

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 - UNIT 4 - LAND LAW

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

General feedback/feedback on exam technique

As indicated above, 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. Generally, a large number of candidates showed an excellent ability to apply the law to the facts of the scenario which is pleasing.

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

As in previous sessions, a significant number of weaker 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 candidate has previously set out the full name in full earlier in the paper.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Was answered well by most candidates although weaker candidates would, on occasion, misstate the test.

Question 2

Was less well answered with many candidates able to give the example but they were not able to identify what is meant by an incorporeal hereditament.

Question 3

Was answered well by the majority of candidates and posed few difficulties for the well prepared candidate.

Question 4

Was answered well by most candidates the strongest candidates giving an excellent explanation of what is meant by overreaching and how it is achieved.

Question 5

Was also answered well by most candidates.

Question 6

Was answered well by a majority of candidates although a significant minority of weaker candidates were able to give the example but were insufficiently precise in identifying what a profit a prendre is to receive this mark.

Question 7

Was answered well by a pleasing number of candidates although only a small minority of the strongest candidates identified that a covenant can be positive even if it is worded negatively.

Question

Was answered well by most candidates with many candidates gaining full marks on this question.

Question 9

Was answered less well although a small but significant number of the strongest candidates were able to gain both available marks.

Question 10

Was not answered well by most candidates which is consistent with previous exam performance for questions of a similar nature and candidates are reminded of the need for syllabus coverage in their revision.

Question 11

Was also not answered well and, again, candidates are reminded of the need for syllabus coverage in their revision.

Question 12

Was answered very well by most candidates, with most achieving both available marks.

Section B**Scenario 1****Question 1**

Was well answered with weaker candidates tending to lose marks by failing to state the position in respect of the legal title.

Question 2

Was also well answered with many candidates obtaining full or nearly full marks. A very small minority identified this as potentially being a constructive trust.

Question 3(a)

Was answered well by most candidates although candidates are reminded of the need to set out the full name of the act (and the section number) to gain the mark, unless they set out the full name of the act elsewhere in the paper.

(b)

Was answered well by a number of candidates. However, as these are statutory requirements candidates are expected to be precise in their statement of them and many candidates lost marks because of this.

(c)

Was, again, answered well by the majority of candidates many of whom showed an excellent ability to apply their knowledge to the facts of the scenario and to come to a conclusion.

Question 4

Was answered well by many candidates who showed a very good knowledge of when a lender's power of sale becomes exercisable. In addition, many candidates also did well in applying to the facts of the scenario and coming to a conclusion.

Question 5

Was answered less well with many candidates being quite imprecise as of the Lender's obligations and with a significant minority believing that the Lender's only obligation was to sell for an amount equivalent to the amount outstanding on the mortgage.

Scenario 2**Question 1(a)**

Was not answered well although a minority of the strongest candidates gave an excellent explanation. It is, however, recognised that this question was a harder question.

(b)

Again, this question was not well answered although a minority of the strongest candidates were able to apply the facts of the scenario very well. Again, it is recognised that this question was a harder question.

Question 2

Again, this question was not well answered although, as above, it is recognised that this question was a harder question.

Question 3(a) was well answered by most candidates.

(b)

Was also well answered by most candidates with many scoring all, or very nearly all of the available marks.

Question 4(a) was answered well by most candidates.

Was less well answered with many candidates seeming unaware of the Land Registration Act 2002 and the other triggers for first registration.

(b)

Was well answered with most candidates gaining all of the available marks. Candidates need to be aware, however, that it is not sufficient to say that registration makes conveyancing easier or cheaper alone – they also need to specify why this might be the case.

Scenario 3

Question 1(a)

Was not well answered with many candidates just saying that the covenantor has the burden and the covenantee has the benefit and this was insufficient for marks to be awarded.

(b)

Was well answered by most candidates although there was some confusion among weaker candidates.

Question 2

Was well answered by the stronger candidates with some excellent explanations and applications to the facts.

Question 3

Was also well answered by the stronger candidates with some excellent explanations and applications to the facts.

Question 4

Again, was also well answered by stronger candidates with some excellent explanations and applications to the facts.

