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# 2005 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

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## HEAD I: CONVEYANCING

Thursday, 27 October 2005



# **HEAD I: CONVEYANCING**

## **TEST PAPER**

**27 October 2005**

### **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. ANSWER ANY FOUR QUESTIONS ONLY.**
- 4. You must write your answers to any of:**
  - Questions 1, 2 and 3 in Answer Book 1**
  - Questions 4 and 5 in Answer Book 2**
- 5. IF YOU ATTEMPT MORE QUESTIONS THAN YOU HAVE BEEN INSTRUCTED TO ANSWER :**
  - (a) THE EXAMINERS WILL MARK ALL QUESTIONS THAT HAVE BEEN ATTEMPTED AND NOT DELETED; AND**
  - (b) IN COMPUTING YOUR FINAL MARK, THE EXAMINERS WILL COUNT THE MARKS FOR THE NUMBER OF QUESTIONS THAT YOU WERE INSTRUCTED TO ANSWER TAKING INTO ACCOUNT THE ANSWERS WITH THE LOWEST SCORES.**
- 6. 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.**
- 7. Do not take either this question paper or any answer books with you when you leave the examination room.**

# 2005 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

Value Limited ('Value') as vendor and Polar Limited ('Polar') as purchaser have entered into a binding formal agreement for the sale and purchase of the Tenth Floor of China House ('the Property'), a commercial building in Central. The consideration is HK\$200,000,000. Polar has paid a ten per cent deposit. Value's mortgage in favour of the Mideast Bank Limited ('Mideast') will be redeemed on completion. Polar will borrow HK\$100,000,000 from the Western Bank Limited ('Western'). The loan will be secured by a first legal mortgage on the Property. Value, Polar, Mideast and Western are each separately represented.

The agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance. The agreement provides that vacant possession will be given on completion. Completion is due to take place between the hours of 9 am and 5pm on 10 November 2005. It has been agreed among all the firms of solicitors that completion will take place by way of undertaking in the manner recommended by the Law Society.

### Questions:

Answer the following questions giving reasons for all your answers:

- (a) What documents should the solicitors for Polar send to the solicitors for Western and within what period of time?  
(5 marks)
- (b) If there is a delay in sending documents to Western's solicitors, what action should they take to protect Western's interests?  
(6 marks)
- (c) Polar wants to ensure that when selling the Property in future, it can prove that Value has validly executed the Assignment in favour of Polar. On completion, what stipulations should Polar make with regard to execution by Value of the Assignment to Polar?  
(4 marks)
- (d) Assume that Polar inspects the Property immediately before 5pm on 10 November 2005 and discovers that Value has left a lot of furniture on the Property. Polar does not want to complete. What remedies (if any) are available to Polar?  
(10 marks)

## Question 2 (25 marks)

In 1995 Grand Realty Limited ('GR') built Grand House ('the Building'), a ten storey commercial building on Inland Lot No 1234 ('the Land'). By an assignment dated 14 December 1995 GR sold to China Land Ltd ('CLL') 12/102<sup>nd</sup> undivided shares in the Land and the Building together with the right to the exclusive use of the top floor and the roof of the Building. GR and CLL then entered into a Deed of Mutual Covenant ('the DMC') which was dated 14 December 1995 and registered in the Land Registry. GR later sold all its remaining undivided shares. Every assignment was made 'subject to and with the benefit of the DMC'. The DMC provides that 10/102<sup>nd</sup> undivided shares are allocated to each floor and 2/102<sup>nd</sup> undivided shares are allocated to the roof. The DMC also contains the following clauses:

'The right to the exclusive use occupation and enjoyment of any part of the Land or the Building shall not be sold, assigned, mortgaged, charged, leased or otherwise dealt with separately from the undivided shares with which the same is held.'

'Every owner of undivided shares will pay monthly management charges in respect of that part of the Building of which he has the exclusive use.'

### Questions:

Answer the following questions giving reasons for all your answers;

- (a) CLL has agreed, subject to contract, to sell the roof of the Building to R and a portion of the top floor of the Building ('Suite A') to A Limited. It has been agreed that A Limited will be able to use the toilets, lifts and lift lobbies on the top floor in common with CLL. Will the proposed sales of Suite A or the roof breach the DMC? Is it necessary or desirable for CLL to create a sub deed of mutual covenant with R or A Limited?

