

Examiners' Comments on the 2004 Examination

Head 1: Conveyancing and Landlord and Tenant

This report contains observations made by examiners on the performance of candidates in the 2004 examination. It is not intended to be an exhaustive list of problems. The comments are provided to help candidates with preparation and with examination technique.

The headings indicate **general** categories of weakness.

Failure to follow the examination rubric

Candidates are required to answer all questions. Candidates cannot expect a pass mark to an answer which has not been attempted. Omissions of one or more parts of a question can make the difference between success and failure in marginal cases.

Candidates must answer the question set. Many questions required reasons to be given in support of conclusions. In such cases it is not sufficient merely to provide a conclusion such as "yes" or "no", without further explanation.

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.

Candidates are advised to pay attention to the number of marks allocated to a question.

Failure to direct information to the question

Candidates are required to address issues raised by the question.

It is important to ensure that information is presented in answer to the specific question set. For example, in question 3, issues raised in part (b) were examined in part (a) and vice-versa. An examiner is entitled to conclude lack of understanding in such a situation. It is the responsibility of the candidate to demonstrate knowledge and understanding, not to expect an examiner to infer it from inadequate information.

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.

Omissions constituted the major weakness in the 2004 examination. A significant number of candidates failed to deal with one or more issues raised in questions 1 to 4, although question 5 was generally done well.

Examples

Question 1

Failure to deal with the issue of defeasibility of title.

Inadequate treatment of the effect on title of the rights of occupiers.

Failure to explain how to clear an old mortgage off the title.

Question 2

Failure to consider, either adequately or at all, the effect of clause 6 on the right to claim specific performance and/or whether the purchaser was ready willing and able to complete. These were significant defects in view of the fact that they carried 6 marks of the 20 for this question.

The same point applies to the failure to consider the issue of whether time was of the essence, which carried 4 marks.

Question 3

Failure to explain the difficulties of curing the defect in respect of the potential liability to estate duty.

Failure to deal with substantial performance, either at all or adequately.

Failure to explain the validity of the charging order

Question 4

The main problem on part (a) was that many candidates confused the issue of subdivision of shares with the quite separate question of whether an owner can sell part of the exclusive use areas without shares. The question concerned the former and not the latter issue.

On part (b), some candidates failed to answer the question in that they did not consider the issue of when the purchaser could rescind. Others failed to explain why the potential liability to contribute to the judgment debt could be a defect in title and/or why the vendor had failed to make title.

Failure to cover issues in sufficient depth

In some cases correctly identified issues were not fully explained. For instance:

Question 4

On (c)ⁱⁱ – many candidates failed to explain the meaning of structural alterations, either at all or correctly. It is not sufficient to state that the courts apply a layman's meaning to the term.

Errors of law

Errors of law were not a major problem in this year's examination. One was in question 3, where some candidates concluded wrongly that the vendor's title was not encumbered with any potential liability to estate duty because the donor of the gift was still alive.