

**CHIEF EXAMINER COMMENTS WITH  
SUGGESTED POINTS FOR RESPONSES**

**JANUARY 2021**

**LEVEL 3 - UNIT 10 – 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 2021 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**

Generally, there was a high level of knowledge from the candidates however, there were also a few questions where reading the question properly would have resulted in higher marks. Some of the weaker candidates did go off on the wrong track in some of their answers. 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. This is reflected in the fact that some such scripts scored less than 20 marks. The question paper was on a par with previous papers and was not therefore a contributory factor in this regard.

Most of the questions provided the opportunity for the best candidates to shine, without being unduly onerous for others.

It was found that many candidates have 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.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### **Q1(a)(i)**

There were a number of candidates that failed to note the implied covenants for title. A majority of candidates noted that the seller had the right to dispose of the property.

### **(ii)**

Candidates generally were able to identify valid points and also to apply the question to the case study.

### **Q1(b)**

Most candidates identified the correct procedure for dealing with an adult occupier and the implications for failing to take appropriate measures. Weaker candidates were unable to explain that the adult occupier would need to sign the occupier's clause in the contract at Special Condition 7 and said that they would arrange for a different form to be completed.

### **Q1(c)(i)**

Stronger candidates were able to identify the purpose of the unilateral notice instead of explaining what a unilateral notice was.

### **(ii)**

Candidates were able to confirm how they would deal with this however there was some confusion between who can remove the notice and who may cancel.

### **Q1(d)**

Surprisingly, some candidates did not have the knowledge of the process of how to redeem a mortgage. This may be because in practise it may not be performed by the candidates (i.e if there was a post completion department). It was important for the candidates to note when the redemption figure was required for and the procedure once the mortgage had been discharged such as request for the discharge of undertaking.

### **Q2(a)**

Generally, well answered with candidates identifying that the survey should be conducted as soon as possible and caveat emptor. Many candidates however did waste time going into details of which survey would be most appropriate, which is a matter for the client. Many candidates referred to the case study and applied this to their answer.

### **Q2(b)**

There were some very good and some poor answers in respect of this question. Stronger candidates identified that the property was the first sale for value since 13/10/2013 and therefore a notice could still be registered.

**Q2(c)**

Many papers referred to the 2011 out of date code. Candidates must be up to date with law and process. Very few candidates recognised the necessity for confidentiality and the fact that this was a private sale.

**Q2(d)(i)**

Generally, well answered however, some candidates did not realise that this was a report to the lender certifying that the title was satisfactory and requesting funds. It may be that in practice, the candidates send off the report to the lenders but do not know the reason for this.

**(ii)**

Generally, well answered however, candidates did get this confused with an endowment mortgage and very few candidates identified that this was not coupled with a life policy.

**Q3(a)**

The question didn't perform as intended. Candidates struggled with elements for the procedure for exchange of contracts. Stronger candidates identified the use of the formula and method of the exchange. Candidates need to be aware of process as per the unit syllabus.

**Q3(b)**

Generally, a well answered question with the candidates identifying the errors in the transfer.

**Q3(c)**

Generally, a well answered question, candidates were required to identify the search and explain why it is carried out. Some candidates just stated that the bankruptcy search was carried out as it was a lender requirement and did not explain what the search revealed. Some candidates started referring to local land charge searches.

**Q3(d)**

Again, there was some confusion as candidates were unable to differentiate between exchange and completion.

**Q3(e)**

Stronger candidates were able to identify the consequences if the application cannot proceed.

## SUGGESTED POINTS FOR RESPONSES

### LEVEL 3 - UNIT 10 – CONVEYANCING

The purpose of this document 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 2021 examinations. The Suggested Points for Responses 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.

Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

| Question Number | Suggested Points for Responses   | Marks (Max) |
|-----------------|--|-------------|
| Q1a (i)         | A definition that recognises 'full title guarantee' <ul style="list-style-type: none"><li>• The seller has the right to dispose of the property</li><li>• Property is sold free from undisclosed charges or adverse interests.</li><li>• The seller will do everything reasonable to give good title to the buyer</li></ul>  | 2           |
| Q1a (ii)        | An explanation making reference to the following points <ul style="list-style-type: none"><li>• To confirm the seller will be able to transfer/ what they are going to convey to the buyer</li><li>• Whether there are any defects in the title</li><li>• Are there any incumbrances?</li><li>• Check which title guarantee is appropriate</li><li>• Application of the defects</li></ul>  | 4           |
| Q1b             | Explanation of implications with adult occupiers <ul style="list-style-type: none"><li>• Jessica is an adult occupier / occupier over the age of 17</li><li>• Concerns she may have (legal/equitable) interest in the property</li><li>• Possible overriding interest/consent</li><li>• Arrange for Jessica to sign the occupier's clause / Special Condition 7 in the Contract to confirm release of any rights / agreement to sale / will give vacant possession</li><li>• Buyer may be bound by the rights of occupier</li><li>• Need to take independent legal advice.</li></ul> | 4           |
| Q1c (i)         | An explanation of the purpose of the Unilateral Notice <ul style="list-style-type: none"><li>• Protects the priority of the third-party interest/claim</li></ul>   | 1           |
| Q1c (ii)        | An explanation of how Unilateral Notice should be dealt with: <ul style="list-style-type: none"><li>• Check what UN relates to</li><li>• Contact beneficiary of UN/his lawyer</li><li>• Remove before exchange</li><li>• Or undertake to remove before completion</li><li>• Beneficiary of UN can apply to cancel at anytime</li><li>• special condition may be added to contract requiring notice to be removed upon completion</li></ul>   | 3           |

