

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 6 UNIT 17 – 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

The stronger performing candidates exhibited similar characteristics, in that they possessed both good knowledge and understanding of the relevant principles and procedures of conveyancing, coupled with the ability to offer practical advice to the clients in relation to the issues with which they were presented. Weaker candidates struggled with both general principles and procedure of Conveyancing. Better candidates had clearly made good use of the opportunity to consider the case study materials in advance of the exam.

Weaker candidates tended to produce answers which were generalised and did not show much knowledge of the case study materials. For examples some candidates referred to there being a lease in connection with the clients' purchase, whereas it was of course an unregistered freehold.

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 and fees for searches, and post completion matters as these matters are essential in practice and in examination questions.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

Quite a lot of candidates considered that they were being asked what would be included in a contract package. This was not the case as the question asks what documents will be required to “deduce title.” This would be the official copies of the register plus filed plan for leasehold and freehold; an office copy of the Lease plus plan and a copy of the deed dated 29th April 1988. This is required as it creates rights over the property.

1(b)

Most candidates explained this reasonably well. The restriction requires a compliance certificate which would only be issued by the Management Company when the buyers have entered into a deed of covenant in accordance with the terms of the Lease. Better candidates described the procedure involved with regard to this.

1(c)

A surprisingly low number of candidates answered this question with any confidence. The distinction candidates and perhaps those dealing with Conveyancing on a daily basis did quite well, but other candidates struggled. The form is of course the Leasehold Property information form, so needed information such as ground rent receipts, block insurance policy details, share certificate and memo and articles of association etc.

1(d)

Seller

For the full 2 marks candidates were required to state that Margery Zena Arrowsmith was the seller as personal representative of Zena Ann Arrowsmith. A good proportion of candidates attained full marks here but some tried to include a second Trustee which was not required.

Title guarantee

The correct title guarantee was limited guarantee which a high percentage of candidates got correct.

Specified incumbrances

Better candidates referred to the matters contained or referred to in the Lease and the rights referred to in entry number 1 of the Charges register of title number BM 79812. Most however only referred to the Official copies.

Special conditions

Not many candidates achieved full marks here. Distinction candidates tried drafting the clause relating to the reinstatement of the garden fence. Hardly any candidates included the standard clause in leaseholds where a limited title guarantee is given.

Question 2(a)

Most candidates did work out that the Deed of Gift was not acceptable and gave valid reasons why this was the case.

2(b)

The question was designed for candidates to actually frame the requisitions in the appropriate wording and explain why it was necessary to raise these. Candidates should be reminded that the purpose of Requisitions are to clear up issues on the title so that it gives a clear overview of the ownership. Requisitions should not be used for matters which have been dealt with in the property information form.

The main issues to clarify and which required a properly worded requisition were:

- To request a plan in respect of the 1984 Conveyance
- To obtain documentation in respect of the marriage of Kevin Diffey and Judith Campbell and also death certificate of Judith Diffey
- To ascertain who will act as Trustee- as the Diffeys held as tenants in common
- Query the position of the non-public road – access, maintenance
- Query the position re covenants

Merit and distinction candidates did well with their understanding of requisitions. Other candidates did less well and went off at a tangent.

2(c)

This question was well answered by most candidates, although only the better candidates mentioned that Con290 should be requested – the optional enquiry as to common land.

Other relevant searches were Chancel repair as near medieval church; environmental/flood search to check for contaminated land and flooding as property near a river.

Also, a SIM search as the property is unregistered. Some candidates mentioned HS2 search which isn't really applicable in Northamptonshire, nor is a Coal mining search which some candidates mentioned. On the whole though, this question was well answered.

Question 3(a)

Once the candidates had identified that the question related to planning and restrictive covenants it was a matter of setting out a detailed client-friendly email explaining the position. Unless the proposed extension was within permitted development, the candidate needed to consider that planning permission may be required and the statute concerning this should be stated. More able candidates discussed whether Building Regulations might be required. The second element to this question was whether the restrictive covenants were in fact enforceable and more able candidates noted that this could only be the case if the covenants contained in the 1984 Conveyance had in fact been registered as a D(ii) Land Charge. Many candidates discussed how the covenants could be released.

Many candidates followed the direction and set this out as an email, but some did not and just answered it as a question.

Question 3 (b)

This question was on the whole very well answered. Most candidates worked out that there was a chain transaction in the sale of Flat 1A and this would be a formula C exchange and the purchase would be a formula B. Better candidates detailed the procedure of the exchange and the post exchange procedure.

3(c)

This was not particularly well answered.

