



## 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 2019-2020, 27th edition, Meryl Thomas, Oxford University Press, 2019.**
- 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, with reference to case law, how the courts have dealt with trusts for non-charitable purposes.

**(25 marks)**

2. It is an established equitable maxim that 'equity will not assist a volunteer'; however, there are exceptions to this. Using critical evaluation, explain the following as exceptions to the maxim:

(a) the 'every effort' test;

**(10 marks)**

(b) unconscionability

**(15 marks)**

**(Total: 25 marks)**

3. With reference to case law, critically analyse:

(a) the freezing order. Within your answer, provide detail of the tests the court will apply in its application;

**(12 marks)**

(b) the search order. Within your answer, provide details of how the court balances the interests of the parties.

**(13 marks)**

**(Total: 25 marks)**

4. Discuss, with reference to statute and case law, the circumstances in which beneficiaries and the courts may vary a trust.

**(25 marks)**

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

**Question 1**

David and his partner Victoria have recently separated, after being together for 15 years. They were not married and they have no children.

In 2012, David purchased a house, title to which was registered in his sole name. David and Victoria had planned on purchasing the property jointly but due to Victoria's erratic earning ability as an actress, the mortgage company would not agree to her being a joint mortgagee. On the day the house purchase was completed, David said to Victoria, "It may be in my name, but this is our home, Vic".

The purchase price of the house was £300,000. David paid the deposit of £15,000 from his personal savings. The mortgage loan was £285,000. David, who was in steady employment as a management consultant, paid the monthly mortgage repayments from his sole bank account. Victoria, who also had some savings, bought a new three-piece suite, a double bed and a kitchen table with chairs. She also redecorated the house while she was 'resting' from acting work.

Three months before the couple separated, they had opened a joint account and, from that point forward, the mortgage had been paid from this account. During this three-month period, they had both paid in a monthly sum to the joint account: David had contributed £1000 every month; and Victoria, who was then contracted to work on a well-known TV soap opera, had paid in £2,500 a month. The regular household outgoings were also paid by direct debit out of the joint account.

Now that the couple have separated, David, in whose name the house is still registered, claims that Victoria has no financial interest in the house. Victoria says that she owns a half-share.

Explain to David on what grounds Victoria could claim a 'half-share' in the house and whether she is likely to be successful.

**(25 marks)**

**Turn over**

## Question 2

Ribeya died in October 2019. Her valid will appointed Isobel and Walter to be her executors and trustees.

It contained the following legacies:

- '(a) I give £250,000 to my trustees to distribute the capital between such promising athletes in the South West and in such shares as my trustees think fit, and if they do not, then to my cousin James absolutely.
- (b) I give £100,000 to The Little Animal Shelter.
- (c) I give the rest of my estate to Isobel on the trust which I have communicated to her.'

The Little Animal Shelter was an unincorporated charity, which ran a wild animal hospital in the village where Ribeya lived. Just before Ribeya died, The Little Animal Shelter closed down and its assets were transferred to another charity called Save the Wildlife.

Before she made her will, Ribeya gave Isobel an envelope and said: 'I have left you something in my will and there are instructions as to what you are to do with it. Don't open it until I have passed away'. Isobel opened the letter on the day of Ribeya's funeral. Inside was a letter which asked Isobel to hold the residue of Ribeya's estate on trust for Una.

Una died two months before Ribeya.

Advise Isobel whether the legacies in clauses (a), (b) and (c) of Ribeya's will are valid and, if not, what will happen to the assets referred to.

**(25 marks)**

### Question 3

In 2016, Jackson put £200,000 into a trust for his two grandchildren, Xander and Megan, contingent on them attaining the age of 18. Jackson appointed his friends Nisha and Harry to be trustees. The trust instrument did not contain any additional powers for the trustees.

Nisha, a busy single mother has had no time to be involved in the trust and so Harry has been running it alone. Harry works in financial services and so Nisha had no concerns about his ability to do this.

Recently however, Nisha has discovered that Harry invested the whole trust fund in the shares of just one company, EcoFair plc. Harry will only invest in ethical companies but the value of the trust investments in EcoFair has declined by 30%.

Six months ago, Harry sold some of the shares and gave Quentin (Harry's brother) the proceeds of £60,000 to invest on behalf of the trust. Quentin had been the director of a financial services company, but he was struck off the Register of Directors two years ago for "irregular business practices". There is now no sign of Quentin or the £60,000.

In addition, Xander's parents say that Harry has refused their request for trust income to pay for Xander's golf lessons, saying it is a waste of time and money. Xander is 14 years old and is already playing golf for the national under-21 team.

Harry is fed up with the trust and has told Nisha that he is going to retire as a trustee. Nisha asks your advice on the following:

(a) Whether the beneficiaries could successfully sue the trustees due to the fall in the value of the trust fund and, if so, Nisha's liability in respect of:

(i) the trust investments;

(ii) the delegation to Quentin.

**(15 marks)**

(b) Whether Harry was entitled to refuse to pay for Xander's golf lessons.

**(5 marks)**

(c) Whether Harry can retire as a trustee and, if so, how. Nisha also asks you whether Harry would avoid liability for any breach of trust by retiring.

**(5 marks)**

**(Total: 25 marks)**

**Turn over**

#### Question 4

Graham died six years ago and was survived by his daughter, Amy and his grandchildren, Chloe (now aged 19) and Larry (now aged 22). In his validly executed will, Graham appointed Amy to be his trustee and instructed that she hold the residue of his estate on trust for Chloe and Larry upon them attaining the age of 25. The will did not contain any administrative provisions.

Larry has discovered the following facts and is very concerned:

1. In 2017, the will trust's investment adviser suggested that the trust purchase shares in Bright Sparks plc, a promising new tech company. Amy declined to buy any for the trust, but she did buy some shares in Bright Sparks in her own name, using her own money. She has since sold the shares and, in doing so, made a considerable profit. When challenged by Larry, Amy said that at the time, the trust would have had to have sold other assets to buy the shares and that she was not willing to do that. She added, "Anyway, I don't know why you are complaining, it's not like the trust has lost anything".
2. Last year, Amy sold £50,000 worth of shares from the trust and gave the proceeds to her boyfriend, Yousef, telling him that the money came from an unexpected windfall. Yousef was surprised but he did not ask any questions and he used the money to renovate his shop.
3. Solomon is the trust's stockbroker. When Amy instructed him to pay the proceeds from the sale of the shares to Yousef, he thought it was odd. The money would normally have been paid in to the trust bank account. However, Solomon carried out the instructions, without asking Amy any questions.
4. Amy also sold a sculpture belonging to the trust. It had, originally, belonged to Graham's great grandfather and was known to be valuable. The sculpture sold for £40,000. Amy paid the sale money into her private bank account, which already had a balance of £10,000, being Amy's monthly salary. Later that week, Amy withdrew £15,000 and used it to buy shares in Hampshire Ham plc, an organic farming company. The shares have performed well and are now worth £20,000. The following day, she paid £15,000 off her credit card bill. The next day, she bought herself a one of a kind designer dress for £20,000. Unfortunately, the first time she wore the dress she spilt red wine on it and now it is only worth £12,000.
5. Finally, it has come to Larry's attention that Amy's business has been struggling for some time and yesterday she was declared bankrupt.

Advise Larry what possible remedies he and Chloe may have against:

(a) Amy;

**(12 marks)**

(b) Yousef;

**(8 marks)**

(c) Solomon

**(5 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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