

(EAQE)

Sample Questions with Answers and Explanation

Notes:

1. All references to:

- (a) “Hong Kong” shall mean the Hong Kong Special Administrative Region (“HKSAR”).
- (b) “Government” shall mean The Government of the HKSAR.
- (c) the “Code of Ethics” shall mean the Code of Ethics issued by the Estate Agents Authority.
- (d) the “Practice Circular” shall mean the practice circulars issued by the Estate Agents Authority.
- (e) the “Licensing Regulation” shall mean the Estate Agents (Licensing) Regulation.
- (f) the “Practice Regulation” shall mean the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.
- (g) a gender shall include the opposite and the neuter gender.
- (h) the singular shall include the plural and vice versa.

2. Unless otherwise stated:

- (a) the Estate Agents Ordinance and its subsidiary legislation shall apply to all questions.
- (b) “estate agent”, “licensee” and “salesperson” shall mean a person holding a relevant licence under the Estate Agents Ordinance.
- (c) a “land search” refers to the land register of a property in the Land Registry.
- (d) “Property Information Form (Form 1)” and “Leasing Information Form (Form 2)” refer to the corresponding forms prescribed in the Practice Regulation.
- (e) “Estate Agency Agreement (Form 3)”, “Estate Agency Agreement (Form 4)”, “Estate Agency Agreement (Form 5)” and “Estate Agency Agreement (Form 6)” refer to the corresponding agreements prescribed in the Practice Regulation.

1. Raymond is an estate agent and the sole proprietor of XYZ Estate Agency. From time to time, he receives moneys for, or on account of clients in the course of his estate agency business. With regard to the receipt of such moneys, which of the following are among the requirements that Raymond is required to comply with under the Estate Agents Ordinance and the Practice Regulation?
- (i) To deposit the moneys into a trust account maintained at an authorized institution for the benefit of the client.
 - (ii) To use the moneys to pay the client concerned.
 - (iii) To use the moneys for making a payment in accordance with, and pursuant to, the client's prior written instructions.
 - (iv) To issue a written receipt to the client within fourteen days of receipt of the moneys.
 - (v) To retain a copy of the receipt for the moneys received for not less than three years after it is issued.
- A. (i) and (iv) only
 - B. (iii) and (v) only
 - C. (ii), (iii) and (iv) only
 - D. (i), (ii), (iii) and (v) only**
 - E. (i), (ii), (iii), (iv) and (v)

Explanation:

Section 43(2)(b) of the Estate Agents Ordinance states: "where the moneys are so received for or on account of a client of the estate agent, the person referred to in paragraph (a) (i.e. the person receiving the money) shall forthwith pay such moneys, or cause them to be paid, either to the estate agent or to an account maintained by that agent pursuant to the requirements of regulations under section 37 (i.e. a separate account at a bank for the benefit of the client all or any prescribed class or description of the moneys received for or on account of a client)." Furthermore, section 12(3) of the Practice Regulation states: "A licensed estate agent shall deposit all moneys received or held for or on account of a client in a trust account maintained at an authorized institution". Therefore, option (i) is correct.

Section 43(3)(c) of the the Estate Agents Ordinance also provides: "where moneys are kept on deposit by an estate agent pursuant to the requirements of regulations under section 37, the estate agent shall... use the moneys or any part thereof for, and only for, the following purposes:-

- (i) the making of payments to the client concerned; or
- (ii) the making of other payments if, and only if, any such payment is made pursuant to and in accordance with such client's prior written instructions regarding that payment".

Hence options (ii) and (iii) are also correct.

Furthermore, section 12(2)(a) of the Practice Regulation provides: "A licensed estate agent shall issue a written receipt to a client immediately for any moneys received". Therefore, Option (iv) is incorrect because the receipt must be issued immediately but not within the period of fourteen days.

Finally, section 12(2)(b) of the Practice Regulation states: "A licensed estate agent shall retain a copy of the receipt for not less than 3 years after it is issued". Therefore, option (v) is correct.

In light of the above, the correct answer is D.

2. Alan is the sole proprietor and manager of the main office of ABC Estate Agency. He is about to open a new branch office. Alan will continue to be the manager for the effective and separate control of the business of the main office. He has to appoint a manager for the new branch office. Beatrice and Cathy, both licensed salespersons, have worked for ABC Estate Agency for five and ten years respectively. Doreen, a licensed estate agent, has worked for ABC Estate Agency for only one year. In the above situation and in order to comply with the requirements of the Estate Agents Ordinance, who may be appointed as the manager for the effective and separate control of the business of the new branch office in compliance with the Estate Agents Ordinance?

- (i) Alan
- (ii) Beatrice
- (iii) Cathy
- (iv) Doreen

- A. (i) only
- B. (iv) only**
- C. (i) and (iv) only
- D. (ii) and (iii) only
- E. (i), (ii) and (iii) only

Explanation:

Section 38(1)(a) of the Estate Agents Ordinance provides: “a licensed estate agent shall ensure that his business at every one of his other offices, if any (whether such other offices are referred to as branch offices, sub-offices or otherwise), is under the effective and separate control of a manager appointed by him”. Since Alan will continue to be the manager of the main office, he cannot be appointed as the manager of the new branch office at the same time. Hence, option (i) is not correct.

Section 38(1)(a) of the Estate Agents Ordinance further provides that a person appointed as the manager for the effective and separate control of the branch office needs to be an individual and is the holder of an estate agent’s licence. As Beatrice and Cathy are not holders of an estate agent’s licence, they are not eligible to be appointed as the manager for the effective and separate control of the business of the new branch office in compliance with the Estate Agents Ordinance. Therefore, options (ii) and (iii) are incorrect.

Since Doreen is a licensed estate agent, she is eligible to be appointed as the

manager for the effective and separate control of the business of the new branch office in compliance with the Estate Agents Ordinance. Therefore, option (iv) is correct.

In light of the above, only option (iv) is correct and therefore the answer is B.

3. If a complaint against a licensee is well-founded, which of the following are the powers under the Estate Agents Ordinance that the Estate Agents Authority may exercise against the licensee concerned?

- (i) Admonish or reprimand the licensee.
- (ii) Impose a fine of \$100,000 on the licensee.
- (iii) Suspend the licence of the licensee for three years.
- (iv) Revoke the licence of the licensee.
- (v) Attach conditions to the licence of the licensee.

- A. (i), (iii) and (iv) only
- B. (i), (ii), (iii) and (v) only
- C. (i), (ii), (iv) and (v) only**
- D. (ii), (iii), (iv) and (v) only
- E. (i), (ii), (iii), (iv) and (v)

Explanation:

Section 30(1) of the Estate Agents Ordinance provides that where the Estate Agents Authority or, as the case may be, the disciplinary committee is satisfied that a complaint is well-founded, the Estate Agents Authority or, where appropriate, the disciplinary committee may exercise such of the following powers as it considers appropriate –

- “ (i) admonish or reprimand the licensee concerned;
(ii) attach specified conditions to the licence concerned;
(iii) vary any condition already attached to such licence;
(iv) suspend such licence for a specified period not exceeding 2 years;
(v) revoke such licence ;
(vi) impose a fine of a specified amount not exceeding \$300000;
(vii) make such order as it thinks fit with regard to the payment of any 1 or more of the following, namely, the whole or part of its costs regarding the proceedings, or, where a recommendation referred to in paragraph (a) is made, the whole or part of the costs of the investigator by whom the recommendation was made, or the whole or part of the costs of a complainant under section 29 or of the licensee concerned.”

Options (i), (ii), (iv) & (v) correspond respectively to sections 30(1)(i), (vi), (v) and (ii) of the Estate Agents Ordinance and are therefore correct. Option (iii) is incorrect because under section 30(1)(iv), the Estate Agents Authority may only

suspend the licence of the licensee for a period not exceeding 2 years.

Therefore, the answer is C.

