

## 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.

**Turn over**

## SECTION A

### (Answer ALL questions in Section A)

1. Explain, with reference to case law, how the degree of attachment test is used to decide whether an object is a fixture or fitting.  

**(2 marks)**
2. Identify what is meant by 'incorporeal hereditaments' under s205 (1) (ix) Law of Property Act 1925 and give one example.  

**(2 marks)**
3. Identify the requirements of a valid contract for the sale of land, with reference to the statute and section number.  

**(4 marks)**
4. Explain what is meant by 'overreaching' and how it is achieved on the sale of land.  

**(5 marks)**
5. Describe the requirements for severance of a joint tenancy under s.36 (2) Law of Property Act 1925.  

**(5 marks)**
6. State what is meant by a 'profit a prendre' and give one example.  

**(2 marks)**
7. Explain how to distinguish between a positive covenant and a restrictive covenant and give one example of a positive covenant.  

**(4 marks)**
8. Describe the main features of a repayment mortgage.  

**(5 marks)**
9. Explain what is meant by the 'curtain principle'.  

**(2 marks)**
10. Identify the interests which bind a buyer of land with 'absolute leasehold title'.  

**(4 marks)**

11. Identify any **three** interests in land which are capable of substantive registration under s.2 Land Registration Act 2002.

**(3 marks)**

12. Identify any **two** remedies of a mortgagee.

**(2 marks)**

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

**Turn over**

## SECTION B

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

### Scenario 1

In 2010 Neil and Bella bought a house, 3 Mitchell Road, for them and their two young children. Neil and Bella owned 3 Mitchell Road as legal and beneficial joint tenants. In 2015 Neil died.

In 2016, Bella sold 3 Mitchell Road and, in 2018, she bought Lilac Cottage, with her friend Jeevan. Bella and Jeevan did not intend this to be a long-term arrangement. They hoped that they would be able to make enough money from selling Lilac Cottage so that they could then each afford to buy their own house.

The purchase price of Lilac Cottage was £300,000. Bella and Jeevan each paid £100,000 towards the purchase price. Jeevan's aunt, Anaisha, also paid £50,000 towards the purchase price and Bella and Jeevan obtained a mortgage of £50,000 from the Bedfordshire Building Society for the balance.

Bella and Jeevan own Lilac Cottage as beneficial tenants in common. Nothing was recorded in writing in respect of Anaisha's contribution. At the time that Anaisha made the contribution, she told Jeevan that she was happy to be in a position to help Jeevan with his purchase.

Bella and Jeevan lived in Lilac Cottage with Bella's two children. Anaisha has never lived at the property.

The arrangement worked well until six months ago when Jeevan decided that he would like to sell Lilac Cottage. Bella does not want to sell Lilac Cottage.

Jeevan has moved out of Lilac Cottage and Bella continues to live there with her two children. Bella is struggling to pay the monthly mortgage payments and has also not been insuring Lilac Cottage, in breach of the mortgage conditions.

Bella has received a letter from the Bedfordshire Building Society stating that as the mortgage has not been paid for the last three months, they may apply to the court for an order to sell Lilac Cottage. Bella is also worried that if Bedfordshire Building Society sells Lilac Cottage, they may sell it for much less than its current value of £400,000.

## Scenario 1 Questions

1. Explain who owned the legal and beneficial interest in 3 Mitchell Road following the death of Neil.

**(5 marks)**

2. Explain whether Anaisha can claim a share of Lilac Cottage.

**(7 marks)**

3. (a) Identify the statute and section number that entitles Jeevan to apply for an order for sale of Lilac Cottage.

**(1 mark)**

(b) Identify any **three** factors the court must take into account when deciding whether to make this order for the sale of Lilac Cottage.

**(3 marks)**

(c) Explain whether the court is likely to order the sale of Lilac Cottage.

**(5 marks)**

**(Total: 9 marks)**

4. Explain whether Bedfordshire Building Society's power of sale is exercisable under s.103 Law of Property Act 1925.

**(5 marks)**

Assume for the purpose of Question 5 only that Bedfordshire Building Society's power of sale is exercisable.

5. Explain whether it could sell Lilac Cottage for less than the current value.

**(4 marks)**

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

**Turn over**

## Scenario 2

Bob has owned a house, 52 Aneray Road, since 1975 and Anna has owned the adjoining hotel, 'Sea View', since 1986. Before Anna bought Sea View, and during her ownership, the sign advertising the hotel has been situated in the garden of 52 Aneray Road.

