

**2000 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

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

Monday, 23 October 2000



HEAD I: CONVEYANCING AND LANDLORD AND TENANT

TEST PAPER

23 October 2000

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. You must answer ALL questions.**
- 4. You must answer Questions 1 to 3 in Answer Book 1, and Questions 4 to 5 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.**

2000 Overseas Lawyers Qualification Examination

Head I : Conveyancing and Landlord and Tenant

Question 1 (20 marks)

In 1999 Lena Lam bought a flat ('the Flat') on a brand new residential development in Pokfulam. She let the Flat to Tom To for a 2 year term. The term of Tom's tenancy started on 1 April 1999. Lena wanted to obtain possession of the Flat at the end of the term in order to live there herself. Lena's solicitors So So & Co served Form CR101 on Tom stating that Lena would oppose an application by Tom for a new tenancy on the grounds that she intends to live in the Flat herself. Copies of Form CR101 and So So & Co's covering letter are attached. The letter and Form CR101 were posted to Tom by So So & Co on 30 September 2000. Lena was then offered a good price for the Flat by Leo who also wanted to occupy the Flat as his own residence. Lena sold the Flat to Leo on 15 October 2000.

This morning, 23 October 2000, Leo received a notice in Form CR103 from Tom requesting a new tenancy. A copy of Form CR103 is also attached. The form was sent to Tom through the post.

Question :

- (a) **Explain whether Leo can obtain possession of the Flat in order to live there himself and whether, and if so, how he should respond to Tom's notice in CR103.**
(12 marks)

Lester Luk owns a modern office building in Wanchai. Lester agreed orally with Tessa Tam to let a suite of offices ('the Premises') in the Building to her for a term of two years starting on 1 September 2000 at a calendar monthly rent of HK\$130,000 payable monthly in advance. Tessa also agreed that she will pay the quarterly rates of HK\$30,000 and monthly management charges of HK\$5,000 and a security deposit of HK\$260,000. Lester agreed with Tessa that he will repay the deposit to her at the end of the term. No other terms were agreed, but Lester said that he would ask his solicitor to draft a tenancy agreement for approval by Tessa.

Lester's solicitor delayed preparing the tenancy agreement. Eventually Lester gave the keys to Tessa who paid the deposit and moved in to the Premises on 1 September 2000. Tessa started paying rent and other charges in accordance with her oral agreement with Lester.

Earlier this month Lester sold the Premises to Loretta. Loretta wants to use the premises for her own business. She wrote to Tessa giving her notice to move out on 31 May 2001. Tessa received Loretta's letter on 10 October 2000.

Question :

- (b) **Explain whether Tessa must move out on 31 May 2001 in accordance with Loretta's notice.**
(8 marks)

So So & Co

Solicitors
16/F Hutchison House
Hong Kong

Mr Tom To
Flat 6A Foo Lam Court
Pokfulam
Hong Kong

30 September 2000

Dear Sir

Flat 6A Foo Lam Court, Pokfulam, Hong Kong

We act for Landlord of the above premises, Lena Lam of Flat 10A Hibiscus Court, North Point, Hong Kong. We enclose Form CR101 by way of service on you.

Yours faithfully

So So & Co

So So & Co

FORM CR 101
表格 CR 101

LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE—PART IV
NOTICE OF TERMINATION OF TENANCY BY LANDLORD

業主與租客(綜合)條例—第四部
業主終止租約通知書

To: Tom To
致: Flat 6A Foo Lam Court
Pokfulam, Hong Kong
(Tenant)
(租客)

PREMISES Flat 6A Foo Lam Court, Pokfulam, Hong Kong
樓宇地址

Pursuant to section 119(1), I hereby notify you that the tenancy of the above premises will be terminated on 31 March 2001 (date) (see notes 1 and 2 overleaf).

本人現根據本條例第119條第(1)款之規定，通知你，上述樓宇的租約將於
年 月 日終止(參閱背頁註一及二)。

You are required to notify me in writing WITHIN 2 MONTHS after the giving of this Notice whether or not you will be willing to give up possession on the date specified above (see note 3 overleaf).

你須在本通知書發出後兩個月內以書面通知本人是否願意在上述指定日期遷出(參閱背頁註三)。

You are informed that:
現通知你:

- ~~(1) I would not oppose an application to the Lands Tribunal for the grant of a new tenancy.~~
• (一)本人並不反對你向土地審裁處申請授與新租約。
- (2) I would oppose an application to the Lands Tribunal for the grant of a new tenancy on the following grounds (see note 4 overleaf):
• (二)本人反對你向土地審裁處申請授與新租約，理由如下(參閱背頁註四):

I require the premises as a residence for myself.

