

**1997 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

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

Tuesday, 28 October 1997



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

## **TEST PAPER**

28 October 1997

### **Instructions to Candidates**

1. The duration of the examination is 3 hours and 30 minutes.
2. This is an open-book examination.
3. There are FIVE questions in this paper. EACH must be answered.
4. Answer Question 1 in Answer Book 1.  
Answer Questions 2 and 3 in Answer Book 2.  
Answer Questions 4 and 5 in Answer Book 3.
5. 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.
6. Do not take either this question paper or any answer booklets with you when you leave the examination room.

# 1997 Overseas Lawyers Qualification Examination

## Head I : Conveyancing and Landlord and Tenant

### Question 1 (20 marks)

Your client Albert has just purchased flat 6A in Magnificent Mansions in Tuen Wan from Quick Development Co Ltd. The agreement for sale and purchase dated July 20 1997 provided that the vendor would give and show good title to the flat. The flat was assigned to Albert by Quick Development Co Ltd in September 1997, the vendor assigning 'as beneficial owner'.

- (a) Albert entered into occupation of the flat on 1st September 1997 and has just been informed by the managers of Magnificent Mansions, who were appointed by the deed of mutual covenant, that management fees for the months of July and August 1997 have not been paid as required by the deed of mutual covenant. To avert threatened legal action by the managers Albert immediately paid these fees.

**Advise Albert as to whether he can recover these fees from Quick Development Co Ltd.**

- (b) Now assume that Albert does not pay off the arrears of management fees and assigns the property to, *for the purposes of (b) only*, Samantha by way of gift. Samantha pays off the arrears for July and August.

**Can Samantha recover the fees from either Albert or Quick Development Co Ltd?**

- (c) The deed of mutual covenant for Magnificent Mansions, to which Quick Development Co Ltd was not a signatory, provides inter alia:

'Each holder of undivided shares in the building covenants:

- (A) to keep the interior of his flat in good repair and condition; and  
(B) not to make any structural alteration to his flat or the common parts of the building.'

The deed of mutual covenant also authorises and requires the managers to take action to enforce the terms of the deed of mutual covenant on behalf of the co-owners. There are, of course, many other terms in the deed of mutual covenant; you may assume for the purposes of answering this question that they are the terms conventionally found in such deeds.

Albert decides to emigrate to Canada to look after his sick mother who lives in Vancouver. He lets the flat to John Ho on a two year tenancy. Water has recently been leaking from internal pipes in the bathroom of the flat and, by seeping through the floor, is causing damage to the flat of Peter Wong immediately below. Further, John Ho has instructed workmen to commence work in knocking down an interior bedroom wall to

convert two small bedrooms into one larger one.

- (i) The managers seek your advice as to what action they should take in respect of the leaking pipes.

**Advise the managers as to what action they must take and against whom that action should be taken. Identify the appropriate remedy they will be seeking from the court.**

- (ii) The managers also seek your advice with respect to the intended demolition of the adjoining wall.

**Advise the managers whether they are entitled to intervene to stop John Ho knocking down the wall. Identify the appropriate remedy they will be seeking from the court?**

- (d) In the deed of mutual covenant Good Security Ltd have been appointed to be managers for ten years. There is no provision for earlier termination of their appointment in the deed. The co-owners, however, are very dissatisfied with their performance. There have been complaints that the managers have failed to keep the common parts clear of obstructions constituting a fire risk and that the managers have not provided adequate security services for the premises to guard against burglary and car theft. There have been further complaints that the estate accounts are not being properly kept.

**Briefly advise the co-owners as to what action they can take including whether, and by what means, they can terminate the manager's appointment as soon as possible.**

- (e) The Government lease in respect of the land provides that the flat may only be used for residential purposes. The same restriction is contained in the deed of mutual covenant. Albert seeks your advice as to whether his wife can use the living room five afternoons per week for conducting piano lessons for which she will charge a fee.

**Advise him.**

## Question 2 (20 marks)

By a sale and purchase agreement dated July 1997 Hopeful Development Co Ltd (the purchaser) agreed to purchase a house and carpark from Mrs S Chan the registered owner (the vendor). In the sale and purchase agreement the vendor agreed to show and give good title. The chain of title from the Crown lease as deduced from the computer search issued out of the Land Registry shows as follows:

Crown Lease (granted for 75 years from 1 June 1910 renewable for 75 years)



Mrs Da Rosa (Crown lessee)

Died 1.3.12

Letters of Administration dated 29.5.12 granted to Isidore Michael Xavier as next of kin. Memorial No 123456



Assent by Isidore Michael Xavier to himself. Memorial No 123789.

