

**LEVEL 6 - UNIT 17 - 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 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 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's performance in the examination.

**Question 1(a)**

Under the Money Laundering Regulations 2017 (SI 2017/692) (MLR) lawyers involved in property transactions must establish the identity of their clients. [Credit was also given for referring to the Money Laundering Regulations 2007].

Money laundering is where the proceeds of criminal activity are converted into legitimate money; for example, by purchasing a property with illegitimate money and then selling that property so that the proceeds of sale now appear legitimate. It is often necessary to identify the source of any funds.

Under the MLR, for each client we require both proof of their physical identity, for example by a valid passport, and of their address, for example by a utility bill no more than three months old.

It is important to confirm the client's identity to confirm that the client has a right to sell the property as property fraud is a known risk in property transactions.

It is important for the lawyer to correctly confirm the client's identity so the lawyer is not at risk of professional misconduct or of committing an offence such as 'tipping off' or failing to identify and report suspicious transactions.

In relation to the purchase of Nightingale Road, we are also acting for a lender, the Halifax plc, and under the UK Finance Mortgage Lenders' Handbook (UFMLH) 3.1.2 and 3.1.5 we must comply with the Money Laundering Regulations and establish the identity of our clients.

## **1(b)**

To deduce title to Long Lane I would provide the buyer's lawyers with the following documentation:

1. An Official Copy of the Register for Long Lane and an Official Copy of the Title Plan for Long Lane. The title is registered and the Official Copy of the Register proves the ownership of registered land and the Official Copy of the Title Plan shows the extent of the land in the registered title.
2. A copy of the lease of Long Lane (including colour plans) dated 2 May 1994 and made between (1) WM Investments (Liverpool) Limited (2) Jeremy Clarke and Cynthia Clarke. The lease creates the legal interest in Long Lane and also contains the tenant's covenants which bind the lessee.
3. An Official Copy of the Register and Title Plan for the freehold title as under the Law Society Conveyancing Protocol (the Protocol) the superior titles must be provided. The Official Copies of the leasehold title show that the landlord's title is registered and the Lease will be shown in the Charges Register of that title.
4. An Official Copy of the death certificate for Mrs Cynthia Clarke. Mr and Mrs Clarke owned both the legal and beneficial estates in Long Lane in a Joint Tenancy. On Mrs Clarke's death the property automatically passed to Mr Clarke by the operation of survivorship. An Official Copy of the Death certificate for Mrs Clarke will be required as evidence of Mrs Clarke death by the Land Registry which will permit Mr Clarke to sell as a sole owner. There is no Form A restriction in the Proprietorship Register.

## **(c)**

As both parties are following the Protocol in relation to Long Lane the buyer's lawyers will expect Kempstons to complete and submit the following pre-contract replies to enquiries:

1. The Fittings and Contents Form (TA10) which details the fittings being included in the sale price and any fixtures being removed from the property prior to completion.
2. The Property Information Form (TA6) which covers standard questions about the property such as ownership of boundaries, utilities serving the property, etc.
3. The Leasehold Information Form (TA7) which covers specific information relating to leasehold properties such as the amount of service charge paid, details about the insurance arrangements for the building, receipt for the last payment of ground rent, etc.
4. LPE1 and LPE2 (or equivalent if these forms are not used) being the replies to the enquiries of the landlord/management company which have been completed by the lessor and/or the lessor's managing agents providing specific information on the estate - such as the past three years of service charge accounts, details of insurance, whether there are any arrears of service charge payable by the current lessee, etc.

## **1(d)**

Under clause 6.16 of the lease of Long Lane (the Lease) the consent of the lessor is required before any assignment of the Lease. This is a qualified covenant and accordingly Section 19 of the Landlord and Tenant Act 1927 converts this into a fully qualified covenant so that the lessor's consent must not be unreasonably withheld or delayed.

Under the Landlord and Tenant Act 1988 the lessor must give or refuse consent (stating reasons for any refusal) within a reasonable time of receiving an application from the lessee for permission to assign the Lease.

This consent must therefore be obtained prior to the assignment of the Lease (i.e. completion) otherwise it will be an unlawful assignment which could render the Lease liable for forfeiture and also our client not being released from the lessee's covenants in the Lease until a lawful assignment occurs.

Under this clause the seller is liable to pay the lessor's reasonable fees in deciding whether to grant consent and for drafting any necessary documentation.

Under clause 8.3.2 of the Standard Conditions of Sale (5<sup>th</sup> Edition) (SCS) the seller must apply for consent at the seller's own cost and so will be liable for this fee.

Assuming there has been no breach by either the seller or the buyer under clause 8.3.3 of the SCS, if consent to assign the Lease has not been received by three working days before the completion date, then either party may rescind the contract by serving notice on the other party.

This would not be acceptable to either the seller or the buyer. The seller is in a chain transaction and this could potentially result in Mr Clarke being in breach of contract on his purchase as he will not have sufficient funds to complete the purchase. The buyer is likely to have arranged removals and will be liable for the wasted removal fees and also would lose any fees, costs and disbursements payable in relation to the purchase of Long Lane such as professional fees, mortgage fees, search fees, etc.