Date 30 September 2000
日期

(Signed) So So + Co
Landlord 業主簽署

Name in BLOCK Letters So So & Co Solicitors
姓名(請用正楷填寫)

Address 16/F Hutchison House, Hong Kong
地址

Telephone No. (if any) 1234-5678
電話號碼(如有電話者)

• Delete the words which do not apply.
• 刪去不適用字句。

NOTES

1. This Notice must be given to the tenant not earlier than 7 months nor less than 6 months before the date the tenancy is to terminate.
2. The date of termination specified in this Notice must not be earlier than that permitted by the current tenancy.
3. The tenant must, within 2 months after the giving of this Notice, notify the landlord in a specified form (Form CR 102) whether or not he will be willing to give up possession of the premises at the date of termination. An application to the Lands Tribunal for the grant of a new tenancy may not be entertained if the tenant fails to serve the notice within the specified time.
4. The landlord can oppose the grant of new tenancy on the following grounds:—
 - (a) where any rent has not been paid or where any covenant or condition of the tenancy has been broken or not performed which would normally have been a cause of forfeiture;
 - (b) the premises or any part thereof are reasonably required by the landlord for occupation as a residence for himself, his father, his mother or any son or daughter over 18 years of age;
 - (c) the landlord intends to rebuild the premises;
 - (d) the tenant has caused unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person, which has continued after a warning in writing served by the landlord;
 - (e) the tenant has used, or has suffered or permitted the use of, the premises or part thereof, for an immoral or illegal purpose;
 - (f) the tenant has sublet the premises and does not occupy any part thereof as his dwelling.
5. The Ordinance applies both to tenancies and sub-tenancies. This Notice may be given either by a landlord to his tenant or by a principal tenant to his sub-tenant.

For enquiries, please contact the rent officer of the district by telephone on 2805 7049.

註 釋

如有查詢，請撥電話 2805 7049
與所屬地區的租務主任聯絡。

- 一、本通知書須於租約終止日期前六個月發給租客，但不得先於七個月前發出。
- 二、本通知書指定的租約終止日期不得較現時租約的終止日期為早。
- 三、租客須於本通知書發出後兩個月內以規定表格(表格 CR 102)通知業主，是否願意於租約終止日期遷出，否則土地審裁處不會接納租客要求授與新租約的申請。
- 四、業主可基於下列理由反對授與新租約：—
 - (甲)租客欠租或違反或不遵守租約的規定或條件，因而可能導致喪失租住權；
 - (乙)業主須收回樓宇或其中一部份以供業主本人或父、母、或十八歲以上的子女居住；
 - (丙)業主擬將樓宇重建；
 - (丁)租客擾及業主或他人或令他們遭受不便或干擾，而雖經業主發出書面警告，該等情況仍然持續；
 - (戊)租客使用、容忍或准許他人使用樓宇或其中部份作不道德或非法用途；
 - (己)租客將樓宇分租，而他本人並不在該樓宇任何部份居住。
- 五、本條例對租賃樓宇或分租樓宇均適用，本通知書可由業主發給租客或由二房東發給三房客。

LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE—PART IV
業主與租客(綜合)條例——第四部

REQUEST FOR A NEW TENANCY
租客要求新租約通知書

To: Leo Lam
致: Flat 9B, Wilson Gardens,
Wilson Road, Hong Kong

(*Landlord/Principal Tenant)
(*業主/二房東)

PREMISES Flat 6A Foo Lam Court, Pokfulam, Hong Kong
樓宇地址

Pursuant to section 119A(1), I hereby request you to grant me a new tenancy of the above premises commencing on 1 May 2001 (date) (see note 1 overleaf).

根據本條例第 119A 條第 (1) 款的規定，現請你授與本人上述樓宇由 年 月 日開始的新租約(參閱背頁註一)。

My proposals regarding the rent, the duration and other terms of the new tenancy are:—
本人對新租約的租金、租期及其他條款的建議如下：

on terms and at the prevailing market rent to be determined by the Lands Tribunal.

