Examiners’ report 2012

LA3003 Land law – Zone B

Introduction

The standard of performance was broadly in line with that achieved in recent years. Once again it was clear that a number of candidates had memorised legal material. However, even where this material was relevant there was a huge disparity in the quality of the way it was used in responding to the question. Some candidates made use of it in an analytical manner and, where appropriate, demonstrated the capacity to offer critical assessments of it. However, far too many scripts revealed a complete lack of understanding either of the legal information stated and/or of the need to use it to answer the question as set. As has been pointed out in previous Examination reports the Examination is not designed to test the ability to regurgitate details about the law. Examiners are looking to assess your understanding of how the law does or does not work, whether this is shown through the application of law to a problem scenario, or by your ability to respond to the precise language of an essay title. It is worth remembering that both problems and essays are invariably set in the grey areas of the law where alternative arguments exist. These may sometimes flow from uncertainty in the law relating to, or the facts in, the question. There is considerable merit in recognising and exploring these ambiguities rather than glossing over them. It is also valuable if you state any preference you have for a particular approach or outcome, provided it is reasoned rather than asserted. As far as problem questions are concerned, you should be wary of inventing new facts, particularly at the expense of dealing with others that are given. Generally speaking these will provide more than enough for you to draw upon when framing your answer. By all means identify any missing information that is material and significant, for instance if it opens up the possibility of offering different legal advice on the point. There can be immense value in exhausting plausible avenues in dispensing advice. This can help in making the answer more comprehensive in its coverage.

There are a number of other matters which it may help candidates to keep in mind. It is important to manage your time in the examination efficiently so that you produce four answers of equal length and calibre. Ensure that you prepare a plan of your answer before you start writing. Use the planning stage to decide upon a systematic structure and create an aide memoire whilst you are writing your answer. It helps if you avoid overly long introductions. With problem questions (but the same applies to essays) it is important to use the limited time by starting to respond to the issues right from the outset. Avoid setting down quotations – in particular do not copy out statutory provisions. These can attract little, if any, credit. The answer needs to be expressed in your own words. You may, of course, paraphrase and attribute the views of judges and academics accurately and incorporate them into your answer. It is essential that you take the utmost care with your use of English. Poor grammar and spelling can make the meaning of what you are saying unclear. This may have an adverse impact on the credit your work can be given. Finally, you will impress the Examiners if you take as much care as
possible with the presentation of your work. Try to be as neat as you can and observe conventions of good legal writing, such as underlining case names (preferably using a ruler/straight edge). If your handwriting is not easy to read then it may be advisable to consider writing on alternative lines.

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**Specific comments on questions**

**Question 1**

Early in 1990 Grant entered (via an insecure back door) a boarded-up shop, of which Stretford Council was the registered proprietor. Stretford Council had left the shop empty because it did not have enough money to make the shop viable for it to be leased. Grant has occupied the garage adjacent to the shop since he agreed to buy it from Stretford Council in 1988. Through an administrative oversight Stretford Council failed to complete the sale of the garage to Grant.

By 1998 Grant has completely renovated and re-fitted the shop, which he has been using to sell spare parts for cars. In 2000 Grant met Max, Stretford Council's surveyor, outside the shop. Max admired the work that had been done on the shop. Grant told him that he would be prepared to pay rent for the shop if Stretford Council asked him. Max said he would pass the information on to his boss. Grant heard nothing more from Stretford Council, until they wrote to him a month ago asking him to leave the shop.

Advise Grant whether he has to leave the shop and the garage.

How would your advice differ if Grant entered the shop in 1999 and, after the conversation with Max, the letter Stretford Council sent him last month asked him to leave the shop and the garage?

**General remarks**

This question on adverse possession (subject guide Section 11.3) proved popular. It relates to claims that are subject to registered land. The dates and the second rubric allow the facts to be considered by reference, first, to the framework provided by the Land Registration Act 1925 (subject guide Section 11.2) and, second, the post-2003 regime found in the Land Registration Act 2002 (subject guide Section 11.3).

**Law cases, reports and other references the Examiners would expect you to use**


**Common errors**

Asserting that the conversation with Max amounts to acknowledgement of Stretford Council's title and therefore falls within ss.29 and 30 of the Limitation Act 1980.

**A good answer to this question would…**

Make good use of the legal ideas contained in the wealth of case law to determine if (and by when) the use Grant makes of the shop satisfies the requirements of factual possession and intention to possess.

