

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 6 UNIT 9 – 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

After two sessions which saw an increase in the pass rate, the percentage passing dropped again. This may seem a notable descent from June 2022 but that was an exceptionally high rate. The pass rate in this session remained very much in line with the 2021 and 2020 sessions.

As always, it can only again be reiterated that candidates who answer less than 4 questions are very unlikely to score any more than, at best, a bare pass. Even to achieve a pass, candidates who answer three questions need to average 17 marks – i.e. they must write at least a Merit-level answer for ALL three questions to achieve the most basic pass mark. Again, candidates are much better advised to split their time evenly between four questions (and to do sufficient learning and revision to have the knowledge to do this) than to try and answer three questions well enough.

Regarding areas of law, recent papers have shown a real improvement in knowledge relating to resulting and constructive trusts and this continued here. Inevitably, performance was also strong on adverse possession. Areas where knowledge seemed weaker included easements, over-riding interests and overreaching, leasehold and TOLATA ss14 and 15.

More generally, candidates are reminded that at Level 6 an answer is expected to the actual question asked. Simply noting general points about an area of law will not allow for a pass mark. Answers which are not tailored to the question are unlikely to pick up much credit at Level 6. This

was most notable on question A2. A worrying proportion of answers simply provided an overview of the law of easements, with at best a passing reference to the ouster principle. When a question asks for specific knowledge, that is what candidates should focus on.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

This question tested knowledge of different types of trust arising by operation of law. This is an active area of developing law and that has been the main criticism of candidate answers when similar questions on the topic have been asked in section A in the past – a lack of knowledge of the more recent law. While this was still the case to an extent, there was definitely an improvement in this area and this led to some good answers.

Question 2

If Q1 was the question which was the most surprising with the strength of answers, A2 was definitely the question which most surprised with the weakness in answers. A worryingly large proportion of candidates simply disregarded the question for most or even all of the answer, providing a purely general answer on the topic of easements as a whole.

Question 3

This was by some way the least popular question on the paper. This was most likely due to the topic area (mortgages) which is generally not popular with candidates and has in the past been answered poorly, especially in the context of section A.

Question 4

This was a relatively popular question, being answered by more than half of the cohort. The topic (the principles underlying the modern land registration system) is one which can appear deceptively simple. The topic is one where knowledge of “the law” is very much secondary to the ability to discuss and analyse (compared to e.g. A1 or A3 where a descriptive answer could still do relatively well if it showed good knowledge of the case law).

Section B

Question 1

This question attracted the lowest mean mark on the paper, It is suggested that this was mainly, if not entirely, due to the fact that a notable proportion of the 11 candidates who answered this question only focused on one half or the other of the scenario. A good answer needed to consider leasehold covenants in respect of the first half, and the distinction between a lease and a licence for the second half. Failing to address either half inevitably had a major impact on marks, and this occurred in quite a number of papers.

Question 2

This was another question which required knowledge of more than one narrow area of law and was not particularly popular as a result (just under a third of candidates attempted it). When setting this question, the idea was to balance the “tricky” area of formalities for estates in land with the “easier” area of ownership of airspace. The statistics suggest that this was the case, with the vast majority of candidates obtaining at least 5 marks out of 9 on (c), while fewer performed well on (a) and (b). Overall, the question performed as expected.

Question 3

This question was a problem question on adverse possession, which is what the majority of candidates hope for in the exam judging by the persistently high numbers who choose such questions.

Question 4

This was a relatively popular question which focused on the topic of co-ownership. In general, candidates performed better on part (a) than expected; but also performed commensurately less well on part (b), meaning that while the balance between the two parts was not quite as intended, it was immaterial as it still remained a balanced question in relation to the rest of the paper.

SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

LEVEL 6 UNIT 9 – LAND LAW

Question Number	Suggested Points for Responses	Marks (Max)
1	<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 Laws and Statutory provisions• Discussion around the above with detailed arguments, for and against being evidenced• Relevant new developments• A reasoned conclusion which is supported with evidence• Response is appropriately structured <p>Responses should include:</p>	25



	<ul style="list-style-type: none"> • Explanation of legal and equitable title • Explanation of concept of implied trusts • Discussion of development of law relating to resulting trust • Discussion of development of law relating to constructive trust • Distinction between express common intention and implied common intention • Law regarding qualification for constructive trust • Law regarding quantification of constructive trust • Leading cases in the area <p>Responses could include:</p> <ul style="list-style-type: none"> • Detailed consideration of some or all of above points • Recent case law • Sociolegal critiques of the existing system • Comparison/overlap with estoppel • Proposals for reform 	
	Question 1 total:25 marks	
2	<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 Laws and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Relevant new developments • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Definition of easement • Discussion of requirements for establishing valid easement • Concept of “ouster principle” • Relevant case law on the topic <p>Responses could include:</p> <ul style="list-style-type: none"> • How need for dominant/servient tenement may be in issue in some car parking cases • Academic commentary as to case law • Further case law, especially recent decisions 	25
	Question 2 total:25 marks	
3(a)	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Marks should be distributed in the following areas:</p>	10

	<ul style="list-style-type: none"> • Correct identification of relevant Case Laws and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Relevant new developments • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Definition of a mortgage/ explanation that charge over land • Explanation of the right to redeem • Options outside the mortgage • Postponement of date of redemption • Relevant case law on the topic <p>Responses could include:</p> <ul style="list-style-type: none"> • Distinction between right to redeem and equity of redemption • Idea of “once a mortgage, always a mortgage” • Further depth on specific fetters • Further breadth in looking at a wide range of fetters <p>Collateral advantages</p>	
3(b)	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant Case Laws and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Relevant new developments • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Explanation of right of possession • Common law jurisdiction to adjourn possession proceedings • Statutory protection under Administration of Justice Act 1970 • Relevant case law on the topic <p>Responses could include:</p> <ul style="list-style-type: none"> • Right exercisable immediately • Contractual term expressly or impliedly excluding right to possession • Amendment of AJA 1970 by AJA 1973 • Further case law on the topic 	8

<p>3(c)</p>	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant Case Laws and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Relevant new developments • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of some or all of: <ul style="list-style-type: none"> ○ Duty of reasonable care and good faith ○ Duty to obtain best price reasonably obtainable ○ Duty to take reasonable steps when selling ○ Whether duty as to time of sale ○ Duty to pay surplus to next mortgagee and/or mortgagor <p>Responses could include:</p> <ul style="list-style-type: none"> • When power of sale will arise • When power of sale becomes exercisable • Equitable nature of duty of care and good faith • Distinction between sale by building society and by other mortgagee 	<p>7</p>
<p>Question 3 total:25 marks</p>		
<p>4(a)</p>	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant Case Laws and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Relevant new developments • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Explanation of system of registered land in England and Wales, supported with reference to relevant provisions of the Land Registration Act 2002 • Explanation of mirror principle, supported with reference to relevant provisions of the Land Registration Act 2002 	<p>15</p>

	<ul style="list-style-type: none"> • Concept of over-riding interests • Critical analysis of how far principle has been achieved under the current system • Reasoned conclusion providing an answer to the question asked. <p>Responses could include:</p> <ul style="list-style-type: none"> • Relevant case law • Detailed discussion of particular areas of controversy, e.g. overriding interests, restrictions in register • Reference to academic opinion • Reference to Law Commission report 2018 	
4(b)	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Marks should be distributed in the following areas:</p> <ul style="list-style-type: none"> • Correct identification of relevant Case Laws and Statutory provisions • Discussion around the above with detailed arguments, for and against being evidenced • Relevant new developments • A reasoned conclusion which is supported with evidence • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Explanation of certain principle, supported with reference to relevant provisions of the Land Registration Act 2002 • Concept of over-reaching • Critical analysis of how far principle has been achieved under the current system • Reasoned conclusion providing an answer to the question asked. <p>Responses could include:</p> <ul style="list-style-type: none"> • Relevant case law • Detailed discussion of particular areas of controversy, e.g. overriding interests, restrictions in register • Reference to academic opinion • Reference to Law Commission report 2018 	10
Question 4 total: 25 marks		

SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's 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 Laws • Discussion around the above with detailed arguments, for and against being evidenced • Relevant alternatives/options available • 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"> • Concept of leasehold estate in land • Enforceability of leasehold covenants • Relevant provisions of Landlord and Tenant (Covenants) Act 1995 • Passage of benefit and burden of covenants on assignment • Release of former tenant on assignment • Personal covenants • Effect of authorised guarantee agreement • Importance of distinction between lease and licence • Exclusive possession as a vital feature of lease • Relevant case law to support the above • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Sham clauses • More detailed case law to support discussion 	25
Question 1 total:25 marks		
2(a)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's 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 Laws • Discussion around the above with detailed arguments, for and against being evidenced • Relevant alternatives/options available • A reasoned conclusion which is supported with evidence, offering the suggested best option available 	7



	<ul style="list-style-type: none"> • Response is appropriately structured <p>Responses should include:</p> <ul style="list-style-type: none"> • Requirement for legal lease to be made by deed • Requirements for valid deed under S1 Law of Property (Miscellaneous Provisions) Act 1989 • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Detailed discussion of signature in presence of a witness • Detailed discussion of making clear on face of document that document is a deed • Relevant case law relating to S1 • Recognition that exceptions under s54 Law of Property Act 1925 do not apply • Notice for eviction • Periodic tenancies 	
<p>2(b)</p>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's 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 Laws • Discussion around the above with detailed arguments, for and against being evidenced • Relevant alternatives/options available • 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"> • Requirement for equitable lease to be created by contract • Requirements for valid contract under S2 Law of Property (Miscellaneous Provisions) Act 1989 • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Further explanation of how and why equity will enforce a contract under the rule in <u>Walsh v Lonsdale</u> • Detailed discussion of single document rule and exchange of correspondence • Detailed discussion of signature by both parties • Relevant case law relating to S2 	<p>9</p>

	<ul style="list-style-type: none"> • Recognition that exceptions under S2(5) LP(MP)A 1989 do not apply • Notice for eviction • Periodic tenancies 	
2(c)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's 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 Laws • Discussion around the above with detailed arguments, for and against being evidenced • Relevant alternatives/options available • 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"> • Definition of land • Explanation of three-dimensional nature of land ownership • Discussion of trespass in the "lower stratum" • Relevant case law to support the above • Application of law to facts • Reasoned conclusion <p>Responses could include: Discussion of "upper stratum"</p>	9
Question 2 total:25 marks		
3	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's 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 Laws • Discussion around the above with detailed arguments, for and against being evidenced • Relevant alternatives/options available • 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"> • Identification of relevant doctrine of adverse possession • Discussion of need to show factual possession • Discussion of need to show intent to possess 	25

	<ul style="list-style-type: none"> • Law relating to unregistered land, particularly Limitation Act 1980 • Law relating to registered land, particularly Land Registration Act 2002 Sch 6 • Relevant case law to support the above • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Successive possession by different people • Effect of objection by paper title holder 	
Question 3 total:25 marks		
4(a)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's 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 Laws • Discussion around the above with detailed arguments, for and against being evidenced • Relevant alternatives/options available • 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"> • Concept of co-ownership • Distinction between legal and equitable title • Methods of holding land: joint tenancy and tenancy in common • Legal title as joint tenancy • Presumptions of joint tenancy in equitable title • Strong presumption of JT and thus equal 'shares' in domestic relationships, reference to <i>Stack v Dowden</i> etc. • Rule of survivorship • Severance and effect of severance (may transfer from (b)) • Homicide as severance • Relevant case law to support the above • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • The "PITT" test • Forfeiture Act 1982 • Further relevant case law 	12

<p>4(b)</p>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's 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 Laws • Discussion around the above with detailed arguments, for and against being evidenced • Relevant alternatives/options available • 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"> • Likely equitable joint tenancy and reasoning for this • Severance and effect of severance (may transfer to (a)) • Severance by acting upon one's share • Severance by notice • Trusts of Land and Appointment of Trustees Act 1996 S14 and S15 • Relevant case law to support the above • Application of law to facts • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Consideration of legal title • Requirement that legal title holder must be 18 • The PITT test (may transfer from (a)) • Severance by mutual agreement/course of dealing • Further relevant case law 	<p>13</p>
<p>Question 4 total:25 marks</p>		