



CHIEF EXAMINER REPORT

JANUARY 2025

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 2025 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.

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 Section A: it is somewhat optimistic to hope 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 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 may be limited.

Section A

Question 1	25 marks
<p>This question required candidates to discuss the principal statutory regimes which are available to tenants who wish to be responsible for the management of flats that they hold under long residential leases. Five candidates answered this question. To a largely similar extent, they were able to discuss in broad terms both the nature of the regimes and the procedure for invoking them. However, they were not able to discuss them in detail nor in context (ie by addressing the disadvantages that would be overcome).</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of the drawbacks associated with the current long leasehold residential regime. • Detailed discussion of the right to collective enfranchisement under Leasehold Reform Housing & Urban Development Act 1993 (ie who qualifies, how exercised, how implemented, etc). • Detailed discussion of the two different routes (ie Landlord and Tenant Act 1987 and Commonhold and Leasehold Reform Act 2002) by which tenants may secure the right to manage the building in which their flats are located (ie who qualifies, how exercised, how implemented, etc). • Reasoned evaluation of how/to what extent the right of collective enfranchisement and/or the right to manage mitigate the drawbacks previously identified. 	

Question 2	25 marks
<p>This question required candidates to discuss the remedies which are available to a landlord of commercial premises whose tenant is in arrears with payment of the occupational rent. Five candidates answered this question: unfortunately, the answers were largely weak. Candidates were able to articulate a few basic concepts, but did not go very far beyond that.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion re current law of forfeiture, including: • need for express reservation (with reference to, eg, <u>Duppa v Mayo</u> (1669)); • procedure for exercising right (with reference to LPA 1925, s 146); • common law rules re waiver (with reference to, eg, <u>Central Estates (Belgravia) Ltd v Woolgar (No.2)</u> (1972)); • statutory/common law rules re relief from forfeiture. • Discussion of Commercial Rent Arrears Recovery (with reference to: (i) relevant provisions of Tribunals, Courts and Enforcement Act 2007, (ii) criteria/conditions, etc). • Discussion of action in debt. • Discussion re advantages/disadvantages of each remedy. 	

Question 3a	14 marks
This question required candidates to discuss the protection which is afforded to tenants by the principles of (a) quiet enjoyment, and (b) non-derogation from grant. Seven candidates answered this question, with all dealing with part (a) somewhat better than they dealt with part (b).	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion re: (i) presence of covenant in every lease (express or implied), (ii) its content (as regards freedom from interruption/interference), (iii) only substantial interruptions being actionable (per <u>Browne v Flower</u> (1911)), and (iv) case law moving away from purely physical interruption (eg <u>McCall v Abelesz</u> (1976) and <u>Owen v Gadd</u> (1956)). • Discussion of: (i) additional elements of the covenant (ie as to title and possession), and (ii) examples of breaches and situations where liability will not arise (eg <u>Southwark LBC v Mills</u> (2001)). • Discussion re the adequacy of the protection afforded by the covenant. 	
Question 3b	11 marks
See 3a	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion re: (i) rationale of the principle of non-derogation from grant, (ii) its implication into every lease, (iii) its limitations (in general terms). • Differentiating discussion re: (i) relevant authorities (eg <u>Aldin v Latimer Clark, Muirhead & Co</u> (1894) and <u>Kelly v Battershell</u> (1949)), (ii) the limitations of the principle (in a more detailed and analytical way). • Discussion re adequacy of the protection afforded by the principle. 	

Question 4a	13 marks
This question required candidates to discuss the duties owed by a landlord (a) to lawful visitors and trespassers, and (b) to third parties under the law of nuisance. Four candidates answered this question - none achieved a pass mark (13+). All the candidates adopted something of a 'broad brush' approach to the question and there was little evidence of real analysis/evaluation.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of Defective Premises Act 1974, s 4. • Discussion of Occupiers Liability Acts 1957 and 1984. • Discussion of general framework and implications for landlord (and tenant). • Citation of relevant case law, eg, <u>Drysdale v Hedges</u> (2012), <u>Hannon v Hillingdon Homes Limited</u> (2012). 	

Question 4b	12 marks
See 4a	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of common law duty and circumstances in which liability might arise. • Citation of relevant case law, eg, <u>Sampson v Hodson-Pressinger</u> (1981), <u>Coventry v Lawrence (No. 2)</u> (2014), <u>Fouladi v Darout Ltd</u> (2018). 	

