
**1996 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD I: CONVEYANCING
AND LANDLORD AND TENANT**

Monday, 28 October 1996



HEAD I: CONVEYANCING AND LANDLORD AND TENANT

TEST PAPER

28 October 1996

Instructions to Candidates

1. The examination duration is three (3) hours, plus 30 minutes reading time.
2. There are FIVE questions in 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. Write Questions 1 ^{Q.2} ~~to 3~~ in Answer Book 1 and Questions ^{3 to} ~~4 and~~ 5 in Answer Book 2.
6. Do not take either this question paper or any answer booklets with you when you leave the examination room.

Overseas Lawyers Qualification Examination 1996

Head I : Conveyancing and Landlord and Tenant

Question 1 (20 marks)

- (a) Very Profitable Co Ltd ('Very Profitable') is a development company registered in Hong Kong. The company's business is the development of land by the construction of blocks of flats and the sale of those flats to members of the public.

Very Profitable have identified a plot of land (Inland Lot No 1456) in Western District on which stands an old low-rise block of four flats with potential for development. The flats, which were built in 1955, have been owned by Mrs Wong since the date of their construction. Very Profitable wishes to purchase the block from Mrs Wong, demolish it and construct a new high-rise six-storey block consisting of 10 flats for residential purposes and to locate a small supermarket on the ground floor.

Advise Very Profitable as to what investigations and inquiries they must make to ensure that the land can be used for their intended purposes. Explain the purpose of each investigation or inquiry that you identify.

- (b) Very Profitable's solicitors have advised their client that there is no prohibition on their building scheme and architects have been instructed to draw up the building plans for submission to the Building Authority.

The plans were submitted to the Building Authority on March 1st 1996 but they were rejected on March 12th under section 16(1)(g) of the Buildings Ordinance on the grounds that the carrying out of the work would result in a building differing in height and design from buildings in the immediate neighbourhood.

Very Profitable appealed against this rejection to the Building Appeal Tribunal who allowed the appeal on June 15th 1996 on the grounds that the decision of the Building Authority was wrong since there was already considerable difference in the height and design of the buildings in the immediate neighbourhood.

On June 1st 1996, however, as a result of the downzoning of Western District, the permitted plot ratio for the site was reduced.

When Very Profitable resubmitted their plans to the Building Authority on June 20th 1996 the Building Authority rejected the plans on the ground that the proposed building now exceeded the revised permitted plot ratio.

What action would you advise Very Profitable to take? Give reasons for your advice.

(Please also see page 2 for questions (c) & (d))

- (c) Very Profitable received permission to commence building work from the Building Authority on September 1st 1996. Next day, however, they received a letter from the Legal Advisory and Conveyancing Office of Government (LACO) which says inter alia:

We note that you are intending to construct a block of flats on Inland Lot No 1456. Since the Crown Lease only permits the construction of private residential premises on the site, we draw your attention to the fact that you must seek a variation of the Crown Lease before you can construct a block of flats on the site. Such a variation would require the payment of a substantial premium.

Very Profitable seek your advice.

- (i) They ask first whether LACO can raise this objection since planning permission has already been granted by the Building Authority. Advise them on this point.
- (ii) Advise Very Profitable whether they have any *other* argument to put to Government to avoid paying a premium for a variation of the Crown Lease.
- (d) Mrs Wong's solicitors have been acting for her since the original construction of the old block of flats and have now found on their file in respect of Inland Lot No 1456 a letter from Government dated 1954 which says that, according to current Government policy, Mrs Wong would be permitted to erect a block of flats not exceeding six storeys in height notwithstanding the restrictive covenant in the Crown Lease.

Advise Very Profitable as to whether this letter would affect their position in relation to LACO's demand for payment of a premium.

Question 2 (20 marks)

