



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 19 – RESIDENTIAL & COMMERCIAL LEASEHOLD CONVEYANCING

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 January 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

Generally, there was a high level of knowledge from the candidates however, there were also a few questions where reading the question properly would have resulted in higher marks. Some of the weaker candidates did go off on the wrong track in some of their answers. There were a few scripts that were submitted by candidates who clearly did not have sufficient knowledge, understanding and skills to enable them to achieve a pass. This is reflected in the fact that some such scripts scored less than 20 marks.

Most of the questions provided the opportunity for the best candidates to shine, without being unduly onerous for others.

It was found that many candidates had answered questions on the basis of what they do in practice rather than what the syllabus has set down. This is a theoretical practice exam and in light of this a candidate that has studied the course should be able to pass.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

This question is part of the procedure at the start of a transaction.

1(b)

This question was attempted by most. Some candidates were able to identify valid points.

Most candidates identified the correct procedure for dealing with an adult occupier and the implications for failing to take appropriate measures. Weaker candidates were unable to explain that the adult occupier would need to sign the occupier's clause in the contract at Special Condition 7 and said that they would arrange for a different form to be completed.

1(c)

Lack of knowledge of underpinning law, especially what a good leasehold title means. In light of the nature of the unit, this was disappointing.

1(d)

Candidates were able to identify a few points from the LPE1 with ease. This is a form that is used in practice often and the information contained is important for them to know and understand so it was expected that candidates would be able to pick up more marks on this question.

Question 2(a)

Whilst many candidates were able to identify which searches were required, a concerning number of candidates could not correctly identify that the OS1 priority period was 30 working days.

2(b)(i)

Candidates seemed to have some confusion between requirements for a deed and a contract.

2(b)(ii)

Many candidates failed to identify that the transfer needs to be signed to show acceptance of modifying the implied covenants.

2(c) Candidates should have knowledge of the provisions of the Code for Completion by Post.

2(d) Candidates were able to identify what documents were required.

Question 3(a)(i)

Candidates should have had knowledge of the mandatory code; it is voluntary for everyone except RICS members.

3(a)(ii)

This had a knock on effect from the above question and showed a lack of knowledge of the code.

3(b)

Some candidates were able to identify the reason for an anticipated completion date, but few went into further detail.

3(c)

None of the candidates answered this correctly. It is important for candidates to understand the length of term and commencement of lease and the reason why the start of the lease may not begin on the same date of the completion of the purchase.

3(d) Most candidates could answer this correctly.

Question 4(a) Candidates were unable to apply the clause and generally failed to evidence any knowledge of commercial leases. Some confusion of what an AGA would do. The clause would allow consent to the assignment to be conditional upon entering into an authorised guarantee agreement (AGA)

4(b) Candidates were unable to apply any knowledge of remedies for non-payment of rent. Little written on forfeiture or the commercial rent arrears recovery procedure.

SUGGESTED POINTS FOR RESPONSE**JANUARY 2023****LEVEL 3 UNIT 19 – RESIDENTIAL & COMMERCIAL LEASEHOLD CONVEYANCING**

| Question Number | Suggested Points for Responses | Marks (Max) |
|------------------------|--|--------------------|
| 1(a) | <ul style="list-style-type: none">• A Full names, address and contact details of buyers• B Details of seller and their solicitor• C ID• D Estate agents• E Full property address of property to be purchased• F Price and whether a deposit has been paid already• G Anticipated completion date• H Mortgage lender• I How clients funding purchase• J How property held | 6 |
| 1(b) | <ul style="list-style-type: none">• A ADV-Flexibility that a lease can provide in terms of the duration of the leasehold interest.• B ADV-lease term may provide for a relatively short duration, which may suit those tenants who do not want to commit themselves to a longer property interest• C ADV-Alternatively, the lease duration may provide for a lengthier period when the tenant is seeking the stability of a long term.• D ADV- it can avoid major capital outlay in acquiring a leasehold interest, if the main form of payment for the lease is a 'rack' or market rent• E DIS- the tenant is not the outright owner of the property and is subject to the landlord's interest in the land.• F DIS- The landlord may impose obligations or restrictions• G DIS-the lease is a 'wasting asset'. The value of the interest declines as the term gets closer to the end of the grant.• H The declining value of a lease can create problems when a party is trying to secure a mortgage on a lease• I DIS-The risk of the lease being forfeited if the tenant breaches a lease obligation makes the tenant's occupation precarious | 9 |
| 1(c) | <ul style="list-style-type: none">• No guarantee that the original landlord was in a position to grant a lease• No evidence of freehold incumbrances on the leasehold title.• This class of title may be unacceptable to mortgage lenders. | 3 |



