

CHAPTER 153
TRUST AND EQUITY LAW

Arrangement of sections

Section

PART 1.—EQUITABLE PRINCIPLES

1. Short title
2. Interpretation
3. Equity acts in personam
4. Equity does nothing in vain
5. Equity will not suffer a wrong to be without a remedy
6. Equity follows the law
7. Equity looks on the intern rather
8. Equity looks on that as done which ought to be done
9. Equity imputes an Intent to fulfil an obligation
10. Delay defeats equity
- 10 When injunction may be barred
- 11 When delay does not constitute laches
- 12 Laches
- 13 Evidence as to laches.
- 14 When prompt action is essential
- 15 He who comes to equity must come with clean hands
- 16 He who seeks equity must do equity
- 17 Where there are equal equities the first in time prevails.
- 18 Where claims may be postponed
- 19 Where there are equal equities the law prevails
- 20 Purchaser without notice
- 21 Where there is trust of legal estate
- 22 Notice of existing interest.
- 23 Equity never lacks a trustee
- 24 Joint purchasers.
- 26 Joint mortgagees
- 27 Partners
- 28 Equality is equity
29. Equitable remedies are discretionary
- 30 Equity will not permit a statute to be a cloak for fraud
31. Fraud and limitation law
32. Absence of seal or writing
33. Equity will not assist a volunteer

PART II—EQUITABLE REMEDIES

section

- 34. Specific performance only where legal remedy inadequate
- 31. Conditions for grant of specific performance.
- 36. Sale of shares and specific goods
- 37. No order where court supervision or personal service involved
- 38. Delivery of chattels
- 39. Partnership agreement
- 40. Trustees and agents
- 41. Specific performance and limitation law
- 42. Inadequate price
- 43. Misdescription of the subject-matter
- 44. Want of goods title
- 45. Mistake
- 46. Lapse of time
- 47. Where delay is evidence of abandonment
- 45. Tricky or unfair conduct
- 49. Hardship on defendant
- 50. Illegal contracts
- 51. Incomplete contracts
- 52. Arbitration
- 53. Want of mutuality
- 54. Procedure
- 55. Effect of possession
- 56. Nature of possession
- 57. Breach of contract and other wrongs
- 58. Injunction, when to be granted

- 59. Damages in lieu of injunction
- 60. What injunction may be granted
- 61. Covenant concerning land
- 62. Waste and repairs
- 63. Nuisance
- 64. Patents
- 65. Expulsion from clubs
- 66. Passing off
- 67. Copyright
- 68. Confidential information
- 69. False statements
- 70. Enforcement
- 71. Withholding injunction
- 72. Court may make declaratory judgment
- 73. Restrictions on declaratory judgments

section

- 74. Invitation of unjust verdict
- 75. Declaratory judgment is discretionary
- 76. Declaratory judgment against Attorney -General
- 77. Nature of rescission
- 78. Discharge by breach
- 79. Illegality
- 80. Grounds for rescission
- 81. Loss of right of rescission
- 82. Court may rectify document
- 83. Unless barred by statute
- 84. Rectification is discretionary

PART III. — TRUSTS AND TRUSTEES

85. Interpretation
86. Application
87. Creation of trust by transfer of property
88. Creation of trust by declaration
89. Creation no beneficial interest intended for donee
90. Secret trusts
91. Precatory trusts
92. Trust not fail in certain circumstance
93. Request to maintain testator's children
94. Where specific trust not exhausted
95. Trust not to fail for want of trustee
96. Requirements of valid trusts
97. Property subject to life interest
98. Contract for benefit of third party
99. Conveyance in another's name; husband and wife
100. Effect of fraud, etc on conveyance, etc
101. Gratuitous transfers
102. Trust for sale under a will
103. Where gift to charity fails
104. Partnership
105. Lense renewed in name of trustee. etc
106. Family head as trustee
107. Money collected from the public
108. Public officer acquiring money unlawfully
109. Vesting order consequential on judgement for specific performance, etc
110. Object contrary to public policy, etc
111. Oral evidence not to contradict written trust
112. Rule against perpetuities abolished