The safest course of action is to ensure that the licence to assign is obtained before contracts are exchanged on Long Lane.

## **Question 2(a)**

The lease of Long Lane (the Lease) is dated 1994 and as such is an 'old lease' for the purposes of the Landlord and Tenant (Covenants) act 1995.

The relationship between the lessor and lessee is governed by privity of contract and privity of estate. Thus when our client, an original party to the Lease, assigns the Lease to Sarah Platt, he will remain liable to the Landlord for any breaches of lessees' covenants until the lease term ends. For example, should Miss Platt breach any of the lessee's covenants the lessor can decide to pursue Mr Clarke.

Our client will therefore on completion require Miss Platt to provide an indemnity in the transfer (the assignment) indemnifying our client for any breaches of the lessee's covenants under the Lease. Although Standard Condition 4.6.4 does provide for the buyer to provide an indemnity to the seller, it is good practice to

insert a special condition into the contract for sale to deal with this matter expressly.

As this is a registered 'old' lease such an indemnity covenant from the buyer to the seller is implied by Schedule 12, paragraph 20 of the Land Registration Act 2002.

## **2(b)**

I would raise the following issues:

1. I would ask the seller's lawyers to provide a new Official Copy of the Register and Title Plan for Nightingale Road. This is because the Official Copy of the Register and Title Plan for Nightingale Road are dated 21 April 2017 and so are currently over 6 months old. Under paragraph 24 (2) of the Law Society Conveyancing Protocol these should be less than 6 months old.
2. Entry number 2 of the Property Register for Nightingale Road states that the mines and minerals and the power to extract these has been excepted. I would ask the seller's lawyers whether any past or current mining has occurred within the vicinity of Nightingale Road, whether the property has suffered from subsidence, and/or whether any compensation has been paid.

I would report to Mr Clarke that the mines and minerals to Nightingale Road have been accepted and mining may have occurred at or near the property in the past and there is a possibility that mining at the property could commence in the future.

I would also advise Mr Clarke to carry out a full structural survey to establish if the property has suffered subsidence from any past or current mining works and not to rely on a Homebuyer Report.

I would ask the seller's lawyers to provide a copy of the lease referred to in entry number 1 of the Charges Register. Mr Clarke is buying the freehold to Nightingale Road and expects vacant possession on completion (as will Halifax plc as the mortgagee) and a leasehold interest, depending in its nature, could prevent this. It is likely that the leasehold interest in the property was 'enfranchised' in the past. If this interest does adversely affect this then we need to ensure that the seller's lawyers ensure that the lease is surrendered on or before completion; or on completion both the freehold and leasehold titles are transferred to our client.

3. I would also ask the seller's lawyers to send us with a copy of the TA10 form as some contents are included in the purchase price, such as carpets, curtains and white goods.

## 2(c)

We are also acting for Mr Clarke's lender, the Halifax plc and under the UFMLH 5.4.1 we must carry out all usual and necessary searches against a property.

I will perform the following pre-contract searches for Nightingale Road:

1. A chancel check/search to establish whether the property is subject to a chancel repair liability. There has not been a sale for value of Nightingale Road since October 2013, as the last sale was in August 2011, and so there is a possibility that an unregistered chancel repair liability may still be registered against Nightingale Road prior to completion. The title plan makes reference to Church Street and therefore it would be prudent to perform the chancel check/search.
2. An energy/infrastructure report to determine whether the property will be affected by 'high-speed 2'. This is because the property is located in Bolton and may be on or near the proposed route for 'High-speed 2'.
3. A flood search as it is prudent to perform flood searches for all properties.
4. An environmental search as it prudent to perform an environmental search for all properties to establish the risk of contamination being present at the property.
5. A water and drainage search, CON29DW, should be performed to establish whether the property is connected to mains water, sewage and drainage. Further, as Mr Clarke intends to build a small extension to the rear of the property the CON29DW should show the location of any pipes/drains and it will be useful to see if these affect the proposed build.
6. A coal mining search, CON29M, should be performed because the property is situated in Bolton, a coal mining area, and also because under entry number 2 of the Property Register the mines and minerals are excepted and the property is clearly in the vicinity of past or current mining activities. This will establish whether any coal mining has been carried in the past or currently at or near the property, whether the property has suffered damage as a result of mining activities and whether any compensation has been paid in relation to any damage caused by mining activities.
7. I would perform an index map search to investigate the intervening leasehold interest referred to in entry number 1 of the Charges Register to see whether the lease or any other matters have been registered.

### **Question 3(a)**

Mr Clarke intends to add a small extension to the rear of the property.

Section 55 of the Town and Country Planning Act 1990 states that planning permission is required for the development of land. Building an extension is a building operation which is a development of land and therefore Mr Clarke will require planning permission from the Local Authority to build the extension.

The General Permitted Development Order (GPDO) automatically grants planning consent for small extensions. The replies to question 3.9 (j) of the CON29 Replies to the Enquiries of the Local Authority show that an article 4 direction restricting permitted development has not been passed. Therefore the GPDO will apply and grants automatic planning permission for Mr Clarke's proposed extension.

