

PCLL CONVERSION EXAMINATION JUNE 2016

Title of Paper : Hong Kong Land Law
Date : 27 June 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 5 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 June 2016

Hong Kong Land Law

Question 1 (50 marks)

- (a) Lawson Development Ltd ('Lowson') owns a large plot of land in Tai Po in the New Territories on which it erected in 1970 a multi-storey block of flats known as 'Lowson Villas'. Behind the block of flats but still within Lowson's land is a lane leading to a public road. This lane is used by Lowson's employees (on the instructions of its Management Committee) inter alia for removing rubbish from the estate and by the residents for access to a back door by which they can gain entry to Lowson Villas. In 1979 Mr Chin ('Chin') constructed a small enclosure ('the shop') at one side of the back lane (not blocking its use) from which he offered certain services including key cutting and sale of small electrical goods. His customers were mainly (but not exclusively) residents of Lowson Villas. Lowson's Management Committee took no action to evict him. In 1986 Chin fell ill suffering a minor heart attack. Since he did not wish to endanger his health especially in the cold winter weather, he leased the shop to his friend Fred for five years at a monthly rental of \$2,000. In 1990 Chin died of a massive heart attack whilst jogging up Quarry Bay Gap Road. By will he left all his property to his son Stanley. Stanley had not done well at school and had no job, so he took over the shop when Fred's lease expired in 1991. Stanley continued to sell small electrical goods but expanded the business to include the sale of cigarettes and cold drinks.

Stanley has just received an eviction notice from Lowson's Management Committee requiring him to cease to occupy the area and demolish the shop. Stanley has received legal advice from a friend who is studying law saying that Stanley may have acquired title to the shop by adverse possession.

Citing the relevant statutory and case law, advise Stanley whether you agree with this advice. Please also comment upon whether the *New Territories Leases (Extension) Ordinance* has affected Stanley's claim. **(30 marks)**

- (b) Bill owns flat D on the ground floor of Lowson Villas. Lowson Villas is governed by a deed of mutual covenant which contains the clauses conventionally found in deeds of mutual covenant. Just outside his flat is an open yard which forms part of the common parts of the building. In 2000 Bill enclosed part of this yard ('the enclosed area') and installed a washing machine where his domestic helper does the washing and ironing. Bill believed that the enclosed area formed part of his unit and that he had a right to the exclusive use of the area. Bill has also just received a notice from the Management Committee requiring him to demolish the enclosure in the enclosed area and reinstate the area. He has also been advised by the same friend that he may have acquired title to the enclosed area by way of adverse possession.

- (i) First, explain whether Bill's occupation of the enclosed area would be likely to breach the deed of mutual covenant and *Building Management Ordinance*. In answering this question you are not required to discuss any issues relating to the running of benefit or burden of covenants in the deed of mutual covenant. **(6 marks)**
- (ii) Citing the relevant statutory and case law, advise Bill whether you agree with the friend's advice that he may have acquired title to the enclosed area by way of adverse possession notwithstanding his belief that he owned the enclosed area and had a right to use it for washing and ironing. Also explain the reasons for your advice. **(14 marks)**

Question 2 (50 marks)

In March 2016 Larry Lo ('Larry') and Tina Tong ('Tina') negotiated the terms on which Larry would grant Tina a lease of Larry's Flat 2A Bauhinia Gardens (the 'Flat'). Eventually they agreed to enter into a lease starting on 1 May 2016 for a term of four years at a monthly rent of HK\$55,000.00 payable monthly in advance. They also agreed that the lease would include 3 split level air conditioners currently installed in the Flat. Larry and Tina did not sign an agreement for lease but on 1 March 2016 Larry's solicitor sent the following letter to Tina.

Dear Ms. Tong

We act for Larry Lo who has agreed to let Flat 2A Bauhinia Gardens to you for a term of four years starting on 1 May 2016. We are preparing the draft lease which we will shortly send to you for execution.

Larry's solicitor signed the letter. Tina replied in writing as follows:

Dear Sirs

Thank you for your letter of 1 March 2016. I confirm the agreement between myself and Larry Lo. The agreed rent is HK\$55,000 per month.

Tina signed this letter but later refused to sign the lease and did not move in to the Flat on 1 May 2016.

- (a) Can Larry enforce the oral agreement for lease against Tina? **(35 marks)**
- (b) Assume that both Larry and Tina execute the lease under seal. The lease is dated 23 April 2016.
- (i) Tina did not register the lease in the Land Registry. On 28 April 2016 Larry mortgaged the Flat by way of legal mortgage to the ABC Bank Ltd ('ABC') to secure a loan of HK\$1 million. ABC knew about Tina's lease when the

mortgage was created. ABC registered its mortgage on 11 May 2016. Who has priority, Tina or ABC? **(10 marks)**

- (ii) Ignoring the mortgage mentioned in (i) above, now assume that Tina and Susan orally agree that Tina will sublet the Flat to Susan for a term of two years starting on 1 June 2016 at a monthly rent of HK\$58,000. They do not sign a lease but Susan moves in. Can Susan enforce the oral lease against Tina? **(5 marks)**

Question 3 (50 marks)

- (a) On 10th May 2016 Prosperous Property Ltd ('Prosperous') entered into a binding sale and purchase agreement to purchase Vagabond Holdings' ('Vagabond') commercial unit in Hopeless Building in North Point and paid a deposit of 10% of the agreed purchase price. The agreement was registered on 1st June 2016. On 15th May 2016 the Agricultural Bank of Kowloon ('the Bank') registered a charging order over the unit by way of enforcement of a judgment which the Bank had obtained against Vagabond. Prosperous seeks your advice as to what legal consequences the charging order will have if it executes the assignment in accordance with the sale and purchase agreement on 25th July 2016. Advise Prosperous. **(15 marks)**

- (b) Would your advice differ if the sale and purchase agreement was only registered on 15th June 2016? Explain your answer. **(5 marks)**

- (c) Ben wished to purchase a flat in Kennedy Town and in 2000 he obtained by way of a mortgage over the flat a loan of \$1 million from A Bank. The purchase was duly concluded and the mortgage was duly registered and has not been discharged. \$600,000 is still outstanding. In 2015 Lucky Legend Ltd ('Lucky') registered a charging order nisi over the flat by way of execution of a judgment against Ben. The charging order was registered within one month. In June 2016 Ben approached B Bank to obtain a further loan by way of new mortgage of \$800,000 which Ben intends to use to discharge A Bank's mortgage and to provide some extra liquidity for his business. B Bank has come to you, its solicitor, for advice as to whether, if it lends \$800,000 to Ben partly to discharge A Bank's mortgage, the charging order will take priority over the second mortgage and to what extent.

Advise B Bank. **(15 marks)**

- (d) Would your answer differ if the charging order had been registered in 2010? **(5 marks)**

- (e) A restrictive covenant in the Government lease relating to Dirty Building states that the building is to be used for industrial purposes only. Your client Plastic Flowers Ltd ('Plastic') wishes to lease two floors in the building. One floor will be used for manufacturing the flowers whilst the other floor will be used for advertising,

arranging the sale of manufactured flowers to purchasers, invoicing clients and staff resource matters.

- (i) Plastic seeks your advice as to whether such use will breach the restrictive covenant in the Government lease. Advise Plastic.
- (ii) Also advise Plastic (and the building's owner) as to the likely consequence if Plastic enters into the lease and such use does constitute a breach of the Government lease.

(10 marks)

~ End of Examination Paper ~