



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 - UNIT 19 RESIDENTIAL & COMMERCIAL LEASEHOLD CONVEYANCING

JUNE 2023

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

This exam was taken by a very small cohort so general observations on exam performance needs to be considered in this context. Unfortunately, the overall performance of this small cohort was weak. The Case Study Materials (CSM) and exam paper questions would have been seen in similar form to those in past sessions so there was a good opportunity to spot potential question areas and revise these. Candidates would be well advised to discuss the CSM with a tutor, not only to identify any potential question areas, but also to clarify anything not completely understood.

Several of the exam questions covered standard conveyancing process which in the past have been answered well, but this time, apart from the co-ownership question, candidates seemed to lack knowledge of the standard process, especially post exchange, pre completion work. Candidates should ensure they understand the conveyancing process as set out in the unit specification because several questions can be answered to a pass standard with this general knowledge. Candidates also need to ensure they know and understand underpinning law; e.g., the key features of a lease and the requirements for security of tenure for a commercial tenant, because sometimes there are questions based on this law if it could be relevant to the scenarios in the CSM. Finally, candidates need to ensure they identify any of the leasehold specific issues in the CSM, e.g., is it



the transfer of an existing leasehold title or the grant of a new lease because this will dictate the documents and any adjustments in the conveyancing process.

There was no real evidence of time management issues apparent from the candidates' papers.

Examination technique could be improved by ensuring every part of the question is answered, otherwise a candidate cannot achieve all the marks allocated to that question. Copying and pasting a clause from the CSM should be avoided because it does not show the clause is understood and does not answer the question asked. The clause needs to be explained in the candidate's own words and applied to the CSM facts. If the question asks for a time limit, be clear from when this time limit starts, e.g., "30 working days from the date of the OS1 search certificate."

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

This was answered by most candidates to a pass standard but more knowledge of Standards and Regulations in outline would have gained more marks.

(b)

This was answered by all candidates, but the examples needed to be 3 separate and distinct examples. Many candidates concentrated on sources of funding the purchase, but this is just 1 example. Although this question could be passed with standard conveyancing knowledge, there was also an opportunity to show leasehold specific knowledge.

(c)(i) - This was answered by all candidates, but most achieved less than half marks. Better knowledge of title issues and the effect of a restrictive covenant would gain more marks.

(ii) - Although a standard conveyancing type question, this was not answered well. More knowledge of how to resolve title issues would gain more marks.

(d)

Although all candidates answered this question, which is a standard conveyancing process question, only one achieved half marks. Better knowledge of the Law Society formulas for exchange and when they apply would gain more marks.

(e)(i) and (ii) - These linked questions on the OS1 search were not answered well. More knowledge on the purpose of the search and its priority period of 30 working days from the date of the official search certificate (not 30 days) is needed.

Question 2(a) – This was not answered well. Candidates should know and understand the underpinning law on the key features of a lease.

2(b) – As with Q2(a) this was not answered well. Some candidates did not attempt the question and others did not know the key features of a lease so could not apply them to the facts.

Question 3(a) – This question was answered well. Candidates showed good knowledge and understanding of a beneficial tenancy in common and applied this to the facts.

(b)

This was answered quite well, especially by one candidate. The main issue here was not answering the question fully. Some candidates just identified documents but did not give an example of what they covered. Although this question could be passed with standard conveyancing knowledge, none of the candidates showed knowledge of any document that would be relevant on the grant of a new lease/ buying from developer. A candidate could shine in this type of question with better knowledge and understanding of the new lease documentation.

(c)

Most candidates answered this question and gained some marks but there was no clear knowledge shown that the deed on the facts would be the lease itself. Again, better knowledge of how title is transferred with a new lease would gain more marks.

(d)

Half of the candidates answered this question well showing some good knowledge. The errors made here related to lack of knowledge of pre completion searches, especially the search of part of a registered title and the company search.

(e)

Not all candidates answered this question but those who did clearly knew this was a notifiable transaction for SDLT purposes. Answers could be improved if candidates understood the law as to why this lease was notifiable.

Question 4(a)

This was answered quite well with the clause being analysed and applied. Answers could be improved by making sure the part of the clause that defines the property is analysed and applied as well.

(b) - This was not answered well for a simple knowledge-based question.

4(c)

Half the candidates did not answer this question. Those that did showed no knowledge of the security of tenure requirements for a commercial tenant. This was a knowledge based question

so was either known or not. Security of tenure could be relevant to any commercial tenant in an exam so is an area worth revising as this type of question usually carries substantial marks.

SUGGESTED POINTS FOR RESPONSE

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Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> (a) Under SRAS&R generally not acceptable to act for both sides. (b) Usually acceptable to act for lender and borrower as long as no conflict of interest. (para 6.2 SRACC) (c) No evidence of conflict of interest on our facts. (d) Lender and borrower have substantially common interests/ the same interests in ensuring good title/able to sell in the future (e) On the facts the mortgage is on standard terms/ high risk of conflict if not a mortgage on standard terms (f) Approved certificate of title being used /Diligent Bank's mortgage conditions require certificate in approved form. (g) Provided we can ensure we can act in both clients' best interests (Principle 7 SRAS&R) (h) Ensure duty of confidentiality can be maintained <p>Conclusion – likely to be able to act</p>	8
1(b)	<p>Any three of:</p> <ul style="list-style-type: none"> (a) Amount of deposit (b) Sources of funding on purchase (c) Any additional money being paid for fittings (d) Costs and disbursements (e) Apportionment of rent and service charge (f) Additional charges under the lease e.g. registration of transfer / mortgage, share certificate 	3
1(c)(i)	<ul style="list-style-type: none"> (a) Entry 1 is a restrictive covenant relating to a building line. (b) Clients' proposal to build at side of property could be a possible breach. (c) If the extension infringes line on Title Plan, this is a breach. (d) Because clients are bound by covenant. 	4

