
**1999 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

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

Monday, 25 October 1999



HEAD I: CONVEYANCING AND LANDLORD AND TENANT

TEST PAPER

25 October 1999

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 SIX questions in this paper. You must answer ALL questions.**
- 4. You must answer Questions 1 to 3 in Answer Book 1, and Questions 4 to 6 in Answer Book 2.**
- 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 books with you when you leave the examination room.**

1999 Overseas Lawyers Qualification Examination

Head I : Conveyancing and Landlord and Tenant

Question 1 (20 marks)

Hibiscus Court is a 4 storey residential block of flats built in 1973. There are eight flats in the block each with a floor area of 2000 square feet and 8 uncovered parking spaces. Each flat has an annual rateable value of HK\$120,000. Fantastic Developments Limited ('Fantastic') is the registered owner of Hibiscus Court. Each flat is let together with one parking space. Every tenancy agreement contains the following covenant by the tenant:

'Not to use the flat for any purpose other than residential purposes and not to use the car park for any purpose other than for parking a vehicle belonging to the tenant.'

Fantastic intends to demolish Hibiscus Court and replace it with a 16 storey block with three flats on each floor. Each flat will have a floor area of 1010 square feet. There will also be underground parking for 50 cars.

Flat 3A Hibiscus Court is occupied by Thomas To a well known hairdresser in Hong Kong. Thomas has styled the hair of many Hong Kong pop stars and is famous for his outrageous punk hair styles. Recently Thomas was in the news when his salon closed due to financial difficulties.

Fantastic first let Flat 3A to Thomas in 1998 for a term of two years starting on 1 February 1998 at a monthly rent of HK\$45,000. On 28 July 1999 Fantastic sent a notice of termination in Form CR101 to Thomas terminating Thomas' tenancy on 31 January 2000. The notice was sent by post to Thomas at Flat 3A. Fantastic stated in the notice that it would oppose the granting of a new tenancy on the grounds that it intended to redevelop Hibiscus Court.

Fantastic has not received any response to its notice. However, last week Fantastic discovered that Thomas has been styling the hair of several of his customers at Flat 3A.

Fantastic wants to obtain possession of Flat 3A as quickly as possible.

- (a) **Explain the methods by which Fantastic can obtain possession of Flat 3A.**
(9 marks)
- (b) **In respect of each method, state the procedures to be followed giving details of any forms that must be completed.**
(6 marks)
- (c) **Thomas would like to renew his tenancy of Flat 3A. Explain what steps Thomas should take in order to renew.**
(5 marks)

If you need more information to answer any of the above questions, state what information you need.

Question 2 (20 marks)

You act for Mr and Mrs James Lok who have agreed to buy Flat 2B Primrose Court, Taikoo Shing, Hong Kong ('the Property') from Madame Yu Yuk Ling. A copy of a preliminary agreement signed by the parties is attached.

On 20 October 1999 Madame Yu's solicitors sent a draft formal agreement to you. The draft included the following terms which are clauses 4, 5 and 6 of the formal agreement:

Clause 4

Title to the Property shall commence with the Government lease of Inland Lot Number 1346 dated 21 June 1965 and made between (1) His Excellency the Governor of Hong Kong and (2) Rich Castle Limited and an Assignment dated 13 September 1988 and registered in the Land Registry by Memorial No. 6784243.

Clause 5

Completion shall take place at the offices of the vendor's solicitor or as they may direct on 19 November 1999 between the hours of 9:00 a.m. and 5:00 p.m.

Clause 6

The assignment from the Vendor to the Purchaser will be executed under a Power of Attorney dated 2 July 1999 given by Madame Yu Yuk Ling (the Vendor) to Vincent Ko. A certified copy of the Power of Attorney has been given to the Purchaser who will not raise any requisitions thereon.

- (a) **Mr and Mrs Lok are very keen to proceed with their purchase because prices are going up. Explain with authority whether or not you will accept clauses 4, 5 and 6 in the formal agreement for sale and purchase. Your answer should include brief explanations of the effect of the three clauses and full reasons for accepting or rejecting them.**

(14 marks)

- (b) **You have carried out an historical search against the Property in the Land Registry and discovered that in 1970 Rich Castle Limited agreed to sell Inland Lot Number 1346 to Mr Leo Ho who nominated Big Investments Limited to take up the assignment. Madame Yu's solicitors have not sent you the agreement for sale and purchase, the nomination or the assignment in question.**

Explain whether or not you need to see the agreement for sale and purchase, the nomination and the assignment and whether Madame Yu is under a duty to provide them to the purchasers.