4. In an investigation conducted by the investigator appointed by the Estate Agents Authority under Section 28 of the Estate Agents Ordinance, which of the following are the obligations of the licensee under investigation?
- (i) If reasonably required by the investigator, to produce to the investigator records which the investigator considers to be relevant to the investigation.
 - (ii) To allow the investigator to search his residence at reasonable hours.
 - (iii) If reasonably required by the investigator, to explain a document which he has produced to the investigator.
 - (iv) To pay reasonable costs and expenses of the investigation to the Estate Agents Authority upon its demand.
- A. (i) and (ii) only
 - B. (i) and (iii) only**
 - C. (iii) and (iv) only
 - D. (ii), (iii) and (iv) only
 - E. (i), (ii), (iii) and (iv)

Explanation:

Section 28(5)(a) of the Estate Agents Ordinance provides that the licensee shall, “if reasonably required by the investigator, produce to the investigator, within such time and at such place as he may reasonably require, any record or other document specified by the investigator or any record or other document which is of a class or description so specified, which, in the investigator’s opinion in either case, is, or may be, relevant to the investigation, and which is in his possession or under his control”. Hence, option (i) is correct.

Option (ii) is not a requirement under the Estate Agents Ordinance, hence it is not correct.

Section 28(5)(b) of the Estate Agents Ordinance provides that the licensee shall, “if reasonably required by the investigator, give to him such explanation or further particulars in respect of a record or other document produced in compliance with a requirement under paragraph (a) as the investigator shall specify”. Hence, option (iii) is correct.

Section 28(8)(a) of the Estate Agents Ordinance states: “Where the licensee under investigation or any other person is **convicted** by a court or magistrate on a prosecution instituted as a result of an investigation under this section, the court or

magistrate may order him to pay to the Authority the whole or part of the costs or expenses of the investigation”. Only the court or magistrate, not the Estate Agents Authority, may order the licensee who is convicted as a result of an investigation to pay to the Estate Agents Authority the whole or part of the costs or expenses of the investigation. Option (iv) is therefore incorrect.

In light of the above, the answer is B.

5. Under the Estate Agents Ordinance, which of the following are among the factors that the Estate Agents Authority must have regard to in determining whether a person is “a fit and proper person” to hold an estate agent’s licence (individual) or a salesperson’s licence?
- (i) The person is an undischarged bankrupt.
 - (ii) The person is a mentally disordered person within the meaning of the Mental Health Ordinance.
 - (iii) The person has relevant work experience.
 - (iv) The person was convicted in Hong Kong or elsewhere of an offence which involved the person acting fraudulently, corruptly or dishonestly.
- A. (i) and (ii) only
 - B. (i), (ii) and (iv) only**
 - C. (i), (iii) and (iv) only
 - D. (ii), (iii) and (iv) only
 - E. (i), (ii), (iii) and (iv)

Explanation:

Sections 19(2) and 21(3) of the Estate Agents Ordinance state that, in determining whether a person is fit and proper for the purpose of holding an estate agent’s licence (individual) or a salesperson’s licence, the Estate Agents Authority shall have regard to the following factors:

- “ (a) the fact that the person is an undischarged bankrupt, or has, within the 5 years immediately prior to the day on which the Authority considers, or, where appropriate, begins to consider the matter, made a composition or scheme of arrangement with his creditors;
- (b) the fact that the person is a director or officer of a company which is for the time being disqualified under this Ordinance for holding a licence, or was a director or officer of that company at the date when the company was so disqualified;
- (c) the fact that the person is a mentally disordered person or a patient within, in either case, the meaning of section 2 of the Mental Health Ordinance (Cap. 136);
- (d) any conviction, whether in Hong Kong or elsewhere, of the person for any offence (other than an offence under this Ordinance), being a conviction as regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly; and

- (e) any conviction of the person under this Ordinance in respect of which he has been sentenced to imprisonment, whether the sentence is suspended or not.”

Options (i), (ii) and (iv) are respectively in line with subsections (a), (c) and (d) of sections 19(2) and 21(3) of the Estate Agents Ordinance. In light of the above, only options (i), (ii) and (iv) are correct and the answer is therefore B.

6. To expand its business, Good View Estate Agency Limited (“Good View”) opened a new branch office. It appointed Mr Chan as the manager for the effective and separate control of the business of that branch office in compliance with the Estate Agents Ordinance. Under the Estate Agents Ordinance, which of the following are the requirements that Good View is required to comply with in relation to the establishment of the new branch office and the appointment of Mr Chan as the manager of the new branch office?

- (i) Apply for a statement of particulars of business for the new branch office.
- (ii) Notify the Estate Agents Authority of the opening of the new branch office within 31 days of opening the new branch office.
- (iii) Notify the Estate Agents Authority of the appointment of Mr Chan as the manager of the new branch office within 31 days of the appointment.
- (iv) Arrange for each of the directors of Good View to apply for an estate agent’s licence.

- A. (i) and (ii) only
- B. (i) and (iii) only**
- C. (ii) and (iv) only
- D. (ii), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Explanation:

Section 10 of the Licensing Regulation stipulates that a licensed estate agent is required to apply for a statement of particulars of business (“SPOB”) before operating an estate agency business at a particular place of business using a particular business name. Therefore, a licensed estate agent carrying on estate agency business at two different places using a particular business name is required to apply for two SPOBs. Hence, option (i) is correct.

Under section 40 of the Estate Agents Ordinance, licensees are required to notify the Estate Agents Authority of certain events which include (inter alia) notifying the Authority within 31 days of appointing or terminating the appointment of a manager (appointed under section 38). However, they are not required to notify the Estate Agents Authority of the opening of a new branch office. Hence, option (ii) is incorrect and option (iii) is correct.

Under section 20 of the Estate Agents Ordinance and section 8 of the Licensing Regulation, a company shall not be eligible to be granted or to hold or continue to hold an estate agent's licence unless the company has at least one director holding a valid estate agent's licence and each of its directors who is engaged in its business as an estate agent is, a licensed estate agent. However, there is no requirement that each of its directors (including those who are not engaged in the business as an estate agent) has to apply for an estate agent's licence. Hence, option (iv) is not correct.

In light of the above, only options (i) and (iii) are correct and the answer is therefore B.

7. Under the Licensing Regulation, a holder of an estate agent's licence who operates an estate agency business is required to state which of the following information in a letter issued by him or on his behalf?
- (i) the number of his licence or the relevant statement of particulars of business
 - (ii) the business name as stated in the relevant statement of particulars of business
 - (iii) the address as stated in the relevant business registration certificate
 - (iv) the place of business as stated in the relevant statement of particulars of business
- A. (ii) and (iii) only
 - B. (iii) and (iv) only
 - C. (i), (ii) and (iv) only**
 - D. (i), (iii) and (iv) only
 - E. (i), (ii), (iii) and (iv)

Explanation:

Under Section 14(1)(b) of the Licensing Regulation, every holder of an estate agent's licence is required to state clearly and conspicuously on any letter, account, receipt, pamphlet, brochure and other document issued by him or on his behalf the following:

- (i) the number of his licence or the relevant statement of particulars of business;
- (ii) the business name as stated in the relevant statement of particulars of business;
and
- (iii) the place of business as stated in the relevant statement of particulars of business.

There is no requirement that a licensed estate agent has to state his address stated in the relevant business registration certificate on any letter or document issued by him or on his behalf. Hence, options (i), (ii) and (iv) are correct and the answer is therefore C.

8. According to the Practice Circular regarding the conduct in promotional activities and the provision of property information for the first sale of residential properties, which of the following is/are the proper practice(s) that licensees must follow when incentives are offered to prospective purchasers?
- (i) Set out in writing any promise of incentives, including any gifts, discounts or rebates that has been made to prospective purchasers, and stipulate clearly the terms and format of the incentives.
 - (ii) Advise prospective purchasers not to reveal to the vendor the offer of incentives.
 - (iii) Inform prospective purchasers of the details of any incentives which may be offered to purchasers and state clearly whether the incentives are offered by the vendor or their estate agency companies.
- A. (i) only
 - B. (i) and (ii) only
 - C. (i) and (iii) only**
 - D. (ii) and (iii) only
 - E. (i), (ii) and (iii)

Explanation:

Paragraph 33 of the relevant Practice Circular (No. 13-04 (CR)) states: “Licensees must set out in writing any incentives, including any gifts, discounts or rebates, that they have offered to prospective purchasers, and stipulate clearly the terms and format of the incentives so offered”. Hence, option (i) is correct.

