

2024 UNIT SPECIFICATION

Title:	(Unit 5) Equity & Trusts
Level:	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1. Understand the role of equity and equitable principles in English Law	1.1 Explain the development of equity and its relationship to common law 1.2 Summarise the maxims and underlying principles of equity	1.1 An explanation of its historical development to fill gaps in common law: <ul style="list-style-type: none"> eg <u>Earl of Oxford's Case</u> (1615) - where conflict, rules of equity prevail over common law; Judicature Acts 1873, 1875. 1.2 <ul style="list-style-type: none"> the maxims; early principle of conscience and modern concept of unconscionability.

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	<p>1.3 Explain the nature of a trust</p> <p>1.4 Identify different uses of trusts including modern uses</p> <p>1.5 Analyse the main contributions of equity</p>	<p>1.3 Origins of the trust:</p> <ul style="list-style-type: none"> • recognition of rights of beneficiary by equity; • originally personal rights but developed into equitable proprietary rights; • split between legal and equitable ownership. <p>1.4</p> <ul style="list-style-type: none"> • family trusts; • bare trusts; • fixed, discretionary and protective trusts and powers of appointment; • uses of trusts, for eg: charities, unit trusts, pensions; • importance in commercial context, eg in cases of commercial fraud or insolvency (eg Quistclose trust). <p>1.5</p> <ul style="list-style-type: none"> • flexibility of equity to adapt to changing times; • trust mechanism extended from preserving family wealth to, eg (i) resolving disputes over home ownership, (ii) role in commercial context, (iii) protecting mortgagors, (iv) providing remedies where damages inadequate (including development of modern injunctions); • appreciate importance of these mechanisms.
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	<p>1.6 Apply an understanding of equity and equitable principles to a given situation</p> <p>1.7 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>1.6 Application of understanding to a complex scenario.</p> <p>1.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
2. Understand equitable remedies	<p>2.1 Explain the effect of specific performance and when it would be appropriate</p> <p>2.2 Analyse the circumstances in which specific performance is likely to be refused</p>	<p>2.1 Orders party to contract to carry out term/s – but available only if damages inadequate, eg: <u>Cohen v Roche (1927)</u>, <u>Sky Petroleum v VIP Petroleum (1974)</u> and other relevant cases.</p> <p>2.2 Refused eg:</p> <ul style="list-style-type: none"> • if no consideration; • if order would be 'in vain'; • where unacceptable degree of supervision, eg: <u>Co-operative Insurance v Argyll Stores (1997)</u> and other relevant cases; • where cannot judge if imperfections of performance are deliberate, eg: <u>Giles v Morris (1972)</u>; • for employment contracts; may be refused for other personal services and relevant cases; <p>NB: factors may interact.</p>

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	<p>2.3 Differentiate between the effect of a prohibitory and a mandatory injunction</p> <p>2.4 Contrast the principles governing the grant of prohibitory and mandatory injunctions at the interim stage</p> <p>2.5 Explain the effects of search orders and freezing injunctions and the strict principles governing their use</p>	<p>2.3</p> <ul style="list-style-type: none"> • Prohibitory - to restrain an action; • Mandatory - to enforce positive action or undo an action; • Each granted to protect legal or equitable right where damages inadequate. <p>2.4</p> <ul style="list-style-type: none"> • Prohibitory, interim: <u>American Cyanamid v Ethicon</u> (1975) guidelines; circumstances where guidelines not applied or modified; • Mandatory, interim: <u>Shepherd Homes v Sandham</u> (1971) test. <p>2.5 A search order requires a defendant to allow search of premises to secure evidence:</p> <ul style="list-style-type: none"> • requirements laid down in <u>Anton Piller v Manufacturing Processes</u> (1976); • strict guidelines for execution; • freezing injunction prevents defendant dealing with their assets; • requirements as stated in eg: <u>Third Chandris Shipping v Unimarine</u> (1979) and other cases.
