



PCLL Conversion Notes

Quick, easy and effective notes for PCLL Conversion Examinations!

Hong Kong Land Law

Notes & Model Exams

1st Edition

For use with

January 2025 Exams



PCLLConversion.com



TABLE OF CONTENTS

1. INTRODUCTION	6
A. How to use Conversion Notes	6
B. Abbreviations	6
2. DEFINITIONS AND FORMALITIES	6
A. Form of land title in HK	6
i. Leasehold tenure	6
ii. Freehold Tenure	6
B. What is land?	6
i. Legal Estates	7
ii. Equitable interests	7
iii. Easement	7
1) Claims to easement	7
2) Multi-storey buildings	7
iv. Fixtures	7
1) Objective intention	7
2) Presumption of fixture	7
3) Presumption of chattel	8
4) Part and parcel test	8
C. Written agreement for the disposition of land	8
i. Essential terms	8
ii. Agreement subject to contract	9
iii. Exchange	9
iv. Deposit	9
v. Conditional contracts	9
D. Oral contract supported by sufficient memorandum in writing	9
i. Form	9
ii. Content	9
iii. Joinder of documents	9
iv. Signature	9
E. Oral contract absent sufficient written memorandum	9
i. Enforce by Statute	9
ii. Part performance	10
1) In performance of concluded contract	10
2) Point to some contract	10
3) Must first show part performance	10
4) Fraud	10
F. Formalities	10
i. Legal estates	10
ii. Equitable interest	10
iii. Trusts	10
G. Interests at will	10
3. PRIORITY & REGISTRATION	11
A. Registration of deeds	11
i. Vacation	11
ii. Manner of Registration	11
B. Registrable instruments	11
i. Deeds and conveyances	11
ii. Other instruments in writing	11
1) Non-registrable interests subsumed by later written instrument	11
iii. Judgments	12
1) Charging orders	12
iv. Lis Pendens relating to land	12



1) Relating to land.....	12
C. Priority of registered instruments.....	12
i. Instruments and judgments.....	12
ii. Lis pendens and charging orders.....	12
iii. Expiration.....	12
D. Non-registration of registrable instruments.....	12
i. Bona fide/good faith.....	13
ii. For Valuable consideration.....	13
E. Leases and options.....	13
i. Written options.....	13
ii. Unwritten options.....	13
F. Parol Evidence Rule.....	13
G. Unregistrable interests - Common Law Priority rules.....	13
H. Bona Fide Purchaser for Value Without Notice.....	13
i. Bona fide.....	13
ii. For Value.....	14
iii. Notice.....	14
1) Actual notice.....	14
2) Avoidance of notice.....	14
3) Constructive notice.....	14
4) Constructive notice and duty to make enquiries.....	14
I. Unregistrable interests - Common Law Equities/unwritten equities.....	15
i. Advancement of money to discharge loan.....	15
ii. Lien.....	15
iii. Oral agreement.....	15
iv. Trust.....	15
J. Land titles Ordinance.....	15
4. PARTITION OF LAND IN JOINT OWNERSHIP.....	15
A. Partition Ordinance.....	16
i. Tong and tso land.....	16
ii. Parties to proceedings.....	16
iii. Court inquiries.....	16
iv. Principles for exercising discretion under section 2.....	16
v. Order for partition.....	16
vi. Order for sale.....	16
vii. Proceeds of sale.....	17
viii. Buy out.....	17
ix. No order.....	17
5. ADVERSE POSSESSION.....	17
A. Limitation ordinance.....	17
i. Time begins to run.....	17
ii. Accrual of right for landlords.....	18
iii. Time stops running.....	18
iv. Aggregation of periods of adverse possession.....	18
v. Renewal or Extension of New Territory leases.....	18
B. Conditions for Adverse Possession.....	18
i. Factual possession.....	18
ii. Intention to possess not to dispossess (not intention to own).....	18
iii. "Adverse" possession.....	18
1) Licence.....	19
2) Lawful title.....	19
3) Mortgage.....	19
4) Lease.....	19
iv. Owner's intentions.....	19



