



CHIEF EXAMINER REPORT

JANUARY 2024

LEVEL 6 UNIT 17 – Conveyancing

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

The stronger performing candidates exhibited similar characteristics, in that they possessed both good knowledge and understanding of the academic law underlying the issues presented, as well as the relevant procedures of conveyancing, and brought this knowledge together to offer practical advice to the client.

Better candidates had clearly made good use of the opportunity to consider the Case Study Materials in advance of the exam and ensured that they understood all the relevant provisions, and clauses, in those materials.

Generally, there was a high number of candidates who dealt with conveyancing procedures in a satisfactory manner, although a minority of candidates struggled with the correct procedure and knowledge. It is always advisable to ensure that candidates have a working knowledge of time limits for pre-completion searches, for example, and post completion matters, as these matters are essential in practice and in examination questions.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance is limited.

Section A

Question 1a	7 marks
<p>Question 1(a) – generally candidates scored well on this question, with many obtaining full, or nearly full marks. Those who did not score may have not read the question carefully enough; the question also asked for an explanation of each document that would be provided in the pre-contract package, and if an explanation was not given for a document, then the mark could not be awarded.</p>	
<p>Suggested Points for Response:</p> <ul style="list-style-type: none"> • Draft contract (in duplicate) • Official copy of the Register and the Title Plan showing the entries/title matters that affect MH Road (less than 6 months old) • The Fittings and Contents Form (TA10) to show what is included in the sale (as, for example, carpets and curtains are included in the sale price) • Replies to the Property Information Form (TA6) which shows information that occupiers of a property would know i.e. have there been any disputes with neighbours etc • The Conveyance dated 3 April 1955 made between (1) Middlesbrough Estate Ltd and (2) Arthur Vinter because this is a filed document and it contains covenants which the property is sold subject to, and the buyer will need to know what these are. • The EPC, which is an energy efficiency report on MH Road • Building Regulations approval for replacement of the windows, or a FENSA Certificate if the contractor is a member of the Glass and Glazing Federation • Credit for mentioning a draft transfer as this is mentioned in the Protocol as something conveyancers could consider including 	

Question 1b	8 marks
<p>Question 1(b) – some candidates answered this question well, and explained the chain of indemnity covenants competently as well as providing the correct practical advice to the client.</p>	
<p>Suggested Points for Response:</p> <ul style="list-style-type: none"> • Entry number 2 of the Proprietorship Register for MH Road shows that when Mr and Mrs Nayyar purchased MH Road they gave a personal indemnity covenant to the people who sold MH Road to them in respect of the restrictive covenants referred to in the Charges Register. • It is likely that the sellers to Mr and Mrs Nayyar also gave a personal indemnity covenant to their sellers when they purchased MH Road. • Thereby creating a chain of personal indemnity covenants. • Once Mr and Mrs Nayyar sell MH Road to Bob and Zahra Platt, and if the Platts breach the restrictive covenants, then Mr and Mrs Nayyar could be sued on the basis of the indemnity covenant that they gave. • Accordingly, in the contract Mr and Mrs Nayyar will require Bob and Zahra Platt to provide them with a personal indemnity covenant in the transfer. • This would entitle them to sue the Platts if the Platts breach the restrictive covenants and action is taken against Mr and Mrs Nayyar. • Standard condition 4.6.4 of the Standard Conditions of Sale (5th edition – 2018 Revision) (SC) does this, as where a seller remains liable for an obligation affecting the property following completion then the buyer must provide the seller with an indemnity in the transfer. 	

- Notwithstanding SC 4.6.4, it is good practice to add a special condition to the contract requiring an indemnity so that it is clear to all parties that such an indemnity must be included in the transfer.

Question 1c

8 marks

Candidates often answered this question well and showed good co-ownership knowledge. Most candidates were able to recognise that a second trustee needed to be appointed, however more limited responses were not able to explain why.

