

**2013 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD I: CONVEYANCING

Thursday, 7 November 2013



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TEST PAPER

7 November 2013

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.

2013 Overseas Lawyers Qualification Examination

Head I: Conveyancing

Question 1 (25 marks)

Barry recently inspected Flat 20C in Villa Splendido (the “Flat”). Through Wendy, the property agent dealing with the sale, Barry orally offered HK\$9 million for the Flat. The offer was accepted orally. Barry met the owner of the Flat, Shirley, at Wendy’s office where Shirley and Barry agreed orally on a completion date of 2 October 2013. Shirley agreed orally that Barry could keep all of the furniture in the Flat without extra payment.

Wendy asked Barry and Shirley to sign a written sale and purchase agreement, but Barry declined, saying that he would wait until the solicitors had been able to negotiate the written agreement.

Some days later, Shirley sent Barry a message by e-mail referring to the meeting and the terms that had been agreed, but making no mention of the agreement concerning the furniture. Shirley told Barry that she was not happy about his refusal to sign an agreement.

Barry replied that he would ask his solicitors to deal with the matter as quickly as possible. Shirley sent a second e-mail message telling Barry that their deal was off and that she had found another buyer.

Questions:

- 1.1 Is there a contract for the sale and purchase of the Flat which Barry can enforce against Shirley?

(15 marks)

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

1.2 Would your answer to question 1.1 be affected in any way (or would your conclusion be strengthened) if Wendy had started the discussions at her office by saying that all discussions between the parties were 'subject to contract' and Barry and Shirley had agreed to this?

(3 marks)

1.3 Assume that Shirley and Barry had signed a binding agreement during the first meeting at Wendy's office. What remedies would Barry have if Shirley later signed a contract to sell the Flat to a third party?

(7 marks)

Question 2 (25 marks)

On 1 October 2013 Vicki as vendor and Paul as purchaser entered into a binding Agreement for Sale and Purchase of Flat 4, 4th Floor, Block 3, Green Gardens (“Flat 4”). The development known as Green Gardens consists of three blocks of flats erected in 1955 on Rural Building Lot No. 8642 at Repulse Bay in Hong Kong. The agreement is in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. The consideration is HK\$20 million. Completion is due to take place tomorrow, 8 November 2013.

On 16 October 2013 Vicki’s solicitor sent Paul’s solicitor the title deeds to Flat 4 including an Occupation Permit issued in 1955 and the Government Lease. The Occupation Permit shows that Block 3 has four storeys. When investigating title, Paul’s solicitor discovered that the Government Lease for Rural Building Lot No. 8642 restricts development on the lot to three storeys. Paul’s solicitor also discovered that Blocks 1 and 2 of Green Gardens each have three storeys and that only Block 3 has four storeys. On 20 October 2013 Paul’s solicitor raised a requisition with Vicki’s solicitor explaining that there appeared to be a breach of the Government Lease and asking for evidence that the Government had consented to the construction of four storeys. On 3 November 2013 Vicki’s solicitor replied as follows:

“Our client has owned Flat 4 since 1983 and has never received any complaint about a possible breach of the Government Lease. It is unlikely that the Government will take any action to re-enter.”

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

Questions:

2.1 Discuss whether Paul's requisition is reasonably raised, whether this is a satisfactory reply to Paul's requisition and what more Vicki can do to give a satisfactory reply and avoid being in breach of contract. If you need more information to answer this question, state what information you need.

(18 marks)

2.2 Assume first that Paul completed his purchase and that in the assignment of Flat 4 from Vicki to Paul Vicki assigned as beneficial owner and secondly that Paul discovered the breach of the Government Lease described above after completion. Does Paul have any remedy against Vicki or anyone else?

(7 marks)

Question 3 (25 marks)

Healthy Estates Ltd. (“Healthy”) developed Good Gardens, an apartment block. In 1978 Healthy assigned to Alpha Ltd. (“Alpha”) five equal undivided 100th shares of and in the land on which Good Gardens is built and of and in Good Gardens together with the right to the exclusive use of Apartment 8A and Car Park 8. On completion Healthy gave Alpha one set of title deeds for Apartment 8A and Car Park 8.

Healthy and Alpha entered into a Deed of Mutual Covenant (the “DMC”). The DMC was registered in the Land Registry.

Later Healthy sold the remaining apartments and car parks in Good Gardens. Every assignment was of undivided shares and exclusive use rights and was made ‘subject to and with the benefit of the DMC’.

The DMC includes the following covenant:

- Every owner will pay monthly management charges in respect of his flat.

The DMC contains details of exclusive use areas and their allocation between undivided shares. Five equal undivided 100th shares are allocated to Apartment 8A and Car Park 8 collectively. The DMC also provides that Alpha will enjoy the exclusive use of Apartment 8A and Car Park 8 and that Healthy will enjoy exclusive use of all other apartments and car parks in Good Gardens.

Beta Ltd. bought Apartment 4C from Healthy using a loan advanced by the Eastern Bank Ltd. which is secured by a first legal charge on Apartment 4C. Beta Ltd. has not paid management charges for several months.

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

Questions:

3.1 Can the Eastern Bank Ltd. be forced to pay Beta Ltd.'s arrears of management charges?

(7 marks)

3.2 On 20 October 2013 Beta Ltd. entered into a binding agreement to sell Apartment 4C with good title. During title investigation it is discovered that the DMC is not validly executed by Healthy because its company seal has not been affixed.

Is Beta Ltd. able to give good title? If you need more information to answer this question, state what information you need.

