



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

January 2025

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, 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. Critically evaluate the circumstances in which a testamentary gift to a charity, or a gift for charitable purposes, may be saved from failure if implementation of that gift is impossible after the testator's death.

(25 marks)

2. Critically evaluate the extent to which the common law and equity are now fused.

(25 marks)

3. Critically evaluate, in relation to disputes concerning the family home, the principles that have been developed by the courts as regards:

(a) establishing a beneficial interest;

(19 marks)

(b) quantifying a beneficial interest.

(6 marks)

(Total: 25 marks)

4. It is a well-established principle that non-charitable trusts must be created for a human beneficiary and that a trust for a purpose will be void.

Critically analyse the exceptions to this principle.

(25 marks)

SECTION B

Answer at least one question from this section.

Question 1

Aurora died several years ago, leaving her entire estate on trust for her children, Boris and Caprice. The trustees are Davina (who is the family solicitor) and Emily (a friend of Aurora's). Aurora chose Davina because of Davina's considerable experience in trust law. Aurora chose Emily because Emily had always talked about her (Emily's) business acumen and prowess.

The trust property included 10,000 shares in Kempston Chemicals (KC), a very successful company that manufactures pesticides. Davina is an ardent environmentalist and did not approve of this sort of investment. Two years ago, she suggested to Emily that they should sell the KC shares and reinvest in something 'greener'. Emily was unsure but Davina insisted that Emily should rely on Davina's trust law experience. Emily respected Davina and so she reluctantly agreed. They sold the KC shares for £500,000 and reinvested the proceeds in a majority shareholding in Save the Rainforest Limited (SRL), a newly formed company that was set up to promote reforestation of the Amazon Basin.

Emily was invited to become a director of SRL. Emily left the running of the company to Ferdinand, its managing director, and did not attend a single board meeting. Ferdinand decided to make SRL more profitable by replacing its experienced scientists with entry-level graduates. Over the last two years, the profits of SRL have fallen steadily. Last year, the company did not declare any dividends and one month ago it went into liquidation. Its shares are now worthless. Davina blames Emily for the loss to the trust, complaining that she had relied on Emily because of her business expertise.

Advise Boris and Caprice as to what remedies they may have in relation to the loss that has arisen.

(25 marks)

Turn over

Question 2

Graham died three years ago. By his Will Graham appointed Hester as his executor and trustee. Under the Will, Hester holds Graham's estate on trust for such of Graham's two nieces as may attain the age of 25. Graham's nieces, Ida and Jade, are now 20 years old and 18 years old respectively.

There are no administrative provisions in the Will. Ida has discovered that in 2022, the trust's investment adviser suggested to Hester that the trust should buy shares in ABC plc, a new technology company. Hester did not buy any shares on behalf of the trust but Hester did buy some shares in ABC plc in her own name, using her own money. She has just sold the shares and has made a large profit. When Ida raised this with Hester, she replied that it was none of Ida's business how Hester spent her own money.

Last year, Hester arranged for some shares belonging to the trust to be sold. The trust's stockbroker (Kirk) carried out the sale transaction. Hester instructed Kirk to arrange for the buyer to pay the sale price (£50,000) directly to Liam, who is Hester's brother. Kirk was surprised that Liam was to receive the money but he nevertheless carried out the instructions. Liam needed the money and did not ask any questions, although he thought it was strange that Hester could put her hands on that much money. Liam spent the money on doing up his flat.

Hester also sold a valuable sculpture belonging to the trust and paid the proceeds of £40,000 into her personal bank account, which already contained £5,000 of her own money. She then paid off a number of her creditors by using the entire balance of £45,000, which was then in the bank account.

Finally, Hester paid £10,000, which she had won on the National Lottery, into her bank account.

Hester has now been declared bankrupt.

