

**THE LAW SOCIETY OF HONG KONG**  
**OVERSEAS LAWYERS QUALIFICATION EXAMINATION**  
**2026 SUPPLEMENTARY INFORMATION PACKAGE**

**HEAD I: CONVEYANCING**

**Contents**

- 1. Standards, Syllabus and Reading List**
- 2. Examiners' Comments on the 2023, 2024 and 2025 Examinations**
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**Important: The test paper for Head I Conveyancing:**

- 1. is open book. Candidates may bring in and refer to any book, document or other written material**
- 2. has a duration of 3½ hours**
- 3. has no specific reading time allocated**
- 4. contains FIVE questions. Candidates should answer any FOUR questions only.**



# **1. Standards, Syllabus and Materials**



# **Overseas Lawyers Qualification Examination**

## **Head I: CONVEYANCING**

### **Standards, Syllabus and Reading List**

#### **STANDARDS**

Candidates will be expected:-

- (a) to be familiar with the basic concepts and rules of land law, and conveyancing law and practice;
- (b) to be familiar with the practice and procedures of conveyancing in Hong Kong; and
- (c) to be able to respond to problems by identifying the issues, applying relevant law, giving suitable practical advice and by recommending or taking such action as is appropriate in the circumstances including, where appropriate, drafting or amending conveyancing documents.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

#### **SYLLABUS AND DIRECTED READING**

**The textbooks for Conveyancing are:**

Judith Sihombing, Hong Kong Conveyancing Law (9<sup>th</sup> ed) (LexisNexis 2022) (HK Conveyancing)

Butterworths Hong Kong Conveyancing and Property Law Handbook (6<sup>th</sup> Edition) (LexisNexis) (Handbook). Reference should be made to relevant sections and schedules of the annotated Conveyancing and Property Ordinance (Cap 219) of the Handbook

Alice Lee and S.H. Goo, Land Law in Hong Kong (5<sup>th</sup> Practitioner Edition) (LexisNexis 2022) (Land Law in Hong Kong)

Reference should also be made to relevant articles in Hong Kong Lawyer, Law Society Circulars, and relevant ordinances and cases.

## 1. Legal Framework of Conveyancing in Hong Kong

- (a) The system of landholding in Hong Kong
- (b) The system of conveyancing, including registration under the Land Registration Ordinance
- (c) The meaning of “land”
  - The distinction between fixtures and chattels
- (d) The demarcation of land
  - Sectioning and subdivision
- (e) Government Leases and Conditions
  - **Government leases**
    - Grantee’s interest under a Government lease
    - Standard terms in a Government lease including restrictions on alienation
    - Premium and Government rent
    - User restrictions
    - Obligations of the Government
    - Variation of Government leases
    - Renewal and extension of Government leases
  - **Conditions**
    - The different types of Conditions
    - Grantee’s interest under Conditions
    - Standard Conditions including restrictions on alienation and obligations to create a Deed of Mutual Covenant
    - Modification of the Conditions
    - Conversion of equitable interest into legal estate
    - The certificate of compliance
  - **Termination of Government Lease/Conditions**
    - Re-entry by Government
      - Relief against re-entry
    - Resumption by Government (excluding assessment of compensation)

### Essential Reading

HK Conveyancing

Chapter 1

Paragraphs [1-1] - [1- 22],  
[1-23] - [1-27], [1-42] - [1-44],  
[1-50] - [1-54], [1-71] - [1-94],  
[1-221] - [1-224]

HK Conveyancing	Chapter 2	Paragraphs [2-1] - [2-19], [2-51] - [2-77], [2-84], [2-95] - [2-104], [2-116] - [2-144]
	Chapter 8	Paragraphs [8-1] - [8-19], [8-370] - [8-394]
Land Law in Hong Kong	Chapter 1	Paragraphs [1-1] - [1-42], [1-62] - [1-70]
	Chapter 9	Paragraphs [9-39], [9-66] - [9-75]
	Chapter 10	Paragraphs [10-32] - [10-37]

## 2. Deeds of Mutual Covenant

### (a) The system of multi-unit development ownership in Hong Kong

- The nature of the interests of unit owners; tenants in common holding undivided shares with right of exclusive occupation of a particular unit
- The need for a Deed of Mutual Covenant and the steps taken to create one

### (b) Guidelines for Deeds of Mutual Covenant

- The binding nature of Deeds of Mutual Covenant on signatories and non-signatories
- Common terms in Deeds of Mutual Covenant including the allocation (or pairing) of undivided shares, restrictions on re-allocation and common parts

### (c) Enforceability of covenants in the Deed of Mutual Covenant against successors in title to owners and against tenants and occupiers

### (d) Enforcement of the Deed of Mutual Covenant

### (e) The Building Management Ordinance Cap. 344

- Section 2 and Schedule 1 - the definition of common parts, ss14, 16, 17, 18, 19, 23, 24, 25, 34H, 34I and 40

### Essential Reading

HK Conveyancing	Chapter 3
Land Law in Hong Kong	Chapters 8 and 16

### 3. Title

#### (a) The Nature of Title to be made or given

- **Distinction between the duty to show and the duty to give a good title**
  - What constitutes a good title
- **Duty to show and give a good title**
  - Contract terms relating to the giving and showing of title
  - Variation of duty by express term in sale and purchase agreement
  - Whether there is a need to produce the originals of deeds dealing solely with the property sold
- **Factors that will vitiate a good title including**
  - Title not in vendor
  - Registered encumbrances
  - Unregistered encumbrances
  - Latent and patent encumbrances
    1. Occupiers rights
    2. Nominations
    3. Mortgages and Charges
    4. Notices and Orders from Government or Competent Authority
  - Defeasible titles including
    1. Breach of Government Lease/Conditions
    2. Substantial enforcement action by Building Authority
    3. Breach of Deed of Mutual Covenant
    4. Under the Bankruptcy Ordinance
  - Matters of mere conveyance
  - Pre-intermediate root defects

#### (b) Proof of title

- The statutory provisions
  1. The ultimate root - Government Lease/Conditions
  2. The intermediate root
  3. The chain of title (Candidates should be able to read a title diagram)
- Use of recitals in proving title
- Missing and illegible title deeds
- Proof of due execution of documents
  1. Presumptions in aid of proof
  2. Execution of deeds by individuals
  3. Execution of deeds by corporations
  4. Execution of deeds under a power of attorney
  5. Proof of non-revocation of power of attorney
  6. Execution of documents abroad

- Checking signatures for consistency
- Discrepancies in property description
- Time considerations in showing and giving title
- Requisitions on title
  1. Time within which requisitions may be raised
  2. Provision giving vendor the right to annul sale where he is unwilling or unable to answer the requisition
- Acceptance of title
- The vendor and purchaser summons procedure
- Retention of title deeds pending completion

Essential Reading

HK Conveyancing	Chapter 3	Paragraphs [3-322] - [3-349]
	Chapter 5	Paragraphs [5-193] - [5-204], [5-218] - [5-232], [5-247] - [5-273]
	Chapter 8	Paragraphs [8-1] - [8-37], [8-48] - [8-394]
	Chapter 9	Paragraphs [9-1] - [9-196], [9-216] - [9-219]
	Chapter 11	Paragraphs [11-237] - [11-243]

**4. The Contract of Sale**

**(a) Form of the agreement**

- Note or memorandum
- Part performance
- Preliminary, Provisional and Formal Agreements
- Form 2 of the Third Schedule to the Conveyancing and Property Ordinance

**(b) Preliminary agreements**

- Does the preliminary agreement constitute a binding agreement?
- Common terms including implied terms

**(c) Conditional agreements**

- Effect of 'Subject to contract' heading

**(d) The formal sale and purchase agreement**

- The relationship between the preliminary or provisional and formal agreement
- Common conditions in the formal agreement
  1. Outgoings
  2. Insurance
  3. Condition of property
  4. Title
  5. Documents of title
  6. Payment of deposit and purchase price
  7. Easements and appurtenant rights
  8. Requisitions
  9. Vendor's warranties
  10. Failure by purchaser
  11. Failure by vendor
  12. Completion
  13. Time of essence
  14. Fixtures, fittings and chattels
  15. Entry into possession prior to completion
  16. Conditions in Part A of the Second Schedule to the Conveyancing and Property Ordinance
  17. Sales with vacant possession and sales subject to tenancies, dealing with the deposit paid by the tenant to the landlord
  18. Exclusion of liability for misdescription and misrepresentation.

