Issues arising in questions

Chapter 1

This question requires you to identify in general terms whether it is appropriate to give Brenda and Christopher a remedy in these circumstances and whether Equity can and should do so. In reliance on David's undertaking that he will transfer a sum of money to Brenda on Alan's death, Alan drafts his will to leave £10,000 to David. The problem is that, on the face of the will, this money belongs to David absolutely. Brenda and Christopher have no contractual rights to enforce and cannot sue David in tort. But it is not fair for David to receive this money for himself when he promised Alan that he would transfer the money to Brenda. Equity would characterize David's conduct as unconscionable, because he knew why Alan had left the money to him and what he should morally do. Consequently, Equity will recognize that David holds this money for Brenda, by means of a trust. This is a trust which operates outside the will by operation of law. It is known as a fully secret trust, because the existence of the trust is not disclosed in the will. Secret trusts are considered in more detail in Chapter 4.2(c)(iii), pp. 126-144.

Chapter 2

This question requires you to consider the nature of any rights which Alan might have in respect of both his dog and the money which he gives to Brian to buy shares. It is particularly important to determine whether the dog and the shares can be considered to be held on an express trust: Chapter 2.4(b)(i), p. 29.

As regards the dog, the key issue is whether it is held on trust by Brian for Alan, or whether it has simply been bailed to Brian to look after for Alan: Chapter 2.6(c), pp. 40-41. This will turn on Alan's intention. If the dog is held on trust, Alan's equitable proprietary interest in it will be defeated because the dog has been sold to Debbie, who will presumably be considered to be a bona fide purchaser for value (see further Chapter 18). Brian will, however, hold the purchase price on trust for Alan. If the dog has been bailed to Brian, Alan will be able to sue Debbie for the tort of conversion, but it is possible that the proceeds of sale will be held on trust for him, particularly since this money may have been used to buy some of the shares which will also be held on trust for him.

Since Alan has asked Brian to take £10,000 to buy shares for him, Brian may simply be described as an agent (Chapter 2.6(d), pp. 41-44), but may well be intended to hold the money and then the shares on trust for Alan. If the money was held on trust it does not matter that it has been credited to Brian's bank account which is already credited with Brian's money. Since Brian withdrew £20,000 from this account, this is likely to be presumed to be money in which Alan has a beneficial proprietary interest (as is considered in more detail in Chapter 18), representing both the money that Alan paid to Brian and the proceeds of sale of Clive, so that Brian will hold the shares in the company on trust for Alan, who will get the benefit of the increase in the value of the shares.

Chapter 3

This question requires you to consider problems relating to each of the 'three certainties'.

(i) Some consideration of certainty of intention might be warranted, but this is clearly established by the mandatory words used ('to be distributed'). The major issue

concerns certainty of objects under a discretionary trust – both as regards 'best friends' and 'relatives' – and whether Claire is able to 'cure' any conceptual or evidential uncertainty regarding 'best friends': this requires some discussion of *Re Tuck* etc. (Chapter 3.4(b)(i), pp. 101-102). You should also consider whether the entire clause should fail if 'best friends' can be made certain but not 'relatives', or whether it would be consistent with the intention of the testator to sever 'relatives'.

(ii) The focus here is on certainty of objects, and the fact that 10 of the 50 bottles of wine do not seem to have been clearly segregated as trust property. The issue revolves around whether the trust should therefore fail, and some consideration of *Hunter v Moss* and, in particular, *Re London Wine* is necessary (Chapter 3.3(c), pp. 76-85). Does it matter that the gift was made in a will rather than *inter vivos*? This issue was raised by Dillon LJ in *Hunter v Moss,* and subjected to critical discussion by Hayton (Chapter 3.3(c), pp. 79-80). Upon a testator's death the testator's interests in the property are automatically divested and the executor has to administer the estate. By contrast, if a purported settlor is alive, the key question is whether he or she has divested him or herself of an interest in the relevant property. Of course, *Hunter v Moss* concerned intangible property, whereas here tangible bottles of wine are concerned, and the significance of this distinction should also be discussed.

