

**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 that are 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.

### **Question One**

### **Question One**

Darian Dalrymple is an estate agent who 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 at the moment 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, costs and projected outcomes on to Fabian, knowing he was interested in investing his money in the property market. Fabian then bought into the development securing some prime assets including the penthouse and a number of the more desirable apartments. Two weeks later, Darian won a substantial sum on the lottery and invested the money in the Manhattan Chase Apartment Development.....

***Answer***

**Fabian (F) v Darian (D) and Oliver (O):**

F may have equitable rights against D if he has breached a fiduciary duty; or against O if he has assisted in that breach.

Darian:

*Is there a fiduciary relationship?*

An estate agent will generally owe a fiduciary duty to his clients. However, the question is whether D's fiduciary duties to F extended to his actions against him. In this case does D's fiduciary obligation extend to his actions buying into the apartment complex and using his knowledge about F's plans to sell.

*Scope of the relationship:*

An estate agent's duties may not ordinarily extend to the giving of financial advice but considering the nature of the relationship between D and O, the facts appear to give rise to what seems to be a fiduciary relationship. In this case D has acted for F in the past in respect of selling property, not acquiring it.....

### ***Question Two***

Derek Shepherd passed away in 2006. He was a wealthy business tycoon who possessed a number of assets including an extensive collection of art. The following facts have emerged since Derek's death:

His wife has been shocked by the revelation that Derek had an affair with his secretary for many years, which was on-going at the time of his death. His secretary, Meredith Grey, claims that Derek promised her that on his death, she would be entitled to 'the bulk of his estate and his beach house in Florida'. She showed Derek's wife a letter written by him, to Meredith, which stated this. It also seems that others knew of Derek and Meredith's affair and that he expressed his intention to leave the bulk of his estate and his beach house in Florida to Meredith, in front of several witnesses. Additionally, Derek had a separate bank account in his own name, which he and Meredith used jointly for a number of years. Derek stated on a number of occasions, in front of witnesses, that the money was 'as much yours as it is mine'.....

### ***Answer***

The situations outlined above primarily concern whether the proposed trusts are sufficiently certain. If they satisfy the three certainties (intention, subject matter and objects) a trust will be established. If not, then the trust will fail.

- Certainty of intention – It must be shown that the testator intended to create a trust. Intention can be expressed via an outright declaration of trust, words which do not include the mention of a trust or other actions.
- Certainty of subject matter – The subject matter of the trust is clear and unambiguous.
- Certainty of objects – Whether beneficiaries are sufficiently certain, e.g. meet certain criteria to enable them to be beneficiaries of a particular trust.....

### **Question Three**

Why is there a strict rule of accountability for any profits that trustees make from information or opportunities, which arise as a result of any dealings with the party to whom they owe the fiduciary duty? Are there any justifications for the strictness of this rule?.....



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