

# **2023 OVERSEAS LAWYERS QUALIFICATION EXAMINATION**

## **HEAD I: CONVEYANCING**

**Wednesday, 25 October 2023**





# 2023 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

In 1994, Richly Ltd. developed a block of 40 residential flats on Inland Lot No. 456. The block is called “Richly Gardens”. Richly Ltd. paired one equal undivided share of and in Inland Lot No. 456 and of and in Richly Gardens with each flat and sold all 40 flats. Alfred bought one equal undivided share of and in Inland Lot No. 456 together with the right to the exclusive use of Flat 1.

Richly Ltd. and Alfred then entered into a Deed of Mutual Covenant (the “DMC”) which includes the following covenants by them:

1. *that they will pay monthly management charges in respect of their exclusive use areas;*
2. *that they will contribute proportionately according to their exclusive use areas to the cost of maintaining, repairing and renovating the common parts of Richly Gardens; and*
3. *that they will employ Richly Ltd. to carry out the work in the event that they want to carry out any renovation or repairs to the common parts of Richly Gardens.*

The DMC was registered in the Land Registry. Richly Gardens is managed by Richly Management Ltd. The owners have not incorporated.

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

Betty bought from Richly Ltd. one equal undivided 40th share of and in Inland Lot No. 456 and of and in Richly Gardens together with the right to the exclusive use of Flat 2 (“Flat 2”) “subject to and with the benefit of the DMC”. In 2010, Betty sold Flat 2 to Mary also “subject to and with the benefit of the DMC”. Mary financed her purchase by mortgaging Flat 2 to M Bank Ltd. to secure a loan of HK\$10 million (the “Mortgage”). The Mortgage is in the form set out in Form 5 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219. The Mortgage is dated 7 June 2010. M Bank Ltd. registered the Mortgage in the Land Registry within two weeks of its date. The loan is repayable by equal monthly instalments of principal and interest.

With the prior written consent of M Bank Ltd., Mary leased Flat 2 to Tom for a term of 2 years starting on 3 October 2022 at a calendar monthly rent of HK\$60,000 inclusive of management charges (Mary pays the management charges). Tom paid Mary a tenancy deposit of HK\$120,000 and Mary agreed to repay this deposit to Tom at the end of the Lease term subject to deductions for any rent unpaid by Tom.

Since June 2023, Mary has not paid any of the monthly instalments of principal and interest due under the Mortgage. Richly Management Ltd. has informed M Bank Ltd. that Mary has not paid the monthly management charges due under the DMC since January 2023 and that the owners have resolved to renovate the entrance lobby to Richly Gardens. The entrance lobby is a common part.

M Bank Ltd. requires advice as to whether it can evict Tom or collect the rent that Tom pays and whether it is liable to repay the rental deposit to Tom. M Bank Ltd. is also concerned about its liability to pay management charges including the arrears and the liability of the owners to employ Richly Ltd. to renovate the entrance lobby. M Bank Ltd. does not dispute that the entrance lobby is a common part or that renovation is necessary.

*(See the next page for a continuation of Question 1)*

## **Question:**

**Answer the following questions giving reasons for your answers:**

**Advise M Bank Ltd.:**

**1.1 whether it can evict Tom from Flat 2 or collect rent from Tom;**  
**(8 marks)**

**1.2 whether it is liable to repay the tenancy deposit to Tom if M Bank Ltd. evicts Tom or at the end of the Lease term;**  
**(4 marks)**

**1.3 whether:**

- it is liable to pay management charges in respect of Flat 2 including the arrears (If you need more information to answer this question, state what information you need), and**
- the owners are obliged to employ Richly Ltd. to carry out the renovations to the entrance lobby.**

**(13 marks)**

## Question 2 (25 marks)

On 24 October 2023, Sunny Wong (“Sunny”) and his wife, Moon Wong (“Moon”), signed a binding written Provisional Agreement for Sale and Purchase (the “Provisional Agreement”) to purchase as joint tenants a flat in Festival Building in Wanchai, Hong Kong (the “Property”) from Oliver Rock (“Oliver”), who is not related to them in any way, at the price of HK\$12 million. Sunny and Moon own a ground floor shop in Mongkok but do not own any other immovable property in Hong Kong. Sunny is a Hong Kong permanent resident but Moon is not. The source of funds for their purchase is the money they have jointly inherited from Sunny’s late father’s estate.

When Oliver bought the Property, he signed a Provisional Agreement for Sale and Purchase dated 17 October 2022 and a Formal Agreement for Sale and Purchase dated 31 October 2022. The permitted user of the land upon which Festival Building stands is “non-industrial” according to the government grant. Under the relevant deed of mutual covenant and occupation permit, the permitted user of the Property is “domestic”.

