

## CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

JANUARY 2020

### 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 2020 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 better performing candidates showed similar characteristics in that they had good knowledge and understanding of the law coupled with the ability to offer practical and pragmatic advice in relation to the issues with which they were presented. They had clearly made good use of the opportunity to consider the case study materials in advance of the exam. Weaker candidates tended to produce answers which were generalised and discursive, with occasional suggestions of sheer guesswork.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

#### **Question 1(a) -Identify most appropriate document to use as root of title and explain choice**

The vast majority of candidates correctly identified the 1980 assignment as the appropriate root of title. A few opted for the 1965 lease itself or an earlier assignment. A few suggested that it would be necessary to deduce the freehold title.

**1(b) - Identify pre- and post-root documents for inclusion in Epitome and explain choice**

Most candidates answered this question well, although there was a noticeable tendency to list a large number of documents, no doubt in the hope that some of them at least would prove to be right. Weaker answers were often a direct consequence of a prior failure to identify the appropriate root of title.

**(c)- Identify likely class of title to be granted on first registration and explain why**

The vast majority of candidates correctly identified the class of title that was likely to be awarded and set out the reasons why. Weaker candidates either took no account of the absence of the freehold title (and so opted for absolute title in any event) or were unduly optimistic about the prospects of obtaining it within the anticipated timescale of the transaction so that an absolute title might be achieved.

**(d)- Identify additional documents for inclusion in contract bundle and explain choice**

Although a good number of candidates dealt with this question well, a number of answers were decidedly haphazard. Again, the same observation as is made under Question 1(b) applies in terms of listing a number of documents. In addition, a significant number of candidates took the reference to a leasehold property as meaning that forms LPE1 and LPE2 would be appropriate, when there was nothing in the facts to suggest that they would be of any relevance at all.

**Question 2(a) - List required pre-contract searches and explain selection**

Only a very small number of candidates failed to identify the relevant pre-contract searches. Some candidates simply recited a memorised list of searches without offering any explanation as to why the particular search was required.

**(b) – Draft requisitions on title**

Although most candidates identified the areas for concern, and so had clearly read the case study materials thoroughly, many of their answers were repetitive (eg asking the same requisition about mining/subsidence in two (or sometimes even three) different ways or were unconvincing as to the reasons for raising the requisition. It was disappointing to see how many candidates drafted requisitions asking for proof/undertakings that the existing mortgage would be discharged or that completed documents would be delivered after completion.

**2(c) – Identify/discuss consents/permissions required for buyers' proposed alterations**

Generally, this question was answered well, apart from a small number of candidates who took no account of any planning issues at all. A somewhat larger number did not state that they would need to disclose the proposed works to the buyers' lender, nor did they discuss the possible conflict of

interest which might arise if the buyers did not consent to that course of action.

### **Question 3(a) – Draft key provisions of sale contract**

A few elements of this question caused problems for some of the candidates:

(i) failing to identify the parties by their full names, (ii) failing fully to describe the property which was being sold (ie by reference to, and with full particulars of, the 1965 lease), (iii) mis-identifying the root of title (an inevitable result if Question 1(a) had been answered incorrectly), (iv) not identifying the correct title guarantee (a handful of answers stated 'absolute/good leasehold'), (v) not correctly setting out the applicable interest rate, and (vi) mis-calculating the balance of the purchase price.

### **(b) – Identify correct formula for exchange and discuss matters arising**

Quite a few candidates wrongly opted for Formula C, failing to spot that the relevant property was at the top of a chain. Quite a large number of the answers in relation to the matters which were to be agreed/confirmed on exchange when using the chosen formula were very generalised and discursive. Several candidates discussed both exchanges (and the logistics in relation to the sequence of events which that would involve) even though the question clearly only related to one of the properties.

### **Question 4(a) – Identify and discuss required pre-completion searches**

Virtually all candidates identified the need for a K16 search and an OS1 search, but there was then a very wide range of detail in the subsequent discussion as to why those searches were required and what benefits they would yield, and for whom. Some candidates did not appear to be aware of the differing lengths of the respective priority periods or expressed their answers in terms of 'days' rather than 'working days'.

