



NATIONAL OPEN UNIVERSITY OF NIGERIA
14/16 AHMADU BELLO WAY, VICTORIA ISLAND, LAGOS
SCHOOL OF LAW
MARCH/APRIL 2014 EXAMINATION

COURSE CODE: LAW423
COURSE TITLE: EQUITY AND TRUST I
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 QUESTION

1. Grandfather Joffe, left specific bequests of \$2,500.00 to each of his five grandchildren. Those bequests were sent to the grandchildren, and the payments were accepted. After they were accepted, the grandchildren learned that under the Grandpa Joffe's prior wills, they and their mother, whose interest they would ultimately succeed to, would have received much more and that their father was instrumental in obtaining the changes in the last will. Two of the grandchildren (the petitioners) filed a will contest. The Estate answered and filed a motion to dismiss on the basis of election. At about the same time, the petitioners tendered their bequests back to the estate, and the estate refused to accept the checks. The trial court dismissed the will contest and the Appellate Court affirmed the dismissal. The Appellate Court initially noted the issue of whether petitioners clearly knew at the time that checks were accepted by petitioners of their rights under the prior wills. However, the court focused on their knowledge at the time the will contest was filed. At that time, the petitioners knew of their rights. However, the petitioners did not return the bequests and did not even attempt to do for at least one month after they filed their will contest. The court said that they should have returned the money prior to filing the will

contest and that their failure to do so doomed the contest. The dismissal was upheld.

SECTION B:

ANSWER ANY THREE

2. Nosa entered into a written lease agreement with his landlord, Smith. Their original written lease agreement states that the tenant will bear the cost of any repairs required to be carried out on the property. After an oral discussion with Smith, the Landlord, the responsibility for repairs was shifted to the landlord because Smith intended to increase the rent. Smith the Landlord later sells the house to Jones, who as a matter of fact has no notice of the oral variation. Jones wants to enforce the written lease against tenant Smith to make him responsible for repairs. Advise Jones on the following issues:
What interest does Smith have with respect to the oral variation?
Can he enforce that right?
Is Jones affected by the variation in the contract between Nosa and Smith?
3. Is equity enforceable as against a subsequent mortgagee of the property?
4. Porter offered to sell his property to Sullivan and Andrews for N50m with a N20m down payment and Sullivan accepted orally. Porter said that he would have his attorney prepare the paperwork. Sullivan took possession of the property in September 2000 and began improving the stable and trails. This continued until November 24, 2000 when Porter arrived at the farm with a real estate agent. Porter told Sullivan that another buyer was interested but told Sullivan that he would honor their agreement. The next day, Porter accepted a N3m down payment from Sullivan. Sullivan and Andrews began renovations and improvements on the property, started their new business, placed advertisements in the local newspaper, and paid for an appraisal of the property. Porter regularly visited the property and received updates about the renovations but did not produce the paperwork

necessary to complete the transaction. Porter then offered to sell the property for N65m with N50m down payment from Sam.

Sullivan intends to file an action. What, if any, should be basis of his claims?

What must a party show in order to invoke the doctrine of part performance?

5. Mr TJ was the sole registered proprietor of the matrimonial home in which his wife had a beneficial interest. The marriage broke down and Mrs TJ moved out but returned each day to look after their twin children and would stay the night if her husband was away. Mr TJ mortgaged the property. On his application for the loan, he stated that he was single. He arranged for the inspection to take place on a Sunday when he knew his wife and children would be out. The agent inspecting the property noted that there was occupation by the children but he found no signs of occupation by the wife. Mr TJ had said that she had moved out many months ago and was living with someone else close by. The mortgage company advanced a loan of N50m which Mr. TJ has now defaulted. The company wishes to sell the house but Mrs. TJ claims she has better title. Analyse the legal issues in this case.

Do a critical analysis of the decision of the court viz-a-viz the rights of the petitioners.

6. Ada got an allocation for greenacre from the Lagos State Government in 1978. Sometime in 1999, Ify bought the same piece of land from Effiong who had exercised continuous acts of possession and ownership rights on the land since 1982 and erected a four-bedroom duplex thereon. Ada, who had contracted Ekpeyong to erect a building of her choice was shocked to discover a trespasser on her land, and promptly reported the matter to the Lagos State Government. Ify averred that she had been on the land and enjoyed undisturbed possession without questions or interruptions and that the Ada did not do anything but stood by and allowed substantial developments to be done on the land before she raised an alarm. Ada agreed to go into negotiation with Ify to either pay for the land or swap the land with another one, given the level of development that Ify had done on the

land. Negotiations broke down between the parties and Ada has come to you for advise. Advise her on the legal issues involved in this case.