

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 - UNIT 9 - LAND LAW

JUNE 2022

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 2022 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 pass rate has improved for the second examination session running, which is pleasing to see. It is noted in a previous report that this improvement was particularly evidenced by *“an increase in papers where the candidate answered four (rather than only three) questions; and an improvement in the amount of relevant case law cited.”* These trends continued, and praise is given for an increase in candidates trying to really answer the question asked (especially in section A) rather than producing general, “this is everything I know about topic X” answers. A genuine attempt to argue or analyse will always be credited more fully than an answer which was clearly prepared in advance and did not relate at all to the specific phrasing of the question.

In terms of areas of law, it is suggested that candidates have a good knowledge of joint tenancy and tenancies in common, proprietary estoppel, the statutory element of adverse possession and, perhaps surprisingly, constructive trusts.

Areas where the majority of candidates had some working knowledge but could have expanded on the law included freehold covenants, fixtures and fittings and easements.

Areas where a notable number of candidates seemed to have incomplete or flawed knowledge were particularly mortgages and TOLATA.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

This question tested knowledge of freehold covenants. Given a long-running and regrettable tendency for candidates to pre-learn answers the question was asked slightly differently, focusing only on the burden of such covenants. This did seem to make the question more of a true test of ability as some candidates wasted time discussing passing the benefit, while others engaged more directly with the question.

Question 2

Again, this question examined a very familiar topic (adverse possession) in a less familiar way. As the question was less popular (but still one of the more popular section A questions) it fell back in line with other questions on other areas, as something candidates may choose rather than considered almost mandatory.

Question 3

This was the second most popular section A question and attracted one of the highest mean marks on the paper. Fixtures and fittings are always popular, given they are usually covered early on in land law courses, and answers were generally solid although not necessarily able to go beyond that level.

Question 4:

This was the most popular section A question but also attracted the lowest mean mark on section A. The question was designed to balance a topic candidates find very straightforward (co-ownership itself) with something more complicated (S14 TOLATA). It was surprising by just how poor the general standard of knowledge was on section (b).

Section B

Question 1

This question was by a long way the least popular question on the paper. Cause and effect may work both ways here: the topic is one which candidates do not tend to enjoy/understand (mortgages, and two of the more complex, technical parts of mortgage law) which could have led to poor performance directly; or to the question being unpopular to the extent that the sample size is so small (and perhaps skewed toward the weakest candidates who choose questions almost at random).

Question 2

This was the most popular section B question and focused on easements. The question continued the ongoing trend of easements questions that they are very popular, but candidates do not tend to perform particularly well on them. This may be because easements seem straightforward and structured (there are four requirements for an easement, there are five ways of creating an easement etc.) but is actually a big and complex area of law, perhaps more than candidates realise.

Question 3

This question, on constructive trust, was a very practical question which probably reflected real life disputes more closely than some of the artificial problem questions required for exam assessments. It was answered well on the whole, which was pleasing to see.

Question 4

This was the best answered section B question. Estoppel is an area with few strict rules and where argument is in many ways as good as trying to methodically apply clear legal principles, so it is perhaps unsurprising that candidates find this one of the easier areas to answer a problem question on (performance, when asked as a section A question is usually not as strong).

SUGGESTED POINTS FOR RESPONSE

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Question Number	Suggested Points for Responses	Marks (Max)
1	<p>Responses should include:</p> <ul style="list-style-type: none">• Definition of freehold covenant• Explanation of rule as to passing of burden of covenant at common law• Identification of exceptions to this rule• Further detail as to doctrine of mutual benefit and burden• Discussion of methods to avoid the contract law rule, such as long leases and chains of covenants• Explanation of rule as to passing of burden of covenant at equity• Relevant case law• Reasoned conclusion which answers the question asked <p>Responses could include: Consideration of advantages and disadvantages of above mechanisms</p> <ul style="list-style-type: none">• The need to protect a covenant in order for the burden to pass• Detailed discussion of <u>Tulk v Moxhay</u> requirements at equity• Proposed reform to freehold covenants	25

