

PCLL CONVERSION EXAMINATION JANUARY 2017

Title of Paper : Hong Kong Land Law
Date : 5 January 2017
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 2017

Hong Kong Land Law

Question 1 (50 marks)

Beautiful Gardens is a multi-storey building constructed by Ever Hopeful Development Co Ltd ('Ever Hopeful') in 2010. It overlooks the harbour in Aberdeen and has a good view of Ap Lei Chau. It has fifty floors and the ground floor is used as a shopping arcade with ten shops selling different merchandise. According to the occupation permit the first three floors of the building must be used for commercial use and the fourth to fiftieth floors for residential use. The whole of the first floor is occupied by Good Books Ltd ('Good Books'), a company selling educational books. In 2015 flat 20A on the twentieth floor was purchased by Mr Chan as a residence for him and his family. Flat 20B on the twentieth floor is owned by Mrs Wong and has been let to Tommy To ('Tommy') on a three year lease which will expire in 2018.

The deed of mutual covenant for Beautiful Gardens provides, inter alia, that:

- (i) Every owner must keep his flat in good repair and condition; and
- (ii) No owner may carry out any structural alterations to his or her flat without the consent of the Manager of the building.

The deed of mutual covenant was executed under seal by Ever Hopeful and Mr Lam (the purchaser of a flat on the fiftieth floor).

Mr Chan wishes to knock down an internal load-bearing wall (which constitutes a structural alteration) in flat 20A.

- (a) Is Mr Chan bound by the covenant not to make structural alterations without the consent of the Manager? (15 marks)
- (b) Is Tommy bound by the covenant to keep flat 20B in good repair? (15 marks)

Good Books wishes to divide up the first floor (to which 50 shares have been allocated) into five separate units. The units will then be sold to five different companies to use for commercial purposes.

- (c) Explain to Good Books the legal mechanism by which such division should be effected bearing in mind that new common parts will need to be created. You should ignore any building issues. (10 marks)
- (d) Mr Chow is intending to purchase shop 4 on the ground floor. He notes that the vendor Quick Laundry Ltd has breached the deed of mutual covenant by enclosing part of the common parts at the back of its unit for its own use. Advise Mr Chow whether, if he goes ahead with the purchase, he will be responsible for the breach committed by Quick Laundry Ltd. (10 marks)

Question 2 (50 marks)

- (a) Jenny owns a flat in Sai Ying Pun. In 2013 she executed by way of a deed a six year lease of her flat in favour of Leslie. The lease was not, however, registered in the Land Registry. In 2016 Jenny sold and assigned the flat to Prudence explaining to her that the assignment of the flat was subject to Leslie's lease. Will Prudence be bound by Leslie's lease? (15 marks)
- (b) Would your answer differ if the lease had been at a rack rent for 2 years? (5 marks)
- (c) Pacific Airways Ltd ('Pacific') entered into a binding sale and purchase agreement to purchase Venus's flat in Tsuen Wan for \$6 million. The sale and purchase agreement was signed by Pacific and Venus on 5th October 2016 and Pacific paid the deposit of \$600,000. The sale and purchase agreement was registered on 30th October 2016. A charging order nisi in favour of Clarissa by way of execution of judgment against Venus for \$2 million was registered against the flat on 15th October 2016 and a charging order absolute in favour of Clarissa was registered on 20th October 2016. The assignment to Pacific is due to be executed by Venus on 15th January 2017 on which date the residue of the purchase price (ie \$5.4 million) should be paid to Venus.

Advise Pacific

- (i) whether it will be bound by the charging order and;
- (ii) if the sale goes ahead, what it should do with the outstanding balance of the purchase price (ie \$5.4 million) which is due to be paid on 15th January 2017. (25 marks)
- (d) Would your answer to (c)(i) and (ii) above be the same if the sale and purchase agreement had only been registered on 18th November 2016? (5 marks)

Question 3 (50 marks)

- (a) Owen owns a flat in North Point. The flat is in a multi-storey building on land which was granted by the Government to the developer New Globe Ltd under Conditions of Exchange dated 1976.
- (i) Explain what is meant by Conditions of Exchange distinguishing Conditions of Exchange from Conditions of Sale. (3 marks)
- (ii) Did New Globe Ltd receive a legal or equitable interest under the Conditions of Exchange in 1976? (4 marks)
- (iii) It is now 2016 and Owen wishes to sell his flat. How can he prove that he holds the legal interest in his flat? (6 marks)

- (iv) Would your answer to (iii) above differ if the Conditions of Exchange had been dated 1967? (4 marks)
- (b) A plot of land in Sai Wan Ho was granted to Mega Development Ltd ('Mega') in 1980 by way of Conditions of Sale. A restrictive term in the Conditions of Sale provided that no building might be erected on the land with a height exceeding 30 metres. In 1981 Mega constructed a building 36 metres in height on the land and an occupation permit was issued by the Buildings Department. In 1995 the land and building were sold to Mini Construction Ltd ('Mini') which demolished the building and constructed a replacement building 40 metres in height. Again, an occupation permit was issued by the Buildings Department. This month Mini received a notice from the Lands Department informing it that the restrictive term as to the maximum permitted height in the Conditions of Sale had been breached and requiring the building to be demolished.

Mini seeks your advice as to:

- (i) whether it is bound by the restrictive term; and
(ii) whether it has any defence against an action by the Government to require the demolition of the building.

Advise Mini. (20 marks)

- (c) Your client Real Estate Developers Ltd ('Real Estate') has come to you for legal advice. It is considering whether to purchase a vacant plot of land in Yuen Long in the New Territories. The land was originally granted by Government under a Block Crown lease dated 1906 which contained the usual covenants. In the Schedule to the Block Crown lease the land is described as 'dry cultivation'. Your client wishes to know:
- (i) whether the plot can be used for the construction of a hotel; and
(ii) whether the plot can be used as a dump for old cars.

Advise your client on these two issues. (13 marks)

~ End of Examination Paper ~