

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 UNIT 9 – LAND LAW

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

Overall the pass rate decreased by a notable amount, for the second successive session. As has been mentioned many times in the past, the most straightforward issue which candidates seem to neglect is the need to write four full answers, rather than spending uneven amounts of time leading to a brief or non-existent fourth answer. The importance of teaching good exam technique is vital.

In terms of paper performance, as is always the case performance was notably strong on the question about adverse possession. Apart from that question, candidates generally performed better on essay questions compared to problem questions. Knowledge was stronger on fixtures and fittings, farm and family estoppel cases and constructive trust. Two areas where there was a noticeable lack of knowledge were solus agreements in mortgages and estoppel in commercial cases (especially the impact of Cobbe).

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

This was a two-part question which was balanced between an area that candidates tend to find very straightforward (fixtures and fittings) and one that is more complex (owning land above and below the ground). The marks awarded reflected this, higher for (a) than for (b) but with an overall mean very much in the middle of the overall performance.

Question 2

As already noted, part (b) of this question saw notably poor performance. This was to an extent expected, although it is disappointing how poor the performance was in reality. This is one of the most complex parts of the syllabus and involves a case which candidates often struggle to understand. A number of candidates simply did not understand the question at all, choosing to focus on part (a) only.

Question 3

This was a well answered question. This was pleasing as it is an area where the law has changed in recent years. The importance of including recent higher court decisions has been repeatedly highlighted in past Chief Examiner reports and it is pleasing to see this being taken into account.

Question 4

The question performed well in testing different candidates' knowledge.

Section B

Question 1

This was the second most unpopular question on the paper, but performance was well within the expected range.

Question 2

As has been discussed in previous reports, adverse possession is a topic which candidates know is likely to be on the paper and which is relatively easy to prepare for. As a result, it is not surprising that higher marks were gained for this question.

Question 3

Performance on this question was not particularly strong but given that it is arguably the hardest topic in the entire unit (interests in registered and unregistered land) it actually was pleasantly surprising that candidates did reasonably well as a whole.

Question 4

This was a question which would probably have had quite an average profile, except for a poor set of answers to part (b). There seemed a notable gap in candidate's knowledge on this particular point (solus agreements in mortgages) despite it being identified as part of the unit spec. It seemed a notable area where knowledge was lacking.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 UNIT 9 – LAND LAW

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Responses should include:</p> <ul style="list-style-type: none">• Definition of land• Recognition of real property vs personal property• Distinction drawn between fixtures vs fittings/chattels• Some discussion of historic tests as to distinguishing (degree of attachment/ purpose of attachment)• Some discussion of more modern approaches to distinguishing• Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none">• Further detail as to tests for distinguishing• Criticisms of the various tests• Concept of “common sense approach”• Further relevant case law to support the above points	16
1(b)	<p>Responses should include:</p> <ul style="list-style-type: none">• Recognition that land extends into three dimensions• Explanation of the maxim <i>ad coelum et ad inferos</i>• Some discussion of extent to which land includes the air above• Some discussion of extent to which land includes the soil below• Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none">• Further breadth/depth of discussion on above points• Relevance of boundaries – potential claims for trespass• Statutory regulation e.g. Civil Aviation Act 1982, Petroleum Act 1938• Special rules applying to objects in the soil e.g. crops, treasure etc.• Further relevant case law to support the above points	9
Question 1 Total:25 marks		



Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Explanation of place of proprietary estoppel within land law • Identification of equitable nature of the doctrine • Identification of usual formalities required for disposition of an interest in land, especially s2 LP(MP)A 1989 • Identification of requirements for promissory estoppel to arise, and discussion on each point, e.g.: <ul style="list-style-type: none"> ○ Promise: especially lack of single clear express promise in some such cases ○ Reliance/detriment: especially willingness of court to consider wide range of behaviour/decisions ○ Unconscionability and remedies: balance between doing justice to claimant and protecting e.g. other family members <p>Responses could include:</p> <ul style="list-style-type: none"> • Further breadth/depth of discussion on above points • Further relevant case law to support the above points 	17
2(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Explanation of place of proprietary estoppel within land law (if not in (a)) • Identification of equitable nature of the doctrine (if not in (a)) • Identification of usual formalities required for disposition of an interest in land, especially s2 LP(MP)A 1989 (if not in (a)) • Identification of requirements for promissory estoppel to arise, and discussion on each point, e.g.: <ul style="list-style-type: none"> ○ Promise: stricter requirements for certainty in commercial cases, need for a certain interest not a mere expectation of future negotiations ○ Reliance/detriment: discussion of how this might be demonstrated in commercial cases ○ Unconscionability and remedies: a much stricter approach, given parties should comply with formalities. Possibility of <i>quantum meruit</i> as alternative remedy <p>Responses could include:</p> <ul style="list-style-type: none"> • Further breadth/depth of discussion on above points • Further relevant case law to support the above points 	8
Question 2 Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
3	<p>Responses should include:</p> <ul style="list-style-type: none"> • Basis of constructive trusts in land: common intention • Qualification stage: distinction between express and implied intention • Discussion of how far contribution to bricks and mortar needed to create trust where express common intention • Discussion of how far contribution to bricks and mortar needed to create trust where no express common intention • Detailed analysis of key cases e.g. <u>Lloyds Bank v Rosset (1990)</u>, <u>Stack v Dowden (2007)</u>, <u>Jones v Kernott (2011)</u> etc. • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Explanation of distinction between legal and equitable title and how trusts operate • Identification of implied trusts as a form of trust created by operation of law • Further breadth/depth of discussion on above points • (Brief) consideration of resulting trust as alternative to constructive trust • Impact of contribution to bricks and mortar on quantification of share 	25
Question 3 Total: 25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4	<p>Responses should include:</p> <ul style="list-style-type: none"> • Recognition of distinction between leases and licences and some consideration of why distinction is legally important • Discussion of requirement for exclusive possession, including e.g.: <ul style="list-style-type: none"> ○ 'sham' agreements ○ Provision of services ○ Family and acts of generosity ○ Shared accommodation • Discussion of requirement for certainty of term • Some discussion of formalities required to create valid lease • Reasoned conclusion 	25

	<p>Responses could include:</p> <ul style="list-style-type: none"> • Discussion of whether rent is an essential requirement of a lease • Further breadth/depth of discussion on above points • Anomalies re: certainty of term such as future leases or the decision <u>Berrisford v Mexfield Housing (2011)</u> • Distinction between legal and equitable leases 	
Question 4 Total:25 marks		

SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identification of nature and purpose of freehold covenants • Explanation that covenants remain binding between original purchasers • Identification of how both benefit and burden of covenants must pass to successors, either in law or in equity. • Rules relating to passing of the burden in law (especially exception of “mutual benefit and burden”) • Rules relating to passing of the benefit in law (especially what covenants “touch and concern” the land) • Rules relating to passing of the burden in equity (especially positive/negative covenants) • Rules relating to pass of the benefit in equity (especially annexation and assignment through building scheme) • Application of above law to facts. • Reasoned conclusions. <p>Responses could include:</p> <ul style="list-style-type: none"> • Further detail as to each element of the rules. • Potential remedies for breach of covenant. • Relevant case law illustrating principles outlined above. 	25
Question 1 Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
2	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identification of relevant doctrine of adverse possession • Discussion of need to show factual possession • Discussion of need to show intent to possess • Law relating to unregistered land, particularly Limitation Act 1980 • Law relating to registered land, particularly Land Registration Act 2002 Sch 6 • Relevant case law to support the above • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Former doctrine of “implied licence” • Effect of objection by paper title holder 	25
Question 2 Total: 25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3	<p>Responses should include:</p> <ul style="list-style-type: none"> • Overriding interests and Sch 3 Land Registration Act 2002 • Requirement for legal lease to be made by deed • Requirements for valid deed under S1 Law of Property (Miscellaneous Provisions) Act 1989 • Requirement for equitable lease to be created by contract • Requirements for valid contract under S2 Law of Property (Miscellaneous Provisions) Act 1989 • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Detailed discussion of need for interest to be obvious on reasonably careful inspection • Detailed discussion of meaning of actual occupation • Detailed discussion of para 2 Sch 3 LRA 2002 	25
Question 3 Total: 25 marks		

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Definition of mortgage • Principle that oppressive/unconscionable terms will be struck down • Case law on such terms • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Detailed discussion of above points 	7
4(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Concept of collateral advantages • Courts approach to such advantages • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <p>Detailed discussion of above points</p>	7
4(c)	<p>Responses could include:</p> <ul style="list-style-type: none"> • Relief from possession and whether applicable • Alternative approach: personal remedy • Alternative approach: receiver • Alternative approach: foreclosure • Detailed discussion of above points 	11
Question 4 Total: 25 marks		