

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 UNIT 17 – 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

The question paper was a fair assessment. It covered a spectrum of questions from easier to more difficult questions. It also covered the required proportion of the syllabus.

Although there are a number of fails this does not seem to be an issue with the paper, as a large proportion of the candidates did perform well. Having reviewed a number of the fails, these do not appear to be linked to issues with the paper but rather a lack of conveyancing knowledge.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

This question was focused around the first part of a conveyancing transaction. Overall most candidates dealt with ID checks well but missed source of funds requirements. When we are dealing with due diligence at the beginning of any transaction, we would also be checking source of funds.

The rest of the question focused around an OCE. Candidates need to ensure they clarify the steps that are needed so once you identify that a 2nd trustee is needed, make sure you say why they are needed (overreach) and then how you practically appoint one. Candidates needed to check the facts they were given. What can help is to use the clients' names to help ensure that the fact pattern is applied correctly. For example, for question 1c the fact pattern said the client would be getting a mortgage so their lender would expect a first charge.

Question 2

The first part of question 2 involved writing an email to a client. The question said what was needed under the lease. Candidates need to be careful when reading the question. By saying "under the lease" the question was asking the candidate to go through the lease and state what was required under the lease. Some candidates wrote about "planning" which was not needed.

The next question dealt with exchange. Candidates approached this answer differently and there were varied answers. However, very few mentioned that you must have your client's authority before you exchange and you must inform them after you have exchanged. Insurance was often missed as well. You must check your client has an insurance policy ready as it is a lender requirement. Candidates need to ensure that they read the question fully and address all parts. Most dealt with the process of exchange but some missed steps before exchange.

The last part of question 2 was asking about OS1 searches and a lot of candidates missed the "search from" date which is very important.

Question 3

The main point which was missed the most was modifying the covenants and linking clause to the standard conditions. This is a standard entry for leasehold properties. Candidates should annotate up a TR1 and add possible clauses which need to be added. Another common clause which more candidates picked up on is the indemnity chain which was seen in the OCE entry.

The next question was dealing with post completion. Lots of candidates missed that you need your client's authority before submitting the SDLT return. Candidates need to consider that when acting for a client you need their authority before doing most things.

The last question was also on post completion and asked, "what additional steps need to be taken under the lease". In questions like this candidates need to review the lease and see what the lease says.

Question 4

The last question was focused around unregistered land. The first two parts of the question dealt with searches. The first part was reviewing an extract of a local search. The key here was to identify what issue the search had brought up and then how to deal with the identified issues. Candidates needed more detail in their answer on how to resolve the issue. So, with regards to the unadopted road we would need to check if there is a right of way and ask about maintenance etc.

For the second part of the question the candidates needed to look at the facts they were given and decide what additional searches were needed. One way in which candidates could improve their answers is to explain what search they are doing; explain why they are doing that search with reference to the facts and also explain what that search will tell them. For example: “A Coal mining search. The house was built for miners therefore suggesting mining has occurred in the area. Need to establish as there is a risk of subsidence etc”.

The next part was about title guarantee in the contract which is different to the class of title, like absolute title on the OCE. Title guarantee is about the implied covenants in the contract.

The last part involved listing what documents you would expect to see in an epitome for unregistered land. This question required a list of documents which you would expect to see and discussion on what is a good root of title was not needed.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 UNIT 17 – CONVEYANCING

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. CDD required under the Money Laundering Regulations 2017 b. Compliance with MLR 2017 also required by the LSCP/ UK Finance Lender's Handbook c. Must verify Mr and Mrs Patel's identity with current passport, driving licence or birth certificate. d. Must also have proof of Mr and Mrs Patel's current address within last three months by a bank statement, utility bill or council tax bill e. Application - The £10,000 savings must be verified by a recent bank statement. f. Application - The gift of £12,000 from Mrs Patel's parents must be verified by requesting ID from the parents and proof of the source of the funds. g. Application - check Mr and Mrs Patel have disclosed the gift to the lender and write to the lender to confirm there is a gifted deposit. <p>Application - Carry out bankruptcy search on Mrs Patel’s parents</p>	7



