



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 4 – LAND LAW

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

Candidate performance varied with a range from excellent to very poor.

Some candidates clearly had a very good knowledge across the Unit Specification and demonstrated excellent subject knowledge. These candidates were able to answer the questions with precision, detail and often with strong application of the law to the facts of the scenario and their papers deserved the merits or distinctions that their answers achieved.

The weakest candidates generally showed a lack of coverage of the unit specification and a lack of understanding of it.

As in previous sessions, a significant number of weaker candidates showed good subject knowledge but were weak in applying that knowledge to the facts of the scenario question that they chose to complete. Candidates should be reminded that to apply the law to the facts they need to identify the relevant facts referred to in the scenario.



Candidates are again reminded that, where applicable to the question, they are expected to cite the full name of the relevant statute and the section number. However, credit will be given where the statute is correctly abbreviated, and the candidate has previously set out the full name in full earlier in the paper.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

This was answered well by most candidates with many gaining all or substantially all of the available marks.

Question 2

This was well answered by the majority of candidates with many gaining all of the available marks.

Question 3

This was also well answered by many candidates. However, a number of candidates lost marks particularly with their explanation of the unity of possession.

Question 4

This was not well answered with only a minority of candidates able to provide a precise explanation of the 'mirror principle' and a significant minority of candidates not gaining any marks on this question.

Question 5

This was generally answered well by most candidates although some lost marks for saying only that the registered system is cheaper or quicker without giving an explanation of why this might be the case.

Question 6

This was answered well by some candidates although a significant minority were not aware that this register relates to unregistered land or any entries that it contains and so gained no marks.

Question 7

This was answered well by a pleasing number of candidates although a small minority of candidates stated that both the beneficiary and the trustee hold the equitable/beneficial interest in land and so lost the available mark for this part of the question.

Question 8(a)

This was generally answered well by many candidates with many candidates gaining full marks or nearly full marks on this question.

Questions 9

This was answered reasonably well by many candidates although a significant number confused the circumstances when an easement is acquired by prescription with the requirements for a valid easement. Marks were also lost when candidates could state some but not all of the requirements for an easement to be acquired by prescription. The candidate performance was disappointing and, given the nature of the question, surprising.

Question 10

This was answered well by most candidates although, again, a significant minority were unaware of what a profit a prendre is and lost both available marks.

Question 11

This was also answered well by many candidates although a significant number confused the name of the body or could not explain in sufficient details/with sufficient precision any of the grounds.

Question 12

This was answered very well by most candidates, with most achieving all or nearly all available marks.

Section B**Scenario 1****Question 1**

This was, in general, reasonably answered with good explanations of the doctrine of survivorship. Candidates tended to lose marks by not discussing the effect, if any, of the letter and this impacted on the marks achieved.

Question 2

This was answered reasonably well by a significant number of candidates with many giving very good explanations of the requirements of a constructive trust and good application of the law to the facts of the scenario. However, many candidates lost marks with unclear explanations of constructive trusts and/or a failure to apply to the law to the facts of the scenario.

Question 3(a)

This was incorrectly answered by the majority of candidates.

Question 3(b)

This was also poorly answered with many candidates not identifying the statutory factors and/or applying them to the facts of the scenario.

Candidates are reminded of the need to set out the name of the relevant statute in full in their answer (unless it is set out in full previously in the exam paper).

Question 4(a)

This was not answered well by many candidates and there is a lack of understanding of the classes of title and it is fairly common to see the statement that absolute freehold title means that there are no interests adversely affecting a property.

Question 4(b)

This was answered reasonably well with a significant number of candidates identifying that the issue is that of an overriding interest. However, many candidates lost a mark by not accurately identifying the relevant overriding interest i.e. the right of a person in actual occupation.

Question 5

This was a difficult question and was answered reasonably well with some candidates showing a good understanding of the circumstances when a lease needs to be registered or when it is protected as an overriding interest.

Scenario 2**Question 1**

This was answered reasonably well by most of the candidates who chose this scenario.

Question 2

This was, surprisingly, not well answered with many candidates confusing the common law requirements for a valid contract (i.e. offer, acceptance etc) with the statutory formalities.

Question 3(a)

With only a very small number of exceptions, this question was not well answered.

Question 3(b)

As above, with only a very small number of exceptions, this question was not well answered.

Question 3(c)

This was answered well by most candidates.

Question 4

This was again not answered well with many focussing only on the possibility of Bob buying Fred's land (but not then often explaining merger) and not discussing the possibility of obtaining an express release (by deed) from Fred.

Scenario 3**Question 1(a)**

This was answered well with virtually all candidates, who chose this scenario, receiving the one available mark.

Question 1(b)

This was well answered by most candidates with many of the candidates gaining all or nearly all of the available marks for this question.