**( 8 marks)**

- (b) A Limited completed its purchase of Suite A and created a first legal mortgage in favour of the Kowloon Bank Ltd ('KBL'). Assume that the mortgage is dated 3 July 2005 and was registered on 4 July 2005. With the consent of KBL, A Limited then let Suite A to T for a term of three years from 23 July 2005. The tenancy agreement provides that A Limited is responsible for management charges. T paid a tenancy deposit to A Limited and A Limited agreed to repay the tenancy deposit to T at the end of the term.

- (i) A Limited has not paid management charges for three months. Can payment be enforced against A Limited or T?

**(5 marks)**

- (ii) The legal mortgage gives KBL power, exercisable on the occurrence of an event of default, 'to take possession of the mortgaged land and, for that purpose, to take any legal proceedings'. A Limited is in default. How will KBL take possession? Is KBL obliged to repay the tenancy deposit to T?

**(5 marks)**

*(See the next page for a continuation of Question 2)*

- (c) The legal mortgage gives KBL power, exercisable on the occurrence of an event of default, to sell the mortgaged land. What duties would KBL owe to A Limited when exercising this power and how would KBL discharge them?

**(7 marks)**

### Question 3 (25 marks)

Vanessa Lee has agreed to sell her flat known as 3A Rose Gardens, 16 Magazine Gap Road, Hong Kong ('the Property') to Paul 'for the residue of the term of years created by the Government Lease'. They have signed a formal agreement in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance. The formal agreement is dated 15 October 2005. It contains a description of the Property in a schedule. The description states 'the Property is for the purposes of identification only shown coloured pink on the plan attached to an Assignment dated 20 October 1975'.

Vanessa's solicitors have sent to Paul's solicitors all the documents shown on the attached title diagram, with the exception of the Assignment dated 20 October 1975.

Answer the following questions giving reasons for all your answers:

- (a) Should Paul ask to see a certificate of compliance with the conditions precedent in the Conditions of Sale dated 7 June 1973?  

**(4 marks)**
- (b) Is Vanessa obliged to produce to Paul the Assignment dated 20 October 1975?  

**(4 marks)**
- (c) Should Paul raise a requisition on the Power of Attorney dated 1 February 1995?  

**(4 marks)**
- (d) The Assignment dated 16 November 1985 has been sealed with the common seal of Blackwood Limited and signed by James Chan who is described as 'director'. Should Paul raise a requisition on this Assignment?  