The Provisional Agreement includes the following terms:

1. *The Vendor will sell a good title to the Purchaser.*
2. *Completion will take place on or before 1 December 2023.*
3. *The purchase price of the Property is HK\$12,000,000.00 which shall be paid by the Purchaser to the Vendor in the manner as follows:*
  - (a) *an initial deposit in the sum of HK\$600,000.00 shall be paid upon the signing of this Agreement;*

*(See the next page for a continuation of Question 2)*

- (b) *a further deposit in the sum of HK\$600,000.00 shall be paid on or before 7 November 2023; and*
- (c) *the balance of purchase price in the sum of HK\$10,800,000.00 shall be paid upon completion on or before 1 December 2023.*
4. *The parties will sign a formal agreement for sale and purchase on or before 7 November 2023.*
5. *Should the Vendor fail to complete the sale of the Property in accordance with the terms of this Agreement, all monies and deposits paid by the Purchaser pursuant to this Agreement shall be returned to the Purchaser.*
6. *Each party will pay their own legal costs. Registration fees and all forms of stamp duty (except any special stamp duty that may be payable in respect of this transaction) will be paid by the Purchaser.*
7. *The Vendor will pay any special stamp duty that may be payable in respect of this transaction.*

## **Questions:**

**Answer the following questions giving reasons for your answers:**

- 2.1 Will the Formal Agreement for Sale and Purchase, if signed on or before 7 November 2023, attract ad valorem and/or other stamp duties? If so, how much will the duties be, who is liable to pay them and when must they be paid?**

**(15 marks)**

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

**2.2** Assume for the purposes of this question only that today is 30 November 2023 and that the parties to the Provisional Agreement signed the Formal Agreement for Sale and Purchase on 7 November 2023. The Formal Agreement for Sale and Purchase contains the same Clause 1 as in the Provisional Agreement. Assume also that Sunny and Moon have today discovered that the Incorporated Owners of Festival Building have been involved in several pieces of litigation. **Are Sunny and Moon entitled to rescind the Formal Agreement for Sale and Purchase and recover the initial and further deposits? If you need more information to answer this question, state what information you need and why you need it.**

**(10 marks)**



### **Question 3 (25 marks)**

On 20 October 2023, Ben Wong (“Ben”) entered into a binding Agreement for Sale and Purchase (the “Agreement”) with Sandra Lee (“Sandra”) to purchase her flat in Causeway Bay, Hong Kong (the “Flat”). The Agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219 and in addition provides expressly for a good title to be sold.

The list below (the “List”) sets out in chronological order the title deeds which affect the Flat and which have been registered at the Land Registry. All of them, except for items (1), (2) and (3), relate exclusively to the Flat.

- (1) Government Lease dated 2 April 1936
- (2) Occupation Permit dated 9 May 2000
- (3) Deed of Mutual Covenant dated 19 June 2000
- (4) Assignment with Plan dated 16 August 2000 in favour of John Chan
- (5) Mortgage dated 16 August 2000 in favour of Tiger Bank Limited
- (6) Release dated 23 May 2005 of the abovementioned Mortgage in favour of Tiger Bank Limited, which was executed by Randy So as attorney of Tiger Bank Limited
- (7) Assignment dated 14 January 2010 in favour of Big Apple Limited
- (8) Assignment dated 29 June 2020 in favour of Sandra Lee, which was sealed with the common seal of Big Apple Limited and signed by David Watson who is described as “Director”

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

## **Questions:**

**Answer the following questions giving reasons for your answers:**

**3.1 Is Sandra obliged to provide all or any of the following:**

- **the original of the Assignment dated 14 January 2010;**
- **the power of attorney in favour of Randy So; and**
- **the sealing provisions of Big Apple Limited?**

**If Sandra is obliged to provide any of the above but cannot do so, what else can she do to fulfil her obligations under the Agreement?**

**(18 marks)**

**3.2 Assume that Terry Tai (“Terry”) entered into a written tenancy agreement (the “Tenancy Agreement”) with Sandra on 1 September 2022 to rent the Flat at HK\$28,000 per month for a term of three years starting on 1 September 2022 and that the Tenancy Agreement contains an option (the “Option”) for Terry to renew his tenancy for another two years upon the expiry of the existing term. How, if at all, will the Agreement affect Terry’s rights under the Tenancy Agreement which contains the Option?**

**(7 marks)**

#### **Question 4 (25 marks)**

On 25 September 2023, Vince Vong (“Vince”) as vendor and Peter Poon (“Peter”) as purchaser signed a provisional agreement for sale and purchase (the “PA”) in respect of Flat 3B, Green Gardens, Hong Kong (the “Property”), a residential flat built in 1998. A copy of the PA is attached. Peter did not register this in the Land Registry.

Vince owns the Property in his sole name and does not have a mortgage.

On 27 September 2023, Vince’s solicitor sent Peter’s solicitor a draft formal agreement for sale and purchase and the title deeds to the Property. The draft formal agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219 except that Clause 4 provides that completion will take place by way of solicitors’ undertakings.

Peter did not accept Clause 4 but, despite negotiations between the parties and their solicitors, Vince refused to change it. As a result, Peter did not sign the formal agreement or pay the further deposit by 5 October 2023. On 6 October 2023, Vince’s solicitor wrote to Peter’s solicitor saying that Peter had repudiated the PA. Peter’s solicitor replied stating that Vince had repudiated the PA and that Peter reserved all his rights under the PA.

