



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

**SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAW
SECOND SEMESTER, 2021/2022
(JUNE - SEPTEMBER, 2022)**

LLBK 223: EQUITY AND TRUST

STREAM: LLBK 2 S2

TIME: 2 HOURS

DAY: FRIDAY, 3:00 – 5:00 P.M.

DATE: 09/09/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE:

“A court of equity has always refused its aid to stale demands where a party has slept upon his right and acquiesced for a great length of time . Nothing can call forth this court into activity , but conscience , but conscience ,good faith and reasonable diligence .Where these are wanting , the court is passive and does nothing.” Per Lord Camden in Smith v Clay(1767) 3 Bro.C.639n at 640n.

- a) Analyse the above statement and explain how it applies to cases involving the equitable remedies of specific performance and

injunction. Support your answer with reference to relevant decided cases.
(20 Marks)

- b) Explain the features or characteristics of Equitable Remedies and in doing so support your answer with relevant authorities. (10 Marks)

QUESTION TWO

Briefly outline the duties, powers and discretions of a Trustee. In so doing, also explain how Trustee's discretions are to be exercised. Cite relevant case law in support of your answer (20 Marks)

QUESTION THREE

Explain any **FOUR** of the following maxims supporting your answer with the relevant case authorities (20 Marks)

- I. Equity acts in personam
- II. Equity follows the Law
- III. Where the equities are equal, the first in time shall prevail and where equities are equal, the law will prevail
- IV. Equity imputes an intention to fulfil an obligation
- V. Equity will not allow a statute to be used as a cloak for fraud

QUESTION FOUR

- a) Discuss the three certainties required for the creation of a Trust, any exceptions thereto and the effect of failure of each of the certainties. Support your answer with relevant case law. (10 Marks)
- b) Explain how and when Trustee are appointed as well as how Trusteeship comes to an end. (10 Marks)