

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 2011-2012, 19th edition, edited by Meryl Thomas, Oxford University Press, August 2011.**
- 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. Explain what is required for a trust to be charitable, and analyse how such trusts differ from private trusts.

(25 marks)

2. Explain when equity might perfect an imperfect gift, and critically assess the courts' approach to this process.

(25 marks)

3. (a) Explain the circumstances in which a court may grant a search order, and critically assess how a defendant's rights and interests are protected.

(13 marks)

- (b) Critically assess the grounds on which a court may grant or refuse an order of specific performance?

(12 marks)

(Total: 25 marks)

4. (a) Analyse a trustee's powers of maintenance.

(8 marks)

- (b) Analyse a trustee's powers of advancement.

(7 marks)

- (c) Analyse the duties and powers of trustees to invest trust property with particular reference to the changes made by the Trustee Act 2000.

(10 marks)

(Total: 25 marks)

Turn over

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

Question 1

Hector has instructed your firm to prepare his will and has provided the following notes on the specific bequests he would like to make:

(a) I want to make sure my late wife's grave will always be kept neat and tidy.

(8 marks)

(b) I would like £30,000 to go to Fulchester Rugby Club, a non-charitable unincorporated association, where I've been a member all my life.

(17 marks)

Advise Hector on the legal issues raised and how, if at all, his wishes could be achieved.

(Total: 25 marks)

Question 2

Max is the trustee of the Psi Trust.

On 5 January, Max transferred £3,000 of the trust's funds to his personal bank account where there was already £3,000 of his own money. Shortly afterwards, Max used £4,000 from this account to buy a painting. The painting is currently worth £3,000.

On 10 January, Max gave £2,000 from this account to his daughter, Cilla, for a holiday. When Cilla asked Max why he was being so generous, Max replied, 'I spend all my time looking after that trust fund. It's about time I looked after my family as well.'

Max is also the trustee of the Omega Trust. On 13 January, he transferred £20,000 from the Omega Trust and a further £20,000 from the Psi Trust into his personal account.

On 15 January, he withdrew £20,000 from his personal account to pay off one of his creditors. On 17 January, he withdrew the remaining £20,000 from the same account and gave it to his friend, Jack, to pay for renovations to Jack's house.

Max is now personally bankrupt. His activities have been discovered, and you are asked to advise what action both trusts might take in respect of their losses.

(25 marks)

Turn over

Question 3

Ellen, who died earlier this year, was a successful dealer in old coins. She has no immediate family.

(a) Ellen's will provided as follows:

'I leave half of my shares in GreatOil plc and half of my collection of gold krugerrand coins to my Aunt Julie on trust for such of my young relatives as she shall select. The remainder of my estate I leave to my cousin, Olly, absolutely'.

Analyse the effect of the provisions of Ellen's will.

(12 marks)

(b) Ellen's business papers include an envelope containing £1,000 in cash and the following note from a client:

'Dear Ellen, Please find enclosed the money, as discussed. I look forward to receiving the items, Yours, Isabella.'

Ellen had marked the envelope 'for Isabella's coins.' It appears Ellen had died before being able to fulfill Isabella's order.

Consider who is entitled to the £1,000 cash in the envelope.

(6 marks)

(c) Ellen had herself been the beneficiary of a trust fund. There is a note in Ellen's diary recording a conversation with her trustee in which she had told him that she held her interest under this trust for her friend, Phoebe.

Consider who is entitled to the interest in the trust fund.

(7 marks)

(Total: 25 marks)

Question 4

Simi and her boyfriend, Tariq, are joint legal owners of a house. The house has been purchased in 2004 for a price of £370,000 made up of £100,000 of Tariq's own money, £50,000 of Simi's own money, £20,000 provided as an investment by Simi's father, Paolo, and £200,000 raised by a mortgage in Tariq's name.

Simi and Tariq lived in the house with their two children, and with Tariq's sister, Maddy. Over the years, Simi and Tariq have contributed equally to the mortgage repayments.

Maddy has helped to take care of the children, made a number of improvements to the property and has regularly contributed to the general household expenses.

Simi and Tariq have now grown apart and all the parties agree that the house should be sold.

You are asked to advise on how the proceeds of sale should be distributed between any or all of the parties.

(25 marks)

End of Examination Paper

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