HONOUR SCHOOL OF JURISPRUDENCE
DIPLOMA IN LEGAL STUDIES
MAGISTER JURIS
Trinity Term 2019
TRUSTS
Monday, 3 June 2019, 9.30am – 12.30pm

Materials in the Examination Room:
The following will be supplied:

- Trusts Case List 2018-19 (attached at end of paper)
- Charities Act 2011, ss. 1-5

Candidates should answer four questions including at least one of those marked with an asterisk, except for candidates for the Diploma in Legal Studies, who should answer three questions including at least one of those marked with an asterisk.

Do not turn over until told that you may do so.
1. ‘The beneficiary of a trust does not merely have a property right in the subject matter of the trust; the beneficiary is the beneficial owner of the subject matter.’

Discuss.

2. When, if at all, will a non-charitable purpose trust be valid? Is the law concerning non-charitable purpose trusts in need of reform?

3. ‘[At common law and in equity,] liability is fault-based: the defendant is only liable for the consequences of the legal wrong he has done to the plaintiff and to make good the damage caused by such wrong. He is not responsible for damage not caused by his wrong or to pay by way of compensation more than the loss suffered from such wrong. The detailed rules of equity as to causation and the quantification of loss differ, at least ostensibly, from those applicable at common law. But the principles underlying both systems are the same.’ (LORD BROWNE-WILKINSON, Target Holdings Ltd v Redfers (1995))

Discuss.

4. ‘The so-called Quistclose trust … has resisted attempts by academic lawyers to analyse it in terms of conventional equitable principles.’ (LORD MILLET)

Discuss.

5. Do fully secret trusts and half-secret trusts have different juridical bases?

6. ‘[W]hen a purpose appears broadly to fall within one of the familiar categories of charity, the court will assume it to be for the benefit of the community and, therefore, charitable, unless the contrary is shown, and … the court will not be astute in such a case to defeat on doubtful evidence the avowed benevolent intention of a donor.’ (LORD SIMONDS, National Anti-Vivisection Society v IRC (1947))

Discuss.

7. In what circumstances, if any, should equity perfect an imperfect gift? Is the law in need of reform?

8. ‘[I]t is impossible to explain all, or perhaps any, resulting trusts by ascribing them to the transferor’s intentions.’ (GARDNER)

Discuss.
9. Are the fiduciary duties that are owed by trustees overly stringent?

10. “Constructive trustees” are not really trustees, because so-called “constructive trusts” are not really trusts.’

Discuss.

11*. Phoebe held £100,000 and a painting on trust for Ursula.

In 2015, Phoebe had purchased a sports car by borrowing £25,000 from Chandler to fund the purchase.

Phoebe wanted to pay Chandler back and, in 2016, she decided to use the trust monies for this purpose. Phoebe told Rachel about her plan and, with Rachel’s help, Phoebe transferred £25,000 from Ursula’s trust fund into Phoebe’s current account, which already contained £5,000. Phoebe then withdrew £5,000 from the account to pay for an expensive holiday. Phoebe subsequently withdrew the remaining £25,000 from the account and used this to pay back Chandler. Phoebe is now insolvent.

Later in 2016, Phoebe gave the painting to Monica as a birthday present. Monica wondered whether the painting she had received was the painting that Phoebe had held on trust but, as she did not want to fall out with Phoebe, she decided not to question her further. Monica disliked the painting and, subsequently, she sold it for £10,000. She paid the money from the sale into her savings account, which already contained £3,000. But as Monica felt guilty about keeping the money, she withdrew £10,000 from her account and gave it to a charity, which still has the money.

Advise Ursula.
12*. Sandeep, a famous violinist, has died. Her will contains the following provisions:

(a) ‘£100,000 to my executors to hold on trust to distribute among persons who were in the same class as me at music school. The trustees must ensure that every such person is allocated at least £10 but, subject to this, the trustees shall determine in their absolute discretion the amount of money which each such person receives.’

(b) ‘500 shares in The Music Co Ltd to my executors on trust to allocate among such good violinists and in such amounts as they in their absolute discretion think fit.’

(c) ‘My collection of music books to my executors who must allow any good musician at my old music school who wishes to buy one of the books at half its market value to do so.’

(d) ‘£10,000 to my executors on trust for the sole purpose of supporting and facilitating my daughter’s music studies.’

The music school’s student records have been destroyed in a fire.

At the time of her death, Sandeep’s estate included 1000 shares in The Music Co Ltd.

Advise Sandeep’s executors.

13*. Jon covenanted with Kate that he would transfer to her to hold on trust for Dawn any property that he might receive under his father’s will. The deed contained the following provision: ‘When deciding whether to enforce the promise, Kate should make whatever decision she believes to be best for Dawn.’

