



SQE ANSWERED

SAMPLE NOTES FROM OUR SQE1 CORE GUIDE:

- Contract Law: Consideration and Promissory Estoppel
- Property Law and Practice: Investigating Title
- Criminal Law and Practice: Murder

SQE Answered is a comprehensive, distinction-level set of exam-focused study notes for the Solicitor's Qualifying Exam. This is a sample from our *SQE1 Core Guide*.

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CONSIDERATION

RULES OF CONSIDERATION

In order for consideration to be valid in law it must:

NOT BE PAST	MOVE FROM THE PROMISEE TO THE PROMISOR	BE SUFFICIENT, BUT NEED NOT BE ADEQUATE
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PERFORMANCE OF AN EXISTING OBLIGATION

The general rule is that performance of an existing...	OBLIGATION IMPOSED BY LAW	... is not good consideration.
	OBLIGATION OWED TO A THIRD PARTY	
	CONTRACTUAL DUTY	

PROMISSORY ESTOPPEL

In order to rely on promissory estoppel, a Defendant must establish the following four elements:

- A clear and unequivocal promise that causes...**
- ... a change of position by the promisee in reliance on the promise.**
- It must be inequitable for the promisor to go back on the promise.**
- This doctrine is a "shield not a sword".**

Definition of consideration:

“
 An act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought.
 ”

The simplest way to understand consideration is as the value element of the promises exchanged between the parties. There must be a **mutuality of promises**. For example, when buying goods from a supermarket, the buyer obtains the goods in the basket and the seller receives money for the sale. The law will not generally enforce a purely gratuitous promise i.e. a promise for which nothing is offered in exchange.

There are two kinds of consideration:

1:	Executory – the parties agree future performance after the contract has been made.
2:	Executive – where performance has already taken place at the time of the contract.

GENERAL RULE:

Consideration is an essential requirement for the formation of a legally binding contract. In order for a contract to be enforceable “*a consideration must be proved*”.

Consideration limits the types of promises which will be enforced by the courts. Without the doctrine of consideration, any promise could be actionable.

REMEMBER: **both** parties must provide consideration.

EXCEPTION:

Contracts which are executed as **deeds** are enforceable without consideration.

RULES OF CONSIDERATION

There are various common law rules with which consideration must comply in order to be valid in law.

Consideration must:

NOT BE PAST

MOVE FROM THE PROMISEE
TO THE PROMISOR

BE SUFFICIENT, BUT NEED
NOT BE ADEQUATE

1: Consideration must not be past.

Where one party has already acted, a **later** promise by another party to perform an act in return is not good consideration, as it is past consideration.

EXCEPTION:

In *Pao On v Lau Yiu Long* Claimant purchasers agreed not to sell shares for 12 months.

By a later agreement the Defendants agreed to indemnify the Claimants against any fall in value of the shares over that period.

Although the consideration was past in relation to the indemnity, the Privy Council found it was good consideration, and set out the following considerations for past consideration to be good consideration:

Was it at the request of the promisor?

1: Did the promise-maker (promisor) ask for the promisee to take the action?

Was payment understood to be due?

2: Did both parties assume that payment would be made for the variation? This is more likely in a commercial context than in a domestic one.

If the payment had been made in advance, would it have been legally enforceable?

3: Are there any other consideration, acceptance or ICLR problems?

2: Consideration must move from the promisee to the promisor.

In return for receiving the promisor's promise, the promisee must have given consideration. **Both parties must provide consideration.** A Claimant can only claim on a contract if consideration has been provided.

EXCEPTION:
Contract (Rights of Third Parties) Act 1999

3rd parties (people who are neither promisor nor promisee to the contract) **can** enforce a contract between others which benefits that 3rd party, even though the 3rd party has not provided any consideration.

3: Consideration must be sufficient but need not be adequate.

Consideration must have **some** value in the eyes of the law (i.e. be sufficient), even if it is inadequate (i.e. far less than the promise is worth).

Examples of sufficiency in case law:

- Giving up a legal right is sufficient but promising not to enforce a right that you do not have is insufficient.
- Promising to abstain from drink and tobacco was giving up a legal right and did amount to sufficient consideration.

4: Performance of an existing obligation, as between the same parties, is not good consideration – an existing obligation already binds and cannot be good consideration.

Performance of an existing obligation is not good consideration – in order to be good consideration something extra must be offered above one's existing obligations.

Two contrasting cases demonstrate this point and its exception.

CASE 1: On a sea voyage some sailors deserted, the remainder were offered extra money to crew the ship home with fewer hands. When the additional, promised payment was refused they could not enforce; they had been employed to cover "*all reasonable endeavours*".

CASE 2: On a different occasion so many sailors deserted a ship that those who remained were obliged to carry out tasks far more onerous than had been contemplated. These sailors were able to enforce payment of the additional monies promised.

Further examples of offering something extra:
PUBLIC DUTIES

Carrying out a pre-existing public duty will not amount to consideration. For example, a witness who had been subpoenaed could not enforce a promise to be paid to appear in court as the witness was already legally obliged to attend.

