



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 4 – LAND LAW*

Time allowed: 1 hour and 30 minutes plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **This question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios from Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

SECTION A

(Answer ALL questions in Section A)

1. Explain, with reference to case law and statute, the limits to the common law presumption 'he who owns the land owns everything extending to the heavens ...'.

(5 marks)
2. Explain what is meant by fee simple absolute in possession.

(4 marks)
3. Identify any **two** legal interests in land under s.1(2) Law of Property Act 1925.

(2 marks)
4. Explain any **two** of the four unities which apply to joint tenancies.

(4 marks)
5. Identify the requirements for a constructive trust of land.

(4 marks)
6. Identify the factors that the courts must take into account, when ordering the sale of a property under s.15(1) Trusts of Land and Appointment of Trustees Act 1996.

(4 marks)
7. Identify **one** way in which an easement can be extinguished.

(1 mark)
8. Explain whether a covenant is enforceable between the original parties to the covenant.

(2 marks)
9. Identify:
 - (a) when the power of sale arises under s.101 Law of Property Act 1925;

(2 marks)
 - (b) when the power of sale is exercisable under s.103 Law of Property Act 1925.

(3 marks)

(Total: 5 marks)
10. Identify the information found in the property register of a Land Registry title.

(4 marks)

11. (a) Explain how a seller would prove ownership of an unregistered property.

(3 marks)

(b) Identify the register relevant to unregistered land and give one example of an interest that could be protected by this register.

(2 marks)

(Total: 5 marks)

(Total Marks for Section A: 40 marks)

SECTION B

(There are three scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)

Scenario 1

Antonia and Mark were friends. Three years ago, they bought Moorland House, a registered freehold property. The purchase price was £100,000. Antonia paid £80,000 and Mark paid £10,000 of the purchase price, each from their personal savings. The balance of the purchase price of £10,000 was paid by Mark's mother, Carole. The Land Registry title of Moorland House is in the joint names of Antonia and Mark. Nothing was recorded in writing in respect of Carole's contribution to the purchase price.

At the time of their purchase, Antonia and Mark were advised by their solicitors to own Moorland House as beneficial tenants in common. They followed this advice and they owned Moorland House as beneficial tenants in common.

Antonia, Mark and Carole all lived at Moorland House until recently, when Mark died. Mark's will left his share of Moorland House to his sister Daisy. Moorland House has recently been valued at £150,000 and Daisy would like to know whether she is entitled to claim Mark's share of Moorland House.

Carole is worried that, as nothing was recorded in writing in respect of her financial contribution to the purchase price of Moorland House, Antonia may try to sell Moorland House and not pay Carole any money from the sale proceeds. Carole has been unwell and has been spending long periods of time in hospital. Although she has returned to live at Moorland House in between her hospital stays, Carole is concerned that Antonia may try to sell Moorland House without her knowledge. Carole has been to see a solicitor, who has told her that she, Carole, may have an overriding interest.

Scenario 1 Questions

1. (a) Explain why Antonia and Mark were advised to own Moorland House as beneficial tenants in common.

(4 marks)

- (b) Identify how and where Antonia and Mark's ownership of Moorland House as beneficial tenants in common will be recorded in the Land Registry title.

(2 marks)

(Total: 6 marks)

2. Explain whether Daisy is entitled to a share of Moorland House.

(4 marks)

3. Explain:

- (a) the basis upon which Carole could claim a share in Moorland House;

(4 marks)

- (b) whether Carole is likely to succeed with her claim;

(4 marks)

- (c) how Carole's share will be calculated, if she succeeds with her claim.

(3 marks)

(Total: 11 marks)

4. (a) Explain what is meant by 'an overriding interest'.

(2 marks)

Assume, for the purposes of the following question, that Carole succeeds with her claim to a share in Moorland House.

- (b) Explain, with reference to case law, whether Carole is likely to have an overriding interest.