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"> • Identification of claim in adverse possession • Discussion as to requirement for factual possession of land • Discussion as to requirement of intention to possess • Discussion as to requirement that possession is adverse • Relevant case law supporting the above principles • Reasoned conclusion which answers the question <p>Responses could include:</p> <ul style="list-style-type: none"> • Policy justifications for existence of doctrine • Arguments in favour of restricting doctrine • Relevant case law to support discussion of requirements 	14
Question Number	Suggested Points for Responses	Marks (Max)
2(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • General position as to adverse possession in unregistered land • Operation of Limitation Act 1980 in regard to this • General position as to adverse possession in registered land • Operation of Land Registration Act 2002 in regard to this • Reasoned conclusion which answers the question <p>Responses could include:</p> <ul style="list-style-type: none"> • Further detail as to provisions and operation of 1980 and 2002 Acts • Discussion of Legal Aid, Sentencing and Punishment of Offenders Act 2012 	11
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"> • Definition of concepts of fixture and fitting and effect of distinction • Degree of annexation test • Purpose of annexation test • Modern approaches to the question • Relevant case law supporting the above principles • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Further detail as to degree of annexation test • Further detail as to purpose of annexation test • Idea of permanence of object as relevant factor • Idea of ease of removal as relevant factor 	25

	<ul style="list-style-type: none"> • Critical discussion as to whether a single test is possible or desirable • Detailed consideration of relevant case law 	
Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identification of concept of co-ownership in law and in equity • Definition of joint tenancy and main features • Definition of tenancy in common and main features • Four unities • Doctrine of survivorship and application <p>Responses could include:</p> <ul style="list-style-type: none"> • Presumptions as to type of co-ownership • Modern approaches to co-ownership of family home • (Relevant) discussion of how joint tenancy can be severed 	14
Question Number	Suggested Points for Responses	Marks (Max)
4(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Right under section 14 to apply to court • Powers of court to make order under section 14 • Use of section 15 criteria <p>Responses could include:</p> <ul style="list-style-type: none"> • Further detail as to section 15 criteria • Relevant case law showing use of criteria • The position where application is by creditor and possible use of S335A Insolvency Act 	11
Question 4 Total: 25 marks		

SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Requirements for creation of legal mortgage • Requirements for creation of equitable mortgage • Formalities required for above • Priority of mortgage interests in registered land • Reasoned application of law to facts of question • Relevant case law <p>Responses could include:</p> <ul style="list-style-type: none"> • Definition of mortgage/charge over land • (Brief) discussion as to why order for sale granted 	10



Question Number	Suggested Points for Responses	Marks (Max)
	Rule as to priority of subsequent equitable mortgage	
1(b)	<p>An answer which offers advice-based</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Definition of undue influence • Modern approach in cases of alleged undue influence • Constructive notice and how discharged • Reasoned application of law to facts of question • Relevant case law <p>Responses could include:</p> <ul style="list-style-type: none"> • Historical development of doctrine of undue influence 	15
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"> • Definition of an easement as a right over land falling short of possession • The four characteristics of an easement • Discussion of the need for the easement to accommodate the dominant tenement • The principle that an easement cannot amount to joint user or exclusive possession • The requirement for legal interests to be created by deed • Requirements for a valid deed • The requirement for legal interests in registered land to be registered • Requirements for a valid contract of disposition of interest in land • S62 Law of Property Act 1925 • The position regarding legal easements and over-riding interests • Reasoned application of law to facts of question • Relevant case law <p>Responses could include:</p> <ul style="list-style-type: none"> • Further discussion supported by case law of the need for the easement to accommodate the dominant tenement • Further discussion of joint user and exclusive possession in the context of storage easements • The rule under <i>Walsh v Lonsdale</i> • The position regarding equitable easements and over-riding interests • (Possible argument as to estoppel – not expected but credited if mentioned) 	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"> • Explanation of mechanism of trust • Implied trusts, including explanation of resulting and constructive trusts • Principles relating to quantification of share of constructive trust • Reasoned application of law to facts of question • Relevant case law <p>Responses could include:</p> <ul style="list-style-type: none"> • When resulting trust will arise • Principles relating to quantification of share of resulting trust • Discussion of use of constructive trust in non-romantic relationships • Detailed consideration of case law relating to quantification of share of constructive trust 	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"> • Explanation of concept of proprietary estoppel • Modern “test” in cases of estoppel, considering assurance, reliance and detriment • Potential remedies in estoppel cases • Reasoned application of law to facts of question • Relevant case law <p>Responses could include:</p> <ul style="list-style-type: none"> • Traditional requirements for estoppel to arise • Overarching requirement for unconscionability in estoppel cases • Further detail as to likely remedies • Further detail as to relevant case law 	25

Question 4 Total: 25 marks