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	<p>2.6 Analyse reasons for the stringency of the requirements for freezing injunctions and search orders</p> <p>2.7 Explain the defences relevant to specific performance and injunctions and when they might apply</p> <p>2.8 Identify the availability of damages in lieu of specific performance or injunction</p> <p>2.9 Summarise the effect of other equitable remedies and the circumstances in which they might be granted</p> <p>2.10 Apply an understanding of equitable remedies to a given situation</p> <p>2.11 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>2.6 Draconian and described as law's 'nuclear weapons':</p> <ul style="list-style-type: none"> • may affect business and reputation; • human rights issues. <p>2.7</p> <ul style="list-style-type: none"> • lack of clean hands, eg <u>Coatsworth v Johnson</u> (1886); • real hardship, eg <u>Patel v Ali</u> (1984); • delay and acquiescence, eg <u>Bulmer v Bollinger</u> (1974), <u>Shaw v Applegate</u> (1977); • other relevant cases. <p>2.8 Awareness that damages may be awarded in lieu under Lord Cairns' Act.</p> <p>2.9 Other remedies in outline only, eg rescission and rectification of contracts, account.</p> <p>2.10 Application of understanding to a complex scenario.</p> <p>2.11 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>3. Understand how trusts, including secret trusts, are deliberately created</p>	<p>3.1 Explain the requirement for a trust to possess the three certainties of intention, subject matter and objects</p>	<p>3.1 An explanation of the three certainties: intention, property (subject matter) and beneficiaries (objects):</p> <ul style="list-style-type: none"> • need for intention to impose obligation, not just a hope or wish, and relevant cases, eg: <u>Re Adams and the Kensington Vestry</u> (1884), <u>Comiskey v Bowring-Hanbury</u> (1905); • ascertainable property subject to trust (ie how much/many and which) and relevant cases, eg: <u>Palmer v Simmonds</u> (1854), <u>Re Golay</u> (1965), <u>Re London Wine</u> (1986), <u>Hunter v Moss</u> (1994); • beneficial entitlement of individual beneficiaries and relevant cases, eg: <u>Boyce v Boyce</u> (1849); • how to identify beneficiaries and when the different tests apply: <ul style="list-style-type: none"> ▪ fixed trust – list test, <u>IRC v Broadway Cottages Trust</u> (1955); ▪ discretionary trust – is/is not test, <u>McPhail v Doulton</u> (1971); ▪ meaning and application, eg: <u>Re Baden's Deed Trusts</u> (No 2) (1973), same test as for powers from <u>Re Gulbenkian</u> (1970); ▪ administrative workability: <u>District Auditor, ex p West Yorkshire Metropolitan County Council</u> (1986); ▪ gift with condition precedent, eg: <u>Re Barlow</u> (1979), applying <u>Re Allen</u> (1953) test.
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	<p>3.2 Analyse the effects of failure to comply</p> <p>3.3 Explain statutory formality requirements in relation to lifetime trusts</p> <p>3.4 Differentiate between lifetime formalities for a declaration of trust and a disposition of a pre-existing equitable interest</p> <p>3.5 Explain the requirement for title to be transferred to the recipient of a gift and the trustee of a trust</p>	<p>3.2 Consequences of no valid trust;</p> <ul style="list-style-type: none"> donee may take absolutely; may be a resulting trust. <p>3.3</p> <ul style="list-style-type: none"> writing required by Law of Property Act 1925 (LPA 1925), s 53(1)(b); exemption re resulting, implied or constructive trusts: LPA 1925, s 53(2). <p>3.4</p> <ul style="list-style-type: none"> LPA 1925, 53(1)(b) - requirement for declaration of trust relating to land; LPA 1925, s 53(1)(c) – (i) requirement for: (a) 'writing' and relative 'informality' of a sufficient writing, eg <u>Hudson v Hathway (2022)</u>; (b) disposition of existing equitable interest, and (ii) meaning of 'disposition' as discussed in cases such as <u>Grey v IRC (1960)</u>, <u>Vandervell v IRC (1967)</u>, <u>Oughtred v IRC (1960)</u>, <u>Neville v Wilson (1997)</u>; application of formalities to sub-trusts. <p>3.5 Completion of gifts and constitution of trusts by transfer of title:</p> <ul style="list-style-type: none"> correct methods for different types of property; need for transfer to be complete, eg: <u>Milroy v Lord (1862)</u>.