113. Appointments of trustees of settlements and dispositions on trust for sale of land

Section

114. Power appointing new or additional trustee

115. Limitation of the number of trustees

116. Supplemental provisions as to appointment of trustee

117. Retirement of trustee without a new appointment

118. Vesting of trust property in new or continuing trustee

119. Devolution of power or trusts

120. Power of trustee for sale to sell by auction, etc

121. Appointment of agents

122. Power to delegate trusts during absence abroad

123. Deposit of documents for safe custody

124. Power to insure

125. Application of insurance money where policy kept up under any trust power to trust power to obligation

126. Protection innocent purchasers and mortgagees.

127. Revisionary interest appointed by the court

128. Power to accumulate surplus income during minority

129. Payment into court by Trustees

130. Powers of new trustees appointed by the court

131. Authorized investments

132. Investment of inflated figures

133. Protection against liabilities in respect of rents, and covenant

134. Protection h means of advertisements

135. Protection in respect of certain powers of attorney

136. Trustee liable only for own acts etc

137. New trustee may be appointed by the court

138. Court may authorize remuneration of trust corporation

139. Vesting order of land

- 140. Vesting order in place of conveyance
- 141. Vesting orders as to stock and things in action
- 142. Orders made upon certain allegations to be conclusive evidence
- 143. Vesting orders on trustees for charity
- 144. Power of court to authorize dealing; with trust property
- 145. Persons entitled to apply for orders
- 146. Power to give judgement in absence of a trustee
- 147. Power to charge costs on trust estate
- 148. Power to make beneficiary indemnify for breach of trust
- 149. Accounts
- 150. Where trustee is convicted of felony
- 151. Indemnity
- 152. Savings

PART IV. — PUBLIC TRUSTEE

Section

- 153. Interpretation
- 154. Establishment of Public Trustee and officers.
- 155. Appointment of Public Trustee may appear in court in person
- 156. Officer holding office of Public Trustee may appear in court in person
- 157. Powers and duties of the Public Trustee
- 158. Power to accept charitable trust.
- 159. Custodian trustee
- 160. Appointment of the Public Trustee in place of executor or administrator
- 161. Power of court to settle the beneficial interest of a lunatic
- 162. Removal of trustee by court
- 163. Granting probate to Public Trustee
- 164. Transfer by executor after probate of Public Trustee

- 165. Appointment of the Public Trustee in place of executor or administrator
- 166. Powers of Public Trustee on obtaining grant of probate or letters of administration
- 167. Public Trustee may apply for appointment in case of person not sui juris
- 168. Liability general revenue
- 169. Officer holding office of Public Trustee may be exempted by court from general liability
- 170. Fees charged by Public Trustee
- 171. Appeal to court from Public Trustee
- 172. Mode of action of Public Trustee
- 173. Investigation and audit of trust account
- 174. Power to make regulations

CHAPTER 153

TRUST AND EQUITY LAW

A Law relating to the law of trust, doctrines of equity public trustee and related matters.

ANSI,198
6

[27th August 1991]

Cap.139

PART 1.— EQUITABLE PRINCIPLES

1. Law may be cited as the Trust and Equity Law,

Short title

2. This In this Part—,

Interpretation

“ademption” means that the purpose for which a specific legacy was given has been otherwise provided for by the testator:

“cestui que trust” means one who is beneficially entitled to, or interested in property for his own benefit, and not merely as trustee, or executor holding it for others;

“beneficiary” has the same meaning as cestui que trust.

“ court” means the High Court.

“*donatio mortis causa*” means a gift of chattel by a dying donor conditional on the donor's death so that if he dies, the gift shall operate as a legacy but if he recovers it shall revert to him.

