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# 2019 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

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## HEAD I: CONVEYANCING

Tuesday, 29 October 2019





# 2019 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

On 9 April 2019, the Vendor and the Purchaser entered into a preliminary sale and purchase agreement in respect of a house in Shek O, Hong Kong ("the Property") for HK\$16 million. The parties entered into a formal sale and purchase agreement on 16 April 2019 ("the Agreement"). The Agreement was substantially in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance (Cap. 219) ("the Ordinance") and contained the terms which may be incorporated by reference in Part A of the Second Schedule to the Ordinance and that:

- a. *Completion shall take place before 5:30 pm on 13 June 2019 at the office of the Vendor's solicitors in Admiralty. However, parties may complete by way of solicitors' undertakings.*
- b. *The Purchaser shall pay all the stamp duty.*

On 3 May 2019, the Vendor's solicitors delivered the title deeds to the Purchaser's solicitors. The title starts with Conditions of Grant, a certified true copy of which from the Land Registry was included in the title deeds. The certified true copy of the Conditions of Grant contained a bundle of documents and included a number of items of correspondence between the grantee and the Government, among which was one dated 21 October 1923 which set out the terms of the grant as formally approved. The intermediate root of title is an assignment dated 8 February 1957. The Vendor became the owner of the Property pursuant to an assignment dated 19 September 2016.

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

On 7 May 2019, the Purchaser's solicitors raised requisitions on title. The following remained outstanding up to the date of completion:

*"Please let us have the following letters relating to the Conditions of Grant referred to in the recitals of the Assignment dated 8 February 1957:*

- (i) Letter dated 22 November 1923; and*
- (ii) Letter dated 29 December 1924."*

### **Questions:**

**Answer the following questions giving reasons for your answers:**

- 1.1 Explain how the Vendor's solicitors should respond.**  
(12 marks)
- 1.2 Assume that the parties proceeded to completion, explain how the different documents effecting the sale and purchase of the Property would be stamped.**  
(8 marks)
- 1.3 For the purposes of this part, the parties agreed in advance to complete the sale and purchase by way of solicitors' undertakings. On 13 June 2019, the messenger of the Purchaser's solicitors left his office in Wanchai with the cheque for completion but failed to reach the office of the Vendor's solicitors in time due to the closure of the Admiralty MTR**

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

station after a protest the day before. The Vendor's solicitors refused to accept the cheque which arrived late, saying that the agreed time for completion had passed. **Explain who has repudiated the Agreement.**

**(5 marks)**

## Question 2 (25 marks)

A written instrument ("the Instrument") was made and signed by Debby in favour of Winterland Finance Limited ("Winterland") on 8 June 2018. The Instrument recited that:

- (1) *Debby was the registered owner of a certain flat ("the Property");*
- (2) *Debby was indebted to Winterland for HK\$1.2 million; and*
- (3) *Debby had agreed to execute an assignment of the proceeds of sale, or part thereof, to be received by Debby in respect of the Property for the due payment to Winterland of the sum of HK\$1.2 million, with a proviso for re-assignment.*

On request of a manager of Winterland, Debby deposited certain title deeds, which were exclusive to the Property, with Winterland before the execution of the Instrument. The Instrument was then registered in the Land Registry against the Property on 30 June 2018. So far, Debby had repaid only a total sum of slightly over HK\$200,000.

On 4 May 2019, Yasahi International Limited ("Yasahi") as unpaid creditor obtained a judgment against Debby ("the Judgment"). On 29 May 2019, in enforcement and execution of the Judgment, Yasahi obtained a Charging Order Nisi against the Property. It was registered on 14 June 2019. On 4 July 2019, the Charging Order was made absolute. The Charging Order Absolute was registered on 24 July 2019.

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

## **Questions:**

**2.1 Between Winterland and Yasahi, which one has priority over the other's interest in the Property? Explain your answer.**

**(15 marks)**

**2.2** Assume for this part only that the Property was owned by Debby and her husband Johnny as joint tenants and there was no such dealing and transaction with Winterland. Johnny paid all deposits, balance of purchase price, legal costs and incidental expenses in acquiring the Property. Debby did not contribute any monies in the purchase of the Property. Johnny also paid all the mortgage repayments for the Property. The Charging Order Nisi and the Charging Order Absolute in favour of Yasahi were obtained on the basis of a debt owed by Debby to Yasahi. **Advise Johnny.**

**(10 marks)**

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

Jimmy Kim ("the Purchaser") has just signed a binding Agreement for Sale and Purchase ("the Agreement") to purchase a residential flat ("the Flat") and a carpark ("the Carpark") of Evergreen Building in Kowloon Tong from their present owner ("the Vendor"). The land where Evergreen Building now stands is held from the Government of the Hong Kong Special Administrative Region under an Agreement and Conditions of Sale No. 10021 dated 24 October 1972.

The Agreement signed by the Purchaser with the Vendor includes the following terms:

- (1) *The Vendor will sell with a good title.*
- (2) *Completion will take place on 2 December 2019, when vacant possession of the Flat and the Carpark will be delivered.*

### **Questions:**

**Answer the following questions with reference to relevant statutory provisions and case authorities:**

- 3.1 What is the nature of the interest, legal estate or equitable interest, now held under the relevant Government Grant? If further information is required to answer this question, state what it is and the reason(s) it is required.**

**(5 marks)**

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



**3.2** The Deed of Mutual Covenant governing Evergreen Building does not provide for the exact allocation of shares to the Flat and the Carpark. **Is it necessary for the Vendor to show such allocation? If so, how can this be done?**

