

EQUITY AND TRUSTS GUIDEBOOK

SECOND EDITION

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MULTIPLE CHOICE QUESTIONS – CHAPTERS 1- 12

SOLUTIONS

CHAPTER 1

1. Which of the following statements is the best explanation of ‘equity’?

C. Equity refers to the principles that were initially created by the English High Court.

2. The judicature system brought significant changes. Which one of the following statements is the most accurate?

C. Every state in Australia enacted legislation.

3. Complete the sentence. The phrase ‘against the conscience’ refers to...

B. a recurring theme throughout equity.

4. Complete the sentence. The decision in *Harris v Digital Pulse Pty Ltd* (2003) 56 NSWLR 298 is significant because...

A. it is a recent example of a fusion fallacy.

5. Complete the sentence. The equitable maxims are useful when answering legal problems because they indicate:

C. how equity developed, and provide guidance.

6. Equity is based upon the concept of ‘unconscionability’, that is to say...

B. abuse of positions of confidence, insisting upon rights in circumstances that are harsh, the inequitable denial of obligations and the unjust retention of property.

7. Complete the sentence: 'Circumstances of inequality do not of themselves call for the intervention of equity. It is...

B. the concept of unfair advantage being taken of serious inequality that is central to the notion of unconscionable conduct. It must be established that it would be against the conscience for a court of equity not to acknowledge what has occurred between the parties.'

8. The judicature system has been adopted throughout Australia. Which Australian jurisdiction was the first and which was the last to do so?

B. South Australia was the first and New South Wales was the last.

9. Which of the following statements is most accurate?

B. Equity follows the law, equity is equality and equity acts *in personam*.

10. Which of the following statements is the best explanation of the judicature system?

B. Procedure was fused and both common law and equitable principles could now be administered by the one court.

1. Which of the following statements most accurately explains equitable interests?

C. They arise when equity needs to give effect to its doctrines and principles.

2. Complete the sentence. Equitable interests are recognised...

A. in equity but not by the common law.

3. Which one of the following statements most accurately explains personal property?

C. Personal property comprises both tangible items (choses in possession) such as a debt and intangible items (choses in action) such as a car.

4. Complete the sentence. An equitable interest may be ...

A. personal, proprietary or a mere equity.

5. Which one of the following statements most accurately explains the concept of property?

A. Property comprises both real (land and fixtures) and personal (chattels). Personal property can then be classified as intangible (choses in action) and tangible (choses in possession).

6. Which of the following statements is the most accurate?

A. 'Equity in fact calls into existence and protects equitable rights and interests in property only where their recognition has been found to be required in order to give effect to its doctrines'.

7. Which of the following statements is the most accurate?

D. 'The general rule is that legal interest will take priority, where there is a bona fide purchaser who does not have notice of the prior equitable interest. This includes actual and constructive notice.'

8. Which of the following statements is the most accurate?

C. 'In some cases the court may see that what the testator intended was to attach a charge or a trust upon the property, in other cases it may include a personal liability is intended. The view taken would depend partly on the language used to describe the obligation, and partly on the nature of the obligation.'

9. Complete the phrase: 'Circumstances of inequality do not of themselves call for the intervention of equity. It is...

B. the concept of unfair advantage being taken of serious inequality that is central to the notion of unconscionable conduct. It must be established that it would be against the conscience for a court of equity not to acknowledge what has occurred between the parties.'

10. Equity is based upon the concept of 'unconscionability', that is to say,

B. abuse of positions of confidence, insisting upon rights in circumstances that are harsh, the inequitable denial of obligations and the unjust retention of property.

1. Which of the following statements most accurately explains an assignment?

D. An assignment is the immediate transfer of an existing proprietary right, vested or contingent, from the assignor to the assignee.

2. Complete the sentence. Writing is required when ...

A. an interest in real property is involved in a dealing.

3. Interests that cannot be dealt with include which of the following?

B. Future property when it is a mere expectancy.

4. Complete the sentence. When making a declaration of trust ...

B. the three certainties must be satisfied.

5. What does the law require to be satisfied when a chose in action is purportedly being assigned?

C. It must be absolute, reduced to writing, and notice must be given to the debtor.

6. In *Shepherd v Federal Commissioner of Taxation* (1965) 113 CLR 385, a distributor was granted a licence to manufacture castors in return for a monthly payment of 5% of the sale price. He then purported voluntarily to assign 'all [his] rights title and interest in and to an amount equal to ninety per centum of the royalties which may accrue during a period of three years from the date of this assignment'. Which of the following statements is the most accurate?