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	<p>3.6 Analyse the effect of failure to transfer title</p> <p>3.7 Review the exceptions to the general rule</p> <p>3.8 Explain statutory formality requirements in relation to gifts or trusts taking effect on death</p>	<p>3.6</p> <ul style="list-style-type: none"> • general rule from <u>Milroy v Lord</u>: equity will not perfect imperfect gifts, assist volunteers nor interpret a failed gift as self-declaration of trust; • other illustrative cases; • contrast <u>Choithram v Pagarani</u> (2001) - equity won't strive to defeat. <p>3.7</p> <ul style="list-style-type: none"> • if settlor did all in their power, treated as complete in equity under <u>Re Rose</u> (1952) but difficulties with this; extension in <u>Pennington v Waive</u> (2002) where unconscionable to go back, but scope is uncertain - <u>Curtis v Pulbrook</u> (2011); • rule in <u>Strong v Bird</u> (1874) where title as executor - extended to gifts in <u>Re Stewart</u> (1908) and to administrators in <u>Re James</u> (1935) (criticised); • other relevant cases - extension by analogy to constituting trusts in <u>Re Ralli</u> (1964); • <i>donatio mortis causa</i> (DMC): <u>Cain v Moon</u> (1896) requirements and cases applying them, including application to land in <u>Sen v Headley</u> (1991), whether DMC justifiable; • proprietary estoppel and relevant cases. <p>3.8 Wills Act 1837, s 9 in outline.</p>
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	<p>3.9 Explain specific requirements for validity of secret trusts</p> <p>3.10 Explain the different methods of communication</p> <p>3.11 Compare the rules applying to fully and half secret trusts</p> <p>3.12 Analyse the theories used to justify non-compliance with formalities and their application in cases</p>	<p>3.9</p> <ul style="list-style-type: none"> • exception to Wills Act 1837 (WA 1837), s 9, ie created without formality; • requirements: communication to secret trustee of trust, terms and property, acceptance by trustee, reliance, (eg <u>Moss v Cooper</u> (1861) and other relevant cases). <p>3.10</p> <ul style="list-style-type: none"> • communication of terms by sealed envelope as in <u>Re Keen</u> (1937); • rules where communication not made to all trustees discussed in <u>Re Stead</u> (1900). <p>3.11 Communication:</p> <ul style="list-style-type: none"> • before death for fully secret trusts under <u>Wallgrave v Tebbs</u> (1855), <u>Re Boyes</u> (1884); • but before or at time of will for half secret under <u>Re Keen</u>, <u>Re Bateman</u> (1970); • criticism of difference in rules. <p>3.12 Different theories:</p> <ul style="list-style-type: none"> • fraud theory: from <u>McCormick v Grogan</u> (1869) - may suggest constructive trust; • outside (dehors) will theory: (i) arises through communication outside will as discussed in <u>Blackwell vBlackwell</u> (1929) – suggests express trusts, (ii) application of outside will theory (eg <u>Re Young</u> (1951), <u>Re Gardner (No 2)</u> (1923) and criticism of latter);
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	<p>3.13 Analyse the anomalies and areas of doubt in relation to secret trusts</p> <p>3.14 Apply an understanding of how trusts (including secret trusts) are created to a given situation</p> <p>3.15 Critically evaluate a given issue or situation to predict probable legal implications</p>	<ul style="list-style-type: none"> • whether theories satisfactory and if justify disregarding WA 1837, s 9. <p>3.13 Disagreement as to justification:</p> <ul style="list-style-type: none"> • inconsistency of rules; • doubts as to whether LPA 1925, s 53(1)(b) applicable if land (eg <u>Re Baillie</u> (1886), <u>Ottaway v Norman</u> (1972)); • LPA 1925, s 53(2) applies if constructive; • unresolved issues, eg whether secret trust defeated by disclaimer/death of trustee. <p>3.14 Application of understanding to a complex situation.</p> <p>3.15 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>4. Understand when trusts will be implied by law</p>	<p>4.1 Explain the statutory exemption of implied trusts from formality requirements</p> <p>4.2 Differentiate between resulting trusts arising from a rebuttable presumption ('presumed' resulting trusts) and those arising from a failure to part with the entire equitable ownership ('automatic' resulting trusts)</p>	<p>4.1 LPA 1925, s 53 - formalities don't apply to creation of implied, resulting, constructive trusts under LPA 1925, s 53(2).</p> <p>4.2</p> <ul style="list-style-type: none"> • purchase money presumed resulting trusts (eg <u>Bull v Bull</u> (1955) and/or other illustrative cases); • presumed resulting trust on voluntary conveyance; • presumption of advancement; • illegality - <u>Patel v Mirza</u> (2016);

