

New Zealand Institute of Surveyors

Cadastral Law Examination

Research Component 2015

Notes for candidates:

The Research Component will be assigned 40% (forty percent) of the marks of the 2015 Cadastral Law Examination.

There are two questions totalling 40 marks. Both questions are to be attempted.

The answers for this Research Component of the Law Examination are to be passed to the Supervisor of the written Section of the Law Examination when entering the examination venue.

The answers are to be word processed although freehand diagrams are acceptable when they form part of the answer.

A cover sheet is to bear the candidate's name and examination number and the number of attached pages. Every other page is to be numbered and to bear the candidates examination number but not the candidate's name.

Candidates may consult works of reference and colleagues in considering the questions but the final answers submitted are to be the candidate's own work. All answers must be referenced to legislation including specific section numbers, and other relevant authoritative references used. Note that neither the LINZ Guidelines nor the NZIS Land Title Surveys publications are considered authoritative legal references although they may provide references to relevant legislation or case law.

Answers are not expected to exceed 3,500 words for the two questions excluding references and diagram annotations. Marks will not be deducted if this limit is exceeded, but there should be no need to exceed it.

The information provided represents the initial details available to the surveyor. It is considered there is sufficient information provided to answer the questions. However should candidates consider there is insufficient information supplied to allow them to answer the questions, they may list any assumptions they have made to allow them to provide an answer. It is expected few assumptions, if any, will be required and any assumptions are not to be used to limit the possible solution. Candidates may also provide details of aspects where they would consider further investigation could be undertaken, but in doing so should reference this to relevant applicable legislation.

Candidates may use diagrams as part of an answer.

Candidates Answer Cover Sheet

Name.....

Examination Number.....

Number of Pages:

Question One.....

Question Two.....

Total:

Declaration:

I hereby certify that:

The answers attached to this declaration are all my own work and have resulted from my own enquiries of reference materials and other authorities. Apart from quotations from published materials acknowledged in the answers, the answers are entirely my own work and have not been copied from any other source.

.....

... .. / /2015

Candidate

Date

1. Background

(refer to site plan attached as Appendix 1)

In 1930 Mr Andy Anderson bought Lot 12 Deeds Plan 537, a seaside property on Cooks Road at Punanga Bay, as a holiday destination for his family. The previous owner, Aloysius Parker, who Andy bought the land from, also owned Lot 11 Deeds Plan 537 adjoining to the west. He told Andy that the boundary between Lots 11 and 12 followed the fence he'd recently erected from the road up to the boatsheds that he was currently building on his land. He also told Andy that Lot 12 extended eastwards as far as the track that followed a stream down to the beach.

Lot 12 was shown on Deeds Plan 537 with a surveyed road frontage of 333.3 links and side boundaries perpendicular to the road extending out to the mean high water mark of the sea, and with an area of 3 roods 24 perches (0.3642 ha). This land was compulsorily brought under the Land Transfer Act soon after Andy's purchase of the property and the first fee simple title for Lot 12 Deeds Plan 537 was issued in August 1930, being CT 522/262, limited as to parcels and title.

For the first few years, Andy's family spent their holidays camping on the land. In 1935 Andy bought an old railway hut and established it on the western half of the property to use as a bach. Over the next 20 years, Andy upgraded and extended this building to suit his family's needs.

In 1951 Andy's son, Gerry, built his own bach at the eastern end of the property and in 1953 Andy transferred the eastern half of Lot 12 Deeds Plan 537 (shown as Parcel A on the site plan attached as Appendix 1) to Gerry. This parcel was defined by diagram on transfer as having a road frontage of 160.0 links, with the new dividing boundary perpendicular to the road and extending out to the mean high water mark of the sea. A new title was issued for Parcel A, being CT 1848/76, limited as to parcels, with an area of 1 rood 30 perches (0.1770 ha).

Gerry and his father erected a fence between them and planted a toetoe hedge on Andy's side of the fence. In the same year, 1953, Gerry also built fences along the roadside of Parcel A and along the western side of the track used by the public for foot access to the beach from the end of Cooks Road.

The remaining land owned by Andy (shown as Parcel B on the site plan attached as Appendix 1) also had a new title issued in 1953, being CT 1848/77, limited as to parcels, with a road frontage of 173.3 links and an area of 1 rood 34 perches (0.1872 ha). Andy transferred Parcel B to his daughter, Sylvia, in 1955.

Sylvia sold Parcel B out of the family in 1975, and the new owners completely rebuilt the bach on this property that same year. They renewed the western fence in the same location as the one existing at that time, which was the original fence built by A. Parker in the late 1920's. They also fenced the previously unfenced roadside of Parcel B.

Gerry's daughter, Penny Tracy, inherited Parcel A in 1995 and continued to use it as a holiday home with her own family.

