

**2014 OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

**HEAD I: CONVEYANCING**

**Tuesday, 28 October 2014**



# **HEAD I: CONVEYANCING**

## **TEST PAPER**

**28 October 2014**

### **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.**

# 2014 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

**Give reasons for all your answers**

### **Question 1 (25 marks)**

Shatin Bank Ltd. (the “**Bank**”) has agreed to grant Brandon a loan of HK\$6 million (the “**loan**”) to finance Brandon’s purchase in his sole name of Flat 17A in the El Palacio Development (the “**Flat**”). The loan is to be secured by an ‘all monies’ Legal Charge over the Flat (the “**Legal Charge**”).

#### **Questions:**

**1.1 What are the formalities to be observed in order to create the Legal Charge and the steps to be taken in order to protect its priority? What are the consequences of a failure to take the necessary steps to protect its priority?**

**(3 marks)**

**1.2 Explain the significance of the fact that the Legal Charge is to be security for ‘all monies’ that Brandon owes to the Bank.**

**(4 marks)**

**1.3 Brandon’s wife, Helen, provided part of the deposit that Brandon paid to the seller of the Flat. She will live with Brandon at the Flat after completion of the purchase. Might Helen have a proprietary interest in the Flat that has priority over the Legal Charge?**

**(6 marks)**

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

**Assume in questions 1.4 and 1.5 that the Legal Charge is in the form of Form 4 of the Third Schedule to the *Conveyancing and Property Ordinance* Cap. 219.**

**1.4** Assume that Brandon and Helen subsequently moved to live in a different property and granted a lease of the Flat for a term of 4 years. Brandon did not obtain the Bank's consent to the grant of the lease. **Will the Bank's rights under the terms of the Legal Charge have priority over those of the tenant under the terms of the lease?**

**(4 marks)**

**1.5** **If Brandon fails to pay interest due under the Legal Charge for six months after the due date for payment, explain the steps that the Bank must take to sell the Flat free from the Legal Charge and without incurring any liability to Brandon.**

**(8 marks)**

## Question 2 (25 marks)

In May 2014 Lee Estates Ltd. (“**Lee**”) was renovating its shopping mall in Causeway Bay (the “**mall**”) and Lee started negotiations with Tang Emporium Ltd. (“**Tang**”) for Tang to lease a shop in the mall. Lee and Tang discussed the rent, rent free period, service charges, duration of term and option to renew and they orally agreed that Tang would take a lease of a 10,000-square foot shop (the “**shop**”) on the ground floor of the mall at a monthly rent of HK\$1 million and that Tang would pay monthly service fees of \$50,000. Lee and Tang also agreed a 10-year term starting on 1 October 2014.

Lee’s solicitors drafted a lease and sent it to Tang but neither party executed the lease because they could not agree on the precise terms of the option to renew or the duration of the rent free period. However, Tang paid Lee an ‘initial deposit’ of HK\$500,000 and in June 2014, before the renovations were completed, Lee allowed Tang’s contractors access to start fitting out the shop. Lee and Tang continued to negotiate the terms of the option to renew and the rent free period.

Last week, however, Lee stopped negotiations and told Tang that it no longer wanted to lease the shop to Tang and also prevented Tang’s contractors from entering the shop.

### Questions:

**2.1 Is there an agreement for lease which Tang can enforce against Lee?**

**(13 marks)**

**2.2 Assume that Lee and Tang finally conclude all the terms of the 10-year lease. Lee was incorporated in April 2014 and does not have a company seal. Explain how Lee should execute the lease.**

**(6 marks)**

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

**2.3** Assume that the 10 year-lease was validly executed by Lee and Tang on 3 July 2014 and registered in the Land Registry on 6 August 2014. On 2 July 2014 Lee executed a mortgage of the shop in favour of ABC Bank Ltd. The mortgage was registered in the Land Registry on 7 August 2014. **Who has priority, ABC Bank Ltd. or Tang?**

**(6 marks)**

### Question 3 (25 marks)

An Agreement for Sale and Purchase (the “**Agreement**”) was signed last month between Sean as vendor and Polly as purchaser for the sale and purchase of a flat at Happy Building in Yuen Long (the “**Flat**”). According to the Grant referred to below and the Occupation Permit for Happy Building, the flats are for ‘domestic’ use.

The Agreement is in Form 2 of the Third Schedule to the *Conveyancing and Property Ordinance* Cap. 219. Your firm acts for Polly. Sean’s solicitors have produced the title deeds which include the following:

- (1) New Grant No. 5955 (the “**Grant**”) dated 20 July 1982 for a term of 99 years less the last three days thereof from 1 July 1898.
- (2) A letter from the District Lands Officer, Yuen Long dated 29 November 1989 and registered in the Land Registry by Memorial No. YL648634 certifying that all positive obligations imposed on the grantee under the General and Special Conditions of the Grant had been complied with to his satisfaction.
- (3) An Assignment dated 30 June 2003 (the “**Assignment**”) in favour of Sean which was sealed with the Common Seal of Jin Ling Company Ltd. (a company incorporated in Hong Kong) and signed by Mr. Wong Hoi whose capacity is not mentioned thereon.
- (4) The Deed of Mutual Covenant for Happy Building (the “**Deed of Mutual Covenant**”).