Question 4(a)

This question required a lot of detail, and most candidates did not show as much information as was required. Most but not all candidates were quite vague. Better candidates were able to discuss the implications of the Bankruptcy and that the property would vest in the Trustee in Bankruptcy and there would be obvious delays before the purchase could be completed.

4(b)

Most candidates offered practical advice to the clients, the most sensible being to complete on the sale to chain break and move into temporary accommodation. The better candidates stated what would happen if completion on the sale was delayed, service of completion notice etc.

4(c)

This reflects the comments made at the beginning of this report in that candidates should be well prepared with knowledge of post completion procedural steps including fees and time limits.

Most if not all candidates were able to state that SDLT should be paid within 14 days, and many offered the amount due which was £10,000.

Almost all candidates recognised that a FR1 form was required and were able to detail most of the documentation required for submission to the Land Registry although not many candidates mentioned the Bankruptcy documentation which would have been required. A significant number of candidates mentioned that the original documentation does not have to be submitted to the Land Registry in that they will accept certified copies. A disappointing number of candidates knew that the time limit for submitting a FR1 application was two months from completion but most of those candidates who knew this, were able to explain why this was- that title passed on completion rather than on registration but reverted to seller if not submitted within two months. A minority of candidates mentioned OS1 and priority periods which of course is completely incorrect. Some mentioned that the application has to be submitted within the period given by the K15, but this is not the case as long as completion takes place within that period.

SUGGESTED POINTS FOR RESPONSE**JANUARY 2023****LEVEL 6 UNIT 17 – CONVEYANCING**

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<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 and explanation of relevant facts and law • Clear and understandable explanation of complex events/procedures <p>Responses should include:</p> <ul style="list-style-type: none"> • official copy of the register and plan for the leasehold title • colour copy of the lease dated 12 December 2006 • copy deed dated 29 April 1988 made between New Towns Commission and New England Homes (MK) Limited • official copy of the register and plan for the freehold <p>Responses could include:</p> <p>Credit if candidates refer to the fact that production is required under the Protocol or in the case of the 1988 deed that it creates rights over the property and so in any event the Buyer’s Lawyers will want to know what these are</p>	6
1(b)	<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 and explanations of relevant facts and law <p>Responses should include:</p> <ul style="list-style-type: none"> • restriction prevents registration of Buyers’ transfer without a certificate from a director of the Management Company/or a conveyancer that the Buyers have entered into a deed of covenant as required in the Lease 	6



	<ul style="list-style-type: none"> • the Management Company will prepare the deed as per the prescribed form in the Lease (or one of the parties may prepare it and obtain the Management Company’s approval of it) • the Buyers will need to execute the deed in escrow for delivery on completion • the Sellers’ Lawyers will need to liaise with the Management Company to obtain a draft certificate, have this approved by the Buyers’ Lawyers and obtain signatures • the deed of covenant and duplicate must be lodged with the Management Company on completion by the Sellers’ Lawyers • the Management Company then provides the signed certificate which must be lodged at HM Land Registry with the Buyers’ application for registration <p>Responses could include:</p> <ul style="list-style-type: none"> • the deed of covenant need only be executed by the Buyers <p>the Buyer’s Lawyers or the Sellers’ Lawyers could sign the certificate once the deed of covenant has been executed, but they would be reluctant to do so</p>	
1(c)	<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 and explanations of relevant facts and law <p>Responses should include:</p> <p>Candidates may identify any of the separate items identified in Form TA 7, eg:</p> <ul style="list-style-type: none"> • ground rent receipt for three years from the landlord in accordance with UK Lenders Handbook – to ensure the ground rent has been paid and there are no arrears • copy block insurance policy – to confirm that the landlord has the building in which the flat is located on risk • memorandum and articles of association re the management company – to confirm its constitution • share or membership certificate for Zena Ann Arrowsmith – to confirm that she was a shareholder in or member of the management company • information re most recent internal and external decoration of the block – so that Buyers can anticipate timing and extent of likely future service charge liability 	8

