



## CHIEF EXAMINER REPORT

**JANUARY 2024**

**LEVEL 6 UNIT 10 – Landlord & Tenant**

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

## Chief Examiner Overview

Better performing candidates exhibited similar characteristics, in that they demonstrated good knowledge and understanding of the relevant law and used references to statutory provisions and case law appropriately to underpin their analysis/explanation. Candidates who did less well: (a) did not have a sufficient legal foundation on which to base any sort of reasoned argument or (in terms of the Section B questions) to provide any sort of reasoned advice, and (b) cited little or no relevant statute or case law.

Several candidates gave quite short answers, particularly in relation to the Section A questions. Although volume certainly does not go hand in hand with quality, it is unrealistic to assume that a 300-400 word answer will garner a significant proportion of the marks which are available in relation to a 25-mark question.

## Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

Therefore, no feedback on candidate performance has been included on most occasions.

### Section A

Question 1a	8 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Discussion of the three essential characteristics of a lease, contrasting those with a licence, with particular reference to the proprietary rights granted by the former and the (merely) contractual rights granted by the latter.</li><li>• Better candidates will be able to explain the concept of exclusive possession, with reference to cases such as <i>Street v Mountford</i>, <i>Marchant v Charters</i> and <i>Prudential Assurance v London Residuary Body</i>.</li></ul>	

Question 1b	6 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Discussion (by reference to relevant statutes, eg RA 1977, HA 1988, LTA 1954, LRA 1967 and LRHUDA 1993) of the principal consequence of the distinction, namely the degree of statutory protection which is afforded to leases in terms of security of tenure for commercial and residential tenants, as well as rent protection and enfranchisement rights for certain residential tenants. They will contrast this with the far more vulnerable position of licensees.</li></ul>	

Question 1c	11 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Discussion of three main Facchini exceptions: (i) no intention to create legal relations, (ii) where occupation arises from some other legal relationship, and (iii) where a landlord has no power to grant a tenancy.</li> <li>• Illustration of those examples with reference to, and discussion of, relevant case law, eg <u>Cobb v Lane</u> (1952), <u>Booker v Palmer</u> (1942), <u>Norris v Checksfield</u> (1986) and <u>Errington v Errington and Woods</u> (1952).</li> <li>• Discussion of 'grey areas' where the authorities do not appear to be consistent, with reference to cases such as <u>Family Housing Association v Jones</u> (1990), <u>Stibling v Wickham</u> (1989) and <u>Dresden Estates v Collinson</u> (1987).</li> <li>• Discussion re whether these are really examples of exceptions or inconsistent application of the law, or whether they are instead merely reflections of the complex factual scenarios to which the law sometimes has to be applied.</li> </ul>	

Question 2	25 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Possession – discussion re: (i) discretionary and the mandatory cases for possession, (ii) the requirement for reasonableness in relation to the former, (iii) power of the court to stay or suspend possession in discretionary cases, (iv) limited court powers to refuse to make a possession order once a mandatory case has been made out by the landlord, or to suspend a possession order, (v) need for prior notice and the ability of the court to waive that requirement in relation to mandatory cases, (vi) relevant cases for possession (both discretionary and mandatory).</li> <li>• Succession – discussion re: (i) who is entitled to succeed, (ii) reforms broadening categories of permitted successor, (iii) reforms narrowing the categories and substituting an assured tenancy, (iv) relevant case law and statutory provisions.</li> <li>• Rent protection – discussion re: (i) what is the 'fair rent', (ii) who can apply for it, (iii) consequences once it has been set, (iv) when and how the rent can be reviewed, (iv) relevant case law and statutory provisions.</li> </ul>	

Question 3a	14 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Discussion re requirements of LPMPA 1989, s 2(1)</li> <li>• Discussion re requirements of LPA 1925, s 52(1). They will also be able to explain that this does not apply to “short” leases, ie those which can be created orally.</li> <li>• Discussion re “short” leases under LPA 1925, s 54, ie those which can be created orally.</li> <li>• Discussion re problems caused by failing to satisfy the required formalities (eg security of tenure and other statutory protections which are associated with a lease rather than a licence).</li> </ul>	

Question 3b	11 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Discussion re equitable rule in <u>Walsh v Lonsdale</u> (1882), including (i) when it operates (including reference to availability of specific performance (SP)), and (ii) the maxim “an agreement for a lease is as good as a lease”.</li> <li>• Discussion re: (i) rule cannot be invoked to save a lease which does not need to be signed by the tenant, nor (ii) to save an agreement or contract for lease which fails to comply with the requirements of LP(MP)A 1989, s 2(1) - because there is no lawful agreement or contract to which the rule can apply (because SP could not be granted).</li> </ul>	

Question 4	25 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Discussion of nature of obligation to repair (with reference to, eg, <u>Lurcott v Wakeley &amp; Wheeler</u> (1911) and <u>Post Office v Aquarius Properties Ltd</u> (1987), including distinction between repair and renewal (with reference to, eg <u>McDougall v Easington District Council</u> (1989), <u>Ravenseft Properties Ltd v Davstone (Holdings) Ltd</u> (1980) and <u>Lurcott</u>).</li> <li>• Discussion of concept of ‘disrepair’ and how that state of affairs arises.</li> <li>• Discussion of the nature of an inherent defect (with reference to, eg, <u>Quick v Taff Ely Borough Council</u> (1986) and <u>Aquarius</u>).</li> <li>• Discussion of obligation to repair damage caused by inherent defect (with reference to, eg, <u>Lee v Leeds City Council</u> (2002), <u>Stent v Monmouth County Council</u> (1987) and <u>Elmcroft Developments Ltd v Tankersley-Sawyer</u> (1984).</li> <li>• Reasoned conclusion re accuracy of proposition</li> </ul>	

