

**LEVEL 3 – UNIT 19 – RESIDENTIAL AND COMMERCIAL LEASEHOLD
CONVEYANCING
SUGGESTED ANSWERS – JANUARY 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

Question 1

- (a) I will ask David and Melissa to bring in their passports and utility bills because as a firm of solicitors we are under a specific duty to check the identity and residence of our clients.

This obligation arises under the Money Laundering Regulations 2007 which are extremely important. Breach of the regulations has serious consequences, including criminal sanctions.

Two documents are normally required and they must be current. By the term 'current' we mean not more than 3 months old.

- (b) I would explain that it is usually acceptable for the same solicitor to act for both the borrower and lender as long as there is no conflict of interest. Usually there would be no conflict as both parties share the same interests in securing a good title to the property.

Solicitors are required to act in accordance with the SRA Code of Conduct 2011 (SRACC 2011). This contains mandatory Outcomes and examples of conduct which would demonstrate compliance with the Outcomes, called Indicative Behaviours (IBs).

Although the SRACC 2011 does not contain any specific Outcomes about acting for the lender and borrower, this would usually be dealt with as part of the broad provisions in Chapter 3 SRACC 2011. Acting for lender and borrower is possible unless, under O(3.5), there is a conflict or a significant risk of client conflict. As Nateast Finance plc's mortgage is being offered on standard terms there will be little scope for negotiation and therefore less likelihood of a conflict of interest arising.

Even if there is a risk of conflict it is possible to act under O(3.6), if there is a substantially common interest, the conflict is peripheral and certain safeguards are in place.

IB(3.7) provides a relevant example where it may be possible to act for both parties in a residential transaction.

Therefore, considering IB(3.7), as the mortgage being offered by Nateast is a standard mortgage being used for the purchase of the borrowers' private residence and is subject to Nateast receiving its approved certificate of title (which presumably complies with SRACC 2011), as long as I am satisfied that it is reasonable and in my clients' best interests to act, I would be permitted to act for both clients.

- (c) Entry number 2 in the property register reveals a right of way over a drive. This right of way provides the owner of 53 Heathcliff Street with a benefit, but the entry also reveals a burden in the form of an obligation to contribute to the cost of maintenance of the drive.

I will have to make checks and enquiries concerning this right of way.

I would ask the seller's solicitor for details of any past contributions that have been paid by the seller or the seller's predecessors, and if so, what amounts had been paid.

I would also advise the clients to check the present state of repair of the drive to assess whether it is likely to require any work of repair in the near future.

- (d) I would not advise my clients to rely upon the lender's valuation.

Nateast will carry out a valuation in order to establish whether the property will be adequate security for the amount of the loan. David and Melissa have secured an 80% mortgage and as the valuation is essentially carried out for the lender's own purpose, it would be sensible for them to consider other options. The valuation does not give them the same level of protection as an independent survey would.

I would, therefore, advise David and Melissa to consider another type of survey. They could choose from a Condition Report, a HomeBuyer Report or a full structural survey.

It is advisable that a full structural survey is commissioned in this case. The justification for this choice would be based upon the age of the property (a 1950s house) and its unusual design.

- (e) (i) The risk of physical damage between exchange of contracts and completion (i.e. the damage to water pipes in the case of 53 Heathcliff Street) will pass to David and Melissa at the moment of exchange even though Syed retains possession.
- (ii) As a result of this, David and Melissa should usually insure the property, but it is important to check the terms of the lease before concluding. I will need to check the lease to see if it contains a covenant relating to insurance.

If the lease provides for the tenant to insure, then Syed, as the present tenant, must maintain the policy. In these circumstances David and Melissa should ensure that they have the right to inspect the policy or see evidence of its provisions. Nateast Finance plc will have to have confirmation that the insurance is in force during this period and adequately insures its security.

If the lease provides for the landlord (or a management company) to insure the property, then Syed is obliged to take reasonable steps to ensure that the insurance policy is maintained during this period.

I will again have to confirm that the insurance adequately insures Nateast's security.

