



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 4 – LAND LAW

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

Candidate performance varied with a range from very good to poor.

Candidates could often show a lack of knowledge and understanding of the unit specification. As in previous sessions, a significant number of weaker candidates were also weak in applying their subject knowledge to the facts of the scenario question that they chose to complete.

Candidates should also consider that, where applicable to the question, they are expected to cite the name of the relevant statutory and the section number.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1 Was well answered well by a significant number of candidates with many gaining full marks in their answer to this question.

Question 2(a) Was answered well although only a very small minority of candidates were able to explain with sufficient detail the key elements of a freehold/fee simple absolute in possession.

(b) Candidates fared well with their answers too with many gaining both available marks for this part question.

Question 3 Was answered well with a majority of candidates gaining the mark available for this question.

Question 4 Again, was well answered with most candidates gaining some or all of the marks.

Question 5 Was also well answered with many candidates gaining all of the available marks.

Question 6 Was well answered by many candidates

Question 7 Was reasonably well answered but many candidates lost marks by referring to the incorrect statute or section number and/or confusing the requirements for a valid contract with those for a valid deed.

Question 8 (a) and (b) Candidates often showed a lack of knowledge of this part of the syllabus.

Question 9 Was reasonably well answered by some candidates but candidates lost a mark by giving no explanation beyond that a positive covenant is an obligation to do something/a restrictive covenant an obligation not to do something.

Question 10 While a minority of candidates were able to gain all or almost all of the available marks a number of candidates showed a lack of subject knowledge of this part of the syllabus.

Question 11 Was reasonably well answered but it was disappointing that more candidates were not able to gain all or nearly all of the marks, given that this question is a common exam question.

Section B

Scenario 1

Question 1(a) Was not well answered with very little accurate explanation of the requirements of a constructive trust and little application of the law to the facts of the scenario.

(b) The answers here were also disappointing with candidates failing to get either of the available marks.

Question 2 Was also not particularly well answered which is surprising when, usually, candidates seem to have a better grasp of resulting trusts than constructive trusts.

Question 3(a) Was well answered with many candidates giving a good explanation of the basis on which a share acquired under a resulting trust would be valued.

(b) Was less well answered with candidates referring to the incorrect section number. Many candidates also referred to the abbreviation of the statute rather than setting out the name of the statute in full and candidates are reminded of the need to do this (at least once in the paper), to gain the available mark.

Question 4 Was well answered by some candidates although others were confused as to the relevant factors and did not seek to apply the factors to the scenario and so lost marks.

Question 5 A minority of candidates showed a lack of subject knowledge of this topic of overreaching. However, for the candidates who understood this topic, there were some good explanations of the need for overreaching and good application of the law to the facts of the scenario.

Scenario 2

Question 1 While some candidates were able to identify this as a freehold positive covenant, they did not provide any detail in their explanation of this in order to gain higher marks.

Question 2 Candidates who chose this scenario often showed a lack of subject knowledge of the topic of covenants.

Question 3 Was answered reasonably well with some candidates gaining higher marks although again there was some confusion with the statute and section number.

Question 4(a) Candidates showed a lack of understanding of merger or implied release. Express release was identified by a minority of candidates, but they failed to give an explanation of this sufficient to merit anything other than a mark.

(b) Was also very poorly answered with no candidates identifying that Hassan's failure to take action might be implied release.

Scenario 3

Question 1 Was well answered by some candidates who were able to gain all or virtually all available marks in their answers to this question.

Question 2 Was answered well by some candidates who were again able to gain all or virtually all of the available marks by applying the law to the facts of the scenario..

Question 3 A very small number of candidates gave excellent answers again gaining all or virtually all of the available marks with their answer to this question. However, a significant number of candidates showed little knowledge of the subject matter of this question i.e. prescription and also were unable to/did not apply the law to the facts of the scenario.

Question 4 (a) Was not well answered by the candidates and the same was also true of 4**(b)**.

Question 5 Was also not well answered with candidates seeming to not have revised this topic.

SUGGESTED POINTS FOR RESPONSE**NOVEMBER 2023****LEVEL 3 UNIT 4 – LAND LAW****SECTION A**

Question Number	Suggested Points for Responses	Marks (Max)
1	Any three of: <ul style="list-style-type: none"> • Easier deduction of title (credit easier proof of title) • Eliminates examination of title deeds • Easy to see third party interests • State guarantee (credit compensation for errors) • Extent of property shown on title plan • Reduces drafting to a form filling exercise 	3
2(a)	<ul style="list-style-type: none"> • Fee simple absolute in possession (credit 'freehold' as alternative) • Fee simple – can be inherited by anyone • Absolute – not liable to be cut short • In possession – starts immediately (Credit 'receipt of rent and profits') (credit explanation even if not allocated specifically to part of the phrase) • Term of years absolute (credit 'leasehold' as alternative) • fixed term (credit fixed maximum duration) • or periodic • can start up to 21 years in future 	4
2(b)	<ul style="list-style-type: none"> • legal easements and profits • legal rentcharge • charge by way of legal mortgage • rights of entry in legal leases and legal rentcharges 	2
Question 2 Total: 6 marks		
3	<ul style="list-style-type: none"> • a right of way • a restrictive covenant 	1
4	<ul style="list-style-type: none"> • Any valid example of fixture • Significance: part of land and passes with it on sale • Relevant case e.g. Holland v Hodgson (1872) 	3