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	<p>4.3 Summarise the different circumstances in which a constructive trust might arise</p> <p>4.4 Explain use of resulting and constructive trust principles and proprietary estoppel to resolve disputes over shared homes</p>	<ul style="list-style-type: none"> • automatic resulting trusts arising from failure to dispose of entire equitable interest (eg <u>Vandervell v IRC (1967)</u> (option), <u>Re Trusts of the Abbott Fund (1900)</u> and/or other illustrative cases); • Quistclose trusts as interpreted in <u>Twinsectra v Yardley (2002)</u>; also <u>National Crime Agency (Claimant) v (1) Gui Hui Dong (2) Hong Fang (Defendants) & Feng Xing (Interested Party) (2017)</u> - presumption that a gratuitous transfer gives rise to a resulting trust in favour of the transferor not abolished by LPA 1925, s 60(3). <p>4.3 Examples in outline only:</p> <ul style="list-style-type: none"> • specifically enforceable contracts, mutual wills, forfeiture, common intention constructive trust, profits made by fiduciaries; • liability of third party recipients; categories not closed. <p>4.4</p> <ul style="list-style-type: none"> • resulting trust restricts share to proportion of direct contribution at outset (eg <u>Cowcher v Cowcher (1972)</u>, <u>Curley v Parkes (2004)</u>, but later mortgage payments count if anticipated at outset under <u>Tinsley v Milligan (1994)</u>); • development of constructive trust principles (eg <u>Gissing v Gissing (1971)</u>, <u>Pettitt v Pettitt (1970)</u>, <u>Lloyds Bank v Rosset (1991)</u>);
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	<p>4.5 Apply an understanding of implied trusts to a given situation</p> <p>4.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<ul style="list-style-type: none"> • express common intention and detrimental reliance (eg <u>Grant v Edwards</u> (1986), <u>Hudson v Hathway</u> (2022) and other example cases); • inferred common intention for which indirect contributions generally don't count, (eg <u>Rosset</u> and other cases), but cf dicta in <u>Burns v Burns</u> (1984) and by HL in <u>Stack v Dowden</u> (2007) and <u>Kernott and Jones</u> (2011); • calculating size of interest and relevant cases including HL dicta in <u>Stack v Dowden</u>; • relationship with estoppel and relevant estoppel cases (eg <u>Grant v Edwards and Guest v Guest</u> [2022] UKSC 27); • Also consider <u>Juliette Malisz Wodzicki v Monique Wodzicki</u> (2017) EWCA Civ 95. <p>4.5 Application of understanding to a complex scenario.</p> <p>4.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate:</p> <ul style="list-style-type: none"> • eg limitations of resulting trust and inferred common intention constructive trusts; • evidential difficulties of express common intention; • doubts as to what counts as detrimental reliance; • unclear relationship with estoppel; • inconsistency on quantification;
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		<ul style="list-style-type: none"> • Law Commission recommendations for reform.
5. Understand the rules relating to purpose trusts	5.1 Identify purpose trusts	5.1 <ul style="list-style-type: none"> • charitable (public) purpose trusts; • non-charitable (private) purpose trusts within permitted classes; • relevance to unincorporated associations.
	5.2 Summarise key advantages of charitable status	5.2 <ul style="list-style-type: none"> • awareness of fiscal advantages; • enforced by Attorney General so no need for ascertainable beneficiaries; • need not have certainty of objects; • exempt from rule against inalienability (ie excessive duration); • availability of cy-près doctrine; • relevant changes effected by Charities Act 2022.
