

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 – UNIT 10 - CONVEYANCING

### Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses 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 2022 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses 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

There was a good level of knowledge from the candidates however, there were also a few questions where reading the question fully would have resulted in higher marks. Some of the scripts submitted by candidates show that the candidates did not have sufficient knowledge, understanding and skills to enable them to achieve a pass. This is reflected in the fact that some such scripts scored less than 20 marks.

A majority of the questions gave opportunity for the best candidates to shine, without being unduly onerous for others.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Question 1(a)

Most candidates were able to identify the requirements of a client care letter.

### (b)

Most candidates did not identify that Bison Bank was the new lender.

### (c)

Most candidates identified the necessary points to obtain high marks with this question. The stronger candidates applied the case study.

### (d)

Knowledge of the Act was mediocre, most provided conclusion.

### Question 2(a)

Very few candidates identified that this question was asking for reference to the protocol specifically in respect of additional enquiries.

### (b)(i)

Surprisingly many thought the local authority supplied this search or that it came by a search provider. Many got full marks and most gained at least 1 mark. Candidates knowledge of searches on a whole was quite vague.

### (b)(ii)

Disappointing answers on the whole with just a few even considering the case study information. Little knowledge shown of what is asked by the CON 29R. Many thought the LLC1 and CON290 were relevant but neither of these cover information about road works. Candidates need to ensure they read the question carefully and answer what it asks. Surprising how many were sending clients off to look for themselves which is not within the ambit of conveyancing practice. Also, many said the information would be in the PIF but there is no question on roads in that form, although possibly you might get the information when asking about notices received.

(c) Most candidates did not seem to consider checking the lender's instructions.

### (d)

Many candidates were distracted into explaining joint tenancy instead of the law of how a trust works. Many couldn't name Act. More work needs to be done by candidates on understanding the underpinning law and distinguishing between the legal estate and beneficial interests.

(e) A majority of the candidates identifying the enviro search to check for contamination.

**Question 3 (a)(i)**

Most candidates were able to identify the types of exchange. Some incorrect answers were in respect of what formula was used instead.

**(a)(ii)**

Most candidates recognised formula C but many couldn't explain the process. Several went the wrong way along the chain so they released on purchase first and then sale. (Although it could possibly work this way, this comes with a risk because the sale needs to be secure before release on the purchase is given.) Few referred to undertakings to exchange although release was credited. Many didn't finish the procedure with dating contracts and undertakings to send out, but many remembered the attendance note

**(b)**

Few candidates knew how to complete by post and just wrote out the steps to completion. Even those that did talk about sending money did not clarify this was by bank transfer, who to etc and then what Carlton Law had to do once received. Many talked about dating their clients copy of the transfer and sending that off showing the confusion for some between exchange and completion.

**(c)(i)**

This question required candidates to identify how the requisition could have been prevented in the first place and how to respond to the Land Registry for both marks.

**(c)(ii)**

Many candidates recognised delay, cancellation and loss of priority.

**(d)**

Several candidates forgot the lender. Reinforce perhaps that when acting for lender they need to carry the procedure right through to the TID. Few candidates failed to note that the TID should be checked.

