

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 6 – UNIT 9 – LAND LAW

### 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 2022 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

Performance was generally good, and showed an increase over the pass rates in the 2021 examination sessions. There was not a commensurate improvement in the proportions of candidates receiving distinction and merit marks, suggesting that the main improvement came in more borderline scripts.

Two things the Chief Examiner noted which may explain this improvement was an increase in papers where the candidate answered four (rather than only three) questions; and an improvement in the amount of relevant case law cited.

Regarding areas of the syllabus, performance was as expected strong on areas such as the definition of land, fixtures and fittings and co-ownership. Perhaps more unexpectedly, there was a good overall knowledge of proprietary estoppel. Candidates were least likely to attempt questions on mortgages and on leasehold,

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### SECTION A

#### Question 1

This question tested knowledge of co-ownership of land. The topic of co-ownership is a common one, although it is more frequently tested in section B as part of a problem scenario. That this is an area candidates tend to consider “easier” is shown by the large proportion who selected the question.

#### Question 2

This question focused on proprietary estoppel. It has been noted in previous reports that candidates have traditionally underperformed on questions on this topic, so it was pleasing to see stronger performance than usual.

#### Question 3

This two-part question examined knowledge of how interests are protected in unregistered and registered land. | Weaker answers tended to show a lack of knowledge of the rules relating to one type of land in comparison with the other.

#### Question 4

This question on mortgages was one of the least popular questions on the paper. The question was generally answered moderately well, with answers tending toward the descriptive rather than the analytical.

### SECTION B

#### Question 1

This problem scenario tested knowledge and application of the law relating to easements. While easements has historically been a stronger topic across previous cohorts, this questions tested some of the more complex legal elements, especially the doctrine of prescription, which likely explains that performance is perhaps slightly below the historical average for this type of question.

#### Question 2

This questioned was answered well. This was likely a result of the question examining areas which candidates tend to consider easier – the definition of land and fixtures and fittings.

**Question 3**

This was the least popular question on the paper. The area examined, leasehold, is traditionally unpopular among candidates and anecdotally a number of the weaker answers were clearly a candidate picking a fourth question almost at random.

**Question 4**

The question was in some ways more challenging than previous freehold covenants questions, in that part of the question examined the discharge and modification of such covenants. However, the performance on part (a) was surprisingly weak also, in comparison to previous similar questions. I

**SUGGESTED POINTS FOR RESPONSE**

**LEVEL 6 – UNIT 9 – LAND LAW**

Question Number	Suggested Points for Responses	Max Marks
<b>1</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Explanation of methods of holding co-owned land.</li> <li>• Concept of severance and effect.</li> <li>• Severance by notice.</li> <li>• Other methods of severance at common law.</li> <li>• Analysis assessing ease of using each method.</li> <li>• Reasoned conclusion.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Further detail as to operation of joint tenancy/ tenancy in common.</li> <li>• Presumptions that might give rise to an initial joint tenancy.</li> <li>• Survivorship and reasons for severance.</li> <li>• Further detail as to methods of severance.</li> </ul>	<b>25</b>
<b>Question 1 Total:</b>		<b>25 marks</b>

Question Number	Suggested Points for Responses	Max Marks
<b>2</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Modern approach to estoppel.</li> <li>• "Requirement" of assurance and discussion of relevant case law.</li> <li>• "Requirement" of reliance and discussion of relevant case law.</li> <li>• "Requirement" of detriment and discussion of relevant case law.</li> <li>• Analysis evaluating how far estoppel is based on clear principles.</li> <li>• Reasoned conclusion.</li> </ul>	<b>25</b>

	<p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Overarching concept of unconscionability.</li> <li>• Clarity (or lack of it) as to principles regarding remedies.</li> <li>• S2 LP(MP)A 1989, commercial and “farm and family” cases.</li> <li>• Overlap between estoppel and trust.</li> </ul>	
<b>Question 2 Total:</b>		<b>25 marks</b>

Question Number	Suggested Points for Responses	Max Marks
<b>3(a)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Distinction between legal and equitable interests.</li> <li>• Idea that legal interests “bind the world”.</li> <li>• Equitable interests .</li> <li>• Effect of Land Charges Act 1972 and need for protection under the Act.</li> <li>• Basic discussion of concept of over-reaching.</li> <li>• The doctrine of notice for residual interests.</li> <li>• Reasoned conclusion.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Further detail as to effect of s1 Law of Property Act 1925.</li> <li>• Puisne mortgages as exceptions to usual rule re: legal interests.</li> <li>• Further detail as to Land Charges Act 1972.</li> <li>• Case law relating to over-reaching and/or the doctrine of notice.</li> </ul>	<b>10</b>
<b>3(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Continuing distinction between legal and equitable interests.</li> <li>• General rules and principles of registration of interests.</li> <li>• Entering an interest on the register – notices and restrictions.</li> <li>• Status of over-riding interests under Land Registration Act 2002.</li> <li>• Reasoned conclusion.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Further detail as to operation of register(s).</li> <li>• Further detail as to sch 1 and sch 3 Land Registration Act 2002.</li> <li>• Issues of priority.</li> <li>• Potential reform and e-conveyancing.</li> <li>• Relevant case law relating to any/all of the above points, especially case law post-2002.</li> </ul>	<b>15</b>
<b>Question 3 Total:</b>		<b>25 marks</b>

