

**LEVEL 6 - UNIT 17 - 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 set out a response that a good (merit/distinction) candidate would have provided. 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)

Pre-root Documentation

The lease dated 20 June 1973 should be provided as this is the document which creates the legal title and also the property is subject to the covenants contained in the lease. The lease must be provided. This is an exemption to the seller not having to provide pre-root documentation under s45 of the Law of Property Act 1925.

The Root

The assignment dated 28 March 1988 will be the root of title.

The criteria used to choose a good root of title are:

1. The document must be at least 15 years old at the date of the contract.
The assignment dated 28 March 1988 is over 15 years old.
2. The document must deal with the ownership of the whole legal and beneficial interest in the property.
The assignment dated 28 March does this by stating the 'assignors as beneficial owners...'
3. The document must contain an adequate description of the property.
The assignment dated 28 March 1988 contains a postal address, but not a plan and thus does not contain an adequate description of the property. However, the original lease contains the description and thus we can still rely on the 1988 assignment as the root of title.
4. There must be nothing to cast doubt on the title.
Here there is no evidence to cast doubt on the title. We should perform a Central Land Charges search against the assignors in the root, Stephen Jenkins and Samantha Jenkins, to see if there are any adverse Central

Land Charges registered against them. The assignment has also been properly executed.

Subject to the above it is good practice to choose the latest document as the root of title.

Post-root Documentation

The post root documentation that should be provided includes:

1. The mortgage dated 28 March 1988 as all post root mortgages must be provided
2. The death certificate of Johnathan Locke because the 1988 assignment states that Johnathan Locke and Mary Locke held the property as joint tenants. On Johnathan's death the property automatically passed to Mary by survivorship.
3. Central Land Charges search against Samantha Jenkins and Stephen Jenkins for the period 1978 to 1988.
4. Central Land Charges search against Mary Locke for the period 1988-20 January 2017.
5. Central Land Charges search against Johnathan Locke for the period 1988-1995.

1(b)

The landlord's freehold title is not registered as mentioned in Document 1 of the case study materials. Therefore the Land Registry will register Ringley Road with Good Leasehold Title. This is because the freehold title will not have been deduced to the Land Registry on First Registration.

This class of title will not be acceptable to the buyer who is purchasing with a mortgage from the Royal Bank of Scotland because:

1. There is no guarantee that the lease was validly granted and there is a risk that the title could be extinguished.
2. The leasehold title will be subject to any restrictions on the freehold title and the assignee will not know what these are,
3. There may be defects on the freehold title which the lease is granted out of and subject to, and
4. Good leasehold title is not acceptable to lenders under Council of Mortgage Lenders Handbook (CML) 5.6.2 unless any of the exceptions apply.

The buyer's lawyers may want us to deduce the freehold title.

If the freehold title is available the buyer's lawyers may ask us to upgrade the Good Leasehold Title to absolute title, although we probably would not agree to this due to the additional work and cost involved.

We can perform an Index Map search to determine whether the freehold title has already been registered at the Land registry, and if so, we can obtain a copy of that title and provide this to the buyer's lawyers.

Under s44 of the Law of Property Act 1925 and under the standard conditions of sale (5th edition) we are under no obligation on the assignment of an existing lease to deduce the superior title to the buyer.

The most cost effective method which is acceptable to most lenders (under CML 5.6.2) and buyers is for the seller to provide a Good Leasehold indemnity policy on or before completion, at our client's own cost.

Question 2(a)

The lease is an 'old lease' as the lease is dated before 1996. The relationship of the tenant to the lessor/landlord is therefore governed by privity of contract and privity of estate.

Privity of contract does not apply between our client and the lessor as our client was not an original party to the lease and further the lease does not require assignees to enter into a direct covenant with the landlord on an assignment.

