Examination Period 3: 2017/18

LAW302618NA

Module Title  
Equity and Trusts

Level  
Six

Time Allowed  
One hour and forty minutes

Instructions to students:

- Enter your student number not your name on all answer books.
- Answer two out of six questions.
- All questions carry equal marks.
- Begin each question in a separate answer book; label each answer book clearly with the number of the question you are answering.
- Students are permitted to bring an unannotated copy of the FD Rose, Blackstone’s Statutes on Property Law into the examination. Highlighted text and index tabs/strips within the book are permitted.

<table>
<thead>
<tr>
<th>No. of Pages</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Questions</td>
<td>6</td>
</tr>
</tbody>
</table>

Page 1 of 5
Answer two out of six questions

1. Aurelius has recently died. All the property he had left in the world was a sum of £300,000 in cash which was held in three separate parcels of £100,000 each in three separate cash boxes marked A, B, and C. In his will, he appointed his wife Rosa and his eldest son Shaq to be his executors and trustees. His will contains the following dispositions:

   i. I leave the specific sum of £100,000 (held in cash box A) to be held on trust to be divided equally between servants of the family who served from the time of my birth until my last breath.

   ii. For twenty years after my death, the trustees may distribute the money in cash box B among my dearest friends in amounts which they may select, but so that all of the money shall be spent within eighty years.

   iii. The trustees shall apply £5,000 from the money in box C in each year after my death to the “Man Is Hot” Music Club to fund and promote the club’s activities. The Club operates on a piece of land leased for a period of 21 years and is governed by a constitution which gives its members decision-making powers regarding the use of its assets.

Advise the following people as to their rights:

   a. George, the family butler for twenty years preceding Aurelius’ death.

   b. Jimmy, Aurelius’ golf partner for the last thirty years.

   c. Joshua, the President of the “Man Is Hot” Music Club.
2. Zara died in hospital on 12th September 2017. Her executors seek your advice as to whether or not she retained title in any of the following items of property at the date of her passing, based on the following information:

i. On the 1st June 2017, Zara was the absolute owner of 2,000 shares in Gavto Plc. Zara declared on the 1st August that: ‘Henceforth I hold my 2,000 shares in Gavto Plc on two trusts: 1,000 shares for my daughter Venus and 1,000 shares for my son Mark’. However Zara took no further action in relation to her shareholding.

ii. Zara was the sole beneficiary of a trust over a house in Northamptonshire, which was used as a holiday home. Zara told her business partner James over lunch that she wanted to give him the house immediately. On the 1st July, Zara went to see her solicitor who gave her a large amount of paperwork to complete so as to transfer the house to James. Zara completed part of the documentation but she did not sign it and she did not return it to her solicitor. Shortly before she died, Zara told James (in front of a nurse) that she still wanted him to have the house.

iii. Zara was the sole beneficiary under another trust. The trust property constituted 500 shares in Eco Plc. Zara wanted to exchange the Eco Plc shares for Fossil Fuel Plc shares which were held on a bare trust for her friend Martha. Therefore on 1st August 2017, Zara and Martha entered into a contract in which they agreed to exchange their equitable interests under the two trusts with one another.

iv. Zara was the object of a power of appointment held by her mother. On the 1st September 2017, Zara entered into a covenant with her trustees to the effect that: “any money I shall receive in the future from my mother’s power of appointment is to be held on trust for Sarah”. On the 2nd September she sent an email to her trustee saying: “I meant that the benefit of the covenant should be part of the trust too”. On the 3rd September, Zara received £20,000 under her mother’s power of appointment.

3. ‘The great expansion of charitable categories under the Charities Act 2011 means that almost anything can be charitable.’

Critically assess the accuracy of this statement.
4. "The Quistclose trust does not involve any departure from well-settled principles of trust law" (P.J Millet QC).

Critically discuss this statement.

5. Don and Hillary were an unmarried couple who bought a house together in June of 2015. The legal title in the house was registered in their joint names. Hillary was a speaker who earned £200,000 a year from making speeches to 3rd year Law students. Don is a socialite who struggles to make more that £10,000 a year from his poorly rated television reality show ‘the fired’.

Don attended Moscow State University with the vendor, Bernie. At a dinner party at the house in April of 2015, Bernie told everyone that he wanted to sell the house, and that he had reached a valuation of £420,000 for it. Don and Hillary decided immediately that they wanted to buy it. Don offered Bernie £400,000 for an immediate sale without expenses such as estate agents’ fees to which Bernie agreed.

As a result of this deal, the purchase of the house amounted to £400,000 when the sale was completed in June 2015. Hillary paid £100,000 in cash from her savings. The remainder of the purchase price was funded by a mortgage of £300,000 from the ‘People of America Bank’ which was taken out in their joint names.

The mortgage was an interest-only mortgage, such that no repayments of capital were made. Hillary made all of the interest payments out of her ‘speech money’. There was no further discussion between the parties. Instead they accepted that only Hillary could afford the payments. The couple had a child in September of 2015. Don agreed to take on all of the childcare responsibilities so that Hillary could return to making speeches as soon as possible. In January of 2017, Don earned £100,000 from the sale of the rights to his trademark hats “No Collusion”.

He said to Hillary: “I have the greatest hats you will ever see – and they make huge amounts of money. Should I use money to extend the house to make a playroom for the baby?” Hillary answered: “Well, it’s as much your house as mine darling – and it is your money from the hats.” Don went ahead to spend all of the £100,000 on building an extension onto the house.

The couple have now decided to separate.

Advise them as to their respective rights in the house.
6. Robert was the sole trustee of the Freeman family trust. He had no professional qualifications, and worked as a self-employed plumber. He had agreed to act as trustee as a personal favour to members of the Freeman family. The Freeman family trust contained a total sum of £100,000.

The only two surviving beneficiaries of this trust were Hui and Railey. Hui was a successful 55 year old playwright. She was the life beneficiary under the trust. Railey was an aspiring 30 year old heavy metal guitarist with an as-yet unsuccessful rock band. Railey was the remainder beneficiary. Railey had no capital other than his collection of vintage guitars and his rights under the trust fund.

The relevant provisions of the trust instrument were as follows:

i. The trustee shall have a power to pay any capital from the trust fund to any beneficiary so as to protect them from hardship.

ii. The trustee shall not be liable for any act of dishonesty.

Hui had been experiencing difficulties in finding new ideas for plays and her audiences had been dwindling for some years. Therefore, Hui telephoned Robert to ask him to use the entire trust fund to buy her a small villa in Spain where she could write plays about English people living there. Robert asked: “am I allowed to do that?” Hui answered: “you are the trustee, and so you can do anything you like. It is my trust fund, and I want that money now.”

Robert attempted to contact Railey, but Railey had changed his email address and phone number so that Robert could not track him down that week. Hui began to chase Robert, even turning up at his house on several occasions, until Robert agreed to pay £90,000 from the trust fund to Hui.

Robert learned from one of his customers, who was a stockbroker, that a new company called Dodgy Start Up Ltd was a good investment prospect for the future. The stockbroker had mentioned this while Robert was installing a new washing machine for him. Therefore, Robert decided to invest the remaining £10,000 from the trust fund in that company because he had been advised by his customer that this investment would earn ‘big money quick’. However Dodgy Start Up Ltd never showed a profit and is now due to be wound up as a result of fraud within the company.

Advise Railey.