PEPERIKSAAN AKHIR SEMESTER PERTAMA SESI 2013/2014
FINAL EXAMINATION FIRST SEMESTER SESSION 2013/2014

KOD / NAMA KURSUS : GLUP3044 UNDANG-UNDANG KEADILAN, AMANAH DAN PROBET I
COURSE CODE / NAME LAW OF EQUITY, TRUSTS AND PROBATE I
TARIKH : 24 DESEMBER/DECEMBER 2013 (SELASA/TUESDAY)
DATE
MASA : 9.00 PAGI/AM- 12.00 TENGAHARI/NOON (3 JAM/HOURS)
TIME
TEMPAT : BK3 (COLGIS) & BK4 (COLGIS)
VENUE

ARAHAN : INSTRUCTION

1. Kertas soalan ini mengandungi EMPAT (4) soalan di dalam ENAM (6) halaman bercetak tidak termasuk kulit hadapan.
This book script contains FOUR (4) questions in SIX (6) printed pages excluding the cover page.

2. Anda dikehendaki menjawab SEMUA soalan.
You are required to answer ALL the questions.

You are provided with the Specific Relief Act 1950.

NO. MATRIK :
MATRIC NO. ___________________________ ( dengan perkataan / with word ) ___________________________ ( dengan angka / with number )

NO. KAD PENGENALAN :
IDENTIFICATION CARD NO.

PENSYARAH :
LECTURER

KUMPULAN GROUP : NO.MEJA TABLE NO.

JANGAN BUKA KERTAS PEPERIKSAAN INI SEHINGGA DIBERI ARAHAN
DO NOT OPEN THIS EXAMINATION PAPER UNTIL INSTRUCTED

SULIT/CONFIDENTIAL
SOALAN SATU/QUESTION ONE

i. “He who comes to equity must come with clean hands”.

Dengan merujuk kepada kes-kes yang diputuskan, terangkan makna dan bincangkan penggunaan pepatah di atas. Bandingkan ia dengan pepatah ekuiti “He who seeks equity must do equity”.

“He who comes to equity must come with clean hands”.

With reference to decided cases, explain the meaning and discuss the applicability of the above maxim. Compare it to the equitable maxim of “He who seeks equity must do equity”.

(10 markah/marks)

ii. Jelaskan perbezaan di antara kedua-dua pepatah “Where the equities are equal the law prevails” dan “Where the equities are equal the first in time shall prevail”. Sokong jawapan anda dengan kes undang-undang.

*Explain the distinction between the two maxims “Where the equities are equal the law prevails” and “Where the equities are equal the first in time shall prevail”. Support your answer with case law.*

(10 markah/marks)
iii Jelaskan pepatah "Equity acts in personam".

Explain the maxim that "Equity acts in personam".

(5 markah/marks)

SOALAN DUA/QUESTION TWO

Bincangkan sama ada permohonan injunsi boleh diberikan dalam kes-kes berikut:

Discuss whether an injunction can be granted in each of the following cases:

i Rafiq dan Rafidah memasuki suatu kontrak untuk menyanyi di Hotel Agora untuk tempoh 2 tahun. Kontrak itu menyatakan bahawa di dalam tempoh kontrak mereka tidak boleh menyanyi ditempat lain tanpa kebenaran bertulis daripada pihak pengurusan. Mereka bertemu rakan lama mereka, Ricky McCat, yang meminta mereka untuk menyanyi di hotelnya iaitu Hotel Akoola. Mereka bersetuju dan mengabaikan komitmen mereka dengan Hotel Agora. Pihak pengurusan Hotel Agora memohon perintah injunsi menghalang penyanyi-pen�anyi itu untuk menyanyi di Hotel Akoola.

Rafiq and Rafidah entered into a contract to sing at Hotel Agora for a period of 2 years. It was stated that during that period they are not to sing anywhere else without the management's written permission. They met their old friend, Ricky McCat, who requested them to sing at his Hotel Akoola. They agreed and abandoned their previous commitment with Hotel Agora. The Management of Hotel Agora applied for an injunction restraining the singers to sing at Hotel Akoola.

