

PCLL CONVERSION EXAMINATION JUNE 2017

Title of Paper : Hong Kong Land Law
Date : 26 June 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 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 2017

Hong Kong Land Law

Question 1 (50 marks)

In 1940 Mr Wan and his wife, who were immigrants from Mainland China, purchased a small wooden structure ('the property') near Yuen Long in the New Territories in which they lived with their two children, Amy and Peter. Sadly, Mrs Wan died during the Japanese occupation in 1944. The property included a large garden in which Mr Wan grew vegetables. The adjacent plot ('the plot') was unleased Government land on which grew wild flowers and weeds. There were also some small trees. There was an old broken-down fence around the plot. Mr Wan had observed that the plot had been vacant for several years and he decided to use it as an extension to his vegetable garden. In 1950, assisted by his children at times when they were not at school, Mr Wan dug up the wild flowers and weeds and began to plant vegetables on part of the plot. After he cut down the small trees in 1952 he used the whole plot for growing vegetables. In 1953 he repaired the fence and put up a notice saying 'Trespassers Keep Out'. The vegetables grew well and he earned a reasonable income from their sale to traders in Yuen Long. Mr Wan died in 1965 and his two children inherited all his assets. They continued to grow vegetables on the plot. In 1970 Amy and Peter attended further studies in the UK and leased the plot to their friend Joshua who continued to grow vegetables on the plot which he sold at market in Yuen Long. Joshua paid rent on a monthly basis to Amy and Peter. Amy and Peter resumed possession of the plot after they returned to Hong Kong in 1975. In 1985, following the judgment of the Full Court in *Attorney General v Melhado Investments Ltd* [1983] HKLR 327, Amy and Peter ceased to cultivate the plot but cleared it of vegetables and leased it to Heavy Construction Co Ltd for storing their containers at \$5,000 per month on an annual renewable tenancy which contained a provision for an incremental increase in the rent payable.

This arrangement continued until January 2017 when Amy and Peter received an eviction notice from the Lands Department of Government alleging they had no title to the land and giving notice that the plot was going to be used by Government for the construction of a housing development.

- (a) Amy and Peter have come to you, a solicitor, for advice as to whether they have any title to the plot and whether they can resist the Government's eviction demands.

Ignoring the issues raised in parts (b) and (c) of this question, advise them whether they have acquired a title by adverse possession to the plot and can, accordingly, resist the Government's eviction demands. (26 marks)

- (b) Government has contended that any claim that Amy and Peter might make to the plot had been affected by the *New Territories Leases (Extension) Ordinance* (Cap 150) because a new lease had been created in 1988 when the Ordinance came into effect.

Advise Amy and Peter how to respond to this argument. (8 marks)

- (c) Government has also contended that, upon the reversion of the New Territories to Mainland China in 1997, any interest or title acquired or claimed against the Hong Kong Colonial Government had come to an end and could not be enforced against the PRC Government as reversioner.

Advise Amy and Peter how to respond to this argument. (8 marks)

- (d) Would your answer differ if Amy and Peter had said in cross-examination during the trial that, if asked, they would have been willing to pay rent to Government for use of the plot? (8 marks)

Question 2 (50 marks)

- (a) In early May 2017 Vivacious Cosmetics Co Ltd ('Vivacious') agreed orally to sell its commercial premises in Kowloon Bay to Pacific Wine Importers Ltd ('Pacific'). Vivacious and Pacific identified the premises as floor 3, Bay Building, 12 North Street, Kowloon Bay. The agreed purchase price was HK\$18 million with the completion date fixed at 2nd June 2017. They also agreed that Vivacious would give vacant possession at completion and include all the fixtures in the building.

Both parties obtained separate legal representation. There was no preliminary sale and purchase agreement.

Vivacious solicitors wrote to Pacific's solicitors on 12th May saying:

12 May 2017

Dear Sirs

Re Sale of Floor 3, Bay Building, 12 North Street, Kowloon Bay

We act for Vivacious in the sale of the above premises to your client Pacific. We confirm that Vivacious has agreed to sell the premises to your client for HK\$18 million with completion fixed for 2nd June 2017.

We are preparing the formal sale and purchase agreement. Please confirm that you have instructions to act for Pacific and let us know whether your client will be purchasing with the aid of a mortgage.

Yours faithfully

Tong and Man
Solicitors

Pacific's solicitor wrote back on 15th May:

15 May 2017

Dear Sirs

Re Purchase of Floor 3, Bay Building, 12 North Street, Kowloon Bay

Thank you for your letter of 12th May 2017. We confirm that we act for Pacific in the purchase of the above premises from your client Vivacious. We confirm that Pacific will be purchasing the property with the aid of a mortgage from the Bank of East Asia.

Yours faithfully

Right and Wrong
Solicitors

One week later Right and Wrong wrote to Tong and Man saying:

22 May 2017

Dear Sirs

Re Purchase of Floor 3, Bay Building, Kowloon Bay

We are writing to inform you that our client, Pacific, has decided not to go ahead with the purchase of the above property.

Yours faithfully

Right and Wrong
Solicitors

You are a solicitor in the employment of Tong and Man, Solicitors. Advise your client Vivacious whether it can enforce the oral agreement against Pacific.

(36 marks)

- (b) Now assume that the above correspondence had been headed 'Subject to Contract'. Explain with case authority the meaning and effect of this expression in this context. (4 marks)
- (c) Explain the doctrine of part performance in the context of an agreement for the sale and purchase of land and provide two examples of acts which are likely to be held by the court as constituting part performance in this context. (10 marks)

Question 3 (50 marks)

- (a) Philip ‘owns’ a flat in a multi-storey building. Explain the nature of his ‘ownership’ of the flat. (6 marks)
- (b) In the context of a deed of mutual covenant, explain the difference between a land covenant and a personal covenant. Provide with case authority three examples of land covenants commonly found in deeds of mutual covenant. (10 marks)
- (c) (i) In the context of a multi-storey building, explain when a sub-deed of mutual covenant may be required and explain its content and effect. (8 marks)
- (ii) Explain whether the co-owners of units held under a sub-deed of mutual covenant will be bound by ALL the covenants in the head deed of mutual covenant. (4 marks)
- (d) In what circumstances may a co-owner of shares in a multi-storey building enforce the benefit of the covenants in the deed of mutual covenant against another co-owner? (6 marks)
- (e) Your client New Territories Development Ltd (‘NTD’) is considering purchasing a vacant plot of land in the New Territories. The land was originally granted by Government under a Block Crown lease dated 1907 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 part of the plot can be used for the construction of a youth hostel; and
- (ii) whether the remainder of the plot can be used as a car-park for lorries.

Advise your client on these two issues. (16 marks)

~ End of Examination Paper ~