

PCLL CONVERSION EXAMINATION JUNE 2018

Title of Paper : Hong Kong Land Law
Date : 21 June 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 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 2018

Hong Kong Land Law

Question 1 (50 marks)

- (a) In early May 2018 Easiphone Mobile Communications Co Ltd ('Easiphone') agreed orally to sell its commercial premises in Shatin to Biba Boutique Fashions Ltd ('Biba'). Easiphone and Biba identified the premises as Floor 5, Lucky Building, 53 Tai Wai Street, Shatin. The agreed purchase price was HK\$35 million with the completion date fixed at 8th June 2018. They also agreed that Easiphone would give vacant possession at completion and include all the fixtures in the premises.

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

Easiphone's solicitors wrote to Biba's solicitors on 14th May stating:

14 May 2018

Dear Sirs

Re Sale of Floor 5, Lucky Building, 53 Tai Wai Street, Shatin

We act for Easiphone in the sale of the above premises to your client Biba. We confirm that Easiphone has agreed to sell the premises to your client for HK\$35 million with completion fixed for 8th June 2018.

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

Yours faithfully

Lee and Lee Solicitors

Biba's solicitor wrote back on 16th May:

16 May 2018

Dear Sirs

Re Purchase of Floor 5, Lucky Building, 53 Tai Wai Street, Shatin

Thank you for your letter of 14th May 2018. We confirm that we act for Biba in the purchase of the above premises from your client Easiphone. We confirm that Biba will be purchasing the property with the aid of a mortgage from the Standard Chartered Bank.

Yours faithfully

Man and Fook Solicitors

One week later Man and Fook wrote to Lee and Lee saying:

23 May 2018

Dear Sirs

Re Purchase of Floor 5, Lucky Building, Shatin

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

Yours faithfully

Man and Fook Solicitors

You are a solicitor in the employment of Lee and Lee, Solicitors. Advise your client Easiphone whether it can enforce the oral agreement against Biba. **(32 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. Does all subsequent correspondence in written negotiations commenced with a letter so headed have to be headed with this expression to gain similar effect? **(6 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. **(12 marks)**

Question 2 (50 marks)

- (a) Chen owns a flat in Kennedy Town. The flat is in a multi-storey building on land which was granted by the Government to the developer Happy Dragon 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 Happy Dragon Ltd receive a legal or equitable interest under the Conditions of Exchange in 1976? **(4 marks)**
- (iii) It is now 2018 and Chen 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 1969? **(4 marks)**
- (b) In 1985 a plot of land in Kowloon Bay was granted to Carlton Construction Ltd ('Carlton') 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 50 metres. In 1986 Carlton constructed a building 55 metres in height on the land and an occupation permit was issued by the Buildings Department. In 1996 the land and

building were sold to Ritz Development Ltd ('Ritz') which demolished the building and constructed a replacement building 60 metres in height. Again, an occupation permit was issued by the Buildings Department. This month Ritz 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 therefore requiring the building to be demolished.

Ritz seeks your advice as to:

(i) whether it is bound by the restrictive term; and **(10 marks)**

(ii) whether it has any defence against an action by the Government to require the demolition of the building. **(10 marks)**

Advise Ritz.

(c) Chelsea Developers Ltd ('Chelsea') is considering whether to purchase a vacant plot of land in Sheung Shui 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 **(6 marks)**

(ii) whether the plot can be used as a dump for old cars. **(7 marks)**

Advise Chelsea on these two issues.

Question 3 (50 marks)

In 1949 Mr Leung purchased a small house ('the property') near Sai Kung in the New Territories in which he lived with his son Gerald. The property included a large garden in which Mr Leung grew vegetables. The adjacent plot ('the plot') was Government land which had not been leased by anyone and which was surrounded by an old broken-down fence. The plot was uncultivated with just wild flowers and trees growing on it. After some years Mr Leung decided that as the land was not being put to any use by anyone he would use the land as an extension to his vegetable garden. In 1954 Mr Leung dug up the wild flowers and began to plant vegetables on part of the plot. In 1955 Mr Leung cut down the small trees and began using the whole plot for growing vegetables. In 1956 he repaired the fence and put up a notice saying 'Trespassers Keep Out'. Mr Leung sold the vegetables from the plot in the market in Sai Kung. Mr Leung died in 1970 and his son Gerald inherited all his assets. Gerald continued to grow vegetables on the plot. In 1975 Gerald sold the property to Bill his neighbour. Bill wanted to buy the plot as well but Gerald would only lease the plot to Bill. Bill continued to grow vegetables on the plot. Bill paid a monthly rent to Gerald. Bill died in 1979 and Gerald took the plot back and carried on growing vegetables on it. In 1985, following the judgment of the Full Court in *Attorney General v Melhado Investments Ltd* [1983] HKLR 327, Gerald leased the plot to LogiTech Co Ltd to store their containers on the land on an annual renewable tenancy at the monthly rental of \$6,000. This arrangement, with subsequent rental increases,

continued until March 2018 when Gerald received an eviction notice from the Lands Department of Government alleging he had no title to the land and giving notice that the plot was going to be used by the Government for the construction of a much needed housing development.

- (a) On the facts as explained above and ignoring the issues raised in parts (b) and (c) of this question, advise Gerald whether he has acquired a title by adverse possession to the plot and can, accordingly, resist the Government's eviction demands. **(26 marks)**
- (b) The Government has now raised the issue of the effect of the New Territories Leases (Extension) Ordinance (Cap 150). The Government argues this Ordinance created a new lease when it came into effect in 1980 and any period of possession must date from the creation of the new lease. Advise Gerald how such an argument might be considered by the court. **(8 marks)**
- (c) The Government has raised the further issue of the return of the New Territories to Mainland China in 1997, arguing that this return also provides a break in any possession period as 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 of the original New Territories lease. Advise Gerald how to respond to this argument. **(8 marks)**
- (d) What would the effect be on the likelihood of his success in arguing that he had obtained a title to the plot by way of adverse possession if Gerald had said in cross-examination during the trial that, if asked, he would have been willing to pay rent to the Government for use of the plot? **(8 marks)**

~ End of Examination Paper ~