1(b)(i)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. Entry 3 is the form A restriction- tenants in common. This means there is no right of survivorship so if one party dies the other does not automatically inherit and cannot sell by themselves b. Application- Which means the sellers Mr and Mrs Steel owned the property as tenants in common c. Application- The facts confirm that Mr Steel has died therefore Mrs Steel cannot sell on her own- the restriction prevents this d. We need to raise enquiries with the seller’s solicitor as they will need to appoint a 2nd trustee to overreach any beneficial interest in the property e. Overreaching ensures Mr and Mrs Patel will buy the property free of beneficial interests f. Lender will also require a 2nd trustee appointed to overreach any beneficial interest in the property g. A 2nd Trustee can be appointed by deed of appointment and made party to the contract or can be appointed in the transfer prior to completion h. The buyers solicitor will need to request a copy of the death certificate The land registry will require a copy of the death certificate with the AP1 i. Legal estate would have devolved to Mrs Steel as surviving legal joint tenant. 	9
1(b)(ii)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. Proprietorship Register Entry 3 is a restriction which prevents the property from being sold without the consent of the lender of the current registered charge b. Application-There is an existing registered charge (Charges Register entry 2) and the owner of that charge is Halifax Building Society (Charges Register entry 2) c. Technically Halifax BS have to consent to the sale to the Patels and the transfer to the Patels will not be registered if there is no consent however as the charge is being removed this is an unnecessary step d. Application- As the Patels are taking out a new mortgage with Natwest who will require a first legal charge, the existing charge to Halifax BS must be removed from the title on completion 	6

	<p>e. We need an undertaking to discharge the Halifax BS mortgage and to provide evidence of discharge on completion from the seller's solicitors (usually provided in TA13)</p> <p>f. When registration of the Patels transfer and mortgage is applied for, the LR will discharge the Halifax BS mortgage along with the corresponding restriction in Entry 4.</p>	
		<i>15 marks</i>
	Question 1 Total:22 marks	
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<p>Responses should include:</p> <p>a. Suitable introduction and summary to the client</p> <p>b. (i)Suitable paraphrase and explanation of - Para 10 of the lease says “Not to keep any animal or bird on the Property without the prior written consent of the Landlord, which consent may be revoked at any time.” Which means the buyers need the landlord’s consent in order to have a dog at the property (candidate can paraphrase) to the client</p> <p>c. Application- Should contact the landlord prior to exchange to ensure they will agree</p> <p>d. Application- Email should also inform that consent can be revoked at any time</p> <p>e. Application-This could be an issue if there are noise complaints from a neighbour as the landlord could decide to withdraw consent (mark for sensible suggestion)</p> <p>f. (ii)Suitable paraphrase and explanation of -Para 8.1 says “ Not at any time during the Term to make any structural alterations in or additions to the Demised Premises or any part thereof or to cut main or injure any of the walls or timbers.” To the client</p> <p>g. Application-Therefore, removing the wall is not permitted under the lease.</p> <p>h. Application- Could still approach the landlord to see if they will agree client may want to approach before exchange</p> <p>i. (iii)Suitable paraphrase and explanation of- 8.2 says “ Not at any time during the Term to make any non- structural alterations in or additions to the Demised Premises without first having made a written application (accompanied by all relevant plans and specifications) in respect thereof to the Lessor (such consent not be required in the case of minor alterations or additions) PROVIDED ALWAYS THAT all costs and expenses as shall be incurred by the Lessor in the considering of such requests</p>	12