Paragraph 32 of the said Practice Circular also states: “Licensees must inform prospective purchasers of the details of any incentives which may be offered to purchasers and state clearly whether the incentives are offered by the vendor or their estate agency companies”. Hence, option (iii) is correct.

Option (ii) is not one of the requirements under the relevant Practice Circular. Hence option (ii) is incorrect.

As only options (i) and (iii) are correct, the answer is therefore C.

9. An estate agent persuades his purchaser client to buy a property owned by a company. The estate agent is a major shareholder of the company. He deliberately conceals this fact from his client. The estate agent may have breached which of the following provisions of the Code of Ethics?
- (i) Exercise due care and due diligence in fulfilling duties.
 - (ii) Disclose any pecuniary or other beneficial interests in relation to the property to all parties concerned.
 - (iii) Carry out the client's instructions in accordance with the estate agency agreement.
 - (iv) Act in an impartial and just manner to all parties concerned in the transaction.
- A. (i) and (ii) only
 - B. (ii) and (iii) only
 - C. (ii) and (iv) only**
 - D. (i), (iii) and (iv) only
 - E. (ii), (iii) and (iv) only

Explanation:

In this case, the licensee failed to disclose to the purchaser his relationship with the vendor. The licensee thus failed to comply with paragraph 3.6.2 of the Code of Ethics which states: "Estate agents and salespersons shall, in the event of possible or potential conflict of interest (such as representing both the vendor and the purchaser), disclose to their clients that they are so acting. Any pecuniary or other beneficial interests in relation to the property shall be disclosed fully to all parties concerned". Hence, option (ii) is correct.

Under common law, an agent owes a fiduciary duty to his client. Since the agency relationship is one of trust and confidence, the agent must not allow any personal interest (including the interest of the agent himself or that of his close relatives) to conflict with his duties to the client.

Where any potential conflict arises, the agent should make a full disclosure to the client of all the relevant facts, so as to give the latter an opportunity to decide whether to continue with the proposed transaction or with the appointment of the agent. However, the licensee deliberately concealed this fact from his client and allowed his personal interest to conflict with his duties to the client, such act can also be considered as a breach of paragraph 3.4.1 of the Code of Ethics which

states: “Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction”. Hence, option (iv) is correct.

However, the conduct of the estate agent concerned did not relate to the provisions of the Code of Ethics set out in options (i) and (iii).

In light of the above, only options (ii) and (iv) are correct and the answer is therefore C.

10. Which of the following acts of an estate agent may breach the Code of Ethics?

- (i) He informs his client that his estate agency firm can give the client a cash rebate of \$8,000 when he knows in fact that his estate agency firm can only give a cash rebate of \$4,000.
- (ii) He passes his client's name and telephone number to his brother without the client's consent to enable his brother to market interior design services to the client.
- (iii) He falsely advises his client that a rival agency is notorious for dishonest practices.
- (iv) He introduces a firm of solicitors to his client at the client's request.

- A. (i) and (ii) only
- B. (ii) and (iii) only
- C. (iii) and (iv) only
- D. (i), (ii) and (iii) only**
- E. (ii), (iii) and (iv) only

Explanation:

The estate agent in option (i) lies to his client that his estate agency firm can give a cash rebate of \$8,000 when he knows in fact his firm can only offer a cash rebate of \$4,000. The estate agent therefore commits a breach of paragraph 3.3.1 of the Code of Ethics which states: "Estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions".

In option (ii), the licensee uses personal data for other purposes without the prior consent of his client. He is therefore in breach of the Data Protection Principle 3 of the Personal Data (Privacy) Ordinance and fails to comply with paragraph 3.1.1 of the Code of Ethics which states: "Estate agents and salespersons shall refrain from activities during their practice which may infringe the law".

As the estate agent in option (iii) makes remarks that are injurious or defamatory to the reputation of another estate agent, the estate agent is therefore in breach of Paragraph 3.7.1 of the Code of Ethics which states: "Estate agents and salespersons shall not seek unfair advantage over, nor injure directly or indirectly the reputation of, nor publicly disparage the business practice of other agencies"

No breach is found for the conduct of the estate agent in option (iv).

In light of the above, only options (i), (ii) and (iii) are correct and the answer is therefore D.

11. An estate agent is required to disclose to his client any pecuniary or other beneficial interest in the property concerned. This duty is stipulated in which of the following?

- (i) Code of Ethics
- (ii) Estate Agents Ordinance
- (iii) Conveyancing and Property Ordinance
- (iv) Unconscionable Contracts Ordinance

- A. (i) and (ii) only
- B. (i) and (iv) only
- C. (ii) and (iii) only
- D. (ii), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Explanation:

Options (iii) and (iv), i.e. the Conveyancing and Property Ordinance and the Unconscionable Contracts Ordinance, have nothing to do with estate agents' conduct and practice. Hence, they are not the correct options.

However, section 36(1)(a)(vi) of the Estate Agents Ordinance stipulates that every licensed estate agent shall disclose to a client full particulars of any pecuniary or other beneficial interest which the agent has in the property concerned, together with particulars of any benefit, including any commission or any interest of any kind whatever in such property, whether monetary or otherwise, which will accrue to the agent should the property be disposed of.

Furthermore, paragraph 3.6.2 of the Code of Ethics states: "Estate agents and salespersons shall, in the event of possible or potential conflict of interest (such as representing both the vendor and the purchaser), disclose to their clients that they are so acting. Any pecuniary or other beneficial interests in relation to the property shall be disclosed fully to all parties concerned."

Hence, options (i) and (ii) are correct and the correct answer is A.

12. Sean decided to purchase a residential property. The estate agent who acts for him also acts for the vendor. The property is subject to an “all moneys” mortgage. Which of the following are the proper steps that the estate agent should take before arranging for Sean to sign the provisional agreement for sale and purchase?

- (i) The estate agent should complete the Property Information Form (Form 1).
- (ii) The estate agent should enter into the Estate Agency Agreement (Form 4) with Sean.
- (iii) The estate agent should conduct a land search of the property.
- (iv) The estate agent should check the “Owner Particulars” in the land search to ascertain if the vendor is the registered owner of the property.
- (v) The estate agent should advise Sean that the deposits be held by the vendor’s solicitors as stakeholders.

- A. (ii) and (iv) only
- B. (iii) and (v) only
- C. (i), (iii) and (iv) only
- D. (ii), (iii), (iv) and (v) only
- E. (i), (ii), (iii), (iv) and (v)**

Explanation:

The estate agent acting for Sean should take the steps mentioned in options (i), (ii), (iii), (iv) and (v) before arranging for Sean to sign the provisional agreement for sale and purchase in order to comply with the relevant provisions of the Estate Agents Ordinance (“EAO”), the Practice Regulation, the Code of Ethics and the relevant Practice Circular as mentioned below:

- (a) Under section 36(1)(a)(i) of the Estate Agents Ordinance and section 3(1) of the Practice Regulation, a licensed estate agent entering into an estate agency agreement with the vendor of a residential property is required to have in his possession or under his control property information prescribed in the Property Information Form (Form 1). Hence, option (i) is correct.
- (b) According to section 6(2) of the EAO, “A licensed estate agent who acts for a purchaser shall enter into an estate agency agreement with the purchaser prior to (a) arranging an inspection of the residential property concerned by the purchaser; or (b) signing an agreement for sale and purchase or a lease of the

property, whichever is the earlier”.

Furthermore, the appropriate estate agency agreement prescribed under the Practice Regulation for use between an estate agent and a purchaser in the purchase of residential properties in Hong Kong is the Estate Agency Agreement (Form 4) (see Schedule of the Practice Regulation).

Hence, option (ii) which provides that “the estate agent should enter into the Estate Agency Agreement (Form 4) with Sean” is a correct option.

- (c) Section 13(4) of the Practice Regulation provides that “a licensee acting for the vendor of a residential property shall, immediately before an agreement for sale and purchase or a lease of the property is entered into, cause to be carried out a land search in the Land Registry in respect of the property and supply a copy of the land search to the purchaser of the property”. Hence, option (iii) which provides that “the estate agent should conduct a land search of the property” is a correct option.
- (d) Section 13(3) of the Practice Regulation stipulates that a licensee shall, for the purpose of avoiding the fraudulent misrepresentation of identity in an agreement for sale and purchase of a residential property, take all practicable steps to ensure that the name of the vendor is correct, and if the vendor is an individual, the licensee may collect a copy of the vendor’s identity card or other identification document”.