Bob asked Anna to remove the sign but Anna refused. Bob has taken legal advice and has been told that Anna may have to remove the sign because it does not benefit Sea View and therefore is not capable of being an easement.

There is a further area of land suitable for parking one vehicle ('the parking space') adjacent to the hotel, and this belongs to Tony. Shortly after her purchase of Sea View, Tony agreed with Anna that she could use the parking space. Anna has used the parking space on an almost daily basis since her purchase.

Tony has recently contacted Anna and has said that he wants her to stop using the parking space, but Anna has refused. Tony has looked into this and believes that Anna does not have the legal right to use the parking space because this would be 'exclusive possession.'

There is no reference in the Land Registry title of Tony's land to Anna's use of the parking space. The parking space and Sea View have never been in common ownership.

Anna has also sought legal advice in respect of the above issues and has been told by her solicitors that the title deeds of Sea View are unregistered and it would be better if the title of Sea View was registered.

## Scenario 2 Questions

1. (a) Explain what is meant by the sign needing to benefit Sea View for it to be capable of being an easement.

**(3 marks)**

- (b) Explain whether the sign in Bob's garden benefits Sea View and is capable of being an easement.

**(3 marks)**

**(Total: 6 marks)**

2. Explain whether Anna's use of the parking space gives her exclusive possession of it.

**(4 marks)**

Assume for the purposes of Question 3 only that the use of the parking space is capable of being a valid easement.

3. (a) Describe the requirements to acquire a right by prescription.

**(5 marks)**

- (b) Explain whether Anna has acquired the right to use the parking space by prescription.

**(5 marks)**

**(Total: 10 marks)**

4. (a) Explain why the title of Sea View is unregistered.

**(3 marks)**

- (b) Explain whether it would make any difference to your answer to Question 4(a) if Anna had mortgaged Sea View in 2005.

**(4 marks)**

- (c) Identify any **three** advantages of the system of land registration.

**(3 marks)**

**(Total: 10 marks)**

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

**Turn over**

### Scenario 3

In 2010, Lois owned a plot of land and had two houses built on that land, The Sycamore and The Oaks. In 2011, Lois sold The Oaks to David and retained ownership of The Sycamore.

The Transfer Deed of The Oaks made between Lois and David in 2011 contains the following provisions in respect of the use of The Oaks:

'For the benefit of The Sycamore and the current and future owners of it and so as to bind the Transferee and their successors in title to The Oaks, the Transferee agrees;

1. Not to use The Oaks for any commercial purposes'

In 2016, David sold The Oaks to Perry. In 2019, Lois sold The Sycamore to Yolande. Perry has recently started a hairdressing business at The Oaks. Yolande would like to stop Perry from running this business because the amount of traffic going to and from The Oaks has increased substantially as a result of the business.

Perry has told Yolande that he is not bound by the covenant in the 2011 Transfer Deed as neither he nor Yolande signed this Transfer Deed.

Yolande's lawyer has obtained a copy of the Transfer Deed used when David sold The Oaks to Perry in 2016 and he has told Yolande that, in it, Perry promised David to comply with this covenant. In addition, Yolande's lawyer has obtained a copy of the Land Registry title of The Oaks and has told Yolande that there is a reference to this covenant in the title of The Oaks.

### Scenario 3 Questions

1. (a) Define what is meant by 'covenantor' and 'covenantee.'  
*(2 marks)*
- (b) Identify the 'covenantor' in the Scenario.  
*(1 mark)*

*(Total: 3 marks)*

2. Explain whether the **burden** of the covenant has passed to Perry at **common law**.  
*(7 marks)*
3. Explain whether the **benefit** of the covenant is likely to have been annexed to the land so as to have passed **in equity** to Yolande.  
*(5 marks)*

Assume for the purposes of Question 4 only that the benefit of the covenant has passed in equity to Yolande.

4. Explain whether the **burden** of the covenant has passed in **equity** to Perry under the rules in *Tulk v Moxhay (1848)*.  
*(7 marks)*
5. (a) Explain the two types of notice that can be entered in a Land Registry title and when each will be entered.  
*(4 marks)*
- (b) Describe which type of notice will have been entered in respect of the covenant.  
*(2 marks)*
- (c) State the effect of the registration of a restriction on a Land Registry title and give one example of an interest protected by a restriction.  
*(2 marks)*

*(Total: 8 marks)*

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

**End of Examination Paper**