	<p>including though no by way of limitation any legal or surveyors fees including any VAT thereon shall be discharged by the Lessee and in the event that the same shall be requested by the Lessor as a condition of such consent the Legal Representative of the Lessee shall undertake with the Legal Representative of the Lessor to discharge the foregoing costs and expenses whether or not such consent is granted” to the client</p> <p>j. Application-The buyer can install their windows but they need to seek the landlords consent</p> <p>k. Application- The buyer will be liable for any costs incurred by the landlord</p> <p>l. Application- Email should make it clear to Mr and Mrs Patel will be responsible for the landlords fees.</p>	
2(b)	<p>Responses should include:</p> <p>a. Take clients authority to exchange run through contract check its correct and happy with proposed dates</p> <p>b. Check buildings insurance- quote is ready. Client is aware insurance required from exchange. Lender requirement</p> <p>c. Application-We are holding our clients signed contract and deposit and is not a chain therefore formula B is most likely to be used</p> <p>d. Application- Alternative- Formula A if contract and deposit sent to sellers solicitor to hold to order pending exchange and then phone to exchange</p> <p>e. By exchanging using the formula the solicitors are bound by undertakings which they must comply with</p> <p>f. Involves telephoning sellers solicitor and running through contract. Fill in the contract including -Date and time</p> <p>g. Inform client once have exchanged- tell them to put insurance in place insurance</p> <p>h. Complete memo of exchange and sent to sellers solicitor with the original contract to comply with undertakings</p> <p>i. Send deposit to sellers’ solicitors to comply with undertakings</p>	6

2(c)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. OS1 b. Application- Date would be 10th June 2023 Because this is the date the official copies of the title were printed c. c. Application- Applicant would be National Westminster Bank plc This means the search result will protect both the buyers and the lender d. The search reveals whether any new entries have been made on the title since the date of the official copy entries provided e. It also provides a 30 working day priority period during which the Patels application for registration should be lodged f. Otherwise a risk of a third party gaining priority over both the transfer and a charge. For example a new mortgage charge 	6
Question 2 Total: 24 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. Box 2- Address should be as the OCE so add “Ground Floor” b. Box 4 – Sellers full name should be added Kay Leanne Steel c. Box 4 - Delete name of John Steel and Replace with name of 2nd trustee appointed d. Box 5 - Transferees full name should be Chirag Patel and Rupal Patel e. Box 8- price should be written as well Two Hundred and Twenty Thousand Pounds f. Box 9 or 11 - Insert clause modifying the covenants for title implied by s4(1) b LP(MP)A 1994. Accept reasonable attempt at drafting the clause or explanation of need for and effect of clause. g. Required under SC 4.6.3 h. Box 11- insert an indemnity covenant. Accept reasonable attempt at drafting the clause or explanation of need for and effect of covenant. Example:- “The Transferee covenants with the Transferor that it will observe and perform the covenant referred to in entry 1 of the Charges Register of Title number TG224667 as at xx and indemnify the Transferor against any liability for its future breach or non-observance.”. Required under SC 4.6.4 i. Box 10 - selecting joint tenancy j. Box 11 - explanation of what the execution clause should say or accept reasonable attempt at drafting clauses for both Mrs Steel and the 2nd trustee. 	10



3(b)	<p>Responses should include:</p> <p>Application-</p> <ul style="list-style-type: none"> a. No SDLT Payable b. As the buyers are first time buyers c. LTR still needs to be submitted because the transaction is notifiable/price over 40,000 d. Submit form SDLT1 online e. Mr and Mrs Patel will need to have authorised you to do so either by signing the SDLT1 draft or can be a separate SDLT for used by some firms f. SDLT1 must be submitted within 14 days of completion, otherwise penalties are payable g. We will then need to submit form AP1 to the land registry with the mortgage deed, SDLT5,TR1, deed of appointment of 2nd Trustee, note that Halifax charge has been electronically discharged and death certificate of John Steel attached. h. The AP1 should be submitted within the OS1 priority period which is 30 working days i. Once the AP1 in the priority is protected again however if the AP1 is not submitted prior to the OS1r expiring the title is not protected and other applications can be made j. Application - There will be a fee payable to the land registry of £150 (award mark if amount not there) 	11
3(c)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. Suitable explanation/paraphrase of Para 11 it says “ Within four weeks next after any Deed of transfer assignment subletting charging or parting with possession (whether mediate or immediate) or devolution of the Demised Premises (except for a holiday letting) to give notice in writing of such transfers assignment subletting charging parting with possession or devolution and the name and address and description of the assignee sub-lessee chargee or party upon whom the Terms or any part thereof shall devolve (as the case may be) and to deliver to the Lessor or its Solicitors within such time as aforesaid a certified copy of any instrument effecting or evidencing the same and to pay to the Lessor a fee of Fifty Pounds or such other reasonable fee as stipulated by the Lessor for the registration of 	5