Date 22 October 2000
日期

(Signed) Tom To

Tenant/Sub-tenant
租客/二房東

Name in BLOCK letters TOM TO
姓名(請用正楷填寫)

Address Flat 6A Foo Lam Court, Pokfulam,
地址

Hong Kong

Telephone No. (if any) 2468-1234
電話號碼(如有電話者)

Delete the words which do not apply.
請刪去不適用字句。

PLEASE SEE NOTES OVERLEAF
請參閱背頁註釋

NOTES

1. The commencement date of the new tenancy must be not more than 7 nor less than 6 months after the making of the Request and it must not be earlier than the expiration date of the current tenancy.
2. The tenant cannot make a Request for a new tenancy if the landlord has already given a Notice of Termination of Tenancy (Form CR101) or if the tenant has already given a notice to quit.
3. The Landlord and tenant may freely agree on the terms of a new tenancy. Upon agreement, an application to the Lands Tribunal for a new tenancy will not be necessary. However, the landlord must lodge with the Commissioner of Rating and Valuation a Notice of Renewal Agreement (Form CR109) for endorsement, otherwise he shall not be entitled to maintain an action for rent due under the agreement.
4. If the landlord does not wish to grant a new tenancy, he may within 2 months after the making of this Request notify the tenant (Form CR104) stating the grounds on which he will oppose an application to the Lands Tribunal for the grant of a new tenancy.
5. Failing agreement on a new tenancy, the landlord may serve a notice (Form CR105) on the tenant requiring him to apply to the Lands Tribunal for a new tenancy, but such a notice should not be made before the expiry of 2 months after the giving of this Request by the tenant.
6. After the giving of a notice (Form CR105) by the landlord mentioned in Note 5 above, the tenant must then apply to the Lands Tribunal for the grant of a new tenancy. He must do this before the date of expiry of 2 months after the giving of the Form CR105 or before the commencement date of the new tenancy specified in this Request, whichever is the earlier.
7. Where an application has been made to the Lands Tribunal for a new tenancy the parties may apply to the Commissioner of Rating and Valuation at a fee for rental information of comparable premises. Application forms are available at the Registry of the Lands Tribunal.
8. The Ordinance applies both to tenancies and sub-tenancies. This Notice may be given either by a tenant to his landlord or by a sub-tenant to his principal tenant.

the rent officer of the district by telephone on 2805 7049.

註 釋

如有查詢，請與所屬地區的租務主任聯絡。

- 一、新租約的生效日期，必須在本通知書發出後六個月至七個月的期間內，但不得較現時租約的屆滿日期為早。
- 二、如業主已發出終止租約通知書(表格 CR101)，或租客已發出遷出通知書，則租客不得提出本要求新租約通知書。
- 三、業主與租客可自由協議簽訂新租約。雙方如達成協議，則毋須向土地審裁處申請。不過業主必須將重訂租約通知書(表格 CR109)送交給差餉物業估價署署長加簽，否則業主無權提出訴訟，以追討租約所規定的應繳租金。
- 四、如業主不想授與新租約，可於本通知書發出後兩個月內，向租客發出通知書(表格 104)，說明業主反對向土地審裁處申請授與新租約的理由。
- 五、如雙方未能就新租約達成協議，業主可向租客發出通知書(表格 105)，要求他向土地審裁處申請新租約，但該通知書必須於租客發出本通知書兩個月後方可送交租客。
- 六、業主發出註五所指的 notice (表格 CR105) 後，租客必須向土地審裁處申請授與新租約。提出該項申請的日期必須早於表格 CR105 發出滿兩個月之日或本通知書所指定的新租約生效日期(以較早的一個日期為準)。
- 七、若已就訂立新租約事宜向土地審裁處提出申請，則租賃雙方可向差餉物業估價署署長申請與有關物業相若的樓宇的租金資料，但在提交申請時須繳交費用。申請表格可向土地審裁處的登記處索取。
- 八、本條例對租賃樓宇或分租樓宇均適用。本通知書可由租客發給其業主或由三房客發給其二房東。

Question 2 (20 marks)

On 26 March 2000 the Bank of West Asia Ltd ('the Bank') lent the sum of HK\$7 million to Malcolm Man to finance his purchase of Shop 6A, Wide World House, Hong Kong ('Shop 6A') from Vincent Vong for a consideration of HK\$10 million under the terms of an Agreement for Sale and Purchase made between Vincent and Malcolm on 27 February, 1999. The loan was secured by a first legal mortgage ('the Mortgage') on Shop 6A which is registered in the Land Registry. The Mortgage is in Form 4 of the Third Schedule to the *Conveyancing and Property Ordinance*. Malcolm charged Shop 6A to the Bank as beneficial owner.

Malcolm bought Shop 6A subject to a tenancy in favour of Terry Tung. Terry runs a small business in Shop 6A selling antiques. The tenancy agreement is in writing. It is for a 2 year term starting on 1 January 1999 at a calendar monthly rent of HK\$30,000. The tenancy agreement includes an option for Terry to renew his tenancy for a further term of two years at a market rent. The option must be exercised by Terry in writing at least 2 months before the end of the term. The Bank was aware of the tenancy and the option when the Mortgage was created even though the tenancy agreement is not registered in the Land Registry.

