

PCLL CONVERSION EXAMINATION JANUARY 2016

Title of Paper : Hong Kong Land Law
Date : 6 January 2016
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 an open book examination.
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 2016

Hong Kong Land Law

Question 1 (50 marks)

1.1 In January 2013 Larry executed a four year written lease of his flat in favour of Tina. The lease was not registered in the Land Registry. In March 2013 Larry sold and assigned the flat to Andy for a consideration of HK\$5 million. The sale of the flat was expressly subject to Tina's lease.

- (a) **Will Andy take the flat subject to Tina's lease?** (8 marks)
- (b) **Would your answer to (a) differ if Larry had given the flat to Andy?** (2 marks)
- (c) **Would your answer to (a) differ if Larry had died and his interest in the flat had passed to his personal representatives?** (5 marks)

1.2 Last month Vanessa Vong ('Vanessa') agreed orally to grant a lease of her flat, 3A Bauhinia Court (the Flat), to Pansy Poon ('Pansy'). Vanessa and Pansy agreed that the term of the lease would be two years starting on 1 January 2016 at a monthly rent of HK\$20,000. They also agreed that Pansy would pay Vanessa a deposit of HK\$40,000 which Vanessa would repay at the end of the term. Vanessa instructed her solicitor to prepare the lease and Vanessa's solicitor sent the following letter to Pansy.

I act for Vanessa Vong who has agreed to let her flat 3A Bauhinia Court to Pansy Poon for a term of two years starting on 1 January 2016 at a calendar monthly rent of HK\$20,000. Please let me know the name of your solicitor so that I can send him the draft lease.

Vanessa's solicitor signed this letter. Vanessa and Pansy did not sign a lease and Vanessa has refused to do so because she has found another tenant who is prepared to pay a higher rent.

- (a) **Can Pansy enforce the oral agreement for lease against Vanessa?** (20 marks)
- (b) Assume that Vanessa and Pansy enter into the lease. Assume also that after entering into the lease, Vanessa creates a legal charge over the Flat in favour of ABC Bank Limited.
 - (i) **What are the correct formalities for creating the lease between Vanessa and Pansy?** (4 marks)
 - (ii) **What are the correct formalities for creating the legal charge by Vanessa in favour of ABC Bank Ltd?** (3 marks)

- (iii) **If the lease and legal charge are both created using the correct formalities, how is priority between Pansy and ABC Bank Ltd determined? (8 marks)**

Question 2 (50 marks)

In November 2015 Peter, a famous musical star who performs with a rock band, agreed to purchase a flat (the 'flat') in Hillyview Gardens, a 20-storey building in Tuen Mun in the New Territories (the 'building'), from its owner Vince. The sale and purchase agreement (the 'agreement') was signed by both parties and the transaction will be completed by the assignment of the flat to Peter in February 2016. In accordance with the agreement Peter will receive 15 equal undivided shares in the land and building together with the exclusive use, occupation and enjoyment of flat B on the 10th floor. The shares also carry with them the right to the exclusive use, occupation and enjoyment of car park number 146, but no shares are attached to the car park.

The land on which the building stands was granted by Government by way of Conditions of Sale dated 12 May 1968. The building was completed in 1971 and is governed by a deed of mutual covenant also dated 1971. The designated user in the Conditions of Sale is residential.

The deed of mutual covenant provides inter alia that:

- (i) *every co-owner shall pay management fees as specified in the deed of mutual covenant; and*
- (ii) *no co-owner shall commit a nuisance in the use of his or her flat.*

You are Peter's solicitor. Peter seeks your advice on the following matters:

- 2.1 After the assignment of the flat to him, will he receive the legal estate or equitable interest in the flat? (5 marks)**
- 2.2 Although not a party to the deed of mutual covenant, will he be bound by the two covenants identified above? (15 marks)**
- 2.3 If he lets the flat to his friend Tommy, will Tommy be bound by the two covenants? (10 marks)**
- 2.4 Is he permitted to sell his interest in the car-park separately from his interest in the flat? (7 marks)**
- 2.5 Is he permitted to use the main room of the flat as a repair workshop for musical instruments for which a charge is made? If you require more information to reach a conclusion, identify what further information you would require. (8 marks)**
- 2.6 Now assume that the flat was assigned 'to Peter and his wife Fiona' without specifying whether they would hold the flat as joint tenants or tenants in**

common. Advise Peter and Fiona whether they hold the flat as joint tenants or tenants in common? (5 marks)

Question 3 (50 marks)

A vacant plot of land in Yuen Long in the New Territories (the 'Plot') was granted by the Government to Mr. Au in 1980 by Conditions of Sale under which Mr. Au is entitled to a Government lease for a term expiring in 1997. The Conditions of Sale contain the following covenants:

The grantee will maintain the slopes surrounding the Plot; and

The grantee will not build on the Plot.

Mr. Au farmed the Plot until 1995 when he moved to Canada. In 1995 he leased the Plot to Farmlands Ltd ('Farmlands') for a term of 20 years. Farmlands intended to use the Plot for organic farming but, as a result of a change in the focus of its business operations, the Plot was never used for that purpose and was left largely vacant. Stanley ran a recycling business on land that he owned adjacent to the Plot. In 2002, Stanley began to use the Plot to store materials for his recycling business. In 2009 Stanley died leaving his entire estate to his son John. John continued to run Stanley's recycling business and to use the Plot for that purpose.

Answer the following questions:

3.1 (a) Has John obtained a title to the Plot by adverse possession against Farmlands? (25 marks)

(b) Explain whether your answer to 3.1 (a) is affected by the fact that Mr. Au's Government lease came to an end in June 1997. (6 marks)

3.2 Assume that John has obtained a possessory title against Farmlands.

(a) Are the above covenants contained in the Conditions of Sale still valid even though the term of the Government Lease expired in 1997? (5 marks) and

(b) Can the above covenants in the Conditions of Sale be enforced against John? (8 marks)

3.3 Mr Au has just returned to live in Hong Kong. Advise Mr. Au whether he can recover possession from John. (6 marks)

~ End of Examination Paper ~