

## CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

SEPTEMBER 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 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

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.

As in previous sessions, a significant number of candidates showed good subject knowledge but were weak in applying that knowledge to the facts of the scenario question that they chose 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, and the candidate has previously set it out in full earlier in the paper.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Section A

#### Question 1

Was generally answered well by most candidates with the majority gaining both available marks.

#### Question 2

Was also answered well with virtually all candidates gaining both available marks. A very small minority confused a fixture and a fitting.

#### Question 3

Was answered well by the majority of candidates, although a significant minority of weaker candidates gave the common law requirements for a valid contract (i.e. offer and acceptance etc), confused the statutory requirements for a contract with those for a deed, or referred to the incorrect or incomplete statutory provision.

#### Question 4(a)

Was answered well by most candidates, although a significant minority referred only to the end of the beneficial joint tenancy rather than its conversion to a beneficial tenant in common.

#### (b)

Was answered well by many candidates.

#### Question 5

Was well answered by a significant number of candidates, although a significant minority were imprecise in their answers and so failed to gain all of the available marks.

#### Question 6

Was answered well by most candidates and presented few issues to those candidates who had covered the syllabus in their exam preparations.

#### Question 7

Was answered well by only a minority of candidates and candidates are reminded of the need for full syllabus coverage in their exam preparations.

**Question 8**

Was answered very well by most candidates and presented few issues.

**Question 9**

Was answered reasonably well by the majority of candidates, but candidates are asked to be precise in their answers, for example, if they say that conveyancing is cheaper/quicker/easier they need to explain why.

**Question 10**

Was well answered by a majority of candidates.

**Question 11**

Was also answered well by a significant number of candidates.

**Section B****Scenario 1****Question 1(a)**

Was answered well by some candidates. However, a significant minority did not understand the important distinction between the legal and equitable title and that the legal title can only ever be held as joint tenants. This is a difficult concept but is a crucial one to an understanding of land law. Candidates would also be reminded that it is incorrect to talk about 'shares' in a joint tenancy.

**Question 2**

Was well answered and presented few difficulties.

**Question 3(a) &(b)**

Was well answered by a significant majority of candidates with good application to the facts of the scenario. There were a range of responses to (b) from poor to excellent. However, many of the better candidates showed a good understanding of the requirements for a constructive trust and a pleasing ability to apply these to the facts of the scenario.

**Question 4(a) & (b)**

Was answered well by a majority of candidates, although candidates are reminded of the need to set out the name of the statute in full (and the date of the statute) at least once in the paper for the mark to be awarded. (b) was also answered reasonably well again, with candidates applying the facts well to the criterion. However, candidates would be reminded of the need for precision in setting out the statutory factors.

## **Scenario 2**

### **Question 1**

Was answered well by a good number of the candidates who chose this scenario.

### **Question 2**

Was answered well by a number of the candidates who chose this scenario, and the stronger candidates showed a pleasing ability to apply the facts to the requirements for a valid easement. However, most of the marks available for this question were available for application and weaker candidates were less able to apply the law to the facts of the scenario.

### **Question 3**

Gained a range of responses from very poor to excellent. It was very pleasing to see the depth of some candidate's knowledge of the criteria and also their ability to apply these to the facts of the scenario and to reach a conclusion. The combination of an explanation of the rule in Wheeldon v Burrows and an application to the facts is a 'new' question. Nevertheless, a pleasing number of candidates gave excellent answers to this question.

### **Question 4**

Was generally answered very well by the candidates again showing a pleasing knowledge of both the law and an ability to apply it to the facts of the scenario.

## **Scenario 3**

### **Question 1**

Was generally either answered extremely well or extremely poorly. Weaker candidates missed out on marks due to poor explanation of the law and also their ability to relate the law to facts of the scenario. This question is a commonly asked restrictive covenant question, requiring application to the facts of the scenario and the well-prepared candidates were able to perform well.

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

Presented no issues to those candidates who have covered the syllabus in their exam preparation.