	5.3 Explain the purposes which the law regards as charitable	5.3 <ul style="list-style-type: none"> • <u>Pemsel</u> (1891) classification – four heads of charity; • expanded by Charities Act 2011 (CA 2011); • charitable purposes as listed in s 3; • purpose must be wholly and exclusively charitable; • relevant changes effected by Charities Act 2022.

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	<p>5.4 Explain the public benefit requirement</p> <p>5.5 Analyse the approach to public benefit for different types of charitable trusts</p>	<p>5.4</p> <ul style="list-style-type: none"> • tangible benefit and sufficient section of public; • CA 2011 preserves public benefit requirement; • specifies no presumption of benefit; • defined by reference to case law before Act • relevant changes effected by Charities Act 2022. <p>5.5</p> <ul style="list-style-type: none"> • applied differently to four <u>Pemsel</u> heads; • tangible benefit and example cases; • poverty trusts have minimal public benefit requirement - class could be defined by link of family or employment ('personal nexus'), (eg <u>Dingle v Turner (1972)</u>, <u>HM Attorney General v Charity Commission for England and Wales (2011)</u>); • for educational trusts class must not be numerically negligible or defined by personal nexus (eg <u>Oppenheim v Tobacco Securities Trust (1951)</u>), but see 'preference' cases and criticisms, also fee-charging (<u>Independent Schools Council v Charity Commission for England and Wales (2011)</u>); • religion (eg <u>Gilmour v Coats (1949)</u>) and other example cases including the Charity Commission's decision not to grant the Temple of the Jedi's Order's application for charitable status, and not certain if personal nexus rule applicable);
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	<p>5.6 Explain the rules relating to application of money given for a charitable purpose which fails</p> <p>5.7 Distinguish between situations where the cy-près doctrine will and will not apply</p>	<ul style="list-style-type: none"> • strict benefit requirement for trusts for other purposes beneficial to community, no class within a class (eg <u>IRC v Baddeley</u> (1955) and other example cases); • criticism of differences and doubt as to how benefit rules will apply to the new statutory purposes; • Charity Commission has issued guidance but no statutory force. <p>5.6</p> <ul style="list-style-type: none"> • gifts to defunct charities (<u>Re Vernon's WT</u> (1971), <u>Re Faraker</u> (1912)); • explanation of cy-près doctrine - allows money to be applied to a charitable purpose as close as possible to the one intended but which has failed • relevant changes effected by Charities Act 2022. <p>5.7</p> <ul style="list-style-type: none"> • always applies on subsequent failure; • only applies on initial failure if 'general charitable intention'; • difficulty of interpretation and example cases; • cy-près if unknown donors • relevant changes effected by Charities Act 2022.
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	<p>5.8 Explain the principle that a non-charitable trust must have a beneficiary to enforce it</p> <p>5.9 Analyse the effect of the beneficiary principle on private purpose trusts</p> <p>5.10 Analyse the exceptions to the principle</p> <p>5.11 Analyse the decision in <u>Re Denley</u> as further possible exception to the principle</p>	<p>5.8 Explanation of the beneficiary principle (<u>Morice v Bishop of Durham</u> (1804) - requires ascertainable beneficiaries in whose favour court can enforce the trust.</p> <p>5.9 Trusts for abstract purpose (pure purpose trusts) which don't benefit person/s are void (eg <u>Re Endacott</u> (1960), <u>Re Astor</u> (1952), <u>Re Shaw</u> (1957)).</p> <p>5.10 Exceptions listed in <u>Re Endacott</u> as anomalous and won't be extended:</p> <ul style="list-style-type: none"> • categories and example cases; • valid, but trusts of 'imperfect obligation' as no-one who can force trustee to carry them out. <p>5.11 Explanation of <u>Re Denley</u> (1969):</p> <ul style="list-style-type: none"> • a trust expressed for a purpose which benefits identifiable persons is valid as they have locus standi to enforce the trust; • unorthodox view if not beneficiaries in normal sense of owning beneficial interests; • doubted in <u>Re Grant</u> (1980) (viewing <u>Re Denley</u> as a case involving a discretionary trust).