“equitable waste” means an act or omission by a tenant in possession occasioning such destruction of, or injury to the property that a prudent man would not do or omit in the management of his own property which “at law” would have been excused by the words “without impeachment of waste”,

"*laches*" means neglect to do something which a man is obliged to do;

"*mandamus*" means the prerogative order issuing from the High Court, commanding an inferior court, corporation, or person to do some particular thing of right and justice appertaining to their office or duty;

"State" means Enugu State of Nigeria.

Maxims of Equity

Equity acts in
personam

3. Any court in granting equitable relief and in the exercise of its jurisdiction thereof shall, where necessary, primary act in *personam* and not in rem and in particular may__

- (a) compel the performance of contracts and trusts relating to property which is not locally within the jurisdiction;
- (b) entertain actions-
 - (i) for foreclosure of mortgages, or
 - (ii) for actions between mortgagor and mortgagee or
 - (iii) for a receiver, though the mortgaged property is out of jurisdiction and provided there is some equitable right which the plaintiff could have enforced against the defendant had the property been and the defendant is within jurisdiction or can be served outside the jurisdiction, or
 - (iv) where relief is sought in respect of property outside the jurisdiction on the ground of fraud, since fraud is upon the conscience of the party, or
 - (v) where relief is sought on the ground that a judgment obtained outside the jurisdiction is being made the instrument of gross injustice.

Equity does
nothing in
vain

4. No court shall intervene in any matter where equitable relief is sought unless its order in respect thereof can be effectively executed by the process of the court and in this regard no court shall give judgment or make an order-

- (a) for delivery of possession of land situated outside its jurisdiction
- (b) for every of any rate or charges attached to such land for which the proper remedy is a local action:
- (c) in a claim depending on the title to land outside its jurisdiction, save that, having jurisdiction as to personal property, the court may extend its jurisdiction to the real property where two types of property are so mixed together that it is impossible to separate them and provided that the court will not make any order which involves a breach of the law of another State or Country properly governing the property or its disposition.

5.(1) Where a plaintiff in an action before the court obtains judgment but is prevented from enforcing the judgment to his advantage on account of the fact that the defendant's interest in his property is merely equitable, the court may appoint a receiver by way of equitable execution to satisfy the judgment.

Equity will not suffer a wrong to be without a remedy.

(2) In granting this relief the court shall not —

- (a) appoint a receiver of the future earnings of a judgment debtor, or the profits accruing to him from patents worked outside the jurisdiction;
- (b) make any order affecting any such equitable property which would not have been affected by any legal remedy had it been legal property.

(3) No receiver by way of equitable execution shall be appointed where execution can be levied in the ordinary way at law.

6. (1) A court in exercising its equitable jurisdiction shall not depart from the provisions of the law except where a strict adherence to such provisions will lead to grave injustice or is unconscionable, or is contrary to public policy or morality

Equity follows the law

(2) Any estate or interest which exists at law may be created in equity as an equitable interest under a trust.

(3) A plaintiff with an equitable interest shall prosecute his claim without undue delay and in determining whether there has been such delay as to bar the plaintiff's claim the court may consider whether—

- (a) there was an acquiescence on the plaintiff's part; and
- (b) any change of position has occurred on the defendant's part

(4) Where an enactment on limitation of action is applicable the court shall apply it to bar equitable interest by way of analogy.

(5) No action will lie in equity where—

- (a) a covenant is void at law. or
- (b) there can be no action on the covenant at law because the same person is a party to it both as covenantor and covenantee

(6) The court shall enforce in equity the rights of the *Cestui que* trust the holder of an equitable estate or interest, as against any person in whose hands the trust property is found except a *bond fide* purchaser for value of the legal estate.

(7) Specific performance will not be granted where damages constitute an adequate remedy.

7. (1) Where the court finds that by insisting on the form in any case before it, the substance of the transaction or matter covered by the case will be defeated, it shall hold it to be inequitable to allow a person to insist on such form and thereby defeat the substance

Equity looks to the intent rather than to the form

(2) If a party to a contract for sale of land fails to complete on the day fixed for completion, the contract may still be completed in equity within a reasonable period thereafter, its breach at law notwithstanding.

