



CHIEF EXAMINER REPORT

JUNE 2024

LEVEL 6 UNIT 17 – CONVEYANCING

The purpose of the suggested points for responses 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' sections set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

The paper covered a range of questions. The drafting question in this sitting (question 3a) was dealt with very successfully by most candidates.

Stronger candidates generally dealt well with the more difficult questions that were flagged in the Case Study Materials (such as question 2a).

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.

Question 1a	10 marks
Generally, candidates scored well on this question. The weaker responses did not explain why the death certificate needed to be provided.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Official copy of the Register and the Title Plan (not more than six months old) • showing the entries/title matters that affect The Channel and proving ownership • A copy of the lease of The Channel (including the lease plans) • This creates the legal title in The Channel and also contains tenant’s covenants which bind the lessee/it details the terms under which the property is held. • Official copy of the Register and the Title Plan for the freehold title ... • as this is registered and the Protocol requires this to be sent. This also details any freehold title matters that the leasehold tenant could also be subject to. • An Official Copy of the Death Certificate for Charlotte Brompton (or can similarly credit a conveyancer’s certificate as evidence of death – but do not double credit) • There is no restriction on the title to The Channel showing that the Brompton’s held The Channel as tenants in common beneficially, and therefore they will have owned both the legal and beneficial titles as joint tenants. 	

Question 1b	8 marks
Several candidates performed well here.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • The Property Information Form (TA6) ... • which provides details that somebody living at the property would know about i.e. is there central heating, disputes with the neighbours etc • The Leasehold Information Form (TA7) ... • which provides details about the lease i.e. have there been permitted alterations etc • The Fittings and Contents Form (TA10) ... • which provides details of the contents to be included in the sale i.e. the carpets and curtains are included according to the Attendance Note from the supervisor 	

Question 1c

8 marks

Most candidates scored reasonably well on this question. There would appear to be a lack of knowledge on the law around qualified covenants and so where candidates lost marks on this question it was usually around not knowing this law.

Suggested Points for Response:

- Under clause 6.16 of the lease of The Channel the consent of the lessor is required before any assignment of the lease.
- This is a qualified covenant ...
- (s19 Landlord and Tenant Act 1927 converts this into a fully qualified covenant) so lessor's consent must not be unreasonably withheld.
- (Under s1(3) Landlord and Tenant Act 1988) the lessor must give or refuse consent within a reasonable time.
- Under clause 8.3.2 of the Standard Conditions of Sale (5th Edition) the seller must apply for consent.
- Under clause 8.3.3 of the Standard Conditions 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 our client, the seller. The client needs to complete the sale and purchase simultaneously and this could potentially result in Mr Brompton being in breach of contract on his purchase as he will not have sufficient funds to complete the purchase.
- The safest course of action is to ensure that the licence to assign is obtained before contracts are exchanged on The Channel.

Question 2a

17 marks

The fact there was a problem with lack of planning permission and building control approvals had been flagged in the Case Study Materials and therefore most candidates scored well on this question as they were clearly prepared to deal with this issue in the exam.

Suggested Points for Response:

- Both the Estate Agent's Particulars of Sale, and the information provided by the client in the Attendance Note, show that Rose Cottage was recently converted into two self-contained flats.
- Under the Town and Country Planning Act 1990, permission is required for development.
- Development will include a material change of use
- Conversion of a single dwelling into separate flats is a material change of use which requires planning permission.
- The Replies to CON29 Enquiries of the Local Authority (specifically 1.1) states that no planning permission has been issued.
- There is some comfort for our client as the same Replies also state at 3.9 that no enforcement notices or planning contravention/breach notices have been served, however this does not mean that they won't be (particularly if the local authority becomes aware of the development).
- The development is also quite recent (12 months ago) so this is well within the time periods where enforcement can be taken.
- We could advise our client to ask the sellers to apply for retrospective planning permission, however this is likely to delay the purchase which our client will not want given he has a linked transaction, and it will also alert the local authority to the breach.
- The better option is to ask the sellers to provide a lack of planning permission indemnity insurance policy against any enforcement action the local authority may take.
- This policy will need to cover successors in title, such as our client, and we would expect the seller to pay for this.
- In addition to planning, again both the Estate Agent's Particulars of Sale and the Attendance Note state that Rose Cottage has had new central heating installed. It is also likely that the conversion into two flats required structural works. Either (or both) of these works would require compliance with the Building Regulations 2010.
- Therefore, an application for building regulations approval should have been made before the works commenced, and a building regulation compliance certificate issued once the works had been completed.

Question 2b	8 marks
<p>This question was answered reasonably well by most candidates. Again, the issue of breach of restrictive covenant had been flagged in the Case Study Materials so most candidates were prepared to answer this question.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • Entry number 1 of the Charges Register contains a restrictive covenant which prohibits conversion of the dwellings at 114 Trelawne Way into multiple occupation dwellings. The conversion of Rose Cottage into 2 separate flats will therefore breach this restrictive covenant. • There is therefore a risk that the neighbouring landowner at 116 Trelawne Way (who has the benefit of the covenant) will take action to enforce it. • The neighbouring owner could be approached to provide consent, or a release, but this may not be forthcoming. • Another option is to make an application to the Lands Chamber of the Upper Tribunal to discharge the covenant under s84 LPA 1925 ... • based on one of several grounds (changes to the character of the area, covenant impedes reasonable use, covenantees have consented and/or covenantees will not be injured by the release/modification. • However, this is expensive and slow. • The best advice is to ask the sellers to take out a restrictive covenant indemnity policy in relation to this breach. • The policy should be paid for by the seller and should cover successors in title, such as our client. 	

