

2022 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD I: CONVEYANCING

Tuesday, 25 October 2022



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Question 1 (25 marks)

In March 2022, Sandy Li (“Sandy”) and Peter Poon (“Peter”) negotiated the terms on which Peter would buy Sandy’s shop at Ground Floor, 122 Red Road, Central, Hong Kong. Sandy’s shop includes a small open yard to the rear (Sandy’s shop and open yard are together referred to as the “Shop”). Eventually Sandy and Peter agreed orally that Sandy would sell the Shop to Peter for a consideration of HK\$200 million with completion on 1 August 2022. They also agreed orally that the sale would include two split-level air conditioners currently installed in the Shop. The air handling units are inside the shop and are connected by pipes leading to the condensers which are located in the open yard.

Sandy and Peter each instructed solicitors to act for them in connection with the sale and purchase and on 10 March 2022, Sandy’s solicitor sent Peter’s solicitor the following letter:

“Dear Sirs,

We act for Sandy Li who has agreed to sell the shop and open yard to the rear of the shop at Ground Floor, 122 Red Road, Central, Hong Kong to Peter Poon for a consideration of HK\$200 million with completion on 1 August 2022. Please confirm that you have instructions to act for Peter Poon.”

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

Sandy's solicitor signed the above letter. On 11 March 2022, Peter's solicitor replied as follows:

"Dear Sirs,

We confirm that we have instructions to act for Peter Poon in connection with his negotiations to buy the shop and open yard to the rear of the shop at Ground Floor, 122 Red Road, Central, Hong Kong for a consideration of HK\$200 million. Please send us a draft agreement for sale and purchase for approval."

Peter's solicitor signed the above letter. Neither letter contains any reference to the air conditioners.

At Peter's request, Sandy gave Peter keys to the Shop on 15 March 2022 so that Peter could draw up plans for fitting it out. With Sandy's permission, Peter also started cleaning the Shop in preparation for fitting it out. On the same day, Peter paid Sandy a deposit of HK\$1 million. Sandy and Peter agreed that this would eventually be part of the deposit that Peter would pay Sandy when they signed the sale and purchase agreement.

Sandy's solicitor sent a draft sale and purchase agreement to Peter's solicitor on 21 March 2022. Despite repeated requests by Sandy's solicitor, Peter did not sign the sale and purchase agreement. On 15 July 2022, Peter informed Sandy that he no longer wants to buy the Shop. Peter returned the keys to Sandy.

Question:

Answer the following question giving reasons for your answer:

Can Sandy enforce the oral agreement for sale and purchase against Peter?

(25 marks)

Question 2 (25 marks)

On 30 June 2022, Pansy Bo (“Pansy”) as purchaser and Vicki Vong (“Vicki”) as vendor entered into a binding agreement for sale and purchase (the “Agreement”) whereby Pansy agreed to buy Vicki’s Flats, i.e. 15A and 15B, Pine Court, 20 Pine Road, Hong Kong (Flats 15A and 15B are together referred to as the “Property”) for a consideration of HK\$30 million. Completion was due to take place on 3 October 2022. Under the Agreement, Pansy paid Vicki a deposit of HK\$3 million. Pansy particularly likes the Property because it is very big.

The Agreement is substantially in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219. It includes the following clauses 12 and 13:

“12. The Purchaser has inspected the Property and will not raise any requisitions or object to title in connection with any unauthorised alterations or illegal structures at the Property.

13. Subject to Clause 12, the Vendor agrees to give good title to the Property.”

As mentioned above, the Property consists of two adjoining flats – Flats 15A and 15B. Vicki bought them in 2010 and converted them into the Property, which is a single large flat. Vicki did this by cutting the structural wall (assume that the wall is structural) which separates Flat 15A from Flat 15B, to make an opening which connects the two flats. The opening is 4 feet wide. Vicki obtained approval from the Building Authority (“BA”) under the Buildings Ordinance, Cap. 123 to cut the structural wall and make this opening. Before Pansy signed the Agreement, Vicki showed her a certified true copy of the written approval from the BA.

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

Vicki's solicitor sent Pansy's solicitor the title deeds on 15 July 2022. Pansy's solicitor then discovered that the Deed of Mutual Covenants for Pine Court (the "DMC") contains the following covenants:

"1. No owner will make any structural alterations to any part of Pine Court.

