

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021
LEVEL 6 – UNIT 9 - 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

After an abnormally low pass rate in the previous (2020) summer examination, it is good to see performance in this session (and in January) has returned to close to the historical average. As a whole the performance was generally reasonably good, with a healthy proportion of merit grades awarded and a handful of candidates providing truly excellent work that was well worthy of the distinction marks awarded.

Taken as a whole, certain trends were apparent, many of which have been addressed in previous Chief Examiner's reports. First and foremost, there remains a clear and obvious distinction between candidates who have not only a good knowledge and understanding of the legal principles but who also are able to apply it to specific questions; and candidates who tend to provide very general "rote" answers that read more as notes on what they have learned about an area than actual answers to the question asked.

This is particularly noticeable on Section A which tended to have lower mean marks, and which seemed the section most students found more difficult. It is crucial that candidates not only describe the law relating to a topic but try to engage with the question asked, whether that is assessing how effective the law is, or providing critical analysis of its operation, or perhaps speculating on potential reform. Candidates who had the technique and ability to provide

(balanced) argument tended to score much more highly than those who would have answered exactly the same regardless of the wording of the question.

In terms of particular areas of knowledge, as has been the case in previous sessions candidates seem least comfortable with how systems of registration and protection of interests in land operate. The lowest mean mark in both Sections A and B came with the questions which examined these principles. Candidates are advised that these are fundamental principles which underpin the system of land law in England and Wales and cannot be disregarded.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

This question was answered by only around a quarter of candidates but achieved the highest mean mark for Section A answers. The question tested knowledge of leasehold estates and asked candidates to differentiate between leases and licences. Most answers were able to define the two concepts and a good number provided at least some explanation as to why the distinction between the two is important. Candidates could usually outline the basic features of a lease, although focused more on the legal elements (certain term, exclusive possession, arguably rent) than on formalities (i.e. lease can only be granted by deed unless <3 years etc.) Stronger answers showed a good grasp of nuances such as 'Bruton tenancies', exceptions to exclusive possession etc. and were able to cite and discuss varied case law.

Question 2

This question focused on the doctrine of prescription as a method of creating an easement. This question attracted the third lowest mean mark on the paper and performance was generally below expectations. Far too many answers were filled with detailed discussions of points of only very tangential relevance such as the Ellenborough Park criteria or other methods of creation. A small number of answers showed a really good understanding of prescription, but many did not really get beyond explaining that different periods existed. Candidates are reminded that merely repeating statements such as "The Prescription Act 1832 has been said to be one of the worst drafted Acts" without actually showing original thought or analysis will not attract many marks.

Question 3

This question on the mirror and curtain principles attracted the lowest mean mark across the paper. This was likely partly due to a significant proportion of candidates scoring low marks choosing the question, but generally there was a worrying lack of knowledge of anything regarding land registration beyond the most basic definitions of the two principles. Centres and tutors are encouraged to ensure that the importance of the LRA 2002 is emphasised in teaching and to encourage students to not just learn the "three principles" by rote but to

understand the reason why each was important to how the Act was drafted and operates in practice.

Question 4

This question was attempted by slightly over half of all candidates. The question was intentionally drafted to emphasise the need to consider potential reform in the area and overall performance was better than expected on section (b). A considerable number of candidates were able to go beyond reciting the rules for passing benefit/burden and to provide cogent critical analysis of at least the current system, and in some cases of the proposals for reform in some depth.

Section B

Question 1

This question on interests in land was the least popular on Section B and attracted a low mean mark. Much of what has already been said regarding interests in land applies here, although a key issue here was also that a number of candidates answered the question as if the land was already registered. Knowledge of formalities was poor as a general rule. Students tended to do best on part (c) relating to fixtures and fittings.

Question 2

Focusing on proprietary estoppel, question 2 was generally answered quite well. The main difference between "average" and "good" answers was the ability to combine both knowledge of case law and practical application of the principles to the specific facts – weaker answers tended to either focus on the law or on the application, but only better candidates were able to do both.

Question 3

This question related to co-ownership and was generally answered reasonably well. Candidates tended to be very strong on how to decide the initial method by which land is held and showed good knowledge on severance by alienation/acting on mutual share. Most candidates also provided at least some relevant discussion on the effect of the homicide. Knowledge was less prevalent on TOLATA (and the Insolvency Act) in particular and only a few papers considered issues of mutual agreement/mutual consent.

Question 4

This question was, unsurprisingly, extremely popular and obtained a high mean mark. Much of what has been said in previous examiner's reports about adverse possession can be repeated here, with the most important points being that candidates should try to develop a detailed knowledge of case law regarding the common law requirements and that candidates are expected to be able to discuss the exceptions in para 5 of Schedule 6.

