

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

JANUARY 2019

LEVEL 6 – UNIT 17 - CONVEYANCING

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested answers 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 2019 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers 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

The standard of the cohort was average, with a pass rate of approximately 59% (i.e. candidates who scored over 50%). Candidates that passed had prepared properly on the Case Study Materials (CSMs), were able to state the relevant law and procedure and apply these to the facts when answering questions.

As stated above most candidates had revised the CSMs and used this to direct their preparation for the examination. Answers that passed, demonstrated the conveyancing knowledge and practice which would be expected from a junior conveyancing practitioner. Capable candidates answered the question set, clearly explained the issues raised by each question, clearly stated the relevant conveyancing knowledge and procedure and clearly applied these to the facts given to reach reasoned conclusions and/or give clear advice.

Poor candidates, i.e. those that failed the assessment clearly had not shown any understanding of the Learning Outcomes nor the KUS for the Unit. As with previous cohorts many of those who failed did not make the transition from merely regurgitating information (for example providing lists of information),

for which no marks were given as the practice Units test practical application of the law and procedure to the facts.

It must be noted that many of those that failed the paper failed badly (i.e. gaining below 40%). Some of the reasons for this included candidates failing to answer the question set, thereby gaining no credit; some candidates did not even understand the scope of the question thereby demonstrating a lack of conveyancing knowledge and understanding; a large proportion of candidates were unable to explain/define terms properly; a large number of answers contained contradictions where candidates contradicted what they stated in an earlier part of their answer thereby gaining no credit; for a number of candidates the grammar used in answering questions was so poor that the answers often did not make sense; a large number of answers lacked precision, for example when explaining what a joint tenancy is most answers said that the co-owners hold the beneficial title in equal shares, this is incorrect - the effect of stating 'shares' means the beneficial title is held in a tenancy in common; there were similar instances of this on answers to other questions.

Some poor candidates merely memorised previous specimen answers to past conveyancing examination paper questions, but often gained no credit as they did not answer the question set.

Several common errors were apparent in candidates' knowledge and application which included the following:

- where a question comprised a number of elements some candidates failed to identify the 'scope' of the question and rather than answer each element of a question, only answered one part. Candidates must answer every part of a question, otherwise they will lose valuable marks;
- As noted in previous reports, many candidates had not properly prepared on the CSMs. For example, candidates were asked to advise the clients on how they should hold the title to Allen Dale, and a large number of candidates incorrectly claimed that they did not know whether the clients were married, even though the CSMs expressly stated they were. Candidates must be fully aware of all information and matters covered by the CSMs.

Candidates tended to answer fairly well or well, questions 1(b), 2(a), 4(b), and 4(d). Candidates tended to answer poorly questions 1(d), 2(b), 3(a), 3(b), 3(c) and 4(c). Other questions were answered averagely by candidates.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Common errors on specific questions is given below:

Question 1

- (a) Which pre-contract enquiries need to be provided by the seller's lawyers to the buyer's lawyers on the sale of a leasehold property?

This was generally answered averagely by most candidates with many scoring 4 or 5 marks. Weak answers tended not to provide enough reasons for

providing each form identified or did not clearly identify the documentation that would need to be forwarded to the buyers' lawyers once the sellers have received it from the landlord/landlord's managing agents.

Some very weak candidates referred to the TA13, EPC, licence to assign or deed of covenant, which are clearly not relevant when discussing pre-contract enquires and/or based on the scenario. Other weak candidates incorrectly stated supplying the documents required to deduce title thereby gaining no credit. Candidates need to answer the question set.

(b) Documentation to be included in the contract pack on the sale of a registered leasehold property.

This was generally answered well by most candidates with most scoring 3 marks or above out of 6.

A few poor answers stated that a licence to assign is required, whereas clearly according to the lease and the length of the remaining term this is not required. Others incorrectly identified the Protocol forms, thereby gaining no credit.

(c) Additional documentation the buyers' lawyers will require because the property was newly built or converted.

This was answered averagely with most answers scoring around 3 marks out of 6.

