

**LEVEL 3 - UNIT 10 – CONVEYANCING
SUGGESTED ANSWERS - JANUARY 2018**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. The suggested answers 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 by the suggested answers.

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

Question 1(a) - (Client care letter)

This required the candidate to describe four matters which would need to be included within the client care letter to be sent to the client regarding her sale. These could have included any four from the following matters:

- confirmation of the firm's instructions to act on the sale;
- a summary of any preliminary advice given;
- an outline of the next steps to be taken;
- a copy of the firm's standard terms & conditions;
- details of the person(s) handling the matter;
- full details of the firm's costs and disbursements (and an explanation of why these could change);
- an outline of the firm's complaints procedures;
- a request for money on account;
- a request for the client to return a duplicate copy/receipt to indicate acceptance of the terms.

Question 1(b) - (Pre-contract package on sale)

This required the candidate to identify four documents to be included in the pre-contract package sent to the buyer's lawyers in relation to the client's sale, and to explain the purpose of each of those documents. These could have included any four of the following:

- Draft Contract in duplicate – for approval/amendment by the buyer's lawyers;
- Seller's Property Information Form (TA6) – this provides general information about the property (e.g. boundaries);
- Fixtures & Contents Form (TA10) – this confirms which items are included/excluded/any additional price;

- Official copy register entries and title plan – these show the up-to-date state of the register;
- Death Certificate of Graham Smitton – to prove the client is now the sole legal owner.

Question 1(c) - (Appointment of second trustee)

This required the candidate to explain that the client remains as the sole legal owner following her late husband's death. The Restriction in the proprietorship register indicates that the property was held on a beneficial tenancy in common. This means that there is no 'right of survivorship' and so the deceased husband's beneficial share passed under his Will. As a result, there are third parties (i.e. the children) who now also have beneficial shares. There is, therefore, a need to achieve overreaching, by ensuring that the sale is effected by not less than two trustees.

Question 1(d) - (Implied covenants for title on sale)

This required the candidate to list the following covenants for title, which will be implied under the Law of Property (Miscellaneous Provisions) Act 1994 on a sale with full title guarantee:

- that the Seller has the right to sell;
- that the seller will do everything they reasonably can to give title to the buyer (i.e. a covenant for further assurance);
- that the property is sold free from undisclosed charges or adverse interests.

Question 1(e) - (Holding of deposit on sale)

This required the candidate to explain that the Standard Conditions of Sale (Fifth Edition) apply. Therefore, the whole of the deposit paid over upon exchange of contracts on the client's sale will be held by the seller's lawyer as stakeholder (not as agent), because no part of it is needed for use as a deposit on any related purchase by the client (SCS 2.2.5 and 2.2.6).

Question 2(a) - (Evidence of clients' identity on purchase)

This required the candidate to explain that evidence of the clients' identity would be required in order to comply with:

- anti-money laundering requirements;
- the mortgage lender's requirements, as contained in the mortgage instructions;
- Land Registry requirements on the application for registration of the clients' purchase.

Examples of types of satisfactory evidence of identity could have included any two of the following:

- current signed passport;
- photo-card driving licence;
- birth certificate;
- recent utility bill.

Question 2(b) - (Specialist pre-contract searches on purchase)

This required the candidate to identify three types of specialist pre-contract search and explain why those searches would be carried out. Such searches could have included the following:

- Environmental Search – required because the official copy of the register shows previous ownership by a chemical company, which indicates the possibility of contamination of the land;
- Chancel Repair Liability search – required because the official copy of the register shows previous ownership by the Church of England, which indicates the possibility of chancel repair liability;
- Coal Mining search (CON29M) – required because the official copy of the register shows a reservation of mines and minerals, which indicates the possibility of coal mining having taken place in the area.

Question 2(c)(i) - (Effect of Caution in register)

This required the candidate to explain that the Caution gives notice of a claimed interest by a third party affecting the property. The cautioner will be notified by the Land Registry of any application for registration, and must then substantiate their claim. The application for registration cannot proceed until the Caution has been dealt with.

Question 2(c)(ii) - (Action required regarding Caution in register)

This required the candidate to explain that the seller's lawyers will need to check with their client as to what the Caution relates to, and to contact the cautioner. The seller's lawyers will need to either remove the Caution before exchange of contracts, or give an undertaking to remove it on completion.

Question 2(d)(i) - (Formula for exchange of contracts on purchase)

This required the candidate to explain that Law Society Formula C (or alternatively Formula B) would be used to exchange contracts on the clients' purchase. This is because the purchase is part of a 'chain' – the seller has a related transaction.

Question 2(d)(ii) - (Effect of exchange of contracts on purchase)

This required the candidate to identify three consequences for the clients of exchange of contracts on their purchase. These could have included any three of the following:

- the transaction becomes binding on both parties;
- the parties are no longer free to withdraw from (or vary the terms of) the contract;
- the deposit is paid to seller's lawyers;
- the completion date becomes fixed;
- the other contractual terms (e.g. as to fixtures & fittings) become fixed;
- the property is now at the buyer's risk and he will therefore need to insure the property as from the exchange of contracts.

Question 3(a) - (Errors on Form OS1)

This required the candidate to describe the following four alterations which would need to be made to the draft Form OS1:

- Panel 4: this should show the name of the current registered proprietor not the names of the buyers;
- Panel 7: the 'search from' date should be the date the official copies of the register were issued, not the edition date;
- Panel 8: the applicant should be the lender (Pan Euro Bank plc) rather than the buyers, so that the search result protects both;
- Panel 9: the reason for the application should be to protect a 'charge' not a 'purchase', so that the search result protects both the purchase and the new charge.

Question 3(b) - (SDLT on purchase)

This required the candidate to explain that the rate of Stamp Duty Land Tax (SDLT) on the clients' purchase will be 0% on the first £125,000 of the consideration and 2% on the balance of the consideration between £125,001 and £250,000. The total amount of SDLT payable will therefore be £1600.

The SDLT needs to be sent to HMRC within 30 days of completion, otherwise a penalty will be payable for late filing and it will not be possible to register the purchase at the Land Registry until the SDLT is paid.

Question 3(c)(i) - (Undertaking in respect of seller's existing mortgage)

This required the candidate to explain that the seller's lawyers would need to provide an undertaking to discharge the seller's mortgage on completion. This undertaking would normally be given in the replies to the Completion Information and Undertakings form (TA13) or in the replies to Requisitions on Title.

Question 3(c)(ii) - (Discharge of seller's existing mortgage)

This required the candidate to identify that the seller's lawyers would need to take the following steps in order to discharge the seller's mortgage on completion:

- send the redemption money to the lender;
- the correct figure to be sent being that shown in the redemption statement obtained from the lender;
- send Form DS1 to the buyers' lawyers on receipt from the lender;
- or (in the alternative) confirmation of e-discharge at the Land Registry.

Question 3(d)(i) - (Land Registry 'early completion' policy)

This required the candidate to identify that the relevant policy is the Land Registry 'early completion' policy, which will be applied if no evidence of the discharge of the seller's mortgage is available at the time of the application for registration of the clients' purchase.

Question 3(d)(ii) - (Effect of 'early completion' policy)

This required the candidate to explain that, if the 'early completion' policy is applied, the Land Registry will register the buyers as the new registered proprietors and the lender's new mortgage will also be registered. However, the seller's mortgage will be left in the register, until a further application is made accompanied by evidence of discharge. This may cause consequential difficulties, such as additional costs; priority issues; and queries from the new lender.