### **(b) – Identify and discuss Code undertakings re sellers**

Very few candidates dealt with this question correctly. The vast majority answered in terms of steps which the sellers' solicitors would undertake to take, whereas the question was asking about the undertakings which those solicitors would be giving in relation to the sellers themselves. Consequently, most candidates received no credit for answers which referred to discharging the existing mortgage, or sending signed documents, etc. These are important undertakings in practice in light of the ever-present issues of property/mortgage fraud, so it was disappointing that so many candidates simply did not understand the scope of the question.

### **4(c) – Identify and discuss post-completion tasks**

For the most part candidates dealt adequately with the principal tasks of (a) paying SDLT, and (b) procuring registration of the transfer and the charge at HM Land Registry, although some were decidedly vague when it came to the specifics in relation to these events. A large number discussed administrative tasks which would not ordinarily be understood to be 'post-completion' tasks.

## SUGGESTED ANSWERS

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#### Question 1(a)

The Assignment dated 19.03.1980 would be the most appropriate root of title for Arnold Street for the following reasons:

First, the assignment must be at least 15 years old. The assignment is dated March 1980 and so is nearly 40 years old.

Secondly, the assignment must deal with both the legal and beneficial estates. This assignment expressly states the assignor made the assignment as beneficial owner (as can be seen from the supervisor's comments) and therefore does deal with both estates.

Thirdly, there must be nothing to cast doubt on the seller's title; as this information is not available, would need to investigate this assignment carefully and undertake Land Charges searches against Juliet Reeve and Joshua Reeve.

Fourthly, the assignment must have a good description of the property being assigned which includes a postal address and a plan, from which the property can be reasonably identified. Assignments tend to include a postal address, but not a plan as reference is usually made to the plan contained in the lease, therefore the lease would also be included to provide a good description.

Finally, best practice is to include the latest possible transfer for value of the property. The assignment dated March 1980 is the latest assignment which meets the above criteria.

#### (b)

The following pre-root document should be included in the Epitome of Title for Arnold Street:

- i. the lease dated 6 September 1965 as this creates the leasehold estate, contains both the landlord's and tenant's covenants and will also contain a recognisable description of the property.

The following post-root documents should be included in the Epitome of Title for Arnold Street:

- i. The charge dated 19.03.1980 as all post-root charges must be deduced to the buyer, even where they have been vacated (the buyer is entitled to see the vacating receipt);
- ii. The charge dated 20.08.1997 as all post-root charges must be deduced to the buyer and will be expected to use the proceeds of sale to redeem this charge on or before completion; and
- iii. A marriage certificate for Aarti and David Clarke which will be required by HM Land Registry to prove that Aarti Iyer and Aarti Clarke is the same person.

Land Charges searches against the following persons:

- i. Juliet Reeve 1975 -1980;
- ii. Joshua Reeve 1975 - 1980;

- iii. Aarti Iyer/Clarke 1980 – present day; and
- iv. David Clarke 1980 - present day.

### **1(c)**

The freehold title to Arnold Street has not been included in the schedule of deeds and documents. If the freehold title is not deduced to the buyers' lawyers, then HM Land Registry will register Arnold Street with 'Good Leasehold Title'.

The buyers' lawyers will be concerned that this is a defective title which is awarded when title to the freehold reversion to a leasehold estate has not been deduced to HM Land Registry and so it will not guarantee that the lease was validly granted by registering the leasehold estate with absolute title. The leasehold title will also be bound by any encumbrances/defects which affect the superior title, even though the tenant has no knowledge of these. Further, the buyers are purchasing Arnold Street with the aid of a mortgage from Lloyds Bank plc and lenders do not merely accept 'Good Leasehold Title'.

The buyers' lawyers will either insist that deduce the freehold title to them, or on completion, at the clients' own cost, provide the buyers with a Good Leasehold Title Indemnity policy. Clause E of the lease to Arnold Street acknowledges the right of the tenant to production of the conveyance of the freehold estate to the landlord dated 1943, so there is a possibility this option could be pursued to try to obtain the freehold title. I would also perform a SIM search to see whether the freehold title has been subsequently registered at HM Land registry.

As the freehold title was not included in the bundle of deeds and documents supplied by the clients it is unlikely that there will be access to the superior title and so the most efficient solution, which will also be acceptable to Lloyds Bank plc, is for the clients on completion to provide the buyers with a Good Leasehold Title Indemnity Policy.

