

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021
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 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

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 student has previously set out the full name in full earlier in the paper.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1(a)

Was answered well by most candidates as was question **1(b)**. Some weaker candidates confused the three tests or chose to explain the 'degree of attachment test' and so are reminded of the need to carefully read the question.

Question 2

Was less well answered although a significant number of the strongest candidates gaining most of the available marks.

Question 3

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

Question 4

Was also answered well by most candidates with only a very small minority confusing the requirements with those for contracts.

Question 5

Was answered well by most candidates with only a relatively small minority of the weakest candidates unable to explain the unities.

Question 6

Was answered well by a majority of candidates although a significant minority of weaker candidates confused this with the circumstances in which a beneficial joint tenancy is converted to a beneficial tenancy in common.

Question 7

Was answered well by a pleasing number of candidates although some of the weaker candidates showed a lack of syllabus coverage, for example, identifying the cases of Re Ellenborough Park (1956) or Wheeldon v Burrows (1879) as being relevant.

Question 8(a)

Was answered well by most candidates.

(b) was also answered well by most candidates. This was pleasing and, in contrast to previous exam sessions, candidates were much more accurate in their identification of the relevant statutory ground.

Question 9

Was answered well by most candidates although a significant minority of candidates showed a lack of syllabus coverage and were unable to give any explanation or at best only a very limited explanation.

Question 10

Was not answered well although a pleasing number of candidates were able to state the duty to obtain the best price reasonably obtainable. Candidates are reminded of the need to cover the syllabus with their study.

Questions 11(a) and (b) were answered well by most of the candidates although a significant minority of candidates recognised that freehold title absolute is subject to overriding interests but failed to mention that this title is subject to the interests registered on the Land Registry title.

Question 12(a)

Was answered reasonably well which was pleasing although a small minority of candidates confused overriding with overreaching.

(b)

Was less well answered although a very small number of the best candidates gave excellent answers to this question.

SECTION B

Scenario 1

Question 1

Was answered well by most candidates which was pleasing with candidates showing a good ability to both identify the characteristics of an easement and also to apply them to the facts of the scenario. Weaker candidates confused the characteristics of an easement with whether the easement has been acquired by prescription and candidates should be conscious of this distinction.

Question 2(a)

Was answered well by a significant number of candidates and a majority of candidates also showed a pleasing ability to apply the law to the facts of the scenario in their answers to question **2(b)**.

Question 3(a)

Was well answered by most candidates although a significant number were confused as to the various dates relating to the registration of title.

3(b)

Was less well answered.

(c)

Was answered well by most candidates but candidates are reminded that in order to gain full marks for this question their answer must contain detail i.e. it is not sufficient to say an advantage is that the process is quicker, there must be an explanation of why this might be the case.

Scenario 2**Question 1(a)**

Was answered well by a good number of the candidates who chose this scenario and presented few difficulties.

(b)

Was also answered well by a majority of candidates although candidates often focussed on application rather than stating the requirements for severance by serving notice of severance.

(c)

Was answered well by most candidates showing a good ability to apply the law to the facts of the scenario.

Question 2

Was also answered well by the majority of the candidates who chose to answer this scenario with some excellent explanations of the law and then its application to the facts of the scenario.

Question 3(a)

Was answered well by most candidates who chose this scenario. Again, candidates are reminded of the need to explain what the common intention the parties must have. Weaker candidates were often unaware of the requirements of a constructive trust or based their answers on the Stack v Dowden (2007) criteria.

3(b)

Was answered reasonably well by some candidates (with a small number of exceptional answers) but on the whole candidates remain confused as to the distinction between express and implied common intention and how the significance of financial contributions will differ depending on the type of common intention.

Questions 4(a) and (b) were answered well by most candidates although a significant number of candidates did not appear to recognise the curtain principle.

Scenario 3

Question 1

Was not answered particularly well and candidates are reminded on the need for syllabus coverage although as is usual with the question on covenants the candidates tend either to be excellent or very weak.

Question 2(a)

Was answered well and posed few difficulties.

(b)

Was answered less well but a small minority of candidates gave very good answers to this question.

Question 3

Again, a small minority of candidates who answered gave an excellent explanation of the law and a very strong application of the law to the facts of the scenario with a significant number gaining all available marks.

Questions 4(a) and (b) were both answered well by most of the candidates who chose to answer them.

SUGGESTED POINTS FOR RESPONSES LEVEL 3 – UNIT 4 – LAND LAW

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.