Privity of estate applies and thus our client will be liable to the lessor for breaches of lease covenants that occurred while the lease was vested in her, but following an assignment she will not be liable for future breaches. Thus prior to the assignment, under privity of estate, our client must perform all covenants under the lease that touch and concern the land, for example paying rent, keeping the property in repair, etc.

However, under clause 2 of the assignment dated 28 March 1988 our client gave a personal indemnity covenant to her predecessors in title, Stephen and Samantha Jenkins, who will be able to sue our client on this indemnity in the event that the assignee breaches the tenant's covenants in the lease. Our client will therefore require a corresponding indemnity covenant from the assignee, Mr Neil Osbourne. Standard condition 4.6.4 states that where the seller has ongoing liability for the property following the sale then the buyer must provide an indemnity in the sale.

2(b)

See contract below

2(c)

The lender will be concerned that because Kevin Heart is lending £20,000 directly to Mary Locke to help purchase Proudfoot Drive there is a possibility that he may be deemed to be to have an interest in the property – such as under a resulting trust. If Kevin Heart goes into occupation of Proudfoot Drive any interest he has in the property may become overriding. If the interest is overriding then the Co-operative Bank's charge may be subject to this interest.

Arguably in law there is no 'gap' between transfer and charge, during which Kevin's interest could gain priority over the charge.

Under CML 7.3 Kevin Heart will be required to sign a deed of consent postponing any interest he may have in Proudfoot Drive in favour of the Co-operative Bank.

Under CML 7.4 we must inform the Co-operative Bank about Mr Heart's proposed occupancy and the arrangement as the borrower has failed to provide the bank with information relating to this. We require our client's consent to inform the Co-operative Bank of this, however if our client refuses consent then we must cease acting for the bank as clearly there is a conflict of interest.

It is highly unlikely that we will be able to act for both our client and Kevin Heart, as there is likely to be either a conflict of interest, or a significant risk of a conflict of interest arising and so we need to ensure that Mr Heart obtains independent legal advice, before signing the consent form.

The Co-operative Bank under CML 8.1 would require Mr Heart to obtain independent advice in any event where there was a conflict of interest.

If we act where there is a conflict of interest then this will be a breach of professional conduct and the matter should be reported to our firm's COLP.

As Kevin Heart is paying £20,000 cash into our firm's bank account there is a risk of money laundering. We must obtain sufficient proof of Mr Heart's identify, which would include both photographic identity, such as a passport, and proof of address, such as a utility bill, less three months old. Further, we must conduct ongoing monitoring by asking Mr Heart where the money came from, etc. We must be careful to avoid committing the offence of 'tipping Mr Heart off' about any suspicions that we may have.

Question 3(a)

The issue is that the environmental report has shown that the property is at a high risk of surface water flooding. This may make the property harder to sell in future and/or to re-mortgage. Further, buildings insurance may not be available for the property, or if it is, it may be available at a high premium and/or with a high excess.

We therefore need to investigate this further.

We should carefully check the sellers' replies to the Property Information Form (TA6) to see if the sellers have mentioned flooding in their replies to question 7 and also for question 6, to see whether any insurance has been refused, or granted with unusual terms or high premiums in relation to the property.

The following requisition should be raised with the seller's lawyers:

'Please confirm whether the Property has suffered from surface flooding in the past and whether any policy of insurance has been refused or the premiums for such insurance have been increased because of any flooding or risk of flooding at the property'.

We should also perform a flood search on the property to see whether the property has in fact suffered from surface water flooding in the past, and/or what the exact risk is of the property suffering from surface water flooding in the future.

The property is eligible for Flood Re which means that insurance cover for flooding is available at reasonable commercial rates. This cover is available because Proudfoot Drive will be used as a residential home and it was built before 2009.

Following our additional investigations we should report to both our client and the Co-operative Bank the issue of there being a significant risk of surface water flooding at the property, the results of the environmental search, the results of our additional enquiries, and the results of the flood search. Based on the results of these the client may decide not to proceed, and the lender will need to determine whether this affects its valuation of the property and therefore its security.

