

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

JANUARY 2020

LEVEL 3 - UNIT 4 – LAND LAW

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 January 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

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 knowledge and understanding of the unit specification. In particular, a significant minority of candidates who chose the Section B scenario relating to trusts showed a lack of understanding of the requirements for a resulting and constructive trust where the answers to the Section B scenario relating to easements were, on the whole, very strong.

Candidates are reminded of the need to read the instructions on the paper carefully. A small number of candidates answered all the questions for all the scenarios in Section B when answers to only one scenario were required.

As in previous sessions, a significant number of candidates showed good subject knowledge but were not able to apply that knowledge to the facts of the scenario question that they had chosen 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 should also consider 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 if the candidate has previously set it out in full earlier in the paper.

Candidates are reminded that good exam technique includes clear handwriting and clear numbering of the questions answered.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Generally answered well by most candidates with a significant number of candidates gaining full marks on this question. Candidates were, however, expected to link the test to the outcome, e.g. if an object is attached by more than its own weight it is likely to be a fixture. A number of candidates explained the test but did not clarify whether this would mean the item is more likely to be classified as a fixture or a fitting. Candidates are reminded of the need to read the question, as a significant number of candidates referred in full or in part to all three tests.

Question 2

Was answered reasonably well with most candidates gaining the mark for giving an example of an 'incorporeal hereditament', but doing less well in explaining what this term means.

Question 3

Was answered well by a significant number of candidates, with many gaining all the available marks.

Question 4

Was not answered well by many of the candidates. Some were able to identify the correct method of protection in registered land, but very few were able to identify the correct method of protection in unregistered land and candidates are reminded of the need for syllabus coverage.

Question 5

Was well answered by most candidates, although candidates are reminded that it is not correct to refer to 'shares' when discussing the ownership of beneficial joint tenants.

Question 6

Was overall answered poorly. A significant majority of candidates cited the incorrect statute and were also unclear on the relevant factors.

Question 7

Was answered well, as virtually all of the candidates could give an example, of a profit à prendre. However, many candidates were not clear that a profit à prendre is the right to take produce or soil from the land.

Question 8

This was answered correctly by a number of candidates, however a significant number of candidates were not aware of this rule and are reminded of the need for syllabus coverage.

Question 9

Was answered well by the majority of candidates.

Question 10

Despite this being considered to be a difficult and technical question, this was well answered by the majority of candidates.

Question 11

Was answered reasonably well by a large number of candidates.

Question 12

Was answered less well by all but a very small number of candidates. Candidates are reminded to clarify their understanding of the effects of being registered with 'absolute leasehold title.' A significant minority of candidates chose to focus on when absolute leasehold title will be given (with an emphasis drawing from the conveyancing syllabus) rather than answering the question that was set.

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

(a) was answered well by most of the candidates who chose this scenario. (b) was less well answered, although a significant number of candidates gave very good answers. (c) was answered poorly and candidates are reminded of the need for syllabus coverage and, in particular, to revise the protection of third party interests.

Question 2 was well answered.

Question 3

Was well answered by a significant majority of candidates, with good identification of the criteria for a valid easement and a very good ability to apply these criteria to the facts of the scenario.

Question 4

Was answered well by a majority of candidates with good identification of the requirements for an easement to be acquired by prescription, and a good ability to apply these criteria to the facts of the scenario.

Scenario 2**Question 1**

Was answered well by a good number of the candidates who chose this scenario. However, a significant number of the weaker candidates were not able to clearly identify that this was a resulting trust, and were not able to clearly state the requirements for a resulting trust and then apply these to the facts of the scenario.

Question 2

Was answered very well by a significant minority of candidates, but a large number lacked the precision in their answer to identify this as potentially a constructive trust and to explain the requirements for a constructive trust to exist.

Question 3

Was, with some exceptions, not well answered. Some candidates were confused between overreaching and overriding interests and while it is accepted that this is a difficult topic, candidates are again reminded of the need for syllabus coverage.

Scenario 3**Question 1**

Part (a) and part (b) were generally answered well and presented few difficulties to candidates. (c) was reasonably well answered, with those candidates who answered it less well usually less able to apply the law to the scenario.

Question 2

Was answered well by the majority of candidates with most achieving full marks for this question.

Question 3

(a) was answered well by a number of candidates, and some weaker candidates were able to identify at least some of the requirements for the burden of a covenant to pass in equity. A number of candidates were able to

apply the law to the facts of the scenario extremely well in their answers to question 3(b).

Question 4

Was answered well by a large number of candidates.

