



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. Critically analyse the extent to which the settlor's intention is relevant when considering the ability of the beneficiaries and/or the Court to vary the terms of a trust established by the settlor.

(25 marks)

2. '[These orders] potentially involve serious inroads on principles which [underpin notions of] English liberty, such as the presumption of innocence, the right not to be condemned unheard, protection against arbitrary searches and seizures, the sanctity of the home...' (per Hoffman J in Lock v Beswick [1989] 1 WLR 1268).

In light of this statement, critically analyse the jurisdiction to grant:

- (a) search orders;

(13 marks)

- (b) freezing orders.

(12 marks)

(Total: 25 marks)

3. 'While an intention may be inferred as well as express, it may not, at least in my opinion, be imputed' (per Lord Neuberger in Stack v Dowden [2007] 2 AC 432, at para 125).

In light of this statement, critically evaluate the use which the courts have made of each of these methods in determining whether, and in what proportions, the beneficial interest in a property is to be shared.

(25 marks)

4. Critically evaluate the differences between the common law and equitable rules in relation to tracing, including in relation to funds which are mixed in the hands of a fiduciary or innocent volunteer.

(25 marks)

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

Question 1

Angela, a world-renowned scientist and winner of the Nobel Prize for Chemistry, died recently. Her Will, which was validly executed, contained the following clauses:

- (a) I give £250,000 to my trustees to hold on trust to invest and apply the income in assisting anyone who wishes to retreat from the world in order to embark on a life of religious contemplation;
- (b) I give £500,000 to my trustees to hold on trust for the education of the children of disadvantaged employees of the National Health Service resident in Kempston;
- (c) I give £100,000 to my trustees to hold on trust to build and maintain a donkey sanctuary on the outskirts of Kempston;
- (d) I give £75,000 to my trustees to hold on trust to pay for the creation and future maintenance of a memorial garden in Kempston as a fitting memorial to myself.

Advise the trustees as to whether these clauses create valid charitable trusts.

(25 marks)

Question 2

Last year, Binita, who was a successful and wealthy businesswoman, decided to distribute some of her wealth among her family.

Binita knew that her daughter, Chaaya, hated her job as an investment banker, even though it was well paid. Binita told Chaaya: 'I am giving you all the shares in my share portfolio: this will give you enough income so that you can do something that you really enjoy. I will see to all the formalities as soon as I can.' Chaaya immediately resigned from her job and spent all her savings on setting up a home-based bakery business making cupcakes and macaroons.

Binita wrote a letter to her son, Daanish, saying: 'You are to have my flat in London to hold on trust for your daughter, Ella, if and when she is 21'. Binita gave Daanish an executed transfer deed in his favour, which he put in his safe at home until he could consult with his lawyers as to what he should do with it.

Binita made a Will appointing her brother, Farook, as her executor. The Will was valid and was witnessed by Binita's former husband (Gautam) and her neighbour (Harry). In the Will, she gave a legacy of £100,000 to Farook.

After executing her Will, Binita asked Farook to hold the £100,000 on the terms of a letter that she would give him. Binita gave Farook an envelope two months before she died, with the following statement written on the envelope: 'Not to be opened before my death'.

Binita died last month. On learning of her death, Farook opened the envelope and found a letter which read as follows:

'Dear Farook,

Of the £100,000 that I am leaving you in my Will you are to give Gautam whatever he needs to live comfortably, and you are then to give what remains to my children. Thanks for your help.

Binita'

When going through Binita's papers and possessions, Farook discovered share certificates for all the shares in Binita's share portfolio, together with signed stock transfer forms in favour of Chaaya.

Advise Farook who is entitled to:

(a) the shares;

(7 marks)

(b) the flat in London;

(7 marks)

(c) the legacy of £100,000.

(11 marks)
(Total: 25 marks)

Question 3

Irma died in May 2018, leaving a trust fund of £500,000 to her trustees (James, a successful car dealer, and Karl, an investment banker) on trust for her children, Lois and Maxwell, contingent upon each of them graduating from university. The fund currently produces an income of £50,000 per annum. Lois is now aged 16 and Maxwell is aged 19.

Lois is a talented dancer and has been awarded a place at a prestigious ballet school in Moscow at a cost of £15,000 per year. Her attendance would be for four years, but the school has demanded that the full £60,000 fees be paid before she starts. Lois has received no money from the trust so far, but she has asked James and Karl if they can use her income from the trust to pay the fees.

Maxwell has just completed his first year at university. He has not received any income from the trust to date, but James and Karl did advance £30,000 from his share of the capital of the fund to pay his tuition and accommodation fees, as well as to contribute towards his general living expenses. In fact, Maxwell spent most of the advance on clothes and parties; he is now being pressed by the university to pay the fees that he still owes plus next year's fees. Consequently, Maxwell has asked for all his present and accumulated income to cover these fees.

Maxwell has also decided that he does not want to live on campus next year. He has found a flat that he wishes to purchase and is asking for £250,000 from the capital of the fund for this purpose.

Advise James and Karl.

(25 marks)

Question 4

Nigel recently died. In his Will, which was validly executed, he left the sum of £100,000 to the Kempston Hang Gliding Club ('the Club'), to be used exclusively to train its existing and future new members how to fly hang gliders.

The Club currently has 75 members. It is run by a Committee of senior members and has a written constitution (the 'Constitution'). The Constitution states that no proposal in relation to the Club's affairs can be implemented unless it has the support of two-thirds of the members given at a meeting convened to consider the proposal.

The Club is affiliated to the National Association of Hang Gliding Clubs ('the National Association'), from which the Club receives an annual grant that covers half the Club's annual operating costs. Under the Constitution, the National Association is entitled to vote on any proposal that is put to a meeting of the Club's members. The National Association's vote is calculated as 15% of the total number of other votes cast in relation to a particular proposal. This means, for example, that if 60 of the Club's members vote for or against a proposal, or abstain, then the National Association's vote is treated as being the equivalent of, and are counted as, 9 member votes).

The Committee of the Club would prefer to use the legacy to fund the construction and maintenance of a clubhouse for the Club's members. It wishes to propose this at the Club's forthcoming Annual General Meeting.

Advise the Committee.

(25 marks)

End of Examination Paper

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