

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, 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**

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

1. Examine how the intentions of a donor to an unincorporated association can be given effect.

(25 marks)

2. (a) In what circumstances may a declaration of trust of an equitable interest be treated as a 'disposition' within s.53(1)(c) LPA 1925?

(10 marks)

- (b) Critically discuss the test for certainty of objects of a discretionary trust.

(15 marks)

(Total: 25 marks)

3. Critically analyse how far the case of *Stack v Dowden* (2007) has changed the rules for determining the existence and quantification of beneficial interests under a trust of land.

(25 marks)

4. (a) Outline how a third party may be liable for receipt of trust property or assisting in a breach of trust.

(13 marks)

- (b) Critically evaluate the law in respect of the fault requirements for the liability in part 4(a) above.

(12 marks)

(Total: 25 marks)

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

Question 1

Bahram is the sole beneficiary under the will of his father, Ahmed, who died last month.

A number of matters have just come to light.

It appears that in 2011 Ahmed instructed his lawyer to arrange for a house which Ahmed owned to be transferred absolutely to his friend, Clare. Unfortunately, the lawyer has not done this. Ahmed had told Clare only that he was doing something that would help her financially. On the strength of that, Clare gave up her job and enrolled on the university course she had always wanted to take.

Also in 2011, Ahmed provided £100,000 to a company, Kempston Fabrics Ltd, for the sole purpose of purchasing machinery which it needed to continue in production. Kempston Fabrics Ltd purchased the machinery but returned it, for a full refund, because it was faulty. Recently, Kempston Fabrics Ltd went into liquidation.

In hospital shortly before his death, Ahmed told Marisa, a nurse, that he wanted her to have his vintage car if he did not recover. He gave her a copy of the key to the garage in which it was kept, and told her that the car keys themselves were in the ignition.

Bahram is now uncertain about the extent of his legacy, and seeks your advice.

(25 marks)

Turn over

Question 2

Major Bartlett, an ex-soldier, has recently died. In his will, he appointed trustees and left funds to them to be used as follows:

- (a) £100,000 for the re-training of soldiers on leaving Major Bartlett's old regiment
- (b) £50,000 to build a hostel for homeless members of his old regiment
- (c) £40,000 to the Gamma Society (an unincorporated association) for its work on exposing human rights abuses around the world.

Unfortunately, it has proved impossible to build a hostel for £50,000, and the Gamma Society has ceased to exist (although there are various other charitable organisations still engaged in the same sort of work).

Advise the trustees on whether the trusts are valid.

(25 marks)

Question 3

Tim and Veronica are the trustees of a fund for the family of their friend, Dr. Patel.

Shruti, Dr. Patel's widow, has a life interest in the fund, with the remainder for their children, Bhavini (17 years) and Minesh (23 years).

- (a) In 2009 Tim and Veronica invested 10% of the trust fund in shares of Kempston Newspapers Ltd despite the fact that an investigation into the newspaper's activities had just begun. The investigation has now concluded, and criminal proceedings are being brought against the paper. The shares have reduced to half their original value.

Advise Tim and Veronica whether they are liable to the trust for the reduction in value of the shares.

(8 marks)

- (b) Minesh has asked Tim and Veronica to advance him funds so that he can take a 3 year course in martial arts.

Advise Tim and Veronica whether they can do this.

(10 marks)

- (c) Tim and Veronica now wish to invest trust funds in shares in Kempston Fashions Ltd, a clothing company.

It is Kempston Fashions Ltd's policy to source materials only from companies which pay their workers a fair wage. The shares produce less income than those of similar companies but Tim and Veronica are attracted by the company's ethical stance.

Advise Tim and Veronica whether they can do this.

(7 marks)

(Total: 25 marks)

Turn over

Question 4

In July 2009, Sara contracted with the privately owned Kempston Museum to lend the museum her collection of ancient Greek artefacts for a fee of £500,000. The museum intended to use them as the centre-piece for a major exhibition to coincide with the Olympic Games in 2012.

In September 2009, the museum received a letter from Sara explaining that she had received a better offer from the Olympic organisation itself and so would be lending the artefacts to it instead.

The museum has taken no action in response to Sara's letter.

- (a) Advise the museum whether Sara can be obliged to provide the artefacts to it.

(10 marks)

The museum has just learned that Sara is now in negotiations to take the artefacts to be exhibited overseas instead. Consequently, the museum is concerned that any court judgement it may obtain could not be enforced.

- (b) Explain what remedies may be available to the museum.

(7 marks)

It transpires that the only copies of the correspondence proving the agreement between Sara and the museum are in Sara's offices. The museum is concerned that Sara may destroy them.

- (c) Explain what remedies may be available to the museum.

(8 marks)

(Total: 25 marks)

End of Examination Paper

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