Mr Clarke will also require building regulations consent for the construction of the extension, to ensure that its construction complies with health and safety requirements.

Mr Clarke is part funding the purchase of Nightingale Road through a mortgage with Halifax plc. If the lender, is not aware of the proposed extension then we need to ensure that the Halifax is informed of the proposed rear extension and gives consent to it. We need Mr Clarke's consent to inform the lender of his proposals and, if he refuses, then we must stop acting for the lender.

### **(b)**

Reply 3.9 (m) of the CON29 Replies to the Enquires of the Local Authority shows that there is a tree preservation order (TPO) on a tree or trees situated at Nightingale Road. I would advise Mr Clarke that it is an offence to cut down or trim trees covered by a TPO without the Local Authority's consent.

The protected tree/trees may be in the way of Mr Clarke's proposed rear extension. I will therefore need to establish the location of the tree/trees protected by the TPO. I would contact the seller's lawyers and ask them to send me a copy of the TPO with a map showing the location of the tree/trees protected by the TPO which I would then forward to my client.

### **(c)**

Now that contracts have been exchanged on Nightingale Road the contract has become binding.

Under the Standard Conditions of Sale (5<sup>th</sup> edition) (SCS) there is no right for a purchaser to withdraw from the contract where the property is damaged or destroyed between exchange and completion.

If Mr Clarke does not complete on completion then he will therefore be in breach of contract. As soon as completion is delayed Mr Clarke must pay compensation to the seller, Mr Greer, under SCS 7.2.1. The seller will also be able to sue Mr Clarke for damages for any losses suffered, which could be substantial as the seller is in a chain (any damages will be reduced by any compensation paid).

Once completion is delayed as the seller being ready willing and able to complete he can serve a notice to complete on Mr Clarke, under SCS 6.8, which will give Mr Clarke 10 working days, following the day of service, in which to complete failing which the seller can forfeit the deposit of £13,500.00, paid on the

exchange of contracts, rescind the contract and sue for damages. He can also resell the property.

Mr Clarke should have insured Nightingale Road from the time of exchange and, if he did so, should be able to claim for the damage to Nightingale Road on his insurance policy. Further, this would have been a requirement of the Halifax, the lender.

Mr Clarke may have a claim in damages against the seller, but only where the damage was caused by the seller's negligence (i.e. breach of trust). I should make enquires about how the damage was caused to Nightingale Road so I can fully advise Mr Clarke in relation to this. However, the preferable course of action would be for Mr Clarke to claim on his policy of insurance.

We are under a duty to report the fire damage to Halifax plc and we require Mr Clarke's consent to do so. If Mr Clarke refuses consent then we must stop acting for the lender, Halifax plc.

In conclusion, Mr Clarke must complete the purchase of Nightingale Road.

#### **Question 4(a)**

During completion of the sale of Long Lane I will undertake with the buyer's lawyer to redeem the charge to Mortgage Express.

Following completion of the sale of Long Lane I will provide the following undertakings to the buyer's lawyers:

1. As soon as possible after completion (but no later than the same day of completion) to:
  - contact the buyer's lawyer to confirm that completion of Long Lane has occurred and
  - notify the seller's estate agent that completion has occurred and that the keys can be made available to the buyer.
2. As soon as possible after completion (but no later than the end of the working day following completion) to send written confirmation and the necessary documents (e.g. the TR1) to the buyer's lawyer, at the buyer's lawyer's own risk, by first class post or document exchange.
3. On receipt of the DS1 executed by Mortgage Express to forward the DS1 to the buyers' lawyers by first class post document exchange.

#### **(b)**

Following completion of the sale of Long Lane I will send the following documents to the buyer's lawyers:

1. Signed TR1;
2. Official Copy of the Death Certificate of Cynthia Clarke;
3. Original Lease;
4. The DS1 executed by Mortgage Express which is required to discharge their charge;
5. The licence to assign executed by the lessor (i.e. the lessor's consent to the assignment);
6. Stock transfer form and share certificate to ensure that the buyers become members of the management company on completion;

7. Receipt for the most recent payment of ground rent; and
8. A deed of covenant between the landlord and assignee.

#### **4(c)**

Following completion of the purchase of Nightingale Road I would make the following applications to the Land Registry:

1. Discharge of the existing charge to RBS plc;
2. Register the Transfer of Nightingale Road to Mr Clarke and
3. Register the charge to Halifax plc.

These applications must be made within the 30 working day priority period provided by the OS1 (Official Search of Whole with Priority), otherwise there is a risk that adverse third party interests could gain priority over the interests

I would include the following documents with my application to the Land Registry:

1. Form AP1 – Application to Change the Register;
2. A certified copy of the executed TR1;
3. A certified copy of the executed charge - Halifax plc;
4. Payment of the fee of £95.00 (or £195.00 if paper based application made); and
5. SDLT 5 as evidence that the SDLT has been paid on our client's purchase.