



SCHOOL OF LAW

COURSE NAME: Equity and Trusts

COURSE NO: LA302

TIME ALLOWED: Three (3) hours

READING TIME: Ten (10) minutes

NUMBER OF PAGES: Five (5) excluding this page

NUMBER OF QUESTIONS ON PAPER: Seven (7)

NUMBER OF QUESTIONS TO BE ANSWERED: Five (5) only

MARK ALLOCATED FOR EACH QUESTION: Equal

TOTAL MARKS: Fifty percent of result.

MATERIALS PERMITTED IN EXAMINATION ROOM:

None

SPECIAL INSTRUCTIONS

1. Complete the full paper.
 2. Complete at least five (5) question from the paper, but no more than five (5).
 3. The examination is worth 50 marks.
 4. You need to obtain at least 20 marks in the examination to pass the course.
 5. Read the questions and the instructions for each question carefully.
 6. You can answer any question with reference of the law of any USP country except where otherwise indicated or required.
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Question 1

THIS QUESTION HAS THREE PARTS. ANSWER ALL PARTS

In each of the following cases write notes explaining the nature of the relevant interests in the property concerned:

A. Jones is the owner of a house property. He wanted to borrow money from the Jinko Bank Ltd. in January 2002. Jones hands over the title deeds to the property to the Bank. The Bank draws up a written agreement for mortgage. However the Bank did not register it and it is not in a proper form for registration.

Without telling Jinko Bank Jones executes a further mortgage agreement with Banco Bank Ltd. in March 2003 in respect of a further loan. This is also in the form of an agreement to grant a mortgage over the property and is not in a proper registrable form. Banco Bank Ltd. knows nothing of the previous mortgage.

B. In July 2003 Pita executed a lease of his farm for four years in favour of Bernard at a rental of \$2200 per annum. The lease was put in writing but not registered. Assume that the Property Law Act of the country requires a lease to be registered only if it is for a term of more than three years. In December 2003 Pita enters into a contract with Billy to sell the farm. Billy knows that Bernard is in possession of the property but does not enquire about the existence of any lease, nor about the basis of Bernard's occupation of the property. Billy completes the contract by full payment of the price and has since had the title to the property transferred to him.

C. In December 2003 Seremaia entered into a contract to sell his tractor to Trotsky. The tractor is of a type which is freely available on the market. Trotsky pays a deposit of \$1000 to Seremaia. Seremaia takes the money and disappears having delivered the tractor apparently by way of gift to his uncle Jonetane a few days after receiving the deposit from Trotsky.

Question 2

Sembu owned 5000 shares in a company called Sortex Pty. Ltd. In about January 2004 she said to Aramia, her longtime friend: "I would like you to get the benefit of these shares that I hold in Sortex. They must be worth quite a bit of money now; maybe around \$15,000. You have been kind to me and I want you to have them. Let's go to the lawyer's office and we will fix up the transfer."

The next day Sembu and Aramia went to the office of Mr. Singh, a lawyer. They told him about the arrangement to transfer the shares to Aramia. He said "That is easy enough to fix up." Mr. Singh then drew up an agreement which was called a deed of gift which says, in effect, that Sembu makes a gift of the shares to Aramia. Both of them sign the deed of gift and it is witnessed by Mr Singh.

Unfortunately Mr Singh was not a very good property lawyer and nothing more was done to complete the transfer. However, a couple of weeks later Sembu handed the share certificate for the 5000 shares to Aramia saying : "Here these are yours now. They are of no use to me."

Sembu died about two weeks after that. The beneficiaries under her will claim the shares, saying that the gift to Aramia was of no legal effect at all. If that were in fact correct, the property would go to the beneficiaries under the will.

Advise Aramia as to the validity of the gift. You can assume that the Companies Act of the country concerned provides that company shares are legally transferable by lodging a written form of transfer signed by the parties plus the share certificate with the company secretary for registration.

What difference, if any, would it make if Sembu had signed a transfer of shares form and handed it to Aramia just before she (Sembu) died?