(iii) The first issue is whether a trust has been created. In contrast to (i), here Claire 'is able' to distribute the property, but does not necessarily have to. This suggests that the testator may have created a power but not a trust, and it should be determined whether or not the power is a fiduciary power or a mere, non-fiduciary power. If a power, some consideration of the test of capriciousness would be appropriate (Chapter 3.4(c), pp. 106-108), and if a trust, some discussion of 'administrative unworkability' (Chapter 3.4(b)(ii), pp. 103-105) might be expected.

(iv) Does 'the bulk' provide sufficient certainty of subject matter? *Palmer v Simmonds* said 'No'*,* but contrast e.g. *Re Golay* (Chapter 3.3(b), pp. 75-76).

(v) The important point here is that although (iv) probably fails for want of certainty of subject matter, (v) does not: the residue becomes sufficiently certain on the point of death (Chapter 3.3(d), p. 85).

If any of the gifts (i)-(iv) fail, then they will simply pass into the residue and be distributed according to (v).

Chapter 4

In answering this question, it is sensible to consider the land, the bicycle, and the shares separately. As regards the land, the problem is a lack of signed writing in accordance with section 53(1)(b) of the Law of Property Act 1925. Assuming that Richard cannot take title to the land beneficially, it is important to consider whether Richard holds the land for James' estate upon a resulting trust, or whether Richard holds the land on trust for Barry notwithstanding the lack of signed writing. If the latter, would this be an express or constructive trust? (See Chapter 4.2(b), pp. 119-124.)

James' giving Colin the keys to the lock on his bicycle may be sufficient to transfer the bike to Colin by way of a *donatio mortis causa*: the keys to the lock of the bike may fulfil the requirement that essential indicia of title be given to the donee (Chapter 4.3(f), pp. 167-168).

Legal title to the shares has not passed to Sarah and Jenna because the shares are not registered in their names. But if James has done all that he can to transfer the shares, then he may hold the shares on constructive trust for Sarah and Jenna. It is important to determine precisely when James' agent, Steve, gave the share transfer form to Sarah. If Sarah received the form before James' death, then the 'rule in *Re Rose*' will apply and a constructive trust arises (see Chapter 4.3(c)(i), pp. 152-155); the fact that the share form was only given to one of the two trustees is irrelevant (cf *T Choithram International SA v Pagarani* [2001] 1 WLR 1 (PC), Chapter 4.3(a), pp. 146-148). However, if James died before Steve provided Sarah with the share transfer form, then James' death would revoke his instructions to Steve to transfer the shares *unless* a constructive trust had already arisen on the basis of 'unconscionability' under *Pennington v Waine* (Chapter 4.3(c)(ii), pp. 155-160). This requires some consideration of the scope of the decision in *Pennington v Waine,* and whether or not it is satisfactory.

A further complication regarding the shares is that James had previously told Barry that he was to hold the shares on trust for Kate. This fails to satisfy the formality requirements of section 9 of the Wills Act 1837. Nevertheless, Barry may hold the shares on a fully secret trust (see chapter 4.2(c)(iii)(c), pp. 135-140).

Chapter 5

It is first necessary to consider whether the trust for the benefit of the employees is a charitable trust. This requires consideration of both charitable purpose and public benefit. Charitable purpose may be established with reference to the relief of poverty and the advancement of education. The benefit part of public benefit will be easily established, but the public component will be more difficult to identify (5.3(c)(ii)(b), pp. 199-200). This is because of the nexus between Alice and the employees of the company, although this is more likely to be significant as regards the educational rather than poverty purpose (compare *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 and *Dingle v Turner* [1972] AC 601). If one purpose is charitable and the other not, it might be possible to sever the non-charitable purpose. If the trust is charitable then, because the company has been wound up so that there are no longer any employees who might benefit, the trust fund should be applied *cy-près*. Since this concerns a subsequent failure of a charitable trust, the application of the doctrine will be straightforward. If, however, the trust fund is for a non-charitable purpose, it is likely to be void (see Chapter 6), so the fund will be held on resulting trust for Alice's estate following his death (see Chapter 8).

Chapter 6

This question requires careful consideration of property holding by unincorporated associations, and the consequences of dissolution of the association. Various possibilities are worth considering.