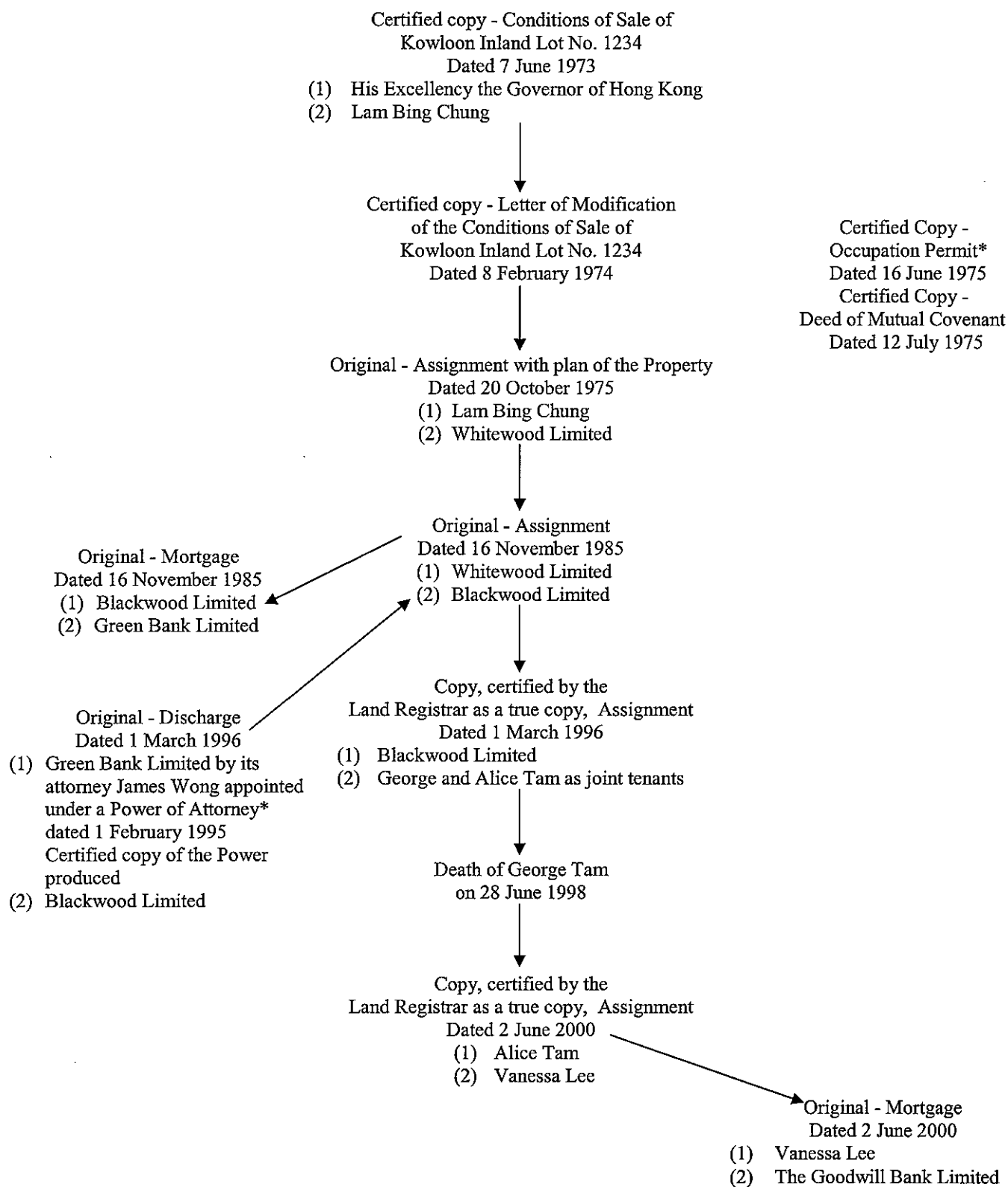
**(4 marks)**
- (e) Should Paul ask for evidence that Alice Tam was solely entitled to assign the Property to Vanessa free from encumbrances? If so, what evidence?  

**(4 marks)**
- (f) Should Paul raise a requisition on the certified copies of the Assignments dated 1 March 1996 and 2 June 2000?  

**(5 marks)**

*(See the next page for a continuation of Question 3)*

**Title Diagram of  
Flat 3A, Rose Gardens, 16 Magazine Gap Road, Hong Kong ('the Property')**



The documents marked \* are not registered in the Land Registry.

#### Question 4 (25 marks)

On 3 October 2005 Victor as vendor and Peony as purchaser entered into a binding formal agreement to sell a three storey house at 118 Waterloo Road, Kowloon (the Property') for a consideration of HK\$120,000,000. Peony has paid a deposit of HK\$20,000,000 and the balance is due on completion on 3 November 2005. Peony intends to finance her purchase by borrowing HK\$8,000,000 from the Kowloon Bank which will take a first legal mortgage over the Property. King & Co act for the Kowloon Bank. Victor's mortgage will be discharged on completion. The agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance.

Vong & Vong act for Victor and Poon & Co act for Peony. Vong & Vong sent the title deeds (including the Conditions of Sale referred to below) to Poon & Co on 5 October 2005. Poon & Co raised requisitions on 7 October 2005. Vong & Vong answered them on 14 October 2005. Poon & Co sent further requisitions to Vong & Vong on 26 October 2005 following title investigation by King & Co. The further requisitions are as follows:

Requisition 1 *'An Assignment dated 16 June 1995 between (1) Grandview Limited as vendor and (2) Victor as purchaser has been sealed with the seal of Grandview Limited and signed by Dick Lee. Please send us evidence that this Assignment has been executed by Grandview Limited in accordance with its articles of association.'*

Requisition 2 *'Following a survey by the purchaser's mortgagee, we understand that an additional storey has been added since the Occupation Permit was issued. The Conditions of Sale provide that no building on the land will exceed two storeys and the Property has three storeys. Please send us evidence that there is no breach of the Conditions of Sale or the Buildings Ordinance.'*

