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Quiz 1

a) In accordance with the law of trust Cap 167 laws of Kenya the trust estate should be invested in special Range and/or Special Range. Citing the provision of the relevant Act, Discuss the three types of investments mentioned herein above.

i) Special Range

This category typically refers to a set of conservative investments that are considered safe and low-risk. These investments are often characterized by stability and steady returns. Although the potential for high returns is generally limited. Examples of investments that might fall within the special range include: government bonds, high-grade corporate bonds, fixed deposits in reputable banks, and other low-risk financial instruments. The aim of including investment in the special range is to preserve the principal amount of the trust estate while generating a modest level of income.

ii) Wider Range

The wider range category usually includes a broader spectrum of investments compared to the special range. Investments within this category may include both conservative and more aggressive options, offering a balance between risk and return. This category might encompass a diverse range of assets such as equities (stocks), real estate, mutual funds, exchange-traded funds and certain types of alternative investments like private equities or hedge funds. The wider range allows trustees to diversify the trust portfolio and potentially achieve higher returns over the long term, albeit with higher associated risks compared to the special range.

Should

c) "A will is a testamentary disposition which must be executed to the letter". Discuss the exceptions to the foregoing statement.

1) Doctrine of Substantial Compliance.

In some jurisdictions, courts may uphold a will even if it does not strictly comply with all legal formalities as long as it substantially meets the requirements for a valid will.

2) Equitable Doctrines.

Courts may apply equitable principles to rectify mistakes or ambiguities in a will to ensure that the testator's true intentions are carried out.

3) Extrinsic Evidence

In certain circumstances, courts may consider extrinsic evidence, such as testimony from witnesses or documents outside the will itself.

4) Dependent Relative Revocation

If a testator revokes a will with the intention of creating a new one but the new will is invalid for some reason (e.g. lack of capacity or undue influence).

5) Partial Revocation.

A testator may partially revoke a will by crossing out or otherwise nullifying specific provisions, without necessarily invalidating the entire document. This allows the testator to make changes to certain parts of the will while leaving the rest intact.

6) Probate Court Discretion.

In some cases, probate courts may have discretion to make decisions regarding the distribution of assets in a manner that deviates from the strict terms of the will.

A protective trust, also known as a spendthrift trust, is a type of trust established to protect the interest of a beneficiary, typically from their own inability to manage financial affairs or from external creditors.

In a protective trust, the trustee has discretion over the distribution of assets to the beneficiary, and there are often restrictions designed to safeguard the trust assets from being squandered by the beneficiary or seized by creditors.

iii) Statutory Trust.

A statutory trust is a trust that is created and governed by specific statutes or laws enacted by the relevant jurisdiction. These statutes outline the legal requirements, rights, and obligations associated with the trust. Statutory trusts may be established for various purposes such as charitable trusts, pension trusts or business trusts.

iii) Special Situations or special opportunities.

This category often includes investments that do not fit neatly into the special or wider range categories but may present unique opportunities for that trust. These could include investments in emerging markets, venture capital projects, startups or other alternative investments with the potential for significant growth but also higher levels of risk.

Trustees may consider such investments when they believe there is a strong potential for substantial returns, but they must also carefully assess and manage the associated risks to ensure they align with the trust's objectives and the best interests of the beneficiaries.

b) Certainty

Briefly but clearly discuss the following terms as used in the law of trust, Implied Trust, protective Trust, Statutory Trust.

i) Implied Trust.

An implied trust arises when a trust is created by the actions or circumstances of the parties involved, rather than by an explicit declaration or written document. It is inferred by law based on the conduct or intentions of the parties. For example, if someone purchases property using funds provided by another person but the legal title is held solely by the purchaser, an implied trust may arise where the purchaser holds the property on behalf of the person who provided the funds.

ii) Protective Trust.

Quiz 2

Distribution Statement of 31 March 2021

Assets	000	000	
Cash in hand	150	150	
Bank balances	4	4300	
Toyota Fielder		300	
Nissan Tiana		360	
Television & home theatre		3250 110	
Debts due from Moraa		440 35	
Free hold house		3250	
personal & household goods		220	
1000 ordinary shares in Sugra Mjanga		370	
1000 shares in Kuku Hd		1200	
12% Uganda stock		165	
Interest received to date		147	
Receivable from previous		60	
			10667
Liabilities			
Mortgage	1000		
Duty payable	130		
Interest due (Mortgage)	20		
			(1150)
			9517
Specific Legacies			
Supu	330		
Precious	3250		
Ogopa (Toyota Fielder)	300		
Simba	165		
Disaster Inv	600		
Banjukia	430		
Kamangu	120		
		5245	5245

General Legacies			
Papi Buur & Karubadika	1000		
Karubadika	1000		
Friends (Olub & Shupuru)	125		
Komanga	130		
		2255	
Total Legacies			(7500)
Residue			2017

b) A list of gifts which may not be assented giving reasons for the decisions.

i) The Wives to the sons of
The Wife to Ochieng will not inherit anything since the law of succession states that a widow cannot inherit the property of any other person apart from her husband. (so she will not inherit the 1 million given to all sons).

ii) The Driver legacy will not hold since he died in the same accident with Munywa (that is lapse time)
So the Driver predeceased Munywa.

The gift to Mathelele the Neighbor ~~that~~ will fail
because there is a disclaimer that Mathelele said Mungwa was
not a good neighbor.

The gift to Sister ~~put~~ Apple Wonder will not hold

The legacy to the cousin Nalipha. It will fail because
of Adoption.