

APPENDIX II — EXAMINATION REVISION

I *Introduction*

A *Examination Format*

The examination is worth 100 per cent of the assessment for this subject. It will be **three hours** in duration, with 30 minutes reading time.

Three questions must be answered:

- One hybrid hypothetical (comprising hypothetical and theoretical parts); and
- Any two other questions, from any part.

Decide on which questions to answer during reading time. Do not change that decision. Utilise reading time to plan an answer: **draft skeleton answers** to each question, but at least one. Never spend more than one hour on a question.

For hybrid questions, the hypothetical and policy parts are worth **equal marks**. Spend 30 minutes on each part.

B *Revision Consultation*

Lecturers are available for questions on the following extensions:

Michael Bryan: 8344 6204

Lisa Sarmas: 8344 7581

In addition, Michael Bryan has available the following consultation times:

Monday 29 May
Tuesday 30 May
Wednesday 31 May (afternoon)
Thursday 1 June (afternoon)
Friday 2 June

C *Essay Strategies*

Each question will usually draw together multiple topics.

Bryan: 'Only answer the essays if you have something interesting to say.' Some of the best and worst answers are written in response to the essay questions. Doing well entails articulately presenting original thought and engaging in close analysis of novel policy ideas.

Professor Bryan has expressed a strong aversion to unoriginal thought. He prefers interesting discussions — even disagreement. Do *not* simply regurgitate lecture notes.

D *Hybrid Strategies*

The two parts of each hybrid are weighted equally. Time should be allocated accordingly.

E *Hypothetical Strategies*

1 *Structure*

Commence by identifying:

- All potential plaintiffs;
- All potential defendants;
- Every potential head of liability;
- Every potential defence;
- Possible remedies; and
- Advice as to the advisee's best course of action.

Remedies are of central importance. Canvass all available remedies and recommend how the plaintiff should elect between them. Revise equitable remedies — most important issue: often the primary issue in a problem.

2 *Problem styles*

There are, broadly, two styles of problems:

- **A narrative of facts, calling for analysis of issues and remedies**
A fairly archetypal law exam problem
- **Structured dispositions under a will**
More clearly structured; analysis of trust issues
 - **Remember** to consider what happens where one disposition is invalid, but the others are valid
 - **Where** there is a single trust in the problem (eg, a discretionary trust), and part of the trust is invalid (eg, one class of beneficiaries), the entire trust fails
 - Same trust, different classes, one of which is invalid
 - The effect is that it is held on resulting trust for the settlor (or, if dead, their next of kin), since there has been failure of an express trust
 - **Where**, however, the will creates a series of distinct trusts in each disposition, if one of the gifts fails, the remainder of the gifts may still be valid
 - ie, each disposition (a) through (g) creating a separate trust
 - Different trusts, different beneficiaries, potentially same trustees, one trust invalid
 - Failure of one will not bring down the others
 - If there is a residuary clause (eg, 'the residue [remainder, what is left over: no problem of uncertainty — *McPhail*: evidentiary uncertainty only] to X'), the money goes to the beneficiary under that clause
 - The money under the invalid clause forms part of the pool to go to the residuary legatee
 - If the residuary clause fails, or there is no residuary clause, the money is then held on resulting trust for the settlor or her estate/next of kin

Thus, in general: numbered paragraphs mean there are separate and independent trusts; cf words within a single sentence, or classes in a single disposition.

If a power is contained in a trust deed, and the power fails, the trust remains valid.

3 *Fiduciary duties*

In relation to fiduciary duties/remedies for breach, they may be relevant to express trusts. For example:

- Is the express trust valid?
- If so, was there a breach of fiduciary duty?
- If so, what remedies are available?

4 *Tracing and Barnes v Addy*

These topics arise in similar circumstances.

If any part of the property remains, or has been used to buy something, tracing should be considered.

If the misapplied money no longer remains but has passed through other people's hands, *Barnes v Addy* liability should be pursued. (Knowing receipt — 'essentially restitutionary', returning the value of the money)

5 *Charitable and non-charitable express trusts*

- Not much charity law will be relevant
- Basic definition sufficient: *SoE*, modern applications
- If not charitable, consider whether it might still be valid as a non-charitable trust
 - Whether as a purpose trust (*Re Denley*; cats and dogs, etc)
 - Or as a trust for ascertainable persons
- An invalid charitable trust might still be a valid trust for persons
 - Eg, such societies as are working for the abolition of war
 - Not charitable since political; but could be a valid express trust
 - Criterion certainty may be problematic, but might possibly be valid
- Note that charitable trusts are never void for perpetuity
- Whereas non-charitable trusts can only last life + 21 years

Carefully identify the legal status of each party.

