks)

Question 5 (25 marks)

The Deed of Mutual Covenant ("DMC") of Blossom Villa (the "Building") provides that the owners of undivided shares in the Building must pay a management charge. The DMC which was made in 1997, requires all owners to contribute to the management charge in proportion to the number of undivided shares in the Building that they own. The DMC also provides that all sums due from an owner under its terms that are unpaid are to be charged on the defaulting owner's shares and provides that the building manager can register a memorandum of the charge in the Land Registry against a defaulting owner's undivided shares. The owners of the Building incorporated in 2003.

Alana was the first owner of flat 19A in the Building (the "Flat") having bought it in 1998. In 2013, Alana sold the Flat to Billy. Billy granted a two-year lease of the Flat to Tina in December 2015.

In 1998, when Alana bought the Flat, the developer agreed to sell Alana a parking space in the basement car park of the Building. Alana did not like the space that was offered. The developer offered her an alternative space and Alana accepted it. Alana was worried because, at the time that she chose it, the space was not physically marked as a car parking space, unlike the space that she had rejected. The developer told Alana not to worry. The developer promised to mark the space as a parking space and ensure that she was issued with a car parking permit. Alana paid HK\$200,000 for the space. As promised, the space was marked out and Alana was issued with a car parking permit. Billy was issued with a permit when he bought the Flat and car parking space in 2013.

The developer sold to another purchaser the car parking space originally offered to Alana. Alana, and then Billy, used the car parking space allocated to Alana until May 2017. The Management Committee then wrote to Billy claiming that the space lay within the common parts of the Building. The Management Committee required Billy to stop using the space.

(See over the page for a continuation of Question 5)

In July 2016, the Owners' Corporation validly resolved to carry out renovation works at the Building. The total cost of the renovation works was HK\$2 million. Once the renovation works were complete, the Management Committee issued demands to owners demanding each owner's contribution to the cost of the renovation works. Billy was served with a demand for HK\$100,000; this was his share of the costs calculated in accordance with the terms of the DMC. Despite repeated demands Billy has not paid the HK\$100,000 demanded.

Questions:

Answer the following questions giving reasons for your answers:

- 5.1 Is Billy liable to pay the Management Committee's demand for HK\$100,000 and if so, what remedies are available to the Owners' Corporation if Billy continues to refuse to pay the HK\$100,000? (7 marks)**
- 5.2 Can the Owners' Corporation validly insist that Tina pays the HK\$100,000 if Billy refuses to do so? (5 marks)**
- 5.3 Advise Billy as to how he can determine whether the car parking space falls within the common parts. (3 marks)**
- 5.4 If the car parking space falls within the common parts, what is the legal basis for any action by the Owners' Corporation requiring Billy to cease using the space? (3 marks)**
- 5.5 Does Billy have any possible defence or defences? (7 marks)**

END OF TEST PAPER