

PCLL Conversion Examination
January 2016
Examiner's Comments
Hong Kong Land Law

Question 1

1.1 (a) The lease is unregistered and is void against Andy under s 3(2) Land Registration Ordinance (LRO) provided Andy is a bona fide purchaser for value. Andy does not lack bona fides simply because the sale to him is expressly subject to the lease.

(b) Andy is a volunteer. Section 3(2) LRO does not apply.

(c) Larrys' personal representatives are not purchasers because they acquire their interests by operation of law. They do not give value. Section 3(2) LRO does not apply.

1.2 (a) The lease can be created orally if it takes effect in possession: s 6(2) Conveyancing and Property Ordinance (CPO). If it does not take effect in possession, the agreement for lease must be in writing or evidenced in writing and signed by Vanessa who is the party to be charged in this case: s 3 CPO. Vanessa's solicitor's letter could be a written memorandum of the oral agreement. Candidates should consider whether there is a concluded oral agreement and if so, whether the letter contains all the agreed terms and is signed by Vanessa's solicitor as her lawful agent. The letter does not refer to the agreed deposit. However, Pansy might submit to this term and enforce the agreement if the memorandum is otherwise complete.

(b)(i) See sections 4(2)(d) CPO (writing no deed) and 6(2) CPO orally. These are exceptions to the need for a deed to create a legal estate.

(ii) A legal charge is a legal estate (s2 CPO) which must be created by deed under s 4(1) CPO.

- (iii) A lease for a term not exceeding three years does not need to be registered: the proviso to s 3(2) LRO. An oral lease cannot be registered. Their priority is governed by the common law – first in time.

Question 2

- 2.1 The Conditions are dated before 1 January 1970. There is deemed compliance under s 14(2) CPO and deemed issue of the Government lease. Peter will receive the legal estate provided the assignment to him is by deed.
- 2.2 Peter is a successor in title of the covenantor. The burden passes under s 41(3) CPO provided the covenants relate to land of the covenantor and the burden is expressed or intended to pass under s 41(2) (a) and (b). See also s 40 CPO. A covenant to pay management charges relates to land: *Hang Yick Properties Management Ltd v The Incorporated Owners of Tuen Mun Kar Wah Building* [2005] 2 HKLRD 499.
- 2.3 As a tenant, Tommy is not bound by positive covenants under s 41(5) CPO. He is bound by restrictive covenants under s 41(2) and (3) CPO. See s 41(6) CPO regarding the nature of positive covenants.
- 2.4 The car park must be sold with undivided shares in the land and building. This requires a reallocation of the parcel of shares with which the flat and car park are held. Reallocation is permitted unless restricted by the Deed of Mutual Covenant. On a sale of reallocated shares, a sub DMC should be created. The DMC should in addition be checked to ensure there is no restriction on a sale of the car park separately from the flat.
- 2.5 The use of the flat for repairing musical instruments potentially breaches the terms of the Conditions of Sale. However, whether there is a breach depends on the extent of the non-permitted use. We need to know how much space in the flat is used for the repairs and for what period of time: *Donald Shields (No 2) v Mary Chan* [1972] HKLR 1210

2.6 Section 9(1) CPO – tenants in common.

Question 3

3.1 (a) Has John acquired title by adverse possession? Candidates should refer to sections 7, 8 and 13 of the Limitation Ordinance (LO) and consider whether John can show factual possession, intention to possess for the requisite period of 12 years and whether possession is adverse to the owner (the owner has not consented). The tests for factual possession and intention to possess should be stated and applied to the facts. John can aggregate his period of possession with that of his father provided the periods are continuous.

If John can prove adverse possession the title of Farmlands is extinguished under s 17 LO.

(b) The rights of squatters were preserved by the New Territories Leases (Extension) Ordinance): *Chan Tin Shi v Li Tin Sung* [2006] 1 HKLRD 185, CFA.

3.2 (a) The term of the Government lease has been extended. Under s 7 New Territories Leases (Extension) Ordinance), the lease is subject to the same covenants.

(b) Section 41(3) and (2) CPO passes the burden of restrictive covenants to squatters, but not the burden of positive covenants under s 41(5) CPO.

3.3 Time does not start to run against the landlord, Mr. Au, until the lease expires. Mr. Au has until 2027 to recover possession from John.