

**2021 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD I: CONVEYANCING

Tuesday, 26 October 2021



2021 Overseas Lawyers Qualification Examination

Head I: Conveyancing

Question 1 (25 marks)

In June 2014, Patrick Poon (“Patrick”) bought Flat 2A, Astrid Court (“Flat 2A”) from Vicki Vong (“Vicki”). Astrid Court is a block of 30 residential flats built in 1984. There is a Deed of Mutual Covenant (the “DMC”) which does not contain a definition of common parts and does not state who owns the external walls. The owners of Astrid Court incorporated in 1986. Astrid Court is managed by Good Management Ltd.

The DMC includes the following covenants:

- “1. No owner will alter the external appearance of Astrid Court without the prior consent of the building manager.
2. No owner will make any structural alterations to any part of Astrid Court.”

In July 2021, Patrick received a letter from the owners’ corporation complaining about the following alterations made to Flat 2A in 2001 by Vicki, who was the owner of Flat 2A at the time. The letter states:

“The living room windows of Flat 2A have been enlarged by cutting the external walls of Astrid Court and inserting larger window frames. These alterations breach the terms of the DMC. Please reinstate the windows of Flat 2A to their original size and condition as soon as possible.”

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

When looking at Astrid Court from ground level, Patrick can see that his living room windows are larger than those of other flats in Astrid Court. The exterior of Astrid Court does not therefore have a uniform appearance. Nevertheless, Patrick has refused to comply with the letter from the owners' corporation.

Question:

Answer the following question giving reasons for your answers:

Advise Patrick whether the owners' corporation can obtain an injunction forcing him to carry out the reinstatement work described above and on the likelihood of the court granting an injunction. If you need more information to advise Patrick, state what information you need.

(25 marks)

Question 2 (25 marks)

In 2017, Harry and Wendy bought a residential flat known as 6B, Flower Gardens (the “Flat”) in their joint names. The price was HK\$14 million. To fund their purchase, Harry and Wendy used HK\$2 million of their own savings and Wendy’s father contributed HK\$2 million. Harry and Wendy also borrowed HK\$10 million from the Goodwill Bank Ltd. (“Goodwill”). The loan from Goodwill is secured by a first legal mortgage (the “Mortgage”) of the Flat and is repayable by equal monthly instalments of principal and interest. The Mortgage is substantially in the same form as Form 5 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219. Harry and Wendy moved into the Flat on the day on which they completed their purchase and mortgage of the Flat.

In 2020, Wendy’s father became ill and he moved into the Flat with Harry and Wendy. In May 2021, Harry lost his job. In June 2021, Harry, Wendy and Wendy’s father moved out of the Flat into cheaper accommodation. Harry and Wendy let the Flat to Tom for a term of two years starting on 1 July 2021 under a written tenancy agreement signed by all parties. The tenancy agreement is not registered in the Land Registry. Harry and Wendy did not obtain the consent of Goodwill to the tenancy agreement. Tom discovered this in August 2021 and stopped paying rent. As a result, Harry and Wendy have been unable to pay Goodwill the instalments of principal and interest due in September and October 2021.

Goodwill wants to sell the Flat with vacant possession. An employee of Goodwill has said that he would like to buy the Flat and is willing to pay HK\$14 million.

(See over the page for a continuation of Question 2)

Question:

Answer the following question giving reasons for your answers:

Advise Goodwill on its rights to take possession and sell the Flat with vacant possession to one of its employees at the price stated free from any interests that Tom or Wendy's father might have. Include in your answer advice as to the duties owed by Goodwill to Harry and Wendy, and the remedies available to them if Goodwill breaches those duties.

(25 marks)

Question 3 (25 marks)

Yesterday, 25 October 2021, Pansy signed a binding Agreement for Sale and Purchase (the “Agreement”) with Simon to purchase his property known as Flat A, 15th Floor, Wonderful Garden, Causeway Bay, Hong Kong (the “Property”). The Agreement includes a term that a good title will be sold.

