

## **PCLL CONVERSION EXAMINATION JANUARY 2019**

Title of Paper : Hong Kong Land Law  
Date : 4 January 2019  
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 2019

Hong Kong Land Law

**Question 1** (50 marks)

- (a) Victor, who owns a luxury flat in Taitam Towers, decided to emigrate to Canada with his family and put his flat up for sale. On 15 October 2018 Peter entered into a binding sale and purchase agreement to purchase the flat for \$20 million and paid a deposit of 10% of the agreed purchase price. The sale and purchase agreement was registered on 1 November 2018. On 25 October 2018 Macau Gambling Holdings Ltd ('Macau') registered a charging order *nisi* over the flat by way of enforcement of a judgment which Macau had obtained against Victor. Peter seeks your advice as to what legal consequences the charging order will have if Victor executes the assignment in accordance with the sale and purchase agreement. Advise Peter. (15 marks)
- (b) Would your advice differ if the sale and purchase agreement had only been registered on 20 November 2018? Explain your answer. (5 marks)
- (c) In 2006 Portable Cabins Ltd ('Portable') inspected a unit in a commercial building in Tuen Mun which it wished to purchase from its owner. Having entered into a binding sale and purchase agreement to purchase the unit, Portable obtained a mortgage loan of \$6 million from the Bank of North America ('America Bank'). The purchase was duly completed and the mortgage was duly registered. In 2017 Frank successfully sued Portable for \$4 million and secured a charging order *nisi* over the unit by way of execution of the judgment. The charging order was registered within one month. In December 2018 Portable approached the Bank of Brunei ('Brunei Bank') to obtain a further loan by way of second mortgage of \$1.5 million which Portable intends to use, first, to discharge America Bank's mortgage (the sum outstanding is \$1 million) and, secondly, to provide some extra liquidity for its business. Brunei Bank has come to you, its solicitor, for advice as to whether, if it lends \$1.5 million to Portable partly to discharge America Bank's mortgage, the charging order will take priority over its mortgage and to what extent. Advise Brunei Bank. (15 marks)
- (d) James and Matilda are husband and wife. In 2016 they decided to buy a flat in North Point and Matilda (who had inherited a large sum of money from her aunt) provided the whole purchase price of \$5 million. The flat was duly purchased (without the assistance of a mortgage) and duly assigned to James and registered in James' sole name. Two years later the flat was mortgaged to Mega Bank to raise funds for James' business. Does Matilda have any interest in the flat and, if so, will Mega Bank take free of that interest? (15 marks)

**Question 2 (50 marks)**

Fancy Mansions ('the property') is a multi-storey building which was constructed in Kennedy Town in 2014. It is close to the MTR station and convenient for shopping. It contains thirty five floors. According to the occupation permit the first three floors of the building must be used for commercial use and the fourth to thirty fifth floors for residential use. The whole of the ground floor is occupied by a supermarket and three shops and the whole of the first floor is occupied by a firm of accountants. Flat 12D on the twelfth floor is owned by Mr Lam and has been let to Trudi Tsui ('Trudi') on a three-year lease which will expire in 2020.

The deed of mutual covenant for the property provides, inter alia, that:

- (i) No owner may carry out any structural alterations to his or her flat without the consent of the Manager of the building.
- (ii) Every owner must pay the required management fees as provided for in the deed of mutual covenant.
- (iii) No owner shall interfere with the common parts of his or her flat or convert the common parts to his or her own use.

The deed of mutual covenant was executed under seal by the developer and Patrick Pang who was the first purchaser of a flat in the building to be sold.

- (a) Are both Mr Lam and Trudi bound by the covenants (i) not to carry out any structural alterations; and (ii) to pay management fees? **(20 marks)**
- (b) The firm of accountants intends to move out and wishes to divide up the first floor (to which 100 shares have been allocated) into four separate units. The units will then be sold to four different persons/companies to use for commercial purposes.

Explain to the firm of accountants the legal mechanism by which such division should be effected bearing in mind that new common parts will need to be created. You may ignore any building issues. **(10 marks)**

- (c) Percy is intending to purchase one of the shops on the ground floor. He notes that the vendor Vesuvius Volcano Ltd ('Vesuvius') 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 Percy whether he will be responsible for the breach committed by Vesuvius. **(12 marks)**
- (d) A and B own adjacent flats in Pine Mansion. B went to live in Bermuda in 1995 and his flat was left vacant. B died in 1998 leaving no relatives. A moved into B's flat without any permission in 1999 and has been occupying the flat ever since. Has A obtained title by adverse possession to B's flat? **(8 marks)**

**Question 3 (50 marks)**

- (a) Danny is a male indigenous villager of a recognized village in the New Territories who wishes to build a small house for himself in the village. He does not, however, own any land in the village.
- (i) Advise him (A) what he must do to secure land upon which to build a small house; and (B) whether any restrictions in respect of the house to be constructed will be imposed. **(10 marks)**
- (ii) Danny has heard from the village head that he may apply for a certificate of exemption. Explain to him (A) the purpose of obtaining this certificate; and (B) whether he has a right to be issued with a certificate of exemption. **(8 marks)**
- (iii) The small house has now been constructed in accordance with the statutory requirements and Danny wishes to sell the house to another indigenous villager. Explain (A) what documents of title he must produce by way of proving his good title; and (B) explain the purpose of each document which must be produced to the purchaser. **(8 marks)**
- (b) In November 2018 Steven agreed to sell his flat in Wanchai to Pearl for \$10 million. When inspecting the flat Pearl noted that there were two window-type air-conditioners in the flat and two split-level air conditioners. The split-level air-conditioners were securely attached to an inside wall with bolts. Completion has just taken place and Pearl has moved in. To her dismay she has discovered that the two window-type air conditioners and the split-level air-conditioners have been removed. On perusing the applicable sale and purchase agreement and assignment she sees that no mention of air-conditioners was made in either of them. Does she have any claim to the air-conditioners against Steven? **(10 marks)**
- (c) Paul has just entered into a sale and purchase agreement to purchase a newly constructed flat in Chai Wan from the developer. The developer's solicitor sends Paul the documents of title and Paul notes that the ultimate root of title is Conditions of Sale dated 2018. The developer's solicitor explains to Paul that he will only be receiving the equitable interest in the flat.
- (i) Explain why, as a matter of law, Paul will only be receiving the equitable interest in the flat. **(4 marks)**
- (ii) As a matter of law, when will the equitable interest be converted into a legal estate? How can this best be proved? Does any document need to be registered? **(10 marks)**

**~ End of Examination Paper ~**