SUGGESTED ANSWERS

LEVEL 3 - UNIT 4 – LAND LAW

SECTION A

1. One of the tests used to distinguish between a fixture and a fitting is the degree of attachment. If an object is attached to the land other than by its own weight, it is likely to be a fixture as shown, for example, in the case of Holland v Hodgson (1872). Another test is the purpose of the attachment, so that if the object was attached for its own benefit, it is likely to be a fitting, where if it was attached for the benefit of the land as a whole, it is more likely to be a fixture. This was established in the case of Leigh v Taylor (1902). A final test is the permanence of attachment, which means that if the object is likely to be attached to the land for a long time, it is more likely to be a fixture. This was shown in the case of Botham v TSB Bank Plc (1996).
2. The term 'incorporeal hereditament', under Section 205 (1) (ix) Law of Property Act (LPA) 1925, refers to various intangible rights associated with the land and which include, for example, the benefit of a right of way or the benefit of a restrictive covenant over the land of another.
3. The term 'estate contract' means that following an exchange of contracts, a buyer has acquired an equitable interest in the land, which is the contract to acquire the legal estate at a later date.
4. (a) An estate contract will be protected by a notice in registered land.
(b) An estate contract will be protected as a Class C (iv) Land Charge in unregistered land.
5. The doctrine of survivorship means that, on the death of a beneficial joint tenant, the Property will pass to the surviving joint tenant(s). This applies irrespective of the terms of the will of the deceased beneficial joint tenant. The doctrine applies to joint tenancies only. The doctrine of survivorship does not apply to a beneficial tenancy in common. On the death of a beneficial tenant in common, their share will pass as per their will or under the intestacy rules if they do not have a will. Under section 1(6) LPA 1925, the legal estate can only be owned as legal joint tenants.
6. Section 15(1) Trusts of Land and Appointment of Trustees Act (TLATA) 1996 states that the courts are obliged to consider the following factors when deciding whether to make an order for the sale of a property: the intention of the person or persons who created the trust; the purposes for which the property subject to the trust is held; the welfare of any child who occupies or who might reasonably be expected to occupy any land subject to the trust as their home; and the interests of any secured

creditor. The courts may also take into account the circumstances and wishes of any beneficiary in occupation and the loss to the community.

7. A profit à prendre is the right to enter onto someone else's land to take produce or soil and, for example, includes mining rights, fishing rights and shooting rights.
8. The principle is that the burden of a covenant does not run at common law and this was stated in the case of Austerberry v Oldham Corporation (1885).
9. A repayment mortgage is where the borrower borrows a sum of money from the lender and the borrower repays this with monthly payments to the lender. These payments, which consist of both capital and interest, are paid over the mortgage term which is usually 20 -25 years. At the end of the mortgage term the loan is repaid in full. The borrower will also usually take out a life insurance policy to repay the outstanding capital in the event of the borrower's death during the mortgage term.
10. (a) The 'equity of redemption' refers to the borrower's equitable right to redeem the mortgage, which arises after the legal (contractual) date for redemption.

(b) The term 'clog on the equity of redemption' refers to any attempt to prevent the borrower from redeeming the mortgage.
11. The 'insurance principle' is that the register is deemed to be correct and if a loss is suffered due to a Land Registry mistake or error, then the injured party may be compensated. In addition, the Land Registry has powers to rectify the register. This is part of the 'state guarantee' of the title.
12. The effect of land being registered with absolute leasehold title is that this is the best form of title for leasehold land. An absolute leasehold title is subject only to the registered interests, which include the provisions in the lease and in the freehold title, and to overriding interests.

SECTION B

Scenario 1 Questions

1. (a) Section 1 Law of Property (Miscellaneous Provisions) Act 1989 provides that a deed must be in writing and it must be clear on its face that it is intended to be a deed. In addition, the deed must be validly executed and signed, witnessed and delivered.

(b) Section 52 Law of Property Act (LPA) 1925 or Section 1(2) LPA 1925 provides that a legal interest can normally be created only by deed. If it had not been created by deed, this would, at best, be an equitable interest.

- (c) The express right of way in favour of No. 1 will be protected by entry of a notice in the title register of No. 2.
2. Other than by deed, an easement can be ended by statute, implied release (intentional abandonment) or unity of ownership and occupation of the dominant and servient tenements.
 3. Re Ellenborough Park (1956) specifies the requirements for a valid easement. There must be a dominant and servient tenement and here we have No. 1 (the dominant tenement) and No. 2 (the servient tenement). The right claimed must benefit the dominant tenement and not purely be of personal benefit to the land owner. Here, the right of way is likely to benefit No. 1, as it provides access to the rear. There must be diversity of ownership and occupation of the dominant and servient tenements and here, we have Neil (as the successor of Jackie) who owns the servient tenement, and Frances who owns the dominant tenement. The right must be capable of forming the subject matter of a grant, which means that its nature must be similar to existing recognised types of easements, there must be no requirement to spend money and the right must be sufficiently definite. Here, there is no requirement to spend money and the right is sufficiently definite, as it was capable of being expressed in writing (in the Deed for No.1). A right of way is a common type of easement and is, therefore, likely to be capable of being an easement.
 4. For an easement to be acquired by prescription, there needs to be a continuous user, and we are told that Ellen has used the pathway occasionally, only once or twice per year. This may not be sufficient to amount to a continuous user. The use must be for the prescriptive period of 20 years or more, and here we are told that it has been used since 1980 which is over 20 years ago. The 'right' must be exercised by a freehold owner against a freehold owner and here the 'right' is exercised by Ellen against Neil (previously Jackie). The 'right' must be exercised as of right, which means that it must be without force, secrecy or permission. We are told that permission was given by Jackie for Ellen to use the pathway and it is, therefore, unlikely that an easement will have arisen by prescription.