(3) Where a contract is for the sale of a thing of fluctuating value, time may be treated as of its essence in equity so that repudiation of such contract in default of prompt fulfilment will be allowed.

(4) There shall be relief in equity against penalty when the object of the penalty is to secure the payment of a sum of money or the attainment of some other object, and when the event upon which the penalty is made payable can be adequately compensated by payment of interest or otherwise. And in particular relief will be granted against—

(a) the penalty in a money bond:

(b) penal sums made payable on breach of bonds, covenants and agreements for payment of money by instalments, or for doing or omitting to do a particular act:

Provided that compensation can be made for such breach,

In granting relief under this subsection, it shall first be ascertained whether the specified sum is in fact penalty or liquidated damages and where the specified sum is in fact penalty or liquidated damages. And where it is a penalty, only actual damages, not exceeding the amount of the penalty, are payable

(5) Where there is a stipulation in any agreement, bond or covenant that on non-payment of a smaller sum, a larger sum shall be paid, the larger sum shall be deemed a penalty and the court will grant relief against it.

(6) Where there is a clause in any agreement or any other instrument requiring the forfeiture of an interest in property on non-payment of money, such clause shall be treated as penal and relief will be given on payment of the money, with interest as compensation for the delay,

(7) In respect of any debt whereof payment is to be made by instalments, a stipulation that on non-payment of any instalment the entire debt becomes due shall not be construed as a penalty

(8) The court may grant relief against forfeiture of a lease or termination of any tenancy for non-payment of rent.

8. (1) Where there is an obligation to do an act, the court shall treat as done that which is agreed to be done so that the obligation not yet carried out shall be enforced in favour of the party who has the right to pray that the thing should be done as against the party liable to perform it.

Equity looks on that done which ought to be done.

(2) If possession is held under an agreement for a lease, of which specific performance would be ordered, the parties shall be treated in equity as being in the same position with regard to the respective rights as if a lease had been granted.

(3) Where a party has wrongfully prevented anything from becoming due under a contract money which would have been payable under the contract but for the wrongful act would nevertheless be treated as an enforceable debt in equity although it is not a debt at law.

(4) An assignment for value of an after acquired property which operates as a contract to assign shall, when the property comes into existence, become in equity a complete assignment.

(5) Where an agreement has been entered into by a company with a clear intention of creating a charge, a charge will be held to be established notwithstanding defects of form. if the transaction is intra vires

(6) Nothing in this section shall be constructed as giving any court the right to vary any agreement or contract or to make for the parties contracts, different from those they have made for themselves, except that—

(a) where land has been directed to be turned into money or money directed to be turned into land: or

(b) where a contract remains executory on one side but has been executed on the other;

the court will regard the obligations arising therefrom which are not yet carried out as enforceable

9. (1) If a person under an obligation does an act which is suitable to be the means to performing the obligation he will be presumed in equity to have done the act with that intention

(2) If a person covenants to purchase and settle lands and thereafter purchases lands which are suitable to be the subject of the settlement but does not settle them it will be presumed that he purchased them with the intention of performing his covenant,

And if, formerly, he died intestate as to these lands, they shall be treated, as against his heir-at-law, as, being bound by the trusts of the settlement either entirely, or if the land purchased are less in value than the amount covenanted to be laid out, *pro tanto*

(3) Any presumption in favour of performance under subsection (1) above shall only arise—

(a) where the lands are purchased subsequently to the covenant; and

(b) the interest purchased is of the same nature as that specified in the covenant.

(4) Where a debtor, without mentioning the debt in his will, bequeaths by it to his creditor a sum as great as, or greater than the debt, his legacy will be presumed to destroy or swallow up the debt:

Provided that the legacy is not on a contingency or less than the debt and the debt was not contracted subsequently to the making of the will or contemporaneously with it.

