

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

JUNE 2018

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 June 2018 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 performance of the cohort was generally good and for those that passed this paper showed a good understanding of the underlying law and good application. Weaker candidates tended not to apply their legal and conveyancing knowledge to the case studies or the facts.

Most candidates are answering questions by explaining the relevant legal and conveyancing knowledge and then applying this to the facts to answer questions in a practical way. A few candidates are being proactive by performing due diligence on the sale and purchase properties.

Weaker candidates, who either failed or did particularly badly, clearly had not demonstrated any understanding of the Learning Outcomes nor the KUS for the Unit. Many of those who failed did not make the transition from merely regurgitating information (for example providing lists of information), for which no marks were given as practice Units test application of the underlying facts to the law.

Some candidates merely memorised previous specimen answers to past conveyancing examination paper questions, but often gained no credit as they did not answer the question set.

A number of common errors were apparent in candidates' knowledge and application and included the following:

- Where a question comprised a number of elements often candidates only tackled part of a question - candidates must ensure that they answer every part of the question to ensure that they gain the maximum benefit.
- A number of candidates did not seem to be adequately prepared on the Case Study Materials - candidates should ensure that they have properly prepared based on the Case Study Materials.

Candidates tended to answer fairly well, or well on questions 1(a), 1(b), 2(a), 2(b), and 3(c).

Candidates tended to answer poorly on questions 2(b), 3(a), 3(b), 4(a) and 4(b). Question 3(c) was answered averagely.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Common errors on specific questions is given below:

Question 1

(a) Applying the criteria to choose the most appropriate root of title for Haven Street.

This question was tackled well by most candidates, with many scoring 6-8 or more marks out of 12.

Good answers listed the relevant criteria for selecting an appropriate root and applied each of these to the root they selected – making reference to specific parts of the actual document. Poorer answers stated the rules for selecting a root of title, but failed to explicitly apply these. It is not enough to say that a document meets the criteria (e.g. nothing to cast doubt on the title) without providing evidence to support the assertion. Very poor answers stated they would use the charge or deed of gift as the root, which we would not do in practice. Better answers explained why we might be reluctant to rely on these documents in practice.

Some answers failed to actually answer the question set, for example, by drafting an epitome of title and so gained no credit.

(b) Drafting part of a contract for sale for unregistered land.

Overall this question was answered well with many answers scoring 8 marks or more out of 14.

Most candidates included the buyer's and seller's full names and addresses, however, many candidates omitted their addresses, thereby getting no credit. A few candidates drafted the contract for the wrong property (i.e. the property

the clients were purchasing) thereby gaining no credit. Candidates must read questions carefully and answer the question set.

Around 50% of candidates correctly stated the property description for unregistered land, the root and the incumbrances all correctly, however about 30% of candidates were not able to do this thereby scoring no marks. A common error for these candidates was merely giving a postal address, rather than a postal address and property description. Another error made by candidates was stating that the property description was contained in the root, whereas the property description was in another conveyance.

Encumbrances – often these were not referred to properly.

A large proportion of candidates surprisingly entered incorrect figures for the purchase price, deposit and balance. It should be remembered that the purchase price is the sale price here £157,500; the deposit is 10% of the purchase price, here £15,750; and the balance is the purchase price less the deposit paid on exchange of contracts here £141,750. This type of error has been made on past papers by candidates. There were also many errors in the additions.

Candidates were asked to draft any special conditions that will need to be added to the second page of the contract (i.e. non-standard special conditions that will need to be added). Most candidates identified the need to add an indemnity covenant in respect of the liability our clients would continue to have in respect of the property following the sale. This should be done, even though standard condition 4.6.4 has the same effect, so all parties are aware that such an indemnity is required in the transfer. Poor candidates either did not identify this, or were unable to draft a suitable provision.

Question 2

(a) The Protocol forms which the seller's lawyers will include in the contract bundle for Merchants Quay.

This was generally answered well by most candidates, however a number of candidates failed to appreciate this is a leasehold title and neglected to refer to the leasehold Protocol Forms. Candidates need to note that they must give the full name of each form and the relevant form number. Many candidates listed irrelevant documents such as the draft contract, the EPC, etc. Again, candidates need to answer the question set.