Suggested Points for Response:

- Entry number 3 of the Proprietorship Register for MH Road shows that Mr and Mrs Nayyar owned the property as beneficial tenants in common.
- The legal title will pass to Mrs Nayyar by survivorship
- but when Mr Nayyar died his beneficial share passed by will or intestacy to his estate.
- A second trustee is needed to give good receipt for the purchase monies.
- This would then overreach...
- Mr Nayyar's beneficial interest which means that the interest then moves from the property to the proceeds of sale
- It is possible for Mrs Nayyar to appoint a second trustee (by deed of appointment) prior to contracts being exchanged.
- However, Mrs Nayyar does not want this to delay exchange of contracts, and so a special condition can be added into the contract requiring the appointment of a second trustee as a party to the transfer deed.
- The buyer's lawyers will require us to provide them with a certified copy of Mr Nayyar's death certificate as proof of death will be needed by the Land Registry to permit overreaching to occur.
- Where a second trustee is appointed (whether that is before or after exchange) then the Form A restriction on the title will be satisfied as the sale will be by two trustees.

Question 1d

5 marks

Responses could fail to evidence an appropriate knowledge of the SRA Code of Conduct for Solicitors. Importantly for practice, however, most candidates recognised that you cannot act for two clients where there is a conflict of interest, but the rules behind this were not well known by candidates.

Suggested Points for Response:

- Under section 6.2 of the Code the solicitor should not act if there is a significant risk of conflict arising...
- Unless the clients have a substantially common interest in relation to the matter...
- And all clients have given informed consent...
- And there are safeguards in place to protect the clients' confidential information...
- And the solicitor thinks it is reasonable to act.
- Credit can be given for an application of these criteria, such that although there is a substantially common interest (the Nayyars to sell and the Platts to buy MH Road), there is a significant risk of conflict arising and a risk of breaching confidentiality.

Question 2a	8 marks
Generally candidates scored well on this question, with many obtaining full, or nearly full marks. This was to be expected given this is likely to be something candidates deal with in practice frequently (pre-exchange searches).	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Local Land Charges (LLC1) to determine if there are any local land charges affecting the property • Enquiries of the Local Authority (CON29), which will determine whether the roads surrounding the development are adopted, give a list of planning permissions, etc. • Optional search in the CON29 of commons land as Forsyth Close is in a rural area and is next to (on the eastern side) a wide patch of open green land. • Drainage and water search (CON29DW). Generally a standard search which shows whether the drains, sewers etc at a property are adopted or are private (but also important here as Forsyth Close is on a development so their adoption should be checked). • Environmental search to determine the possibility of contamination being present. • Chancel repairs search as Forsyth Close is next to (on the western side) a medieval church and..... • it has not been sold for value since 13 October 2013 as shown by the Title Register. • Index map search as the title is registered with good leasehold title indicating that the freehold title may be unregistered and the index map search would ascertain this. • Flood search to determine whether the property is at risk of flooding • Search at HMLR to obtain official copies of the freehold title if the index map search indicates that the freehold title is in fact registered 	

Question 2b	11 marks
Stronger candidates were able to explain all the options available to clients in this scenario (where there is a good leasehold title only, rather than title absolute) and had clearly revised this area having spotted this issue from the Case Study Materials, however, more limited responses were not properly able to explain the background to the law in this question, and therefore the reason why the various options were needed for the client.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Forsyth Close has a good leasehold title class of title which means when the lease was originally registered at HM Land Registry the freehold title was not provided. • As a result, the Land Registry cannot guarantee the lease was validly granted. • The risk for the buyers and the lender, is that the title can be extinguished if the lease was not validly granted. • The buyers would purchase the leasehold subject to any encumbrances or defects affecting the superior title even though these are unknown and the lender would be subject to these as well. • The lease may have been granted in breach of a condition on the freehold such as a restrictive covenant preventing the freeholder owner from granting residential leases. • Good leasehold title is unlikely to be acceptable to the lender, National Westminster Bank plc. • Steps we could take: The sellers' lawyers could deduce the freehold title for a period of 15 years prior to the lease being originally granted.... • We can then apply to upgrade the class of title when applying for registration of the transfer to our client. • The sellers may have an existing good leasehold title indemnity policy which covers subsequent owners and lenders which they could hand over which we would check to see it is acceptable. • The sellers could, at their own cost, take out a good leasehold title indemnity policy in the sum of £240,000 to cover our client and lender and subsequent owners. • These policies should cover our client and lender for any losses should the title be extinguished, or if any onerous encumbrances on the freehold title are enforced and have a detrimental effect on the leasehold title. 	

