

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021  
LEVEL 6 – UNIT 17 -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 better performing candidates exhibited similar characteristics, in that they possessed both good knowledge and understanding of the relevant law, coupled with the ability to offer practical and pragmatic advice in relation to the issues with which they were presented. Weaker candidates were lacking in one or more of these respects. They had clearly made good use of the opportunity to consider the case study materials in advance of the exam.

Weaker candidates tended to produce answers which were generalised and discursive, with occasional suggestions of sheer guesswork.

It was disappointing how many candidates failed on one or more occasions to deal with fundamental elements of conveyancing correctly.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### **Question 1(a)** – Land charges search and restrictive covenants

A disappointing number of candidates confused a land charge with a local land charge. Equally, many did not understand the function of the search, stating that it would establish ownership/title.

Those who understood the purpose of the search and went on to discuss the consequences of registration or non-registration of a D(ii) entry generally did so in an accurate and comprehensive manner.

The discussion of indemnity covenants, and the need for such a covenant to be taken from the buyers even if the restrictive covenants did not bind successors in title by virtue of registration, was generally good.

### **(b)** – Root of title

Most candidates answered this question reasonably well – although more than might have been expected opted for the Deed of Gift (seemingly because it was the most recent document). A small proportion correctly identified the preferred conveyance but then opted for something else when completing the relevant part of Q1(c).

### **(c)** – Draft key provisions of sale contract

A few elements of this question caused problems, namely: (i) naming Edward Mbulu as one of the sellers, (ii) entering 'freehold' or 'title absolute' or 'full title guarantee' when attempting to identify the root of title, and (iii) failing to apportion the total amount payable between the property and the contents (a surprisingly large number of candidates failed to do this).

### **Question 2(a)** – Documents to be included in the contract bundle

The vast majority of candidates correctly identified the documents that needed to be included, though some neglected to include the contract itself. Identifying which documents should be referred to in, and therefore should accompany, the epitome of title was probably the most challenging aspect of this question for many candidates.

### **(b)** – Requisitions

Candidate performance on this was decidedly patchy. Most candidates noted the reservation of mines and minerals and so raised a requisition in relation to mining/subsidence. Far fewer raised requisitions about the missing titles/plans. Far too many raised requisitions (often at some length) about a range of inappropriate/unnecessary matters.

**Question 3(a)** – Identify relevant pre-contract searches (with reasons)

Most candidates were able to identify one or more relevant searches. Statements of reasons were often a little vague, particularly in relation to chancel repair liability.

**(b)** – Identify necessary consents re building works and office use

Only a small proportion of candidates explored the planning issues in real depth – whilst most noted that wholly internal conversion works would be unlikely to require planning permission, far fewer either identified or discussed in sufficient detail the position regarding change of use in light of the stated facts.

Several candidates ignored the leasehold covenants altogether or discussed one but not both of the material provisions. References to LTA 1927 were relatively few and far between.

Relatively few candidates discussed the desirability of having the required consents in place before exchange.

**Question 4(a)** – Advice re beneficial joint tenancy or tenancy in common

In contrast to previous sessions, this was something of a mixed bag: some candidates appeared to believe that a joint tenancy meant that the beneficial interest was automatically held 50/50 from the outset, whereas others appeared to believe that a tenancy in common meant that the beneficial interest was automatically held 50/50 from the outset. A small number said that a legal joint tenancy could be severed.

A great many candidates trespassed into the territory of telling the clients what they ought to do, rather than limiting themselves to explaining the options that were available and identifying matters that the clients might want to take into consideration in deciding which option was the right one for them.

**(b)** – SDLT

Most candidates dealt with this question adequately. Equal credit was given regardless of whether the candidate answered the question on the basis that the current SDLT 'holiday' was or was not in force.

**(c)** – Death of seller and consequences

Quite a few candidates struggled with this question (which was not foreshadowed in the CSM) – they offered only very generalised (and noticeably short) answers. There were some unduly optimistic assumptions as to how quickly matters could be resolved (eg over the weekend). But the majority of candidates did reasonably well, although there was far from universal awareness as to the need to protect the contract by registration and to notify the lender of the change of circumstance.