Consider the possible legal effect, if any, in establishing adverse possession of: (a) Stretford Council's reason for boarding up the shop; and (b) the conversation between Grant and Max.
Advise on how the uncompleted contract of sale of the garage in 1988 may trigger one of the three exceptions in Schedule 6, para. 5 of the LRA 2002 and so entitle Grant to succeed in achieving registration of his title.

**Poor answers to this question...**
Provided a limited and generalised statement of adverse possession with far too little attention to the detailed facts.

Misdiagnosed the question as being about some other aspect of the Land law syllabus (proprietary estoppel or easements).

**Question 2**
Critically assess what is meant by “exclusive possession” in determining if there is a lease. Should exclusive possession be all that the law requires for the existence of a valid lease?

**General remarks**
A number of candidates who chose this question seemed to have underestimated its demands in at least two respects. First, by requiring a critical assessment of the concept of exclusive possession (subject guide Section 6.1; study pack, pp. 135–54) it needs more than simply narrative; and, second, it calls for a case to be made for and/or against making exclusive possession the only requirement for a valid lease to exist. Whilst this second part gives scope to consider other parts of the topic – certainty, rent and perhaps even formalities – it is crucial that inclusion of such material is justified by tying whatever is said to the precise terms of the question.

**Law cases, reports and other references the Examiners would expect you to use**
Street v Mountford (1985); AG Securities v Vaughan; Antoniades v Villiers (1990); Prudential Assurance Co Ltd v London Residuary Body (1993); Mikeover v Brady (1989); Aslan v Murphy (1990) Berrisford v Mexfield Housing Co-operative (2011); Ashburn Anstalt v Arnold (1988); Bruton v London Quadrant Housing Trust (2000).

**Common errors**
Failing to address the second part of the question – thereby reducing the maximum credit available.

**A good answer to this question would...**
Offer a focused and critical assessment of the case law on exclusive possession, (especially the judicial decisions since Street v Mountford (1985)), paying particular attention to the challenges in making sense of the concept where there are multi-occupiers who need to be joint tenants if a lease is to exist.

Consider (a) the role of other requirements – perhaps most notably certainty of term – in distinguishing leases from other ideas of ownership of land; and (b) the significance of the idea in Lord Hoffmann’s speech in Bruton that may suggest a demarcation between proprietary and non-proprietary (or contractual) tenancies.

**Poor answers to this question...**
Offered a scatter-gun essay about all the current legal requirements for a valid lease (and formalities) without indicating how the material relates to the question.

**Question 3**
Rita buys a property comprising a newsagents’ shop with living accommodation at the rear and a car park outside. She uses her savings to pay the deposit, and raises the balance of the purchase price by obtaining a loan from the Weatherfield Bank, which has a branch next door to her shop.
The loan is secured by way of legal mortgage over the property. The mortgage provides that the Weatherfield Bank:

(i) may, at its absolute discretion, vary the annual interest rate Rita pays at any time during the twenty year term of the mortgage; and

(ii) has the first right of refusal to buy the car park in the event that Rita decides to sell it.

Rita’s business starts to lose money when Price Check opens a new superstore nearby. The Weatherfield Bank writes to Rita telling her that it is doubling the annual interest rate because it needs to maintain its profitability. Rita is unable to pay her next mortgage repayment. Meanwhile Price Check writes to Rita expressing its interest in buying the car park from her. When she tells Ken, the manager of the Weatherfield Bank, he explains that Latte’s, a chain of coffee shops has heard about Rita’s business problems. Latte’s is interested in buying Rita’s shop from the Bank, providing it can be sold to them privately and for a good price. Rita’s assistant, Norris, is also interested in buying the shop but only if he can buy it from Rita as a going concern.

Advise Rita as to each of the following:

(a) if she can refuse to pay the increased monthly mortgage payments;

(b) if she can sell the car park to Price Check; and

(c) whether she can prevent the Weatherfield Bank from selling the shop (with vacant possession) to Latte’s and be able to remain in possession so that she can sell it to Norris.

General remarks
Perhaps surprisingly this question was attempted by relatively few candidates. However, there were some quite good answers. These recognised that Rita needs advice on each of the following: (a) the limited circumstances in which the mortgagor is protected where interest rates are raised during the mortgage term (subject guide Section 10.2.3; study pack, pp.450–53); (b) the validity of the mortgage term giving the Weatherfield Bank a right of pre-emption over the car park (subject guide Section 10.2); and (c) the competing proposals of the mortgagee and mortgagor as to possession and sale (subject guide Section 10.3; study pack, pp.459–63).

