

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 6 UNIT 10 – LANDLORD & TENANT 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

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.

Weaker candidates tended simply to recite everything that they were able to recall about a particular topic (whether or not it was germane to the question posed). However, learning/recall must be accompanied by reasoned discussion and/or application if higher grades are to be achieved. This is particularly pertinent in relation to the Section A questions, where candidates are expected to be able (as the case may be) to analyse, evaluate or discuss both sides of a particular proposition.

In relation to the Section B questions, a failing which is common to a large number of candidates is a reluctance to commit to a conclusion and/or offer a pragmatic explanation or advice – the phrase “it all depends on what the court decides” (or its equivalent) is an all-too-common feature of many scripts.

As stated above, candidates are expected to cite statutory provisions and/or case law in relation to legal principles which they refer to. They are also expected to be accurate. No credit is given for statements such as 'In a decided case...', or 'In the case about...' or 'In [] v [] ...' or 'The Landlord and Tenant Act 1927 deals with this...'

In this particular session, a notable feature was that several candidates gave quite short answers. Although volume certainly does not go hand in hand with quality, it is 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.

Excessive or unnecessary recitation of the facts of particular cases receives no credit.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

In the main, candidates were unable to articulate the impact of LTA 1927, s 19(1A) in relation to alienation covenants. The candidates who passed were at least able to state the general law regarding those covenants with some clarity/accuracy.

Question 2(a)

This was a relatively straightforward question on a topic (RA 1977) which has been popular with candidates over the years.

2(b)

Overall, candidate performance in relation to this part was poorer than in relation to part (a). The question was not particularly complex, and so the poor performance is perhaps attributable to poor revision/recollection.

Question 3

Overall performance was good. This is a topic which candidates often choose not to revise, so only those who have in fact done so tend to choose a question on it. The remainder who choose to answer it presumably do so on the basis that the alternative questions have even less appeal.

Question 4

Fourteen candidates attempted this question. Although a handful answered it well, for the most part the results were disappointing. Forfeiture is a familiar topic for examination (both as an essay and a problem question, and it is one of the more fundamental aspects of the course. It was surprising, therefore, that the majority of candidates appeared to struggle. Although the wording of the question is a different formulation from past years, it does not seem that that alone can explain the generally poor performance.

Section B

Question 1

Performance overall was very poor. A number of candidates (wrongly) focussed their discussion on the topics of easements/rights granted and/or the contractual terms of the lease. The question actually concerns the implied covenant for quiet enjoyment and/or the principle of non-derogation from grant.

Question 2(a)

Overall performance was disappointing. Part (a) was a question about occupiers' liability – again, this is a topic which is not generally favoured by candidates, but the mark range seems acceptable.

2(b)

The problem with QB2 overall seems to lie in some very poor performances in relation to part (b), which invited candidates to discuss protection from eviction/harassment. Ordinarily, this is a popular topic with candidates, but for some reason this cohort seem to have struggled to deal with it. Many included a discussion about lawful eviction procedures, when: (i) the scenario clearly indicated (in words which have been used in similar previous questions) that Cyra was being intimidated into leaving her flat, and (ii) the question explicitly asked for discussion of Bashir's potential liability to her.

Question 3

This question concerned security of tenure under the Landlord and Tenant Act 1954. This is a popular topic with candidates, and performance overall seems on a par with previous sessions. A small number of candidates did not recognise that Henning did not have a protected tenancy (which excluded them from a number of marks), whilst (from recollection) some answers to the question were on the basis that he had a residential tenancy.

Question 4

This question concerned the familiar topic of the lease/licence distinction. This topic is typically popular with candidates and is one where (historically at least) they have tended to perform well. However, this cohort seem to be something of an exception to that general rule. In the main, the answers simply did not engage in a systematic exposition of the legal principles nor application of those principles to the facts.

SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

LEVEL 6 UNIT 10 – LANDLORD & TENANT LAW

| Question Number | Suggested Points for Responses | Marks (Max) |
|----------------------------------|---|-------------|
| 1 | <p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Discussion around the above with detailed arguments, for and against, being evidenced • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion (brief) re absolute, partly-qualified and fully-qualified covenants against alienation • Discussion of effect of LTA 1927, s 19(1) on partly-qualified and covenants against alienation • Discussion of principles enunciated in cases such as <u>International Drilling Fluids Limited v Louisville Investments (Uxbridge) Ltd</u> (1986), <u>Stradley Investments v Mount Eden Land Ltd</u> (1996) and <u>Ashworth Frazer v Gloucester City Council</u> (2001) as regards ‘reasonableness’ • Discussion of LTA 1988, s 1 in relation to ‘reasonableness’, with reference to cases such as <u>Footwear Corpn Ltd v Amplight Properties Ltd</u> (1998), <u>Norwich Union Life Insurance Society v Shopmoor Ltd</u> (1998) and <u>London & Argyll Developments Ltd v Mount Cook Land Ltd</u> (2002) - candidates must articulate the specific elements of LTA 1988 • Discussion of terms and impact of LTA 1927, s 19(1A) in relation to ‘assignment circumstances’ and ‘assignment conditions’ <p>Reasoned discussion in relation to the question posed</p> | 25 |
| Question 1 total:25 marks | | |



