
2001 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION

HEAD I: CONVEYANCING
AND LANDLORD AND TENANT

Friday, 19 October 2001



HEAD I : CONVEYANCING AND LANDLORD AND TENANT

TEST PAPER

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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 and 2 in Answer Book 1**
 - Questions 3 and 4 in Answer Book 2**
 - Question 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 books with you when you leave the examination room.**

2001 Overseas Lawyers Qualification Examination

Head I : Conveyancing and Landlord and Tenant

Question 1 (20 marks)

In 1996 Mary bought a residential flat ('the Flat') in an old low-rise block of flats. Mary knew that the block had redevelopment potential and that at least one developer had shown an interest in buying the whole block. Mary borrowed 70% of the purchase price from the Goodwill Bank ('the Bank'), which took a first legal mortgage over the Flat. The mortgage was immediately registered at the Land Registry. Mary agreed with the Bank to repay the loan over a period of 15 years by equal monthly instalments of principal and interest payable on the first day of every month. The legal charge is in the form set out in Form 4 of the Third Schedule to the Conveyancing and Property Ordinance.

After the Asian financial crisis, the value of the Flat dropped and there was no interest in re-developing the block. Without informing the Bank, Mary let the Flat to Tony for two years starting on 1 March 2000. They signed a written tenancy agreement, which was not registered at the Land Registry. Mary continued to make the repayments due to the Bank until September of this year when Mary failed to pay the instalment due on 1 September 2001. The Bank has now discovered that the Flat is let to Tony.

Questions:

- (a) The Bank seeks your advice on the following questions. When giving your advice, state whether the Bank owes any duties to Mary and explain how the Bank can discharge those duties.
- (i) **Can the Bank sell the Flat with vacant possession? What action should the Bank take in order to sell the Flat as soon as possible?**
(10 marks)
 - (ii) **What action should the Bank take if it wants to collect rent from Tony?**
(4 marks)
- (b) Tony has now moved out and the Bank intends to sell the Flat. The Bank sent all the title deeds to its solicitor, who kept them on his desk. All the title deeds were destroyed by flooding when a window of the solicitor's office was blown out in a typhoon. The Government lease was granted in 1958 and there have been numerous dealings with the Flat since then. Some of the documents were originals dealing solely with the Flat, while others related to the block. **How will the Bank give and show title to the Flat to a purchaser?**
(6 marks)

Give reasons for your answers to questions (a) and (b).

Question 2 (20 marks)

Sally showed Peter her flat at 16A Bauhinia Gardens ('the Flat'). She pointed out that she had constructed a large balcony outside the living room. Several other flats in Bauhinia Gardens had similar balconies, but Sally's balcony was bigger than any of the others. Peter told Sally that he liked the Flat. In particular, he liked the large balcony. On 1 June 2001, Peter and Sally signed a binding agreement for sale and purchase containing all essential terms and including the following clauses:

1. The Vendor will give and show good title to the Flat.
2. The Purchaser will raise requisitions on title within 14 days of receiving the title deeds from the Vendor's solicitors.
3. Completion shall take place on 15 July 2001.
4. Time shall be of the essence of this agreement.
5. If the Purchaser fails to complete this agreement the Vendor shall have the right to forfeit the deposit paid by the Purchaser.
6. If the Vendor fails to complete the sale in accordance with this agreement the Vendor shall immediately refund the deposit to the Purchaser and compensate the Purchaser with a sum equivalent to the amount of the deposit and the Purchaser shall not take any action to claim damages or to enforce specific performance.

Peter paid Sally a deposit equivalent to 10% of the purchase price. On 2 June 2001, Sally's solicitors sent the title deeds to Peter's solicitors. Peter's solicitors raised the following requisition on title on 20 June 2001 after his surveyor had inspected the Flat:

Please send us evidence that all necessary consents, including the consent of the Building Authority, were obtained in connection with construction of the balcony outside the living room of the Flat.

Sally's solicitors' reply to this requisition was as follows:

The requisition has been raised out of time. Furthermore, your client inspected the Flat and did not at that time object to the construction of the balcony. He has waived his right to do so.

Peter's solicitors told Sally's solicitors that they were not satisfied with this reply. Peter did not complete on 15 July 2001. On 16 July 2001, Sally's solicitors wrote to Peter's solicitors saying that Peter had repudiated the agreement, that Sally accepted the repudiation, that she was treating herself as discharged, and that she had forfeited Peter's deposit.