Law cases, reports and other references the Examiners would expect you to use
Paragon Finance v Nash (2001); Paragon Finance v Pender (2005); Cityland and Property (Holdings) v Dabrah (1968); Multiservice Bookbinding v Marden (1979); Samuel v Jarrah Timber (1904); Kreglinger v New Patagonia Meat & Cold Storage Co Ltd (1914); Jones v Morgan (2002); Warnborough Ltd v Garmite Ltd (2003); Cheltenham and Gloucester v Morgan (1996); Ropalgealach v Barclays Bank (2000); Horsham Properties v Clarke (2011); Mortgage Services Funding v Palk; Cheltenham and Gloucester v Krausz (1997); Tse Kwong Lam v Wong Chit Sen (1983); Cuckmere Brick Co v Mutual Finance (1971); ss.91, 101, 103 and 105 of the Law of Property Act 1925; s.36 of the Administration of Justice Act 1970 (as amended).

Common errors
Failing to appreciate that mortgage term (ii) creates a right of pre-emption rather than an option for the purchase of the car park from the mortgagor.

Adding extraneous narrative material, for instance, on the formalities needed to create legal and equitable mortgages.
A good answer to this question would...
Adopt the explicit structure provided by the question and offer advice exclusively on the three matters in (a), (b) and (c).

Question 4

Ricky and Bianca decide to set up home together in London. Ricky’s father, Frank, makes a contribution towards the deposit on a house, and Ricky takes out a mortgage to cover the balance of the purchase price. Ricky is registered as sole proprietor of the house. He also takes responsibility to repay the mortgage. Bianca uses her earnings from her part-time job at the local laundrette to help meet household bills.

Several years later, Ricky moves out of the house shortly after Bianca gives birth to their daughter, Whitney. He continues to pay the mortgage. Bianca decides to ask her mother, Carol, to help look after Whitney, who needs constant care because of a congenital heart condition. Carol gives up her home in Newcastle and moves in to the house. Feeling guilty, Ricky tells Carol that she must consider the house as her home for as long as she wants. Carol later uses some Bingo winnings to pay for new fitted wardrobes in her bedroom.

Ricky now has a new girlfriend, Janine. He wants them to live in the house. He therefore writes to Bianca and Carol giving them six weeks to leave. They refuse, insisting they are entitled to stay in the house.

Advise Ricky who wants to know what, if any, rights in the house Bianca and Carol may be able to claim.

General remarks
A considerable number of candidates attempted this question. Whilst some answers were impressive, far too many resorted to producing what appeared to be a pre-prepared set of notes on the law relating to constructive trusts (subject guide Section 5.1) and proprietary estoppel (subject guide Section 7.3). Although much of the information relayed in these answers had some potential relevance it was not used in a discriminating way; nor was it applied to give reasoned advice on the potential claims that Carol and Bianca may have to property rights that may entitle them to resist Ricky’s attempt to evict them.

Law cases, reports and other references the Examiners would expect you to use
This is an area of land law replete with significant case law that may be of assistance in offering advice. In particular reference might be made to: Lloyds Bank v Rosset (1991); Stack v Dowden (2007); and Jones v Kernott (2011).

Common errors
Giving partial and incomplete advice that overlooked possible legal bases of claim and/or material facts.

A good answer to this question would...
Offer structured advice on the strengths and weaknesses in the respective claims Bianca and Carol may make to establish that each of them has an equitable property right to the house.

Ensuring that the advice is rooted in the intricacies of the case law, that it appropriately mobilises the differences in judicial and academic opinion on points.
Question 5

Al, Bob, Cynthia, Derek and Ed contribute unequal amounts when they purchase a large house to live in together. They are all attending the East End Acting School. Title to the house is registered in Al, Bob, Cynthia and Derek’s names. They also execute a declaration that they hold the beneficial estate as joint tenants for all five of them.

Cynthia becomes engaged to one of her tutors, Jasper. As she plans to leave the house she agrees to sell her interest to Al. However, when Jasper breaks the engagement, Cynthia decides to stay in the house, and, with Al’s consent, the sale does not go ahead.

