
OVERSEAS LAWYERS QUALIFICATION EXAMINATION

HEAD I: CONVEYANCING AND LANDLORD AND TENANT

Monday, 25 September 1995



THE
LAW SOCIETY
OF HONG KONG
香港律師會

HEAD I: CONVEYANCING AND LANDLORD AND TENANT

TEST PAPER

25 September 1995

Instructions to Candidates

- 1. The examination duration is Three (3) hours, plus 30 minutes reading time.**
- 2. There are FIVE questions on this paper. EACH must be answered.**
- 3. This is an Open-Book examination.**
- 4. Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.**
- 5. Do not take either this question paper or any answer booklets with you when you leave the examination room.**

QUESTION 1 (20 marks)

Mr Horace Wong ('the Vendor'), who owns a flat in Shatin, wished to sell his flat to Mrs Leung ('the Purchaser') and in the office of an estate agent they both signed a document headed 'Preliminary Agreement'.

Clause 2 of the Agreement provided that an initial deposit of 1% of the purchase price was payable on the signing of the Preliminary Agreement.

Clause 3 of the Agreement provided that the vendor would show and give good title.

Clause 7 of the Agreement stated that the parties agree to pay the balance of the deposit and to enter into a formal sale and purchase agreement within 14 days.

Clause 8 of the Agreement stated that, if the vendor fails to sign the formal sale and purchase agreement within 14 days, he would be liable to pay the purchaser twice the initial deposit paid.

One week later the Vendor's solicitor wrote to the Purchaser's solicitor a letter headed 'Subject to Contract' which said, inter alia, that the parties were not as yet bound by any agreement, the letter being accompanied by a draft sale and purchase agreement which contained the following clause 15:

'The Vendor agrees to give good title to the property and the Purchaser agrees not to raise any requisition as to any matters which arose before January 1st 1991.'

The Purchaser refused to agree to the inclusion of this term in the Sale and Purchase Agreement, but the Vendor insisted upon its inclusion. All other clauses in the draft Agreement are acceptable to both parties. As a consequence, the formal sale and purchase agreement has not been signed, the balance of the deposit has not been paid and 14 days have elapsed since the signing of the Preliminary Agreement.

You are a trainee solicitor working for the firm instructed by the Purchaser. The solicitor handling the matter asks you for advice as to four matters.

- 5 marks (a) He seeks your advice as to whether there is a binding agreement for the sale and purchase of the property. He is especially concerned that the use of the words 'subject to contract' in the letter might have the effect of preventing there being a binding agreement.
- 5 marks (b) He seeks your advice as to whether, since the formal sale and purchase agreement has not been signed, and the Preliminary Agreement contains very few clauses, there can be a binding agreement. He notes, for example, that the Preliminary Agreement does not deal with such matters as the passing of risk, the insurance of the property, whether the further deposit is to be held by the vendor's solicitor as stakeholder or as agent for the Vendor or as to the raising and answering of requisitions.

(see over on page 2 for questions (c) and (d))

5 marks

(c) He seeks your advice as to whether he was entitled to refuse to sign the formal Sale and Purchase Agreement and pay the balance of the deposit on the grounds of the proposed clause 15 or whether, by refusing to sign the agreement and pay the balance of the deposit, his client is now in breach of the Preliminary Agreement.

5 marks

(d) Finally he seeks your advice as to whether, if there is a binding agreement, he can secure specific performance of the agreement or whether he is obliged to accept twice the initial deposit from the Vendor in lieu of specific performance as provided for in clause 8 of the Preliminary Agreement.

Advise him on these matters by way of a memo citing authority where you are able to do so.

QUESTION 2 (20 marks)

In June 1988 James Chan purchased a flat in Mongkok, paying the deposit from the funds in his own bank account, but paying the remainder of the purchase price by way of money secured by a mortgage from the Hong Kong Bank. The flat was registered in the sole name of Mr Chan. His wife Mary, however, made all the mortgage repayments from her salary.

James met Mr Ho at their local fitness club and Mr Ho visited the flat on two occasions but never met Mary, although he knew that James was married and had seen a photograph of her displayed in the sitting room.

Unknown to Mary and while Mary was on a short holiday in China visiting her sick mother, James entered into an agreement to sell the flat to Mr Ho, the formal sale and purchase agreement having been signed by Mr Chan and Mr Ho on August 1st 1994. The agreement contained a term that the vendor 'agreed to give and show good title to the purchaser'. The agreement was registered in the Land Registry on August 3rd 1994. Mr Chan executed the assignment of the flat to Mr Ho on September 1st 1994 and in the assignment Mr Ho was expressed to assign 'as beneficial owner'. The assignment was registered on October 3rd 1994.

