



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 9 – LAND LAW*

Time allowed: 3 hours 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 the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Property Law 2013-2014, 21st edition, Meryl Thomas, Oxford University Press, 2013.**
- 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 ball point 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 following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

SECTION A
(Answer at least one question from this section)

1. a) Critically assess the extent to which covenants affecting freehold estates can be enforced by successors in title of the dominant tenement against successors in title of the servient tenement.

(18 marks)

- b) Critically assess the effectiveness of commonhold in mitigating the difficulties of enforcing positive covenants.

(7 marks)

(Total: 25 marks)

2. Critically assess the approach of the courts to distinguishing leases from licences, and the relevance of the parties' intentions to the courts' decisions.

(25 marks)

3. Critically assess whether it is fair to say that an application for registration as proprietor by a person in adverse possession of a registered estate is doomed to failure?

(25 marks)

4. Critically assess the doctrine of prescription in relation to easements and the arguments for its reform.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

- a) Paul purchases a motor repair business, including the freehold of the premises, with the aid of a loan from Quebec Bank plc secured by way of mortgage of the freehold. He is registered as proprietor, and the mortgage is registered against the title.

Paul soon falls into arrears of repayment of the loan. He has made no payments on the repayment mortgage since August 2013.

Advise Quebec Bank plc how it might enforce its charge.

(15 marks)

- b) Before Quebec Bank plc enforces its charge, Paul removes a number of items from the premises:

- All of the spare parts for cars which are on the premises;
- The large lift (which raises cars so that the mechanic can work on the underside). The lift weighs about a ton and is bolted to the floor;
- All of the toilets and basins on the premises; and
- All of the signage (showing the name of the business) on the premises.

Advise Quebec Bank plc whether those items formed a part of its security.

(10 marks)

(Total: 25 marks)

Turn over

Question 2

Raj retired in 2000, after a successful career as a stockbroker. He bought the freehold of a large country house, and invested considerably in antique furniture and art for the house.

His physical health deteriorated, and he soon required 24 hour nursing care. He hired three nurses, Steve, Trisha and Usma, to provide that care. Each was paid to work an eight hour shift, before returning to their respective homes.

After several years, he asked all three to attend a meeting with him. He said, 'You have been so good to me since I retired. This is a big house – why don't you all move in now – it, and everything in it, will be yours when I die anyway.'

Steve moved in. He continued to work his shift, for which he was paid, but also took over the running of the house, including doing the housework and running the household finances.

Trisha also moved in. She no longer accepted payment for nursing Raj, and frequently nursed him for more than eight hours a day.

Usma decided not to move in, as there was not enough room for her family. She continued to work as normal.

When Raj died, his estate was left to charity.

Advise Steve, Trisha and Usma as to whether they can claim a share in the house.

(25 marks)

Question 3

- a) Victor purchased, for £350,000, the registered freehold of a house, Winter's End, at auction (without inspecting it), in November 2013, and registered as proprietor.

On moving in, he finds that a large part of the garden of Winter's End has been fenced-off, and apparently incorporated into the neighbouring property, Summer's Eve (a registered freehold owned by Xanadu). Xanadu, who has cultivated the garden area, shows Victor a properly constituted 15 year lease of that area, dated July 2013, and executed by Victor's predecessor in title.

Victor notices another neighbour, Yasmin, who owns the registered freehold of Spring Bloom, using a track on Winter's End as a short-cut to the shops. When challenged by Victor, Yasmin shows him a court judgment confirming that a right of way for the benefit of Spring Bloom was acquired by prescription in August 2012.

The day after Victor moves in, he receives a demand for repayment of a £200,000 loan made to his predecessor by Carefree Bank plc, and ostensibly secured by way of mortgage over Winter's End. He is shown a properly constituted charge by way of deed dated June 2011.

None of these matters is referred to on the register.

Advise Victor whether he is bound by the claimed rights.

(19 marks)

- b) Explain whether your advice would be different if Victor had acquired the estate by way of gift.

(6 marks)

(Total: 25 marks)

Turn over

Question 4

In 1990, when they were students, Zane, Andrea and Bob purchased the freehold of a house, 13 Moss Street, for £40,000. They contributed equally to the deposit; the balance of funds was provided by a loan secured by mortgage over the property. They were registered as joint proprietors of the legal estate, but the transfer makes no mention of the beneficial estate.

While students, they each contributed equally, from their respective bank accounts, to the mortgage repayments.

In 1993, when they graduated, Zane and Andrea married. Bob moved out of the house and stopped contributing to mortgage repayments. It was agreed that he would receive his share of the property when Zane and Andrea sold it (the extent of that share was not discussed).

Zane and Andrea divorced in 2004. Prior to the divorce, they had a joint bank account into which was paid their respective salaries, and from which household expenses, including the mortgage, were paid. The greater proportion of the mortgage repayments can be attributed to Andrea, who earned significantly more than Zane.

On the divorce, Andrea moved out, but she continued to pay a half of each month's mortgage repayment.

Recently, both Andrea and Bob have written to Zane, demanding that the property be sold and that they receive one third each of the net proceeds of sale.

Advise Zane as to the parties' respective entitlements to the proceeds of any sale.

(25 marks)

End of Examination Paper

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