



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 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.

SECTION A
(Answer at least one question from this section.)

1. Critically evaluate the extent to which the equitable maxim 'equity will not perfect an imperfect gift' has been undermined by case law.

(25 marks)

2. "The rule of equity, which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff. The profiteer, however honest and well-intentioned, cannot escape the risk of being called upon to account." (per Lord Russell of Killowen in *Regal (Hastings) Ltd v Gulliver* (1942))

Critically analyse this statement with reference to case law.

(25 marks)

3. Explain:

(a) the differences between equitable remedies and legal remedies;

(6 marks)

(b) how the remedy of specific performance exemplifies those differences.

(19 marks)

(Total: 25 marks)

4. Describe the circumstances in which each of the following might arise:

(a) a constructive trust;

(13 marks)

(b) a presumed resulting trust;

(6 marks)

(c) an automatic resulting trust.

(6 marks)

Please note: In relation to part (a) do not discuss the application of constructive trusts to: (i) the resolution of disputes concerning shared homes or (ii) the liability of strangers in relation to trust property.

(Total: 25 marks)

SECTION B
(Answer at least one question from this section.)

Question 1

In 2010, Angela and her partner, Beth, decided to live together. Their original intention was they would buy a new home in their joint names but the mortgage lender would not accept Beth as a party to the mortgage owing to the fact that she had a poor credit rating.

Angela and Beth decided, instead, that the property would have to be bought in Angela's sole name but Angela said that Beth should always treat it as her home.

The purchase price was £350,000. Angela provided a deposit of £35,000. The mortgage loan covered the rest of the price. Beth spent £3,500 from her savings on some items of furniture for the new property.

Angela and Beth have lived in the property ever since. Angela has paid the monthly mortgage repayments from an account in her sole name. Angela and Beth also opened a joint account into which they both paid a monthly sum: every month Angela contributed £700 and Beth £1,000. All the regular household outgoings (for example food, utilities, insurance, repair and maintenance) have been paid for out of the joint account.

In 2019, Beth inherited £50,000, following the death of her aunt. Angela and Beth decided that the money should be used to build a kitchen extension and a conservatory for the property. When Beth expressed concern at using all the inheritance on a property that she did not own, Angela said "Don't worry. Like I said when we first bought this place, this will always be your home as much as it is mine.". Reassured, Beth paid for the building works to be carried out.

Angela and Beth separated last month. The property is still registered in Angela's sole name. She claims that Beth has no interest in the property, whereas Beth maintains that she is entitled to a 50 per cent share of its net worth.

Advise Beth as to the grounds on which she could claim such a share and whether she is likely to be successful.

(25 marks)

Question 2

Cerys and Dionte are trustees of the Egremont family trust. You have been consulted by Dionte, who has recently discovered the following matters.

- A year ago, Cerys made an unauthorised withdrawal of £50,000 from the trust's bank account. She paid it into her personal current account at FGH Bank, which contained £10,000 of her own money. She used £20,000 from the account to buy shares in Indigo plc: those shares are now worth £40,000. She spent the remaining £30,000 on shares in Jayco plc. Jayco has gone into liquidation and the shares are worthless.
- Six months ago, Cerys made an unauthorised withdrawal of £17,000 from the trust's bank account and gave it to her daughter, Kerry, who had just finished university. Suspicious of where the money had come from and worried that she could be asked to return it if she held onto it, Kerry immediately used £12,000 to pay off her student loan and then spent the other £5,000 on a round-the-world trip, from which she returned two weeks ago.
- Three months ago, Cerys made a further unauthorised withdrawal of £50,000 from the trust's bank account. She paid this into her personal current account, which had a balance of £25,000. Subsequently, she spent the entire £75,000 on a Ferrari car for her own personal use, which is now worth £60,000.

Cerys has recently been declared bankrupt. Dionte says that he has only just found out about Cerys's activities because he has been teaching in Canada for the past 14 months and was not provided with copies of the trust accounts.

Advise Dionte as to the possible claims that the beneficiaries of the Egremont trust may have against:

- (a) Cerys; **(13 marks)**
- (b) Dionte; **(6 marks)**
- (c) Kerry. **(6 marks)**

(Total: 25 marks)

Question 3

Loella died last week. Her valid Will appointed Miriam and Niamh to be her executors and trustees, and contained the following specific gifts.

- ‘1. I give £3,000 to the Kempston Bowling and Tennis Club so that the members may have a dinner at my expense in gratitude for their kindness and generosity to me over the years.
2. I give my property, Fonteyn House, and £500,000 to my Trustees to hold on trust to continue to run the Fonteyn School, which I founded there. My Trustees must invest the sum of £500,000 and use only the income towards running the school.
3. I give £50,000 to my Trustees on trust to maintain my grave for 21 years after my death.’

The Kempston Bowling and Tennis Club is a non-charitable unincorporated association. Loella had been a member of the club for the past 25 years.

Loella opened the Fonteyn School at Fonteyn House 30 years ago. The school has 85 pupils aged between 11 and 16. Essentially, it is a ballet school but pupils also study the usual range of GCSE subjects. Places at the school are open to all pupils (male and female) who demonstrate an aptitude for ballet dancing. The annual school fees are £7,500 but scholarships and bursaries are available to assist those pupils whose parents cannot pay the school fees at the full rate. Miriam and Niamh are teachers at the school.

Advise the trustees:

- (a) whether clause 1 is valid; **(7 marks)**
- (b) whether the Fonteyn School is likely to be charitable and, if so, why charitable status is advantageous in relation to the gift in clause 2; **(11 marks)**
- (c) whether clause 3 creates a valid trust. **(7 marks)**

(Total: 25 marks)

Question 4

Olga died recently; her valid Will contained the following provisions:

- ‘1. I give my house in Kempston to Pasha and Quinn in the hope that they will do what they promised me.
2. I give £50,000 to Ruslan on trust.’

After making the Will, Olga went to see Pasha and Quinn at their home. Unfortunately, Quinn was abroad on business so Olga spoke only to Pasha. Olga told Pasha that she had left the house to Pasha and Quinn in her Will, and that she would like them to hold it on trust for her nephew, Tomas, until he reached the age of 25. Pasha said that she would do her best to fulfil Olga’s wish and would tell Quinn about the conversation when he returned home. Unfortunately, Pasha then completely forgot to do so.

Before making her Will, Olga had told Ruslan of the proposed gift to him in her Will. She told him that she wanted him to keep £10,000 for himself and to give the rest to the person whose name she had written in a letter to her solicitor, and which would be communicated to Ruslan after Olga’s death. Ruslan agreed to Olga’s request. After Olga’s death, Ruslan received a letter from Olga’s solicitor in which he was informed that Olga had requested that he should give £40,000 to Olga’s niece, Sonya. Sonya was one of the witnesses to Olga’s Will.

Advise as to the validity of these gifts.

(25 marks)