



CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 5 - Equity and Trusts

Question paper

June 2023

Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- You can use your own unmarked copy of the following designated statute book – **Blackstone’s Statutes on Property Law 30th edition, Meryl Thomas, Oxford University Press, 2022.**
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

Turn over

SECTION A

(Answer at least one question from this section)

1. The beneficiary principle holds that “there must be someone in whose favour the court can decree performance”, per Grant MR in *Morice v Bishop of Durham* (1805).

Critically evaluate the extent to which it is true to say that a trust can only be valid if it has a beneficiary.

(25 marks)

2. Critically analyse the means by which the terms of an existing trust may be altered in order to meet a change in circumstances.

(25 marks)

3. Critically analyse the purpose of the following equitable remedies and the criteria for granting them:

(a) an interim prohibitory injunction;

(8 marks)

(b) an order for specific performance;

(12 marks)

(c) an interim mandatory injunction.

(5 marks)

(Total: 25 marks)

4. “The absence of legislative intervention ... [has] ... made it necessary for the judiciary to respond by adapting old principles to new situations. That has not been an easy task” (per Lord Collins in *Jones v Kernott* [2011] UKSC 53).

Critically evaluate whether the courts have satisfactorily adapted trust principles so as now to provide a suitable framework for determining the beneficial interests in a family home.

(25 marks)

SECTION B

(Answer at least one question from this section)

Question 1

Aarav recently won a substantial prize on the National Lottery. He therefore decided to share some of his other assets amongst his relatives as follows.

Under a trust set up by Aarav's father some years previously, the trustees were holding a substantial fund on trust for Aarav until he reached the age of 30. On the day of his 30th birthday, which was at the beginning of last week, Aarav told a meeting of the trustees "I want you to hold everything on trust for my nephew, Baru. Please do what needs to be done." Aarav took no further steps in relation to the fund. Baru is 14 years old.

On the following day, Aarav told his brother, Chandresh, that he wanted him to have all his shares in a family company that had been established by their father. He sent a signed stock transfer form to Chandresh but was unable to find the share certificate. Chandresh, realising that he would now have sufficient shares to appoint himself as a paid director of the company, immediately resigned from his job as a restaurant manager.

Aarav also wrote a letter to his cousin, Divya, saying that he wanted her to have his late mother's diamond bracelet. In Aarav's letter, he said that the bracelet was currently with a jeweller for some minor repairs. However, he enclosed the jeweller's receipt for the bracelet with his letter and told Divya that she could pick it up once the jeweller let him know that the bracelet was ready for collection. Divya has not yet collected the bracelet.

Finally, Aarav wrote a letter to his sister, Eshana, saying "I have today transferred my country cottage to you. The signed transfer form is with my solicitor, to whom I have given instructions to do all that is required".

Aarav died in a car accident at the end of last week. By his Will, which was made in April 2019, his entire estate is left to charity. Aarav appointed Divya to be his executor.

Advise Divya as to who is entitled to the property that Aarav purported to dispose of during his lifetime.

(25 marks)

Turn over

Question 2

Felix died in August 2022. By his validly executed Will, he appointed Gordon, a partner in the accountancy firm retained by Felix, as his sole executor. Felix left his entire estate to his wife, Hermione.

Unfortunately, Gordon later found himself short of funds and so decided to borrow some money from Felix's estate to cover his forthcoming expenditure.

On 7 December 2022, Gordon took £25,000 from Felix's estate and deposited it into his empty savings account ('the Account'). He then withdrew £20,000 from the Account to buy a designer watch for his wife, Isolde, as a gift for her birthday. Gordon had always been very generous to Isolde and so she did not consider the gift to be unusual. Gordon then used the remaining £5,000 to pay off the debit balance on his credit card.

On 20 December 2022, Gordon withdrew a further £20,000 from Felix's estate and deposited it into the Account. He then used £12,000 to pay for the food and wine at a lavish Christmas Day celebration for his family, relations and friends.

On 28 December 2022, Gordon's monthly salary of £4,000 was paid into the Account.