Section A

Question Number	Suggested points for responses	Max Marks
1 (a)	<ul style="list-style-type: none"> • a fixture is attached to the land/a fitting is not • which means that on a sale of the land a fixture will automatically pass with it but a fitting will not 	2
1 (b)	<ul style="list-style-type: none"> • if the object is attached for its own benefit likely to be a fitting • or if attached for the benefit of the land as a whole, is likely to be a fixture • Leigh v Taylor (1902), D'Eyncourt v Gregory (1866) 	3
2	<ul style="list-style-type: none"> • lease/leasehold • an estate for a fixed maximum duration • can be fixed term or periodic • can be granted to start in the future provided comes into effect in possession within 21 years 	4
3	<ul style="list-style-type: none"> • eg, (benefit of) a right of way, (benefit of) a restrictive covenant 	1
4	<ul style="list-style-type: none"> • in writing • be clear on the face of it is intended to be a deed • be validly executed by the parties to it • signed, witnessed and delivered 	4
5	<p>Any <u>two</u> from</p> <ul style="list-style-type: none"> • possession • each tenant is entitled to possession of the whole of the land • interest • the interest of each tenant must be the same e.g. leasehold or freehold • time • the interests must arise at the same time • title • each tenant must gain his title from the same document 	4
6	<ul style="list-style-type: none"> • sale • partition • union in a sole owner/only one trustee remains (and no third party has a beneficial/equitable interest) in the property. 	2
7	<ul style="list-style-type: none"> • has to be absolutely necessary/the land is otherwise landlocked • Mere inconvenience is not enough • Nickerson v Barraclough (1981) or other relevant case law 	3
8(a)	<ul style="list-style-type: none"> • Upper Tribunal (Lands Chamber) 	1
8(b)	<ul style="list-style-type: none"> • the covenant is obsolete • due to changes in the character of the property of the neighbourhood 	2

	<ul style="list-style-type: none"> continued existence of the covenant would prevent the reasonable user of the land the persons entitled to the benefit of the covenant have expressly or impliedly consented to its discharge the discharge or modification of the covenant will not injure the person entitled to the benefit of the restriction 	
9	<ul style="list-style-type: none"> interest only is paid off so that the capital is outstanding at the end of the mortgage term usually by monthly instalments mortgagor will also usually take out an endowment (insurance) policy will also pay the monthly premiums of this policy the policy is intended to mature and pay the loan in full at the end of the term 	5
10	<ul style="list-style-type: none"> must obtain the best price a duty to take reasonable care must act in good faith 	2
11(a)	<ul style="list-style-type: none"> Credit any class of title 	1
11(b)	<ul style="list-style-type: none"> registered interests overriding interests 	2
12(a)	<ul style="list-style-type: none"> Not registered on the title but will bind a buyer 	1
12(b)	<ul style="list-style-type: none"> A short lease/a lease granted for a term not exceeding 7 years from the date of the grant a legal lease unless the lease takes effect in possession more than 3 months from the date of the ears from the date of the Lease certain leases under Housing Act 1985 	3
Total		40 Marks

Section B - Scenario 1

Question Number	Suggested points for responses	Max Marks
1	<ul style="list-style-type: none"> • requirements of an easement are set out in Re Ellenborough Park (1956) • there must be a dominant tenement and a servient tenement *Application - Rose Cottage is the dominant tenement and the Field is the servient tenement • the right must benefit the dominant tenement and not be for the purely personal or commercial benefit of the occupier • Application - it is likely that the additional access will benefit the land as it is likely to add to its value/ is a personal benefit to Arwen as it is just a shortcut • must be diversity of ownership/occupation • Application - Arwen owns Rose Cottage; Jenny owns the Field • must be capable of forming the subject matter of the grant - similar to existing easements • Application - a right of way is an established easement • no requirement for servient owner to spend money • Application - Jenny does not have to spend any money to maintain the easement • right must be sufficiently definite • Application - here there is no defined path • Conclusion - unlikely that this is a valid easement as not sufficiently definite but credit reasoned conclusion either way. 	10
	Question 1 Total	11 Marks
2(a)	<ul style="list-style-type: none"> • there must be continuous (regular) user • for the prescriptive period of 20 years or more • the user must have been by a freehold owner against another freehold owner • the user must have been as of right – without force, secrecy or permission • at common law, under the doctrine of lost modern grant or by Prescription Act 1832 	5
2 (b)	<ul style="list-style-type: none"> • Arwen has walked over the path a few times each month so has been continuous user • Arwen has done so since 1973 ie for the prescriptive period of 20 years or more as Arwen • use has been by Arwen (one freehold owner) against Jenny (another freehold owner) • there is no suggestion of force or permission • however, Arwen has taken care to ensure that Jenny did not see her which suggests secrecy. • therefore unlikely that an easement has been acquired by prescription although credit reasoned arguments either way 	6

	Question 2 Total	11 Marks
3(a)	<ul style="list-style-type: none"> • sale of land trigger compulsory first registration in all of England and Wales • from December 1990 • Rose Cottage was bought in 1973 i.e. before the date for compulsory first registration. 	3
3(b)	<ul style="list-style-type: none"> • gifts • assents • transfers following court orders • first legal mortgages 	2
3(c)	<ul style="list-style-type: none"> • avoids the need for repeated examinations of title deeds and therefore reduces costs • a complete record of the interests that exist in connection with a title • an accurate plan • the conveyancing process is made simpler • drafting is made simpler and easier • a record of the proprietors of the land • compensation if errors or mistakes are made by the Land Registry as the system is state guaranteed. 	4
	Question 3 Total	9 Marks
	Scenario 1 Total	30 Marks