(i) The land and pavilion might be held on charitable purpose trust for the advancement of amateur sport, subject to satisfaction of the public benefit requirement (Chapter 5.4(g), pp. 241-244; Chapter 6.1(b), p. 285). If so, on dissolution of the association the property will be applied *cy-près* (Chapter 5.6, pp. 259-280; Chapter 6.4(b)(i), pp. 299-300).

(ii) If this was intended to be a non-charitable purpose trust, it is likely to be void, so that it will be held on an immediate resulting trust for Alan, unless it can be validated by

reference to the principle recognized in *Re Denley's Trust Deed* [1969] 1 Ch 373 (Chapter 6.2(a), pp. 287-288). Upon dissolution, the property will still be held on resulting trust for Alan's estate.

(iii) It is more likely that the property will be transferred to the members subject to their contractual rights (Chapter 6.4(b)(v), pp. 303-310). On dissolution, this property will be distributed amongst the relevant members at that time (*Re Horley Town FC* [2006] EWHC 2386 (Ch), [2006] WTLR 1817; Chapter 6.4(c)(ii)(c), pp. 317-321). It is then necessary to determine whether the assets will be distributed amongst all 11 members equally or whether their different categories of membership have an effect on their contractual right to distribution. It is likely that both categories of membership are entitled to share in the assets, although George will probably be excluded because he has failed to pay his subscription so should no longer be considered to be a member.

Chapter 7

The key issue in this question is whether Brenda and Clare have an equitable proprietary interest in the money which they paid to Alan; if so, they will have a priority claim to Alan's assets which rank above the claims of his unsecured creditors. They will be able to establish such a proprietary interest if they can show that Alan holds the money on constructive trust for each of them. The relevant trigger for a constructive trust might be Alan's unconscionable conduct (Chapter 7.2(a), pp. 330-336). This is unlikely to be established as regards the deposit taken from Clare, because this was received before Alan was aware of the difficulties in supplying cars. Clare will therefore only have a claim for breach of contract as an unsecured creditor. Her only hope is to assert a remedial constructive trust, but this is not recognised in English law (Chapter 7.3, pp. 355-358).

As regards Brenda, however, Alan was aware that he was unable to source the cars, but he still took the deposit. This can probably be characterised as unconscionable conduct, so that he holds the deposit on constructive trust for her (see *Re Farepak Foods and Gifts Ltd* [2006] EWHC 3272 (Ch); Chapter 7.2(a), p. 331). Consequently, her claim will rank above those of Alan's unsecured creditors.

Chapter 8

The first paragraph requires consideration of whether a resulting trust arises when Fred transfers his property to Steve and Bob. It may be that the presumption of advancement applies with respect to Steve as Fred's son (Chapter 8.2(c), p. 371) but a presumption of resulting trust applies to Bob as Fred's brother (Chapter 8.2(a), p. 366). Can these presumptions be rebutted? The difficulty here is that they may all be parties to an unlawful plan. Before *Patel v Mirza,* the law was that a person cannot rely upon evidence of his or her own illegality to rebut the presumption, but the father may have been able to rely upon the controversial decision of *Tribe v Tribe* and his 'withdrawal' from the illegal scheme. After *Patel v Mirza*, the court will take into account a range of factors when deciding whether the illegal conduct should prevent Fred from recovering his property (Chapter 8.2(d)(i), pp. 380-386).

The second paragraph squarely raises issues concerning '*Quistclose* trusts', and whether all the necessary requirements are met (Chapter 8.5, pp. 412-428). The question talks of a 'loan', but does Steve only have a personal right to recover the money lent? This

type of question invites consideration of what the law *should* be – and if a '*Quistclose* trust' does arise, what sort of trust is it?