**(e) Signing of contract**

**(f) Breach of contract**

- Remedies for breach
  1. Damages
  2. Rescission
  3. Specific performance
  4. Liquidated damages clauses and penalty clauses
  5. Forfeiture of deposit and relief against forfeiture

**(g) Stamp Duty payable under the Stamp Duty Ordinance, Cap. 117 (SDO) in connection with immovable property**

- Whether Ad Valorem Stamp Duty is payable on an agreement for sale and purchase, nomination or assignment and the rates of duty payable
- Who is liable for the stamp duty
- The time limits for stamping
- Certificates of value
- The right to obtain a refund of stamp duty paid if an agreement for sale and purchase is cancelled, annulled, rescinded or not performed.
- The rates of Buyer's Stamp Duty and Special Stamp Duty

### Essential Reading

HK Conveyancing	For (a) (b) (c) (d) & (e)	Chapter 4	Paragraphs [4-1] - [4-206]
		Chapter 6	Paragraphs [6-19] - [6-135], [6-161] - [6-236]
HK Conveyancing	For (f)	Chapter 11	Paragraphs [11-1] - [11-42], [11-57] - [11-203], [11-220] - [11-395]
HK Conveyancing	For (g)	Chapter 10	Paragraphs [10-7] - [10-30] Note that this reading does not include subsequent amendments to the Stamp Duty Ordinance, Cap. 117.
Land Law in Hong Kong		Chapter 2	

## **5. The Assignment**

### **(a) The form of the assignment**

### **(b) Contents of the assignment**

- Date
- Parties
- Recitals
- Consideration and receipt clause
- Covenants for title
- Words of grant
- Parcels
- Easements
- Exceptions and Reservations
- Habendum
- Apportionment of Government rent
- Covenants
- Stamp duty and certificates of value

### **(c) Form 1 of the Third Schedule to the Conveyancing and Property Ordinance**

### Essential Reading

HK Conveyancing	Chapter 6	Paragraphs [6-237] - [6-321], [6-356] - [6-364]
Land Law in Hong Kong	Chapter 2	Paragraphs [2-52] - [2-53]

## 6. Mortgages and Charges

### (a) Nature of mortgages and charges

### (b) Form of the mortgage or charge

### (c) Types of mortgage

### (d) Contents of a legal mortgage or charge

- Covenants of mortgagor
- Events of Default under the Fourth Schedule to the Conveyancing and Property Ordinance
- Forms 4 and 5 of the Third Schedule to the Conveyancing and Property Ordinance

### (e) Registration and priority

### (f) Remedies of legal mortgagee

- Sale
- Foreclosure
- Possession
- Appointment of a receiver
- Action on the covenant to repay

### Essential Reading

HK Conveyancing	Chapter 7	Paragraphs [7-1] - [7-14], [7-18] - [7-45], [7-60] - [7-65], [7-90] - [7-101], [7-129] - [7-139], [7-303] - [7-315], [7-373] - [7-386], [7-393] - [7-476], [7-488] - [7-579]
Land Law in Hong Kong	Chapter 13	Paragraphs [13-1] - [13-25], [13-70] - [13-156]

## 7. Completion

### (a) Methods of completion

- Completion in person (Formal completion)
- Completion by post
- Completion by undertaking  
- The Law Society's series of undertakings

### (b) The Time for completion

### (c) Registration and Priority

- Which documents are registrable?
- Time within which registration must be effected
- The effect of registration and failure to register
- The manner of registration

Essential Reading

HK Conveyancing	Chapter 10	Paragraphs [10-1] - [10-30], [10-134] - [10-240]
	Chapter 12	
Land Law in Hong Kong	Chapter 7	Paragraphs [7-1] - [7-149]

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## **2. Examiners' Comments on the 2023, 2024 and 2025 Examinations**



## **Examiners' Comments on the 2023 Examination**

### **Head I: Conveyancing**

Examiners advise candidates to note the following:

- No credit is given for copying out a question without any attempt at answering,
- Candidates are given credit for relevant and correct points made in an attempt at answering a question, even if the answer is short or incomplete,
- Candidates should identify all issues raised by the facts of a question and attempt to deal with all issues – for example, candidates have a tendency not to deal fully with priority issues embedded in questions,
- Candidates should apply the law to the facts of each question – see below for examples, and
- Candidates should avoid contradicting their conclusions.

Candidates must answer 4 out of 5 questions. The following is a guide to the issues raised by the 2023 questions. It does not include complete model answers. Candidates should, where necessary, cite legislation and cases.

#### **Question 1.1**

Section 51(1) of the Conveyancing and Property Ordinance, Cap. 219 (“CPO”) implies the powers contained in the 4<sup>th</sup> Schedule to the CPO into a legal mortgage. Paragraph 2 of the 4<sup>th</sup> Schedule to the CPO gives M Bank Ltd as mortgagee the power to take possession on the occurrence of an event of default. Mary, the mortgagor, has failed to pay interest within one month of becoming due. This is an event of default. The facts also state that Mary has failed to pay management charges. This is a breach of a covenant in the mortgage which is also an event of default. The loan is repayable on demand. If M Bank Ltd makes a demand and Mary fails to repay the loan in accordance with the demand, this would also be a breach of covenant which is an event of default. Candidates should apply the CPO events of default to the facts rather than stating all events of default contained in the 4<sup>th</sup> Schedule to the CPO.

M Bank Ltd takes possession either by obtaining a court order for physical possession or by giving notice to the tenant to pay rent to it. In this case M Bank Ltd has consented to the tenancy agreement which was entered into by Mary after the mortgage. The mortgage was registered within one month after its date and takes priority from the date of creation which is before the date on which the tenancy was created. M Bank Ltd cannot therefore evict the tenant. M Bank Ltd must therefore take possession by collecting rent from the tenant. M Bank Ltd must give notice to the tenant to pay rent to it. A number of candidates did not fully explain these points.

## **Question 1.2**

The tenancy agreement contains a covenant by Mary as landlord to repay the deposit at the end of the term. The issue is whether the burden of this covenant has passed to M Bank Ltd as mortgagee. This covenant to repay has been found to be a personal covenant the burden of which does not pass. Candidates should explain why the covenant is personal.

Candidates might have considered whether, as a condition of consenting to the letting, M Bank Ltd took an assignment of the rent and tenancy deposit in which case M Bank Ltd would be liable to repay the tenancy deposit.

## **Question 1.3**

The issue is whether the burden of the covenants has passed to M Bank Ltd as mortgagee. Mary, the mortgagor, is a successor in title to one of the parties to the Deed of Mutual Covenant (“DMC”). M Bank Ltd as mortgagee derives its title from Mary. Candidates should apply sections 41(3), 41(2) and 40 of the CPO to the three covenants. Covenant 1 has been found to relate to land of the covenantor. Covenant 2 also relates to land. But covenant 3 (to employ Richly Ltd to carry out repairs or renovations) is likely to be a personal covenant. Candidates should explain the difference between covenants relating to land and those that are purely personal.

Richly Ltd is in any event unlikely to be able to enforce covenant 3 because it has not retained any undivided shares in the land.

The burden of the covenant to pay management charges potentially passes to M Bank Ltd whether or not it is in possession. Therefore M Bank Ltd might be liable for the arrears. However, the DMC might show an intention that the burden does not pass by stating that only mortgagees in possession are liable for management charges. Candidates might also refer to case law to answer this question. See *Discovery Bay Services Management Ltd v Buxhaum* [1995] HKDCLR 7 and *Wise Wave Investments Ltd v TKF Services Ltd* [2007] 4 HKLRD 762.

Question 1 was the least popular question.

## **Question 2.1**

Candidates should consider Ad Valorem Duty (“AVD”), Special Stamp Duty (“SSD”) and Buyers Stamp Duty (“BSD”).

AVD – the permitted user of the property is residential. Under Part 1 of Scale 1 of Head 1(1A) of the First Schedule to the Stamp Duty Ordinance, Cap. 117 (“SDO”) AVD at the rate of 15% of the consideration or value of the property is payable unless exemptions apply. However, Scale 2 would apply here provided this is a single residential property and Sunny and Moon are acting on their own behalf because the facts state that they do not own any other residential property, that Sunny is a Hong Kong permanent resident and that he and Moon are a married couple. This makes them closely related within the meaning of the SDO. Under Scale 2 the rate of duty is 3.75%. The agreement must contain a certificate of value.

SSD – candidates should state the relevant dates of acquisition and disposal. The rate of duty is 10% of the consideration or value whichever is higher. There are no exemptions.

BSD - this is payable at the rate of 15% of the consideration or value whichever is higher unless exemptions apply. However, in this case Sunny is a Hong Kong permanent resident and Moon is closely related within the meaning of the SDO and no BSD is payable provided that each is acting on his or her own behalf.

Under the SDO both parties are liable for AVD and SSD and the purchaser is liable for BSD. The agreement, however, makes the purchaser alone liable for AVD and BSD and the vendor liable for SSD.

Provided the formal agreement is signed within 14 days after the provisional agreement, AVD, SSD and BSD are payable on the formal agreement within 30 days after its date and there is no obligation to stamp the provisional agreement.

Candidates performed well on this question. SSD and BSD are no longer in the syllabus, but AVD remains in the syllabus. A number of candidates omitted some information regarding AVD - for example,

- Duty is payable on the consideration or value whichever is higher,
- A certificate of value must be included in the document if the rate of AVD is lower than the maximum rate,
- All parties to the document are liable under the SDO, but the agreement often states that the purchaser alone will pay AVD and
- The time for stamping is within 30 days **after** the date of the document.

