



**Chartered Institute of Legal Executives (CILEX)**  
**Paralegal Apprenticeship End-Point Assessment**

**Land Law and Conveyancing Practice**

**Timed assessments**

**Sample assessment materials – sample model responses**

## Introduction

### Sample model responses

The following sample model responses have been produced to support apprentices with preparing for their timed assessments.

The responses provided are a suggestion and other acceptable valid responses will be accepted.

Please note that the word count recommendations in the tasks are given as a guide. We do **not** negative mark if the word count goes above or below the recommendation.

In order to get the most out of these samples model responses, we recommend apprentices should:

- familiarise themselves with the grading criteria in the assessment plan, especially the distinction requirement
- carry out the research as stated in the advance materials
- sit the sample tests — you can do this as many times as you like.

## TA1 – Task

This task requires you to produce a report based on the information provided by Jane in the memorandum below. The memorandum will outline to you the content of the report and key information that you will need to include.

You should refer to the advance materials you were previously issued (also attached below), which outline the relevant facts and suggested legal sources for this client.

### Internal memorandum

**To:** Paralegal

**From:** Jane Cutler

**Client:** Henry Whitton

**File Reference:** JC/36/{this year}/Whitton

Further to my previous memorandum to you regarding this client, you now need to write a report providing the details of your findings and conclusions from the research you have previously carried out.

In particular, can you please prepare a report showing your findings and conclusion on the following.

#### Findings

By referring to the relevant legislation and case law, the report must explain the following.

- The characteristics of an easement.
- The ways in which an easement can be created.
- How easements are protected in registered land, and the circumstances in which an easement will override a registered disposition.

#### Conclusions

Based on your research findings, applying relevant legislation and case law, explain the following.

- Whether the accessway used by Peter Brown is capable of being an easement.
- Whether the accessway is likely to have been created as an easement.
- Whether the client, Mr Whitton, will need to allow Peter Brown to continue to access the land after his purchase of the land.

It would be helpful if you could conclude with your suggestions as to the most suitable advice for us to give to the client, based upon the law and practice that you have researched.

Your report should relate only to the issues that I have asked you to research. Your report should be at least 1250 words.

As I will be using this to advise the client, you must ensure that your report is structured logically and not provided as bullet points. It is also important for you to check your spelling, punctuation and grammar.

All legislation and case law included in the report must be explained in your own words to show understanding of the research that you have undertaken.

You must ensure that at the end of your report, for billing purposes you provide the amount of time taken.

Thank you.  
Jane Cutler

## Model response

### Introduction

Further to instructions received from Jane Cutler, in the matter of Henry Whitton's prospective purchase of Brook Field, Milchester, this report will set out research findings on the law and practice as relevant to the characteristics of an easement, the ways in which easements can be created and the methods of protection of easements in registered land, including easements as interests that override.

Furthermore, the report will conclude as to how the research applies to the client's potential purchase of Brook Field.

### Findings

#### Easements Overview

An easement is a property right over land that is owned by another. Easements can be legal or equitable and can be created by grant, where the easement is granted over land, or by reservation where the exercise of a right is reserved or retained by a landowner when land is sold.

#### Characteristics of an easement

To be valid, easements must meet certain characteristics as set down in the case of Re Ellenborough Park 1956. The requirements are as follows:

1. There must be a dominant and servient tenement. 'Tenement' in this context simply means a piece of land. There must be two pieces of land; one which takes the benefit of the easement and one which bears the burden.
2. The right claimed must benefit the dominant tenement. This requires that the easement be of more than mere personal benefit to the current owner of the land. Practically, it can be determined by asking whether the easement would make the land more valuable if it were to be sold as determined in Hill v Tupper 1863.
3. There must be diversity of ownership or occupation. This requires that two different people must own or occupy the land, as confirmed in Metropolitan Railway Co v Fowler 1893.
4. The right claimed must be capable of 'forming the subject matter of a grant'. This is a legal term meaning:
  - The right claimed must be similar to existing, commonly found easements.
  - Subject to some exceptions, such as maintenance of fences, there must be no requirement for the owner of the servient tenement to expend money, as confirmed in Jones v Price 1965.
  - Easements must be sufficiently definite and not vague or too general (such as a general right to a view as in Aldred's Case 1610.)

