

Annotated sample answers to an exam question

Below is an extract from an exam question. The answers each have good and bad points. Neither is the perfect answer. Answer 1 is narrow and has errors in the law. Answer 2 has a better knowledge of the law but has very little application. A common error for even good students is to state the law but fail to apply to the given facts. This is often the difference between a good answer and an excellent answer.

As this is an extract to illustrate how examiners mark, the answers are relatively short. Remember, good answers are not measured by their length. The most concise, clear, well supported, and applied answers will be marked highly.

When you read your question underline or note the material facts; these are facts which raise legal points and you want to address in the answer, perhaps noting cases and authority as you go. These have been underlined to show how you might do it.

Question

Rehanna was a wealthy business woman who wanted to share her good fortune. She called her trustees who held shares in Hodan Ltd on a bare trust for her absolutely. She called them and told them to give the shares to her friend Manshun.

She also called her friend Aisha and told her that she wanted her to hold her holiday cottage, Windy Hills, on trust for Aisha's son, Roy. Rehanna sent the deeds to Aisha with a note confirming her intentions. Rehanna sent a letter to Roy telling him of her gift and inviting him to join her there for the next weekend.

Walking to work the next day Rehanna was hit by a car and seriously injured. As she lay in hospital she said to the doctor, Leith, that if she died she wanted him to have her home, Orchard House. She handed him the keys to a safe, explaining that inside the safe were the deeds to the house. Leith was delighted as he needed somewhere to live as he had recently got married.

Rehanna has died and her validly executed will leaves all her property to charity. Aisha is Rehanna's executor. Advise her on the rights of the charity over the property.

Answer 1

Rehanna has a beneficial interest in shares and wants to give them to Manshun. *Timpsons v Yerbury* states that there are three ways to give a beneficial interest to another. If she wants to dispossess herself of her interest she must complete the formalities of s52 LPA. Sign a document or get her agent to sign it. If it's not in writing it is void. The transfer fails.

Milroy v Lord gave three ways to benefit another and here Rehanna is asking Aisha to be the trustee for the beneficiary Roy. This is land and she must transfer legal title and equitable title to the parties. S52 LPA will transfer legal title so she needs to

Commented [U1]: This is the clue that you may be dealing with a question on formalities and constitution, a person making inter vivos gifts to others. It may include contracts too.

Commented [U2]: This is a bare trust, there is a clue here from the examiner as to the issue – the property here is NOT the shares but the BENEFICIAL INTEREST in the shares.

Commented [U3]: The issue will revolve around what is meant by 'give'.

Commented [U4]: The property is land, and she want Aisha to hold this on trust, so legal title will need to vest in Aisha.

Commented [U5]: Clear intention to create a trust to benefit Roy.

Commented [U6]: Clue as to issue here, this may be a donation mortis causa (DMC).

Commented [U7]: Will this be sufficient to satisfy the requirements of a valid DMC

Commented [U8]: The examiner is trying to guide you here, do not discuss the charity here, it is a valid will and you are told it is a charity.

Commented [U9]: Always note if any of the intended recipients is executor as this is a clue for the answer.

Commented [U10]: A good opening start, student has clearly identified what the settlor wants to do, what the property is, correctly, and there is a case to support the statement. Although the student is not absolutely correct on the case.

Commented [U11]: This is incorrect, s52 LPA relates to the transfer of legal title in land. This may be exam nerves but it is a silly mistake to make and student is unlikely to be able to reach the highest marks.

Commented [U12]: The explanation of the requirements is correct, that of s53 (1) (c) LPA '25. The answer would be enhanced by reference to *Grey v IRC*.

Commented [U13]: The answer is incomplete, there are clues in the answer that the principle of *Vandervell* apply and the student has missed them. The bare trust would mean that Rehanna (R) could end the trust under *Saunders v Vautier*, as long as she is *sui juris*. This means that if the legal title is validly transferred to Manshun then there is no need to comply with s53 (10) (c) LPA if R intended her equitable title to transfer at the same time.

Commented [U14]: Again a clear start correctly identifying what the issue is.

Commented [U15]: The correct use of s52 LPA '25, which may indicate nerves at the start.

complete a deed. She must also complete a written document which will create a trust for Roy, this is section 53 (1) (b) of LPA. The letter will be the necessary written requirements for both of these so Aisha will hold Windy Hills on trust for Roy.

