

PCLL CONVERSION EXAMINATION JUNE 2019

Title of Paper : Hong Kong Land Law
Date : 19 June 2019
Time : 2:30 p.m. – 2:45 p.m. (Reading Time)
2:45 p.m. – 4:15 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 4 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination June 2019

Hong Kong Land Law

Question 1 (50 marks)

- (a) Alan Au ('Alan') purchased flat 3D Zeon House Buildings (the 'Flat') in February 2015. In August 2018, Alan and Bella Bates ('Bella') were negotiating the terms of a lease of the Flat for Bella's occupation. Eventually they agreed orally to enter into a lease of the Flat starting on 1 September 2018 for a term of four years at a monthly rent of HK\$50,000.00 payable monthly in advance. They also agreed that the lease would include a dish washer, an electric stove and all split-level air-conditioners currently in the Flat.

Alan then wrote to Bella as follows:

"Dear Miss Bates,

Earlier today we agreed that you would take a lease of my flat in Zeon House Buildings for a term of four years starting on 1 September 2018 at a monthly rent of HK\$50,000 payable monthly in advance. My solicitors are preparing the draft lease which will shortly be sent to you. "

Alan signed the letter.

The following day, Alan wrote to Bella again as follows:

"Dear Miss Bates,

I omitted to mention in my letter of yesterday that we had agreed you would have the benefit of the use of the air-conditioners which are fitted in the flat."

Alan signed the letter.

In late August, however, Alan wrote to Bella again saying that he had changed his mind and had decided not to let to her.

- (i) Can Bella enforce the oral agreement for lease against Alan? **(20 marks)**
- (ii) If Alan had not signed the letters sent to Bella but instead had instructed his solicitors to send these letters containing the same information, would your answer differ? **(6 marks)**
- (iii) Assuming the lease between Alan and Bella was for three years, what are the legal formalities required for creating the lease? **(6 marks)**
- (b) Assume that the lease is for four years and both Alan and Bella execute the lease under seal. The lease is dated 10 September 2018.
- (i) Bella did not register the lease in the Land Registry. On 14 September 2018 Alan mortgaged the Flat by way of legal mortgage to the Colonial Cash Bank

Ltd ('Colonial Cash') to secure a loan of HK\$1 million. Colonial Cash knew about Bella's lease when the mortgage was created. Colonial Cash registered its mortgage on 5 October 2018. Who has priority, Bella or Colonial Cash?

(12 marks)

- (ii) Assume Alan and Bella had never executed the lease under seal but instead Alan had orally agreed on 10 September 2018, to lease the Flat to Bella for a term of two years starting immediately at a monthly rent of HK\$50,000 and Bella had moved into the Flat the same day. They do not sign a lease. Can Bella enforce the lease against Alan and Colonial Cash? **(6 marks)**

Question 2 (50 marks)

In 1950 Mr Dong purchased a small house ('the property') near Tai Po in the New Territories in which he lived with his son Eric. The property included a large garden in which Mr Dong grew vegetables. The adjacent plot ('the plot') was Government land which had not been leased by anyone and which was surrounded by an old broken-down fence. The plot was uncultivated with just wild flowers and trees growing on it. After some years Mr Dong decided that as the land was not being put to any use by anyone he would use the land as an extension to his vegetable garden. In 1955 Mr Dong dug up the wild flowers and began to plant vegetables on part of the plot. In 1956 Mr Dong cut down the small trees and began using the whole plot for growing vegetables. In 1957 he repaired the fence and put up a notice saying 'Trespassers Keep Out'. Mr Dong sold the vegetables from the plot in the market in Tai Po. Mr Dong died in 1970 and his son Eric inherited all his assets. Eric continued to grow vegetables on the plot. In 1975 Eric sold the property to Fred, his neighbour. Fred wanted to buy the plot as well but Eric would only lease the plot to Fred. Fred continued to grow vegetables on the plot. Fred paid a monthly rent to Eric. Fred died in 1979 and Eric took the plot back and carried on growing vegetables on it. In 1985, following the judgment of the Full Court in *Attorney General v Melhado Investments Ltd* [1983] HKLR 327, Eric leased the plot to Happy Logistics Co Ltd to store their containers on the land on an annual renewable tenancy at the monthly rental of \$6,000. This arrangement, with subsequent rental increases, continued until March 2019 when Eric received an eviction notice from the Lands Department of Government alleging he had no title to the land and giving notice that the plot was going to be used by the Government for the construction of a much needed housing development.

- (a) On the facts as explained above and ignoring the issues raised in parts (b) and (c) of this question, advise Eric whether he has acquired a title by adverse possession to the plot and can, accordingly, resist the Government's eviction demands. **(26 marks)**
- (b) The Government has now raised the issue of the effect of the New Territories Leases (Extension) Ordinance (Cap 150). The Government argues that this Ordinance created a new lease when it came into effect in 1980 and any period of possession must date from the creation of the new lease. Advise Eric how such an argument might be considered by the court. **(8 marks)**

- (c) The Government has raised the further issue of the return of the New Territories to Mainland China in 1997, arguing that this return also provides a break in any possession period as any interest or title acquired or claimed against the Hong Kong Colonial Government had come to an end and could not be enforced against the PRC Government as reversioner of the original New Territories lease. Advise Eric how to respond to this argument. **(8 marks)**
- (d) What would the effect be on the likelihood of his success in arguing that he had obtained a title to the plot by way of adverse possession if Eric had said in cross-examination during the trial that, if asked, he would have been willing to pay rent to the Government for use of the plot? **(8 marks)**

Question 3 (50 marks)

- (a) In 2013, three friends Jackie, Keith and Lionel, bought a flat (the ‘Flat’) for HK\$12,000,000. It was assigned to them as legal and beneficial joint tenants.

Advise on the following matters.

- (i) Last month, Jackie died leaving her entire estate by will to her husband, Michael. Explain who inherits Jackie’s interest in the Flat? **(10 marks)**
- (ii) Now Lionel wishes to sever his interest in the flat. Advise him of the action he must take. **(10 marks)**
- (iii) Assume Lionel did not sever his interest in the flat. Last week Keith and Lionel died in the same road traffic accident. Who can assign the legal estate in the Flat? **(8 marks)**
- (iv) If the assignment in 2013 had stayed silent as to the nature of the ownership of the Flat, explain the interests in the Flat would have been affected. **(10 marks)**
- (b) In 2015, Nightingale Developments Ltd (“Nightingale”) developed a block of 30 residential flats on Lot 789. The block is called ‘Oceana Building’ (‘Oceana’). In 2016, Michael bought Flat 1 Oceana from Nightingale. The purchase included one equal undivided 30th share of and in Lot 789 and of and in Oceana together with the right to the exclusive use of Flat 1.

Nightingale and Michael then executed a Deed of Mutual Covenant for Oceana (‘DMC’). The DMC provides that each owner has the right to the exclusive use of the flat allotted to their one undivided share. The DMC was registered in the Land Registry.

Explain the legal relationship between the owners of the flats in Oceana. **(12 marks)**

~ End of Examination Paper ~