



## 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**

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## SECTION A

### (Answer ALL questions in Section A)

1. Explain, with reference to case law, any **one** of the tests used to distinguish between a fixture and a fitting (chattel).  

**(3 marks)**
2. Identify what is meant by the term 'incorporeal hereditaments' and give an example of one.  

**(2 marks)**
3. Explain what is meant by the term 'estate contract'.  

**(2 marks)**
4. Identify the method of protecting an 'estate contract' in:
  - (a) registered land;  

**(1 mark)**
  - (b) unregistered land.  

**(1 mark)**

**(Total: 2 marks)**
5. Explain what is meant by the 'doctrine of survivorship'.  

**(5 marks)**
6. Identify the factors that the courts must take into account, in deciding whether to make an order for sale of a jointly owned property. Give the relevant statute and section number as part of your answer.  

**(5 marks)**
7. Describe what is meant by a 'profit à prendre' and give **one** example of a 'profit à prendre'.  

**(2 marks)**
8. Identify what the rule is in respect of the passing of the burden of a freehold covenant at common law.  

**(1 mark)**
9. Explain the main features of a repayment mortgage.  

**(5 marks)**
10. Explain what is meant by:
  - (a) the 'equity of redemption';  

**(2 marks)**
  - (b) a 'clog on the equity of redemption'.  

**(1 mark)**

**(Total: 3 marks)**
11. Explain the 'insurance principle' in relation to registered land.  

**(5 marks)**
12. Explain the effect of land being registered with 'absolute leasehold title' at the Land Registry.  

**(5 marks)**

**(Total Marks for Section A: 40 marks)**

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## SECTION B

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

### Scenario 1

2 Albion Row (No. 2) is the middle property in a terrace of three freehold properties. It is attached on one side to 1 Albion Row (No. 1) and on the other side to 3 Albion Row (No. 3). The front driveways of **all** three properties border the public highway.

Jackie had owned No. 2 since 1975. In August 2019, Jackie sold No. 2 to Neil.

When Neil bought No. 2, he was told by his solicitors that a Deed dated 10 January 1969 granted the right to No. 1 to walk over the pathway (the Path) in the rear garden of No. 2, to gain access to the rear of No. 1. Neil has checked the Land Registry title of No. 2 and this clearly refers to this right in favour of No. 1.

Neil is a dog owner and is keen to fence off his back garden for the safety and security of his dogs. Once this fencing is erected, this will block access to the Path.

Neil has recently spoken to the current owner of No. 1, Frances, and she has agreed that she will enter into a Deed to end the right of way over the Path.

Neil started to erect fencing around his rear garden. However, he has been approached by the owner of No. 3, Ellen. Ellen said that Neil cannot block the Path, as No. 3 also has a right to walk over the Path.

Neil has checked his Land Registry title and there is no reference in it to No. 3 having a right to walk over the Path.

However, Ellen told Neil that when she bought No. 3 in 1980, she verbally agreed with Jackie that she, Ellen, would be allowed to use the Path when she needed to do so. Ellen says that she has used the Path once or twice a year during her ownership of No. 3, and she wishes to continue to do so. Ellen told Neil that she believes that she has acquired a right of way by prescription over the Path for the benefit of No. 3.

## Scenario 1 Questions

1. (a) Identify, giving the relevant statute and section number, the requirements for a valid Deed.

**(5 marks)**

- (b) Explain, giving a relevant statute and section number, why a Deed was used to grant the right over the Path on No. 2 in favour of No. 1.

**(3 marks)**

- (c) State how the right of No. 1 over the Path is protected in the Land Registry title of No. 2.

**(1 mark)**

**(Total: 9 marks)**

2. Identify any **two** ways that an easement can be ended, other than by express release by Deed.

**(2 marks)**

3. Explain whether the right of way over the Path for No. 1 is capable of being an easement, with reference to Re Ellenborough Park (1956).

**(10 marks)**

4. Explain whether No. 3 has acquired an easement by prescription to use the Path over No. 2's garden.

**(9 marks)**

**(Total Marks for Scenario 1: 30 marks)**

**Turn over**

## **Scenario 2**

In 2010, Brianna bought Rose Cottage, a detached property with a self-contained annexe, for £100,000. Brianna paid £80,000 of the purchase price from her savings, and her friend Alex contributed the balance of £20,000 from her savings.

