



Legal Aspects Relating to Residential Estate Agency (LAREA)

Sample Questions and Answers

propertymark
QUALIFICATIONS

LEGAL ASPECTS RELATING TO RESIDENTIAL ESTATE AGENCY (LAREA) SAMPLE QUESTIONS AND ANSWERS

This unit builds on the legal aspects units covered in Level 3, expanding on select concepts and including case law to illustrate various points. It begins with general legal concepts and looks at contract, tort basic property law and estate agency law in greater depth. The unit concludes with a consideration of financial service requirements, consumer legislation and the legal aspects of the buying and selling process.

Questions, and answers where provided, are correct as at time of publishing.

April 2021

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ASSESSMENT INFORMATION

Assessment Method	Short essay style exams 2 hours
Availability of assessment	Set times of the year as identified within the qualification page on the Propertymark Qualifications website

Examinations are manually marked by an examiner and moderated by an experienced and qualified moderator.

The pass mark for each unit is **45%**.

The successful achievement of all units will result in either a final certificate showing a Pass or Distinction Grade.

In order to obtain an overall grade of Distinction, you need to achieve an **overall average mark of 70% across all examinations**.

SCENARIO 1

Caroline agrees to market her property at an asking price of £250,000. Rob makes an offer of £230,000, which is not accepted by Caroline. However, Caroline says she will accept £240,000. Rob makes a counter offer of £235,000, which is again rejected by Caroline. Rob then comes back with a final counter offer of £240,000, which Caroline rejects. Rob is upset that his final counter offer has not been accepted after Caroline had earlier said she would accept £240,000.

Question 1

Explain why Caroline can reject the final offer of £240,000 from Rob.

Answers may include:

- Caroline's asking price is classified as an invitation to treat rather than an offer
- Caroline doesn't have to accept any offer
- Reference to Fisher vs Bell (1961)
- Would need to be unconditionally accepted by Caroline to be binding
- Discussion of counter offers wiping out previous offers
- Can't accept a previous offer subsequently rejected and extinguished by a counter offer

Credit can be given by markers for any other valid answer(s).

SCENARIO 1 (CONTD.)

Question 2

Explain the circumstances under which an offer can be terminated giving example of case law.

Answers may include:

Circumstance explained:

- Express rejection
- Counter offer

A good explanation of a circumstance

- Revocation (withdrawn)
- Lapse of time
- Death
- Failure of a condition

Case law

- Dickenson vs Dodds (1876)
- Payne vs Cave (1789)
- Warlow vs Harrison (1859)

Credit can be given by markers for any other valid answer(s).

SCENARIO 2

Your potential client, Mr Smith, is interested in using your agency to sell his property. He has asked to see a copy of your standard agency contract.

Question 1

Discuss the legal requirements of the Estate Agents Act (1979) and related legislation in relation to the provision of agency contracts.

Answers may include:

- Section 18 of the Estate Agents Act (1979) asks for a variety of information to be given but does not specify how.
- Written contract now an obligation under the Estate Agents (Provision of Information) Regulations 1991
- If the terms sole agency, sole selling rights or ready willing and able buyer are used, these must be explained using the statutory wording or similar
- Must be given in writing as soon as possible and before the Client is committed
- Section 18 requires that all payments are listed along with when they are due. Payments details include:
 - All charges and when due
 - Commission and how it is calculated
 - Details of costs based on the full asking price
 - Details of any other charges, e.g. boards, advertising, etc
 - All costs should include VAT
 - Might also mention CMA or ASA/CAP and redress schemes require VAT inclusive fees to be quoted

Credit can be given by markers for any other valid answer(s).

SCENARIO 2 (CONTD.)

Question 2

Explain what is meant by a tie-in service, giving examples of those that could be offered to buyers. Explain the duties on an agent to inform their seller clients.

Answers may include:

- An explanation of a tie-in service
 - A tie-in service is any service that may be offered to a potential buyer in connection with the acquisition of and interest in land
 - Covered by the 1991 Regulations
 - Consent of the client (seller) not required
 - Disclose referral fees, if these are received
- Examples of tie-in services
 - Banking and insurance
 - Mortgage/life assurance
 - Introduction to a removal firm or surveyor
 - Selling the buyers own property
- Duties of an agent
 - Client must be informed in writing at the outset that you might offer these services
 - If tie-in services are later taken up, the client seller must be informed in writing that they are now being provided

Credit can be given by markers for any other valid answer(s).

