

# **Overseas Lawyers Qualification Examination**

## **Head I: CONVEYANCING**

### **Standards, Syllabus and Reading List**

#### **STANDARDS**

Candidates will be expected:-

- (a) to be familiar with the basic concepts and rules of land law, and conveyancing law and practice;
- (b) to be familiar with the practice and procedures of conveyancing in Hong Kong; and
- (c) to be able to respond to problems by identifying the issues, applying relevant law, giving suitable practical advice and by recommending or taking such action as is appropriate in the circumstances including, where appropriate, drafting or amending conveyancing documents.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

#### **SYLLABUS AND DIRECTED READING**

**The textbooks for Conveyancing are:**

Judith Sihombing and Michael Wilkinson, Hong Kong Conveyancing Law (8<sup>th</sup> ed) (LexisNexis 2018) (HK Conveyancing)

Butterworths Hong Kong Conveyancing and Property Law Handbook (5<sup>th</sup> Edition) (LexisNexis) (Handbook). Reference should be made to relevant sections and schedules of the annotated Conveyancing and Property Ordinance (Cap 219) of the Handbook.

Alice Lee and S.H. Goo, Land Law in Hong Kong (4<sup>th</sup> Practitioners' Edition) (LexisNexis 2015) (Land Law in Hong Kong)

Ayesha Macpherson Lau and Michael Olesnicky, Hong Kong Taxation: Law & Practice 2018-19, The Chinese University Press (HK Taxation)

Reference should also be made to relevant articles in Hong Kong Lawyer, Law Society Circulars, and relevant ordinances and cases.

## 1. Legal Framework of Conveyancing in Hong Kong

- (a) The system of landholding in Hong Kong
- (b) The system of conveyancing, including registration under the Land Registration Ordinance
- (c) The meaning of “land”
  - The distinction between fixtures and chattels
- (d) The demarcation of land
  - Sectioning and subdivision
- (e) Government Leases and Conditions
  - **Government leases**
    - Grantee’s interest under a Government lease
    - Standard terms in a Government lease including restrictions on alienation
    - Premium and Government rent
    - User restrictions
    - Obligations of the Government
    - Variation of Government leases
  - **Conditions**
    - The different types of Conditions
    - Grantee’s interest under Conditions
    - Standard Conditions including restrictions on alienation and obligations to create a Deed of Mutual Covenant
    - Modification of the Conditions
    - Conversion of equitable interest into legal estate
    - The certificate of compliance
  - **Termination of Government Lease/Conditions**
    - Re-entry by Government
      - Relief against re-entry
    - Resumption by Government (excluding assessment of compensation)

### Essential Reading

HK Conveyancing	Chapter 2	Paragraphs [2-1] - [2-176], [2-214] - [2-235]
Land Law in Hong Kong	Chapter 1	Pages 10-31

## 2. Deeds of Mutual Covenant

### (a) The system of multi-unit development ownership in Hong Kong

- The nature of the interests of unit owners; tenants in common holding undivided shares with right of exclusive occupation of a particular unit
- The need for a Deed of Mutual Covenant and the steps taken to create one

### (b) Guidelines for Deeds of Mutual Covenant

- The binding nature of Deeds of Mutual Covenant on signatories and non-signatories
- Common terms in Deeds of Mutual Covenant including the allocation (or pairing) of undivided shares, restrictions on re-allocation and common parts

### (c) Enforceability of covenants in the Deed of Mutual Covenant against successors in title to owners and against tenants and occupiers

### (d) Enforcement of the Deed of Mutual Covenant

### (e) The Building Management Ordinance Cap. 344

- Section 2 and Schedule 1 - the definition of common parts, ss14, 16, 17, 18, 19, 23, 24, 25, 34H, 34I and 40

#### Essential Reading

HK Conveyancing	Chapter 4	Paragraphs [4-1] - [4-93], [4-99] - [4-382]
HK Conveyancing	Chapter 12	Paragraphs [12-222] - [12-308]
Land Law in Hong Kong	Chapter 8 Chapter 16	Pages 525-576

### 3. Title

#### (a) The Nature of Title to be made or given

- **Distinction between the duty to show and the duty to give a good title**
  - What constitutes a good title
- **Duty to show and give a good title**
  - Contract terms relating to the giving and showing of title
  - Variation of duty by express term in sale and purchase agreement
  - Whether there is a need to produce the originals of deeds dealing solely with the property sold
- **Factors that will vitiate a good title including**
  - Title not in vendor
  - Registered encumbrances
  - Unregistered encumbrances
  - Latent and patent encumbrances
    1. Occupiers rights
    2. Nominations
    3. Mortgages and Charges
    4. Notices and Orders from Government or Competent Authority
  - Defeasible titles including
    1. Breach of Government Lease/Conditions
    2. Substantial enforcement action by Building Authority
    3. Breach of Deed of Mutual Covenant
    4. Under the Bankruptcy Ordinance
  - Matters of mere conveyance
  - Pre-intermediate root defects

#### Essential Reading

HK Conveyancing Chapters 5 and 6 Paragraphs [5-1] - [5-264],  
[6-121] - [6-126],  
[6-161] - [6-182]

#### (b) Proof of title

- The statutory provisions
  1. The ultimate root - Government Lease/Conditions
  2. The intermediate root
  3. The chain of title (Candidates should be able to read a title diagram)
- Use of recitals in proving title
- Missing and illegible title deeds