- Trustee company XYZ
- Directors A and B
- Beneficiaries C and D
- A and B misapply trust property to E
- Party liable for breach of trust: company XYZ (*not* A and B)
- A and B liable for knowing assistance in breach of trust (*Barnes v Addy*)
- [Would A and B also be liable as fiduciaries — director–company?]
- E may be liable for knowing receipt of trust property

II Section A, Question 1

1 Does Jack ('J') owe a fiduciary duty to Bodycare ('BC')?

- When J was an employee of BC, he clearly fell within a presumptive category of fiduciary duty
- Although the duty ended when J left the company, he may still have continuing obligations as a factual fiduciary
- Similar to *Warman v Dwyer*: clearly Warman was a fiduciary at all relevant times

2 Is there a breach of J's fiduciary obligations?

(a) Acceptance of antique clock

- Conflict of interest?
 - Yes, a real and substantial possibility
 - Accepting a gift from a supplier to BC in return for leaving BC
- Profit?
 - Yes, J 'on company business', met Claire on that trip
 - Clear profit: receives personal property
- Is it a bribe?
 - Yes, property provided as an inducement for J to leave the company
- Remedies
 - *Lister*: only personal remedies
 - *Reid*: full suite of proprietary remedies available
 - Unclear how this would be resolved in Australia
 - Here, personal remedy would be unsecured payment of \$50 000 (*Lister*)
 - Or proprietary remedy: possibly a constructive trust over the \$50 000 (*Reid*)
 - No difference here, since J far from insolvent

(b) Gathering information about and setting up rival business

- Profit?
 - Obtained the information on business, profiting from his position
 - *Phipps*
- Conflict?
 - *Chan, Pilmer*: need a real and substantial possibility of conflict
 - Mere setting up of the rival business also a breach
- Within the scope of the duty?
 - Rival business is in the same field
 - Difference between beauty products and salons?
 - Low-end retail business (BC)
 - High-end boutique market (J)
 - However, difference probably insufficient
 - Both chains
 - Both beauty industries

- Remedies?
 - Constructive trust over assets
 - \$500 000 profit in just one year
 - Lease
 - Best option: gets the supply contract, assets and future profits; likelihood of further growth
 - *LAC Minerals*: similar circumstances breach of confidence, such a remedy imposed
 - But may be excessive
 - *Warman*: constructive trust may be inappropriate over a business
 - Could something less be given?
 - Account or percentage of profits for a limited number of years?
 - To what extent is the new business a mere product of the old business left by the fiduciary — ie, a product of the breach?
 - Here all dealings with Claire were done as representative of BC — would never have happened if he had not been employed by BC
 - Allowance for care and skill?
 - *Warman*: J worked very hard to ensure the success of the new enterprise
 - See *Warman*
 - May reduce numbers of years profits, or suggest constructive trust
 - Equitable damages
 - If the Court is only willing to grant an account of profits over J's profit for the one year period, compensation would be better
 - \$1 000 000 'loss'
 - But note causation issue: did BC suffer loss because of J or would BC's contract with EC have ended anyway?
 - But for test
 - If contract would have been terminated by EC regardless of J's breach, damages may be reduced
 - Here, EC was looking to restructure its Australian presence, so it is possible that BC would have suffered the loss anyway
 - But unsecured (personal)

- J may not have enough money to pay, having only made half that in profit
- BC will need to elect whether it should pursue an account or compensation

3 Other issues

- J's company
 - Personally liable for assisting in breach of fiduciary duty
 - Personally liable for receipt of property in breach
- EC and BC in fiduciary relationship
 - Hospital Products
- Claire personally liable for assisting in breach of fiduciary duty
 - Biggest secondary issue

B Positive Fiduciary Duties

1 Introduction

This statement reasserts the proscriptive view of fiduciary relationships in Australia. This is the dominant approach to fiduciary relationships in Australia.

Argue that the prescriptive approach is more suited to.

2 The proscriptive approach

In addition to *Breen*, see *Paramasivan*. Fiduciaries do not owe positive obligations to act in the best interests of their principal — just negatively expressed duties *not* to profit and *not* to be in conflict.

Criticism

3 The prescriptive approach

Norberg v Wynrib, *M(K) v M(H)*: contrast with *Paramasivan*.