**SUGGESTED POINTS FOR RESPONSES  
LEVEL 6 – UNIT 17 -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)	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p><b>Responses should include:</b></p> <ul style="list-style-type: none"> <li>• A Land Charges Search using form K15 needs to be performed against Peter Earnshaw for the period 1957 – 1973 (his period of ownership). This is because: (a) the Protocol requires it and (b) Peter Earnshaw is an estate owner within the root of title.</li> <li>• The 1957 conveyance contains restrictive covenants and so I would expect to see a class D(ii) Land Charge registered against Peter Earnshaw. If the restrictive covenants are registered as a D(ii) Land Charge, they will be binding on all successors in title to Peter Earnshaw and so will be binding on Christine Jacobs.</li> <li>• If the restrictive covenants are not registered then they will be void against a subsequent purchaser for value from Peter Earnshaw, and so became void as a result of the 1973 conveyance to Brian and Vera Jacobs. The buyers could apply to HM Land Registry to have them removed from the freehold title following completion.</li> <li>• However, Christine Jacobs gave a personal indemnity covenant in respect of these covenants in the Deed of Gift dated 11 February 1988, and so she is bound by that covenant as a matter of contract notwithstanding any want of registration. There is also an indemnity covenant in the 1973 conveyance. This means that Christine Jacobs will require a personal indemnity covenant from Hardik and Meena Basra in any event.</li> </ul>	12

	<ul style="list-style-type: none"> <li>Peter Earnshaw remains liable under the covenants in the (under privity of contract) even if they are void for non-registration as a land charge, hence the need for a chain of indemnity covenants.</li> </ul>	
Q1(b)	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p><b>Responses should include:</b></p> <p>The criteria for selecting a good root of title are that the root must:</p> <ul style="list-style-type: none"> <li>be at least 15 years old</li> <li>deal with the ownership of both the legal and equitable title</li> <li>contain a recognisable description of the property</li> <li>contain nothing to cast doubt on the seller's title</li> </ul> <p>Good practice is to choose the most recent document that satisfies all these criteria: consequently, the most appropriate root would be the conveyance dated 5 September 1973. The only limitation is that it does not have a good description of the property as reference is made to the property description contained in the Conveyance dated 17 June 1957, however we can provide this conveyance in addition to the 1973 root as a pre-root document. The 1957 Conveyance needs to be disclosed in any event as it is a pre-root document that contains restrictive covenants.</p> <p>Additional credit may be given if candidates discuss why a conveyance on sale would be preferred over a deed of gift.</p>	7
Q1(c)	<p><b>Seller</b> Christine Anne Jacobs of 85 Littledale Drive, Eccleshill, Bradford, BD19 9TV</p> <p><b>Buyer</b> Hardik Basra and Meena Basra (both) of 14 Tatton Road, Bradford BD2 2AD</p> <p><b>Property</b> The freehold land known as 85 Littledale Drive, Eccleshill, Bradford, BD19 9TV as more particularly described in a Conveyance dated 17 June 1957 and made between Andrew Kettleborough and Peter Earnshaw (2)</p> <p><b>Root of title</b> A conveyance dated 5 September 1973 and made between Peter Earnshaw and Brian Jacobs and Vera Jacobs (2) ('the Conveyance')</p> <p><b>Specified</b> The covenants contained, <b>incumbrances</b> mentioned</p>	7

	or referred to in the Conveyance	
	<b>Purchase price</b> £271,500 (Two Hundred and Seventy-One Thousand Five Hundred Pounds)	
<b>Total</b>		<b>26 marks</b>
<b>Question Number</b>	<b>Suggested points for responses</b>	<b>Max Marks</b>
Q2(a)	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p><b>Responses should include:</b></p> <p>Since we are adopting the Law Society Conveyancing Protocol, we must provide the following documents in the contract bundle for Littledale:</p> <ul style="list-style-type: none"> <li>• Index map search in relation to Littledale to see if there are any cautions against first registration or whether the title is already registered</li> <li>• Completed Property Information Form (TA6)</li> <li>• Completed Fittings and Contents form (TA10)</li> <li>• Draft contract in duplicate for approval</li> <li>• EPC (if not already provided)</li> <li>• The Epitome of Title and Epitome front sheet containing: <ul style="list-style-type: none"> <li>▪ pre-root documentation - the Conveyance dated 17 June 1957 made between Andrew Kettleborough and (2) Peter Earnshaw</li> <li>▪ the root of title (the Conveyance dated 5 September 1973 made between Peter Earnshaw and Brian Jacobs and Vera Jacobs (2)</li> <li>▪ Deed of Gift dated 11 February 1988 made between Brian Jacobs and Vera Jacobs and Christine Anne Jacobs (2)</li> <li>▪ Land Charge Searches against all estate owners from and including the root of title onwards</li> </ul> </li> </ul>	10