SCENARIO 3

A prospective buyer visits your office to pick up details on a property. During the visit, the receptionist mentions that bus links are good in the area. However, after buying the property the buyer finds that this is not the case and is threatening to sue for negligence.

Question 1

In view of the negligence threat, discuss the issues that would need to be considered.

Answers may include:

- For negligence to have occurred:
 - Duty of care owed
 - Duty of care breached
 - Loss or damage has resulted from the breach
- Issues to consider
 - Issue is negligent misstatement.
 - Client could sue the firm under Vicarious Liability
 - Employers liable for the actions of their employees
 - Receptionist not in sales so not qualified to offer sales advice
 - Buyer should have made their own checks based on own requirements
- Additional issues
 - CPRs cited
 - False or misleading information
 - Internal due diligence procedures

Credit can be given by markers for any other valid answer(s).

SCENARIO 3 (CONTD.)

Question 2

Discuss the defences for negligence and the remedies available for claimants.

Answers may include:

- Defences

- o There must be foreseeability and proximity for a case to succeed
- o As a firm you need to have procedures in place to show due diligence and show the standards of a reasonably competent estate agent
- o Follow accepted codes of practice

- Remedies

- o Remedies are damages for losses
- o Physical damage
- o Economic loss
- o Psychological damage
- o Volenti non fit injuria, Contributory Negligence, Limitation

Credit can be given by markers for any other valid answer(s).

SCENARIO 4

You are selling a detached freehold property to which access is via a path across an adjoining property's garden.

Question 1

What would this access be classed as, and what tests would you apply to determine this?

Answers may include:

- Identifying this would be classed as an easement (right of way)
- Discussing for each test identified
 - There must be a dominant and servient tenement
 - The easement must accommodate the dominant tenement
 - Both tenements cannot be owned by the same person
 - The easement must be capable of being subject to a grant
 - Long usage (e.g. 20/40 years)

Credit can be given by markers for any other valid answer(s).

SCENARIO 4 (CONTD.)

Question 2

Explain what is meant by the term freehold title. What are the main differences compared to a leasehold title?

Answers may include:

Freehold

- Freehold seen as true ownership as it is indefinite rather than a term of years.
- Freehold called fee simple absolute in possession
 - Fee – inheritable and indefinite
 - Simple – available to all heirs
 - Absolute – there are no conditions
 - In possession – holder has right to occupy

Leasehold

- Leasehold is 'term of years absolute' created from a freehold or superior leasehold

Differences

- A leasehold is time limited. A freehold is indefinite
- A leasehold has covenants and conditions. Generally, there are more restrictions on leasehold property in terms of use and obligations
- Freehold properties hold their value, whereas the value of leasehold property will diminish particularly towards the end of the lease term

Credit can be given by markers for any other valid answer(s).

SCENARIO 5

Your company is considering offering financial services alongside its existing estate agency business.

Question 1

Outline the legislation which covers the provision of financial services by estate agents, and the steps you should take to ensure compliance when providing these services.

Answers may include:

Financial Services and Markets Act 2000 governs financial services activities.

- Would have to decide the type of business to become
- Authorised firm
- Appointed representative
- Introducer
- Will determine the type of advice that can be offered
- Must be authorised by the Financial Conduct Authority
- Individual members of staff must be trained/qualified and approved
- Only they can give advice with the firm

Credit can be given by markers for any other valid answer(s).

SCENARIO 5 (CONTD.)

Question 2

To protect consumers should a dispute arise, what dispute resolution obligations do agents have and what are the advantages to the consumer?

Answers may include:

- Agents should have a complaints procedure and belong to a redress scheme. If they belong to a professional body a complainant could complain to the professional body, but they cannot award compensation as a redress scheme can, professional bodies can only discipline their members
- Consumers, Estate Agents and Redress (CEAR) Act 2007 requires that all agents belong to an approved scheme
- Provides dispute resolution without going to court
- Courts would expect alternative dispute resolution to have taken place
- Advantages to the consumer identified:
 - Free for the consumer to use
 - Can award compensation of up to £25,000
 - Agents must make customers aware in writing of the scheme they are in
 - Agents must keep literature in the office where it can be easily seen
 - Any decision by the scheme is binding on the agent and customer (complainant).

Credit can be given by markers for any other valid answer(s).