The title of Rose Cottage was registered in Brianna's sole name and there was no written agreement to show Alex's contribution to the purchase price. Alex does not live at Rose Cottage.

In 2015, Brianna met Xavier and, in January 2016, he moved into Rose Cottage with Brianna. Xavier has paid all the utility bills for Rose Cottage since January 2016. Xavier has also paid for a new kitchen to be installed. Brianna and Xavier discussed transferring the title of Rose Cottage into their joint names. However, as Xavier was in the process of divorcing his wife, they agreed to leave the title in Brianna's sole name, as they did not want to complicate Xavier's divorce proceedings. There was no written agreement of Xavier's payments of the utility bills or for the kitchen.

Brianna and Xavier have recently ended their relationship, although Xavier continues to live at Rose Cottage. Xavier has told Brianna that he is entitled to claim a share in Rose Cottage.

Recently, Brianna granted a six-month legal lease of the self-contained annexe to Chris, and Chris has moved into the annexe. However, Brianna has now decided to sell Rose Cottage, and Chris is concerned that there is no mention of his lease on the Land Registry title. Chris has spoken to his solicitor, who has told him not to worry, as Chris has an 'overriding interest'.

## Scenario 2 Questions

1. (a) Explain the basis upon which Alex could claim a share of Rose Cottage.

**(4 marks)**

- (b) Explain whether Alex would be likely to succeed with her claim.

**(4 marks)**

**(Total: 8 marks)**

2. (a) Explain the basis upon which Xavier could claim a share in Rose Cottage.

**(8 marks)**

- (b) Explain whether Xavier would be likely to succeed with his claim.

**(5 marks)**

**(Total: 13 marks)**

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

**(2 marks)**

- (b) Explain the overriding interest that Chris has in Rose Cottage.

**(2 marks)**

- (c) Explain whether Alex and Xavier are each likely to have an 'overriding interest' in Rose Cottage, if their respective claims are successful.

**(5 marks)**

**(Total: 9 marks)**

**(Total Marks for Scenario 2: 30 marks)**

**Turn over**

### **Scenario 3**

In 2008, Pat bought 'Sunnybank', a freehold dwelling with a large garage, from Leon and Aysha. Leon and Aysha had owned Sunnybank and the adjoining property, 'The Grange', since 1973. When they sold Sunnybank to Pat, their title to Sunnybank and The Grange was unregistered.

The Transfer of Sunnybank to Pat contained the following covenant:

'The Transferee so as to bind her successors in title covenants with the Transferor and the Transferor's successors in title for the benefit of The Grange and each and every part of it not to use Sunnybank for any commercial purposes'.

Leon and Aysha still own The Grange. In 2018, Pat sold Sunnybank to Glen. Glen is a motor mechanic and is operating his car repair business from the garage of Sunnybank. Leon and Aysha are concerned by the level of noise from the garage, caused by the cars being repaired, and also by the constant flow of traffic to and from Sunnybank as Glen's customers arrive to drop off and collect their cars.

Glen has told Leon and Aysha that he is not obliged to comply with the covenant, as he did not sign the 2008 Transfer of Sunnybank. Leon and Aysha have obtained a copy of the Land Registry title in respect of Sunnybank, and this refers to the covenant imposed in 2008.

### Scenario 3 Questions

1. (a) Explain how Leon and Aysha's right to sell Sunnybank in 2008 would have been proven to Pat's lawyer.  

**(5 marks)**
- (b) Identify what step Pat's lawyer would have needed to take after completion of Pat's purchase of Sunnybank and state within what time limit that step should have been taken.  

**(2 marks)**
- (c) Explain the reason for your answer to Question 1(b) above.  

**(3 marks)**  
**(Total: 10 marks)**
  
2. Explain what is meant by 'covenantor' and 'covenantee'.  

**(2 marks)**
  
3. (a) Explain when the burden of a covenant will pass in equity on a sale of the burdened land.  

**(7 marks)**
- (b) Explain whether, on the facts of the scenario, the burden of the covenant has passed in equity to Glen.  

**(6 marks)**  
**(Total: 13 marks)**
  
4. Explain whether your answer to Question 3(b) would be different, if the wording of the covenant was: '... not to allow Sunnybank to fall into a state of disrepair'.  

**(5 marks)**

**(Total Marks for Scenario 3: 30 marks)**

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