Questions:

- (a) Can Peter recover his deposit? (15 marks)
- (b) Assume that Sally has repudiated the agreement by refusing to complete. If Peter wishes to complete his purchase, can he claim specific performance despite clause 6 of the agreement? (5 marks)

Give reasons for your answers to questions (a) and (b).

Question 3 (20 marks)

Big Builders Ltd ('BB') developed a ten-storey building ('the Building') for non-domestic use in 1996. BB allocated 100 equal undivided 1,000th shares to each floor of the Building and assigned 100 shares together with the right to the exclusive use occupation and enjoyment of the 3rd floor to Creative Toys Ltd ('CT'). In the assignment to CT, BB reserved to itself the right to the exclusive use of all other areas of the Building, including the roof but excluding the common parts. (Note that the toilets and the lift lobbies on all floors, except the ground floor, are **not** common parts.) BB and CT then entered into a Deed of Mutual Covenant ('the Deed') that includes the following terms:

1. Every owner of undivided shares shall maintain the unit of which he has exclusive use and the fixtures and fittings belonging to the unit.
2. No owner of undivided shares shall do anything that might be a nuisance to any other owner or occupier of the Building.

The Deed also sets out the allocation of 100 equal undivided 1,000th shares to each floor of the Building. The Deed contains other terms that are commonly found in deeds of mutual covenant and provides that the manager of the Building will enforce the Deed on behalf of the owners of undivided shares. BB then sold all its interest in the Building with the exception of 100 equal undivided 1,000th shares and the right to the exclusive use of the top floor and the roof of the Building. Every sale was made subject to, and with the benefit of, the Deed.

Questions:

- (a) Albert, the owner, has let the 4th floor to Terry who runs a dance studio. Under the terms of the tenancy agreement made between Albert and Terry, Terry has agreed to observe and perform the covenants contained in the Deed. CT has complained to the manager of the Building about the noise coming from the dance studio and about leakage of water into the 3rd floor from the toilets on the 4th floor. **What action can the manager of the Building take in order to deal with CT's complaints?**
(7 marks)
- (b) CT wants to erect partitions on the 3rd floor in order to divide it into five units. CT then proposes to sell one of the units and to retain four of them. Eventually, however, CT might want to sell the remaining four units. CT intends that the toilets and lift lobby on the 3rd floor will be common areas for all owners of units on the 3rd floor and that they will all have the right to use them. **What steps should CT take in order to carry out its proposals and what consents (if any) should CT obtain?**
(8 marks)
- (c) BB has entered into a binding agreement for sale and purchase to sell its remaining 100 equal undivided 1,000th shares to Paul together with the right to the exclusive use of the top floor of the Building. BB, on discovering that it had not sold the right to the exclusive use of the roof, has advertised the exclusive use of the roof of the Building for sale. Star Adverts Ltd ('Star') is interested in buying the exclusive use of the roof from BB. **Advise Star on its proposed purchase.**
(5 marks)

Give reasons for your answers to questions (a) to (c).

Question 4 (20 marks)

By a sale and purchase agreement made in September 2001, Penny Lee ('the Purchaser') agreed to buy a house in the New Territories from Venice Lo ('the Vendor'). The chain of title to the house, which starts with the Government Lease (as revealed by a land search obtained from the Land Registry) is as follows:

Chain of Title

Government Lease (granted from 1st July 1898 for 75 years renewable for a further 24 years less the last three days thereof)

•

Mortgage by Chan Lee Shi (Government Lessee) to Tai Yip Bank to secure a loan of HK\$50,000 (dated 2nd April 1908, Memorial No. 48484)

•

Deed of Gift by Chan Lee Shi to Chan Fong and Chan Yuen as joint tenants (dated 18th May 1910, Memorial No. 52020)

•

Assignment by Chan Fong to Great Fortune Development Limited (dated 1st April 1984, Memorial No. 203030)

•

Agreement for Sale and Purchase by Great Fortune Development Limited to May Wong (dated 14th February 1985, Memorial No. 213213)

•

Nomination by May Wong in favour of John Lam (dated 23rd December 1986, Memorial No. 288088)

•

Assignment by Great Fortune Development Limited to John Lam (dated 24th December 1986, Memorial No. 288089)