Gordon was also the sole trustee of an *inter vivos* trust fund set up by Felix for his nephew, Kyle. The fund was held in the client account of Gordon's firm. On 4 January 2023, Gordon learned of an exciting new investment opportunity involving the purchase of shares in a start-up business. Without sufficient funds of his own, Gordon decided to take some money from the trust fund. He instructed Laverne, one of the junior accountants in his firm, to transfer £100,000 from the firm's client account into the Account. Laverne was suspicious of Gordon's motives and asked him why he wanted to do this. Gordon told her that she could have 10% of the transferred money as a bonus if she did as he had asked. Laverne duly complied, paying £10,000 to herself and the remaining £90,000 into the Account. Gordon then used £50,000 from the Account to purchase 5,000 shares in the start-up business. The value of the shares rose rapidly, and on 11 January 2023 Gordon sold 2,500 shares for £75,000. He placed this money into the Account.

Gordon has recently been arrested for fraud. It has also been discovered that he has debts exceeding £5 million.

Advise as to the remedies which may be available to:

(a) Hermione;

(12 marks)

(b) Kyle.

(13 marks)

(Total:25 marks)

Question 3

In 2012, Mo created a trust for his grandson, Oscar, contingent on him attaining the age of 21. Mo appointed his friends, Penelope and Quentin, to be the trustees. The trust instrument did not contain any express administrative powers for the trustees.

Since the trust was set up, Quentin has hardly been involved with it, effectively allowing Penelope to run it singlehandedly. Quentin admits that he is not an expert in financial matters and thought that Penelope knew what she was doing given that she was a qualified accountant.

Recently, Quentin has become more and more concerned about the trust. He has discovered that Penelope has invested the whole trust fund in company shares. Penelope's concern for the environment meant that her priority was to avoid companies with a poor environmental record. The value of the trust investments has declined by 10%.

In addition, Quentin has discovered that, six months ago, Penelope sold some of the shares and gave Royston (a solicitor friend of hers) the proceeds of £50,000 to invest on behalf of the trust. It now appears that Royston has disappeared with the money.

Oscar's parents have recently complained to Quentin about Penelope's refusal of their request for trust income to be used to pay for Oscar to join a tennis academy in Florida for two years. Oscar is 16 years old and has displayed considerable talent. However, Penelope dismissed the request out of hand, saying that Oscar should concentrate on getting "a proper education" rather than "swanning off to some holiday camp".

Penelope is now threatening to retire as a trustee. Quentin is worried that if she does so she will avoid any liability for any breach of trust which may have occurred.

Advise Quentin whether:

- (a) the beneficiaries could successfully sue Penelope and/or himself in relation to the losses which the trust fund has sustained;

(17 marks)

- (b) there is any basis for successfully challenging the decision to refuse the request for trust income made on Oscar's behalf.

(8 marks)

(Total: 25 marks)

Turn over

Question 4

Sandrine died in November 2022. By her Will she appointed Toni to be her executor and trustee and gave the following legacies:

- (a) “£250,000 to my trustee to hold on trust to distribute between such deserving British athletes and in such shares as she may determine”;
- (b) “£30,000 to the Candleford Foodbank”;
- (c) “the rest of my estate to my sister, Valerie, to hold on the trusts which I have previously discussed with her”.

Candleford Foodbank was an unincorporated charity, which ran a foodbank in the community hall in Candleford, close to Sandrine’s home. Just before Sandrine died, Candleford Foodbank closed down. The assets of the charity were transferred to another charity called End Hunger Now.

Before she made her Will, Sandrine gave Valerie an envelope and said “I am leaving you a legacy in my Will. This envelope tells you what to do with it, but please do not read the contents until after I have gone”. Valerie opened the envelope after Sandrine’s death. It contained a letter that instructed Valerie to hold the residue of Sandrine’s estate on trust for Sandrine’s friend, Una. Unfortunately, Una had died the day before Sandrine.

Advise Toni whether the legacies in clauses (a), (b) and (c) of Sandrine’s Will are valid and, if not, what will happen to the property referred to in them.

(25 marks)

End of the examination