D. The decision is significant because the High Court of Australia held in favour of the taxpayer since the purported assignment involved future property. The purported assignment was ineffective in the absence of consideration.

7. In *Anning v Anning* (1907) 4 CLR 1049, a settlor who was close to death purportedly assigned via a deed his personal estate to his wife and children. The property included both real and personal property. Each item except for an interest in partnership (only equitable) could have been dealt with at law. The question before the court was whether a purported assignment that failed at law would be effectively assigned in equity.

How did the High Court of Australia decide the matter?

A. Griffith CJ referred to *Milroy v Lord* (1862) 4 De GF & J 264 in that the settlor had to do 'everything that was necessary to be done'—those things that only the settlor could do. In his opinion the assignment was effective in equity, since notice, which was required by statute, could be given by someone else. Isaacs J held that the assignment was ineffective in equity unless it was for valuable consideration. All requirements must be met if it is to be effective in equity. Higgins J held that the assignment was ineffective since notice as required by law was something that only the assignor could do.

8. In *Milroy v Lord* (1862) 4 De GF & J 264, Thomas Medley voluntarily assigned 50,000 shares to Lord, to be held on trust for Milroy, but the register was never updated. Medley lived for a further three years. The question for the court was whether anything had been effectively achieved in law or equity for the shares to have formed part of the estate. Which of the following statements is correct?

A. Turner LJ held that the shares did form part of the estate. For a voluntary settlement to be valid: (i) 'the settlor must have done everything which was necessary to be done to transfer the property' and (ii) 'if settlement is intended to be effected by a particular mode, the court will not give effect to it by applying another form'.

9. In *Corin v Patton* (1990) 169 CLR 540, Mr and Mrs Patton held Torrens title land as joint tenants. Mrs Patton was seriously ill and did not want her property passing to Mr Patton (right of survivorship). She preferred her property to be given to the children. In an effort to break the joint tenancy, she assigned her interest. Three documents were executed:

- A memorandum of transfer was completed in favour of her brother, Mr Corin, subject to a mortgage with the State Bank of New South Wales, which held the certificate of title.
- A trust deed indicated that he held the property in favour of Mrs Patton.
- The will of Mrs Patton gave her estate in equal shares to the children.

When Mrs Patton died, the transfer had not been registered nor had any other steps been completed. Which of the following statements is correct?

A. The case is significant because nothing had been achieved at law or in equity. The most liberal view in *Anning v Anning* (1907) 4 CLR 1049 was that of Griffith CJ, which would have required the production of the title documents—something that only Mrs Patton could do.

10. In *Norman v Federal Commissioner of Taxation* (1963) 109 CLR 9, a purported assignee was entitled to receive dividends on certain company shares and interest on a loan. The terms of the loan agreement permitted the debtor to pay out the balance at any time without notice. The Taxation Commissioner considered the purported voluntary assignment to be ineffective to avoid the payment of tax. The question before the court was whether the property could be classified as either future or presently existing property.

Which of the following statements is accurate?

A. There was a unanimous decision with respect to the dividends being regarded as future property—a mere expectancy. The directors of the company could not be compelled to pay a dividend. The majority of the court, comprising Dixon CJ, Menzies and Owen JJ, considered the interest on the loan to be future property since it could be repaid at any time without notice. The minority, comprising Windeyer and McTiernan JJ, held that the interest was a present right to receive interest that was payable in the future.

1. Which of the following statements most accurately explains undue influence?

D. It protects the vulnerable and is concerned with the nature and quality of consent.

2. Complete the sentence. The 'wife's special equity'...

A. arises in the context of relationships that have a presumption of undue influence. The onus is on the party benefiting from the transaction to establish that no undue influence was apparent.

3. Which of the following is the most accurate description of unconscionable conduct?

B. It is very similar to undue influence and estoppel.

4. Complete the sentence. Equitable estoppel...

A. was defined by Deane J in *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387 and comprises six elements.

5. Complete the sentence. The phrase 'against the conscience' refers to...

B. a recurring theme throughout equity.

6. *Louth v Diprose* (1992) 175 CLR 621 is a significant decision because

C. the lack of education is a factor in establishing undue influence but infatuation was enough for the court to set aside the transaction in favour of the 40-year-old solicitor.