- (f) Any four of the following documents could be listed:
- A certified copy (or original) of the TR1
 - LTR Certificate (SDLT 5)
 - A certified copy (or original) of the new Nateast mortgage deed
 - Evidence of discharge of Floyds Bank's mortgage
 - Form DI if necessary

Question 2

- (a) The three conditions in s2 Law of Property (Miscellaneous Provisions) Act 1989, which must be complied with for the creation of a valid contract for the sale of an estate in land, are that the contract must:
- Be in writing
 - Incorporate all agreed terms
 - Be signed by, or on behalf of, each party.
- (b) An EPC must be supplied as nearly all buildings that are leased in the UK need to have an EPC when they are sold. This will include Flat 44, so Upmans must supply one.
- (c) The draft lease may restrict some or all of Winston's proposed alterations.

Clause 7.1 is an absolute covenant that prevents any alterations other than those permitted by 7.2.

The proposed addition of the balcony would breach clause 7.1 as it is not permitted under 7.2, not being an internal alteration.

Clause 7.2 is a fully qualified covenant, preventing internal non-structural alterations without the consent of the Landlord, such consent not to be unreasonably withheld.

The proposed new wet room would be permitted by clause 7.2 if Upmans consents as it amounts to an internal, non-structural alteration. Upmans could only refuse to consent if they had a reasonable reason for doing so.

- (d) The Law Society has produced a Code for Completion by Post. This code guides the parties through a postal completion.

Any **four** of the following provisions could have been stated as applicable to the procedure to be used on the completion of the sale of Flat 44:

- Seller's solicitor to provide replies to form TA13 at least five working days before completion.
- Seller's solicitor will act as agent for the buyer's solicitor without a fee.
- Buyer's solicitor will use all reasonable endeavours to ensure that the funds are obtained from the buyer and lender in time to be sent to the seller for completion.
- Seller's solicitor confirms that he is authorised by the seller to receive the money.
- Buyer's solicitor should send full instructions.
- Seller's solicitor will complete as soon as the funds have arrived.
- Seller's solicitor will comply with the buyer's solicitor's reasonable instructions regarding completion and confirm to the buyer's solicitor that completion has taken place. He will also notify the key holder.
- Seller's solicitor will send the documents to the buyer's solicitor as soon as possible after completion, and in any event by the end of the next working day following completion.

Question 3

- (a) I would explain that, from the point of view of the landlord, the advantages of leasing a property are:

The ability to derive income from the property in the form of rent.

The landlord retains a capital asset which is saleable during the lease term with a sitting tenant or at the end of the lease term with vacant possession. The landlord could alternatively decide to retain the property and grant a new lease to a new tenant or retain it for its own uses.

The lease can provide for the repairing obligations to be transferred to the tenant and so as a result the landlord's capital asset can be maintained and protected at the tenant's expense.

The ability for successor landlords to enforce positive covenants can also be seen as an advantage. This is particularly apparent with repair and decoration covenants in the case of flats or other multi-let properties.

The disadvantages of leasing include the fact that the landlord surrenders exclusive possession of the property. The capital asset is therefore controlled, to an extent, by a tenant who may breach his obligations in the lease, thus undermining the value of the landlord's capital asset.

The landlord could also end up with a negotiated lease where he retains a number of obligations in favour of the tenant, to enhance the tenant's enjoyment of the lease e.g. provision of estate services.

- (b) (i) Barry would gain statutory protection under Landlord and Tenant Act 1954 Part II (LTA 1954) if he could satisfy the conditions in s23(1) LTA 1954.

There must be a tenancy. Barry's occupation will have to combine exclusive possession and certainty of duration.

The premises must be occupied by the tenant.

The premises must be occupied for business purposes.

The tenancy must not be excluded from the protection of the LTA 1954, for example by the tenancy having been contracted out.

- (ii) The tenant will acquire three rights if his lease is protected by the LTA 1954.

The tenant will have a continuation tenancy; the right to remain in occupation indefinitely until the lease is brought to an end under one of the ways permitted under the LTA 1954. Such a lease will continue on the terms of the original lease.

The tenant has the right to apply for a new lease. This can arise either as a result of the landlord attempting to terminate the original contractual tenancy under LTA 1954 or as a result of the tenant applying for such a new lease.

The tenant can, in certain circumstances, become entitled to compensation under the LTA 1954.

- (c) There are a variety of rent review mechanisms.

- Fixed increase

This method provides for the rent to be increased at a fixed amount on appointed rent review dates.

- Index-linked

Some leases provide for the rent to be increased by linking the rent figure to an index.

- Turnover

This method relates the rent increases, during the lease term by linking the rent figure, to the turnover of the tenant's business.

- Open market

This method requires that the rent should be revised in accordance with changes in the property market.