

**LEVEL 3 - UNIT 4 – LAND LAW
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.

SECTION A

1. Candidates should give any three of:

- mines;
- minerals;
- buildings and parts of buildings;
- land of any tenure;
- corporeal hereditaments;
- incorporeal hereditaments.

2. One of the following three tests should be given, with an explanation:

- Degree of annexation (attachment); if the item is held down by more than its own weight, it is likely to be a fixture. A case to illustrate this is Holland v Hodgson [1872] concerning looms in a mill.
- Purpose of annexation (attachment). If the item is there for its own benefit, rather than to benefit the land, then, even if attached to the land, it is likely to be a fitting. A case to illustrate this would be Leigh v Taylor [1902].
- Permanence of annexation (attachment). If the item is likely to be attached to the land for a long time then it is more likely to be a fixture. A case to illustrate this would be Botham v TSB Bank plc [1996].

3. The two entries are:

- a Restriction, which puts a condition on a dealing with the land;
- a Notice, which warns of a third party interest such as an easement or covenant.

4. One of the following should be given:
 - the Property register, which contains a description of the property and rights benefiting it together with a reference to the filed plan, or reference to whether the estate is freehold or leasehold;
 - the Proprietorship register, which has the name of the owner and the class of title;
 - the Charges register, which has burdens affecting the property such as legal charges, easements and covenants.
5. The insurance principle refers to the guarantee by the land registry of the accuracy of the register and that, in the case of any error by the registry, compensation will be given or the register will be amended.
6. The 'four unities' refer to co-ownership as joint tenants. The unities are:
 - Unity of possession: each tenant entitled to possession of whole land;
 - Unity of interest: interest of each tenant must be the same;
 - Unity of time: interests must arise at same time;
 - Unity of title: each tenant must gain title from same document.
7. (a) The trustee holds the legal title.
(b) The beneficiary holds the equitable title.
8. (a) The three methods are:
 - at common law;
 - by lost modern grant;
 - under the Prescription Act 1832.(b) 'User as of right' means:
 - without force (so without using force to enter the servient land);
 - without secrecy (so entering the servient land openly);
 - without permission (without permission from the servient owner).
9. (a) (i) The benefit of a covenant is the right to enforce it.
(ii) The burden of a covenant means the obligation to keep it.
(b) The benefit of the covenant can be transferred through:
 - annexation of the benefit to the benefited land;
 - assignment of the benefit of the covenant to a successor;
 - the benefited land being part of a building scheme (otherwise known as a scheme of development).
10. One of the following grounds should be given:
 - covenant is obsolete, due to changes in the property or the neighbourhood;
 - the person entitled to covenant has expressly/impliedly consented to its release;

- the discharge of the covenant would not injure the person entitled to the benefit of the covenant;
 - the continued existence of the covenant prevents reasonable use of the land.
11. A clog on the equity is a clause in a mortgage deed preventing or postponing redemption by the borrower. It is invalid and therefore ineffective, as shown in the case of Fairclough v Swan Brewery [1912].

SECTION B

Scenario 1 Questions

1. The nature of Clause 2 was that of a freehold covenant, a binding obligation between parties in relation to land. It is a positive covenant because there is a requirement to do an action, especially to spend money.
2. Candidates should recognise that the issue in this question is of the burden of covenants passing to succeeding owners after the first covenantor. In the scenario the issue is whether the burden has passed to Bob. Usually the burden of a positive covenant does not pass, as shown in a case such as Austerberry v Oldham Corporation [1885] or Rhone v Stevens [1994]. There is an exception under the principle of Halsall v Brizell [1957]. Candidates should explain the principle and apply it to the scenario facts. Under the principle, if a successor to the original covenantor takes the benefit of facility (such as the use of roads in Halsall v Brizell [1957]), then he is bound by the related covenant. Applying the principle here, the covenant was made in a deed, and Bob is using the driveway, so he is bound by the covenant to contribute. Accordingly, Bob is not correct to say that he is not bound.
3. A deed is needed to transfer ownership under s.52 Law of Property Act 1925. The formalities for a deed are set out in s.1 Law of Property (Miscellaneous Provisions) Act 1989. The deed must be: in writing, show on its face the intention to be a deed, and be signed in front of a witness and delivered to the other party.
4. (a) The covenant could be ended by:
 - merger of 1 and 1A Willow Avenue, meaning that there is only one owner of the benefited and burdened land;
 - express release by Hassan, through a deed of discharge;
 - mutual agreement;
 - implied release.(b) Hassan's failure to take action may count as implied release by him, as he has the benefit of the covenant. This is illustrated in a case such as Shaw v Applegate [1977].