Re: Apartment B, 7/F, Lofty Heights

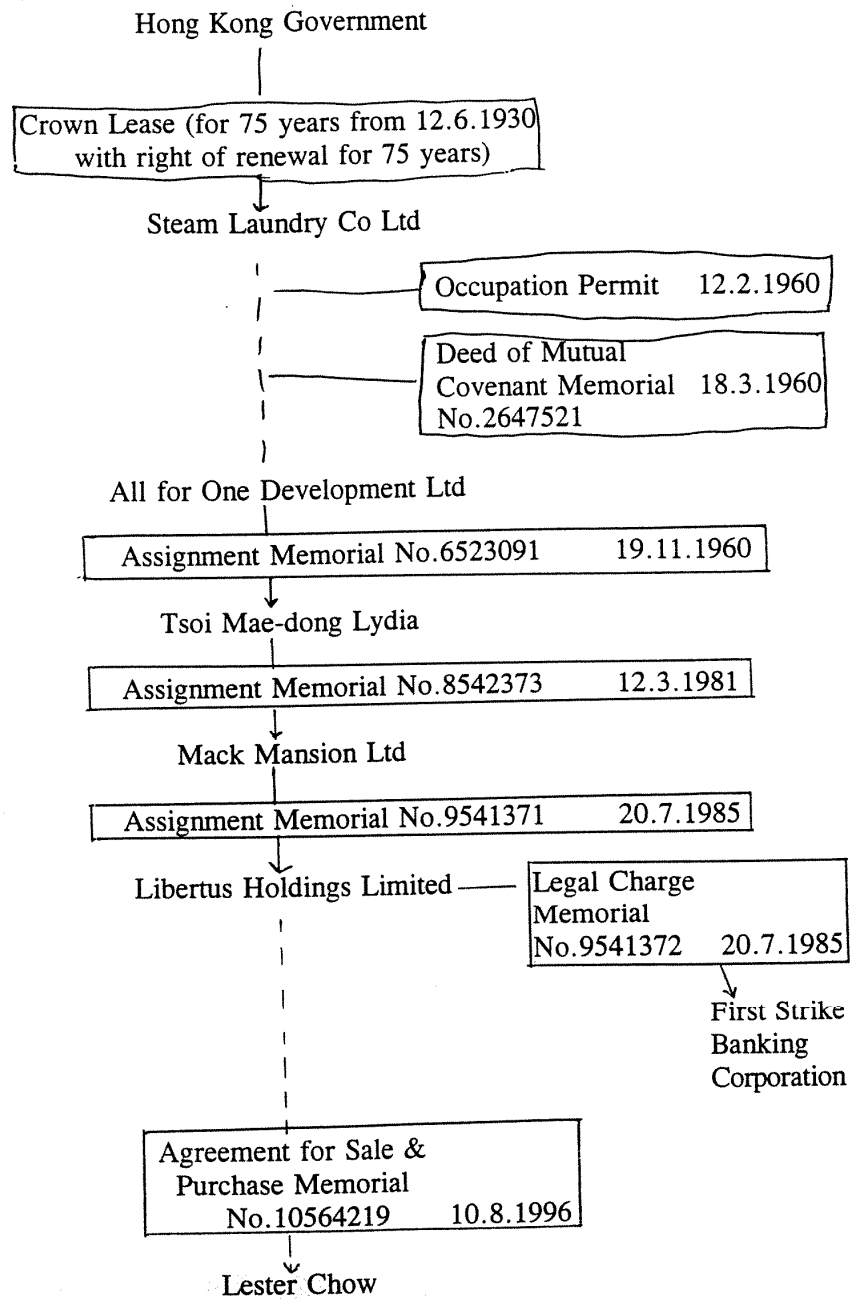
You have received instructions from Lester Chow in the purchase from Libertus Holdings Limited ('Libertus') of the above apartment located in a highrise block of apartments in Mongkok, Kowloon. Your client has already executed with Libertus a formal Agreement for Sale and Purchase a clause of which reads:-

'The Vendor agrees to give good title which shall be shown in accordance with Section 13, Conveyancing & Property Ordinance ('CPO'), Chapter 219 of the Laws of Hong Kong.'

Upon perusal of the title deeds and documents supplied the diagram of title looks like this:-
(see overleaf)

Apartment B, 7/F, Lofty Heights

Title Diagram (based on Deeds & Documents supplied)



N.B. The dates opposite various documents are the dates of execution of those documents. Please note that the title deeds and documents are not complete. The title between the Crown Lease to Steam Laundry Co Ltd and All for One Development Ltd has not been made available; for the purposes of this question you may ignore it.



(a) Please identify the intermediate root of title which complies with S.13(1)(a), CPO.

(5 marks)

(b) (i) You note that the copy of the Crown Lease among the title deeds is a plain copy of the Counterpart a number of pages of which are illegible.

(ii) The Deed of Mutual Covenant Memorial No.2647521 was executed by an attorney for one of the parties to it but the power of attorney is missing.

(iii) You have been supplied with a certified copy of Assignment Memorial No.8542373 but not the original.

(iv) In Assignment Memorial No.6523091 the purchaser is named as Tsoi Mae-dong (蔡美東) and she has signed her name in Chinese.

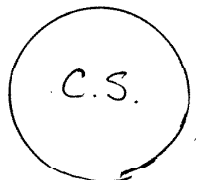
In Assignment Memorial No.8542373 by which she apparently assigned the property, she is named Tsoi Mae-dong, Lydia (蔡美英) and she has signed her name in English as Lydia Tsoi.

In Assignment Memorial No.6523091 it is stated that execution by her occurred in the presence of Johnny K L Chan, solicitor who signed as attesting witness. In the Assignment Memorial No.8542373 she apparently executed it before the same attesting witness. She was also stated to be holder of HKID Card No.M469392(8) in this later assignment.