However, Peter wanted to complete his purchase. On 20 October 2023, Peter’s solicitor informed Vince’s solicitor that Peter would complete the PA on the completion date. On 24 October 2023, Peter’s solicitor sent Vince’s solicitor a cashier order for HK\$9,900,000 (representing the balance of purchase price and the further deposit) made payable to Vince together with an Assignment of the Property in favour of Peter for execution by Vince. Vince refused to complete because Peter had not signed the formal

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

agreement or paid the further deposit by 5 October 2023 and also because the cashier order arrived at 5.15 p.m. instead of during normal working hours which, Vince's solicitor alleges, ended at 5.00 p.m. Vince's solicitor therefore returned the cashier order and the Assignment to Peter's solicitor.

On 18 October 2023, Big Credit Ltd. obtained a charging order nisi against Vince which was registered against the Property on 19 October 2023.

**Question:**

**Answer the following question giving reasons for your answer:**

**Can Peter obtain specific performance of the PA?**

**(25 marks)**

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

*Provisional Agreement for Sale and Purchase*

*THIS AGREEMENT is made on 25 September 2023*

*Between the Vendor - Vince Vong of Flat 3B, Green Gardens, 16 Green Road,  
Hong Kong and  
the Purchaser - Peter Poon of Flat 12B, Crimson Court, 12 Crimson  
Road, Kowloon*

*The Vendor and the Purchaser agree as follows:*

- 1. The Vendor sells and the Purchaser purchases 3B, Green Gardens, 16 Green Road, Hong Kong (the 'Property').*
- 2. The purchase price is HK\$10,000,000.00 which shall be paid by the Purchaser in the following manner:*
  - (a) HK\$ 100,000.00 to the Vendor on the signing of this agreement as initial deposit,*
  - (b) HK\$ 900,000.00 as further deposit to the Vendor on 5 October 2023 this date being on or before the signing of a formal agreement for sale and purchase,*
  - (c) HK\$ 9,000,000.00 being the balance of purchase price on completion.*
- 3. The parties will on or before 5 October 2023 sign a formal agreement for sale and purchase.*
- 4. Completion will take place on 24 October 2023.*

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

5. *Should the Vendor after receiving the initial deposit paid hereunder fail to complete the sale 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 to enforce specific performance.*
6. *The Purchaser will pay the stamp duty in connection with this transaction.*

Signed *Vince Vong*

Signed Peter Poon

### **Question 5 (25 marks)**

On 31 July 2023, Pansy inspected Flat 6A, Pine Court, Hong Kong (the “Property”). The Property is residential with a floor area of 500 square feet. It was built in 1983. Vicki, the owner of the Property, was present. Vicki informed Pansy that the previous owner had moved the entrance door to the Property into the corridor and in so doing had incorporated approximately 10 square feet of the corridor into the Property. No walls were demolished during this alteration. Vicki pointed out that other owners of flats in Pine Court had also moved their entrance doors and incorporated parts of the corridors into their properties. Vicki said that this alteration makes the Property more spacious.

On 4 August 2023, Vicki as vendor and Pansy as purchaser entered into a formal agreement for sale and purchase of the Property (the “Agreement”) for a consideration of HK\$12 million. Pansy paid Vicki a deposit of HK\$1,200,000. The Agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219 and also includes a term that Vicki will give good title to the Property. Completion was due to take place on 11 September 2023.

On 8 August 2023, Vicki’s solicitor sent the title deeds to Pansy’s solicitor. These include the Deed of Mutual Covenant for Pine Court (the “DMC”) and an assignment of the Property with a floor plan showing the original position of the entrance door to the Property. The DMC provides that corridors are common parts of Pine Court. Pansy’s solicitor raised requisitions on 10 August 2023 and Vicki’s solicitor answered them on 16 August 2023.

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

In early September 2023, Pansy informed her solicitor that she did not want to complete her purchase of the Property. Pansy's solicitor therefore wrote to Vicki's solicitor on 7 September 2023 with three further requisitions asking for evidence that:

1. the moving of the entrance door to the Property does not breach the Deed of Mutual Covenant for Pine Court which restricts alterations made to the common parts without the consent of the building manager;
2. the moving of the entrance door to the Property does not breach section 34I of the Building Management Ordinance, Cap 344; and
3. the moving of the entrance door to the Property does not breach the Buildings Ordinance, Cap.123.

Vicki's solicitor refused to answer the requisitions raised on 7 September 2023 on the grounds that they were raised out of time and that Pansy knew that the entrance door had been moved into the corridor before she entered into the Agreement. Pansy did not complete her purchase on 11 September 2023.

There is an owners' corporation for Pine Court.

**Question:**

**Answer the following question giving reasons for your answer:**

**Advise Pansy whether she can recover the deposit she paid under the Agreement.**

**(25 marks)**

**END OF TEST PAPER**