



## CHIEF EXAMINER REPORT

**JUNE 2024**

**LEVEL 6 UNIT 10 – LANDLORD & TENANT LAW**

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the June 2024 examinations.

The 'suggested points for responses' section sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

### Chief Examiner Overview

On the very limited evidence available due to the small cohort size and optional question choices, there is nothing to suggest any concern with the question paper or its performance. Data is too limited to observe any real trends.

Better-performing candidates demonstrated strong knowledge of the relevant law and appropriately used statutory provisions and case law to support their analysis. Conversely, weaker candidates lacked a sufficient legal foundation and cited little or no relevant statute or case law.

## Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

### Section A

Question 1	25 marks
This question required candidates to discuss how collective rights to enfranchise and manage might mitigate the disadvantages associated with owning long leasehold residential property. Most candidates discussed the nature of these rights and the procedures for invoking them in broad terms but failed to provide detailed analysis or contextualise their discussion by addressing specific disadvantages.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Discussion of the drawbacks associated with the current long leasehold residential regime.</li><li>• Detailed discussion of the right to collective enfranchisement under Leasehold Reform Housing &amp; Urban Development Act 1993 (ie who qualifies, how exercised, how implemented, etc).</li><li>• Detailed discussion of the two different routes (ie Landlord and Tenant Act 1987 and Commonhold and Leasehold Reform Act 2002) by which tenants may secure the right to manage the building in which their flats are located (ie who qualifies, how exercised, how implemented, etc).</li><li>• Reasoned evaluation of how/to what extent the right of collective enfranchisement and/or the right to manage mitigate the drawbacks previously identified.</li></ul>	

Question 2	25 marks
This question required candidates to discuss the common law and statutory rules relating to forfeiture for breach of covenant or condition. Responses were too few for valid analysis.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Explanation of current law of forfeiture, including:<ul style="list-style-type: none"><li>▪ need for express reservation (with reference to, eg, <u>Duppa v Mayo</u> (1669));</li><li>▪ procedure for exercising right (with reference to LPA 1925, s 146);</li><li>▪ common law rules re waiver;</li><li>▪ statutory/common law rules re relief from forfeiture.</li></ul></li><li>• Discussion re the case for reform, including:<ul style="list-style-type: none"><li>▪ implied reservation in all cases if not expressly included (with reference to, eg, <u>Doe d Abdy v Stevens</u> (1832));</li><li>▪ adoption of single procedure for exercising right, based on notice;</li><li>▪ repeal of CLPA 1852, s 210;</li><li>▪ discussion of remediable/irremediable breach (with reference to, eg, <u>Saava and Anr v Hussain</u> (1996) and <u>Scala House and District Property Company v Forbes</u> (1974);</li><li>▪ problems/unpredictability presented by waiver (with reference to, eg, <u>Central Estates (Belgravia) Ltd v Woolgar (No.2)</u> (1972));</li><li>▪ clarification as to when and how relief is available.</li></ul></li></ul>	

Question 3	25 marks
This two-part question required candidates to discuss the law relating to qualified leasehold covenants in relation to assignment and use. Responses were too few for valid analysis.	
Suggested Points for Response:	
<p>Part A)</p> <p>Re assignment:</p> <ul style="list-style-type: none"> <li>▪ Discussion of terms and effect of LTA 1927, s 19(1) and attendant case law (eg <u>International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd (1986)</u>) re when consent may be/is not reasonably withheld.</li> <li>▪ Discussion of impact of LTA 1927, s 19(1A) in terms of ‘circumstances’ and ‘conditions’ which (in relation to commercial leases granted on or after 1 January 1996) may qualify when/how a tenant may be permitted to assign and which ‘sidestep’ the requirement of reasonableness.</li> <li>▪ Discussion of LTA 1988, s 1 and its requirements (noting reversal of burden of proof).</li> </ul> <p>Re alterations:</p> <ul style="list-style-type: none"> <li>▪ Discussion of terms and effect of LTA 1927, s 19(2) (noting that the section refers to ‘improvements’ rather than ‘alterations’) and attendant case law (eg <u>Lambert v FW Woolworth &amp; Co. Ltd (No.2) (1938)</u>) re what constitutes an ‘improvement’;</li> <li>▪ Discussion of other statutory elements (eg L’s right in certain circumstances to require payment of compensation and/or reinstatement on lease expiry;</li> <li>▪ Discussion of burden of proof and when it ‘flips’, ie if L fails to give any reason for refusing consent</li> </ul> <p>Part B)</p> <ul style="list-style-type: none"> <li>• Discussion of what the landlord needs to establish to justify a refusal of consent (with reference to the <u>International Drilling</u> guidelines and case law/examples) and the extent of the ‘burden’ which it imposes.</li> <li>• Discussion of the ability to avoid the burden of qualified covenants by imposing absolute covenants, but noting the disadvantages to the landlord of such covenants.</li> </ul>	