C. Effects of Possessory title.....	19
i. Lessee remains liable under the lease	19
ii. Fairweather v St Marylebone Property.....	19
D. Co-owners and Adverse Possession	19
6. GOVERNMENT LEASES AND CONDITIONS.....	20
A. Terminology.....	20
i. Lots.....	20
ii. Sections.....	20
iii. Subdivision	20
B. Land disposal.....	20
i. Private treaty grants.....	20
ii. Grants subject to conditions	20
iii. Conditions of sale, grant, regrant, extension or exchange.....	20
C. Restriction and obligations.....	21
D. Nature of ownership.....	21
i. Equitable interest.....	21
ii. Legal interest	21
1) Compliance.....	21
iii. Vendor's title.....	21
E. Nature of Government Leases.....	22
i. HK Island, Kowloon and New Kowloon.....	22
ii. New Territories.....	22
1) Duration of Block Government Leases	22
F. Terms of lease	22
i. Standard Terms.....	22
ii. The Design Disposition and Height Clause	22
1) User restrictions	22
2) Repair.....	23
3) Offensive trade clause.....	23
G. Obligation of the Government under the Lease	23
i. Covenant for quiet enjoyment.....	23
ii. Non-derogation from grant	23
H. Modification of Government Leases.....	23
i. Express Waiver	24
ii. Implied Waiver	24
1) Waiver by acquiescence	24
iii. Waiver of breach of covenant vs Waiver of covenant.....	24
iv. Estoppel.....	24
I. Termination of Government Lease.....	24
i. Resumption.....	24
ii. Right of re-entry/forfeiture.....	25
1) Relief against forfeiture	25
2) Vendor's title.....	25
J. Extension of Government Leases Ordinance.....	25
7. THE SYSTEM OF MULTI-UNIT DEVELOPMENT OWNERSHIP IN HONG KONG	25
A. Deed of Mutual Covenant	25
i. Sub-DMC.....	25
B. subsequent purchaser	26
i. Subject to DMC and Sub-DMC	26
ii. Allocation and reallocation of shares	26
1) Increasing shares.....	26
2) Pairing shares.....	26
C. Exclusive possession	26



- i. Demonstration of exclusive possession.....26
- ii. Common area.....26
- D. Common Terms in DMCs.....27
 - i. Express terms.....27
 - ii. Covenants implied into the DMC by the Building Management Ordinance.....27
- E. Principles of enforceability of Covenant in DMC.....27
 - i. Covenants run with the land.....27
 - ii. Owner not party to covenant.....27
 - iii. Positive and negative covenants.....27
 - 1) Positive covenants.....27
 - 2) Doctrine of *Halsall v Brizell*.....27
 - iv. Registration.....28
 - v. Touch and concern the land.....28
 - 1) Personal covenants.....28
 - 2) Enforcing personal covenants.....28
 - vi. Burden of covenant expressed or intended to run with the land.....28
 - 1) Breaches of successors in title.....28
 - vii. Expressed and intended to benefit.....28
 - 1) Expressed and intended to be made with the covenantee.....29
 - 2) Benefit the land.....29
 - viii. Retain the land.....29
- F. Enforcement of the DMC and Remedies.....29
 - i. Non-payment of management fees.....29
 - ii. Remedies for breaches of other covenants.....29
 - 1) Injunctions.....29
 - 2) Damages.....29
 - iii. Defences.....29

8. SMALL HOUSE POLICY30

- A. Free Building License.....30
- B. Private Treaty Grant.....30
- C. Certificates of exemption.....30
 - i. Failure to obtain certificate.....30
 - ii. Effect of certificate.....30
- D. Restrictions on alienation.....30
 - i. Alienation.....30
 - 1) Premium - Private Treaty Grant.....30
 - 2) Premium - Free Building License.....30
 - ii. Vendor's title.....30
- E. Showing good title to New Territory Land.....31

9. CHINESE CUSTOMARY TRUST - TSOS & TONGS.....31

- A. Tso.....31
- B. Tong.....31
- C. Creation of trust.....31
 - i. Tso.....31
 - ii. Tong.....31
- D. Management of tsos and tongs.....31
 - i. Legal status.....31
 - ii. Appointment of manager.....32
- E. Regulation of dealings.....32
 - i. Appointment of manager registered after completion date.....32
 - ii. Execution of instrument.....32
 - iii. Leases.....32
- F. Dealings by the manager.....33
 - i. Objections.....33



ii. Instrument to be executed in the presence of the district officer.....	33
G. Applicable laws	33
i. Land.....	33
ii. Perpetuity rules.....	33
H. Chinese customary trusts and adverse possession.....	33

1. INTRODUCTION

A. HOW TO USE CONVERSION NOTES

The Hong Kong Land Law Notes are formatted into a step-by-step guide, which you can use as a checklist in your exams to ensure that every element of the exam question is answered. You may find the Table of Contents to be a quick and useful overview of the law to be applied. You should also answer the exam question using the ILAC method, which will ensure your answer is comprehensive.

Issue	State the legal issue relevant to the problem
Law	Identify the relevant case law and legislation
Analysis	Analyse and apply the law to the legal issue. This is the most important part, so ensure your legal analysis is very thorough.
Conclusion	Form a conclusion based on your analysis and application of the law, giving some practical advice to the hypothetical client.

It is very important to spend time perfecting your analysis section, as this is the part that examiners are most interested in. Do not worry if you reach the correct conclusion (there often isn't one clear answer) – examiners will give more weight to your legal analysis, and sometimes may even reward answers that propose an innovative answer!

B. ABBREVIATIONS

The Hong Kong Land Law Notes will refer frequently to the following using abbreviations.

