

**CHIEF EXAMINER COMMENTS WITH
SUGGESTED ANSWERS**

JANUARY 2021

LEVEL 3 - UNIT 4 – LAND LAW

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 2021 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

Candidate performance varied with a range from excellent to very poor. Some candidates clearly had a very good knowledge across the Unit Specification and demonstrated excellent subject knowledge. These candidates were able to answer the questions with precision, detail and often with strong application of the law to the facts of the scenario and their papers deserved the merits or distinctions that their answers achieved.

The weakest candidates generally showed a lack of knowledge and understanding of the unit specification.

As in previous sessions, a significant number of candidates showed good subject knowledge but were weak in applying that knowledge to the facts of the scenario question that they chose to complete. Candidates should be reminded that to apply the law to the facts they need to identify the relevant facts referred to in the scenario.

Candidates should also consider that, where applicable to the question, they are expected to cite the full name of the relevant statute and the section number. However, credit will be given where the statute is correctly abbreviated, and the student has previously set out the full name in full earlier in the paper.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

This was not particularly well answered which was disappointing. Candidates showed a lack of knowledge of this area of the syllabus. A number of weaker Candidates chose to interpret this question to explain, for example, the rules relating to the 'depths of the earth' which the question did not ask for. Many other Candidates lost marks because their answers lacked detail.

Question 2

This was answered well by the majority of Candidates.

Question 3

This was also answered well by the majority of Candidates.

Question 4

This was also answered well by most Candidates and the minority who lost marks would typically identify the unity but explain it with reference to a different unity.

Question 5

This was not answered well by the majority of Candidates and while a significant number of Candidates were able to refer to express common intention and implied common intention, they gave no indication that this needs to be the intention to share ownership. A significant minority of weaker Candidates appear to have no knowledge/understanding of this part of the syllabus.

Question 6

This was answered reasonably well by some Candidates and those that lost marks were quite often too imprecise in their knowledge of these factors. As this is asking Candidates to recall statutory factors, a reasonable amount of precision is needed for marks to be awarded.

Question 7

This was answered well by virtually all Candidates.

Question 8

This was answered well by most Candidates and weaker Candidates lost marks by their lack of knowledge/understanding of this part of the syllabus.

Questions 9 (a) and (b)

These were not answered well, perhaps showing a lack of syllabus coverage although a small number of Candidates gained full or nearly full marks with their answers to these questions.

Question 10

This was answered well by most Candidates.

Question 11(a)

This was not answered very well with most Candidates seeming to have no/very limited knowledge of the unregistered land system. In contrast, Question 11 **(b)** was answered reasonably well with many Candidates gaining full/part marks.

SECTION B

Scenario 1

Question 1(a)

This was answered well by most Candidates which was pleasing. **1(b)** was also well answered by the majority of Candidates with many gaining full marks.

Question 2

This was also answered well by a significant number of Candidates although weaker Candidates remain confused in respect of the distinction between the legal and equitable/beneficial title.

Question 3(a)

This was well answered by many Candidates, but a significant number seemed confused as to the distinction between a resulting trust and a constructive trust. **Question 3(b)** was also answered reasonably well by a lot of Candidates although a surprisingly large number lost marks by failing to apply the facts of the scenario in their answers. Question **3(c)** was well answered by most Candidates.

Question 4(a) was answered well by many Candidates which was pleasing to see. **4(b)** was a challenging question, and it was very pleasing to see the excellent answers given by a significant number of the best Candidates showing very good knowledge of the law and an ability to apply it to the facts of the scenario. Weaker Candidates lacked knowledge of this part of the syllabus. Further, a small minority of the weakest Candidates were confused with overriding interests and overreaching.

Scenario 2

Question 1

This was answered well by a good number of the Candidates who chose this scenario. They demonstrated good subject knowledge and a pleasing ability to apply it to the facts of the scenario.

Question 2

This was answered less well although a minority of the best Candidates gave good answers to this question. A very small minority of Candidates chose to set out the characteristics of an easement in their answer to this question (and Question 1 above) when the questions did not require this. Candidates are reminded of the need to read the question and to direct their answers to what is being asked of them.

Question 3(a)

This was well answered by the majority of Candidates and presented few difficulties. **Question 3(b)** was answered reasonably well with many Candidates gaining some of the available marks. Candidates are reminded of the need for syllabus coverage. **Question 3(c)** was not well answered, again appearing to show a lack of syllabus coverage.

Scenario 3

Question 1

This was generally either answered extremely well or extremely poorly. Weaker candidates also fell down on their explanation of the law and their ability to relate the facts of the scenario to the law. This question is a commonly asked restrictive covenant question requiring application to the facts of the scenario and a well-prepared candidate should have (and did) perform well.

Question 2

This was answered well by a minority of Candidates. Weaker Candidates seemed unaware of the ways in which the burden of a positive covenant can pass to a later owner of land.

Question 3(a)

This was answered very well with most Candidates gaining the available mark. **Question 3(b)** was answered well by a majority of Candidates with many gaining full marks and, again, in their answers to **Question 3(c)** Candidates showed a pleasing ability to apply the law to the facts of the scenario with many gaining full or nearly full marks with their answers to this question.