Most answers explained why it is necessary to inspect both the planning and building regulation consents. Some answers discussed the requirement for the property to have a form of building scheme cover. Fewer answers explained what is covered by such insurance and why such cover is required. Only a few answers clearly expressly explained the date when the lease was granted and linked this to the remaining period of cover.

(d) The effect of the restriction contained in entry number 3 of the Proprietorship Register.

This was answered poorly with many candidates scoring 2 marks, or less. Many candidates failed to adequately define what a restriction is and/or to explain its effect in the scenario. Many candidates failed to identify and apply the requirements of clause 25.2 of the lease, for the sellers on completion to transfer their share in the management company to the buyers, and for the buyers to register this with the management company under clause 26, following which the buyer's lawyers will send a certificate to HM Land Registry confirming this.

Many answers incorrectly said that a licence to assign would be needed from the landlord and discussed the provisions of the standard conditions of sale relating to consent (8.3) and also the need for the licence to be obtained before completion. Under clause 25.3 a licence to assign is only required when an assignment occurs during the last seven years of the term – here clearly, on the date of the examination, the remaining term was 120 years. Candidates must read and correctly apply the information given in the CSMs.

Further, many answers incorrectly stated that the landlord's consent would also be required where the lease is sub-let. Clearly, that is irrelevant as here the lease was being assigned.

Question 2

- (a) Pre-contact searches that will be raised based solely on the matters raised by the title register and title plan and the reasons for raising each search

This question was answered very well by most candidates with many scoring 7 or 8 marks.

Poor answers tended not to link searches to the facts given in the CSMs so were not able to explain each search was necessary in this transaction. Other poor answers merely listed all of the pre-contract searches that they could think of and merely gave the standard reason for performing these searches (for example, Local Land Charges to see if the property is subject to any local land charges) thereby gaining little or no credit.

Good answers identified each relevant search and explained clearly the reasons why each should be performed by referring to the title documents and location of the property and the issues that these raised. Candidates here were expected to make specific reference to the contents of the title documentation and/or location of the property.

As with previous papers a few candidates demonstrated that they had no understanding of what constitutes a pre-contract search as they covered pre-completion searches instead thereby gaining no credit.

- (b) Requisitions on title for a registered freehold property.

Generally answered poorly by most candidates with many scoring 5 or 6 out of the 14 marks available.

Poor answers did not base their requisitions on the title provided in the CSMs and often repeated the questions contained in the protocol forms. Several candidates raised a requisition asking the sellers' lawyers if they will undertake to discharge their client's charge on completion. This is dealt in the TA13, and so no credit was given.

A few candidates did draft suitable requisitions but failed to get full credit as sufficient reasons were not provided for each requisition. It should be noted that all reasons for raising each requisition must be stated. Often, more than one reason will be needed for each requisition.

A few candidates asked for copies of the 1939 Conveyance as this contained restrictive covenants, however these had already been extracted to the official copy.

Many candidates failed to identify and deal with any issues raised by the following:

- The rights granted and reserved by the 1987 Conveyance;
- The provisions as to light or air and boundary structures;
- The facts that the land is subject to rights of drainage; and

- The need to raise requisitions concerning the risk of flooding at the property.

It is important that candidates ensure that they have prepared for the examination by being fully aware of the facts contained in the CSMs.

Question 3

- (a) The Law Society formulae that should be used to exchange contracts in a chain and the advice to given to your clients before you can exchange contracts.

This question was answered poorly by most candidates with many scoring 4 or 5 marks.

Good answers correctly explained which formula would be used to exchange contracts and the reasons why, and clearly explained what advice they would give to their clients before progressing to exchanging contracts.

Most candidates failed to answer the question set as they wrote pages on the steps they would follow when exchanging contracts on both the sale and purchase properties. The question did not require this and so these candidates gained no credit for doing so. Candidates who merely explained each formula or said they would use formula B, or that they would use formula C on the property being purchased gained no credit (candidates were asked which formula would be used to exchange contracts on Flat 7, the property being sold). A large proportion of these candidates failed to provide any advice to their clients and so lost valuable credit.

