



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. (a) Explain, with reference to case law examples, the principle that the remedy of specific performance will only be available if the remedy at law is inadequate.

(11 marks)

- (b) Critically discuss the purpose of both interim prohibitory injunctions and interim mandatory injunctions and the criteria for ordering them.

(14 marks)

(Total: 25 marks)

2. Critically discuss whether either the 'fraud theory' or the 'dehors the will theory' adequately justifies the enforcement of secret trusts.

(25 marks)

3. Critically discuss the circumstances in which gifts to charities, or gifts for charitable purposes, may be saved if implementation is impossible.

(25 marks)

4. It is a well-established principle that non-charitable trusts must be created for a human beneficiary and that a trust for a purpose will be void.

Critically analyse the exceptions to this principle.

(25 marks)

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

Question 1

José died several years ago, leaving his entire estate on trust for his children, Pep and Rafa. The trustees are Gina (who is the family solicitor) and Harry (a friend of José). José chose Gina because of her vast experience in trust law. He chose Harry because Harry had always talked about his business acumen and prowess.

The trust property included 10,000 shares in Kempston Chemicals (KC), a very successful company which manufactures pesticides. Gina is an ardent environmentalist and did not approve of this sort of investment. Two years ago, she suggested to Harry that they should sell the KC shares and reinvest in something 'greener'. Harry was unsure, but Gina insisted that he should rely on her trust law experience. Harry respected Gina, and so he reluctantly agreed. They sold the KC shares for £500,000 and reinvested the proceeds in a majority shareholding in Save the Rainforest Limited (SRL), a newly formed company that was set up to promote reforestation of the Amazon Basin.

Harry was invited to become a director of SRL. He left the running of the company to Unai, its managing director, and did not attend a single board meeting. Unai decided to make SRL more profitable, by replacing its experienced scientists with entry-level graduates. Over the last two years, the profits of SRL have fallen steadily. Last year, the company did not declare any dividends; and one month ago, it went into liquidation. Its shares are now worthless. Gina blames Harry for the loss to the trust, complaining that she had relied on him because of his business expertise.

Advise Pep and Rafa as to what remedies they may have in relation to the loss that has arisen.

(25 marks)

Turn over

Question 2

You have been consulted by Bagya, who is the executrix and trustee of Irfan's Will. Bagya asks your advice as to whether the following clauses in Irfan's Will are effective:

- (a) 'I give my shares in Kempstons plc to my trustee on trust to hold the bulk of them for my sister, Naheed; the remainder are to go to such of her children and in such shares as my trustee thinks fit';
- (b) 'I give my bronze statue of a dancer to my daughter, Aesha, fully expecting that she will pass it on to my grand-daughter, Umara, when the time comes';
- (c) 'I give my collection of vintage motorcycles to my trustee to allow any member of the Kempston Motorcycle Club living at my death to choose not more than one in remembrance of me; any remaining are to go to my said nephews and nieces'.

Naheed has three children: Munib, Raj and Salma.

Aesha and Umara are both alive.

Advise Bagya as to the validity and/or effect of each of these clauses.

[NOTE TO CANDIDATES: Do not discuss legacy (c) as if it were a gift to the Club itself.]

(25 marks)

Question 3

Anya and Cedric have never married. They have two children, both of whom are under 18. Twenty years ago, Cedric purchased the family's home in his sole name. He provided the whole of the purchase price by using his own savings combined with a mortgage in his sole name. At the time of the purchase, he and Anya discussed putting the house into their joint names, but Anya had not been working and she felt that she could not contribute to the mortgage repayments. Five years later, they again discussed putting the property into joint names. By then, their first child had been born and Anya was working part-time. Cedric said that he didn't think they needed to bother with the transfer into joint names. He said it was a 'waste of money when we know that the house belongs to us both'.

Over the following years, Anya used her salary to furnish the house and to keep it maintained. Ten years ago, when Cedric was made redundant, Anya took over responsibility for the mortgage payments. However, this only lasted for a period of one year, because Cedric found a new job and he then resumed making the mortgage payments. However, Anya paid all the other household bills.

Cedric has recently told Anya that he has been having an affair with his secretary, Karen. He wants Anya to move out of the house, so that he and his children can live there with Karen.

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

(25 marks)

Turn over

Question 4

Karuna died three years ago. Her Will appointed Victor as her executor and trustee. Under the Will, Victor holds Karuna's estate on trust for such of Karuna's two nieces as may attain the age of 25. Karuna's nieces, Yvonne and Wendy, are now 20 years old and 18 years old respectively.

There are no administrative provisions in the Will. Yvonne has discovered that in 2018, the trust's investment adviser suggested to Victor that the trust should buy shares in ABC plc, a new technology company. Victor did not buy any shares on behalf of the trust, but he did buy some shares in ABC plc in his own name, using his own money. He has just sold the shares and has made a large profit. When Yvonne raised this with him, Victor replied that it was none of her business how he spent his own money.

Last year, Victor arranged for some shares belonging to the trust to be sold. The trust's stockbroker (Xavier) carried out the sale transaction. Victor instructed Xavier to arrange for the buyer to pay the sale price (£50,000) directly to Zac, who is Victor's brother. Xavier was surprised that Zac was to receive the money, but he nevertheless carried out the instructions. Zac needed the money and did not ask any questions, although he thought it was strange that Victor could put his hands on that much money. Zac spent the money on doing up his flat.

Victor also sold a valuable sculpture belonging to the trust and paid the proceeds of £40,000 into his personal bank account, which already contained £10,000 of his own money. He then withdrew £15,000 and used it to buy shares in Aussie Gold plc; those shares are now worth £20,000. Later, Victor paid off some of his creditors with £10,000 drawn from the bank account. The next withdrawal of £25,000 was spent on a vintage car (which, it turns out, is mechanically unsound and is today worth only £12,000).

Finally, Victor paid in £10,000, into his bank account, which he had won on the National Lottery.

Victor has now been declared bankrupt.

Explain the remedies that Karuna's nieces may have against:

(a) Zac;

(8 marks)

(b) Xavier;

(5 marks)

(c) Victor.

(12 marks)

(Total: 25 marks)

End of Examination Paper

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