Exceptions may be made where actions or obligations go beyond ordinary duties:

- The policing bill for a football match had to be paid by the club that requested it as it went beyond ordinary policing duties.
- A police officer had provided valid consideration for a reward when they gave information to a householder about a break in. Their duty was to prevent crime and the provision of information went beyond the duty.

Consider: have the Claimant's actions gone above and beyond what they were contracted to do?

If so, that can be good consideration. Remember that in addition all the criteria for good consideration must also be met. If the Claimant has not gone “*over and beyond*” expectation there are other circumstances in which performance of an existing obligation can amount to good consideration. The exception is set out in *Williams v Roffey Bros* as follows:

1:	Where A already has a contract with B to supply goods or services; and
2:	B has reason to doubt that A will complete (A cannot approach B and say this though, as it would be duress); and
3:	B approaches A and promises to pay A extra to complete on time ; and
4:	B obtains a “practical benefit” or “obviates a disbenefit” . NOTE: this was not defined in <i>Roffey Bros</i> . In this case it was avoidance of a penalty clause – is the example in your MCQ similar? What exactly is the benefit afforded/disbenefit avoided?; and
5:	B's promise was not given as a result of duress or fraud ; then
6:	The benefit to B is capable of being consideration, so B's promise to pay more for the same will be binding.

NOTE: this case is precedent only for situations where the contract is renegotiated and applies only where there is an offer to **increase** the contract price.

When applying *Roffey Bros.*, you must be certain that the variation did not result from duress (see *Duress chapter*). The effect of duress would be to render the contract voidable.

NOTE: Duties owed to third parties

The general rule is that promising someone new that you will perform an existing contractual duty owed to a third party **may** be valid consideration. This would apply if the person to whom you make the promise gains a direct right to sue if you fail to fulfil the promise.

5: Part payment of a debt is not good consideration

GENERAL RULE:

Part payment of a debt is not good consideration as this is merely fulfilling an existing obligation to pay the money. Even where the other party promises to waive the remainder of the debt, they can still claim the debt back at any later point. There are three potential exceptions to the rule:

EXCEPTION 1:

Payment with a **different thing**, in a **different place**, or a **different time** (i.e. earlier) can be good consideration (*Pinnel's Case*).

EXCEPTION 2: Part-payment of a debt by a **3rd party** is good consideration.

EXCEPTION 3: **Promissory Estoppel** (*see overleaf*).

PROMISSORY ESTOPPEL

Promissory estoppel was established by **LJ Denning** in ***Central London Property Trust v High Trees House***. In this case the Claimant promised to reduce the agreed rent “*for the duration of the war.*” The property became fully let in 1945, and when the Claimant sued for the full back rent, it was held that the rent could be claimed in full for the period for which it was fully let, but that the landlord could not claim for the wartime period when it was partly vacant.

ELEMENTS OF PROMISSORY ESTOPPEL

Promissory Estoppel has five elements:

1:	A clear and unequivocal promise to suspend or waive existing contractual rights. This can be by words or conduct but must be sufficiently clear.
2:	A change of position by the promisee in reliance on the promise.
3:	The reliance need not be detrimental.
4:	It must be inequitable for the promisor to go back on the promise. The party claiming the estoppel in their favour will not succeed if they have demonstrated bad faith. Promissory estoppel is an equitable remedy and there is an expectation that those seeking equitable remedies will have “ <i>clean hands</i> ”; this will not be the case if they have shown bad faith.
5:	Promissory estoppel is a shield, not a sword. It can only be used as a defence, not a cause of action.

EFFECT OF THE ESTOPPEL

Generally **suspends** rights, which means that rights could be resumed later.

Rights can be **resumed** later:

1:	following reasonable notice ; or
2:	when the circumstances giving rise to estoppel cease (in <i>CLP v High Trees</i> the properties were fully let before the war ended, unlike during the Blitz in 1940).

If the money is due in instalments (like rent), the Claimant cannot recover the money that was waived – they can only receive **future** payments. Any past periodic payments are extinguished. **This implies that if the money is due as a lump sum** (one debt payment), then the **payment is merely suspended** for the period that the estoppel lasts – afterwards the Claimant can resume their rights for the **whole sum**.

In summary, if the Claimant has promised to accept less, the Defendant will be able to rely on this variation if payment is made with a different thing, if a third party pays, or if promissory estoppel applies.

NOTE: duress is **not** relevant to promises to accept less.

ESTOPPEL BY CONVENTION

Estoppel by convention is where the parties act on the common assumption that a set of facts or situation in law is true. The Supreme Court approved the following five principles for an estoppel by convention to arise:

1:	The common assumption must be expressly or impliedly shared by the parties not merely understood by them;
2:	The party raising the estoppel must have “ <i>assumed some element of responsibility for it... in the sense of leading the other party to understand they would rely on it</i> ”;
3:	The person raising the estoppel must have relied on the common assumption;
4:	Reliance must be apparent in some subsequent mutual dealing between the parties; and
5:	Some detriment must have been suffered by the person defending the estoppel or some benefit accrued to the other party so that it would be unconscionable to assert the true legal position.