4 Conclusion: which is the appropriate position?

Make an argument.

II Section A, Question 2

A Freeacre

- Legal ownership jointly held by Toula ('T'), Koula ('K') and Soula ('S')
- If the legal interest is followed, T's title goes to K and S by survivorship
- Contributions to purchase price — beneficial interests
 - Presumption of resulting trust in favour of contributions to the purchase price
 - Contributions and liability, not repayments: *Calverley*
 - Equal payments of \$20 000, \$80 000 each by mortgage
 - Therefore, in equity hold as tenants in common in equal shares, unless contributions are equal
 - **Here, since contributions are equal, and legal title is joint, 'it is more likely' that they hold beneficial interests jointly as well: *Calverley* majority**
 - Evidence to rebut presumption?
 - No contrary presumption: sister–sister
 - May be weaker than commercial context though
 - Therefore, they hold jointly
- Mortgage repayments
 - T would have been entitled to personal repayment by K and S of her disproportionate contributions to the mortgage repayments
 - Equitable accounting back to T: all \$160 000 must be accounted back to T, if T did not intend to gift the additional contributions
 - On the facts, was the extra contribution a gift?
 - Presumption is no: separate presumption arises with respect to each repayment as the voluntary transfer of property
 - No evidence here to rebut
 - Cf if she told them
 - Therefore no, presume T intended to retain the repayments
 - As a personal liability, it passes to the estate, and thus eventually to Andy ('A')
 - \$160 000 plus interest
 - Can be secured by an equitable lien
 - Becomes a debt owed to T's estate; forms part of the property that goes to A

B Farm

- Presumption of resulting trust
 - That T holds A's share of the farm on resulting trust for A
 - Business relationship; strong presumption
- Illegality
 - Tainted by illegal purpose: avoiding anticipated court order
 - Should the assets be left where they fall or should A's equitable rights be enforceable against T's estate?
 - Probably in breach of the *Family Law Act* or in contempt/fraudulent
 - *Nelson v Nelson*
 - Need details of the statute
 - If there are penalties

- Depends whether the underlying policy objectives of the statute would be breached
- Need to balance discouragement of illegal conduct against unjustly enriching T
- F may need to properly settle the claim before coming to equity (*Nelson*)
 - This may mean that F's ex-wife has an interest in the property, or pay her money in lieu of an interest

C Approaches to Illegality

1 Introduction

Summarise the currently favoured view. Make a contention.

2 Approaches to illegality

(a) Clean hands

See Lord Goff in *Tinsley*
Deontological

(b) Outcomes

Teleological
Fails to address ethical quality of claimant's conduct
May have been extremely immoral conduct, but unsuccessful
Equity cannot in good conscience aid such an immoral claimant

(c) Reliance

Pragmatic

(d) Policy

Best fusion of broad social policy and individual justice
But equity should remain focussed on justice in individual cases

3 Conclusion

Contrast and evaluate views; suggest the best approach

III Section B, Question 3

A Introductions

Several equitable issues arise from these facts:

- Validity of trust dispositions;
- Wrongful distribution of trust property;
- Breach of fiduciary duty;
- Accessory liability for breach of trust;

Equitable causes of action may be available to Chris against Tracy and to Simon's estate or other beneficiaries against Tracy, Jack, Olivia, Amanda, and the Bank.

Several equitable remedies may be available to the estate and its legatees. Chris may be entitled to an equitable lien over the train set, or compensation from Tracy. The estate may be entitled to a constructive trust or account of profits over certain of the wrongfully distributed assets. It may also be entitled to damages from Tracy or the Bank, or to trace into the property itself.

These issues are now dealt with in turn.

B Validity of Dispositions

1 Disposition (a)

- Certainty of subject matter
 - 'sensible portion': too vague?
 - Similar to 'bulk' in *Palmer* (there invalid)
 - Indeed, unlike 'bulk', 'sensible' doesn't even set lower bounds on the amount
 - On the other hand, 'reasonable income' in *Re Golay* (there valid)
 - 'Sensible' implies a qualitative evaluation, like 'reasonable'
 - Probably more similar to 'reasonable' than 'bulk'
 - Court can apply standards, but not like other legal standards (cf *Re Golay*) — 'sensible' not a standard readily applied, unlike 'reasonableness'
 - Borderline — probably valid
- Certainty of objects
 - Violates beneficiary principle:
 - Purpose trust on the face of the record
 - 'to maintain' — object is a purpose
 - Non-charitable
 - Analysis required
 - Alternatively, characterise as a trust for persons (*Re Denley*)
 - Even though expressed as being for a purpose, there are indirect ascertainable beneficiaries
 - Employees of Zco, for whom the sports ground exists — sufficiently identifiable: criterion certainty
 - They could enforce the trust if there was a problem — major reason for not recognising non-charitable purpose trusts therefore does not apply
 - Further, not an abstract purpose, unlike *Re Astor*