#### Ways in which an easement can be created

Under s1(2)(a) Law of Property Act 1925 (LPA 1925), easements are one of five legal interests over land. They can also be equitable.

Legal easements can only be created by deed and must be for a term equivalent to the legal estate. This means that, in addition to being set down in a valid deed, the right over land must be granted or

reserved for a period equal to the legal estate, whether that be in perpetuity (where the title to land is absolute) or the length of time set out in the lease (where land is leasehold).

Equitable easements do not need to be created by deed, but under s53(1) LPA 1925 they must still be in writing.

Other than being created by statute in specific circumstances, easements can be created by express grant, by implied grant or by prescription.

An express grant of easement arises where one owner of land expressly agrees that another should have rights over his land. Where this agreement is set out in a valid deed, and equivalent to the legal estate, it will be created as a legal easement under s1(2)(a) LPA 1925. If, however, the agreement is not set out by deed, but is confirmed in writing then it will be equitable, provided the document complies with the requirements of s2 Law of Property (Miscellaneous Provisions) Act 1989.

An implied grant of easement can arise in one of four ways, two of which are relevant to the client's intended purchase of Brook Field; these are necessity and common intention.

An easement can be granted by necessity only when exercise of the right claimed is absolutely necessary to the use of the land, such as when land is otherwise 'landlocked' and can only be accessed by crossing neighbouring land. Mere inconvenience will not suffice as confirmed in Titchmarsh v Royston Water Co 1899.

Easements can also be granted where the parties must have clearly intended the right to be granted, because it is obvious on inspection of the land that it should be implied. This is known as common intention and is neatly summarised in the case of Liverpool City Council v Irwin 1977.

Finally, easements can be granted by prescription in circumstances as set out in the Prescription Act 1832, via common law or the doctrine of lost modern grant. Briefly, this requires continuous user (meaning regular use) of the claimed right by the would-be dominant landowner for a period of at least 20 years, without force, secrecy or permission.

#### **The protection of easements in registered land**

Under section 27(2)(d) of the Land Registration Act 2002, legal easements do not take effect at law until they are registered. Properly registered, legal easements are said to 'bind the world'. If they are not registered, they do not bind a buyer of land.

Legal easements over registered land can be protected by entering a notice in the register of both the benefitted (dominant) and burdened (servient) land using form AP1.

#### **Easements that override a registered disposition**

Some interests in land can override a registered disposition; that is, the easement will bind the buyer of land even though it is not registered. This occurs when land is registered for the first time (para 3 Schedule 1 LRA 2002) and when a disposition (sale or other transfer) of land is registered and the easement meets one of the following requirements set out under para 3 Schedule 3 LRA 2002:

- It would have been obvious on a reasonably careful inspection of the land, or
- It was known about by the person to whom the disposition is made, or
- It has been exercised within the year before the disposition.

## Conclusions

### **Whether the accessway used by Peter Brown is capable of being an easement**

Applying Re Ellenborough Park 1956, the land owned by Peter Brown is the dominant tenement (the piece of land taking the benefit of the easement) and Brook Field is the servient tenement (the land bearing the burden of the easement). It is arguable that the easement may be of benefit to Peter Brown's land, as easy access to grazing land may make the land more valuable. There is diversity of ownership and occupation, as Peter Brown owns his farmland (the dominant tenement) and Mr Hewitson currently owns Brook Field (the servient tenement). Finally, the right claimed is capable of forming the 'subject matter of a grant' in that it is a common type of easement (a right of way across land), it is capable of being marked on a map and is therefore not vague or indefinite and it requires no expenditure on behalf of the servient landowner, Mr Hewitson. The accessway across Brook Field is therefore capable of being an easement as it meets the characteristics set down in Re Ellenborough Park 1956.

### **Whether the accessway is likely to have been created as an easement**

The agreement between Mr Hewitson (the owner of Brook Field) and Peter Brown (the owner of the neighbouring land) is said to have been reached by discussion. It is therefore assumed that there is no agreement in writing, either set down in a deed or otherwise. The easement has therefore not been granted expressly. It is further noted that the register contains no notice of any easements over Brook Field.