- Proof of due execution of documents
  1. Presumptions in aid of proof
  2. Execution of deeds by individuals
  3. Execution of deeds by corporations
  4. Execution of deeds under a power of attorney
  5. Proof of non-revocation of power of attorney
  6. Execution of documents abroad
- Checking signatures for consistency
- Discrepancies in property description
- Time considerations in showing and giving title
- Requisitions on title
  1. Time within which requisitions may be raised
  2. Provision giving vendor the right to annul sale where he is unwilling or unable to answer the requisition
- Acceptance of title
- The vendor and purchaser summons procedure
- Retention of title deeds pending completion

Essential Reading

HK Conveyancing	Chapter 6	Paragraphs [6-1] - [6-576]
	Chapter 15	Paragraphs [15-225] - [15-231]

**4. The Contract of Sale**

**(a) Form of the agreement**

- Note or memorandum
- Part performance
- Preliminary, Provisional and Formal Agreements
- Form 2 of the Third Schedule to the Conveyancing and Property Ordinance

**(b) Preliminary agreements**

- Does the preliminary agreement constitute a binding agreement?
- Common terms including implied terms

**(c) Conditional agreements**

- Effect of 'Subject to contract' heading

**(d) The formal sale and purchase agreement**

- The relationship between the preliminary or provisional and formal agreement
- Common conditions in the formal agreement
  1. Outgoings
  2. Insurance
  3. Condition of property
  4. Title
  5. Documents of title
  6. Payment of deposit and purchase price
  7. Easements and appurtenant rights
  8. Requisitions
  9. Vendor's warranties
  10. Failure by purchaser
  11. Failure by vendor
  12. Completion
  13. Time of essence
  14. Fixtures, fittings and chattels
  15. Entry into possession prior to completion
  16. Conditions in Part A of the Second Schedule to the Conveyancing and Property Ordinance
  17. Sales with vacant possession and sales subject to tenancies, dealing with the deposit paid by the tenant to the landlord
  18. Exclusion of liability for misdescription and misrepresentation.

**(e) Signing of contract**

**(f) Breach of contract**

- Remedies for breach
  1. Damages
  2. Rescission
  3. Specific performance
  4. Liquidated damages clauses and penalty clauses
  5. Forfeiture of deposit and relief against forfeiture

**(g) Stamp Duty payable under the Stamp Duty Ordinance, Cap. 117 (SDO) in connection with immovable property**

- Whether Ad Valorem Stamp Duty is payable on an agreement for sale and purchase, nomination or assignment and the application of the scales of duty in Heads 1(1) and 1(1A) of the First Schedule to the SDO to determine the rate of duty payable
- Whether an agreement for sale and purchase, nomination or assignment attracts Special Stamp Duty and the rate payable
- Whether an agreement for sale and purchase, nomination or assignment attracts Buyer's Stamp Duty and the rate payable

- In connection with the above, provisions relating to Hong Kong permanent residents and provisions relating to ‘closely related persons’ as defined in the SDO
- Who is liable for the stamp duty
- The time limits for stamping
- Certificates of value
- The right to obtain a refund of stamp duty paid if an agreement for sale and purchase is cancelled, annulled, rescinded or not performed.

### Essential Reading

HK Conveyancing	For (a) (b) (c) and (e)	Chapter 8	Paragraphs [8-1] - [8-113], [8-150] - [8-205]
HK Conveyancing	For (d)	Chapter 8 Chapter 11	Paragraphs [8-269] - [8-274]
HK Conveyancing	For (f)	Chapter 8 Chapter 15	Paragraphs [8-244] - [8-268] Paragraphs [15-1] - [15-20], [15-104] - [15-188], [15-210] - [15-219], [15-232] - [15-368]
Hong Kong Taxation	For (g)		Pages 939 - 954
Land Law in Hong Kong		Chapter 2	

## **5. The Assignment**

### **(a) The form of the assignment**

### **(b) Contents of the assignment**

- Date
- Parties
- Recitals
- Consideration and receipt clause
- Covenants for title
- Words of grant
- Parcels
- Easements
- Exceptions and Reservations
- Habendum
- Apportionment of Government rent
- Covenants
- Stamp duty and certificates of value

**(c) Form 1 of the Third Schedule to the Conveyancing and Property Ordinance**

Essential Reading

HK Conveyancing Chapter 12

**6. Mortgages and Charges**

**(a) Nature of mortgages and charges**

**(b) Form of the mortgage or charge**

**(c) Types of mortgage**

**(d) Contents of a legal mortgage or charge**

- Covenants of mortgagor
- Events of Default under the Fourth Schedule to the Conveyancing and Property Ordinance
- Forms 4 and 5 of the Third Schedule to the Conveyancing and Property Ordinance

**(e) Registration and priority**

**(f) Remedies of legal mortgagee**

- Sale
- Foreclosure
- Possession
- Appointment of a receiver
- Action on the covenant to repay

Essential Reading

HK Conveyancing Chapter 13 Paragraphs [13-1] - [13-14],  
[13-16] - [13-17],  
[13-31] - [13-44],  
[13-61] - [13-85],  
[13-92] - [13-94],  
[13-99] - [13-112],  
[13-127] - [13-157],  
[13-170] - [13-209]

Land Law in Hong Kong Chapter 13 Pages 783-789, 832-868 and  
869-888



## 7. Completion

### (a) Methods of completion

- Completion in person (Formal completion)
- Completion by post
- Completion by undertaking
  - The Law Society's series of undertakings

### (b) The Time for completion

### (c) Registration and Priority

- Which documents are registrable?
- Time within which registration must be effected
- The effect of registration and failure to register
- The manner of registration

### Essential Reading

#### On completion

HK Conveyancing	Chapter 14	Paragraphs [14-1] - [14-62], [14-80] - [14-141]
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#### On registration

HK Conveyancing	Chapter 14	Paragraphs [14-155] - [14-263]
Land Law in Hong Kong	Chapter 7	Pages 415-508

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