Many candidates tended to 'mix-up' or appear confused between formulas B and C. Some candidates incorrectly identified that formula C would be used here with formula B. The question dealt with which formula should be used on the sale of the flat, not on the purchase.

Candidates clearly need more practice in understanding when formula C and formula B are used in chain transactions. This advice has been given in previous examination reports. Candidates who merely explained either the wrong formula or explained formulas A, B and/or C gained no marks as they failed to apply the law and procedure to the facts.

Candidates must answer the question set, be specific, and explain their answers clearly.

- (b) Advice to clients on how they should hold the legal and beneficial title to the property they are buying.

This was answered poorly by most candidate with many scoring 5 or 6 marks.

Good answers clearly identified how the legal title is held when land is held by co-owners, how the equitable estate may be held by co-owners, clearly defined both a joint tenancy and tenancy in common, clearly explained when each form of co-ownership is appropriate and then advised the clients on the most appropriate way to hold the property, supporting this advice with reasons from the CSMs.

Poor answers failed to clearly explain the above and/or failed to provide the clients with any advice or gave unclear advice. Some answers gained no credit as they gave contradictory information saying the clients could hold the property in a joint tenancy or in a tenancy in common. Some answers raised issues whether the clients were married – this is expressly stated in the CSMs.

A number of answers lacked precision, for example some answers when defining a joint tenancy said that the parties held the title in 'equal shares', note where 'shares' are stated this creates a tenancy in common, and so these candidates gained no credit. Candidates must be able to clearly and correctly explain the relevant law and procedure and must avoid these simple mistakes.

A number of candidates from two centres incorrectly said that there are three ways in which the beneficial interest in a property can be held which is 'a joint tenancy', 'a tenancy in common in equal shares', or a 'tenancy in common in unequal shares'. These candidates have not revised correctly. The beneficial interest in land can only be held in two ways, a joint tenancy, or in a tenancy in common.

A few answers gained no marks as they refused to give advice saying it was a matter for the clients. Candidates must be able to provide legal advice to clients and then the clients will decide whether to follow that advice, or not.

Question 4

- (a) The additional pre-completion search that needs to be performed by the buyers' lawyers because a lender is involved in the transaction.

This was answered averagely with many candidates scoring 2 or 3 marks out of 5. Good answers clearly explained the need to perform a K16 Bankruptcy search against the buyers, expressly stating their full names, giving the name of the lender, stating the correct priority period and reason which such a search is required.

Poor answers failed to state the name of the lender or incorrectly gave the priority period in 'days' rather than 'working/business days'.

Many answers incorrectly explained the need to perform an OS1 search, however it should be noted that this search would be performed in every registered land transaction irrespective of whether a lender is involved in the transaction. No marks were awarded for discussing an OS1, however candidates were not penalised for doing so.

A few answers explained pre-contract searches, rather than pre-completion searches, thereby gaining no credit.

- (b) Documents to be provided by the seller's lawyers to the buyer's lawyers following completion of the sale of a leasehold property.

This was answered fairly well. Most answers correctly identified the documents that needed to be provided under the scenario.

Poor answers just listed irrelevant documents from a memorised list, rather than those required under the scenario, for example licence to assign (one is not required), TA13 (this is provided pre-completion), the signed contract, etc. Here better application was needed.

- (c) Explanation of the reason why the buyers' transactions need to be registered at HM Land Registry and the consequences of not registering these in accordance with the relevant deadlines.

This was answered poorly by most candidates. Many candidates failed to clearly explain why both the transfer and charge need to be registered, many answers incorrectly stated the deadline for registration as '30 days' rather than '30 working days' and a lot of answers failed to explain the ramifications of missing the relevant deadlines.

Many answers worryingly said there was a two- or three-month period in which to register title and so lost credit. No one should talk about a two- or three-month period in which to register any transaction in registered land.

Some candidates bizarrely said a failure to register title at HM Land Registry will result in the imposition of fines and/or penalties.