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

## Questions:

**3.1 Is the interest held by Sean under the Grant an equitable interest or a legal estate?**

**(4 marks)**

**3.2 When will the equitable interest or legal estate mentioned in 3.1 above end?**

**(2 marks)**

**3.3 What investigations and requisitions, if any, will you make to ascertain whether Jin Ling Company Ltd. has duly executed the Assignment?**

**(6 marks)**

**3.4 Polly already owns the flat next to the Flat (the “adjoining flat”). After completion, she is planning to remove the partition wall between the Flat and the adjoining flat to create more space and to use part of the Flat as her office. In light of the Grant, the Occupation Permit and the Deed of Mutual Covenant, advise whether the titles to both the Flat and the adjoining flat might be affected by Polly’s plans.**

**(13 marks)**



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

Vanessa acquired her flat (the “**Flat**”) in Causeway Bay in September 1994 when she became principal of a private kindergarten owned by Scholastic Limited (“**Scholastic**”). The shareholders of Scholastic were:

- Vanessa - 10 shares
- David - 10 shares
- Noble Ltd. (“**Noble**”) - 80 shares

David and his wife were the directors of Scholastic and were also the shareholders and directors of Noble. Both Scholastic and Noble were incorporated in Hong Kong.

In November 1995, Vanessa executed a Legal Charge of the Flat (the “**Legal Charge**”) in favour of Noble for loans to be advanced to her or to Scholastic from time to time. The Legal Charge was registered against the Flat in the Land Registry. By 2010 the kindergarten had closed down. Both Noble and Scholastic were then voluntarily wound up.

In August 2014, Vanessa agreed to sell the Flat to Pepperdine Ltd. (“**Pepperdine**”). Vanessa and Pepperdine signed a formal sale and purchase agreement which is in Form 2 of the Third Schedule to the *Conveyancing and Property Ordinance* Cap. 219. Pepperdine paid a deposit. In response to a requisition raised by Pepperdine’s solicitors, Vanessa first took out an application against the Secretary for Justice seeking, inter alia, an order that the registration of the Legal Charge be vacated. By consent between the parties, Vanessa obtained a court order last week that the registration of the Legal Charge in the Land Registry be vacated. The sale and purchase is scheduled to be completed tomorrow.

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

**Questions:**

**4.1 Must Pepperdine complete the purchase of the Flat as scheduled?**  
(20 marks)

**4.2 Would your answer differ if before Noble was wound up, David had signed a receipt for all moneys due under the Legal Charge?**  
(5 marks)

### Question 5 (25 marks)

On 1 August 2014 Victor (the “Vendor”) and Posy (the “Purchaser”) signed a binding provisional agreement for sale and purchase (the “provisional agreement”) of Flat 3A, Pine Court (the “Flat”) and the Purchaser paid the Vendor an initial deposit of 5% of the price. The provisional agreement provides that the parties will sign a formal agreement, but the parties have not done so. Neither party alleges a breach for this reason. Completion was due to take place on 1 October 2014.

The provisional agreement does not contain any terms regarding the Vendor’s obligation to give and show title. It contains the following clause which is Clause 4:

*“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.”*

On 7 August 2014 the Vendor’s solicitors sent the title deeds to the Purchaser’s solicitors. The deeds include the following:

- A power of attorney dated 12 January 1996 by Alex Au authorising Betty Bee to sell the Flat on such terms as she thinks fit.
- An Assignment dated 13 March 1996 under which Betty Bee as attorney for Alex Au assigned the Flat to Cathy Ko by way of gift.
- An Assignment dated 15 June 1998 by Cathy Ko in favour of the Vendor.

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

On 18 August 2014 the Purchaser's solicitors sent the following requisition to the Vendor's solicitors:

*"It appears that the Power of Attorney dated 12 January 1996 does not authorise Betty Bee to make a gift of the donor's property. Please give us evidence that Alex Au authorised the Assignment by way of gift to Cathy Ko dated 13 March 1996."*

The Vendor's solicitors refused to reply to the requisition on the grounds that it related to a pre-intermediate root defect in title and that the Vendor was not required to produce the Power of Attorney because the Assignment executed under the Power of Attorney is more than 15 years old. Completion did not take place on 1 October 2014 and the Vendor alleges that the Purchaser has repudiated the provisional agreement by failing to complete.

**Questions:**

**5.1 Has the Vendor breached the provisional agreement?**

**(13 marks)**

**5.2 Assuming that the answer to question 5.1 above is positive, what remedies are available to the Purchaser?**

**(12 marks)**

**END OF TEST PAPER**