



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2023/2024
(JANUARY-APRIL, 2024)

LLBK 223: EQUITY AND TRUST

STREAM: Y2 S2

TIME: 2 HOURS

DAY: THURSDAY, 12:00 – 2:00 P.M.

DATE: 04/04/2024

INSTRUCTIONS

- 1. Do not write anything on this question paper.**
- 2. Answer Question ONE and any TWO other Questions.**
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.**

QUESTION ONE

- a. Explain the nexus of the doctrines of equity and the fiduciary function of the trustees. (7 Marks)
- b. 'The concept of trust is not new. In case of absolute necessity, but only in case of absolute necessity, the court may presume a trust. But such presumption is not to be arrived at easily. The courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust is implied.' *Peter Ndungu Njenga vs. Sophia Watiri Ndungu [2000] eKLR*

Analyse this statement bringing out the features of a trust at its creation, and the characteristics of the various classes of trusts.

(9 Marks)

- c. Slaka paid for a parcel of land from Vlirmir which with the passage of time was occupied again by Vlirmir's family members who have since constructed temporary structures on it and refused every entreaty to vacate it. Upon Vlirmir's demise, Slaka approaches you to assist him regularize his ownership of the land. Give an opinion to Slaka on how the land ownership can be

resolved and highlight possible defences that the Vlirmir family can raise to the action you suggest to Slaka. (14 Marks)

QUESTION TWO

- a. Using case law and any other illustrations, set a basis for the equitable support of the processes of class action and interdicts. (8 Marks)
- b. Advise Grusha, which is a Public Trust, on its tax exposure in the following situations: -
- Donations received from Sweden for scholarships to deserving persons pursuing nursing courses in Kenya and Tanzania
 - Rental income from units built by widowers sponsored by Grusha in Kenya. (12 marks)

QUESTION THREE

- a. Wharkon approaches you to explain to her the maxim 'where equities are equal, the law will prevail' citing any exceptions to the maxim. (10 Marks)
- b. Fliko approaches you to advise her considering she is bound to joining an expedition to outer space and wishes to create a trust that would benefit her children in the event she does not return from the expedition alive. (10 Marks)

QUESTION FOUR

- a. Explain the transformative features of the 'age of enlightenment' in the development of Equity. (10 Marks)
- b. Explain to your client Thumba instances where a trust can be deemed to be illegal. (10 Marks)

QUESTION FIVE

- a. Thama and Ogom are planning a wedding and approach you for advise on how they can settle certain property they intend to bring into the marriage. Advise the smitten clients also on what property cannot form of such a settlement. (10 Marks)
- b. Franwel feels his time at the trust has run out and approaches you on advise on how he can retire from his position as trustee. (10 Marks)