(v) Assignment Memorial No.8542373 was executed by MACK MANSION LTD as purchaser in the following manner:-

Sealed with the Common)
 Seal of MACK MANSION LTD)
 and signed by Xavier Y L Ng,)
 its director in the presence of:-)
)
)
)
)

Xavier Ng.



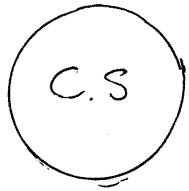
James T.K. Wong,)
 Solicitor, Hong Kong)



Assignment Memorial No.9541371 was executed by MACK MANSION LTD as vendor in the following manner:-

Sealed with the Common)
Seal of MACK MANSION LTD)
and signed by Xavier Y L Ng)
and Rosie S K Lee, its directors in)
the presence of:-)
)
)
)
)
)
)
Cynthia Lee,)
Solicitor, Hong Kong)

Xavier Ng



S.K. Lee

- (1) Raise requisitions on title on items in (i) to (v) as you consider appropriate.
- (2) Suggest ways in which the vendor or you could satisfy yourself on these points so that you will be in a position to approve the title.

(15 marks)

Question 3 (20 marks)

Lester Chow will purchase Apartment B, 7/F, Lofty Heights with the aid of a loan from Happy Go Lucky Bank which will be secured by a first charge on the property. The parties involved in the completion (namely Happy Go Lucky Bank, Lester, Libertus Holdings Limited and First Strike Banking Corporation) are all separately represented. They and their solicitors have agreed that completion shall be by way of undertaking using the Law Society recommended forms of undertaking. When Libertus Holdings Limited purchased the property it did so with the aid of a loan from First Strike Banking Corporation secured by a first charge on the property. On sale to Lester Chow, Libertus Holdings Limited will repay the loan and discharge the charge from the proceeds of sale.

Please answer the following:-

- (a) What documents should Libertus Holdings Limited's solicitors require from the solicitors for First Strike Banking Corporation?
- (b) Within what period must these documents be sent to the Libertus Holdings Limited's solicitors?
- (c) Should Lester's solicitors send split cheques on completion to the solicitors for Libertus Holdings Limited and, if so give reasons for adopting this practice?
- (d) If Libertus Holdings Ltd's solicitors do not receive the documents within the period what consequences may follow and what avenues of redress are open to them?

Question 4 (20 marks)

Explain how stamp duty is charged on the following:

- (a) An agreement for the sale and purchase of a unit in an old building in Mongkok for a consideration of HK\$2 million. The unit is used partly for business and partly for residential purposes.
- (b) An assignment of an office building in Causeway Bay for a consideration of HK\$50 million from a Hong Kong Holdings to its wholly owned subsidiary Malaysian Holdings Limited.
- (c) A lease for a term of three years at a monthly rent which is below the market rent.
- (d) A licence of a car park for a term of two years at a monthly licence fee of HK\$3,000.
- (e) An informal agreement for the sale and purchase of residential property for a consideration of HK\$5 million. Under the terms of the agreement the parties were obliged to sign a formal agreement. The purchaser has refused to sign the formal agreement because the purchaser has investigated title and discovered a defect.

Question 5 (20 marks)

- (a) In 1995, Kevin Lo took a tenancy of a postwar residential flat known as 4A Valiant Court from Johnson Wu for a 2 year term starting on 13th January 1995 and ending on 12th January 1997. In July 1996, Johnson sent notice of termination of the tenancy to Kevin. The notice was in Form CR101 and terminated the tenancy on 12th January 1997. Johnson sent the notice to Kevin on 12th July 1996. In the notice Johnson did not say whether or not he would oppose an application by Kevin for a new tenancy but Johnson did state that he wanted to live in the premises himself.

Discuss whether or not the notice of termination in Form CR101 is valid.

(10 Marks)

- (b) In 1995, JFK Finance Company Limited ('JFK') took a lease of office premises in Asia Tower in Wanchai from Asia Land Limited ('Asia Land'). The lease was for a term of 2 years. The term expires on 31st May 1997. However, JFK has an option to renew the lease for a further term of 2 years at a market rent. The lease is in writing. The option must be exercised in writing before 30th November 1996. JFK paid a deposit to Asia Land to secure JFK's obligations under the lease. The deposit was equivalent to three times the monthly rent and Asia Land have agreed to repay the deposit to JFK at the end of the term if JFK has not breached any of the terms of the lease.

If JFK exercise the option to renew, the deposit will be increased or reduced so that it remains at a level equivalent to three times the monthly rent.

JFK has learned that Asia Land is negotiating to sell Asia Tower to Luk Kwong Holdings Limited ('Luk Kwong') although according to market rumours, the negotiations have not been finalised. JFK wants to exercise the option to renew.

Advise JFK the effect the sale of Asia Tower to Luk Kwong would have on JFK's tenancy and its option to renew.

(10 Marks)