

PCLL Conversion Examination
January 2015
Examiner's Comments
Hong Kong Land Law

Question 1(a)

- (i) Candidates should consider whether there is a concluded oral agreement and, if so, whether there is a written memorandum of the oral agreement signed by Lester who is the party against whom the agreement is to be enforced.

Lester's letter to Tina could be a memorandum within section 3 of the Conveyancing and Property Ordinance (CPO), but it does not contain details of the fridge and washing machine. These are unlikely to be fixtures but Tina might be able to waive their inclusion in the agreement for sale and purchase and enforce.

- (ii) A lease is a legal estate and a deed is required to create a legal estate: s 4 CPO. However, a lease for a term of three years or less taking effect in possession at best rent without a premium can be created in writing (s 4(2)(d) CPO) or orally (s6 (2) CPO).
- (iii) The burden of covenants in the Deed of Mutual Covenant passes to Tina under s 41(3) CPO provided the covenants relate to land and the burden is expressed (in the DMC) or intended to pass. However, this covenant to pay management charges is positive and does not pass to a Tina because she is a tenant.

Question 1(b)

- (i) The Conditions of Sale are an agreement for lease and Victor has an equitable interest provided specific performance is available. The conditions are dated after 1 January 1970. The equitable interest is converted to a legal interest and a Government lease is deemed issued on compliance with the conditions precedent in the Conditions of Sale. Penny would need to see evidence of compliance which must be registered in the Land Registry in order to rely on s 14(3) CPO.
- (ii) The lease has been extended to 30 June 2047 under the New Territories Leases (Extension) Ordinance.

Question 2

- (a) The express declaration that Alice, Ben and Calvin own the Flat as joint tenants in law and equity prevails but the four unities must be present in a joint tenancy. Alice's will has no effect on the joint tenancy. When she dies, the property passes by survivorship to Ben and Calvin who hold the property at law and in equity as joint

tenants. Ben and Calvin can assign the legal estate in the Flat. They prove that they can do so by showing Alice's death certificate.

- (b) Subject to a contrary intention in a will or instrument, co-owners are presumed to hold as tenants in common. This presumption does not under s 9(3) CPO apply to personal representatives or trustees.
- (c) The owners of flats in Green gardens are tenants in common enjoying unity of possession. Each owner is given exclusive use of his flat and holds undivided shares in Lot 123 and Green Gardens. The undivided shares give each owner a proprietary interest.
- (d) Legal severance is effected under s 8 CPO by written notice served by one joint tenant on the other(s) or by an instrument. Legal severance also severs the joint tenancy in equity.
- (e) There might be implied waiver of the right to enforce the covenant because Government has taken no enforcement action for 40 years. Fab Estate must show that Government has actual or constructive notice of the breach. Notice might be inferred from the circumstances.

Question 3

- (a) Green may have acquired title to Plot B by way of adverse possession. Candidates should discuss whether Green has been in adverse possession for at least 60 years. Green has the burden of proof and must be able to establish factual possession of Plot B and intention to possess without the consent of Government for the requisite period. Periods of adverse possession may be aggregated if they are continuous and Green remains in possession through its lessee, Red. Green must also be able to show that its possession is inconsistent with the future intended use of the land by Government.
- (b) As the land was described in the Block Government Lease as 'padi', the usual covenants include a restriction on building which is enforceable: *Watford Construction Co Ltd v Secretary for the New Territories* [1978] HKLR 410, CA.