SUGGESTED ANSWERS

LEVEL 3 - UNIT 4 – LAND LAW

SECTION A

1. The owner of land is only allowed rights in the airspace to such a height as is necessary for the ordinary use and enjoyment of the land. Bernstein v Skyviews (1978). Section 76 Civil Aviation Act 1982 provides that a landowner cannot object to the passage of aircraft during normal flight over land at a reasonable height. What is reasonable will depend on the weather conditions at the time.
2. Fee means the land is capable of being inherited, simple means that there is no limit on who can inherit, absolute means that there are no limitations which may bring the estate to an early end and in possession means that the freeholder has the immediate right to go into possession or receive the rents. This is also known as a freehold estate in land.
3. The five legal interests in land under section 1(2) Law of Property Act 1925 are legal easements and profits, legal rentcharges, charges by way of a legal mortgage, certain charges arising under statute and rights of entry in legal leases and estate rentcharges.
4. The four unities are, firstly, unity of possession which is that each tenant is entitled to possession of the whole of the land and, secondly, unity of interest which is that the interest of each tenant must be the same. The third unity is unity of time which means that the interests must arise at the same time and, finally, unity of title which means that each tenant must gain their title from the same document.
5. The requirements for a constructive trust are either express or inferred common intention to share ownership of the property, coupled with reliance and detriment.
6. The factors that the courts must take into account when ordering the sale of a property under section 15 (1) Trusts of Land and Appointment of Trustees Act 1996 are the intention of the person or persons who created the trust, the purposes for which the property subject to the trust is held, the welfare of any child who occupies or might reasonably be expected to occupy the property and the interests of any secured creditor.
7. An easement can be extinguished by statute, by release – either express or implied/intentional abandonment, or unity of ownership and possession.
8. By virtue of the doctrine of privity of contract, a covenant is always enforceable between the original covenantor and covenantee.
9. (a) Under section 101 Law of Property Act 1925 the power of sale arises when the contractual date set to redeem the mortgage has passed

which is usually 6 months after creation of the mortgage, unless there is a contrary intention in the mortgage deed.

- (b) The power of sale becomes exercisable when interest payments are more than 2 months in arrears, notice requiring payment of the capital has been served and three months have elapsed, or there is a breach of some other term of the mortgage.
10. The property register of the Land Registry title contains a description of the land by reference to a plan. It contains a statement of whether the land is freehold or leasehold and contains details of any interests that benefit the land, for example, easements.
11. (a) A Seller would prove ownership of unregistered land by producing the title deeds. The Seller will need to provide a good root of title which is usually a conveyance on sale at least 15 years old.
- (b) The Land Charges register is relevant to unregistered land and examples of interest that could be protected by it are puisne mortgages (Class C (i)) and restrictive covenants created on or after 1 January 1926 (Class D (ii))

SECTION B

Scenario 1 Questions

1. (a) As beneficial tenants in common each own a notional share in land. Antonia and Mark bought the property as friends and contributed unequally to the purchase price. Therefore, owning as beneficial tenants in common allows Antonia and Mark to preserve their unequal contributions in Moorland House.
- (b) A restriction entered in the proprietorship register will show that Antonia and Mark own Moorland House as beneficial tenants in common.
2. As Antonia and Mark own Moorland House as tenants in common, the doctrine of survivorship does not apply and, on the death of Mark, his beneficial share in the property will pass in accordance with his will. As Mark left his beneficial share of Moorland House in his will to Daisy, she is therefore entitled to claim this share of Moorland House. The legal title will pass to Antonia by operation of the doctrine of survivorship.
3. (a) Carole could seek to claim a share of Moorland House on the basis of a resulting trust. This arises when payment is made to the purchase price of a property at the time of its acquisition and this is not intended to be a gift. In addition, no reference is made to the contributor on the legal title of the property. Bull v Bull (1955).
- (b) Carole made a payment to the purchase price of Moorland House at the time it was bought and there is no suggestion it was intended to be a gift (although credit is given to candidates who identify the parental presumption of gift). In addition, Carole is not on the legal title and therefore she is likely to succeed in her claim to have an interest in Moorland House on the basis of a resulting trust. We are told that no record of Carole's contribution was made in writing and

a resulting trust does not need to be recorded in writing. S.53 Law of Property Act 1925.

- (c) The amount of the interest under a resulting trust is based on the proportion of the contribution to the original purchase price. As Carole made a 10% contribution towards the purchase price of £100,000 Carole is entitled to 10% of the current value of Moorland House. As the current market value of Moorland House is £150,000, Carole will be entitled to receive a share equal to £15,000.
4. (a) An overriding interest is an interest in land which is not registered on the title but which binds a buyer of the land.
- (b) A right of a person in actual occupation can be an overriding interest if that person has a right or interest in land. Schedule 3 Land Registration Act 2002. As Carole has an interest in land under a resulting trust, she may have an overriding interest if she is in actual occupation of the land. This is unless the interest is not disclosed to a buyer who asks about it or if the interest is not obvious on a reasonable inspection of the property. We are told that she lives at the Property but also that she has spent some time absent from the property in hospital. It is likely that her occupation of the property would be obvious to a buyer or, if asked, would have been disclosed to a buyer. Temporary absence from a property does not stop a person being in actual occupation. Chokkar v Chokkar (1984). It is likely that Carole will have an overriding interest in Moorland House.

