

## 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*, 18<sup>th</sup> 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**

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

1. The maxim "equity looks to the intent rather than the form" is misleading when applied to the creation of a trust. On many occasions, it will be overridden by the competing maxim, "equity will not assist a volunteer", or by the legal formalities that apply to trusts or transfers of particular types of property.

Critically assess this statement.

**(25 marks)**

2. (a) Explain and critically evaluate the rule that a trust that has political purposes cannot be charitable.

**(13 marks)**

- (b) Assess the extent to which it is possible for a charitable trust, which had failed because its purposes were political, to be saved by the cy-près doctrine.

**(12 marks)**

**(Total: 25 marks)**

3. The basis of equity consists in "a social justice based on equality of access for citizens to principles of fairness in recognition of their needs and deserts, which ensures that the legal system is not blind to any injustice suffered by the individual under the common law." (*Alastair Hudson, Equity & Trusts (6<sup>th</sup> edn) 749-750*).

Critically assess this statement with reference to the remedies of specific performance and injunction.

**(25 marks)**

4. Critically examine the effect of s199 Equality Act 2010 on the law relating to "presumed" resulting trusts.

**(25 marks)**

**Turn over**

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

**Question 1**

George and John are the trustees of a family trust. The trust requires them to distribute the fund as they think fit between the wife, children, grandchildren and great grandchildren of the settler. Malcolm one of the beneficiaries, has been concerned about the management of the trust, and recently managed to obtain access to some trust accounts and correspondence. Advise Malcolm on the following matters:

- (a) Malcolm found a letter from Alice, another one of the beneficiaries, to George and John. Alice asked them to explain the reasons why she had received a smaller annual payment than her brother Owen and also requested a copy of the trust's accounts for the last three years. John had replied to Alice, saying the trustees had no obligation to do either of these things.

Advise Malcolm on whether John's reply to Alice was correct.

**(5 marks)**

- (b) One of the trust's assets is an investment in a fish and chip shop, "The Plaice to Be". Malcolm discovered a file of letters from the manager of the shop, addressed to John. The letters reported on how trade was going, and several mentioned that sales had fallen after a new takeaway shop opened close to "The Plaice to Be". Malcolm telephoned the manager and learned that John had not responded to the letters about the business. Malcolm was told the business was about to close down. It had large debts and it was unlikely that the trust would recover its investment. Malcolm asked George about the investment and was told that this was John's project and George knew nothing about it.

Advise Malcolm on whether there has been a breach of trust by John and/or George. It is not necessary to consider what remedies might be available if there has been a breach of trust.

**(12 marks)**

- (c) John also discovered that the new takeaway business a few doors away from "The Plaice to Be" is owned by George. It is called "Munchie Heaven" and sells pizza, kebabs, fried fish and chips. Unlike "The Plaice to Be", "Munchie Heaven" is doing well.

Advise Malcolm on whether George's involvement in "Munchie Heaven" was a breach of trust. It is not necessary to consider what remedies might be available if there has been a breach of trust.

**(8 marks)**

**(Total: 25 marks)**

**Question 2**

Faizaan died recently having appointed his son Mo as his executor.

In his will, Faizaan left £500,000 to "my best friend Ahmed, to use in the way I told him about in October 2006". Mo contacted Ahmed in relation to this bequest to ask about this, and Ahmed said that he had not known anything about the bequest until very recently. After Faizaan's death a solicitor forwarded Ahmed a letter written by Faizaan in October 2006. In the letter Faizaan instructed Ahmed to hold the money for the benefit of Faizaan's granddaughter, Emily. Emily was not in touch with the rest of the family because of a family row. Ahmed explained to Mo he would be happy to carry out Faizaan's instructions.

Faizaan's will also sought to set up a trust for Faizaan's other grandchildren on the following terms:

"I give my shares in Manor Homes Ltd to my trustees on trust for my trustees to use to ensure my grandsons and also my granddaughters Zara and Sobia become good and moral citizens. Once Sobia reaches the age of 25, the money that is left is to be shared equally between all my grandchildren."

