

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 – UNIT 19 – RESIDENTIAL & COMMERCIAL LEASEHOLD 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

The overall performance of this cohort of candidates was satisfactory.

The biggest issue on the paper was the lower performance on leasehold specific areas as opposed to general conveyancing questions. The questions in the examination paper covering commonhold, modification of full title guarantee on leasehold assignment, post exchange insurance implications in leasehold transactions, and the advantages of upwards only rent review provisions revealed that some candidates had a more limited knowledge of the leasehold specific areas of the syllabus and were attempting the examination reliant upon their general conveyancing knowledge.

No real evidence of time management issues was apparent from the candidates' papers.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

Most candidates struggled to identify and explain the advantages of commonhold ownership.

(b)

This answer, concerning the purpose of the initial letter of instruction, was dealt with fully by most candidates.

(c)

The professional conduct question on conflict of interest in the context of a buyer and seller situation, was poorly addressed by most candidates. This was surprising as it is a standard conveyancing issue. The answers were often poorly structured, lacking reference to the Code paragraphs and failing to reference the SRA and Law Society guidance.

Question 2(a)

This question required the identification of buyer's lawyer checks before exchange. Candidates often identified steps such as search and enquiry results, investigation of title, approval of the contract, contract signature and client authority etc but would miss leasehold points such as approval of the lease, service charge information.

(b)

This question on formalities of an estate contract was answered well by most candidates.

(c)

The answers to this question on pre-completion searches lacked precision when identifying the pre-completion searches. The Land Registry search had to be identified as an OS2 search and again reference to time limits should have referred to business/working days.

Question 3(a)

This was a co-ownership question and was answered well by most candidates.

(b)

This was one of the weaker answers on this paper. The question concerned the modification of the full title guarantee when a leasehold interest is being assigned. This showed a lack of awareness of the conveyancing contradiction and the SCS 4.6.3 solution to the problem.

(c)

This was also a weak answer for many candidates. This required an appreciation of the insurance position on a leasehold assignment. Most candidates did not appear to recognise the issue in this question.

3(d)

This answer on the documents to accompany an AP1 application lacked precision.

Question 4(a)

Candidates often failed to fully describe the type of covenant featured in the question.

(b)

This question required knowledge of section 19(3) Landlord and Tenant Act 1927 and many candidates did not appear to possess this knowledge.

(c)

Although most candidates recognised that the clause in question featured an open market rent review clause, they failed to fully identify the clause as being upwards only. This indicated an inability to analyse the lease provision.

SUGGESTED POINTS FOR RESPONSE

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Question Number	Suggested Points for Responses	Max Marks
1(a)	<ul style="list-style-type: none"> • Security of freehold ownership • Not a wasting asset • Easier to secure mortgage on the property than on leases with shorter terms • Commonhold does not have the threat of forfeiture 	4
1(b)	<ul style="list-style-type: none"> • Confirm instructions and client care information should be provided <p>Examples:</p> <ul style="list-style-type: none"> • How much legal work will cost? • Who is dealing with the matter? • How the work is regulated • How they can complain 	3
1(c)	<ul style="list-style-type: none"> • Principle 7 SRA Standards and Regulations solicitors must act in the best interests of their clients - cannot do this where there is a conflict • Paragraph 6.2 SRA Codes - cannot act where there is a client conflict, or a significant risk of a client conflict, unless certain limited circumstances apply • Paragraph 6.2 (a) SRA Codes exception. The clients would have to have a substantially common interest in relation to the transaction 	9



	<p>[6.2 (a) Conditional upon:]</p> <ul style="list-style-type: none"> • Parties having provided informed consent; • Where appropriate, put in place effective safeguards to protect confidential information; and • Satisfied that reasonable to act for both. • SRA guidance – firms should not routinely act for sellers and buyers in same transaction • Law Society guidance – stresses that the exception under 6.2(a) does not apply to sellers and buyer /and that not act for both in same transaction where conflict or significant risk • Conclusion: not possible to act for both sides in this transaction. 	
Question 1 Total:		16 marks

Question Number	Suggested Points for Responses	Max Marks
2(a)	<ul style="list-style-type: none"> • Search and enquiry results • Investigation of title • Approve lease • Approve contract • Contract signature and client authority • Completion date • Survey • NHBC cover (or equivalent) • Inspection • Finance • Linked transaction • Property insurance • Service charge information 	7
2(b)	<ul style="list-style-type: none"> • In writing • Signed by both parties • Containing all the terms 	3
2(c)	<ul style="list-style-type: none"> • Land Registry OS2 • Reveals any further entries since date of OCE • Creates a priority period 30 working days /Need to apply within priority period to avoid being bound by late entries • Bankruptcy only K16 search against Imran [Do not require full name for mark] • As he is buying with the aid of a mortgage from Facility Lending Bank plc • Revealing any bankruptcy entries for the purpose of checking insolvency of borrower for the lender • Creates a priority period of 15 working days for completion and mortgage • Company search as the seller is a company 	9

	<ul style="list-style-type: none"> Indicate if company has gone into liquidation pre-completion /to check that the purchase money is paid to an existing and authorised legal entity 	
Question 2 Total:		19 marks

Question Number	Suggested Points for Responses	Max Marks
3(a)	<ul style="list-style-type: none"> Two types of co-ownership, joint tenancy and tenancy in common Tenancy in common may be the appropriate co-ownership option in this case They are not a married couple Further justification – John’s children from previous relationship Tenancy in common would allow John to provide for children by leaving a share of the property in his will and avoid the right of survivorship Also contributing differing amounts A tenancy in common can recognise separate shares and the distinct contributions 	7
3(b)(i)	<ul style="list-style-type: none"> Full title guarantee includes promise that seller has complied with covenants in the lease including repair Contradicts caveat emptor (buyer beware principle) SCS 4.6.3 resolves the contradiction between SCS and caveat emptor Transfer to contain statement that title guarantee not to extend to covenants related to physical condition 	4
3(b)(ii)	<ul style="list-style-type: none"> Some solicitors prefer to deal with by special condition so that the matter does not get overlooked in the drafting of the TR1 /so that the solicitor can control the “wording” of the clause in the transfer 	1
3(c)	<ul style="list-style-type: none"> Risk of physical damage passes to buyer on exchange Parties need to consider insurance position Buyer should inspect terms of the lease to see if T covenant to insure (there is such a provision) [SCS 5.1.2. and 5.1.3] S to maintain insurance policy whilst the S is the T Buyer entitled to inspect policy or evidence of provisions Nateast will require confirmation that policy in force during exchange to completion Buyer to insure from completion. 	7
3(d)	<ul style="list-style-type: none"> Certified copy of the transfer/TR1 LTR Certificate/SDLT 5 Certified copy charge/Nateast Bank Disclosable overriding interests if necessary/Form DI 	4
Question 3 Total:		23 marks

Question Number	Suggested Points for Responses	Max Marks
4(a)	<ul style="list-style-type: none"> • A negative/restrictive covenant • A qualified covenant • There is no implication that the landlord's consent cannot be unreasonably refused 	3
4(b)	<ul style="list-style-type: none"> • Isobel, as landlord, cannot charge the tenant a premium • Provided no structural alteration are involved 	2
4(c)(i)	<ul style="list-style-type: none"> • Open market rent review • This one is an upwards only open market rent review lease clause • Rent to be reviewed on the Review Date set by the lease • New rent to be higher of current rent and the new open market rent 	4
4(c)(ii)	<ul style="list-style-type: none"> • Rent can increase with market but never fall • Makes the lease attractive to institutional investors • As income element of investment protected from vagaries of the market 	3
Question 4 Total:		12 marks