



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 4 – LAND LAW*

Time allowed: 1 hour and 30 minutes plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **This question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios from Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

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SECTION A

(Answer ALL questions in Section A)

1. (a) Define what is meant by 'trespass' and explain when landowners can claim that trespass has infringed their rights in the airspace above their land.

(3 marks)

(b) Name **one** remedy that may be ordered by the court in the case of trespass to land.

(1 mark)
(Total: 4 marks)
2. Explain the meaning and special features of 'term of years absolute'.

(4 marks)
3. In relation to unregistered land, give **two** examples of the type of interest that should be protected by registration in the Land Charges Register under the Land Charges Act 1972.

(2 marks)
4. Explain **two** of the possible classes of registered title for freehold land and when they can be granted.

(4 marks)
5. Explain when the right of survivorship arises and what it means.

(4 marks)
6. Describe **two** of the essential characteristics of an easement. State in your answer the case which established these essential characteristics.

(5 marks)
7. Describe **two** of the circumstances in which a restrictive covenant can be discharged or modified by the Upper Tribunal (Lands Chamber).

(4 marks)
8. Explain the statutory requirements for a valid contract for the sale of land, stating the statute and section number in which they are contained.

(4 marks)
9. Give **one** feature of the commonhold system, stating to what type of property commonhold would apply.

(2 marks)
10. Explain the main features of an endowment mortgage.

(4 marks)
11. Explain **one** way in which an implied easement could arise.

(3 marks)
(Total Marks for Section A: 40 marks)

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SECTION B

(There are three scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)

Scenario 1

Alan owned 53 Orchard Avenue, a house with registered freehold title. Alan was unwilling to deal with the maintenance of the large rear garden there, so he divided the rear garden by a fence in order to sell part of it as a building plot. Brenda purchased the plot. As Alan wanted to preserve the privacy of his own house, he insisted on Brenda entering into an agreement with him ('the Agreement') in the deed transferring the plot to her. Under the Agreement, Brenda agreed 'for the benefit and protection of 53 Orchard Avenue to maintain the fence in good condition at all times'.

Brenda built a house on the plot (53A Orchard Avenue) and moved in. Later, Brenda sold 53A to David. She told David about the Agreement.

David moved into 53A. He was then very annoyed to see that, when Brenda had left the house, she had taken the curtains and carpets from all the bedrooms with her. She had also dug up and taken the paving stones that had formed a path from the front gate to the house. Nothing had been said about this before the sale. David contacted Brenda and complained to her, but Brenda said that she was entitled to take these items as they all belonged to her.

After some time, Alan, who still lived in 53 Orchard Avenue, noticed that, while Brenda had kept the fence in good condition during her ownership, after she sold 53A to David, this was no longer the case. David had failed to keep it in good repair. Alan told David, 'You must repair it or I will take you to court to make you do so'. David said, 'This is not my responsibility. Your agreement was with Brenda, not with me, so you must take action against her.'

Scenario 1 Questions

1. Explain whether Brenda was entitled to take the paving stones, curtains and carpets.

(7 marks)
2. Explain how any disputes over the removal of these items could have been avoided.

(5 marks)
3. Explain the nature of Alan's Agreement with Brenda and whether David was correct in saying that Alan should take action against Brenda.

(5 marks)
4. Explain:
 - (a) in what circumstances an agreement between Alan and Brenda would be binding on David;

(5 marks)
 - (b) whether these circumstances exist on the facts of the scenario, so that David is bound.

(5 marks)

(Total 10 marks)
5. If, in the Agreement, Brenda had agreed 'not to let the fence fall into disrepair', explain whether your answer to 4(b) would be different.

(3 marks)

(Total Marks for Scenario 1: 30 marks)

Turn over

Scenario 2

Mark recently bought a house with registered freehold title. To finance the purchase, Mark had obtained a small loan from the Kempston Finance Company Ltd to be secured by a mortgage on the property. Mark intended to finance the balance of the purchase money from his savings. However, he found that he did not have sufficient savings. He discussed the problem with his sister Laura. She said she would help him with a contribution. When she handed the money to him, she said, 'I cannot afford to give you this as an outright gift. I will need the money back sometime. For the time being hold it on my behalf and use it, if necessary, as a contribution to the purchase.'