## Question 2.2

A number of candidates did not answer this part of question 2 or gave very brief answers. Candidates should be able to recognise that ongoing litigation against the owners' corporation ("IO") is a title problem and that the vendor has an obligation to give good title. Candidates might then state what amounts to a good title and realise that the litigation against the IO might result in the purchaser being required to contribute to the cost after completion. Thus the vendor is unable to give an unencumbered title.

A fuller answer to this question would explain that under the Building Management Ordinance, Cap. 344 the IO has power to establish a contingency fund to cover expenditure of an urgent or unexpected nature. The IO also has power to determine the contributions to the fund to be made by each owner. The Deed of Mutual Covenant ("DMC") might provide that the expression "owner" means any owner for the time being which would mean that the purchaser would be liable to contribute to the fund to cover the cost of litigation. The DMC might also provide that a charge may be registered against the undivided shares of any owner who fails to contribute.

The liability to contribute to the fund might be of such magnitude that it exceeds the contemplation of the purchaser in which case the vendor would be unable to give good title. This principle has been extended to cover a situation where there is ongoing litigation against the IO involving much smaller sums when the amount of the liability is unknown.

If the amount of the liability and the contribution due from the owners is known, the purchaser might be obliged to accept the vendor's title if the vendor agrees to give a fortified undertaking to pay the contribution due.

### **Question 3.1**

**The Assignment dated 14 January 2010** is within the chain of title period. The vendor can show or prove title with a certified true copy, but since it relates exclusively to the property sold, the vendor must be able to give the purchaser the original on completion.

If the vendor is not in possession of the original, he must give a satisfactory explanation as to the reason – for example, a statutory declaration of loss of title deeds - so that the purchaser is not fixed with constructive notice of a prior interest. The explanation is necessary only if there is a realistic possibility of the successful assertion of a prior interest. The question in every case is whether there is a real risk of an encumbrance affecting the property.

The Release dated 23 May 2005 is more than 15 years old at the date of the agreement. The presumptions in section 13(4A) of the CPO apply. The vendor does not need to produce **the Power of Attorney**.

The vendor must show that the Assignment dated 29 June 2020 has been properly executed by Big Apple Ltd. A deed is required to pass the legal estate. The seal of Big Apple Ltd has been affixed. The vendor must be able to show that it has been affixed in accordance with the company's sealing requirements. The presumptions in sections 20(1), s 23(1) and (2) of the CPO do not apply. Candidates should state the reasons why. The vendor must therefore produce the **sealing provisions of Big Apple Ltd** so that the purchaser can check that the sealing provisions have been complied with and in particular whether the presumption in s 23 of the CPO applies.

### **Question 3.2**

If the rent payable under the tenancy agreement is a market rent, the tenancy agreement, does not need to be registered in order to bind the purchaser. The option to renew, however, is an interest which is separate from the tenancy and which must be registered, failing which it will be void against a subsequent purchaser for value even if the purchaser has notice.

Candidates might mention that under the agreement for sale and purchase, the vendor must give vacant possession on completion and that the vendor cannot do so unless he agrees a surrender with the tenant. The tenant is not obliged to agree and surrender.

#### Question 4

The provisional agreement (“PA”) is binding because it shows an intention to be bound. It does not matter that it has not been registered because registration affects priority and not validity.

The purchaser will not be able to obtain specific performance of the PA if it has been validly terminated or if the purchaser is in breach.

The PA requires the purchaser to sign a formal agreement (“FA”). However, the purchaser has no obligation to sign if the FA contains a new term which is not contained or implied into the PA. In this case the vendor tries to insert into the FA a term requiring the purchaser to complete by way of undertaking. The purchaser is not obliged to accept this term because the PA does not provide for completion by undertaking and the purchaser is entitled to require formal completion which means the simultaneous exchange of the price for the assignment. The purchaser’s failure to sign the FA is not therefore a breach by the purchaser.

The vendor’s insistence on a new term might amount to repudiation. If the purchaser has accepted the vendor’s repudiation, the PA would be terminated. Acceptance must show unequivocally that the purchaser regards the PA as being terminated. The facts in this case do not show this.

The purchaser has failed to pay the further deposit. The question is whether the obligation to pay is linked to signing the FA or whether it is independent. The wording in the PA could indicate that the obligation to pay is independent. Thus the purchaser might be in breach of the PA.

Time is of the essence under the PA.

The vendor alleges that the purchaser was late completing because the balance of purchase price was received after 5pm on the day of completion, but under the PA the purchaser has until midnight to complete. There is no breach on this ground.

Assuming that the purchaser has not breached the PA, he must show that he is ready, willing and able to complete at the time of completion and the date of the hearing for specific performance. Candidates should apply this to the facts which indicate that the purchaser has the purchase price ready. Many candidates mentioned that there are bars to the award of specific performance. A good answer would also state that the facts do not suggest that any bars apply here.

A number of candidates did not refer to the priority issue between the charging order and the PA. Candidates should be able to state the dates of registration. Case law shows that the vendor signed the PA before the charging order was obtained and that when the charging order was obtained, there was nothing to which the charging order could attach. If the purchaser has notice of the charging order, it must pay the balance of purchase price to the chargee.

## Question 5

The purchaser can recover the deposit if the vendor has breached the agreement by failing to give or show good title. However, if the purchaser has breached the agreement (and the vendor is not in breach) by failing to complete on time, the vendor can keep the deposit without proving loss provided the deposit is reasonable as earnest money. A deposit equal to 10% of the price has been held to be reasonable. Time is of the essence.

The vendor has a duty to give and show good title. The latter includes an obligation to answer requisitions reasonably raised. Under Condition 7(1) of Part A of the 2<sup>nd</sup> Schedule to the CPO, the purchaser must raise requisitions no later than 14 days before completion.

Candidates might consider whether the purchaser waived its right to good title after viewing the flat and signing an agreement to buy. However, the agreement provides expressly that the vendor will give good title.

The purchaser's requisitions dated 7 September 2023 are reasonably raised. The alterations made to the entrance to the flat potentially breach the Buildings Ordinance, Cap.123 ("BO"), the BMO and the Deed of Mutual Covenant. ("DMC") However, they are raised out of time. The vendor need not answer them unless they go to the root of the title and even then not, if with due diligence, the purchaser could have discovered them earlier. Candidates should apply these principles and consider whether the requisitions go to the root of the title and whether the purchaser could have raised them earlier. In this connection, candidates might consider that the entrance can easily be restored to its original condition (no walls have been demolished) which would suggest that the requisitions do not go to the root of the title. However, it appears that the vendor has agreed to sell a portion of the common parts which would suggest that the requisitions do go to the root of the title because the vendor cannot give title to the common parts. However, the facts indicate that the problem might have been identified from the plans with the title deeds which the vendor sent to the purchaser within the time limit for raising requisitions. For this reason the vendor might not be obliged to reply to the requisitions.

Even if the vendor is not obliged to reply to the requisitions, the vendor must give good title on completion. The issues are then whether there is a real risk of enforcement action for breach of the BO, the BMO or the DMC or whether there are facts and circumstances to show beyond reasonable doubt that there is no real risk of enforcement action.

Regarding the BO, candidates should refer to the exemption for the need for Building Authority consent to alterations in section 41(3) of the BO. Several candidates suggested that the alterations were not inside the building. The alterations described in the facts are not inside the flat but they are inside the building and the facts suggest that they do not affect the structure because no walls have been demolished.

Regarding the DMC and BMO, the covenant referred to in requisition 1 and section 18 (1)(a) of the BMO both permit consent to be given and consent might have been given. Even if no consent were given, since no enforcement action has been taken for a long period of time, the IO might have waived the right to take enforcement action. Waiver is a possible defence because the

covenant and section 18(1)(a) of the BMO both permit consent to be given. By contrast, if there is a breach of section 18(1)(b) of the BMO, waiver is not possible. If there is waiver, there is no real risk of enforcement action.

When discussing unauthorised building works, some candidates refer to breaches of the Government Lease, the BO, the DMC and the BMO without identifying the specific problem. A good answer would analyse the issue and decide who might take enforcement action.

Although it is possible in this case that no enforcement action will be taken, the vendor cannot sell common parts. However, candidates might mention that the area of the common parts which the vendor has agreed to sell is small in relation to the area of the flat and the vendor might be able to claim that he can give substantial performance and force the purchaser to complete.



## **Examiners' Comments on the 2024 Examination**

### **Head I: Conveyancing**

Examiners advise Candidates to note the following:

- identify all issues raised by the facts of a question and deal with all issues;
- read the facts carefully;
- apply the law to the facts of each question – see below for examples and
- avoid contradicting conclusions.

Candidates must answer 4 out of 5 questions. The following is a guide to the issues raised by the 2024 questions. It does not include complete model answers. Candidates should, where necessary, cite legislation and cases.