In terms of whether an easement has been implied by necessity, per the case of Titchmarsh v Royston Water Co 1899 mere inconvenience will not suffice; there must be absolute necessity. Peter Brown is said to have access to the grazing land by road, and therefore there is no necessity that the easement should be implied.

Further, on inspection of Brook Field it is unlikely that an informal 'path' of churned up soil would indicate any common intention on behalf of the landowners to create a legal right, and it would not be obvious that a right should exist to allow a corner of the field to be crossed, particularly given the alternative route available by road. It is therefore unlikely that an easement has been granted by common intention.

Finally, as Peter Brown is said to have sought permission to cross the corner of Brook Field some 15 years ago, an easement by prescription would fail on the basis that permission was granted by Mr Hewitson and, in any event, the right claimed has not been exercised for the prescriptive period of 20 years.

### **Whether the client, Mr Whitton, will need to allow Peter Brown to continue to access the land after his purchase of Brook Field**

As summarised above, it is unlikely that an easement has been created over the land.

Under the Land Registration Act 2002, our client is entitled to rely on the accuracy of the title register of Brook Field and the register is clear of any notices relating to easements over the land. Unless properly registered, a legal easement will not take effect and will not bind a buyer of land. Therefore, our client will not be bound by a legal easement and would not need to allow Peter Brown to continue to access the land.

However, the client should be cautioned that, until such time as we can be satisfied that there is no written document confirming an express grant of easement over Brook Field (an equitable easement), there is potential risk for an easement to override any disposition of the land to him. This risk exists

because the client has inspected the land, noting a churned up 'muddy path' from Peter Brown's land across Brook Field, and this indicates use in the year before his purchase. Further, our client informs us that he knew the accessway was used by Peter Brown as recently as three years ago and he may, therefore, be on notice as to the existence of the easement. The requirements of para 3 Schedule 3 LRA 2002 are therefore triggered, and our client should proceed with caution until such time as investigations are complete to rule out an equitable easement having been granted.

### **Billing record**

Research time 2 hours [20 units]

Report preparation 1.5 hours [15 units]

## TA2 – Task 1

You have been given a task via email from Jane in relation to your client (see below).

A copy of the advance materials is attached, see below.

**Once you have completed Task 1, please move on to Task 2.**

### Internal email

**To:** Paralegal

**From:** Jane Cutler

**Client:** Henry Whitton

**File reference:** JC/36/{this year}/Whitton

Thank you for your report on this client's case which I found very useful.

I now need you to draft an email to Mr Whitton to deal with some key issues before we proceed with his purchase. Please make sure you cover the following points.

- Explain, with reference to relevant legislation and professional conduct rules, why we will require proof of ID, proof of address and proof of funds before we can commence work on the client's purchase.
- Explain, with reference to relevant legislation, the meaning of 'land registration', a brief overview of the land registration system and three benefits of the land registration system.
- Explain, with reference to relevant case law, how the following items will be classified and whether Mr Whitton will be entitled to them on completion:
  - a. the shepherd's hut
  - b. the grain silo
  - c. the tractor parts and tools.

As always when writing to the client, please ensure that the tone of your email is appropriate and be aware that the client is not familiar with the law and so you will need to write clearly so that they understand your explanation of the law. As usual, please pay particular attention to correct spelling, punctuation and grammar, and your presentation.

You should include a short introduction to set out the purpose of your email and a suitable ending. Your email should be at least 900 words.

The client has also asked us to update them on the **costs incurred in this matter so far**. Please provide the client with a brief overview of your time records for this task and outline any potential timing considerations, moving forward, that they will need to be aware of.

Thank you.  
Jane Cutler  
Partner



## Model response

Dear Mr Whitton,

### **Your proposed purchase of Brook Field, Milchester**

I write regarding the above matter and to introduce myself as [apprentice], assistant paralegal to Jane Cutler with whom you met recently to discuss your instructions. Ms Cutler has asked me to write to you to confirm some information in advance of your meeting with her next week which I set out below.

