

**2011 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD I: CONVEYANCING**

Thursday, 3 November 2011



# HEAD I: CONVEYANCING

## TEST PAPER

3 November 2011

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

# 2011 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

### Question 1 (25 marks)

On 15 September 2011 Vanessa Vong (“Vanessa”) as vendor and Peter Poon (“Peter”) as purchaser entered into an Agreement for Sale and Purchase (the “Agreement”) in respect of House Number 3, Red Gardens, Red Road, Sai Kung (the “House”). Red Gardens is a development of 8 detached houses. The Agreement is substantially in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. The completion date is 5 November 2011. The price is HK\$10 million and Peter paid Vanessa a deposit of HK\$1 million when the Agreement was signed. The House is held under Conditions of Sale dated 1 July 1996 and has a floor area of 2,100 square feet. The Buildings Ordinance Cap. 123 applies to the House.

Before entering into the Agreement, Peter inspected the House. He particularly liked the living room on the ground floor which was spacious and bright. At one end of the living room and forming part of it was an area of about 150 square feet covered by a glass roof and extending into the common garden of Red Gardens by 5 feet. The living room has a total area of 350 square feet. Peter told Vanessa that he was buying the House for investment purposes and that he considered the glass roof which makes the living room very bright to be a big attraction for potential tenants.

On 17 September 2011 Vanessa’s solicitor sent Peter’s solicitor the title deeds which included an assignment of the property with a plan. Peter’s solicitor raised requisitions which Vanessa’s solicitor answered on 20 September 2011. On 25 October 2011 Peter’s solicitor raised the following requisition:

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

*“Our client’s surveyor has inspected the House and advises us that the area in the living room which is covered by a glass roof has been extended beyond the original external wall of the House. The surveyor advises further that the original external wall has been demolished in order to extend the living room. The surveyor also advises that the demolition of the external wall and the erection of the glass roof require the consent of the Building Authority under the Buildings Ordinance Cap. 123. Please send us evidence that the necessary consent of the Building Authority has been obtained.”*

Vanessa’s solicitor replied that Vanessa is not obliged to answer the requisition.

**Questions:**

**1.1 Can Peter treat himself as discharged and recover the deposit?**

**(18 marks)**

**1.2 Would your answer to Q.1.1 differ if Vanessa offered to remove the glass enclosing the extension and to reinstate the original external wall of the House? Vanessa estimates that this would take approximately 2 weeks.**

**(7 marks)**

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

On 1 October 2011 Adam as vendor and Bella as purchaser entered into an Agreement for Sale and Purchase (the “Agreement”) of Flat 6C, Fern Court, 6 Fern Gardens (the “Flat”). The Agreement is substantially in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. The Agreement provides:

- that Adam is selling ‘the residue of the term of years created by the Government Lease’,
- that ‘the sale is subject to a written Tenancy Agreement dated 4 June 2010 (the “Tenancy Agreement”) for a term of two years starting on 1 July 2010’, and
- that the date of completion is 5 November 2011.

Adam’s solicitors have sent Bella’s solicitors the title deeds including the Conditions of Exchange, all documents in the chain of title starting with the intermediate root which is an Assignment dated 4 November 1995 and made between Alpha Ltd. as vendor and Beta Ltd. as purchaser and some pre-intermediate root documents.

### **Questions:**

**Explain the impact of the following on title:**

- 2.1 Beta Ltd. mortgaged the Flat by way of legal mortgage to the Goodwill Bank on 4 November 1995 (the “Goodwill Mortgage”). Without releasing the Goodwill Mortgage, Beta Ltd. as beneficial owner assigned the Flat to Gamma Ltd. on 2 March 2004. By a Release dated 10 September 2004 and made between 1) Goodwill Bank and 2) Beta Ltd., the Goodwill Mortgage was released.**

**(6 marks)**

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

**2.2 The Assignment dated 2 March 2004 is executed by Beta Ltd. as vendor as follows:**

**Sealed with the Common Seal of Beta Ltd. and**

*Ruby Chan*

**Signed by Ruby Chan in the presence of:**

**Name of Witness**

**The Company Seal of Beta Ltd. has been affixed next to Ruby Chan's signature.**

**(5 marks)**

**2.3 The Tenancy Agreement contains an option to renew for a further term of two years at the market rent on 1 July 2012 (the "Option"). Neither the Tenancy Agreement nor the Option is registered in the Land Registry.**