Question Number	Suggested Points for Responses	Marks (Max)
5	One of: <ul style="list-style-type: none"> • property register • description of property • credit rights benefiting property (also credit reference to filed plan) • freehold/leasehold estate • proprietorship register • name of owner • class of title (also credit reference to Restriction but first two bullet points important) • charges register • burdens affecting property • credit example e.g. legal charges, easement 	3
6	<ul style="list-style-type: none"> • Guarantee by land registry • of accuracy of register • compensation given for error by registry 	3
7	<ul style="list-style-type: none"> • s.2 Law of Property (Miscellaneous Provisions) Act 1989 must be: • in writing • contain all agreed terms • signed by all parties 	4
8(a)	<ul style="list-style-type: none"> • at common law (accept as alternative since 1189) • By lost modern grant • Under the Prescription Act 1832 	3
8(b)	<ul style="list-style-type: none"> • without force • Without permission • Without secrecy 	3
Question 8 Total: 6 marks		
9	<ul style="list-style-type: none"> • a positive covenant is an obligation to do something/ –a restrictive covenant is an obligation not to do something • look at substance not wording • if a covenant requires money to be spent/time then it will be a positive covenant 	2
10	<ul style="list-style-type: none"> • Arises where legal title held in name of one person • With contribution from another Requirements: <ul style="list-style-type: none"> • common intention or agreement • contribution recognised by the court • Decided case e.g. Grant v Edwards (1984), Lloyds Bank v Rosset (1991) 	5

Question Number	Suggested Points for Responses	Marks (Max)
11	<ul style="list-style-type: none"> • Loan over fixed period • Payment of interest only • Capital intended to be paid off by separate investment e.g. insurance policy • Premium for policy paid to insurance company 	4
Section A Total: 40 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> • No claim • Not constructive trust • No common intention/agreement apparent • Insufficient contribution • Case e.g. Gissing v Gissing (1970); Lloyds Bank v Rosset (1991) • No right to occupy as not a beneficiary of a trust 	6
1(b)	<ul style="list-style-type: none"> • Family Law Act 1996 • Spouse's right of occupation 	2
Question 1 Total:8 marks		
2	<ul style="list-style-type: none"> • Resulting trust • Contribution to original purchase price • Where property in the name of another • Case e.g. Bull v Bull (1955) • Apply to scenario: contribution not a gift 	5
3(a)	<ul style="list-style-type: none"> • Valued as proportion of contribution to original price • Now as in proportion to current value 	2
3(b)	<ul style="list-style-type: none"> • Under s.14 • Trusts of Land and Appointment of Trustees Act 1996 • She can apply as beneficiary under trust 	3
Question 3 Total:5 marks		

Question Number	Suggested Points for Responses	Marks (Max)
4	<ul style="list-style-type: none"> • s.15 Trusts of Land and Appointment of Trustees Act • intention for which property was bought • purpose for which property is held • interests of secured creditor <p>Apply:</p> <ul style="list-style-type: none"> • property bought as home for Mark • still held for that purpose • still subject to mortgage, so interest of secured creditor relevant • *credit reasoned conclusion either way 	6
Scenario 1 Total: 30 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> • freehold covenant • Positive covenant • Obligation between parties relating to land • Positive as required to do something e.g. spend money 	4
2	<ul style="list-style-type: none"> • Issue of burden of covenant passing • Whether burden has passed to Bob • Burden of positive covenant usually does not pass • Relevant case e.g. Austerberry v Oldham, Rhone v Stevens • Exception under principle of Halsall v Brizell • Explain principle: if successor to original covenantor takes benefit of facility he is bound by covenant • Apply: covenant made in deed • Apply: Bob is using driveway so is bound by covenant • Bob not correct to say he is not bound 	9
3	<ul style="list-style-type: none"> • Deed (credit TR1) • needed under s.52 Law of Property Act 1925 • s.1 Law of Property (Miscellaneous Provisions) Act 1989 • in writing • shows on its face intention to be a deed • signed and witnessed 	6

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<ul style="list-style-type: none"> • Merger of 1 and 1A Willow Avenue • explain meaning; sole owner of benefited and burdened land/common ownership • Express release • by Hassan • through Deed of discharge • Mutual agreement • Implied release 	7
4 (b)	<ul style="list-style-type: none"> • Hassan’s failure to take action • May count as implied release • By Hassan who has benefit of covenant • Relevant case e.g. Shaw v Applegate 	4
Question 4 Total: 11 marks		
Scenario 2 Total :30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> Claim for easement <p>Essential characteristics:</p> <ul style="list-style-type: none"> two pieces of land (dominant and servient) separate ownership easement must benefit dominant tenement capable of grant, so not vague credit: not claim for total possession, no expenditure on servient owner 	7
2	<ul style="list-style-type: none"> There are two pieces of land Separate ownership Easement would benefit Simon's land Definite track so capable of grant No claim for total possession on facts of scenario Credit reasoned argument either way 	5
3	<ul style="list-style-type: none"> No evidence of express or implied grant Created by prescription continuous user – and uses regularly use as of right - and facts suggest this In fee simple – 2 freehold properties 20 year use /prescriptive period and has used for 30 years Creation at common law, or under lost modern grant, or Prescription Act 1832 	6
4 (a)	<ul style="list-style-type: none"> Third party interest in registered land Not shown on register Binding on buyer or lender Land Registration Act 2002 (full name required) Credit example e.g. interest of person in actual occupation under para. 2 Schedule 3 	4
4 (b)	<ul style="list-style-type: none"> No overriding interest Occupation but no contribution/no interest Other relevant comment e.g. not a tenant Case e.g. Williams & Glyn's Bank v Boland (1980) 	4
Question 4 Total: 8 marks		
5	<ul style="list-style-type: none"> Absolute freehold title Equivalent to fee simple absolute in possession Subject only to entries on the register And overriding interests 	4
Scenario 3 Total: 30 marks		