	<p>notice of every such Deed together with Value Added Tax payable thereon at the current rate for the time being in force”</p> <p>b. Application - We must service notice of assignment on the landlord</p> <p>c. Application -This must be served within 4 weeks from completion</p> <p>d. Application -A fee of £50 is payable plus VAT</p> <p>e. Application -The landlord requires a copy of the TR1</p>	
Question 3 Total:26 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<p>Responses should include:</p> <p>The search reveals: -</p> <p>a. 1.1 c The property is in a conservation area This means any works to the exterior of the property may need additional consent (must be identified to gain full marks)</p> <p>b. The buyers want to put new windows – they may need conservation area consent for this</p> <p>c. 2.1 Main street is maintained at the public expense but Oakhill Road is not (must be identified to gain full marks)</p> <p>d. Need to review the title documents to ensure there is a right of way contained</p> <p>e. If no right of way in title inform lender obtain indemnity policy/stat dec If applicable</p> <p>f. We need to raise requisitions with the sellers solicitor to find out more information including any cost contributions to maintenance</p> <p>g. They may not know as they are executors</p> <p>h. 2.2 there is a public footpath- inspect it- ask if there have been any issues</p> <p>i. Reveals enforcement notice (must be identified to gain full marks)</p> <p>j. Ask seller to make enquiries regarding what it relates to.</p> <p>k. Cannot proceed with purchase until it has been dealt with as breach will pass to our client</p>	8



	<ul style="list-style-type: none"> l. It is not possible to get indemnity insurance for breach of planning as council have taken enforcement proceedings m. Should ask seller's solicitor for copies of all planning permissions to check conditions been complied with the correspond with what is revealed in search (must be identified to gain full marks) n. Needs to check the sellers property information form (TA6) as some of these queries may have been addressed for example regarding the private road. 	
4(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. Environmental Search b. This should be done in all purchases/ is a lender required search and we are acting for the lender/ It will confirm if there are any contaminated land concerns, flooding issues, subsidence / the property is located in a historical mining area/ the property is near a river c. Flood risk search d. The property is near a river so potential risk of flooding/ important for insurance purposes e. Water and Drainage (CON29W) f. This search will confirm if the property is connected to mains drainage as the client did not know if it was private or not. Award mark for other sensible reasons including water meter, charges etc g. Chancel Search h. The property is located near a church and could be liable for upkeep and the search will reveal if there is a potential liability and indemnity insurance should be obtained/alternatively could mention chancel indemnity insurance as some firms obtain indemnity insurance and never do search as it is cheaper i. Coal Mining Search (CON29M) j. The house was built for miners and therefore suggests mining has occurred in the area/ will confirm if mining has occurred, risk of subsidence etc k. SIM Search <p>To discover if the title is already registered/ to check any cautions against first registration.</p>	8

4(c)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. Title Guarantee relates to implied covenants b. Limited is used when the seller has no personal knowledge of the property c. Application -The owner has died and is therefore not the seller. The property is being sold by the executor d. The executor has no personal knowledge of the property e. The implied covenant is limited relating to the seller promising there have been no charges, incumbrances or 3rd party rights created since the deceased bought the property f. Therefore the seller can only provide limited information and it is for the buyer to fully investigate and inspect g. Application - Limited title guarantee is acceptable in these circumstances 	6
4(d)	<p>Responses should include:</p> <ul style="list-style-type: none"> a. 1950 Conveyance to Albert and Ethel Matthews - root of title b. Land charge search results (if available) c. Grant of representation of the survivor or Albert / Ethel Matthews d. Memorandum of assent on grant e. 1989 Assent to Phyllis Matthews f. Grant of probate of Phyllis Matthews g. Any other sensible suggestion eg receipted mortgages, deeds of grant, deeds of covenant 	6
Question 4 Total:28 marks		