



**CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma**

**Unit 9 - Land Law**

**Question paper**

**June 2023**

**Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)**

**Instructions and information**

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- You can use your own unmarked copy of the following designated statute book – **Blackstone’s Statutes on Property Law 30th edition, Meryl Thomas, Oxford University Press, 2022.**
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

***Turn over***

## SECTION A

Answer at least one question from this section

1. Critically analyse what constitutes 'land', in relation to:
  - (a) fixtures and fittings; **(16 marks)**
  - (b) the maxim *ad coelum et ad inferos*. **(9 marks)**

**(Total: 25 marks)**
  
2. Critically analyse the approach of the courts to proprietary estoppel in:
  - (a) domestic property ('farm and family' cases); **(17 marks)**
  - (b) commercial property. **(8 marks)**

**(Total: 25 marks)**
  
3. Critically assess how far the law of constructive trust has 'moved on' from the idea that only a contribution to 'bricks and mortar' will give rise to a constructive trust. **(25 marks)**
  
4. Critically evaluate how true it is to say that exclusive possession alone determines whether an agreement is a lease or a licence. **(25 marks)**

## SECTION B

Answer at least one question from this section

### Question 1

Afsana is a property developer who purchased a large piece of land in 2016 with the intention of building eight new houses on the land. The proposed estate was called 'The Crescent'. In 2019 Afsana completed construction and sold the houses to seven different buyers, reserving 8, The Crescent for herself to live in.

Afsana sold 1, The Crescent to Bertrand. She sold the neighbouring property, 3, The Crescent, to Claire. When selling the properties, Afsana told all the buyers that "this is a new estate and there are some legalities that go with that". She gave each buyer a plan showing the eight plots of land on the estate but did not explain that she had registered three covenants against all of the properties in The Crescent. These covenants were:

- 1) Residents of The Crescent hereby covenant to build no additional structures on their land;
- 2) Residents of The Crescent hereby covenant to hold a birthday party for Afsana every year on April 3<sup>rd</sup>;
- 3) Residents of The Crescent hereby covenant to pay £250 per property, per annum, toward the upkeep of the communal drainage system.

After all the purchases were completed, Afsana wrote to all of the residents informing them that they were legally bound to hold a birthday party for her, each year, and to pay £250 towards drainage. A few months ago, Bertrand built a large shed in his back garden. Claire is furious that her view has been spoiled by the shed and has refused to pay the £250 drainage fee for this year. Afsana is upset that her neighbours failed to organise a birthday party for her in April.

Advise the residents as to the enforceability of the various covenants.

**(25 marks)**

## **Question 2**

Eze purchased the freehold of 38, The Avenue in 2010. The property consists of a detached house with a small front garden and a larger back garden. At the end of the back garden is a field.

When Eze moved in, he was aware that number 40, the next door house, was unoccupied. In fact, the house was in very poor repair and Eze soon became annoyed at how unsightly and overgrown the large front garden of number 40 had become. In January 2011 Eze weeded the front garden of number 40, and over the following months he began to plant flowers and bushes in the newly cleared garden. In August 2011 Eze decided to repair the low stone wall that separated the front garden of number 40 from the public road. In September 2013 Eze spent £5,000 on landscaping the area.

In December 2012 Eze bought his 11-year-old son Frankie a quad bike as a Christmas present. Frankie rode the quad bike on the field behind the house. He took the family dog for walks on the field most days, and in the summer of 2013 he and a friend spent much of their summer holiday building a treehouse in one of the trees at the edge of the field.

In 2016 Eze built a wire fence around the edge of the field, leaving a single gate for access that led directly from his own back garden. He usually kept the gate locked.

Last month, in May 2023, Eze received a letter from Gigacorp, a large company. Gigacorp's letter informed Eze that Gigacorp has, since 2004, been registered owners of the field and that "while we left the field undeveloped awaiting the need to expand, we now plan to build a distribution centre on the field".