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| 1(d) | <ul style="list-style-type: none"> • A Does Landlord need to consent to assign? • B Need to comply with restriction in register • C Do notices need to be served? • D Is Deed of Covenant required (refer to lease) • E Ground rent payable, who to and how often? • F Service charges payable, who to and how often? • G Disputes- any issues to be aware of? • H Provide documentation required • I Service charge accounts (last 3 years)/budget/building ins • J Documents relating to property ie fire risk assessment/asbestos etc • K Details of man co/freeholder • L Costs of Transfer | 9 |
| Question 1 total:27 marks | | |
| 2(a) | <ul style="list-style-type: none"> • A OS1 search when buying a registered title. • B The result of the OS1 search will ascertain if there are any further entries entered on the register since the date of the official copy entries • C Also creates a priority period for the buyer. 30 working day period from the date of the search result. • D Form K16 Bankruptcy search as Nancy & Catherine are buying with a mortgage • E Check what entries are revealed • F Completion must take place before expiry of priority period | 6 |
| 2(b)(i) | <ul style="list-style-type: none"> • Signed & Witnessed • Clearly intended on its face to be a deed • Delivered as a deed • Must be in writing • Credit for noting Law of Property (Miscellaneous Provisions Act) 1989 | 4 |
| 2(b)(ii) | <ul style="list-style-type: none"> • A Seller (Benny) • B To consent to the sale/ Transferring or disposing of land • C Not always the buyers but a requirement entering into covenants • D Considered good practice all parties to sign • E Nancy and Catherine are declaring a trust • F Transfer will contain an agreement and declaration modifying implied covenants for title so the transfer needs to be signed by all parties to show acceptance of this provision • G Credit to reference seller needing to execute to transfer the legal estate in the land | 5 |
| 2(c) | <p>Any four of the following provisions could have been stated:</p> <ul style="list-style-type: none"> • Seller's solicitor to provide replies to form TA13 at least five working days before completion. • Seller's solicitor will act as agent for the buyer's solicitor. | 4 |

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| | <ul style="list-style-type: none"> • Buyer's solicitor will use all reasonable endeavours to ensure that the funds are obtained from the buyer and lender in time to be sent to the seller for completion. • Seller's solicitor confirms that he is authorised by the seller to receive the money. • Buyer's solicitor should send full instructions. • Seller's solicitor will complete as soon as the funds have arrived. • Seller's solicitor will comply with the buyer's solicitor's reasonable instructions regarding completion and confirm to the buyer's solicitor by telephone etc that completion has taken place. He will also notify the key holder. • Seller's solicitor will send the documents to the buyer's solicitor as soon as possible after completion, and in any event by the end of the next working day following completion. | |
| 2(d) | <ul style="list-style-type: none"> • A certified copy of the TR1 • LTR Certificate (SDLT 5) • A certified copy of the new Nateast mortgage deed • Evidence of discharge of Sawyer Provident Bank Plc's mortgage • Form DI if necessary | 4 |
| Question 2 Total: 23 marks | | |
| 3(a)(i) | <ul style="list-style-type: none"> • The Code for Leasing Business Premises (1 edition) effective from 2020 • Royal Institute for Chartered Surveyors (RICS) | 2 |
| 3(a)(ii) | <ul style="list-style-type: none"> • Negotiations over the lease must be approached in a constructive and collaborative manner • Unrepresented parties must be advised of the existence of the code and must be recommended to seek independent legal advice • Any agreement as to terms for a vacant possession letting must be recorded in 'subject to contract' written heads of terms • Heads of terms must also be used at lease renewal. A template of heads of terms is provided but not mandatory • Negotiations should aim to produce letting terms that achieve a fair balance between the parties having regard to their respective commercial interests | 4 |
| 3(b) | Anticipated completion date only- may be on notice and not set date in contract | 1 |
| 3(c) | <ul style="list-style-type: none"> • So that all leases come to an end on the same day • And other features such as tying in rent review dates <p>Ensures all rents for all flats are paid on the same day/easier for Landlord</p> | 2 |
| 3(d) | Buyer covered against builders failing to start or complete through insolvency or fraud up to a specified financial limit | 1 |
| Question 3 Total: 10 marks | | |
| 4(a) | <ul style="list-style-type: none"> • A clause 15 could provide assistance to Peter on an assignment to Tyne | 5 |



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| | <ul style="list-style-type: none"> • B It would allow his consent to the assignment to be conditional upon entering into an authorised guarantee agreement (AGA) with him. • C Usually Tim would be released from his liability on the lease covenants following the assignment, • D As Peter has concerns about the financial and covenant strength of Tyne, an AGA would enable Peter to sue Tim if Tyne fail to pay rent or observe covenants • E If Tim refused to enter into an AGA then Peter can withhold his consent to assignment and this would be deemed a reasonable refusal | |
| 4(b) | <ul style="list-style-type: none"> • Peter could sue Tyne for the debt but this is unlikely to be useful as the tenant may not have the available money to satisfy any court order to repay the arrears. • Peter could sue Tim the outgoing tenant, for the debt under the AGA • Forfeiture (the right of re-entry) would determine the lease and allow Peter to re-take possession against Tyne • The commercial rent arrears recovery procedure (CRAR) would allow regulated enforcement agents to enter Tyne's property after giving at least 7 days' notice. • The agents would then be able to take control of items in Tyne's property and after at least 7 days, sell them to pay off the arrears | 5 |
| Question 4 Total: 10 marks | | |