Scenario 2 Questions

1. Wheeldon v Burrows (1879) states that it is a requirement that one person originally owns and occupies all of the land and, in the scenario, Mia originally owned Aspen Cottage to include the Plot. The original owner must have exercised quasi-easements, and we are told that the pathway has been in existence and used for many years by the owners of Aspen Cottage, which suggests that this requirement is satisfied. The easement must be continuous and apparent and we are told that the pathway is visible and worn. The right must also be necessary to the reasonable enjoyment of the land and we are told that it will provide a shortcut to the nearby village, which suggests that this requirement is likely to be satisfied. The land must have been divided and part of the garden was sold to Peter. The rule in Wheeldon v Burrows was not excluded from the transfer. It is likely that Peter will have acquired the right to use the pathway.
2. The right to lay a new drainage pipe may have been acquired by express grant, if it was expressly agreed in the Transfer Deed of the Plot. A Deed is required by Section 52 Law of Property Act 1925. While we are told that this was agreed, but we do not know enough to know whether the right was expressly granted to the Plot. Alternatively, by means of implied grant, the Plot may have acquired the easement by necessity but, as mere inconvenience is not enough to allow a right to be acquired by necessity and as there is an alternative access to the Plot, the right will not have been acquired by necessity on this facts of this scenario. The right may have been acquired by common intention, which is where the parties have clearly intended for this to happen and we are told that

this was agreed which suggests the right may have been acquired by common intention. Nickerson v Barraclough (1981) and Liverpool City Council v Irwin (1977).

3. (a) A repayment mortgage consists of monthly payments to a lender of capital and interest so that at the end of the mortgage term, which is usually 20–25 years, the whole amount of the loan has been repaid. A life insurance policy will usually be taken out by the borrower so that the loan is repaid in the event of early death.
- (b) As a guarantor, Peter's father is guaranteeing his son's liability to make the mortgage payments. Peter's father's name will not appear on the Land Registry title, but he is jointly and severally liable with Peter for the debt. If Peter fails to pay the loan, his father can be subject to an action in debt. If the loan is fully repaid, Peter's father will be released from the agreement.
- (c) A legal mortgage of registered land must be created by deed expressly stating that the property has been charged with the debt by way of a legal mortgage and this must be registered in the charges register of the Land Registry title.

Scenario 3 Questions

1. As Justin retains ownership of the Croft and therefore the benefit of the covenant, the issue is whether the burden of the covenant has passed. The burden of a covenant does not pass at common law Austerberry v Oldham Corporation (1885), but may pass under the equitable rules. Tulk v Moxhay (1848) states that for the burden of a covenant to pass in equity, the covenant must be negative in nature which it is. In addition, the burden needs to be intended to pass and, in the scenario, we are told that the covenant is for the benefit of heirs and assigns etc. In any event, section 79 Law of Property Act 1925 states that it will be assumed that the burden of the covenant is intended to pass unless the covenant says otherwise. There needs to be two pieces of land/the dominant and servient tenement and we have the Nook and the Croft. The covenant appears to benefit the dominant tenement and we are told that the conservatory overlooks the Croft, which suggests that it does. For the burden to have passed, there must be notice of the covenant in the Land Registry title of the Croft and, if so, the burden of the covenant will have passed to Ethan.
2. This covenant is a positive covenant as it requires spending money. As such, it will not pass under the rule in Tulk v Moxhay (1848) and the burden will not pass in common law or equity. However, it may pass in law if there is a chain of indemnity covenants and there may have been an indemnity covenant included in the Transfer to Ethan. Alternatively, it may pass under the principle established in Halsall v Brizell (1957), that a person cannot take a benefit under a deed without subscribing to the obligations under it. If Ethan wants to be able to use the shared driveway, he will need to accept the burden of having to contribute towards its maintenance and Justin is therefore likely to be able to enforce this covenant.

3. (a) The form that will usually be supplied is a Fittings and Contents form.
- (b) A fixture is attached to the land and will pass with it, but a fitting will not. To determine whether an object is a fixture or a fitting, there are a number of common law tests. The degree of attachment test states that if an object is attached to land by more than its own weight, it is likely to be a fixture. Holland v Hodgson (1872). The purpose of the attachment test provides that if the object is attached for its own benefit it is likely to be a fitting but if it is attached for the benefit of the land it is likely to be a fixture. Leigh v Taylor (1902). The permanence of attachment test states that the longer an object has been in situ the more likely it is to be a fixture. Botham v TSB Bank plc (1996).
- (c) We are told that the fireplace is freestanding and is not therefore attached by more than its own weight. However, it is described as very ornate which could raise a point as to whether it is part of the room design or there because Asta liked it. A fireplace is normally expected to be permanent, but as it is freestanding, it is likely to be a fitting and so Asta was entitled to take it with her on the sale of the Nook.