## Section B

Question 1	25 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Discussion re status of Bilal and Cassie – both appear to enjoy security of tenure under Part II of LTA 1954. Discussion re consequences, ie: (i) tenancy will continue after contractual expiry date, (ii) unless and until terminated by Annabelle, (iii) in accordance with the statutory procedures and timescales prescribed by LTA 1954, (iv) entitling them then to apply for a renewal tenancy, unless (v) Annabelle can make out one of the statutory grounds of opposition (per LTA 1954, s 30(1)).</li><li>• So Annabelle must serve a section 25 notice, not less than six nor more than 12 months from the termination date specified in it, specifying a date for termination which cannot be earlier than the contractual expiry date. She must include in that notice any ground on which she proposes to oppose the grant of a renewal tenancy.</li><li>• Discussion that in B's case, Ground (b) (see <u>Horowitz v Ferrand</u> (1956)), and possibly Ground (c), might be available. Discussion of the discretionary nature of each Ground.</li><li>• Discussion re whether Annabelle has waived, or acquiesced in, the breach by a course of conduct: <u>Hazel v Akhtar</u> (2002).</li><li>• Discussion that in C's case, Ground (c) might be available (see <u>Youssefi v Mussellwhite</u> (2014)).</li><li>• Discussion re Donovan's status: does he have a 1954 Act protected periodic tenancy or an unprotected tenancy at will, given the fitful negotiations for a new tenancy (see <u>Javad v Aqil</u> (1991) and <u>Barclays Wealth Trustees (Jersey) Limited v Erimus Housing Limited</u> (2014))? If the former, Annabelle must follow the statutory procedures, but may struggle to make out a ground of opposition. If the latter, his right to occupy can be terminated at any time.</li></ul>	

Question 2a	17 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Discussion re the nature of a qualified covenant against assignment and the application of LTA 1927, s 19(1).</li><li>• Discussion of statutory obligations in relation to the giving of consent and/or the imposition of conditions (per LTA 1988, s 1).</li><li>• Discussion of guidelines in <u>International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd</u> (1985) re determining whether a refusal of consent, or the imposition of a condition, is reasonable and reference to relevant case law.</li><li>• Discussion that the requirement of a cash payment: (i) does not appear to be reasonable (having nothing to do with the landlord and tenant relationship and seeming like a blatant attempt to secure a collateral advantage), and (ii) is prohibited by LPA 1925, s 144 (unless the lease expressly authorises such a requirement).</li><li>• Fergal can, therefore, ignore the condition. He could proceed to assign without it (subject to the answer to 2(b)), or could apply to the court for a declaration that consent has been unreasonably withheld.</li></ul>	

Question 2b	8 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Discussion of the nature of an AGA (LT(C)A 1995, s 16.</li> <li>• Discussion of terms and effect of LTA 1927, s 19(1A) in relation to 'new' tenancies (ie the 'ouster' of any requirement of reasonableness in relation to imposition of a specified condition).</li> <li>• Discussion that it is therefore irrelevant to ask whether it is reasonable to require a guarantee from Fergal when the supermarket operator is clearly 'good for the money'; Fergal must comply with the condition if he wants to be able to assign.</li> </ul>	

Question 3	25 marks
<p>This question required candidates to address various elements of the Housing Act 1988, with particular emphasis on those relating to security of tenure/the recovery of possession. This topic is typically popular with students and is one where they have tended to perform well. The question itself was a variation on a previous question which had not caused any concerns. A number of responses did not engage in a systematic exposition of the legal principles nor a convincing application of those principles to the facts.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Discussion in general terms re: (i) security of tenure afforded by HA 1988, (ii) existence of mandatory and discretionary grounds for possession, (iii) summary possession procedure which is available in relation to assured shorthold tenancies.</li> <li>• In relation to Priti, advice as to: (i) the protection which she enjoys from unlawful eviction by PEA 1977, s 1, and (ii) measure of damages to which she is entitled under HA 1988, ss 27 and 28 (with particular reference to the redevelopment proposal).</li> <li>• In relation to Quinn, advice as to: (i) duty of a landlord to protect tenant's deposit in a tenancy deposit scheme (HA 2004), (ii) consequences of non-compliance (with particular reference to the inability of the landlord to invoke the summary possession procedure under HA 1988, s 21 as a result of Deregulation Act 2015), (iii) whether a HA 1988, s 8 notice (under which Oscar might be entitled to invoke one of the mandatory grounds for possession - ie redevelopment) is an alternative option.</li> <li>• In relation to Renee, advice that the summary possession procedure is not available where the fixed term has not yet expired. Consequently, a s 21 notice will be invalid. However, service of a s 8 notice might be an alternative.</li> </ul>	

Question 4	25 marks
Data too limited for feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Discussion in general terms of principle of non-derogation from grant (with reference to relevant case law)</li><li>• Discussion in general terms of implied covenant for quiet enjoyment (with reference to relevant case law)</li><li>• Advice as to whether Marwan has any cause of action, taking account of: (i) the express repair covenant on Leroy's part (with specific reference to its inter-relationship with the principle and covenant referred to above), (ii) Marwan's knowledge re some of the existing disrepair, (iii) the reasonableness of the chosen method of repair, (iv) the reasonableness of the execution of that method, (v) the mitigating/compensating steps taken by Leroy, (vi) the rights afforded to Marwan by the principle and covenant referred to above.</li><li>• Reference to relevant case law, eg, <u>Southwark London Borough Council v Tanner (2001)</u>, <u>Lechouritis v Goldmile Properties Ltd (2003)</u>, <u>Timothy Taylor Ltd v Mayfair House Corporation (2016)</u>.</li></ul>	