



## 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 maxim 'Equity will not perfect an imperfect gift' suggests that gifts will fail unless they are transferred to the donee using the correct formalities. It is argued that these formalities ensure consistency and certainty. However, where a gift could fail on a mere technicality, the result may be contrary to the donor's intention and perhaps inequitable.

Critically evaluate how far the following exceptions to the maxim reflect the arguments outlined above:

(a) the 'every effort' test (Re Rose (1952)); **(7 marks)**

(b) the rule in Strong v Bird (1874); **(5 marks)**

(c) a Donatio Mortis Causa. **(13 marks)**  
**(Total: 25 marks)**

2. Critically analyse the advantages of using equitable tracing rather than common law tracing to assert proprietary rights. **(25 marks)**

3. The fraud theory cannot justify secret trusts as they are in themselves a fraud on the requirements of the Wills Act 1837.

Discuss.

**(25 marks)**

4. The imposition of a resulting trust for a settlor may be contrary to their every intention.

Discuss the situations when resulting trusts can arise and if they are justified.

**(25 marks)**

**Turn over**

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

**Question 1**

Adam (until now a confirmed atheist all his life) tells you that he has 'seen the way of the Force' and has become a follower of a little-known group calling itself 'The Fellowship of the Force' (TFF). The group has outposts across the world, but is particularly strong in California, where it has built a Temple of Force and has a congregation of 100 people, plus several thousand more who regularly tune in to the group's sessions via Skype.

Adam has recently visited the group in California and has returned to the UK determined to bring its teachings to the UK. TFF believes that living among us are a chosen few, who will be shown the way to 'The Awakening', a mythical state that will enable them to overcome the evil Emperor Maul and save Earth from an attack from the Grand Maul's army of Starshooters.

Last year, Adam inherited £1,000,000 following the death of his father, and he tells you that he wishes to put this to good use and establish a UK branch of TFF. He wants to establish and run a Temple of Force and says that followers of TFF would pay an annual subscription fee of £1,000 to attend TFF meetings (either in person or virtually) and receive the Power of the Force through silent group meditation exercises. Adam is keen that TFF UK should have charitable status.

Adam also wants to set up a private school, for the children of followers to be educated in the way of the Force. He has heard that private schools can have charitable status, provided that there are some subsidised places for those who cannot afford the fees, and he is prepared to set aside a small amount of money to fund one reduced fee bursary each year. He wants this fund to give preference to employees and relatives of the furniture business that he inherited from his father and which he still runs.

Finally, Adam is also the executor of his late Aunt Ruth's will. Ruth died six months ago. Ruth has left her entire estate to the Mini Beasts Wildlife Trust, which was an incorporated charity until 2010, but was then wound up.

Advise Adam as to:

- (a) the potential charitable status of TFF UK; **(9 marks)**
- (b) the potential charitable status of the school; **(9 marks)**
- (c) what will happen to the gift to the Mini Beasts Wildlife Trust. **(7 marks)**

**(Total: 25 marks)**

## Question 2

Peter died five years ago. At his death, the value of his estate was £1,000,000 consisting of a property, Crossfield Manor, in which he lived with his daughter Yasmin and granddaughter Zara (now aged 19 years), worth £700,000. The remainder of his estate was held in a building society account.

In his will, Peter appointed his friends Antonia (a landscape gardener) and Beatrice (a solicitor) as trustees of a trust for Yasmin for her lifetime and then the remainder to Zara. The will contained no administrative provisions relevant to this question.

Since her father's death, Yasmin has not liked living in Crossfield Manor and wants to move to France. She discusses this with Antonia and asks if the house could be sold and a smaller property purchased for herself and Zara in France. Antonia and Beatrice agree to Yasmin's request, and Antonia says that she will buy Crossfield Manor 'to keep the costs down and keep things simple'. She purchases the property for £650,000 and the trustees purchase a property in France out of the proceeds.

The trustees leave the remainder of Peter's estate in a building society account for three years and then make the following investments:

- (i) They use £100,000 of the trust fund to buy shares in Petey Ltd, a private limited company owned by Peter's wider family.
- (ii) They appoint James, a contact of Beatrice's who is a financial adviser, to invest £200,000 in quoted stocks and shares.

The beneficiaries have now discovered that the value of the Petey Ltd shares have halved. The trustees say they are 'honour bound' to retain the shares out of loyalty to the wider family.

The quoted shares have also steadily lost money. Antonia and Beatrice admit that they do not know much about investments.

Yasmin wants to take action against Antonia and Beatrice for the losses. She also says she has lost confidence in them and wants to replace them with new trustees.

- (a) Advise Antonia and Beatrice whether they are liable for the decline in the values of the Petey Ltd shares and also the quoted shares.

**(13 marks)**

- (b) Discuss what breaches of trust or fiduciary duty may have occurred regarding the sale of Crossfield Manor and the purchase of the house in France.

**(7 marks)**

- (c) Explain whether Yasmin can replace the trustees.

**(5 marks)**

**(Total: 25 marks)**

**Turn over**

### Question 3

Theobald, a retired artist, whose trustees are Sebastian and Tia leaves a will containing the following dispositions:

1. £100,000 to build a suitable monument in memory of my genius as an artist, and to maintain the monument for as long as possible.
2. £15,000 to my trustees to hold for such of my relations as they in their absolute discretion select but if any property remains undistributed at the end of the year after my death to divide the residue equally among my relations.
3. My collection of Constable paintings to my trustees to hold for such of my friends as my cousin Donald may select.
4. £50,000 to my trustees to hold for such person or persons, being inhabitants of Portsmouth, as they shall in their absolute discretion select.
5. The residue to my trustees to pay to such person or persons they believe may have a moral claim on me and in the event of any doubt they may consult my friend Edward whose decision shall be final.

Advise the trustees as to the validity of each of the dispositions in the will and the effect if it should fail.

**(25 marks)**

#### **Question 4**

In 2012, Mark was a shipbuilder working in Portsea, where he lived alone in a flat that he had bought with the help of a mortgage. He met Wanda, who had a job in London 60 miles away, but she gave up her job and moved in with him. Wanda owned a flat in London, which she then let out to students. The rent paid the mortgage on the London flat. Wanda got a good job in Portsea and bought a car for Mark and her to use. She also paid for their holidays and paid when they went out.

In 2014, Wanda became pregnant. When the baby was born, she and Mark decided to buy a house in Portsea. Mark sold his flat and used the net proceeds of sale as a deposit on 'The Haven'. The house was transferred to Mark and Wanda as legal joint tenants, because the building society (which lent the balance of the purchase price) insisted on a joint transfer and a joint mortgage. Mark's conveyancer said this was normal practice and not to worry. Mark did not understand anything else that the conveyancer said about joint ownership, except that if either he or Wanda died, the house would automatically go to the other. This was what Mark wanted.

In 2016, Mark was made redundant and Wanda took over paying the mortgage. Wanda got a new job in London and the couple decided to move closer to her work. Unfortunately for Mark, this meant that he could not continue working as a shipbuilder.

They terminated the students' lease on the London flat and moved in. They let out 'The Haven' to tenants and used the rent to make the mortgage repayments on the house. Mark got a part-time job and looked after their child when he was not working. He did all of the domestic chores as well as some major improvements to the flat.

Yesterday, Mark discovered that Wanda is having an affair with a work colleague. When he asked Wanda about it, she said that she and her colleague would be setting up home together and that Mark need not think he is getting a share of 'The Haven' or the London flat because (as Mark admits) she had always earned much more money than him.

Advise Mark about any claim he might have to the London flat and 'The Haven'.

**(25 marks)**

**End of Examination Paper**

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