Jon covenanted with Rita that, as Susan’s daughter had promised to care for Jon’s child while he was away on business, he would transfer any property that he might receive under his mother’s will to Rita to hold on trust for Susan.

Jon and Rita agreed over the phone that Jon would transfer his fee simple estate in Whiteacre to Rita to hold on trust for Bill. Thereafter, Jon conveyed the fee simple to Rita.

Jon’s father and mother recently died. Jon’s father, by his will, left £10,000 to Jon. Jon’s mother, by her will, left a painting to Jon.

Jon is now refusing to carry out his promises. Rita denies that she holds the fee simple in Whiteacre on trust for Bill.

Advise Dawn, Susan, and Bill.
14*. Thomas holds 100 shares in Red Co Ltd on trust for Adam, 100 shares in Green Co Ltd on trust for Ben, and 100 shares in Orange Co Ltd on trust for Cathy.

Advise Thomas as to the legal effect of EACH of the following transactions:

(a) Adam wants the 100 shares in Red Co Ltd to be given to his daughter, Violet. Adam tells Thomas to transfer the 100 shares in Red Co Ltd to Violet and Thomas does so.

AND

(b) Ben agrees with Peter over the phone that he will transfer his equitable interest in the 100 shares in Green Co Ltd to Peter in return for £1,000. Peter pays Ben £1,000 and then says to his son: ‘I will henceforth hold my interest in the shares on trust for you.’

AND

(c) Cathy tells Thomas to transfer the 100 shares in Orange Co Ltd to Quinn to hold on trust for Roger. Accordingly, Thomas transfers the 100 shares in Orange Co Ltd to Quinn.

AND

(d) David transfers 100 shares in Yellow Co Ltd to Thomas to hold on trust. David fails to specify the objects of the trust. A month later David tells Thomas that, henceforth, he should hold the shares in Yellow Co Ltd on trust for Sarah.

END OF QUESTIONS
1. The idea of a trust; beneficiaries’ rights

*Morice v Bishop of Durham* (1804) 9 Ves 399 (MR); (1805) 10 Ves 522 (LC)
*Saunders v Vautier* (1841) 4 Beav 115
*Baker v Archer-Sheer* [1927] AC 844
*Commissioner of Stamp Duties v Livingston* [1965] AC 694
*Re Smith* [1928] Ch 915
*Gartside v IRC* [1968] AC 553
*Sainsbury v IRC* [1970] Ch 712
*Webb v Webb* [1991] 1 WLR 1410 (ChD); [1994] 3 WLR 801 (ECJ)
*MCC Proceeds Inc v Lehman Brothers International (Europe)* [1998] 4 All ER 675
*Shell UK v Total UK* [2011] QB 86
*Akers v Samba* [2017] UKSC 6
*Grey v IRC* [1960] AC 1
*Oughtred v IRC* [1960] AC 206
*Neville v Wilson* [1997] Ch 144
*Nelson v Greening & Sykes* [2007] EWCA Civ 1358
*Vandervell v IRC* [1967] 2 AC 291
*Re Vandervell (No 2)* [1974] Ch 269
*Re Dean* (1889) 41 Ch D 552
*Re Hooper* [1932] 1 Ch 38
*Re Thompson* [1934] Ch 342
*Re Astor* [1952] Ch 534
*Re Endacott* [1960] Ch 232
*Re Denley* [1969] 1 Ch 373
*Carreras Rothmans v Freeman Mathews Treasure* [1985] Ch 207
*Twinsectra Ltd v Yardley* [2002] 2 AC 164
*Re Bowes* [1896] 1 Ch 507
*Re Abbott Fund* [1900] 2 Ch 326
*Re Andrew* [1905] 2 Ch 48
*Re Osoba* [1979] 1 WLR 247
*Independent Schools Council v Charity Commission* [2012] Ch 214
*IRC v Baddeley* [1955] AC 572
*Re Shaw* [1957] 1 WLR 729
*Re Hopkins’ Will Trust* [1965] Ch 669
*Re Besterman’s WT* (unreported), as cited in *McGovern v AG* [1982] Ch 321
*IRC v McMullen* [1981] AC 1
*National Anti-Vivisection Society v IRC* [1948] AC 31
*Gilmour v Coats* [1949] AC 426
*Neville Estates v Madden* [1962] Ch 832
*Re Hetherington* [1990] Ch 1
*Re Resch’s Will Trusts* [1969] 1 AC 514
*McGovern v AG* [1982] Ch 321
*Oppenheim v Tobacco Securities* [1951] AC 297
*IRC v Baddeley* [1955] AC 572
*Dingle v Turner* [1972] AC 601
*Re Cohen* [1973] 1 WLR 415
*Leahy v AG for NSW* [1959] AC 457
*Neville Estates v Madden* [1962] Ch 832
2. Express trusts