HOW TO ANSWER AN MCQ ON CONSIDERATION

STEP 1:	<p>Does the MCQ involve a new contract being formed or an issue with variation of an existing contract? Remember that a variation contract is itself a new contract and so any variation must also meet all of the usual requirements of a contract.</p>
STEP 2:	<p>Decide what is the issue with consideration. There are only a few potential issues: The consideration is <u>not good consideration</u> because it does not meet one or more of the criteria.</p> <p>ASK:</p> <ul style="list-style-type: none"> • Is it past consideration? • Is the consideration flowing from the promisee to the promisor? If not, it is not valid. • Is the consideration sufficient? Remember that this does not mean adequate. • Is it performance of an existing obligation? • Is it in respect of a duty owed to a third party? • Is it a promise to pay more? Remember that this will only be enforceable if some extra value is given. • Is it a promise to pay less? If so, it will be invalid unless the payment is made in a different way, or there is a promissory estoppel, or a part payment is made by a third party in circumstances where a fresh contract arises between that third party and the promisor.
STEP 3:	<p>Pick the most appropriate answer.</p>

INVESTIGATING TITLE

SEARCHES & ENQUIRIES

Searches will be carried out by any party acquiring land, whether that is freehold or long leasehold. Certain tenants entering into new leases may also conduct searches.

GENERAL APPROACH TO MCQs

IDENTIFY	the potential issues;
CONSIDER	why those issues could cause problems for your client; and
SOLVE	know what options are available to the client. In an MCQ there will always be one option which is clearly the best.

Run through this checklist of potential issues:

1:	Description of land
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Is it correct and in line with the client's expectations?

2:	Rights / easements
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This will most commonly be a right of way. Consider the following:

ADEQUACY	Is the easement adequate for the client's needs? (E.g. if considering a right of way, is the roadway wide enough to allow suitable vehicles through?) If it is not adequate, a Deed of Variation can be requested from the owner of the servient land.
MAINTENANCE	Is the easement in need of maintenance? This could mean ongoing costs
ADOPTION	In the case of a right of way, does the Local Authority have any plans to adopt it? This should be revealed by the results of Local Authority Search CON29 . If so, this may mean that the client incurs costs to bring the road up to the standard required by the Authority, but that after this the client will save on ongoing maintenance costs.
REGISTRATION	Has the right been registered? For registered land, check the Charges Register of the servient land. If the servient land is unregistered, check the Land Charges Register. You should also check if there is a caution against first registration by searching the Index Map.

3: Is the Title Absolute?

Any mortgagee is likely to require a client to show that they have Title Absolute to the land as a pre-condition to any loan. Title Absolute is the strongest form of title that a landowner can have – it means that they have the strongest possible proof that they are the lawful owners of the land.

TITLE ABSOLUTE	Shows that LR is satisfied that the Seller is the true and proper owner.
QUALIFIED TITLE	Ownership has only been established for a short period of time, or there are reservations or missing documents – can be upgraded to absolute if the issues are rectified.
POSSESSORY TITLE	Where the Seller is in actual occupation without documentary evidence as to how the property was acquired. This can be upgraded to Title Absolute after someone has owned the land for 12 years, provided no adverse claims against it have been made during that period.
GOOD LEASEHOLD TITLE	Where the Tenant cannot provide evidence of the Landlord's title.

4: Check that the Registered Proprietor of the land is the same person as the Seller

Have the following checks been carried out - depending on who the seller/proprietor is?

JOINT TENANTS ("JTs") HOLD LEGAL ESTATE

Where more than one person is a legal owner, assume that the beneficial estate is held as a joint tenancy unless there is a **restriction on the Proprietorship Register** (which will look something like this: "*no disposition by a sole proprietor...*"). If there is, that means there has been a severance of the joint tenancy at some point, and so the beneficial estate is now held as a tenancy-in-common. Check how many of the JTs or TiCs are surviving:

- **All JTs alive** – all of them must execute the deed.
- **All Tenants-in-Common ("TiCs") alive** – all of them must execute the deed.
- **One surviving JT** – the survivor can execute as both the legal and beneficial interests are vested in them. Remember that the Land Registry ("LR") will also need to see the **death certificate(s)** (or a certified copy) for the deceased JT(s).
- **One surviving TiC** – the purchaser can overreach all beneficial interests if another trustee is appointed, and the purchase monies are paid to both the surviving TiC and that second trustee.

An exception is made if there is a Personal Representative ("PR"), in which case there is no need to appoint another trustee to overreach). **Remember** that the LR needs to see both the **death certificate(s)** of the deceased TiC(s) and also the **deed of appointment** of the second trustee, if relevant.

COMPANIES	Check name, company number and solvency at Companies House (“CH”). Is an overseas company registered? (Companies can execute deeds.)
INDIVIDUALS	Can execute deeds.
PERSONAL REPRESENTATIVES	The Buyer needs to see the PRs’ Grant of Representation – PRs must then assent to the sale in writing (use a deed), and all must execute. Remember that payment to one PR overreaches any beneficial interests, as above.
ATTORNEY	The Buyer needs to see a certified copy of the Power of Attorney, check that it was validly granted, has not been revoked and that this property sale is within the attorney’s powers. REMEMBER: the sale can still be valid if the power has been revoked provided that the buyer is unaware of this.
MORTGAGEE	Buyer must check that a power of sale exists (inspect the mortgage deed) and has arisen.

5: Are there any leases over the land?