Some answers gained no credit as they failed to answer the question set. Here they dealt with post completion steps such as paying SDLT, registering title and the forms to be used, etc. Candidates must answer the question set and must realise that no marks will be awarded where they fail to do so.

- (d) Drafting parts of the AP1 in the answer booklet.

This was answered very well by most candidates with many scoring 8 or 9 marks out of 11.

A few errors included not using the correct terms to state the applications (such as discharge, transfer and charge), not stating the applications in the correct order (e.g. stating 'charge' before 'transfer', etc), failing to state the correct fee (either £95 or £190 were accepted), failing to state the applicant (some incorrectly stated RBS).

Worryingly, when referring to the documents included with the application some candidates stated TP1 rather than TR1 and so gained no credit.

SUGGESTED ANSWERS

JANUARY 2019

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Question 1(a)

I would send the following replies to pre-contract enquiries to the buyers' lawyers for Flat 7:

- The Replies to the Property Information Form;
- The Replies to the Fittings and Contents Form as carpets and curtains are included in the sale;
- The Replies to the Leasehold Information Form; and
- LPE1 (or equivalent replies).

I will also forward the following documentation to the buyers' lawyers as part of the replies to the enquiries of the lessor and/or managing agents:

- Three years management accounts;

- A ground rent receipt for the last payment of ground rent;
- A copy of the service charge account and receipts paid by the tenant;
- A copy of the lessor's buildings insurance;
- Contact details for the landlord and the landlord's managing agents;
- Memorandum and articles of association of the management company; and
- A copy of our clients' share certificate in the management company.

1(b)

Under the Law Society Conveyancing Protocol ('the Protocol'), I will include the following documentation in the contract package for Flat 7:

- Draft contract containing the latest edition of the Standard Conditions of Sale;
- Official copy of the register for the leasehold title;
- Official copy of the title plan to the leasehold title;
- Copy of the registered lease dated 16 September 2014 with colour plans for the lease;
- Official copy of the register and title plan for the freehold title as entry 5 of the Property Register states the Landlord's title is registered; and
- An Energy Performance Certificate (EPC).

(c)

The lease was granted on the 16 September 2014 with the term commencing on the 16 February 2013 and therefore the property has therefore been built or converted within the past ten years.

The buyers are buying with the aid of a mortgage from Birmingham Midshires and as such the buyers' lawyers will require a new property buildings standards indemnity scheme insurance cover. They will need to ensure that they have this documentation due to the requirements of the UK Finance Mortgage Lenders' Handbook, which will also state which schemes are acceptable to the lender.

The most common form of building scheme insurance cover is NHBC Buildmark. This provides staged cover over a period of ten years and for years 3-10 (the relevant stage to the buyers of Flat 7) NHBC provides insurance to cover major defects in the building, a breach of building regulations consent and for contamination present at the site. There is approximately 5 years of cover remaining.

I will also request a copy of both the planning consent for the build and also the building regulations consent to ensure that planning consent was granted, to inspect any conditions attached to the consent and also to ensure that a buildings completion certificate has been issued.

(d)

Entry number 3 of the Proprietorship Register is a restriction. A restriction is an entry on the register that prevents or controls the making of an entry in the register in relation to a disposition of the land. If the terms of the restriction are not complied with then HM Land Registry will not register the sale of Flat 7 to the buyers following completion and our clients will remain the legal owners.

Clause 25.2 of the eighth schedule of the lease states that when transferring or selling the whole of the lease the assignor must also transfer the share certificate in the management company to the assignee and that on completion the executed share transfer form and shares must be registered with the management company.

We must therefore ensure that we supply the relevant documentation to the buyers' lawyers to enable them to comply with the above conditions.

Under clause 26 of the eighth schedule of the lease within one month of an assignment and/or mortgage of the property the tenant must serve on the management company a notice of such dealing and must also pay the management company's reasonable fees.

Only once these provisions have been complied with will the buyers' lawyer send a certificate to HM Land Registry confirming that these conditions have been adhered to which will enable the buyers to be registered as the new proprietor.