Last week, when Eze was watering the flowers outside number 40, a stranger arrived in a car. He introduced himself as Hari and told Eze that number 40 belonged to his grandfather. He told Eze that the property was unregistered, and he had inherited it after his grandfather's recent death. Hari said to Eze "thanks for keeping the front garden tidy, but obviously you need to stay out of it now".

Advise Eze as to whether he has any claim in adverse possession to the field or to the front garden outside number 40.

**(25 marks)**

### Question 3

In 2022 James retired after a long and successful career in the publishing industry in the United States. Having earned a considerable sum of money, James decided to invest in property in his home country, England. He asked his favourite nephew to recommend two properties: “something I can rent out in a city centre and a proper country house for me and your aunt to live in”.

On his nephew’s recommendation, James purchased Flat 30 in a large apartment complex in Manchester from Kevin, and ‘Old Heralds’, a large country house in the Worcestershire countryside from Liam. Both properties are registered land. James returned to the UK last month and went to visit both properties. He found out the following:

Mahmood is living in Flat 30 and told James that “I’ve got a rental agreement to live here until 2027.” Mahmood gave James a document dated June 2021 that purports to grant a six-year lease of Flat 30 to him. The document has been signed by Mahmood and Kevin. It is headed “rental agreement” and the signatures are not witnessed. There is no entry on the register relating to the lease. James’ nephew admitted that when he viewed the flat he met Mahmood but that he assumed this was one of Kevin’s friends and did not ask him about whether he had an interest in the property.

At Old Heralds, James was surprised to find an extensive collection of farming machinery in one of the barns. He found out that these belonged to Nora, a local farmer, who showed him a valid deed from Liam that granted her the right to store tools in the barn until 2030. The easement was registered against the property.

The land also included a small cottage and James was shocked to find Olivia, Liam’s sister, living there. Olivia told James “I paid half the purchase price for this place when Liam bought it, so I’ve got rights you know.” There is no mention of Olivia’s interest on the register. James’ nephew did inspect the cottage but Olivia was away from the property from 2021 until last month, as she was in hospital with a very serious illness.

Advise James as to whether he is bound by any of the above interests.

**[NOTE TO CANDIDATES: You may assume that the characteristics for each interest to arise are present – your answer should focus solely on whether the interests are protected against the new freehold owner.]**

**(25 marks)**

**Turn over**

#### Question 4

In 2016 Rikki decided to purchase new premises for his delicatessen and café business. In order to fund the purchase, he approached Solvent Banking plc for a mortgage. Rikki had a bad credit history and Solvent Banking was reluctant to lend him the £200,000 he was asking for. The usual interest rate was 10% but the company told Rikki that they would only be willing to loan him £100,000 to be repaid over 15 years and that because he was assessed as a high-risk borrower, they would need to charge 22% interest. After consulting with the other directors of his business, Rikki agreed to the mortgage. The mortgage was created by deed and registered in August 2016.

To raise the remaining £100,000, Rikki approached Tiana, a wealthy local businesswoman who he often dealt with when ordering inventory for the delicatessen. Tiana agreed to lend him £100,000 secured against the property he was purchasing, at an interest rate of 8%, to be repaid over 15 years. However, Tiana also insisted that a clause was inserted into the mortgage agreement that for the next 12 years Rikki would purchase all of the cheese sold in his delicatessen from a specific dairy which she owned.

Rikki's business has increasingly struggled in recent years. While Rikki has been able to maintain his payments to Tiana, he has fallen behind with his repayments to Solvent Banking plc.

Rikki still believes that he can restructure his business but in order to do so he wants to stop buying cheese from Tiana, as she charges far more than other potential suppliers.

Advise Rikki as to:

- (a) whether the rate of interest for his loan from Solvent Banking plc is likely to be considered an oppressive or unconscionable term;  

**(7 marks)**
- (b) whether he can escape the agreement to purchase cheese from Tiana;  

**(7 marks)**
- (c) what is likely to happen if he continues to fail to make repayments on his Solvent Banking plc mortgage.  

**(11 marks)**

**(Total: 25 marks)**

**End of the examination**