#### **(b)**

Was less well answered, with a significant number of candidates failing to identify all/some of the grounds or by being too imprecise in their identification of them.

#### **(c)**

Also gained a range of responses from very poor to excellent. Candidates who were able to achieve high marks showed excellent subject knowledge and a pleasing ability to relate this to the facts of the case. For those candidates

who did less well, there was little evidence of applying the facts of the scenario to the law.

### **Question 3(a) &(b)**

Was answered reasonably well by many candidates and with part (b) being answered less well. Candidates are again reminded of the need for syllabus coverage in their exam preparations. This was a technical question but was entirely within the syllabus.

## **SUGGESTED ANSWERS**

### **LEVEL 3 - UNIT – 4 - LAND LAW**

#### **SECTION A**

1. The remedies available in respect of a trespass to land are an injunction, damages (compensation) and, if applicable, the remedy of self-help.
2. An example of a fixture would be a dimmer switch and an example of a fitting would be a free-standing plant pot.
3. The requirements for a valid contract for the sale of land are set out in Section 2 Law of Property (Miscellaneous Provisions) Act 1989. The requirements are that the contract is in writing, it must incorporate all the terms and it must be signed by or on behalf of both the buyer and the seller.
4. (a) Severance is where a beneficial joint tenancy is converted to a beneficial tenancy in common.  
  
(b) Williams v Hensman (1861) provides that bankruptcy, grant of a lease or mortgage or a contract for sale of a joint tenant's interest in the land would be examples of a tenant operating on their own share so as to effect severance.
5. Stack v Dowden (2007) provides that, in quantifying the share of a constructive trust the courts must have regard to what is fair in all the circumstances. The relevant factors that the courts may consider in deciding this are:
  - the financial contributions to the property;
  - the nature of the parties' relationship;
  - advice or discussions at the time of the transfer;
  - the purpose for which the house was purchased;
  - the courts may consider whether there are children of the parties;
  - how the couple arranged their finances;
  - payment of outgoings and how this was divided;
  - the individual characters and personalities of the parties.

This list is not exhaustive.
6. For an easement to be acquired by prescription, there must have been a continuous user for the prescriptive period of at least 20 years. The user

must have been by or on behalf of and against the fee simple (freehold) and must have been as of right which means without force, secrecy or permission. In addition, the right must have been acquired at either common law, under the doctrine of lost modern grant, or under the Prescription Act 1832.

7. For the benefit of a covenant to run at common law, the covenant must touch and concern the land, and the original covenantee must have owned the legal estate in the land to be benefitted when the covenant was made. In addition, the original parties must have intended that the covenant should pass with the land and the successor in title must derive title from the original covenantee.
8. A repayment (or capital repayment) mortgage requires a monthly payment to the Lender of capital and interest so that at the end of the mortgage term, usually 25 – 30 years, the mortgage is repaid in full. The borrower will also usually take out a life insurance policy with an insurance company to cover the possibility of their death before the whole amount has been repaid.
9. The registration of title has a number of advantages and these include that registration removes the need for a repeated examination of the title deeds on each sale, the Land Registry (subject to overriding interests) is a complete record of interests in land which can be easily discovered and an accurate plan for each parcel of land is available. In addition, the conveyancing process is made easier and drafting it also usually simpler. The Land Register provides a complete record of proprietors of land and there is a state guarantee if errors or mistakes are made by the Land Registry.
10. The Property Register contains a physical description of the property by reference to the title plan, states whether the land is freehold or leasehold and sets out the interests, for example easements, which benefit the land.
11. Overreaching is the process where land is held on trust for one or more beneficiaries. If the purchase money is paid to at least two trustees, the interests of the beneficiaries are swept from the land and put into the proceeds of sale, and a buyer will take the land free of the interests of the beneficiaries.