- Therefore, probably valid
 - Certainty of objects unproblematic: employment a feasible criterion
 - Don't need to mention:
 - It appears to be a discretionary trust
 - 'shall'
 - 'sensible' (ie, non-zero): cf *Re Gulbenkian*
 - Therefore criterion certainty applies
 - Clearly possible to determine entitlement by asking whether X is an employee of Zco
 - Some semantic ambiguity: past employees, how long, etc, but unlikely to be fatal
- Therefore, if 'sensible' is given content, sufficiently certain

2 *Disposition (b)*

- Gift of property
 - Could possibly be construed as a fixed trust: one beneficiary
 - But no management duties imposed on trustee, so unlikely to be a fixed trust
- Was this property able to be gifted?
 - Only able to bequeath if S had beneficial interest to pass to Chris
 - Might already be the subject of a prior express trust in favour of Chris
 - See below

3 *Disposition (c)*

- Certainty of objects
 - Mere power
 - 'may'
 - 'absolute discretion'
 - Trustees don't have to distribute the money
 - Discretion as to how, as well
 - Therefore, criterion certainty (*Re Gulbenkian*)
 - Has X shown love and devotion towards Simon throughout his life?
 - Evidentiary uncertainty (finding everyone) not fatal to certainty
 - Semantic ambiguity:
 - Love
 - Devotion
 - How to determine if X's conduct 'shows' love and devotion?
 - Are both required, or either? ('and')
 - Visible actions?
 - Or internal emotions?
 - Linguistic uncertainty — either conduct or attitudes may be required
 - Like *Re Gulbenkian*, seems uncertain
 - Or, should (c) be interpreted as vesting in Tracy the power to determine who has 'shown' these qualities
 - Can't delegate disposition-making power
 - Only applies to powers in wills

- Invalid
 - Consequences considered below

4 Disposition (d)

- Certainty of objects
 - Trust for persons (not purposes)
 - 'to anyone ... except ...'
 - Discretionary trust:
 - the residuary (must be exhausted)
 - 'shall pay'
 - Certainty of objects is an issue
 - *McPhail v Doulton*
 - Does it satisfy criterion certainty test?
 - If so, is it administratively workable?
 - Criterion certainty:
 - X is in the world
 - X does not support right-wing politics
 - Ambiguous
 - 'support'
 - Public statements?
 - Opinions or beliefs? Voting records?
 - Difficulty of determining not a bar
 - Passive or active 'non-support'?
 - 'right-wing'
 - Liberal or Labour? What political parties?
 - Probably insufficient criteria
 - But even if a suitable criterion exists, administrative unworkability is probably a requirement (loose class)
 - Probably unworkable: *McPhail*; seemingly accepted in *McCracken*
 - Arguably larger than the Greater London example
 - Onerous duties
 - But technical advances — status of the requirement unclear
 - Although the class of potential beneficiaries is enormous, the number of actual payees could be small
 - Trustees can choose from anyone, but need only pay to anyone, not everyone
 - But still need to consider the entire class
 - But cf *Horan v James*: not applied — perhaps not a requirement in Australia
 - Even if workable, may impermissibly delegate will-making power to T by giving too much discretion about how to distribute residuary (*Horan v James*)
 - Probably invalid by lack of adequate criterion
 - Even if valid criteria, probably unworkable

C *Effect of Invalidity*

Each disposition (a) through (d) creates a separate trust, constituting T as trustee.

Because aspects of dispositions (a), (c) and (d) are likely to be invalid, the entirety of these trusts will fail. Nevertheless, disposition (b) may still be valid.

Because there is a residuary clause, the money under invalid dispositions (a) and (c) will go to the beneficiary under that clause.

However, since the residuary clause is also likely to fail, it will be held on automatic resulting trust for Simon's estate, and will probably go to his next of kin by partial intestacy.

D *Wrongful Distributions*

Note: group with first part of answer. Do not separate into multiple sections.

Distributions made by T under an invalid disposition will be invalid.