#### **Question 1**

The person who owns (or has the right to the exclusive use) of the roof and external walls is responsible for their maintenance under the terms of the Deed of Mutual Covenant (DMC). If they are common parts, the owners' corporation is responsible for maintaining them under section 18(1)(a) of the Building Management Ordinance, Cap. 344 (BMO).

The First Assignment reserves exclusive use of the roof and external walls to the developer, but the DMC states that external walls are common parts. The DMC is silent on the question of exclusive use or ownership of the roof.

In *Donora Company Limited v Tsuen Kam Centre (IO)* [2024] HKCFA 3 the CFA explained that the common intention (as to ownership) of the developer and the first purchaser is to be determined by looking at the first assignment and the DMC together. However, the recitals to the DMC (set out in the question) indicate that the DMC is the primary document to be considered when determining which parts of a building are common parts. In addition the CFA stated that the purpose of the assignment is to assign undivided shares and that the exclusive use covenants are in the DMC. To determine who owns the roof and external walls therefore, the DMC must be interpreted using the usual principles of contractual interpretation.

The DMC states expressly that the external walls are common parts. It is well established that the roof membrane is a common part.

With regard to the roof, In *Donora Company Limited v Tsuen Kam Centre (IO)* the Court of Final Appeal considered the following points in relation to the DMC to determine whether parts of a building are exclusive use areas or common parts:

- Does the developer have exclusive use of the roof or a limited right? Do flat owners have rights over the roof?
- Does the roof benefit all owners?
- Does the developer own undivided shares: Section 2 of the BMC defines owner as a person who owns undivided shares and the DMC contains a similar definition.

Candidates will probably conclude that the roof is a common part.

The question asks how Mary can force the person responsible to maintain the roof and external walls. Section 16 of the BMO provides that only the owners' corporation can take action in relation to the common parts. However, in this case Mary can take action in relation to the common parts because the harm caused by leakage from the roof is specific to Mary.

Mary requires a mandatory injunction against the owners' corporation. The principles set out in *Redland Bricks Limited v Morris and Anor* [1970] AC 652 should be applied. In this connection it should be noted that the failure to repair is a continuing breach and that Mary's flat has been seriously damaged.

## Question 2

Has Peter breached the Agreement by failing to complete on time. Time is of the essence. Alternatively, has Vera breached the Agreement by failing to give or show good title?

Subject to Clause 12 of the Agreement, Vera has a duty to give and show good title. Breach of the DMC or the Buildings Ordinance, Cap.123 (BO) leading to a real risk of enforcement action would make title defective or defeasible. The demolition of an external wall would be a structural alteration which breaches the restriction in the DMC. If the consent of the Building Authority has not been obtained, there would also be a breach of the BO. There might also be a breach of any plot ratio restrictions in the Conditions of Sale and a breach of section 34I of the BMO if the consent of the management committee has not been obtained. Therefore the requisition raised on 2 September 2024 is reasonably raised.

However, Vera's obligations might be limited by Clause 12 of the Agreement. The principles set out in *Jumbo King Limited v Faithful Properties Limited* [1999] 4 HKC 707, CFA must be applied to determine whether Clause 12 is effective. Therefore candidates should have considered the wording of Clause 12 and the factual matrix (title deeds including a plan were shown to the purchaser **before** he signed the Agreement, Peter had inspected the house and Vera had also mentioned that alterations had been made by the previous owner).

An additional problem is that Vera seems to be selling part of a common garden to which she has no title. Does Clause 12 cover this title defect?

Candidates should reach a conclusion based on their application of the principles to the facts.

If the conclusion is that Vera cannot rely on Clause 12, Vera might nevertheless rely on substantial performance.

If Vera is able to rely on Clause 12, she will be able to keep Peter's deposit provided that it is reasonable as earnest money. The deposit exceeds 10% of the price and Vera will be able to keep it only if the circumstances justify a larger deposit. Candidates should refer to the facts of the case. One relevant fact that might justify a larger deposit is the five month elapse of time between the Agreement and completion.

If Vera cannot rely on Clause 12, she must return the deposit to Peter.

The conclusion regarding the deposit should be consistent with findings as to whether Vera or Peter is in breach.

### **Question 3.1**

For stamp duty purposes the user of the property is non-residential: section 29A(1) of the Stamp Duty Ordinance, Cap. 117 (SDO). The Provisional Agreement (PA) is an “agreement for sale”: sections 2(1) and 29A (1) and (2) of the SDO.

The rates of ad valorem stamp duty that apply after 26 November 2020 are in Scale 2 of Head 1(1A) of the First Schedule to the SDO. The applicable rate is 3% of the consideration or value, whichever is higher. The document must include a certificate of value because the PA does not attract the highest rate of ad valorem stamp duty.

Provided that the Formal Agreement (FA) is signed within 14 days after the date of the PA, and stamped within 14 days of the date of the FA. the obligation to stamp the PA is discharged.

Under section 4(3) and Head 1(1A) of the First Schedule to the SDO the vendor and purchaser are jointly and severally liable to pay ad valorem stamp duty, but Clause 6 of the PA provides for the purchaser to pay.

### **Question 3.2**

Section 21 of the BO Provides that a new building may not be occupied unless an occupation permit (OP) has been issued. The OP is evidence that the terms of the BO have been complied with. If no OP has been issued and the building was erected before 1 June 1956 (the date on which the current version of the BO came into force) the test to be applied is whether there is a real risk of enforcement action by the Building Authority.

When investigating title in this case, the purchaser needs to know the date on which the building was built.

### **Question 3.3**

When selling a unit in a multistorey building, the vendor is usually bound to give and show good title and must be able to show how undivided shares have been allocated. Evidence of the reallocation of shares might be in a sub-DMC. A sub-DMC would also contain exclusive use covenants and provide for the rights and obligations of the owners of reallocated shares as to use management and maintenance of common areas and liability for management charges payable under the DMC.

Reallocation of undivided shares is permitted unless expressly restricted under the DMC.

### **Question 4.1**

Initially the interest under the Agreement and Conditions of Sale (Conditions) was equitable. The Conditions are an agreement for lease. Under s 14(1) of the CPO there is deemed grant of a legal interest on compliance with the Conditions. In this case a legal estate is deemed granted because the Conditions are dated after 1 January 1970 and a certificate of compliance has been issued and registered in the Land Registry.

### **Question 4.2**

The Assignment dated 13 July 2013 is within the chain of title period of 15 years s 13(1)(a)(i) of the CPO. This Assignment does not relate exclusively to the Flat and Rose as vendor may both prove and give title with a certified true copy: sections 13(2) and 13A(1)(b) of the CPO.

Rose may prove title using certified true copies of the Mortgage dated 8 October 2015 and the Release dated 14 September 2023, but when giving title on completion she must produce the originals: section 13A(1)(b) of the CPO. If the originals have been lost or Rose is not otherwise in possession of them, she must provide a satisfactory explanation of the reasons so that Jack as purchaser is not fixed with constructive notice of any prior unwritten equitable charge. In the absence of a satisfactory explanation, Jack can refuse to complete only if the absence of the originals indicates a realistic possibility of an interest affecting the land which would affect him. Candidates should apply this test to the Mortgage (which has been discharged) and the Release.

### **Question 4.3**

Rose, the vendor, holds a legal estate in the Flat provided she acquired her interest by deed: s 4(1) of the CPO. Maria might have acquired an unwritten equitable interest in the Flat (for example, by providing part of the purchase price). Candidates should consider the presumption of advancement in general and specifically with regard to a mother and her children.

The common law doctrine of notice should be applied to determine priority between Maria and Jack and candidates should discuss whether the purchaser has actual or constructive notice of any interest that Maria might have and the importance of obtaining Maria's written consent to the sale.

### **Question 5**

Under section 13 (1)(c) of the CPO Victor must produce the Power of Attorney dated 3 September 2012 (POA) to prove title because the vendor in the Assignment dated 5 September executed under the POA and the Assignment was executed less than 15 years before the date of the Agreement for Sale and Purchase (Agreement) (note it is the date of the Assignment which is relevant). Victor may prove title using a certified true copy: section 13(2) of the CPO.

Victor must prove title before completion and give title on completion. Time is of the essence and the de minimis rule does not apply. The parties have agreed that Victor need not produce the original POA. Pansy is not obliged to accept an undertaking from Victor's solicitor to produce a certified true copy of the POA after completion. Therefore, Victor has repudiated the Agreement. In these circumstances Victor may not terminate the Agreement or keep the deposit.

In order to obtain specific performance, Pansy must not terminate the Agreement by accepting Victor's breach or starting proceedings for recovery of her deposit or damages. Candidates should discuss what would amount to acceptance of Victor's breach.

Pansy must show that she is ready willing and able to complete. Candidates should discuss what this means.

The award of specific performance is discretionary. Candidates should apply the discretionary bars. For example, the facts do not show any hardship on Victor's part. However, the facts do show a competing interest that might have priority over Victor's interest which would make specific performance impossible.