Malcolm agreed with the Bank that he would repay the loan over a term of 10 years by equal monthly instalments of principal and interest subject to the Bank's overriding right to be repaid on demand. Malcolm lost his job in August this year. In August and September this year Malcolm paid interest to the Bank but did not manage to repay any principal. Malcolm is also in arrears with rates and management charges. The Bank has telephoned Malcolm and asked him to repay the principal but Malcolm told the Bank that he has no money.

The Bank now wants to enforce the Mortgage by selling Shop 6A with vacant possession. A neighbouring shop of the same size as Shop 6A recently sold for HK\$5 million.

Questions :

- (a) **Explain with reference to the Mortgage and to relevant authorities all the steps that the Bank must take in order to sell Shop 6A free from the Mortgage as quickly as possible, with vacant possession and without incurring any liability to Malcolm. Your answer should include an explanation of how Shop 6A will be vested in a purchaser and how the proceeds of sale will be applied.**

(14 marks)

- (b) **The Bank in exercise of its power of sale has entered into an agreement to sell Shop 6A with good title to Penny. After perusal of the title deeds, Penny's solicitors discover that there are discrepancies between Vincent's signature and identity card number in the Assignment which he executed as purchaser and those in the Assignment executed by him as vendor and beneficial owner ('the later Assignment') in favour of Malcolm. Penny's solicitors insist that Vincent should re-execute the later Assignment or execute a confirmatory assignment in order to remove any blot on title caused by the discrepancies. When Vincent is approached by the Bank, he refuses to co-operate and claims that even if the later Assignment is defective due to the discrepancies, he is under no obligation to assist the Bank or Penny to perfect the title. Explain whether Vincent's views are correct.**

(6 marks)

Question 3 (20 marks)

In August 2000 Vanda agreed to sell her flat at 1B Wealthy Heights ('the Property') to Paul for a consideration of HK\$12 million. They signed a formal agreement for sale and purchase. Paul paid a deposit of HK\$1,800,000 to Vanda's solicitor as stakeholders. The formal agreement includes the following terms:

'The Vendor will give and show good title to the Property.'

Completion will take place at the offices of the Vendor's solicitors on 30 September 2000 by 3 p.m.

Time is of the essence of this Agreement.

The Purchaser shall have the right to inspect the Property on the day of completion prior to completion taking place.'

The formal agreement is otherwise in the form of agreement set out in Form 2 of the Third Schedule to the *Conveyancing and Property Ordinance*.

Vanda's solicitor sent the title deeds including the Conditions of Exchange dated 1974 to Paul's solicitor on 15 September 2000. He raised the following requisition on 17 September 2000:

'We note that the Conditions of Exchange for Wealthy Heights are dated after 1 January 1970. Please send us a certified copy of the Certificate of Compliance for Wealthy Heights'

Vanda's solicitor replied on 20 September 2000 as follows:

No Certificate of Compliance has been issued.

Paul's solicitor replied on 21 September 2000 saying that they were not satisfied with the response to their requisition and that evidence of compliance was needed. Paul's solicitor enclosed with his letter a draft assignment and completion undertaking for approval.

Vanda's solicitor replied on 23 September 2000 returning the draft assignment and completion undertaking which he approved. In his letter he said:

We have nothing further to add concerning compliance with the Conditions of Exchange. In any event the requisition was raised out of time.

Vanda and Paul agreed that the inspection of the Property would take place at 11 am on 30 September 2000. Vanda did not turn up for the inspection on 30 September 2000. Paul's solicitor then agreed with Vanda's solicitor that the inspection of the Property would take place at about 5 p.m. that day. Paul's solicitor asked whether they could deliver the balance of purchase price at 5 p.m. Vanda's solicitor did not reply 'yes' or 'no' to this question, but he did say that he would hold the balance of purchase price as stakeholder until after the inspection. Vanda's solicitor then sent a fax to Paul's solicitor setting out the revised arrangements for inspection and for stakeholding the balance of purchase price until after the inspection but not saying anything about the time for completion.

(See over the page for Questions 3(a), (b) and (c))

When Paul's solicitor delivered the balance of purchase price to Vanda's solicitor at 4.30 p.m. Vanda's solicitor refused to accept payment and immediately wrote to Paul's solicitor saying that Vanda had rescinded the agreement and forfeited Paul's deposit. It appears that Vanda has not suffered any loss by reason of Paul's delay in delivering the balance of purchase price.

Questions :

- (a) **Explain whether or not Paul's solicitor's requisitions are properly raised and whether Vanda's solicitor's replies properly answer the requisitions.** (6 marks)

Assume for the purposes of the following parts of this question that there is no dispute as to title between Vanda and Paul.