(6 marks)

(See over the page for the "Preliminary Agreement")

Agreement for Question 2

Preliminary Agreement

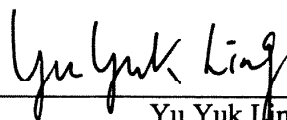
This agreement made this 19 October 1999.

BETWEEN Vendor Yu Yuk Ling of Flat 2 Lock Yee Gardens, 6 Renfrew Road,
Hong Kong

Purchaser James Man Chee Lok
Yolanda Ming Lan Lok

1. The Vendor will sell and the Purchaser will purchase Flat 2B, Primrose Court, Taikoo Shing, Hong Kong erected on Inland Lot No 1346 for a consideration of HK\$6,700,000 which shall be paid as follows:
 - (a) the sum of HK\$67,000 by the Purchaser to the Vendor on the signing of this Agreement;
 - (b) the sum of HK\$603,000 by the Purchaser to the Vendor on the signing of a formal agreement for Sale and Purchase on 25 October 1999; and
 - (c) the balance on completion which shall take place on 19 November 1999.
2. The Purchaser will pay all stamp duty and registration fees in connection with this transaction.

Signed



Yu Yuk Ling

Signed



James Man Chee Lok



Yolanda Ming Lan Lok

Question 3 (10 marks)

In August 1999 Peter Lee agreed to purchase an **Office** in Causeway Bay from Velma Wong for a consideration of HK\$13 million. The sale was negotiated by an estate agent called Ricky Lam. Peter and Velma have signed a formal agreement for sale and purchase which is in the form set out in Form 2 of the Third Schedule to the *Conveyancing and Property Ordinance*. It is a term of the agreement that Peter will pay all stamp duty and registration fees in connection with the transaction. Completion is due to take place on 28 November 1999.

Prices of offices have increased substantially since August. Recently Ricky Lam introduced Peter to Augustine Chan who has offered to buy the office from Peter for a consideration of HK\$18 million. Peter is keen to sell and has come to you for advice in connection with a possible sale to Augustine.

Peter wants to structure the sale to Augustine so as to reduce or avoid his liability to pay stamp duty. **Advise Peter how this can be done stating what documents Peter will be required to sign and when he will be required to sign them. If there is more than one method of structuring the sale to Augustine so as to meet Peter's objectives, state all methods.**

(10 marks)

Question 4 (10 marks)

Jimmy agreed to purchase a flat in Happy Valley from Peter. The provisional sale and purchase agreement was signed on May 28th 1999 and the formal sale and purchase agreement was signed on June 10th 1999. The formal agreement was registered on June 20th 1999. The assignment was executed at 2:00 p.m. on 2nd August 1999 and registered on 5th September 1999.

Unknown to Jimmy a charging order had been registered against the title at 10:00 a.m. on August 2nd 1999.

(i) **Jimmy seeks your advice as to whether the property is bound by the charging order.**

(2 marks)

(ii) **Would your answer differ if the charging order had been registered on June 15?**

(2 marks)

(iii) **Now assume that no charging order had been registered against the title. However Peter had guaranteed the debts of a business partner and the business partner had defaulted in repayment. A writ was served on Peter as guarantor on August 5th 1999 and had been registered against the title as a lis pendens on May 26 1999.**

Is Peter's title defective as a result of the lis pendens?

(3 marks)

(iv) **Peter had agreed in the sale and purchase agreement to sell to Jimmy along with the flat a television and video recorder (the two items) that were in the flat. The price had been fixed at \$2,000 and has been paid. Peter had also warranted in the sale and purchase agreement that the two items were his unencumbered property, but no mention was made of them in the assignment. Two days after completion Electric Hire Company Ltd visited the flat and removed the two items since they were on hire purchase from their company and Peter had failed to keep up the hire payments.**

Advise Jimmy as to his remedies against Peter.

