

# **EQUITY AND TRUSTS LAW**

## **MODEL EXAM**



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## ***IRAC method of completing exams***

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

If you are sitting an open book exam, be sure to have concise notes with only the main points for each topic. Too much time will be wasted searching through thick textbooks.

Try to answer the question yourself first before looking at the answer. Do not worry if you do not come up with the same amount of text as is in the answer below. The student who wrote this answer had a considerable amount of time in which to write. Good luck!

## **Question One**

### **Part A:**

Luna is a successful and well known clairvoyant and Penny hosts a breakfast chat show on television. In February 2006, they entered into a valid contract whereby Luna agreed to appear in a weekly segment on Penny's show and answer viewers' questions, whilst on the air, when they called in. Further Luna agreed to appear **only** on Penny's show. In return, Penny agreed to allow Luna to promote her books and other charms she produces as a clairvoyant. The contract was for 5 years. The agreement would further Luna's exposure outside of newsprint and allow her to sell her range of books and charms. Luna's popularity and name would also attract a higher audience share to Penny's show, which would receive higher advertising income.

Luna begins appearing in the segment on Penny's show and is a runaway success. Penny's show, too, has increased its audience share significantly and attracted a number of new advertising accounts wanting to advertise during her show. However, Penny refuses to allow Luna to promote her books and charms on the segment as another clairvoyant wishes to advertise their products during the show and more money will be made from the other clairvoyant's products as Penny would not receive any income from sales of Luna's products.....

### **Part B:**

Penny also consults you about a signed letter she received from the head of the television network where she works. The letter said:

*I want to make sure my best star, and beautiful belle, is set for life and financially secure throughout all your days. I am giving to you the interest payable on \$1 million to which I am entitled from my term deposit with Glitter Bank.....*

## **Question Two**

### **Part A:**

Darian Dalrymple is a real estate agent and has acted for Fabian on a number of occasions in selling and buying property. Darian recently sold Fabian's house for a record \$2.5 million. Fabian was over the moon as he bought the house over 30 years ago for \$90 000. Fabian consulted with Darian on how he should invest the healthy surplus he made on the sale in the property market.

Darian had recently met with a developer, Oliver, for whom Darian was acting. Oliver suggested to Darian that he should invest in a new development, Manhattan Chase Apartments, adjacent to the one he was selling. Oliver said that the property market, especially in high-rise apartment developments, was soaring now and in his opinion was a good financial investment. Unfortunately, Darian did not have any spare money to invest in the development. Darian passed all the relevant details, costings and projected outcomes onto Fabian, knowing he was interested in investing his money in the property market. Fabian then bought into the development securing some prime real estate assets including the pent house and a number of the more desirable apartments. Two weeks later Darian had a win in the Lottery and invested the money in the Manhattan Chase Apartments development.....

### **Part B:**

Further, Darian becomes angry after receiving an irate call from his girlfriend Joan. He slammed the phone down and yelled obscenities at his young secretary, Irene. Fed up with Darian's antics, Irene collected her belongings and walked out informing Darian that she quit and would be taking up a recent job offer made by Darian's competitor over the road. Unbeknown to Irene, she took Darian's client list (which detailed addresses, evaluations and recent sales commissions) with her as she collected her belongings.....

- **Injunction.** Springboard doctrine (*Austral Ships v Incat Australia*). Irene should not be allowed to use information obtained from a breach of

confidence to put herself or a subsequent 3rd party ahead of a Darian. In these circumstances, injunction could be sought by Darian to prevent (consider – does Darian know the document is missing?).

- **Equitable compensation.** Exclusive jurisdiction.
- **Delivery up.** An order to hand back information / documents etc be returned. If not complied with, contempt of court.
- **Alternative Dispute Resolution.** Outside equity but a quick mention demonstrates knowledge and application of another viable remedy.

Here, advice for Irene – information likely to be established as confidential. Therefore, it falls within remit of Equity's exclusive jurisdiction. Avoid costly legal endeavour, admit mistake, and return document to Darian.

**Question Three**

Derek Shepherd is a wealthy and well-known surgeon who owns a prime piece of real estate which he leases to wealthy social types for holidays. On 14 February 2004, he makes the following statement before a number of witnesses:

*'I declare myself the trustee of my salubrious holiday pad, "McDreamy Estate" at Forster on the New South Wales North Coast, from now on. The income earned from the lease of the house to wealthy socialites is to be divisible amongst my work colleagues as I choose until 14 February 2005. After that date it is to be held by my wife in total'.*

However, one year later (14 February 2005) Derek, in a fit of passion, wrote the following signed letter to Meredith Grey.....

**Question Four**

Melissa died on 2 January 2011 after having executed her will in June 2010. The will provided for the creation of a trust. Steven, Hayden, Caitlin, Ben, and Walter were appointed as trustees. The trust property consists of, amongst other things, a service station (the trust's business) in Gladstone, a Mercedes Benz car valued at \$50,000, \$200,000 invested in the short-term money market, a rental property on Palm Island and \$200,000 worth of shares in Fast Track Pty Ltd.

Although the trust deed was silent on the investment powers of the trustees, it clearly articulates that the trust property is to be held on trust for her brother, Rupert, for life and, the remainder to her children, Christopher and Stephanie (aged 14 and 17 respectively) in equal shares provided they reached the age of 21 years.

Steven and Caitlin decided to run the trust's business themselves and that it should be run through a company to protect the trust through limited liability and to take advantage of the lower corporate tax rate. Accordingly, they incorporated "Service Station Pty Ltd."

The decision to run the business was partly based on the fact that it was the only service station in Gladstone and the local community needed a guaranteed local fuel supply. Melissa was also indebted to BP Ltd for \$10,000 at the time of her death for fuel supplied to the service station on credit. Steven and Caitlin were of the view that the business should continue to trade as that would provide a means of paying off that debt. BP Ltd was aware of these facts. ....



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