2. Current Situation

Penny's children have now grown up and moved away from the area. She's considering her options for Parcel A, but is thinking she will sell it while the market's good and invest for her retirement. She's been told by the local Council's planning officer that she's got enough land, according to her title area, to subdivide Parcel A into 2 allotments. However, Penny has also obtained a photo map of her land from the Council, and there are significant discrepancies between the boundaries on the map and her fences, which she thought were on her boundaries.

Penny has approached you, a licensed cadastral surveyor, to determine where her boundaries are and whether or not she has enough land to subdivide. You have carried out a site survey and prepared the preliminary plan attached as Appendix 1.

3. Additional Information

3.1. Adjoining Landowner:

While you were doing the site survey for Penny, the owner of Parcel B, Charlie Windsor, spoke to you about what you were doing and agreed it would be good to confirm where his boundary with Penny was. He also mentioned that about 10 years ago, his neighbours to the west had subdivided their land and he'd been surprised when their surveyor pegged the boundary a metre on his neighbours' side of the boundary fence. Charlie showed you those pegs, which you fixed accurately by survey and are shown on the site plan as OP's DP 358930. He said he'd like to know if those pegs are on his boundary and, if they are, could he relocate the fence to align with the pegs and remove the portion of the now dilapidated boat sheds from his land. He implied that you should be able to provide this advice at minimal cost since you're already doing the work for Penny.

3.2. The Beach:

You also queried Penny and Charlie about the stability of the beach. They both independently confirmed that the only change they were aware of was in the big storm of 1982, when approximately 3 metres of land along the beach front was lost to the sea. As far as Penny could remember, there had always been a bank at the top of the beach, which high tide regularly came up to, but the bank moved south as a result of the 1982 storm.

Information that you have obtained from the Regional Council, including a series of aerial photos, flown in 1948, 1972, 1995 and 2012, and reports of the 1982 storm event, corroborates what Penny and Charles have told you.

3.3. Deeds Plan 537:

Deeds Plan 537, surveyed in 1916, shows traverses, boundary pegs placed, and offsets measured to mean high water mark (MHWM). Several reliable old marks from this plan have been found by subsequent surveys, allowing the original documentary framework of the area to be reliably established.

3.4. DP 358930:

- In 2005, DP 358930 subdivided what was formerly Lot 11 Deeds Plan 537 into 3 residential allotments and vested a 3 metre-wide esplanade reserve along mean high water springs (MHWS) in the local Council.
- The eastern boundary of Lot 11 Deeds Plan 537 (now Lot 3 DP 358930) was pegged based on several reliable old survey marks, including the remains of an old peg placed by Deeds Plan 537 at the southeast corner of Parcel A.
- DP 358930 determined a shortage along Cooks Road, 0.20 metres of which was left in the frontages of Parcels A and B.
- The surveyor of DP 358930 appears to have considered all relevant evidence and correctly determined the location of the eastern boundary of Lot 11 Deeds Plan 537.
- The survey report for DP 358930 states that the owners of Lot 11 Deeds Plan 537, at the time of subdivision, did not want to pursue a claim for title by adverse possession to the portion of CT 1848/77 between the eastern documentary boundary of Lot 11 and the old fence on Parcel B, due to time and financial constraints.
- DP 358930 determined MHWS to coincide with the same 0.5m high bank at the top of the beach that you have surveyed and the survey report also refers to the bank having been cut back several metres in the 1982 storm event.
- The surveyor of DP 358930 concluded that Deeds Plan 537 had probably fixed the former position of this bank in 1916 as a practical definition of MHW, whereas actual MHW in 1916 was further seaward.

3.5. District Plan:

The District Plan provides for allotments of a minimum net site area of 800m² (i.e. exclusive of access strips) to be subdivided as a controlled activity in this area. The Plan also requires that when any allotment is created by subdivision in this area, an esplanade reserve 3 metres in width must be set aside from that allotment along the mark of mean high water springs of the sea.

3.6. Adjoining Crown Land:

The land to the east of Parcel A has never been alienated by the Crown and is currently Crown Land with no registration administered by LINZ.

3.7. Land Status History:

After searching titles and deeds records you have prepared a summary of the history of Lots 11 & 12 Deeds Plan 537 (attached as Appendix 2).