(5) Where legacies of equal amounts are the same will or codicil to be given to the same person, it shall be presumed that only one legacy was intended to be given to that person.

Equity imputes an intent to fulfil obligation

Provided that different notices are not expressed for the two legacies and there is no internal evidence that the testator intended them to be cumulative.

(6) Two legacies contained in different instruments shall be payable if—

- (a) they are of the same amount and a different motive is expressed for each; or
- (b) they are of the same amount and a motive is expressed for one and not for the other.

unless it appears from internal evidence or from the circumstances surrounding the execution of the instruments that the second amount was a mere repetition of the first.

(7) The court shall only admit extrinsic evidence of the testator's intention under this section where the court itself raises the presumption against double legacies in order to show that the testator intended the legatee to take both or to show that one legacy only was intended.

(8) Where a testator gives a legacy to a child, or to any other person towards whom he has taken on himself parental obligations, and afterwards makes another provision in favour of the same legatee then, unless there are distinctions between the nature and conditions of the two gifts, there shall be prima facie presumption that both gifts were made to fulfil the same natural or moral obligation of providing for the legatee, and consequently that the gift *inter vivos* is either wholly or in part a substitution for, or an ademption of the legacy.

(9) The provisions of the foregoing subsection shall apply to—

- (a) a share of residue; or
- (b) a devise of land:

Provided that in each case its application shall be restricted only to cases where provisions are made by a father or person in *loco parentis* for his child so that in the case of a stranger he shall be entitled to claim both provisions.

(10) The presumption against double provisions in subsection (1) above may be rebutted either by internal or external evidence or circumstance showing the testator's actual intention.

10.(1) A party found guilty of laches in any action before the court may be disqualified for equitable relief except as otherwise provided by any statute of limitation in force in the State which expressly includes equitable claims within its orbit.

(2) Where a statute applies to equitable claims by analogy, the ordinary rules of laches shall not apply.

(3) The court may, in the case of any action for which no period of limitation is prescribed by any law in force, apply the provisions of subsection (1) where it would be practically unjust to give a remedy either—

- (a) because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it; or

- (b) where by his conduct and neglect the party has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterward to be asserted.

When
injunction may
be barred

11. An injunction other than an interlocutory injunction granted in aid of a legal right shall not be barred through laches unless the legal right itself is barred.

12. (1) Laches may not be imputed to create a bar in equity although there is lapse of time where the party against whom it is pleaded is—

When delay
does not
constitute
laches

- (a) under the disability of infancy or unsoundness of mind; or
- (b) subject to such circumstances of undue influence or other pressure or to deprive him of the ability to give a true consent; or
- (c) kept in ignorance of the facts constituting his title to relief through the fraud of the party making the plea.

(2) When the remedy sought in court is in respect of fraud, there is no laches so long as the party defrauded remains, without any fault of his own, in ignorance of the fraud.

(3) Where a person is entitled to rely on the fidelity of another, time will only begin to run against him from the time when he actually discovers the fraud of that other person or has reason for suspicion, so that the court shall not deem the fraud condoned unless the injured party has full knowledge of all the facts and of the equitable rights arising out of those facts and failed to seek relief promptly.

13. (1) The court shall not allow a dormant claim to be set up when the means of resisting it, if founded, have perished through the plaintiff delay to bringing his action.

Laches

(2) Laches will be imputed where the plaintiff, with knowledge of his right, has allowed the defendant to expend money in the belief that no claim will be made

(3) Where there is no other statutory provision, action for breach of trust may be barred by acquiescence if—

- (a) there is assent to the breach of trust by the party instituting the action; or
- (b) there is subsequent condonation by the party bringing the action; or
- (c) there are other circumstances, which combined with the delay in bringing the action, make it inequitable to allow the action.

(4) Time alone shall not be a bar to a mortgagor's right to redeem personality and the court may not deprive a party of its right:

Provided that, when it is asserted—

- (a) the debt shall have been paid or can be paid;
- (b) the security is available; and

(c) no one's position has been altered in the meantime.