(9 marks)

3.3 Alpha intends to sell Apartment 8A and retain Car Park 8. Explain the steps that Alpha must take in order to do this.

(9 marks)

Question 4 (25 marks)

Last week Ben Wong entered into a binding Agreement for Sale and Purchase (the “Agreement”) with Simon Chan to purchase Simon’s flat at Tsim Sha Tsui, Kowloon (the “Flat”). The Agreement provides, amongst other things, for Simon to give Ben a good title to the Flat. You are a solicitor acting for Ben.

The title documents produced by Simon Chan include the following:

- (1) Certified copy of an Agreement and Conditions of Sale dated 18 June 1973 (“the Grant”) in favour of Dominance Company Limited (“Dominance”) and Super Easy Company Limited (“Super Easy”) as tenants in common in equal shares for a term of 75 years commencing from the date of the Grant together with a right of renewal for a further term of 75 years.
- (2) Certified copy of an Assignment (“the Assignment”) dated 1 April 1984 by Dominance and Super Easy as vendors in favour of Simon Chan which was (i) sealed with the Common Seal of Dominance and signed by Chan Siu Ming who was described as its Chief Accountant and (ii) executed by Adam Smith who was described as the lawful attorney of Super Easy.

Questions:

4.1 Is the interest held by Simon Chan under the Grant an equitable interest or a legal estate? If you need more information to answer this question, state what information you need.

(4 marks)

4.2 When will the equitable interest or legal estate mentioned in 4.1 end?

(3 marks)

(See the next page for a continuation of Question 4)

4.3 What investigations and enquiries, if any, will you make to ascertain whether the Assignment has been duly executed by Dominance and Super Easy?

(6 marks)

4.4 What investigations and enquiries, if any, will you make if you are informed that Simon Chan does not have in his possession the original of the Assignment, which is the intermediate root?

(6 marks)

4.5 Simon has removed the partition wall between the kitchen and the lounge at the Flat to create an open kitchen. What investigations and enquiries will you make in connection with this matter, if any?

(6 marks)

Question 5 (25 marks)

On 3 October 2013 Susan So (“Susan”) as vendor and Boris Bau (“Boris”) as purchaser entered into a binding preliminary agreement (the “Agreement”) in English whereby Susan agreed to sell to Boris her residential flat known as Flat 10B, Blue Gardens, 47 Link Road, Hong Kong (the “Property”). A copy of the Agreement is attached. Susan bought the Property in June 2010.

Before signing the Agreement Boris inspected the Property in the presence of Susan. Susan has a mortgage on the Property in favour of the Goodwill Bank Ltd. Susan will discharge this mortgage on completion. The solicitors for Susan are Leung & Chan. You act for Boris.

Questions:

- 5.1 Leung & Chan has sent you the draft formal agreement containing the following clause:

“The parties agree that completion will take place by way of undertaking.”

Boris did not sign the formal agreement or pay the further deposit on or by 17 October 2013. **Has Boris breached the Agreement? Must Boris accept the proposed term?**

(5 marks)

- 5.2 Boris is a Hong Kong permanent resident. On 25 October 2013 Boris nominated Bau Properties Ltd. to be the purchaser in the assignment on completion. Boris owns the whole of the issued share capital in Bau Properties Ltd. **Explain how stamp duty will be charged on the sale and purchase and nomination.**

(8 marks)

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

5.3 Assume that the parties did not sign a formal agreement, but that neither party alleges a breach of the Agreement on this ground. Assume also that Boris paid the further deposit to Susan on 17 October 2013.

(a) Boris, on behalf of the nominee Bau Properties Ltd., wants to inspect the Property before completion takes place. **Is he entitled to do so?**

(2 marks)

(b) Assume that all parties have agreed that completion will take place by way of undertaking. You act for Boris and also Bau Properties Ltd. which, after the nomination referred to above, will be the purchaser in the assignment. Leung & Chan acts for Susan. Three days before completion Leung & Chan instructs you to send them the following cheque drawn on your firm's clients' account in respect of the balance of purchase price:

HK\$ 5,220,000 made payable to Leung & Chan.

Explain how you would protect your clients' interests when completing by way of undertaking and whether this instruction enables you to protect their interests.

(10 marks)

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

Provisional Agreement for Sale and Purchase for Question 5

THIS AGREEMENT is made on 3 October 2013

Between the Vendor - Susan So of Flat 3A, Green Gardens, 47A Stubbs Road,
Hong Kong

the Purchaser - Boris Bau of Flat 6A Red Gardens, 10 Prince Edward
Road, Kowloon

the Agent - Centahome Property Agency Limited whose registered
office is at 2nd Floor, Hopeful Plaza, Hong Kong

The Vendor and the Purchaser agree as follows:

1. The Vendor shall sell and the Purchaser shall purchase Flat 10B, Blue Gardens, 47 Link Road, Hong Kong (the "Property").
2. The purchase price is HK\$5,800,000 which shall be paid by the Purchaser to the Vendor in the following manner:
 - (a) HK\$58,000 on the signing of this agreement as initial deposit,
 - (b) HK\$522,000 on the signing of a formal agreement for sale and purchase on 17 October 2013 as the balance of the deposit,
 - (c) HK\$5,220,000 upon completion on 17 November 2013 as the balance of the purchase price.

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

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 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. 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 17 November 2013.
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 other than Special Stamp Duty.
8. The Vendor will pay any Special Stamp Duty in connection with the disposal of the Property.

Signed *Susan So*

Signed *Boris Bau*

Signed *David Lee* for Centahome Property Agency Limited

END OF TEST PAPER