Q2(b)	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p><b>Responses should include:</b></p> <p>The following requisitions and pre-contract enquiries need to be raised based on the information and title provided:</p> <p>1. "Please provide a copy of the title plan".</p> <p>A title plan has not been provided and one is needed to determine the extent of the property.</p> <p>2. "Please provide a coloured copy of the plan to the lease".</p> <p>A plan has not been provided and it is essential to determine the extent of the property. Furthermore, clause 2(f) of the lease contains a covenant not to build beyond a building line or facing the rear passageway, and we must establish that there has been no breach.</p> <p>3. "Please confirm that the financial charge referred to in Part 2 of the Register of Specific Financial Charges of the LLC1 search will be redeemed on or before completion at the seller's own cost."</p> <p>Our clients will not want to purchase the property subject to an existing financial charge.</p> <p>4. "Please confirm that the property has not suffered from subsidence and/or damage from mining and please confirm that no mining has occurred on or near the property".</p> <p>Entry number 2 of the Property Register states that the mines and minerals are excepted and so there is a risk that mining may have occurred on or near the property which could have or can cause damage to it.</p> <p>5. "Please provide the superior title"</p> <p>The superior title should have been provided with the contract bundle under the Protocol.</p>	10
<b>Total</b>		<b>20 marks</b>

Question Number	Suggested points for responses	Max Marks
Q3(a)	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p><b>Responses should include:</b></p> <p>The searches that are required based on the location of the property and the title provided are:</p> <ol style="list-style-type: none"> <li>1. A coal mining search (CON29M) and an environmental search are required as the property is situated within a coal mining area. Entry number 2 of the Property Register states that the mines and minerals are excepted, indicating that mining operations may have occurred within the vicinity of the property. It is important to see if damage or contamination (actual or prospective) from previous mining is something that needs to be considered in further detail.</li> <li>2. A Chancelcheck search is required. Although the property is leasehold, it is possible that it will be subject to chancel repair liability (CRL) - either as a matter of law, or because the lease contains provisions which put responsibility for CRL on the tenant. The fact that CRL has not been registered is irrelevant, because the overriding status of CRL has not been 'defeated' by a disposition of the title since 13 October 2013. We do not have the superior title, and so do not know whether there has been a sale of this since that date, which may be sufficient to defeat any CRL claim in any event.</li> <li>3. A drainage and water search (CON29DW) is required to determine if the property is connected to mains water, drainage and/or sewerage.</li> <li>4. The address of the property suggests that it may be close to a river. A flood risk search is required to establish if the property is in an area at risk from flooding and/or has suffered from flooding in the past.</li> </ol>	12