In relation to priority, many candidates applied the terms of the Land Registration Ordinance, Cap. 128 and concluded that Felix had priority. In *Chu Ki Yuk v Country Wide Industrial Limited* [1995] 2 HKLR 162 the common law rule of priority (where the equities are equal the first in time prevails) was applied to determine priority between two valid agreements for sale and purchase. Candidates might consider whether the equities are equal in this case.



## **Examiners' Comments on the 2025 Examination**

### **Head I: Conveyancing**

The following is a guide to the issues raised by the 2025 questions. It does not include complete model answers. Candidates should, where necessary, cite legislation and cases. Candidates must answer four out of five questions.

#### **Question 1**

- 1.1 Candidates should explain the permitted use of the Property according to s29A(1) of the Stamp Duty Ordinance, Cap.117 (SDO) and that the Provisional Agreement (PA) is an agreement for sale according to ss 2(1) and 29A (1) and (2) of the SDO. The rates of Ad Valorem Stamp Duty (AVD) are set out in Part1, Scale 1 of Head 1(1A) of the First Schedule to the SDO. Candidates should explain the need for a certificate of value in this case and the time within which payment must be made. Under the SDO both the vendor and purchaser are liable for the duty but the PA makes the purchaser solely liable. Candidates should also explain that the PA attracts Special Stamp Duty and Buyer's Stamp Duty but that the rates are 0%. Note that strictly speaking Special Stamp Duty and Buyer's Stamp Duty have not been abolished.
- 1.2 Sonny prima facie holds the Property on resulting trust for Pinky because Pinky has paid the deposit. Candidates should explain that the resulting trust is unwritten and explain how priority is determined between the resulting trust and a subsequent purchaser. Candidates might consider how the presumption of resulting trust could be rebutted and whether there is a presumption of advancement between Pinky and Sonny. However, best practice would be for Pinky to renounce in the nomination any interest she may have in the Property and to state that the deposit has been paid by Sonny.
- 1.3 The nomination is an agreement for sale under the SDO but the exemption from AVD applies because Sonny is Pinky's son. The nomination must be submitted for adjudication.
- 1.4 On Jill's death the Property passes by survivorship. To prove that he is the sole owner of the Property, Jack must produce a certified true copy of Jill's death certificate. A Land Registry search will reveal whether any notice of severance or deed of severance has been registered. See s 8(1) of the CPO and note s 3(2) of the Land Registration Ordinance, Cap. 128.

#### **Question 2**

Candidates should explain the mortgagee's powers to take possession and sell in the Fourth Schedule to the CPO which are exercisable on the occurrence of an event of default. Candidates should state the precise events of default in this case (note that interest has been paid up to date, principal is in arrears and that management fees have not been paid. Also note that the loan is repayable on demand).

Candidates should discuss priority between the tenant, Tim, and ABC as mortgagee. In this case Tim has priority. ABC cannot take physical possession but should give notice to Tim to pay rent to ABC. ABC can take physical possession against Tim at the end of the term or could sell subject to Tim's tenancy or could accept a surrender of Tim's tenancy if Tim agrees. See the mortgagee's powers in the Fourth schedule to the CPO. Many candidates did not consider that ABC could sell subject to Tim's tenancy.

Candidates should consider ABC's duties when selling as mortgagee and how they can discharge those duties. Many candidates dealt well with these issues.

The mortgagor can obtain an injunction if there is some irregularity in the sale but otherwise is limited to damages. See also s52 CPO.

Most candidates explained that s54 CPO governs the application of the proceeds of sale. As s54 CPO deals with outgoings, it is likely that this covers arrears. As a practical matter, any purchaser would want a charge in respect of unpaid management charges to be released on completion of a sale and purchase.

The notice of severance effectively severs the joint tenancy at law under s 8 CPO.

### **Question 3**

The Deed of Mutual Covenant (DMC) does not define the common parts. The lightwell including the Lightwell area and the external walls are likely to be common parts. See s2 Building Management Ordinance, Cap. 344 (BMO) and paragraphs 1 and 8 of the First Schedule to the BMO.

Candidates should explain Donald's probable breaches of s 34I (1)(a) and (b) BMO by his use of the Lightwell Area and fastening the Canopy to an external wall of the Building.

Candidates should also explain Donald's probable breaches of the DMC covenants (the covenant not to make structural alterations to any part of the Building and not to make any alterations which breach the Buildings Ordinance, Cap 123 (BO) by him laying floor tiles in the Lightwell Area and fastening the Canopy to an external wall of the Building. This also requires an explanation of breaches of the BO. Note that the Lightwell Area is open to the elements.

Candidates should consider Donald's possible defence of acquiescence. Generally, the Incorporated Owners (IO) cannot acquiesce in a breach of the DMC unless the covenant gives the IO discretion.

Candidates should consider s16 BMO which gives the IO exclusive jurisdiction to enforce the DMC in relation to common parts and the action that Barney should take if the IO fails to enforce the DMC.

Finally, candidates should consider the remedies of prohibitory and mandatory injunction and mesne profits for use of the Lightwell Area. Damages must not be speculative.

#### **Question 4**

- 4.1 Under s 13(1)(a)(ii) of the CPO, the Mortgages dated 2 May 1983 provided it is a mortgage by assignment and that it deals with the whole interest. Note that the intermediate root is a single document.
- 4.2 Candidates should explain the operation of the New Territories (Renewable Government Leases) Ordinance Cap, 152, the New Territories Leases (Extension) Ordinance Cap, 150 and the Extension of Government Leases Ordinance Cap, 648 (EGLO) and the conditions stated in the EGLO. The further information needed is in the EGLO.
- 4.3 A vendor is obliged to show how undivided shares have been allocated to the property he is selling. The given facts state that a DMC recital sets out the allocation of undivided shares. Candidates should explain the operation of s13(4) of the CPO in relation to this recital. A number of candidates mentioned that the control card in the Land Registry might also provide evidence of the undivided share allocation.
- 4.4 Section 23A(1) and (2) CPO do not apply. Section 20(1) CPO does not apply. Candidates should explain the reasons why. The purchaser should ask the vendor to provide the sealing provisions of Money Bank Limited and consider whether 23 CPO applies. In this connection the office held by the signatory and the number of signatories should be discussed.

If the Release does not appear on its face to have been executed in accordance with the sealing provisions, candidates should consider further whether defective sealing could be cured by a board resolution passed by the directors of Money Bank Limited or whether title is defective.

#### **Question 5**

- 1 The Provisional Agreement (PA) is binding. Candidates should consider the vendor's implied duties to give and show good title and discuss whether the vendor or the purchaser has breached the PA.
- 2 Candidates should explain whether the two requisitions are properly raised. Regarding requisition (a), if an internal partition wall has been demolished without the consent of the Building Authority (BA), there is a potential breach of s14 BO which would entitle the BA to take enforcement action under s 24 BO. If the wall does not affect the structure of the building, s41(3) BO applies and no consent is necessary. The issue therefore is whether the wall affects the structure of the building. Candidates should avoid making assumptions as to whether the wall affects the structure or not. Candidates might also consider whether the wall is a common part and whether the demolition breaches the DMC and s34I BMO. The threat of enforcement action under the BO or DMC makes title defective only if there is a real risk of enforcement action. Candidates should apply the test. For example, if the wall affects the structure of the building, its demolition would affect the structural integrity of the building and there would be a real risk of enforcement action.

- 3      However, requisition (a) does not point to a specific defect and is not formulated with precision. After he obtains the 1999 Assignment, Paul is likely to be able to formulate a proper requisition because he can compare the plan on that Assignment with the existing layout of the Property which he has seen.
- 4      Regarding requisition (b), although the Assignment dated 1999 is dated before the intermediate root of title, arguably the vendor must show it because the property description in post intermediate root documents refers to it. See s13(1)(b) CPO. If the vendor is obliged to show the 1999 Assignment, it is not enough for the purchaser to buy it from the Land Registry.
- 5      The PA does not state any time limits for giving and showing title and the vendor must therefore show title before completion and give title on completion. At this stage the vendor has not breached the PA and might be able to give and show good title by completion.
- 6      The purchaser's insistence on the vendor replying to requisitions at this stage, might amount to inserting a new term in the PA. Insistence on a new term might amount to repudiation by the purchaser.
- 7      The PA does not appear to require the parties to sign a Formal Agreement but the wording does oblige the purchaser to pay a further deposit on 16 October 2025. Time is of the essence. Paul has not done this and has breached the PA. Under clause 4 of the PA, the vendor can forfeit the purchaser's deposit but may not recover damages.

### **3. Past Examination Papers from 2023 to 2025**



# **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)*



### **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**

# 2024 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

## HEAD I: CONVEYANCING

Monday, 21 October 2024





# 2024 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

Elegant Gardens (the “Building”) is a block of 30 residential flats built in 1975 on Inland Lot No. 1234 (the “Lot”). The first assignment in 1975 (the “First Assignment”) by the developer of the Building (the “Developer”) assigns the exclusive use of Flat 1A to the First Purchaser and reserves to the Developer the exclusive use of all other parts of the Building including the roof and external walls.

