

2018 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD I: CONVEYANCING

Thursday, 25 October 2018



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Question 1 (25 marks)

On 20 August 2018, Vera as vendor and Paul as purchaser entered into an agreement (the "Agreement") whereby Vera would sell Paul her flat known as Flat 3B, Grand Gardens (the "Flat") for a consideration of HK\$18 million with completion on 20 October 2018. The Agreement is substantially in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219. Vera agreed expressly to give good title. Clause 4 of the Agreement provides as follows:

Completion shall take place at the office of the Vendor's solicitor at 5 p.m. on 20 October 2018.

Two weeks before the date of completion, Vera's solicitor suggested to Paul's solicitor that completion should take place by way of undertaking. Vera's solicitor sent Paul's solicitor a completion statement showing the balance of purchase price to be paid on completion and instructed Paul's solicitor to pay the balance of purchase price by way of two cashier orders as follows:

1. Made payable to Vera's mortgagee for the account of Vera to discharge Vera's mortgage.
2. Made payable to Vera's solicitor's firm.

One week before the date of completion, Paul's solicitor told Vera's solicitor that he did not agree to complete by way of undertaking.

(See over the page for a continuation of Question 1)

On 19 October 2018, Paul's solicitor made an appointment with Vera's solicitor to complete at 4:45 p.m. on 20 October 2018 and on 20 October 2018 Paul's solicitor attended at the office of Vera's solicitor with two cashier orders as instructed. Vera's solicitor did not by 5 p.m. hold an assignment executed by Vera and a discharge executed by Vera's mortgagee. Paul's solicitor refused to complete. On 22 October 2018, Vera entered into a binding provisional agreement to sell the Flat to Betty.

Questions:

Answer the following questions giving reasons for your answers:

1.1 Advise Paul whether he can obtain specific performance of the Agreement.
(20 marks)

1.2 Assume that the sale and purchase was completed and that Vera as beneficial owner assigned the Flat to Paul. After completion, the building manager of Grand Gardens gave Paul notice to reinstate a structural internal partition wall separating the living room in the Flat from one of the bedrooms. This demolition was carried out before Paul bought the Flat. It breaches a covenant in the Deed of Mutual Covenant for Grand Gardens which provides that no owner will make any structural alterations. Paul telephoned Vera who told Paul that she did not demolish the wall. **Does Paul have a remedy against Vera or anyone else?**

(5 marks)

Question 2 (25 marks)

Pursuant to a provisional agreement dated 28 September 2018, Victor entered into a formal agreement to sell his residential flat in North Point (the "Flat") to Peter for HK\$10 million. Victor agreed expressly to give and show good title.

From the computer record of documents registered in the Land Registry and the title deeds provided, the Flat was first assigned by way of a sale to Lai Kun in 1991. Lai Kun died in 2000. The Grant of Probate of Lai Kun's will (the "Grant") shows that he left all his property to his son, Lai Chung, who was an infant at that time. The Grant also reveals that his executors were Felix Chen and Francis Chen. The register shows that in 2002, the Flat was assigned by Felix Chen and Francis Chen as executors to Felix Chen at what appears to have been an undervalue. In 2009, Felix Chen assigned the Flat by way of sale to Emma Yau who assigned the Flat by way of sale to Victor in June 2016.

Questions:

Answer the following questions giving reasons for your answers:

- 2.1 Explain how Peter can challenge Victor's title. (14 marks)**
- 2.2 Explain to any extent your answer would be different if the devolution of Lai Kun's estate took place more than two decades ago. (4 marks)**
- 2.3 Assume that Victor and Peter proceed to completion. Explain how the different documents effecting the sale and purchase of the Flat would be stamped. (7 marks)**

Question 3 (25 marks)

Super Company Limited ("Super") was incorporated in Hong Kong in March 2005 and has only one director, David Wong. Super has just signed a binding agreement (the "Agreement") to sell to Oliver Pang (the "Purchaser") its property (the "Property"), which forms part of Marigold Mansion, Wanchai, Hong Kong.

The terms of the Agreement include the following:

- (1) *Super will sell a good title to the Purchaser.*
- (2) *The Property is sold subject to a tenancy agreement (the "Tenancy Agreement") dated 1 April 2017 in favour of Terry Tai for three years at a monthly rent of HK\$28,000.*
- (3) *Completion will take place on 3 December 2018.*

The Articles of Association of Super include the following:

"The Common Seal of the company shall be affixed in the presence of one or two of its directors."

