



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

Faculty of Shariah and Law
Semester II, 2020/2021 Academic Session

Final Examination Question Paper

Course Code : LB 3304

Course Name : Equity and Trust II

**Course Level : Bachelor of Laws (LL.B) & Bachelor of
Shariah Law (BSL)**

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)

Richard, by will, made the following bequest:

- (a) BND500,000.00 my daughter, Jenny, and I trust that she will provide for the children out of this. (3.5 Marks)
- (b) BND150,000.00 to my son, John on trust to use the income for such period as the law allows for the provision of holiday outings for the employees and their relatives and/or dependants of my old company, Maju Jaya Sdn Bhd previously located in Brunei Muara District. (4 Marks)
- (c) BND100,000.00 to my sister Angela, confident that she will pay a reasonable sum each year to my aunt Rose for her maintenance. (3.5 Marks)
- (d) My collection of old textbooks on Equity & Trust to my sons Tim and Raymond and they are to allow my old enthusiast friends to have any textbooks which they wish. In case of doubt as to who is an old enthusiast friend, my wife Mary can be asked. She knows who they are. (4 Marks)

Advise the trustees of Richard's will on the validity of these gifts.

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)

John and Nicole fall in love in 2010 when she was twenty-three years old and he was twenty-seven years old. Throughout their relationship, John spent four nights each week with Nicole at her grandmother's house. John spent the rest of his week at his mother's house. The couple had a child in 2012. During their relationship, Nicole cooked and washed for John and used her earnings as a clerk to provide for their child. John saves most of his salary in an account, which he has with Bank Islam Brunei Darussalam (BIBD).

In 2013, unknown to Nicole, John purchased a plot of land in Kampung Bunut using the savings from his account with BIBD. In 2015, he started buying building materials to construct a house on the land. He told Nicole: "There is a plot of land in Kampung Bunut on which we can build a house to live, but your name cannot go on the title because it is a family land".

Nicole helped in the construction by lifting cement blocks and mixing cement. In 2016, due to heavy rain there was damage to the house, which was still under construction. Nicole, who was a loyal party stalwart, got twenty-five sheets of galvanised zinc from her Village Head (Ketua Kampung) for repairs to the house.

The house was completed in October 2017. Before they could move to the new house, John told Nicole that he was in love with someone else whom he has been seeing for the last five years and that he does not want Nicole to move into the new house. In November 2017, John brought in his girlfriend to stay in the house.

Advise Nicole as to whether she is a beneficial owner of the house, in its entirety or in part.

QUESTION 4 (15 Marks)

Explain **FIVE (5)** circumstances giving rise to constructive trust. Support your answer with relevant case law.

QUESTION 5 (15 Marks)

Advise Celia, who is considering including the following dispositions in her will:

- (a) BND250,000.00 to my trustees for the promotion of spiritual well-being amongst children in hospices in Muara;

(3.5 Marks)

(b) BND150,000.00 to my trustees for the protection of endangered species of parrots in the forest reserve of Temburong National Park;

(3.5 Marks)

(c) BND350,000.00 to my trustees for the purpose of educating the Bruneian public about vegetarianism and encouraging young people in Brunei to become vegetarian; and

(4 Marks)

(d) BND150,000.00 to my trustees for the purpose of providing free television sets for the poor in the District of Kuala Belait.

(4 Marks)

QUESTION 6 (15 Marks)

(a) Discuss **THREE (3)** ways by which a trustee commits a breach of trust. Support your answer with relevant case law.

(7.5 Marks)

(b) Discuss **THREE (3)** defences available to a trustee who has committed a breach of trust. Support your answer with relevant examples.

(7.5 Marks)

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