



## 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 2016-2017, 24th edition, Meryl Thomas, Oxford University Press, 2016.**
- 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 question whether there has been a disposition of an equitable interest within s.53(1)(c) of the Law of Property Act 1925 gives rise to difficult issues.

Critically evaluate, in the light of the above statement, what constitutes a disposition of an equitable interest within s.53(1)(c) with reference to case law.

**(25 marks)**

2. The 'no profit' and 'no conflict' rules are applied strictly with no regard to the honesty of the trustee nor to whether the beneficiaries have suffered loss. This is undesirable and the courts should adopt a more flexible approach.

Critically discuss this statement.

**(25 marks)**

3. (a) Explain how equitable remedies differ from common law remedies.

**(8 marks)**

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

**(17 marks)**

**(Total: 25 marks)**

4. 'The fact that there are different tracing rules at law and in equity is unfortunate, though probably inevitable.'

Millet LJ, *Trustee of the Property of F C Jones and Sons (a Firm) v Jones* (1996).

(a) Critically discuss the differences between the common law and equitable tracing rules in the light of the above statement.

**(10 marks)**

(b) Critically discuss the equitable rules for tracing trust property which has been mixed with money belonging to a trustee or to an innocent volunteer.

**(15 marks)**

**(Total: 25 marks)**

**Turn over**

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

**Question 1**

Harry died in 2013. His validly executed will left his estate to his trustees, Gemma and Megan, to hold 'on trust for such of my sons, David, Eric and Freddie, who attain the age of 21 and, if more than one, in equal shares'. The current ages of the beneficiaries are:

- David – 19 years;
- Eric – 18 years;
- Freddie – 16 years.

The will contained only the following provision relating to trustees' powers:

'My Trustees shall invest no more than one-half of the trust fund in company shares and unit and investment trusts'.

Shortly after Harry died, Megan persuaded Gemma that they should instruct Brown's Financial Consultancy ('Brown's') to handle all the trust investments. Gemma now says that they should 'just let Brown's get on with it'. Brown's put all the trust money into company shares which have declined significantly in value over the last three years. Megan has had serious financial difficulties and, as a result, has been declared bankrupt.

The beneficiaries are threatening to sack Megan and to sue Gemma for the loss to the trust fund.

Freddie is unhappy, because he has received nothing from the trust fund, whereas the trustees have paid a generous allowance to David and Eric as well as funding their university fees.

(a) Explain whether it is likely that the beneficiaries could successfully sue Gemma for the loss to the trust fund.

**(13 marks)**

(b) Explain whether the beneficiaries can remove Megan from her trusteeship and whether Gemma should take any action as regards Megan.

**(6 marks)**

(c) Explain whether the trustees have done anything wrong by paying trust money to David and Eric and by not paying anything to Freddie.

**(6 marks)**

**(Total: 25 marks)**

## Question 2

Fatima died last month. Last July, she had retired from the family business, Mahmood Office Solutions Ltd ('MOS') and took the following steps:

- She said to her daughter, Aalia, 'I know that you want to quit your job. I am giving you my shares in MOS to give you an income so that you can do something which you enjoy. I will see to all the formalities as soon as I can.' Aalia immediately resigned from her well-paid job and spent all her savings on a round-the-world holiday, from which she has just returned. The MOS Ltd share certificate and a signed stock transfer form in favour of Aalia have been found among Fatima's possessions.
- Fatima wrote a letter to her son, Imran, saying, 'You are to have my house in Cornwall to hold on trust for your daughter, Jasmine, if and when she is 21'. Fatima gave Imran an executed transfer deed in his favour, which he kept in his safe at home.
- Fatima made a will appointing her brother, Pasha, as her executor. The will was valid and was witnessed by Fatima's former husband, Zain, and her neighbour, Bill. In the will, she gave a legacy of £100,000 to Pasha and the residue of her estate to her husband, Charles.

After executing her will, Fatima asked Pasha to hold the £100,000 on the terms of a letter that she would give him. Fatima gave Pasha an envelope two months before she died, with the following statement written on the envelope: 'Please do not open before my death'. After Fatima died, Pasha opened the envelope and found a letter which read as follows:

'Dear Pasha,

Of the £100,000 that I am leaving you in my will you are to give my ex-husband, Zain, whatever he needs to live comfortably and give the rest to my children. Thanks for your help.

Fatima'

Advise Pasha who is entitled to:

- (a) the shares in MOS Ltd; **(8 marks)**
- (b) the house in Cornwall; **(6 marks)**
- (c) the legacy of £100,000. **(11 marks)**

**(Total: 25 marks)**

**Turn over**

### Question 3

Mary died last month. Her executor, Owen, wants to know whether the following legacies, which appear in Mary's valid will, are effective:

- (a) 'I give £200,000 to Anbury School on trust, to provide scholarships for the next 20 years, for its pupils who are offered places at the Universities of Oxford or Cambridge.'
- (b) 'I give £100,000 on trust for such talented young poets who show great promise and in such shares as my trustees think fit.'
- (c) 'I give £50,000 to the Portshire Literary Society.'

Mary's will gave her residuary estate to her husband, Robert.

Anbury School is a private school, which charges fees of £20,000 per annum and has 600 pupils. The Portshire Literary Society is a non-charitable unincorporated association.

Explain the effect of the above legacies.

**(25 marks)**

#### **Question 4**

In 2006, Ben and his girlfriend, Crystal, decided to live together. Ben bought a house (4 Duke's Court) in his sole name, for £500,000. Crystal had just sold her flat and, after paying off the mortgage, was left with £20,000. Crystal contributed this £20,000 towards the deposit for 4 Duke's Court. She assumed that she was a joint owner, although she admits that the matter was not discussed.

From 2006 until 2012, Crystal and Ben contributed equally to a joint bank account from which they paid household expenses, but Ben funded all the mortgage payments.

In 2012, Ben experienced financial problems after losing his job, and Crystal paid the mortgage instalments for a year. In 2013, Ben found new employment and assumed full responsibility for the mortgage payments once more.

In 2013, Ben's brother, Will, a builder, went to live at 4 Duke's Court with Ben and Crystal. Ben told him that if he built a two-storey extension to the house, he could live there rent-free for as long as he liked. Will constructed the extension in his spare time. Ben paid for the materials, but Will did most of the building work free of charge.

Crystal is now having a relationship with Will. Ben has asked them both to leave, but each claims to be entitled to an interest in the house.

As a result of losing his job in 2012 and some heavy gambling losses, Ben incurred substantial debts. Fearing that his creditors might make him bankrupt, Ben transferred his shares in Greencom Ltd (his family's company) to Crystal. Ben's finances have recovered, but Crystal refuses to return the shares.

Ben wants to know whether Crystal and Will can claim any rights in relation to 4 Duke's Court and whether he can recover the shares in Greencom Ltd from Crystal.

Advise Ben.

**(25 marks)**

**End of Examination Paper**

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