Scenario 2 Questions

1. (a) Alex may have acquired an interest under a resulting trust. Bull v Bull (1955) provides that a resulting trust may arise when payments are made by a person to the purchase price of a property at the time the property is acquired, and the person who made those contributions does not become a joint owner of the legal title. A trust will not arise if the contribution was, in fact, a gift.

(b) Alex has contributed the sum of £20,000 towards the purchase price of the property at the time of its acquisition, and the property is registered in Brianna's sole name. There is no suggestion the payment was intended to be a gift and it is, therefore, likely that Alex will have an interest in the property under a resulting trust.
2. (a) Xavier may claim an interest under a constructive trust. Such a trust can arise when there is an express common intention which is relied upon to the claimant's detriment. This was shown in the cases of

Eves v Eves (1975) and Grant v Edwards (1986). A constructive trust may also be established where there is an inferred common intention, coupled with reliance and detriment. However, when inferred common intention is used, the case of Lloyds Bank plc v Rossett (1991) suggests that only payments to the purchase price or mortgage instalments are likely to be sufficient for a constructive trust to arise.

- (b) Xavier may seek to claim a constructive trust based on express common intention, as the statement in respect of complicating the divorce proceedings may be sufficient. There was a discussion in respect of shared ownership and the decision to omit Xavier from the legal title is, arguably, evidence of express common intention. If so, the payments towards the kitchen and utility bills may be sufficient reliance and detriment for him to succeed with his claim. If, however, he relies on his conduct of paying for the kitchen and utility bills to claim inferred common intention, this is unlikely to be sufficient. Grant v Edwards (1986).
3. (a) An overriding interest is an interest which will bind a buyer of a property even though it is not set out on the Land Registry title and the Buyer is not aware of it.
- (b) Schedule 3 Land Registration Act 2002 provides that a legal lease granted for a term not exceeding 7 years is an overriding interest. Chris has a legal lease for a term not exceeding 7 years (his lease is for 6 months) and so satisfies this.
- (c) The rights of persons in actual occupation are overriding interests, provided that they have an interest or right in the land. Both Alex and Xavier appear to have interests in the land arising under a resulting and constructive trust respectively. However, Alex is not in actual occupation and so her interest is not an overriding interest. Xavier is in actual occupation and so his interest will be an overriding interest. The interests will be overriding unless an enquiry was made of the person with the interest and they did not disclose their interest, or if the interest is not obvious on a careful inspection of the land.

Scenario 3 Questions

1. (a) The title was unregistered and ownership of unregistered land is shown by the production of the title deeds/an epitome of title starting with a good root of title. This will be a Conveyance at least 15 years old.
- (b) Pat's lawyer will need to have applied for first registration and this application should have been made within two months of completion of Pat's purchase.
- (c) Since 1990, all land in England and Wales has been subject to compulsory first registration and this will have been 'triggered' by the sale of Sunnybank to Jackie in 2008. If registration is not made, the legal title reverts to the Seller.

2. The covenantor is the landowner with an obligation to comply with the covenant, and the covenantee is the landowner who has the right to enforce the covenant if it is breached.
3. (a) The case of Tulk v Moxhay (1848) states that for the burden of a covenant to pass in equity, the covenant must be negative in nature. In addition, the burden must be intended to pass with the land which will be assumed under section 79 Law Property Act (LPA) 1925, unless the covenant indicates otherwise. There needs to be two pieces of land – a dominant and servient tenement. The covenant must benefit the dominant tenement and the burden of the covenant must be protected by entry of a notice in the register, if the title to the servient tenement is registered.

(b) The covenant not to use the property for commercial purposes is a negative covenant. The covenant benefits The Grange, as it will limit noise and traffic. In addition, the wording 'so as to bind the Transferee's successors in title' shows the covenant is intended to pass with the land, although this is likely to be assumed under s.79 LPA 1925 in any event. Sunnybank is the servient tenement and The Grange is the dominant tenement, and the reference in the scenario to the covenant being 'on the title' means the burden of it is likely to be protected by a notice. It is, therefore, likely that Glen is bound by the covenant.
4. Although the covenant 'not to allow Sunnybank to fall into a state of disrepair' is expressed as a negative covenant, it is in fact a positive covenant, because complying with it will involve time and expense. Therefore, the burden of the covenant would not pass in equity and Glen would not be bound by it.