The list of title documents (the “List”) for the Property is as follows:

- (1) Government Lease of Inland Lot No. 123 dated 7 April 1934
- (2) Occupation Permit dated 9 December 2004 (Memorial No. UB8435088)
- (3) Deed of Mutual Covenant dated 7 January 2005 (Memorial No. UB8457286)
- (4) Assignment with Plan dated 10 February 2005 (Memorial No. UB8654210)
- (5) Assignment dated 8 September 2009 (Memorial No. 0909080735498)
- (6) Assignment dated 10 November 2015 (Memorial No. 1511107548319)
- (7) Mortgage dated 10 November 2015 (Memorial No. 1511107548320)
- (8) Deed of Release dated 8 October 2016 (Memorial No. 16100804367206)
- (9) Mortgage dated 8 October 2016 (Memorial No. 16100804367207)
- (10) Deed of Release dated 9 October 2019 (Memorial No. 19100998743571)

Questions:

Answer the following questions giving reasons for your answers:

3.1 Identify from the List the intermediate root of title in respect of the Property.

(4 marks)

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

3.2 Should Pansy accept title to the Property if Simon is unable to produce the originals of items (3), (6) and (7) of the List? Item (3) does not relate exclusively to the Property but items (6) and (7) do. For the purposes of answering this question, assume that item (8) was duly executed by the Mortgagee named therein and that it fully released and discharged the Property from item (7).

(14 marks)

3.3 Explain whether or not item (10) of the List has been duly executed if it was sealed with the common seal of Prosperity Bank Ltd. (the Mortgagee named in both items (9) and (10) of the List) and signed by Alan Wong and Barbara Chan whose capacities are not stated.

(7 marks)

Question 4 (25 marks)

On 1 September 2021, Peter Wong (“Peter”) inspected Flat 15A, Wealthy Court and the roof above Flat 15A (the “Property”). The roof is accessible by a spiral staircase leading from the living room of Flat 15A. Later that day, Peter signed a provisional agreement to buy the Property from Vera Lee (“Vera”) and he paid the initial deposit. A copy of the provisional agreement is attached.

On 5 September 2021, Vera’s solicitor sent Peter’s solicitor a draft formal agreement for sale and purchase and the title deeds. On the same day, Peter met his solicitor and described the Property to him. Peter’s solicitor advised Peter that the spiral staircase might have been constructed after the Occupation Permit for Wealthy Court (the “OP”) was issued and that its construction might not have been authorised by the Building Authority (the “BA”) under the Buildings Ordinance, Cap. 123 (the “BO”). The OP does not refer to the staircase. Peter’s solicitor also advised him that the BA’s consent to the staircase would be required if it was constructed after the issue of the OP because its construction involves cutting the roof slab. Peter’s solicitor has also read the Deed of Mutual Covenant for Wealthy Court (the “DMC”) which includes the following covenant:

“No owner will make any alterations to Wealthy Court which breach the terms of the Buildings Ordinance, Cap. 123”

On 7 September 2021, Peter’s solicitor informed Vera’s solicitor that he was concerned that the spiral staircase might be unauthorised under the BO and that as a result the staircase might also breach the DMC. Vera’s solicitor replied on 8 September 2021, saying that neither he nor Vera had any information about the spiral staircase, but that it was present when Vera bought the Property in 1970. On 9 September 2021, Peter’s solicitor informed Vera’s solicitor that Vera’s title is defective and that Peter would not sign the formal agreement or pay the further deposit.

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

On 10 September 2021, Vera's solicitor wrote to Peter's solicitor saying that the BA had inspected Wealthy Court (including the Property) in 1988 when the Government Lease was renewed and that he would be able to provide written evidence of this before completion. In the same letter, Vera's solicitor also said that since 1970, the BA had not complained about any unauthorised building works on the Property.

