

**LEVEL 6 - UNIT 17 – CONVEYANCING
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 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 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.

Question 1(a)

As we are following the Law Society Conveyancing Protocol (the Protocol), and according to paragraph 24 of the Protocol, we will to send the buyer's lawyers the following:

1. Draft contract in duplicate,
2. Official Copy of the Register,
3. Official Copy of the Title Plan,
4. Marriage certificate for April Reeve (nee Browne) as there has been a change of name and evidence is required to show she is the same person,
5. The Fittings and Contents Form (TA10),
6. The Property Information Form (TA6),
7. The completed Overriding Interest Questionnaire,
8. The Energy Performance Certificate (EPC) if not already provided to the buyers by the estate agent, and
9. The Conveyance dated 1 May 1882 made between (1) Lloyd Jennings and (2) Winston Shaw as it contains a provision as to boundary structures and a copy is filed at the Land Registry.

(b)

Entry number 3 of the Proprietorship Register for Gillibrand shows that when April and Daniel Reeve purchased Gillibrand they gave a personal indemnity covenant to the people who sold Gillibrand to them in respect of the restrictive covenants referred to in the Charges Register. It is likely that the sellers to April and Daniel also gave a personal indemnity covenant to their sellers when they purchased Gillibrand. This created a chain of personal indemnity covenants.

Once April and Daniel sell Gillibrand to Simon and Zara Ingram, and if the Ingram's breach the restrictive covenants, then April and Daniel could be sued on

the basis of the indemnity covenant that they gave. Accordingly, in the contract April and Daniel will require Simon and Zara Ingram to provide them with a personal indemnity covenant in the transfer. Standard condition 4.6.4 of the Standard Conditions of Sale (5th edition) (SC) does this, as where a seller remains liable for an obligation affecting Gillibrand following completion then the buyer must provide the seller with an indemnity in the transfer.

Notwithstanding SC 4.6.4, it is good practice to add a special condition to the contract requiring an indemnity so that it is clear to all parties that such an indemnity must be included in the transfer.

(c)

Entry number 4 of the Proprietorship Register for Gillibrand shows that Mr and Mrs Reeve owned Gillibrand as tenants in common. When Mr Reeve died his beneficial share passed by will or intestacy to his estate. Mrs Reeve's beneficial share is still owned by her.

The most efficient approach would be for Mrs Reeve to appoint a second trustee in the transfer to overreach Mr Reeve's beneficial interest in Gillibrand by giving a good receipt for the purchase monies from at least two people (Mrs Reeve and the trustee).

Mr Reeves's beneficial interest then moves from the property to the proceeds of sale.

The buyer's lawyers will require us to provide them with a certified copy of Mr Reeves's death certificate as proof of death will be needed by the Land Registry to permit overreaching to occur.

There should be no delay to the transaction as contracts have not yet been exchanged. The death certificate will be available within three days of death, the contract and transfer can easily be amended, the declaration of trust can be added to the transfer (which will be executed by Mrs Reeve and the trustee).

Question 2(a)

I would raise the following requisitions on title:

1. Please provide us with a copy of the Transfer referred to in Entry number 2 of the Charges Register dated 16 June 2012 made between (1) Manchester Diocesan Board of Finance and (2) Heathlea Construction Limited

This transfer contains restrictive covenants and we need to examine these as the leasehold title will be bound by any restrictive covenants affecting the superior freehold title. A copy is filed at HM Land Registry.

2. Please supply a copy of the Deed of Grant dated 25 July 2014 made between (1) Heathlea Construction Limited and (2) United Utilities Electricity Plc referred to in entry number 6 of the Charges register.

As these rights affect the superior title they will also affect the leasehold title and we need to determine what these are. A copy is filed at the Land Registry.

3. Please provide a coloured copy of plans 1 and 2 referred to in the draft lease.

Plan number 1 shows the extent of the building and development and plan number 2 shows the floor plan of the flat and the floor in the building the flat is on. These plans will be required by HM Land Registry to register the lease.

4. Please provide a copy of the planning consents for the estate.

We need to check the consents to determine whether planning consent has been granted for the development of the estate and buildings

5. Please provide a copy of the building regulation approval for the property.

We need to ensure that the apartment and building have been constructed according to building regulations.