(b) Pre-contract searches that will be raised based on both the location of the property and matters raised by the title register, title plan and the reasons for raising each search.

This question was answered poorly by most candidates. Most candidates merely listed all the pre-contract searches that they could think of and merely gave the standard reason for performing these searches (for example, Local Land Charges to see if the property is subject to any local land charges) thereby gaining either little or no credit. Good answers identified each relevant search and explained clearly the reasons why each should be performed by referring to the title documents and/or location of the property and any issues that these raised. Candidates here were expected to make specific reference to the contents of the title documentation and/or location of the property.

As with previous papers a few candidates demonstrated that they had no understanding of what constitutes a pre-contract search as they covered pre-completion searches instead thereby gaining no credit.

Question 3

(a) Who holds the title deeds and documents in unregistered land where the property is charged?

Generally, this question was answered poorly, with many candidates incorrectly saying that these will be held by the clients. Some candidates identified that the lender will hold the title deeds and documents and also the type of undertaking a lawyer will need to give to the lender in exchange for receiving them. However, hardly any candidates explained why the first lender in unregistered land will hold the title deeds and documents demonstrating a lack of understanding of unregistered land law and procedure. A few candidates gained no credit as they said the title deeds and documents could be held by the lender or by the client. Candidates gain no credit by guessing or 'sitting on the fence'.

(b) Interpreting an entry in the Property Register to ascertain that the landlord's consent is required to assign a leasehold interest.

This question was answered poorly by most candidates. Many candidates were unable to draw the conclusion from this entry that the lease must have contained some form of restriction on the tenant's ability to assign the lease without the prior consent of the landlord. Some candidates totally missed this issue and looked at the need to obtain planning consent, etc – which was irrelevant and so gained no marks.

Most candidates that correctly identified the issue failed to structure their answers in the same way as the question was structured e.g. into parts (i), (ii) and (iii), this often meant that candidates did not answer all parts of the question. Again, candidates need to carefully read each question so they answer the question that has been set. Only a few candidates made reference to the statutory provisions relating to the landlord giving consent, or to the lender's requirements in relation to the certificate of title. Unfortunately, not many candidates applied the contractual provisions relating to seeking and receiving consent.

(c) Requisitions on title for a registered leasehold property.

Generally answered averagely by most candidates, with many scoring 5/6 marks out of the 11 available.

Poor answers did not base the requisitions on the title provided in the Case Study Materials and often repeated the questions contained in the Protocol forms. A number of candidates raised a requisition asking the sellers' lawyers if they will undertake to discharge their client's charge on completion. This is dealt with in the TA13, and so no credit was given.

A few candidates did draft suitable requisitions but failed to get full credit as sufficient reasons were not provided for each requisition. It should be noted that all reasons for each requisition must be stated. Often, more than one reason will be needed for each requisition. Some candidates lost credit as they

just listed issues rather than drafting requisitions. Again, candidates must answer the question set.

Question 4

- (a)** Issues related to clients having a shortfall in the balance required to complete and advice required to minimise any problems.

Generally, this question was answered poorly by most candidates. Many candidates did not clearly set out the problem and did not make reference to figures showing the amount of the shortfall. A large proportion of candidates incorrectly said there was no shortfall. Most candidates did look at the contractual provisions in relation to a delayed completion, but many did not look at practical solutions, for example to minimise compensation/damages payable by the clients by completing the sale; also any delays should only be one day and so the contract will not be rescinded and their deposit not forfeited, etc.

Some candidates made suggestions which would never happen in practice for example, that the firm would pay the shortfall, or that the firm would give an undertaking to the seller's lawyer to pay the shortfall the next working day thereby allowing completion to occur. A few candidates stated they would complete even though there are insufficient funds to deal with post completion (e.g. payment of SDLT, the firm's fees, etc), however it should be noted that to do this will result in the firm breaching the lenders' instructions and undertakings.

