



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 the question paper fully.** However, you may make notes on the 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. The 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 2012-2013, 20th edition, Meryl Thomas, Oxford University Press, 2012.**
- 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 ball point 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, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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

1. For any form of trust to be valid the three certainties must be present.

Critically discuss the validity of this statement.

(25 marks)

2. Re Baden (No2) (1973) significantly developed the test for certainty of object in McPhail v Doulton (1971).

Critically analyse this statement.

(25 marks)

3. The Charities Act 2006 had little effect on the definition of charitable trusts – the changes in Sections 1 and 2 merely re-categorised existing charitable purposes. Section 3 and 4, on the other hand, has had a significant effect.

Critically analyse this statement, with particular reference to the public benefit test.

(25 marks)

4. Critically discuss:

(a) Resulting Trusts; their types and when they arise.

(13 marks)

(b) Constructive Trusts in relation to the family home.

(12 marks)

(Total: 25 marks)

Turn over

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

Question 1

Liam died in August 2012. Before he died he executed a will nominating Stewart as executor. The will contained the following bequests:

- (a) £15,000 for a tomb depicting me riding my horse;
- (b) £100,000 to care for my beloved dogs, Christian and Coco;
- (c) £5,000 to promote fox hunting;
- (d) My country house and grounds to my employees and my groundstaff, Noel and Jenny for leisure activities;
- (e) £200,000 to maintain my grave, with £50,000 of that to be spent creating and maintaining a garden depicting my life and surrounding my grave; and
- (f) The residue of my estate to the Crazyman's Cavern for the refurbishment of the bar and toilets. Crazyman's Cavern is an unincorporated association.

Advise Stewart as to the validity of these dispositions.

(25 marks)

Question 2

In 2003 Winifred, a wealthy publisher, settled a large sum of money in trust for her daughters, Joyce and Mary, in equal shares, should they attain the age of 21. Any remainder is to pass to their respective children (if any).

Winifred now intends to retire to the Bahamas and wishes to take Joyce and Mary with her. However, Joyce and Mary, now aged 18 and 16 respectively, wish to remain in school in England and plan to go on to university there. Neither Joyce nor Mary is married or has any children.

Winifred's solicitor has suggested that for administrative and tax purposes the trust would be better transferred to the Bahamas when she emigrates.

Advise the trustees:

- (a) Whether such a variation can be sanctioned by the Court;

(10 marks)

- (b) On the likelihood that the Court would consent to such an application.

(15 marks)

(Total: 25 marks)

Turn over

Question 3

Tarquin recently settled a trust for the benefit of Anupam, Gupta and Iqbal. The trust contains a provision preventing the trust property from vesting in the beneficiaries until they all reach their 25th birthday; currently they are all 18 years old.

The trust comprised the lease on a yacht shed on the Thames, the entire shareholding in a yacht leasing company called 'Yacht-A-Lot', and a painting which hangs in the yacht shed. The trustees, Mike and Aisha, were chosen specifically by Tarquin because of their knowledge of fine art and their love of sailing.

It is now six months since Tarquin died. Jimmy, who owns the freehold on the yacht shed, and needs to sell the property quickly, recently approached Mike and Aisha and asked them if they would buy the property at a knock-down price. Mike and Aisha agreed to buy the shed for the trust and paid Jimmy one million pounds for the freehold. Mike and Aisha have appointed themselves directors of 'Yacht-A-Lot'.

They have also approached the local council for planning permission to develop the plot as a ferry landing stage and plan to sell the plot of land to P&A ferries at a price of two million pounds. They plan to award themselves £50,000 each in director's remuneration for the work done in obtaining the planning consents.

It has also transpired that Mike and Aisha, using their knowledge of the local area and information they have received while working as directors of 'Yacht-A-Lot', have been operating a second yacht-leasing venture from another dock just a mile down the shore for the last three months, and have each earned over £20,000 as a result of this.

Mike has discovered that the painting hanging in the offices of the company is a rare and valuable Constable landscape and has approached his brother, Steve, about a proposed sale. Mike does not intend to put the painting into auction and has agreed that Steve may purchase the painting from the trust at a nominal fee set by the trustees.

Growing increasingly suspicious, the beneficiaries have demanded to know why Steve is so interested in the painting and seek your advice.

Advise Anupam, Gupta and Iqbal on their rights as beneficiaries and the potential breaches of trust committed by the trustees.

(25 marks)

Question 4

Andrew and Dave were trustees of a settlement for Anne for life with remainder to Jonathon. Dave was going through a divorce at the time and was so distracted so left all investment decisions to Andrew.

Among the investments were shares in Connected.com. Andrew was concerned that such stocks were dropping and prospects of companies in this sector were poor. Andrew sold the shares in the company for £100,000 in August 2011. Andrew received the money on 1 September 2011. Both Dave and Andrew signed the receipt for the money. On 10 September Andrew decided to invest the £100,000, without obtaining any advice, in an up-and-coming green energy company run by his best friend.

In November 2011 Dave had developed depression resulting from the divorce and decided to resign from the trust given that he had not participated in the trust administration for the previous six months. Andrew decided to appoint his cousin Carlo in Dave's place and the trust assets were put in Andrew and Carlo's names except the £100,000 investment in the green energy company. Carlo made no enquires on becoming a trustee and therefore is unaware of the investment in the green energy company.

Anne received dividends of £50 a year from the green energy company from September until her death in March 2012. In May Jonathon discovered the investment in the green energy company following a local paper article on the company. In July 2012 Connected.com was declared insolvent.

Advise Jonathon.

(25 marks)

End of Examination Paper

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