Despite this reply, Peter did not sign the formal agreement or pay the further deposit on 14 September 2021 and Peter has now demanded that Vera return his deposit.

Question:

Answer the following question giving reasons for your answers:

Advise Vera whether she can terminate the provisional agreement and forfeit Peter's initial deposit.

(25 marks)

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

Provisional Agreement for Sale and Purchase referred to in Question 4

THIS AGREEMENT is made on 1 September 2021

Between

(1) Vera Lee of House A, No. 47, Strawberry Road, Hong Kong (the “Vendor”);

and

(2) Peter Wong of Flat 6A, Red Gardens, 10 Prince Edward Road, Kowloon (the “Purchaser”)

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase Flat 15A and the roof above Flat 15A, Wealthy Court, 10 South Road, Hong Kong (the “Property”).
2. The purchase price is HK\$50 million which shall be paid by the Purchaser to the Vendor in the following manner:
 - (a) HK\$7 million on the signing of this agreement as initial deposit,
 - (b) HK\$3 million on the signing of a formal agreement for sale and purchase on or before 14 September 2021 as the further deposit,
 - (c) HK\$40 million upon completion on or before 30 March 2022 as the balance of the purchase price.

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

3. The Purchaser will attend at the offices of the Vendor's solicitor on or before 14 September 2021 to sign the formal agreement for sale and purchase.
4. Should the Purchaser fail to sign the formal agreement for sale and purchase in the manner herein contained, the initial deposit shall be forfeited to the Vendor who shall then be entitled at his absolute discretion to sell the Property to anyone he thinks fit and the Vendor shall not sue the Purchaser for any liabilities and/or damages caused by the Purchaser's default.
5. Should the Vendor after receiving the initial deposit paid hereunder fail to sign the formal agreement for sale and purchase in the manner herein contained, the Vendor shall immediately compensate the Purchaser with a sum equivalent to the amount of the initial deposit as liquidated damages together with the refund of the initial deposit and the Purchaser shall not take any further action to claim damages or specific performance.
6. The Purchaser will pay the stamp duty in connection with this transaction.

Signed *Vera Lee*

Signed *Peter Wong*

Question 5 (25 marks)

Yesterday, 25 October 2021, Rose and her sister Daisy signed an Agreement for Sale and Purchase (the “Agreement”) with Oliver (who is not related to them in any way by blood or marriage) to purchase his flat in Quarry Bay, Hong Kong (the “Flat”) for HK\$6,380,000. The Agreement is the only agreement signed by Rose, Daisy and Oliver in connection with this transaction.

Rose is a Hong Kong permanent resident but Daisy is not. According to the government grant, the deed of mutual covenant and the occupation permit relating to the Flat, its user is “domestic”.

When Oliver first bought the Flat, he signed an Agreement for Sale and Purchase on 1 December 2018 (the “Acquisition Agreement”). The Acquisition Agreement was the only agreement signed by Oliver in connection with his purchase. Pursuant to the Acquisition Agreement, Oliver executed an Assignment on 7 January 2019. In the Acquisition Agreement and the Assignment dated 7 January 2019, Oliver was the sole purchaser named therein.

The Agreement includes terms that Oliver is selling a good title and that completion will take place on 11 January 2022.

Questions:

Answer the following questions giving reasons for your answers:

5.1 Will the Agreement attract ad valorem and/or other stamp duties? If so, how much will such stamp duties be? If you need more information to answer the question, state what information you need and why you need it.

(15 marks)

(See over the page for a continuation of Question 5)

5.2 The building of which the Flat forms part is over 30 years old. Notices (the “Notices”) have just been issued under sections 30B and 30C of the Buildings Ordinance, Cap. 123 requiring mandatory inspection of the said building and window inspection of the Flat. **Explain the impact, if any, the Notices may have on the title to the Flat.**

(10 marks)

END OF TEST PAPER