

UNIVERSITY OF LONDON

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**LLB EXAMINATION**

for External Students

PART I EXAMINATION (Scheme A)

SECOND AND THIRD YEAR EXAMINATIONS (Scheme B)

GRADUATE ENTRY LEVEL II (Route A)

GRADUATE ENTRY SECOND AND THIRD YEAR (Route B)

**BSc DEGREES**

for External Students

MANAGEMENT WITH LAW, LAW WITH MANAGEMENT, ACCOUNTING  
WITH LAW AND LAW WITH ACCOUNTING FOR STUDENTS IN THE  
EXTERNAL PROGRAMME

**Law of Trusts**

Wednesday 27 May 2009 : 10.00 - 1.15 pm

Candidates will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their answer books. They then have the remaining **THREE HOURS** in which to answer the questions.

Candidates should answer **FOUR** of the following **EIGHT** questions.

Candidates should answer all parts of a question unless otherwise stated.

1. “It is unhelpful to categorise resulting trusts according to whether they are ‘presumed’ or ‘automatic’.”

Discuss.

2. “We must continue to do our best with the accepted formulation of the liability in knowing receipt, seeking to simplify and improve it where we may. While in general it may be possible to sympathize with a tendency to subsume a further part of our law of restitution under the principles of unjust enrichment, I beg leave to doubt whether strict liability coupled with a change of position defence would be preferable to fault-based liability in many commercial transactions ...’ (*per* Nourse LJ in *BCCI v Akindele* (2000))

Discuss.

3. “... a trust for selection will not fail simply because the whole range of objects cannot be ascertained. The test ... is satisfied if, as regards at least a substantial number of objects, it can be said with certainty that they fall within the trust; even though, as regards a substantial number of other persons, if they ever for some fanciful reason fell to be considered, the answer would have to be, not ‘they are outside the trust’, but ‘it is not proven whether they are in or out’.” (*per* Megaw LJ in *re Baden’s Trusts (No 2)* (1973))

Discuss.

4. Doug, who had 500 shares in Del King Co, a private company, decided to give them to Laura. He executed a share transfer form, gave the form to Vic and instructed him to give it to Laura when he next saw her. Doug then wrote to Laura, telling her that Vic would be giving her the share transfer form and that she should sign and submit it to the company to complete the transfer. Vic saw Laura the next day, but forgot to give her the form. Laura received Doug’s letter the following day and phoned Vic, who said he would be back next week with the form.

Laura decided to share her good fortune with her best friend, Noreen. She phoned her to tell her about the gift and said, ‘I want you to have 100 of the shares. Consider them yours already. I do.’

Laura died three days later, before Vic could deliver the share transfer form. Doug has now changed his mind and does not want to go through with the gift, and Vic has returned the form to him. Noreen wants her 100 shares. Laura’s son, Zack, is entitled to her estate.

Explain who is entitled to the shares.

5. By his will, Ben left his freehold title to Blackacre to Gerry, 'in full confidence that he will use the property for the purposes which I have communicated to him'. After making the will, Ben telephoned Gerry and asked him to hold Blackacre on trust for Hilary. Gerry agreed. By the same will, Ben left a parcel of shares to Nigel 'on trust for such purposes as I shall communicate to him'. After making the will, Ben wrote to Nigel, asking him to hold the shares on trust for Mary. Nigel agreed.

Ben has now died. The day before his death, Mary was killed in a car crash. Gerry, who is also Ben's residuary legatee, has disclaimed the gift of Blackacre.

Discuss.

6. Discuss whether the Trustee Investment Act 2000 has made any appreciable difference to the investment duties of trustees.
7. Lionel holds shares in Kybosh Ltd, a private company, on trust for Mark. Mark orally instructs Lionel to transfer the Kybosh shares to Peter as a gift. After Mark does so, Peter orally contracts with Quentin to sell his interest in the shares to him. Lionel also holds shares in Sundance Ltd, another private company, on trust for Nigel for life, remainder to Oliver. Oliver orally contracts with Nigel to assign him his interest under the Sundance trust. Nigel then orally declares himself trustee of that interest for Rachel. Finally, Oliver holds a fee simple title to Purpleacre, a farm. Oliver procures the registration of Lionel as proprietor of his fee simple title to Purpleacre, having previously orally instructed him to hold it on trust for Ursula.

Discuss.

8. Advise Boris, who is considering including the following dispositions in his will:
- (i) '£1,000,000 to teach schoolchildren how they can use the Human Rights Act 1998 to protect themselves against the oppressive actions of the state';
  - (ii) '£100,000 to encourage spiritual belief amongst the poor';
  - (iii) '£100,000 to provide internet access for the unemployed';
  - (iv) '£100,000 to the National Synchronised Swimming Society [an unincorporated association] to organise swimming lessons for children outside London.' It appears possible that the Society may soon cease to exist.

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