Assignment by way of deed of gift by Isidore Michael Xavier to Frederico Antonio Xavier and Faustino Antonio Xavier as Tenants in Common dated 1.2.46. Memorial No 212211



Death of Frederico Antonio Xavier on 15.5.75. Grant of Probate dated 2.3.76. Memorial No 256789 (missing)



Assignment on sale by Faustino Antonio Xavier to Shaw & Co Ltd  
Dated 18.7.80. Memorial No 377377



Assignment on sale by Shaw & Co Ltd to Prosperous Co Ltd  
Dated 5.5.82. Memorial No 400000



Mortgage to China Bank Ltd  
Dated 20.10.83. Memorial No 466466



Reassignment by China Bank Ltd  
Dated 3.10.88. Memorial No 588588



Assignment by Prosperous Co Ltd to Mrs S Chan  
Dated 1.1.94. Memorial No 666666



Agreement for sale and purchase to Hopeful Development Co Ltd  
Dated 5.7.97

Answer the following questions in relation to this title:

- (a) **Identify the ultimate root of title document and the intermediate root of title document.**
- (b) **There is no evidence that the Crown lease has been renewed. Advise the purchaser as to whether he should be concerned by such lack of evidence.**
- (c) (i) **Does the vendor have a duty to show title back to the intermediate root or ultimate root of title?**  
(ii) **Does the vendor have a duty to give title back to the intermediate or ultimate root of title?**
- (d) **The vendor produces a certified copy of the Crown lease but a significant portion of that certified copy is illegible. The purchaser raises a requisition requiring a fully legible certified copy. What are the obligations of the vendor?**
- (e) **Assignment Memorial No 377377 by Faustino Antonio Xavier to Shaw & Co raises a serious title problem. What is that problem and how would you resolve it?**
- (f) **Assignment Memorial No 400000 by Shaw & Co Ltd was executed as follows:**

**'SEALED WITH THE COMMON SEAL OF THE ASSIGNOR AND SIGNED BY Mr Thomas Chen and Mr William Kwok'.**

The signatures of Thomas Chen and William Kwok appear below together with the corporate seal.

- (i) **What title problems, if any, arise in respect of the execution of this assignment?**
  - (ii) **Are there any relevant statutory provisions to resolve the problem?**
  - (iii) **Acting for the purchaser would you raise a requisition? If so, what would your requisition require the vendor to do?**
- (g) **Reassignment Memorial No 588588 was executed on behalf of the Bank of China Ltd by Mr Wing Siu Lun under a power of attorney dated 1/10/87 memorial No 588621. The power of attorney has not been produced for the purchaser's inspection.**
- (i) **What requisition or requisitions should the purchaser properly raise in respect of this reassignment and how should the vendor satisfy that requisition or requisitions?**
  - (ii) **Would your answer differ if Prosperous Co Ltd had been wound up two years ago?**

- (h) Assignment Memorial No 666666 is missing. The vendor can, however, explain by way of statutory declaration how the document has come to be missing and can produce secondary evidence of its contents to comply with the principle laid down in *Re the Halifax Commercial Banking Co Ltd and Wood* (1898) 79 LT 536. **Will this suffice by way of proof of title?**

### Question 3 (20 marks)

- (a) In April 1997 Randall Chiu agreed to sell his flat to Rose Ling. A term in the formal sale and purchase agreement provided that the vendor would show good title by June 20. The agreement incorporated condition 7 of Part A of the Second Schedule of the Conveyancing and Property Ordinance. Completion was fixed for July 20. Time was made of the essence.

A further clause in the sale and purchase agreement provided that, in the event of the vendor breaching the sale and purchase agreement, the purchaser would be entitled to the return of his deposit and to a sum equal to the preliminary deposit by way of liquidated damages.

On June 19 Rose's solicitor received the documents of title from Randall's solicitor. Rose's solicitor carried out a search in the Land Registry and checked the title documents. Discovering that the vendor had failed to send him a post-intermediate root assignment, he raised a requisition on July 10 requiring the vendor to supply the original or a certified copy of the assignment.

- (i) **Would the vendor be entitled to refuse to answer this requisition? Give authority for your answer.**
  - (ii) **The vendor's solicitor responded on July 15 by providing a copy of the missing assignment attested by two clerks. Has the vendor responded satisfactorily to the requisition?**
  - (iii) **The purchaser's solicitor responded that he was not satisfied by the answer. The vendor immediately returned the purchaser's deposit and sent him a sum equivalent to the preliminary deposit saying it was by way of liquidated damages as compensation for the vendor's breach of contract. At the time the property market was rising steeply and the purchaser seeks your advice as to whether he can enforce specific performance of the agreement. Advise him.**
- (b) Your client William is intending to purchase a vacant plot of land in Sai Kung in the New Territories. The land in question is described in the Schedule to the Block Government lease as 'agricultural land' and there is a restriction in the Block Government lease upon building on land 'described in the Government lease as agricultural land'.

William seeks your advice as to whether he can use the land for the storage of shipping containers.

