



NATIONAL OPEN UNIVERSITY OF NIGERIA
14/16 AHMADU BELLO WAY, VICTORIA ISLAND, LAGOS
SCHOOL OF LAW

COURSE CODE: LAW424

COURSE TITLE: EQUITY AND TRUST II

TIME ALLOWED: 3 HOURS

INSTRUCTION: QUESTION ONE IS COMPULSORY AND YOU ARE TO ANSWER ANY OTHER THREE (3) QUESTIONS. All questions carry 17.5 marks

SECTION A: COMPULSORY

1. Mr. and Mrs. Blackson reside in V.G.C. Mr. Blackson created a trust "for all of my property" with himself as trustee. The trust instrument provided that Mr. Blackson had the right to revoke the trust at any time. Mr. and Mrs. Blackson were set forth as income beneficiaries for life and, upon Mr. Blackson's death; half of the trust property was to be "held in trust for my son, Sammy, until he reaches the age of 30." The other half was to be held by his daughter, Dana, "to be distributed, at her discretion, to the charitable institutions of her choice." The trust instrument was dated and signed at the end by Mr. Blackson and two witnesses, all of whom signed in each other's presence.

Mr. Blackson died without leaving a will. At the time of his death, he and Mrs. Blackson owned their N400, 000,000.00 home. Mr. Blackson also held, in his name only, stocks and bank accounts that were valued at N80, 000,000.00 at the time of his death. None of these assets had been transferred to a trust.

Shortly after Mr. Blackson's death, Mrs. Blackson and Sammy, now 21 years old, filed a petition in probate court seeking to have all or a portion of the trust declared invalid. Attached to the petition is a typewritten note signed and dated by Mr. Blackson prior to his death. The note reads, "I hereby amend my trust to leave all of my property to Mrs. Blackson when I die." Dana predeceased Mr. Blackson and she had no children.

As the law clerk to the probate judge, prepare a memorandum addressing the issues and possible outcomes.

SECTION B:
ANSWER ANY THREE
QUESTION 2

Sam, a widower, set up a valid, revocable inter vivos trust, naming himself as trustee, and providing that upon his death or incapacity his cousin, Tara, should be successor trustee. He did not name any additional trustee. He directed the trustee to distribute the income from the trust annually, in equal shares, to each of his three children, Ann, Beth, and Carol. He specified that, at the death of the last of the three named children, the trust was to terminate, and the remaining assets were to be distributed to his then living descendants, by representation.

When he established the trust, he also executed a valid will pouring over all his additional assets into the trust. Two years later, Sam died. He was survived by Ann, Beth, and Carol. For three years after Sam's death, Tara administered the trust as trustee. Because Ann had very serious medical problems and could not work, and because Beth and Carol had sufficient assets of their own, Tara distributed nearly all of the trust income to Ann and little to Beth and Carol. Beth and Carol have filed suit against Tara, claiming breach of fiduciary duties. Tara has submitted her resignation, and Beth and Carol have sought termination of the trust so that all assets may now be distributed outright to the beneficiaries now living.

1) Are Beth and Carol likely to be successful in terminating the trust? Discuss.

3) Are Beth and Carol likely to be successful in suing Tara? Discuss.

QUESTION 3

"A resulting trust for the settlor is born and dies without any writing at all. It comes into existence whenever there is a gap in beneficial ownership. It ceases to exist whenever the gap is filled by someone becoming beneficially entitled.....: Lord Denning M.R. in **Re Vandervell's Trust (No.2) (1974) Ch. 269**

Discuss this statement.

QUESTION 4

The right of the beneficiaries in a discretionary trust is uncertain. Discuss and indicate when the beneficiaries can put an end to the trust.

QUESTION 5

Constructive trust arise by way operation of law whenever the circumstances are such that it would be unconscionable for the owner of the legal title to assert his beneficiary interest and deny the beneficiary interest of another.

Critically examine the veracity of this statement with the aid of judicial and statutory authorities.

QUESTION 6

Thomas worked for the National Health Service at various hospitals during his life, but spent the last 10 years of his working life in Penzance General Hospital, which was destroyed by fire just after his retirement in 2004. Assess the validity of the following dispositions in the Will of Thomas, who died in December 2006:

- (a) 10,000 to my Aunt Agatha, knowing that she will use the money in order to secure the future of my daughters;
- (b) My houses in Penzance and St. Ives on trust for my daughters, Amanda and Barbara, for their lifetimes and then in equal shares between such of my other kinsfolk now living as may be resident in the county of Cornwall, save only that no person of the Protestant religion shall be entitled to any portion; and,
- (c) The residue of my estate to my Executors for such of my colleagues at work as they shall in their discretion think;

.