|                        |  |   |
|------------------------|--|---|
| Q1d                    | Identify and include the following points in respect of ensuring discharging of a mortgage <ul style="list-style-type: none"> <li>• Obtain redemption statement after exchange/before completion.</li> <li>• Pay redemption money on completion</li> <li>• Arrange for lender to execute e-DS1/ED</li> <li>• Obtain confirmation from Lender or Land Registry of discharge</li> <li>• Forward confirmation onto buyer's conveyancers/request undertaking discharged</li> </ul> | 4 |
| <b>Total: 18 marks</b> |  |   |

| Question Number | Suggested Points for Responses   | Marks (Max) |
|-----------------|--|-------------|
| Q2a             | Explanation of the advice to give to client's regarding survey <ul style="list-style-type: none"> <li>• Carry out at early stage</li> <li>• Caveat Emptor (buyer beware) applies</li> <li>• Ensure no defects</li> <li>• Buyer could decide to not proceed/request price reduction</li> </ul>  | 4           |
| Q2b             | Explanation of why chancel required <ul style="list-style-type: none"> <li>• Most firms carry out search/obtain insurance</li> <li>• In certain risk parishes owners can be under legal obligation to pay towards repairs</li> <li>• Search determines if property at risk of CRL and possible to insure against it</li> <li>• This is the first sale for value since 13/10/2013 so a notice could still be registered</li> <li>• Until 2013 the right to claim did not need to be registered</li> <li>• Relevant case: Aston Cantlow Parochial Church Council v Wallbank (2003)</li> </ul>              | 3           |
| Q2c             | Explanation of professional considerations in acting for both parties <ul style="list-style-type: none"> <li>• 2019 code of Conduct for Solicitors applies</li> <li>• Para 6.2- Not to act if there is a conflict of interest or significant risk of one</li> <li>• Example of why there is a risk on the facts (cracks)</li> <li>• Para 6.3- need to keep affairs of client confidential unless the client's consent</li> <li>• Example of problem with confidentiality</li> <li>• Private sale- no agent to re-negotiate price</li> <li>• Principle 7- Act in best interests of each client</li> </ul> | 7           |
| Q2d (i)         | Explanation of the purpose of the certificate of title <ul style="list-style-type: none"> <li>• To confirm title is marketable</li> <li>• No onerous issues to report</li> <li>• To request funds</li> <li>• Can be accepted as security</li> </ul>  | 3           |

|                        |  |   |
|------------------------|--|---|
| Q2d (ii)               | <p>Definition of Interest only mortgage</p> <ul style="list-style-type: none"> <li>• Usually cheapest form of mortgage</li> <li>• Borrower makes only interest repayments per month</li> <li>• No capital repayment is made</li> <li>• Not coupled with life policy of other financial product</li> <li>• Borrowers need to make their own arrangements to ensure capital can be repaid at the end of the term.</li> </ul> | 3 |
| <b>Total: 20 marks</b> |  |   |

| Question Number        | Suggested Points for Responses   | Marks (Max) |
|------------------------|--|-------------|
| Q3a                    | <p>Identification of the following points</p> <ul style="list-style-type: none"> <li>• Building insurance</li> <li>• Client's authority to proceed</li> <li>• Use of deposit</li> <li>• Agreed completion date</li> <li>• Method and timing of exchange</li> <li>• Record Keeping (memo of exchange)</li> <li>• Correspondence and communication to other side</li> <li>• Confirming exchange to agents and clients</li> <li>• Use of Law Society formula and exchanging by phone</li> </ul>   | 8           |
| Q3b                    | <p>Identify the following amendments to the Transfer</p> <ul style="list-style-type: none"> <li>• Title Number incorrect (panel 1)</li> <li>• Transfer dated (panel 3)</li> <li>• Include sellers middle name (panel 4 and execution clause)</li> <li>• Mark as joint tenants (panel 10)</li> </ul>  | 3           |
| Q3c                    | <p>Identification and explanation of the following</p> <ul style="list-style-type: none"> <li>• Land Registry Search OS1 - priority in place/no additional entries/charges since register produced</li> <li>• Bankruptcy Search (K16) - Ensure clients are not subject to bankruptcy proceedings</li> </ul>  | 2           |
| Q3d                    | <p>Completion checklist</p> <ul style="list-style-type: none"> <li>• Ensure satisfactory replies provided in Form TA13</li> <li>• Send balance of purchase price balance to sellers solicitors and confirm funds transferred</li> <li>• Receive confirmation keys released/collect keys</li> <li>• Ensure the Transfer and other relevant completion documents dated from sellers solicitors</li> <li>• Check receipt of miscellaneous documents</li> </ul>  | 4           |
| Q3e                    | <p>Explanation of the importance of replying to requisitions</p> <ul style="list-style-type: none"> <li>• Application cannot proceed without satisfactory answers to Land Registry.</li> <li>• Failure will mean</li> <li>• Delayed completion of registration</li> <li>• Transfer and new mortgage will not take effect at law until registration</li> <li>• Application may be cancelled</li> <li>• If so loss of priority/expiration of priority period</li> <li>• Lawyer in breach to client and lender. Lawyer liable for losses</li> </ul> | 5           |
| <b>Total: 22 marks</b> |  |             |