Advise the client that they could be bound by them and so become a landlord on purchase.

6: Are there any easements burdening the land?

For example, rights of way over the land enjoyed by a neighbour.

7: Check the mortgages

There must be an **undertaking from the Seller’s solicitor to discharge the Seller’s mortgage** – otherwise the Buyer could be bound by the mortgage. The Seller must discharge the mortgage using either a **DS1**, Electronic Discharge (“ED”) or an **e-DS1**.

8: Check for covenants

Are there any positive covenants (where an indemnity was given by the previous owner(s) or restrictive covenants? If so, go through the steps below:

STEP 1:

Will the covenant be enforceable against the buyer?

Consider your knowledge of the passing of the burdens of covenants from the conversion course, PGDL or LLB.

STEP 2:	<p>Will the covenant be a problem for the buyer?</p> <p>Are there any continuing, past or future breaches of the covenants? Has the previous owner been breaching the covenant? Will the Buyer want to breach it? Consider the use they want to make of the land (e.g. a restrictive covenant preventing the Buyer from using the land for heavy industry may not be a problem if they want to open a shop).</p> <p>Apply the facts in the scenario – is this covenant a problem for this Buyer?</p>
STEP 3:	<p>Find out who has the benefit of those covenants.</p> <p>The Person with the Benefit, or “PWB” can be determined via a search of the Index Map.</p>
STEP 4:	<p>Is there an available solution?</p> <p>Solutions vary depending on the timing of the breach and the age of the covenant.</p> <ul style="list-style-type: none"> • A past breach, where the covenant is >50 years old – take out insurance (*conduct point - remember that s. 19 FSMA limits a solicitor’s ability to advise on, or broker insurance). Do not tell the PWB of the breach. • A past breach, where the covenant is <50 years old – seek the PWB’s consent. • Intend to breach in future – seek the consent of PWB or obtain insurance. • Any, e.g. where the PWB will not give consent – go to the Lands Tribunal to have the covenant discharged. <p>NOTE: this is a last resort, as it will take a long time, cost a lot, and in any event the Tribunal may decide against the client. It is only for restrictive covenants.</p>

9: Are there any other charges not on the register?

The following unregistered charges could override a purchase, and so the Buyer must be aware that they could be bound by them:

- **Interests of persons in actual occupation.**
- **Leases** – but only if ≤ seven years in length, or ≤ 21 years if granted before 13 October 2003.
- **Easements** – only legal easements created under the rule in *Wheeldon v Burrows* and equitable easements created before 13 October 2003 override.

The Buyer’s solicitor must **raise requisitions** (i.e. make enquiries) with the Seller’s solicitor and **inspect the property** in order to check for such interests.

10: Any issues on the enquiries before contract?

The **CPSE.1** is the questionnaire on which the Seller answers the Buyer’s questions in commercial transactions. Forms **TA 6-10** are used for most residential questions. The Seller could be liable for

misrepresentation if they have lied on either questionnaire. The Seller must also provide an Energy Performance Certificate.

11: Any issues visible on inspection?

Advise that a structural survey should be carried out by a professional surveyor or structural engineer.

12: Possibles environmental issues – contaminated land?

Where there is “*significant harm*” or the possibility of harm or water pollution.

Check:

- Is there any hint of contamination on the facts (e.g. there was previously a warehouse on the land which could have stored industrial chemicals)? If so, it is advisable that a Phase I inspection / survey is carried out. If anything is found, the Buyer may need to commission an expensive Phase II inspection.
- Where there is pollution on the land, it is the original polluter who is responsible, but beware that the current owner will be liable if the polluter is untraceable and the local authority serves a Remediation Notice. To prevent the Buyer becoming liable, ensure that the Seller cleans up – and check on the **CON29** whether the Local Authority has served, or will serve, a Remediation Notice.
- The Buyer may need to do more detailed searches, e.g. for flood risk or coal mining. Consider the answers in the **CON29M** as to whether this could be needed.

13: Drainage and water

Is the property connected to the mains water and a public sewer? Lateral drains should now all have been adopted by the local utility company. Check this – ask the utility supplier if it is commercial property, or commission a **CON29DW** if residential.

14: Chancel repair liability?

NOTE: there was a requirement that all such liabilities should be registered as of **13 October 2013** and so this should be visible on the **Official Copies** – but the position is not entirely clear. The LR has guidance indicating that it will still accept registrations for notices that lost their automatic protection after 13 October 2013. There is, as yet, no case law. It is common to search and to take out insurance.

15: Roads

The **CON29** will provide answers as to whether the Local Authority has any plans to adopt any private roads. Where the boundary of a road is unclear the Highways Authority will clarify.

16: Tree Preservation Orders (“TPO”) / smoke control orders?

The Buyer will be bound by such orders, so check the **LLC1** to see whether there are any orders over the property.

17: Planning

Check the answers provided by the “*Local Search*” (which is just a term for the **LLC1** & **CON29**) in respect of the following potential issues.

(The points below are a summary – full details about potential planning issues are explained in the next section.)

IS THE LAND IN A CONSERVATION AREA?

If so, the Buyer will need consent for tree felling / demolition – and planning permissions will generally be harder to obtain. Check that planning permissions for any works carried out from 2013 had been obtained (if required) and that anything before 2013 had Conservation Area Consent.