Question 2(a)

I will perform the following pre-contract searches for Allan Dale [credit was given for any other relevant searches identified by candidates]:

1. A chancel check or search to establish if the property is subject to a chancel repairing liability. There has not been a sale for value of Allan Dale since October 2013, as the last sale was in September 2009, and so there is a possibility that an unregistered chancel repair liability may still be registered against Allan Dale prior to completion.
2. A coal mining search to determine if coal mining has occurred at the property in the past, or at present or is planned for the future. This is because entry 2 of the Property Register states that the mines and minerals have been reserved to a third party. Also, entry number 3 of the Charges Register refers to a conveyance dated 2 October 1987 and one party to this deed was British Coal.
3. A water and Drainage search (CON29DW) because entry 1 of the Charges Register states that the property is subject to rights of drainage and the manner of drainage on and in the vicinity the property needs to be investigated.
4. An environmental search to determine if there is any contamination present at the property because the references to mining and to British Coal in the official copy of the register indicate that a past industrial use may have occurred at the property in the past.
5. A flood search because entry number 1 of the charges register states that the property is subject to rights of drainage and this may raise the risk of the property suffering from flooding.

2(b)

I would raise the following requisitions on title for Allan Dale [credit was given for any other relevant requisitions raised by candidates]:

1. "Please confirm whether any past or current mining has occurred within the vicinity of Allan Dale, whether the property has suffered from subsidence, and/or whether any compensation has been paid".
Entry number 2 of the Property Register for Allan Dale states that the mines and minerals with the ancillary rights of working are excepted. There is a likelihood that mining has occurred on or near the property in the past and is a possibility that mining could commence in the future. Further, if mining has occurred in the past it may have caused subsidence damage to the property which needs to be investigated.
2. "Please provide us with a copy of the Conveyance dated 2 October 1987 made between (1) The British Coal Corporation and (2) Blocktoken (Newark) Limited" and "Please confirm whether any third party has exercised any rights of access over the property. If so, please provide full details".

The Protocol) is being followed and under paragraph 24(2)(i) a copy of all filed documents must be included in the contract bundle.

This conveyance contains restrictive covenants which will be binding on the buyers and the buyers need to know what these are, and they need to be investigated to ensure they are not too onerous.

Entry number 3 of the Property Register states that this conveyance also contains rights granted that benefit the property and rights which are reserved over the property. The rights granted and reserved require investigation so that our clients can be fully advised on their impact of these on their use and enjoyment of the property.

Entry number 5 of the Property register states that this conveyance also contains provisions as to light or air and boundary structures which will require investigation and then reporting to our clients.

3. "Please provide us with details of any drainage arrangements that affect the property" and "Please confirm whether the property has suffered from any flooding in the past. If the property has suffered from flooding in the past, please provide full details of each incident and confirm whether any policy of insurance has been refused or any premium increased due to the risk of flood and/or whether 'flood re' applies to the property".

Entry number 1 of the Charges register states that the property is subject to rights of drainage. These arrangements must be fully investigated and whether this has caused any flooding to occur on or near the property.

Question 3(a)

I will use formula C to exchange contracts on Flat 7, as Flat 7 is in a chain (i.e. not at the top of the chain).

I will give my clients the following advice prior to exchanging contracts on Flat 7 and Allan Dale [credit was also given for any other relevant advice identified by candidates]:

1. The sale of Flat 7 and purchase of Allan Dale will be synchronised, so we will exchange contracts on the same day so that completion of both the sale and purchase will occur on the 15 February 2019;
2. If the clients are happy to proceed with the sale and purchase, they need to return the signed contracts to me in readiness for exchange of contracts;
3. The clients will need to provide me with a 10% deposit in cleared funds before we can exchange contracts in relation to the purchase of Alan Dale. The actual amount of the deposit we require from our clients is £7,650, as our clients are entitled to use the deposit of £7,550, received from the sale of Flat 7, to part fund the deposit payable on the purchase of Alan Dale;
4. The clients also need to sign and return a form of irrevocable authority to permit me to use formula C in relation to the sale of Flat 7, and they must be clear that once we have initiated part 1 of formula C they will not be able to withdraw from the sale transaction; and
5. The clients need to ensure that they will have suitable building insurance in place before we exchange contracts, as under the Standard Conditions of Sale (5th edition), risk in the property passes to the buyer on exchange. This is a condition of the clients' mortgage offer and will be condition of our instructions from the clients' lender RBS.
6. That they should have a valid mortgage offer from RBS before contracts are exchanged.
7. That once contracts have been exchanged contract is binding and they cannot withdraw from the transaction without being liable for damages for breach of contract.