Question 3a	5 marks
<p>The drafting of an easement for a right of way was dealt with well by most candidates. Most candidates had clearly prepared for this in preparation for the exam.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • A right of way <ul style="list-style-type: none"> ○ for the buyer and his successors in title ○ to pass and repass at all times with or without vehicles ○ over the driveway shown coloured in yellow on the plan ○ subject to the buyer paying one half of the cost of maintenance of the accessway. 	

Question 3b	8 marks
<p>Many candidates did well on this question. There is certainly a problem around accuracy of answers (for example, some candidates simply state that the priority period for an OS2 is 30 days, rather than <u>working days</u>).</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • An official search of part of the title with priority using form OS2 • which reveals whether any new entries have been added to the register since the date of the official copies • which provides a priority period of 30 working days in which to apply to register both the transfer and charge at HM Land Registry. • A bankruptcy search using form K16 against Lukas Brompton as he is obtaining a mortgage from National Westminster Bank plc and the lender will not want to lend to a bankrupt. • The priority period is 15 working days in which to complete the charge. 	

Question 3c	7 marks
<p>Some candidates failed to properly explain why an occupier would need to sign an occupier's consent clause in the mortgage deed, and many do not identify that the occupier should be separately advised. Some candidates had looked up the detailed provisions of the Lender's Handbook for the bank, which was admirable.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • The mortgage deed needs to be executed by the buyer, Lukas Brompton. • To be a deed, his signature must be witnessed by an independent person (i.e. someone who is not related to him and has sufficient mental capacity). • Grace Brompton must also execute an occupier's consent clause contained in the mortgage deed because she will be moving into the property and may have an interest in the property that will be binding on the lender, National Westminster Bank plc. • And so she must consent to the mortgage which will postpone any interest she has to National Westminster Bank's interest. • National Westminster Bank plc will insist that she obtain written independent legal advice due to a risk of a conflict of interest arising. 	

Question 4a	9 marks
<p>The issue of bankruptcy was not flagged in the Case Study Materials and perhaps candidates had not fully prepared for this possibility. Points were picked up for common sense suggestions, such as registering a notice to protect the Contract and notifying the lender of any delay.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • There is no entry in the register indicating Mr and Mrs Singh are tenants in common, and therefore they are holding the beneficial title as joint tenants. • As such, when Mrs Singh is declared bankrupt, the joint tenancy would be severed into tenants in common beneficially. • As such, ownership of Mrs Singh's separate beneficial share automatically vests in the trustee in bankruptcy once the trustee in bankruptcy is appointed. • The legal estate will not vest in the trustee in bankruptcy however.... • the TP1 will ideally need to be redrafted so the trustee in bankruptcy consents to the sale of the beneficial interest. • However, the buyers cannot insist on the trustee consenting in the TP1 (because the trustee is not a transferor) and so completion will not necessarily be delayed until the trustee is appointed and the TP1 is redrafted. • We should register the contract as a notice at the Land Registry if it looks like there may be a delay between exchange and completion to protect our clients against any other third parties who may attempt to register a claim against the title. • We should also consider notifying National Westminster Bank plc (e.g. because there is a risk of delay). • A copy of the bankruptcy order and proof of the trustee's appointment will need to be requested from the sellers' lawyer even though this only relates to Mrs Singh's beneficial interest. 	

Question 4b	10 marks
<p>This question was disappointing given that candidates had the Standard Conditions of Sale provided to them and will probably have come across late completion in practice. Whilst many candidates could find the relevant provisions in the Standard Conditions, many described those either poorly (or too vaguely) to be credited or did not discuss the relevant provisions at all.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • Completion should occur on or before 2pm on 28 June 2024 (SC 6.1.2) otherwise there will be late completion and a breach of contract by the sellers (as the buyer is ready willing and able to complete). • Time is not of the essence for completion and so the sellers cannot be forced to complete on 28 June 2024 (SC 6.1.1). • The sellers will be required to pay compensation/interest to the buyer at the contract rate on the purchase price (SC 7.2.2). • The buyer retains the right to sue for damages, but any claim is to be reduced by any compensation paid (SC 7.2.3). • The buyer can make time of the essence by serving a notice to complete (SC 6.8). • This gives the sellers 10 working days to complete making time of the essence (SC 6.8.2). • If the sellers fail to complete, the buyer may rescind the contract and have the deposit repaid with accrued interest (SC 7.5.2). 	

- The buyer also retains other remedies (i.e. can sue for breach of contract) (SC 7.5.3)
- As our client has a linked sale, it is unlikely that he will be able to complete on this on 28 June 2024 (as otherwise he will have nowhere to live).
- Therefore, our client will be liable pay compensation and potentially damages to the buyers of The Channel which he may claim from the seller as damages for breach of contract.

Question 4c	10 marks
<p>Several candidates did very well here. Weaker responses were unable to properly explain why each document needs to be provided to the Land Registry.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • Form AP1 as the prescribed form of application • Should be sent to the Land Registry within 30 working days of the OS2 priority search result certificate along with • Certified copy Transfer (TP1) • to register the change of ownership • SDLT 5 Certificate • which proves payment of the SDLT on the transaction (of which there won't be any for this particular transaction) • Certified copy of the National Westminster Bank plc charge • to register the charge over Rose Cottage • Documentation appointing the trustee in bankruptcy • to show why the trustee in bankruptcy is consenting to the TP1. 	