Chapter 9

As regards the beneficial ownership of Greenacre, this is registered in the name of both Alan and Brenda. They each contribute one quarter of the purchase price from the sale of their own properties and obtain a mortgage loan for the remainder of the price. Alan and Brenda both pay the monthly mortgage payments initially, but, after Alan's accident, Brenda alone made the payments for over half the mortgage term. Because the property is registered in their joint names it will be presumed that they have a joint beneficial interest (*Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432; Chapter 9.2(b)(ii), p. 438). But since the responsibility for contribution to the mortgage payments changed in 2005, it might be possible to identify a change in the common intention, such that the presumption of joint beneficial ownership is rebutted at that stage: *Jones v Kernott* [2011] UKSC 53, [2012] 1 AC 776 (see Chapter 9.2(c)(iii), pp. 456-457). That decision might, however, be distinguished on the basis that Brenda became solely responsible for the mortgage payments because Alan lost his job rather than because their relationship, at least at that stage, had broken down. A change in the common intention might, consequently, only be identified on their separation in 2018.

Whiteacre is registered in the name of Alan only, even though both Alan and Brenda contributed one quarter of the purchase price and obtained a mortgage loan for the remainder. The monthly rent on the property is used to pay this mortgage. Because the property is registered in Alan's sole name it will be presumed that he has a sole beneficial interest in the property (Chapter 9.2 (b)(ii), p. 438). This presumption is rebuttable but, because Whiteacre has been purchased for investment purposes, it is unlikely that that there is an express or inferred common intention that the beneficial ownership will be different (see *Geary v Rankine* [2012] EWCA Civ 555, [2012] 2 FLR 1409; Chapter 9.2(c)(i), pp. 453-454). It might be possible instead to presume that the property is held on resulting trust for Alan and Brenda, the presumption being triggered by Brenda's contribution of one quarter of the purchase price plus, presumably, her joint liability in respect of mortgage payments if the rent was not sufficient to discharge this liability, so that she and Alan will have a joint beneficial interest in the property, but the recognition of the resulting trust in such circumsatnces is inconsistent with the sole focus on the common intention constructive trust following *Marr v Collie* [2017] UKPC 17, [2017] 2 FLR 674; Chapter 9.2.(c)(iv), pp. 457-459.

Chapter 10

This question is concerned with the rights of objects of a discretionary trust.

(i) The objects have no right to receive any part of the trust estate (Chapter 10.1(b)(i), pp. 493-294), but the trustees of a discretionary trust are required to exercise their discretion. Failure to do so constitutes a breach of trust, so the objects can ask a court to require the trustees to exercise their discretion, or to appoint new trustees, or even to authorise the distribution of trust assets (Chapter 10.1(b)(ii)(a), p. 494).

(ii) The objects have no right to see any letter of wishes provided by the settlor to the trustees, but the court does have a discretion to require disclosure of such a document if it is considered to be appropriate to do so (*Breakspear v Ackland* [2008] EWHC 220 (Ch), [2009] Ch 32; Chapter 10.1(b)(ii)(d), pp. 494-498).

(iii) The objects of a discretionary trust cannot compel the trustees to make a disposition to a person who is not an object of the trust. In principle, the beneficiaries might terminate the trust under the rule in *Saunders v Vautier* (1841) Cr and Ph 240 (Chapter 10.3(a), pp. 519-522) and then transfer money to their sister if they wish; this could be possible even though they are the objects of a discretionary trust (*Re Smith* [1928] Ch 915; Chapter 10.3(b), pp. 522-523). However, the rule in *Saunders v Vautier* is only available where all the objects agree and they are adults. Since one of the objects is 17, the rule is not applicable and the beneficiaries cannot ensure that any part of the trust fund is transferred to Georgina.

Chapter 11

In advising Brenda as regards the transfer to Charles, the crucial issue is whether it is possible to treat this as ineffective. Following the decision of the Supreme Court in *Pitt v Holt* [2013] UKSC 26, [2013] 2 AC 108; Chapter 11.7(g), pp. 586-591, it is important to distinguish between transactions which are beyond the trustees' authority and those which are within their authority but in breach of trust. This disposition will not be regarded as being outside Brenda's authority, since Charles is an object of the trust, so it is not a void transaction. However, the disposition might have been made in breach of trust because Brenda did not check Charles' financial circumstances, and therefore perhaps failed to comply with the reasonable standard of skill and care (see Chapter 12.2(a), pp. 595-597). Consequently, the transaction might be voidable and could be rescinded.

