



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 power to vary trusts exercisable by beneficiaries, and by the courts under the Variation of Trusts Act 1958, means that the settlor's intention can be wholly disregarded. Other factors take priority.

Critically evaluate this statement.

(25 marks)

2. 'A trust may be created for the benefit of persons ... but not for a purpose or object unless the purpose or object be charitable. For a purpose or object cannot sue ...'

(Leahy v A-G of New South Wales (1959) Viscount Simonds)

In the light of this comment, critically analyse, with reference to case law, how the courts have dealt with trusts for non-charitable purposes.

(25 marks)

3. Critically analyse the purpose of the following injunctions, the criteria for ordering them and whether the interests of claimant and defendant are sufficiently protected:

(a) freezing orders;

(12 marks)

(b) search orders.

(13 marks)

(Total: 25 marks)

4. 'Although equity will not aid a volunteer, it will not strive officiously to defeat a gift.'

(T Choithram International SA v Pagarani (2001) per Lord Browne Wilkinson)

Explain and critically evaluate the following exceptions to the rule that equity will not assist a volunteer in the light of the above statement:

(a) the 'every effort' test;

(10 marks)

(b) where it would be unconscionable for the donor or settlor to retract.

(15 marks)

(Total: 25 marks)

Turn over

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

Question 1

In 2012, Sarah created a trust for her grandchildren, Ben and Kate, contingent on them attaining 21. Sarah appointed her friends, Tracy and Victor, to be trustees. The trust instrument did not contain any additional powers for the trustees.

Since the trust was set up, Tracy has hardly been involved with it, effectively allowing Victor to run it singlehandedly. Tracy admits that she is not an expert in financial matters; she thought that Victor knew what he was doing, as he works for an insurance company.

Recently, Tracy has become more and more concerned about the trust. She has found out that Victor invested the whole trust fund in company shares. Victor's concern for the environment meant that his priority was to avoid companies with a poor environmental record. The value of the trust investments has declined by 10%.

Six months ago, Victor sold some of the shares and gave Harold (a solicitor friend of his) the proceeds of £50,000 to invest on behalf of the trust. Harold had been the subject of several investigations by the Solicitors Regulation Authority. Last month, Harold disappeared with the money.

Ben's parents are very annoyed, because Victor refused their request for trust income to pay for Ben's violin lessons, saying he was too young. Ben is 16 years old and has displayed considerable musical talent.

Victor is threatening to retire from the trust. Tracy is worried that if Victor is allowed to retire, he will avoid any liability for breach of trust.

(a) Advise Tracy whether the beneficiaries could successfully sue Victor and/or herself for compensation in respect of the trust investments and the delegation to Harold (and, if so, what would be the extent of Tracy's liability).

(15 marks)

(b) Explain whether the trustees did anything wrong, when they refused the request for trust income made on Ben's behalf.

(5 marks)

(c) Explain whether Victor can retire and, if so, how. Would he thereby avoid liability for any breach of trust.

(5 marks)

(Total: 25 marks)

Question 2

Adam and his partner, Beth, have recently separated; they were not married. Adam is seeking advice on the following matter.

In 2010, Adam decided to buy a house. Originally, Adam and Beth planned to buy the house in joint names, but the mortgage lender would not accept Beth as a party to the mortgage, because she had a poor credit rating. They decided that the house would have to be purchased in Adam's sole name, but he said that he would always treat it as Beth's home as well.

The purchase price was £200,000. Adam provided a deposit of £10,000. The mortgage loan covered the rest of the price. Beth paid for some furniture from her savings.

Adam and Beth have lived there ever since. Adam paid the monthly mortgage repayments. They opened a joint account, into which they both paid a monthly sum; Adam contributed £700 every month and Beth paid in £1,000 a month. The regular household outgoings have been paid by direct debit out of the joint account.

The house is still registered in Adam's sole name and he claims that Beth has no interest in the house. Beth maintains that she has a half-share.

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

(25 marks)

Turn over

Question 3

Hana died in May 2017. Her valid will appointed Inga and Javed to be her executors and trustees. It contained the following legacies:

- '(a) I give £100,000 to my trustees to hold on trust to distribute between such deserving British athletes and in such shares as my trustees shall select.
- (b) I give £30,000 to Acton Foodbank.
- (c) I give the rest of my estate to Inga to hold on the trusts which we have discussed.'

Acton Foodbank was an unincorporated charity, which ran a foodbank in Acton. Just before Hana died, Acton Foodbank closed down. The assets of the charity were transferred to another charity called Stop Poverty Now.

Before she made her will, Hana gave Inga an envelope and said, 'I am leaving you a legacy in my will. This envelope tells you what to do with it, but please do not read the contents until after I have gone.' Inga opened the envelope after Hana's death. It contained a letter, which instructed Inga to hold the residue on trust for Hana's friend, Maaz. Maaz died in February 2017.

Advise Inga whether the legacies in clauses (a), (b) and (c) of Hana's will are valid and, if not, what will happen to the property.

(25 marks)

Question 4

Gillian died five years ago. In her will, she appointed Aziz to be her trustee and gave him her estate to hold on trust for such of her grandchildren, Charlotte and Lucy, as should attain 25. Charlotte is now aged 19 and Lucy is 22 years old. The will did not contain any administrative provisions.

Lucy has uncovered the following facts.

- In 2014, the trust's investment adviser suggested to Aziz that the trust might want to buy shares in NYZ plc, a promising new company. Aziz bought some shares in NYZ plc in his own name, using his own money. He has since sold the shares and made a considerable profit. When challenged by Lucy, Aziz said that the trust could not have raised the cash in time to buy the shares and that she could not complain, because the trust had not lost anything.
- One year ago, Aziz sold some shares belonging to the trust for £60,000. He gave the proceeds to his girlfriend, Yasmin, telling her that the money came from a legitimate business venture. This was the first time that Yasmin had heard of the venture, but she did not enquire further and used the £60,000 to build an extension to her house.
- James, the trust's stockbroker, carried out the sale transaction and was surprised when he was instructed by Aziz to give the proceeds to Yasmin, rather than transfer the proceeds to the trust bank account in the usual way. Nevertheless, he carried out Aziz's instructions without asking any questions.
- Aziz also sold a painting belonging to the trust and paid the proceeds of £40,000 into his bank account, which already contained £10,000 of his own money. He then withdrew £15,000 and used it to buy shares in Cornish Mining plc, which are now worth £20,000. Later, he paid off some of his creditors with £10,000 drawn from the bank account. The next withdrawal of £25,000 was spent on a sports car (which, it turns out, is mechanically unsound and is today worth only £12,000). Finally, he paid in £10,000, which was a gift from his aunt.
- Aziz has been declared bankrupt.

Explain the remedies that the beneficiaries have against:

(a) Yasmin;

(8 marks)

(b) James;

(5 marks)

(c) Aziz.

(12 marks)

(Total: 25 marks)

End of Examination Paper

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