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	<p>5.12 Apply certainty of objects requirement to purpose trusts</p> <p>5.13 Explain the rule against excessive duration of purpose trusts</p> <p>5.14 Explain the problems in relation to gifts to an unincorporated association</p>	<p>5.12</p> <ul style="list-style-type: none"> generally, purpose must be clearly defined, (eg <u>Re Endacott</u>, <u>Re Astor</u>); for <u>Re Denley</u> trust, purpose must be clearly defined and those who benefit must be identifiable, so clear who can enforce it. <p>5.13 Property must not be tied up for a private purpose for a time that could exceed perpetuity:</p> <ul style="list-style-type: none"> need to expressly limit to perpetuity period or 'so long as the law allows' and relevant cases; no problem when capital can all be spent (eg <u>Mussett v Bingle</u> (1876), <u>Re Lipinski</u> (1976)); Perpetuities and Accumulations Act 2009 does not apply to purpose trusts. <p>5.14</p> <ul style="list-style-type: none"> not a legal person so can't own property or be beneficiary of a trust; gift to association would be a trust for its purposes, therefore void under beneficiary principle and for perpetuity (unless charitable) (eg <u>Leahy v AG for NSW</u> (1959)); problem affects most members' clubs.
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	<p>5.15 Analyse the different interpretations placed upon gifts to unincorporated associations</p> <p>5.16 Apply an understanding of the rules relating to purpose trusts to a given situation</p> <p>5.17 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>5.15 May be valid if view as gift to the members:</p> <ul style="list-style-type: none"> • need to construe gift and rules of club; • gift to present members individually is rarely intended. • gift to present and future members raises perpetuity issues and possible application of Act; • gift to present members subject to rules of the UA (eg <u>Neville Estates v Madden</u> (1962), <u>Re Recher</u> (1972) and cases applying this) – appears to be favoured view, as indicated in more recent cases, but only possible if rules give members control of assets or can be changed to give control (cf <u>Re Grant</u>); • <u>Re Denley</u> was applied to a gift to a UA in <u>Re Lipinski</u>; • consideration of relative advantages and disadvantages of different interpretations and whether the present law is satisfactory. <p>5.16 Application of understanding to a complex scenario.</p> <p>5.17 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>6. Understand the role of trustees and the administration of trusts</p>	<p>6.1 Summarise the rules relating to appointment of trustees</p> <p>6.2 Explain how a trustee may retire or be removed from office</p> <p>6.3 Explain the duties of a trustee and other fiduciary: (i) not to put themselves in a position where their interest conflicts with their duty and (ii) not to make any profit from their position</p> <p>6.4 Analyse the imposition of a constructive trust rather than an account of profits</p> <p>6.5 Summarise the exceptions to the no conflict and no profit rules</p>	<p>6.1 Awareness of relevant provisions of Trustee Act 1925 (TA 1925) and Trusts of Land and Appointment of Trustees Act 1996 (TOLATA 1996).</p> <p>6.2</p> <ul style="list-style-type: none"> • explanation of the circumstances and procedures; • awareness of relevant provisions of TA 1925 and TOLATA 1996. <p>6.3 Fiduciary nature of trustee's position:</p> <ul style="list-style-type: none"> • strict rules underpinned by no conflict and no profit principles (eg self-dealing rule, no remuneration (but exceptions), no profit from position (example cases, including <u>Boardman v Phipps</u> (1967)); • extension to other fiduciaries. <p>6.4 Constructive trust: <u>FHR European Ventures LLP v Cedar Capital Partners LLC</u> (2014).</p> <p>6.5</p> <ul style="list-style-type: none"> • authorisation (eg in trust instrument or from all beneficiaries if sui juris and fully informed); • other exceptions (eg rule in <u>Cradock v Piper</u> (1850) • sanctioned by court • example cases.
