

LEGAL PROFESSION ADMISSION BOARD**EQUITY****SEPTEMBER 2013 EXAMINATION****EXAMINER'S COMMENTS****Question 1**

This question essentially revolved around the historical development of equity as a body of legal principles that was initially a means of remedying defects in, and supplementing the principles of, the common law. Some discussion of the nature of equity generally and of its maxims together with the extent to which equity continues to fulfil its historical role of developing new principles need to be mentioned. Very few students attempted this question, but those that did, generally answered it well.

Question 2

As a director Charles owed fiduciary duties to HB Ltd. *Regal (Hastings) v Gulliver* would suggest that he was in breach of his fiduciary duty and that he would be liable to HB Ltd. However, as he has no assets the question is whether, on the basis of the principles in *Barnes v Addy*, Crime Fiction Ltd would be accountable for the profits it made. The issue of the existence of fiduciary duties and the remedies that could be available against Charles was generally well done. However, very few students discussed whether Crime Fiction Pty Ltd could be liable under the principles set out in *Barnes v Addy*. This is of practical significance on the facts of the question as remedies against Charles would not be of any use to HB Ltd, given that Charles has no assets.

Note to Cameron: 10 marks were allocated to the fiduciary duty issue and 10 marks allocated to the *Barnes v Addy* issue.

Question 3

The first part of the question related to a *Quistclose* trust. Because the purpose of the loan had failed the money is held on trust for Regal Hastings Finance. The directions given to Pearson by Hastings raised the validity of the dispositions of a subsisting equitable interest and whether they had to be evidenced in writing pursuant to s 23C(1)(c) of the *Conveyancing Act 1919*. The first direction is of the type set out in *Vandervell v IRC* and would thus likely be valid. The second direction would fail as writing is required for the assignment pursuant to s 23C(1)(c). The issue relating to the existence of a *Quistclose* trust was generally covered quite well by most students. However, very few students covered well, or at all, the s 23C(1)(c) issue. The most common mistake was to analyse the directions given by Hastings as attempts to assign a legal debt, either in law or in equity, and discussed the requirements of s 12 of the *Conveyancing Act* and/or the principles in *Milroy v Lord*. However, the directions related to attempted dispositions of a subsisting equitable interest in personal property. This flowed from the consequence of the *Quistclose* trust that, upon the failure of the purpose of the loan, the funds were held by Compact Resources Pty Ltd on trust for Regal Hastings Finances Ltd. Thus, what was the subject of the directions was a subsisting equitable interest in the money and not a debt.

Note to Cameron: 10 marks were allocated to the *Quistclose* trust issue and 5 marks were allocated to the each of the two s 23C(1)(cc) issues.

Question 4

The purchase of property meant it belonged in equity to Maria on the basis of resulting trust principles. Enzo may have a right of property in relation to the shed-come-house on the western side of the property on equitable estoppel principles. Whatever of the property that belonged to Maria at her death was left to the Hunter Valley Antivivisection Association. This raised the issue of charitable trusts – key cases here being *National Anti-Vivisection Society v IRC* and *Aid/Watch Inc v Comm of Taxation*. Most students raised the resulting trust and charitable trust issues. Very few discussed the equitable estoppel issue.

Note to Cameron: 6 marks were allocated to the resulting trust issue and 7 marks were allocated to the each of the other two issues.

Question 5

Part A

This question was largely based upon the facts of *Corin v Paton* and principally raised the application of the principles in *Milroy v Lord*. In *Corin v Paton* neither of the two limbs of *Milroy v Lord* were satisfied. However, on the facts of the problem, it is arguable that the first limb was satisfied, but not the second. Most students did this part of the question reasonably well.

Part B

Part (i) raised the issue of an injunction to restrain a negative contractual stipulation pursuant to the line of cases starting with *Lumley v Wagner*. Part (ii) raised the issue of whether a Mareva order (or freezing order) was available to Russell in relation to his proceedings for breach of contract. This part of the question was generally poorly done.

Note to Cameron: 10 marks were allocated to Part A and 5 marks were allocated to the each of the two issues in Part B.