

**PCLL Conversion Examination**  
**January 2018**  
**Examiner's Comments**  
**Hong Kong Land Law**

This paper followed the usual format for Hong Kong Land Law examinations with candidates required to answer two questions from three. Question 1 was a question considering co-ownership of and was probably the least popular question. Where candidates attempted this question they generally did quite well with some excellent answers. Question 2 was a question concerning the passing of the benefit and burden of covenants. Question 3 was a question which considered the requirements for an enforceable contract for the sale or other disposition of land and registration of interests in land and priorities of interest in land.

**Question 1 (50 marks)**

This was a question concerning co-ownership.

- (a) This part of the question considered co-ownership as joint tenants and tenants in common. The question required candidates to consider whether the property was held as joint tenants or tenants in common, whether any of the parties had severed their interests and whether survivorship would apply to the property in the event of the death of the parties. This part was generally answered quite well when attempted. Candidates who did not do so well failed to identify that interests had or had not been severed. Many candidates failed to identify the application of the commorientes rule in section 11 of the Conveyancing and Property Ordinance.
- (b) This part of the question considered multi-ownership of a building. Candidates were asked to explain how tenants held their interests in the building and what effect the deed of mutual covenant had. This part of the question was generally answered quite well with candidates noting the most important points that each owner owned undivided shares in the building and land on which the building stands and had exclusive use of his flat and the right to occupy and enjoy this flat.

**Question 2 (50 marks)**

This was a question concerning the passing of the burden and benefit of covenants including restrictions on the use of property from conditions of sale and deeds of mutual covenant. Candidates were asked to consider who could enforce these covenants and who would be bound by them including subsequent purchasers and tenants with short-term leases. This was a very popular question with many candidates providing very good answers. Candidates who fared less well tended to miss important points such as the dating of the Conditions of Sale before 1 January 1970, which provides deemed compliance with the conditions precedent under s.14 (2) CPO and deemed issue of the Government lease, which provided Gary with the legal estate provided the assignment to

him was by deed. Some candidates failed to clarify in what circumstances the burden of covenants would pass.

**Question 3 (50 marks)**

- (a) This part of the question considered enforceable contracts for the sale or other disposition of land. Most candidates identified the formality requirements for a written contract or memorandum in s.3(1) Conveyancing and Property Ordinance. Many candidates also noted that a series of documents could amount to an enforceable agreement and identified the requirements for such an enforceable agreement. Most noted that in the question there might be an enforceable agreement although it might not include the air conditioners unless they could be indented as fixtures and so part of the flat. Some candidates were confused as to whether a solicitor would have implied authority to sign an agreement but many noted that they did not: *Well Lock Ltd v Reserve Investments Ltd* (2013) DCCJ 2111/2011.

Most candidates identified that if the lease had been for a term of three years or less taking effect in possession at best rent without a premium then it can be created in writing (s 4(2)(d) CPO) or orally (s6 (2) CPO).

- (b) This part of the question considered registration of interests in land and priorities of interests. Most candidates understood the importance of registration and the basic principles, e.g. unregistered interests are void against a subsequent bona fide purchaser or mortgagee for valuable consideration (section 3(2) of the Land Registration Ordinance ('LRO')). Some candidates mistakenly equated the Banks' knowledge of Tiffany's interest with mala fides, which will only be the case if there is form of fraud: *Creator HK Ltd v Kwong Wing Industries Stainless Steel Engineering Ltd* [2008] 2 HKC 245. Most candidates noted that a lease not exceeding three years at the best rent that may be obtained without a premium and taking effect in possession does not need to be in writing under s 6(2) CPO.