

INSTITUTE OF LEGAL EXECUTIVES

UNIT 5 – EQUITY & TRUSTS*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Property Law 2010-2011, 18th edition, edited by Meryl Thomas, Oxford University Press, August 2010**
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

BLANK PAGE

StudentBounty.com

SECTION A
(Answer at least one question from this section)

1. (a) Explain, with the help of examples, the principle that the remedy of specific performance will only be available if the remedy at law is inadequate.

(10 marks)

- (b) Analyse the purpose of search orders and freezing orders and the criteria for ordering them.

(15 marks)

(Total: 25 marks)

2. Explain and critically analyse the distinctions between

- (i) fixed trusts
(ii) discretionary trusts, and
(iii) powers

Pay particular reference to the duties of the trustees/donees and the interest of the beneficiaries/objects in the subject matter of the trust or power.

(25 marks)

3. (a) Explain the changes to the definition of charitable purposes made by the Charities Act 2006.

(10 marks)

- (b) Analyse the way in which courts will approach the question of whether a purpose is charitable, including the requirement of public benefit.

(15 marks)

(Total: 25 marks)

4. Both the 'no profit' rule and the 'no conflict' rule are applied strictly, with no allowance made for the honesty or good motives of the trustee. This is unfair, and a more flexible approach should be adopted.

Critically discuss this statement.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Hamish is the executor of Kate's estate. Most of the provisions in her will were straightforward but Hamish is concerned about the following provisions:

- (a) I leave my shares to my trustees on trust. They are to hold the bulk of them for my sister Margaret; the remainder are to be held for my grandchildren, in whatever shares my trustees believe to be appropriate.
- (b) I leave my bronze statue of a dancer to my daughter Fiona, expecting she will keep it safely for her grandchildren.
- (c) I leave my collection of vintage motorbikes to my brother Peter; I have already told him what I would like him to do with them.

All the beneficiaries mentioned in the will are still alive. Peter has told Hamish that Kate telephoned him some months ago and asked him to sell the motorbikes she was leaving in her will, and use the proceeds to support Kate's ex-partner, Janine. Kate did not want to mention Janine in her will because it would annoy other family members. Peter does not remember the exact date of the conversation, but thinks it was some time in September 2009. The will was executed on September 14 2009.

Advise Hamish on whether the above provisions create valid trusts.

(25 marks)

Question 2

Noah is the sole trustee of a trust set up by William, who died three years ago. The large trust fund is held for William's wife Miriam for life, and then for five children in equal shares. Miriam is still alive.

However, a few days ago, Miriam received a letter from Noah. It said that he was in a bit of a mess, financially, and had decided to retire as a trustee. He wished her luck in sorting things out. The letter was posted from Brazil, and there was no forwarding address.

Miriam has now discovered that Noah has sold the trust's shares in various publicly listed companies and invested the proceeds in a small internet-based business selling second hand books. The terms of the investment are that, instead of taking a share of the profits, the trust will receive 50% of the value of the business in ten years or, if the business is sold before that, when it is sold. The new business seems to be doing well, but the trust is receiving very little income.

Miriam has also discovered that a few months ago Noah withdrew £30,000 from the trust account and deposited it in his own bank account. Noah's bank account was overdrawn by £15,000 at the time. Noah then withdrew £15,000 from his own bank account and used it to pay off a bank loan he had taken out to purchase a car. In the last few days, a sum of £20,000 has been deposited into Noah's own bank account, this being a legacy from his grandmother. Noah had forgotten about the legacy and did not know it was going to be paid direct into his bank account. The car is still in Noah's garage.

Advise Miriam on what legal action, if any, is available to her.

(25 marks)

Question 3

Mohammed has inherited a large estate from his father, Ahmed. The estate includes an investment portfolio, a farm in Bedfordshire, and a number of rental properties. Mohammed already owns a house in Kempston. Mohammed is concerned because his father made very little provision for any other members of his family, and as a result, he makes the following transactions.

- (a) Mohammed telephones his brother Farooq and says, "I think you ought to have the farm. I am going away soon but until I have time to transfer it I will hold it on your behalf."
- (b) Mohammed writes to his sister Salma, who has recently completed a property management course. In the letter he says "I think you should take on the rental properties. I have told my accountant to transfer the legal ownership of the rental properties to you, and you should get confirmation of that quite soon." Salma is delighted, and immediately resigns from her job as a junior in a hairdressing salon.
- (c) Mohammed is about to divorce and to prevent his wife claiming his house in Kempston he transfers it to his younger brother Hassan. Mohammed tells Hassan he can live there as long as he needs and when Hassan is older Mohammed will buy him his own house.

Unfortunately, shortly after all these events, Mohammed died suddenly; his will leaves everything to his wife. The farm is still in Mohammed's name. Mohammed had signed all the documents relating to the rental properties, but his accountant had not yet done anything with them. Hassan is living in the house in Kempston and would like to stay there.

Advise Mohammed's executor as to the ownership of the farm, the rental properties and the house in Kempston that is in Hassan's name.

(25 marks)

Question 4

Bella and Cameron have been living together for ten years but have now separated. They have one child, Karina, who is now five years old. They bought the house eight years ago. The house cost £150,000 and is now worth £200,000. Cameron bought the house for cash. There was no mortgage.

- (a) Bella was made redundant soon after they bought the house, and after Karina was born she stopped looking for work. She and Cameron had a joint bank account, from which all bills were paid. Bella was studying landscape gardening, and she developed their large garden, building a patio and garden beds. She also maintained an allotment and grew all the fruit and vegetables for the family. Neither Bella nor Cameron had ever talked about the ownership of the house. The house was registered in the joint names of Bella and Cameron. Cameron is now arguing that he is the sole owner of the house because he was the person who paid for it.

Advise Cameron if he can succeed in this claim. It is not necessary to consider the quantification of Cameron's interest.

(15 marks)

- (b) Would your answer be different if the house was registered in Cameron's name only and, at the time when it was purchased, Bella asked whether it ought to be in joint names but was told by Cameron it was not possible because she was not working. All the other facts remain the same. It is not necessary to consider the quantification of any interest Bella may be given.

(10 marks)

(Total: 25 marks)

End of Examination Paper

BLANK PAGE

StudentBounty.com