- (b)** Documents to be provided by the seller's lawyers to the buyer's lawyers following completion of the sale of a leasehold property.

This was answered fairly poorly. Many answers failed to identify the documents that needed to be provided under the scenario or to identify what else needed to be provided according to the scenario. Some answers incorrectly stated that the contract would be provided, etc. Here better application was needed and answers must relate the question to the scenario.

- (c)** Post completion procedure on the assignment of a registered leasehold property.

This was answered fairly well by many candidates, with most identifying the need to pay SDLT and then to register title at the Land Registry, however many candidates failed to deal with the need to obtain a certificate from the landlord (see restriction at entry number 2 of the Proprietorship Register) or to serve notice on the lessor of the charge and assignment.

Payment of SDLT

Many candidates incorrectly stated the time limit in which duty must be paid as either one month or as 30 'working/business days'. A large number of candidates failed to correctly state the exact amount of SDLT that had to be paid to HMRC showing a lack of preparation on the case study materials.

Registration:

Many candidates failed to correctly identify the transactions to be registered i.e. the transfer and charge.

Some candidates did not correctly identify all of the documents that would accompany an application. Note only certified copies need to accompany an application. Most candidates failed to identify the correct fee to be paid demonstrating a lack of preparation. As with previous cohorts many candidates erroneously stated the time limits for registration as 'days' rather than 'working days'.

A large number of candidates overlooked the need to provide the Land Registry with a copy of the landlord's certificate as required under the restriction.

Many candidates failed to deal with serving notice on the landlord in relation to both the assignment and the charge.

SUGGESTED ANSWERS

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Question 1(a)

The criteria for selecting a good root of title are:

1. The deed must be at least 15 years old.
The conveyance dated 16 September 1981 made between Daniel Costello and Julie Platt (the Conveyance) is over 15 years old.
2. The deed must deal with the ownership of both the legal and equitable title.
The Conveyance does this as it clearly deals with the legal title and also the beneficial title as the seller sells as beneficial owner.
3. The deed should contain a clear, recognisable description of the property.
The Conveyance contains a postal address, but as it does not contain a plan it does not contain a sufficiently clear description of the property. The Conveyance does state that the property is more particularly delineated on the plan annexed to a conveyance dated 30 March 1964 made between Haven Homes (Manchester) Limited (1) and Stella Cruise (2) which is a suitable description of the property. We will therefore provide the buyers' lawyers with a copy of the 1964 conveyance or of its plan in addition to the Conveyance as a pre-root document.
4. The deed must contain nothing to cast doubt on the seller's title.
There does not appear to be anything from the Conveyance to cast any doubt on the seller's title as it has been properly executed by both Daniel Costello and Julie Platt. We should perform a Central Land Charges search against the seller in the Conveyance, Daniel Costello, for the seller's period of ownership to see if the results show anything to cast doubt on the seller's title.

5. Good practice is to choose the latest sale for value.
Here the latest sale for value is the Conveyance as it is dated 1981.
It is possible to use either the 1989 Deed of Gift or the 1989 Mortgage as the root, however as we have the 1981 Conveyance we would prefer to use that as the good root of title.

Question 1(b)

I would draft the provisions for the sale contract for Haven Street as follows:

- i. The seller
JONATHAN PLATT and ABBIE PLATT both of 30 Haven Street, Manchester, M6 5QR
- ii. The buyer
SAMANTHA HUK and TIMOTHY HUK both of 1337 Rochdale Road, Blackley, M9 6FG
- iii. The property
The freehold land known as 30 Haven Street, Manchester, M6 5QR as is more particularly described in a conveyance dated 30 March 1964 made between Haven Homes (Manchester) Limited (1) and Stella Cruise (2)
- iv. The root of title
A conveyance dated 16 September 1981 made between Daniel Costello (1) and Julie Platt (2)
- v. The specified incumbrances
The covenants conditions and provisions contained mentioned or referred to in a conveyance dated 18 December 1962 made between Joshua Cohen (1) and Haven Homes (Manchester) Limited (2) (the Conveyance)
- vi. The purchase price and the deposit
Purchase price : £157,500
Deposit : £15,750
- vii. The balance
£141,750
- viii. Any special conditions which will be added to the second page of the contract

In the Transfer to the Buyer, the Buyer will covenant with the Seller to observe and perform the covenants contained, mentioned or referred to in the Conveyance and to indemnify the Seller against any claims, losses, damages, costs or expenses resulting from any future breach thereof.