Advise Mo on the nature and effect of the bequest to Ahmed, and the purported trust in favour of the grandchildren.

**(25 marks)**

**Turn over**

### Question 3

Derek was the director of a successful internet based company. He died in an accident a month after his 25<sup>th</sup> birthday. Derek's entire estate was left to his 12 year old half-sister Kylie. Derek's executor has discovered evidence of the following transactions:

- (a) Derek was the beneficiary of a trust set up by his father. Under the terms of the trust Derek currently received the income on a half-share of a portfolio of shares. The other beneficiary of this trust was Kylie. After Derek's 25<sup>th</sup> birthday he was entitled to ask for half the shares to be transferred to him absolutely.

Derek's accountant says that she had a conversation with Derek about the shares quite recently and that Derek wanted them to be transferred to Derek's cousin, Susan, immediately. However, much to the accountant's embarrassment she could not remember whether the conversation took place before or after Derek's birthday. Because of Derek's death, nothing has yet been done about this instruction.

Advise Derek's executor whether Susan has an interest in the shares.

**(10 marks)**

- (b) Maggie is a paramedic with the ambulance service. She knew Derek when she was young. She was the first on the scene at his accident, and spoke to him before he was taken to hospital. She says that he knew he was seriously injured and that he said to her, "Maggie, I always loved you the best. I would like you to have my gold chain if the doctors can't help me." He tried to take the chain off to give it to her, but was unable to do so. The staff at the hospital returned the chain to Derek's family after his death.

Advise Derek's executor whether Maggie has a claim to the gold chain.

**(7 marks)**

- (c) Derek is godfather to Jamie's children. In Derek's desk drawer was a folder labelled, "Jamie Family Trust". In it was a photocopy of a letter from Derek to his accountant. The letter said:

"I am setting up a trust for Jamie's four children, they will all be eligible to benefit, any other children he has will also be eligible. It will be a discretionary trust. Could you note in your records that my shares in ZY Ltd are now held by me on trust for this purpose."

The letter was dated a week before Derek's death. Derek's accountant said that she had not received the letter.

Advise Derek's executor whether the trust is enforceable.

**(8 marks)**

**(Total: 25 marks)**

#### Question 4

Anna is the sole trustee of a fund (the CD trust) held for the benefit of Cara and Dennis.

In December 2010 Anna took £17,000 out of the CD trust bank account and put it into her own bank account. She already had £3,000 in her account so the balance was now £20,000. In January 2011 Anna purchased a car for £15,000 and gave the car to her nephew Edward as a birthday present. Edward was very suspicious, because he knew Anna was usually very short of money, but decided it was best not to ask any questions.

After Anna purchased the car, she had £5,000 left. She used this money to go on a trip around Europe but overspent and when she got back, her bank account was overdrawn. In March 2011, Anna took £75,000 out of the CD trust bank account. Anna wanted to invest it but she did not want her bank manager to know about the investment because the bank manager would insist on Anna paying off her overdraft. Anna invested £50,000 in a business making organic cheeses but was not sure how to invest the rest. Anna asked her friend Ben whether he had any ideas about a suitable investment for £25,000. Ben was a wealthy investment banker. Anna said the investment needed to be discreet and easy to access in a hurry. Ben asked whether that meant that it had to be 'off the books' and she said yes. Ben made a few phone calls and then told Anna that he had a friend operating a cash-only car-cleaning business who could use the funds. Anna gave Ben a cheque to pass on.

Anna has now disappeared, taking the rest of the money from the CD bank account with her. Edward crashed his car and received £13,000 in insurance money. The organic cheese company has been successful and Anna's investment is now worth £75,000. The car-cleaning business is now in receivership, after being investigated by the police on suspicion of money laundering. There will be no payments to unsecured creditors.

Advise Cara and Dennis on their equitable and legal rights.

**(25 marks)**

**End of Examination Paper**

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