



CHIEF EXAMINER REPORT

January 2025

LEVEL 6 UNIT 5 – EQUITY & TRUSTS

The purpose of the suggested points for responses is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2025 examinations.

The 'suggested points for responses' sections set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

On the very limited evidence available due to the small cohort size, there is nothing to suggest any concern.

Only five candidates sat the exam.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

Therefore, no feedback on candidate performance has been included.

Section A

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Basic discussion of cy-près, including when it arises, sanction by court or Charity Commission, and CA 2011, s 67. • Discussion of initial failure, including requirement for general charitable intent and when/how this may be identified, with reference to cases such as <u>Biscoe v Jackson</u> (1887), <u>Re Wilson</u> (1913), <u>Re Good's Will Trusts</u> (1950), <u>Re Rymer</u> (1984), <u>Re Harwood</u> (1936), <u>Re Spence</u> (1979), <u>Re Satterthwaite's Will Trusts</u> (1966) and <u>Re Finger's Will Trusts</u> (1972). • Discussion of supervening failure, with reference to <u>Re Wright</u> (1954). • Discussion of CA 2011, ss 63 and 64. • Discussion re failed gifts to incorporated bodies and unincorporated associations, with reference to cases such as <u>Re Vernon's Will Trusts</u> (1971) and <u>Re Faraker</u> (1912). 	

Question 2	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of separate evolution, principles and function of common law and equity, highlighting emergence of the latter as a way of correcting the perceived injustices of the former, with reference to, eg, <u>Earl of Oxford's Case</u> (1615). • Discussion of Judicature Acts 1873 and 1875, in terms of whether they merely fused the courts or also fused the law: see judicial statements in, eg, <u>Trustee of the Property of FC Jones & Son v Jones</u> (1996), <u>Westdeutsche Landesbank Girozentrale v Islington LBC</u> (1996), <u>Swindle v Harrison</u> (1997) and <u>MCC Proceeds Inc v Lehman Bros</u> (1998). • Discussion of relevant equitable maxims as indicators of degree of fusion or continued separation (of which 'equity follows the law' and 'equity will not suffer a wrong to be without a remedy' are likely to be the most useful examples). • Discussion re invocation of former in 'family home' cases, eg <u>Stack v Dowden</u> (2007), following on from adoption of equitable constructive trust as a vehicle for achieving a just result (see eg <u>Hussey v Palmer</u> (1972) and <u>Eves v Eves</u> (1975)) and rejection of restrictiveness represented by, eg, <u>Lloyds Bank v Rosset</u> (1991). • Discussion of use of equitable remedies (eg use of injunctions (citation of any relevant authority can be credited)). 	

Question 3a	19 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> Brief contextual discussion re: (i) lack of recourse to statutory financial relief, (ii) express trusts, resulting trusts and common intention constructive trusts (CTs) (express and implied), (iii) LPA 1925, ss 53(1)(b) and 53(2). Detailed discussion re express / implied common intention CTs (including citation of relevant authority, eg, <u>Abbott v Abbott</u> (2007), <u>Lloyds Bank v Rosset</u> (1990), <u>Eves v Eves</u> (1975), <u>LeFoe v LeFoe</u> (2001), <u>Clough v Killey</u> (1996), <u>Hammond v Mitchell</u> (1991), <u>Thomas v Fuller-Brown</u> (1988), <u>James v Thomas</u> (2007)), and with reference to factors referred to in <u>Stack v Dowden</u> (2007) and <u>Jones v Kernott</u> (2011). Candidates should distinguish between sole ownership and joint ownership cases as appropriate. Discussion of law of proprietary estoppel and potential relevance, with reference to relevant authorities, eg, <u>Gillett v Holt</u> (2000), <u>Thorner v Major</u> (2009) and <u>Davies v Davies</u> (2016) 	

Question 3b	6 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
Discussion re the approach derived from relevant case law, eg, <u>Midland Bank plc v Cooke</u> (1995), <u>Drake v Whipp</u> (1996).	

Question 4	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> Outline of beneficiary principle (with reference to cases such as <u>Morice v Bishop of Durham</u> (1804) and <u>Re Astor's Settlement Trusts</u> (1952)), with consequence for non-charitable purpose trusts. Discussion of 'motive' cases, eg <u>Re Andrews Trust</u> (1905) and <u>Re Osoba</u> (1979). Discussion of purpose trusts with ascertainable beneficiaries (with reference to <u>Re Denley's Trust Deed</u> (1969)), and requirement for satisfying perpetuity period. Extension of <u>Re Denley</u> to unincorporated associations (as in <u>Re Lipinski's Will Trusts</u> (1976)). Discussion re administrative unworkability (with reference to cases such as <u>District Auditor, ex parte West Yorkshire Metropolitan County Council</u> (1986) and <u>Re Harding (Deceased)</u> (2007)). Discussion of <u>Re Endacott</u> (1960) exceptions, with reference to cases such as <u>Mussett v Bingle</u> (1876), <u>Re Hooper</u> (1932), <u>Re Dean</u> (1889) and <u>Pettingall v Pettingall</u> (1842). 	