Question 2(a)

I would expect the seller's lawyers to include the following Protocol forms in the contract bundle for Merchants Quay:

1. the Property Information Form (TA6) which is required under the Law Society Conveyancing Protocol;
2. the Leasehold Information Form (TA7) as this is a leasehold property and is required under the Law Society Conveyancing Protocol;
3. the Fittings and Contents Form (TA10) which is required under the Law Society Conveyancing Protocol. Also as a fridge, washing machine dishwasher and four wardrobes are included in the purchase price these items need to be documented in the TA10; and
4. the LPE1 and LPE2 or the equivalent replies to the enquiries of the Landlord and/or management company which provides details of the Landlord's contact details, service charges, details about insurance (if any), etc. I doubt that there would be any service charge payable by the tenant as the property is a leasehold house, however, I still need to investigate this.

Question 2(b)

I will perform the following pre-contract searches for Merchants Quay based on the location of the property and the matters raised by the Official Copies of the Register of Title and Title Plan:

1. An energy/infrastructure report to determine whether the property will be affected by 'high-speed 2' or other railways. This is because the property is located in Salford Manchester and may be on or near the proposed route for 'high-speed 2' and also because Entry Number 1 of the Charges Register refers to a conveyance where the London Midland and Scottish Railways Company was a party.
2. A flood search as the property is situated near a canal and will show if the property is in an area at risk of flooding.
3. A drainage and water search (Con29DW) as Entry 2 of the Charges Register contains restrictive covenants preventing "materials or waste matter (other than clean surface water)" to be deposited or flow into the Manchester Ship Canal or Dock number 9. The drainage system at Merchants Quay therefore needs to be investigated.
4. A coal mining search (Con29M) as the property is situated in Manchester which is a coal mining area and Entry Number 2 of the Property Register states that the mines and minerals are excepted.
5. An environmental search as the history of the area shows past industrial use; for example, being on a quay, being near a railway, the mines and minerals being reserved, etc. This means there is a risk of contamination being present at the site.
6. A Canal and River Trust Search as the property is adjacent to a canal and this search provides information on who is responsible for the maintenance of the canal, whether the property owner has to contribute to the repair or maintenance, and whether the Trust has any rights of access over the property, etc.

7. A chancel check/search to establish if the property is subject to a chancel repairing liability. There has not been a sale for value of Merchants Quay since October 2013, as the last sale was in 1997, and so there is a possibility that an unregistered chancel repair liability may still be capable of being registered against the property. Further, it is unlikely that there has been a sale of value of the lessor's title and thus there is also possibility that an unregistered chancel repair liability may still be capable of being registered against the superior title which would also bind the leasehold title.
8. Con290 to raise additional enquiries of the Local Authority for example to check if there are any public footpaths/environmental hazards affecting the property or its the surroundings, given the past history of the land.

We would also need to perform all relevant searches as these are our instructions from the lender, RBS plc, under paragraph 5.4.1 of the UK Finance Lenders Handbook.

Question 3(a)

In 1989, Jonathan and Abbie Platt mortgaged Haven Street to the Halifax Building Society (the Halifax) which has a first legal charge over the property. The Halifax therefore protects its charge in an unregistered property by retaining the title deeds and documents. We will therefore need to request these title deeds and documents from the Halifax.

We will have to provide an undertaking to the Halifax to hold these deeds and documents to their order pending completion of the sale and on completion to redeem the Halifax's charge over the property. Following redemption of the Halifax's charge we will be released from our undertaking and can forward the title deeds and documents to the buyers' solicitors.

If the sale falls through or we realise there will be insufficient funds to redeem the Halifax's charge on completion then will then have to return the title deeds and documents to the Halifax.