Rehanna wants to give her house to her doctor. She would need to complete a deed under s52. This has not been done as she has only given her keys to Leith not the deeds. However, there are ways that equity will step in to help. *Re Rose* states that if the settlor has made every effort to transfer the property to Leith, then that will be enough. Here it does not seem that this has been complied with so it is more like *Re Fry*. Also equity may use proprietary estoppel if there is a promise which has been relied on. This could be successful as Leith is very happy with the house. It could also be like *Pennington v Waine* where it would be unconscionable for the courts to deny that Rehanna wanted Leith to have the property and it would appear that he is very happy to have the house as he really needs it. *Strong v Bird* could apply if Leith was her executor and Rehanna intended to make a gift which continued until death. Also, it could be perfected by a *donatio mortis causa* if she make the gift in contemplation of immediate death, which is conditional on death and there is delivery of legal title. This is the most likely to succeed and Leith will get the house.

Good Points

Beneficial Interest in Shares

- Reference to *Timpsons v Yerbury* is a promising start.
- The correct requirements for the disposition of an equitable interest are identified but with a reference to the incorrect section of the Law of Property Act. *Sometimes this may be forgiven if it clear that this is a slip from exam nerves BUT the failure to mention Vandervells indicates a lack of understanding.*

Windy Hills

- It is correctly stated that *Milroy v Lord* identifies three ways to benefit another.
- Correctly identifies that, as the question relates to a trust of land, there are more formalities.
- Identifies s52 LPA required for transfer of legal title.
- Identifies s53 (1) (b) LPA is required for the creation of a trust in land or interest in land.

Orchard House

- Correctly states that the legal title needs to be transferred by deed and this has not been done.
- Explains that equity will step in and identifies that this may perfect title.

Bad Points

Beneficial Interest in Shares

Commented [U16]: This is true, but incomplete. It would be good to see reference to s1 Law of Property (Miscellaneous Provisions) Act (LP(MPA) here but essential for legal title to transfer is correct registration under Land Registration Act 2002. The student has not dealt with the failed transfer, so missed the chance to discuss *Strong v Bird*. The clue that this was an issue was that Aisha was the executor.

Commented [U17]: This is correct, but the requirements are not clearly stated as to why the letter is enough.

Commented [U18]: Repeats the same mistake on legal transfer of title in land.

Commented [U19]: The answer would be enhanced by reference to the equitable maxims here, not assisting a volunteer, not perfecting imperfect gifts perhaps. Also then to say that equity looks at substance not form.

Commented [U20]: There is no indication that R has started any process, and the student has missed the clues in the question that this is DMC; 'hospital' 'if I die' are classic clues.

Commented [U21]: Perhaps this at a stretch but no real unconscionable behaviour.

Commented [U22]: It clearly does not, Leith is not the executor. Just listing all the possible exceptions that the student knows is a weak style. It shows a lack of planning, analysis and evaluation. This will reduce any chance of getting good marks, no matter how correct the explanation of the rules are.

Commented [U23]: The student got to the relevant issue in the end, but clearly not planned their answer, and is not developed with any authority to support the issue.

- Although *Timpsons v Yerbury* is mentioned it is incorrectly stated that there are three ways but in fact there are four ways identified. This may be confusing the *Milroy v Lord* categories that are mentioned.
- There is a failure to spot that the issue here is if this transaction falls outside the requirements of s53 (1) (c) LPA. This is an important area of the rules on formalities and constitution and an omission that may indicate a real weakness in understanding important concepts. No mention of the need for the trustees to have validly transferred legal title.

Windy Hills

- The problems with the transfer of legal title are not dealt with. Incorrectly states that the letter will be the required deed as required by s52 LPA. The assumption that this works means that the equitable principles for perfecting legal title are not considered.
- Omits to spot that the legal title needs perfecting in equity and that, as A is executor, the rule in *Strong v Bird* will apply and consider how this is applied to trusts in *Re Ralli's WT*.

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- In considering which of the equitable principles will apply to the perfecting of legal title there is just a list of all the possible options with no selection of the one(s) that may be the most relevant. This can suggest that there is not an understanding of the issues, merely a remembrance of the issues.

Answer 2

R appears to be dispossessing herself of her beneficial interest, which requires compliance with s53 (1) (c) LPA. It must be in writing and signed by R, failure to do this will mean it is void, *Grey v IRC*. However an oral direction can be enough if a beneficiary under a bare trust tells her trustee to give legal title to another and intends that the equitable title is transferred with it to the same person. *Vandervell* states that there is no need to comply with s53 (1) (c) in this case.

Milroy v Lord identifies three ways to benefit another, an outright gift, declaring self as trustee and ask another to act as trustee for a beneficiary. Here R is asking A to act as trustee for the benefit of R. She must complete a deed as required by s52 LPA (see LP(MP)A s1 for what a deed requires). This has not been complied with so at law the transfer fails, equity will not perfect an imperfect gift. However, equity will look at the substance rather than form on some occasions. Following the principle from *Strong v Bird* if the intention of R was to make an immediate gift, which continues unchanged until death *Re Gonin* and the intended recipient is appointed executor or personal representative in the will then equity may perfect title. This principle was extended to transfers to trustees; *Re Ralli's*.