Questions:

Answer the following questions giving reasons for your answers:

- 3.1 Explain Super's possible mode(s) of execution of the forthcoming assignment at completion.** There is no need to draft any clause to answer this question. **(6 marks)**

(See the next page for a continuation of Question 3)

- 3.2** Among the title deeds produced by Super, there is a receipt on discharge of a charge (the "Receipt") dated 8 May 2016 signed by Fred Chan, who is described as "manager of Rich Bank Ltd.". The Receipt is annexed to a mortgage memorial no. 05120500480038 executed by Super on 8 December 2005 in favour of Rich Bank Ltd.

The Receipt reads as follows:

"Rich Bank Ltd. hereby acknowledges receipt of all monies secured by the annexed Mortgage registered in the Land Registry by Memorial No. 05120500480038."

Should the Purchaser's solicitors raise any requisition on title to ensure due execution of the Receipt by Rich Bank Ltd.?

(5 marks)

- 3.3** Explain the impact, if any, on title if the Purchaser has just discovered that the owners' corporation of Marigold Mansion (the "Corporation") is currently involved in several litigation matters, which include a claim for compensation from an elderly watchman employed by the Corporation (who fell, whilst performing his duties, on a slippery floor of the main lift lobby of Marigold Mansion) as well as some contractual disputes with companies recently engaged to undertake renovation work on the external walls of Marigold Mansion.

(10 marks)

- 3.4** Explain the impact, if any, on title if the Tenancy Agreement contains an option for Terry Tai to renew the tenancy for a further term of two years upon expiry of the present term.

(4 marks)

Question 4 (25 marks)

In January 2016, Alice bought Flat 16A (the "Flat") on the top floor of Marina Court (the "Building") from David. The Building is a block of 30 residential flats built in 1973. Alice inspected the Flat before she signed an agreement to buy it and David told Alice that in 2000, he had moved the front door of the Flat and incorporated into the Flat three feet of the corridor immediately outside the Flat. David pointed out that many other owners had done the same and that no action has ever been taken against him or any other owners.

There is a Deed of Mutual Covenant for the Building (the "DMC"). The DMC does not contain a definition of common parts. The DMC sets out the undivided share allocation which pairs each of the flats with one equal undivided 30th share of and in the land and the Building. The DMC grants exclusive use rights over each of the 30 flats and reserves to the developer the exclusive use of the roof of the Building. There are no other exclusive use areas. There are no undivided shares paired with the roof and the developer did not retain any undivided shares. The owners of the Building formed an owners' corporation in 1980 and there is also a building manager. Under the DMC, an owner is the person in whom the undivided shares in the premises are vested for the time being.

In August this year, water started leaking into Alice's flat from the roof due to a failure to repair the tiles on the roof's surface. Alice contacted the building manager and asked the manager to arrange for the developer to carry out repairs. However, despite Alice's complaints to the building manager and the developer, the roof has not been repaired and the leakage has continued.

Alice recently received a letter from the owners' corporation complaining that she has encroached into the corridor outside the Flat and asking her to restore the front door of the Flat to its original position.

(See the next page for a continuation of Question 4)

Questions:

Answer the following questions giving reasons for your answers:

4.1 Who is responsible for repairing the roof? (10 marks)

4.2 Can the owners' corporation obtain an injunction against Alice to force her to restore the front door of the Flat to its original position?

(15 marks)

Question 5 (25 marks)

Harry and Wendy live at Flat 3B, Harbour View (the "Flat") which was bought in 2015 for HK\$10,000,000. Wendy paid 50% of the price of the Flat but the Flat was bought in Harry's sole name. ABC Bank Limited ("ABC") loaned Harry 50% of the price which was secured by a first legal mortgage of the Flat. The loan is repayable by equal monthly instalments of principal and interest.

Harry has not paid the monthly instalments for six months and ABC intends to sell the Flat. ABC has found a buyer, Boris, who has offered HK\$7,500,000 for the Flat. ABC intends to accept this offer but Harry thinks that it is too low.

Questions:

Answer the following questions giving reasons for your answers:

- 5.1 Can ABC exercise the power of sale? (4 marks)**
- 5.2 Is there any basis on which Harry might stop the sale of the Flat from going ahead or on which he might later claim compensation? (10 marks)**
- 5.3 Is ABC subject to any interest that Wendy might have in the Flat? (4 marks)**
- 5.4 In 2017, ABC lent a further HK\$2,000,000 to Harry and in 2016, DEF Bank Ltd ("DEF") lent Harry HK\$1,000,000 on the security of a second legal mortgage of the Flat. If the proceeds of sale are not enough to cover all of Harry's indebtedness, in what order will ABC and DEF be paid out? (7 marks)**

END OF TEST PAPER