

BOWEN UNIVERSITY, IWO

COLLEGE OF LAW

SECOND SEMESTER EXAMINATION, 2022/2023 SESSION
COURSE CODE: PCL 404 COURSE TITLE: EQUITY AND TRUSTS II

Instructions: Answer any FOUR questions. Time Allowed: 3 Hours.

Each question carries 17^{1/2} marks

- 1(a) "It is very difficult to conceptualize and define the word "trusts". However, whichever way we conceptualize it, it must conform to what legal minds have been doing over the ages."

Against this background, define the word 'trusts', and with the aid of the magic triangle, discuss the nature of trust.

- 1(b) Distinguish between 'trusts' and two out of the following legal concepts:

- a. Trusts and bailment.
- b. Trusts and contract.
- c. Trusts and agency.
- d. Trusts and power.

2. What is Constitution of trusts? Discuss the exceptions to the two maxims that are relevant to the discussion on constitution of trusts.

3. The Will of Mrs. Katherine Faulkner established a trust, with life interest in May Sewell, and remainder over in certain proportions to nine different charitable organizations. Alcoholics Anonymous of *San Francisco* was given ratio 1/40. That organization, following a policy of traditionally refusing bequest from non-members, voted 'non acceptance' of the bequest. The testamentary trustee petitioned for instructions as to this portion of the trust estate. The Respondent Executor of the *May Sewel Estate* answered, claiming that the bequests had failed and should be distributed as intestate property. The Attorney General also answered, alleging the existence of all conditions for the immediate operability of the cypress doctrine. He further alleged the existence of two other organizations where purposes he claimed to be akin to those of Alcoholics Anonymous. The Attorney General prayed distribution to either one of those according to such scheme as the court might in law devise for effectuating the charitable intent of the testatrix. The Will provided that:

"Upon the death of the said sister, *May Sewell*, this trust shall cease and terminate, and all of the trust estate then in the hands of my trustee, subject to the settlement of said trustee's as stated further. In the event that I should predecease my sister, *May Sewell*, or in the event that she should die before any distribution of my estate, to my said trustee, in either of

said events, I give and bequeath my entire estate directly to the charities mentioned, free from any trust, in the proportions herein above set forth.”

Other bequests were also made to the following charity organizations:

- i. The American Cancer Society
- ii. University of California – to be used for Osteoarthritis research
- iii. Polio National Foundation
- iv. American Red Cross
- v. Father Flanagan’s Boy Town
- vi. Guide Dogs for the Blind Inc.
- vii. San Francisco Tubercular Society
- viii. Children Home Society
- ix. Alcoholics Anonymous

Examine the issues raised in the above dispositions or bequests

4. Gold and Boma are 400 Level Law Students of Bowen University, Iwo who got into a discussion after Law of Trusts class and eventually ended up in a very heated argument. Gold is of the view that there are only two occasions where the need to appoint trustees may arise, while Boma said that it could arise in six different occasions. In the course of their argument, Tope appeared and quietly listened to their argument. After then she shook her head, smiled, and suddenly said "you guys are not serious". They all decided to approach Dr. Abiodun for clarification, and Dr. Abiodun asked them the following questions:
 - a. Who is a trustee?
 - b. What are occasions that could give rise to the appointment of trustees?
 - c. Relying on your answer to question (b) above, appraise Gold and Boma's argument with relevant statutory provisions, if any.
 - d. Arising from question (b) above outline the persons who are statutorily empowered to exercise the power of appointment.
 - e. What will be the consequences of your answer in the light of question (a) above?

5. Abolade Alabi's uncle asked him how he is coping with his studies, adding, "I hope you find 400 Level LL.B class interesting". Abolade Alabi replied, "Yes indeed". Abolade Alabi asked his uncle if he has heard of a "Trust Agreement". The uncle replied "Trust Agreement? Are you serious? ".
 - a. Outline five components of a Trust Agreement.
 - b. What are the attributes required of a trustee?

- c. Arising from question (b) above, and in line with the remark in the case of *LOW v. BOUVERY* (1891) 3 Ch. 82 at 99, list and discuss briefly five duties of a trustee.
 - d. State five "special entitlements" for which a trustee may be remunerated.
 - e. In a joking manner, Aboladi Alabi's uncle said that a breach of trust occurs when a trustee acts in line with the dictates of the trust instrument.
Comment briefly.
6. In the case of *FOSKETT v. MCKEOWN* (2001)1 AC 102, where the House of Lords resolved the controversies arising from the proper definition of Tracing as a concept under the Law of Trusts. Olawale Abioye, a 400 Level student of Political Science of Bowen University, asked the following questions:
- a. What are the conditions that may give rise to tracing?
 - b. Which conditions must be satisfied before Equity exercises this significant discretion in favour of a beneficiary?
 - c. Generally, where a trustee had accepted his appointment and later on decided to terminate it, a usual question is whether or not the trusteeship could be terminated.
 - d. Discuss briefly three major ways of terminating a trusteeship in line with statutory provisions or case law.
 - e. In line with statutory provisions and case law, it is significant to note that a trustee remains under ongoing duty to act in the best interest of the beneficiaries when considering retirement. The above principle of law seems confusing to Olabode Idowu, a 400 Level Law student of Redeemer's University, Ede. As a 400 Level Law student of Bowen University, Iwo, state the various forms of retirement of a trustee as provided under the Trustee Act.
 - f. In a controversy that ensued between Oyelede Wisdom and Olalekan Bala, 400 Level students of Redeemer's University, Ede on whether it is permitted by the statute for a trustee to voluntarily retire, another 400 Level Law student, Oluwatoyin Atoyebi, suggested that such a voluntary retirement is dependent on certain conditions.
List five conditions that will justify a trustee's voluntarily retirement.