Evidence as
laches

14. Evidence shall be led in court to determine whether in any case where Lapse of time is pleaded there has been such acquiescence on the part of the plaintiff or such change of position on the part of the defendant resulting from the plaintiff's delay in bringing the action as would constitute laches to bar the action. And, in particular. Such evidence shall be given in respect of claims –

- (a) against trustees and others in fiduciary position to set aside sales;
- (b) to set aside a sale of a reversion or a sale by a mortgagee;
- (c) by a mortgagee or a beneficiary to follow assets;
- (d) in respect of partnership interest;
- (e) generally in respect of breach of trust;

subject however to the rule that time itself is not evidence of acquiescence and shall not *per se* constitute a bar.

Where prompt
action is essential

15. (1) Without prejudice to the provisions of the foregoing sections, special promptitude shall be required in seeking relief in equity in respect of claims-

- (a) to establish constructive trusts;
- (b) to set aside gifts made under undue influence ; or
- (c) to obtain specific performance or rescission of contracts.

(2) Where the claim is to establish a trust in respect of property of a speculative nature, relief shall be sought within a reasonable time.

(3) If the claim is in respect of gifts made under influence, there will be no laches in the door until he is acquainted with his rights and the influence is at an end.

(4) Specific performance shall only be given where the party seeking it applies to the court promptly and as soon as the nature of the case will admit and so any substantial delay after negotiations have terminated will constitute a bar

(5) In claims relating to rescission of contract where the defendant may be altering his position on the faith of the contract standing, relief must be sought promptly and before any change of position occurs on the defendant's part.

16. (1) The court shall not grant equitable relief to a party whose conduct in regard to the subject-matter of the action has been improper; and in this regard, relief shall be refused—

He who comes to
equity must come
with clean hands.

- (a) where a transaction is based on the plaintiff's. fraud or misrepresentation: or
- (b) where the plaintiff seeks to enforce a security improperly obtained, or
- (c) where any party claims a remedy for a breach of trust which he has.himself procured and whereby he has obtained money.

(2) Where an infant, fraudulently misrepresenting himself to be of age, obtains from his trustees anything to which he shall be emitted only on coming of age, he shall not be allowed by the court

to enforce against the trustees his right over again in respect of the same thing after he has attained full age.

(3) A tenant whose lease has been forfeited for non-payment of rent shall not expect relief against the forfeiture if he has been using the premises as a disorderly place.

(4) If any equitable interest in land had been granted with a fraudulent purpose, the court shall not enforce it in favour of the party tainted with the fraud.

17. (1) Where a party in any matter before the court seeks equitable relief, he shall be prepared to do justice and submit during the proceedings in the matter to any orders or directions which the court may in accordance with the principles of equity, deem proper to give.

(2) Where a person in possession of property has under a mistaken belief that he is entitled to it, expended money in permanent improvements, the true owner if he has to assert his right in equity, shall be required to do equity by repaying this money.

(3) A borrower who seeks for equitable relief against a security which is voidable in equity or which is void by statute, shall obtain it only on terms of paying the money which is properly due.

(4) Where the court sets aside any purchase, it may make an order for the purchase money thereon to be repaid with interest.

(5) Where a person gives his own property to another and in the same instrument purports to give that other person's property to a third party, that other person shall be unable to claim the whole of the gift to him unless he allows the gift to the third party to take effect.

(6) Where a person has become entitled to two mortgages made by the same mortgagor, he may consolidate the mortgage and refuse to permit the exercise of the equitable right of the mortgagor to redeem one mortgage without the other.

(7) A mortgagor who wishes to exercise his equitable right to redeem his mortgage shall give his mortgagee reasonable notice of his intention.

18. Where the legal interest is outstanding, the priority of equitable interest shall be governed by the rule that what is earlier in time is stronger in law so that—

- (a) competing equitable interest will *prima facie* rank according to the order of their creation; and
- (b) in dealing with equitable interests in pure personality priority primarily will depend upon the order in which notice of the dealings has been received.