## **SECTION B**

### **Scenario 1 Questions**

1. Section 1(6) Law Property Act (LPA) 1925 states that the legal title can only be held as joint tenants. The effect of the doctrine of survivorship is that, on the death of a joint tenant, the title passes automatically to the surviving joint tenant. Therefore, on the death of Elle the legal title remains with Jeevan.
2. (a) Elle and Jeevan's beneficial ownership of Primrose Cottage as tenants in common will be shown by the entry of a restriction in the proprietorship register of the Land Registry title.  
  
(b) As Elle and Jeevan owned the beneficial interest as tenants in common and the doctrine of survivorship does not apply, on the

death of Elle, her beneficial interest in the property will pass in accordance with her will. Therefore, Elle's beneficial interest in the property will pass to Felix, and Felix is entitled to claim a share in the property.

3. (a) Asha has not made a contribution towards the purchase price of Primrose Cottage at the time of acquisition and so is not able to make a claim under a resulting trust.
- (b) In order for Asha to be able to claim an interest in Primrose Cottage on the basis of a constructive trust, she will need to be able to show an express common intention. There is no evidence of this and the agreement as to her living at Primrose Cottage rent free suggests that in fact that there is no intention for Asha to have a share in Primrose Cottage. There is no written record of any agreement and no registration of any kind.

Asha may be able to argue that there is a constructive trust on the basis of inferred common intention, based on the conduct of the parties. Gissing v Gissing (1970) and Lloyds Bank v Rosset (1991) state that only direct payments to the purchase price at the outset or by way of the mortgage payments are sufficient. It is therefore unlikely that Asha's payments to the utility bills or the extension will be sufficient. She will also need to show detriment and reliance. It is unlikely that Asha will be able to claim a share of Primrose Cottage on the basis of a constructive trust.

However, the payment towards the extension coupled with the length of time the arrangement has continued could be an example of conduct that creates a constructive trust under Stack v Dowden (2007).

4. (a) Section 14 Trusts of Land and Appointment of Trustees Act (TLATA) 1996
- (b) In deciding whether to make an order for the sale of Primrose Cottage, the court will look at the intention of the parties who created the trust and the purpose for which the property subject to the trust is held. Here, Primrose Cottage was bought as a family home.

The court will also consider the welfare of any child who occupies or might reasonably be expected to occupy the Property, here Elle and Jeevan's two children live in Primrose Cottage. The court may not make an order for the sale of Primrose Cottage. Section 15 TLATA 1996 and Mortgage Corporation v Shaire (2001).

## Scenario 2 Questions

1. The essential characteristics of an easement as stated in Re Ellenborough Park (1956) are that there must be a dominant and servient tenement, that the right must benefit the dominant tenement and not be of purely personal benefit to the owner of the dominant tenement and that there must be diversity of ownership and occupation of the dominant and servient tenement. In addition, the right must be capable of forming the subject matter of a grant, which means that it must be similar to existing

easements, there must be no positive requirement to expend money, it must be sufficiently definite, and it must not amount to exclusive possession.

2. The Garden is the dominant tenement and The Manor is the servient tenement. Arguably, the right benefits the dominant tenement as opposed to being for the personal benefit of the owner, as a parking space will add to the value of The Garden. There is diversity of ownership and occupation as Helen owns and occupies The Manor and KD Ltd own and occupy The Garden. The right must be capable of forming the subject matter of the grant, which means that it must be similar to an existing easement and Helen must not be under an obligation to spend money.

The issue here is that there must be no exclusive possession. Batchelor v Marlow (2003) suggested that the right to park is not capable of being an easement as it gave the dominant owner exclusive possession of the servient tenement. However, in the later case of London & Blenheim Estates Ltd v Ladbroke Retail Parks Ltd (1994) the right to park was held to be a valid easement. This was also confirmed in the Montcrieff v Jamieson (2007) and Waterman and Another v Boyle and Another (2009). Wright v Macadam held that use of a garden shed for storage of coal was capable of being an easement whereas in Grigsby v Melville (1973) a claim to store goods in a cellar failed as an easement as it amounted to exclusive possession. Therefore, it is likely, that the right to park in the four parking spaces is a valid easement.