### **Proof of identification; photo ID, proof of address and proof of funds**

Please be advised that we will require the above documentation and information to begin acting for you in your purchase of Brook Field. I understand that it has been some time since you were involved in a property transaction and would therefore like to offer you some reassurance and explanation regarding the documents and information we have requested.

As a firm, Hedley, Smith & Cutler are regulated by the Solicitors Regulation Authority and all members of the firm are required to comply with the SRA Standards and Regulations Code of Conduct 2019. Principle 7.1 of the Code requires that we follow the law and regulation governing the way we work, and principle 8.1 requires that we identify who we are acting for in a matter.

Further, in accordance with legislation such as the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, we are required to demonstrate that we have undertaken sufficient Customer Due Diligence to reduce the risk of money laundering, which all law firms face. Customer Due Diligence simply means ensuring that our customers are who they say they are, which is why we ask for photographic ID and proof of address. We ask for proof of funds to prove that the monies used to fund a purchase are from a legitimate source.

Please ensure that you bring the required documentation and information as discussed with Jane Cutler in order that we can begin work on your transaction straight away.

### **Land Registration**

I understand that you have discussed the possibility of voluntarily registering your current property, Mount Farm, and would like to know more about land registration. Land registration is a term that refers to the creation and ongoing maintenance of a central record of all property held in England and Wales.

By way of background, since the passing of the Land Registration Act 2002, whenever land is 'disposed of' which includes being sold, transferred or inherited, it is compulsory to register land for the first time. A government department, the Land Registry, is responsible for recording the ownership of land and property in England and Wales. Once land is recorded, the Land Registry maintain a system to record any important information such as ownership changes, mortgages or interests.

At the heart of the system are three important principles, known as the mirror, curtain and insurance principles. Briefly, the mirror principle means that the information held at the land registry will be an accurate reflection of the title and interests in land. The curtain principle means that only information that a buyer needs to know will be shown on the register. The insurance principle means that any error

on the part of the land registry will be rectified and any person who suffers a loss as a result of that error will be compensated.

The benefits of land registration are that buyers can rely on the record being accurate and receive compensation if they suffer loss as a result of an error. Another benefit is that complex documents and deeds in poor condition do not need to be re-inspected every time land is sold or mortgaged, as all of the information is held electronically. A third benefit is that the central electronic system safeguards against issues caused by lost or damaged deeds.

#### **Outbuilding and items on Brook Field**

I understand that you would like some clarity around various items stored on Brook Field, namely a grain silo, shepherd's hut and various tractor parts and tools. It is always preferable to negotiate and agree on what will be included with land when it is sold. To that end, conveyancers use a form known as a TA10 Fittings and Contents form to set out exactly what will be included with a sale, and what will be retained by a seller when land is sold.

However, in the absence of any agreement, the courts can be asked to determine whether items on the land are 'fixtures' or 'fittings'. Fixtures are part of the land; they transfer with the land when land is sold. Fittings, on the other hand, are not part of land and can be retained by the seller when land is sold.

In order to determine whether an item is a fixture or a fitting the courts use a series of tests from previously decided cases. The tests are known as the:

- degree of attachment test
- the purpose of attachment test, and
- the permanence of attachment test.

The degree of attachment test looks at the extent to which an item is attached to land. A relevant case is Holland v Hodgson [1872] which determined that if an item is held down other than by its own weight, i.e., by being attached to the floor, it will be a fixture. This is relevant to the grain silo, which you have described as being affixed to the ground by large bolts. Under this test, the silo is likely to be a fixture and will transfer with the land when it is sold. Conversely, the tractor parts and tools are not affixed to the land and are therefore likely to be deemed as fittings to be retained by Mr Hewitson.