Advise Graham's nieces in relation to the remedies they may have against:

(a) Hester; **(13 marks)**

(b) Liam; **(6 marks)**

(c) Kirk. **(6 marks)**

(Total: 25 marks)

Question 3

Malwina is a world-renowned chef. She runs a restaurant that holds two Michelin stars. Six months ago, Malwina was commissioned to create and cook a special menu for the forthcoming wedding of a high-profile celebrity couple. The menu, along with all other aspects of the wedding arrangements, is being kept top secret at the request of Wow! magazine, which has purchased the exclusive rights to feature the celebrity wedding in a forthcoming issue. In order to protect those rights, Wow! has made Malwina sign a confidentiality agreement, under which she is liable to pay £100,000 by way of damages if she or any of her employees discloses any of the details about the menu or the wedding to any third party. In return for that commitment, Malwina's restaurant will be featured prominently in Wow!'s coverage of the wedding.

As part of the menu, Malwina ordered, and paid for, a case of rare French truffles from Noel, who imports them into the UK. Last week, Malwina received a phone call from Noel in which he stated that owing to a worldwide shortage of the truffles, the price had quadrupled. As a result of this, Noel had sold the truffles that were due to be delivered to Malwina for a far higher price to another customer and he would be returning Malwina's money.

Olivier is one of Malwina's sous-chefs. He has worked with Malwina in designing the wedding menu. Last week Malwina and Olivier had a blazing row, during which Malwina told Olivier "Take your things and never come back again!" In response, Olivier said: "This place is nothing without me. I'll ruin you, just you wait and see."

Olivier then cleared out his locker at the restaurant and left. Shortly afterwards, one of Malwina's other employees was moving his belongings into the locker when he discovered a piece of paper that had been left on the topmost shelf. The document, which he immediately showed to Malwina, was a hard copy of an email between Olivier and the editor of 'Celeb' magazine, in which the editor had written: 'As discussed, further to the £1,000 already paid by us as an initial incentive fee, we will pay a further £10,000 for full details of the menu and any other information that you may have relating to the celebrity wedding.'

Advise Malwina as to any equitable remedies she may have against:

(a) Noel;

(14 marks)

(b) Olivier.

(11 marks)

(Total: 25 marks)

Turn over

Question 4

Peter decided to distribute some of his assets amongst his family.

He arranged to meet his solicitor, Qasim. At that meeting, Peter told Qasim "I am going to transfer my flat in London to you and I want you to hold it on trust for my granddaughter Ravenna until she reaches the age of 18, at which point it becomes hers. Please sort out the necessary paperwork." The next day, Peter texted Ravenna telling her "I am giving you my London flat. Qasim (my lawyer) will hold it in trust for you. Lots of love, Grandad."

A few days later, Peter went to Qasim's office and signed a transfer deed (Form TR1) transferring the flat to Qasim. Qasim explained that he was going on holiday for a week but would arrange for his trainee to send off the necessary documents to the Land Registry for registration; unfortunately, the trainee subsequently forgot to do so.

At the same meeting with Qasim, Peter told Qasim that he (Peter) wanted to make new arrangements in relation to 5,000 ordinary shares in Kempstons Bros Limited, which Qasim was already holding on trust for Peter. Peter instructed Qasim that "as from today you are to hold half my shares in Kempstons Bros Limited on trust for my niece Sylvie and you are to transfer the other half to my nephew Troy". Qasim agreed that he would do this. Sylvie is 17 years old and Troy is 21 years old.

After leaving Qasim's office, Peter told his assistant (Ugo) to drive him to his club for lunch. When they arrived, Peter stepped out of the car and was immediately struck by a speeding cyclist. Peter suffered severe internal injuries. As he was lying in the road, Peter told Ugo "I don't think I'm going to make it. I want you to have the money in my online savings account with Santander – the username is my email address, which you know, and the password is Aardvark123."

Peter died shortly afterwards.

Peter's Will, which was validly executed several years ago, appointed Ravenna as his executrix and left his entire estate to charity.

Advise Ravenna as to who is entitled to:

- the flat;
- the shares;
- the credit balance in the Santander savings account.

(25 marks)

End of the examination