•

Mortgage by John Lam to Apple Bank Limited (dated 24th December 1986, Memorial No. 288090)

•

Receipt on Discharge of a Charge by Apple Bank Limited (dated 25th June 1990, Memorial No. 304040)

•

Assignment by John Lam to Venice Lo (dated 8th January 1992, Memorial No. 322438)

(See over the page for questions 4(a) to (d))

Questions:

Answer the following questions in relation to the title:

- (a) **There is no evidence that the Government lease term is continuing. Should the Purchaser be concerned by the lack of evidence? (2 marks)**
- (b) **What are the requisitions on title, if any, you would raise in connection with the following:**
- (i) Mortgage Memorial No. 48484? **(2 marks)**
- (ii) Deed of Gift Memorial No. 52020? **(3 marks)**
- (iii) Assignment Memorial No. 203030? **(2 marks)**
- (iv) The Receipt on Discharge of a Charge Memorial No. 304040 was executed on behalf of Apple Bank Limited ('the Bank') by Christopher Lawson, an attorney of the Bank, by virtue of a Power of Attorney dated 20th June 1989. Assume that the Power of Attorney has been properly executed by the Bank and contains the necessary power for Christopher Lawson to execute Receipts on Discharge of a Charge on behalf of the Bank. **(3 marks)**
- (c) The Nomination by May Wong to John Lam Memorial No. 288088 is a short document which:
- recites the fact that a sum equivalent to 10% of the purchase price was paid by May Wong to Great Fortune Development Limited upon the signing of the Agreement for Sale and Purchase Memorial No. 213213; and
 - provides for the nomination by May Wong in favour of John Lam, her husband, to take up the Assignment of the house from Great Fortune Development Limited.

What are the requisitions, if any, you would raise in respect of Nomination Memorial No. 288088? (4 marks)

- (d) The Assignment by Great Fortune Development Limited ('GF') to John Lam (dated 24th December 1986 Memorial No. 288089) has been executed by GF as follows:

“Sealed with the Common Seal of GF and signed by George Fan as authorised by the Board of Directors”

The signature of George Fan appears below the company seal of GF.

What requisitions on title, if any, would you raise to ensure that the Assignment has been duly executed by GF? State the statutory presumptions, if any, which may be of assistance. (4 marks)

Give reasons for your answers to questions (a) to (d).

Question 5 (20 marks)

A Holdings Limited ('A') owns a residential flat ('the Flat') in a modern block which is let to Mr B. Mr and Mrs Keen have entered into a binding agreement with A to purchase the Flat subject to the existing tenancy of Mr B. The Keens have never met Mr B as the latter has been in hospital for the past few months. Nevertheless, the Keens have been assured by A's estate agents that Mr B has so far kept payments of rent and other charges up-to-date.

Mr B's tenancy is due to expire on 31 December 2001. On 27 June 2001, A posted a notice in Form CR101 to Mr B informing him that his tenancy will terminate on 31 December 2001 and that A would not object to the grant of a new tenancy to Mr B. When they were negotiating the sale, A's agents informed the Keens that as Mr B had not responded to the notice in Form CR101, it could be safely assumed that Mr B did not want to apply for a new tenancy.

The Keens are presently living in a house which they own, but they feel that the house is too big for just the two of them. Their children have all grown up and do not live with them any more. The Keens have several other properties in Hong Kong, which are all let to tenants. In any event, they consider the Flat most suitable for them. The Keens would like to move into the Flat as soon as Mr B's tenancy ends so that they can rent out their house to generate some income.

Questions:

- (a) After completion of their purchase on 20th October 2001, can Mr and Mrs Keen serve a new notice in Form CR101 on Mr B to oppose the grant of a new tenancy to him on the grounds that they want to live in the Flat themselves? (6 marks)**

- (b) Can it be safely assumed that Mr B has lost his right to apply for a new tenancy due to the lack of any response from him since the posting of the notice in Form CR101? (4 marks)**

- (c) If Mr and Mrs Keen wish to oppose an application by Mr B on the ground that they want to live in the Flat themselves, explain, by reference to the above facts, how they should prove their grounds of opposition. Assume that there are no substantive or procedural bars to Mr and Mrs Keen's opposition. (10 marks)**

Give reasons for your answers to questions (a) to (c).

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