Pursuant to Paragraph 3.5.1 of the Code of Ethics, licensees shall, in fulfilling their duties, exercise due care and due diligence. Hence, licensees should check carefully the name of the vendor on the identity card or identification document against the name of the owner as recorded in the land search.

Hence, option (iv) which provides “the estate agent should check the “Owner Particulars” in the land search to ascertain if the vendor is the owner of the property” is a correct option.

- (e) Given that some vendors may for various reasons fail to discharge the mortgage or abscond after receiving the deposit, it is important for the licensee, whether acting as a dual agent for the parties or as a single agent for the purchaser, to advise the purchaser of any possible risks in payment of deposits directly to the vendor and of the desirability of arranging for the stakeholding of all deposits (both the initial and further deposits) by a firm of solicitors, before arranging for the parties to sign the provisional agreement

for sale and purchase of properties where there is an undischarged mortgage. The licensee should also explain to the vendor and the purchaser the implications of the stakeholding arrangement and the conditions to be fulfilled before the release of the deposits by stakeholders (see Practice Circular No. 05-07 (CR)).

Hence, option (v) which provides that “the estate agent should advise Sean that the deposits be held by the vendor’s solicitors as stakeholders” is a correct option.

In light of the above, E is the correct answer.

13. The forms of estate agency agreements prescribed under the Practice Regulation are **NOT** prescribed for which of the following purposes?

- (i) the sale of a residential property together with a car parking space
- (ii) the leasing of a residential property together with a car parking space
- (iii) the sale of a shop
- (iv) the leasing of an office
- (v) the leasing of a residential property that is not a self-contained unit (i.e. a residential property which does not have separate cooking facilities and bathroom)

- A. (i) and (ii) only
- B. (iii) and (iv) only
- C. (iii) and (v) only
- D. (iv) and (v) only
- E. (iii), (iv) and (v) only**

Explanation:

The Practice Regulation (“PR”) prescribes the relevant forms for estate agency agreements for residential properties:

- (a) Form 3: Estate Agency Agreement for Sale of Residential Properties in Hong Kong (for use between an estate agent and a vendor)
- (b) Form 4: Estate Agency Agreement for Purchase of Residential Properties in Hong Kong (for use between an estate agent and a purchaser)
- (c)
- (d) Form 5: Estate Agency Agreement for Leasing of Residential Properties in Hong Kong (for use between an estate agent and a landlord)
- (e) Form 6: Estate Agency Agreement for Leasing of Residential Properties in Hong Kong (for use between an estate agent and a tenant)

Under Section 3(4) of the PR, no prescribed forms are required to be used in the following cases:

- (a) the sale and purchase or the leasing of only a car parking space;
- (b) the leasing of a residential property which is not a self-contained unit (a self-contained unit means an independent dwelling with separate cooking facilities and bathroom with or without lavatory); and

- (c) subject to Section 7(1) of the PR, a first sale of an undivided share in land in which a residential property forms part.

Since the properties concerned in the transactions as described in options (iii) and (iv) are non-residential properties and the one in option (v) is a residential property that is not a “self-contained” unit, no prescribed estate agency agreements are required to be used in these cases. Hence, the correct answer is E.

14. FILL IN THE BLANK:

Please choose the correct answer from A to E.

According to the Estate Agency Agreement (Form 3), the duties of an estate agent acting for a vendor in the sale of a residential property include marketing the property, obtaining information about the property for the vendor and conducting _____.

- A. an investigation of the purchaser's background
- B. an inspection of the property
- C. a bankruptcy search of the purchaser
- D. **negotiation with interested purchasers**
- E. a valuation of the property

Explanation:

Schedule 1 of the Estate Agency Agreement (Form 3) prescribed under the Practice Regulation provides that the duties of the agent acting for the vendor shall include:

- (a) market the Property on behalf of the vendor;
- (b) obtain information in relation to the property for the vendor;
- (c) arrange for purchasers to inspect the property;
- (d) conduct negotiation and submit all offers in relation to the property to the vendor; and
- (e) assist the vendor in entering into a binding agreement for sale and purchase with a purchaser.

Answers A, B, C and E, namely conducting an investigation of the purchaser's background, conducting an inspection of the property (instead of arranging inspection for purchasers), conducting a bankruptcy search of the purchaser and conducting a valuation of the property are not among the duties of the agent as stated in the Estate Agency Agreement (Form 3). Only D (i.e. conducting negotiation with interested purchasers) is the correct answer.

15. Mr Chan is a salesperson of XYZ Estate Agency. Mr Chan receives \$40,000 in cash from Mrs Poon, a purchaser. The money is for paying the initial deposit to the vendor in a property transaction. At that time, the vendor is not in Hong Kong. Under the Practice Regulation, how should Mr Chan deal with the money in these circumstances?
- A. Mr Chan should immediately deposit the money into a trust account maintained by the vendor's solicitors at a bank.
 - B. Mr Chan should immediately deposit the money into a trust account maintained by Mrs Poon's solicitors at a bank.
 - C. Mr Chan should immediately deposit the money into the office account of XYZ Estate Agency maintained at a bank.
 - D. Mr Chan should immediately deposit the money into his supervisor's personal account maintained at a bank.
 - E. Mr Chan should immediately deposit the money into a trust account of XYZ Estate Agency maintained at a bank.**

Explanation:

Section 12(3) of the Practice Regulation provides that a licensed estate agent shall deposit all moneys received or held for or on account of a client in a trust account maintained at an authorized institution. To comply with the aforesaid requirement, Mr Chan should deposit the money into a trust account of XYZ Estate Agency maintained at a bank. Hence, the correct answer is E.

16. According to the Practice Regulation or the Licensing Regulation, which of the following statements is **INCORRECT**?
- A. An estate agent must not issue an advertisement relating to his estate agency business which contains any statement which is false or misleading in a material particular.
 - B. An estate agent must not issue any advertisement in respect of a vendor's residential property without the vendor's written consent.
 - C. **An estate agent may issue advertisements in respect of a vendor's residential property unless the vendor has specifically instructed him not to do so.**
 - D. An estate agent must state in the advertisement of a property the number of his licence or the relevant statement of particulars of business.
 - E. An estate agent who issues an advertisement in respect of a residential property which is to be sublet must state in the advertisement that the property is to be sublet.

Explanation:

Section 9(1) of the Practice Regulation provides "A licensed estate agent shall not cause or permit to be issued an advertisement wholly or partly relating to his estate agency business which includes any statement or particular that is false or misleading in a material particular". Hence, the statement in Answer A is correct.

Section 9(2) of the Practice Regulation provides "A licensed estate agent shall obtain a vendor's written consent prior to the issue of an advertisement in respect of the vendor's residential property". Hence, the statement in Answer B is correct and the statement in Answer C is incorrect.

Section 9(4) of the Practice Regulation provides "A licensed estate agent shall not cause or permit to be issued an advertisement in respect of a residential property which is to be sublet without the advertisement expressly stating that the property is to be sublet". Hence, the statement in Answer E is correct.

Section 14(1)(c) of the Licensing Regulation requires every holder of an estate agent's licence to state clearly and conspicuously in all advertisements, pamphlets and brochures excepted, issued by him or on his behalf (1) the number of his licence or the relevant statement of particulars of business; and (2) the business name as stated in the relevant statement of particulars of business. Hence, the statement in Answer D is correct.

In light of the above, the correct answer is C.

17. Simon is a salesperson. He obtained his salesperson's licence three years ago and has since then worked as a salesperson for ABC Estate Agency. One day, Mr Pang went to ABC Estate Agency to look for a suitable property to purchase for investment. He was served by Simon. Under the Practice Regulation, which of the following are the matters that Simon must inform Mr Pang of before he carries out estate agency work for Mr Pang?