- 1 *Purported distribution under (a)*
 - Is the distribution wrongful?
 - Invalidity of (a) does not entitle T to take money that would go into the residuary pool
 - Breach of trust: misappropriation of trust property
 - Clearly a breach of fiduciary duty, and breach of trust
 - Trustee's duty is to make restitution to the estate of misapplied funds
 - Estate entitled to equitable compensation
 - Personal remedy secured by equitable lien
 - Can the estate trace into the money?
 - *Re Hallett*: assume first money withdrawn is T's
 - Based on a naïve equitable assumption that fiduciaries act honestly: they are presumed to spend their own money not that of their beneficiaries
 - Therefore, \$10 000 of the remaining \$20 000 belonged to the estate
 - Or *Re Oatway*: dissipated assets presumed to belong to breaching party
 - In combination, estate has at least a half interest in the shares purchased
 - *Scott v Scott, Foskett*:
 - Estate entitled to a proportionate increase in value in line with the shares' increase in value
 - Can get compensation (\$10 000) or account of profits (\$30 000)
 - Cannot be secured by lien since no fixed property over which it could be secured

- Since dealing with fungible shares, court more likely to favour account of profits
 - Shares are severable, so estate could also elect to take half of the shares
 - Or: reasoning in *Boardman v Phipps* — fiduciaries should not profit at all from their breach:
 - All the profit should accrue to the estate
 - T receives her \$10 000 back, but not profit
 - Thus, \$50 000 to the estate
 - A constructive trust over all the shares, subject to return of the \$10 000
 - Best pursued if the shares are likely to rise in value
 - Or held by T in some other proportion (50/50), as in *Foskett*
 - Risk that shares will fall in value after judgment but before sale by estate
 - (Speculative argument: not decided in *Scott* or *Foskett* — just a proportionate increase to the estate)
 - But there: property was not fungible (house)
 - Without the money taken in breach, fiduciary could not have purchased the asset at all
 - In such a case, the fiduciary is still getting a profit from their share in the house's increased value
 - Shares: breaching trustee might herself have been able to purchase the shares without breach of duty
 - House: investment would not have been possible but for the breach
 - Suggests *Boardman* approach more applicable to houses than fungible property

2 Purported distribution under (b)

- Was there an intention to create a trust to C?
 - Substance not form — can be created without using the language of trusts (*Paul v Constance*)
 - Birthday card
 - Statement in card — 'for your enjoyment'
 - Probably suggests intention to create trustee relationship
 - Birthday context — also suggests gift of beneficial interest
- Formality requirements
 - Personalty, not land, so does not fall within s 53(1)(b) of *PLA*
 - May be manifested in writing and signed anyway ('Love Simon'), but not necessary
- Therefore, previous trust probably created in favour of C
 - S declared himself trustee of the train set
 - Therefore not S's to gift to O later
 - Therefore, distribution to O was improper
- Breach of fiduciary duty by T
 - Misapplication of trust property

- C can claim against O
 - Personal claim in *Re Diplock*: wrongful recipient under a will
 - Strict liability
 - But must sue breaching fiduciary first
 - Personal liability: receipt of trust property
 - First limb of *Barnes v Addy*
 - However, O probably innocent: no knowledge, so unlikely to succeed unless strict liability approach adopted
 - Proprietary remedy: tracing into the train set
 - Would allow C to get the train set back
 - No defences apply: volunteer, no change of position
 - Direct tracing available
 - Technically 'following' (see Lionel Smith; Lord Millett in *Foskett*)
 - C and follow the train set into O's hands

- C can claim against T
 - Breach of fiduciary duty
 - Equitable compensation

- Best option: trace directly into O's hands — get it back

3 *Purported distribution under (c)*

- Because clause is invalid, distribution must be wrongful
 - Therefore, payment to J is invalid

- Estate (or residuary legatee) can sue:
 - T for breach of fiduciary duty
 - Equitable compensation — repay \$200 000 to the estate
 - No proprietary remedy since no assets in hands
 - J under *Re Diplock*
 - Strict liability — must repay money since wrongfully received
 - (Personal claim)
 - Must sue T first
 - Subject to defence of good faith change of position
 - J for knowing receipt of trust property (*Barnes v Addy*, first limb)
 - Only possible if strict liability — no knowledge of improper distribution — note defences (below)
 - Therefore unlikely to succeed
 - Proprietary claim against J: tracing
 - Volunteer
 - Repayment of mortgage
 - Money used to repay a debt untraceable: *Re Diplock*
 - *Gertch v Atsetz* (money paid under a forged will): subrogation of debt — possible tracing claim, assuming this is accepted
 - Suggests traceable into J's house
 - Defences
 - Good faith change of position: university and job
 - *Gertch*: giving up job can be detriment
 - Studying at university? Probably not a detriment (future employability): *Gertch*