3. Wheeldon v Burrows (1879) established when easements may be acquired in respect of land that was previously in common ownership. The first requirement is that there was originally unity of ownership and occupation of the land and, here, Helen, originally owned and occupied both The Manor and The Garden. The second requirement is that the original owner exercised quasi-easements and we are told that the drainage system was pre-existing and used previously by Helen. Thirdly, the right must be continuous and apparent, and we are told that the drainage covers are clearly visible. Fourthly, the right must be necessary to the reasonable enjoyment of the land and we are told that it will cost KD Ltd money to install a new drainage system and it will also be more convenient to use the pre-existing system.

The final requirement of Wheeldon v Burrows (1879) is that when the land is divided, here when Helen sold The Garden to KD Ltd, the quasi easements become easements. It is, therefore, likely that The Garden will have acquired an easement over The Manor to use the pre-existing drainage system by virtue of the rule in Wheeldon v Burrows (1879). There may also be an argument based on section 62 Law Property Act 1925/Wood v Waddington (2015).

4. Infringing a person's airspace is trespass and, therefore, the overhanging advertising sign will be trespass and Helen can object to this. In respect of the aerial photography the case of Bernstein v Skyviews Ltd (1978) stated that a person is allowed rights to such a height as is necessary for the ordinary use and enjoyment of his land. This would mean that aerial photography is permitted, and Helen is unlikely to be able to object to this. Consider also Anchor Brewhouse Developments v Berkeley House (Docklands) Developments (1987). Section 76 Civil Aviation Act 1982



provides that a landowner cannot object to the passage of aircraft during normal flight over land.

### Scenario 3 Questions

1. Tulk v Moxhay (1848) states that for the burden of a covenant to pass, the covenant must be negative in nature and this is the case in this scenario. In addition, the burden must be intended to pass with the land and while we do not have any information here, the intention for the burden to pass will be assumed under section 79 Law Property Act 1925. There must be a dominant and servient tenement and here the dominant tenement is Meadow View and the servient tenement is Sunnyside. The covenant must benefit the dominant tenement which it does, and the covenant must be protected by notice in the register, and we are told that there is reference on the Land Registry title in respect of it. It is, therefore, likely that Sunnyside/Mark is likely to be bound by the covenant.
2.
  - (a) Mark can apply to the Upper Tribunal (Lands Chamber) to have the covenant discharged from the title.
  - (b) The grounds that can be used in an application to the Upper Tribunal (Lands Chamber) to have a covenant discharged from the title are that the covenant is obsolete due the changes in the character of the property or the neighbourhood, that the continued existence of the covenant would prevent reasonable use of the land, that the person entitled to the benefit of the covenant have expressly or impliedly consented to the discharge or that the discharge or modification will not injure the person entitled to the benefit of the restriction.
  - (c) We are told that the area was rural but is no longer, and also that there are a number of bed and breakfasts in the area. This suggests that the application may succeed on the ground that the covenant is obsolete due to changes in the character of the property or the neighbourhood, Chatsworth Estates v Fewell (1931). This may also suggest that this covenant may prevent the reasonable use of the land.

We are told that the neighbours would prefer that Mark does not use Sunnyside as a 'bed and breakfast' and so he does not have the express consent of his neighbours. However, as there has been no objection for the past 30 years, Mark may be able to argue that the neighbours have impliedly consented to its discharge, Shaw v Applegate (1977). We are told that use as a 'bed and breakfast' does cause extra noise and traffic and this suggests that Mark is unlikely to be able to argue that the discharge or modification of the covenant will not injure the person entitled to the benefit of the restriction.

Mark's application may succeed.

3.
  - (a) The mortgage deed will contain a provision that the full loan must be repaid by a specific date which is usually 6 months from the date of creation of the mortgage and this is the legal date for redemption. The significance of this date is that, once it has passed,

the mortgagee's remedies arise, and the borrower has an equitable right to redeem the mortgage.

- (b) The equity of redemption is the right to redeem the mortgage and any attempt to prevent this is known as a 'clog on the equity of redemption' and will be void.