The deed of mutual covenant for the Building (the “DMC”) was made in 1975 immediately after the First Assignment. The parties to the DMC are the Developer, the First Purchaser and the Building Manager. One of the recitals to the DMC states that the purpose of the DMC is to regulate the interests, rights and obligations of the owners. The DMC sets out the undivided share allocation and pairs each of the flats with one equal undivided 30th share of and in the Lot and the Building. There are no shares paired with the external walls or the roof and the Developer has not retained any undivided shares.

The flat owners incorporated in 1982.

The DMC includes the following terms:

*“The DMC reserves to the Developer:*

- *the exclusive right to use the roof of the Building for advertising purposes.”*

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

The DMC provides that:

- “● *owners may not place anything on the roof of the Building except with the consent of the Building Manager;*
- *owners will maintain their exclusive use areas;*
- *the common parts of the Building include the external walls and all parts over which no exclusive use rights have been granted (there is no mention of the roof);*
- *that an owner is a person in whom undivided shares are vested for the time being.”*

Mary owns a flat on the top floor of the Building. In June this year, water started leaking into Mary’s flat seriously damaging the walls and the floor and some of Mary’s furniture. As a result, Mary has been unable to use two of the bedrooms in her flat. Mary has obtained expert advice that there is damage to the external walls directly outside her flat and also to the membrane and surface tiles on the roof. Mary’s adviser has said that water has leaked into Mary’s flat through the damaged parts of the external walls and the damaged part of the roof.

Mary has asked the Developer to maintain the roof, but the Developer has refused. Mary has also asked the Building Manager to maintain the external walls and roof but no work has been done. The Building Manager has told Mary that the Developer is responsible for the roof. The DMC does not state who is responsible for maintaining the roof or external walls.

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

**Question:**

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

**Who is responsible for maintaining the roof and external walls and how can Mary force the person responsible to maintain them?**

**(25 marks)**

## **Question 2 (25 marks)**

On 20 May 2024, Peter as purchaser (the “Purchaser”) entered into a binding Agreement for Sale and Purchase (the “Agreement”) to buy House Number 3, Green Gardens, Green Road, Sai Kung, Hong Kong (the “House”) from Vera (the “Vendor”) for a consideration of HK\$16 million. The House is on a development of 12 houses with a common garden. Peter paid Vera a deposit of HK\$2 million. Completion was due to take place on 17 October 2024.

The development known as Green Gardens is held from the Government under an Agreement and Conditions of Sale dated 1 July 1996. There is a Deed of Mutual Covenant for Green Gardens (the “DMC”) which restricts owners from making structural alterations to the houses. The Buildings Ordinance, Cap.123 (the “BO”) applies to Green Gardens.

Peter inspected the House before entering into the Agreement. It has a floor area of 2,100 square feet. Peter particularly liked the living room on the ground floor. At one end of the living room and forming part of it is an area of approximately 80 square feet covered with a glass roof and extending into the common garden of Green Gardens by about 5 feet. With this extension, the living room has a total floor area of 400 square feet. Peter is buying the House for his own occupation and told Vera that the large, light-filled living room will make the House a very comfortable home. Vera told Peter that she thought that the previous owner of the House had changed the layout of the living room.

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

Vera's solicitor sent the title deeds of the House to Peter's solicitor before Peter signed the Agreement. The title deeds include an assignment of the House to which is attached a layout plan. The Agreement includes the following clauses:

*"12. The Purchaser has inspected the House and buys with full knowledge of alterations and additions made to the House and, notwithstanding anything to the contrary in this Agreement, will not raise any requisition or objection or annul the sale or claim any compensation or damages from the Vendor in connection with any title defect caused by any alterations or additions to the House which might breach the BO or the DMC or the Agreement and Conditions of Sale for Green Gardens.*

*13. Subject to Clause 12 the Vendor agrees to give good title to the House."*

The Agreement is otherwise in the form of agreement set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219.

Immediately after Peter had signed the Agreement, Peter's solicitor raised requisitions which Vera's solicitor answered.

On 2 September 2024, after receiving a surveyor's report, Peter's solicitor raised the following further requisition:

*"The Purchaser's surveyor has advised us that the living room of the House has been extended beyond the original external wall of the House into a garden which is a common part of Green Gardens, that the original external wall of the House has been demolished and a glass roof and wall added over the extended area. Please send us evidence that the consent of the Building Authority was obtained to this extension under the BO and that there is no breach of the restriction in the DMC against owners making structural alterations."*

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

Vera's solicitor did not reply to this requisition but stated that Vera relies on Clause 12 of the Agreement. Vera's solicitor also stated that Vera had not herself made any alterations to the House. Peter did not complete his purchase on 17 October 2024.

**Question:**

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

**Can Vera keep Peter's deposit?**

**(25 marks)**

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

On 3 October 2024, Jolly Co. Ltd. (“Jolly”) signed a binding written Provisional Agreement for Sale and Purchase (the “Provisional Agreement”) to purchase from Simon Chan (“Simon”) a unit (the “Unit”) of Lucky Industrial Building (the “Building”), which stands on Aberdeen Inland Lot No. 28, Hong Kong Island, Hong Kong (the “Lot”).

The government grant relating to the Building (the “Government Grant”) provides that the permitted user of the Lot is “industrial”. According to the deed of mutual covenant governing the Building (the “Deed of Mutual Covenant”), the permitted user is also “industrial”.

Neither the Government Grant nor the Deed of Mutual Covenant contains any clause that allows or forbids any owner from partitioning or subdividing any part of the Building.

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 20 December 2024.*
  
3. *The purchase price of the Unit is HK\$8,800,000.00 which will be paid by the Purchaser to the Vendor in the manner as follows:*
  - (a) *an initial deposit in the sum of HK\$440,000.00 will be paid upon the signing of this Agreement;*

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

- (b) *a further deposit in the sum of HK\$440,000.00 will be paid on or before 16 October 2024; and*
- (c) *the balance of purchase price in the sum of HK\$7,920,000.00 will be paid upon completion on or before 20 December 2024.*
4. *The parties will sign a formal agreement for sale and purchase on or before 16 October 2024.*
5. *Should the Vendor fail to complete the sale of the Unit in accordance with the terms of this Agreement, all monies and deposits paid by the Purchaser pursuant to this Agreement will be returned to the Purchaser.*
6. *Each party will pay their own legal costs. The Purchaser will pay the registration fees and all forms of stamp duty where applicable.”*

### **Questions:**

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

- 3.1 If the Formal Agreement for Sale and Purchase was signed on or before 16 October 2024, will any stamp duty be payable and if so, how much? When will such stamp duty be payable and who will be responsible to pay it?**

**(10 marks)**

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

**3.2** Simon owns the Unit free of mortgage and thinks that no occupation permit has ever been issued in respect of the Building. **If Simon's view is correct, what impact, if any, might the absence of an occupation permit have on the title to the Unit? If you require further information to answer this question, state what it is and the reasons why such information is required.**

**(7 marks)**

**3.3** The Deed of Mutual Covenant has allocated 39/2,080 undivided shares of and in the Lot and the Building to the Unit. Jolly plans (after its completion of the Unit and subject to the necessary consents having been obtained from the Building Authority and the Building Manager) to subdivide the Unit into three smaller units. **Is Jolly entitled to subdivide the Unit? If so, in what ways, if at all, can the creation of a sub-deed of mutual covenant assist Jolly in fulfilling its obligations as the vendor in any future sale of the subdivided units?**

**(8 marks)**

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

On 13 July 2012, Rose Chan (“Rose”) bought, free of mortgage, both a flat (the “Flat”) and a car parking space (the “Car Parking Space”) in Fantastic Building in Wanchai, Hong Kong by executing (as the purchaser) a deed of assignment with Plan (the “Assignment”).

On 2 April 2015, Rose sold the Car Parking Space to another flat owner of Fantastic Building.

On 21 October 2024, Rose entered into a binding Agreement for Sale and Purchase (the “Agreement”) with Jack Lee (“Jack”) to sell to him the Flat. The Agreement, which is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219, contains an additional clause which expressly provides for Rose to prove and give a good title.

The list below sets out in chronological order the title deeds which affect the Flat and which have been registered at the Land Registry. Only items (6) and (7) relate exclusively to the Flat.