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	<p>6.6 Analyse the appropriateness of a strict application of fiduciary duties</p> <p>6.7 Identify the duties of a trustee on appointment</p> <p>6.8 Explain the case law duties of trustees in relation to the beneficiaries and trust property</p> <p>6.9 Summarise the statutory powers and duties of trustees in relation to investment and the delegation of investment functions</p>	<p>6.6 A consideration of dissenting views and the criticism of <u>Boardman v Phipps</u>.</p> <p>6.7 Must familiarise self with terms and check fund properly invested.</p> <p>6.8 Duties:</p> <ul style="list-style-type: none"> • duty to be even-handed between beneficiaries; • duty of prudence; • duty to invest; • duty to balance interests of life and remainder beneficiaries (eg <u>Nestlé v National Westminster Bank</u> (1988)); • duty to have regard to financial not ethical considerations for investment (eg <u>Cowan v Scargill</u> (1985)); • duty where majority shareholding (eg <u>Re Lucking</u> (1968), <u>Bartlett v Barclays Bank</u> (1980)); • other relevant case law on various duties. <p>6.9 Trustee Act 2000:</p> <ul style="list-style-type: none"> • s 1 - statutory duty of care; • s 3 - general power of investment; • s 8 - investment in legal estate in UK land; • s 4 - standard investment criteria and duty to review; • s 5 - duty to obtain advice; • s 11 - delegable functions;
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	<p>6.10 Analyse the adequacy of statutory duties and controls</p> <p>6.11 Explain the powers and duties of trustees in relation to paying out income and capital to beneficiaries</p> <p>6.12 Analyse the scope and appropriateness of the statutory powers of maintenance and advancement</p>	<ul style="list-style-type: none"> • s 22 - duty to review arrangements with agent (and s 23 liability for agent); • Trustee Delegation Act 1999 (in outline only). <p>6.10 Are investment powers too wide, duties strict enough and is there enough accountability where agents appointed.</p> <p>6.11</p> <ul style="list-style-type: none"> • TA 1925, s 31 – (i) discretionary power to use income for maintenance, education or benefit of minor beneficiary and duty to accumulate, (ii) entitlement to income once 18, (iii) intermediate income, (iv) rules as to use of and entitlement to accumulations; • TA 1925, s 32 power to advance capital for advancement or benefit and limits on power; • Inheritance and Trustees’ Powers Act 2014. <p>6.12</p> <ul style="list-style-type: none"> • meaning of ‘benefit’ defined in <u>Pilkington v IRC</u> (1964); • advancement to resettle; • benefit to others; • improper payments (eg <u>Re Pauling’s ST</u> (1964)); • other relevant cases; • whether statutory powers wide enough or too wide.
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	<p>6.13 Explain the range of powers for trusts to be varied by beneficiaries or the court</p> <p>6.14 Analyse the extent and appropriateness of the powers contained in Variation of Trusts Act 1958</p> <p>6.15 Apply an understanding of the role of trustees and the administration of trusts to a given situation</p> <p>6.16 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>6.13</p> <ul style="list-style-type: none"> • rule in <u>Saunders v Vautier</u> (1841); • limited powers under TA 1925 and inherent power; • main power in Variation of Trusts Act 1958. <p>6.14</p> <ul style="list-style-type: none"> • categories on behalf of whom court can approve variation; • requirement for variation to be for benefit of those on behalf of whom court gives consent; • meaning of 'benefit' as interpreted in relevant cases (eg <u>Re Weston</u> (1969), <u>Re Remnant</u> (1970)); • whether and how far settlor's intentions can or should be ignored and example cases; • substratum' requirement from <u>Re Ball</u> (1968). <p>6.15 Application of understanding to a complex scenario.</p> <p>6.16 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>7. Understand the remedies available to beneficiaries for breach of trust</p>	<p>7.1 Classify remedies into personal and proprietary claims and explain the effect of each (Tracing?)</p> <p>7.2 Distinguish between personal claims against a trustee and a third party</p> <p>7.3 Explain the extent of a personal claim for breach of trust against the trustees</p> <p>7.4 Explain how liability is shared between the trustees</p>	<p>7.1</p> <ul style="list-style-type: none"> personal claim requires defendant to meet it from own funds, so claim won't be met in full if bankrupt or disappear; proprietary claim asserts right to identifiable assets or a proportion (including increase in value as confirmed in <u>Foskett v McKeown</u> (2001)) or charge (lien) over them; priority over other creditors. <p>7.2</p> <ul style="list-style-type: none"> trustee liable for breach even if inadvertent; in general, third party is personally liable only if aware. <p>7.3</p> <ul style="list-style-type: none"> claim for loss caused by breach according to <u>Target Holdings v Redferns</u> (1996), plus interest; measure of liability for investment breaches; joint and several liability; passive trustee equally liable according to <u>Bahin v Hughes</u> (1886); exemption clauses and proposals for reform in outline only. <p>7.4</p> <ul style="list-style-type: none"> Civil Liability (Contribution) Act 1978; Indemnity (eg <u>Re Partington</u> (1887), <u>Head v Gould</u> (1898), <u>Chillingworth v Chambers</u> (1896)).