**SUGGESTED POINTS FOR RESPONSES
LEVEL 6 – UNIT 9 - 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
Q1	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Definition of lease and licence, reasons for distinguishing • Traditional approach based on the contract • Street v Mountford and similar cases – looking at “reality” of the agreement. Focus on exclusive possession • Discussion of exclusive possession, with case law both pre- and post- Street • Analysis evaluating success of the exclusive possession based approach • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Further detail as to exclusive possession cases • Exceptions to the rule of exclusive possession (e.g. service occupancy, charity etc.) • Other factors especially rent and certainty of term • ‘Bruton tenancies’ and issues from this case • Formalities required to create/end leasehold estate and comparison to mere licences 	25
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q2	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Definition of easements and their function (N.B. no marks awarded for detailed discussion of requirements of an easement) • Methods of creation, focusing on prescription • Requirements, including user as of right (without force, without secrecy, without permission); continuous user, by and against fee simple. • Different methods and periods: common law, lost modern grant, Prescription Act 1832 • Critical analysis of doctrine, looking at e.g. ease of use, frequency of use, effect on dominant/servient owners etc. • Reasoned conclusion <p>Responses could include:</p> <ul style="list-style-type: none"> • Comparison of prescription to other methods of creation • Detail of 1832 Act, e.g. the two periods, rights of light etc. • Reference to relevant registered land aspects (e.g. taking effect as overriding interest) • Proposed reform of easements 	25
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q3	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Explanation of system of registered land in England and Wales, supported with reference to relevant provisions of the Land Registration Act 2002 • Explanation of mirror principle, supported with reference to relevant provisions of the Land Registration Act 2002 • Explanation of curtain principle, supported with reference to relevant provisions of the Land Registration Act 2002 • Critical analysis of how far both principles have been achieved under the current system • Reasoned conclusion providing an answer to the question asked. <p>Responses could include:</p> <ul style="list-style-type: none"> • Relevant case law • Detailed discussion of particular areas of controversy, e.g. overriding interests, restrictions in register • Reference to academic opinion • Reference to Law Commission report 2018 	25
Question Number	Suggested points for responses	Max Marks
Q4(a)	<p>An answer which consists of reasoned assessment, breaking down the issue into sections and highlighting those of higher importance/relevance. There should be a conclusion which indicates merits and flaws and is supported with evidence where appropriate.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Definition of freehold covenant • Explanation of how benefit/burden may (or may not) pass to successor in title in equity • Explanation of how benefit/burden may (or may not) pass to successor in title at common law • Reasoned analysis/conclusions as to current system <p>Responses could include:</p> <ul style="list-style-type: none"> • Further exploration of different methods by which covenants may pass • Exploration of exceptions to general rules (e.g. the mutual benefit/burden rule, chains of indemnity covenants etc.) 	17

	<ul style="list-style-type: none"> • Consideration of creation/removal of covenants • Criticism of current system from judges/academics 	
Q4(b)	<p>An answer which consists of reasoned assessment, breaking down the issue into sections and highlighting those of higher importance/relevance. There should be a conclusion which indicates merits and flaws and is supported with evidence where appropriate.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Identification of Law Commission proposals • Discussion of these proposals including critical analysis • Reasoned conclusion as to whether proposals would improve the current law <p>Responses could include:</p> <ul style="list-style-type: none"> • Wider purpose of freehold covenants • Alternative proposals for reform • Arguments in favour of the current system 	8
Total		25 marks

Section B

Question Number	Suggested points for responses	Max Marks
Q1(a)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Identification of usual formalities required for grant of a lease • Explanation of law relating to parol leases • Short leases as an interest which overrides under Sch 1 of the Land Registration Act 2002 • Application of above rules to facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Detail as to formalities required • Explanation of how legal interests will "bind the world" in unregistered land • Importance of personal inspection/enquiries • Further relevant case law illustrating principles outlined above 	7
Q1(b)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p>	7

	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identification of usual formalities required for grant of a easement • Explanation of requirements for a valid deed • Explanation of how equitable easements must be protected in unregistered land • Application of above rules to facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Detail as to class D(iii) charges • Explanation as to why “old” law applies • Further relevant case law illustrating principles outlined above 	
Q1(c)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Explanation of law relating to fixtures and fittings • Application of above rules to facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Detail as to different tests used to decide if an object is a fixture or fitting • Further relevant case law illustrating principles outlined above 	11
Total		25 marks
Question Number	Suggested points for responses	Max Marks
Q2	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • An explanation of the concept of proprietary estoppel • Discussion of the modern approach to estoppel and the criteria used by the court • Discussion of potential remedies • Application of the above to the facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Further detail as to each of the criteria • The overarching principle of unconscionability • Different approaches to remedies • Relevant case law illustrating principles outlined above 	25
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q3	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • An explanation of the concepts of legal and equitable ownership • Discussion of the initial position • Discussion of subsequent events, focusing on rules relating to severance and survivorship • The provisions of the Trusts of Land and Appointment of Trustees Act 1996 and Insolvency Act 1986 • Applications for an order for sale • Application of above rules to the facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Detailed consideration of each event • Rules on forfeiture and unlawful killing • The doctrine of overreaching • Relevant case law illustrating principles outlined above 	25
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q4(a)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Explanation of common law requirements to claim adverse possession: factual possession, the intention to possess, possession must be adverse. • An explanation of the process for claiming adverse possession in unregistered land, with reference to the Limitation Act 1980. • Application of the above rules to facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Further detail as to the common law principles • Any potential application of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 • Relevant case law illustrating principles outlined above 	15
Q4(b)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • (Explanation of common law requirements credited to (a)) • An explanation of the process for claiming adverse possession in registered land, with reference to the Land Registration Act 2002. • Application of the above rules to facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Further detail as to the process under Schedule 6 LRA 2002 including reference to exceptions. • Relevant case law illustrating principles outlined above 	10
Total		25 marks