Mark was very grateful. He accepted Laura's money on this basis and his purchase was completed. The house was registered in his sole name and he moved in. Laura went away on a long cruise.

Later, Mark met Ellen and they became very friendly. She moved into the house and they started to cohabit, although they did not marry. Ellen redecorated one room and dealt with household tasks, such as shopping and cleaning.

Laura returned from her cruise to find that she had lost her job. She asked Mark for the money she had provided to him for his purchase. He said that he could not do this, as he had no spare money. His only asset was the house and he refused to sell this. Laura said, 'I am sure I have a right to a share in this house and you must sell it.'

Hearing of this, Ellen was worried. She said she had nowhere else to go, so she also claimed a share in the house with the right to occupy it, saying she would not leave.

Mark resisted all these claims from Laura and Ellen and the demands for him to sell the house.

Scenario 2 Questions

1. Explain:
 - (a) whether Ellen can claim a share in the house and the right to occupy it;
(6 marks)
 - (b) if Mark and Ellen were married rather than just cohabiting what, if any, special right to occupy the house Ellen would have.
(2 marks)**(Total: 8 marks)**

2. Explain whether Laura can claim a share in the house.
(5 marks)

3. If Laura can claim a share, explain:
 - (a) how such a share would be valued;
(2 marks)
 - (b) whether she can apply to the court to force a sale and, if so, on what basis.
(3 marks)**(Total: 5 marks)**

4. Explain the factors the court would consider in Laura's situation in deciding whether or not to order a sale.
(6 marks)

5. Suppose that, to avoid Laura making an application to court, Mark voluntarily agreed with her that he would sell the house. He quickly found a buyer. However, the buyer's lawyer had heard previously of Laura's plans to apply to the court. He objected, to the sale, to Mark alone.

Explain why this was the case and the action that Mark needed to take to overcome this objection.
(6 marks)

(Total Marks for Scenario 2: 30 marks)

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Scenario 3

In 2013, Imran was looking for a house to buy. He found a suitable property at 17 Green Street. This was a freehold house with unregistered title.

Imran was told by George, the owner, that he had owned the house for over 40 years. He gave Imran a copy of a 1970 deed, which he said proved his ownership. The deed just referred to a right of way in favour of number 17 over the drive of number 19 next door.

Imran agreed to buy the house and instructed his lawyer. He gave her the copy of the 1970 deed.

His lawyer said, 'It is a pity that the house has unregistered title as there are disadvantages with that for a buyer.' She also said that she was not satisfied that the 1970 deed granting the right of way proved George's ownership.

Eventually, Imran's purchase was completed. In 2015, Imran needed some finance. He obtained a loan from Kempston Bank Ltd (the Bank), secured by a mortgage on the house. The loan, on a capital repayment basis, was guaranteed by his brother Kemal. The mortgage deed did not permit repayment of the capital until 2036 nor the letting of the house to tenants.

After taking out the loan, Imran inherited some money and wanted to repay the loan. The Bank refused to allow this in view of the repayment condition in the mortgage deed. Disappointed, Imran instead let the house on a short-term tenancy, while he went abroad. Learning of this, the Bank wrote to him saying that it intended to repossess the property and sell it immediately to achieve whatever price it could, even if a low one. Imran wanted the sale to be delayed until property prices improved.

Scenario 3 Questions

1. Explain why Imran's lawyer was not satisfied that the 1970 deed proved George's ownership and what documents were needed to prove George's right to sell.

(5 marks)

2. Explain what the lawyer meant by 'the disadvantages of unregistered title for a buyer'.

(5 marks)

3. Explain:

(a) what further step Imran's lawyer needed to take after completion and within what time limit;

(2 marks)

(b) the reason for this;

(3 marks)

(c) as a result of this step, what proof of ownership Imran would have received and what it contained.

(3 marks)

(Total: 8 marks)

4. Explain whether:

(a) Imran can challenge the condition in his mortgage deed in order to repay the loan before 2036;

(3 marks)

(b) in the circumstances of the scenario, the Bank had the right to sell the house;

(3 marks)

(c) the way the Bank proposed to carry out the sale was correct;

(4 marks)

(d) the Bank could have obtained any remedy against Kemal.

(2 marks)

(Total: 12 marks)

(Total Marks for Scenario 3: 30 marks)

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