



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

**Faculty of Shariah and Law
Semester II, 2022/2023 Academic Session**

Final Examination Question Paper

Course Code : LB3304
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 (4)** 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)

Consider the effect of the following bequests in the will of Peter Chong, the deceased:

(a) “B\$75,000.00 to my dear Aunt Caroline Lim, in full confidence that she will do what is right as to the disposal thereof between my children, either in her life time or by her will on her death”.

(5 Marks)

(b) “B\$300,000.00 to my trustees James Hong and Raymond Hock to be held upon trust to pay a reasonable income to my loving wife, Helena Kong, and B\$75,000.00 to the same trustees to be held upon trust to pay a meagre income to my miserable ex-wife, Angela Leong”.

(5 Marks)

(c) “1500 bottles of fine white wine now lying in my store to my loving brother Henry Chong. Whatever Henry Chong does not consume is to be distributed by my trustees amongst the drinking buddies with whom I met on Saturdays at the Happy Hours Inn”.

(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)

John Lim and his partner Helena Kong have recently separated, after being together for 15 years. They were not married and they have no children.

In 2012, John Lim purchased a house, title to which was registered in his sole name. John Lim and Helena Kong had planned on purchasing the property jointly but due to Helena Kong's erratic earning ability as an actress, the mortgage company would not agree to her being a joint mortgagee. On the day the house purchase was completed, John Lim said to Helena Kong, "It may be in my name, but this is our home, Darling".

The purchase price of the house was B\$300,000.00. John Lim paid the deposit of B\$15,000.00 from his personal savings. The mortgage loan was B\$285,000.00. John Lim, who was in steady employment as a management consultant, paid the monthly mortgage repayments from his sole bank account. Helena Kong, who also had some savings, bought a new three-piece suite, a double bed and a kitchen

table with chairs. She also redecorated the house while she was 'resting' from acting work.

Three months before the couple separated, they had opened a joint account and, from that point forward, the mortgage had been paid from this account. During this three-month period, they had both paid in a monthly sum to the joint account: John Lim had contributed B\$1000.00 every month; and Helena Kong, who was then contracted to work on a well-known TV soap opera, had paid in B\$2,500.00 a month. The regular household outgoings were also paid by direct debit out of the joint account.

Now that the couple have separated, John Lim, in whose name the house is still registered, claims that Helena Kong has no financial interest in the house. Helena Kong says that she owns a share in the house.

Explain to John Lim on what grounds Helena Kong could claim a 'share' in the house and whether she is likely to be successful.

QUESTION 4 (15 Marks)

Peter Chong has recently died. By his will, he left his vast shareholding to his close friends Dennis Lim and Brian Hong. Prior to his death, he told Dennis Lim to hold the shares on trust for Mary Leong, Peter Chong's illegitimate daughter. A letter giving similar instructions to Brian Hong was only found amongst Peter Chong's effect after his death. Peter Chong also left his house to Robert Hang, "who has been informed in writing of my wishes as to its disposal". Peter Chong had in fact told Robert Hang before making his will that the house was to be held for Mary Leong though orally and not in writing.

Advise Mary Leong as the intended beneficiary to both properties and as well as the trustees regarding their liabilities as secret trustees.

QUESTION 5 (15 Marks)

Angela Fong died recently and Jacob Chong was appointed as the executor of her estate. Jacob Chong seeks your advice regarding the nature and validity of the following clauses in Helena Fong's will:

- (a) I give B\$150,000.00 to my trustees for the purpose of providing free television sets for the poor in the District of Tutong.

(3.5 Marks)

- (b) I give B\$50,000.00 to promote music of the under-rated composer Aaron Kwok and to fund research into what links, if any, there are between his music and the great composers of the past.

(4 Marks)

- (c) I leave B\$1 million to establish the Henry Lau Centre for Alternative Medicine, which will provide comfort to patients and ease suffering. Patients should be charged, each according to their means.

(3.5 Marks)

- (d) I leave B\$500,000.00 to promote the playing of sport (e.g. cricket, football, snooker) among the youth of Kiarong, so that young people can come together, get fit and find a sense of community.

(4 Marks)

Advise Jacob Chong.

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)

بالتوفيق والنجاح