7. The decision in *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd* (2003) 197 ALR 153 involved the following:

A. The trial judge, French J held that Mr & Mrs Roberts were under a 'special disadvantage' because of their situation. Before the Federal Court the decision was overturned. On a subsequent appeal, the High Court of Australia agreed with the Full Federal Court in deciding that no unconscionable conduct occurred. The majority considered that in all commercial bargaining there are differences in bargaining power and that this was no exception.

8. Equity is based upon the concept of 'unconscionability', that is to say,

B. abuse of positions of confidence, insisting upon rights in circumstances that are harsh, the inequitable denial of obligations and the unjust retention of property.

9. Complete the phrase: 'Circumstances of inequality do not of themselves call for the intervention of equity. It is...

B. the concept of unfair advantage being taken of serious inequality that is central to the notion of unconscionable conduct. It must be established that it would be against the conscience for a court of equity not to acknowledge what has occurred between the parties.'

10. In *Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387 Brennan J identified the following elements with regard to the doctrine of estoppel:*

A. The parties were in a pre-existing legal relationship or they were about to enter into a legal relationship. The defendant induced the plaintiff to make an assumption that certain things were to occur. The plaintiff conducted their affairs in reliance on this expectation. The defendant knew or ought to have known what the plaintiff was doing. The plaintiff suffered detriment. The defendant failed to minimise the detriment.

1. Which of the following statements most accurately explains fiduciary obligations?

A. Fiduciary obligations arise from the 'position of the parties'.

2. Another way of explaining fiduciary obligations would be to indicate that where they arise:

B. the party who is a fiduciary must avoid any conflict of interest and any profit acquired is held under a constructive trust in favour of the party to whom fiduciary obligations are owed.

3. Complete the sentence. Joint venturers are...

C. fiduciaries depending upon the circumstances.

4. Complete the sentence. Confidential information only occurs...

C. when information is subject to an obligation of confidence.

5. Complete the sentence. Information subject to an obligation of confidence may be...

C. expressly stated, an implied term or arise because equity would acknowledge that the information has been received in confidence.

6. Which is the most accurate statement with regard to protecting privacy?

D. Specific privacy legislation has been enacted in most Australian jurisdictions except South Australia and Western Australia.

7. Complete the sentence: A charter of rights and responsibilities...

D. has been enacted in the Australian Capital Territory and Victoria.

8. Equity provides little protection for confidential information, unless...

A. the nature of the relationship is established and how the information is communicated is assessed.

9. Complete the phrase: 'Circumstances of inequality do not of themselves call for the intervention of equity. It is ...

B. the concept of unfair advantage being taken of serious inequality that is central to the notion of unconscionable conduct. It must be established that it would be against the conscience for a court of equity not to acknowledge what has occurred between the parties.'

10. Equity is based upon the concept of 'unconscionability', that is to say,

B. abuse of positions of confidence, insisting upon rights in circumstances that are harsh, the inequitable denial of obligations and the unjust retention of property.

1. Which of the following statements most accurately explains a trust?

A. Property held by one person in favour of another person.

2. Complete the sentence. Trustees are fiduciaries...

A. but not all fiduciaries are trustees.

3. In creating an express trust which of the following must occur?

C. The 'three certainties' must be satisfied, and it must be completely constituted.

4. Complete the sentence. Powers of appointment create problems because...

B. hybrid testamentary powers in discretionary trusts infringe the principle prohibiting the delegation of will-making power.

5. Complete the sentence. 'Precatory' words ...

B. are not required when creating a trust.

6. In *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, a company lacked sufficient funds to pay a share dividend that had already been declared. A loan agreement was entered into and the funds were placed in a special bank account. The company then went into liquidation and the share dividend was not paid. Which of the following statements is accurate with regard to how the matter was resolved?

A. The House of Lords held that given the mutual intention of all the relevant parties, an express trust had been created. When the funds could no longer be used to pay the dividend, the monies were held under a resulting trust in favour of the creditor.

7. 'Complete constitution' of a trust may be achieved...

