



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A MAIN EXAMINATION

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AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 418: TRUST AND TRUST ACCOUNTS

Date: DECEMBER 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. a) Mr Killion, alumni of Catholic University of Eastern Africa transferred his apartment to Mr. Kone a former campus 'mate' to hold until his daughter becomes of age. A few years later, Mr Kone's father became ill and he didn't have any money to settle his fathers to hospital bills. Out of desperation Mr. Kone decided to sell the said apartment to clear his father's hospital debts. Mr Killion daughter became *sui juris* and went to Mr. Kone for the transfer of the apartment in her name. Mr. Kone, told the friend's daughter that he has never been in possession of Mr. Killions property and in turn sued the friends' daughter for defamation. Mr. Killions daughter out of rage sued Mr. Kone and the Magistrate alleged that she didn't have Locus standi. Mr. Killions daughter decided to appeal the matter in a higher court. Discuss all the legal issues arising. **(10marks)**
- b) Define a resulting trust and analyse the ways in which it can be rebutted by the doctrine of advancement. **(10marks)**
- c) Discuss the Cy-pres doctrine and analyse its application to charitable trusts. Support your answer with relevant authorities. **(10marks)**
- Q2. "The office of a trustee is onerous. A trust is an office necessary in the concerns between man and man and should be faithfully discharged, attended with no small degree of trouble and anxiety so that it is an act of great kindness in any one to accepts it". Discuss the above dictum **(20marks)**

- Q3. a) Section 37 of the Act creates a power in the person who is nominated to appoint or if there is no such person in the surviving trustees to appoint in writing new trustees in substitution. Discuss the instances when this power becomes exercisable. **(10marks)**
- b) Distinguish between the relation of the Principal-Agent with that of Trustee and Beneficiary setting out any similarities and differences. Support your answer with relevant case law. **(10marks)**
- Q4. a) Discuss any five duties of trustee and the legal consequences of breaching each of the said duties. **(10marks)**
- b) Explain the various powers of a Trustee and in doing so set out the sources of the said powers as well as the rationale of the same with aid of relevant case authorities. **(10marks)**
- Q5. The accounts that the trustees are supposed to keep are not complicated as the ones that are kept by Certified Public Accountants. However, the law requires settlors to show evidence of how the Settlor's property was administered from the moment he dies. With help of hypothetical examples and aid of decided cases, describe these accounts. **(20marks)**

END