IS THERE A LISTED BUILDING ON THE LAND?

If so, Listed Building Consent will be needed for any changes – and planning permissions will generally be harder to obtain.

CHANGE OF USE?

Planning permission is needed to change between the classes of use of land that are set out in the **Use Classes Order (“UCO”)** unless there is a **General Permitted Development Order (“GPDO”)** exception. Check all planning permissions – if there was a change of use recently where no planning permission was granted, then the council **has ten years to enforce**, or **four years if the change was to residential use**. The Buyer would be bound to use the land in accordance with the use class(es) to which it was restricted previously.

BUILDING WORKS?

Planning permission is needed, unless it is a minor permitted development – council only has four years to enforce in respect of the **completion of a dwelling** built without planning permission being granted, otherwise **where a condition or limitation on planning permission has not been complied with the council has ten years to enforce**. If the Seller has carried out recent works without planning permission, the Buyer must insist that the necessary permissions are obtained prior to exchange. Be aware that permitted development rights can be withdrawn by a Local Authority when planning permission is granted, so that all subsequent developments, no matter how minor, will require planning permission.

**BUILDING
REGULATIONS**

These must be complied with for any building works, and there is no time limit on enforcement. Has the seller complied? If not, the Local Authority can inspect and issue a **Regularisation Certificate** – otherwise the Buyer could be bound to carry out expensive remediation works to ensure compliance.

18: Are there any public rights of access over the land?

Answers will be revealed on the **CON29**.

Always search by the following means and **always advise carrying out a physical inspection/survey** of the land.

We have given you search numbers although you will not need to know them for the MCQs – they will be useful to you when you enter practice:

- Official copies (*see below for more details*);
- Pre-contract enquiries form;
- Register of Local Land Charges – Requisition for Search and Official Certificate of Search **LLC1**;
- Chancel repair search (*see above*);
- Enquiries of Local Authorities - **CON29**;
- **CON290** (a series of optional supplementary questions to **CON29** on a range of topics, such as pollution, noise abatement, urban development areas and pipelines);
- **CON29DW** (drainage and water);
- Environmental searches (*see above*); and
- Highways search.

If **unregistered**, always also search:

- the Index Map; and
- the Land Charges registry using form **K15**.

Other searches to perform **if the facts suggest** there might be an issue:

- **CON29M** (mining);
- Companies House search;
- **K16** search for bankruptcy (where acting for a lender against an individual borrower);
- Commons registration search;
- Canals / rivers search; and
- Railways.

NOTE: when a solicitor is acting for a vendor and has replied to pre-contract enquiries and something occurs to make an answer inaccurate, there is a duty to advise the purchaser's solicitors of the change.

ANALYSING OFFICIAL COPIES

EXAMPLE OFFICIAL COPY

 - TITLE NUMBER : RE32510

A: PROPERTY REGISTER

OXFORDSHIRE: OXFORD

1. (3 July 1986) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 14 Rayleigh Road, Oxford, OX1 3NP.
2. (3 July 1986) The land tinted yellow on the title plan has the benefit of the following rights granted by the Conveyance dated 27 July 1968 referred to in the Charges Register: "TOGETHER WITH the benefit of a right of way on foot only over that part of the shared accessway belonging to 14 Rayleigh Road."
3. (3 July 1986) The land has the benefit of the rights granted by the Transfer dated 21 August 1974 referred to in the Charges Register.

NOTE: *the Property Register describes the land and estate comprised in the title. It details the location and gives a brief description of the property. This is usually the address. It may include reference to rights that benefit the land, such as legal easements.*

 B: PROPRIETORSHIP REGISTER

TITLE ABSOLUTE

1. (28 September 2001): PROPRIETOR: PETER SMITH and ANNE SMITH of 14 Rayleigh Road, Oxford, OX1 3NP.
2. (28 September 2001) The price stated to have been paid on 2 September 2001 was £500,000.
3. (28 September 2001) Except under an order of the registrar no disposition by the proprietor of the land is to be registered without the consent of the proprietor of the charge dated 2 September 2001 in favour of the Goldfarm Building Society referred to in the Charges Register.
4. (28 September 2001) RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.

NOTE: *the Proprietorship Register records the quality of the title, for example absolute or limited title. It identifies the owner of the property, giving details such as their name and address. It shows whether there are restrictions on the power to sell the property or otherwise deal with the land. It may give a price paid for the land on a specified date.*

 C: CHARGES REGISTER - ABSOLUTE FREEHOLD

1. (3 July 1986) A Conveyance of the land tinted pink on the title plan dated 18 December 1960 made between (1) Gary Phillips (Vendor) and (2) George Roney (Purchaser) contains the following covenants:-

“THE Purchaser hereby covenants with the Vendor so as to bind the land hereby conveyed into whosoever hands the same may come that the Purchaser and his* successors in title will not use the premises hereby conveyed for any purpose other than as a flower shop.” (*NOTE: in 1960 the pronoun “his” would have been used).

2. REGISTERED CHARGE dated 2 September 2001 to secure the moneys including the further advances therein mentioned.

PROPRIETOR Goldfarm Building Society of Manor House, High Road, Oxford, OX4 4NP.

