



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 2013-2014, 21st edition, Meryl Thomas, Oxford University Press, 2013.**
- 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**

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

1. The maxim 'Equity will not perfect an imperfect gift' suggests that gifts are invalid unless the property is transferred to the donee in the correct way. This protects donors by allowing them to change their minds at any time before the transfer formalities are complete. However, in cases where donors do not change their minds, gifts should not be allowed to fail due to a technicality; that would be contrary to the intention of the donor and is not desirable.

Critically evaluate how far the following exceptions to the rule (that equity will not perfect an imperfect gift) reflect the policy considerations outlined in the above statement:

- (a) the "every effort" test (Re Rose (1952));

(7 marks)

- (b) the rule in Strong v Bird (1874);

(5 marks)

- (c) unconscionability.

(13 marks)

(Total: 25 marks)

2. Explain how far the enforcement of secret trusts conflicts with the requirements of the Wills Act 1837 and critically evaluate the justifications for their enforcement.

(25 marks)

3. Critically evaluate the law relating to the state of mind which must be shown to render a defendant liable for:

- (a) recipient liability; and

(10 marks)

- (b) accessory liability.

(15 marks)

(Total: 25 marks)

4. Compare and contrast the certainty of objects tests for fixed trusts, discretionary trusts and gifts subject to a condition precedent and critically evaluate why different tests are appropriate.

(25 marks)

Turn over

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

Question 1

Sophie and Marcus have recently split up having lived together for 20 years. They never married. They have a daughter, Amy, who is 17 years old.

Marcus purchased the family home 20 years ago in his sole name. When, at the time of the purchase, Sophie suggested that the house should be conveyed into their joint names, Marcus said, "Why do you want a stupid piece of paper saying that? Don't you trust me?" Marcus provided the deposit. The balance of the purchase price was funded by a mortgage loan. Marcus has paid all the mortgage instalments. Sophie used the sale proceeds of her studio flat to furnish the new house.

Shortly before Amy was born, Sophie gave up her job and did not work until 2004 when she got part-time work. Her wages were a welcome addition to the family finances because Marcus's business was going through a bad period. Marcus continued to meet the mortgage payments but since 2004 Sophie has paid all other household bills.

Advise Sophie on whether she can claim a half-share in the family home and, if not, whether any other remedies may be available to her.

(25 marks)

Question 2

George died four years ago. His valid will gave his estate (worth £800,000) to Harry and Iris to hold on trust for such of George's children, Barney and Amanda, as should attain the age of 25. Barney is now 21 years old and Amanda is now 17. The will contained no administrative powers.

Harry has his own manufacturing business. Iris is a paralegal in the probate and trusts department of a solicitors' firm.

Harry and Iris consult you about the following matters:

- Barney is upset because the trustees have given Amanda a monthly allowance from trust income for clothes and pocket money and £15,000 of trust capital for her to buy and insure a car, whereas he has received nothing.
- Barney has also demanded information about the value of the trust fund and how it is invested. After George died, Iris suggested that they invest most of the trust fund in the purchase of quoted shares in the banking sector. The value of the investments has gone down. The trustees blame the general economic climate but they are worried that the beneficiaries might hold them personally liable.
- Realising that they may not have the expertise to manage the trust investments, the trustees want to know whether they can employ a financial adviser to take over this aspect of trust business or appoint an investment expert as an additional trustee.

Explain to Harry and Iris:

- (a) whether they have done anything wrong by giving Amanda trust income and capital and nothing to Barney;

(8 marks)

- (b) whether Harry and/or Iris may be held liable for the performance of the trust investments;

(10 marks)

- (c) whether they can employ an investment expert to manage the trust investments or appoint him as an additional trustee and pay him out of the trust fund.

(7 marks)

(Total: 25 marks)

Turn over

Question 3

Margot died last week. Her valid will appointed Nadia and Odette to be executors and trustees and contained the following provisions:

1. "I give £10,000 to the Kempston Bridge Club."
2. "I give my property, Riverside, and £500,000 to my Trustees to hold on trust to continue to run Riverside School, which I founded there. My Trustees must invest the sum of £500,000 and use only the income towards running the school."
3. "I give £20,000 to my Trustees on trust to maintain my grave for 21 years after my death."
4. "I give the residue of my estate to my Trustees on trust to advance the cultural education of the employees of Hall's Industries Ltd and their families."

The Kempston Bridge Club is a non-charitable unincorporated association.

Margot opened Riverside School at her house five years ago but did not register it as a charity. It is a fee-paying school with 70 pupils aged 11 to 16. Nadia and Odette are teachers at the school. It is essentially a ballet school but, in addition, pupils also study the usual GCSE subjects.

Hall's Industries Ltd was founded by Margot's great-grandfather in 1850. Currently, the company employs 1,000 people.

Advise the trustees:

- (a) whether clause 1 is valid;
(6 marks)
- (b) whether Riverside School is likely to be charitable and, if so, why charitable status is advantageous;
(9 marks)
- (c) whether clauses 3 and 4 create valid trusts.
(10 marks)

(Total: 25 marks)

Question 4

Mary and Oscar are trustees of the Phillips family trust. The beneficiaries recently discovered some disturbing facts.

The trustees appointed Anwar to advise them on trust investments. Anwar received commission for recommending certain products to the trust and shared this commission (which amounted to several thousand pounds) with the trustees. He also told Mary to buy shares in Nanco plc because it was about to bring out a new wonder drug which would 'send the price of the shares through the roof'. Mary used her own money to buy the shares in her own name claiming that the trust did not have sufficient cash readily available. Anwar's prediction was accurate and the value of the shares has increased.

Oscar has made a number of unauthorised withdrawals from the trust's bank account.

- In February 2013, Oscar withdrew £40,000 from the trust's bank account. He used this sum together with £10,000 of his own money to buy shares in Rightbet plc. The shares have doubled in value.
- In December 2013, Oscar withdrew a further £20,000 from the trust's bank account and paid it into his own account at Barnards Bank, which, at the time, had a balance of £4,000.
- Oscar then withdrew £15,000 from the Barnards account to pay off some personal debts. He then spent the balance of £9,000 on buying a car for himself. Subsequently Oscar's salary of £8,000 was paid into the Barnards account.

Oscar has substantial debts. The beneficiaries are worried that he will sell the Rightbet shares and the car and spend the proceeds together with the money in the Barnards account. Their other concern is that he may be made bankrupt.

The trust instrument contains no provisions to deal with these circumstances.

Advise the beneficiaries.

(25 marks)

End of Examination Paper

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