



## 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 2017-2018, 25th edition, Meryl Thomas, Oxford University Press, 2017.**
- 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**

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

1. 'The rule of equity, which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff... The profiteer, however honest and well-intentioned, cannot escape the risk of being called upon to account.'

Lord Russell of Killowen *Regal (Hastings) Ltd v Gulliver* (1942)

Critically examine and illustrate this statement with reference to case law.

**(25 marks)**

2. Secret trusts provide a method of side-stepping the requirements of the Wills Act 1837.

Critically evaluate how the courts justify the enforcement of secret trusts.

**(25 marks)**

3. 'In seeking to give some judicial protection to the practical realities of family property, a variety of equitable devices have been employed to answer the question relating to property entitlements in the home.'

Pearce and Stevens, *Trusts and Equitable Obligations* (2014), p282.

Critically examine the use of resulting and constructive trusts as 'equitable devices' which cohabitants can use to establish an equitable interest in a home that is in the sole name of their partner.

**(25 marks)**

4. Critically discuss the public benefit requirement which the following trusts must satisfy in order to gain charitable status:

(a) trusts for the relief of poverty; **(10 marks)**

(b) trusts for the advancement of education. **(15 marks)**

**(Total: 25 marks)**

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

**Question 1**

In February 2017, Celia won £12 million on the National Lottery competition. The following week, she decided to share some of her other property among her relatives.

- Under a trust set up by Celia's father, trustees were holding a substantial trust fund on trust for Celia if she should attain the age of 30. Celia had her thirtieth birthday in January 2017. At a meeting of the trustees, she told them, 'I want you to hold everything on trust for my son, Adam. Please see to the formalities.' Celia took no further steps.
- Celia told her brother, Simon, that she was retiring from the family business, Ellco Ltd, and was giving him her shares so that he would get involved with the company. She sent a signed stock transfer form to Simon. No further action has been taken, because Celia could not find the share certificate. Simon had previously lent money to the company.
- Celia wrote a letter to her cousin, Peter, saying that she was giving him her collection of paintings. Peter never got round to collecting the paintings.
- Celia wrote a letter to her sister, Judith, saying, 'I am hereby transferring Park House to you and I want you to hold it on trust for Anna if she attains the age of 25'. She enclosed an executed deed transferring the house to Judith. Anna is Judith's 17 year old daughter.

Celia died last week, having made a will in April 2017 leaving Park House and her paintings to her partner, Bill. She left the residue of her estate to Oxfam, a registered charity. She appointed her cousin, Peter, to be her executor.

Explain who is entitled to the property that Celia purported to dispose of during her lifetime.

**(25 marks)**

## Question 2

Aziz shows you his will, which was drawn up by his nephew. He asks whether the provisions contained in the will (and set out below) are valid.

- (i) 'I give £50,000 to my sister, Fatima, knowing that she will continue to help with the rent and expenses of our mother, Zeinab, as I have done for the past few years.'
- (ii) 'I give £100,000 to the Hartley Cricket Club on trust to build new changing rooms at their cricket ground.'
- (iii) 'I give the residue of my estate to my Trustee to hold on trust for such worthy young cricket players and in such shares as my Trustee shall, in his absolute discretion, think fit.'

Advise Aziz whether the provisions are valid and on any improvements you would make.

**(25 marks)**

### Question 3

Angus died last year. He left a valid will, in which he appointed his accountant, Hana, and a family friend, Stephen (who is an architect), as trustees. The will did not contain any additional administrative powers or a charging clause.

All of Angus's estate is held on trust for such of his children who should attain the age of 21. Angus had two children: Rebecca (now aged 18) and Zach (now aged 16).

Hana and Stephen seek your advice on their powers and duties. The trust is taking up more of their time than they expected. They want to know whether they can be paid from the trust fund for all their time spent and out-of-pocket expenses incurred in managing the trust. They also ask whether they can get help, either by employing an investment adviser to manage the trust investments or by appointing an investment adviser as a trustee.

Rebecca (who is about to start university) has requested a payment of £10,000 out of the trust income or trust capital to help her through her first year. Zach wants the trustees to pay for his drama lessons out of trust income. Hana and Stephen told them that they had no power to give them any money until they respectively reached the age of 21.

Annoyed by the trustees' response, Rebecca and Zach have now suggested that the trustees should retire, failing which they will end the trust and divide the trust capital between them. Hana and Stephen will not agree, because they feel a responsibility to Angus.

Advise Hana and Stephen:

(a) whether they can claim remuneration and get the assistance they suggest;

**(11 marks)**

(b) whether they can and should make the payments requested by Rebecca and Zach;

**(8 marks)**

(c) whether the beneficiaries can end the trust or compel the trustees to retire.

**(6 marks)**

**(Total: 25 marks)**

#### Question 4

Georgina and Kaye are trustees of the Barker family trust. You are consulted by Kaye, who has recently discovered the following matters:

- A year ago, Georgina made an unauthorised withdrawal of £40,000 from the trust's bank account. She paid it into her current account at DFC Bank, which contained £10,000 of her own money. She used £20,000 from the account to buy shares in Hillco plc. The shares are now worth £30,000. She spent the remaining £30,000 on shares in Lowco plc. Lowco has gone into liquidation and the shares are worthless.
- Six months ago, Georgina made an unauthorised withdrawal of £17,000 from the trust's bank account and gave it to her daughter, Jess, who had just finished university. Suspicious of where the money had come from, Jess immediately used £12,000 to pay off her student loan and then spent the other £5,000 on a round-the-world air ticket. She embarked on her travels after her graduation and returned two weeks ago.
- Three months ago, Georgina made a further unauthorised withdrawal of £50,000 from the trust's bank account. She paid this into her current account with DFC Bank, which, at the time, had a balance of £25,000. Subsequently, she spent the entire £75,000 on a small yacht, which is now worth £60,000.

Georgina has recently been declared bankrupt. Kaye says that she has only just found out about Georgina's activities because she (Kaye) has been teaching in Japan for the past 14 months. Harry, the trust's accountant, covered up the irregularities on the trust accounts, which made it more difficult to discover what had been happening.

Advise Kaye as to the beneficiaries' possible claims against:

- (a) Georgina; **(11 marks)**
- (b) Kaye; **(5 marks)**
- (c) any other possible defendants. **(9 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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