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# 2015 OVERSEAS LAWYERS QUALIFICATION EXAMINATION

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## HEAD I: CONVEYANCING

Tuesday, 27 October 2015



# **HEAD I: CONVEYANCING**

## **TEST PAPER**

**27 October 2015**

### **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.**

# 2015 Overseas Lawyers Qualification Examination

## Head I: Conveyancing

**Give reasons for all your answers**

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

Ms. Ang is the registered owner of a flat in the New Territories (the "**Flat**").

On 19 August 2013 Ms. Ang executed a mortgage of the Flat (the "**First Mortgage**") in favour of A Ltd. to secure all monies. The First Mortgage was registered in the Land Registry on 3 September 2013.

On 30 May 2014 Ms. Ang executed a second mortgage of the Flat (the "**Second Mortgage**") in favour of B Ltd. to secure all sums of money payable by Ms. Ang under a loan agreement made between B Ltd. and Ms. Ang also dated 30 May 2014 ("**B's First Loan Agreement**"). Under B's First Loan Agreement B Ltd. agreed (inter alia) to lend the sum of HK\$2 million to Ms. Ang. The Second Mortgage was registered in the Land Registry on 15 June 2014.

On 3 August 2014 Ms. Ang executed a third mortgage of the Flat (the "**Third Mortgage**") in favour of C Ltd. to secure a loan of HK\$1.5 million. In the Third Mortgage C Ltd. acknowledged that the First Mortgage and the Second Mortgage were valid and subsisting and that the Third Mortgage was subject to the First Mortgage and the Second Mortgage. The Third Mortgage was registered in the Land Registry on 5 August 2014.

A Ltd., B Ltd. and C Ltd. are all licensed money lenders under the Money Lenders Ordinance Cap. 163.

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

On 9 August 2014 Ms. Ang entered into a second loan agreement with B Ltd. whereby B Ltd. agreed (inter alia) to lend the sum of HK\$7.62 million to Ms. Ang for the purpose of enabling Ms. Ang to repay A Ltd. and discharge the First Mortgage so that B Ltd. could become the first mortgagee. Ms. Ang used part of this loan to discharge the First Mortgage which was fully discharged on 12 August 2014.

Ms. Ang is now unable to repay the loans made to her by B Ltd. and C Ltd. and the net value of the Flat is less than the total sum secured on the Flat.

### **Questions:**

**1.1 Can B Ltd. tack its second loan of HK\$7.62 million to its Second Mortgage?**

**(5 marks)**

**1.2 Explain whether B Ltd. or C Ltd. would have priority over the proceeds of sale of the Flat.**

**(20 marks)**

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

Candy is considering purchasing from Vicky Flats 15A and 15B (the "Flats") in Block 5 of Coastal Views. There is an owners' corporation for Coastal Views. The non-structural wall dividing the Flats has been demolished to create a single, larger unit.

The balcony of each of the Flats has been enclosed so that, in effect, they have become part of the living area for the Flats. This has been done despite the fact that the Deed of Mutual Covenant ("DMC") for Coastal Views prohibits this. Vicky tells Candy that she need not worry about this as the owners of many other flats in Coastal Views have done the same thing. Vicky also informs Candy that the management committee has known all along about the work and so the committee cannot complain about it now.

The DMC contains a prohibition on the keeping of pets in any flat in Coastal Views without the written permission of the management committee. Finally, there are problems with the external wall of Block 5 of Coastal Views. As a result, there is severe water penetration from outside whenever there is heavy rain.

Candy is very interested in buying the Flats. Before she goes ahead, however, she would like your advice on the following matters:

### **Questions:**

**2.1 Can the owners' corporation require the reinstatement of the wall dividing the Flats?**

**(5 marks)**

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

**2.2 Can the owners' corporation enforce the DMC prohibition on enclosing the balconies?**

**(5 marks)**

**2.3 If Candy completes the purchase of the Flats, will she be subject to the prohibition on the keeping of pets?**

**(5 marks)**

**2.4 Can the owners' corporation be required to remedy the defect in the external wall of Block 5?**

**(4 marks)**

**2.5 Assume that defects in the pipes inside Flat 16B, the flat above Flat 15B mean that there is now water leakage through the ceiling of Flat 15B. Who can take action in respect of the defects and against whom can the action be taken?**

**(6 marks)**

### Question 3 (25 marks)

Alan Chan has agreed, by virtue of a binding Provisional Agreement for Sale and Purchase (the "**Agreement**") in English only signed yesterday, to buy Betty Lee's flat (the "**Flat**"), which is free of mortgage.

Certain clauses of the Agreement read as follows:

- (1) *The Vendor shall sell and the Purchaser shall buy a good title.*
- (2) *The purchase price of the Property is HK\$10,000,000 which shall be paid by the Purchaser to the Vendor as follows:*
  - (a) *Initial deposit in the sum of HK\$500,000 shall be paid upon signing of this Agreement;*
  - (b) *Further deposit in the sum of HK\$500,000 shall be paid on or before 15 November 2015; and*
  - (c) *Balance of purchase price in the sum of HK\$9,000,000 shall be paid upon completion on or before 28 December 2015.*
- (3) *The Formal Agreement for Sale and Purchase shall be signed on or before 15 November 2015, if the terms thereof are agreed upon by both the Vendor and the Purchaser.*
- (4) *Vacant possession of the Property shall be delivered by the Vendor to the Purchaser on completion.*

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

Your firm acts for Alan Chan and the law firm of Rich & Poor acts for Betty Lee. Upon perusal of the title deeds supplied by Rich & Poor, the following are noted:

- (1) Mary Lee, who is Betty Lee's mother, bought the Flat by virtue of an Assignment (the "**Assignment**") dated 7 July 2005 from Fantasy Co. Ltd. ("**Fantasy**"). The Assignment was sealed with the common seal of Fantasy and signed by Mr. Jack So and Miss Jill Lam whose capacities are not mentioned.
- (2) A Deed of Gift (the "**Deed of Gift**") of the Flat dated 4 March 2009 executed by Mary Lee as donor in favour of Betty Lee as donee.

