



**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 & Trusts**

**Question paper**

**June 2022**

**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 2021-2022, 29th edition, Meryl Thomas, Oxford University Press, 2021***
- 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. "Given its nature, there is nothing inherently legal or equitable about the tracing exercise. There is ... no sense in maintaining different rules for tracing at law and in equity. One set of tracing rules is enough." (per Lord Millett in Foskett v McKeown and Others (2000))

In light of this statement, critically evaluate whether maintaining separate tracing rules can be justified.

**(25 marks)**

2. Critically assess, with particular reference to the law relating to volunteers and/or imperfect transactions, whether the capacity for equity to "find a way to produce a convenient answer in spite of the technical rules" is an advantage or disadvantage when it comes to providing certainty of principle and consistency of outcome.

**(25 marks)**

3. Critically analyse whether the device of the secret trust is a justifiable exception to the statutory formalities for making a valid Will.

**(25 marks)**

4. Where a residential property has been registered in the sole name of one of two people who are cohabiting as partners but who are not married or in a civil partnership, explain (with reference to relevant case law) how the court will approach the task of determining:

(a) if the non-owning cohabitee has a beneficial interest in that property, and if so

**(17 marks)**

(b) the size of that interest.

**(8 marks)**

**(Total: 25 marks)**

## SECTION B

Answer at least one question from this section.

### Question 1

Arsène died in January 2022. By his Will, he left his estate on trust to be divided equally between such of his children, Bernice (now aged 17) and Cristobal (now aged 21), as should reach 25 years of age. Arsène's friends (Duncan and Elaine) were appointed as trustees. There was no express investment clause in the trust deed.

The trust property included:

- 99.8% of the shares in Flightdreams Limited, an aerospace company that hoped to expand into the burgeoning 'space tourism' market
- a 40% shareholding in Goonerland Limited, which owned a vacant site in North London
- a large holiday cottage in Wales.

Duncan and Elaine used the trust's majority shareholding in Flightdreams Limited to secure her appointment as a director of the company with an annual salary of £36,000. Unfortunately, Elaine rarely attended Board meetings and did not regularly review the Board minutes and financial reports that were sent to her. She has now learned that the four other directors sanctioned production of an experimental 'spacebus', which has been the subject of massive cost overruns; as a result, Flightdreams Limited is insolvent and the trust shareholding is worthless.

Goonerland Limited could not raise the money to develop the North London site. Duncan persuaded the other shareholders to sell their shares to him. He then arranged for the development to be completed (at his personal expense) and acted as project manager for the development. The completed development has just been sold for a substantial profit: as a result, Duncan received £1.2 million by way of dividends from Goonerland Limited whilst the trust received £800,000.

Neither Bernice nor Cristobal wanted to live in the cottage in Wales. Duncan and Elaine knew that Bernice needed accommodation in London for her forthcoming degree course, so they allowed Bernice to choose a flat in London which was then bought with the money realised from the sale of the cottage. Due to a miscommunication between them, Bernice thought that Duncan and Elaine were arranging for a survey of the flat to be carried out, but Duncan and Elaine thought that Bernice was dealing with this. As a result, no survey was carried out. After moving in to the flat, Bernice has discovered that it suffers from severe dry rot, which would have been discovered by a surveyor. The required remedial works will cost £50,000.

Advise Duncan and Elaine as to:

- (a) any liability that they may have to Bernice and Cristobal; **(18 marks)**  
(b) any defences that may be available to them. **(7 marks)**

**(Total: 25 marks)**

**Turn over**

## Question 2

Hermione created a lifetime trust in 2021. Under the terms of that trust, she left £600,000 to trustees on trust for such of her grandchildren as should attain the age of 25 years. At that time, Hermione had three grandchildren: Ivor (now aged 16), Jordi (now aged 19) and Karl (now aged 22). The trust fund yields interest at a rate of 5% per year.

The whole of Ivor's share of the income is currently being accumulated. Jordi has not yet received any income. Karl has received his income, which he has used to subsidise a video gaming club at his college. Karl is the Treasurer of the club.

In November 2021, Ivor was expelled from school after attempting to start a fire in the Science Department. Ivor has since been diagnosed as suffering from a significant personality disorder. Ivor's parents have asked the trustees for £20,000 a year to pay for Ivor to attend a private school that specialises in treating children with Ivor's condition.

Jordi, along with his boyfriend, wants to establish an orphanage in Kenya. Jordi has asked the trustees for £30,000 to cover the costs that he and his boyfriend will incur during their first year of living in Kenya. He has also asked the trustees for £50,000 as a donation to the orphanage.

Karl is in his final year at college. After graduation, he hopes to set up a business developing software for video games. He has asked the trustees for £150,000 to provide the start-up capital for that business. The trustees know that the reason Karl was using his income to subsidise the activities of his college club was because of his mismanagement of the club's funds. However, Karl has assured them that he has learned from his mistakes and has promised that he will attend evening classes in business management once the business is up and running.

Advise the trustees whether they can agree to the requests made in relation to Ivor, Jordi and Karl.

**(25 marks)**

### Question 3

Lionel, a renowned astronomer, died recently and made the following provisions in his Will:

- “(a) £350,000 to the Genesis Club to provide grants to its members to carry out research into the origins of the Universe and to hold an annual lunch in my memory;
- (b) £50,000 to the vicar of St Cecilia’s Church, Kempston for the purpose of repairing and maintaining the church organ, for as long as the law allows;
- (c) £20,000 to my dear friend Mishna so that she may look after my flock of racing pigeons until the last of them dies.”

The Genesis Club does not have any formal rules. It is the name used by a group of 10 astronomers and academics, which included Lionel, who have met for 10 years on the first Saturday of every month at the Savoy Hotel in London in order to discuss matters of shared academic interest over lunch.

St Cecilia’s Church dates back to the Norman period and is a Grade II listed building. The church organ was installed in the 1850s.

Mishna has been caring for Lionel’s pigeons pending administration of Lionel’s estate.

Advise as to the validity of the dispositions in Lionel’s Will.

**(25 marks)**

**Turn over**

#### Question 4

Nortons Limited operates a resort hotel (Nortons) that offers luxury holiday experiences for rich and famous celebrities. Nortons has established a reputation for protecting and preserving the confidentiality of its guests whilst they are at the hotel.

Nortons has agreed to allow a TV company to make a documentary about the 'behind the scenes' operations of the hotel on condition that none of the hotel's guests are identified. Filming is due to begin in August 2022.

Nortons decided to commission a new and very large abstract glass sculpture as the centrepiece for the hotel lobby. Nortons told the sculptor (Oricine) that the new centrepiece had to be installed before filming of the TV programme began. Last week, Oricine admitted to Nortons that she will not be able to complete the work by the deadline as she is busy doing more lucrative work for another client. Nortons has been unable to find another sculptor who can deliver a sculpture of comparable size and quality before the deadline.

Today, the hotel's general manager opened a letter addressed to Paulina, who oversees the work of the hotel's room cleaning teams. The letter was from Wow! magazine. The manager was shocked to read: "Following our recent conversation, we agree that we will pay you £5,000 for each story that we publish based on information supplied by you in relation to the activities of guests staying at Nortons. This amount will be doubled if you are able to provide photographs which can accompany the story. We confirm that, as agreed, we have paid £10,000 into your bank account in return for your agreement to carrying out this work for us."

Advise Nortons Limited of any equitable remedies that may be available to it.

**(25 marks)**

**End of the examination**

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