Re Adams and the Kensington Vestry (1884) 27 Ch D 394
Milroy v Lord (1862) De GF & J 264
Jones v Lock (1865) 1 Ch App 25
Richards v Delbridge (1874) LR 18 Eq 11
Re Schebsman [1944] Ch 83
Paul v Constance [1977] 1 WLR 527
T Choithram International SA v Pagarani [2001] 1 WLR 1
JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2017] EWHC 2426 (Ch)
Wilkinson v North [2018] EWCA Civ 161
Re Ellenborough [1903] 1 Ch 697
Re London Wine Co [1986] PCC 121
Re Goldcorp Exchange Ltd [1995] 1 AC 74
Hunter v Moss [1994] 1 WLR 452
Re Harvard Securities, Holland v Newbury [1997] 2 BCLC 369
Pearson v Lehman Brothers [2011] EWCA Civ 1544
IRC v Broadway Cottages [1955] Ch 20
Re Gulbenkian’s ST [1970] AC 508
McPhail v Doulton [1971] AC 424
Re Baden (No 2) [1973] Ch 9
Re Manisty’s Settlement [1974] Ch 17
Re Hay [1982] 1 WLR 202
R v District Auditor ex p West Yorks MCC [1986] RVR 24
Re Barlow [1979] 1 WLR 278
Re Coxen [1948] Ch 747
Dundee Hospitals Board v Walker [1952] 1 All ER 896
Re Tuck [1978] Ch 49
Rochefoucauld v Boustead [1897] 1 Ch 196
Bannister v Bannister [1948] 2 All ER 133
Hodgson v Marks [1971] 1 Ch 933
Ong v Ping [2017] EWCA Civ 2069
3. Constructive trusts

Keech v Sandford (1726) Sel Cas t King 61
Boardman v Phipps [1967] 2 AC 46
Lister v Stubbs (1890) 45 Ch D 1
A-G of Hong Kong v Reid [1993] AC 713
Sinclair Investments v Versailles Trade Finance [2011] EWCA Civ 347
Grimaldi v Chameleon Mining (No 2) [2012] FCAFC 6
FHR European Ventures LLP v Mankarious [2014] UKSC 45
Lysaght v Edwards (1876) 2 Ch D 499
Walsh v Lonsdale (1882) 21 Ch D 9
Englewood Properties Ltd v Patel [2005] 1 WLR 1961
Scott v Southern Pacific Mortgages Ltd [2014] UKSC 52
Binions v Evans [1972] Ch 359
Lyus v Prowsa Developments Ltd [1982] 1 WLR 1044
Ashburn Anstalt v W J Arnold & Co [1989] Ch 1
Rochefoucauld v Boustead [1897] 1 Ch 196
Bannister v Bannister [1948] 2 All ER 133
Hodgson v Marks [1971] 1 Ch 933
McCormick v Grogan (1869) LR 4 HL 82
Blackwell v Blackwell [1929] AC 318
Re Gardner (No 2) [1923] 2 Ch 230
Re Young [1951] 1 Ch 344
Ottaway v Norman [1972] Ch 698
Re Snowden [1979] Ch 528
Paul v Paul (1882) 20 Ch D 742
Pullan v Koe [1913] 1 Ch 9
Cannon v Hartley [1949] Ch 213
Davenport v Bishop (1843) 2 Y & C CC 451
Fletcher v Fletcher (1844) 4 Hare 67
Lloyds v Harper (1880) 16 Ch D 290
Re Cavendish Browne [1916] WN 34
Re Pryce [1917] 1 Ch 234
Re Kay’s Settlement [1939] 1 Ch 329
Re Cook’s Settlement Trusts [1965] Ch 902
Re Brooks [1939] 1 Ch 993
Re Ralli’s Will Trusts [1964] Ch 288

TURN OVER
4. Resulting trusts

Dyer v Dyer (1788) 2 Cox Eq Cas 92
The Venture [1908] P 218
Re Vinogradoff [1935] WN 68
Lohia v Lohia [2001] EWCA Civ 1691
National Crime Agency v Dong [2017] EWHC 3116 (Ch)
Vandervell v IRC [1967] 2 AC 291
Hodgson v Marks [1971] Ch 892
Re Vandervell's Trust (No 2) [1974] Ch 269
Westdeutsche Landesbank Girozentrale v Islington LBC [1996] AC 669
Air Jamaica Ltd v Charlton [1999] 1 WLR 1399
Stack v Dowden [2007] 2 AC 432
Jones v Kernott [2011] 3 WLR 1121
Fowkes v Pascoe (1875) LR 10 Ch App 343
Shephard v Cartwright [1955] AC 431
Tribe v Tribe [1996] Ch 107
Patel v Mirza [2016] UKSC 42
Marr v Collie [2017] UKPC 17