- If the sellers' lawyers agree to their clients taking out a policy, we would add a special condition to the contract specifying that the sellers would at their own cost provide a good leasehold title indemnity policy to the buyers in the sum of £240,000 on or before completion.
- Credit need for us to perform an Index Map search to ascertain if the freehold is registered (as the lease was granted a long time ago and so the freehold may have been registered in the intervening period) and obtaining official copies if it is (or requesting from the other side)

Question 2c	5 marks
Candidates who have come across the issue of additional occupiers at a property knew how to deal with this (and this is not an uncommon issue to have in practice).	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Notify National Westminster Bank of Pushpa's intended occupation from completion • Pushpa must sign the occupiers' consent clause on the mortgage deed before completion • This states Pushpa will postpone any rights she may have in favour of National Westminster Bank • This will include any rights under a trust she might claim by virtue of her contribution to the deposit (although this is a gift and has already been reported to National Westminster Bank) • Pushpa must have separate legal representation before signing the clause - it will be a conflict of interest for the firm to advise her as well as acting for National Westminster Bank • Credit any reference to the fact that the savings were jointly held, therefore they will have passed to Pushpa by survivorship and so she will be in a position to continue with the gift notwithstanding administration of Sanjeev's estate 	

Question 3a	11 marks
Whilst most candidates had the ability to find the relevant clause in the lease relating to alterations, only very strong candidates knew the law relating to this question (around s19(2) Landlord and Tenant Act 1927).	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Under clause 6.6 of the Lease, the tenant cannot make any structural alterations or additions to the property without the lessor's consent. • Our client (Misha) will therefore be required to apply to the lessor for consent to an extension. • However, this is a qualified covenant.... • and as such s19(2) Landlord and Tenant Act 1927... • implies a term that the landlord must not unreasonably refuse their consent ... • against the making of alterations which would be regarded as "improvements". • The effect of this is that the qualified covenant is converted into a fully qualified covenant. • This applies to the extent that the alteration amounts to an improvement seen from the tenant's point of view. • If the works would increase the value or usefulness of the property from the tenant's point of view, they would be regarded as an improvement even though the lessor might not feel the same way. • It is likely that Misha will see the extension as improving both the value and usefulness of the property and therefore this is likely to be seen as an improvement. • Therefore the landlord must consider the application for consent to these works reasonably. 	

Question 3b	7 marks
Most candidates scored well on this question. Some candidates discussed planning rules in their answer for question 3(a) and, where this was the case, they were credited for those comments in this question.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Planning permission is required for a development of land. • The proposed building work being a 3 metre rear single storey extension constitutes a development of land so planning permission is required for the proposed extension. • The General Permitted Development Order (Town and Country Planning (General Permitted Development) (England) Order 2015) applies as the property is a detached house.... • and the extension does not exceed beyond the rear of the original house by more than 4 metres in length and so deemed permission is granted for the extension building [credit size reference to 8 metres or less]. • Building Regulations consent will also be required for the building works. • The clients should also obtain the lender's consent for their proposals as we are also acting for the lender. • We should obtain these consents/permissions prior to exchange of contracts, otherwise if any of these are sought post exchange and are not obtained then the client will be prevented from carrying out her plans and may not want to proceed with the purchase. • This is unless there is an Article 4 direction in place restricting the GPDO/ there is no Article 4 Direction that restricts the operation of the GPDO • Credit can be awarded for a build over agreement over sewers, water pipes etc that would also potentially be required. 	