#### Questions:

Answer the following questions giving reasons for all your answers:

- (a) Assume that the information in italics in the requisitions is correct. Is Victor obliged to answer the requisitions?  
(16 marks)
- (b) Peony wants the Property to be assigned to a limited company in which she owns all the shares. Advise her whether, and how this can be done and generally.  
(6 marks)
- (c) The parties have agreed that completion will take place by way of undertaking. Poon & Co delivered the balance of purchase price to the offices of Vong & Vong at 5.10 p.m. on 3 November 2005. Can Victor forfeit Peony's deposit and annul the sale?  
(3 marks)



### Question 5 (25 marks)

On 25 October 2005 Violet Tam ('Violet') as vendor and Peter Poon ('Peter') as purchaser signed the attached binding provisional agreement for the sale and purchase of a residential flat known as Flat 2C Hibiscus Court, 20 Hibiscus Road, Hong Kong ('the Property'). Peter inspected the Property with Violet before he signed the provisional agreement. Violet showed Peter her washing machine which she kept on a balcony outside the kitchen. No other flats at Hibiscus Court have a similar balcony.

Violet bought the Property for HK\$3,000,000 in 1997. She mortgaged it to the Kowloon Bank to secure a loan of HK\$2,700,000. The loan was to be repaid over a 20 year term. Violet's mortgage will be discharged on completion out of the proceeds of sale. The price of the Property has gone down since Violet bought it.

You act for Peter and you have now received the draft formal agreement and title deeds from Violet's solicitors.

#### Questions:

Answer the following questions giving reasons for all your answers:

- (a) The draft formal agreement provides:  
'The vendor and purchaser agree that completion will take place by way of undertaking in accordance with the forms of undertaking recommended by the Law Society of Hong Kong.'
- Would you accept, reject or amend the clause for Peter?  
**(5 marks)**
- (b) Is it necessary to include a certificate of value in the formal agreement?  
**(4 marks)**
- (c) Advise Peter whether two split level air-conditioners currently installed in the Property are included in the sale.  
**(4 marks)**
- (d) The Land Registry search shows that the Incorporated Owners of Hibiscus Court have registered a charge in respect of unpaid management charges. Should Peter insist on the charge being discharged before he signs the formal agreement?  
**(4 marks)**
- (e) After inspecting the title deeds, Peter raised a requisition asking for evidence that the kitchen balcony does not breach the Buildings Ordinance or Regulations. Is Violet obliged to reply to Peter's requisition?  
**(8 marks)**

*(See over the page for a continuation of Question 5)*

**Provisional Agreement for Sale and Purchase**

THIS AGREEMENT is made on the 25 October 2005.

Between: the Vendor - Violet Tam of Flat A, 3<sup>rd</sup> Floor, 62 Queen's Road, Hong Kong  
the Purchaser - Peter Poon of Flat 10A Green Gardens, 16 Prince Edward Road, Kowloon

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase Flat 2C Hibiscus Court, 20 Hibiscus Road, Hong Kong ("the Property").
2. The purchase price is HK\$2,500,000.00 which shall be paid by the Purchaser in the following manner:
  - (a) HK\$25,000.00 on the signing of this agreement as initial deposit.
  - (b) HK\$225,000.00 as further deposit on the signing of a formal agreement for sale and purchase on 3 November 2005.
  - (c) HK\$2,250,000.00 on completion on 27 November 2005.
3. Should the Purchaser fail to complete the purchase in the manner herein contained the deposit shall be forfeited to the Vendor who shall then be entitled at his absolute discretion to sell the Property to anyone he thinks fit and the Vendor shall not sue the Purchaser for any liabilities and/or damages caused by the Purchaser's default.
4. Should the Vendor after receiving the initial deposit paid hereunder fail to complete the sale in the manner herein contained the Vendor shall immediately compensate the Purchaser with a sum equivalent to the amount of the initial deposit as liquidated damages together with the refund of the initial deposit and the Purchaser shall not take any further action to claim damages or to enforce specific performance.
5. The Purchaser accepts the Vendor's title.
6. The Purchaser will pay the stamp duty in connection with this transaction.

Signed Violet Tam

Signed Peter Poon

**END OF TEST PAPER**