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# 2008 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

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## HEAD I: CONVEYANCING

Tuesday, 28 October 2008



# **HEAD I: CONVEYANCING**

## **TEST PAPER**

**28 October 2008**

### **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. Start each question on a separate page of your answer book.**
- 7. 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.**
- 8. An examiner will be present for the first 30 minutes of the examination. Any question relating to the paper must be raised in that period. Questions raised after the first 30 minutes will not be entertained.**
- 9. Do not take either this question paper or any answer books with you when you leave the examination room.**

# 2008 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

On 1 October 2008, Alan Man and Amy Wong (the 'Vendors') entered into a binding Agreement for Sale and Purchase (the 'Agreement'), which is in the same form as Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219, to sell their property in the New Territories (the 'Property'), which is owned by them as joint tenants free from encumbrances, to Beryl Lam (the 'Purchaser'). Completion is due to take place on 30 November 2008.

The Property is held under Conditions of Sale (the 'Conditions of Sale') dated 8 May 1972 for a term of 99 years less the last three days from 1 July 1898.

### Questions:

Answer the following questions:

- (a) For how long can the interest under the Conditions of Sale be enjoyed?  
(2 marks)
- (b) What is the interest, legal or equitable, now held under the Conditions of Sale? If there is missing information, state what it is.  
(4 marks)
- (c) The Vendors have mislaid all the title deeds for the Property and are unable to find them, though all of them have been registered in the Land Registry. How will the Vendors give and show title to the Purchaser?  
(5 marks)
- (d) If one of the Vendors dies before completion, who should execute the Assignment of the Property to the Purchaser? What must be produced as evidence of the right and ability of the person or persons to execute the Assignment?  
(4 marks)
- (e) The Purchaser inspected the Property before she signed the Agreement. During her inspection, she met an old man called George, who was introduced to her by the Vendors as their uncle. How should the Purchaser's solicitor handle this information?  
(5 marks)

*(See over the page for a continuation of Question 1)*

- (f) An assignment in the chain of title dated 1 August 2004 is executed by Abacus Limited. The company seal of Abacus Limited has been affixed in the presence of one signatory. Should the Purchaser raise a requisition? **(5 marks)**

**Give reasons for all your answers.**

## **Question 2 (25 marks)**

On 2 January 2006 Mary Mao mortgaged her flat at 6A Hibiscus Court (the 'Flat') to the ABC Bank Limited ('ABC') to secure a loan of HK\$3 million. ABC registered their mortgage in the Land Registry on 28 January 2006.

On 6 March 2008 Mary Mao borrowed HK\$3 million from the DEF Bank Limited ('DEF'). DEF made the loan to enable Mary Mao to pay off the loan from ABC of which HK\$2.5 million was still outstanding. DEF took a mortgage over the Flat to secure a loan of HK\$3 million. The mortgage was dated 27 March 2008 and registered in the Land Registry on 20 April 2008. ABC discharged their mortgage on 27 March 2008 and the Discharge was also registered in the Land Registry on 20 April 2008.

Mary Mao agreed to repay each of the loans by equal monthly payments of principal and interest. ABC's and DEF's mortgages are by deed and are in the form set out in Form 4 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. In each case the legal date of redemption is 6 months from the date of the mortgage.

On 8 March 2008 Cherry Limited obtained a charging order against the Flat which it registered in the Land Registry on 20 March 2008.

On 1 May 2008 Mary Mao let the Flat to Tom Tang for a term of two years. She did this without informing DEF. In August, September and October this year Mary Mao failed to make the repayments due to DEF.

In late August 2008 DEF discovered the letting and gave Tom Tang notice to pay rent to it as mortgagee. Tom has been paying the rent to DEF since then but the monthly rent does not cover the monthly mortgage repayments.

### **Questions:**

- (a) Can DEF sell the Flat with vacant possession free from encumbrances?  
**(15 marks)**
- (b) Assume that DEF is able to sell the Flat and advise DEF on the conduct of the sale.  
**(5 marks)**
- (c) Assume that Mary Mao has opened the external wall of the Flat to create a new window and advise DEF on the conduct of the sale.  
**(5 marks)**

**Give reasons for all your answers.**

### Question 3 (25 marks)

On 25 September 2008 Victor Vong as vendor ('Victor') and Paul Pong as purchaser ('Paul') signed a Provisional Agreement in respect of Flat 16A Green Gardens (the 'Property'), a residential flat built in 1975. A copy of the Provisional Agreement is attached. Paul did not register the Provisional Agreement in the Land Registry.

On 27 September 2008 Victor's solicitor sent Paul's solicitor a draft formal agreement for sale and purchase and the title deeds to the Property. The proposed formal agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219 except that Clause 4 provides that completion will take place by 5 p.m. on 25 October 2008 and that completion will take place by way of solicitors' undertakings.

Paul's solicitor did not accept that completion would take place by way of solicitors' undertakings. Victor's solicitor refused to omit this provision and Paul did not sign the formal agreement or pay the further deposit. On 25 October 2008, Paul's solicitor sent a cashier order to Victor's solicitor for the sum of HK 4,950,000.00 together with an Assignment for execution by Victor. The Assignment was in favour of Paul and his wife Nancy, Paul having signed a Nomination requesting Victor to execute the assignment in favour of Paul and Nancy as joint tenants. Paul sent a certified copy of the Nomination with the cashier order.

