

**PCLL Conversion Examination**  
**January 2017**  
**Examiner's Comments**  
**Hong Kong Land Law**

This year's overall performance was quite pleasing and a clear improvement on previous years.

As usual candidates were required to answer two questions out of three.

**Question 1 (50 marks)**

Question 1 was a question on deeds of mutual covenant.

Parts (a) and (b) involved the question whether the burden of two covenants was enforceable against a successor in title of an owner and a tenant. It required recognition and application of sections 41(2), (3), (5) and (6) of the Conveyancing and Property Ordinance. Candidates were expected to know the applicable case law.

Part (c) required candidates to explain whether shares in a multi-storey building could be sub-divided and, if so, how. In particular candidates should mention division by deed poll and the need for a sub-deed of mutual covenant where new common parts were created.

Part (d) asked whether a purchaser of a unit in a multi-storey building would be bound by breaches of the deed of mutual covenant committed by a predecessor in title. Candidates should have been aware of (at least one of) the judgments in *IO Fortune Mansion Tsuen Wan v Chiu Ng Ling* [2010] 2 HKC 67, CA; *IO Marina Cove v Chu Kam Tai* [2012] 2 HKLRD 107, CA and *IO Wah Fai Court v Lee Man Ho Joseph* (2013) LDBM 60/2010.

**Question 2 (50 marks)**

Question 2 covered the topics of registration of deeds and priorities.

Part (a) involved the non-registration of a six year lease and the application of section 3(2) of the *Land Registration Ordinance*. Candidates were also expected to mention that notice of the unregistered interest would not in itself render the purchaser mala fide in the absence of fraud or improper motive: see *Keep Point Development Ltd v Chan Chi Yim* [2000] 2 HKC 53; *Creator (HK) Ltd v Kwong Wing Industries Stainless Steel Engineering Ltd* [2008] 2 HKC 245, [2008] 2 HKLRD 475, CA.

Part (b) asked whether the answer would differ if the lease had been a short term tenancy for 2 years at a rack rent. Candidates were expected to note that such short term tenancies provided an exception to section 3(2) of the *Land Registration Ordinance* and were not rendered void as against a bona fide purchaser if unregistered.

Parts (c) and (d) were questions on the priority between a sale and purchase agreement and a charging order registered after the execution of the sale and purchase agreement. Candidates were expected to consider the effects of section 3, 5 and 5A of the *Lands Registration Ordinance*. The judgments in *Ho King Yim v Lau King Mo* [1980] HKLR 42 (FCt), *Magalink Holdings Ltd v Whole Fortune Co Ltd* (1998) HCMP No 4482/1997 and *Tse Fook Choy Joey Callan v Kwong On Bank Ltd* [1999] 3 HKC 126 were applicable.

### **Question 3 (50 marks)**

This question dealt with three different topics.

Part (a)(i)-(iv) dealt with the effect of Conditions of Exchange and the conversion of the equitable interest under such Conditions into the legal estate. Candidates should have applied sections 14(1), 14(2) and 14(3) of the Conveyancing and Property Ordinance. The cases of *Tai Wai Kin v Cheung Wan Wah Christina* [2004] 3 HKC 198 and *Minchest Ltd v Lau Tsui Kwai* [2008] 2 HKC 283, CFA, could usefully be cited.

Part (b) dealt with the running of burden under Conditions of Sale, whether the covenant was ‘spent’ upon first compliance (see *Expressluck Development Ltd v SJ* (2007) HCMP 1432/2005; *Gold Shine Investment Ltd v SJ* [2010] 1 HKC 212), whether the fact that the Buildings Department had issued an occupation permit would estop the Lands Department from enforcing the provisions of the Conditions of Sale (see *Hang Wah Chong Investment Co Ltd v Attorney General* [1981] 1 WLR 1141, [1981] HKLR 336, PC) and, finally, waiver by acquiescence on the part of the Lands Department (see *Fairfax Ltd v Attorney General* [1997] 1 HKC 17, PC).

Part (c) dealt with covenants in Block Crown Leases. Candidates were expected to identify the ‘Watford’ restrictive covenant (see *Watford Construction Co v Secretary for the New Territories* [1978] HKLR 410, CA) and consider the effect of the decision of the Full Court in *Attorney General v Melhado Investments Ltd* [1983] HKLR 327.