Commented [U24]: It is OK to use the initial in an answer, each important character should begin with a different letter to help with this. If this is not the case it can be dangerous.

Commented [U25]: Good strong start, compare this with the previous answer, there is not a lot more in words used but so much more in law.

Commented [U26]: Clear and concise summary of the relevant issues. No irrelevant discussion. The student could add a line to explain that the need for a bare trust is based on the principles of *Saunders v Vautier*.

Commented [U27]: You can see the danger of using initials, I would suggest that you name Roy in this situation to make the distinction clear.

Commented [U28]: Good on seeing the incomplete legal rules but this student has also missed the point on LRA '02. The reference to the equitable maxims is creditworthy. It is often difficult to understand the maxims but seeing them in action shows a grasp of their importance in the development of equitable principles.

Commented [U29]: Good to refer to the extension of the principle to *re Ralli's*. A good student may say that this case is not just an extension of the principle but perhaps a different rule entirely. The weakness here is that there is no application to the facts. This is very poor style. Knowing the law is not enough, to show understanding you must apply to the facts. She has asked Roy to join her there, is this suggesting that she still thinks she owns it?? No certain conclusion on this but comment on this being a possibility.

Additionally as the trust is over land it must comply with s53 (1) (b), evidenced in writing at some time. Until this is done it is valid but unenforceable. It must be signed by the settlor, Rehanna. If this is done then the trust is **valid**.

Leith may have a claim over the house. Although the legal title has not been transferred by a deed as required by s52 LPA equity may perfect **title**. It appears that R was contemplating imminent death and conditional on her death she hands Leith the keys to a chest which holds the deeds. This could be a *donatio mortis causa* and the requirements of *Cain v Moon* has been complied with if the handing of the keys to the safe is seen as constructive delivery of the property. *Lillington* would suggest that giving keys which provide access to the necessary method of gaining legal title may be enough.

It could be suggested that *Pennington v Waine* unconscionability may be applicable as it seems that Leith has need of the house. However, it is suggested that more reliance would be needed before the courts would find that to deny Leith legal title would be **unconscionable**. So it appears that the best argument is a DMC.

Good Points

Beneficial Interest in Shares

- A good start which correctly identifies the area being examined.
- Good case references using both *Grey v IRC* and *Vandervell v IRC*.
- The principle of *Vandervell* is clearly stated and concise.

Windy Hills

- Begins strongly with *Milroy v Lord*.
- Correctly identifies the need for a deed with the additional mention of LP(MP)A which adds some depth and has been sufficiently concise to illustrate knowledge.
- After identifying that the gift fails at law correctly identifies the most relevant equitable principle, *Strong v Bird*.
- Correctly notes that the principle of *Strong v Bird* was extended to trusts in *Re Ralli's*.
- Correctly states that there must be compliance with s53 (1) (b) to create a trust in land or an interest in land.

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- Immediately identifies the relevant equitable principles which apply on the facts.
- Correctly states the relevant requirements with legal authority.
- Makes some application to the facts.

Bad Points

Commented [U30]: This is all correct, but again this is not applied to the facts. The statement 'if this is done...' demonstrates to the examiner that there is no application. Has she done it? There are facts provided on which to give advice.

Commented [U31]: Again no mention of LRA 02; so it was not an oversight the first time.

Commented [U32]: This is much better application to the facts, and there is authority referred to which supports their argument.

Commented [U33]: This is a sufficient consideration of *Pennington v Waine* as it shows an understanding of the principles of the case. It may be enhanced to comment that the case is limited in application and has been criticised academically.

Beneficial Interest in Shares

- There is a failure to mention that the signature can be by the agent.
- No mention of the need for the trustees to have validly transferred legal title.
- There is an assumption that the word 'give' means to give both but a good answer would apply to the facts directly on that point.
- States that 'if' she is beneficiary of bare trust but the facts clearly state that she is.

Windy Hills

- Lists the types of transfer of *Milroy v Lord* which is not really relevant and eats into the time available to write that which is relevant.
- The principles of *Strong v Bird* are correctly stated but there is no application to the facts to consider if the intention continued. It appears R stays at the cottage after the declaration which may indicate it was not an intention of immediate giving.
- Although s53 (1) (b) is correctly identified there is little application to the fact of signature. Letters are rarely signed formerly when sent to family members.