

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.