NOTE: the Charges Register identifies charges and other matters that affect the land.

HOW TO ANSWER AN MCQ ON THE ANALYSIS OF OFFICIAL COPIES

1:	<p>Identify the issue.</p> <ol style="list-style-type: none"> a) In which register does the issue appear? Property, Proprietorship or Charges? b) What is the number of the entry?
2:	<p>What does the entry say and why is this a potential problem?</p> <ol style="list-style-type: none"> a) Does it relate to a particular sensitivity on the part of the client or to a particular way in which they wanted to use the land? b) Is it a more general problem relating to the land itself (e.g. environmental issues or lack of planning permission)?
4:	<p>What is the appropriate action in the circumstances?</p> <ol style="list-style-type: none"> a) Initially: <ol style="list-style-type: none"> i) Make enquiries of the seller; ii) Make enquires at the Land Registry; and/or iii) Inform the client. b) Does further action need to be undertaken? <ol style="list-style-type: none"> i) Surveys ii) Expert advice c) How can the issue be solved. Possible solutions are: <ol style="list-style-type: none"> i) Defective title indemnity insurance ii) Putting a special condition into the contract iii) Appointing a second trustee

PROFESSIONAL CONDUCT POINT

Remember the general prohibition in **s.19 Financial Services and Markets Act 2000**. Providing advice on insurance is a regulated activity, which may not be carried out unless the advisor is authorised or exempt. You should remember this in relation to the suggestion regarding insurance. (*You will find more detail on this in the Legal Services section of this guide.*)

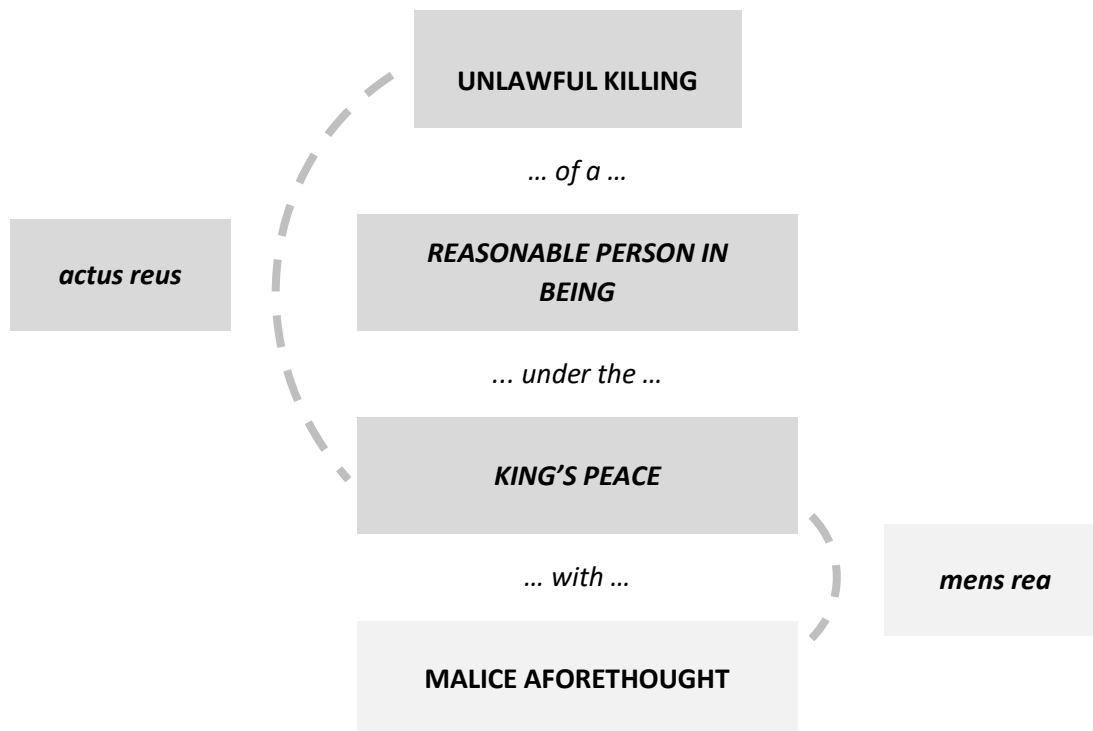
EXAMPLE OF OFFICE COPIES ANALYSIS

1:	There is a potential issue in the Proprietorship Register at entry 3 : no disposition without the consent of the proprietor of Goldfarm Building Society.
2:	The entry states: " <i>RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.</i> " This means that a single owner cannot sell the property on their own as the property is owned beneficially as tenants in common .
3:	This may be an issue for the client if one of the owners does not want to sell the property or if one owner is deceased; in that case a second trustee will need to be appointed . If a second trustee is appointed, the purchase price should be paid to both trustees to overreach any beneficial interest which may remain under the trust. This is a safe method to ensure that the buyer is free from liability in relation to the second trustee.
4:	The client will have to ensure that a new trustee has been appointed and will require evidence of the appointment. If the second owner is deceased, it may be possible for the seller to prove that the deceased's share in the property passed to the seller.