<p>Q3(b)</p>	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p><b>Responses should include:</b></p> <p>Under the Town and Country Planning Act 1990 (TCPA 1990) planning consent is required for ‘development’ of land. TCPA 1990, s 55 provides that a material change of use constitutes ‘development’: a change of use from residential user to an office user is a material change of use. Although certain types of development have the benefit of a deemed grant of planning consent under so-called ‘permitted development rights’, a change of user from residential to commercial is not one of them. The property is also subject to an Article 4 direction (see Document 6) which limits permitted development rights.</p> <p>The question, therefore, is whether the use of the converted garage as an office will change the use of the property when viewed as a whole. Ultimately, this is a question of fact and degree, but material considerations will include:</p> <ul style="list-style-type: none"> <li>• will the property continue to be used mainly as a private residence?</li> <li>• will the office use result in a marked rise in traffic or the number of people calling at the property?</li> <li>• will the office use involve any activities unusual in a residential area?</li> <li>• will the office use disturb neighbours at unreasonable hours or create other forms of nuisance (eg noise)?</li> </ul> <p>Planning consent will most probably not be required for the conversion works as these appear to be wholly internal (and as such planning consent is not required under the TCPA 1990) . However, Building Regulations approval may be required for those works.</p> <p>Under clause 2(e) of the Lease dated 30 November 1937 (the ‘Lease’), the landlord’s prior consent is required before making any structural alterations to the property. Section 19(2) of the Landlord and Tenant Act 1927 (‘LTA 1927’) applies, which converts this qualified covenant into a fully qualified covenant, and so the landlord cannot unreasonably withhold consent for the proposed alterations.</p> <p>Under clause 2(m) of the Lease, the landlord’s prior consent is required before changing the user of the property from residential to another use. LTA 1927, s 19(3) applies to this user covenant, with</p>	<p>18</p>
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	<p>the result that the landlord cannot charge a fine or premium for granting consent where the works are non-structural.</p> <p>In relation to both covenants we will need to take instructions on whether the clients' proposed works are structural or not.</p> <p>The clients should also obtain the lender's consent for their proposals as it may affect the lender's security and/or decision to lend. If the clients instruct us not to do this then we must cease acting for the lender as there will be a conflict of interest between our clients and the lender client.</p> <p>In all of the above instances the clients should be advised to try to obtain the consents/permissions prior to exchange. A refusal after exchange will prevent them from carrying out their plans but will leave them committed to a purchase with which they may well no longer really wish to proceed.</p>	
	<b>Total</b>	<b>30 marks</b>
<b>Question Number</b>	<b>Suggested points for responses</b>	<b>Max Marks</b>
Q4(a)	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p><b>Responses should include:</b></p> <p>The legal title to The Old Rectory must be held by you both as joint tenants.</p> <p>The beneficial title (which, in broad terms, amounts to the right to receive or deal with the proceeds of sale from the property) may be held by you either as joint tenants or as tenants in common.</p> <p>If you choose to hold the beneficial title as joint tenants, then the consequences are that:</p> <ul style="list-style-type: none"> <li>• on the death of one of you, the property will automatically belong wholly to the survivor</li> <li>• if, before the death of either of you, the joint tenancy is severed (which, by way of example only, might occur as a result of the bankruptcy of one of you, or by one of you giving notice of severance to the other), the law would presume that you then held equal shares in the property – this would be regardless of the separate (and possibly unequal) contributions that you may have made to the costs of acquiring, converting or maintaining the property up to that point.</li> </ul> <p>If you choose to hold as tenants in common, you may hold The Old Rectory in whatever shares are agreed between you. This would</p>	13

	<p>then mean that you each have a separate interest in the property which you could dispose of under the terms of your Will or which would pass to your 'next of kin' under the rules of intestacy if you do not leave a Will. In this regard I should point out that neither of you currently qualifies as the next of kin of the other as you are not married.</p> <p>Once you have decided how you wish to hold The Old Rectory, this can be documented by setting out an appropriate declaration of trust in the TR1 which will be used to transfer the property to you, or in a separate trust deed, or by using Land Registry Form JO.</p>	
Q4(b)	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p><b>Responses should include:</b></p> <p>(i) The death of a sole owner has no effect on the transaction. The contract is still binding and the deceased's personal representatives (PRs) are contractually bound to complete on the completion date.</p> <p>(ii) The PRs will need to be appointed to enable legal title in the property to be conveyed to our client. The appointment will need to be either by a grant of representation or by letters of administration (according to whether the Seller died testate or intestate). The time needed to achieve this inevitably means that completion cannot take place today – a delay of several weeks seems probable (even if an application for an expedited grant is made to the Probate Registry).</p> <p>The transfer will need to be re-drafted (so as to add the PRs as the transferors) and will also need to be re-signed by all parties.</p> <p>As there is a delay between exchange and completion, the contract should be protected by the registration of a notice at the Land Registry.</p> <p>As completion will be delayed, we must inform our lender client of this delay and, according to the lender's express instructions or the UKFML Handbook, we may need to return the mortgage advance to the lender.</p>	11
	<b>Total: 24 marks</b>	