



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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

JANUARY – APRIL 2019 TRIMESTER

FACULTY OF LAW REGULAR PROGRAMME

CLS 223: EQUITY AND TRUSTS LAW

P.O. Box 62157

00200 Nairobi - KENYA

Telephone: 891601-6

Date: APRIL 2019

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

Q1. Muhesh

Wan is the Governor of the 48th county in Kenya who recently confessed on Citizen TV that he was setting up a billion-dollar trust fund in favour of his celebrity girlfriend Dina Sasa. Unfortunately he collapsed and died immediately following this televised declaration.

His legal widow Mama Muhesh quickly filed court papers seeking the letters of administration of his estate (as next of kin). However the girlfriend Dina is fighting to have this verbal declaration recognised as a valid trust in her favour.

Analyse the law applicable to this case based on the following perspectives:

- a) Certainty of the intention of the settlor;
- b) Certainty of the subject matter of the trust;
- c) Certainty of the beneficiaries of the trust.

(30 marks)

Q2. Provide a brief summary of the historical weaknesses of Common Law (Kings Bench) and one remedial function of equity in Kenya (or East Africa) today.

(20 marks)

Q3. Discuss the equitable principle promoted in only one of the following cases:

- a) Mareva vs International Bulkcarriers [1975] 2 Lloyd's Rep 509
- b) Anton Piller vs Manufacturing Processes Ltd [1976] Ch 55
- c) [Re Astor's Settlement Trusts](#) (Astor VsScholfield Et Al (1952 Ch. 534
- d) [Re Endacott](#) (CorpevsEndacott) [1960] Ch. 232

(20 marks)

Q4. Discuss only one of the following equitable doctrines and practices:

- a) Perpetuities (Leahy vs Attorney-General for New South Wales [1959] AC 457);
- b) Public Benefit ([Oppenheim vs Tobacco Securities Trust](#) [1951] AC 297);
- c) Implied (Constructive) Trust ([Reading vs Attorney-General](#) [1949] 2 KB 232);
- d) Implied (Resulting) Trust ([Tinsley vs Milligan](#) [1994]1 AC 340)

(20 marks)

Q5. Provide one example each of breach of trust by Trustee(s) in the following areas:

- a) **Commission:** Doing an act that ought not to be done;
- b) **Omission:** Failing to do any act which ought to be done.

(20 marks)

END