2. No owner will make any alterations to the common parts of Pine Court."

The DMC does not contain a definition of common parts.

Pansy's solicitor raised a requisition asking for evidence that consent had been obtained under the DMC to making an opening in the structural wall separating Flat 15A from Flat 15B. Vicki's solicitor replied that Vicki had not obtained any such consent, but pointed out that the BA had consented to Vicki making the opening and that the Agreement includes clause 12.

Pansy did not complete her purchase on 3 October 2022 on the grounds that Vicki's title is defective due to Vicki's breach of the DMC and that clause 12 does not effectively limit Vicki's obligation to give good title. Vicki's solicitor wrote to Pansy's solicitor saying that the Agreement is terminated and that Vicki has kept the deposit of HK\$3 million. The current market value of the Property is HK\$24 million.

Question:

Answer the following question giving reasons for your answer:

Can Vicki claim damages from Pansy equal to the difference between the consideration stated in the Agreement and the current market value of the Property?

(25 marks)

Question 3 (25 marks)

On 24 October 2022, Pat signed a binding Agreement for Sale and Purchase (the “Agreement”) with Sam to purchase his property known as Flat D, 12th Floor, Joyful Place, Wanchai, Hong Kong (the “Property”). The Agreement includes a term that a good title will be sold.

All the title documents set out in the list below (the “List”), except items (1) and (2), relate exclusively to the Property:

- (1) Agreement and Conditions of Sale No. 11213 dated 29 June 1973
- (2) Deed of Mutual Covenant dated 20 September 1983 (Memorial No. UB2482499)
- (3) Assignment with Plan dated 16 April 1984 (Memorial No. UB2578323)
- (4) Mortgage dated 18 May 1984 (Memorial No. UB2578367)
- (5) Agreement for Sale and Purchase dated 30 November 1990 (Memorial No. UB4657494)
- (6) Receipt on Discharge of a Charge dated 10 January 1991 (Memorial No. UB4716736) endorsed on Mortgage Memorial No. UB2578367
- (7) Assignment dated 10 January 1991 (Memorial No. UB4716737)
- (8) Mortgage dated 10 January 1991 (Memorial No. UB4716738)
- (9) Release (of Mortgage Memorial No. UB4716738) dated 18 December 2020 (Memorial No. 20122086598712)

Questions:

Answer the following questions giving reasons for your answers:

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

(3 marks)

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

3.2 Sam has lost the following:

- A certified true copy of the occupation permit for Joyful Place,
- the original Assignment with Plan Memorial No. UB2578323 (Item (3) of the List), and
- the original Mortgage Memorial No. UB4716738 (Item (8) of the List).

Sam does not plan to provide Pat with these documents. **How, if at all, does this affect Sam's obligations under the Agreement?**

(15 marks)

3.3 Sam first bought the Property with his wife, Susan. They are the purchasers under Assignment Memorial No. UB4716737 (Item (7) of the List) which they executed as joint tenants. Susan died on 17 May 2022. **To what extent will Sam's right to deal with the Property be affected if a Charging Order *nisi* and a Charging Order absolute in respect of Sam's unpaid debts were dated and registered against the Property at the Land Registry on 16 March 2021 and 2 July 2021 respectively and they were subsequently discharged by a Discharge dated and registered at the Land Registry on 3 December 2021?**

(7 marks)

Question 4 (25 marks)

Ben Ma (“Ben”) is a Hong Kong permanent resident but his wife, Brenda Ma (“Brenda”) is not. On 21 October 2022, they entered into a binding written Provisional Agreement for Sale and Purchase (the “Provisional Agreement”) to purchase as joint tenants a property in Happy Valley (the “Property”) from its present owner, Sylvia Smith (“Sylvia”), who is not related to them in any way, at the price of HK\$22 million. According to the Land Registry search, Sylvia entered into an Agreement for Sale and Purchase as the purchaser of the Property on 4 August 2021. The government grant, deed of mutual covenant and occupation permit relating to the Property provide for its user to be “domestic”.