Question 5(a)

Was not well answered by many candidates and candidates are reminded of the need for syllabus coverage.

(b) - again, this was not well answered.

(c) again, this was not well answered.

SUGGESTED POINTS FOR RESPONSE**LEVEL 3 - UNIT 4 - LAND LAW****SECTION A**

Question Number	Suggested Points for Responses	Max Marks
1	*if an object is attached other than by its own weight it is likely to be a fixture *Holland v Hodgson (1872)	2
2	*various intangible rights associated with land *for example, the benefit of a right of way or the benefit of a restrictive covenant	2
3	*s2 Law of Property (Miscellaneous Provisions) Act 1989 *in writing *incorporates all the terms *signed by on behalf of the buyer and seller	4
4	*To remove beneficial interests from trust land/land held on trust *and place in proceeds of sale *so buyer takes the land free of those interests *Applies if there is one trustee and more than one beneficiary *the trustee will need to appoint a second trustee to sell *The purchase monies must be paid to two trustees	5
5	*must serve notice of severance *does not need to be read *in writing *on the other joint tenant (s) *must be an intention to sever immediately	5
6	*the right to enter onto the land of another and take produce or soil *for example, shooting rights, rights to collect wood	2
7	*a restrictive covenant is an obligation not to do something/a positive covenant an obligation to do something *a covenant can be positive even if it is worded negatively *if it requires expenditure *for example, to maintain a wall	4
8	*monthly repayments *of the loan and the capital *so that and the end of the term the loan is repaid in full *usually over a 25 – 30 year term *may also be required to take out a life assurance policy *to repay the loan in the event of early death	5
9	*keep equitable interests off the register *the register screens a buyer from information that they do not need *for example, interests behind a trust	2

	*protected by the principle of overreaching	
10	*matters in the leasehold title *matters in the Lease *matters in the freehold title *overriding interests	4
11	*Freehold *Leasehold with at least 7 years to run *rentcharges *franchises *profits a prendre in gross if in perpetuity or for a term with more than 7 years remaining	3
12	*possession *sale *action in debt *appointment of a receiver *foreclosure	2
Section A Total:		40 marks

Section B - Scenario 1

Question Number	Suggested Points for Responses	Max Marks
1	*Section 1 (6) Law Property Act 1925 *legal title can only be held as joint tenants *we are told the equitable title is held as joint tenants *doctrine of survivorship applies *so on death of Aaron legal and equitable title passes to Bella/ Bella is the sole legal and equitable owner.	5
2	*resulting trust *payment is made to the purchase price at the time of acquisition - and this is the case *unless a gift *Bull v Bull (1955) *and no reference on Land Registry title/there is no reference to Anaisha on Land Registry title *statement 'happy to help' suggests could be a gift *conclusion that Anaisha can claim	7

3(a)	*section 14 TLATA 1996	1
3(b)	*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 any land subject to the trust as his home *the interests of any secured creditor	3
3(c)	*intended not be to a long term arrangement *purpose is as an investment *Bella's two young children are likely to be relevant *and there is a mortgage on the house but there are arrears on this so likely to be an issue/concern *the purpose of the trust seems to have come to an end so likely to order sale but consider reasoned arguments either way	5
Question 3 Total:		9 marks
4	*interest payments are more than 2 months in arrears *we are told that the interest payments are 3 months in arrears *there is a breach of some other term of the mortgage *we are told that Bella and Jeevan have not insured Aubrey Cottage and that this is a breach of the mortgage terms *conclusion – the power of sale is exercisable	5
5	*to obtain the best price available *duty to take reasonable care *requirement of good faith *credit reasoned conclusion	4
Scenario Total:		30 marks

Section B - Scenario 2

Question Number	Suggested Points for Responses	Max Marks
1(a)	*the easement must benefit Sea View *as opposed to being of purely personal benefit for the occupier *the question is whether it makes Sea View more valuable *Moody v Steggles (1879) *confirms placing a pub sign on another's land was capable of being an easement *Hill v Tupper (1863) *a right to use a mooring was a personal benefit	3
1(b)	*because as it was there for a long time, the use of the land and the sign were linked *because it increases/does not increase the value of the land *Anna's sign has been on Bob's land since before 1986 * so likely to satisfy this requirement	3
Question 1 Total:		6 marks
2	*issue is that the dominant owner (Anna) cannot exclude the servient owner (Tony) from the land	4