- (i) the fact that he is a licensed salesperson
- (ii) the number of his licence
- (iii) the year he first obtained his licence
- (iv) the validity period of his licence
- (v) the number of transactions he handled in the previous three months

- A. (i) and (ii) only
- B. (iii) and (v) only
- C. (i), (ii) and (iv) only
- D. (ii), (iii) and (v) only
- E. (i), (ii), (iii) and (iv) only

Explanation:

Section 5(2) of the Practice Regulation provides that a licensed salesperson shall not perform any estate agency work for a person before the person is informed —

- (a) that the salesperson is a licensed salesperson; and
- (b) of the number of the salesperson's licence held by him.

Hence, options (i) and (ii) are correct. Options (iii), (iv) and (v) are not the requirements under the Practice Regulation. Therefore, the correct answer is A.

18. Mr Chan, a vendor, has entered into a provisional agreement for sale and purchase with a purchaser to sell his residential property. The transaction is handled by ABC Estate Agency. The provisional agreement for sale and purchase contains a clause which provides that Mr Chan agrees to pay commission to ABC Estate Agency. However, Mr Chan refuses to pay the commission. ABC Estate Agency intends to take legal action to recover the outstanding commission. According to the Estate Agents Ordinance, which of the following must ABC Estate Agency have done before it may sue Mr Chan?

- (i) ABC Estate Agency must have first registered the provisional agreement for sale and purchase against the property in the Land Registry.
- (ii) ABC Estate Agency must have first entered into an Estate Agency Agreement (Form 3) with Mr Chan.
- (iii) ABC Estate Agency must have first submitted an Estate Agency Agreement (Form 3) to the Estate Agents Authority for approval.

- A. (i) only
- B. (ii) only**
- C. (iii) only
- D. (ii) and (iii) only
- E. (i), (ii) and (iii)

Explanation:

Section 45(1) of the Estate Agents Ordinance provides that in respect of the estate agency work performed by an agent, the agent will only have a right or other cause of action for damages or other relief or remedy against the client if:

- (a) the requirement of executing a prescribed estate agency agreement (in Form 3, 4, 5 or 6) under the EAO has been complied with; and
- (b) the agent was a licensed estate agent at the time when the estate agency agreement was entered into.

Therefore, a licensed estate agent cannot recover commission in respect of a residential property unless the prescribed form of estate agency agreement has been executed. This is so even if the client has signed a tripartite provisional agreement for sale and purchase (“PASP”) under which the vendor and purchaser have agreed to pay commission to the estate agent.

However, there is no legal requirement that the licensed estate agent must have first registered the PASP with the Land Registry or submitted the prescribed estate agency agreement to the Estate Agents Authority for approval before it can take legal action to recover the commission from its client.

Hence, option (ii) is correct and the correct answer is B.

19. Which of the following is/are the effect(s) of a clause in a provisional agreement for sale and purchase which provides that the vendor agrees to sell and the purchaser agrees to purchase the property on an “as is” basis?

- (i) A warranty is given by the vendor that all alterations made to the property are in compliance with the Buildings Ordinance as at the date of the provisional agreement for sale and purchase.
- (ii) The purchaser accepts to be bound by the tenancy agreement of the property subsisting at the date of the provisional agreement for sale and purchase.
- (iii) The purchaser accepts that the property is sold in such physical state and condition as at the time when the provisional agreement for sale and purchase is made.

- A. (i) only
- B. (ii) only
- C. (iii) only**
- D. (ii) and (iii) only
- E. (i), (ii) and (iii)

Explanation:

If it is stipulated in the provisional agreement for sale and purchase that the property will be sold to the purchaser on an “as is” basis, the property will be sold and delivered to the purchaser in such physical condition as at the time the agreement is signed. Hence, a property stated to be sold on “as is” basis refers only to its physical states and condition and will not extend to illegal structures or alterations in the absence of clear wordings to such effect.

Hence, option (iii) is correct and the correct answer is C.

20. Under common law, which of the following are required for the formation of a contract?

- (i) Offer
- (ii) Acceptance of offer
- (iii) Intention of the parties to create legal relation
- (iv) Agreement as to how contractual disputes are to be resolved
- (v) Consideration for the contract

- A. (i), (ii) and (iii) only
- B. (i), (iv) and (v) only
- C. (i), (ii), (iii) and (v) only**
- D. (ii), (iii), (iv) and (v) only
- E. (i), (ii), (iii), (iv) and (v)

Explanation:

In common law, there are 4 essential elements in the formation of a contract: (i) offer; (ii) acceptance of offer; (iii) consideration; and (iv) intention to create legal relation.

Hence, options (i), (ii), (iii) and (v) are correct and the correct answer is C.

21. Mr Chow, an estate agent, made a photocopy of the Hong Kong identity card of his vendor client, John. Without telling John, Mr Chow made another copy and gave it to a friend who worked as an insurance broker so that his friend could market his services to John. Mr Chow then lost his copy of John's identity card. A week later, John asked Mr Chow whether he still had the copy of his identity card. Mr Chow could not produce it. Which of the following Data Protection Principles under the Personal Data (Privacy) Ordinance might Mr Chow have breached?

- (i) Ensuring the accuracy of the personal data collected.
- (ii) Not using personal data for any purpose other than that for which it is collected.
- (iii) Taking all practicable steps to ensure that personal data held by a data user are protected against unauthorised or accidental access.
- (iv) Allowing a data subject to correct his personal data.

- A. (i) and (ii) only
- B. (ii) and (iii) only**
- C. (i), (ii) and (iii) only
- D. (i), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Explanation:

The Schedule to the Personal Data (Privacy) Ordinance (Cap. 486) sets out six Data Protection Principles ("DPPs") for the protection of personal data. Licensees should comply with them when collecting, using and handling personal data in the course of exercising or carrying on the business of doing estate agency work. The DPPs provided in the question options are as follows:

- (i) DPP 2 requires all practicable steps to be taken to ensure the accuracy of data.
- (ii) DPP 3 requires that a data user cannot without the prescribed consent of the data subject use personal data for any purpose other than the purpose for which it was originally collected or for a directly related purpose.
- (iii) DPP 4 addresses security of personal data and requires all practical steps be taken to ensure that personal data held by a data user are protected against unauthorised or accidental access, processing, erasure or other use.
- (iv) DPP 6 provides that a data subject shall have the right of access to, and correction of, their personal data.

Mr Chow collected John's personal data by obtaining a copy of John's identity card for the purpose of providing estate agency service to John. By disclosing John's personal data to his friend, an insurance broker, without John's consent, so as to enable his friend to market his services to John, Mr Chow was in breach of DPP 3. Hence, option (ii) is correct.

By losing the copy of John's identity card, Mr Chow was also in breach of DPP 4 for failing to ensure that personal data held by him are protected against unauthorized or accidental access, processing, erasure or other use. Hence, option (iii) is correct.

In light of the above, options (ii) and (iii) are correct but options (i) and (iv) are incorrect. Therefore, the answer is B.

22. An estate agent received three offers to purchase a property listed by his client. One interested purchaser (who made the lowest offer) proposed to the agent that he was prepared to pay the agent an extra commission of \$30,000 if the agent would not relay the other two offers to the vendor. Which of the following regulations/ordinances might the agent have breached if he accepts the extra commission and if he does not relay the other two offers to the vendor?
- (i) Unconscionable Contracts Ordinance
 - (ii) Prevention of Bribery Ordinance
 - (iii) Practice Regulation
 - (iv) Estate Agents (Determination of Commission Disputes) Regulation
 - (v) Personal Data (Privacy) Ordinance
- A. (i) and (iv) only
 - B. (ii) and (iii) only**
 - C. (ii), (iii) and (iv) only
 - D. (iii), (iv) and (v) only
 - E. (i), (ii), (iii), (iv) and (v)

Explanation:

According to Section 9(1) of the Prevention of Bribery Ordinance (“PBO”),
“Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal’s affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal’s affairs or business,

shall be guilty of an offence”.

Where a salesperson acts for a vendor client in a property transaction, the vendor client is his principal. If the salesperson without the permission of his vendor client accepted “extra commission”, that is an advantage, from a prospective purchaser for not relaying the offers of other prospective purchasers to the vendor client, the salesperson may commit an offence under Section 9(1) of the PBO. Besides, by accepting “extra commission” without his employer’s permission, the salesperson may commit an offence under Section 9(1) of the PBO.