Question 3(b)

Entry number 4 of the Property Register contains a provision relating to alienation. It is therefore likely that the lease contains a covenant prohibiting an assignment of the lease without the lessor's prior consent in writing which would be given by granting a licence to assign the lease). Thus, under the terms of the lease it is likely that this consent must be obtained by completion.

Section 19(1) of the Landlord and Tenant Act 1927 applies which means that the lessor must not unreasonably withhold or delay giving consent to the assignment. Under s 1(3) Landlord and Tenant Act 1988 the landlord must give or refuse (with reasons) consent within a reasonable time from receipt of the tenant's request for consent.

As we are also acting for RBS, we will not be permitted to apply for the certificate of title from the lender until we have procured the lessor's consent to the assignment.

The seller is under an obligation to use reasonable endeavours to obtain the consent from the lessor at the seller's own cost and the buyer must provide all information reasonably required to obtain the consent (SCS 8.3.2). Under SCS 8.3.3 if the lessor's consent has not been obtained within 3 working days of the contractual completion date, then either party may rescind the contract by serving notice to do so on the other party. However, we would be reluctant to rely on this provision as both parties are in chain transactions and would have entered into arrangements for completion, such as arranging removal firms, etc. If this provision is relied on by any party then all parties could incur substantial losses, and so it is essential that consent to assign is obtained prior to exchange of contracts.

We should therefore insist that the licence to assign is granted prior to exchange of contracts.

Question 3(c)

I would raise the following requisitions on title with the Seller's lawyers:

1. "Please provide us with a copy of the lease dated 29 April 1988 made between The Council of the City of Salford (1) Merchants Quay Management Company Limited (2) and Arijit Singh (3)"

The Law Society Conveyancing Protocol ('the Protocol') is being followed in this transaction and under paragraph 24 of the Protocol the seller's lawyers must include an official copy of the registered lease in the contract bundle.

Our clients, the prospective tenant, will also need to know what the lessee's, lessor's and management company's (if any) covenants and obligations are.

2. "Please provide us with a copy of the lessor's title which is registered under title number GM415555"

Entry number 5 of the Property Register states that the lessor's title is registered under GM415555. Under paragraph 24 of the Protocol the seller's lawyers must include the lessor's title in the contract bundle.

3. "Please provide a copy or an abstract of the conveyance dated 12 October 1937 made between London Midland and Scottish Railways Company (1) Robert Clifton (2) and Manchester Liners Limited (3), or if this conveyance is not available please confirm that your client will on or before completion at her own cost provide a title indemnity policy in respect of these missing covenants".

Our client will be bound by these covenants following a purchase and therefore needs to know what they are. HM Land Registry states in entry number 1 of the Charges Register that neither a copy nor an abstract of this conveyance has been produced; however, there is a slim possibility that the seller's lawyers or the seller have a copy of this conveyance, which could then be supplied to HM Land Registry.

If a copy is not available, then the seller, at the seller's own cost, will need to provide our client with a title indemnity insurance policy in respect of these missing covenants because there is a risk that these

covenants may have been breached in the past or could be breached in the future which could result in legal action being taken against our clients.

4. "Please confirm that consent to the erection of the Property and the development under covenant (b) was not necessary or that consent was obtained or that the seller will at their own cost on or before completion provide a breach of covenant title indemnity policy"

Entry number 2 (b) of the Charges Register contains a restrictive covenant preventing building works adjacent to the canal without Manchester Ship Canal's consent.

5. "Please confirm whether any mining has occurred at the property. If so please provide details. Further, please confirm whether the property has suffered subsidence or any other damage caused by mining activity".

Entry number 2 of the Property Register states that the mines and minerals are excepted and therefore it is important to determine whether any mining has occurred at the property and/or whether the property has been damaged by mining activity.

Question 4(a)

Our clients require a total of £158,325 to complete the purchase.

[This includes the purchase price of £250,000, less the mortgage advance from RBS of £95,000 and the £400 paid on account plus:

- i. £2500 for Stamp Duty Land Tax (SDLT),
- ii. £400 for search fees, Official Copy fees and Bankruptcy search fees,
- iii. £135 for the land registration fee
- iv. £690 for our legal fees on the purchase including VAT.]

