

## 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 2021-2022, 29th edition, Meryl Thomas, Oxford University Press, 2021.**
- 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.**

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

1. Critically analyse whether the existence of separate tests for liability in relation to knowing receipt and dishonest assistance can be justified.

**(25 marks)**

2. Critically assess the extent to which the common law and equity are now fused.

**(25 marks)**

3. Critically assess whether the distinction between discretionary trusts and mere powers retains any real importance.

**(25 marks)**

4. Critically analyse:

(a) the differences between equitable remedies and common law remedies;

**(8 marks)**

(b) with reference to case law, the extent to which specific performance exemplifies the characteristics of equitable remedies.

**(17 marks)**

**(Total: 25 marks)**

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

**Question 1**

In 2012, Anton and his girlfriend Bettina decided to live together. At that time, Anton was in the process of buying a new house. Bettina had just received an inheritance of £20,000 and so, after Anton asked her to move in with him, she used this to pay the deposit on the new house.

Anton obtained the rest of the purchase price by way of a mortgage in his sole name. The property was purchased in Anton's sole name.

From 2012 until June 2018, Anton and Bettina contributed equally to a joint bank account, from which they paid all their living expenses. However, Anton funded all the mortgage repayments from his own money.

In June 2018, Anton was made redundant. Bettina made the mortgage repayments until Anton secured a new job at the beginning of 2020, at which point Anton resumed making the mortgage payments.

In 2020, Anton's brother, Chris, came to live with Anton and Bettina. Anton told Chris that if Chris converted the existing integral garage at the property into a further bedroom and installed en-suite facilities, Chris could live at the property rent-free for as long as he wanted. Anton paid for the materials, but Chris alone carried out the necessary works.

Bettina and Chris are now in a relationship. Anton has asked them both to leave, but each has claimed that they have an interest in the house.

Advise Anton.

***(25 marks)***

***Turn over***

## Question 2

Darius died last month. His duly executed Will contains the following legacies:

- (a) 'I give £750,000 to my old school, Rydells, on trust to provide scholarships to pupils who wish to pursue an academic career at a university in England or Wales';
- (b) 'I give £25,000 to the Kempston Literary Society, of the Manor House, Kempston, so that they may establish a reading room dedicated to housing a collection of first editions of all my novels';
- (c) 'I give the residue of my estate to my niece, Esme'.

Darius also appointed Esme as the sole executrix of his Will.

Rydells is a private school. It charges fees of £30,000 a year and has 750 pupils.

The Kempston Literary Society is a non-charitable unincorporated association. Its 25 members are all self-published authors. Darius was the author of 30 self-published novels, none of which has ever sold more than 25 copies.

Before he made his Will, Darius gave Esme an envelope, which he told her she was not to open until after his death. Esme has now opened the envelope; in it is a letter instructing her to hold the residue of Darius's estate on trust to maintain his collection of Koi carp. Esme has carried out some online research and has discovered that Koi carp can live for well over 20 years and sometimes even as long as 200 years. She has provided you with the results of her research and you are satisfied that it is correct.

Advise Esme as to the validity of each gift.

**(25 marks)**

### Question 3

Farhad died in 2017. By his validly executed Will, he left his entire estate to his trustees, Gil and Hashem, to be held 'on trust for such of my children as may attain the age of 25 years and, if more than one, in equal shares'.

Farhad was survived by his two daughters, whose names and current ages are: Iman – 22 years old; and Jannat – 19 years old.

The only provision in the Will in relation to the trustees' investment powers is as follows:

'My trustees may invest no more than one-half of the trust fund from time to time in company shares or in unit or investment trusts'.

Shortly after Farhad died, Gil persuaded Hashem that they should instruct Kempstons, a firm of investment brokers and managers, to handle all the trust investments. Given that neither Gil nor Hashem had any experience in making or managing investments, Gil suggested that it would be best 'just to let Kempstons do whatever they think is best'. In fact, Kempstons invested 90% of the trust fund in company shares, most of which have subsequently declined significantly in value.

Gil has since been declared bankrupt due to gambling debts.

Iman has been at university for two years. In each year, Gil and Hashem have paid her enough money from the remaining part of the trust fund to cover the university fees that she has had to pay. They have also paid her a generous living allowance. Jannat has so far received nothing from the fund.

Advise Iman and Jannat whether:

- (a) they can sue Hashem for the loss suffered by the trust fund; **(13 marks)**
  
  - (b) they can remove Gil and Hashem as trustees; **(6 marks)**
  
  - (c) Gil and Hashem have acted wrongly, in failing to pay anything to Jannat from the trust fund. **(6 marks)**
- (Total: 25 marks)**

**Turn over**

#### Question 4

Kiara, a highly successful businesswoman, wished to dispose of some of her assets.

A few years previously, Kiara had set up a Foundation to provide financial assistance to aspiring young female entrepreneurs. Kiara was one of the trustees of the Foundation. At a recent meeting of the board of trustees, Kiara had announced that she was going to give her valuable collection of paintings to the Foundation, and that she would sort everything out once she had recovered from a routine operation that she was planning to undergo in a few days' time.

Immediately after the meeting, Kiara had spoken to Leona, one of the executors and trustees of Kiara's late father's estate and said: 'You are currently holding 5,000 ordinary shares in the family company on trust for me. I want you to hold them on trust for my brother, Martin, instead.' The next day, Kiara had telephoned Leona and said: 'I've changed my mind about the shares for Martin. I want you to have them.'

The day before the planned operation, Kiara went for a drink with Martin. Kiara told Martin that she wanted to give him the Rolex watch that had belonged to their late father, and which had been left to Kiara in their late father's Will. Unfortunately, some of the links on the watch strap had become rather loose, so Kiara had sent the watch to a jeweller for repair. However, Kiara told Martin that she would give authority for the jeweller to allow Martin to collect the watch, once the repair work had been completed.

Kiara underwent her planned operation yesterday. Unfortunately, she suffered post-surgery complications and died. Her Will, which was validly executed, appoints Martin as her executor and leaves her entire estate to charity.

Advise Martin as to the validity of the gifts of:

- the collection of paintings to the Foundation;
- the 5,000 ordinary shares to Leona;
- the Rolex watch to Martin.

**(25 marks)**

**End of Examination Paper**