Furthermore, by failing to present all the offers received from prospective purchasers to his vendor client, the salesperson may be in breach of Section 11(e) of Practice Regulation which stated that “a licensee shall present an offer to a client for acceptance as soon as practicable after receiving it”.

23. Mr Chan purchased a “Home Ownership Scheme” flat from the Hong Kong Housing Authority eight years ago. He now intends to sell it in the open market, but the premium has yet to be paid. Which of the following documents relating to the sale must state that, unless the Director of Housing stipulates otherwise, Mr Chan must pay a premium to the Hong Kong Housing Authority within 28 days of the date of the agreement for sale and purchase, and before the assignment?
- A. The certificate of availability for sale
 - B. The certificate of eligibility to purchase
 - C. The letter of nomination
 - D. The agreement for sale and purchase**
 - E. The assignment

Explanation:

According to the Schedule to the Housing Ordinance (Cap. 283), when the Home Ownership Scheme flat exceeds five years from the date of first assignment, the owner can sell, let or assign the flat in the open market subject to payment of a premium to the Housing Authority. Prior to payment of the premium, the owner of the flat which exceeds five years from the date of first assignment can enter into agreement for sale and purchase including provisional/formal agreement providing it contains a condition that the premium as assessed by the Director of Housing be paid prior to the assignment and within 28 days from the date of the agreement or within such other period as may be stipulated by the Director of Housing.

Therefore, the answer is D.

24. Generally speaking, if a purchaser fails to complete a transaction in accordance with the agreement for sale and purchase, which of the following actions may the vendor take?

- (i) He may forfeit the deposits.
- (ii) He may terminate the agreement for sale and purchase, and resell the property.
- (iii) He may register a Memorandum of Charge against the property at the Land Registry.

- A. (i) only
- B. (i) and (ii) only**
- C. (i) and (iii) only
- D. (ii) and (iii) only
- E. (i), (ii) and (iii)

Explanation:

Where the parties fail to complete the sale and purchase transaction in accordance with the agreement for sale and purchase due to the purchaser's default, the vendor will be entitled to forfeit the deposit monies paid by the purchaser, terminate the agreement for sale and purchase and to sell the property to other person(s). Hence, options (i) and (ii) are correct. As regards the Memorandum of Charge mentioned in option (iii), such document is usually registered by creditors with regard to any arrears of management fee or government rent and rate and is therefore not applicable to the present context.

Therefore, the answer is B.

25. If a purchaser client intends to purchase a property from a confirmor by way of a sub-sale agreement, which of the following is/are the matter(s) that the estate agent should draw the purchaser client's attention to in order to protect his interests?
- (i) whether the agreement for sale and purchase between the head vendor of the property and the confirmor restricts sub-sale
 - (ii) whether the balance of the purchase price payable by the client to the confirmor is sufficient to cover the balance of the purchase price payable by the confirmor to the head vendor under the agreement for sale and purchase between the confirmor and the head vendor
 - (iii) whether the client has an opportunity to inspect the property before he enters into the sub-sale agreement
- A. (i) only
 - B. (ii) only
 - C. (i) and (iii) only
 - D. (ii) and (iii) only
 - E. (i), (ii) and (iii)

Explanation:

According to Practice Circular (No. 01-08 (CR)), there are certain risks in confirmor sales. To protect the interests of the confirmor and the sub-purchaser, the estate agent should pay attention to a number of things when handling this type of transactions.

Paragraph (1)(a) of the Practice Circular states that practitioners should remind the confirmor to examine the agreement for sale and purchase between the vendor and the confirmor to see if there is any restriction on subsale. Option (i) is thus correct.

Paragraph (2)(b) of the Practice Circular states that attention should be paid to whether the balance of purchase price payable by the sub-purchaser is sufficient to cover the balance of purchase price payable by the confirmor under the original agreement. Hence, option (ii) is correct.

Paragraph (2)(a) of the Practice Circular states that the sub-purchaser would normally have no opportunity to inspect the relevant property before he/she enters into the subsale agreement. Practitioners should alert the sub-purchaser to the risks of no inspection and try to arrange for an inspection before completion.

Therefore, option (iii) is correct.

In light of the above, all options (i), (ii) and (iii) are correct and the answer is E.

26. To best protect his client's interests in the purchase of a property, under which of the following situations should an estate agent advise the purchaser client to pay the deposit to a firm of solicitors to hold the deposit as stakeholders?

- (i) where the property is subject to an "all-monies" mortgage
- (ii) where the property is subject to a charging order
- (iii) where the vendor sells the property as a confirmor

- A. (i) only
- B. (ii) only
- C. (iii) only
- D. (i) and (ii) only
- E. (i), (ii) and (iii)**

Explanation:

Where a property is subject to an "all-monies" mortgage or a charging order, the total outstanding balance that the vendor would be required to repay on completion for the discharge of the mortgage or charging order is unknown at the early stage of the transaction. Hence, it is uncertain whether the property is actually one with "negative equity" and/or whether the vendor is able to discharge the mortgage or charging order on completion of the sale and purchase transaction. As for the case of "confirmor sale", there are certain risks in such transaction, for instance, the balance of purchase price payable by the sub-purchaser may not be sufficient to cover the balance of purchase price payable by the confirmor under the original agreement and that the purchaser may not have the opportunity to inspect the property before the signing of the agreement of the sale and purchase.

Under the aforesaid circumstances, an estate agent, in order to protect his purchaser client's interest, should advise the purchaser client of any possible risks in payment of deposits directly to the vendor and of the desirability of arranging for the stakeholding of all deposits (both the initial and further deposits) by a firm of solicitors.

In light of the above, options (i), (ii) and (iii) are correct. Therefore, the answer is E.

27. Tommy, an estate agent, has arranged for his purchaser client, Mr Chan, to sign a provisional agreement for sale and purchase of a residential property. Two days later, Mr Chan intends to execute a nomination to nominate his business partner to hold the property together with him as joint tenants. Which of the following are the proper pieces of advice for Tommy to give to Mr Chan?

- (i) Mr Chan must execute a deed of gift in favour of his business partner.
- (ii) Stamp duty is payable on the nomination.
- (iii) Mr Chan and his business partner cannot hold the property as joint tenants because only a married couple can be joint tenants.
- (iv) If Mr Chan and his business partner hold the property as joint tenants and if Mr Chan predeceases his business partner, Mr Chan's interest in the property will pass to his business partner upon his death.

- A. (i) and (iii) only
- B. (ii) and (iv) only**
- C. (i), (ii) and (iii) only
- D. (ii), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Explanation:

Exemption for payment of ad valorem stamp duty under the Stamp Duty Ordinance is not applicable in this case since Mr Chan and Mr Sze are not close relatives, hence, ad valorem stamp duty is payable on the nomination as on an agreement for sale and purchase of the property. Option (ii) is correct.

Under the common law, joint tenancy is a form of co-ownership where all the co-owners own the whole property together but individually they do not own a distinct undivided share in the property. On the death of one of the co-owners, the property remains vested in the survivor(s) by virtue of the doctrine of survivorship. Option (iv) is correct.

However, there is no legal requirement on the execution of a deed of gift in favour of a nominee who is being nominated in a nomination to take up the assignment of a residential property or any requirement that only married couple will be allowed to hold property as joint tenants. Therefore, options (i) and (iii) are not correct. The answer is B.

28. If an estate agent intends to include the floor area information in the advertisement of a residential property and if the saleable area of the property can be obtained from the Rating and Valuation Department or the agreement for sale and purchase of the first assignment, according to the guidelines in the Practice Circular in relation to the provision of floor area information for second-hand residential properties, which of the following must the estate agent do?

- (i) The estate agent must provide the saleable area of the property in the advertisement.
- (ii) The estate agent must provide both the saleable area and the gross floor area of the property in the advertisement.
- (iii) The estate agent must clearly state in the advertisement that the floor area provided is the saleable area of the property.
- (iv) The estate agent must clearly state in the advertisement the source of the floor area provided.

