

PCLL CONVERSION EXAMINATION JANUARY 2015

Title of Paper : Hong Kong Land Law
Date : 7 January 2015
Time : 2:30 p.m. – 2:45 p.m. (Reading Time)
2:45 p.m. – 4:15 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is **NOT** an open book examination. However, candidates are allowed to bring into the examination a copy of the Conveyancing and Property Ordinance, the Land Registration Ordinance and the Limitation Ordinance. The Ordinances may not be annotated but can be highlighted. No other materials are allowed.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 4 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2015

Hong Kong Land Law

Question 1 (50 marks)

- (a) In October 2014 Lester Lee ('Lester') and Tina Tong ('Tina') were negotiating the terms of a lease of Lester's flat 1B Pine Court (the 'Flat') to Tina. Eventually they agreed orally to enter into a lease of the Flat starting on 1 December 2014 for a term of three years at a monthly rent of HK\$25,000.00 payable monthly in advance. They also agreed that the lease would include a washing machine and fridge currently in the Flat.

Lester then wrote to Tina as follows:

Dear Miss Tong

Earlier today we agreed that you would take a lease of my flat in Pine Court for a term of three years starting on 1 December 2014 at a monthly rent of HK\$25,000 payable monthly in advance. My solicitors are preparing the draft lease which will shortly be sent to you.

Lester signed the letter. In late November, however, Lester wrote to Tina again saying that he had changed his mind and had decided not to let to her.

- (i) **Can Tina enforce the oral agreement for lease against Lester?** (20 marks)
- (ii) **What are the correct formalities for creating the lease between Lester and Tina?** (8 marks)
- (iii) **Assume that Tina has a lease of the Flat for a term of three years. The Deed of Mutual Covenant for Pine Court (the 'DMC') contains a covenant that management charges of HK\$500 per month shall be paid in respect of each flat in Pine Court. The DMC is registered in the Land Registry against Pine Court. Can this covenant be enforced against Tina?** (10 marks)
- (b) Penny has entered into a binding agreement with Victor to buy Victor's house (the 'House') in the New Territories. The House is known as House 4 Villa Marina and Victor holds it under Conditions of Sale dated 4 June 1977 for a term of 99 years from 1 July 1898.
- (i) **Will Penny acquire a legal estate in the House? If you need more information, say what information you need.** (8 marks)
- (ii) **For how long can the interest in the House be enjoyed?** (4 marks)

Question 2 (50 marks)

- (a) In 2003 Alice and her sons Ben and Calvin bought a flat (the 'Flat') for HK\$600,000. It was assigned to them as legal and beneficial joint tenants. Alice died in 2004 leaving her entire estate by will to her husband, Harry. **Who can assign the legal estate in the Flat?** (10 marks)
- (b) **Explain the statutory presumption in section 9(3) of the Conveyancing and Property Ordinance Cap. 219.** (9 marks)
- (c) Healthy Developments Ltd developed a block of 20 residential flats on Lot 123. The block is called 'Green Gardens'. Adam bought one equal undivided 20th share of and in Lot 123 and of and in Green Gardens together with the right to the exclusive use of Flat 1.

Healthy Developments Ltd and Adam then executed a Deed of Mutual Covenant for Green Gardens ('DMC'). The DMC provides that each owner has the right to the exclusive use of the flat allotted to their parcel of undivided shares. The DMC was registered in the Land Registry.

Explain the legal relationship between the owners of the flats in Green Gardens. (10 marks)

- (d) In 2007 Flat 6B Peony Garden was assigned to Mr. and Mrs. Wong as joint tenants. Mr. and Mrs. Wong separated earlier this year and Mrs. Wong wants to sever the joint tenancy. **Advise her of the action she must take.** (9 marks)
- (e) Eric owned a three storey building in Causeway Bay which was built on a plot of land he held under Conditions of Sale dated 1967. The Conditions of Sale contain a restrictive covenant that the land is to be used for the construction of a building not exceeding three storeys in height. In 1975 Eric sold the land and the building to Fab Estates Limited which demolished the three storey building and built a 15 storey building on the land. Fab Estates Limited now intends to demolish the 15 storey building and rebuild a modern 15 storey building on the land. However, the Government has advised Fab Estates Limited that building on the land is restricted to three storeys only. **Advise Fab Estates Limited.** (12 marks)

Question 3 (50 marks)

- (a) In 1945 Heavy Transport Ltd ('Heavy') became the registered owner of a plot of land ('Plot A') in Yuen Long. Next to Plot A was a vacant plot of land ('Plot B'). In 1952 Heavy started to park its lorries on both Plots A and B. The following year Heavy erected a six foot high wire fence around Plot B with an entrance gate which was locked at night. In 1975 Heavy sold Plots A and B to a light bus company Green Buses Ltd ('Green'). Green continued to use Plots A and B for parking its minibuses. The fence surrounding Plot B was largely

demolished by typhoon Wanda in 1983 but rebuilt six months later. In 1995 Green leased Plot B to Red Minibuses Ltd ('Red') for 30 years. In 1997 Red constructed a large roofed-over brick building on Plot B so that its vehicles would be protected from the sun and rain.

Red has very recently received an eviction notice from the Lands Department of Government alleging that Green and Red have no title to Plot B and giving notice that Plot B had been designated by the Government for the construction of a new housing estate. The letter from the Lands Department states that Plot B had been left vacant since 1940 because Government had had no present intention to use the land for any purpose and had been awaiting a social need for the land to be utilized. That social need had now arisen. The Lands Department has also contended that any claim that Green and Red may make to Plot B had been terminated by the *New Territories Leases (Extension) Ordinance* which, the Lands Department alleges, had the effect of creating a new lease in 1988 when the Ordinance came into effect.

Green and Red's managing directors have come to you, a solicitor, for advice as to whether they have any title to Plot B and whether they must comply with the eviction notice. Taking into account the reason given by the Lands Department for leaving Plot B vacant and their claim in respect of the effect of the *New Territories Leases (Extension) Ordinance*, advise them.

(40 marks)

- (b) Now ignore the above facts and assume that Plot B had been granted to Red in 1995. The land had been vacant. The land was governed by a Block Government Lease dated 1906 which contained the usual restrictive covenants. In the Schedule to the Block Government lease the land was described as 'padi'. **Would Red be permitted to build a roofed-over building to protect its minibuses from the sun and rain?** **(10 marks)**

~ End of Examination Paper ~