

**Law School.**

MAY EXAMINATION: 1897.

THIRD YEAR.

EQUITY AND GUARANTEES.

HONOURS.

*Examiner:* HERBERT L. DUNN, B.A.

1. In 1858 A., who was not then engaged in trade and who owed no debts, made a voluntary settlement of a sum of \$1,000. The trusts of the deed were a life estate to himself determinable upon bankruptcy, then a life estate to his wife for her separate use, then trusts for the children of the marriage, and an ultimate remainder to the settlor. In 1875 A. was adjudicated a bankrupt. Discuss fully the rights of A.'s wife and children under the settlement.

2. A., being seised of certain lands and fearing financial difficulties, made an absolute conveyance of the lands to B. The conveyance purported to be for valuable consideration, though in fact no money really passed. After A.'s death B. stated that A., when he made the conveyance, orally requested B. to hold the lands in trust for A.'s wife, and B. now executed a formal written declaration of trust in favour of A.'s wife. Subsequently C., A.'s heir-at-law, brings an action to recover the lands. Should he succeed? State reasons fully.

3. Distinguish between the doctrines of law and equity with respect to the effect of an agreement under seal, given without consideration, under the following circumstances: A. without consideration covenants with B. to convey Blackacre to B. to hold in trust for C. and afterwards refuses to carry out his agreement. What are the respective rights and obligations of the parties?

4. A testator bequeathed \$100,000 of his pure personality to trustees to pay the income arising therefrom to the Toronto General Hospital (a charity) so long as that institution should maintain and keep in repair the family vault of the testator in St. James' Cemetery, and upon their failure in that respect to pay the said income forever to The Sick Children's Hospital (another charity). The personal representatives of the testator contended that the trust failed in whole or in part as tending to create a perpetuity for the purpose of maintaining a family vault. This contention was resisted by the charities. Which contention should prevail and why? Discuss the question fully.

5. A. and B. entered into a verbal agreement that A. should purchase Blackacre from the owner thereof for \$1000 and that A. should pay \$500 of the purchase money out of his own funds, and should take a conveyance of the land to himself, and that B. should pay the balance of the purchase money, and that A. should sell the land and that out of the proceeds of sale B. should be paid the amount of his advance with interest thereon at 12 per cent. per annum. A. and B. each paid \$500 according to the said agreement, and the lands were conveyed by the vendor to A., who thereupon denied that B. had any interest in the lands. B. brings an action alleging that there is a resulting trust in his favour for a one-half interest in the lands, and asks for a declaration accordingly, and A. pleads the Statute of Frauds as a defence. Who should succeed and why?

6. A testator devises land to a trustee upon trust that he should hold the same for 25 years, and that in the meantime he (the trustee) should be entitled to the rents and profits, and that he shall then partition the land between those persons who shall at that time be the heirs of the testator. Immediately after the death of the testator his son, who was also the executor of the will, brought action against the trustee seeking to set aside the trust as invalid. Who should succeed and why?

7. A. orally promised B. that if B. would accept certain bills for a firm in which A.'s son was a partner, A. would provide B. with funds to meet the bills. Is A. bound by the promise? State reasons fully.

8. How is the liability of a surety under a guarantee for partners affected (a) by an increase in the number of partners (b) by a diminution in the number of partners?

9. R. S. O. Cap. 123, sec. 8, provides that it shall not be necessary to the validity of a contract of guarantee that the consideration should appear in writing. State briefly the reasons which led to this enactment.

10. Discuss the doctrine of appropriation of payments as affecting the liability of the surety.