Section B - Scenario 2

Question Number	Suggested points for responses	Max Marks
Q1(a)	<ul style="list-style-type: none"> when a beneficial joint tenancy is converted to a beneficial tenancy in common 	1
Q1(b)	<ul style="list-style-type: none"> s36 (2) LPA 1925 enables a joint tenant to serve notice of severance must show intention to sever immediately the letter is notice in writing the statement 'want to sell the Property' shows the intention to sever immediately the issue is that the notice must be served on the other joint tenant as it was not so served it has not been severed. 	6
1(c)	<ul style="list-style-type: none"> as there is no severance, Mark and Lucy are still beneficial joint tenants on Lucy's death the Hideaway will pass to the surviving joint tenant, Mark under the doctrine of survivorship Claire is not entitled to claim a share of the Hideaway 	3
Question 1 Total		10 Marks
Q2	<ul style="list-style-type: none"> Kinch v Bullard (1998) notice in writing must be served to be effective once served it becomes effective even if not read Mark handed the letter to Lucy and so has served it it does not matter that Lucy did not read it the beneficial joint tenancy has been severed so that it is a beneficial tenancy in common Mark and Lucy had separate shares on Lucy's death, her share will pass as per her will Claire is entitled to Lucy's share of the Hideaway 	7
Question 2 Total		7 Marks
Q3(a)	<ul style="list-style-type: none"> need express common intention – evidence that the parties had expressed an intention to share the ownership of the Hideaway. need implied common intention of intention to share ownership reliance detriment 	4
Q3(b)	<ul style="list-style-type: none"> Mark's statement that would be together forever is unlikely to be evidence of an intention to share ownership of the Hideaway Mark's statement that he would put the house in their joint names apart from the situation with Lucy could be evidence of an intention to share ownership if so, Saba's act in paying the bills/for the extension could be sufficient inferred common intention based on the conduct of the parties 	6

	<ul style="list-style-type: none"> • if relying on inferred common intention alone then payment to the utility bills and kitchen are not sufficient. • conclusion – it is likely that Saba will be able to claim a share based on a constructive trust but credit reasoned arguments either way. • does not matter that the trust is not recorded in writing • credit relevant case 	
	Question 3 Total	10 Marks
Q4(a)	<ul style="list-style-type: none"> • The curtain principle 	1
Q4(b)	<ul style="list-style-type: none"> • mirror principle • the register should reflect all of the estates and interests in respect of a property • but not overriding interests • the insurance principle • register is deemed to give a correct reflection of the title • if loss is suffered through mistake or error by the LR, the injured party is entitled to compensation or rectification 	2
	Question 4 Total	3 Marks
	Scenario 2 Total	30 Marks

Section B - Scenario 3

Question Number	Suggested points for responses	Max Marks
Q1	<ul style="list-style-type: none"> • section 52 LPA 1925 • a conveyance of land conveying or creating a legal interest • must be by Deed 	3
	Question 1 Total	3 Marks
Q2(a)	<ul style="list-style-type: none"> • covenant/restrictive covenant 	1
2(b)	<ul style="list-style-type: none"> • issue is whether the benefit of the covenant has passed • in common law • if the covenant touches and concerns the land rather than being personal in nature • here the covenant not to build a dwelling is likely to benefit the Farm as it will add value/preserve amenity • the covenant re buying fruit and vegetable is a personal benefit to Iqram/Ellie and not to the value/enjoyment of the Farm • the original covenantee must have owned the legal estate in the land to be benefited when the covenant was made • Alice owned the legal estate • the original parties intended that the covenant should pass with the land • suggested by the words 'for the benefit of the Farm and the current and future owners'' • the successor derives title from the original covenantor • Ellie bought the land from Iqram • conclusion that Ellie can enforce the covenant re no building • but that the covenant re farm produce is not enforceable as it does not touch and concern the land 	10
	Question 2 Total	11 Marks
Q3	<ul style="list-style-type: none"> • whether the burden of the covenant has passed • does not pass in common law but may pass in equity • Tulk v Moxhay (1848) • the covenant must be negative in nature • the covenant not to build an extension is negative in nature and so could pass • the covenant to buy the fruit and vegetables is positive as it requires time/money and so the burden will not pass the burden of the covenants was intended to pass with the land • assumed unless the covenant indicates otherwise (section 79 LPA 1925) • two pieces of land • The Farm is the dominant tenement and Willow Barn is the servient tenement • the covenants must benefit the land • the covenant not to build on Willow Barn benefits the Farm as prevents overdevelopment nearby • the covenant must be protected by notice 	10

	<ul style="list-style-type: none"> • the covenant is registered on the Land Registry title • burden of negative covenant will pass on the sale of Willow Barn and so Zander will be bound protected by notice and we are told that it is. 	
	Question 3 Total	10 Marks
Q4(a)	<ul style="list-style-type: none"> • charges register • e.g. a legal charge or an easement burdening the property. 	2
4(b)	<ul style="list-style-type: none"> • property register • description of the property/the property address • By reference to a plan • freehold/leasehold 	4
	Question 4 Total	6 Marks
	Scenario 3 Total	30 Marks