



CHIEF EXAMINER REPORT

JUNE 2025

LEVEL 6 UNIT 5 – EQUITY AND 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 June 2025 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

Higher-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 a reasoned argument or (in terms of the Section B questions) to provide reasoned advice, and (b) cited little or no relevant statute or case law.

Several candidates gave answers for 25-mark questions of about 300 words which is not long enough.

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:	
<ul style="list-style-type: none"> • Discussion of: (i) absence of legal personality (so cannot own property or be the beneficiary of a trust), (ii) trusts for non-charitable purposes generally void (beneficiary principle), (iii) explanation of principle (with reference to <u>Morice v Bishop of Durham</u> (1805)). Such a trust may also fail for lack of certainty of objects and/or for offending the rule against perpetuity. • Discussion of <u>Re Denley</u> interpretation, outlining facts and Goff J's reasoning. • Discussion of direct application to UAs in <u>Re Lipinski</u> (1976). • Discussion of: <ul style="list-style-type: none"> ○ perpetuity ○ certainty (with reference to <u>Baden No.1</u> and <u>No.2</u>) ○ whether really an exception at all (eg <u>Re Grant's Will Trusts</u> (1980) and <u>Grender v Dresden</u> (2009)). • Discussion re trust for present and future members, highlighting narrow scope of this analysis. • Discussion of 'contractual' analysis, with reference to eg <u>Re Recher's Will Trusts</u> (1972), <u>Artistic Upholstery v Art-Forma</u> (1999) and <u>Hanchett-Stamford v HM Attorney General</u> (2008). Better-performing candidates will discuss when interpretation cannot be invoked (ie UA ceased to exist, absence of rules, 'excessive' outside control). • Discussion re immediate gift to present members and limited scope of this analysis (with reference to <u>Leahy v A-G for NSW</u> (1959) and <u>Re Grant's Will Trusts</u> (1979)). • Credit for any discussion that none of these interpretations guarantees that the purpose will actually be carried into effect. 	

Question 2	25 marks
Data too limited for valid 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 role of inference/imputation if no express or implied intention can be discerned by the application of the above. 	

Question 3(a)	13 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • General discussion re nature of a search order. • Discussion of Civil Procedure Act 1997, s 7 - with correct articulation of relevant test - and relevant case law both before and after enactment. • Detailed description of safeguards for defendant. 	

Question 3(b)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • General discussion re nature of a freezing order. • Discussion of relevant statutory provisions and case law. • Detailed description of safeguards for defendant. 	

Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response	
<ul style="list-style-type: none"> • Discussion of facts of <u>Twinsectra v Yardley and others</u> (2002). • Description of what constitutes knowing/dishonest assistance (may include reference to <u>Barnes v Addy</u> (1874)). • Discussion of Lord Nicholls' speech in <u>Royal Brunei Airlines Sdn Bhd v Tan</u> (1995). Higher-performing candidates will note the rejection of knowledge and/or unconscionability (and also negligence) as touchstones for liability. • Discussion of Lord Hoffman's apparent 'gloss' on the <u>Tan</u> test in <u>Twinsectra</u>, including cross-reference to criminal test from <u>R v Ghosh</u> (1982). • Discussion of Lord Millett's dissenting speech. • Discussion of 're-interpretation' or 'clarification' of the decision in <u>Twinsectra</u>, with reference to later cases such as <u>Barlow-Clowes v Vaughan</u> (2006), <u>Abou-Rahmah v Abacha</u> (2007), <u>Starglade Properties Ltd v Nash</u> (2010) and <u>Ivey v Genting Casinos (UK) Ltd (t/a Crockfords)</u> (2017). • Noting that unconscionability has been adopted in relation to knowing receipt, with reference to <u>BCCI (Overseas) Ltd v Akindele</u> (2000). • Critique of the actual outcome in <u>Twinsectra</u> regardless of which test is applied. Credit to be given for any reasoned conclusion. 	