In advising Brenda about Alan, the key question is whether it will be possible for him to be replaced as a trustee (see Chapter 11.5, pp. 558-562). This requires you to consider whether there is a power to replace the trustee under the trust instrument, whether there is a statutory power to do so, or whether the court's inherent jurisdiction to replace a trustee can be invoked.

Chapter 12

This question requires consideration of the powers of trustees, especially as regards the investment of trust assets. A number of separate issues are raised. First, Brenda obtains advice from her next door neighbour, who happens to be a solicitor. Whilst trustees are under a duty to obtain investment advice, this must be "proper" advice (Chapter 12.4(b)(iii), p. 605), and a failure to obtain such advice will constitute a breach of the statutory duty of care (Chapter 12.2(b), pp. 597-598).

Secondly, Alan and Brenda decide not to invest trust funds in a profitable company for ethical reasons. Whether it is appropriate to take into account ethical considerations when making investment decisions requires careful consideration of the very limited exceptions recognised in *Cowan v Scargill* [1985] Ch 270 (Chapter 12.4(c)(ii), pp. 609-612).

Thirdly, the trustees invest in IT Ltd, relying on the advice of Edward. This may be in breach of their statutory duty of care, since they have failed to comply with the standard investment criteria (Chapter 12.4(b) (ii), p. 604). Similarly, giving Edward £50,000 to invest presumably also constitutes breach of their duty of care.

Finally, bearing in mind that the investment is now worthless, it is necessary to consider the appropriate remedy which will be awarded. This will be a compensatory remedy, which is considered further in Chapter 17.

Chapter 13

This raises a number of questions concerning the exercise of dispositive powers under a discretionary trust.

First, it is important for the trustees to know whether the trust assets can be distributed to Debbie and Edward when Edward attains the age of 25, or whether they must retain Charles's portion of the capital in case he should ever come forward. But since Charles has not been heard from for a decade, it might be preferable to treat him as dead; the trustees could seek directions from the court (Chapter 13.3(b)(i), p. 648) or a *Benjamin* order (Chapter 13.3(b)(iii), pp. 651-653).

Debbie has attained the age at which she is entitled to receive capital, so she should be able to claim her portion of the capital in order to enable her to pay the deposit on a house.

The trustees may have the power under the trust instrument to advance capital to Edward. However, even if they do not, the courts may be able to exercise the power of advancement (Chapter 13.5, pp. 659-667) and the power of maintenance (Chapter 13.4, pp. 656-659), since the purchase of the car and the piano lessons would presumably be considered to be beneficial for him.

Chapter 14

Fred clearly owes fiduciary duties to Pete, and commits a breach by persuading Pete to pay £50,000 more than the fair market value for the land so that Fred can receive £50,000 as a bribe or secret commission. It therefore seems clear that Pete can sue Fred for the £50,000 (and perhaps seek to rescind the transaction – see Chapter 20.5, p. 1011). It is worth exploring the nature of this claim: following the decision of the Supreme Court in *FHR*, Fred is likely to hold the secret commission on trust for Pete (see Chapter 14.5(b), p.712).

Whether Fred has any claim against Sandy is more complicated. First, has Sandy committed any breach of fiduciary duty whilst employed by Fred? If Sandy fully disclosed the contents of Dragon Ltd's proposal, and ended the relationship with Fred with no intention to take up Dragon Ltd's offer, then arguably not. But was Sandy free to accept Dragon Ltd's offer after his retirement? This is perhaps more difficult, especially since Pete had not unequivocally said that he did not wish to purchase the offices, and Sandy had only heard about this opportunity due to his fiduciary position. Careful consideration of instances of retirement is appropriate here (Chapter 14.2(e), pp. 720-721). If there has been a breach of fiduciary duty, some discussion of the appropriate remedy should be provided.

