

Legal Profession Admission Board

Examiner's Comments

07 Equity Examination - March 2025

The exam comprised of three questions.

Candidates were required to answer two questions.

Question 1 was compulsory and worth 60 marks and the others were worth 40 marks.

Question 1

What issues or areas of knowledge was question 1 seeking to test?

1(a) dealt with two principles in the area of dispositions of property, namely the assignment of future property pursuant to the principles in *Holroyd v Marshall*, and the requirement of writing pursuant to s 23C(1)(c) of the Conveyancing Act 1919 for a disposition of a subsisting equitable interest by means of a direction to a trustee.

1(b) raised the question of whether there was a completely constituted trust of the promise to transfer property pursuant to a voluntary deed.

1(c) raised the issue of whether there was a trust or equitable personal obligation in favour of either of the two persons mentioned in the question.

1(d) raised the issue of a valid fit for a charitable purpose, in this case, probably for the relief of poverty.

Question 2

What issues or areas of knowledge was question 2 seeking to test?

2(a) dealt with, the issue of resulting trusts of joint bank accounts, with a key case being *Russell v Scott*.

2(b) raised the issue of the existence of a *Quistclose* trust.

2(c) raised the issue of secret trusts and the effect of the death of the beneficiary of such a trust prior to the death of the testator.

Question 3

What issues or areas of knowledge was question 3 seeking to test?

In Part A, the question raised the principles relating to proprietary estoppel and the remedies, on the facts of the question, of equitable compensation and freezing orders. In Part B, the first two parts raised the right of beneficiaries pursuant to tracing principles to assert beneficial ownership of property (i) acquired by a trustee by breach of his or her trustee obligations, and (ii) whether a third party was a bona fide purchaser taking for value and without notice, of property from a trustee who acquired it in breach of his or her trust

obligations. The third part of the question related to the presumption of a resulting trust where property is purchased in the name of someone other than the person who paid the purchase price and whether the presumption of resulting trust was rebutted.

Characteristics of poor or average responses

What characterised very poor or average responses to the examination paper?

The inability to identify the legal issues raised by the question was overwhelmingly the reason for poor answers. Poor structure in answering questions was also a factor in that students did not adequately or correctly state the relevant legal principle and discuss its application to the facts of the question.

Characteristics of very good or excellent responses

What characterised very good or excellent responses to the examination paper?

Such answers were very rare, but did correctly identify the issue, state the law and apply the law to the question.

Common mistakes

Were there commonly encountered mistakes as to the law in student responses?

Yes, in almost every question. Students understanding of the topic of dispositions of property in equity was very poor, with significance consequences to their marks on questions on that area of the law. Another, less significant, but nonetheless basic mistake, was to refer to the federal Charities Act for the definition of charitable purposes, rather than the law derived from *Pemsel's* case when dealing with question 1(d).

Areas for improvement

Were the identifiable areas for improvement in the students' legal knowledge tested by the examination paper?

See comments to previous question. Also, students need to dramatically improve answering technique, to ensure they clearly state the issue(s) raised by the question, state the relevant law accurately, and apply that law to the facts to come to a conclusion.

Other comments

Any other comments and/or comments about marks awarded.

The failure rate for the subject was 58.88%. In the previous session the failure rate was 30%.

However, a more meaningful comparison is the failure rate for the examination only in the previous session which was 55.9%.

The number of students getting a better than Pass grade on the examination was significantly below that of previous sessions.

A further striking feature of the examination was the number of students who did not attempt all the questions. This became apparent fairly early on in the marking process, so I kept a tally as papers were marked.

29 students (27%) did not answer all the questions. 12 students (11.2%) left out answers worth 8-20% of the marks. 17 students (15.8%) left out questions worth more than 20% of the marks with 8 of them leaving out questions worth more than 30% of the marks.

This combined with generally poor answers to questions saw many students getting a very low final mark.