Section B

Question 1	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Outline explanation of Wills Act 1837, s 9.• Discussion of requirements for creation of a valid fully secret trust.• Higher-performing candidates will note the discrepancy between the amount of the legacy as stated in the Will and the amount that Fleur is told about. They will consider the effect, with reference to <u>Re Colin Cooper</u> (1939).• Discussion of non-communication re Electra and <u>Re Stead</u> (1900).• Reasoned conclusion re Electra.• Discussion of requirements for creation of a valid half secret trust (much of which may be by cross-reference to earlier discussion).• Discussion of communication and <u>Re Keen</u> (1937).• Discussion of trusts of land and LPA 1925, s 53(1)(b), with reference to cases such as <u>Ottoway v Norman</u> (1972) and <u>Re Baillie</u> (1886).• Discussion re Boris witnessing Will, with reference to WA 1837, s 15 and <u>Re Young</u> (1951).	

Question 2	25 marks
Data too limited for valid feedback.	
Suggested Points for Response	
<ul style="list-style-type: none">• 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 <u>Pilkington v IRC</u> (1964), <u>Re Clore's Settlement Trusts</u> (1966) and <u>Re Pauling's Settlement Trusts</u> (1963)).• Detailed application of the above to the scenarios in relation to both Jiya and Kali, including discussion of: (i) factors for and against the exercise of the discretion in relation to each of them, (ii) the benefit that will be enjoyed by Jiya's mother by being provided with rent-free accommodation in Paris for 4 years, and (iii) alternatives to direct advance (eg buying a flat for Kali in the name of the trustees and giving her 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.	

Question 3(a)	9 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of formalities re gift of chattels (the paintings), with reference to (i) delivery and <u>Re Cole</u> (1964), (ii) presence of intention but absence of delivery, (iii) apparent failure of gift for want of delivery - equity will not step in to perfect it (<u>Jones v Lock</u> (1865)) nor will equity treat it as a self-declaration of trust (<u>Milroy v Lord</u> (1862)). • References to equitable maxims/cases should be credited wherever they appear in the answer. • Discussion whether gift may be upheld by applying <u>T Choithram International SA v Pagarani</u> (2000) - on the basis that it's sufficient that one of the trustees (Letitia) already holds the legal title, and so it will be deemed held by Letitia (or Natalie as her executor) on behalf of all the trustees (so Natalie must transfer it to the remaining trustees). 	

Question 3(b)	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of formalities re transfer of beneficial interest in shares with reference to (i) Law of Property Act 1925, s 53(1)(c) and relevant cases, (ii) requirement for signed writing, (iii) apparent failure of gift for want of writing. • Discussion whether gift may be upheld – on the basis that Letitia's instruction involves the collapsing of a trust in favour of the person who was already the legal owner: see <u>Grey v IRC</u> (1960) and <u>Vandervell v IRC</u> (1967). Higher-performing candidates will note that this scenario is distinguishable from the latter because there is no transfer of the legal interest in the shares. 	

Question 3(c)	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Discussion of formalities re gift of bracelet to Natalie – which may well simply refer to earlier discussion re the sculptures (the bracelet also being a chattel) – and apparent failure of gift for want of delivery. • Discussion whether gift may be upheld on the basis of the rule in <u>Strong v Bird</u> (1874) (as applied to gifts in <u>Re Stewart</u> (1908)), given the fortuitous vesting of the legal estate to Letitia's assets by virtue of Natalie being her executor - the gift fails during Letitia's lifetime, but on her death Natalie automatically holds legal title to all of Letitia's property (including the bracelet). This will constitute the gift as long as other conditions are met, ie (i) intention to make an immediate gift, and (ii) the intention continues until death: see <u>Re Freeland</u> (1952). 	

Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Outline discussion of advantages of proprietary claim over personal claim to follow/trace. • Discussion re dissipation of money on debts. • Discussion re donation to hospice/charity. Money spent on rooms cannot be recovered, but cash at bank is traceable (<u>Re Diplock</u> (1951)). • Discussion re implications of mixed funds in a current account. • Discussion of lowest intermediate balance on the Account and <u>Roscoe v Winder</u> (1915). • Discussion re uplift in value of cryptocurrency and proportionate share (<u>Re Hallett</u> (1880)). • Discussion of reversal of presumption of honesty (<u>Re Oatway</u> (1903)) and consequences. • Discussion of Romeo's right to be subrogated to discharged mortgage (<u>Boscawen v Bajwa</u> (1996)). 	