Scenario 2 Questions

1. The issue in this question is the different effects of purchase as joint tenants or tenants in common. Candidates should explain that the original purchase was as joint tenants who own the land as a whole. Joint tenants do not have separate shares in equity, so nothing can be left by will. The survivorship principle should be explained and applied: on the death of one of more of joint tenants, the survivor becomes owner of the whole. Therefore, after the death of Sam and Richard, Terry is the owner of the whole property. Applying this principle, Valerie does not have a claim on the house.
2. Candidates should identify the possibility that Barbara has an interest under a constructive trust in the house held by the legal owner, Terry. They should explain the elements, which are:

- a common intention/agreement for the non-legal owner (Barbara in this case) to have a share;
- where there is not an express common intention, a contribution by the non-legal owner that is sufficient enough to be recognised by the court as showing an inferred common intention. In this case, the contribution is generally required to be financial, as shown in cases such as Lloyds Bank v Rosset [1991]. Just payment towards household expenses is not sufficient, as shown in a case such as Gissing v Gissing [1970].

Candidates should then apply these principles to the facts of the scenario. Terry's invitation, his promise of a home and particularly the reference to a possible shared ownership in the future, could well show his intention. Barbara relied on that but, even so, her conduct of cleaning and cooking is insufficient to give her an interest, following Gissing v Gissing [1970]. However, later payments towards the mortgage would, following Lloyds Bank v Rosset [1991], be sufficient to give her an interest under a constructive trust.

3. Candidates should identify the factors derived from cases which the court would use to value a share under a constructive trust, and should then apply those factors to the scenario. Relevant cases are Stack v Dowden [2007] and Jones v Kernott [2011]. These factors include the intention of parties and fairness in the circumstances. In the scenario, it could be argued that Terry's intention was likely to allow Barbara to have a share and, as she relied on that, it would be fair for her to have an interest.

The factors also include:

- the nature of relationship: they appear to be just friends;
- the arrangement of their finances: shared outgoings but towards the end Barbara paid towards the mortgage;
- fairness: Barbara relied on the promise.

Barbara was not part of the original purchase by Richard, Sam and Terry, so any discussions which they had at the time of purchase are not relevant to a valuation of Barbara's share.

4. (a) Barbara can make an application to the court under s.14 Trusts of Land and Appointment of Trustees Act (TLATA) 1996.
(b) s.14 allows any beneficiary to make the application; so as Barbara is a beneficiary, she can apply.
5. Under s.11 TLATA 1996 a trustee must consult the beneficiary when exercising any trustee function. Sale is a trustee function. Barbara is a beneficiary, so Terry must consult her before selling the house.

Scenario 3 Questions

1. A capital repayment mortgage is a loan of capital for a fixed period. Regular payments are made of both capital and interest together. At the end of the fixed period all the capital should be paid off.
2. The question emphasises a binding interest under the Land Registration Act 2002, so candidates should recognise that the focus of the question

relates to overriding interests. These are not shown on the register but are binding on lender or buyer. The Bank had already seen that no third party interests were noted on Fatima's land register.

The relevant overriding interest would be under Schedule 3 paragraph 2 of the Land Registration Act 2002 – the interest of a person in actual occupation. A contribution to the purchase, at the time of purchase, of a property held in the name of another creates an interest under a resulting trust. This is shown in a case such as Bull v Bull [1955]. Applying this to the scenario, Soraya's contribution gave her a beneficial interest in the house. However, she was not in occupation at the time of the mortgage loan. Her occupation only came two years later. Therefore, there is no overriding interest binding on the Bank.

3. If Soraya had given the money as a gift, there would be no resulting trust. She would not have an interest in the house. There would not be an overriding interest. The answer to Question 3 would be no different to that for Question 2, though for different reasons.
4. The tenant would not need to take any step to protect the tenancy. Under the Land Registration Act 2002 a lease for less than 7 years cannot be registered with its own title number. Instead, it is protected as an overriding interest under Schedule 3 paragraph 1.
5. (a) Candidates should recognise that this question relates to when the power of sale arises and when it is exercisable. Under s.101 Law of Property Act 1925, the power of sale arises when the mortgage is made by deed and the redemption date has passed. For the purposes of this question, it is assumed that the mortgage was made by deed. The alteration work was completed two years after the loan, so again it is assumed that the redemption date (usually six months after the date of the loan) has passed.

Under s.103 Law of Property Act 1925, there are three circumstances when the power of sale is exercisable. Candidates should select and apply the most relevant of the three circumstances. This is that interest payments are more than 2 months in arrears. As Fatima's interest payments are late, this would enable the Bank to use its right of sale if the interest payments are more than two months late.

(b) The Bank has the remedies of:

- suing Fatima in debt: this would not be chosen as she has no income;
- appointing a receiver: this would not be chosen as this is a domestic not a commercial property;
- using foreclosure: this remedy transfers ownership of the house from Fatima to the Bank, but it would not be chosen as it involves long and expensive court proceedings.