Before signing the Provisional Agreement, Ben and Brenda met Frank, Sylvia’s father, when they went to inspect the Property. During their meeting (the “Meeting”), Frank told Ben and Brenda that he was staying at the Property whilst his own flat was under renovation. He also showed them round the Property and negotiated the purchase price with them.

The terms of the Provisional Agreement (in which Sylvia was defined as the “Vendor” and Ben and Brenda together as the “Purchaser”) include the following:

- “1. The Vendor will sell a good title to the Purchaser.*
- 2. An initial deposit equivalent to 5% of the purchase price was paid by the Purchaser to the Vendor upon the signing of the Provisional Agreement.*
- 3. A further deposit equivalent to 5% of the purchase price will be payable by the Purchaser to the Vendor on or before 3 November 2022.*

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

4. *The balance of purchase price will be payable by the Purchaser to the Vendor at completion on or before 1 December 2022.*
5. *The Formal Agreement for Sale and Purchase will be signed on or before 3 November 2022.*
6. *Each party will pay his or her or 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:

- 4.1 Will the Formal Agreement for Sale and Purchase, if signed within the time limit, attract ad valorem and/or other stamp duties? If so, how much will they be and who will pay them? If you require further information to prepare the answer, state what it is and why you require it.**

(15 marks)

- 4.2 Explain the impact, if any, the Meeting may have on the title to the Property.**

(10 marks)

Question 5 (25 marks)

On 1 September 2022, Victor as vendor and Paula as purchaser entered into a binding agreement (the “Agreement”) whereby Victor agreed to sell Paula his flat known as 6B, Bauhinia Court, 6 Bauhinia Road, Hong Kong (the “Property”) for a consideration of HK\$18 million with completion on 10 October 2022. The Agreement is substantially in the Form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance, Cap. 219. Clause 4 of the Agreement provides:

“4. Completion shall take place at the offices of the Vendor’s solicitor on 10 October 2022.”

The Agreement also includes the following clause 12:

“12. The Vendor will give good title and will prove title in accordance with section 13 of the Conveyancing and Property Ordinance, Cap. 219.”

The Property was built in 1984. During title investigation, Paula’s solicitor asked Victor’s solicitor for a certified true copy of a power of attorney dated 2 July 2015 (the “Power of Attorney”) under which an Assignment of the Property dated 3 August 2015 was executed by the attorney of Raymond Wong as vendor in favour of Victor as purchaser. Victor’s solicitor said that he would later supply a certified true copy of the Power of Attorney. Paula’s solicitor asked for the original or a certified true copy to be supplied on or before completion. All other title deeds supplied by Victor’s solicitor are in order.

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

One week before completion, Victor's solicitor suggested that completion take place by way of undertaking. He sent Paula's solicitor a completion statement requiring the balance of purchase price to be paid in two cashier orders as follows:

1. One made payable to Victor's mortgagee for the account of Victor to discharge Victor's mortgage, and
2. one made payable to Victor's solicitor's firm.

Five days before completion, Paula's solicitor told Victor's solicitor that he wanted to complete in person. Paula's solicitor made an appointment to meet at the offices of Victor's solicitor at 4.30 p.m. on 10 October 2022. Paula's solicitor and Paula attended this appointment with two cashier orders as instructed. Victor's solicitor held an assignment of the Property executed by Victor and a discharge from Victor's mortgage executed by Victor's mortgagee, but Victor's solicitor did not hold the original or a certified true copy of the Power of Attorney dated 2 July 2015. Victor's solicitor told Paula's solicitor that he would give an undertaking to supply a certified true copy within 14 days. As instructed by Paula, Paula's solicitor refused to complete.

On 18 October 2022, Victor's solicitor obtained the Power of Attorney and on the same day, Victor entered into a binding agreement to sell the Property to Lily Leung ("Lily"). The sale was completed on 24 October 2022 and Lily moved into the Property immediately. Bauhinia Court is next to Bauhinia Hospital. Lily particularly wanted to move to Bauhinia Court because she has a serious illness for which she is receiving regular treatment at Bauhinia Hospital.

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

Question:

Answer the following question giving reasons for your answer:

Advise Paula whether she can obtain specific performance of the Agreement.

(25 marks)

END OF TEST PAPER