Question 4	25 marks
This question required candidates to discuss the scope of statutory protections for (a) Rent Act tenants and (b) licensees. Responses were too few for valid analysis.	
Suggested Points for Response:	
<p>Part A)</p> <ul style="list-style-type: none"> <li>• Outline of the three main protections provided by RA 1977 to qualifying tenants: <ul style="list-style-type: none"> <li>▪ security of tenure – possession orders limited to the cases for possession set out in RA 1977, Sch 15</li> <li>▪ reasonable rent</li> <li>▪ succession</li> </ul> </li> <li>• Detailed discussion re each protection, with reference to relevant statutory provisions and/or case law.</li> </ul> <p>Part B)</p> <ul style="list-style-type: none"> <li>• Outline of the protection afforded by Part I of the Protection from Eviction Act 1977 (PEA 77) – prohibition on (i) eviction without due process of law, and (ii) harassment</li> <li>• Detailed discussion of each element, with reference to relevant statutory provisions and/or case law.</li> <li>• Discussion of remedy in damages under Housing Act 1988, ss 27 and 28.</li> </ul>	

## Section B

Question 1	25 marks
This question concerned the familiar topic of the lease/license distinction and its consequences. More limited responses failed to cite relevant principles or case law or engage in any reasoned application of the law to the facts.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Discussion of lease/licence distinction (noting their respective proprietary and contractual characteristics) and the essential elements of a lease (by reference to cases such as <u>Lace v Chantler</u> (1947), <u>Prudential Assurance v London Residuary Body</u> (1992) and <u>Street v Mountford</u> (1985)).</li><li>• Discussion whether payment of rent is an essential characteristic of a lease, with reference to <u>Ashburn Anstalt v Arnold</u> (1989) and, for example, <u>Colchester Council v Smith</u> (1991). Candidates may consider that: (i) Benjamin's building services and/or (ii) Cassandra's repair works are sufficient consideration for a lease.</li><li>• Discussion of scenarios where the presence of the essential characteristics of a lease has not resulted in the conclusion that a lease has been granted, with particular reference to family situations, lack of intention to create legal relations and service occupancy (eg <u>Cobb v Lane</u> (1952), <u>Booker v Palmer</u> (1942), <u>Facchini v Bryson</u> (1952) and <u>Norris v Checksfield</u> (1991)).</li></ul>	

Question 2	25 marks
This two-part question required candidates to address the familiar topic of security of tenure under the Landlord and Tenant Act 1954. The discussion on Warehouse One/Funtime was noticeably better than on Warehouse 2/Gregor. The discussion of the grounds for opposing a renewal tenancy and securing possession was generally good.	
Suggested Points for Response:	
Part A) <ul style="list-style-type: none"><li>• Outline of the issues: (i) does either tenancy enjoy protection under the Landlord and Tenant Act 1954 (LTA 54), and (ii) (depending on the answer to (i)) how might DEL regain possession.</li><li>• Given that there is no evidence of either tenancy being contracted out, discussion of the qualifying criteria for a protected tenancy under LTA 54, s 23 in relation to both Funtime and Gregor, with reference to relevant case law.</li><li>• Application of that discussion to the facts. The correct conclusions (on the given facts) appear to be that Funtime has a protected tenancy and Gregor does not (consistently with, eg, <u>Addiscombe Garden Estates v Crabbe</u> (1958)).</li><li>• DEL can therefore only terminate the tenancy re Warehouse One by following the procedures in LTA 1954, ie by: (i) service of a s 25 notice terminating the tenancy on the appropriate date (which at the earliest would be the contractual expiry date of the lease) after the appropriate period, and indicating whether or not any application for a renewal tenancy will be opposed, and (ii) if Funtime apply for a renewal tenancy, opposing the grant of that tenancy under LTA 1954, s 30(1) – grounds (f) and (g) would appear to be available, and candidates should identify the circumstances in which each can be invoked.</li><li>• If Gregor does not have a protected tenancy of Warehouse Two, he has no right to possession after lease expiry. Gregor must vacate in accordance with the terms of his lease (which if vacant possession is required will mean that Gregor must remove the current users of the warehouse).</li></ul>	