Question 3

Jane and Pio became involved in a de facto relationship in 1999. They lived together in rented accommodation for a couple of years after the relationship began. Jane had never been employed. However Pio was fully employed as a book editor. This was the situation which continued after the beginning of the relationship.

Later they became interested in buying a house because they thought that spending money on rental was a waste of resources. They inspected a house property in 2001 which they liked very much. Discussions took place between both of them and the real estate agent and they succeeded in negotiating a price of \$150,000 which the seller was prepared to accept.

The whole of the deposit of \$15,000 was paid by Pio as Jane had no money of her own. There was no joint bank account just an account in Pio's name. He had fully supported Jane from the time the relationship began.

The contract to buy the house was in Pio's name alone. There had been some discussions between them about putting it in their joint names, but the bank from whom the loan to purchase the property was obtained had insisted that the property be purchased in Pio's name only. This was because he was the sole income earner. The purchase was completed in July 2001.

In December 2001 Jane gave birth to a child of the relationship. Another child was born in June 2003. Jane had always maintained the household. She looked after the children, kept the house clean and tidy and provided other domestic duties. She made no actual financial contribution to the payments to the bank in respect of the loan except for one occasion in July 2003 when Pio was short of funds. On that occasion Jane borrowed the loan instalment of \$750 from her father and this was used to pay the bank.

The relationship broke up in March 2004 when Pio went to live with another woman. Jane retained custody of the children. She has heard that Pio is trying to sell the house and to remove her and the children from it.

What remedies in equity does she have in this situation? Advise Jane

Question 4

In 2003 a trust deed is executed by Jonson, a millionaire businessperson. The deed appoints Manifest Trustees Ltd. as trustee of the trust. It gives Manifest Trustees Ltd. the sum of one million dollars (\$1,000,000) on the following trusts:

- A. To set aside \$200,000 of the trust fund to establish safe sex awareness programmes for young people in the Pacific region;
- B. To set aside \$300,000 of the trust fund to pay or apply the same to such of the people of the Southern Pacific region who are good Christians and who are deserving of help, the payments or allocations to lie wholly in the discretion of the trustee;
- C. To set aside \$250,000 of the trust fund in order to fund the rebuilding of a new bridge over the Wakiwaki River, the existing bridge being in a state of total disrepair;
- D. To set aside \$100,000 of the trust fund to promote changes to the constitution of Vanuatu in order to change the electoral system to provide more opportunities for the election to parliament of citizens who were formerly expatriates;
- E. To set aside \$150,000 of the trust fund for any legitimate purpose which the said trustee thinks worthwhile in promoting in the South Pacific region.

Consider the validity of each of these trust provisions. In the event that one or more of them is invalid what effect, if any, would this have on the trust as a whole?

Question 5

Write short notes (no more than a page for each) explaining three (3) only of the following:

- (a) a trustee's power of investment;
- (b) the rule in *Saunders v Vautier*;
- (c) the principle in *Keech v Sandford*;
- (d) a trustee's right to remuneration;
- (e) the trustee's duty to preserve trust property;
- (f) an interlocutory injunction;

Question 6

“There are, generally speaking, two types of situation in which the courts have treated a person as a fiduciary. The first one is where a person has powers to exercise on behalf of another. The second situation is where the facts show that there is a special relationship between parties such that one of those parties owes duties to act in the interests, wholly or substantially, of the other. Whatever the case, it is clear that the class of fiduciaries is not a closed one and that new fiduciary relationships can be created by the courts from time to time as is necessary.”

Write an essay discussing this statement. Your answer should explain the special position of a fiduciary in equity and the different types of fiduciaries which have been recognised.

Question 7 ANSWER ANY TWO ONLY OF A, B and C

A. Certainty of subject matter is one of the basic requirements which must be met in respect of any type of trust, whether public or private. Where this requirement is not met the trust fails.

Explain the nature of this requirement and illustrate its application using not less than three examples.

AND/OR

B. One of the maxims of equity is as follows: ‘Equity has regard to the substance rather than the form’.

Write a short essay explaining and illustrating the operation of this maxim.

AND/OR

C. Write a short essay explaining the nature of a resulting trust. Your answer should provide some illustrations of situations where a resulting trust will be deemed by the courts to exist.