**(6 marks)**

**2.4 Beta Ltd. assigned the Flat to Flora Fung who died on 2 May 2007. Probate of Flora Fung's estate was granted to her executors, Ella Fung and George Fung on 6 July 2007. On 6 November 2007 George Fung assigned the Flat to Adam. However, Flora Fung's will which is annexed to the Grant of Probate contains a gift of the Flat to Harry Fung.**

**(6 marks)**

**2.5 The Flat is held under Conditions of Exchange dated 1 June 1971.**

**(2 marks)**

### Question 3 (25 marks)

3.1 In August 2011 Valerie Vong (“Valerie”) agreed orally with Paula Poon (“Paula”) that Valerie would sell her flat known as Flat 3A, Pine Court, 3 Pine Road, Hong Kong to Paula for the sum of HK\$5 million with completion on 15 September 2011. Valerie agreed to include in the sale all curtains and fitted carpets. Valerie and Paula also agreed that the sale would be with vacant possession and that Paula would pay a 10% deposit to be held by Valerie’s solicitor as stakeholder. Valerie and Paula each instructed solicitors to act for them. Valerie told her solicitor all the terms that had been agreed.

On 3 August Paula’s solicitor wrote to Valerie’s solicitor as follows:

*“Dear Sirs,*

*I enclose a cheque for HK\$500,000 drawn on the Goodwill Bank Limited by my client Paula Poon and payable to your firm as stakeholder in respect of the sale and purchase of Flat 3A, Pine Court, 3 Pine Road, Hong Kong. This sum is 10% of the agreed price for the property and is paid as a deposit to be held by your firm as stakeholder pending completion of the sale on 15 September 2011. Please send us a receipt for this sum together with the draft agreement for sale and purchase.”*

Paula’s solicitor signed this letter.

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

On 5 August 2011 Valerie's solicitor sent Paula's solicitor a receipt for the deposit which reads as follows:

*"Received from Paula Poon the sum of HK\$500,000 being the 10% deposit on Flat 3A, Pine Court, 3 Pine Road, Hong Kong agreed to be sold by Valerie Vong to Paula Poon."*

Valerie's solicitor signed this receipt, but subsequently Valerie refused to proceed with the sale and she returned the deposit to Paula.

**Question:**

**Advise Paula whether she can enforce the oral agreement against Valerie.**

**(18 marks)**

3.2 Wanda instructs you to act for her in connection with the sale of her flat and car park space at Dragon Court. A few years ago Wanda built a cover for her car park consisting of a metal frame with a corrugated iron roof. In January this year Wanda received a letter from the Building Authority asking her to remove the cover because it has not been authorised under the Buildings Ordinance Cap. 123. Wanda has not removed the cover and does not intend to do so and she has not heard further from the Building Authority. However, Wanda is concerned that a buyer might sign an agreement to buy her flat and car park and if the market goes down, refuse to complete because the car park cover is not authorised under the Buildings Ordinance.

**Question:**

**What advice would you give to Wanda in connection with her concerns?**

**(7 marks)**



#### **Question 4 (25 marks)**

In 2006 Alex orally agreed to grant Ben a lease of an office in a multi-storey building (the "Office") for a term of 10 years at a monthly rent of HK\$50,000. Ben moved into the Office and started paying rent. In 2008 Alex borrowed HK\$13 million from the Goodwill Bank Ltd. ("Goodwill"). The loan is repayable over ten years by equal monthly instalments of principal and interest. The loan is secured by a legal mortgage securing all monies which is substantially in the form set out in Form 5 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. In 2011 Alex got into financial difficulty and has been unable to make any repayments due since September 2011.

#### **Questions:**

**4.1 Goodwill wants to enforce the legal charge by selling the Office. Goodwill would prefer to sell with vacant possession to obtain the best price. Advise Goodwill on the steps it must take.**

**(17 marks)**

**4.2 Assume that, intending to replace Goodwill as mortgagee, the Hopeful Bank Ltd. ("Hopeful") offered Alex a loan at a lower interest rate. On 5 March 2011 Alex borrowed from Hopeful and redeemed Goodwill's legal mortgage. The discharge from Goodwill to Alex was dated 20 March 2011 and registered on 23 March 2011. Alex created a new legal mortgage in favour of Hopeful on 20 March 2011. This was registered on 10 April 2011. On 7 March 2011 Wily obtained a charging order nisi against Alex. This was registered on 8 March 2011. Who has priority between Hopeful and Wily?**

**(8 marks)**

### **Question 5 (25 marks)**

On 3 March 2011 Vera Wang (“Vera”) entered into a binding agreement (the “Head Agreement”) to buy a residential flat known as Flat 6A, Green Gardens, 6 Green Road, Hong Kong (the “Flat”) from Greenland Ltd. for a consideration of HK\$4 million. Under the Head Agreement Vera is liable for stamp duty on the transaction. On 3 October 2011 Vera as vendor and Paul To (“Paul”) as purchaser signed a binding Provisional Agreement (the “Provisional Agreement”) for the sub-sale and purchase of the Flat. A copy of the Provisional Agreement is attached. The completion dates in the Head Agreement and the Provisional Agreement are the same.