- (1) Agreement and Conditions of Sale No. UB2804 dated 2 March 1999
- (2) Occupation Permit dated 16 January 2012
- (3) Certificate of Compliance dated 4 May 2012
- (4) Deed of Mutual Covenant dated 7 June 2012
- (5) The Assignment
- (6) Mortgage dated 8 October 2015 in favour of Lion Bank Limited
- (7) Release dated 14 September 2023 of the abovementioned Mortgage executed by Lion Bank Limited in favour of Rose

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

## **Questions:**

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

**4.1 What is the nature of the interest, legal estate or equitable interest, now held under the Agreement and Conditions of Sale No. UB2804?**

**(5 marks)**

**4.2 How, if at all, can Rose fulfil her contractual obligation to prove and give a good title if the originals of the Assignment, the Mortgage dated 8 October 2015 and the Release dated 14 September 2023 are missing?**

**(12 marks)**

**4.3 What should Jack's solicitors do if Jack tells them that when he went to inspect the Flat before signing the Agreement, he met Maria there, who was introduced to him as Rose's mother? If you require further information to answer this question, state what it is and the reason(s) why such information is needed.**

**(8 marks)**

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

On 2 July 2024, Victor as vendor entered into a binding agreement (the “Agreement”) to sell Flat 3A, Pine Court, Hong Kong (the “Property”) to Pansy as purchaser for the price of HK\$10 million. Pansy paid a deposit of HK\$1 million. The Agreement is substantially in the same form as the agreement in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219. Completion was due to take place on 10 October 2024.

In the process of proving and investigating title, Pansy required Victor to give her a certified true copy of a Power of Attorney dated 3 September 2012 (the “Power of Attorney”) under which Thomas Au as attorney for the vendor executed the assignment in favour of Victor. That assignment is dated 5 September 2012. Victor’s solicitor gave Pansy’s solicitor an ordinary copy of the Power of Attorney and said that he would obtain a certified true copy before completion on 10 October 2024. The parties agreed that Victor need not produce the original.

By 9 October 2024, Victor’s solicitor was still unable to produce a certified true copy of the Power of Attorney. Pansy suggested that the completion date be delayed to allow Victor’s solicitor extra time to produce the document. However, Victor refused and said that his solicitor would give his personal undertaking to produce a certified true copy of the Power of Attorney within 10 days after completion on 10 October 2024. Pansy did not accept this arrangement and did not complete on 10 October 2024.

On 14 October 2024, Victor’s solicitor informed Pansy’s solicitor that Pansy had repudiated the Agreement by failing to complete, that Victor had accepted the repudiation, terminated the Agreement and kept Pansy’s deposit. Pansy’s solicitor replied immediately and informed Victor’s solicitor that Victor had repudiated the Agreement and that Pansy reserved all her rights under the Agreement.

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

The price of the Property has gone up since 2 July 2024 when the Agreement was signed. Pansy's solicitor advised her to accept Victor's repudiation, to recover her deposit and sue for damages.

Pansy's solicitor did not register the Agreement in July 2024. On 18 October 2024, Pansy's solicitor sent the Agreement to the Land Registry for registration. A recent search against the Property in the Land Registry shows that on 15 October 2024, Victor entered into a binding agreement to sell the Property to Felix. Felix' agreement was sent to the Land Registry for registration on 21 October 2024.

**Question:**

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

**Can Pansy obtain specific performance of the Agreement?**

**(25 marks)**

**END OF TEST PAPER**



**2025 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD I: CONVEYANCING**

**Thursday, 23 October 2025**





# 2025 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

Jack, whose wife Jill died on 8 January 2025, signed a Provisional Agreement for Sale and Purchase (the “Provisional Agreement”) on 22 October 2025 to sell to Pinky a property known as Apartment 4, 10<sup>th</sup> Floor (the “Property”) of Beauty Mansion (the “Building”), which stands on Inland Lot No. 8 (the “Lot”). Jack and Jill bought the Property on 25 October 2023. The Property was assigned to them as joint tenants.

The government lease relating to the Lot (the “Government Lease”) provides that the permitted user of the Lot is “residential”. According to the deed of mutual covenant and the occupation permit governing the Building, the permitted user 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 12 December 2025.*
  
3. *The purchase price of the Property is HK\$6,380,000.00 which will be paid by the Purchaser to the Vendor in the manner as follows:*
  - (a) *an initial deposit in the sum of HK\$319,000.00 will be paid upon the signing of this Agreement;*
  
  - (b) *a further deposit in the sum of HK\$319,000.00 will be paid on or before 5 November 2025; and*

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

(c) *the balance of purchase price in the sum of HK\$5,742,000.00 will be paid upon completion on or before 12 December 2025.*

4. *The parties will sign a formal agreement for sale and purchase on or before 5 November 2025.*
5. *Each party will pay his/her own legal costs. The Purchaser will pay the registration fees and all forms of stamp duty where applicable.”*

### **Questions:**

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

- 1.1 If the formal agreement for sale and purchase (the “Formal Agreement”) is signed on or before 5 November 2025, will any stamp duty be payable and if so, how much? When will such stamp duty be payable and who will be responsible for the payment?**

**(10 marks)**

- 1.2 Assume that after signing the Formal Agreement, Pinky decides to sign a letter of nomination (the “Nomination”) nominating her son, Sonny to take up the Assignment of the Property in his sole name at completion and directing Jack to execute this Assignment.**

**What potential title problems, if any, would Pinky’s payments of the initial and further deposits pose when Sonny, as its sole owner wants to sell the Property? Explain the provisions, if any, which should be included in the Nomination to prevent requisitions on this matter from being raised during the sale of the Property.**

**(7 marks)**

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

**1.3 Will the Nomination attract any stamp duty?**

**(3 marks)**

**1.4** The names of Jack and Jill appear as the last entry in the “Owners’ Particulars” of the land search against the Property obtained from the Land Registry, in which they are described as “joint tenants”.

**What title investigation should Pinky conduct to make sure that Jack can sell the Property as the sole owner?**

**(5 marks)**

## **Question 2 (25 marks)**

In 2015, Oscar and Olivia bought a residential flat known as 8A Pine Court (the “Flat”) for a consideration of HK\$10 million. The Flat was assigned to them as joint tenants. They funded their purchase by using HK\$2 million of their own savings and borrowing HK\$8 million from the ABC Bank Ltd (“ABC”). The loan from ABC is secured by a first legal charge (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. After completing their purchase, Oscar and Olivia moved into the Flat.

In 2022, Olivia moved out of the Flat, but Oscar continued to live there. Olivia later sent a written notice (the “Notice”) to Oscar saying: “By this notice, I hereby sever our joint tenancy of the Flat at law and in equity”. Olivia dated and signed the Notice and sent it by registered post to Oscar at the Flat. Olivia also registered the Notice at the Land Registry. After receiving the Notice, Oscar sent Olivia a written letter saying that he did not agree to sever their joint tenancy.

In January 2025, Oscar moved out of the Flat. Oscar and Olivia, with the written consent of ABC, then let the Flat to Tim by a written tenancy agreement for a term of two years starting on 20 January 2025 (the “Tenancy Agreement”). Tim did not register the Tenancy Agreement at the Land Registry.

Olivia died in August 2025 leaving the whole of her estate by a valid will to Nancy, her niece. Before her death, Olivia and Oscar had each paid half of the monthly Mortgage repayments. After Olivia’s death, Oscar could no longer afford to make the monthly repayments and since August, he has paid the interest due under the Mortgage, but has not repaid any of the principal. The rates and management charges have also remained

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

unpaid since August 2025. In September 2025, the building manager of Pine Court registered in the Land Registry a charge in respect of unpaid management charges against the Flat. This is permitted under the deed of mutual covenant for Pine Court.

ABC now wants to sell the Flat quickly at the best possible price. ABC thinks that it can obtain the best price by selling with vacant possession. Oscar does not want ABC to sell the Flat as he believes that property prices are too low but that they will improve in the near future. Oscar would therefore like to stop the sale.

**Question:**

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

**Advise ABC on its rights to take possession and sell the Flat. Include in your answer advice as to the duties owed by ABC to the mortgagors when selling the Flat, how ABC can discharge those duties and the remedies available to the mortgagors if ABC breaches those duties. In addition, advise ABC how it should apply the proceeds of sale.**

**(25 marks)**

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

Triumph Tower (the “Building”) is a 20-storey building built in 1972. There are two ground-floor shops in the Building, Shops A and B. The remaining units are residential. The owners incorporated in 1999 and the building manager is Mance Management Ltd. (the “Manager”). The deed of mutual covenant for the Building (the “DMC”) is relatively short, and does not define the common parts (neither does any other title deed). The DMC includes covenants by owners that they will not make any structural alterations to any part of the Building, and will not make any alterations which breach the Buildings Ordinance, Cap. 123.