MURDER

DEFINING MURDER

Murder is defined under the common law as the:



SPECIAL DEFENCES

There are two special defences which only apply to murder:



THE MENS REA OF MURDER

The MR of murder is “*with malice aforethought*”. There is no alternative *mens rea* of recklessness for murder.

<p>“with malice aforethought”</p>	<p>This means intention to kill or to cause GBH (grievous bodily harm). GBH is defined as serious or really serious harm.</p>
<p>“Intention”</p>	<p>Intention is given its ordinary linguistic meaning by the jury of direct aim or purpose.</p> <p>NOTE: for murder only, it is possible for D to be found to have indirect or “<i>oblique</i>” intent. To find out whether D had oblique intent to commit murder, ask: was death or serious injury a virtual certainty of D’s actions? And did D appreciate this to be the case?</p> <p>If so, the jury may find that D intended to kill or cause GBH. Indirect intent only applies to murder – it cannot be used in offences where there is an alternative <i>mens rea</i> of recklessness.</p>

THE ACTUS REUS OF MURDER

The AR of murder is “*the unlawful killing of a reasonable person in being under the King’s peace.*” Breaking this down into its individual components, this means:

<p>“Unlawful”</p>	<p>Killing will generally be unlawful – only killing in battle, the death penalty and some self-defence situations could be considered lawful.</p>
<p>“Killing”</p>	<p>D’s act(s) must result in V’s death. This has a clear element of causation, so consider the section overleaf on <i>Establishing Causation</i>.</p>
<p>“Under the King’s peace”</p>	<p>An ordinary state of affairs in society, i.e. not during a time of war or rebellion. It would be rare for a court to find that D’s actions were not committed under the King’s peace.</p>
<p>“Reasonable person in being”</p>	<p>This archaic terminology means a “<i>person</i>”. It does not matter whether or not the victim is “<i>reasonable</i>”. Think of this as meaning “<i>viable</i>”. A person is someone capable of an independent life.</p> <p>The grey area here is around pre-natal cases. An unborn child cannot be murdered as it is not a “<i>reasonable person in being</i>” for the purposes of murder (NOTE: there are separate offences relating to unborn children). However, murder would arise where injuries are inflicted on the unborn child, which is then born alive, but dies as a result of the injuries inflicted while it was in the womb.</p>

ESTABLISHING CAUSATION

Consider the three questions below:

1: Can factual causation be established?

Here one must apply the “*but for*” test: The prosecution must prove that, *but for* D’s actions, the death of V would not have occurred.

See the case of *R v White* in the general causation section above.

2: Can legal causation be established?

Did the Defendant’s **culpable act** cause the death?

EXAMPLE

R v Dalloway

Facts: D was driving a horse and cart along a road. A child ran out in front of the cart and was killed. D had not been holding the reins at the time of the accident.

Held: The cart could not have stopped in time even if D had been holding the reins and able to pull them as the child ran out. The culpable act (failure to hold the reins) was not the cause of the child’s death. The driver was not guilty of murder.

NOTE: where there are several causes of an incident, the Defendant may still be guilty of murder if their actions were a “*material and substantial cause*” of the injury, **unless** there was a *novus actus interveniens*.

3: Is there a *novus actus interveniens*?

A *novus actus interveniens* is a new act from the victim, a third party or an Act of God, which intervenes in a chain of events started by D to affect the outcome significantly. This event must **break the chain of causation** (see the first chapter of this guide, on the general principles of criminal law, for more details).

DEFENCES TO MURDER

The SQE syllabus only requires you to know about intoxication and self-defence as well as the special defences of loss of control and diminished responsibility for murder.

SELF-DEFENCE

INTOXICATION

See the Defences section of this guide for the details of the above defences.

LOSS OF CONTROL
DIMINISHED RESPONSIBILITY

NOTE: these are not full defences but are **partial** defences. If they are raised successfully, the Defendant is liable for **voluntary manslaughter** instead of murder.

LOSS OF CONTROL

A new defence under **ss. 54 - 55 Coroners and Justice Act 2009 ("CJA 2009")** replaces the old law on provocation.

If, in the judge's opinion, there is sufficient evidence adduced to raise the defence, the burden of proof falls on the **prosecution** to show that it does not apply.

Where a person is convicted of murder but successfully raises loss of control as a defence, their conviction will be for **voluntary manslaughter**.

There are three requirements, **all** of which must be shown. The prosecution need only prove that one element is missing for the defence to fail.

The three requirements for loss of control:

1:

D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control.

- Loss of control need not be a **complete** loss of control.
- Loss of control need not be **sudden**, though the greater the delay between the qualifying trigger (*see immediately below*) and the loss of control, the less likely the defence is to succeed.

2:

The loss of control had a qualifying trigger.

Possible qualifying triggers:

a:

D's fear of serious violence from V against D or another. For example, in **R v Martin (Anthony)** the Defendant had a personality disorder making D abnormally anxious.

b:

Things said or done that "*constituted circumstances of an extremely grave character*" and which "*caused D to have a justifiable sense of being seriously wronged*". This is ill-defined but is probably an objective test.

c:

Any combination of the above

NOTE: If the qualifying triggers were activated by something that D incited to be done as an excuse to use violence or resulted from sexual infidelity without additional reasons for the loss of control or was a "*considered desire for revenge*", then it is indefensible.