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| <p>2(a)</p> | <p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Creating clear and understandable explanations of complex events/procedures • A reasoned conclusion which draws together the matters covered under the previous two bullet points • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • General discussion re: (i) security of tenure afforded by RA 1977 and (ii) existence of mandatory and discretionary grounds for possession under RA 1977, s 98 and Sch 15 • Detailed discussion of: (i) specific grounds of possession; (ii) suitable alternative accommodation as a distinct basis for possession, and (iii) requirement for written notice in relation to the mandatory grounds • General discussion re: (i) security of tenure afforded by HA 1988, (ii) existence of mandatory and discretionary grounds for possession under HA 1988, s 7 and Sch 2, (iii) power to stay, suspend or postpone possession in relation to discretionary grounds, and (iv) more limited power to postpone possession in relation to the mandatory grounds • Reasoned discussion in relation to the question posed | <p>18</p> |
| <p>2(b)</p> | <p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Creating clear and understandable explanations of complex events/procedures • A reasoned conclusion which draws together the matters covered under the previous two bullet points <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion (by reference to relevant provisions in both RA 1977 and HA 1988) of: (i) wide power of Court to stay, suspend or postpone possession in relation to discretionary cases/grounds, | <p>7</p> |

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| | <p>and (ii) more limited power to postpone possession in relation to the mandatory cases/grounds</p> <ul style="list-style-type: none"> • Reasoned discussion in relation to the question posed | |
| Question 2 total:25 marks | | |
| 3 | <p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Detailed discussion around the above • A reasoned conclusion which draws together the matters covered under the previous two bullet points • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • In relation to service charges, discussion re: <ul style="list-style-type: none"> ▪ requirement for reasonableness and approach to be adopted (<u>Veena SA v Cheong</u> (2003) and LTA 1985, ss 18-20) ▪ time limit for serving a service charge demand (LTA 1985, s 20B) and consequences of failing to do so ▪ requirement for any service charge demand to be accompanied by a summary of the tenant’s rights and obligations in relation to service charge (LTA 1985, s 21) and the consequences of failing to do so ▪ restriction on forfeiture without amount due having been agreed with the tenant or determined by a tribunal (CLRA 2002, s 168) ▪ landlord’s duty to provide a summary of expenditure if requested ▪ restricted right of the landlord to recover costs of proceedings by way of service charge ▪ statutory trust over service charge funds • In relation to consultation, discussion re: <ul style="list-style-type: none"> ▪ tenants’ right in relation to major contracts and major works (LTA 1985, ss 20 and 20ZA) and consequences of failing to consult ▪ tribunal’s ability to dispense with the obligation to consult, when this may be appropriate and terms on which dispensation may be granted (<u>Daejan Investments Limited v Benson</u> (2013) and any other relevant authorities) ▪ Reasoned discussion in relation to the question posed | 25 |
| Question 3 total:25 marks | | |



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| 4 | <p>An answer which consists of reasoned assessment, breaking down the issue into sections and highlighting those of higher importance/relevance. There should be a conclusion which indicates merits and flaws and is supported with evidence where appropriate.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant case law and statutory provisions • Creating clear and understandable explanations of complex events/procedures • A reasoned critique which draws together the matters covered under the previous two bullet points • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of right to forfeit in outline, with reference to need for reservation of express right of re-entry and <u>Duppa v Mayo</u> (1669) • Discussion of: (i) common law requirements re forfeiture for non-payment of rent (timing and service of demand), (ii) intervention of statute in form of CLPA 1852, ss 210, 212 and 214, and (iii) landlords' attempts to mitigate effect of those rules by drafting which dispenses with need for formal demand and defines 'rent' as broadly as possible • Discussion of requirements imposed by LPA 1925, s 146 in relation to: (i) need for a landlord's notice of breach, and (ii) form and content of the notice re remediable/irremediable breach, 'reasonable time' and compensation • Discussion of common law doctrine of waiver and how landlords may fall foul of it • Discussion of how tenants may avoid forfeiture, eg payment - CCA 1984, s 138 - or application for relief (under LPA 1925, s 146 or inherent jurisdiction) | 25 |
| Question 4 total: 25 marks | | |

SECTION B

| Question Number | Suggested Points for Responses | Marks (Max) |
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| 1 | <p>An answer which offers advice based on evidence. It should supply possible alternatives (with their pros and cons) but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant facts and law • Discussion around the above with detailed arguments, for and against, being evidenced | 25 |



