



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 5 – EQUITY AND TRUSTS*

Time allowed: 3 hours plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates may use in the examination their own unmarked copy of the designated statute book: **Blackstone's Statutes on Property Law 2020-2021, 28th edition, Meryl Thomas, Oxford University Press, 2020.**
- Candidates must comply with the CILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW and the LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

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

1. *'... the principles laid down by the Privy Council in Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378 ... require more than knowledge of the facts which make the conduct wrongful. They require a dishonest state of mind, that is to say, consciousness that one is transgressing ordinary standards of honest behaviour'*

(Lord Hoffmann in Twinsectra Limited v Yardley and Others (2002) at para 20).

Critically evaluate this statement.

(25 marks)

2. Critically explain how the courts have variously interpreted a gift to an unincorporated association, and identify the problems associated with each interpretation.

(25 marks)

3. In the past 20 years, the courts of England and Wales have provided certainty for constructive trusts of the family home. The move away from the traditional approach of the resulting trust means that a fair result can be achieved by finding an express common intention, or by inferring or imputing one.

Critically assess this statement.

(25 marks)

4. Critically discuss the following statements:

(a) the rules that govern fiduciary duties may appear harsh, but they are justifiable;

(11 marks)

(b) the decision in FHR European Ventures LLP and others v Cedar Capital Partners LLC (2014) has brought much-needed certainty to the rules governing whether a proprietary or personal remedy is available for accepting a secret bribe or commission.

(14 marks)

(Total: 25 marks)

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

Question 1

Arturo is a world-renowned chef. He runs a restaurant that holds three Michelin stars. Six months ago, Arturo was commissioned to create and cook a special menu for the forthcoming wedding of a very high-profile celebrity couple. The menu, along with all other aspects of the wedding arrangements, is being kept top secret at the request of Wow! magazine, which has purchased the exclusive rights to feature the wedding in a forthcoming issue. Arturo has signed a confidentiality agreement with Wow!, under which he is liable to pay £100,000 by way of damages, if he breaches – or any of his employees breach – that agreement.

As part of the menu, Arturo has ordered, and paid for, a case of rare French truffles from Bernard, who imports them into the UK. Last week, Arturo received a phone call from Bernard, in which Bernard stated that due to a world-wide shortage of the truffles, the price had quadrupled; as a result, Bernard had sold the truffles that were due to be delivered to Arturo for a far higher price to another customer, and Bernard would be returning Arturo's money.

Claudia is one of Arturo's sous-chefs. She has worked with Arturo in designing the wedding menu. Last week, Arturo and Claudia had a blazing row, during which Arturo told Claudia to: 'Take your things and never darken my door again'. In response, Claudia said: 'I can ruin you, just you wait and see'.

Claudia then cleared out her locker at the restaurant and left. Shortly afterwards, one of Arturo's other employees was moving his belongings into the locker, when he discovered a piece of paper, which had been left on the top shelf. The document, which he immediately showed to Arturo, was a hard copy of an email between Claudia and the editor of 'Celeb' magazine, in which the editor had written: 'As discussed, further to the £1,000 already paid by us as an initial incentive fee, we will pay a further £10,000 for full details of the menu and any other information that you may have relating to the wedding'.

Advise Arturo as to any equitable remedies he may have against:

(a) Bernard;

(14 marks)

(b) Claudia.

(11 marks)

(Total: 25 marks)

Question 2

Daniel died recently. His Will was validly executed in 2015 and witnessed by Erin (Daniel's solicitor) and Faisan (Erin's trainee). It appointed Gordon, Daniel's brother, as executor.

Daniel's Will contains the following provisions:

- I bequeath £100,000 jointly to my nieces Helga and Isla
- I devise my house to my brother Gordon to be held on trust.

Daniel had emailed Gordon on the day that he executed his Will. Daniel had asked Gordon if he would be willing to hold Daniel's house on trust after he died. Gordon had replied immediately, indicating that he was happy to do so. Daniel had then sent a further email to Gordon with an attached document. Daniel had asked Gordon not to open the document, which contained details of the intended trust, until after Daniel's death. Gordon agreed.