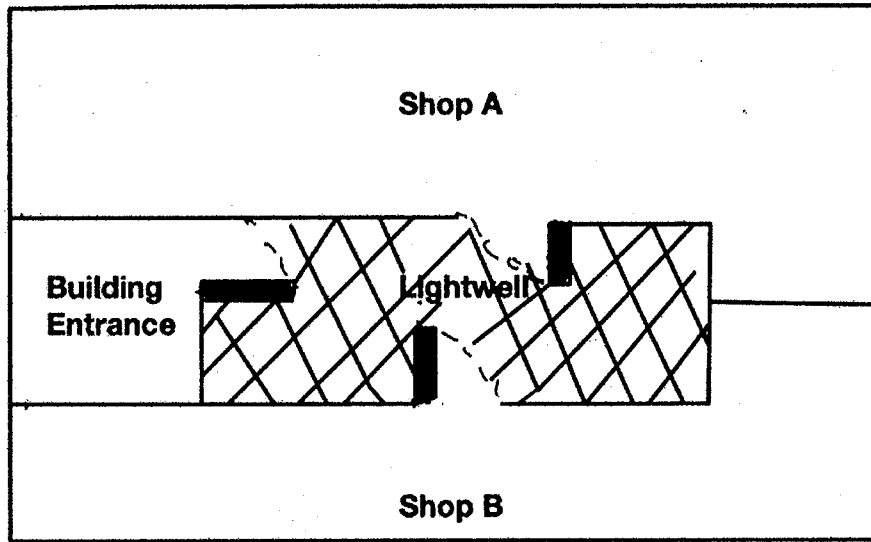
The Building is built around a lightwell which extends from the ground floor of the Building up to the top of the Building and which is open at the top. The base of the lightwell (the “Lightwell Area”) is on the ground floor of the Building and is shown hatched black on the attached plan (the “Plan”). The Lightwell Area was unoccupied until 2009 when Donald purchased Shops A and B on the ground-floor of the Building and opened a café named “The Big & Beautiful Café” (the “Café”). Each Shop has a side door leading to the Lightwell Area as shown on the Plan. Donald uses the side doors and Lightwell Area to “connect” Shops A and B and enlarge the Café. He has renovated the Lightwell Area by paving it all with large slabs of granite tiles. Donald has also placed tables and chairs in the Lightwell Area exclusively for patrons of the Café.

Two weeks ago, Donald also attached a large shiny golden-coloured canopy (the “Canopy”) to the external wall at the front of Shop A (not shown on the Plan). The Canopy is attached to the external wall by metal nails which have been driven into the external wall. The Canopy provides patrons ordering takeaway with shelter from the rain and sun and, due to its size and colour, the Canopy also captures the attention of passers-by.

The DMC does not grant exclusive use of the lightwell or the Lightwell Area or the external walls to any owner (neither does any other title deed).

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

## The Plan



Barney recently purchased flat B on the second floor of the Building and currently resides there. He is a retired lawyer from Canada and believes that Donald is not entitled to use the Lightwell Area or attach the Canopy to the external wall of the Building. Barney has complained to the Manager who replied that the minutes of meetings of the owners' corporation and the management committee show no record of a resolution from the management committee permitting Donald to use the Lightwell Area or attach the Canopy. There are, however, emails in 2009 from Donald informing the management committee of his plan to 'connect and enlarge' Shops A and B by using the Lightwell Area, including details of how he would renovate the Lightwell Area. Despite Barney's complaints, the Manager has decided not to take any action against Donald. Barney is therefore eager to take action himself.

### **Question:**

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

**Advise Barney whether Donald has breached the DMC, and if so, what remedies Barney should pursue against Donald or anyone else.**

**(25 marks)**

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

Sonia Lee (“Sonia”) became the owner of a flat (the “Flat”) and a car parking space (the “Car Parking Space”) in Grand Building, Shatin, New Territories, Hong Kong by executing (as the purchaser) a deed of assignment (the “Assignment”) dated 22 October 1982.

The list below sets out in chronological order the title deeds (the “title deeds”) concerning the Flat and the Car Parking Space. The title deeds have all been registered at the Land Registry within one month after their dates of execution.

- (1) New Grant No. 3011 dated 13 June 1955
- (2) Occupation Permit dated 5 March 1982
- (3) Deed of Mutual Covenant dated 15 October 1982
- (4) Assignment dated 22 October 1982
- (5) Mortgage dated 2 May 1983
- (6) Further Charge dated 2 October 2010
- (7) Deed of Release dated 3 May 2021 of the abovementioned Mortgage and Further Charge executed by Money Bank Limited

#### **Questions:**

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

**4.1 Identify from the title deeds the intermediate root of title.**

**(4 marks)**

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

- 4.2 According to the provisions of the New Grant No. 3011, the term of the lease (the “lease term”) for the lot where Grand Building stands (the “Lot”) is 75 years from 1 July 1898 with a right of renewal for a further 24 years less the last three days.

**Trace, with reference to the relevant ordinances, the rights and protection given to the lessee of the Lot to renew and/or extend the lease term since 1 July 1898. Under the present law of Hong Kong, when is the latest possible date of expiry of the lease term? If you require further information to answer this question, state what it is and explain why such information is required.**

**(7 marks)**

- 4.3 According to the recitals of the Deed of Mutual Covenant dated 15 October 1982, the Lot and Grand Building have been notionally divided into 218 equal undivided parts or shares and ten (10) and one (1) out of the said 218 shares have been allocated respectively to each of the flats and the car parking spaces of Grand Building.

**Assuming that none of the relevant title deeds and documents forbids the separate disposal of car parking spaces from the flats, if Sonia wishes to sell only the Car Parking Space, is she obliged as the vendor to produce valid proof of allocation of undivided shares to the Car Parking Space? If so, how, in light of the facts given?**

**(7 marks)**

- 4.4 The Release dated 3 May 2021 was sealed with the common seal of Money Bank Limited as mortgagee and signed by someone described as “Larry Saunders, an authorized person”.

**Has the said Release been duly executed by Money Bank Limited? If you require further information to answer this question, state what it is and explain why such information is required.**

**(7 marks)**

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

On 2 October 2025, Paul inspected Flat 13A, Sunshine Villas, 13 Sunshine Road, Hong Kong (the “Property”). The vendor, Victor, told Paul that a previous owner had renovated the Property and might have demolished some of the internal partition walls. Later that day, Paul as purchaser and Victor as vendor signed a provisional agreement for the sale and purchase of the Property (the “Provisional Agreement”) and Paul paid Victor the initial deposit. A copy of the Provisional Agreement is attached.

On 6 October 2025, Victor’s solicitor sent Paul’s solicitor the draft formal agreement (the “Formal Agreement”) and the title deeds for the Property. The title deeds include an assignment dated 6 June 2008 which is the intermediate root of title (the “2008 Assignment”). There is no plan of the Property with the title deeds but the 2008 Assignment describes the Property by reference to a plan on an assignment dated 1 September 1999 (the “1999 Assignment”). Victor’s solicitor did not send the 1999 Assignment to Paul’s solicitor. Both the 1999 and 2008 Assignments are registered in the Land Registry.

On 9 October 2025, Paul’s solicitor wrote to Victor’s solicitor raising the following requisitions:

- “(a) Please send us evidence that no internal partition walls have been demolished,  
and*
- (b) Please send us the original or a certified true copy of the 1999 Assignment.”*

Victor’s solicitor replied immediately that Victor was not obliged to reply to (a) and also that Victor was not obliged to show Paul the 1999 Assignment because it is dated before the intermediate root of title.

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

On 13 October 2025, Paul's solicitor replied to Victor's solicitor saying that Victor was in breach of his duty to give and show good title and that Paul would not sign the Formal Agreement or pay the further deposit on 16 October 2025 unless Victor replied satisfactorily to the matters raised in (a) and (b) of their letter of 9 October 2025. Victor's solicitor replied saying that Paul must sign the Formal Agreement and pay the further deposit by 16 October 2025 or risk being in breach of the Provisional Agreement. Paul did not sign the Formal Agreement or pay the further deposit on 16 October 2025.

On 17 October 2025, Paul's solicitor obtained a copy of the 1999 Assignment from the Land Registry. A comparison of the internal layout of the Property with the plan on the 1999 Assignment shows that a wall separating two of the bedrooms has been demolished. However, Paul would still like to buy the Property.

**Question:**

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

**Can Victor refuse to sell to Paul, forfeit the initial deposit and claim damages from Paul?**

**(25 marks)**

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

Provisional Agreement for Sale and Purchase

THIS AGREEMENT is made on 2 October 2025

Between the Vendor - Victor Vee of Flat D, 16<sup>th</sup> Floor, Green Mansions, 15  
Green Road, Hong Kong and

the Purchaser - Paul Pong of Flat 6A White Gardens, 6 White Road,  
Kowloon, Hong Kong

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase Flat 13A, Sunshine Villas, 13 Sunshine Road, Hong Kong (the "Property").
2. The purchase price is HK\$20,000,000.00 which shall be paid by the Purchaser in the following manner:
  - (a) HK\$1,000,000.00 to the Vendor on the signing of this agreement as initial deposit,
  - (b) HK\$1,000,000.00 as further deposit to the Vendor on or before 16 October 2025 whether or not a formal agreement is signed.
  - (c) HK\$ 18,000,000.00 being the balance of purchase price on completion.
3. Completion will take place on 10 November 2025.

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

4. Should the Purchaser fail to complete the 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 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.

*Victor Vee*

Signed

\_\_\_\_\_

*Paul Pong*

Signed

\_\_\_\_\_

**END OF TEST PAPER**