Section B

Question 1	25 marks
<p>This question concerned qualified covenants in relation to assignment, alterations and use, and also a landlord's 'non-competition' covenant. The analysis of the facts, and the application of the applicable law, was weak across the board, with few candidates excelling.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Brief outline discussion of qualified covenants. • Discussion of LTA 1927, ss 19(1), 19(2) and 19(3) in relation to the proposed assignment, alterations and change of use respectively (noting that s 19(2) refers to 'improvements' rather than 'alterations'). • Discussion of principles enunciated in cases, eg, <u>International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd</u> (1986), <u>Straudley Investments Limited v Mount Eden Land Limited</u> (1996), <u>Ashworth Frazer Ltd v Gloucester City Council</u> (2001) and <u>Lambert v FW Woolworth & Co Ltd (No 2)</u> (1938). • Reasoned application of those principles to the facts. • Recognition that LTA 1927, s 19(3) does not impose any qualification of reasonableness in relation to Aaron's consent to a change of use. Since the proposed assignment and alterations hinge on a change of use, a refusal of that application may well scupper the entire scheme. • Discussion re the landlord's covenant not to allow a competing use: credit any reasonable discussion (but suggested conclusion is that a supermarket use is use neither as a butcher or a pizza takeaway, and so no infringement arises). 	

Question 2a	12 marks
<p>This question required candidates to deal with various aspects of the Rent Act 1977 and the Housing Act 1988. Five candidates answered this question: one produced a highly creditable answer and three fell just short of a pass mark. In relation to those three, their answers were characterised by a lack of references to the various statutory provisions that were directly applicable.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion re nature of Connor's tenancy, with conclusion that he is a regulated tenant under RA 1977, whose tenancy has transitioned from a contractual tenancy to a statutory tenancy. Outline discussion re consequences of protection: (i) security of tenure, (ii) fair rent, (iii) right of succession. • Discussion re Beatriz's attempt to increase the rent, with reference to: <ul style="list-style-type: none"> • fact that a fair rent appears already to have been registered; • need to follow the statutory procedure for achieving an increase; • apparent absence of a sufficient notice; • need for the new rent to be determined by the Rent Service; • need for two years to have passed or (if earlier) for a material change of circumstance to have occurred. • Reference throughout to relevant provisions of RA 1977, ie ss 44, 45, 49, 51 and 67. 	

Question 2b	13 marks
See 2a	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion re Dirk's right of succession with reference to the facts and the qualifying criteria set out in RA 1977, ss 2(1)(b), 2(5) and Sch 1. • Recognition that Dirk is only entitled to an assured tenancy by virtue of HA 1988, s 31. • Discussion re possible possession proceedings and ground(s) on which they could be based: HA 1988, s 7 and Sch 2. The discussion should focus on ground 14 in particular and the consequences of it being a discretionary rather than a mandatory ground. 	

Question 3	25 marks
<p>This question required candidates to address formalities in relation to lease, equitable leases/agreements for lease and periodic tenancies. Nine candidates answered this question, with the majority achieving a pass mark (and three others being not very far behind). All the answers suffered, to a greater or lesser extent, from the absence of a systematic exposition of the legal principles or a convincing application of those principles to the scenario.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of formalities (including reference to LPA 1925, ss 52 and 54(2)). • Discussion of requirements for creation of periodic tenancy (including reference to <u>Javad v Aqil</u> (1991)). • Discussion of status of agreement for lease (including reference to LP(MP)A 1989 and <u>Walsh v Lonsdale</u> (1882)). • Discussion of nature/effect of notice to quit. • Recognition of potentially competing legal and equitable leases and that 'equity will prevail'. 	

Question 4	25 marks
<p>This question required candidates to deal with various issues including security of tenure under LTA 1954, formalities, intention to create legal relations, etc. Eight candidates answered this question. Of the stronger candidates, most explained the relevant law ably enough, but the application to the facts was patchy.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of qualifying requirements for security of tenure (including reference to LTA 1954, s 23). • Discussion of consequences of security of tenure (including reference to LTA 1954, ss 24 (holding over), 25 to 27 (termination), 26, 32 to 35 (right to renewal tenancy) and 30(1) (grounds of opposition)). • Application to Jackson's situation (including discussion of current lack of occupation and reference to <u>Morrison Holdings Ltd v Manders Property Ltd</u> (1976) and <u>Teasdale v Walker</u> (1958)). 	

- Discussion of ground (g) as possible ground of opposition (including reference to Gregson v Cyril Lord Ltd (1962), Zarvos v Pradhan (2003) and Dolgellau Golf Club v Hett (1998)). Idella must prove: (i) 'bona-fide intention' in relation to the statutory purpose for which she requires possession, and (ii) a 'real possibility' she will be able to occupy the property when the tenancy ends or within a reasonable time after that date.
- Discussion of flat (including reference to, eg, Cheryl Investments Ltd v Saldanha (1978), Groveside Properties Ltd v Westminster Medical School (1983) and Broadway Investments Hackney Ltd v Grant (2006)).
- Discussion re whether there is a lease of the repair shop (including reference to lack of fixed duration, family situations, absence of intention to create legal relations, Cobb v Lane (1952), Booker v Palmer (1942), Facchini v Bryson (1952), Lace v Chantler (1944) and R v London Residual Body (1993)).
- Discussion whether payment of rent is an essential characteristic of a lease, with reference to Ashburn Anstalt v Arnold (1989) and, for example, Colchester Council v Smith (1991). Candidates may consider whether anything that Kyle has done is sufficient consideration for the grant of a lease.
- Discussion re recovery of possession from Kyle.