5. Duties and powers

Keech v Sandford (1726) Sel Cas t King 61
Bray v Ford [1896] AC 44
Wright v Morgan [1926] AC 788
Re Thomson [1930] 1 Ch 203
Re Biss [1903] 2 Ch 40
Holder v Holder [1968] Ch 353
Tito v Waddell (No 2) [1977] Ch 106
Re Thompson [1986] Ch 99
Re Duke of Norfolk's Trusts [1982] Ch 61
Williams v Barton [1927] 2 Ch 9
Re Macadam [1946] Ch 73
Re Gee [1948] Ch 284
Regal (Hastings) Ltd v Gulliver (1942) [1967] 2 AC 134n
Phipps v Boardman [1967] 2 AC 46
Lister v Stubbs (1890) 45 Ch D 1
A-G of Hong Kong v Reid [1993] AC 713
Sinclair Investments v Versailles Trade Finance [2011] EWCA Civ 347
Grimaldi v Chameleon Mining (No 2) [2012] FCAFC 6
FHR European Ventures LLP v Mankarious [2014] UKSC 45
O'Sullivan v Management Agency and Music Ltd [1985] QB 428
Guinness v Saunders [1990] 2 AC 663
Murad v Al-Suraj [2005] EWCA Civ 959
Re Brogden (1888) 38 Ch D 546
Butle v Saunders [1950] 2 All ER 193
Cowan v Scargill [1985] Ch 270
Harries v Church Commissioners [1992] 1 WLR 1241
Speight v Gaunt (1883) 22 Ch D 727 (CA), (1883) 9 App Cas 1 (HL)
Learyd v Whiteley (1886) 33 Ch D 347 (CA), (1887) 12 App Cas 727 (HL)
Schmidt v Rosewood Trust Ltd [2003] 2 AC 709
Breakspear v Ackland [2009] Ch 32
Gisborne v Gisborne (1877) 2 App Cas 300
Tempest v Lord Camoys (1882) 21 Ch D 571
Re Lofthouse (1885) 29 Ch D 921
Vatcher v Paull [1915] AC 372
Klug v Klug [1918] 2 Ch 67
Re Manisty [1974] Ch 17
Re Locker [1977] 1 WLR 1323
Re Hay's ST [1982] 1 WLR 202
Turner v Turner [1984] Ch 100
Mettoy Pension Trustees Ltd v Evans [1990] 1 WLR 1587
Independent Schools Council v Charity Commission [2012] 1 All ER 127
Re Hastings-Bass [1975] Ch 25
Pitt v Holt [2013] 2 AC 108
Nocon v Lord Ashburton [1914] AC 932
Henderson v Merrett Syndicates Ltd [1995] 2 AC 145
Target Holdings Ltd v Redferrals [1996] AC 421
Swindle v Harrison [1997] 4 All ER 705
Bristol and West BS v Mothew [1998] Ch 1
AIB Group (UK) Plc v Mark Redler & Co [2014] UKSC 58
Main v Giambrone [2017] EWCA Civ 1193
Re Hallett (1880) 13 Ch D 696
Re Oatway [1903] 2 Ch 356
Foskett v McKeown [2001] 1 AC 102
Roscoe v Winder [1915] 1 Ch 62
Space Investments v Canadian Imperial Bank [1986] 1 WLR 1072
6. Trusts and third parties

Re Montagu's ST [1987] Ch 264
Agip (Africa) Ltd v Jackson [1990] Ch 265 (Millett J); [1990] Ch 265 (CA)
BCCI v Akindele [2001] Ch 437
Farah v Say-Dee [2007] HCA 22
Relco Limited (In Liquidation) v Varsani [2014] EWCA Civ 360
Royal Brunei Airlines v Tan [1995] 2 AC 378
Twinsectra Ltd v Yardley [2002] 2 AC 164
Barlow Clowes International v Eurotrust International [2006] 1 WLR 1476
Williams v Central Bank of Nigeria [2014] UKSC 10
Re Barney [1892] 2 Ch 265
Mara v Brown [1896] 1 Ch 199
Williams-Ashman v Price & Williams [1942] Ch 219