A year or so later Bob runs into debt paying for private singing and dancing lessons. He takes out a loan with the Bow Bank. The Bank requires Bob to charge his interest in the house to secure the loan.

Last year, on his way to class, Derek dies in a motorcycle accident. In his will he leaves all his property to a charity that supports retired actors. A few weeks later Ed, who is grief-stricken at Derek’s death, emails the others to tell them that he wants to sell his interest in the house. Network problems delay the delivery of the email. In the meantime, Ed telephones the others to say that he has changed his mind.

Three months ago, Bob defaults on his loan repayments. The Bow Bank now wants the house to be sold but Bob and the other students want to stay in the house.

Discuss.

General remarks
This problem question concerns co-ownership and trusts of land. In particular it depends upon considering some of the methods by which a joint tenancy in equity may be severed (subject guide Section 5.3; study pack, pp.92–9). The answers were of varying standard. The question covers a combination of points, some involving the relatively mechanical application of settled principles (such as the state of the co-ownership when the five initially acquire the house) whilst other issues are more open (such as the operation of the judicial discretion in s.15 of the Trust of Land and Appointment of Trustees Act 1996 (TOLATA 1996); subject guide Section 5.5; study pack, pp.123–29).

Law cases, reports and other references the Examiners would expect you to use
Goodman v Gallant (1986); Williams v Hensman (1861); Burgess v Rawnsley (1975); Kinch v Bullard (1998); Mortgage Corporation v Shaire (2001); Bank of Ireland Home Mortgages v Bell (2001); First National Bank v Achampong (2003); Edwards v Lloyds Bank TSB (2004); s.36(2) LPA 1925; TOLATA 1996, ss.14 and 15.

Common errors
Concluding that when the five acquired the house the co-owners held the beneficial interests as tenants in common, thereby making a consideration of severance pointless.

Poor understanding of the scope and case law surrounding the operation of Williams v Hensman methods of severance.

Failing to appreciate that Bob had not been declared bankrupt and that the Bow Bank was therefore secured creditors for the purposes of s.15 of TOLATA 1996.
A good answer to this question would...

Move chronologically through the events to provide well-structured advice on the possibilities that severance of the beneficial joint tenancy may (or may not) have taken place.

Engage with the wealth of case law to suggest how the court may use its discretion in applying the criteria in s.15 of TOLATA 1996 either to order a sale or not.

**Question 6**

In 2007 Abe bought a set of farm buildings which comprise a farmhouse and three dilapidated barns: Green Barn, Red Barn, and Yellow Barn. Abe lives in the farmhouse and converts the three barns into houses. In the yard at the front of the three barns Abe built a heated swimming pool.

In 2008 Abe sold the three barns. Each sale contained the following terms requiring the purchaser to:

(i) use the land as a private dwelling;

(ii) maintain the section of hedge separating each barn from the farmhouse;

and

(iii) pay a proportion of the annual cost of running the swimming pool.

In 2012, when Abe sold the farmhouse to Bertha, the three barns had already been bought and sold several times. When she moved in, Bertha discovered that Carolyn, the owner of Green Barn, was using it to run her publishing business. Bertha also noticed that the section of hedge lying between the farmhouse and Red Barn (owned by Dawn) had blown down. She also learnt that Edwina, who now owns Yellow Barn, has been regularly using the swimming pool but last year refused to pay towards a contribution of the cost of heating it.

Advise Bertha.

**General remarks**

This is a relatively straightforward question on freehold covenants. The central concern should be on determining whether the benefit and burden of each of the covenants has passed when ownership of the land changes hands (subject guide Sections 9.1 and 9.2). This will establish if Bertha is able to sue for breach of covenant.

**Law cases, reports and other references the Examiners would expect you to use**

*Tulk v Moxhay* (1848); *Haywood Rhone v Stephens* (1994); *Haywood v The Brunswick Permanent Benefit Building Society* (1881); *Smith and Snipes Hall Farm Ltd v River Douglas Catchment Board* (1949); *Federated Homes Ltd v Mill Lodge Properties Ltd* (1980); *Crest Nicholson Residential (South) Ltd v McAllister* (2004); *Roake v Chada* (1984); *Hailsall v Brizell* (1957); *Thamesmead Town Ltd v Allotey* (1998).

**Common errors**

Introducing irrelevancies such as discussing rules relating to leasehold covenants.

A good answer to this question would...