Part B)

- Re Warehouse One, in relation both grounds (f) and (g) DEL must prove: (i) a 'bona-fide intention' in relation to the statutory purpose for which it requires possession, and (ii) a 'real possibility' that the landlord will be able to occupy the property when the tenancy ends or within a reasonable time after that date.
- The demolition of Warehouse One, the construction of a new building and the attendant change of use mean that planning permission is required. DEL will have to demonstrate that it can achieve this (together with subsequently carrying out the works) within that timescale. This may also require proof of funding, etc. Subject to proof of these matters, DEL would appear to have a reasonable prospect of securing possession under the Act.
- If Gregor fails to vacate Warehouse Two, DEL can issue possession proceedings against Gregor as a simple trespasser.

Question 3

25 marks

This two-part question required candidates to address various elements of the Housing Act 1988, focusing on security of tenure and recovery of possession. Many attempts demonstrated a good understanding of the topic. Some responses showed real creativity and effort but needed more focused application of the legal principles to the scenario.

Suggested Points for Response:

Part A)

- Discussion re nature of Jana's tenancy, with conclusion that by reference to statutory criteria it is protected by virtue of Housing Act 1988 (HA 1988), s 1.
- Consideration of Jana's prolonged absences overseas, with conclusion that this does not deprive her of the protection afforded by HA 1988.
- Discussion re whether Jana's tenancy is an assured tenancy or an assured shorthold tenancy, which will turn on whether Jana was served with notice that the tenancy was to be an assured shorthold tenancy (and if not this would mean that possession under the accelerated procedure would not be available). Given that the QP is silent about this, credit reasoned discussion either way.

Part B)

- Discussion re procedure for obtaining possession, with reference to HA 1988, s 8 notice and need to establish one or more of the scheduled grounds.
- Candidates will consider Ground 1 as a basis for obtaining possession. They will note the want of the requisite notice and will note that the court may dispense with the need for such a notice.
- Discussion re possible reliance on Ground 1, with particular reference to Boyle v Verrall (1996).
- Discussion re possible reliance on Ground 9, with reference to cases such as Hill v Rochar (1983), Yewbright Properties Ltd v Stone & Others (1980) and Harte v Frampton (1948).
- Application of the facts to both Grounds and a reasoned conclusion.

Question 4	25 marks
This question required candidates to address the familiar topic of repair. Despite the usual popularity of this topic, only two candidates answered it. Responses were too few for valid analysis.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• General (but relatively brief) discussion re nature of obligation to repair (with reference to, eg, <u>Lurcott v Wakeley &amp; Wheeler</u> (1911) and <u>Post Office v Aquarius Properties Ltd</u> (1987), with recognition that inherent defects may not indicate disrepair unless there is a physical manifestation of damage which engages the repairing covenant (with reference to, eg, <u>Quick v Taff Ely Borough Council</u> (1986), <u>Lee v Leeds City Council</u> (2002), <u>Stent v Monmouth County Council</u> (1987) and <u>Elmcroft Developments Ltd v Tankersley-Sawyer</u> (1984)).</li> <li>• Discussion re application of Landlord and Tenant Act 1985 (LTA 1985), ss 9 to 15. Discussion re effect of LTA 1985, ss 9 – 9D and 11 re: (i) fitness for human habitation and (ii) implied obligation on Marvan to keep in repair not only the structure of the flat but also the installations which provide the essential services. This would include the boiler: see LTA 1985, s 11(1)(c). Marvan’s statutory obligation clearly applies to the boiler.</li> <li>• Recognition that Marvan’s obligation to repair cannot be excluded or restricted by agreement (LTA 1985, s 12(1)(a)), so he cannot rely on it to avoid liability.</li> <li>• Discussion re obligation to repair only being ‘triggered’ by notice of disrepair, which Marvan did not receive until last week. Up to that point he was not in breach, and so unlikely that a claim in damages would lie.</li> <li>• In addition, if Natalja’s lease precludes set-off (as most leases do) she cannot lawfully withhold the rent (and if she does so this might ultimately entitle Marvan to forfeit the lease, subject to any right for Natalja to claim relief). However, she may have a civil claim for the same amount, so objecting to a set-off may not be particularly useful.</li> <li>• Reasoned discussion re issue relating to the damp and mould in the context of inherent defects and physical damage.</li> </ul>	