Section B

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of 'basic' and 'enhanced' duty of care under Trustee Act 2000 (TA 2000), s 1. Application to Davina and Emily. • Discussion of duties under TA 2000, ss 3, 4 and 5 when deciding to sell KC shares, and replace and maintain shareholding in SRL, with reference to, eg, <u>Cowan v Scargill</u> (1985). • Discussion re: (i) trustees not vicariously liable for defaults of co-trustees, but (ii) a claim may be brought against them if they do not play an active part in the management of the trust or do not ensure that trust property is under their joint control. Identify passivity as a breach of duty: <u>Bahin v Hughes</u> (1886). • Discussion of duties re management of SRL, with reference to, eg, <u>Bartlett v Barclays Bank</u> (1980) and <u>Re Lucking</u> (1968). Identify passivity as a breach of duty: <u>Bahin v Hughes</u> (1886). • Discussion re causation and remedies, with reference to cases such as <u>Target Holdings v Redfern</u> (1996) and <u>Nestlé v National Westminster Bank</u> (1988). • Discussion re apportioning liability for breach of trust, with reference to, eg, <u>Re Partington</u> (1887) and <u>Head v Gould</u> (1898). • Possible defences: (i) exclusion clause in trust deed, or (ii) Trustee Act 1925, s 61 (unlikely to succeed - may have acted honestly but did not act reasonably, so not fairly to be excused). • Discussion of right of each trustee to claim a contribution from the other under Civil Liability (Contribution) Act 1978. Court will order such amount as is just and equitable having regard to their respective responsibilities for the loss. 	

Question 2a	13 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion re breach of fiduciary in relation to purchase of ABC shares, with reference to, eg, <u>Keech v Sandford</u> (1726) and <u>Boardman v Phipps</u> (1967) and application to facts (with conclusion that Hester must most likely disgorge her profit). • Discussion re breach of trust arising from sale of shares and possible remedies against Hester. • Discussion re breach of trust arising from sale of sculpture and subsequent mixing of the sale proceeds with her own funds. • Discussion re nature of a proprietary tracing claim in equity and why this would be the most appropriate remedy given: (i) funds mixed with trustee's own money, (ii) there are competing claims in bankruptcy (with reference to <u>Agip (Africa) Ltd v Jackson</u> (1991)). • Discussion re money paid to creditors and dissipation (<u>Re Diplock</u> (1948)). • Discussion re application of <u>Re Hallett</u> (1880) and <u>Re Oatway</u> (1903) and to whom the £10,000 balance in the current account 'belongs'. 	

Question 2b	6 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion re personal claim for constructive trusteeship against Liam on the basis of recipient liability - <u>Royal Brunei Airlines v Tan</u> (1995), <u>Barlow Clowes v Eurotrust</u> (2006), <u>Abou-Rahmah v Abacha</u> (2007) and <u>Starglade Properties v Nash</u> (2010)). • Reasoned application to the facts of the scenario. 	

Question 2c	6 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of the relevant principles and case law relating to assistance liability (eg <u>Ivey v Genting Casinos</u> (2017) and <u>Group Seven Limited v Notable Services LLP</u> (2019). • Application to the facts of the scenario 	

Question 3a	14 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of test for specific performance: (i) usual remedy of damages (<u>Adderley v Dixon</u> (1824)) for 'ordinary articles of commerce' (<u>Cohen v Roche</u> (1927)), (ii) exceptions for articles which are rare, unique or of special value to the claimant (<u>Falcke v Gray</u> (1859) and <u>Behnke v Bede Shipping Company Limited</u> (1927)). • Discussion re other arguments Malwina may advance: (i) short time to source and secure delivery of an acceptable alternative (<u>Sky Petroleum v VIP Petroleum</u> (1974)), (ii) possible loss of reputation (cf <u>Verrall v Great Yarmouth Borough Council</u> (1981)). • Discussion re possible need for an interim mandatory injunction – need for 'high degree of assurance' that injunction rightly granted (<u>Shepherd Homes Ltd v Sandham</u> (1971)). • Application of the above to the facts of the scenario. 	

Question 3b	11 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Articulation of test for obtaining IPI, with reference to <u>American Cyanamid Co v Ethicon Ltd</u> (1975) and other relevant authorities. • Application to the facts of the scenario. • Discussion re possible order for an account, with reference to, eg, <u>A-G v Guardian Newspapers Ltd (No 2)</u> (1990). 	

Question 4	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>Re (i), discussion of:</p> <ul style="list-style-type: none"> ▪ formalities/constitution in relation to various dispositions and classes of asset, with reference to <u>Milroy v Lord</u> (1862) and relevant equitable maxims (to be credited in whichever part of the answer it appears); ▪ requirements re the three certainties (<u>Knight v Knight</u> (1840)) (to be credited in whichever part of the answer it appears); ▪ requirements for valid declaration of trust re land: LPA 1925, s 53(1)(b), and consequences of absence of any signed writing; ▪ requirements for valid transfer and constitution of legal estate: Law of Property Act 1925, s 52, Law of Property (Miscellaneous Provisions) Act 1989, s 1 and Land Registration Act 2002, s 27(2)(a); ▪ whether exceptions in <u>Re Rose</u> (1952) or <u>Mascall v Mascall</u> (1984) may apply, with application to facts; ▪ possible application of rule re 'fortuitous vesting', with reference to <u>Strong v Bird</u> (1874) and associated cases. <p>Re (ii), discussion of:</p> <ul style="list-style-type: none"> ▪ certainty of subject matter re shares, with reference to cases such as <u>Re London Wine</u> (1986), <u>Re Goldcorp</u> (1994)), <u>Hunter v Moss</u> (1994) and <u>Re Harvard Securities</u> (1997); ▪ (Sylvie) need to comply with LPA 1925, s 53(1)(c), with reference to <u>Grey v IRC</u> (1960)); ▪ (Troy) (i) no need to comply with LPA 1925, s 53(1)(c) (with reference to <u>Vandervell v IRC</u> (1960)), and (ii) Stock Transfer Act 1963, s 1 (with possible reliance on <u>Re Rose</u> exception). <p>Re (iii), discussion of:</p> <ul style="list-style-type: none"> ▪ DMC re attempted gift of money in Santander savings account, with reference to <u>Cain v Moon</u> (1896) and applicable criteria. 	