

Guidance on issues in Part B answer

This document is intended to highlight some key points of note on the draft trust deed provided in the sample. You may have identified others. You are not expected to spot everything in your answer – it is expected that you will not have time to cover all of the issues arising, but should spend around 70% of the allocated time in the exam (as you will see from this sample – there is plenty to discuss, and you should take all of the time available to you).

Remember to use the IRAC structure when shaping your advice in relation to these points. This document only provides the issues, in your answer you need to explain the law, how it applies and reach a conclusion in relation to these issues. This method was revised in Land Law lectures.

This document should not be taken into your exam. In any event, it will be unhelpful as you will be reviewing an entirely different trust deed and should make better use of your A4 notes. However, you can use it to identify some key notes that you can take into the exam with you.

Clause	Issue
2	You should check whether all the beneficiaries are sufficiently clearly identified to satisfy certainty of objects. Draw on case law to support you to do this. You should address each of the 3 beneficiaries separately.
3	Can each of the parties identified act as the trustee?
4	Is the trust property sufficiently clearly identified to satisfy certainty of subject matter?
5	The beneficial interests (gifts), these are dealt with as follows. In an exam you could deal with clause 2 and 5 together to save time.

5.1	Is certainty of objects satisfied here? If there is not a clearly identified beneficiary, you should consider whether this is saved as a valid charitable or non-charitable purpose trust. Does this trust comply with perpetuity rules (note however clause 7.2 may save this if it does not). Is there sufficient certainty of subject matter? Remember to keep in mind any flexibility a fixed v discretionary trust offers when assessing these.
5.2	Is this beneficiary sufficiently defined? What would case law suggest? Is there sufficient certainty of subject matter? Remember to keep in mind any flexibility a fixed v discretionary trust offers when assessing these.
5.3	Is the beneficiary sufficiently defined? What would case law suggest? Is there sufficient certainty of subject matter? Remember to keep in mind any flexibility a fixed v discretionary trust offers when assessing these.
6	Trustees duties
6.1	Key question to consider here is whether the remuneration aspect is appropriate regarding costs. What does the law say?
6.2	Can they delegate responsibilities to others?
6.3	This relates to trustee duties of investment. How does this align with the duty?

6.4	Relates to management of the trust property. You could pick up here on what informed judgment means, and how they might reach this view, but only if time allows.
6.5	This relates to the ability to replace trustees. You should review the powers here on the ability to replace trustees. Note here the trustee identity has changed (Ltd not LLP), typos can happen in trust deeds, and this is something you would pick up in practice so worth flagging to show your attention to detail. Also note, that the clause only covers Blue Light Trustees Ltd, what about any other trustees?
6.6	This relates to remuneration clauses: is this suitable (remember there are more than one trustee – is it suitable for both)?
6.7	This is an exemption clause, what does the law say on exemption clauses?
7	Commencement and termination These are fairly standard clauses. Note 7.2 and consider how this might relate to perpetuity rules.
8	Interpretation and Jurisdiction Again, standard clauses, and probably nothing worth noting here
Signatures	There is no need to comment that these are blank, this would be normal prior to finalising the deed.