- Probably a net detriment
- Everyday living expenses don't count as a detrimental change of position

4 *Purported distribution under (d)*

- Clause is invalid, so distribution to A must be invalid
- Personal claim: *Re Diplock*
- Possible *Barnes v Addy* claim (but unlikely to be knowledge)
- Tracing — need more information; don't know whether available

Note: failure to consider the exercise of a mere power can amount to breach of trust (*Re Gulbenkian*).

III Section B, Question 4

A Introduction

Issues:

- Creation of express trust
- Resulting trust
- Breach of trust/fiduciary duty
- Third party liability
- Remedies

B Creation of Express Trust

- Grigor ('G') is legal owner of the account
- Opened 'for both of them' (similar to *Paul v Constance*)
- Can be intention to create express trust even though not framed in language of 'trusts'
- In *Paul*: 50/50 beneficial interests were deemed
- Here, a trust for both of them — not to be divided

C Resulting Trust

- G contributes 80 000
- Leila ('L') contributes 20 000
- L makes voluntary transfer to *de facto* partner
- Therefore, applying presumption of resulting trust, G holds on resulting trust for L (*Calverley v Green*)
- Rebutted by evidence: intention was to gift — a contribution to the account (cf *Cummins*)
- Why pay money into that particular trust account if not to pay into the trust's purpose?

D Misapplication of Trust Money

- Assuming the trust is validly constituted, we turn to examine each payment out of the account
 - 1 \$10 000: American holiday
 - No breach of trust
 - Funds being used for their purpose
 - 2 \$20 000: gambling
 - (a) Start with G's liability
 - G liable as trustee for breach of trust
 - G under equitable duty to make restitution of trust money

- \$20 000 + interest (*You Yang v Minter Ellison*)
- (b) Casino
- Tracing impracticable — funds dissipated
 - Knowing receipt?
 - Insufficient knowledge (*Koorootang Nominees v ANZ*: knowing facts indicating breach of fiduciary duty to a reasonable person)
 - Unless strict liability used (*Say Dee v Farah*)
- 3 \$50 000: investment
- G liable for breach of trust: misapplied trust funds
 - Liable to pay equitable compensation of the \$50 000
 - Better remedy: account of profits (\$150 000): *Scott v Scott*
- 4 \$75 000: share sale
- Tracing into D's hands
 - Not possible since used in payment of a debt by D (*Re Diplock*)
 - Though this limitation has been criticised
 - Nevertheless, untraceable
 - Personal remedy against D
 - Knowing receipt of trust property: *Barnes v Addy*
 - Knowledge is an issue
 - Which test would be applied?
 - Actual knowledge: not present here
 - Constructive knowledge: possibly (*Koorootang*)
 - 'Family money'
 - Should make D suspicious
 - Strict liability: definitely (*Say Dee*)
- 5 \$75 000: payment of mortgage
- Tracing money into home (*Gertch*)
 - But does L want to trace into a home in which she lives?
- 6 Remaining money
- Money left in Z account assumed to be L's; at least, for holidays involving L (since owned jointly)

E Conclusion

- ...
- Can get account of profits over shares
 - Cannot trace into D

- But can sue D for knowing receipt
 - Can trace into G's house
- L entitled to remaining funds

III Section B, Question 5

A *Introduction*

B *The Nature of Conscience*

C *Normative Themes in Equity*

1 *History*

2 *Maxims*

3 *Unconscionability*

4 *Materialism*

D *Specific Doctrines*

1 *Fiduciary duties*

- Case examples

2 *Resulting trusts*

- Illegality
 - Conscience of the person claiming
 - Conscience of the court

3 *Trusts*

- Equity permitting tax minimisation

E *Conclusion: Conscience Subservient*

III Section B, Question 6

A *Introduction*

Necessary to support non-profit organisations by affording wider recognition to charitable purpose trusts in equity.

B *Current Definition of Charity*

C *Problems with Current Approach*

- 1 *Political purposes*
- 2 *Outdated statute*
- 3 *Other problems*

D *Reform Possibilities*

E *Conclusion*