3(b)

The following requisitions on title should be raised on the Official Copy of the Register:

1. 'Please provide us with a copy of the transfer dated 25 March 2004 made between (1) District Council of Wear Valley and (2) Castle Residential Developments Limited" (the Transfer).'

A copy of the Transfer is required because it contains restrictive covenants which will be binding on the buyer and the buyer will require a copy of these.

A copy of the Transfer is also required because it easements and we need to investigate the extent of the easements granted and reserved.

A copy of the Transfer has been filed at the Land Registry and the seller's lawyers should provide this under the Law Society Conveyancing Protocol.

2. 'Please confirm that the person(s) who sold Proudfoot Drive to your client in October 2015 has not been made bankrupt. Further, please confirm that your clients will at their own cost on or before completion provide 'sale at an undervalue' indemnity insurance to our client.'

Entry number 2 of the Proprietorship Register states that Proudfoot Drive was purchased in October 2015 for £95,000. Our client is purchasing Proudfoot Drive for £280,000. Unless there is a very good reason for this difference in value it seems that the 2015 purchase was at an undervalue.

Under s339 of the Insolvency Act 1986 a sale at an undervalue can be set aside within 5 years of the sale date by the trustee in bankruptcy if the seller is made bankrupt. The above action is therefore required under CML 5.16.3 and 5.16.4.

3(c)

We will use Law Society Formula B to exchange contracts on the purchase of Proudfoot Drive because there is no onward chain.

Following exchange of contracts we will send Dobbs & Co a cheque for the deposit of £28,000, or we will hold this to their order until completion, and our client's part signed and dated contract.

Under the Law Society Conveyancing Protocol we undertake to post these on the same day of exchange to the sellers' lawyers by either first class post or Document Exchange. We should also include the draft transfer (TR1) for the sellers' lawyer's approval and the completion and undertakings form (TA13) for the sellers' lawyers to complete.

3(d)

I will perform the following pre-completion searches in relation to Proudfoot Drive:

A K16 bankruptcy search against our client Mary Locke. Mary is using mortgage finance to part fund her purchase and the lender, the Co-operative Bank, will not

want to lend to a bankrupt. The priority period is 15 working days in which to complete the mortgage.

I will also perform additional bankruptcy searches against Marc Greenhouse and Alison Greenhouse and the person who sold Proudfoot Drive to Mr and Mrs Greenhouse in August 2015, to see if any of these people have been made bankrupt. This is because it appears that the 2015 sale of Proudfoot Drive was made at an undervalue.

An official search of whole with priority at the Land Registry using form OS1. The applicant will be the Co-operative Bank as they are taking a charge over the property. The priority period is 30 working days in which to make the application to register the purchase and charge. The effect of the priority search is to show if there have been any changes to the title register since the official copy was produced (14 December 2016), it also 'freezes' the title so that third parties are prevented from registering anything during the priority period against the title. If the purchase and charge are not registered within the priority period then there is a risk that third parties may register interests which our client would take subject to.

Question 4(a)

I will contact my client immediately to see if there is any way that the £20,000 can be paid into my firm's client account today, for example by an electronic payment, from the client, the client's family or friends or a personal loan. This will allow completion to continue today. If so, I will need to carry out the necessary money laundering checks on the source of the money.

We will not complete the purchase today if our client has not placed us in sufficient cleared funds to complete the purchase. I will need to inform the Co-operative Bank of the delay and if the delay lasts for more than twenty-four hours they are likely to want the mortgage advance returned to them.

On the facts the sellers appear ready, willing and able to complete. Under the Standard Conditions of Sale (SCS) clause 6.1.2 completion must occur by 2pm today and if it does not then there will be delayed completion and our client will be in breach of contract. Under SCS 7.2.2 our client will be liable to pay the sellers' compensation at the daily rate and damages (although, any damages awarded will be reduced by the amount of compensation payable).

