



## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 19 – RESIDENTIAL & COMMERCIAL LEASEHOLD CONVEYANCING

### 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 November 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

5 candidates or less completed this exam. For this reason, Chief Examiner comments on overall and question-specific performance has not been included as the data is too limited for meaningful trend analysis.



**SUGGESTED POINTS FOR RESPONSE**

**NOVEMBER 2023**

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> <li>(a) In writing</li> <li>(b) Signed by both parties</li> <li>(c) Contains all agreed terms.</li> </ul>	3
1(b)	<p>Correct identification and correct explanation why. Any two of:</p> <ol style="list-style-type: none"> <li>1. <ul style="list-style-type: none"> <li>(a) Buyer client</li> <li>(b) To confirm instructions and give client care information</li> </ul> </li> <li>2. <ul style="list-style-type: none"> <li>(c) Seller’s solicitors</li> <li>(d) Inform them of instructions and request pre-contract package</li> </ul> </li> <li>3. <ul style="list-style-type: none"> <li>(e) Third party</li> <li>(f) If introduced client to the firm - as a matter of courtesy.</li> </ul> </li> </ol>	4
1(c)	<p>Any four of:</p> <ol style="list-style-type: none"> <li>1. <ul style="list-style-type: none"> <li>(a) Optional enquiry on CON290 on commons registration.</li> <li>(b) Risk impedes building on the land.</li> </ul> </li> <li>2. <ul style="list-style-type: none"> <li>(c) Flood search.</li> <li>(d) Risk of flooding from River Whilt.</li> </ul> </li> <li>3. <ul style="list-style-type: none"> <li>(e) Environmental.</li> <li>(f) Risk of contamination as built on site of old factory.</li> </ul> </li> <li>4. <ul style="list-style-type: none"> <li>(g) Chancel repair.</li> <li>(h) Risk of chancel repair liability as located on Church Lane.</li> </ul> </li> <li>5. <ul style="list-style-type: none"> <li>(i) Company search.</li> <li>(ii) Seller a company –check powers and financial information.</li> </ul> </li> </ol>	8



Question Number	Suggested Points for Responses	Marks (Max)
1(d)(i)	Covenant of mutual enforcement/lease contains covenant that all leases contain same/similar covenants.	1
1d(ii)	(a) Landlord to enforce on request. (b) Enforcement at tenant's expense.  Landlord need only take action if judged justifiable.	3
1(e)	Any two of: (a) Arrangements for vacant possession. (b) Details of documents to be handed over. (c) Where completion is to take place. (d) Method of completion/ use of Code for Completion by Post. (e) Amount payable on completion. (f) Bank account details with client's firm reference. (g) Arrangements for discharging mortgage or consent from Shawcross Bank plc/ undertakings. (h) Handover of keys/ confirmation of any alarm codes/passcodes/electronic codes.	2
<b>Question 1 Total:21 marks</b>		
2(a)	(a) An estimate can be changed (e.g. if further factors come to light) (b) Fixed fee cannot be changed (e.g. even if matter becomes more time consuming or complex)	2
2(b)	(a) Reason for survey – caveat emptor/checking physical defects (b) Advise <b>not</b> to rely upon lender's valuation (c) Lender's valuation particularly inappropriate as buyers only taking 50% advance (d) Choose another type (reference e.g. condition report, HomeBuyer report or full structural survey) (e) Conclude full structural / RICS level 3 survey most appropriate (f) Justification (must provide two good reasons for the mark – e.g. age of property, unusual construction, materials used, converted property, stated concerns about major issues such as roof) (g) Credit reference to a more limited survey because of the existence of a buildings standards warranty	6
2(c)(i)	(a) A restrictive covenant preventing the erection of a wall/fence over 3 feet on southern boundary of the land (b) Given clients instructions (will be along the southern boundary), need to check height of proposed wall/fence (c) If proposal exceeds restriction, they would be bound by covenant Contact party with benefit (unlikely to be original Vendors) or insurance	4

Question Number	Suggested Points for Responses	Marks (Max)
2(c)(ii)	(a) TPO prevents protected trees being felled without permission (b) Advise clients that proposal could result in LA action (c) Identify relevant trees (d) If protected seek permission to fell/or get clients to vary plans	4
2(d)(i)	Risk of physical damage between exchange of contracts and completion will pass to the buyer immediately contracts are exchanged.	1
2(d)(ii)	(a) Buyer should usually insure the property. (b) But it is important to check the terms of the lease. (c) If lease provides for the tenant to insure, then Bhavna must maintain the policy. (d) Nile and Beth should have the right to inspect the policy or see evidence of its provisions. (e) Midland Counties must have confirmation that the insurance is in force and adequately insures their security. (f) If lease provides for the landlord (or a management company) to insure, then Bhavna is obliged to take reasonable steps to ensure that insurance policy is maintained. (g) Again, must confirm that the landlord/ management company's insurance adequately insures Midland Counties' security.	7
2(e)(i)	TID/ updated official copy entries	1
2(e)(ii)	Solicitor needs to check lender's requirement for documentation security [from Lender's Handbook].	1
<b>Question 2 Total: 26 marks</b>		
3	(a) A lease is capable of being legal (b) Deed usually required for formality (c) Exception of parol lease (d) On facts lease is for three years or less (e) Appears entitled to occupy immediately (f) Reasonable market rent being paid (no purchase price)	6
4(a)	(a) Clause 15.1 requires the outgoing tenant (Tony) to gain the landlord's (Lamon's) consent to assignment. (b) Clause 15.3 states that Lamon can make giving his consent to assign conditional upon Tony entering into an AGA. (c) Lease was granted after 1996 so Landlord and Tenant (Covenants) Act 1995 applies. (d) Tony would automatically be released from his liability on the lease covenants after assignment. (e) However, under the AGA, Tony would guarantee that Tinska will comply with the lease covenants. (f) This assists Lamon as he is concerned about Tinska's ability to pay the rent and observe the covenants in the lease. Gives Lamon a remedy against Tony as well as Tinska.	7

Question Number	Suggested Points for Responses	Marks (Max)
4b	(a) Sue Tinska for the debt (b) Unlikely to be useful as Tinska may not have the money to pay the arrears (c) Sue Tony as outgoing tenant (d) Assuming Tony entered into the AGA on assignment (e) Forfeit the lease (f) Ends the lease and enables Lamon to re-take possession against Tinska (g) Apply under CRAR Allows enforcement agents to enter Tinska's property and take control of items on the property, which can be sold after 7 days to pay arrears.	8
4(c)	(a) Landlord will receive the entire income from the tenant (b) All leasehold obligations and costs imposed on the tenant.	2
<b>Question 4 Total:17 marks</b>		