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	<p>7.5 Explain the defences a trustee might raise</p> <p>7.6 Explain when a proprietary claim would be available</p>	<p>7.5</p> <ul style="list-style-type: none"> • consent or acquiescence (eg <u>Re Pauling's ST (1964)</u>, <u>Holder v Holder (1968)</u>); • impounding of beneficial interest under TA 1925, s 62 or inherent power and relevant cases; • relief under TA 1925, s 61 and relevant cases; • Limitation Act 1980. <p>7.6</p> <ul style="list-style-type: none"> • common law in outline only; • equitable rules and prerequisites (ie fiduciary relationship and equitable proprietary interest); • equitable rules identify funds when mixed (eg <u>Re Hallett (1880)</u>, <u>Re Oatway (1903)</u>, <u>Roscoe v Winder (1915)</u>); • can follow or trace into hands of innocent volunteer unless inequitable under <u>Re Diplock (1948)</u>, <u>Foskett v McKeown (2001)</u>; • innocent contributors share funds rateably except where <u>Clayton's Case (1817)</u> applies; • subrogation (eg <u>Boscawan v Bajwa (1996)</u>).
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	<p>7.7 Explain when a proprietary claim would fail</p> <p>7.8 Analyse the circumstances in which a third party who had received trust property would or should be personally liable to repay an equivalent sum</p> <p>7.9 Explain the basis of liability of a third party who assisted in a breach of trust or fiduciary duty</p>	<p>7.7</p> <ul style="list-style-type: none"> • no claim to property in hands of bona fide purchaser for value without notice; • proprietary claim fails if property can't be identified or ceases to exist (dissipated), or where proprietary claim inequitable (as in <u>Re Diplock</u>). <p>7.8</p> <ul style="list-style-type: none"> • explanation of the <u>Diplock</u> personal, no-fault claim for misapplied money from a deceased's estate; • liability for knowing receipt: <u>BCCI v Akindele</u> (2001) requiring beneficial receipt of assets traceable to a breach, with knowledge making it unconscionable to retain any benefit; • doubts about when 'unconscionable'; • should liability be strict; • role of change of position defence; • recipients and accessories are not true trustees (<u>Williams v Central Bank of Nigeria</u> (2014)). <p>7.9 Accessory liability of person who dishonestly assists a breach of trust:</p> <ul style="list-style-type: none"> • doubts over meaning of 'dishonesty': • <u>Royal Brunei Airlines v Tan</u> (1995) laid down primarily objective test; • in <u>Twinsectra v Yardley</u> (2002) HL appeared to introduce subjective test but doubted in <u>Barlow Clowes v Eurotrust</u> (2006), <u>Abou-</u>
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	<p>7.10 Apply an understanding of remedies available to beneficiaries to a given situation</p> <p>7.11 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><u>Rahmah v Abacha (2007)</u>, <u>Starglade Properties Ltd v Nash (2010)</u> suggesting subjective only (in that must know the facts making the transaction improper, taking account of defendant's intelligence and experience).</p> <p>7.10 Application of understanding to a complex scenario.</p> <p>7.11 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Law of Equity and Trusts
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2009

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