(7 marks)

(Total: 9 marks)

(Total Marks for Scenario 1: 30 marks)

Scenario 2

Mia bought Aspen Cottage, a detached house with a large garden, in 2000. Last year, Mia sold part of the large garden of Aspen Cottage ('the Plot') to Peter. Peter has obtained planning permission to build a house on the Plot. Peter funded his purchase with a repayment mortgage from the Bedfordshire Building Society, in respect of which his father acts as a guarantor.

The Plot adjoins a road and has access both on foot and in vehicles directly onto that road. However, Peter would also like to be able to use a pathway that crosses the garden of Aspen Cottage, to give him an additional access on foot to the Plot. Use of the pathway will give the Plot a shortcut to the nearby village.

The pathway, which is very worn, has been in existence and used by the owners of Aspen Cottage for many years. There were no discussions at the time of Peter's purchase in respect of him using the pathway, and there is no mention of it in the Transfer Deed of the Plot.

Peter would also like to lay a new drain to serve the Plot under the garden of Aspen Cottage retained by Mia. Peter can connect into an existing drain, which is in the road adjoining the Plot. However, it will save Peter a lot of time and money, if he is able to lay a new drain through the retained garden of Aspen Cottage. Peter discussed this with Mia at the time of his purchase of the Plot and she agreed to him doing so.

Scenario 2 Questions

1. Explain whether Peter has acquired the legal right to use the pathway that crosses the garden of Aspen Cottage under the rule in Wheeldon v Burrows (1879).

(8 marks)

2. Explain how Peter may have acquired the legal right to lay a new drain through the retained garden of Aspen Cottage by express or implied grant.

(9 marks)

3. (a) Explain what is meant by a 'repayment mortgage'.

(5 marks)

- (b) Explain the potential liability of Peter's father as a guarantor.

(6 marks)

- (c) Identify **two** requirements for a legal mortgage to be created over registered land.

(2 marks)

(Total: 13 marks)

(Total Marks for Scenario 2: 30 marks)

Scenario 3

Justin owns a large plot of land on which he built two houses, the Croft and the Nook, which share a driveway. Justin lives in the Croft. The shared driveway is within the title of the Croft. Two years ago, he sold the Nook, to Asta. The Transfer of the Nook granted the right for the owner of the property to use the shared driveway and contained the following covenants:

'For the benefit of the owners of the Croft, their heirs and assigns and others claiming under them to all or any of their lands adjoining or near to the burdened land the Transferee covenants with the Transferor:

1. not to erect any other dwellings or structures on the Nook; and
2. to contribute towards the costs of maintenance of the shared driveway.'

Justin still owns the Croft, but Asta recently sold the Nook to Ethan. Ethan has built a large conservatory on the Nook and Justin is upset by this, as the conservatory overlooks the Croft.

The shared driveway is in need of repair and Ethan is refusing to make any payment to Justin in respect of its maintenance.

On a separate matter, arising out of the sale of the Nook by Asta to Ethan, Ethan was expecting a freestanding and very ornate electric fire to be included in the sale of the Nook. However, Asta took the electric fire with her, when she left the Nook. Ethan has been told by a friend that a form that Asta's lawyer gave him at the time of his purchase should have made clear which items were included in the sale.

Scenario 3 Questions

1. Explain whether Justin is able to enforce against Ethan the covenant not to erect any other dwellings or structures.

(9 marks)

2. Explain whether Justin is able to enforce against Ethan the covenant to contribute towards the costs of the shared driveway.

(8 marks)

3. (a) Identify the form that Ethan's friend is referring to.

(1 mark)

- (b) If the electric fire was not mentioned on the form, explain the tests that would be used to decide whether the electric fire should have been included in the sale of the Nook.

(7 marks)

- (c) Explain, applying the tests identified in (b), whether the electric fire should have been included in the sale of the Nook.

(5 marks)

(Total: 13 marks)

(Total Marks for Scenario 3: 30 marks)

End of Examination Paper