

**2016 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

HEAD I: CONVEYANCING

Tuesday, 1 November 2016



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TEST PAPER

1 November 2016

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.**

2016 Overseas Lawyers Qualification Examination

Head I: Conveyancing

Question 1 (25 marks)

The Deed of Mutual Covenant (the "DMC") of Maritime Villa (the "**Building**") provides as follows:

- a) for owners to pay management charges for the Building in proportion to the number of undivided shares owned by them;
- b) that a charge may be registered over the undivided shares of any owner who fails to pay management charges within one month after payment becomes due; and
- c) that owners must not do anything in their flats to cause a nuisance or annoyance to their neighbours.

The DMC also grants exclusive use rights over each flat to the owner of the flat and does not grant any other exclusive use rights. The owners have established an owners' corporation. There is a building manager appointed under the DMC.

Mark owns flat 3B of the Building. His flat has recently been affected by water coming into his flat during typhoons. This is because of damage to the external wall of the Building. Water is also leaking through the living room ceiling. Mark suspects that this leak is coming from flat 4B which is immediately above his flat.

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

Mark has repeatedly approached the management committee about each of these problems but no action has been taken. The management committee told Mark that they have made a number of attempts to arrange to visit flat 4B but the owner has told them that it is not convenient as he is often away from Hong Kong. The management committee insist that they cannot inspect flat 4B without the owner's consent. They have also suggested that Mark should arrange for a building contractor to repair the damaged external wall of the Building.

Mark is extremely angry. He has refused to pay the monthly management charges in protest.

Questions:

Answer the following questions giving reasons for your answers:

1.1 Who has the duty to repair the external wall of the Building? How can this duty be enforced?

(5 marks)

1.2 What rights does the owners' corporation have to inspect flat 4B to discover the source of the leak into Mark's living room?

(5 marks)

1.3 Assuming that Mark has no legal or equitable right to withhold payment of management charges, what remedies can the owners' corporation pursue to recover them?

(5 marks)

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

1.4 The owner of flat 3A regularly burns incense in his flat. Smoke from the incense wafts into Mark's flat and makes Mark cough. **Advise Mark how he can legally stop his neighbour from burning incense.**

(5 marks)

1.5 A workman engaged by the owners' corporation was seriously injured when working on the repair of the external wall of the Building due to the negligence of the owners' corporation. There is doubt as to whether the owners' corporation's insurance policy will cover the damages awarded to the workman.

Is this of concern to potential purchasers of Mark's flat?

(5 marks)

Question 2 (25 marks)

On 30 October 2016, Pinky Chan entered into an Agreement for Sale and Purchase (the "**Agreement**") to purchase from Olympia Company Limited ("**Olympia**"), a company incorporated in Hong Kong in 2015, a residential property known as Flat A, 8th Floor, Harmony Building (the "**Property**") in Pokfulam, Hong Kong. Completion is due to take place on 16 December 2016.

When Pinky went to view the Property, she noticed that a balcony at the Property has been enclosed. Pinky was told by Oliver Lee, the sole director of Olympia, that the work might have been done by a previous owner many years ago. Pinky impulsively told Oliver: "Never mind, I prefer the balcony enclosed as it means more space and security for the Property."

Questions:

Answer the following questions giving reasons for your answers:

2.1 There is no Occupation Permit relating to the Property among the title deeds supplied by the solicitors acting for Olympia. **Should Pinky's solicitors insist upon production of an Occupation Permit during title investigation?**

(4 marks)

2.2 According to the Land Registry search relating to the Property, a Dangerous Slope Order (the "**Slope Order**") was registered by the Buildings Department on 1 October 2016 requiring owners of Harmony Building to investigate and carry out remedial works on a nearby slope, which forms part of the land on which Harmony Building now stands.

(a) Does the Slope Order affect title to the Property? (6 marks)

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

(b) Both Pinky and Olympia want to complete but the Slope Order will not be discharged before the agreed completion date. **If completion takes place on 16 December 2016, what steps, if any, should Pinky's solicitors take to protect her from any liability to contribute towards the cost of the work required to discharge the Slope Order?**

(5 marks)

2.3 Assume that the enclosure of the balcony required the Building Authority's approval which was not obtained. **Will Pinky be barred from objecting to title to the Property owing to the conversation between her and Oliver Lee?**

(5 marks)

2.4 **How should Olympia execute the Assignment on completion without using its Common Seal?**

(5 marks)

Question 3 (25 marks)

In 2007 Peter Chung bought a residential property known as House 8, Strawberry Hill, 32 Plantation Road, Hong Kong (the "**Property**"). On 28 October 2016 Mr. Santos entered into a provisional sale and purchase agreement (the "**Provisional Agreement**") to purchase the Property from Peter Chung for HK\$30 million. Mr. Santos is not a permanent resident of Hong Kong. The Provisional Agreement includes the following clauses:

- (i) *The Vendor agrees to sell and the Purchaser agrees to purchase the Property.*
- (ii) *The purchase price shall be HK\$30,000,000 to be paid by the Purchaser in the following manner:*
 - *An initial deposit of HK\$300,000 shall be paid to the Vendor upon the signing of this agreement.*
 - *Upon signing of the formal sale and purchase agreement on or before 7 November 2016 a further deposit of HK\$2,700,000 shall be paid to the Vendor's solicitors as stakeholders.*
 - *The balance of the purchase price in the sum of HK\$27,000,000 shall be paid to the Vendor's solicitors as agent for the Vendor on completion on or before 26 November 2016.*
- (iii) *If the Purchaser shall fail to pay any part of the deposits or to complete the purchase in accordance with the terms and conditions herein contained, the deposit(s) paid by the Purchaser shall be absolutely forfeited by the Vendor and this agreement shall be terminated and the Vendor shall then be entitled at his/her/its absolute discretion to resell the Property.*