	<ul style="list-style-type: none"> • details of any anticipated ‘extraordinary’ service charge expenditure - ditto • details of any current service charge disputes – so that the Buyers may know if the service charge regime is operating smoothly and is fully funded • supplemental deeds - so that Buyers have information about licences to alter, etc • details of any managing agent – for the Buyers’ information • relevant correspondence with the landlord and/or the management company and/or the managing agent – ditto 	
1(d)	<p>Seller: Margery Zena Arrowsmith as the [personal representative OR executor/executrix of the estate] of Zena Ann Arrowsmith</p> <p>Title guarantee: Limited</p> <p>Specified incumbrances: The property is sold subject to the exceptions, reservations, covenants and conditions contained or referred to in the Lease and the rights referred to in entry number 1 of the charges register of title number BM79812</p> <p>Special conditions:</p> <ol style="list-style-type: none"> 1. On or before the completion date the Seller must at her own expense reinstate the boundary fence at the Property 2. The transfer of the property will contain the following declaration: “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 limited 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” 	7
Question 1 total:27 marks		
2(a)	<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 and explanation of relevant facts and law • Reasoned conclusion which outlines justifications and is supported with evidence <p>Responses should include:</p> <p>Law of Property Act 1925, s 44(8) states that a good root should:</p> <ul style="list-style-type: none"> • be at least 15 years old 	5

	<ul style="list-style-type: none"> • clearly describe the land in question • deal with the whole legal and equitable estate • contain nothing to cast doubt on the title <p>It follows that the Deed of Gift is not acceptable as a good root of title</p> <p>Responses could include:</p> <p>Candidates may advise that a requisition should be raised requesting that the root of title should commence with the 1984 Conveyance.</p>	
2(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Please supply a copy of the plan annexed to the 1984 Conveyance Reason: This provides a physical description of the land to support the legal description in the conveyance • Please supply a certified copy marriage certificate in relation to Judith Campbell and Kevin Albert Diffey Reason: the buyer in 1984 was Judith Campbell but the donor in 1986 was Judith Diffey. Likely reason for the name change is marriage so marriage certificate will prove this. • Please confirm: <ul style="list-style-type: none"> (a) that the Seller has used the service road fronting the property without objection or permission throughout the entire period of his ownership (b) whether any payments have been made by the Seller in relation to the upkeep of the service road, and if so when and in what amount Reason: Because the property has the benefit of a right of access over an unadopted road owned by another but subject to a contribution to maintenance, the Buyers need to know that there has been no problem with access and whether the Seller has made any payments towards the road's maintenance. • Please confirm that the covenants contained in the Conveyance dated 25th August 1984 have not been breached Reason: provided these are registered as land charges, they will bind the land. If there has been a breach, then anyone currently owning the property can potentially be sued 	9
2(c)	<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 and explanation of relevant facts and law <p>Responses should include:</p>	8

	<ul style="list-style-type: none"> • Con 290 – as the property is in the countryside an optional enquiry should be made on to check if any property has been registered as common land • chancel repair liability – the property is near a medieval church so a search will identify the extent of the potential liability and whether indemnity insurance may be required • environmental/flood search – the property is near the River Nene and so a search its vulnerability to flood damage • SIM search - the title is unregistered need to check the property has not been registered and no caution against first registration <p>Responses could include:</p> <p>a commons registration search as such cannot now be made but the CON 290 enquiry will supply the necessary information</p>	
Question 2 total:22 marks		
3(a)	<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 and explanation of relevant facts and law • Clear and understandable explanations of complex events / procedures <p>Responses should include:</p> <ul style="list-style-type: none"> • note they wish to build extension which would be used for a recording studio, and identify they need to consider: (i) planning issues and (ii) restrictive covenants • TCPA 1990, s 57 states that planning permission is required for any “development of land” and s 55 defines development as “the carrying out of building engineering mining or operations in on over or under land or the making of any material change in the use of building or other land.” • building of the extension would be development under TCPA 1990, s 55 so planning permission required • TCP(GPD)O 2015 would enable a small extension to be built under permitted development rights without having to obtain express planning permission • there is no Art 4 direction disclosed in the CON29 replies and so the application of the GPDO is unaffected • building regulations approval may still have to be obtained • there will also be a material change of use from residential to part business use if the intended studio for Jed is used for the public to 	12

	<p>receive guitar tuition – so planning permission required on that basis as well</p> <ul style="list-style-type: none"> • the CON29 replies shows that property is in a mixed-use area, so there is a reasonable prospect that consent for the change of use will be granted • subject to confirmation from the land charge search certificates that the restrictive covenants in the 1984 Conveyance have been registered, they bind the land and so would preclude the clients from building the extension and/or using it for the proposed purpose without obtaining consent from the person with the benefit of the covenant • all necessary permissions/consents should be obtained prior to exchange of contracts (if they are only post-exchange and are not obtained the clients might well not want to proceed with the purchase) <p>answer should be set out as an email, using appropriate language</p>	
<p>3(b)</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 and explanation of relevant facts and law • Clear and understandable explanations of complex events / procedures <p>Responses should include:</p> <ul style="list-style-type: none"> • Margery is in a chain for both her sale of Flat 1A and the joint purchase with Jed of 6 High Street (and so Jed is also effectively in a chain) • The seller of 6 High Street appears to be at the top of the chain – we have not been told of any related purchase as the Protocol would require • We will activate Formula C, part 1 to obtain a release from the Buyers’ Lawyers re Flat 1A • We will then use Formula B to exchange on the purchase of 6 High Street • We will then activate Formula C, part 2 to exchange contracts on the sale of Flat 1A <p>Following exchange, we will forward the signed contract and the deposit to the Seller’s Lawyers</p>	<p>7</p>