D. four ways: by the declaration of a trust, the transfer of property by *inter vivos*, by a testamentary or post mortem expression of intention and by a direction to a trustee.

8. In *Re Baden's Deed Trusts, McPhail v Doulton* [1971] AC 424, a settlor created a trust, which gave discretion to the trustees to use the net income of the property for the benefit of the staff or former staff of a particular company, their 'relatives' and 'dependants'. The executors claimed that since it was a trust power it was void for uncertainty as it was impossible to ascertain the number of beneficiaries. Which of the following statements accurately indicates how the matter was decided?

A. The House of Lords unanimously considered it a trust power. The majority, comprising Viscount Dilhorne, Lord Reid and Lord Wilberforce, pronounced the 'criterion of certainty' test: whether it was possible to indicate that a particular person was a member of the class. Lord Wilberforce also made a distinction between linguistic/semantic uncertainty and

evidentiary uncertainty. The trust may fail under the former because the language is too vague. In the latter, it may simply be an evidentiary problem. Lord Wilberforce also noted that a trust power might also fail if the trust was administratively unworkable.

9. A post mortem or testamentary trust must satisfy the statutory requirements for the creation of a valid will. They are:

A. it must be in writing, signed by the testator and witnessed by two people.

10. Complete the phrase: 'Circumstances of inequality do not of themselves call for the intervention of equity. It is ...

B. the concept of unfair advantage being taken of serious inequality that is central to the notion of unconscionable conduct. It must be established that it would be against the conscience for a court of equity not to acknowledge what has occurred between the parties.'

1. Which of the following statements is the best explanation of a charitable trust?

B. A charitable trust is a form of an express trust where a charitable purpose replaces beneficiaries.

2. Complete the sentence. The preamble to the *Statute of Charitable Uses 1601* is a 'shopping list' of charitable purposes. Lord Justice McNaughten in *Pemsel* noted four classes of charitable trusts:

C. relief of poverty, advancement of education, advancement of religion and other purposes beneficial to the community.

3. Complete the sentence. The phrase 'against the conscience' refers to...

B. a recurring theme throughout equity.

4. Complete the sentence. A cy-près scheme enables...

C. the court to sever or read down charitable purposes that are illegal, impracticable or impossible to be fulfilled if there is a general charitable intention.

5. Complete the sentence. Where a trust has both charitable and non-charitable purposes...

C. the trust fails but may be saved by legislation.

6. Trusts for political purposes are charitable. Which statement below is correct?

C. Under the common law, they are not if they seek to bring about a change in the law. Commonwealth legislation now provides a means for this activity to be considered charitable.

7. Legislation concerning charitable activities has recently been enacted by the Commonwealth. Which of the following statements is the best explanation of this development?

C. The statute embraces and extends existing charitable principles.

8. In *Church of the New Faith v Commissioner of Payroll Tax* (1983) 154 CLR 120, the issue was the meaning of religion. Which of the following statements accurately reflects the decision of the High Court of Australia?

A. Mason ACJ and Brennan J held that religion involves two elements: a belief in a 'supernatural being, thing or principle' and 'canons of conduct in order to give effect to that belief'. Murphy J extended this approach by indicating the list of religions is not closed. Murphy J considered that freedom of religion was a critical part of Australian society and not a matter for the courts. Wilson and Deane JJ noted that there are additional criteria such as that the ways of behaving must have some spiritual significance, the group must be

recognisable and the participants must consider themselves to be practising a particular religion.

9. In *Re Lysaght (Dec'd)* [1966] Ch 191, a testatrix provided funds to establish a series of scholarships for British-born students who were not of Roman Catholic or Jewish faiths to attend the Royal College of Surgeons. The College rejected the gift and sought assistance from the Court. Which of the statements is correct?

B. The case is significant since the court found a general charitable intention by the testatrix. This is the essential part of a cy-près scheme that enabled the severing of the religious discriminatory part of the gift.

10. Commonwealth legislation has greatly assisted charities and not-for-profit entities. Which of the following statements is correct?

D. The legislation reflects society's changing values as to what is charitable. It expands the common law definition of charity and operates throughout Australia as a national scheme. It also provides for greater accountability and confidence by such entities.