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

- (iv) *If the Vendor shall fail to complete the sale in accordance with the terms and conditions herein contained, the Vendor shall immediately refund the deposit(s) paid by the Purchaser and pay to the Purchaser a sum equivalent to the said deposit(s) and this agreement shall be terminated.*
- (v) *All ad valorem stamp duty shall be borne by the Purchaser solely.*

Questions:

Answer the following questions giving reasons for your answers:

3.1 Explain the stamp duty liability arising from the transaction including who should pay stamp duty, the amount of stamp duty payable and when the stamp duty is payable.

(6 marks)

3.2 Mr. Santos has been advised that on completion the Property should be assigned to a company incorporated in Panama of which Mr. Santos is the sole beneficial shareholder. Explain the most stamp duty efficient way of requiring the Vendor, Peter Chung, to assign the Property to a company and not to Mr. Santos.

(7 marks)

3.3 If on 7 November 2016 the exact terms of the formal agreement remain to be finalized and Mr. Santos does not pay the further deposit, can the Vendor, Peter Chung, keep the initial deposit and cancel the Provisional Agreement?

(8 marks)

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

3.4 For the purposes of this part, assume that today is 26 November 2016 and the parties decide to complete without entering into any formal agreement. **Can Mr. Santos inspect the Property and insist on formal completion and not completion by way of solicitors' undertaking?**

(4 marks)

Question 4 (25 marks)

On 10 May 2016 Perfect Properties Ltd. ("**Perfect**") entered into a binding agreement for sale and purchase with Victor Ltd. ("**Victor**") to buy Victor's premises, namely the 3rd and 4th Floors of Red Building, To Kwa Wan, Kowloon (the "**Premises**"). The agreement is substantially in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219 and the sale is subject to a Deed of Mutual Covenant (the "**DMC**") under which the owners for the time being are required to pay management charges in proportion to the number of undivided shares owned by them. The DMC also provides that the building manager may register a charge over the undivided shares of any owner who fails to pay management charges within one month after they become due.

Questions:

Answer the following questions giving reasons for your answers:

4.1 Perfect paid a deposit of 10% of the agreed price and registered its agreement in the Land Registry on 1 June 2016. On 15 May 2016, Western Bank Ltd. ("**Western Bank**") obtained a charging order against the Premises which Western Bank registered in the Land Registry on 16 May 2016.

(a) Advise Perfect whether it should complete its purchase.

(6 marks)

(b) Would your answer to (a) differ if Perfect had registered its sale and purchase agreement on 1 July 2016?

(4 marks)

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

4.2 Red Building is built on land held from the Government under Conditions of Sale which provide that the land must be used for industrial purposes only. Perfect plans to use a portion of the 3rd Floor for making plastic flowers and to use the rest of the 3rd Floor and the whole of the 4th Floor for marketing and sales. **Advise Perfect whether its proposed uses of the Premises will breach the terms of the Conditions of Sale.**

(6 marks)

4.3 Victor has not paid management charges under the DMC for 20 months because of an ongoing dispute with the building manager. Altogether Victor owes arrears of HK\$580,000. No charge in respect of unpaid management charges is registered in the Land Registry and Victor agrees that on completion it will undertake to pay the arrears when its dispute with the building manager is settled. **Is Perfect obliged to accept this arrangement?**

(9 marks)

Question 5 (25 marks)

In 2000 Vanessa bought a house on a small development of 10 houses known as 'Marina Gardens' ("**Marina Gardens**"). The assignment in Vanessa's favour assigned to her 1 equal undivided 10th share of and in the lot on which Marina Gardens is built together with the right to the exclusive use of House number 10 (the "**House**"). In July 2016 Vanessa entered into a binding agreement for sale and purchase to sell the House to Peter for HK\$50 million. The agreement was signed by both parties and is substantially in the form set out in Form 2 of the Third Schedule to the Conveyancing and Property Ordinance Cap. 219.

The House has three storeys. Vanessa has erected a pre-fabricated structure on the roof of the House (the "**Structure**") which she uses for storage. The Structure is 10 feet (about 3 metres) high and rests on its own weight on concrete blocks. It is connected to the House by a cable through which electricity is supplied to the Structure. The agreement for sale and purchase between Vanessa and Peter refers to a plan of the House attached to the assignment to Vanessa. The plan shows the three storeys of the House but does not show the Structure on the roof. Peter inspected the House before signing the agreement for sale and purchase but neither he nor Vanessa said anything about the Structure.

Marina Gardens is held from the Government under Conditions of Sale dated 1998 which contain a height restriction and there is a Deed of Mutual Covenant (the "**DMC**") binding the owners of all 10 houses in Marina Gardens. The DMC requires owners not to breach the Conditions of Sale.

Vanessa plans to dismantle the Structure before completion of the sale of the House. The Structure can easily be dismantled, moved and rebuilt at Vanessa's new home.

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

Questions:

Answer the following questions giving reasons for your answers:

5.1 According to the agreement which Vanessa and Peter have signed, is Vanessa entitled to remove the Structure before completion of the sale and purchase?

(12 marks)

5.2 Whether or not Vanessa is entitled to remove the Structure, does the Structure affect Vanessa's ability to give good title?

(13 marks)

END OF TEST PAPER