3(c)	<p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification and explanation of relevant facts and law <p>Response should include:</p> <p>The Seller’s Lawyers are undertaking:</p> <ul style="list-style-type: none"> • immediately completion has taken place, to hold to Kempstons’ order every document specified under paragraph 9 of the Code and not to exercise a lien over any of them • as soon as possible after completion: <ul style="list-style-type: none"> (a) to confirm to Kempstons by telephone, fax or email the date and time at which completion has taken place (b) to notify the Seller’s estate agent or other keyholder that completion has taken place, and authorise them to make keys available to the Buyers immediately • as soon as possible after completion and in any event by the end of the working day following completion, to send written confirmation that completion has taken place, and (at Kempstons’ risk) the items specified under paragraph 9 of the Code to Kempstons by first class post or document exchange 	5
Question 3 total:24 marks		
4(a)	<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 and explanation of relevant facts and law • Clear and understandable explanations of complex events/ procedures <p>Responses should include:</p> <ul style="list-style-type: none"> • Since the search is against names rather than property, the first step is to ask the Seller’s Lawyers to confirm whether or not the entries relate to their client • If they confirm that the entries do not, nothing else is required • However, if the entries do relate to the Mr Diffey, the scenario now is that ownership of 6 High Street automatically vested in Mr Diffey’s trustee in bankruptcy immediately on the bankruptcy order being made • as a result, only the trustee in bankruptcy can now lawfully transfer the property (and so the transfer will need to be re-drafted showing the trustee as the transferor) 	11

	<ul style="list-style-type: none"> • the trustee in bankruptcy will need to be asked if they are willing to continue with the sale • the trustee could disclaim the contract as onerous property, but there is no reason that this would happen here as it appears that the property is being sold at a market value and there will be a speedier realisation of Mr Diffey’s assets for the benefit of his creditors if this sale goes ahead • completion will almost certainly be delayed whilst the trustee takes stock of the situation • because of this delay, we should protect the contract by registering a C(iv) land charge at the Land Charges Registry and a caution against first registration at HM Land Registry • on registration, we would need to produce to HM Land Registry: (i) copy bankruptcy order, (ii) certificate of trustee’s appointment, and (iii) certificate from trustee that property is comprised in bankrupt’s estate <p>Responses could include:</p> <ul style="list-style-type: none"> • the trustee in bankruptcy would initially be the Official Receiver • any transfer by Mr Diffey in his own name would be void (unless made with the court’s consent) 	
4(b)	<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 and explanation of relevant facts and law • Clear and understandable explanations of complex events / procedures <p>Responses should include:</p> <ul style="list-style-type: none"> • completion on both properties is currently scheduled for the same date • the delay which will almost certainly occur in resolving the issues surrounding 6 High Street means that it is now highly unlikely that our clients will be able to complete both transactions on the same day • we could ask the Buyers if they would be willing to postpone completion of the sale of Flat 1A to tie in with completion of the purchase of 6 High Street, but they are not obliged to do this • in the (quite probable) scenario that the Buyers do not agree to that request, our clients will be in breach of contract if they do not complete the sale of Flat 1A on the completion date, exposing them to the risk of litigation and/or financial loss (damages) 	6

	<ul style="list-style-type: none"> so the appropriate advice is that the better course of action is to complete the sale of Flat 1A and secure temporary accommodation/storage until the purchase of 6 High Street can be completed 	
4(c)	<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 and explanation of relevant facts and law Clear and understandable explanations of complex events / procedures <p>Responses should include:</p> <ul style="list-style-type: none"> send SDLT 1 to HMRC (or submit electronically) within 14 days of completion in the sum of £10,000 SDLT 5 will be issued to evidence compliance apply to register the transfer at HM Land Registry within 2 months of completion using Form FR1 with: <ul style="list-style-type: none"> accompanying 'conveyancing' documents (transfer, Form DL, 1984 Conveyance, 1986 Deed of Gift, marriage certificate, land charges search certificates, SDLT 5, Form DI) – accompanying 'bankruptcy' documents (as identified in relation to Q4(a)) 	10
Question 4 total:27 marks		