



The University of the South Pacific
Emalus Campus

Special Examination
Semester 2 2005

**FACULTY OF ARTS AND LAW
SCHOOL OF LAW**

COURSE NAME: EQUITY AND TRUST

COURSE NO: LA 302

TIME ALLOWED: THREE (3) HOURS

READING TIME: TEN (10) MINUTES

NUMBER OF PAGES: THREE (3) INCLUDING COVER PAGE

NUMBER OF QUESTIONS ON PAPER: SEVEN (7)

NUMBER OF QUESTIONS TO BE ANSWERED: FIVE (5); there are no compulsory questions.

MARK ALLOCATED FOR EACH QUESTION: Each Question carries ten (10) marks each

TOTAL MARKS: FIFTY (50)

MATERIALS PERMITTED IN EXAMINATION ROOM: None, this is a closed book exam.

SPECIAL INSTRUCTIONS: Do not forget to cite legal authorities for your Answers

Approved by Acting Head of School..........Date 4/5/06

Please do not turn over any page until you are told to do so.

1. Discuss three different types of equitable remedies and the circumstances they may arise or be refused by the courts of equity.
2. Explain and discuss the maxim 'equity looks upon that as done which ought to be done'. To what extent (if any) does this maxim operate to impose a trust on any person?
3. Timothy Kwaso decided to make a gift of his house at 35 Mamara Street, Ranadi to his friend Peter Kokoi. Peter's wife had just died, leaving a daughter, Shakira Kokoi.

Timothy executed a deed of conveyance in the following terms: "To Peter Kokoi for life, remainder to his daughter Shakira Kokoi when she is 21 years old". Peter and his daughter moved in immediately. At that time Shakira Kokoi was 17 years old.

Within a year Peter Kokoi had started a relationship with Jenny Jones. She later moved in with Peter and his daughter Shakira. Shakira was unhappy about this, frequently telling Jenny to leave. Things got worse after Peter died in a car accident in 2002.

Shakira moved out in 2003 to start university studies at USP, Emalus Campus. She took all her possessions except some antique furniture left to her by her father. She also told Jenny that she would return after completing her studies to sell the house. Jenny agreed to look after the house.

Jenny had made improvements to the house. She sold some of the furniture in the house to obtain money to pay for paint and some building materials. The left over furniture was lent to her friend Carol Mane. However, these were stolen. Shakira heard of this and wrote a letter to Jenny demanding she leave the house immediately. Jenny ignored the letter.

Shakira now seeks your advice on the following questions: -

- 1) What are her rights, if any over the house?
 - 2) Does she have remedies against Jenny or Carol?
4. Calo entered into a building contract with Seka Ubaldo. Under the contract Seka would build a residential house for Calo. Seka was required to use an original building plan. Calo was required to make an advance payment of \$5, 000 as goodwill payment for the building plan. Calo gave Seka the \$5, 000.

However, Calo found out later the building plan was similar to a building plan used by his neighbour to construct a house next door. Therefore, he accused Seka

for not coming up with an original building plan. Calo demanded the reimbursement of his \$5,000.

Advice Calo whether he can bring an action in equity.

5. Tom Tom is a senior Bank Manager in ANZ Bank. During the course of employment he often receives bribes from various customers in order to approve their loans. These amounted to \$10,000. Tom Tom deposited \$3,000 in his bank account and gave \$2,000 to his wife as a birthday gift. The remaining amount he used to buy a house. He registered the house under his son's name.

Advice whether ANZ Bank can claim the amount of the bribes from Tom Tom in equity.

6. What is a quia timet injunction and how can one obtain it? Use factual examples to illustrate your answer.
7. I hereby pledge \$100,000 to Wonderland Development Center as trust property for the purchase of classroom and therapy equipment for young children with development disabilities. Discuss and justify with relevant case law the nature of this trust and its validity.