6. Please provide us with the estate plan and Form CI.

HM Land Registry should have approved the estate layout plan for the development and form CI will show whether the property falls within the developer's title and the encumbrances affecting the land being sold.

7. Please provide the NHBS registration number for Heathlea Construction Limited.

We require the NHBS registration number for Heathlea Construction Limited so we can check online with NHBC to ensure that the developer is registered with the NHBC and that the property does benefit from NHBC cover.

8. Please provide us with a copy of the sewer agreement made between Heathlea Construction Limited and the local water authority under s104 of the Water Industry act 1991.

The information sheet state that the sewers on the estate will be adopted and therefore a bond and sewer agreement must be in place between Heathlea Construction Limited and the local water authority.

9. Please amend the title guarantee in clause 4.2 of the lease from no title guarantee to full title guarantee.

The developer should provide full title guarantee. No title guarantee will not be acceptable to either our client or our client's lender.

10. Please amend the wording in the first schedule of the lease to remove the wording 'and for identification only' to 'shown on Plan Number 2 and thereon edged red which premises'.

HM Land Registry will not accept a lease for registration where any of the plans are for 'identification' purposes.

11. We enclose a UK Finance Disclosure of incentives Form. Please return this form to us duly completed.

Our client is buying with the aid of a mortgage and CML 6.4.1 requires this form to be completed by the seller. We are not permitted to provide the

lender with a certificate of title until we have received this form completed by the developer and ensured that the replies are acceptable to the lender.

(b)

I would perform the following pre-contract searches on Apartment 14:

1. Local Land Charges (LLC1) and Enquiries of the Local Authority (CON29) to determine if there are any local land charges affecting Apartment 14, whether the roads surrounding the estate are adopted, list of planning permissions, etc.
2. I would perform a CON29O optional search to establish if the estate has been registered as village green or as common land as the property is newly constructed.
3. An environmental search to determine the possibility of contamination being present. A free online search shows that the area Apartment 14 is located in has had past industrial use and there is also a high possibility of contamination being present at the site.
4. A Chancel check because entry number 1 of the Charges Register is a transfer between Manchester Diocesan Board and the developer. The title has been amalgamated post October 2013 and this will not constitute a purchase for value, and according there has not been a transfer for value of the whole title since October 2013. There is therefore a risk that a Chancel repairing obligation can be still be registered against the developer's title which will also bind the leasehold titles.
5. Flood search as the locality in which Apartment 14 is situated in has a risk of flooding and so it is essential to determine if the estate has suffered from flooding in the past and what the current risk of flooding is.
6. A coal mining search (CON29M) because Apartment 14 is in a coal mining area and so a coal mining search is required to determine the level of risk
7. An infrastructure or High Speed 2 search (HS2) as Apartment 14 is situated in Manchester and it is important to determine if it will be affected by the proposed HS2 railway.
8. Water and drainage search (CON29DW) to establish if the developer has entered into a bond in respect of the sewers with the local water authority.
9. A company search against Heathlea Construction Limited, the developer, and Heathlea Management Limited, the management company, to ensure that they are solvent and/or to ascertain if there are any floating charges.
10. A Search of NHBC website to ensure developer is registered with them.

(c)

Heathlea Road is adopted which means it is a public highway and the local authority are responsible for the maintenance and repair of this road.

The road which the developer is constructing on the estate will not be adopted by the local authority and so the clients will only have an easement over these if one is expressly granted.

In the second schedule of the draft lease the lessor grants the tenant a right to use the Footpaths and Roadway. This right is limited as it is conditional on the tenants paying the service charge.

Under clause 7.2 of the draft lease the management company is responsible for the repair and maintenance of the Maintained Property which includes the estate footpaths and roadways. The costs of repairing and maintaining the estate roads will be paid for by the tenants via the service charge.

The developer in the agreement for lease agrees, under clause 28, to construct the estate roads to adoptable standards and so the costs of repairing and maintaining the roadway should be low, at least for the next ten years or so.

This arrangement is acceptable to our client's lender, NatWest bank plc, under CML Handbook 5.14.5 where the management company is responsible for the repair and maintenance of the common parts.

Question 3(a)

The usual position under clause 2.2.6 of the Standard Conditions of Sale (5th edition)(SC) is that the deposit is paid to the seller's solicitors as stakeholder which means that the money only belongs to the seller only on completion.