1. Which of the following statements most accurately explains a resulting trust?

A. Property held by one person in favour of another person.

2. Complete the sentence. A resulting trust is imposed by law...

C. automatically: where there is non-disposal of the beneficial interest, and this may arise where an express trust has failed or there is a surplus of property after a non-charitable trust has been satisfied. Alternatively, a resulting trust may come into operation based upon the presumed intention between the parties.

3. In creating an express trust, which of the following is true?

C. The three certainties must be present and it must be completely constituted.

4. Is a resulting trust subject to the statutory requirements of writing?

C. No.

5. Complete the sentence. Illegality...

B. may be used to rebut the presumption of advancement but it is dependent upon statutory interpretation.

6. In *Re Gillingham Bus Disaster Fund* [1958] Ch 300, a memorial fund was created after twenty-four Royal Marine cadets were killed in a motor vehicle crash. Contributions were received from the local people. A trust was established by the mayors of the affected towns 'to defray funeral expenses, care for the disabled and such worthy causes ...'. A total of £9000 was collected, with a surplus of £6000. Clarification was sought as to what was understood by the term 'and such worthy causes'.

How did the court decide the matter?

A. Harman J held that the trust failed for uncertainty. His Honour considered that an inquiry should be undertaken to ascertain the identities of the donors. His Honour noted that a *cy-près* scheme should not be applied. Such a scheme would involve a variation of the creator's intention and this could only take place where there was a general charitable intention.

7. In *Re West Sussex Constabulary's Widows, Children & Benevolent (1930) Trust Funds* [1971] Ch 1, two police forces were to be merged. Money in their trust funds had been obtained from three different sources:

- gifts and legacies (personal property under a will)
- street collections
- money that was raised in sweepstakes.

The question before the court involved the status of the funds collected when there was a surplus after the non-charitable purpose had been fulfilled. How did the court resolve the matter?

B. Gough J noted that the identities of the people who contributed to the first category (gifts and legacies) were known, so the property was held under a resulting trust. Contributions in the second category (street collections) were given anonymously, so the surplus would be directed to the Crown. The third category (sweepstakes), in which raffle tickets were purchased, was a simple contract. People bought a chance to win—it was out and out.

8. In *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, Rolls Razor Ltd sought to raise £200,000 to pay share dividends that had already been declared. The funds were borrowed from Quistclose Investments Ltd and placed into a separate account with Barclays Bank. Before the dividends were paid, Rolls Razor Ltd went into liquidation. There was competition between Barclays Bank and Quistclose Investments Ltd. Barclays Bank sought to use the money to cover other Rolls Razor debts. Quistclose claimed the money under a resulting trust when the purpose of the trust could not be performed. How did the court decide the matter?

A. Wilberforce LJ noted the mutual interest of Rolls Razor and Quistclose was critical in determining whether a trust existed. Emphasis was placed on the particular terms of the loan that indicated that the funds were to be used exclusively for a defined purpose. Discussion also focused on a primary trust being established on behalf of the shareholders, and when that trust could not proceed, a second trust arose in favour of Quistclose.

9. Complete the sentence: The phrase ‘against the conscience’ refers to...

B. a recurring theme throughout equity.

10. Equity is based upon the concept of ‘unconscionability’, that is to say,

B. abuse of positions of confidence, insisting upon rights in circumstances that are harsh, the inequitable denial of obligations and the unjust retention of property.

1. Which of the following statements most accurately explains the differences between an express trust and a constructive trust?

C. Constructive trusts are imposed by law, are largely contrary to the intentions of the parties and are not subject to the statutory requirements of writing.

2. Which of the following statements most accurately explains the differences between a resulting trust and a constructive trust?

C. Resulting trusts, like constructive trusts, arise through the operation of law, but the latter come into existence when it would be contrary to equitable principles to deny the existence of the trust.

3. In *Barnes v Addy* (1874) LR 9 Ch App 244 the House of Lords identified two limbs by which third parties may be held responsible under a constructive trust. Which of the following statements is most accurate?

D. Under the second limb, more is required than under the first limb.

4. The High Court of Australia in *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22 had an opportunity to review their earlier decision in *Consul Development Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373. This enabled the court to do which of the following?

B. Revisit the same issues and endorse the decision in *Consul Development Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373.