Question 1(c)

This was also answered well by many candidates who showed a good ability to apply the law to the facts of the scenario. A relatively small number of the stronger candidates were able to distinguish the conclusion in respect of the footpath with that of the right of light and the very strongest candidates were able to distinguish in their conclusion between the right to light thorough the window and the garden generally.

Question 2(a)

This was answered reasonably well although a significant number of candidates did not seem to be aware of express grant and instead discussed prescription or necessity.

Question 3

This was well answered by many candidates although some candidates lost marks but just saying 'release' in their answer with no further explanation i.e. express/by deed or implied/abandonment.

Question 4(a)

This was answered reasonably well by many candidates but while many could identify the issue and the relevant case of *Bernstein v Sykviews* many did not correctly/accurately state the test specified in that case.

Question 4(b)

This was well answered with most candidates gaining all or virtually all of the available marks.

SUGGESTED POINTS FOR RESPONSE**JANUARY 2023****LEVEL 3 UNIT 4 – LAND LAW****SECTION A**

Question Number	Suggested Points for Responses	Marks (Max)
1	Any three of the following: Not entitled to: a) gold or silver in mines (accept gold or silver with no reference to being in mines) b) treasure c) oil under Petroleum Production Act d) coal	3
2	Any one of the following: a) Degree of annexation (attachment) b) if held down by more than own weight, likely to be fixture c) relevant case, e.g. Holland v Hodgson OR d) Purpose of annexation (attachment) e) if for own benefit likely to be fitting f) relevant case OR g) Permanence of annexation (attachment) h) the more permanent attachment, the more likely to be fixture i) relevant case NB Relevant case must relate to test chosen to describe.	3
3	a) Refer to joint tenancy Unity of: b) possession: each tenant entitled to possession of whole land c) interest: interest of each tenant must be the same d) time: interests must arise at same time e) title: each tenant must gain title from same document	5

4	a) Register reflects b) At any one time c) Totality of estates and interests in the piece of land	3
5	Any three of: a) Easier deduction of title b) Eliminates examination of title deeds c) Easy to see third party interests d) State guarantee (credit compensation for errors) e) Conveyancing may be quicker/cheaper (this needs to be supported by a reason) f) Extent of property shown on title plan	3
6(a)	a) unregistered land	1
6(b)	Any one of: a) estate contract b) puisne mortgage c) equitable mortgage d) equitable easement e) equitable lease f) restrictive covenant g) family home rights under Family Law Act 1996 or Civil Partnership Act 2004	1
Question 6 Total: 2		
7(a)	Trustee	1
7(b)	Beneficiary	1
Question 7 Total: 2		
8	Any five from the following: a) contribution to purchase price b) at time of purchase c) to property held in name of legal owner d) legal owner holds on trust for contributor e) as beneficiary under resulting trust f) credit relevant case g) And provided it is not a gift	5
9	Any five from the following: a) must be continuous user (accept regular user) b) for the prescriptive period e.g. 20 years or more c) At common law from time immemorial/doctrine of lost modern grant, Prescription Act 1832 (any one of these will be sufficient for the mark?) d) one freehold owner against another freehold owner e) as of right f) without force, secrecy or permission	5

10	a) Legal right to enter another's land (need to refer to legal right to enter/right to enter for the mark) b) to take something from it credit example e.g. timber	2
11	a) Upper Tribunal (Lands Chamber) PLUS Any one of: a) covenant obsolete b) due to changes in character of property or neighbourhood OR c) continued existence of covenant d) would prevent reasonable use of land e) OR f) person entitled to covenant g) has expressly/impliedly consented to discharge OR h) discharge or modification will not injure person entitled to covenant	3
12	a) monthly repayment to lender b) consists partly capital and part interest c) usually over a 20-25 year term (credit reference to a fixed term without reference to number of years) d) at the end of the term the full amount is repaid Life insurance policy designed to repay the loan in the event of death during the term	4
Section A Total: 40 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1	a) Purchase as joint tenants, jointly entitled to whole Explain right of survivorship: b) Survivor takes whole property on the death of one joint tenant c) unless severance in equity d) To convert to tenancy in common with separate shares e) Severance can be by written notice under s.36 Law of Property Act 1925 (1) (no need to refer to section/statute for the mark) f) Severance must be in lifetime, cannot be by will	9



