

**CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS**

**SEPTEMBER 2020**

**LEVEL 3 - UNIT 10 – CONVEYANCING**

**Note to Candidates and Learning Centre Tutors:**

The purpose of the suggested answers is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the September 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers 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**

There were a few scripts that were submitted by candidates who clearly did not have sufficient knowledge, understanding and skills to enable them to achieve a pass.

The overall performance of candidates across the questions was generally good. There was no evidence that any of the questions within the paper were difficult to understand or misleading.

Many candidates answered questions on the basis of what they do in practice rather than what the syllabus has set down. This is a theoretical practice exam and in light of this, a candidate that has studied the course should be able to pass whether the candidate has any experience working within conveyancing or not.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

Overall, candidate performance on the exam questions was reasonably good. The following comments relate to the individual questions within this exam paper.

### **Question 1(a)**

Generally, well answered. Most candidates recognised that the deeds would need to be obtained from the lender, a majority applying the case study and identifying the existing lender as Bobbins Bank plc. Where marks were not achieved, the candidates did not identify that the undertaking would be to provide the undertaking to hold the deeds to order pending final redemption.

#### **(b)(i)**

Well answered, with most candidates accurately identifying that the deposit would be held as agent of the seller, in order to use the deposit on the related purchase. The stronger candidates identified that the question related to SCS 2.2.5.

#### **(ii)**

Many candidates assumed that occupying the property gives an overriding interest. Knowledge in respect of the law appears limited. The better candidates identified the need for the adult occupier to obtain independent legal advice and would need to sign Special Condition 7 in the contract in respect of the occupier's consent.

#### **(c)**

Most candidates identified the NHBC guarantee would be required, however knowledge of the stages of NHBC cover was poor.

Generally, a very well answered question where candidates identified the required searches and giving confident answers on what may be included in them.

### **Question 2(a)**

Generally, reasonably well answered, with most candidates identifying that the seller's certified marriage certificate was required.

#### **(b)**

Generally, well answered, with most candidates identifying the fact that there was a covenant that had been breached. The stronger answers identified a number of suitable remedies.

#### **(c)**

A number of candidates had little knowledge of classes of title, getting confused with title guarantee under contract.

## **2(d)**

Generally, well answered. The stronger candidates were able to identify that there would not be a restriction on the title.

## **(e)**

Candidates answered this question well, identifying that the property was in a coal mining area

## **Question 3(a)**

This was a well answered question, where a majority of candidates identified the correct Formula, as there was a related transaction.

## **(b)**

The exam was taken during the pandemic. The government had placed an SDLT exception on properties under £500,000, which was not anticipated at the time of writing. The case study was released prior to the changes and it was agreed that markers would take into account the current rules and therefore the candidates could either identify that the standard rate would be payable or note that the stamp duty would not be payable at this time. Some of the candidates did not achieve marks due to making the incorrect calculations in respect of the standard rates.

## **(c)**

The completion checklist caused a problem for many, where some candidates did not limit the answer to the sale only. Those that did concentrate on the sale were still mentioning passing over the contract and deposit. This may be because in practice, sometimes exchange and completion happen at the same time and therefore the distinction between the two stages has become blurred

## **(d)**

Generally, well answered, stronger candidates provided a better understanding of the individual documents purpose.

## **SUGGESTED ANSWERS**

### **LEVEL 3 - UNIT 10 – CONVEYANCING**

#### **Question 1 (a) - Deed packet**

This question required the candidate to identify that the deed packet will have been obtained from the current lender, Bobbins Bank. An undertaking would be provided to Bobbins Bank to hold the deeds to the bank's order pending redemption of the current mortgage.

### **(b) (i) – Deposit**

The candidate should have identified that the deposit would be held as agent for the seller in order to be utilised on the client's related purchase.

### **1(b) (ii) – Adult Occupier**

Ian White, as a non-owning adult occupier, must sign Special Condition 7, being the occupier's consent clause in the contract. Ian should be advised that he should seek his own independent legal advice before signing the clause. It is necessary to ensure that Ian will vacate the property upon completion, that he agrees to the sale and that he releases any rights that he may have over the property. The buyer will then be able to take the property free from any third-party interest and the seller can give vacant possession on completion.

