



**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 Law**

**Question paper**

**January 2023**

**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.
- You can use your own unmarked copy of the following designated statute book – **Blackstone's Statutes on Property Law 30<sup>th</sup> edition, Meryl Thomas, Oxford University Press, 2022.**
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

***Turn over***

## SECTION A

### Answer at least one question from this section

1. The test of 'unconscionability' championed in Bank of Credit and Commerce International (Overseas) Ltd v Akindele [2001] Ch 437 is less certain and more difficult to apply than the scale of knowledge test which was utilised in earlier case law.

Critically evaluate this statement.

**(25 marks)**

2. The 'no profit' and 'no conflict' rules unfairly prejudice a fiduciary who acts in good faith and has caused no loss.

Critically evaluate this statement.

**(25 marks)**

3. Critically analyse when a resulting trust can arise and how the imposition of such a trust can be justified.

**(25 marks)**

4. Critically analyse the application of the public benefit requirement in relation to:

(a) trusts for the advancement of education;

**(15 marks)**

(b) trusts for the relief of poverty.

**(10 marks)**

**(Total: 25 marks)**

## SECTION B

### Answer at least one question from this section

#### Question 1

You have been consulted by Adam, who is the executor and trustee of the Will of his late father, Benjamin. Adam asks your advice as to whether the following clauses in the Will are effective:

- (a) 'I give my shares in Kempstons plc to my trustee on trust to hold the bulk of them for my son, Caleb; the remainder are to go to such of his children and in such shares as my trustee thinks fit';
- (b) 'I give my gold signet ring to my daughter, Daniela, fully expecting that she will pass it on to my grandson, Enoch, when the time comes';
- (c) 'I give my collection of vintage wine to my trustee to allow any of my fellow members of the Kempston Wine Appreciation Society living at my death each to choose not more than one bottle in remembrance of me; the remaining bottles are to be sold and the proceeds are to be used by the Society to pay for a dinner for the members in my memory'.

Adam informs you that Caleb has three children, and that all the beneficiaries identified in gifts (a) and (b) are living. He also tells you that there are currently 20 living members of the Kempston Wine Appreciation Society.

Advise Adam as to the validity and/or effect of:

- (a) the gift of the shares in Kempstons plc; **(7 marks)**
  - (b) the gift of the gold signet ring; **(6 marks)**
  - (c) the gift of the vintage wine collection. **(12 marks)**
- (Total: 25 marks)**

**Turn over**

## Question 2

Fabrizio died in September 2021. By his Will he appointed Gautam, his accountant, as the executor and trustee of his estate and left the entirety of that estate to his partner, Helena. Gautam was surprised to find that the Will made no provision for Fabrizio's daughter, Isolde. Gautam felt that this was desperately unfair, so (having obtained a grant of probate) he told Isolde that she had been left £50,000 in her father's Will, which he paid to her out of Fabrizio's bank account. Isolde subsequently used all of the money to put down a deposit on a flat which she purchased in March 2022 for £250,000. Isolde subsequently spent £25,000 on renovations to the flat. The flat is now estimated to be worth £300,000.

Gautam was also one of two trustees of an inter vivos trust that another of his clients had set up a few years before his death to benefit the client's son, Jalil.

On 1 April 2022, Gautam instructed one of his junior employees, Kerry, to arrange an electronic transfer of £30,000 from the trust's bank account to his personal bank account ('the Account'). Instructions of this kind were always supposed to be co-authorized in writing by Gautam's co-trustee, Laura. However, Laura was on holiday at the time. Gautam told Kerry that the transfer was urgent and that he would arrange for Laura to authorise the transfer once she returned. Kerry was suspicious but she agreed to do as she was asked because Gautam was her employer and she was also hoping for a promotion in the near future.

The Account already held £15,000 of Gautam's own money.

On 5 May 2022, Gautam withdrew £10,000 from the Account to pay off his overdue credit card bills.

On 10 May 2022, Gautam used £20,000 from the Account to buy himself a painting by a new, visionary artist. The artist has since received critical acclaim following an exhibition and the painting is now worth £40,000.