3(b)

Where there are co-owners the legal title is held in a joint tenancy, however the beneficial title can be held in either a joint tenancy or in a tenancy in common.

Holding the beneficial title in a joint tenancy means that on the death of a co-owner, the deceased's co-owner's share automatically passes to the surviving co-owner.

Further, there are no distinct shares in the property and so on a sale of the property the proceeds of sale are shared equally between the co-owners. A joint tenancy is suitable where the buyers are making equivalent contributions to the purchase price or are married or in a civil partnership.

Where beneficial title is held in a tenancy in common, on death the deceased's share passes via their estate, either by will or intestacy. This allows a co-owner to leave their share in the property to whoever they want to. Further, in a tenancy in common the parties will have specific shares in the property, which can equate to their respective contributions to the property (such as 40% and 60%). A tenancy in common is suitable where buyers make unequal contributions to the purchase price, have children from a previous relationship and want to make provision for them after the co-owner's death, and/or are not married or in a civil partnership.

I would therefore advise my clients that the legal and beneficial title should both be held in a joint tenancy because both are married, are using the proceeds of sale from their matrimonial home to fund the purchase of Allan Dale and are taking out a joint mortgage to fund the balance of the purchase price.

Question 4(a)

The pre-completion search that I will need to perform for the lender, RBS, is a K16 Bankruptcy search against the borrowers, Barbara Reid and Daniel Reid. The purpose of the search is to determine if the borrowers are bankrupt because a lender will not want to lend to a bankrupt person, as the mortgage advance would automatically belong to the trustee in bankruptcy. The search also provides a priority period of 15 working days in which to complete the charge, which means if the charge is completed during this period then the lender will not be affected by the bankruptcy of the borrowers.

(b)

Following completion of the sale of Flat 7, I will send the following documentation to the buyers' lawyers:

1. The original lease;
2. The executed transfer;
3. The executed stock transfer form and share certificate in the management company;
4. A receipt for the chattels included in the sale;
5. The original receipt for the last payment of ground rent;
6. The original NHBC cover documentation [or equivalent]

(c)

It is essential to register the purchase (i.e. transfer) of Allan Dale and RBS's charge at HM Land Registry within the relevant deadlines. The transfer of the property must be registered at HM Land Registry as legal title in registered land will not pass until HM Land Registry registers the dealing (this is back-dated to the date when HM Land Registry originally received the application). A failure to register the charge will mean that the charge will not be a legal charge and a subsequent buyer will take free if it is not registered.

Further, a failure to register the transfer and/or charge within the 30-working day priority period provided by the priority search of whole (OS1) could allow third parties to register an interest against the title, which would be binding on our clients and the lender. If this happened, we would be negligent and in breach of our instructions and duty to the clients and/or lender accordingly liable for any losses suffered as a consequence.

(d)

- i. Local authority serving the property and full postcode of property:
Newark and Sherwood District Council
NG22 8QZ
- ii. Title number(s) of the property:

NT212121

iii. Application and priority:

Discharge

Transfer

Charge

iv. Fees:

£95

v. Documents lodged with this form:

Certified copy Transfer

Certified Copy Charge

Certified Copy SDLT5

vi. The applicant:

BARBARA REID and DANIEL REID

vii. The address(es) for service for each proprietor of the registered estate(s) to be entered in the register:

44 Allan Dale, Bilsthorpe, Newark, NG22 8QZ.