

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

I am pleased to provide my report on the Hong Kong Land Law Conversion Examination conducted in June 2015. This is a closed book examination in which candidates must answer two out of three questions.

Preliminary observations

By way of preliminary observation, by far the majority of candidates chose to answer questions 1 and 3, giving an impression that the Small House Policy examined in question 2 was not a popular topic!

It also became clear on marking that about one third of the candidates were admirably prepared, performed at a high level and passed easily. Equally, about one third were poorly prepared and failed miserably. The performance of the remainder was marginal.

I will now deal with the three questions separately.

Question 1

Question 1 dealt with deeds of mutual covenant.

(a)(1) involved the issue of the running of the burden of a restrictive covenant not to make structural alterations. Candidates should have referred to sections 41(2) and (3) of the *Conveyancing and Property Ordinance* and the test as to whether a covenant is a land covenant laid down in *P & A Swift Investments (A Firm) v Combined English Stores Group PLC* [1989] 1 AC 633, 642. Very knowledgeable candidates would have pointed out that the court has ruled in *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 that a covenant not to make structural alterations affects the mode of user and value of the land and is, therefore, a land covenant.

Candidates should also have considered whether knocking a hole in an external wall is a structural alteration: see *IO Elite Garden v Profit More Co Ltd* [2002] 2 HKLRD 518.

(a)(2) required candidates to consider whether a covenant not to keep dogs was a 'land covenant'. The answer can be found in *Lee Yin Hong v IO of Serenade Cove* (2010) DCCJ 4861/2008.

(a)(3) required candidates to consider whether a relatively small amount of offending user would still constitute a breach. The leading authority is *Donald Shields (No 2) v Mary Chan* [1972] HKLR 121.

(b)(1) An owner of shares in a multi-storey building is entitled to subdivide his shares provided there is no restriction in the dmc: see *Kwong Ka Hung v Lai Wah Development*

Co Ltd (1996) HCA 10566/1994; *Hinex Universal Design Consultants Co Ltd v Chan Lai Hing* [1998] 1 HKC 317.

(b)(2) The sub-division is effected by deed poll; additionally, the client must draft a new sub-dmc and a new floor plan showing the location of the new units and the new common parts. The sub-dmc will provide for the new co-owners to use the newly created common parts.

(b)(3) The new co-owners of the new units will be bound by the land covenants in the head deed of mutual covenant: *IO San Po Kong Mansion v Island Management Services Ltd* [2007] 1 HKC 206.

Question 2 (50 marks)

Question 2 involved knowledge of the Small House Policy and the rules governing the priorities of registered documents.

(a)(1) Since Simon owns no land in the village, he must apply to Government for a Private Treaty Grant. If such grant is made he will only be required to pay a concessionary premium (ie a low premium) for the land. The grant will contain provisions delineating the height and area of the building to be constructed and the construction of the house must comply with the height, size etc prescribed for small houses in the *Buildings Ordinance (Application to the New Territories) Ordinance*: ie it must not exceed 3 storeys and 27 feet in height with a roofed-over area not exceeding 700 sq feet.

(a)(2) The certificate of exemption exempts Simon from certain obligations laid down in the *Buildings Ordinance*: see the *Buildings Ordinance (Application to the New Territories) Ordinance*. The District Land Officer is obliged to grant the certificate.

(a)(3) By way of proving his title the vendor must produce to the purchaser (i) the certificate of exemption to show that the construction is exempted from the requirements of the *Buildings Ordinance*; (ii) a certificate of compliance after completion of the construction to show that the conditions in the Private Treaty Grant have been complied with to the satisfaction of the Director of Lands; and (iii) a letter of no-objection from the District Land Officer to show that there is no objection to the small house being occupied (in other words it serves the purpose of an occupation permit).

(b)(1) Candidates should first identify the dates from which the sale and purchase agreement and charging order take priority: see sections 3 and 5A, *Land Registration Ordinance*. They should then refer to and apply the decision in *Ho King Yim v Lau King Mo* [1980] HKLR 42. Since Venda retains only the bare legal estate, the charging order will not attach to the land and Patricia's interest in the land is not, therefore, bound by the charging order.

(b)(2) The Court of Appeal ruled in *Ho King Yim v Lau King Mo* [1980] HKLR 42 that the charging order would attach to any unpaid purchase money still in the hands of the

vendor. This conclusion was confirmed in *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. Since Patricia has constructive notice of the existence of the charging order, she must pay out of the residue of the purchase money sufficient to discharge the charging order in favour of the Bank and pay any remaining money to Venda.

(c) This (very simple) question was poorly answered.

(i) A Government lease is created by deed, whereas Conditions of Sale are created by contract.

(ii) The legal estate passes to the grantee under a Government lease, whereas only the equitable interest passes under Conditions of Sale.

Question 3

Question 3 dealt with several topics: joint ownership of land; oral tenancy agreements and the conversion of the equitable interest under Conditions of Sale into the legal estate.

3.1(a) and (b) were the best answered questions on the examination paper. Most candidates knew that the right of survivorship exists in the case of joint tenants, whereas there is no right of survivorship in the case of tenants in common. The will, therefore, only took effect in the latter case.

3.2 was a simple question on how to sever a joint tenancy. Most candidates knew section 8 of the *Conveyancing and Property Ordinance*. The notice should, of course, be registered.

3.3(a) involved an oral tenancy agreement for 2 years which did not take effect in possession. The agreement therefore fell outside the ambit of section 6(2) of the *Conveyancing and Property Ordinance*. In the absence of a written memorandum under section 3(1) of the *Conveyancing and Property Ordinance*, the oral agreement would be unenforceable.

3.3(b) Since the oral tenancy agreement now took effect in possession, it would be enforceable under section 6(2) of the *Conveyancing and Property Ordinance*.

3.4(a) This was a simple question on the conversion of the equitable interest under Conditions of Sale dated 1970 into the legal estate. Candidates should mention section 14(3) of the *Conveyancing and Property Ordinance* and explain the purpose and issue of the certificate of compliance and the need for its registration.

3.4(b) The term was extended until 30 June 2047 by the *New Territories Leases (Extension) Ordinance*.