- (b) **Paul is now seeking specific performance of the formal agreement for sale and purchase. Explain whether or not his claim is likely to be successful.** (8 marks)
- (c) **If Paul's claim for specific performance is unsuccessful, explain whether or not he can recover his deposit.** (6 marks)

In your answers refer to the terms of the formal agreement, the above facts and all relevant authorities.

Question 4 (20 marks)

Pansy was looking for a property to buy. An estate agent, Edward, told her that Victor had a flat in Rose Court ('the Flat') for sale. Edward also told Pansy that Victor bought the Flat in his own name in 1997, and that the Flat is mortgaged to Apple Bank Ltd.

Pansy was not free to visit the Flat herself but she asked a surveyor, Simon, to value it for her. Simon went to the Flat and met Victor who showed Simon around. Victor told Simon that his mother stays with him in the Flat when she is in Hong Kong. She usually spends 6 months in Hong Kong and 6 months in Canada. Simon prepared a report which contains details of the Flat, the occupiers and his valuation.

Victor agreed to sell the Flat to Pansy for HK\$2 million. They signed a binding preliminary agreement and Pansy paid Victor an initial deposit of HK\$20,000. The preliminary agreement contains details of the Flat, the parties and price and provides that Pansy will sign a formal agreement for sale and purchase and pay a further deposit of \$180,000 on 23 October 2000. The preliminary agreement contains no other terms. Victor's solicitors have sent a formal agreement to Pansy's solicitors.

Golden Bank Ltd will lend Pansy 90% of the purchase price to be secured by a first legal mortgage on the Flat. Both Pansy and Golden Bank Ltd have instructed Smart & Co solicitors to act for them in connection with the purchase and the mortgage. Simon, the surveyor, has sent a copy of his report to Smart & Co.

Smart & Co have investigated title and discovered that the Flat was assigned to Victor subject to and with the benefit of a Deed of Mutual Covenant for Rose Court which includes the following terms:

1. *that every owner of a flat covenants to pay the management charges in respect of his flat;*
2. *that the manager of Rose Court can register a charge against the flat of any owner who fails to pay management charges; and*
3. *that the manager of Rose Court is authorised to enforce the Deed of Mutual Covenant on behalf of all owners of flats in Rose Court.'*

Questions :

(a) **Explain whether Smart and Co should make enquiries on behalf of Pansy and Golden Bank Ltd regarding Victor's mother's occupation of the flat.**

(5 marks)

(b) **Victor has failed to pay management charges for the last two months and the manager of Rose Court has registered a charge against the Flat in respect of unpaid management charges. Pansy has refused to sign the formal agreement for sale and purchase and pay the further deposit until the charge is released. Victor has threatened to terminate the preliminary agreement and forfeit Pansy's initial deposit unless Pansy signs the formal agreement today, 23 October 2000. Explain whether Victor can do this.**

(5 marks)

(See over the page for Questions 4(c) and (d))

- (c) Explain whether the manager of Rose Court can recover the arrears of management charges from Apple Bank Ltd. If Pansy buys the Flat before the arrears have been paid, explain whether the arrears can be recovered from Pansy or from Golden Bank Ltd.

(6 marks)

- (d) Assume that Pansy has now completed her purchase of the Flat. She has discovered that a number of flat owners have not paid management charges because they are dissatisfied with the management services provided by the manager. Explain whether, and if so how, the owners can remove the manager of Rose Court.

(4 marks)

Question 5 (20 marks)

Answer the following two questions, using your knowledge of planning law, the law relating to Government leases and the *Buildings Ordinance*. You are not expected to be familiar with *Buildings Ordinance* regulations or any regulations made under other legislation.

Questions :

- (a) Peter wishes to set up business in Kowloon Tong area. The Outline Zoning Plan for the Kowloon Tong area was made in 1985. His business associates convince him that there is good demand for an efficiently run motel. One of them is willing to lease his 6 room house to Peter for this purpose. Peter plans to convert the 6 room house into an 8 room motel. Peter seeks your advice as to whether there will be any legal obstacles to converting the use of the house for the purpose of a motel. Explain the checks that you will make in order to advise Peter.

(10 marks)

- (b) Patrick returned to Hong Kong recently from Canada where he has been living for the last 15 years. He has inherited a large piece of land in the New Territories. The land described as 'agricultural land' in the lease, has been used since 1998 for storing containers. Patrick wishes to know if it is lawful to continue such use of the land. Explain how you would advise Patrick. If the use is unlawful, explain what advice you will give Patrick.

(10 marks)

END OF TEST PAPER