	<p>Apply:</p> <ul style="list-style-type: none"> g) letter not sent in lifetime h) so not effective to sever equitable joint tenancy i) will not effective as severance <p>Conclusion:</p> <p>Oliver has no interest in property under Mary's will</p>	
2	<p>a) Identify possible constructive trust</p> <p>Explain elements:</p> <ul style="list-style-type: none"> b) common intention (express/implied) for non-legal owner to have share c) sufficient contribution by non-legal owner d) relevant case e.g Lloyds Bank v Rosset; Gissing v Gissing <p>Apply:</p> <ul style="list-style-type: none"> e) invitation to share home may/may not show common intention by Annabel for Carl to have share f) household chores (gardening) generally not sufficient contribution g) discuss whether occasional payment sufficient, especially if used towards mortgage <p>Conclusion on whether there is constructive trust:</p> <p>credit good argument either way</p>	8
3(b)	<p>Credit one mark for identifying a relevant factor:</p> <ul style="list-style-type: none"> a) the intention of the parties who created the trust b) the purposes for which the property subject to the trust is held c) the welfare of any child who occupies or might reasonably be expected to occupy the property d) the interests of any secured creditor e) the interests of any beneficiary <p>PLUS</p> <p>Credit one mark for application, for example:</p> <ul style="list-style-type: none"> f) Annabel intended to remain living in the house g) The purpose of buying the house was as a home for Annabel and Mary/possible argument that as Mary has died purpose has come to an end h) we are not aware of any children so no argument that they need to have a home i) there is a mortgage and so their interests will be relevant 	2
4(a)	<ul style="list-style-type: none"> a) Absolute freehold title b) Highest form of title (accept: equivalent to fee simple absolute on title) c) Subject only to entries on register d) and overriding interests 	4

4(b)	a) Possible overriding interest under Land Registration Act 2002 Schedule 3 para. 2 b) right of person in actual occupation Not on register but binding on buyer or lender	3
Question 4 Total: 7 marks		
5	a) Not necessary b) Not form of lease capable of registration c) Short lease so protected as overriding interest under Land Registration Act 2002	3
Section A Total: 30 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1	a) Fixture is part of land b) Passes with the land on sale c) Unless excluded by consent before sale d) Form states items to be left/taken Avoids dispute	5
2	a) In writing b) Contains all agreed terms c) Signed by all parties d) s.2 Law of Property (Miscellaneous Provisions) Act 1989	5
3(a)	a) Must be restrictive b) Even if positive in form must be restrictive in substance c) Burden intended to pass d) Two pieces of land, benefited and burdened (accept dominant and servient) e) Covenant must benefit dominant land f) Covenant must be registered against servient land/servient owner has notice of the covenant g) Tulk v Moxhay (1848) or relevant case	7
3(b)	a) Covenant is restrictive b) Two pieces of land (2 Silver Strand and 3 Silver Strand) c) Covenant shows benefit to 3 Silver Strand d) Intention to pass assumed under s.79 LPA 1925 e) Need to check whether registered against Bob's land	5
3(c)	a) Damages b) Injunction	2
Question 3 Total: 14 marks		



4	a) Obtain express release b) of benefit c) from Fred d) by deed e) Buy Fred's land f) End by merger	6
Section B Total: 30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	Easement	1
1(b)	a) Re Ellenborough Park (1956) (date of case is not needed for the mark) b) a dominant and servient tenement c) the right must benefit the dominant tenement/of benefit to the land and not just of personal or commercial benefit d) diversity of ownership and occupation e) right must be capable of forming the subject-matter of a grant f) must be similar to existing easements/ no requirement to spend money/ must be sufficiently definite/no exclusive possession (accept one of these points for mark)	6
1(c)	Any seven of the following: a) two pieces of land i.e. 23 and 24 b) right must benefit the land and not of commercial benefit – this is true of both the pathway and the light. (ok to accept reference to pathway only) c) there is diversity of ownership and/or occupation i.e. Denis and Ahmed d) capable – it must be similar to existing easements as this is satisfied in respect of the right of way e) credit reference to no obligation to spend money f) conclusion – right of way is likely to be an easement g) capable – a right of light through a defined aperture is an established easement h) however, it must be sufficiently definite and through a defined opening i) conclusion – the right to light through the window is likely to be an easement j) the right of light to the garden is unlikely to be an easement	7
Question 1 Total: 14 marks		



2(a)	Any two of the following: a) Express grant b) created by deed c) s 52 LPA 1925	2
2(b)	Any three of the following: a) an easement will be implied if absolutely necessary b) i.e. where land is landlocked c) mere inconvenience is insufficient d) here, there is an alternative access e) so no easement (this conclusion is needed for 3 marks to be granted for this question) <u>Nickerson v Barraclough (1982)</u>	3
Question 2 Total: 5 marks		
3	a) By statute b) By express release – deed of release c) implied release – evidence of abandonment unity of possession and ownership	4
4(a)	Any four of the following: a) <u>Bernstein v Skyviews/Kelson v Imperial Tobacco</u> (credit relevant alternative case) b) Ahmed owns the airspace c) to a height for reasonable enjoyment d) infringing on airspace is therefore trespass e) so the summerhouse roof and the trees are trespass	4
4(b)	a) injunction (court order to stop the tree would be sufficient to justify the mark) b) Damages c) remedy of self-help in respect of the trees	3
Question 4 Total: 7 marks		
Scenario Total: 30 marks		