



جامعة السلطان الشريف علي الإسلامية
UNIVERSITI ISLAM SULTAN SHARIF ALI
SULTAN SHARIF ALI ISLAMIC UNIVERSITY

Faculty of Shariah and Law
Semester II, 2021/2022 Academic Session

Final Examination Question Paper

Course Code : LB3304
Course Name : Equity and Trust II
Course Level : Bachelor's Degree
Time : 3 hours

Notes:

1. Answer any **four** of the following questions.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

QUESTION 1 (15 Marks)

Advise the intended beneficiaries in each of the following cases whether a valid and enforceable trust has been created in their favour:

(i) B\$200,000.00 to my sister Lily Tan on trust, to spend as she pleases so that she can live out her days in comfort, and secondly, to leave what is left to her children, John Chong and Peter Chong, on her death;

(5 Marks)

(ii) Raymond Hong receives an inheritance of B\$250,000.00 with which he opens a bank account in the name of his friend, Fiona Lim, telling her that he has done this in case his latest business venture fails. The business succeeds but Raymond Hong and Fiona Lim have now fallen out and Fiona Lim refused to transfer the money to Raymond Hong; and

(5 Marks)

(iii) Jonathan Leong sent a cheque for B\$250,000.00 to his brother Martin Leong, together with a note saying; 'I wish you to use this sum towards educating your two children'.

(5 Marks)

QUESTION 2 (15 Marks)

*“I take the law of this Court to be well settled that in order to render a voluntary settlement valid and effectual, the settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property to the persons for whom he intends to provide, and the provisions will then be effectual; and it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement; or declares that he holds it in trust for those purposes...but in order to render the settlement binding, one or other of these modes must... be resorted to, for there is no equity in this court to perfect an imperfect gift. The cases go further I think to this extent, that if the settlement is intended to be effectuated by one of the modes to which I have referred, the Court will not give effect to it by applying another of those modes . If it is intended to take effect by transfer, the court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust...per Turner LJ in **Milroy v Lord (1862)**”.*

Discuss.

QUESTION 3 (15 Marks)

“In seeking to give some judicial protection to the practical realities of family property, a variety of equitable devices have been employed to answer the question relating to property entitlements in the home”.

Pearce and Stevens, *Trusts and Equitable Obligations* (2014), p282.

Critically examine the use of resulting and constructive trusts as ‘equitable devices’ which cohabitants can use to establish an equitable interest in a home that is in the sole name of their partner.

QUESTION 4 (15 Marks)

Katherine Hong made her will in 2020 and it contained the following clauses:

- (a) “My cottage ‘Acacia Garden’ to my friend, Peter Goh, for the purposes communicated to him”;
- (b) “B\$50,000.00 to my sisters, Angela Chong and Celia Chong”;
- (c) “My residuary estate to my daughter, Elizabeth Kong”.

Before execution of the will, Katherine Hong had asked Peter Goh to hold the cottage, ‘Acacia Garden’ on trust for her niece, Florence Leong. The details would be contained in a sealed letter which could be found in the top of the drawer of the bureau in the living room of her home. After she executed the will, Katherine Hong had written to Angela Chong and Celia Chong asking if they would hold the B\$50,000.00 on trust for Katherine Hong’s niece and nephew, Florence Leong and Tim Leong. Angela Chong replied stating that she would comply with the request but Katherine Hong had not heard from Celia Chong before she, Katherine Hong, died last month. Florence Leong witnessed the will and Tim Leong died in an accident one week before his aunt. After Katherine Hong’s death, Peter Goh came across the sealed letter as directed.

Advise the parties as to any entitlements they might have under Katherine Hong’s will giving reasons for your conclusions. You are also expected to advise the trustees on their respective liabilities if any.

QUESTION 5 (15 Marks)

Richard Tan, a millionaire, is proposing to make the following gifts:

(i) B\$10 million to help local authorities in Brunei Muara defray the cost of oil-spills on the cost lines of Muara Beach;

(5 Marks)

(ii) B\$150,000.00 to my trustees for the purpose of providing free television sets for the poor in the District of Brunei Muara; and

(5 Marks)

(iii) B\$1 million to encourage the practice of transcendental meditation.

(5 Marks)

Advise Richard Tan on the validity of the above gifts.

QUESTION 6 (15 Marks)

“The necessary function of a trust is to confer interests on beneficiaries. A trust that does not do that is a contradiction in terms”.

Discuss.

بالتوفيق والنجاح