Where the deposit is paid to the seller's solicitors as agent it immediately belongs to the seller and therefore the seller can spend it, etc. The risk is that if completion does not occur, through no fault of the buyer, then the buyer may not be able to recover the deposit from the seller.

The deposit here is a substantial amount being £14,000, 10% of the purchase price. The developer requires the deposit to complete the development and so will not usually agree a lower deposit or that it is paid as stakeholder.

Clause 27 of the Agreement for Lease states that the developer is a member of the Council. This means that the National House Building Council (NHBC) insurance cover applies. The relevant cover that the NHBC will provide is protection of the deposit up to a maximum of £100,000 or 10% of the purchase price, whichever is the lowest, should the builder fail to complete due to insolvency or fraud.

Thus our client is protected in respect of paying the deposit as agent to the developer's lawyers.

In any event, immediately prior to paying the deposit to the developers lawyers I would perform a company search against Heathlea Construction Limited to check that the developer is still solvent.

Under SC 2.2.5 and 2.2.6 the client will look to use the deposit received on the sale of £6,850 to part fund the deposit being used on the purchase of £14,000. The client will need to raise the balance of this deposit of £7,150 in time for exchange on Apartment 14, perhaps from a personal loan, etc.

The lawyer acting for Simon and Zara Ingram may object to the deposit being used from our client's sale in this way, and insist that it is held as stakeholder. If this is the case then our client would need to raise the full deposit of £14,000 in time for exchange on her purchase.

(b)

Under clause 14 of the Agreement for Lease, completion of Apartment 14 is conditional on receiving a NHBC cover note, and completion must occur within 10 working days of the buyer's lawyers receiving the cover note. This is because the developer cannot guarantee the date by which apartment 14 will be completed.

From our instructions it is clear that the buyer of Gillibrand is in a chain. Thus it will be impossible to synchronise the client's sale of Gillibrand and purchase of Apartment 14.

The risk is that the client could end up with no property or two properties.

The safest course of action is for the client to complete the sale of Gillibrand before buying Apartment 14, and if necessary, move into rented accommodation or with family and friends until the developer is able to complete the sale of Apartment 14. The added bonus will be that the client will not need to raise additional funds to pay the £14,000 deposit due on Apartment 14.

(c)

Here we would use Law Society Formula B to exchange contracts as both sides are holding their client's respective contracts and the developers lawyers are at the top of the chain.

Each lawyer undertakes to do the following:

1. That day to send by first class post or by document exchange his client's signed part contract and
2. Kempstons also undertake to send a cheque in the sum of £14,000 to the developer's lawyer representing the 10% deposit payable on the purchase price.

Question 4(a)

I will perform the following pre-completion searches for Apartment 14:

1. A K16 bankruptcy search against April Reeve as she is buying with the aid of a mortgage from NatWest Bank plc and NatWest Bank plc will not want to lend to a bankrupt. The priority period is 15 working days from the date of the search to complete the mortgage. The applicant is Kempstons.
2. An OS2 an official search of part with priority. The applicant will be the RBS. The search from date will be the 01 May 2017. The reason for the search is to take a charge. The search provides a priority period of 30 working/business days in which to register the lease.
3. A Companies House search against Heathlea Construction Limited as it is a company and we need to ensure that on completion it is solvent. The applicant will be the firm and a Companies House search does not provide any priority period.

(b)

I will need to perform the following post-completion steps:

1. Pay stamp duty land tax (SDLT) to HMRC using form SDLT within 30 days of completion in the sum of £300. HMRC will send me a Land Transaction Return form (SDLT5) which is required by the Land Registry to register the dealing. If the payment is not made within 30 days of completion then HMRC will levy an automatic fine of £100.
2. Within the 30 working/business day priority period provided by the OS2 search I will register the grant of the lease and charge at the Land Registry. I would complete form AP1 and would include the following:
 - i. A certified copy of the original lease or executed original lease,
 - ii. A certified copy the executed charge or the executed charge in favour of NatWest Bank plc,
 - iii. a letter of consent from RBS consenting to the grant of the lease,
 - iv. SDLT 5, and
 - v. the fee in the sum of £190.
3. On completion I would access the NHBC portal and use the activation code provided to activate my client's NHBC cover.
4. Following registration, under clause 6.19 of the lease of Apartment 14, I would need to serve notice on the Lessor of NatWest Bank plc's charge and include a notice fee of £300 plus VAT.