### **(d)**

The following additional documents, forms and/or items should be included in the contract bundle for Arnold Street:

- i. Land Charges searches against Mr and Mrs Clarke and all relevant past owners of the property in the Epitome of Title – this is a requirement of the Protocol;
- ii. An official search of the index map against Arnold Street – this is a requirement of the Protocol;
- iii. The Law Society Property Information Form (TA6) – this is a requirement of the Protocol;
- iv. The Law Society Fittings and Contents Form (TA10) – this is a requirement of the Protocol and there are specific fittings and contents in relation to Arnold Street as the carpets and curtains are included and the buyers are paying an additional sum for various items of furniture which will be left at the property;
- v. The Law Society Leasehold Information Form (TA7) – this is a requirement of the Protocol;
- vi. A ground rent receipt – the lease extract contains a covenant to pay a ground rent and there is also a forfeiture clause; and
- vii. An Energy Performance Certificate, if not already provided – this is both a legal requirement and a requirement of the Protocol.

## **Question 2(a)**

The following pre-contract searches for West Drive should be performed:

- i. Enquiries of the Local Authority (Con29);
- ii. A local land charges search (LLC1);
- iii. A water and drainage search (Con29DW);
- iv. A Coal Mining Search (Con29M);
- v. An environmental search;
- vi. A flood search;
- vii. A Chancel Check/Search, as even though a charge was registered against the title in 2014, this would protect the lender against a chancel repairing obligation being registered against the title, but probably not the sellers as the interest was overriding when they purchased; and
- viii. A planning search.

## **(b)**

The following requisitions should be raised on title for West Drive:

1. "Please confirm whether any past or current mining has occurred within the vicinity of West Drive, whether the property has suffered from subsidence, and/or whether any compensation has been paid. Please also provide a copy of the Conveyance dated 28 December 1946".

Entry number 2 of the Property Register for West Drive states that the mines and minerals are excepted by the conveyance dated 28 December 1946.

A copy is required of this conveyance so that it can be fully investigated and advise the clients of the rights excepted by this conveyance.

The sellers are required to confirm whether or not West Drive has suffered any damage from any past or current mining at, or in the vicinity of, the property.

2. "Please provide us with a copy of the Conveyance dated 28 December 1946 made between The Lord Mayor Alderman and the Citizens of the City of Manchester (1) and The Rural District Council of Tintwistle (2)".

"Please confirm whether any third party has exercised any rights of access over the property. If so, please provide full details".

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

Entry number 3 of the Property register states that this conveyance also contains provisions as to light or air which will require investigation and then reporting to the clients.

A copy of this conveyance is available as entry number 1 of the Charges Register states that a copy is filed.

Further, the sellers' lawyers have confirmed they are following the Protocol as therefore must provide the buyers' lawyers with a copy of all filed documents (this is also required under the SCS Fifth Edition).

3. "Please provide us with an official copy of the entry for the class C (iv) Land Charge dated 21 July 1977 and registered under 232334/77 referred to under entry number 3 of the Charges Register. Alternatively, if an official copy is not available, please confirm that the clients will on or before completion provide a title indemnity policy in relation to this entry."

The entry relates to an estate contract which was registered as a class C (iv) Land Charge before the title to West Drive was registered and which will therefore bind the property. Therefore, we need a copy to investigate any effect it may have on the property. I would also ask the sellers' lawyers to perform an up-to-date Land Charges search to see whether the estate contract is still registered as a Land Charge, because, if not, then a request could be made to HM Land Registry to remove Entry 3 of the Charges Register.

Alternatively, if a copy of this land charge is not available then we will insist that the sellers procure for the clients, at their own cost, a title indemnity policy.

## **2(c)**

The clients intend to build a 5-metre-wide, 11-metre-long, two story extension along the side of the property. Under s 57 of the Town and Country Planning Act 1990 planning permission is required for a development of land. Section 55 of that Act states that a development of land includes building operations and so the clients' proposals to build a 5-metre-wide, 11-metre-long, two story extension along the side of the West Drive will therefore require planning consent from the local planning authority.

The GPDO does not apply to large double storey side extensions and so the clients will need to apply to the local authority for express planning consent.

The building works will also require building regulation consent/approval from the local authority to guarantee that the works have been performed according to current building safety standards and regulations.

As the clients are using mortgage finance from the Nationwide Building Society to help them purchase West Drive, the lender will need to be contacted to inform it about their proposals and to seek its permission for their proposals. The clients' express permission is required to notify the lender of their proposals; if the clients refuse such permission would then have to stop acting for the lender under the SRA Code of Conduct and also under the instructions contained in the UK Finance Mortgage Lenders' handbook.

