

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021
LEVEL 3 – UNIT 10 - 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 June 2021 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

There was a good level of knowledge from the candidates however, there were also a few questions where reading the question properly would have resulted in higher marks. Some of the scripts submitted by candidates show that the candidates did not have sufficient knowledge, understanding and skills to enable them to achieve a pass. This is reflected in the fact that some such scripts scored less than 20 marks.

A majority of the questions gave opportunity for the best candidates to shine, without being unduly onerous for others.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

There were a number of candidates that failed to note that the general obligations were defined in the 2019 edition, many referred to the previous 2011 edition.

1(b)

Most candidates identified the necessity to add the cooker into the contract however stronger candidates identified where this should be added and the necessity to attach the TA10 to the contract.

(c)

Most candidates identified the necessity to obtain a redemption figure to ensure that the sale price is sufficient to cover costs however many failed to note that there may be an early redemption penalty or that the statement may take some time to be provided which may cause delay.

(d)

Lack of knowledge of underpinning law. Stronger candidates identified the necessity for both the seller and buyer to execute the Transfer by applying the case study however many failed to refer to the LPA (1925).

(e)

A majority of candidates were able to identify likely consequences to the firm and were therefore able to obtain full marks for this question. Several candidates wandered off into impact of clients. Pleasing to see knowledge of the importance of undertakings.

(f)

This was a well answered question however weaker candidates did refer to what may be found on a purchase completion statement (i.e search fees).

Question 2(a) Well answered

(b)

Many candidates noting the Green Deal Scheme, some candidates did not state that the EPC identified the energy efficiency to the property. Stronger candidates did state that the EPC would identify ways to cut bill and reduce carbon emissions. Many candidates just repeated it measured energy performance

(c)

Pleasing to see some good knowledge from many candidates. Some candidates started to discuss the CON29DW. A majority of candidates were able to identify the correct entries in a CON29.

(d)

Candidates struggled to identify the necessity to comply with the mortgage offer conditions (i.e buildings insurance). Most candidates identified the necessity to carry out AML checks and ensure the property was marketable.

Question 3(a)

Stronger candidates identified the completion time in the Contract of 2pm and gave suitable suggestions to remedy the client's wishes (i.e completing the day before).

(b)

Some candidates did not note that the property was in Wales and therefore obtained no marks.

(c)

Weaker candidates did not give an explanation of the purpose of the document and therefore did not achieve the marks available. Stronger candidates referred to the case study and noted that the property was in Wales and would therefore require a LTT form as opposed to an SDLT5 certificate.

(d)

Stronger candidates noting that the buyers will only hold a beneficial interest, few candidates identified that the mortgage is not a legal charge until registered.

(e)

Stronger candidates referred to the case study in relation to the Form A restriction which would have been required if the client's were to hold property as TIC. Better answered applied facts.

**SUGGESTED POINTS FOR RESPONSES
LEVEL 3 – UNIT 10 – CONVEYANCING**

The purpose of this document 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 2021 examinations. The Suggested Points for Responses do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed. Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

Question Number	Suggested points for responses	Max Marks
Q1(a)	<p>A definition that identifies the general obligations defined in the protocol for residential conveyancing transactions up to a maximum of three marks:-</p> <ul style="list-style-type: none"> (a) To ensure that the transaction can proceed smoothly, you should ensure that all information is shared, subject to any confidentiality obligations that have not been waived. (b) Managed and covered timing and other expectations and linked transactions such as chains appropriately (c) Consider any potential conflicts of interest during the whole transaction. (d) Ensure that you comply with duties to lenders. (e) Act with courtesy and co-operate with third parties. (f) Respond promptly particularly in relation to despatch and receipt of money (g) Agree at an early stage how you will communicate with all others involved and respond promptly to communications. (h) Ensure you always comply with regulatory and statutory requirements and SRA warnings. (i) Ensure proper internal and external arrangements for file management have been communicated to your client in relation to holiday and sickness absence. (j) Where you are acting for a lender as well as for either the buyer or the seller, the duties owed to the lender client are professional obligations and are subject to the lender client's specific instructions. 	3