Question 3c	8 marks
Pretty much every candidate was able to identify that Formula B was the correct formula to use (and explain why) but some candidates struggled to explain how this formula works.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Kempstons will exchange contracts with the solicitors (Estates LLP) acting for Jack Gresham, the seller of Forsyth Close, using Formula B, with a completion date of 23 February 2024. • Formula B will be used as our client, Misha, is not selling a property and the seller is not buying another property so there is no chain transaction. • In this formula, each party's solicitor is holding their own client's signed part of the contract. • They then telephone each other and agree to exchange contracts. • On the call, the solicitors agree the completion date, confirm they hold their client's signed part of the contract and agree to insert the completion date (here 23 February 2024). • Each solicitor then undertakes to hold their client's part of the contract to the order of the other. Exchange is effected at that moment. • Kempstons will undertake to send their part of the contract to the seller's solicitor (Estates LLP) that day by first class post, DX or by hand... • together with the deposit. <p>Credit can be given instead as follows if a candidate suggests using Formula A instead of Formula B:</p> <ul style="list-style-type: none"> • Kempstons can exchange contracts with the solicitors (Estates LLP) acting for Jack Gresham, the seller of Forsyth Close, using Formula A, with a completion date of 23 February 2024. • Formula A can be used as our client, Misha, is not selling a property and the seller is not buying another property so there is no chain transaction. • In this formula, it is most likely that Kempstons (as the buyer's solicitor) will send their client's signed part of the contract to the seller's solicitor (Estates LLP). • The solicitors then telephone each other and agree to exchange contracts. 	

- On the call, the solicitors agree the completion date, and the seller's solicitor confirms they are holding both parts of the contract, confirms they are signed and identical and then undertakes to insert the agreed completion date (here 23 February 2024).
- Exchange is effected at that moment.
- The seller's solicitor (Estates LLP) will undertake to send their client's part of the contract to Kempstons that day by first class post, DX or by hand.
- Kempstons will undertake to send the deposit.

Question 4a	8 marks
Generally, this was answered well. Overall, many candidates scored very highly on this question.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • An official search of whole of the title with priority... • using form OS1... • which reveals whether any new entries have been added to the register since the date of the official copies... • which provides a priority period of 30 working days in which to register both the assignment of the lease and charge at HM Land Registry. • A bankruptcy search... • using form K16... • against Misha Nayyar as she is obtaining a mortgage from National Westminster Bank plc and the lender will not want to lend to a bankrupt. • The priority period is 15 working days in which to complete the charge . • Credit can be given for mentioning who is performing a land charges search for the freehold title (in relation to the lessor) if the title is unregistered. • The applicant for the OS1 will be National Westminster Bank plc. 	

Question 4b	5 marks
Candidates often struggled to draft the relevant clause required. Stronger candidates scored well on this.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • The parties agree and declare that the covenants by the Transferor implied by s4(1)(b) • Law of Property (Miscellaneous Provisions) Act 1994 • by reason of the Transferor transferring with full title guarantee • are modified so that these covenants shall not extend to any breach of the tenant's covenants • in the Lease relating to the repair and decoration of the Property" 	
Credit any other wording that has the same effect.	

Question 4c	9 marks
Generally this was answered well. Most candidates were able to identify the registration and SDLT requirements. Some candidates correctly discussed the requirements for post-completion for the lease, but on the whole most candidates got at least two thirds of the marks available for this question.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Send SDLT 1 to HMRC (or electronically)...• within 14 days of completion...• but no SDLT due as Misha is a first-time buyer.• Apply to register the assignment of the lease at HM Land Registry...• and the charge to National Westminster Bank...• within 30 working days of the OS1 priority search result certificate.• Within one calendar month of completion...• serve notice on the lessor of the assignment of the lease...• and the charge to National Westminster Bank plc.	
Note: candidates can be credited if they mention sending the mortgage deed with the application to register.	