Deeds of Mutual Covenant	DMC
Conveyancing and Property Ordinance	CPO
Land Registration Ordinance	LRO
Partition Ordinance	PO
Limitation Ordinance	LO
Buildings Management Ordinance	BMO
Building Ordinance (Application to the NT) Ordinance	BOANTO
Building Ordinance	BO
New Territory Ordinance	NTO

2. DEFINITIONS AND FORMALITIES

A. FORM OF LAND TITLE IN HK

i. LEASEHOLD TENURE

The form of title in HK is that of leasehold tenure (*Winfat Enterprise v AG of HK*). Before July 1 1997, land in HK was granted on Crown Leases. Since the handover to China, land has been granted on Government leases. Therefore all land transactions are affected by the terms of the Government lease.

ii. FREEHOLD TENURE

The only lot of land on freehold tenure in HK is that of St John's Cathedral in Central. All other land are held on leasehold tenure as discussed above.

B. WHAT IS LAND?

Section 2 of the CPO provides that land includes:



- land covered by water (s2(a))
- any estate, right, interest or easement in or over any land (s2(b))
- whole/part of undivided share in land and any estate, right, interest or easement therein (s2(bb))
- things attached to land or permanently fastened to anything attached to land (s2(c))

Note that land does NOT include the outer wall of a building (*Leung Kwok-Kau*).

i. LEGAL ESTATES

Section 2 of the CPO defines legal estates as:

- (a) term of years absolute in land;
- (b) legal interest in easement for a period equivalent to a term of years absolute;
- (c) a legal charge (a mortgage expressed to be a legal charge)

ii. EQUITABLE INTERESTS

Equitable interests is defined in section 2 of CPO as any estate, interest or charge which is not a legal estate or a freehold.

A purchaser obtains an equitable interest in property from the day of contract of an enforceable contract for sale of land: *Lysaght v Edwards*

iii. EASEMENT

Section 2 of the CPO provides that legal easement must be for a period of time equivalent to a term of years absolute.

Section 16 of the CPO further provides that assignment of land assigns all rights, interests, easements and fixtures appertaining to that land.

1) Claims to easement

Claim to easement is founded upon the common law prescription of modern grant (*Tang Tim-Fat*) and the presumption of modern grant arises when there is proof of user for more than 20 years (*Bryant*).

2) Multi-storey buildings

In a multi-storey building, DMC rights are enforceable as covenants not easements (*Merrilong*).

iv. FIXTURES

In section 2(c) of the CPO, land is defined to include things attached to land or permanently fastened to anything attached to land. These may also be described as fixtures. To determine whether something is a fixture, it is useful to consider the following elements.

1) Objective intention

Whether something is a fixture is a question of objective intention (*Holland v Hodgson*).

In order to determine objective intention it is necessary to use the annexation test which considers:

- The degree of annexation – degree/extent object attached; and
 - The greater the degree of annexation, the more likely the court will find the object a fixture.
- The purpose of annexation – whether to improve enjoyment of chattel or land?
 - If the object is annexed for the purpose of improving the land, the court will find the object a fixture.

2) Presumption of fixture

There is a presumption of fixture if the article is affixed (even slightly) as part of the land. For example metal cages and brackets attached to the external wall of a building (*Lam Fung Ying*) and a window-type air conditioner affixed for more convenient use of a flat were presumed to be fixtures (*Irene Loong*).



However the presumption is rebutted if the object can be removed without damage to the article or to the land.

- Window type air conditioner attached to a wall that could be easily removed was equivalent to a ceiling fan or wall lamp (*Kobylanski*).
- An air conditioner bolted to a frame with pipes that could be easily disconnected by cutting the pipes rebutted the presumption of fixture (*Penta Continental*).

3) Presumption of chattel

There is a presumption of chattel if the article rests on its own weight, or is not physically fixed.

- A marble statue weighing one tonne resting on plinth was presumed a chattel (*Berkley*).
- A greenhouse resting on concrete blocks was presumed a chattel (*Dibbe*).

Where the object was intended to be part of the land, the presumption may be rebutted.

- The presumption was rebutted by showing that the statues resting on their own weight were part of an architectural design (*D'Eyncourt*).
- A central air condition system was shown to be part of the land (*Orient Leasing*).

4) Part and parcel test

Alternatively the court may infer that an object was intended to be part of the land (a fixture) by the 'part and parcel test'. The 'part and parcel test' considers the annexation tests and whether the structure was 'made to measure' and obviously intended to be part of the land (*Elitestone*). This test is relevant for large structures on the land.

For example a greenhouse physically attached to the roof of a house which could not be removed unless the glass panes of the green house were broken was considered to be part and parcel of the land (*Goldful Way Development*).

C. WRITTEN AGREEMENT FOR THE DISPOSITION OF LAND

Section 3 (1) of the CPO provides that agreement/memo thereof for the disposition of land to be in writing and signed failure of which will render the agreement voidable not void (*Maddison v Alderson*). In order to be enforceable, the written agreement must answer the following requirements.

i. ESSENTIAL TERMS

For a contract for sale of land to be binding there must be an agreement on all essential terms such as property, price and date of completion (*Kwan Siu Man*).

In the case of a contract for a lease, there must be agreement on essential terms such as the premise, parties, commencement, duration, rent and other consideration (*World Food Fair*).



We hope you have enjoyed this short preview of the Hong Kong Land Law Notes & Model Exam Answers.

Don't forget to check out the Law Study Tips we have on our website at www.PCLLConversion.com!