

**LEVEL 3 - UNIT 4 – LAND LAW  
SUGGESTED ANSWERS – JUNE 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 June 2017 examinations. 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.

**SECTION A**

1. 'Real property' is freehold land, i.e. fee simple absolute in possession. Candidates can be credited for saying that it can be referred to as 'realty', or that the owner is entitled to bring an 'action in rem' and the dispossessor is subject to a 'real action' to reclaim it.
2. (a) Candidates should give one of the following:
  - fee simple absolute in possession where 'fee simple' means that it can be inherited by anyone; 'absolute' means that it is not liable to be cut short; 'in possession' means that it starts immediately or that the holder is entitled to receipt of the rent and profit of the land;
  - or
  - term of years absolute (a leasehold) which can be for a fixed period or periodic and may start immediately or up to 21 years in the future.
- (b) Candidates can explain any one of:
  - legal easements which are granted in fee simple or for a term of years absolute, and so are equivalent to a legal estate;
  - profits, also granted in fee simple or for a term of years absolute, and so are equivalent to a legal estate;
  - a legal rentcharge which is a right to a periodic payment of money from land;
  - a charge by way of legal mortgage which is a loan created by deed and charged against land;
  - right of re-entry in leases and rentcharges which is a right to repossess the land for non-payment.

3. (a) 1990  
(b) 1998
4. (a) Candidates should give any two of the following:
  - a lease for over 7 years;
  - a lease with more than 7 years left to run;
  - a lease granted under the 'right to buy' legislation in the Housing Act 1985;
  - a lease not starting within 3 months from the date of grant.(b) In 'absolute leasehold' the landlord's title is either registered or 'deduced' i.e. proved to the land registrar, so that the registrar is satisfied with the landlord's ability to grant the lease. Good leasehold title is granted where the landlord's title is not deduced to the land registrar so that there is doubt over the ability to grant the lease.
5. A resulting trust arises when there is a contribution to the purchase price, at the time of purchase, to a property held in the name of the legal owner. That legal owner then holds the property on trust for the contributor as a beneficiary under a resulting trust. Candidates can be credited with referring to the case of Bull v Bull [1955] provided an outline of the facts is given.
6. (a) Overreaching is necessary when there is a sale of trust land where the legal title is held by trustees on behalf of beneficiaries.  
(b) Overreaching is carried out by the payment of the purchase money to at least two trustees. The result is that the buyers take free of trust the beneficial interests.
7. (a) Candidates should give any two of:
  - By express agreement;
  - Statute;
  - Implied agreement, i.e. intentional abandonment;
  - Release by the dominant owner;
  - By unity of ownership of the two pieces of land.(b) An express easement by reservation would be created on the sale or transfer of part of land. The seller or transferor would by deed reserve an easement over the part sold/transferred in favour of the part retained.
8. A 'profit-à-prendre' is a legal right to enter another's land to take something from it, such as timber or to use it for grazing.
9. The body which has this power is the Lands Chamber of the Upper Tribunal. It has the power in the following circumstances, **one** of which should be explained:
  - the covenant is obsolete due to changes in the character of the property or the neighbourhood;
  - the continued existence of the covenant would prevent reasonable use of the land;
  - the person entitled to the benefit of the covenant has expressly or impliedly consented to its discharge;

- the discharge or modification will not injure the person entitled to the covenant.
10. Under a capital repayment mortgage there are regular instalment payments of both capital and interest made over a fixed period. At the end of the period the whole loan is paid off.

## SECTION B

### Scenario 1 Questions

1. (a) This question requires candidates to identify the Agreement as a freehold covenant and which is a form of contract. They should then recognise that Kemal is the original covenantee and Simon is the original covenantor. Under the principle of 'privity of contract' the two are liable to each other for any breaches of covenant. This means that Kemal could have sued Simon for breaking the terms of the covenant.  
  
(b) Kemal could either have sought an injunction (a court order for Simon to stop his activities) or damages (monetary compensation) if he has actually suffered loss.
2. (a) In this question candidates should recognise the issue of whether the burden of a covenant passes to a future owner of the burdened land. They should explain that the burden only passes in equity. For this to occur the conditions, as established first by the case of Tulk v Moxhay (1848):
  - The covenant must be negative (i.e. restrictive);
  - It must show an intention for the burden to pass, to bind future owners;
  - There are two pieces of land, benefited and burdened;
  - The covenant must benefit ('touch and concern') the covenantee's land;
  - The future owner must have notice of the covenant. This is by registration where the title is registered;  
(b) These conditions should be applied to the Agreement and candidates should conclude:
  - The covenant not to use for business is negative;
  - The intention for the burden to pass is assumed under s.79 Law of Property Act 1925;
  - There are two pieces of land: Tina's property and the rest of the estate;
  - There was a benefit to Kemal's land and the rest of the estate as shown in the wording of the covenant;
  - Assuming the covenant was registered against Tina's registered title, then the conditions were present and she is bound by the Agreement.
3. This question requires candidates to explain whether Neville has the benefit of the covenant in order to enforce it against Tina. As the burdened land has changed hands, the benefit must also pass in equity for enforcement. There are various methods in which this can happen, but the most obvious way here is through a 'scheme of development'. This is where land is divided into plots and sold subject to a set of conditions, designed to be for the mutual benefit of all plot owners. Candidates could refer to the case of Elliston v Reacher (1908) which gave a list of criteria for this type of scheme. The conclusion is that Neville does have the right to enforce the Agreement.
4. (a) Here candidates should identify the issue of 'fixtures' and define them as items which have become so attached to land that they are part of it. They must pass with it on sale to the new owner who could bring

legal action if they are wrongfully removed. The answer could make a very brief reference to the fact that where there is doubt on whether an item is a fixture or a fitting the courts have developed tests such as the degree or purpose of annexation (i.e. fixing) to land. A case can be given to illustrate this, such as Holland v Hodgson (1872). Candidates should apply the principles to the items in the question: the table and chairs are certainly fittings so can be taken by Neville. The fireplace, as it is built-in, would be a fixture and must be left.