Earlier this month, Gautam used the remaining balance in the Account to pay off some of his bills and to go on a luxury cruise. He has just been declared bankrupt.

Advise Helena and Jalil as to their claims in equity.

**(25 marks)**

### Question 3

Marek died recently. His validly-executed Will, made in 2020, was witnessed by Nico. By that Will, Marek appointed Olaf as his executor and made the following gifts:

- (a) "£100,000 to my accountant Pavel, who has been told how to use this money;
- (b) £150,000 to my nephews Quinn and Ruslan; and
- (c) my house, Staveley Lodge, to my niece Tatiana to be held on trust".

Olaf has since learned the following information:

1. On the day that he executed his Will, Marek emailed Tatiana and asked her if she would be willing to hold Staveley Lodge on trust. Tatiana replied immediately, indicating that she was happy to do so. Marek responded with a further email asking Tatiana not to open the attached document, which contained the details of the trust, until after his death. Tatiana agreed.
2. Marek had written to Pavel in 2019. In that letter, Marek told Pavel that he was going to leave him £50,000 in his Will, which was to be held on trust for 'my dear friend' Ursula. Pavel forgot to reply to Marek's letter.
3. The day before Marek died, Quinn paid him a visit. While he was there, Marek mentioned that he had left some money in his Will to Quinn and Ruslan, but that he wanted them to hold that money on trust for Olaf. Quinn told Pavel not to worry and that he would tell Ruslan about the arrangement. Unfortunately, Quinn was killed in a car accident on the way back from his visit to Marek and so never told Ruslan about the trust.

Ruslan now wants to keep the £150,000 for himself. Pavel has discovered that Ursula was in fact Marek's mistress and he is therefore refusing to accept the £100,000 legacy. Tatiana has opened the email attachment and discovered that Staveley Lodge is to be held on trust for Nico, who has been revealed to be Marek's illegitimate son with Ursula.

Advise Olaf as to the enforceability of these gifts by those who were intended by Marek to benefit from them.

**(25 marks)**

**Turn over**

#### Question 4

In 2010, Victor and his girlfriend, Wendy, bought a house ('the House') for £200,000. Victor contributed £15,000 to the deposit and Wendy contributed £5,000. The House was registered in their joint names but without any declaration as to their beneficial interests. The balance of the purchase price was provided by way of a building society mortgage. Both Victor and Wendy signed the mortgage.

Victor and Wendy moved into the House immediately. They paid their salaries, which were comparable, into a joint current account from which the mortgage instalments and other outgoings were paid.

In 2012, Victor and Wendy had twin daughters. Wendy gave up her job to look after the children until they reached nursery school age. The mortgage and outgoings were still met from the joint account which, from 2012 onwards, was funded only by Victor's salary.

In 2016, Victor and Wendy employed a nanny, Xena, to help look after the twins when Wendy returned to work. At Christmas 2017, Victor announced that he and Xena were in love and he was leaving Wendy. Victor moved out of the House and made no further contributions to the mortgage and outgoings; these were paid exclusively by Wendy from 2018 onwards. However, Victor paid regular sums to Wendy to cover the twins' maintenance.

Victor then bought a cottage with Xena ('the Cottage'). The Cottage, which was in need of substantial renovation, cost £150,000. Victor paid the deposit of £15,000 and the balance of the purchase price was funded by way of a mortgage loan. The Cottage was registered in Victor's sole name and he was solely responsible for the mortgage payments. Xena used all her savings (£15,000) to pay for materials for the renovation works to the Cottage. She also managed the renovation project, as well as doing much of the heavy labouring work, so as to save on costs. The Cottage is now worth £250,000.

Last week, Wendy told Victor that she wants to sell the House, which is worth £400,000, and that she expects to receive all the proceeds of sale after the mortgage has been repaid. Yesterday, Xena told Victor that she has decided to leave him and wants half the proceeds of sale from the Cottage after the mortgage has been repaid.

Advise Victor whether Wendy and Xena have a claim in relation to the proceeds of sale of the House and the Cottage respectively and, if so, the likely amount that may be awarded to them.

**(25 marks)**

**End of Examination Paper**

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