The day before Daniel died, Isla had paid him a visit. While she was there, Daniel had mentioned that he had left £50,000 to Helga and Isla in his Will (unfortunately, he had misremembered that he had in fact left them £100,000). Daniel had explained that he wanted this money to be held on trust for the charitable donkey sanctuary of which Daniel had been a lifelong supporter. Isla had told Daniel that she would tell Helga about Daniel's wishes, but it would have to wait until Helga returned from her two-week holiday in the Seychelles. Unfortunately, Isla was killed in a car crash as she was driving home from the meeting with Daniel.

Gordon has opened the email attachment and discovered that Daniel's house is to be held on trust for Erin (with whom Daniel had had a secret relationship for many years). Helga wishes to keep the £100,000 legacy for herself.

Advise Gordon.

(25 marks)

Question 3

Kapil was a wealthy man, who wanted to distribute some of his assets among his family.

He arranged to meet his solicitor, Lionel. At that meeting, Kapil told Lionel: 'I am going to transfer my flat in London to you, and I want you to hold it on trust for my granddaughter Maria until she reaches the age of 18, at which point it becomes hers. Please sort out the necessary paperwork.' The next day, Kapil texted Maria, telling her: 'I am giving you my London flat. Lionel (my lawyer) will hold it in trust for you. Lots of love xx.'

A few days later, Kapil went to Lionel's office and signed a transfer deed (Form TR1), transferring the flat to Lionel. Lionel explained that he was going on holiday for a week, but would arrange for his trainee to send off the necessary documents to the Land Registry. Unfortunately, the trainee subsequently forgot to do so.

At the same meeting with Lionel, Kapil told Lionel that he (Kapil) wanted to make new arrangements in relation to 5,000 ordinary shares in Kempstons Bros Ltd, which Lionel was already holding on trust for Kapil. Kapil instructed Lionel that: 'As from today, you are to hold half my shares in Kempstons Bros Ltd on trust for my niece Naomi and you are to give the other half to my nephew Oscar'. Lionel agreed that he would do so. Naomi is 17 years old and Oscar is 21 years old.

After leaving Lionel's office, Kapil told his chauffeur (Parker) to drive him to his club for lunch. When they arrived, Kapil stepped out of the car and was immediately struck by a speeding cyclist. Kapil suffered severe internal injuries. As he was lying in the road, Kapil told Parker: 'I don't think I'm going to make it. I want you to have my classic Triumph motorcycle – the keys are in the safe in the garage, you have the code.'

Kapil died shortly afterwards.

Kapil's Will, which was validly executed, appointed Qasim and Renata as his executors and left everything to his sister, Taini.

Advise Qasim and Renata as to who is entitled to:

(a) the flat;

(12 marks)

(b) the shares;

(8 marks)

(c) the Triumph motorcycle.

(5 marks)

(Total: 25 marks)

Question 4

In August 2019, Ulrich died and left his entire estate to his daughter, Velma. Ulrich's stepson, William, is the executor of Ulrich's estate. William was aggrieved that he and his sister, Xena, had not been remembered in their stepfather's Will and he decided to redistribute some of the estate.

William paid £150,000 from the estate to Xena and £75,000 to his son Yannick, telling them that the money had been left to them by Ulrich. Yannick and Xena had no idea that this was not the case. Xena used the £150,000, together with £100,000 of her own money, to buy a flat in London. The flat is now worth £300,000. Yannick used the £75,000 to pay off his student loan and other debts.

William is also the trustee of a separate trust set up for the benefit of his nephew, Zander. Having lost his job in December 2019, William was running out of money, so he withdrew £100,000 from Zander's trust, which he paid into his personal current account ('the Account'). Prior to this, the Account was overdrawn by £10,000. He then used £35,000 from the Account to pay some bills.

In March 2020, William won £60,000 on the National Lottery and paid the money into the Account.

In April 2020, William withdrew £70,000 from the Account to pay off the mortgage on his home.

In May 2020, William received a tax bill for £40,000, which he paid from the Account. He spent a further £10,000 from the Account on bills and is now overdrawn again.

William has recently been declared bankrupt.

Advise Velma and Zander of any claims they may have.

(25 marks)

End of Examination Paper