



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 2018-2019, 26th edition, Meryl Thomas, Oxford University Press, 2018.**
- 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 maxim states that 'equity follows the law'.

Critically evaluate the extent to which this continues to be true today.

(25 marks)

2. *McPhail v Doulton* (1970) is perhaps the most significant case in terms of certainty of object for discretionary trusts.

Critically analyse this statement.

(25 marks)

3. How can the intentions of a donor to leave a legacy to a non-charitable unincorporated association be given effect?

(25 marks)

4. (a) Critically analyse how a freezing order may protect the interests of claimants and defendants.

(17 marks)

(b) Discuss when the courts may make an order for specific performance.

(8 marks)

(Total: 25 marks)

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

Question 1

Andrew is the sole beneficiary under the will of his father, Ben, who died last month. Andrew has come to see you because he has discovered the following.

It appears that, in 2017, Ben had instructed his lawyer to arrange for a house that Ben owned to be transferred absolutely to his friend, Clare. Ben's lawyer had drafted the TR1 transfer deed but Ben had not executed it. Ben had told Clare that he intended to leave her his house. On the strength of that, Clare gave up her job and enrolled on the university course she had always wanted to take.

Also in 2017, Ben had provided a £100,000 loan to a company, Kempston Fabrications Ltd, for the sole purpose of purchasing machinery that it needed in order to continue in production.

Kempston Fabrications Ltd purchased the machinery but returned it, for a full refund, because it was faulty. Recently, Kempston Fabrications Ltd went into liquidation.

In hospital, shortly before his death, Ben told Mollie, a nurse, that he wanted her to have his vintage car if he did not recover. He gave her a copy of the key to the garage in which it was kept, and told her that the car keys themselves were in the ignition.

Andrew seeks your advice as to whether any of the above transfers are valid and what this may mean for his entitlement under his father's will.

(25 marks)

Turn over

Question 2

Yasmin and Annis have recently split up, having lived together for 23 years.

They never married. They have a daughter, Rabeya, who is 17 years old.

Annis purchased the family home 20 years ago and it was registered in his sole name. When, at the time of the purchase, Yasmin suggested that the house should be registered in their joint names, Annis said, 'We don't need a bit of paper! You trust me, don't you?'

Annis provided the deposit. The balance of the purchase price was funded by a mortgage loan in his name.

Annis has paid all the mortgage instalments. Yasmin used the sale proceeds of her studio flat to furnish the new house.

Shortly before Rabeya was born, Yasmin gave up her job as a legal secretary and did not work again until 2007, when she got part-time work back at her old firm. Her wages were a welcome addition to the family finances, because Annis's business was going through a bad period.

Annis continued to meet the mortgage payments but, since 2007, Yasmin has paid all other household bills.

Advise Yasmin on whether she can claim a share in the family home and, if not, whether any other remedies may be available to her.

(25 marks)

Question 3

Martin and Aleysha are the trustees of a fund for the family of their friend, the late Professor Khatri, who died in 2012.

Leana, Professor Khatri's widow, has a life interest in the fund, with the remainder for their children, Raza (now aged 17 years) and Sahil (now aged 23 years).

- (a) In 2015, Martin and Aleysha invested 10% of the trust fund in shares of Kempston Environmental Ltd, a waste disposal company, despite the fact that an investigation into the company's activities had just begun. The investigation has now concluded, and criminal proceedings are being brought against the company for the illegal dumping of waste. The shares have reduced to half their original value.

Advise Martin and Aleysha whether they are liable to the trust for the reduction in value of the shares.

(8 marks)

- (b) Sahil has asked Martin and Aleysha to advance him funds from the trust, so that he can take a three-year course in advanced yoga.

Advise Martin and Aleysha whether they can do this.

(10 marks)

- (c) Martin and Aleysha now wish to invest trust funds in shares in Kempston Ethical Building Ltd, a local building company.

It is Kempston Ethical Building Ltd's policy to source materials only from the local area and from sustainable wood. The shares in the company do not perform as well as other building companies of a similar size. Martin and Aleysha are keen to support the company's ethical stance.

Advise Martin and Aleysha whether they can do this.

(7 marks)

(Total: 25 marks)

Turn over

Question 4

Juliet died last week.

Her valid will appointed Freya and Georgie to be her executors and trustees, and contained the following provisions:

- '1. I give £10,000 to the Kempston Bowling and Tennis Club.
2. I give my property, Holly House, and £500,000 to my Trustees to hold on trust to continue to run Holly House School, which I founded there. My Trustees must invest the sum of £500,000 and use only the income towards running the school.
3. I give £20,000 to my Trustees on trust to maintain my grave for 21 years after my death.
4. I give the residue of my estate to my Trustees on trust to advance the cultural education of the employees of Grey's Industries Ltd and their families.'

The Kempston Bowling and Tennis Club is a non-charitable unincorporated association.

Juliet opened Holly House School at her house five years ago, but did not register it as a charity. It is a fee-paying school with 70 pupils aged between 11 and 16. Freya and Georgie are teachers at the school. It is essentially a ballet school but, in addition, pupils also study the usual GCSE subjects.

Grey's Industries Ltd was founded by Juliet's great-grandfather in 1850. Currently, the company employs 1,000 people.

Advise the trustees:

- (a) whether clause 1 is valid; **(6 marks)**
- (b) whether Holly House School is likely to be charitable and, if so, why charitable status is advantageous; **(9 marks)**
- (c) whether clauses 3 and 4 create valid trusts. **(10 marks)**

(Total: 25 marks)

End of Examination Paper

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