(12.5 markah/marks)

Adiba, a famous television presenter, appointed Rahman as her manager. The contract of service stated that Adiba shall not appoint anybody as her manager during the period of 6 years. A year after the contract, Adiba wrote to Rahman that she no longer needs Rahman as her manager. Rahman is seeking an injunction to prevent the termination of the service contract.

(12.5markah/marks)

SOALAN TIGA/QUESTION THREE

Nasihatkan beneficiari-beneficiari yang diniatkan bagi setiap kes berikut sama ada satu amanah sah dan boleh dikuatkuasa telah diwujudkan bagi pihak mereka:

Advise the intended beneficiaries in each of the following cases whether a valid and enforceable trust has been created in their favour:
i. RM100,000.00 kepada kakak saya Jacky atas amanah untuk dia membelanjakan mengikut kemahuannya, supaya dia boleh hidup dengan selesa, dan kedua, untuk meninggalkan apa-apa baki kepada anak-anak beliau, Richard dan Michael, apabila dia meninggal dunia;

RM100,000.00 to my sister Jacky on trust, to spend as she pleases so that she can live out her days in comfort, and secondly, to leave what is left to her children, Richard and Michael, on her death;

(5 markah/marks)

ii. Timothy, semasa teman wanitanya Grace, berpindah masuk ke rumahnya beliau berkata:
"Sayang, dari hari ini dan seterusnya rumah ini dan segala isinya adalah milik awak";

Timothy, on the occasion of his girlfriend Grace, moving into the house, said:
"Darling, from this day forward this house and all its contents are yours";

(5 markah/marks)

iii. Tim menerima harta peninggalan sebanyak RM150,000.00 yang mana dengan wang itu beliau membuka akaun bank atas nama temannya Agnes dan memberitahu Agnes bahawa dia melakukan sedemikian takut-takut pelaburan perniagaan terakhirnya gagal. Perniagaan tersebut berjaya tetapi Tim dan Agnes sekarang berpisah dan Agnes enggan menyerahkan wang tersebut kepada Tim;
Tim receives an inheritance of RM150,000.00 with which he opens a bank account in the name of his friend, Agnes, telling her that he has done this in case his latest business venture fails. The business succeeds but Tim and Agnes have now fallen out and Agnes refused to transfer the money to Tim;

(5 markah/marks)

iv. Moses menghantar cek sebanyak RM200,000.00 kepada abangnya Paul, bersama-sama dengan nota pemberitahuan menyatakan; “Saya berharap awak dapat menggunakan wang ini untuk pengajian tiga anak-anak awak”; dan

Moses sent a cheque for RM200,000.00 to his brother Paul, together with a note saying; “I wish you to use this sum towards educating your three children”; and

(5 markah/marks)

v. RM250,000.00 untuk isteri saya Hilary “ dengan sepenuh kepercayaan yang dia akan buat apa yang betul dalam pembahagian kepada anak-anak kami Raymond dan John, sepanjang hidupnya atau melalui wasiat selepas kematiannya”.

RM250,000.00 to my wife Hilary “in full confidence that she would do what was right as to the disposal thereof between our children Raymond and John, either in her lifetime or by will after her death”.

(5 markah/marks)
SOALAN EMPAT/QUESTION FOUR

"I take the law of this court to be well settled that in order to render a voluntary settlement valid and effectual, the settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property to the persons for whom he intends to provide, and the provisions will then be effectual; and it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement; or declares that he holds it in trust for those purposes...but in order to render the settlement binding, one or other of these modes must... be resorted to, for there is no equity in this court to perfect an imperfect gift. The cases go further I think to this extent, that if the settlement is intended to be effectuated by one of the modes to which I have referred, the Court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust...per Turner L.J in Milroy v Lord (1862)".

Bincangkan.

Discuss.

(25 markah/marks)