



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 5 – EQUITY AND 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 2012-2013, 20th edition, Meryl Thomas, Oxford University Press, 2012.**
- Candidates must comply with the CILEX 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 CILEX 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. Equitable remedies are in fact strict and of limited flexibility.

Critically evaluate this statement in relation to:

- (a) Specific performance;

(10 marks)

- (b) Injunctions.

(15 marks)

(Total: 25 marks)

2. Critically discuss the rationale behind the court denying charitable status to trusts for political purposes?

(25 marks)

3. For a private express trust to be valid the objects must be ascertainable.

Critically discuss this statement.

(25 marks)

4. Critically evaluate the extent to which law and equity are fused today.

(25 marks)

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

Question 1

Brody owns a small private art gallery. In 2005 he was appointed sole trustee of the Partridge family trust (the trust). The trust has as its main assets several works of art by Justin Partridge, the grandfather of the present beneficiaries, Heidi and Spencer. Brody also has a small private collection of Partridge paintings.

In 2007 Brody sells one painting from the Trust, "Sunset", for £120,000 to his friend, Taylor, who is an art collector. Taylor knows that Brody is the trustee of the trust, but is not aware that "Sunset" belongs to it. Brody tells him that the painting is from Brody's own private collection. Taylor is astonished by his good fortune as he knows "Sunset" is worth at least £250,000.

In 2008 Brody gives a painting, "Louis", also from the trust to his elderly great aunt, Lauren, telling her that the painting has been left to her in the will of a cousin who had recently died and that he wanted her to have the picture to provide for her old age. Lauren sells the painting later that year for £40,000 which she spends on a luxury holiday in Australia.

In January 2011 Brody put a further "Partridge" up for sale at public auction. Brody mistakenly believes that this painting was from his own private collection, but in fact it belonged to the trust. Although he assured the auctioneer, Frankie, that the painting was his own. Frankie had some years ago examined the trust paintings for valuation purposes, and had a strong suspicion that the painting was part of the trust collection. However, he goes ahead with the sale without making any further enquiries and the painting is purchased by an unknown bidder from China.

Brody has now been declared bankrupt and the beneficiaries have discovered that the three paintings are missing from the collection.

Advise the beneficiaries as to the nature of liability and any of the remedies they might have against any or all of those involved.

(25 marks)

Turn over

Question 2

Simon was the owner of two properties in London; an apartment in Stamford Towers tenanted by his daughter, Isabella, and a semi detached house, tenanted by the Spearings, an elderly couple who are old friends of the family. In March 2000, Simon made a will appointing his wife, Alexia, and three of their seven children, Wendy, Kris, and Rob, executors and trustees of his estate. The beneficiaries of the trust were Alexia and the seven children. Simon died in 2003.

Advise the trustees on what action they should take in the following situations:

- (a) Shortly after Simon's death, Alexia is diagnosed with severe depression and has become withdrawn and uncommunicative. She is convinced that her children are trying to kill her so they can divide up the property between them.

(7 marks)

- (b) It has been discovered that no rent has been paid by the Spearings for the last two years and the amount outstanding now stands at £30,000. The Spearings are unable to pay this money.

(7 marks)

- (c) After Simon's death Rob renounced his position as executor, without having undertaken any of his duties as executor. The apartment in Stamford Towers was subsequently offered for sale by auction and Rob bought it, paying slightly lower than the market value. Kris has taken action to set aside the transaction.

(7 marks)

- (d) After performing her duties for a year Wendy wants to retire from the trust.

(4 marks)

(Total: 25 marks)

Question 3

In 2005, Ama bought a Georgian house in Ullswater Road and one month later Ama, and her mother, Parshinder, moved into the house. Ama paid for the house in cash following a divorce settlement. Since moving in, Parshinder has paid for all the outgoings, such as food and electricity bills, and has generally tidied and cleaned the house.

In 2010, Ama met Tariq and in 2011 Tariq moved into the house and began to live with her. Unfortunately, Parshinder did not like Tariq. In an effort to keep the peace, Tariq worked day and night converting the basement into a self-contained bed-sit for Parshinder. He paid for all the materials, extended the central heating system into the basement and built a bathroom in the basement. Access to the basement was by way of a new staircase, for which Tariq also provided the materials and labour.

Six months ago, Ama who had not been feeling herself for a while visited her doctor who advised her "to escape reality – and get more sleep". Ama went home, packed a suitcase and took off on a world cruise. Parshinder and Tariq have heard nothing from Ama since she left. Shortly after sailing, Ama contracted measles and fell into a coma from which she died. Just before she fell into the coma, Ama made a will in which she left the house in Ullswater Road to the local women's refuge.

Parshinder and Tariq each feel the house should be theirs and seek legal advice.

Advise Parshinder and Tariq.

(25 marks)

Turn over

Question 4

Petro died in May 2004. In his will Petro gave £650,000 to his trustees, Edgar and Roland, in trust for Petro's son, Solomon, for life with the remainder to Teddy, Petro's favourite nephew. The will also left Edgar and Roland an express power to invest in shares quoted on the London Stock Exchange "except for shares in oil or gas". Edgar is a barrister; Roland is a university lecturer in accountancy and finance and has been a long standing friend of Petro since school. Edgar and Roland would like to invest part of the trust fund in antiques. Edgar is an ardent anti-smoker and has written to Roland requesting not to invest in any tobacco companies.

Advise Edgar and Roland:

(a) What their powers of investment and distribution are.

(10 marks)

(b) What their duties are in selecting investments.

(15 marks)

(Total: 25 marks)

End of Examination Paper

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