The balance coming in from the clients' sale is a total of £153,600.

[This includes the sale price of £157,500 less:

- i. £3000 required to redeem the Halifax charge;
- ii. £900 for our legal fees on the sale including VAT].

The balance required from our clients to complete is therefore £4,725 (i.e. £158,325 less £153,600). If we do not receive the full balance of the purchase money from our clients today then we will not be able to complete on their purchase as we will not have sufficient funds.

We should advise our clients to see if they can obtain the shortfall of £4,725 today by either arranging a short-term loan or borrowing the money from family or friends as then we will be able to complete on both our clients' sale of Haven Street and purchase of Merchants Quay today. We would perform some money laundering check on the source of any additional money which comes from another source (such as a family member, etc.). Where a loan is provided by either friends or family then we would require that person to enter into a deed of postponement.

Here both the buyer of Haven Street and the seller of Merchant Quays are ready, willing and able to complete.

Completion should occur on or before 2pm today and if our clients cannot pay the balance to us today there will be late completion and a breach of contract by our clients (SC 6.1.2 and 6.1.3).

If our clients do not complete on either their sale or purchase by 2pm today they will then have to pay compensation to the buyers and/or seller at the contract rate on the purchase price (SC 7.2.2). The buyers and/or the seller retain the right to sue for damages but any claim is to be reduced by any compensation paid. Both the buyers and sellers are in chain transactions and so these losses could be high.

Time is not of the essence for completion and so our clients cannot be forced to complete today on either property (SC 6.1.1). The buyers and/or the sellers can make time of the essence by serving a notice to complete on our clients (under SC 6.8) which gives our clients 10 working days to complete (SC 6.8.2). On receipt of the notice to complete our clients would have to pay the seller an additional £12,500 as on exchange they only paid a 5% deposit (SCS 6.8.3).

However, the balance of the purchase money is due from our client's tomorrow morning, and so the buyers and seller are unlikely to be able to exercise any remedies in respect of serving a notice to complete.

If the money cannot be paid to us today then to minimise our client's potential liability I would advise them to complete the sale of Haven Street today and move into temporary accommodation tonight and place their possessions into storage overnight to ensure that they will not be in breach of contract in relation to the sale of Haven Street.

If the delay exceeds 24 hours then I would have to report the delay to RBS plc, who would probably require the mortgage advance to be returned to them according to the UKLH.

Question 4(b)

Following completion of the purchase of Merchant Quay I expect to receive the following documents and confirmation from the seller's lawyers:

1. An executed TR1 which assigns the lease to our clients;
2. A licence to assign duly completed by the lessor;
3. Confirmation of the method of discharge as there is a charge registered on the title to Merchants Quay in favour of Northern Rock plc,
4. The missing covenant title indemnity policy (if the matter is to be dealt with in this way) in respect of the missing covenants contained in the 1937 Conveyance;
5. A ground rent receipt confirming the last payment of ground rent; and
6. The original lease as this is a leasehold property.

Question 4(c)

In relation to Merchants Quay I will need to take the following post completion steps:

1. Send SDLT 1 to HMRC (or electronically) within 30 days of completion and pay Stamp Duty Land Tax to HMRC in the sum of £2,500. In return we will receive SDLT5 which is required to register title at HM Land Registry

2. Serve notice of the assignment and charge on the lessor and obtain a certificate of receipt in accordance with entry 2 of the Proprietorship Register.
3. Apply to register at HM Land Registry the assignment of the lease (TR1) and RBS's charge so that these take effect in law, within the 30-working day priority period provided by the Official Search of Whole (OS1). I would use form AP1 and would enclose:
 - i. the executed TR1;
 - ii. the completed RBS charge;
 - iii. the SDLT 5 certificate;
 - iv. include payment to HM Land Registry of £135 for the registration fee; andthe lessor's certificate confirming that notice has been received of the assignment in order to comply with the restriction in the Proprietorship Register.