

**The Institute of Legal Executives**  
**LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW**  
**EQUITY AND TRUSTS**

**Time allowed: 3 hours**

**Each question carries a total of 25 marks**

**Answer FOUR only of the following EIGHT questions. This paper is divided into two sections. You MUST attempt at least ONE question from Section A and at least ONE question from Section B.**

**Full reasoning must be shown in answers – a yes or no answer will earn no marks.**

**Authorities and decided cases should be cited where appropriate.**

**Candidates may use in the examination their own clean unmarked copy of the designated statute book: Blackstone's Statutes on Property Law 2006-7, 14<sup>th</sup> edition by Meryl Thomas, published by Oxford University Press.**  
**Invigilators may carry out spot checks.**

**SECTION A**

1. In 2003, under the will of Bob, his wife, Judith, became life tenant of a fund of £250,000 with remainder to such of their children as attain the age of 18. The trustees have proved very successful in their investment of the fund, which is now worth £1,000,000.

Judith is wealthy in her own right and would like to release her interest in half the fund. She feels, however, that 18 is too young for her children, Ellie aged 10 and Mark aged 14, to acquire such wealth. She therefore proposes that half the fund be released to her children but on the basis that that they do not receive any capital until they are 35 or any income until they are 30.

Judith also wishes to move to Guernsey. She states that the children would be educated in England and spend the school holidays with her in Guernsey. She believes that it will be advantageous for the trust funds to be administered from Guernsey. The trustees disagree.

Consider whether Judith's proposals are likely to be put into effect.

**(25 marks)**

**P.T.O.**

2. A couple of months ago, Eileen, a wealthy widow, met her friend Christine for lunch. During their conversation, Eileen mentioned that she was thinking of helping her nephews, Joel and George. While she was happy to make an outright gift to Joel she was not so happy about George, as she thought his wife, Becky, would spend any gift unwisely. Eileen was also a little worried that if the nephews were not treated equally it might lead to bad feeling in the family. Christine said that if she could help in any way, she would.

Last month Eileen made a will containing the following legacies:

- " (i) £35,000 to my friend Christine Smythe, on trust for the purposes I have communicated to her  
(ii) £25,000 to Christine Smythe absolutely  
(iii) £10,000 to my nephew George in the hope that he will use the money wisely to make provision for his daughter Abigail"

A week after the will was executed, Eileen sent a letter to Christine explaining that she would like Christine to be the trustee of the first two legacies under her will and enclosing a sealed envelope marked 'Not to be opened until after my death'. Christine put the envelope away safely but failed to reply to Eileen's letter.

Eileen died last week. Christine opened the envelope. The first legacy of £35,000 is to be given to Joel absolutely. The second legacy of £25,000 is to be held for George for life with the remainder to Abigail.

Advise on the validity and effect of the three legacies.

**(25 marks)**

3. In January, Sheila Mitchell, a wealthy widow, decided to set up trusts in favour of her two sons, Alan and Christopher. She asked her friends, James and John, to act as her trustees. They agreed. James and John hold shares in Asco plc as nominees for Sheila.

Later that month she sent James and John a share certificate in CP plc and a signed stock transfer form. These shares were duly registered in the names of the trustees. She also enclosed the title deeds to "Wits End" her holiday cottage in Suffolk with "this is for Alan's trust, SM" written on it in pencil. There was no covering letter.

In May she received some rental income in relation to the holiday cottage which she paid into her bank account and spent the money on a new television for Alan. She then phoned the trustees and told them that she wanted the CP plc shares to be held in trust for both her sons in equal shares. She also told them to give the Asco plc shares to Christopher immediately as he needed the money to set up his new business.

Later that afternoon Sheila died, leaving a will appointing James and John as her executors and leaving all her property to a local charity.

Advise James and John on the beneficial ownership of the CP plc shares, the Asco plc shares and "Wits End".

**(25 marks)**

**P.T.O.**

4. On his death in 1999, Derek left his large farm, six holiday cottages in the same village and a portfolio of quoted shares, to be held between his three children equally contingent upon attaining the age of 25.

Derek's widow, Sophie, moved out of the farm to be close to the job which she then obtained. The farm and cottages were let to produce an excellent income.

The farm has now become vacant and Sophie would like to move back with the three children, William, Gloria and Edward, now aged 20, 17 and 14 respectively. The whole property is valued at £1.4 million.

Sophie has asked the trustees, Tom and Torvil, to agree to the following arrangements. To date she has provided entirely for all the children's requirements herself.

- (a) To fund course fees and living expenses for William who is a student at agricultural college;
- (b) To spend £200,000 to renovate the farmhouse in which the family will live;
- (c) £150,000 for Gloria to purchase foundation stock and instal stables as Gloria would like to set up a business breeding miniature Shetland ponies.

Advise the trustees.

**(25 marks)**

## SECTION B

5. One of the duties of trustees is to safeguard the value of the trust fund by investing in investments authorised under the trust instrument or otherwise under the Trustee Act 2000.

Explain and illustrate the nature and extent of this duty.

**(25 marks)**

6. The purpose of an interim injunction is "to prevent a litigant, who must necessarily suffer the law's delay, from losing by that delay the fruit of his litigation".

(*Hoffman – La Roche v. Secretary of State for Trade and Industry* (1975) per Lord Wilberforce)

Consider what factors influence the Court in its decision whether or not to grant an interim injunction.

**(25 marks)**

7. These words 'section of the community' have no special sanctity, but they conveniently indicate (i) that the possible beneficiaries ... must not be numerically negligible and (ii) that the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual, (Lord Simonds in *Oppenheim v Tobacco Securities Trust Co Ltd and Others* (1951)).

Discuss in relation to the meaning of public benefit in the law of charity.

**(25 marks)**

8. Equity insists that beneficiaries are entitled to the single-minded loyalty of their trustees, or, more generally, that principals are entitled to the single-minded loyalty of their fiduciaries. The duty demands a general denial of self interest: the fiduciary role proscribes certain perfectly legitimate activities unless the principal consents to the fiduciary's involvement. The fiduciary's personal autonomy is correspondingly constrained.

If a fiduciary fails to live up to this standard – and he can fail despite acting within his authority, carefully and in perfectly good faith – then Equity demands that the profits resulting from the breach be paid over to the principal.

Explain and discuss this statement

**(25 marks)**