- (i) **Advise William, with authority, whether the storage of containers is prohibited by the Block Government lease.**
- (ii) **Acting for the intending purchaser what other searches would you conduct before you could give William final advice on this question?**



- (c) Peter is intending to purchase a plot of land in Aberdeen. The notes accompanying the Outline Zoning Plan for the area prescribe a maximum plot ratio of 8:1. The site area is 1,500 square metres. Peter's architect is intending to construct a building of 10 storeys. Each storey will be of equal size and each storey will have a gross floor area of 1,400 square metres.
- (i) **Explain, showing your calculations, whether the proposed building complies with the prescribed plot ratio?**
  - (ii) **Now assume that it does not comply. Does the Building Authority have discretion to approve the building plans even though they do not comply with the prescribed plot ratio?**
  - (iii) **If the builder added an enclosed balcony to the top floor without the permission of the Building Authority, can the Building Authority retrospectively approve the building plan, that is, after the building works have been completed?**

#### **Question 4 (20 marks)**

Your client Western Properties Limited (WPL) has agreed to buy the 6th Floor of Worldwide House (the Property) from Pacific Insurance Limited (PIL). WPL and PIL have signed a binding agreement for sale and purchase which provides that PIL will give and show good title to WPL and that the Property is sold subject to and with the benefit of the Deed of Mutual Covenant for Worldwide House.

Worldwide House was developed by Fantastic Development Limited (FDL). In 1994 FDL entered into an agreement to sell the Property together with naming rights for Worldwide House to China Land Limited (CLL). China Land Limited subsold the Property and the naming rights to Pacific Overseas Insurance Limited (POIL). When the development of Worldwide House was completed in 1995, FDL assigned the Property and the naming rights to POIL. CLL joined in that assignment (the 1995 assignment) as confirmor.

POIL entered into the Deed of Mutual Covenant for Worldwide House with FDL. That Deed of Mutual Covenant grants naming rights for Worldwide House to POIL. FDL has since sold all the floors in Worldwide House subject and with the benefit of that Deed of Mutual Covenant.

In 1996, POIL assigned the Property with the naming rights to its wholly owned subsidiary PIL. That assignment is referred to below as the 1996 assignment.

You have been sent the title deeds to the Property.

- (a) The common seal of CLL has not been affixed to the 1995 assignment and the signatures of the directors who have signed have not been witnessed by a solicitor.

**Explain whether you will raise a requisition on title concerning these matters.**

- (b) The 1996 assignment has been stamped with a stamp which indicates that it has been adjudicated and that it was exempt from stamp duty under section 45 of the Stamp Duty Ordinance. Recently you have read an article in the South China Morning Post Business News that POIL in September 1997 sold its wholly owned subsidiary PIL to Martin Mao.

**Explain whether you will raise a requisition concerning the manner in which the 1996 assignment has been stamped.**

- (c) Your client WPL proposes to rename Worldwide House 'Western House'.

**Explain whether WPL will be able to rename Worldwide House.**

Please see next page for Question (d)

- (d) The agreement for sale and purchase between PIL and WPL is in the same form as that set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance. Completion is due to take place tomorrow. PIL's solicitors Honest Wong and Co are insisting that completion take place by way of undertaking and have asked for the balance of purchase price of HK\$ 90,000,000 to be made payable to Honest Wong and Co. There is no mortgage to discharge.

**Explain whether you will agree to complete by undertaking or what other arrangements you will make regarding completion.**

### **Question 5 (20 marks)**

William Tang has occupied Flat 6C Roxwell gardens - a residential flat built in 1960 - as a tenant for a number of years. William signed a tenancy agreement with his landlord Mary Lee for a term of two years in October 1981. When the term expired in October 1983, William and Mary signed a new agreement for a further term of two years. When the second term expired in October 1985, no new agreement was signed although William has remained in occupation ever since.

Mary has increased William's rent every 2 years. The rent was last increased in 1995 and is currently HK\$26,000 per month.

In July this year, Mary sold Flat 6C to James Wu subject to William's tenancy. The assignment of the flat from Mary to James has been completed and registered in the Land Registry.

- (a) James believes that the rent William is currently paying is below the market rent for the flat because he has seen two flats in Roxwell Gardens advertised for rent at HK\$32,000 per month. Last week James telephoned William and suggested that the rent should be increased to HK\$30,000 per month but William refused.

**Advise James what action he must take in order to increase William's rent.**

- (b) James wonders whether he can obtain possession of Flat 6C when his son Lester completes his studies in Vancouver in December 1997 and returns to Hong Kong.

**Advise James of the steps that he must take to obtain possession of the flat to enable Lester to live there.**

- (c) **Explain whether your answers to (a) and (b) would be different if William used Flat 6C as his residence and also to run a mail order business.**