

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021

LEVEL 3 – UNIT 19 - RESIDENTIAL AND 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 June 2021 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 biggest issues on the paper were on leasehold specific areas as opposed to general conveyancing questions. The questions in the examination paper covering the Land Registry entry indicating lease restrictions on assignment, awareness of the term "institutional lease", and the impact of the release of a tenant from covenant liability on assignment frequently 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.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

Most candidates gained good marks on 1(a) being aware of the key features of a lease. The distinction between candidates was revealed when answering 1(b) and applying the key features to the case study materials. The ability to apply the law to the facts of a question is a key indicator of the quality of a candidate.

Question 2(a)

Was answered well by most candidates; but again the quality answer demonstrated an ability to decipher the key factual information in the question and then relate that in a clear manner to the legal principles relevant to co-ownership.

(b)

Was a question concerning the stages of NHBC cover. This is a general conveyancing area of the syllabus, and most candidates were able to answer the question fully.

(c)

Answers often lacked the precision to identify the relevance of the developer sale and therefore, the lack of onward chain in the transaction.

(d)

Often revealed a lack of knowledge about notifiable transactions in the context of leasehold transactions.

Question 3(a) presented few problems to most candidates.

(b)

Was the SRA Code question dealing with conflicts of interest. A well-structured answer benefitted those candidates who had clearly thought about how to present their answer. The poorly answered papers ranged from those candidates quoting the incorrect Code, to those who made limited references to the correct Code but produced answers that were often lacking in coherence.

(c)

Was poorly answered by many candidates. This revealed a lack of knowledge about this area of the syllabus.

(d) this was answered well by most candidates.

3(e)

Was a strong answer for most candidates, though there remained a tendency for generality with some candidates referencing "title documents" instead of specific documentation.

(f)

The issue with answers here was an incorrect reference to "business" or just "days" rather than the correct expression "working days".

Question 4(a)

Many candidates appreciated the significance of an "Authorised Guarantee Agreement" but failed to explain the significance of the release of the former tenant from their lease covenant liability. It is this release that makes the Authorised Guarantee Agreement so important on an assignment.

(b)

Tended to distinguish between the high end candidate who appreciated the term "institutional lease" and those candidates, perhaps reliant upon their general conveyancing knowledge, who did not appear to have any awareness of this term.

(c)

Required lease analysis skills for a successful and well structured answer. Most candidates appeared able to deliver this skill, which was reassuring.

**SUGGESTED POINTS FOR LEVEL 3 – UNIT 19
RESIDENTIAL AND COMMERCIAL LEASEHOLD CONVEYANCING**

The purpose of this document 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 2021 examinations. The Suggested Points for Responses 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. Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

Question Number	Suggested points for responses	Max Marks
Q1(a)	Key features of a lease: <ul style="list-style-type: none"> • Certainty of duration • Exclusive possession • Granted for a term shorter than that held by the landlord 	3
Q1(b)	Application of key features to agreement: <ul style="list-style-type: none"> • 18 month term = certainty of duration • Term is shorter than the freehold estate • Cramped, one bed-roomed property indicates exclusive possession • Consider relevance of the inspection and repairing provision • Unrestricted nature and exercise of the inspection right suggests no exclusive possession • Conclusion a licence rather than a lease 	6
Question 1 Total: 9 Marks		
Question Number	Suggested points for responses	Max Marks
Q2(a)	Explanation of why tenancy in common is appropriate method of co-ownership: <ul style="list-style-type: none"> • Tenancy in common may be suitable as not married • Also Anne has son from a previous relationship • Tenancy in common appropriate as the right of survivorship does not apply • No automatic transfer to John on death • Different contributions towards purchase A tenancy in common appropriate as recognises the distinct contributions/shares	6
Q2(b)	Explanation of stages of NHBC cover: <ul style="list-style-type: none"> • Exchange to completion protects against builder's failure to complete the property, through insolvency or fraud • Cover protects the buyer from losing his deposit 	4