1(c)(ii)	(a) Contact party with benefit for discharge or variation. (b) Arrange insurance cover. (c) Alter plans for building extension to avoid infringement. (d) Potential to apply to Upper Tribunal (Lands Chamber) for modification or discharge but impractical/ expensive	3
1(d)	(a) 3 Formulas A, B & C (b) Parties likely to be holding own parts of contract (c) Formula B – likely to be used as most common (credit Formula A if candidate justifies this with sellers' lawyer holding both parts of contract pending exchange) (d) Because no onward chain.	4
1(e)(i)	(a) The time limit for this application is within the priority period provided by the buyers' OS1 search.	1
1(e)(ii)	(a) The consequence is losing priority to third party applications.	1
Question 1 Total: 24 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	(a) Certainty of duration. (b) Exclusive possession. (c) Granted for a term shorter than that held by the landlord.	3
2(b)	(a) 18 month term = certainty of duration. (b) Term is shorter than the freehold estate. (c) Cramped, one bed-roomed property indicates exclusive possession/ unlikely another person can live there with them. (d) Consider relevance of the inspection and repairing provision (e) Unrestricted nature and exercise of the inspection right suggests no exclusive possession. (f) Conclusion a licence rather than a lease.	6
Question 2 Total: 9 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	(a) Tenancy in common may be suitable as not married. (b) Also Zaina has son from a previous relationship. (c) Tenancy in common appropriate as the right of survivorship does not apply. (d) No automatic transfer to Ben on death/ enables Zaina to pass her share to her child under her will. (e) Different contributions towards purchase. (f) A tenancy in common is appropriate as it recognises the distinct contributions/shares.	6

3(b)	<p>Any two of:</p> <ul style="list-style-type: none"> (a) Draft contract (in duplicate) (b) Sets out the terms for the sale and purchase of the property (e.g. price, amount of deposit, anything property is subject to on title) (c) Draft lease and plan (in duplicate) (d) Sets out the terms upon which the property is held and identifies the boundaries of the property (e.g. payment of service charge, rights that benefit the property, tenant covenants, landlord covenants) (e) Evidence of the freehold title / official copies of freehold title/ copies of deeds referred to in the freehold title (f) To prove the landlord owns/ can sell the property, any title issues with the freehold which may bind the new lease, any charges, notices, restrictions on the register that may bind the leasehold property (g) Property Information Form (TA6)/ Developer's Property Information Sheet (h) Answers questions about the property that the seller answers (e.g. boundaries, disputes, guarantees, planning issues, environmental matters, parking, rights and informal arrangements) (i) Fittings & contents form (TA10)/ Developer's Fittings and Contents Information sheet (j) Identifies items that are included/ excluded from sale (e.g. fitted furniture, white goods, fireplaces, light fittings) (k) Copies of planning permissions/ building regulations approval/ guarantees (accept any one of these) (l) Documents that authorise any development to a new flat or guarantees for e.g. heating, windows, doors, cavity wall insulation, structure. (m) NHBC guarantee (accept alternative new warranty schemes recognised by UK Finance Lender's Handbook (e.g. BuildZone, Zurich Municipal, BLP, Protek)) (n) As a new build, this a 10 year guarantee relating to structural quality of the build/ defects in the build enabling these to be rectified by the builder or under insurance policy. (o) EPC (p) Gives energy efficiency and environmental impact rating for the property. 	4
3(c)	<ul style="list-style-type: none"> (a) Not a TR1 as this is a new lease which is being created. (b) TR1 only appropriate for a transfer of existing title on assignment (c) Need the engrossed lease itself to be executed by seller. (d) Need the counterpart lease to be executed by the buyers. 	4

3(d)	(a) OS2 search as buying part of a registered title. (b) Result will reveal if any further entries entered on the register since the date when the official copy entries were issued. (c) The result also creates a priority period of 30 working days. (d) Seller is a company so make a company search. (e) To see whether the company has gone into liquidation.	5
3(e)	(a) Yes – transaction notifiable (b) Grant of a lease for a term of seven years or more (120 years) and price £40,000 or more (£425,000)	2
Question 3 Total: 21 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4(a)	(a) [16.1] Tenant liable to repair the “Property”. (b) Identify whether the roof is part of the “Property”. (c) If roof part of Unit 2 then tenant has obligation to repair roof , (d) [16.2] Exception for Tenant to repair if damage caused by an “Insured Risk”. (e) Storm = Insured Risk” and so not Tenant’s responsibility.	5
4(b)	(a) Fixed increase (b) Index linked (c) Open market	3
4(c)	(a) Must occupy under a lease. (b) Occupation must not be in the form of a licence. (c) Premises must be occupied by the tenant, (d) Occupation is a question of fact. (e) Premises must be occupied for business purposes. (f) Nature of business occupation is widely defined. (g) Business lease must not be excluded under Act (e.g. contracted out) (h) Various tenancies are excluded from protection even if they satisfy the prior three conditions.	8
Question 4 Total: 16 marks		