5. De facto/domestic relationships are considered in which of the following matters?

D. *Baumgartner v Baumgartner* (1987) 164 CLR 137, *Muschinski v Dodds* (1985) 160 CLR 583, *Green v Green* (1989) 17 NSWLR 343 and *Calverley v Green* (1984) 155 CLR 242.

6. In *Giumelli v Giumelli* (1999) 196 CLR 101, Mr and Mrs Giumelli operated an orchard in partnership. They encouraged their son Robert to work in the business without receiving remuneration with the promise that he would receive an unspecified part of the land. The agreement allowed Robert to build a house or subdivide the portion of property. Robert's first marriage broke down in 1981 and he later remarried. His parents disapproved of his new wife and refused to transfer the land. The issue involved the imposition of a constructive trust as a remedy based upon the doctrine of estoppel.

Which of the following statements accurately describes how the matter was resolved?

A. The Supreme Court of Western Australia imposed a constructive trust over the entire orchard, to secure the transfer of the promised land. On appeal before the High Court of Australia, Gleeson CJ, McHugh, Gummow and Callinan JJ (with Kirby J in agreement) upheld the finding of detriment in acting in reliance on the promise to transfer land. The court considered that the imposition of a constructive trust was inappropriate since the partnership

was an ongoing business and other family members had made improvements to the land. The court ordered payment of money to represent the value of the agreement and it was to be a charge on the property until paid.

7. Selbourne LJ in *Barnes v Addy* (1874) LR 9 Ch App 244 noted that a third party may become liable as if they were a trustee, in which of the following circumstances?

A. If a stranger acts as a trustee without authority, if a third party receives trust property with the knowledge that it was held under a trust, or if a third party does not receive trust property, but has assisted the trustee in breaching their fiduciary obligations.

8. In *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22, the parties entered into a joint venture agreement to purchase and develop a parcel of land. The local council rejected two development applications as the land was too narrow for the proposed building. The principal of Farah Constructions, Mr Elias, and his wife and two daughters purchased adjoining properties. Mr Elias, who controlled Lesmint Pty Ltd, wanted to purchase the narrow land from Say-Dee. It was in these circumstances that a second limb *Barnes v Addy* situation arose.

Which of the following statements accurately describes how the court resolved the matter?

A. In the High Court of Australia, Gleeson CJ, Gummow, Heydon, Callinan and Crennan JJ endorsed the decision in *Consul Development*. Assistance in a dishonest and fraudulent design on behalf of the trustee or fiduciary is essential. In a second limb *Barnes v Addy* situation, a third party will be held responsible if they have:

- actual knowledge
- wilful shutting of one's eyes to the obvious
- wilful and reckless failure to make enquiries that a reasonable person would make
or
- knowledge of the facts that would have indicated the circumstances to a reasonable person.

9. Complete the phrase: 'Circumstances of inequality do not of themselves call for the intervention of equity. It is...'

B. the concept of unfair advantage being taken of serious inequality that is central to the notion of unconscionable conduct. It must be established that it would be against the conscience for a court of equity not to acknowledge what has occurred between the parties.'

10. Which of the following statements is accurate with respect to constructive trusts?

A. There are four types of constructive trusts:

- where equity gives effect to that which ought to be done.
- where property has been acquired under a transaction that is liable to be set aside in equity.
- where a profit has been made improperly by a fiduciary.
- where a third party, with or without receipt of trust property, participates with the requisite degree of knowledge in a breach of trust or other fiduciary duty.

1. Which of the following statements most accurately explains the role of a trustee?

D. The trust instrument, statute and the court define the role of a trustee.

2. Trustees are fiduciaries. This means they must avoid any conflict of interest, and any property that is acquired because of their position is held under a constructive trust.

Which of the following statements is correct with respect to third parties becoming a trustee/fiduciary?

B. There are certain circumstances whereby a third party may become effectively a trustee and as a consequence a fiduciary.

3. Complete the sentence. A beneficiary may bring a trust to an end when...

A. they are a sole beneficiary, who is of age and is entitled to an absolute interest.

4. Who can be a trustee?

D. Any person who is capable of holding property, a statutory trustee company or the public trustee/state trustee

5. Complete the sentence. Beneficiaries are entitled to receive information from trustees...

A. when it is a trust document.

6. Which of the following statements is correct with regard to the source of a trustee's powers and responsibilities?

D. The trust instrument, the court, the relevant trustee legislation for the particular jurisdiction and fiduciary obligations.