3: A person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

"Normal tolerance"

Has D acted in the same way that a person with a normal degree of tolerance would have acted in the same situation?

"Self-restraint"

Has D exhibited an acceptable level of self-restraint as required?

The hypothetical person for the purposes of this test is *"a person of D's age and sex, in the circumstances of D, but with a normal degree of tolerance and self-restraint"*.

On a murder charge, if the trial judge concludes that sufficient evidence is adduced to raise an issue of loss of control, the burden of proof moves to the prosecution to prove beyond reasonable doubt that the defence is **not** satisfied. If the tests are satisfied the Defendant becomes liable for conviction for **manslaughter** rather than murder.

NOTE: the defence is unavailable if D was drunk or high (intoxicated) at the time. For example, in **R v Morhall** the Defendant was a glue-sniffer; D could not rely on the effect the glue had on D, but the court could take into account D's particular sensitivity to being goaded about their addiction.

One situation in which a defence of loss of control may succeed is where a party (typically to a marriage) has been subject to coercive control and has *"snapped"* and killed the dominant party.

DIMINISHED RESPONSIBILITY

The burden of proof is on the **defence** to prove the existence of diminished responsibility on the balance of probabilities – **ss. 2(1)-(2) Homicide Act 1957 ("HA 1957")**.

Diminished Responsibility acts as a **partial** defence to murder. The important factor is that the mandatory life sentence does not apply.

The four requirements must all be met for the D to rely on the defence:

1: Was D suffering from an "abnormality of mental functioning"? ...

An abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.

It has been defined as *"a state of mind so different from that of ordinary human beings the reasonable person would term it abnormal"*.

An abnormality of mental functioning is perhaps easier to spot than to define. It is something less than insanity, which is a separate defence (*see the Defences chapter*).

2: ... which arose from a recognised medical condition? ...

A recognised medical condition could be a physiological or psychological condition. However, it must be a **recognised medical** condition.

Examples include PTSD (post-traumatic stress disorder), schizophrenia and Asperger's syndrome.

3: ... which substantially impaired the Defendant's ability to do certain things? ...

The jury may assess all relevant circumstances preceding and following the killing (including circumstances that took place a long time before the killing). This may involve appraising the impact of the abnormality of mental functioning both on D's decision-making generally and also on the particular decision to kill V.

Substantially should be given its ordinary English meaning. Juries need to be advised that the impairment must be more than merely trivial. It is **not the case that any impairment beyond the trivial will suffice**.

IMPAIRMENT EXAMPLES

Useful examples from a Law Commission report show you how to analyse the different elements of an impairment.

D's impairment to do certain things could include impairment of D's ability to:

a: understand the nature of D's conduct. For example:

“ A boy aged 10 who has been left to play very violent video games for hours on end for much of his life, loses his temper and kills another child when the child attempts to take a game from him. When interviewed, he shows no real understanding that, when a person is killed they cannot simply be later revived, as happens in the games he has been continually playing (*Law Commission Report No 304, 2006*). ”

b: to form rational judgements. Where D cannot decipher what the *right* thing to do is due to their abnormality of mental functioning. For example:

“ A mentally sub-normal boy (sic) believes that he must follow his older brother's instructions, even when they involve taking part in a killing. He says, “*I wouldn't dream of disobeying my brother and he would never tell me to do something if it was really wrong*” (*Law Commission Report No 304, 2006*). ”

NOTE: in 2006 when this was written the phrase “*mentally sub-normal*” was still in parlance. It would not be considered appropriate today, and expressions like “*neuro-diverse*” or “*mentally disabled*” may be used instead. The appropriateness of these terms may change over time.

c: or to **exercise self-control**. It is necessary to show that D's self-control is limited or affected by D's abnormality of mental functioning. For example:

“ A man (sic) says that sometimes the devil takes control of him and implants in him a desire to kill, a desire that must be acted on before the devil will go away (*Law Commission Report No 304, 2006*). ”

4: ... and which provides an explanation for D's acts and / or omissions in killing?

D's mental (dis)functioning must “provide an explanation for D's acts and omission in doing or being party to the killing”.

The role of medical experts is key here. The jury decides as a matter of fact whether D's recognised medical condition led to a loss of control which provides an explanation for D's actions.

A NOTE ON INTOXICATION

If D is drunk, that is not an abnormality of mental functioning, but if D also had an abnormality of mind which had some effect on the killing (which could include alcoholism or some other condition that meant being drunk was not voluntary), being drunk does not necessarily negate the defence.

D must still demonstrate that D was suffering from a recognised medical condition e.g. PTSD. Heavy binge drinking which falls short of medically diagnosed alcoholism is insufficient.

EXAMPLE

R v Stewart

Facts: D, an alcoholic, who committed murder whilst drunk, argued successfully that his alcoholism allowed access to the diminished responsibility defence.

Held: **Alcoholism** could, in certain circumstances, be open to D as a defence. The jury were directed to consider the seriousness of D's dependency, the extent to which D's ability to control his drinking was reduced, whether D was capable of abstinence and if so, for how long, and whether D was choosing to drink more than usual for a particular reason. **The defence can only succeed where the drinking becomes involuntary.**