

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. Identify any **two** remedies for trespass to land. **(2 marks)**
2. Identify examples of **one** fixture and **one** fitting. **(2 marks)**
3. Explain the statutory requirements to create a valid contract for the sale of land, giving the statute and section number. **(4 marks)**
4. (a) Explain what is meant by 'severance' of a joint tenancy. **(1 mark)**

(b) Give any **two** examples of when a joint tenant operates on their own share, as identified in Williams v Hensman (1861). **(2 marks)**
(Total: 3 marks)
5. List any **four** factors identified by the House of Lords in Stack v Dowden (2007) that can be used to decide the quantification of the beneficial shares of a constructive trust. **(4 marks)**
6. Identify the requirements for an easement to be acquired by prescription. **(5 marks)**
7. Identify the requirements for the **benefit** of a covenant to run at common law. **(4 marks)**
8. Explain the main features of a repayment mortgage. **(5 marks)**
9. Identify any **four** advantages of the system of land registration. **(4 marks)**
10. Identify the information contained in the Property Register of a Land Registry title. **(3 marks)**
11. Explain what is meant by overreaching. **(4 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

Elle and Jeevan were girlfriend and boyfriend when they bought a house, Primrose Cottage, intending it to be a home for them and the family they hoped to have in the future. They bought Primrose Cottage, a registered property, as joint legal owners and held the property as beneficial tenants in common and without a mortgage.

Six months after they bought Primrose Cottage, Jeevan's sister Asha moved into Primrose Cottage with them.

Asha paid for a significant extension to Primrose Cottage at a cost to her of £60,000. In return, Elle and Jeevan agreed that she could live at Primrose Cottage with them free of charge. Asha's name is not on the Land Registry title and no written record was made of this agreement. Elle, Jeevan and Asha all contributed equally towards the utility bills.

This arrangement continued for ten years, during which time, Elle and Jeevan had two children.

Elle has recently died and, in her will, has left all of her estate to her brother Felix. Felix would like Primrose Cottage to be sold, so that he can claim his inheritance in cash.

Asha is also keen for Primrose Cottage to be sold, and she wishes to claim a share of Primrose Cottage in view of her financial contributions towards it.

Jeevan would like to continue living in the house with his two children, so he does not want it to be sold.

Scenario 1 Questions

1. Explain who owns the **legal** title to Primrose Cottage, following the death of Elle.

(5 marks)

2. (a) Explain how Elle and Jeevan's beneficial ownership of Primrose Cottage as tenants in common will be reflected in the Land Registry title.

(2 marks)

- (b) Explain whether Felix is entitled to a share of Primrose Cottage.

(4 marks)

(Total: 6 marks)

3. Explain whether Asha may be able to claim a share in Primrose Cottage on the basis of:

- (a) a resulting trust;

(3 marks)

- (b) a constructive trust.

(10 marks)

(Total: 13 marks)

4. (a) Identify the statute and the section number that will allow Felix to apply for a court order for the sale of Primrose Cottage.

(1 mark)

- (b) Explain whether Felix is likely to succeed, if he applies to the court for an order for the sale of Primrose Cottage.

(5 marks)

(Total: 6 marks)

(Total Marks for Scenario 1: 30 marks)

Turn over

Scenario 2

Helen owns 'The Manor', a house with a very large garden. Helen sold part of the garden ('The Garden') of The Manor to Kempston Developers Ltd (KD Ltd), who obtained planning permission to build four houses in The Garden.

The Transfer Deed ('the Transfer') of The Garden included a right for The Garden to park four cars in parking spaces located in the retained grounds of The Manor, but made no reference to any other rights. The Transfer clearly stated that Helen has no right to use these parking spaces.

KD Ltd has recently discovered that there is a pre-existing drainage system that runs from The Garden through the retained grounds of The Manor, and which Helen installed two years before she sold The Garden. KD Ltd made this discovery as there are a number of drainage covers clearly visible on the surface of The Garden. KD Ltd would like to use this pre-existing drainage system, as it would be much cheaper than having to install a new system.

However, no mention is made in the Transfer of KD Ltd having the right to use this pre-existing drainage system. Helen does not wish it to do so, and does not believe that it has the right to do so. Helen has spoken to her lawyers, who have said that KD Ltd may have acquired this right, as The Garden and The Manor were previously in common ownership.

Helen is also upset as KD Ltd has erected a sign advertising for sale the new homes to be built on The Garden. This sign is overhanging onto the retained grounds of The Manor. Helen has raised this with KD Ltd, which has said that there is nothing she can do about this.

KD Ltd also mentioned that it has commissioned a photographer, who will soon be taking some aerial photographs of the new houses as part of KD Ltd's advertising campaign. Helen does not wish it to do so, if this involves flying over the retained grounds of The Manor.

Scenario 2 Questions

1. Identify the essential characteristics of an easement, as stated in Re Ellenborough Park (1956).
(5 marks)

2. Explain, with reference to case law, whether the right for The Garden to park four cars in parking spaces located in the retained grounds of The Manor is capable of being an easement.
(10 marks)

3. Explain why Helen's lawyers have advised her that KD Ltd may have a right to use the pre-existing drainage system because The Garden and The Manor were previously in common ownership.
(10 marks)

4. Explain whether Helen can object to the advertising sign and the aerial photography.
(5 marks)

(Total Marks for Scenario 2: 30 marks)

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Scenario 3

Mark bought a property, Sunnyside, one month ago with the help of a mortgage from the Kempston Building Society.

The Land Registry title in respect of Sunnyside states that Sunnyside is subject to a covenant imposed in 1956, in favour of a neighbouring property, Meadow View. The covenant is not to use Sunnyside as a 'bed and breakfast'.

Sunnyside has been used as a 'bed and breakfast' for the past 30 years, and Mark wishes to continue doing so. Kempston Building Society has agreed that he can use Sunnyside as a 'bed and breakfast'.

Mark does not think he will be bound by this covenant, as he did not sign the deed imposing the covenant in 1956. He has spoken to the owners of Meadow View, but they have said that they would rather he didn't continue using Sunnyside as a 'bed and breakfast', as there is an increase in traffic driving past Meadow View and some extra noise from the guests.

Mark believes that the covenant cannot be enforced because while, in the 1950s, the area was very rural, now many properties in the area are being used as 'bed and breakfast' accommodation and hotels, and the area is no longer rural.

Mark wishes to have the covenant discharged from his title.

Scenario 3 Questions

1. Explain whether Mark will be bound by the covenant not to use Sunnyside as a 'bed and breakfast'.

(8 marks)

2. (a) Identify the official body to which Mark can apply to have the covenant discharged from the title.

(1 mark)

- (b) Identify the grounds that can be used in an application to have a covenant discharged from the title.

(4 marks)

- (c) Explain, with reference to case law, whether Mark is likely to succeed with his application on the above grounds.

(10 marks)

(Total: 15 marks)

3. (a) Explain what is meant by the 'legal date for redemption' and what the significance is of this date passing.

(4 marks)

- (b) Explain what is meant by a 'clog on the equity of redemption'.

(3 marks)

(Total: 7 marks)

(Total Marks for Scenario 3: 30 marks)

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