Question Number	Suggested Points for Responses	Max Marks
<b>4</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Definition of a mortgage.</li> <li>• Basic right to enter into possession in legal mortgage.</li> <li>• Recognition that no such right in equitable mortgage.</li> <li>• Legal mortgage – right exercisable immediately.</li> <li>• Direct restrictions on right, e.g. court’s discretion, s36 Administration of Justice Act 1970, FCA rules etc.</li> <li>• Practical disadvantages of possession, e.g. need to manage with due diligence, third parties, potential liability etc.</li> <li>• Discussion of right of sale – when arises and when exercisable.</li> <li>• Restrictions/guidance on how power of sale exercised.</li> <li>• Reasoned conclusion.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Historic development of mortgages and changing policy considerations in the area.</li> <li>• Impact of other principles on when mortgagor considered in breach e.g. no oppressive terms, undue influence etc.</li> <li>• Availability of alternative remedies for mortgagee.</li> <li>• When possession may be available in equitable mortgage</li> <li>• Pre-action Protocol for Possession Claims.</li> <li>• Further detail as to restrictions on right to possession – credit breadth and/or depth.</li> <li>• Further detail as to right of sale and restrictions upon it – credit breadth and/or depth.</li> <li>• Relevant case law relating to any/all of the above points.</li> </ul>	<b>25</b>
<b>Question 4 Total:</b>		<b>25 marks</b>

## SECTION B

Question Number	Suggested Points for Responses	Max Marks
<b>1</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• An explanation of the concept of an easement.</li> <li>• Requirements for an easement to exist, as established in Re Ellenborough Park.</li> <li>• The ouster principle and easements of storage/parking.</li> <li>• Different methods of creation of easement.</li> <li>• Formalities for creation of an express easement.</li> <li>• Prescription as a method of creating an easement.</li> <li>• Application of the above to the facts.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Further detail as to relevant criteria.</li> </ul>	<b>25</b>

	<ul style="list-style-type: none"> <li>• Further detail as to car parking cases and modern approach (e.g. Batchelor v Marlow, Moncrief etc.).</li> <li>• Further detail as to methods of creation.</li> <li>• Relevant case law illustrating principles outlined above</li> </ul>	
<b>Question 1 Total:</b>		<b>25 marks</b>

Question Number	Suggested Points for Responses	Max Marks
<b>2(a)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• An explanation of the concept of land and what constitutes land.</li> <li>• Discussion of principles relating to how far the landowner owns land beneath the ground.</li> <li>• Application of the above to the facts.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Relevant case law illustrating principles outlined above.</li> </ul>	<b>6</b>
<b>2(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Distinction between real and personal property.</li> <li>• Recognition of the concept of relativity of title and the relevance of possession.</li> <li>• Application of the above to the facts.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Finding of objects by employees or servants of the landowner.</li> <li>• Finding of objects that may be the proceeds of crime.</li> <li>• Relevant case law illustrating principles outlined above.</li> </ul>	<b>7</b>
<b>2(c)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Distinction between real and personal property.</li> <li>• Reference to tests developed to distinguish between fixtures and chattels.</li> <li>• Application of the above to the facts.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Further detail as to different tests used for distinguishing fixtures and chattels.</li> <li>• The “modern approach” in cases such as Botham and Elitestone.</li> <li>• Relevant case law illustrating principles outlined above.</li> </ul>	<b>12</b>
<b>Question 2 Total:</b>		<b>25 marks</b>

Question Number	Suggested Points for Responses	Max Marks
<b>3</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Definition of lease and licence, reasons for distinguishing.</li> <li>• Requirements of a valid lease: exclusive possession, certainty of term.</li> <li>• Traditional approach based on the contract.</li> <li>• Street v Mountford and similar cases – looking at “reality” of the agreement. Focus on exclusive possession.</li> <li>• Discussion of exclusive possession, with case law both pre- and post- Street.</li> <li>• Basic formalities for creating leasehold estate.</li> <li>• Basic distinction between legal and equitable leases.</li> <li>• Concept of over-riding interests.</li> <li>• Application of above law to facts.</li> <li>• Reasoned conclusions.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Further detail as to importance of lease/licence distinction.</li> <li>• Discussion of “exceptional circumstances” where exclusive possession will not create a lease, including service occupancy.</li> <li>• Detailed discussion of formalities for creation of leasehold, especially regarding Law of Property (Miscellaneous Provisions) Act 1989 and s54(2) Law of Property Act 1925.</li> <li>• Detailed discussion of effect of creating equitable lease and potential status as over-riding interest under Land Registration Act 2002.</li> <li>• Relevant case law illustrating principles outlined above.</li> </ul>	<b>25</b>
<b>Question 3 Total:</b>		<b>25 marks</b>

Question Number	Suggested Points for Responses	Max Marks
<b>4(a)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Explanation of freehold covenants and their use.</li> <li>• Identification of how both benefit and burden of covenants must pass, either in law or in equity.</li> <li>• Rules relating to passing of the burden in law.</li> <li>• Rules relating to passing of the benefit in law.</li> <li>• Rules relating to passing of the burden in equity.</li> <li>• Rules relating to pass of the benefit in equity.</li> <li>• Application of above law to facts.</li> <li>• Reasoned conclusions.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Further detail as to each element of the rules.</li> <li>• Exception of “mutual benefit and burden”.</li> </ul>	<b>18</b>

	<ul style="list-style-type: none"> <li>• Potential remedies for breach of covenant.</li> <li>• Relevant case law illustrating principles outlined above.</li> </ul>	
<b>4(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Identification of option of express release.</li> <li>• Alternatives to express release, especially application. to Lands Chamber of the Upper Tribunal.</li> <li>• Application of above law to facts.</li> <li>• Reasoned conclusion.</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Further detail as to operation of section 84, Law of Property Act 1925.</li> <li>• Relevant case law relating to s84 applications.</li> </ul>	<b>7</b>
<b>Question 4 Total:</b>		<b>25 marks</b>