- A. (i) and (iii) only
- B. (ii) and (iii) only
- C. (ii) and (iv) only
- D. (i), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Explanation:

Paragraph (4) of Practice Circular (No. 12-02 (CR)) states that “if the floor area information of a property is included in an advertisement and the saleable area of the property can be obtained from either the RVD or the first agreement, then licensees must:

- (a) provide the saleable area of the property (obtained from the RVD or the first agreement, as the case may be) in the advertisement; and
- (b) clearly state in the advertisement that the floor area provided is the saleable area of the property (e.g. saleable area: 980 square feet)”.

The estate agent should thus provide the saleable area of the property in the advertisement and state clearly in the advertisement that the floor area provided is the saleable area of the property. Options (i) and (iii) are thus correct. However, licensees are not obligated to provide the gross floor area of the property and the source of the floor area in the advertisement. Therefore, options (ii) and (iv) are not correct. Therefore, the answer is A.

29. FILL IN THE BLANKS:

Please choose the correct answer from A to E. The first part of the answers applies to the first blank and the second part applies to the second blank.

To prove title to a property, the vendor is required to produce to the purchaser the government lease as well as proof of title extending not less than ____ years before the date of the agreement for sale and purchase commencing with an _____, a mortgage by assignment or a legal charge, each dealing with the whole estate and interest in that property.

- A. 10.....assignment
- B. 15.....occupation permit
- C. 15.....assignment**
- D. 20.....agreement for sale and purchase
- E. 25.....assignment

Explanation:

According to Section 13(1)(a) of the Conveyancing and Property Ordinance (Cap. 219), “a purchaser of land shall be entitled to require from the vendor, as proof of title to that land, only production of the Government lease relating to the land sold and—

- (a) proof of title to that land : —
 - (i) where the grant of the Government lease was less than 15 years before the contract of sale of that land, extending for the period since that grant; or
 - (ii) in any other case, extending not less than **15 years** before the contract of sale of that land commencing with an **assignment**, a mortgage by assignment or a legal charge, each dealing with the whole estate and interest in that land”.

Therefore, the correct answer is C.

30. According to the Practice Circular on compliance of anti-money laundering and counter-terrorist financing requirements, a licensee should do which of the following if he/she licensee is unable to complete the Customer Due Diligence (“CDD”) process against a customer for complying with the statutory requirements of anti-money laundering and counter terrorist financing?

- (i) Licensee must not establish a business relationship with that customer.
- (ii) Licensee may carry out occasional transaction with that customer provided that the transaction is one-off.
- (iii) Licensee must terminate the business relationship with that customer as soon as reasonably practicable if a business relationship has already been established with that customer.
- (iv) Licensee must report the failure of completion of CDD process to the Hong Kong Police.

- A. (i) and (ii) only
- B. (i) and (iii) only**
- C. (i), (iii) and (iv) only
- D. (ii), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Explanation:

Paragraph (4.15) of Practice Circular (No. 18-01 (CR)) states that “where a licensee is unable to complete the CDD process, he:

- (a) must not establish a business relationship or carry out any occasional transaction with that customer;
- (b) must terminate the business relationship as soon as reasonably practicable if he has already established business relationship with that customer; and
- (c) should assess whether failure to complete the CDD process provides grounds for knowledge or suspicion of money laundering or terrorist financing and for filing an Suspicious Transaction Reporting with the Joint Financial Intelligence Unit”.

In light of the above, options (i) and (iii) are correct but options (ii) and (iv) are incorrect. Therefore, the answer is B.

31. The purchaser client of an estate agent is about to enter into a provisional agreement for sale and purchase of a property owned by a private limited Hong Kong company. The client wants to check whether the property is subject to any mortgages or charges. Which of the following documents may contain the above information?

- (i) the memorandum of association of the vendor company
- (ii) an up-to-date land search of the property at the Land Registry
- (iii) an up-to-date search of the Mortgage or Charge Details/Statement of Particulars of Charge filed by the vendor company with the Companies Registry
- (iv) the Certificate of Incorporation of the vendor company
- (v) the Business Registration Certificate of the vendor company

- A. (i) and (ii) only
- B. (ii) and (iii) only**
- C. (ii) and (v) only
- D. (i), (iii) and (iv) only
- E. (ii), (iv) and (v) only

Explanation:

Public may conduct land searches on most of the properties in Hong Kong at the Land Registry which provides information on all encumbrances and other documents registered against the property concerned including documents such as legal charges, mortgages, building orders, court orders etc.

Public may also conduct company searches on the current data of registered companies and image records of documents registered and kept at the Company Registry. Public can obtain a list of registered charges of a company (including a charge on land or any interest in land). Basic information on each charge such as a brief description of the charge, the charge registration number and the dates of creation and registration will be provided.

In light of the above, options (ii) and (iii) are correct and the answer is therefore B.

32. Leo (a landlord) intends to enter into a tenancy agreement of a residential property with Tina (a tenant) for a term of one year. The land search of the property shows the following registered documents:

- (i) a legal charge registered by a mortgagee bank
- (ii) a second legal charge registered by a finance company
- (iii) a memorandum of a charge of outstanding management fees registered by the management company of the building of which the property forms a part
- (iv) a building order of the property registered by the Building Authority

As Tina's estate agent, you should advise Tina to require Leo to obtain the consent of which of the following before entering into the tenancy agreement?

- A. The mortgagee bank in (i) only
- B. The finance company in (ii) only
- C. The mortgagee bank in (i) and the finance company in (ii) only**
- D. The management company in (iii) only
- E. The Building Authority in (iv) only

Explanation:

According to the Practice Circular (No. 01-09 (CR)) on tenancy matters for residential properties, the mortgage deed/legal charge executed by the owner of a property usually contains a covenant that prohibits leasing unless with the prior written consent of the mortgagee. In the event of an owner failing to repay the mortgage loan and the mortgagee taking possession of the property, the tenant will not be able to continue to occupy the property and therefore suffer loss and inconvenience.

Hence, if the relevant property is a mortgaged property, practitioners should suggest to the prospective tenant to request the landlord to obtain the required bank consent and to explain the risks involved in renting a property without bank consent for the prospective tenant's consideration.

In light of the above, options (i) and (ii) are correct and the answer is therefore C.

33. Which of the following information may be found in the occupation permit of a building?

- (i) gross floor area of the building
- (ii) permitted use(s) of the units of the building
- (iii) term of the relevant Government Lease
- (iv) saleable area of the building

- A. (ii) only
- B. (i) and (ii) only
- C. (i) and (iii) only
- D. (iii) and (iv) only
- E. (ii), (iii) and (iv) only

Explanation:

Occupation permit is issued by the Building Authority under the Building Ordinance. From this document, one can ascertain the age and user of the units of the building when the building was completed. In most cases, the document also states the total number of units on a floor of the building. Information concerning the floor area of the units of the building or the term of the relevant Government Lease of the lot(s) where the building is situated are not provided in the occupation permit.

In light of the above, only option (ii) is correct and the answer is therefore A.

34. A purchaser asks his estate agent to ascertain the permitted use(s) of the unbuilt land adjacent to the property which he intends to purchase. The unbuilt land has been bought by a developer. The estate agent may obtain information about the permitted use(s) of the unbuilt land from which of the following documents?

- (i) the “Outline Zoning Plan” which includes the unbuilt land
- (ii) the land search of the property which the purchaser intends to purchase
- (iii) the Government lease of the unbuilt land

- A. (i) only
- B. (ii) only
- C. (i) and (ii) only
- D. (i) and (iii) only**
- E. (ii) and (iii) only

Explanation:

In most cases, the information concerning the land use of a particular lot is available from the New Grant, Government Lease, Conditions or Block Government Lease under which the lot is held and it usually corresponds to the land use zoning for the land on which the lot is situated as shown on the relevant Outline Zoning Plan (“OZP”).

OZPs are prepared and published by the Town Planning Board under the Town Planning Ordinance. The OZPs deal with areas zoned for uses such as residential, commercial, industrial, open space, government, institution or community, green belt, conservation development areas, village-type development, open storage or other specified uses.

In light of the above, options (i) and (iii) are correct and the answer is therefore D.