Chapter 15

This requires consideration of whether it will be possible to vary the trust under the Variation of Trusts Act 1958 to enable the disqualification of Fred as an object of the discretionary trust to be removed (Chapter 15.3(b), pp. 728-743). Whilst the variation of the trust has the support of Alan's daughters, there are other objects of the trust who are under age, so it is not possible to extinguish the trust under the rule in *Saunders v Vautier* (Chapter 15.1, p. 726). Further, since Debbie is pregnant, there will be other objects not yet born who might

otherwise benefit under the trust. The key question for the court, therefore, is whether it is able to consent to the variation of the trust on behalf of these objects (Chapter 15.3(b)(ii), pp. 731-734). This will turn on whether the variation can be considered to be for the benefit of these actual and potential objects. Various considerations will need to be taken into account, including whether the objects would have consented had they been able to (*Re CL* [1969] 1 Ch 587) and whether variation would produce family harmony (*Re Remnant's ST* [1970] Ch 566). Whether or not variation would be allowed on these facts is a matter of judgment, but it would certainly be difficult to establish that variation would be for the benefit of these objects.

Chapter 16

Breach of trust is strict, and the beneficiaries may therefore be able to recover 'compensation' (the appropriate measure is discussed in Chapter 17). However, Alan may be unable to recover because he is a beneficiary who instigated the breach of trust (Trustee Act 1925, section 62; see Chapter 16.4(b), p. 777), and Charles, as a beneficiary-trustee, agreed to the breach so may not recover as much as Brian (*Re Dacre* [1916] 1 Ch 344; see Chapter 16.4(c), p. 780).

Although Charles 'took the lead' in the purchase of the property, all trustees are jointly and severally liable for the breach of trust (Chapter 16.5, pp. 780). Peter and Leona might argue that Charles should bear the sole liability to repay and indemnify them, but Charles' career as a struggling musician means that it may not be reasonable for the other trustees to rely upon Charles' decisions (cf *Head v Gould* [1898] 2 Ch 250; see Chapter 16.5(b)(ii), pp. 783). The trustees may try to rely upon section 61 of the Trustee Act 1925, if they acted honestly and reasonably and ought fairly to be excused for the breach of trust (see chapter 16.3, pp. 765-774).

Chapter 17

Colin and Anna's failure to take advice and properly manage the trust could be a breach of trust (see eg Trustee Act 2000 section 1 (Chapter 12.2, pp. 597)). Because the trust fund is not in the position it ought to be, the beneficiaries might surcharge the account such that Colin and Anna would have to pay the extra £53,000 into the trust fund (cf *Nestlé v National Westminster Bank plc* [1993] 1 WLR 1260; see Chapter 17.2(b), pp. 811-814).

The investment in foreign currency is a breach of trust. As a result, the beneficiaries would be able to adopt or falsify such investments (Chapter 17.2(a), pp. 807-811). The beneficiaries would presumably wish to adopt the investment in Swiss Francs, given the rise in value, and falsify the investment in Japanese Yen, given the fall in value. Whether Colin and Anna are able to set-off the losses made on the Yen investment against the gains made on the investment in Francs might depend upon whether both investments can be viewed as part of a single policy of the trustees (cf *Bartlett v Barclays Bank Trust Co Ltd* [1980] Ch 515; see Chapter 17.4, pp. 844-846).

The problem in the final paragraph concerns the fact that money was paid out *before* receiving the required letter, which was a breach of trust. But clearly the letter was received soon after. In considering whether the beneficiaries can ask the trustees to pay back £8,000, it is important to analyse the similar case of *Target Holdings v Redferns* (Chapter 17.3(a), pp. 815ff), and the more recent decision of the Supreme Court in *AIB v Redler* (Chapter 17.3(b), pp. 827ff). You might consider whether an analysis based upon falsification is preferable to one focussed upon 'equitable compensation'.

Chapter 18

This question requires you to consider whether Alan and Bob can identify their property rights in substitute assets. (Various personal claims against Tom are also available – for example, in the tort of conversion – but these are not analysed in this chapter). It is important first to establish whether Alan and Bob can trace at Law or in Equity. Given that Tom has mixed his money with that of Alan and Bob, it would appear that Tom holds the entire fund on constructive trust (Chapter 7.2(a), pp. 330-336).

Do Alan and Bob have a proprietary claim to the £2,000 used to pay off Tom's overdraft? This is unlikely: the money can be traced into the hands of the bank, but the bank will surely be able to rely upon the bona fide purchaser defence (Chapter 18.6(a), pp. 912-917) – the bank provided value in lending the money to Tom initially.

