



**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 Law**

**Question paper**

**January 2024**

**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.
- A basic calculator is provided should you require the use of one.
- You can use your own unmarked copy of the following designated statute book – ***Blackstone’s Statutes on Property Law 31st edition, 2022-2023 Meryl Thomas, Oxford University Press, 2023.***
- 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. "Subject to the provisions of this or any other Act, every court exercising jurisdiction in England or Wales in any civil cause or matter shall continue to administer law and equity on the basis that, wherever there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail" (Senior Courts Act 1981, s49).

Critically discuss, with reference to both case law and statute, whether this provision confirms that the historically separate principles of common law and equity are now fused.

**(25 marks)**

2. Critically analyse the circumstances in which a stranger to a trust can be held liable in equity to pay compensation to the beneficiaries.

**(25 marks)**

3. With reference to relevant case law, critically analyse:

(a) a **freezing order**. In your answer you should provide detail of the tests the court will apply in deciding whether or not to grant a freezing order;

**(12 marks)**

(b) a **search order**. In your answer you should provide details of how the court balances the interests of the parties in deciding whether or not to grant a search order.

**(13 marks)**

**(Total: 25 marks)**

4. The fraud theory cannot justify the validity of secret trusts given that secret trusts subvert the anti-fraud provisions of the Wills Act 1837.

Critically analyse the above statement.

**(25 marks)**

## SECTION B

Answer at least one question from this section.

### Question 1

Andrew is the sole beneficiary under the Will of his late father, Ben, who died last month as the result of complications following open heart surgery. Andrew has come to see you for your advice in relation to a number of lifetime dispositions that were made by his father.

In October 2023, Ben instructed his lawyer to arrange for a house that Ben owned to be transferred absolutely to his friend, Clare. Ben's lawyer drafted the TR1 transfer but Ben had not executed it by the time of his death. Ben told Clare that he intended to leave her his house. On the strength of that, Clare gave up her job and enrolled on the university course she had always wanted to take.

Also in October 2023, Ben provided a £100,000 loan to a company, Diehard Machine Tools Ltd, which was owned by Ben's nephew, Darius. The sole purpose of the loan was to enable the company to buy some specialist laser-cutting equipment that it needed in order to continue in production. Diehard Machine Tools Ltd purchased the machinery but returned it for a full refund because it was found to be faulty. Diehard Machine Tools Ltd went into liquidation earlier this month.

In hospital, shortly before his death, Ben told Ellie, his lifelong friend, that he wanted her to have his vintage Ferrari motor car if he did not recover. He gave her the key code to the electronic security lock, which was installed at the garage where the car was kept. Ben told Ellie that the car keys themselves were kept in an unlocked key cupboard on an internal wall of the garage.

Andrew seeks your advice as to whether any of these dispositions are valid and what this may mean for his entitlement under his father's Will.

***(Total: 25 marks)***

## Question 2

Fatima (an accountant) and Gael (a bank manager) are the trustees of a fund for the family of their friend, the late Professor Hosemi, who died in 2021. Professor Hosemi's widow, Irina, has a life interest in the fund, with remainder for their son Jamal.

There is no express provision in the trust deed in relation to investment powers.

In 2022, Fatima and Gael invested 10% of the trust fund in shares of Kempston Envirosolutions Limited, a waste disposal company for whom Jamal worked as an environmental analyst. Fatima and Gael did so despite being aware that an investigation into the company's disposal activities had just begun, however Irina urged them to make the investment in the hope of securing Jamal's continued employment by the company. The investigation has now concluded and criminal proceedings are being brought against the company for the illegal dumping of waste. The shares have reduced to half their original value.

Fatima and Gael now wish to invest part of the trust fund in buying shares in Livegreen Builders Limited, a local building company. The company's policy is to source materials only from the local area and from sustainable wood. The shares in the company do not perform as well as other building companies of a similar size. Fatima and Gael are keen to support the company's ethical stance.

Fatima and Gael also inform you that dealing with the trust's affairs is taking up more of their time than they expected. They want to know whether they can be paid from the trust fund for all their time and expenses incurred in managing the trust.

Advise Fatima and Gael whether:

- (a) they are liable to the trust for the reduction in value of the shares of Kempston Envirosolutions Limited;  

**(13 marks)**
- (b) they can invest in Livegreen Builders Limited and what steps they would need to take in order to legitimise their decision to do so;  

**(5 marks)**
- (c) they can claim payment for their time and expenses.  

**(7 marks)**

**(Total: 25 marks)**

### Question 3

Marlena and Nigel met in London in 2015. They decided to give up their jobs in the City and make a fresh start together by running a bed and breakfast hotel in Cornwall. Marlena took responsibility for finding a suitable property and eventually found the perfect opportunity – a dilapidated farmhouse (to be used as the hotel) with an outbuilding (to be converted into a home for Marlena and Nigel).

The property was purchased in Nigel's sole name. He provided a 10% cash deposit and the balance of the purchase price by way of a mortgage in his sole name.

The farmhouse and outbuilding both needed major refurbishment. Nigel rented a cottage for them to live in while the building works were carried out. They agreed that Marlena would supervise the works while Nigel took a job working from home. Nigel said, "We're going to live and work here, so you should have a say in what we do.". Marlena subsequently supervised the works and undertook some work herself by painting rooms and tiling bathrooms. Nigel financed the works but Marlena bought all the furniture and decorations for the farmhouse and the outbuilding. She also applied for the relevant licences and consents to use the property as a hotel, set up its website and interviewed staff.

The refurbishment was completed in 2017. Nigel and Marlena moved into the converted outbuilding and started receiving paying guests at the hotel. Marlena acted as hotel manager while Nigel took care of the business accounts in his spare time. Neither took a salary from the business but Nigel paid money from its profits into their respective bank accounts to cover their living expenses.

The business was badly affected by the coronavirus pandemic. Unable to meet the cost of essential repairs to the hotel, Nigel asked Marlena for help. She was concerned about contributing, given that the property was in Nigel's name. Nigel said, "Don't worry. I'll make sure you're looked after if anything goes wrong but if we don't get these repairs sorted I'm worried we might lose everything, including our home.". Reassured, Marlena used £150,000 of her savings to pay for the repairs.

Unfortunately, business did not improve. The associated stress affected their relationship and last month Marlena left Nigel, and moved out of the outbuilding. Nigel has offered to refund the £150,000 she contributed to the repairs but says the property is his.

Advise Marlena whether repayment of her £150,000 contribution is the limit of what she is entitled to receive.

**(25 marks)**

#### **Question 4**

Oracene has consulted you in relation to the terms of her Will, which she wishes you to prepare. She has provided you with a draft of the dispositions she wishes to make. They are as follows:

- (a) "£250,000 to my sister, Petra, knowing that she will continue to help with the rent and expenses of our mother, Raine, as I have done for the past few years."
- (b) "£500,000 to the Serenity Tennis Club on trust to construct four new artificial grass tennis courts at the club's ground."
- (c) "The residue of my estate to my Trustee to hold on trust for such worthy young female tennis players and in such shares as my Trustee shall, in his absolute discretion, think fit."

Advise Oracene whether the proposed provisions are valid and what alternative wording she might consider in order to ensure their validity.

**(25 marks)**

**End of the examination**

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