Apply the principles on how the benefit and burden of the various covenants may or may not have been transmitted to subsequent owners of the dominant and servient land in a step-by-step way.

Poor answers to this question...

Lacked a logical structure and complete coverage of the issues on transmission of the benefit and/or burden.
Question 7
Dan leases Ralph a cottage which forms part of Dan’s large country estate. The cottage has a small garden, and is a short distance from a main road. There is a track that runs from the cottage across a narrow strip of land belonging to Dan’s estate to the main road. Dan regularly walks from his estate through the cottage garden to reach the track. The track is the fastest route by which Dan can reach the nearest train station, and the only means for Ralph to get access to the main road. A few weeks after the lease is created, Dan allows Ralph to store his quad bike in a locked shed on Dan’s land.

When Ralph’s lease expires, he buys the registered freehold title to the cottage from Dan. Ralph and Dan fall out after a quarrel about the politics of fox hunting. As a result Dan tells Ralph that he must pay to use that part of the track that lies on the narrow strip of his land. Dan also insists that Ralph remove the quad bike from his shed. Ralph therefore decides to lock his garden gate, preventing Dan from using the cottage garden to reach the track.

Dan seeks advice on his property rights. Advise him.

General remarks
A considerable number of candidates attempted this problem question on easements. Essentially Dan needs advice on whether his right of way over the cottage garden and Ralph’s claim to store the quad bike are capable in law of being easements (subject guide Section 8.1.1; study pack, pp.203–10) and, if so, how they may have been impliedly granted or reserved (subject guide Section 8.2.2; study pack, pp.214–22).

Law cases, reports and other references the Examiners would expect you to use
Law of Property Act 1925, s.62; Wheeldon v Burrows (1879); Nickerson v Barracough (1980); Stafford v Lee (1993); Re Ellenborough Park; Moncrieff v Jamieson (2008); London and Blenheim Estates Ltd v Ladbroke Retail Parks Ltd (1993); Batchelor v Marlow (2003); Pwllbach Colliery Ltd v Woodman (1915); Sovmots v Secretary of State for the Environment (1978); Re Webbs Lease (1951).

Common errors
Lacking an explicit application to the facts of one or more of the four characteristics that indicate that a right is eligible to be an easement to the facts.

Failing to distinguish accurately between when implied grant rather than implied reservation applies.

A good answer to this question would…
Examine all the legally available methods by which the rights being claimed as an easement may have been impliedly created, even if in some instances the advice culminates in dismissing the applicability of a particular method because of the specific facts in the problem.

Poor answers to this question…
Gave incomplete advice by dealing with the Re Ellenborough Park criteria without mentioning if and how implied creation might have occurred.

Question 8
“The Land Registration Act 2002 provides that virtually all property interests affecting title to land should be registered and, therefore, will be found on the land register. The law should go even further so as to provide that all interests relating to land must be registered.”
Discuss. (Do not consider adverse possession in your answer)

General remarks
This is a demanding question which relatively few candidates attempted. It requires a sure grasp of a technical area of law that students commonly finding daunting (subject guide Sections 3.2 and 3.3; study pack, pp.48-83). The quotation first invites discussion of the claim that the legislation provides a virtually comprehensive regime for registration of property interests. It then suggests that the reach of registration should be extended. This allows consideration of the nature and justification for some rights being statutorily accorded overriding status even though they are not protected on the register. The question also makes it clear that answers should not touch the subject of adverse possession (which features in an earlier question).

Law cases, reports and other references the Examiners would expect you to use
Of the various provisions of the Land Registration Act 2002 the following are of particular relevance: ss.27–29, Schedule 3, paras 1–3. In addition, post-2002 case law that it may be worthwhile to include on the scope of actual occupation include Thompson v Foy (2009) and Link Lending v Bustard (2010).

Common errors
Introducing barely relevant material – such as the development of land registration and/or on the provisions of the Land Registration Act 1925 – without justifying its inclusion.
Confusing principles and cases of unregistered and registered land law.

A good answer to this question would...
Make use of the quotation – its wording and any underlying assumptions – to frame and direct the answer.
Respond to the second sentence in the quotation that suggests that the law should provide that all interests relating to land must be registered.

Poor answers to this question...
Offered purely superficial and general descriptions of the scheme of land registration, often in ways that created the impression that candidates were regurgitating pre-prepared notes.
Include the provisions in the Land Registration Act 2002 relating to adverse possession.