Meanwhile the Hong Kong School of Motoring had obtained judgment in the District Court against Mr Chan in respect of damage to one of their vehicles caused by the negligent driving of Mr Chan earlier in the year. The School of Motoring obtained a charging order nisi over the flat, which was registered against the title on September 5th 1994 and the charging order was subsequently made absolute and registered on October 10th 1994.

It would appear that James has now left Hong Kong to live in Vancouver so as to avoid a large number of creditors. Mary has returned to Hong Kong and has discovered that the flat has been sold to Mr Ho. On legal advice she has written to Mr Ho claiming an interest in the flat. Further the School of Motoring has written to Mr Ho to the effect that they have an interest in the flat by virtue of the charging order.

- 10 marks (a) Mr Ho comes to your senior partner for advice as to whether he has obtained a good title to the flat free from all incumbrances; in particular he is concerned about the claims made by Mary and the School of Motoring. Your Senior Partner asks you for written advice on this matter. Provide that written advice in the form of a memo, citing authority where appropriate.
- 5 marks (b) Explain briefly the usual mode of completion of sale and purchase transactions in Hong Kong.
- 5 marks (c) Briefly identify the protection afforded to purchasers should completion by undertaking be adopted.

QUESTION 3 (20 marks)

You are instructed by James Goh in the purchase of Apartment B, 7th Floor, Wisdom Gardens, Stanley, Hong Kong.

On perusing the title deeds and documents forwarded to you by the vendor's solicitors you note that:-

- (1) The premises are held under Conditions of Sale dated 6th February 1970. There is no record in the Land Registry of a certificate of compliance being registered against the premises.

- (a) Discuss the significance of a certificate of compliance; and
(b) the failure to register it in the Land Registry.

- (2) An Assignment dated 18th October 1983 was purportedly executed by one George Wong as the lawful attorney of one Wong Ying Jing, the then vendor of the premises.

The Power of Attorney is not among the title deeds forwarded.

- (a) What requisitions would you raise concerning the missing Power of Attorney and in particular concerning its non-revocation?
(b) Would your answer be different if the Assignment were dated 18th October 1978?
- (3) The mode of execution by a limited company as assignor of an Assignment executed on 11th September 1984 of the premises to the vendor (to your client) was as follows:-

'Sealed with the Common Seal of the Company and signed by John Lee Man Wah, its director and Cynthia Wong, its secretary in the presence of Herman Huang, solicitor.'

What requisitions, if any, would you raise concerning execution of this document?

QUESTION 4 (20 marks)

In December 1993 Asia Resorts Limited as landlord granted a new two-year tenancy to Robert Ho as tenant of a post war residential flat at 12B Ocean Court at a monthly rent of HK\$60,000. Asia Resorts Limited also granted Robert a licence to use a car park at Ocean Court at a monthly licence fee of HK\$1,000. The licence can be terminated by Asia Resorts Limited on giving one month's notice to Robert.

Last week the manager of Asia Resorts Management Limited telephoned to Robert and offered to renew his tenancy of flat 12B for a further term of two years at HK\$100,000 per month. Robert declined the offer. Yesterday Robert received two notices to quit from Asia Resorts Management Limited; one in respect of his flat and the other in respect of his car park. Robert would like to stay in the flat at Ocean Court and continue to use the car park, but feels that HK\$100,000 per month is too much to pay for the flat even if this includes the licence fee for the car park.

Advise Robert on the action he should take if he wishes:

- (a) to remain in flat 12B; and
- (b) to continue to use the car park.

Question 5 (20 marks)

(a) Explain

- how stamp duty is charged;
- who is responsible for payment; and
- when stamp duty is payable

on the following:

- 5 marks (i) A tenancy agreement for a term of two years at a market rent which is HK\$60,000 per month. The agreement contains an option to renew for a further term of two years at a market rent. The tenant has a rent free period of two months for the first two months of the initial term. The tenant must also pay rates and management charges.
- 5 marks (ii) An informal agreement for sale and purchase of a residential flat for the price of \$1.2 million.
- 5 marks (b) You are buying a residential flat under an agreement made in August 1995. Explain the title problems created by a deed of gift of the flat made in 1993 which appears in the title chain.
- 5 marks (c) You are buying a residential flat under an agreement made in August 1995. Explain the title problems created by a conveyance on sale of the flat made in 1989 by a mother as vendor to her daughter as purchaser which appears in the title chain.