CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 5 – EQUITY & TRUSTS

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2026 examinations.

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

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview
Only 6 candidates sat the paper in this session. Better performing candidates exhibited similar characteristics, in that they demonstrated good knowledge and understanding of the relevant law and used references to statutory provisions and case law appropriately to underpin their analysis/explanation. Candidates who did less well: (a) did not have a sufficient legal foundation on which to base any sort of reasoned argument or (in terms of the Section B questions) to provide any sort of reasoned advice, and (b) cited little or no relevant statute or case law.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

Section A

Question 1	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Discussion of capacity of *sui juris* beneficiaries to vary regardless of settlor's intention (eg Saunders v Vautier (1841)).
- Discussion of court's jurisdiction under Variation of Trusts Act 1958 in relation to beneficiaries who lack capacity, and relevance of settlor's intention in that scenario.
- Discussion of 'benefit' criterion, with reference to relevant case law (eg Ridgewell v Ridgewell (2007), Re Weston (1967), Re CL (1969), Re T's Settlement (1964), cf Wright v Gator (2011)).
- Discussion of extent to which the settlor's intention has or has not been taken into account, with reference to relevant case law (eg Re Steed's Will Trusts (1960), Re Remnant's Settlement Trusts (1970) and Goulding v James (1997)).

Question 2	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Brief contextual discussion re express trusts, resulting trusts and common intention constructive trusts (express and implied).
- Detailed discussion re express and implied common intention constructive trusts (including citation of relevant authority, and with reference to the factors referred to in Stack v Dowden (2007) and Jones v Kernott (2011)) in relation to both qualification and quantification).
- Identification of a move away from strict approach in Lloyds Bank v Rosset (1990) (but perhaps already anticipated by cases such as LeFoe v LeFoe (2001).
- Discussion of imputation, the nature of any role that it has to play and whether that role is limited to quantification or also applies re qualification.

Question 3(a)	13 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- General discussion re nature of a search order.
- Discussion of Anton Piller KG v Manufacturing Processes Ltd (1976) - with correct articulation of relevant test - and other relevant case law.
- Detailed description of safeguards for the defendant.
- A reasoned evaluation.
- Discussion of ECHR, Art 8 / Chapell v United Kingdom (1990).

Question 3(b)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• General discussion re nature of a freezing order. • Discussion of <u>Third Chandris Shipping v Unimarine</u> (1997) - with correct articulation of relevant test - and other relevant case law. • Detailed description of safeguards for defendant. • A reasoned evaluation.	

Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Discussion of the common law rules re tracing and the limitations from which they suffer. • Discussion of the equitable rules, comparing and contrasting the wider scope that it is available when compared to the common law rules. • Discussion of the uncertainty in some instances as to whether the equitable rules permit a claim for a proportionate share or only a charge. • The apparent arbitrary nature of the rule in <u>Clayton's Case</u> (1861) re mixed funds in a current bank account, and the willingness to ignore the rule if it leads to an unfair/unjust result.	

Section B

Question 1	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Discussion of Charities Act 2011 and relevant case law re meaning of 'charity'. • Discussion of Charities Act 2011 and relevant case law re 'public benefit' requirement. • Detailed application of the above to each clause. • A reasoned conclusion in relation to each disposition. • Recognition that any clause which 'fails' as a charitable trust and which was not a valid purpose trust (which might possibly be the case re (2)) would see the sum in question fall into residue.	

Question 2(a)	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Discussion of formalities / constitution re gift of shares (including Stock Transfer Act 1963, <u>Milroy v Lord</u> (1862) and <u>Pennington v Waine</u> (2002)). • Detailed application of the above to the particular gift with a reasoned conclusion as to validity. • Discussion of criticisms re <u>Pennington v Waine</u>.	

Question 2(b)	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Discussion of formalities / constitution re transfer of land on trust (including Law of Property Act 1925, ss 52 and 53(1)(b), Mascall v Mascall (1985) and Re Rose (1952), completion by registration at HMLR under Land Registration Act 2002, s 27)). • Detailed application of the above to the particular gift with a reasoned conclusion as to validity.	

Question 2(c)	11 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Discussion of Wills Act 1837, ss 9 and 15, and common law requirements for a valid fully secret trust (eg Wallgrave v Tebbs (1855), Kasperbauer v Griffith (2000), Moss v Cooper (1861) (etc), and in particular Re Keen (1937) and Re Young (1970)). • Discussion of three certainties (Knight v Knight (1840)) with reference to certainty of subject matter. • Detailed application of the above to the particular gift with a reasoned conclusion as to validity.	

Question 3	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Discussion of when the powers under Trustee Act 1925, ss 31 and 32 are engaged. • Discussion of when and in what amount income or capital must or may be paid to beneficiaries or applied for their benefit, with accurate discussion of the relevant statutory tests and relevant case law (eg Pilkington v IRC (1964), Re Clore's Settlement Trusts (1966) and Re Pauling's Settlement Trusts (1963). • Detailed application of the above to the scenarios in relation to both Lois and Maxwell, including discussion of: (i) factors for and against the exercise of the discretion in relation to each of them, and (ii) alternatives to direct advance (eg buying a flat for Maxwell in the name of the trustees and giving him a right to reside). • Reasoned conclusion/advice as to whether the trustees can accede to the relevant request, and whether there might be any conditions/safeguards that could/should be implemented. • Discussion as to whether ballet school is 'university' (and therefore querying if Lois is satisfying the contingency) – only to be credited if recognition that it isn't, but it doesn't have to be: there is no time limit on when Lois graduates from a university.	

Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Identification of the Club as an unincorporated association (UA), using the criteria established by case law (eg Conservative and Unionist Central Office v Burrell (1981)). • Discussion of the difficulties that arise in relation to dispositions in favour of a UA as a result of the absence of legal personality. • Detailed discussion of the differing theories that have been put forward to validate a disposition to a UA as a gift or a trust. • Detailed application of the above to the scenario (including consideration of whether the degree of control exercised by the National Association disqualifies the gift entirely, see eg Re Grant's WT (1979)). • Reasoned conclusion/advice as to whether the Committee can proceed with its proposal. • Recognition that the gift does not create a valid private purpose trust.	