4. Your Assignment

4.1. Question One – worth 30 marks

You are required to prepare a report for Penny Tracy covering the following matters:

- (i) the meaning of 'limited as to parcels'
- (ii) an explanation of title created by 'diagram on transfer'
- (iii) the effect of movement of coastal water margins on legal water boundaries, differentiating between accretion, erosion & avulsion
- (iv) the specific implications of (i) to (iii) above on the definition of the boundaries of Parcel A if no subdivision is undertaken, supported with one or more diagrams
- (v) the pros and cons of carrying out either a boundary marking survey or a survey to remove limitations as to parcels for Parcel A
- (vi) the implications of the Marine and Coastal Area (Takutai Moana) Act 2011 on the possible subdivision of Parcel A, supported with one or more diagrams
- (vii) the feasibility, in terms of net site areas, of carrying out a controlled activity subdivision of Parcel A, with a brief summary of the subdivision process
- (viii) possible survey solutions to any conflicts of occupation and legal ownership identified between Parcels A & B
- (ix) the potential and process to claim ownership of some of the adjoining Crown Land by adverse possession, and identification of the extent of land that could be claimed
- (x) Cadastral Survey Dataset (CSD) requirements for each scenario identified (i.e. if CSD is required and what type of CSD)

Where appropriate, the report should refer to relevant legislation and specific sections within that legislation, as well as any applicable rules of law, because Penny intends to get her lawyer to review your advice. However, it should be borne in mind that the report is primarily for a lay person, so extensive legal explanations are not expected.

Candidates can assume that the current and historic positions of MHWM and MHWS shown on the site plan are reliable and not open to dispute.

The report is not expected to estimate costs of survey or subdivision, or to assess potential subdivision requirements such as provision of services, financial contributions, etc.

4.2. Question Two – worth 10 marks

You are required to prepare a letter to Charlie Windsor that:

- (i) explains the ownership situation of the strip of land between his western fence and Lot 3 DP 358930
- (ii) recommends an appropriate course of action in respect of relocating his fence and removing the portion of the dilapidated boat sheds from his land.
- (iii) addresses issues associated with undertaking work for him and Penny at the same time, such as potential conflicts of interest and apportionment of costs.

Notes:

The situation described in this assignment is fictitious. A search in Landonline of the CT & plan references will not identify an actual situation to assist with completing the assignment.

Reference to the following terms and documents may assist you with answering the assignment questions. It is not intended to be an exhaustive list.

Land Transfer Act 1952

Limitation Act 2010

Land Transfer Amendment Act 1963

Marine and Coastal Area (Takutai Moana) Act 2011

Adverse possession

Land Transfer (Compulsory Registration of Titles) Act 1924

Resource Management Act 1991

Diagram on Transfer

Interim guideline to sea boundaries and the Marine and Coastal Area (Takutai Moana) Act 2011 (LINZG65705)

Limited Titles

Land Act 1948

Accretion, Erosion and Avulsion

Water boundary

Rules for Cadastral Survey 2010 (LINZS65003)

Interpretation Guide to Rules for Cadastral Survey 2010 (LINZG65700)

Conservation Act 1987

APPENDIX 2

Land Status History			
Crown Grant of Allotment 31 Parish of Whatitiri to Geoffrey Tracy in 1853			
Deeds Plan 537, being a subdivision of Part Allotment 31 (Tracy's Grant), surveyed in 1916			
Lot 11 Deeds Plan 537 conveyed to Aloysius Parker in 1918	Lot 12 Deeds Plan 537 conveyed to Creighton Ward in 1919		
Voluntarily brought under Land Transfer Act by A. Parker in 1920 and first fee simple title issued  Transfers through subsequent owners to Manu Caskie	Conveyed by C. Ward to A. Parker, owner of adjoining Lot 11 Deeds Plan 537, in 1922		
	Conveyed by A. Parker to Andrew Anderson in 1930 and compulsorily brought under LT Act. CT 522/262 issued, limited as to title and parcels		
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;"> Balance of Lot 12 Deeds Plan 537 (PARCEL B) retained by Andy Anderson. New CT 1848/77 issued, limited as to parcels </td> <td style="text-align: center; width: 50%;"> Transfer of part Lot 12 Deeds Plan 537 (PARCEL A) to Gerry Anderson in 1953. New CT 1848/76 issued, limited as to parcels </td> </tr> </table>	Balance of Lot 12 Deeds Plan 537 (PARCEL B) retained by Andy Anderson. New CT 1848/77 issued, limited as to parcels	Transfer of part Lot 12 Deeds Plan 537 (PARCEL A) to Gerry Anderson in 1953. New CT 1848/76 issued, limited as to parcels
	Balance of Lot 12 Deeds Plan 537 (PARCEL B) retained by Andy Anderson. New CT 1848/77 issued, limited as to parcels	Transfer of part Lot 12 Deeds Plan 537 (PARCEL A) to Gerry Anderson in 1953. New CT 1848/76 issued, limited as to parcels	
	Transferred to Sylvia Anderson in 1955		
Transferred to Penelope Tracy in 1995			
Subdivided by M. Caskie into Lots 1 to 3 DP 358930 in 2005. CFR's 318357 to 318359 issued	Transferred to Charles Windsor in 1975		