Under SCS 6.1.1 time is not of the essence. Therefore the sellers cannot rescind the contract for this delay. The sellers can make time of the essence by serving a notice to complete on us under clause under SCS 6.8. This will give our client 10 working days in which to complete the purchase. At the expiry of this period time becomes of the essence and the sellers can forfeit the deposit, sell the property to someone else and claim damages.

It is unlikely that the contract will be rescinded as if the client has sufficient funds in her bank account then the cheque will clear within the next few days and we will then be able to complete our client's purchase and corresponding sale.

4(b)

Following completion of the sale of Ringley Road, I will telephone the buyer's lawyers to inform them that the balance of the purchase money has been received and that completion has occurred. I will also contact my client's estate agent to confirm that completion has occurred and ask them to release the keys to the buyer.

I will post the following documents/items to the buyer's lawyers and under the Law Society Code for Completion by Post, I will send these out as soon as possible following completion and in any event by the end of the working day following completion:

1. Executed and dated TR1,
2. The Epitome of Title containing all of the documents listed in the Epitome,
3. A receipt for the chattels, and
4. Either a Good Leasehold Indemnity Policy or deduction of the freehold title.

I will send on the Britannia Building Society's charge with the vacating receipt duly endorsed as soon as I receive it from the lender.

4(c)

Stamp Duty Land Tax (SDLT) must be paid in the sum of £4,000 to Her Majesty's Revenue and Customs (HMRC) within 30 days of completion using form SDLT1.

If the duty is not paid, then we will not receive form SDLT5, which the Land Registry requires before it will accept an application to register our client's purchase and the Co-operative Bank's charge. Further, a failure to pay the requisite amount of duty on time will result in an automatic fine of £100 plus late interest penalties.

- 1 (a) This contract incorporates the Standard Conditions of Sale (Fifth Edition).
 (b) The terms used in this contract have the same meaning when used in the Conditions.
- 2 Subject to the terms of this contract and to the Standard Conditions of Sale, the seller is to transfer the property with either full title guarantee or limited title guarantee, as specified on the front page.
- 3 (a) The sale includes those contents which are indicated on the attached list as included in the sale and the buyer is to pay the contents price for them.
 (b) The sale excludes those fixtures which are at the property and are indicated on the attached list as excluded from the sale
- 4 The property is sold with vacant possession.
~~—(or)~~
~~4 The property is sold subject to the following leases or tenancies:~~
- 5 Conditions 6.1.2 and 6.1.3 shall take effect as if the time specified in them were 12 pm rather than 2.00 p.m.

6 Representations

Neither party can rely on any representation made by the other, unless made in writing by the other or his conveyancer, but this does not exclude liability for fraud or recklessness.

~~7 Occupier's consent~~

~~—Each occupier identified below agrees with the seller and the buyer, in consideration of their entering into this contract, that the occupier concurs in the sale of the property on the terms of this contract, undertakes to vacate the property on or before the completion date and releases the property and any included fixtures and contents from any right or interest that the occupier may have.~~

~~—Note: this condition does not apply to occupiers under leases or tenancies subject to which the property is sold.~~

Name(s) and signature(s) of the occupier(s) (if any):

Name

Signature

- 7 In the Transfer to the Buyer, the Buyer will covenant with the Seller:
 - 7.1 to observe and perform the covenants contained, mentioned or referred to in the Lease and to indemnify the Seller against any claims, losses, damages, costs or expenses resulting from any future breach or non-observance thereof, and
 - 7.2 that the covenants implied by section 4(1) (b) of the Law of Property (Miscellaneous Provisions) Act 1994 by virtue of the Seller transferring with full title guarantee shall be modified to excluded those relating to the repair and decoration of the property”.

Notices may be sent to:

Seller's conveyancer's name:

Leave blank

E-mail address:*

Buyer's conveyancer's name:

Leave blank

E-mail address:*

*Adding an e-mail address authorises service by e-mail see condition 1.3.3(b)