7. In *Hardoon v Belilios* [1901] AC 118, the registered holder of certain partly paid Hong Kong bank shares sought indemnification upon winding up the monies he was responsible for since he held the legal title. The beneficial interest in the shares was held by the defendant. The issue before the court was whether beneficiaries had to indemnify the trustees.

Which of the following statements most accurately describes the decision of the court?

A. The trustee's indemnity is not limited to trust assets. If funds are not sufficient then trustees can seek indemnity against the beneficiaries themselves. Trustee indemnity is available *in rem* and *in personam*.

8. The Supreme Court of Victoria in *JW Broomhead (Vic) Pty Ltd (in liq.) v JW Broomhead Pty Ltd* [1985] VR 891 extended the principle from *Hardoon v Belilios* [1901] AC 118 to apply to unit trusts.

B. Those unit trust holders who have not disowned the trust and who are sui juris (of age) and not bankrupt or insolvent must indemnify the trustee.

9. A third party or stranger may be held responsible under a constructive trust in which of the following circumstances?

D. In all of the above.

10. Which of the following statements most accurately summarises who can be a trustee?

D. Both (a) and (b) above.

1. Which of the following statements most accurately explains tracing?

C. Tracing is not a remedy, nor a cause of action.

2. Complete the sentence. A bona fide purchaser for value and without notice of the prior interest...

A. brings tracing to an end.

3. Complete the sentence. Tracing may take place where there is ...

C. a pre-existing fiduciary relationship or a proprietary equitable interest.

4. Complete the sentence. 'Pari passu' is...

D. a method of proportioning property according to the value of contributions when undertaking tracing in equity.

5. Complete the sentence. 'Money first in'...

D. is a principle derived from *Clayton's Case* (1816) 1 MER 572 and modified by *Re Hallett's Estate; Knatchbull v Hallett* (1880) 13 Ch D 696.

6. The House of Lords in *Re Diplock* [1948] 1 Ch 465 considered the following events. In 1936 a testator died and devised his residue estate to 'such charitable institutions or benevolent object or objects as his executors should in their absolute discretion think fit'. Approximately £210,000 was distributed to almost 200 charitable institutions over the next few years. The issue before the court was the ability to trace property where it is in the hands of a third party. Which of the following statements is an accurate description of the court's decision?

A. The property could be traced into the hands of a charity because they were volunteers,

- if the property had not been mixed with other property.
- if a charity had used the funds to refurbish or extend a building, then tracing could not occur.
- if a charity had used the funds to pay a creditor, then tracing could not continue.
- if the property was placed in a mixed fund, the rule in *Clayton's Case* (1816) 1 MER 572 would operate so 'money first deposited is assumed to be money first withdrawn'.

7. In *Foskett v McKeown* [2001] 1 AC 102 the English Court of Appeal considered these events. Approximately £2.6 million was put forward in an express trust to develop a number of properties in Spain. The funds were misappropriated and a proportion was used to pay the life insurance premium of a Mr Murphy. The trustee unfortunately subsequently committed suicide. The issue in question was that of

tracing into a mixed fund.

How did the court resolve the matter?

A. The English Court of Appeal held that the contributors were able to trace their property but they were not entitled to a pro-rata of the insurance proceeds. On appeal before the House of Lords, the majority comprising Lord Millet and Lord Browne-Wilkinson held that the contributors were entitled to a claim as a proportionate share of the proceeds on the basis of their contributions.

8. How do you apply the process of tracing?

B. Where tracing is available, apply *Re Hallett's Estate; Knatchbull v Hallett* (1880) 13 Ch D 696 and the principles in *Foskett v McKeown* [2000] 3 All ER 97. If the 'first in' principle is taken to its completion, it may be that the first beneficiary or proprietary equitable interest holder recovers their property. Any subsequent beneficiary or proprietary equitable interest holders would not recover any property because the fund has been exhausted. If the 'pari passu' or proportionate method is used, each beneficiary or proprietary equitable interest holder would be able to recover at least some of their property according to the nature of their contribution.

9. Complete the sentence: 'The High Court of Australia's decision in *Scott v Scott* (1963) 109 CLR 649 is significant' It is 'significant' because

A. it is an authority for the principle that beneficiaries are entitled to a proportionate share of profits if the asset that had been bought with their funds, as a breach of fiduciary obligations by the trustee, had increased in value.