Victor refused to complete because Paul had not signed the formal agreement and paid the further deposit and also because Paul's solicitor's messenger arrived at Victor's solicitor's office at 5.15 p.m. on 25 October 2008. The cashier order was returned to Paul's solicitors with the Assignment unsigned by Victor.

#### Questions:

- (a) Can Paul obtain specific performance of the Provisional Agreement?  
(16 marks)
- (b) Assume that Paul completes his purchase. How much stamp duty must he pay on the transaction and when is it payable?  
(5 marks)
- (c) Assume that Paul completes his purchase on 30 October 2008 and registers the Assignment on 5 December 2008. When Paul's solicitor registers the Assignment, he discovers that a charging order nisi against Victor Vong was obtained on 5 November 2008 and registered against the Property on 6 November 2008. Who has priority, Paul or the chargee under the charging order?  
(4 marks)

Give reasons for all your answers.

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

## Provisional Agreement for Sale and Purchase

THIS AGREEMENT is made on 25 September 2008

Between the Vendor - Victor Vong of Flat 16A Green Gardens, 16 Green Road, Hong Kong and  
the Purchaser - Paul Pong of Flat 10B Crimson Court, 12 Crimson Road, Kowloon

The Vendor and the Purchaser agree as follows:

1. The Vendor sells Purchaser purchases 16A Green Gardens, 16 Green Road, Hong Kong (the 'Property').
2. The purchase price is HK\$5,000,000.00 which shall be paid by the Purchaser in the following manner:
  - (a) HK\$ 50,000.00 to the Vendor on the signing of this agreement as initial deposit,
  - (b) HK\$ 450,000.00 as further deposit to the Vendor on the signing of a formal agreement for sale and purchase on or before 5 October 2008,
  - (c) HK\$ 4,500,000.00 being the balance of purchase price on completion.
4. Completion will take place on 25 October 2008.
5. 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.
6. The Purchaser will pay the stamp duty in connection with this transaction.

*Victor Vong*

Signed \_\_\_\_\_

*Paul Pong*

Signed \_\_\_\_\_

#### Question 4 (25 marks)

On 10 October 2008 Vicki as vendor ('Vicki') and Peter as purchaser ('Peter') signed a binding agreement for sale and purchase in respect of Flat A on the 10<sup>th</sup> Floor of Cosy Court (the 'Flat') and the roof which is above the Flat (the 'Roof'). The agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219.

Completion will take place on 10 November 2008. Vicki's solicitor sent the title deeds to Peter's solicitor on 4 October 2008 and Peter's solicitor raised the following requisitions on 15 October 2008.

1. *We note that the Occupation Permit for Cosy Court states that there are 3 flats on each floor but that the Deed of Mutual Covenant for Cosy Court states that there are 4 flats on floors 1 to 6 and 3 flats on floors 7-10. Please send evidence that the Building Authority has approved the construction of an additional flat on floors 1 to 6.*
2. *When Peter inspected the Flat on 30 September, he noticed that the kitchen had been extended into a light well in Cosy Court. Peter's surveyor informs us that this extension requires Building Authority approval, please send us evidence that Building Authority approval was obtained.*

#### Questions:

- (a) The approvals referred to in requisitions 1 and 2 were not obtained. How should Vicki's solicitor reply to each of the requisitions?

**[Requisition 1 (11 marks) Requisition 2 (8 marks)]**

- (b) Could the Roof be purchased separately from the Flat? If you need more information to answer this question say where you will find it.

**(6 marks)**

**Give reasons for all your answers.**



## Question 5 (25 marks)

On 30 June 2008 Vera Vong as vendor (the 'Vendor') and Patrick Wong as purchaser (the 'Purchaser') signed a binding agreement for sale and purchase of a house (the 'House') built in 2000 by Valuable Estates Limited ('Valuable'). The agreement between the Vendor and the Purchaser is in the form of agreement set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. Clauses 2, 3 and 4 of the agreement are as follows:

2. *The purchase price is the sum of HK\$15,000,000.00*
3. *A deposit of HK\$2,000,000.00 shall be paid by the Purchaser to the Vendor on the signing of this Agreement and the balance of purchase price shall be paid on completion.*
4. *Completion shall take place at the offices of the Vendor's solicitors on 15 August 2008.*

The Vendor and Purchaser were separately represented and the Purchaser paid the stamp duty on the agreement. The Purchaser also registered the agreement for sale and purchase in the Land Registry. Between June and August the Purchaser suffered heavy losses on the stock market and on 15 August 2008 failed to complete.

The Vendor continued to make the mortgage repayments that were due under her mortgage of the House to the Goodwill Bank Limited but she tried to resell the House. Eventually in early October an estate agent introduced a buyer, Barbara, and the Vendor and Barbara signed an agreement for sale and purchase of the House (also in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219) for the price of HK\$12,000,000.00. The agreement was completed on 15 October when the Vendor as beneficial owner assigned the House to Barbara.

### Questions:

- (a) Can the Vendor forfeit the Purchaser's deposit? (5 marks)
- (b) Can the Vendor claim damages and how will they be calculated? (10 marks)
- (c) Shortly after completing her purchase Barbara received advice from a building surveyor that site coverage restrictions in the Government Lease were breached when the House was built. The Government Lease was made between (1) the Government of Hong Kong and (2) Valuable. Valuable sold to the Vendor as beneficial owner. Barbara believes that the threat of enforcement action under the Government Lease makes the House less valuable. Does Barbara have any redress against the Vendor or Valuable? (10 marks)

**Give reasons for all your answers.**

**END OF TEST PAPER**