

PCLL CONVERSION EXAMINATION JANUARY 2018

Title of Paper : Hong Kong Land Law
Date : 5 January 2018
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 2018

Hong Kong Land Law

Question 1 (50 marks)

- (a) In 2011, three friends Gloria, Ricky and Tim, bought a flat (the 'Flat') for HK\$12,000,000. It was assigned to them as legal and beneficial joint tenants

Advise on the following matters.

- (i) Last month, Gloria died leaving her entire estate by will to her husband, Jack. Explain who owns Gloria's interest in the Flat? (10 marks)
- (ii) Now Tim wishes to sever his interest in the flat. Advise him of the action he must take. (10 marks)
- (iii) Assume Tim did not sever his interest in the flat. Last week Ricky and Tim died in the same road traffic accident. Who can assign the legal estate in the Flat? (8 marks)
- (iv) If the assignment in 2011 had stayed silent as to the nature of the ownership of the Flat, explain how the statutory presumptions in section 9 of the Conveyancing and Property Ordinance Cap. 219 would have affected the interests in the Flat. (10 marks)

- (b) In 2014, Dulwich Developments Ltd ("Dulwich") developed a block of 30 residential flats on Lot 123. The block is called 'Sea View Buildings' ('Sea View'). In 2015, Michael bought flat number 1 Sea View from Dulwich. The purchase included one equal undivided 30th share of and in Lot 123 and of and in Sea View together with the exclusive use right to Flat 1.

Dulwich and Michael then executed a Deed of Mutual Covenant for Sea View ('DMC'). The DMC provides that each owner has the right to the exclusive use of the flat allotted to their one undivided share. The DMC was registered in the Land Registry.

Explain the legal relationship between the owners of the flats in Sea View.

(12 marks)

Question 2 (50 marks)

Rich Terrace Mansions is a small block of 30 residential units which was built on land granted by the Government by way of Conditions of Sale dated 1 April 1969. The building was completed in 1971 and was governed by a deed of mutual covenant also dated 1971. The designated use in the Conditions of Sale is residential.

The DMC for Rich Terrace Mansions provides, inter alia:

- (i) Every co-owner shall pay management fees as specified in the DMC;
- (ii) No owner may make structural alterations to his flat without the written consent of the Manager;
- (iii) No owner may keep dogs or other large pets on the premises; and,
- (iv) No owner may use the premises other than for residential purposes.

Gary, a retired journalist is intending to purchase a small two-roomed flat in Rich Terrace Mansions and comes to you, a solicitor, for advice on the following matters.

- (1) After the assignment of the flat to him, will he receive the legal estate or equitable interest in the flat? (6 marks)
- (2) Although not a party to the deed of mutual covenant, will he be bound by covenants (i) to (iii) identified above? (18 marks)
- (3) If the Covenants do bind Gary- who may enforce them? (8 marks)
- (4) Gary wishes to start a small independent newspaper and wishes to use the flat as an office for the production of the newspaper. Can he do so? (10 marks)
- (5) If he lets the flat to his friend Terry, will Terry be bound by the covenants? (8 marks)

Question 3 (50 marks)

- (a) Lionel Lord ('Lionel') purchased flat 3D Shangri La Buildings (the 'Flat') in December 2013. In August 2017, Lionel and Tiffany Chan ('Tiffany') were negotiating the terms of a lease of the Flat for Tiffany's occupation. Eventually they agreed orally to enter into a lease of the Flat starting on 1 September 2017 for a term of four years at a monthly rent of HK\$50,000.00 payable monthly in advance. They also agreed that the lease would include a dish washer, gas stove and some split-level air-conditioners currently in the Flat.

Lionel then wrote to Tiffany as follows:

Dear Miss Chan,

Earlier today we agreed that you would take a lease of my flat in Shangri La Buildings for a term of four years starting on 1 September 2017 at a monthly rent of HK\$50,000 payable monthly in advance. My solicitors are preparing the draft lease which will shortly be sent to you.

Lionel signed the letter.

The day after, Lionel wrote to Tiffany again as follows:

Dear Miss Chan,

I omitted to mention in my letter of yesterday that we had agreed you would have the benefit of the use of the air-conditioners which are fitted in the flat.

Lionel signed the letter.

In late August, however, Lionel wrote to Tiffany again saying that he had changed his mind and had decided not to let to her.

- (i) Can Tiffany enforce the oral agreement for lease against Lionel? (20 marks)
 - (ii) If Lionel had not signed the letters sent to Tiffany but instead had instructed his solicitors to send these letters containing the same information would your answer differ? (6 marks)
 - (iii) Assuming the lease between Lionel and Tiffany was for three years, what are the correct formalities for creating the lease? (6 marks)
- (b) Assume that the lease is for four years and both Lionel and Tiffany execute the lease under seal. The lease is dated 12 September 2017.
- (i) Tiffany did not register the lease in the Land Registry. On 15 September 2017 Lionel mortgaged the Flat by way of legal mortgage to the Happy Fortune Bank Ltd ('Happy Fortune') to secure a loan of HK\$1 million. Happy Fortune knew about Tiffany's lease when the mortgage was created. Happy Fortune registered its mortgage on 6 October 2017. Who has priority, Tiffany or Happy Fortune? (12 marks)
 - (ii) Assume Lionel and Tiffany had never executed the lease under seal but instead Lionel had orally agreed on 12 September 2017, to lease the Flat to Tiffany for a term of two years starting immediately at a monthly rent of HK\$50,000 and Tiffany had moved into the Flat the same day. They do not sign a lease. Can Tiffany enforce the lease against Lionel and Happy Fortune? (6 marks)

~ End of Examination Paper ~