The courts also apply the purpose of attachment test, which examines the purpose of the item in the context of the land. Usually, the courts examine whether the item is of benefit to the land rather than solely being of benefit to the current occupier. A leading case is Leigh V Taylor 1902 which determined that items displayed or stored solely for the enjoyment of the person occupying the land are fittings, rather than fixtures. A further case, Taylor v Hamer 2002, dealt with some flagstones arranged as a path. It was determined that a reasonable person would consider that the paving slabs formed part of the contract, and they were deemed fixtures. This test bears relevance to both the shepherd's hut and the tractor parts and tools on Brook Field. It is unlikely that a reasonable person would expect tools and tractor parts to be included in the contract, as they are likely to be of personal benefit to the owner rather than of benefit to the land itself. However, a reasonable person is likely to expect that a shepherd's hut would be included with the sale of land, as it is of benefit to the land.

Finally, the permanence of attachment text looks at whether items placed on the land were intended to be permanent or temporary features. A leading case for this is Elitestone v Morris [1997] which turned specifically on whether an item would likely be destroyed if it were to be moved. This is relevant to the shepherd's hut, which is likely to have been placed on the land as a permanent structure and, as you have explained, likely to fall apart if moved. Another relevant case, Lloyds TSB v Botham [1996], provides

that an item should be viewed objectively to determine whether it was intended to be permanent and afford a 'lasting improvement' to the property. It is likely that the large grain silo, which has been bolted firmly to the ground, and shepherd's hut would be viewed as lasting improvements.

In summary, in the absence of an agreement being reached between yourself and Mr Hewitson before completion, the shepherd's hut and silo are likely to be fixtures which will transfer with Brook Field, whilst the tractor parts and tools are likely to be fittings and can be retained by Mr Hewitson.

**Billing**

Finally, Ms Cutler has asked me to update you on the costs incurred in this matter so far. I can confirm that the firm has spent 5 hours on your proposed transaction to date. Any further work will be charged at the hourly rate set out within our client care letter, charged in 6-minute units of time (being 10 units per hour).

Please do not hesitate to contact myself or Jane Cutler should you have any further queries.

Kind regards,

[Paralegal]

## Task 2

You have been given a task, via email, from Jane in relation to your research.

A copy of the advance materials is attached, see below.

### Internal email

**To:** Paralegal

**From:** Jane Cutler

**Reference:** Development work

I am currently reviewing the guidance notes and training documents we provide to our new starters, including legal apprentices.

Can you please assist me in my review by drafting some notes on the importance of ensuring that our customer due diligence and conflict checks are undertaken correctly. I appreciate that this is a rather dry subject, but it is so important that we all understand our obligations.

To that end, please ensure that your notes cover the legal and regulatory requirements relevant to undertaking due diligence and conflict checks.

Your notes should be at least 300 words.

Thank you.

Jane Cutler

### Model response

Welcome to Hedley, Smith & Cutler.

As new members of staff, you will be expected to contribute to ensuring that the firm is compliant with its legal and regulatory requirements. It is important that everyone involved in a legal transaction understands their responsibilities.

#### **Customer Due Diligence and Conflict Checks**

For every new client matter, the firm is required to carry out checks and enquiries to ensure that we know who our client is, and whether we can represent them in a matter without conflict.

#### **Why is Customer Due Diligence important?**

As you may be aware, the firm is regulated by the Solicitors Regulation Authority and must comply with the SRA Code of Conduct 2019. In addition, members of the CILEx are regulated by CILEx Regulation, and must comply with the CILEx Regulation Code of Conduct 2019.

Under both Codes, the firm is required to understand and comply with law and regulation relevant to the way we conduct business. We are required to ensure that the firm is not used to facilitate criminal activity by ensuring that we comply with the requirements of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulation 2017 and the Proceeds of Crime Act 2002.

We do this by **checking that our client is who they say they are**. Practically this means verifying their identify by photo ID, such as a passport, and verifying their address e.g. by utility bill.

**Why is a conflict check important?**

We must comply with regulatory requirements. Outcome 7.1 of the CILEx Regulation Code of Conduct 2019 states that *we must not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise*. Principle 6.1 of the SRA Code of Conduct 2019 states that the firm *should not act if there is an own interest conflict or a significant risk of such a conflict*.

In order for the firm to determine whether we can act for a client, and to ensure that any risk of conflict is properly managed, we must check on every new instruction whether a conflict of interests arises.