**SUGGESTED POINTS FOR RESPONSE****LEVEL 3 – UNIT 10 - CONVEYANCING**

<b>Question Number</b>	<b>Suggested Points for Responses</b>	<b>Max Marks</b>
<b>1(a)</b>	Identify the contents of a client care letter <ul style="list-style-type: none"><li>• Confirming instructions</li><li>• Confirming compliance with client care obligations</li><li>• Confirm who is dealing with the matter/supervisor</li><li>• Ask client to acknowledge receipt/accept terms</li><li>• Accompanying documents</li><li>• Terms/complaints procedure</li><li>• Estimate of fees</li></ul>	<b>4</b>
<b>1(b)</b>	Identify the following information required by Bison Bank Ltd to include the following:- <ul style="list-style-type: none"><li>• Details of solicitors firm (and reference)</li><li>• Oliver and John Keen (The borrowers) name and address</li><li>• Account number</li><li>• Reason for request</li><li>• Date for which figure is to be calculated</li></ul>	<b>5</b>
<b>1(c)</b>	An explanation of the following points in respect of the EPC:- <ul style="list-style-type: none"><li>• Contains an environmental impact rating which measures the property's impact on the environment in terms of carbon dioxide emissions</li><li>• Provides an energy efficient rating (on a scale A-G)</li><li>• Contains advice how to cut fuel bill and reduce carbon dioxide emissions</li><li>• Identifies whether there is a Green Deal Scheme in operation re the property</li><li>• Valid for 10 years</li><li>• Helps buyers at an early stage to be informed because should be supplied at the point of marketing.</li><li>• Credit for application to scenario (rating is C) which is of no concern and will not be concerning to lender.</li></ul>	<b>7</b>
<b>1(d)</b>	An explanation to include the following in respect of the contract up to three marks: - <ul style="list-style-type: none"><li>• Contract must comply with S2 Law of Property (Miscellaneous Provisions) Act 1989 (LP(MP)A 1989)</li><li>• Must be in writing, incorporate all terms and be signed by or on behalf of each party</li><li>• Good practice for client to sign unless they are acting by an attorney</li><li>• Signature by client(s) – rather than by attorney – on each side ensures they are fully aware of (i) the terms of the agreement and (ii) the legal significance (and consequences) of the steps they are taking. Reduces scope for misunderstanding/later argument</li><li>• Execution by attorney is best reserved for situations of true impossibility for client to sign (e.g. pressure of time, absence overseas). Based on email and likely timescales for Oliver's return</li></ul>	<b>3</b>

	would advise that it is premature to consider John signing on behalf of Oliver.	
<b>Question 1 Total:</b>		<b>19 marks</b>
<b>2(a)</b>	<p>A description of the following points in respect of the protocol for enquiries</p> <ul style="list-style-type: none"> <li>• Kempstons to raise only specific additional enquiries required to clarify issues: (i) arising from the documents submitted (ii) which are relevant to the title, existing or planned use, nature or location of the property or (iii) which the buyer has specifically requested.</li> <li>• Kempstons should not raise any additional enquiries about the state or condition of the building unless arising out of the conveyance search results, buyer's own enquiries, inspection, or the surveyor's report.</li> <li>• Indiscriminate use of standard additional enquiries may be breach of Protocol.</li> <li>• If submitted, the seller/their conveyancer is not required to deal with them.</li> <li>• The seller's conveyancer does not need to obtain the seller's answers to any enquiry seeking opinion rather than fact.</li> </ul>	<b>5</b>
<b>2(b)(i)</b>	<ul style="list-style-type: none"> <li>• CON29 DW- (standard drainage and water enquiries)</li> <li>• Submitted to appropriate water service company for the area</li> </ul>	<b>2</b>
<b>2(b)(ii)</b>	<p>Identify the following points in respect of the local search:</p> <ul style="list-style-type: none"> <li>• Obtain a local search from local authority</li> <li>• Send CON29 (enquiries of the local authority) with plan and fee</li> <li>• Discover if road adjoining property is to be new road/ widened/ have humps/ traffic lights/ or roundabouts created/ installed (any one of these suggestions to be credited)</li> <li>• Can also check works happening to 3 other nearby roads</li> <li>• Further enquiries could be raised with sellers</li> <li>• Credit for any other relevant points</li> </ul>	<b>5</b>
<b>2(c)</b>	<p>An explanation to include the following in respect of an adult occupier:-</p> <ul style="list-style-type: none"> <li>• Check UK Finance Mortgage Lender's Handbook for Bank's instructions</li> <li>• Arrange for Milly to sign occupier's consent clause in mortgage deed</li> <li>• Advise Milly she should take independent legal advice</li> </ul>	<b>3</b>
<b>2(d)</b>	<ul style="list-style-type: none"> <li>• Trust of land arises automatically under Trusts of Land and Appointment of Trustees Act 1996 when there are co-owners</li> <li>• Legal estate held by trustees by way of joint tenancy</li> <li>• On trust for the beneficiaries in equity</li> <li>• Oliver and John will be both trustees and beneficiaries</li> <li>• Oliver and John may hold as joint tenants or tenants in common in equity (i.e. beneficially)</li> </ul>	<b>4</b>
<b>2(e)</b>	<p>An explanation of the following points in respect of the Conveyance:-</p> <ul style="list-style-type: none"> <li>• Review restrictive covenants because these will bind the clients</li> <li>• In addition, Mount Pleasant Chemicals UK, as previous landowner, may have used the land for industrial/ chemical purposes</li> <li>• Carry out environmental search to check for land contamination/ risk to health and safety.</li> <li>• Credit any other relevant points</li> </ul>	<b>3</b>