#### **Questions:**

**Answer the following questions based on the terms of the Provisional Agreement:**

**5.1 Assume that on signing the Provisional Agreement, Paul gave Vera a cheque for the initial deposit. However, there were insufficient funds in Paul’s account and the cheque was dishonoured. One day later Paul sent Vera a cashier order for the initial deposit. Can Vera refuse to accept the cashier order and treat herself as discharged?**

**(4 marks)**

**5.2 Explain Paul’s liability to stamp duty on the Provisional Agreement.**

**(3 marks)**

**5.3 Explain whether Vera’s liability for stamp duty on the Head Agreement differs from Paul’s under the Provisional Agreement.**

**(3 marks)**

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

**5.4 Assume that the parties did not sign a formal agreement but that neither party alleges a breach of the Provisional Agreement on this ground. Nevertheless Paul paid the further deposit. Later Paul failed to complete. What remedies are available to Vera?**

**(5 marks)**

**5.5 Assume that after the date of the Provisional Agreement, Paul pays the further deposit and signs a formal agreement and sends them to Vera before 15 October 2011. On 18 October 2011 Vera decides not to continue with the sub-sale. She returns to Paul the further deposit, the initial deposit and a sum equivalent to the initial deposit. Can Paul obtain specific performance of the Provisional Agreement?**

**(4 marks)**

**5.6 Assume that the sub-sale is going to be completed. Can Vera insist on completion taking place by way of undertaking?**

**(4 marks)**

**5.7 Assume that the sub-sale is completed by an assignment from Greenland Ltd. to Paul (the "Assignment"). The parties to the Assignment are 1) Greenland Ltd., 2) Vera, and 3) Paul. What covenants for title must Vera give in the Assignment?**

**(2 marks)**

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

## The Provisional Agreement referred to in Question 5

THIS AGREEMENT is made on the 3rd October 2011

Between

- (1) Vera Wang of Flat A, 3<sup>rd</sup> Floor, 47A Stubbs Road, Hong Kong (the “Vendor”);
- and
- (2) Paul To of Flat 6A, Prince Gardens, 10 Prince Edward Road, Kowloon (the “Purchaser”); and
- (3) Centahome Property Agency Limited whose registered office is at 2<sup>nd</sup> Floor, Hopeful Plaza, Hong Kong (the “Agent”).

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase Flat 6A, Green Gardens, 6 Green Road, Hong Kong (the “Property”).
2. The purchase price is HK\$5,800,000.00 which shall be paid by the Purchaser to the Vendor in the following manner:
  - (a) HK\$58,000.00 as initial deposit on the signing of this agreement,
  - (b) HK\$522,000.00 as further deposit on the signing of a formal agreement for sale and purchase on or before 15th October 2011,
  - (c) HK\$5,220,000.00 on completion on 3rd November 2011.
3. Should the Purchaser fail to complete the purchase in the manner herein contained the initial 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 or enforce specific performance.

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

4. If the Vendor is unable or unwilling to enter into a formal agreement for sale and purchase with the Purchaser, 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. In consideration of the service rendered by the Agent, the Agent shall after this agreement be entitled to receive HK\$58,000 from the Vendor and HK\$58,000 from the Purchaser as commission. Such commission shall be paid not later than 3rd November 2011.
6. If in any case either the Vendor or the Purchaser fails to complete the sale and purchase in the manner herein contained the defaulting party shall compensate at once the Agent HK\$116,000 as liquidated damages.
7. The Purchaser will pay the stamp duty in connection with this transaction and any Special Stamp Duty payable if the Purchaser disposes of the Property within 24 months after the Purchaser acquires the Property.

Signed by the Vendor *Vera Wang*

Signed by the Purchaser *Paul To*

Signed on behalf of the Agent *David Lee*

**END OF TEST PAPER**