### **(c) – NHBC Guarantee**

It will be necessary to provide the NHBC guarantee and insurance policy as the property is still in the 2<sup>nd</sup> stage of cover. The builder will therefore be responsible for correcting any defects and if it failed to do so, the NHBC will take responsibility instead.

### **(d) - Local Search**

The candidate should have identified the following:

- CON 29 - Enquiries of the local authority
- LLC1- local land charges search

Correct examples of information provided by a local search may include: Tree Preservation Order, planning charge, CPO, adopted highway, public rights of way, planning decisions made or pending, conservation area, proposals for new roads or railways.

### **Question 2(a) - Evidence of name change**

The proprietor is registered with the surname Frankum. Therefore, proof will be needed to show Louise Jane Frankum is the same person as Louise Jane Blake, being the person named as seller in the draft Contract. Proof of the change of name should be provided in the form of a marriage certificate, deed poll or divorce certificate.

### **(b) - Breach of Covenants**

The property is subject to restrictive covenants, one of which means that the owner cannot build a shed. This covenant has clearly been breached by the seller; this breach will continue to be breached if the clients retained the shed. The seller could do one of the following: -

1. apply for retrospective consent/release from the landowner with the benefit of the covenant.
2. Apply to the Upper Tribunal (Lands Chamber) for discharge of the covenant.
3. Ask the seller to remove the shed.
4. Ask the seller to supply a restrictive covenant indemnity policy.

### **(c) – Class of Title**

The property is registered with Absolute title which is the registered land equivalent to a fee simple absolute in possession. This class of title means that the property is subject only to the interests included on the register and to any overriding interests. It is the best class of freehold title that can be given.

### **2(d) – Joint Tenants**

If the clients hold the property as beneficial joint tenants, they will both own the whole of the beneficial interest and will not have distinct shares. The doctrine of survivorship applies, which means that if one of them dies the interest of the deceased will vest in the survivor automatically. This interest cannot therefore be passed by Will or under an intestacy.

### **(e) - Mines and Minerals**

The candidate should have identified that a coal mining search (in form CON29M) will be required, as the property register shows that the rights to mines and minerals are reserved and the property being on Coal Lane. The search will reveal whether there is any past, current or future mining nearby, whether there has been any subsidence or gas emissions and whether there have been any subsidence claims.

### **Question 3(a) - Formula of Exchange**

The contracts should be exchanged under Formula C, as the client has a related purchase/linked transaction.

### **(b) - Stamp Duty Land Tax (SDLT)**

As Gita has already owned a property, the standard rate of SDLT is applicable, irrespective of the other client Ian being a first- time buyer. The purchase price is £490,000 and therefore the SDLT percentages are as follows:

Up to £125,000	0%
Over £125,000-£250,000	2%
Over £250,000-£925,000	5%

The total SDLT payable will be £14,500.

In light of the current pandemic and the SDLT exemption, candidates would also be awarded marks for noting that the government have issued an SDLT exemption for properties under £500,000 and therefore, under the current guidelines the tax payable will be nil.

### **(c) - Completion Checklist**

The following would be expected to be included:

- Suitable Heading
- Check replies to CIU in Form TA13/requisitions have been given, including an appropriate undertaking to discharge the existing mortgage on completion.

- Check the redemption statement from Bobbins Bank is in date.
- Check that the Transfer has been executed correctly by Gita Patel.
- Check the amount of completion money to be received.
- Check if there are any specific instructions to comply with from Amrit Blade & Co.
- Check where keys are held.
- Check all miscellaneous documents such as planning consents, NHBC guarantee and insurance cover certificate are available.

### **3(d) – Registering the Purchase**

The Form AP1 will need to be submitted to the Land Registry with the following documents:

- Evidence of discharge of the Cattletown Building Society Mortgage
- Certified copy Transfer in Form TR1
- Certified copy mortgage deed/legal charge to Sandy Building Society
- SDLT 5 Certificate
- Land Registry fee
- Evidence of seller's change of name.

No credit was given for stating evidence of identity, as the firm has already checked the client's identity.