Alan and Bob are able to choose whether the money paid out of the trust fund is their own money, or that of Tom (see *Re Hallett's Estate* [1880] 13 Ch D 696 and *Re Oatway* [1903] 2 Ch 356; Chapter 18.3(ii)(c), pp. 877-880). They may wish to say that Tom's money was used to buy the car, given that it is likely to depreciate in value. However, once Tom's £1,000 has been spent, the money used from the mixed fund will inevitably be that of Alan and Bob (cf *Roscoe v Winder* [1915] 1 Ch 62; see Chapter 18.3(iii)(b), p. 886-887). As between Alan and Bob, it might be that the money Tom stole first was paid out first (*Clayton's Case* (1816) 1 Mer 572) but this does not appear fair and the better approach is to say that Alan's and Bob's money is paid out in equal proportions (cf *Barlow Clowes International Ltd v Vaughan* [1992] 4 All ER 22; see generally Chapter 18.3(ii)(c), pp. 880-885).

Alan and Bob can also trace into Debbie's new bank account, although there will be no proprietary claim to the dissipated £2,000 (Chapter 18.3(iii)(a), p. 885-886; for potential personal claims against Debbie, see Chapter 19). As regards the mortgage, this requires some analysis of subrogation (Chapter 18.5(c), pp. 906ff), and also 'backwards tracing' (Chapter 18.3(iii)(c) pp. 888-892): if backwards tracing is possible (perhaps following the recent decision of the Privy Council in *Brazil v Durant*), might Alan and Bob be able to claim a proportionate share of the uplift in value of the land (see Chapter 18.5(b)(ii), pp. 900-905)?

Whether Alan and Bob can claim the lottery winnings of Luke raises the difficult issue of what remedy should be awarded to vindicate Alan and Bob's proprietary rights (Chapter 18.5(b)(i), pp. 899-900), and whether Luke should have any defence to the proprietary claim (see eg Chapter 18.6(c), pp. 920-922).

Chapter 19

The beneficiaries may have personal claims against Trevor for breach of trust (see Chapters 16 and 17) and proprietary claims to recover misapplied trust assets (see Chapter 18). The focus of this chapter concerns personal claims against third parties.

Sam might be liable for assisting Trevor's breach of trust. This will largely depend upon whether Sam is "dishonest" according to the test laid out in *Royal Brunei Airlines v Tan* [1995] 2 AC 378 (Chapter 19.2(c), pp. 932-948).

Jenna might be liable in unconscionable receipt if her "surprise" is sufficient to say that her receipt of the property in breach of trust is unconscionable (see Chapter 19.3(d), pp. 958-965). If unconscionability cannot be established, then the beneficiaries will have to

argue that there should be a strict liability claim available against Jenna (see Chapter 19.3(d)(i), pp. 965-969).

Rob may possibly be liable for dishonest assistance and unconscionable receipt: has Rob acted “dishonestly”, “unconscionably”, or both?

Chapter 20

This question requires you to consider what equitable orders Ransom may be able to seek. As against Compsci, Ransom may seek both a search order (Chapter 20.3(g), pp. 1001-1006) and a freezing injunction (Chapter 20.3(f). pp. 992-1001); the chances of obtaining the latter may be improved if Ransom can establish that there is a serious risk of Compsci removing its already limited assets from this jurisdiction.

Ransom might seek a mandatory injunction to force Builders to put up the fence (Chapter 20.2(c), pp. 978-980) and a prohibitory injunction to prevent the infringement of its easement of light (Chapter 20.2(d), pp. 980-985). It is also worth considering whether damages should be awarded in lieu of an injunction and the recent decision of the Supreme Court in *Coventry v Lawrence* (see generally Chapter 20.6, pp. 1014-1019).

Ransom may also contend that the contract with Quickbuck does not accurately reflect the true bargain reached by the parties. Ransom may therefore seek rectification (Chapter 20.4, pp. 1008), or argue that Quickbuck has committed a misrepresentation such that the contract can be rescinded (Chapter 20.5, pp. 1011).