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| | <ul style="list-style-type: none"> • A reasoned conclusion which is supported with evidence, offering the suggested best option available • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of terms and effect of Amiyah’s lease (ie not a demise of a parking space but a general right to park) • Discussion of law relating to non-derogation from grant (eg <u>Browne v Flower</u> (1911), <u>Kenny v Preen</u> (1963), <u>Southwark LBC v Mills</u> (2001)) • Discussion of law relating to landlord’s covenant for quiet enjoyment (eg <u>Birmingham, Dudley & District Banking Co v Ross</u> (1888), <u>Aldin v Latimer Clark, Muirhead & Co</u> (1894)) • Reasoned application of legal principles identified above in relation to both: (i) proposal re temporary spaces whilst works are carried out, and (ii) proposal re future parking arrangements post-completion • Discussion of possible remedies in relation to any identified potential breach | |
| Question 1 total:25 marks | | |
| 2(a) | <p>An answer which offers advice based on evidence. It should supply possible alternatives (with their pros and cons) but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant facts and law • Discussion around the above with detailed arguments, for and against, being evidenced • A reasoned conclusion which is supported with evidence, offering the suggested best option available <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of law relating to landlord’s duty of care to tenants, their families and their lawful visitors (eg Defective Premises Act 1974, s 4, Occupiers Liability Act 1957 and Occupiers Liability Act 1984, together with illustrative case law) • Reasoned application of law to facts with particular reference to: (i) Esme’s age, (ii) whether the ladder/open hatch are a ‘lure’, and (iii) Esme was within parts of the building over which Bashir had control but were outside the demised property | 15 |

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| <p>2(b)</p> | <p>An answer which offers advice based on evidence. It should supply possible alternatives (with their pros and cons) but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant facts and law • Discussion around the above with detailed arguments, for and against, being evidenced • A reasoned conclusion which is supported with evidence, offering the suggested best option available <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of criminal and civil liability under PEA 1977 (with reference to each of the relevant separate elements within the Act) • Discussion of statutory tort of unlawful eviction under Housing Act (HA) 1988, ss 27 and 28 • Reasoned application of the above to the facts of the scenario | <p>10</p> |
| <p>Question 2 total:25 marks</p> | | |
| <p>3</p> | <p>An answer which offers advice based on evidence. It should supply possible alternatives (with their pros and cons) but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant facts and law • Discussion around the above with detailed arguments, for and against, being evidenced • A reasoned conclusion which is supported with evidence, offering the suggested best option available • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion re whether the three tenants enjoy security of tenure under Part II of LTA 1954, with particular reference to whether each tenant is in occupation for the purpose of a business carried on by the tenant, citing LTA 1954, s 23 • Discussion of the critical criterion here - ‘for the purposes of a business’ - with reference to relevant authorities, eg <u>Hillil Property and Investment Co Ltd v Naraine Pharmacy Ltd (1979)</u> <u>Abernethie v A M Kleiman (1970)</u> • Application of the above to the facts, with conclusion that Georgina and the charity have security of tenure, whereas Henning does not • Discussion re termination of Fidel’s contractual annual periodic tenancy by notice to quit, which Henning cannot contest | <p>25</p> |

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| | <ul style="list-style-type: none"> • Discussion re termination of the other tenancies, which must be in accordance with LTA 1954 (ie s 25 notice, which can serve the dual purpose of both the statutory notice and the contractual notice to quit) • Recognition that, if Georgina and the charity are unwilling to leave, they may well apply for a renewal tenancy in response to Fidel's s 25 notice, in which case Fidel will need to make out one of the grounds of opposition under LTA 1954, s 30(1). Ground (f) is the obvious candidate | |
| | Question 3 total:25 marks | |
| Q4 | <p>An answer which offers advice based on evidence. It should supply possible alternatives (with their pros and cons) but highlight the best option with sound justifications.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant facts and law • Discussion around the above with detailed arguments, for and against, being evidenced • A reasoned conclusion which is supported with evidence, offering the suggested best option available • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Basic discussion of the three essential characteristics of a lease and contrast those with a licence, with particular reference to the proprietary rights granted by the former and the (merely) contractual rights granted by the latter • Discussion of exclusive possession (with reference to <u>Street v Mountford</u> (1985) and <u>Marchant v Charters</u> (1977)) and other elements enunciated by Lord Templeman, with particular reference to <u>Lace v Chantler</u> (1947) and <u>Prudential Assurance Co Ltd v London Residuary Body</u> (1991) • Discussion of requirements of LPA 1925, s 52(1) and exceptions contained in LPA 1925, s 54 • Application of the above to the facts re whether Naomi and Ophelia are joint tenants under a legal lease • Discussion whether this is a situation where the presence of the essential characteristics of a lease is nonetheless negated by other factors, with particular reference to family situations and/or lack of intention to create legal relations: <u>Cobb v Lane</u> (1952) and <u>Booker v Palmer</u> (1942) • Discussion whether the above precludes the conclusion that there is a lease of the unit | 25 |
| | Question 4 total:25 marks | |