	<p>(k) Maintain high standards of courtesy and deal with others in a fair and honest manner.</p> <p>(l) Use the most up-to-date version of the Code for Completion by Post, contract, forms and formulae and accompanying guidance published by the Law Society or such approved equivalent publications</p> <p>(m) Ensure you comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and client identification requirements.</p> <p>(n) Ensure that your publicity and costs information (including any website) meets the requirements of the SRA rules and codes of conduct and, to ensure transparency of costs and expenses, ensure you give an accurate estimate to your clients at the time of engagement and adjustments thereafter if relevant.</p> <p>(o) Make a record of the advice given to seller, buyer and lender clients at all stages.</p> <p>(p) Have regard to the risk management requirements of your professional indemnity insurer.</p> <p>(q) Have a continuing awareness of potential cyber security issues.</p>	
Q1(b)	<ul style="list-style-type: none"> • Insert contents price into front page of contract • Insert into Contract as chattels • Add special condition/utilise pre printed special condition (3a) • Attach TA10 to contract 	4
Q1(c)	<ul style="list-style-type: none"> • To ensure the sale price is high enough to repay all loans and expenses. • Early Redemption Penalty dates. • Lenders may vary in time taken to send 	2
Q1(d)	<ul style="list-style-type: none"> • S52 LPA 1925 to be valid, deed must be executed • Sellers must always execute • LR will not register a Transfer that has not been executed by seller. • Good practice for all parties to execute • Buyer must executed because entering into indemnity covenant. 	3
Q1(e)	<ul style="list-style-type: none"> • Partners could be ordered by the Court to make good the breach • Could result in partners paying off mortgage from their own resources • Disciplined by the SRA • In extreme cases imprisonment however breach of undertaking being a civil rather than criminal wrong. A fine imposed by SRA is a more likely outcome. • Buyer's conveyancer can sue partners for breach 	4

	<ul style="list-style-type: none"> • Client complaint • Breach of conveyancing protocol 	
Q1(f)	<ul style="list-style-type: none"> • Sale price • Disbursements (i.e Land Reg fee) • Solicitors fees • Chattels • Mortgage redemption figure • Estate agents fee • Net amount due 	5
Question 1 Total		21 Marks

Question Number	Suggested points for responses	Max Marks
Q2(a)	<ul style="list-style-type: none"> • The types of beneficial co-ownership (JT and TIC) • Doctrine of survivorship does not apply • Advice to be TIC • Enables the clients to identify specific shares in the property to protect their contributions • Enables the shares to be left by will so Sabrina's child could benefit • Alternative advice to be JT acceptable if justified e.g. they are married and in a stable relationship. • Advise to complete Declaration of Trust 	5
Q2(b)	<ul style="list-style-type: none"> • I Must be less than 10 years old • Identifies energy efficiency of the property • Identifies the property's environmental impact • Identifies ways to cut fuel bills/ reduce carbon emissions • Identifies if property is subject to the Green Deal 	5
Q2(c)	<ul style="list-style-type: none"> • Search will reveal if property is on common land and subject to any rights • Building regulations/any contraventions? • See if roads are adopted/road proposals • Is Land required for public purposes • Is land to be acquired for road works • Drainage Agreements via private sewer • Road/Rail and Traffic schemes • Outstanding Notices • Notices/Orders/Directions and Proceedings under Planning Acts (i.e Tree Preservation Order) • Is property in a Conservation Area • Compulsory Purchase • Contaminated Land 	6
Q2(d)	<ul style="list-style-type: none"> • Offer received and accepted • Offer conditions complied with • Title is marketable/ no onerous conditions • Identity checks satisfied • Property valuation accords with offer • Clients have sufficient funds from their own resources apart from mortgage • Buildings insurance arranged to take effect from exchange 	5
Question 2 Total		21 Marks

Question Number	Suggested points for responses	Max Marks
Q3(a)	<ul style="list-style-type: none"> • Funds sent to sellers on day of completion/Cleared funds • Keys will need to be released by seller's solicitors, usually to agent upon receipt of funds • Completion time in Contract states 2pm • Suggest earlier time in Contract • Sellers will also need to be vacating on day of completion. • Credit for conclusion i.e. that the clients' request is not feasible 	4
Q3(b)	<ul style="list-style-type: none"> • As property is in Wales SDLT will not be payable • The buyer will have to pay Land Transaction Tax 	2
Q3(c)	<ul style="list-style-type: none"> • DS1/Evidence of discharge of current mortgage – shows previous mortgage has been discharged • Certified copy Transfer (TR1) - Must be signed by seller as confirms their agreement to sell • Certified Mortgage Deed/Legal Charge- shows client's agreeable to mortgage terms and conditions • Land Registry Fee – payable in accordance with price • Land Transaction Return Certificate (LTT) - evidence of Land Tax payment • Disclosable Overriding Interests Form 	5
Q3(d)	<ul style="list-style-type: none"> • Lawyer will be in breach of duty of care to client and mortgage lender and may be liable for costs. • Buyers are not the legal owners although they hold a beneficial interest • Mortgage does not become a legal charge until registered • If out of priority period a third party interests may gain priority over buyer and lender. 	4
Q3(e)	<ul style="list-style-type: none"> • The Mahmood's names have been entered correctly in the proprietorship register • There is a Form A/TIC restriction in the proprietorship register • The Charge to Framer Bank UK Plc has been registered correctly in the charges register 	3
Question 3 Total		18 Marks