(3 marks)

Question 5 (20 marks)

PART A

Mr Cheng (the vendor) agreed to sell his flat and car parking space in Blueway Mansions to Ms Wei (the purchaser). A formal sale and purchase agreement was signed by both parties on June 25th 1999. It contained, inter alia, the following terms:

1. The completion date shall be August 21st.
2. The vendor agrees to show and give good title and to provide the original or certified copies of the title deeds to the purchaser by July 5th.
3. The vendor agrees to sell the flat on an 'as is' basis.
4. Requisitions must be raised within 14 days of the receipt by the purchaser of the title deeds.
5. Except with regard to requisitions raised within the stipulated time, the purchaser is deemed to have accepted the vendor's title.
6. In the event of default by the purchaser, the vendor shall be entitled to forfeit the purchaser's deposit.

The title deeds were delivered to the purchaser on July 4th.

The purchaser had inspected the flat on June 20th and had noticed that one of the rooms had been divided into two by a newly constructed partition wall. She had commented on this and told the vendor that she liked the fact that there was one extra room because of the partition wall.

The price of flats dropped quite substantially in July and the purchaser instructed her solicitor that she wanted to find a way of getting out of the purchase. In an attempt to find a way out of the agreement on August 10th the purchaser's solicitor raised a requisition saying that he believed that the dividing wall was an unauthorised structure so that the vendor had breached his duty to show and give good title. The vendor replied on August 20th saying that in his opinion the dividing wall was non-structural. The purchaser refused to complete on August 21st and the vendor forfeited her deposit. **The purchaser now seeks your advice as to whether she can recover the deposit. Advise her.**

(14 marks)

PART B

Now assume that the vendor, having received the requisition on July 10th, conceded that the wall was structural and offered to demolish it prior to completion. The purchaser refused to accept this offer and refused to complete. Again the deposit was forfeited. **Would your advice differ?**

(6 marks)

Question 6 (20 marks)

In 1980 Grand Design Ltd, a property developer, purchased a vacant site in Central District and erected a multi-storey building which it named 'Central Towers' on the site. According to the occupation permit and the deed of mutual covenant both executed in 1984 the lowest three floors were restricted to commercial use and the remaining twelve floors were restricted to residential use. The deed of mutual covenant provided inter alia:

- (1) Grand Design Ltd shall have the exclusive right to rename the building at any time.
- (2) Each owner shall be responsible, in proportion to the number of shares held by it, for contributing towards the renovation and painting of the exterior of the building, which shall be carried out every 10 years.'

Flat 6A (on the sixth floor) was purchased by Charles in 1984. He sold the flat to William in 1995.

Flat 12C (on the twelfth floor) was sold to Happy Co Ltd in 1984. Happy Company has let the flat to Electric Power Co Ltd, whose employee Mrs Wong lives in the flat.

The whole of the first floor was assigned to Park N' Spend in 1984. Park N' Spend received 100 equal undivided shares in the building.

Mr Chin owns a small shop on the third floor from which he sells antique watches. The shop consists of two rooms, the shop and a back room in which he stores his excess stock and does his book-keeping.

Grand Design Ltd has retained 6 equal undivided shares in the building.

Answer the following questions:

- (a) **Grand Design Ltd wishes to change the name of the building to 'Grand Design Towers'. Several of the owners have objected. Can Grand Design enforce its right laid down in the deed of mutual covenant to change the name of the building against the wishes of the present owners?**
(4 marks)
- (b) **Would your answer to question (a) above differ if Grand Design had sold off all the flats and owned no shares in the building?**
(4 marks)

(See over the page for questions 6(c), (d) and (e))

- (c) The managers of the building have called upon all co-owners to contribute their proper share of the cost of renovating and repainting the exterior of the building which has not been renovated or repainted for more than 10 years. Can the managers insist that William, Electric Power Co Ltd or Mrs Wong contribute towards the costs of repainting?
(6 marks)
- (d) Park N' Spend wish to divide the first floor into two and assign 50 undivided shares to Welgo whilst retaining the other 50 shares. Advise Park N' Spend whether they are entitled to divide up their 100 undivided shares so as to assign 50 to Welgo.
(3 marks)
- (e) Mr Chin wishes to know whether he can set up a bed in the back room and sleep there when his extended family come to visit from the Mainland. Advise him.
(3 marks)

END OF TEST PAPER