Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2009 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

ILEX is currently working with the Level 3 Chief Examiners to standardise the format and content of suggested answers and welcomes feedback from students and tutors with regard to the ‘helpfulness’ of the January 09 Suggested Answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners’ reports which provide feedback on student performance in the examination.

Section A

1. An estate in land is a right to use and control land and the time for which ownership lasts will be defined.


3. A deed is a document witnessed by someone other than the person who will be contractually bound by it. It must by definition be in writing and be expressed to be a deed.

4. (a) 1990 for new transactions.
   
   (b) 1998 for all transactions including those by way of inheritance.

5. The four unities are time, title, possession and interest.

6. If a purchaser buys co-owned land from two or more legal owners the interests of the equitable owners are overreached. The effect is that their co-ownership interest is transferred from the land and takes effect in the purchase money.

7. An easement is a right a landowner enjoys over the land of another. It must benefit the land and cannot be a personal interest. Candidates could have supported this with case law for example Moody v Steggles and Hill v Tupper.

8. The burden of a restrictive covenant cannot run in law. It can run in equity. Candidates should have made reference to Tulk v Moxham. Candidates should have also referred to Tulk v Moxham.
should have outlined the case principles, for example: negative covenants; runs with land; need for registration.

9. The distinctions between legal interests and equitable rights tell us, in the first instance, how the right was created and whether there is any possibility of the existence of a trust. Legal interests bind the whole world and the person entitled to enforce it could exercise it against any new owner or occupier of the land. If the right was equitable, it would bind every transferee of the land except a bone fide purchaser for value of a legal estate in the land who had no notice of the equitable rights.

10. A charge is a deed expressed by way of a mortgage.

11. A repayment mortgage repays the capital and interest to a lender whereas an endowment mortgage repays the interest only to the lender and the capital investment usually to an insurance company.

12. The ‘equity of redemption’ gives the absolute right of the mortgagor to redeem the mortgage after six months and defeats any contractual legal term.

13. Candidates could have achieved marks for any reasonable scenario amounting to a constructive trust under the rules established in Lloyds Bank v Rosset or other suitable case law. For example where one person has the legal title to the property but another person has contributed to the upkeep or improvement of the property.

14. (a) The ‘mirror principle’ reflects all the rights as stated on the Land Register pertaining to the land.

(b) The ‘insurance principle’ is a State guarantee that the information is correct at the time of search.

**SECTION B**

**Scenario 1**

1. (a) (i) The candidate should have identified that this is a co-ownership issue and drawn a distinction between a joint tenancy and a tenancy in common. For example, the legal title will always be held as joint tenants whereas the equitable title can be held as joint tenants or tenants in common. Joint tenancy provides a unity of title whereas tenancies in common provide for specific shares and can only be equitable in nature.

(ii) The recommendation would be for the parties to purchase as tenants in common because of the unequal contribution of the parties.

(b) Joint tenants have the right of survivorship and the said survivor retains full title and becomes the owner of the whole property. On the other hand, the shares of a deceased tenant in common passes under his/her Will or intestacy. In that instance, the deceased would have had to specify in a Will as to the disposition. The beneficiary could apply for a sale order with resulting consequences for the other tenants in common. The advice would be for both parties to make a will.
2 (a) The candidate should have identified that a ‘constructive trust’ is likely to exist which is an equitable remedy developed by the Courts which would give her an equitable interest in the property. This involves a two-stage test of ‘common intention’ and ‘contribution’. Candidates should have applied the law to the scenario and the use of case law to support is essential. It is likely that the Court would find that Andrea is entitled to claim the amount she contributed to the deposit and the mortgage and any proportionate escalation in value.

Credit would also be given for identifying that a resulting trust may exist based on contribution.

(b) To protect her interests Andrea should have entered her interests at the Land Registry under the Charges Register. The candidate should have identified LRA 2002 and the effect such registration has on prospective purchasers i.e. notifies purchaser of equitable interests.

Scenario 2

1. (a) A candidate must identify an easement as a legal or equitable right over someone else’s land.

   (b) (i) The candidate should have identified that the access over the back garden is an equitable easement. Equitable rights can be placed on the Charges Registry at the Land Register.

   (ii) The shared driveway is a legal easement and therefore regarded as an overriding interest and is enforceable even though it does not appear on the Register. See LRA 2002.

   (c) Candidates should have identified the rules in Re Ellenborough Park, which are: Dominant and Servient tenement, separate ownership, must benefit the Dominant Tenement and be capable of a grant.

   (d) It would have been unenforceable.

   (e) Candidates could have given two examples from; unity of ownership, statutory or tribunal or release.

   (f) Failure to repay the mortgage could result in possession proceedings through the County Court providing there are at least two months arrears. A possession order can be granted or a suspended possession order where there are mitigating circumstances.

2. (a) A restrictive covenant is an obligation by one party, the owner of the burdened land to refrain from doing something on their land for the benefit of the benefited land.

   (b) (i) This could be done by looking at the Charges Register for registered land.

   (ii) This could be done by looking at the Land Charges Register for unregistered land.

   (c) Carlo would leave himself open to legal action to enforce by the neighbour. The consequences could result in damages and/or
injunction. For example damages for noise, fumes etc. An injunction to stop the use as a business.

(d) An application could be made to the Land Tribunal. It has discretionary power to remove an obsolete covenant. Or Negotiate a Deed of Release/Deed of Variation with the adjoining owner.

(e) Candidates should identify the following: Dominant & Servient tenement, restrictive in nature, must touch and concern the dominant tenement, intention to burden.

**Scenario 3**

1. (a) You would need to check the deeds and look back 15 years for good root of title.

(b) You would need to make enquiries of Marge, to establish whether she has any interest in the property. Doctrine of Notice applies.

(c) ‘Absolute’ is the very best, uninhibited with no complications. ‘Qualified’ is granted rarely where fundamental doubts exist with the title and ‘Possessory’ is when there is insufficient documentary evidence of title or where the person seeking registration relies upon a period of adverse possession.

(d) There are three: Property, Proprietorship and Charges.

2. (a) Such height as not to interfere with reasonable usage of the landowner. This has been determined by the courts.

(b) To the centre of the Earth.

(c) Parliament lays down rules about what the landowner can keep when found on or below his or her land. There are numerous examples of what cannot be kept including gas, coal, oil, treasure.

(d) A ‘fixture’ is attached or annexed to the land (an example of a fixture is a fitted wardrobe). A chattel is a moveable object not attached to the land (an example of a chattel is a dining room table).

(e) A fixture passes with the land whereas a chattel does not and needs to be listed separately with the contract of sale.