**(6 marks)**

**3.3** For the purposes of this question 3.3 only, you are to assume that both the Agreement and Conditions of Sale No. 10021 were dated and Evergreen Building was erected in 1940. **Should the Purchaser accept title to the Flat and the Carpark if no Occupation Permit is found in the title deeds and documents supplied by the Vendor?**

**(4 marks)**

**3.4** When the Purchaser went to inspect the Flat, he met an occupant there called Nancy, who was introduced to him as the Vendor's mother. **Should the Purchaser's solicitor raise any requisition on title owing to the Purchaser's meeting with Nancy? Would your answer still be the same if Nancy had been informed about the purpose of the Purchaser's visit when they met but she said nothing?**

**(10 marks)**

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

Harmony Company Limited ("Harmony") owns two adjacent flats, namely, Flats A and B, of Golden Mansion ("Flats A and B"). Both flats have been charged to Tiger Bank Ltd. ("Tiger Bank") under and by virtue of a Legal Charge similar in form to Form 5 of the Third Schedule to the Conveyancing and Property Ordinance (Cap. 219).

Harmony is planning to remove a part of the partition wall between Flats A and B and install in its place a door and a door frame ("the planned works") in order to enhance the use of both flats.

#### **Questions:**

**Answer the following questions giving reasons for your answers:**

- 4.1 Would you advise Harmony to seek approval/consent before commencing any of the planned works in light of the provisions of the Buildings Ordinance (Cap. 123), the Building Management Ordinance (Cap. 344) and the Legal Charge, and the provisions which the Deed of Mutual Covenant governing Golden Mansion may contain? If so, why and from whom should such approval/consent be obtained?**

**(20 marks)**

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

**4.2** For the purposes of this question 4.2 only, assume that Harmony had carried out the planned works without having obtained any approval/consent as mentioned in question 4.1 above even if such approval/consent were needed. Marvellous Company Limited ("Marvellous") is keen to buy both Flats A and B and has specifically requested Harmony not to restore the flats to their original state and condition. **How and why will you draft the Agreement for Sale and Purchase of both flats to ensure that Marvellous will not be entitled to rely on the lack of any required approval/consent as ground to reject title? (There is no need to draft any contract clause to answer this question.)**

**(5 marks)**

### **Question 5 (25 marks)**

On 3 October 2019, Vincent Chan ("the Vendor") entered into a binding agreement ("the Agreement") to sell a house with a garden (measuring 5,000 square feet in total) known as House 5, Greenhill Peninsula, Repulse Bay, Hong Kong ("the Property") to Peter Wong ("the Purchaser") for a consideration of HK\$80 million with completion on 5 December 2019. The Agreement is substantially identical in form to Form 2 of the Third Schedule to the Conveyancing and Property Ordinance (Cap. 219). The Purchaser has inspected the Property before signing the Agreement. You are the Vendor's solicitor.

On 8 October 2019, the title deeds of the Property were delivered to the Purchaser's solicitor and they included, among other documents, originals of the following:

- (i) Assignment with Plan attached ("the 2002 Assignment") dated 1 March 2002 from Giant Lake Company Limited as vendor to Mark Lee as purchaser. The 2002 Assignment was executed by Karen Lee as attorney of Mark Lee.
- (ii) Assignment ("the 2015 Assignment") dated 1 April 2015 from Mark Lee as vendor to the Vendor as purchaser. The 2015 Assignment was executed by Karen Lee as attorney of Mark Lee.
- (iii) Power of Attorney ("the Power of Attorney") dated 1 December 2012 from Mark Lee to Karen Lee authorizing her to sell the Property and execute an assignment in relation to such sale.

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

- (iv) Statutory Declaration ("the Statutory Declaration") dated 1 April 2015 made by Karen Lee declaring that she had no knowledge of any revocation of the Power of Attorney.

The Purchaser's solicitor raised the following requisitions on 14 October 2019.

#### Requisition 1

*"We note that the Assignment dated 1 April 2015 was executed by Mark Lee, the vendor named therein, by his attorney Karen Lee under a power of attorney dated 1 December 2012. Please provide evidence that the said power of attorney was valid and not revoked at the time of the execution of the said Assignment dated 1 April 2015.*

#### Requisition 2

*We note that the Assignment dated 1 March 2002 was executed by Mark Lee, the purchaser named therein, by his attorney Karen Lee. Please let us have the relevant power of attorney authorizing Karen Lee to execute the said Assignment dated 1 March 2002 and evidence of non-revocation of such power of attorney."*

### **Questions:**

**Answer the following questions giving reasons for your answers:**

- 5.1 How will you answer Requisition 1? If further document(s) need to be obtained to answer Requisition 1, identify such document(s).**

**(8 marks)**

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

**5.2 On what grounds can the Vendor refuse production of the requested power of attorney mentioned in Requisition 2?**

**(4 marks)**

**5.3** On 2 December 2019, the Purchaser's solicitor raised the following additional requisition ("the Additional Requisition").

*"We note that there has been erected on the garden of the Property a glasshouse covering an area of approximately 100 square feet which is not shown on the plan annexed to the first assignment of the Property dated 1 March 2002. Please let us have the building authority's approval for the erection of the said glasshouse."*

**Is the Purchaser too late to raise the Additional Requisition? Give reasons for your answer.**

**(9 marks)**

**5.4** Assume that the Purchaser's solicitor raised the Additional Requisition at the same time as Requisitions 1 and 2 on 14 October 2019 and the Vendor, conceding that the erected glasshouse ("the Glasshouse") is an illegal structure, is willing to demolish the same. However, the Purchaser insists on the retention of the Glasshouse and the production of the building authority's approval for its erection.

**Advise the Vendor whether he can insist on demolishing the Glasshouse and refuse to accede to the Purchaser's requests but still be able to give good title to the Property.**

**(4 marks)**

**END OF TEST PAPER**