- (b) Trouble can be avoided by Neville obtaining the consent of the buyer, before sale, to the removal of the fireplace. This can either be done by express consent of the buyer or, as is usual, by Neville supplying a Fixtures and Fittings Form before the contract is signed to show what will be left and what will be taken.

## Scenario 2 Questions

1. This question requires candidates to understand the principles of joint tenancy and the issue of severance of joint tenancy in equity. Annabel and Mary bought as 'legal and beneficial joint tenants' so they were jointly entitled to the whole property. There are no separate shares. Under the principle of survivorship, which applies to joint tenants, when the first joint tenant dies, the remaining joint tenant(s), takes the whole property. Nothing can be left by will, unless severance of the equitable joint tenancy has occurred to convert the joint tenancy into a tenancy in common with separate shares. Severance must be carried out in lifetime and cannot be done by will. Candidates should then explain that one of the ways severance can take place is by written notice, under s.36 Law of Property 1925, served on the other joint tenant(s) and showing an immediate intention to sever.
2. These principles should then be applied to the scenario. The letter to Annabel would not count as a written notice under s.36 as it was not served before Mary's death. So Mary did not have a separate share to leave to Oliver and so he has no interest in the house under her will.
3. If Oliver could claim a share in the house under the will, he would be a beneficiary in a trust under the legal title once held by Mary and Annabel. The appropriate way to protect his interest would be by registering a restriction. This would indicate a third party interest under a trust and that payment of money on a sale or mortgage is needed to two trustees.
4. Candidates should recognise the possibility of a constructive trust. Carl is not a legal owner and did not contribute to the initial purchase so does not have a resulting trust. The elements of a constructive trust should be explained as:
  - a common intention (express or implied) for the non-legal owner to have a share;
  - sufficient contribution by the non-legal owner.

The contribution should be of a type which the court will recognise. Following cases such as Lloyds Bank v Rosset (1991) and Gissing v Gissing (1970) this should be financial such as direct payments towards the mortgage. Just carrying out household chores is insufficient.

Applying these principles candidates should discuss whether the invitation by Annabel to share her home, on which Carl apparently relied and acted to his detriment by leaving his rented flat, was enough to show common intention and whether his contribution was sufficient. The gardening would not be but payment of money could be, if used towards the mortgage.

5. (a) The house would have Absolute Freehold title. Candidates should explain that this is the highest form of title, equivalent to fee simple absolute in possession and subject only to entries on the register and overriding interests.  
  
(b) It is possible that Carl had an overriding interest under Schedule 3 (paragraph 2) of the Land Registration Act 2002. This is the right of a person with an interest in the land and in actual occupation. This overriding interest is not on the register but is binding on a buyer or mortgage lender.
6. No entry is necessary. It is not a form of lease capable of registration by itself. As a short lease it is protected as an overriding interest under the Land Registration Act 2002.

### Scenario 3 Questions

In this Scenario candidates need to be familiar with the characteristics of easements and apply them to the Scenario facts.

1. The legal right which Harry is claiming is an easement. Its essential characteristics were set out by the court in the case of Re Ellenborough Park (1956) and are:
  - there must be two pieces of land, dominant (with the benefit) and servient (with the burden);
  - the two pieces must be separately owned;
  - the easement must benefit the dominant land, and not be a personal benefit;
  - the easement must be capable of grant, so it must not be vague, not a claim for total possession of the servient land and must not impose expense on the servient owner.
2. (a) The view would not be capable of being an easement as it is too vague. This was ruled in Re Aldred's case (1610) so the essential characteristics are not present.  
  
(b) While there are two pieces of land, in separate ownership, the use of the path seems to be just of personal benefit to Harry, not to his land. The Scenario facts do say 'it is a more convenient route to him'. So, as in the case of Hill v Tupper (1863), it is unlikely that there would be an easement.  
  
(c) Candidates should consider here whether there is a claim for total possession. In Copeland v Greenhalf (1952) there was no easement as the claim was too wide. Here, whether Harry's claim can be defeated on that basis, depends on how much of the field he is using but it only seems to be a small corner. On the other hand, while it is possible to have an easement of parking, use of the field may again be just a personal benefit to Harry.

3. (a) This question requires candidates to recognise the issue of 'trespass' and define it as 'intruding into another's land without permission'. The foundations of the fence have trespassed into Harry's land. The supports on the top of the fence overhanging his garden were intruding into his airspace. As shown in the case of Bernstein v Skyviews Ltd (1978) a landowner owns the airspace above his land to the height required for reasonable enjoyment.
- (b) Harry's remedies could be an injunction (a court order to remove the trespassing parts) or damages, if actual damage has occurred.
4. (a) The legal right from Ivan would be an express easement.
- (b) The express easement would be created with the formalities of a deed, for a term equivalent to a legal estate, signed by Ivan.
- (c) As both Ivan and Harry have registered titles, the easement should be protected by registration against the titles of both properties. The benefit of the easement will be shown in the property section of Harry's land registry entries. The burden will be shown in the charges register of Ivan's land registry entries.