



**RIARA UNIVERSITY**

**LAW SCHOOL**

**THIRD YEAR UNIVERSITY EXAMINATION FOR THE BACHELOR OF**

**LAWS (LLB) DEGREE**

**EQUITY AND TRUST EXAMS**

**RLLB 309**

**AUGUST 2016**

**EXAMINER: Dr Nicholas Orago**

**Instructions**

1. Attempt all questions. Question one carries **30 Marks** while questions two and three each **carry 20 Marks**
2. This is a closed-book exam; any use of unauthorised material will lead to expulsion from the exam room and subsequent disciplinary action by the School.
3. Read each question carefully before attempting to answer it.
4. Write your answers clearly, marks will be lost for illegibility.
5. Comprehensiveness of analysis, clarity of arguments and logical structuring of arguments will earn you more marks.

## **QUESTION ONE**

**(30 Marks)**

Kenneth died four years ago. His valid will gave his estate (worth Kshs. 8,000,000) to Francis and Joseph to hold in trust for such of Kenneth's children, Kevin and Esther, as should attain the age of 25. Kevin is now 21 years old and Esther is now 15, and still in school. Due to your training and experience in law, especially in the law of trust, Francis and Joseph have come to consult with you in relation to the management of the trust, and especially on the following issues:

- Kevin is upset because the trustees have given Esther a monthly allowance from trust income for clothes and pocket money and Kshs.100,000 of trust capital to enable her pay her school fees, whereas Kevin has received nothing.
- Kevin has also demanded information about the value of the trust fund and how it is invested. After Kenneth died, Joseph suggested that they invest most of the trust fund in the purchase of quoted shares in the Nairobi Stock Exchange. The value of the investments has gone down. The trustees blame the general economic climate but they are worried that the beneficiaries, especially Kevin, might want to hold them personally liable for the depreciation in the value of the investments.
- Realising that they may not have the expertise to manage the trust investments, the trustees want to know whether they can employ a financial adviser to take over this aspect of trust business or appoint an investment expert as an additional trustee.

**Using your knowledge in the law of trust, comprehensively explain to Francis and Joseph the following:**

- (a) Whether they have done anything wrong by making allowances for Esther from the trust income and capital while giving nothing to Kevin; **(10 Marks)**
- (b) Whether Francis and/or Joseph may be held liable for the poor performance of the trust investments at the Nairobi Stock Exchange; **(10 Marks)**
- (c) Whether the trustees can employ an investment expert to manage the trust investments or appoint him as an additional trustee and pay him out of the trust fund. **(10 Marks)**

## QUESTION TWO

(20 Marks)

Mary, a hardworking and industrious lady, lives in and does business in Canada. Due to her industry, she has bought several houses in Lang'ata, Nairobi, three of which she has been leasing to the Kenya Wildlife Services to house their senior managers. John, a young man with great ambitions, has always desired to purchase a house in Lang'ata, but had been unable to do so due to the high prices of property in Lang'ata and his inability to secure financing from banks and other financial institutions. John has learnt of Mary's ownership of the three houses being rented by KWS and has designs to purchase one of them by hook or crook. He sends Mary an email detailing the poor condition of one of the houses due to poor maintenance by the tenants, the KWS. He further states that the said house has been earmarked for demolition by the Kenya Airports Authority (KAA) for being in the flight path and posing a security risk to the planes at Wilson Airport. In the email, John offers to purchase the "condemned" house from Mary at Kshs. 7 million, way below the market price of the house, which was then valued at Kshs. 20 million. Mary questions the low asking price, but John tells her that property prices have considerably fallen in Nairobi due to the security threats posed by the terror group Al-Shabaab.

Taking into account all the circumstances as per John's email, Mary agreed to sell the house to John at the proposed price and a Sale Agreement was prepared and signed by both parties, though the transfer documents had not yet been prepared. Mary came back into the country to complete the transactions, but her inspection of the house revealed that it had been perfectly maintained by the KWS and that it was in good condition. She also discovered that the house had not been condemned for demolition as was stated by John; and that the terror threats from Al-Shabaab have in no way led to the reduction in property prices in Nairobi. Based on her findings, Mary refused to sell the property to John and repudiated the Sale Agreement. Five years after Mary's repudiation of the Sale Agreement, John files a suit in court demanding for the specific performance of the Sale Agreement and the transfer of the house to him. John is, however, unwilling to pay the proper market price for the house, which has now appreciated to Kshs. 50 million, insisting on paying the previously agreed price of Kshs. 7 million.

**You are the judge at the Milimani Law Courts and the matter has been argued in your court. Decide the case, supporting your decision with the relevant principles and case law**

**QUESTION THREE**

**(20 Marks)**

Sophie and Marcus have recently split up having lived together for 20 years. They never married. They have a daughter, Amy, who is 17 years old.

Marcus purchased the family home 20 years ago in his sole name. When, at the time of the purchase, Sophie suggested that the house should be conveyed into their joint names, Marcus said, “Why do you want a stupid piece of paper saying that? Don’t you trust me?” Marcus provided the deposit. The balance of the purchase price was funded by a mortgage loan. Marcus has paid all the mortgage installments. Sophie used the sale proceeds of her studio flat to furnish the new house.

Shortly before Amy was born, Sophie gave up her job and did not work until 2004 when she got part-time work. Her wages were a welcome addition to the family finances because Marcus’s business was going through a bad period. Marcus continued to meet the mortgage payments but since 2004, Sophie has paid all other household bills.

**Advise Sophie on whether she can claim a half-share in the family home and, if not, whether any other remedies may be available to her.**

- *END* -