10. Equity is based upon the concept of 'unconscionability', that is to say...

B. abuse of positions of confidence, insisting upon rights in circumstances that are harsh, the inequitable denial of obligations and the unjust retention of property.

1. Which of the following statements most accurately explains equitable relief?

C. Equitable relief is both flexible and discretionary—first consider whether damages at common law are adequate.

2. Complete the sentence. Injunctions, Mareva orders and Anton Piller orders are ...

B. separate equitable remedies.

3. Complete the sentence. When damages in equity are awarded...

D. they may be substituted for or in addition to an order for specific performance or an injunction.

4. Complete the sentence. Damages in equity are awarded...

B. to compensate.

5. Complete the sentence. A breach of fiduciary obligations may give rise to...

D. the imposition of a remedial constructive trust, an account of profits or damages in equity.

6. In *Harris v Digital Pulse Pty Ltd* [2003] 56 NSWLR 298, an employee who was a fiduciary benefited from the position when he established himself as a competitor to his employer. He was in breach of an express term in his contract and was dismissed. The employer sought exemplary damages. The trial judge, Palmer J in the New South Wales Supreme Court, ordered exemplary damages together with an account of profits. The matter was then appealed. The considered in what circumstances common law damages were available for a breach of fiduciary obligations. Which of the following statements accurately reflects the views of the New South Wales Court of Appeal?

A. Spigelman CJ and Heydon JA in the New South Wales Court of Appeal held that exemplary damages are not available for equitable wrongs. They emphasised the historical development of equity and noted that the *Judicature Act* only simplified procedure. It did not create new legal principles, so the decision would be the same. Mason P, in dissent, came to the view that the decision by Palmer J did not subvert any of equity's general doctrines.

7. In *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1, the landlord of a shopping centre sought to restrain a tenant, a supermarket, from breaking a 35-year lease with several years remaining. The English Court of Appeal had to determine if damages would be an appropriate remedy. How did the court resolve the matter?

C. Rich LJ at 296 noted that damages would not be an appropriate remedy since it would:

not compensate the plaintiffs [the landlord] for the disappearance of the supermarket, or for the effect of that on the other businesses in the shopping centre ... who assumed obligations

under their leases in reliance on there being a supermarket in the shopping centre and who will be adversely affected [and who] have no remedy against the defendants.

8. In *Coulls v Bagot's Trustee* (1967) 119 CLR 460, a contract gave a construction company the right to carry on a business on the property of Mr and Mrs Coulls. Royalties were to be paid to Mr and Mrs Coulls as joint tenants. Note that the contract was between Mr Coulls and the company. The matter came before the court when Mr Coulls died, as to whether the company should pay his estate or Mrs Coulls since she was the surviving joint tenant.

A. Since there had been no assignment of Mr Coulls' interest to his wife. Mrs Coulls was not privy to the contract and could not obtain relief. Barwick CJ and Windeyer J both considered the rights of Mrs Coulls as a third party to compel payment under the contract. Windeyer J at 503–4 noted that a party who has contracted for the conferral of a benefit to a third party is entitled to an order of specific performance compelling payment of that benefit, but the third party has no rights of her own.

9. In *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55, the plaintiffs were German manufacturers of frequency converters for use in computers. The defendants were agents for the manufacturers and were located in the United Kingdom. The plaintiffs claimed that the defendants were in secret communications with other German manufacturers and that they were passing on confidential information. The English Court of Appeal had to consider what was required in the circumstances for Equity to provide relief.

Which of the following statements accurately describes the decision by the court?

B. Ormond LJ noted at 62 that there are four elements that must be satisfied. First, there must be an extremely strong prima facie case; second, the likelihood of damage for the applicant must be very strong; and third, there must be clear evidence that the material is in the possession of the defendants and that there is a real possibility the information may be destroyed. The final or fourth requirement is that an undertaking as to damages must be made.

10. Complete the phrase: 'Circumstances of inequality do not of themselves call for the intervention of equity. It is...'

B. the concept of unfair advantage being taken of serious inequality that is central to the notion of unconscionable conduct. It must be established that it would be against the conscience for a court of equity not to acknowledge what has occurred between the parties.'