35. Generally speaking, which of the following information may be found in the deed of mutual covenant of a building?

- (i) the name of the first purchaser who purchased a unit/units in the building
- (ii) the allocation of undivided shares to the various parts of the building
- (iii) the parts which are designated as common areas in the building
- (iv) the share of management fees that each owner of a unit in the building is liable to pay

- A. (i) and (ii) only
- B. (i) and (iv) only
- C. (i), (ii) and (iii) only
- D. (ii), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)**

Explanation:

A deed of mutual covenant (“DMC”) is a private contractual agreement among all the co-owners, the manager and also the developer of a building. It defines the rights, interests and obligations of the parties concerned. In general, a DMC comes into effect on the date of execution by the developer and the purchaser of the first unit of the building and is binding on other subsequent purchasers. Hence, a DMC contains the name of the first purchaser who purchased a unit/units in a building.

Ownership in a multi-storey building is generally expressed in terms of undivided shares. When an owner purchases a flat in a multi-storey building, he is not only entitled to the exclusive possession of his flat, but also jointly owns the common parts of the building with other owners of the same building. To facilitate management of a building and to effectively define the rights and obligations of the parties concerned, the parts which are designated as common areas in the building and the undivided shares of various parts of the building are set out clearly in the DMC of the building. Under most circumstances, the share of the management fees that each owner of a flat is liable to pay is determined on the basis of the undivided shares owned by him and is set out in the DMC.

In light of the above, option (i), (ii), (iii) and (iv) are all correct and the answer is therefore E.

36. Which of the following is/are the proper step(s) that the owner of a private residential flat should take if he intends to demolish a structural wall in his flat?

- (i) Notify the Lands Department in writing about the intended works.
- (ii) Seek the approval of the Housing Department for the intended works.
- (iii) Appoint an “authorised person” under the Buildings Ordinance to prepare and submit plans for the works for approval by the Building Authority.

- A. (i) only
- B. (ii) only
- C. (iii) only**
- D. (i) and (ii) only
- E. (i) and (iii) only

Explanation:

Under section 2 of the Building Ordinance, building works (建築工程) includes any kind of building construction, site formation works, ground investigation in the scheduled areas, foundation works, repairs, demolition, alteration, addition and every kind of building operation, and includes drainage works. Hence, demolition of a structural wall in a flat falls within the aforesaid definition of building works.

According to the Buildings Ordinance (“BO”), any person who intends to carry out building works in private buildings or on private land should appoint an authorised person and, where necessary, a registered structural engineer to prepare and submit plans of the works for the requisite approval and consent of the Building Authority before the carrying out of the works, unless such works are exempted under section 41(3) of the BO or are carried out as minor works following the simplified requirements of the Minor Works Control System. According to the provisions of section 41(3) of the BO, building works other than drainage works, ground investigation in the scheduled areas, site formation works or minor works carried out in any building are exempted from the requirement for approval from the Building Authority if the works do not involve the structure of the building.

In light of the above, only option (iii) is correct and the answer is therefore C.

37. A property whose permitted user is “garage” has been used as a shop. The purchaser is aware of the permitted user but believes that he can in the meantime continue to use the property as a shop. Which of the following statements is/are correct?

- (i) The Building Authority may, by order, require the owner or the occupier to discontinue the use of the property as a shop.
- (ii) The Building Authority may prohibit the use of the property as a shop on the ground that the property is not suitable for such use.
- (iii) The unauthorised change of user may render the title of the property defective.

- A. (i) only
- B. (ii) only
- C. (iii) only
- D. (i) and (ii) only
- E. (i), (ii) and (iii)**

Explanation:

An owner who wishes to materially alter the user of a property must give one month’s notice in the specified form to the Building Authority (“BA”) under Section 25(1) of the Building Ordinance. For example, he might wish to change the user from “domestic purposes” to “office purposes”. If the BA decides the property is not suitable by reason of the nature of its construction in relation to its present or intended use, an order in writing may be served on the owner or occupier under Section 25(2). That order may:

- prohibit such intended use; or
- require the owner or occupier to discontinue such present use of the building within one month from the service of the order.

The title of the property may be rendered defeasible by reason of a material change in user of the premises. A defeasible title is one that is forfeitable and subject to re-entry by the Government.

In light of the above, option (i), (ii) and (iii) are all correct and the answer is therefore E.

38. Calculate the stamp duty chargeable for a tenancy agreement for a domestic property (including its counterpart) based on the following terms:

Term: five years
Rent: \$100,000 per month
Rent-free period: first two months
Option to renew: a further term of three years at \$120,000 per month

- A. \$100
- B. \$105
- C. \$3,005
- D. \$11,605**
- E. \$12,005

Explanation:

Under Section 4(1) of the Stamp Duty Ordinance and the First Schedule, the applicable rate is 1% of the yearly or average yearly rent where the lease term exceeds 3 years. \$5 is payable on the duplicate.

$$\begin{aligned} \text{The average yearly rent is: } & \frac{(\$100,000 \times 10 \times 1) + (\$100,000 \times 12 \times 4)}{5} \\ & = \$1,160,000 \end{aligned}$$

$$\begin{aligned} \text{The amount of stamp duty payable: } & \$1,160,000 \times 1\% + \$5 \\ & = \$11,605 \end{aligned}$$

Information regarding option to renew should not be included in the calculations.

39. Susan (a landlord) and David (a tenant) entered into a residential tenancy agreement for a term of two years commencing on 1 October 2013. The tenancy agreement does not have any express term which gives Susan the right of forfeiture for non-payment of rent. If David fails to pay his rent, can Susan forfeit the tenancy?
- A. Yes, if David fails to pay rent within seven days of the date when the rent falls due.
 - B. Yes, if David fails to pay rent within ten days of the date when the rent falls due.
 - C. Yes, if David fails to pay rent within fourteen days of the date when the rent falls due.
 - D. Yes, if David fails to pay rent within fifteen days of the date when the rent falls due.**
 - E. No.

Explanation:

In usual cases, the lease/tenancy will mention the amount of rent and will have a clause under which the tenant expressly covenants to pay the rent. Section 117(3) of the Landlord and Tenant (Consolidation) Ordinance also implies this covenant into a Part IV tenancy. Section 117(3) gives the tenant 15 days to pay the rent. On default, the landlord can take action to forfeit the tenancy.

Hence, option D is correct.

40. A tenant has entered into a tenancy agreement for a term of two years with the option to renew for a further term of two years. In order to protect the tenant's interests, which of the following steps should the estate agent advise the tenant to take?
- (i) The tenant shall let the estate agent sign the tenancy agreement for him.
 - (ii) The tenancy agreement should be stamped.
 - (iii) The tenancy agreement should be registered with the Land Registry.
 - (iv) The tenancy agreement should be filed with the Buildings Department.
- A. (i) and (ii) only
 - B. (i) and (iv) only
 - C. (ii) and (iii) only**
 - D. (iii) and (iv) only
 - E. (ii), (iii) and (iv) only

Explanation:

Under the Stamp Duty Ordinance, stamp duty is chargeable on a lease or tenancy agreement. Hence, option (ii) is correct.

The rights of a lessee under a lease which exceeds three years are protected against third parties, who deal with the lessor to create an interest in the land, if the lease has been registered in the Land Registry under the terms of the Land Registration Ordinance. So if the lessor sells the property, the lessee will be able to enforce the lease against the new owner.

The interest of a tenant under a tenancy agreement/lease which does not exceed three years is protected against third parties even without registration so long as the tenancy is bona fide and the rent is at market rate.

If the lease/tenancy agreement contains an option to renew or to purchase, registration of the lease/tenancy agreement causes the option to bind a third party.

The option creates an interest in land which needs registration to allow it to be enforced against the third party. The lessee/tenant must ensure the lease/tenancy agreement which contains the option is registered otherwise he cannot enforce it

against a third party. That is, if the lessor/landlord sells the land, and if the lease/tenancy agreement containing the option has not been registered before the sale, the new owner does not have to honour the option.

In light of the aforesaid, option (iii) is correct.

Option (i) is not a proper procedure and option (iv) is not a requirement under any laws or regulations. Hence, only options (ii) and (iii) are correct and the answer is C.