	<ul style="list-style-type: none"> • First two years builder responsible for correcting defects. If the builder fails to comply, the NHBC may take responsibility for the repairs • Remaining years NHBC insures the property against certain types of major defects resulting from the builder's failure 	
Q2(c)	<p>Explanation which formula to use in this transaction:</p> <ul style="list-style-type: none"> • 3 Formulas A, B & C • Parties likely to be holding own parts of contract • Formula B – likely to be used • Because no onward chain (developer sale) 	4
Q2(d)	<p>Explanation whether this is a notifiable transaction:</p> <ul style="list-style-type: none"> • Yes – transaction notifiable • Grant of a lease for a term of seven years or more (120 years) and price £40,000 or more (£315,000) 	2
Question 2 Total: 16 Marks		
Question Number	Suggested points for responses	Max Marks
Q3(a)	<p>List five examples of information to be obtained from Akeem when taking initial instructions:</p> <ul style="list-style-type: none"> • Akeem's details • Seller's details • Identification details • Estate agent details • Seller's solicitor's details • Full address of property to be bought • Confirmation that there is an EPC • The price • Whether any additional items are included in the purchase • Details of proposed survey report • Details of funding and any mortgage application • Anticipated completion date • Whether there is a linked sale transaction • Whether any other agreed matters between the parties • Any additional or specific instructions 	5
Q3(b)	<p>Explanation of professional conduct reasons for not acting for both the buyer and the sellers in relation to this transaction:</p> <ul style="list-style-type: none"> • General principle that a solicitor or his firm should not act for two or more clients in the same transaction where there is conflict or a significant risk of a conflict of interest arising • It is not normally possible to act for both due to the high risk of a conflict 	8

	<ul style="list-style-type: none"> • Principle 7 SRA Standards and Regulations 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 <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. • Conclusion: not possible to act for both sides in this transaction. 	
Q3(c)	<p>Explanation of title entry and action:</p> <ul style="list-style-type: none"> • Entry indicates that the lease contains a restriction on assignment • Just because Land Registry have completed the registered transaction does not guarantee the landlord would not pursue remedies for breach of lease covenant • Check that the landlord provided the necessary consent to the Registered Proprietors acquisition 	3
Q3(d)	<p>Identify and explain errors on OS1:</p> <ul style="list-style-type: none"> • Edition date stated in box 7 • Should be 7 May 2021 – date of issue of OCs. • Applicants shown as purchasers in box 8 • Should be name of the lender as act for both • Reason for application stated as purchase in box 9 • This should be taking a charge as consistent with box 8 	6
Q3(e)	<p>List documents to deliver on completion:</p> <ul style="list-style-type: none"> • The lease • Transfer (TR1) • Landlord's licence to assign, if relevant • Evidence of mortgage discharge • Insurance policy and last receipt • Copies of duplicate notices served by seller and predecessors in accordance with lease terms • Receipts for rent • Receipt for service charge • Evidence of freehold title if being handed over 	5

	<ul style="list-style-type: none"> Share certificate if Akeem is to become a member of a management company 	
Q3(f)	<p>Identify time limit and explain consequences of failure to comply:</p> <ul style="list-style-type: none"> Priority period of the OS1 search This is a period of 30 working days from the date of the OS1 search Risk being bound by entries made by third parties post completion 	3

Question 3 Total: 30 marks

Question Number	Suggested points for responses	Max Marks
Qu. 4a	<p>Explanation importance of an AGA:</p> <ul style="list-style-type: none"> Matthew automatically released from future liability AGA entered into by Matthew with landlord guaranteeing the performance of the lease covenants by the new buyer. Important because Akeem concerned about the new buyer's ability to pay rent and comply with lease covenants If the new buyer fails to comply Akeem can sue either the new buyer directly or Matthew on the AGA 	4
Qu. 4b	<p>Explain the term 'institutional lease' and its key features:</p> <ul style="list-style-type: none"> Term relates to a lease that guarantees the landlord a 'clear rent' Landlord often transfers obligations for repair and insurance on to the tenant Such leases seen as attractive to institutional investors who want guaranteed income and avoid obligations Short terms – often for approximately 10 years but shorter during recessionary times Strict controls on sale and under-letting Upwards only rent review provisions designed to protect income against inflation Onerous provisions – relating to restoration obligations 	6
Qu. 4c	<p>Consider lease extracts to deal with disrepair:</p> <ul style="list-style-type: none"> Clause, 25.1 - Matthew liable to repair the 'Property' Identify whether roof is part of Unit 8. If it is not Matthew has no obligation to repair If roof part of Unit 8, storm caused damage and property in disrepair. Matthew responsible for the roof disrepair Exception to Matthew's normal repairing obligation in clause 25.2 - if caused by an 'Insured Risk' Storm is identified in clause 1 as one of the 'Insured Risks'. This would exclude Matthew from repairing the unit in the case of storm damage 	5

Question 4 Total: 15 marks