Further, there is a need to investigate the contents of the conveyance dated 28 December 1946 made between The Lord Mayor Alderman and the Citizens of the City of Manchester (1) and The Rural District Council of Tintwistle (2) which contains restrictive covenants – these might either prohibit the client's proposals or require them to obtain a third party's consent.

### **Question 3(a)**

- i. Seller:  
Aarti Clarke and David Clarke both of 189 Arnold Street, Lancaster, LA1 2SU;
- ii. Buyer:  
Daniel Cave and Elizabeth Cave both of 28 Coronation Street, Openshaw, Manchester M11 2JN;
- iii. Property (freehold/leasehold):  
The Leasehold Land known as 189 Arnold Street Lancaster, LA1 2SU as is more particularly described in a lease made 6 September 1965 between Timothy White (1) and Robert Browne (2);
- iv. Title Number / Root of Title  
An assignment made 19 March 1980 between Juliet Reeve and Joshua Reeve (1) and Aarti Iyer and David Clarke (2);
- v. Title guarantee  
Full title guarantee;
- vi. Contract rate  
4% per annum above HSBC plc base rate from time to time in force;
- vii. Purchase price  
£167,000;
- viii. Deposit  
£16,700;
- ix. Contents price (if separate)  
£2,325;
- x. Balance       £152,625.

### **3(b)**

As West Drive is at the top of the chain, it is most likely that formula B will be used to exchange contracts.

Under the Law Society's formulae for exchanging contracts by telephone I will need to confirm/agree the following matters with the sellers' lawyers:

- i. that both contracts are identical;
- ii. that both contracts have been signed by the firms' respective clients;
- iii. the agreed completion date of the 21 February 2020;
- iv. a deposit of 10% of the purchase price is being held in the sum of £25,600;
- v. the date and time of exchange;
- vi. that formula B was used to exchange contracts on West Drive;
- vii. the identities of the lawyers involved in the exchange of contracts; and
- viii. to post, by either first class post or DX, the clients exchanged part contract with a cheque for the deposit to the seller's solicitors.

#### **Question 4(a)**

The clients are funding their purchase with a mortgage provided by Nationwide Building Society. Nationwide will not want to lend to a bankrupt person as the mortgage advance would automatically belong to the trustee in bankruptcy. Therefore, I will perform a K16 bankruptcy search against the clients' full names Aarti Clarke and David Clarke and also against Ms Clarke's maiden name, Iyer. The priority period is 15 working days in which to complete the mortgage. The applicant is the firm.

I will also perform a priority search of whole (an OS1) against West Drive. The effect of the search is to 'freeze the title' preventing third party applications against the title during the priority period of 30 working days. The applicant for the search is the lender, the Nationwide Building Society, and the application is to take a charge: the search will then protect both the lender and also the buyers.

#### **(b)**

The sellers' lawyers undertake that

- i. they have the authority from the true owner of the property to receive the purchase money;
- ii. the person named in the sale contract has the power to transfer the property (i.e. is the true owner); and
- iii. the purchase money will be held on trust for the buyer/lender under a fiduciary duty and will only deal with it according to the Code.

The effect of breaching any of these undertakings is that it will result in a breach of the SRA Code of Conduct (i.e. professional misconduct) which could lead to the lawyer and/or firm being fined and/or struck off. Further, both the lawyer and firm are personally liable for breaching an undertaking and can be sued by the clients for any losses that flow from the breach of undertaking.

#### **(c)**

The following post-completion steps should be performed in relation to West Drive:

1. Pay SDLT to HMRC by submitting form SDLT1
  - i. In the sum of £2,800;
  - ii. Within 14 days of completion; and
  - iii. HMRC will then provide SDLT5 which must be submitted with the application to HM Land Registry to register title since the registration application will not be completed without it.

Failure to meet the deadline will result in the immediate imposition of £100 fine and interest is also payable.

2. I will next register the transfer of West Drive to the clients and the charge to Nationwide Building Society at HM Land Registry within the 30-working day priority period provided by the OS1 search using form AP1. This ensures that the clients are registered as the legal proprietors and that the charge is registered as a legal charge. A failure to register these transactions within the priority period could result in third party applications being registered against West Drive which could bind both the clients and Nationwide.