### **Questions:**

- 3.1 **What investigations and enquiries, if any, will you make in connection with the execution of the Assignment by Fantasy and why?**  
(5 marks)
- 3.2 **Will you advise Alan Chan to complete the purchase of the Flat if Betty Lee does not know the whereabouts of the original of the Assignment?**  
(6 marks)
- 3.3 **What investigations and enquiries, if any, will you make in connection with the Deed of Gift and information from Alan Chan that when he went to view the Flat, he met the abovementioned Mary Lee who told him that she is currently living at the Flat with Betty Lee?**  
(10 marks)

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



**3.4 When is the further deposit mentioned in the Agreement payable? Would your answer be different if the Formal Agreement for Sale and Purchase (referred to in the Agreement) is never signed because your firm and Rich & Poor cannot agree upon its terms?**

**(4 marks)**

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

On 1 September 2015 Sam Sung (the "**Vendor**") entered into a binding agreement (the "**Agreement**") to sell his flat 3A, Hibiscus Court (the "**Property**") to Barry Bau (the "**Purchaser**") for a consideration of HK\$15 million with completion on 10 October 2015. Barry Bau inspected the Property before signing the Agreement. The Agreement is substantially in the form of agreement set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219 but it also includes the following clause which is Clause 12 of the Agreement:

*The Property is sold on an 'as is' basis. The Purchaser has inspected the Property and shall not raise any requisitions or refuse to complete on the grounds that there are any unauthorised or illegal alterations, additions or structures on the Property. If any demolition order or repair order is issued by any government department, the expense for complying with such an order shall be borne by the Purchaser.*

On 20 September 2015 the title deeds were delivered to the Purchaser's solicitors. The Deed of Mutual Covenant ("**DMC**") for Hibiscus Court contains the following clause which is Clause 8:

*No owner shall make any structural alterations to his flat.*

The deeds include a plan showing the layout of the Property and a comparison of the Property with the layout plan indicates that the living room of the Property has been extended into a light well. The Purchaser was not aware of this during his inspection. After seeing the layout plan, the Purchaser inspected Hibiscus Court again on 22 September 2015 and from the roof top he could see that a platform leading from the Property has been built out into the light well. For this purpose the wall separating the light well from the Property has been demolished. On 22 September 2015, the Purchaser's solicitor sent the following requisition to the Vendor's solicitor:

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

## **Requisition**

*Please send us evidence that the extension of the living room into the light well does not breach the Buildings Ordinance or Clause 8 of the DMC.*

The Vendor's solicitor has refused to reply to the Requisition. The Purchaser did not complete on 10 October 2015.

## **Questions:**

**4.1 Explain whether the Vendor has breached the Agreement.**

**(19 marks)**

**4.2 Assume that the Agreement does not include Clause 12. Assume also that the Purchaser's solicitor raises the Requisition out of time and that the Vendor refuses to answer. Explain whether the Vendor has breached the Agreement.**

**(6 marks)**

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

On 1 August 2015 Vera Vong ("Vera") entered into a binding Formal Sale and Purchase Agreement (the "**Agreement**") to sub-sell the residential flat at 3A, Bauhinia Court, 3 Bauhinia Road, Kowloon (the "**Property**") to Peter Poon ("**Peter**") with completion on 15 September 2015. Peter is buying the Property as his residence. After Peter moves into the Property, he will sell his current flat of which he is the sole owner.

The Agreement is in the form of agreement set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219. The Agreement states expressly that Peter will pay all stamp duty. The consideration is HK\$25 million and Peter has paid Vera a deposit of HK\$3.75 million.

The Agreement is the last in a series of sales. Alice, the legal owner of the Property, entered into a binding agreement dated 1 March 2015 to sell the Property to Betty for HK\$18 million also with completion on 15 September 2015. Betty entered into a binding agreement for sub-sale dated 1 June 2015 to sell the Property to Vera for HK\$20 million also with completion on 15 September 2015. A deposit equivalent to 10% of the price was paid under each of these agreements.

Alice, Betty, Vera and Peter are all permanent residents of Hong Kong. None of them is closely related within the meaning of s 29AD Stamp Duty Ordinance Cap. 117.

#### **Questions:**

**5.1 How much stamp duty is payable on the Agreement, who must pay it and when is it payable?**

**(7 marks)**

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

**5.2** Assume that Peter tendered the balance of purchase price to Vera on 16 September 2015. **Explain whether Vera can treat herself as discharged and forfeit Peter's deposit of HK\$3.75 million.**

**(9 marks)**

**5.3** Assume that Peter has breached the Agreement by tendering the balance of purchase price on 16 September 2015 instead of on the completion date of 15 September 2015. The result is that Vera is unable to complete her agreement with Betty who has forfeited Vera's deposit of HK\$2 million. The value of the Property is now estimated to be HK\$21 million. **Explain how the amount of the damages due to Vera from Peter for breach of the Agreement will be assessed.**

**(9 marks)**

**END OF TEST PAPER**