<b>Question 2 Total:</b>		<b>22 marks</b>
<b>3(a)(i)</b>	Identification of the following points in respect of exchange:- <ul style="list-style-type: none"> <li>• Physical (personal exchange)</li> <li>• Postal</li> <li>• Telephonic</li> </ul>	<b>3</b>
<b>3(b)(ii)</b>	Explaining the following points in respect of exchange:- <ul style="list-style-type: none"> <li>• Formula C as this is a linked transaction</li> <li>• Must obtain Oliver and John's written authority to exchange</li> <li>• Kempstons and Carlton Law LLP confirm they hold their clients signed contracts.</li> <li>• Kempstons undertake with Carlton Law LLP to exchange by set time that day</li> <li>• Having exchanged on their related purchase, Carlton Law LLP solicitors request before the agreed time that Kempstons confirm exchange</li> <li>• Contracts dated with exchange and completion date and purchase now binding</li> <li>• Both firms undertake to send out their clients' part of the contract</li> <li>• Attendance note/ memorandum of exchange on file.</li> </ul>	<b>6</b>
<b>3(b)</b>	Identification to include the following in respect of completion by post:- <ul style="list-style-type: none"> <li>• Send balance of purchase price by bank transfer to Carlton Law LLP</li> <li>• Carlton Law LLP should acknowledge receipt of funds and complete</li> <li>• Carlton Law LLP will date the transfer and send out deeds and documents to us within one working day of completion</li> <li>• Carlton Law LLP will notify us as soon as Costo Bank plc have redeemed their mortgage</li> <li>• Law Society Code for Completion by Post 2019 applies.</li> </ul>	<b>3</b>
<b>3(c)(i)</b>	Identification of the following:- <ul style="list-style-type: none"> <li>• Kempstons should have requested marriage certificate as an additional enquiry if not provided by seller's solicitors</li> <li>• Obtain certified marriage certificate from seller's solicitor and send to Land Registry replying to requisition</li> </ul>	<b>2</b>
<b>3(c)(ii)</b>	Explanation of the following points in respect of replying to requisitions:- <ul style="list-style-type: none"> <li>• Completion of registration will be, at best, delayed</li> <li>• Resulting in possible loss of priority afforded by the pre-completion the OS1 search</li> <li>• Oliver and John will not be legal owners and Bank of Bonas will not have a legal mortgage until registration is completed</li> <li>• Application for registration could be cancelled</li> </ul>	<b>3</b>
<b>3(d)</b>	A description of the following in respect of the TID:- <ul style="list-style-type: none"> <li>• Check the new details of owners and charge are correct - If not, request Land Registry to amend</li> <li>• Send copy to Oliver and John and also to Bank of Jonas if required under Lender's Handbook</li> </ul>	<b>2</b>
<b>Question 3 Total:</b>		<b>19 marks</b>