

**LEVEL 3 – UNIT 19 – RESIDENTIAL AND COMMERCIAL LEASEHOLD
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

Whether Simon's lease is legal will depend upon the issues of capability and formality.

S.1(1) Law of Property Act 1925 (LPA) recognises that a lease is capable of being legal.

I would advise Simon that, although a deed is usually required for the creation of a legal lease, the absence of any written document will not prevent the lease from being legal if the conditions of **s.54(2) LPA** (a 'parol lease') are satisfied.

As Simon's occupation is for a term of three years or less, and as he appears to have been entitled to occupy the flat immediately, the rent appears to be a reasonable market rent and there is no suggestion of a purchase price having been paid, his lease would appear to be a legal lease.

Question 2

- (a) I would explain that a fixed fee quote differs from an estimate in that the fixed fee quote cannot be changed, even if the matter proves to be more complex or time consuming than originally assessed. An estimate can be changed if further factors come to light.
- (b) I would advise my clients to have a survey, as the buyer has the onus of discovering any physical faults in the property, due to the principle of 'caveat emptor'. I would advise my clients not to rely upon the lender's valuation.

Midland Counties Building Society will carry out a valuation, in order to establish whether the property will be adequate security for the amount of the loan they are providing (£250,000). Robert and Simon have secured a

25% 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 Robert and Simon 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 Victorian property) and its unusual design (a converted water tower), in addition to their stated concerns about major issues such as the roof.

- (c) (i) Entry number 1 in the charges register is a restrictive covenant preventing the erection of a wall or fence over three feet in height on the southern boundary of the property.

The clients have indicated that they intend to erect a new fence along this boundary at the rear of the garden. I would check the height of the proposed fence, but if it exceeds the three feet restriction there would be an issue with the entry as they would be bound by it.

They should therefore consider either contacting the party with the benefit of the covenant to secure the discharge, or alteration of the covenant, or arrange insurance cover against the risk of being sued for the breach.

- (c) (ii) The entry described in the Local Land Charges search result reveals a tree preservation order. This order will prevent protected trees being felled without permission.

I would advise Robert and Simon that their proposals could result in the local authority taking action against them.

The first step I would take is to identify whether either of the two trees intended to be cut down are protected trees. If they are protected, I would either seek permission from the local authority to fell them, or consider suggesting to my clients that they vary their original plans to avoid the need to fell them.

- (d) The concern that a buyer would have on discovering that the title to the property they are proposing to purchase is good leasehold, would be that there would be no guarantee that the original landlord was in a position to grant a lease, and that the guarantee provides no evidence of freehold incumbrances on the leasehold title. This class of title may also be unacceptable to the mortgage lender.
- (e) The search from date quoted in box 7 is the edition date shown on the official copy entries. The date should be 12 December 2017, the date the official copy entries were issued. I would correct this date on the form. If I search from the issue date of 12 December 2017 I will receive a result updating the information in the official copy entries provided by the sellers' solicitor.

The applicants are shown as the purchasers in box 8. As I act for both the buyers and the lender in this transaction, I would correct this error by entering the name of the lender as the search applicant. The benefit of the search result will apply to both the buyers and the lender if I search in the name of the lender.

The candidate has certified that the applicants are purchasing the property. This should be changed to taking a registered charge. Although our clients are buying a leasehold property our reason for the application in box 9 should be consistent with the applicants stated in box 8.

- (f) (i) The TID (the title information document) will be issued by the Land Registry following completion of the registration of title.
- (ii) I will need to check document security, as there is a new mortgage on this property. I will check the Lenders' Handbook to see what documents the lender wishes to hold. This will be one of the lender's requirements that they will want their solicitor to confirm.

Question 3

- (a) I will ask Sada to bring in her passport and a recent utility bill 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 2017 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) 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 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 a client conflict.

In this case, there is no evidence, on our facts, to suggest a conflict of interest at present. As Nateast Bank's mortgage is being offered on standard terms there will be little scope for negotiation between the parties 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 lender and borrower in a residential transaction.

Therefore, considering **IB (3.7)**, as the mortgage is a standard mortgage of a property to be used as a private residence, as long as Nateast Bank

require a certificate of title in the approved form then, as long as I am satisfied that it is reasonable and in the clients' best interests to act, I would be able to act for both parties.

- (c) The form which will be used to apply for a paper copy of the register entries and title plan is form OC1.

The seller's solicitor will check the register at this stage of the transaction, to ensure that the seller has a good title to the property out of which he is intending to grant the lease.

- (d) The three methods of completion are: in person, by agent and by post.

Question 4

- (a) I would identify that the lease contains a clause, 16.1, which makes the tenant liable to repair the 'Property'.

I would explain that the definition in the lease of 'Property' refers specifically to Unit 6. The first issue is to identify whether the roof is part of Unit 6.

If it is not, the tenant has no obligation under this clause to repair.

If the roof is part of the Unit 6, the storm has caused damage and left the property in a state of disrepair. This clause would, therefore, appear to make the tenant responsible for the roof disrepair.

The lease does, however, contain an exception to the tenant's normal repairing obligation, in clause 16.2, if the damage to the unit was caused by an 'Insured Risk'. Storm is identified in clause 1 as one of the 'Insured Risks'.

This would exclude the tenant from repairing the unit in the case of storm damage

- (b) Simon could pursue a debt action against Nexis. This would, however, have limited utility if Nexis had little money to satisfy a court order.

As an alternative, Simon could consider the commercial rent arrears recovery procedure (CRAR). This allows a landlord to take control of a tenant's items and sell them to settle the debt. The suitability of this remedy would be dependent upon the value of the tenant's items at the property which could be converted into money upon a sale.

Finally, Simon could consider forfeiture. This could end the lease because of Nexis's breach. This remedy may be appropriate given Simon's wish to replace Nexis with a new tenant.

- (c) In order for **Part II Landlord and Tenant Act 1954 (LTA 1954)** to apply to a business occupying premises, a number of conditions require to be satisfied.

Firstly, the occupier must occupy the premises under the terms of a lease. Protection under **LTA 1954** is not afforded to an occupier who only has a licence.

Secondly, the premises must be occupied by the tenant. Occupation is a question of fact.

Thirdly, the premises must be occupied by the tenant for business purposes. The nature of business occupation is widely defined for the purpose of this condition.

The final requirement is that the business tenancy is not excluded from protection under **LTA 1954**. Various tenancies are excluded, even if they satisfy the prior three conditions, the most significant example of which is the tenancy arrangement that has been formally contracted out of **LTA 1954**.