



# THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF \_\_\_\_\_ JULY \_\_\_\_\_ 19 99

CODE AND NAME OF COURSE: LA28A - LAW OF TRUSTS

DATE AND TIME:

DURATION: 2 hours

INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 6 questions.

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Answer **THREE** Questions, at least **ONE** of which must be from Part B  
Answers may be confined to the law of any jurisdiction in the Commonwealth Caribbean unless the context indicates otherwise.

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## PART A

1. "A trust should be upheld if there is sufficient practical certainty in its definition for it to be carried out, if necessary with the administrative assistance of the court, according to the expressed intention of the settlor." (per Lord Wilberforce in *McPhail v. Doultou* (1971).

Assess whether this statement is an accurate reflection of the present law.

2. "It is clear that the question whether an implied or resulting trust arises or whether the presumption of advancement should be predominant is purely one of intent of the settlor, and ... the latter presumption ... can only be rebutted by declarations and acts of the settlor prior to or at the time of the purchase." (Per Bollers C.J. in *Cunje v. Cunje* (1975).

Discuss the application of this principle in the Commonwealth Caribbean.

3. Distinguish between (a) protective and (b) asset protection trusts, and assess the importance of each in the Commonwealth Caribbean.

PLEASE TURN OVER

**PART B**

4. Michael made a will, dated April 1, 1995 in which, after appointing Tim and Tracy as his executors and trustees, he bequeathed \$25,000 to his sister, Naomi, \$20,000 to his son, Oliver, and the residue of his estate to his two business associates, Peter and Quentin, "it being my most earnest desire that they should use the said residue as I shall subsequently direct."

Two days before executing the will, Michael had given to Naomi a sealed envelope marked "not to be opened until my death" and, on the same day, he telephoned Peter to tell him that he wished Peter and Quentin to hold the residue of his (Michael's) estate for the benefit of Michael's granddaughter, Rachel. Peter agreed to do so.

Later Michael told Oliver that he had left him \$15,000 in his will, but that Oliver was to hold \$7,500 on trust for the Hometown Orphans' Home, and to keep the remaining \$7,500 for himself.

Shortly before his death in January of this year, Michael executed a codicil increasing the legacy to Naomi to \$50,000, but he did not inform Naomi of this. After Michael's death, Naomi opened the envelope to find that it contained instructions that he should use the money for the education of Michael's son, Stephen, who was born out of wedlock.

Peter and Quentin had witnessed Michael's will. Rachel had died in a drowning accident in 1997.

Advise Naomi, Oliver, Peter and Quentin as to their respective rights and obligations.

5. Assess the validity or otherwise of the following bequests in the will of 'Duppy' Dreadlock, deceased.
- (i) \$10,000 to assist in the publication of the 'music' of Rough Reddy, a well-known local 'rapper';
  - (ii) \$100,000 to provide private medical treatment for retired professional musicians.
  - (iii) \$3,000 for the erection and maintenance of a tombstone in the local cemetery in 'Duppy's' memory;
  - (iv) \$20,000 to provide legal services for Rastafarian 'Death Row' prisoners throughout the Caribbean.

PLEASE TURN OVER

6. Adrian, Brian, Colin and David are the beneficiaries of a trust fund comprising shares in various private companies. Tom and Tina are the trustees of the fund. Consider the validity or otherwise of the following transactions
- (i) Adrian orally agrees with Kenneth to exchange his beneficial interest for shares in Toytown Inc. (a public company) owned by Kenneth absolutely;
  - (ii) Brian telephones Tina and informs her that he wishes to disclaim his interest, and that henceforth his interest should be held on trust for Leonard;
  - (iii) Colin orally declares himself a trustee of his interest for the benefit of his 11 year old daughter, Maggie;
  - (iv) David leaves a message on Tom's answering machine directing him to transfer his (David's) interest to the National Trust, a registered charity.

THE END