	<ul style="list-style-type: none"> *Batchelor v Marlow (2003) *the right to park not capable of being an easement as gives the dominant owner exclusive possession *contrast with London & Blenheim Estates Ltd v Ladbrooke Retail Parks Ltd (1994) *right to park can be an easement *as parking space is for one vehicle only, Anna's use gives her exclusive possession of Tony's land but credit reasoned argument either way 	
3(a)	<ul style="list-style-type: none"> *user must have been continuous *by or on behalf and against the fee simple *user as of right – without force, secrecy of permission *for the prescriptive period of 20 years or more *Common law, Doctrine of Lost Modern Grant or under Prescription Act 1832 	5
3(b)	<ul style="list-style-type: none"> *we are told has been used almost daily *used by Anna against Tony who are both freehold owners *we are told bought in 1986/used for 20 years or more *we are told that permission was given *therefore, there is no right to park by prescription 	5
Question 3 Total:		10 marks
4(a)	<ul style="list-style-type: none"> *land only has to be registered on a disposition *applies to sales since December 1990 *as Sea View was bought in 1986 not subject to compulsory registration 	3
4(b)	<ul style="list-style-type: none"> *Land Registration Act 2002 *since 1998 *legal first mortgages will also trigger compulsory first registration *and so will have been registered following the mortgage 	4
4(c)	<ul style="list-style-type: none"> *removes the need for repeated examination of the deeds *a complete record of the interests which exists in respect of a registered title *an accurate plan is available *drafting is reduced to form filling (therefore simpler and cheaper process) *register is a record of proprietors *compensation is payable if errors or mistakes are made by the Land Registry as the system is state guaranteed 	3
Question 4 Total:		10 marks
Scenario Total:		30 marks

Section B - Scenario 3

Question Number	Suggested Points for Responses	Max Marks
1(a)	<ul style="list-style-type: none"> *The covenantor has the burden of the covenant so that enforcement action can be taken against the covenantor for breach *the covenantee has the benefit of the covenant and so can take enforcement action if the covenant is breached. 	2
1(b)	David is the covenantor	1
Question 1 Total:		3 marks
2	<ul style="list-style-type: none"> *the burden of a covenant will not pass in common law *Austerberry v Oldham Corporation (1885) *so the burden will not have passed *unless there is a chain of indemnity covenants *and the wording of the later transfer suggests that there may be. *principle of benefit/burden is not applicable here *credit reasoned conclusions either way (burden will only pass if student recognizes the indemnity covenant point) *credit for a student who recognizes that there is no privity of contract between Perry and Yolande in respect of the promise in the later transfer. 	7
Question 2 Total:		7 marks
3	<ul style="list-style-type: none"> *a covenant is annexed to the land if it can be shown that it was entered into with the intention of benefitting the land *and not the owner of the land in a personal capacity *may be express annexation/may be apparent from the wording of the covenant *is expressed to be for the benefit of current and future owners of The Sycamores *section 78 LPA 1925 *covenant is deemed to be made with successors in title and *so benefit is likely to have passed 	5
Question 3 Total:		5 marks
4	<ul style="list-style-type: none"> *the covenant has to be negative in nature and it is *the burden must be intended to pass with the land – the words ‘so as to bind ..’ suggests it is *in any event s79 LPA 1925 implies this *two pieces of land/dominant and servient tenement *covenant must benefit the dominant tenement – this covenant is likely to do so by increasing the value of the Sycamore *must be notice - we are told that there is a notice in the register of title of The Oaks *burden will have passed 	7
Question 4 Total:		7 marks

5(a)	*agreed notice *entered with the agreement or on the application of the proprietor *unilateral notice *entered into without this agreement or on the application of the Land Registry	4
5(b)	*here will be an agreed notice *as agreement of the proprietor was in the 2011 Transfer.	2
5(c)	*sets out the requirements to follow for the Land Registry to register the disposition *for example the restriction entered to protect beneficial tenants in common	2
Question 5 Total:		8 marks
Scenario Total:		30 marks