

## **Examiners' Comments on the 2002 Examination**

### **Head I: Conveyancing and Landlord and Tenant**

This report contains observations made by examiners on the performance of candidates who were unsuccessful in the examination. The headings indicate general categories of weakness.

#### **Failure to follow the examination rubric**

Candidates are required to answer all questions. Some candidates did not answer parts of the questions, such as Question 4 Part B, and Question 5(b). Such omissions can make the difference between success and failure in marginal cases.

Candidates must answer the question set. Most questions required reasons to be given in support of conclusions. It is not therefore sufficient merely to provide a conclusion. For example, in Question 3(e) some candidates merely answered "No" without explaining the principles in the Grand Trade case.

#### **Inadequate information**

Some scripts contained very little information, and no authorities at all. This suggests either failure to comprehend the subject or inadequate preparation. It is not appropriate for candidates to assume that an open book examination dispenses with the need for proper preparation.

#### **Failure to direct information to the question**

Candidates are required to address issues raised by the question. Some candidates spent too long on unnecessary introductions which were not directed to those issues. In a few cases candidates copied out provisions of legislation rather than explaining and applying the law.

#### **Failure to identify key issues**

Failure to spot key issues results in omissions of relevant law. Identifying the wrong issue leads to irrelevance. Too much irrelevance indicates that a candidate has not understood the issues raised by the question. No marks are awarded for omissions or irrelevance.

#### ***Examples***

Question 1(b) - some candidates did not consider the effect of inspection prior to signing the agreement.

Question 1(c) - concerned waiver by conduct, not raising requisitions out of time.

Question 2(d) – failure to consider the possible effect on title of an unwritten equity.

Question 2(e) – no mention of covenants for title.

Question 3(a) - most candidates missed the point that a Certificate of Compliance would remove the risk of re-entry by the government for non-compliance with the positive covenants.

Question 3(b) - the car park layout plan was registered against the property and should therefore be produced as it prima facie affects the property.

Question 3(c) – the principal issue here was how to prove missing documents by econdary evidence, but some candidates wrote at length on the presumptions of non-revocation under the Powers of Attorney Ordinance.

Question 4 Part A – failure to refer to the requirements of the Land Survey Ordinance in respect of sectioning of land.

Question 4 Part B(b) – failure to examine section 41(2) of the Conveyancing and Property Ordinance.

Question 5(a) – failure to identify possible grounds of opposition to an application for a new tenancy.

### **Failure to cover issues in sufficient depth**

In some cases correctly identified issues were not fully explained. For example, outline answers to Question 4 Part A lacked detail on planning and building controls. In question 5(a) some candidates did not adequately address the issue of primary user of the premises.

### **Errors of law**

Errors of law were minimal. However, in Question 4 Part B(b), some candidates thought that a Management Company was a corporation of owners under the Building Management Ordinance. In Question 5(a) some candidates thought that the landlord had lost his right to terminate the tenancy by serving a Form CR 101 because he had not served it more than 6 months before the expiry of the contractual term.

This report contains comments that might assist candidates with their preparation and examination technique. It is not intended to be an exhaustive list of problems.