19. (1) A person having a *prima facie* claim to priority for his interest, legal or equitable, may be postponed by reason of fraud, estoppel or gross negligence.

(2) An equitable mortgagee who is entitled to the title deeds as part of his security but fails to get them shall be postponed to a subsequent equitable mortgagee who takes the deeds without notice.

He who seeks equity must do equity.

When there are equal equities the first in time prevails.

Where claims may be postponed

(3) A prior mortgagee who, having obtained the title deeds, parts with them, or allows them unduly to remain out of his possession and thereby enables the subsequent advance to be obtained shall be postponed to the subsequent equitable mortgagee who takes the deeds without notice.

(4) Nothing in the foregoing provisions shall be construed as having the effect of postponing the interest of an equitable owner or encumbrancer whose interest is such that he does not require the possession of the title deeds to support it as in the ordinary case of trustee and cestui que trust, where the deeds are with the trustee to whom the subsequent equitable owner has parted with his money on the faith of the title deeds unless the trustee purports to act under a power vested in him and conveys the property by a deed containing a proper receipt clause.

(5) Where the owner of property hands over title deeds to an agent in order to enable him to dispose of the property, but subject to restrictions, and the agent creates an interest in disregard of the restrictions, the owner shall be bound by the act of his agent and shall be postponed to the interest thus created whether his estate is legal or equitable.

(6) In every case relating to a chose in action or trust fund, or equitable interest in land or capital moneys representing land, a subsequent equitable encumbrancer without notice shall gain priority if he is the first to give notice to the debtor or trustees or the party having the legal interest in the property.

20. (1) When there is an existing equitable interest in property, and an interest is subsequently created in favor of a purchaser for value without notice of the earlier interest, and that purchaser either gets in the legal estate all the time of his purchase, or after his purchase, his possession of the legal estate shall give him priority over the earlier equitable owner.

This section shall have effect only in the absence of notice or of any other circumstance to postpone him, and where there is no equity attaching his conscience by virtue of which the court will consider it just to deprive him of his legal estate.

(2) A purchaser of valuable consideration of the legal estate without notice either actual, constructive or imputed of a prior equitable right shall be entitled to priority both in equity and at law.

21. A purchaser of an equitable interest without notice of an earlier equitable interest shall take free from the prior interest if his purchase gives him the better right to a legal estate conveyed to a trustee for him and neither he nor the trustee has notice of the prior equitable interest.

(2) Where a purchaser of an equitable interest without notice of the prior equitable interest subsequently gets in a legal estate without being party to a breach of trust, he shall prevail over a prior equity even if he then has notice of its existence.

(3) The purchaser of an equitable interest without notice may not take free of prior equitable interest where the equities are equal, but he may take free of a mere equity. And the question

Where
there are
equal
equities
the law
prevails

Purchaser
without
notice

whether equities are equal in any particular case shall be decided only by the trial Judge on the evidence brought before him.

(4) For the purposes of the provisions of sections 21 and 22, a purchaser with notice may have priority over a prior equitable owner by getting in the legal estate from a purchaser who took without notice.

Provided that the later purchaser is not a trustee buying back trust property which he has sold or there are no other circumstances of fraud.

(5) For the purpose of this section "mere equity*" means a right or a remedy which is ancillary to some right of property, being usually of a procedural nature.

22. Where there is a trust of the legal estate, a purchaser of a second or subsequent equitable interest who gets in the legal estate after notice of the trust shall not avail himself of the legal estate as against the prior equitable interest notwithstanding that he paid his money before receiving notice of the trust. Where there is a trust of legal estate

23. (1) Notice of any prior dealing with, or other circumstances affecting Notice or property which will defeat a plea of purchase for value without notice may be existing actual or constructive. Notice of existing interest.

(2) An actual notice shall be binding only if given by a person interested in the property and in the course of the negotiation.

(3) Registration in a local lands instruments registry or any other such registry or an instrument transferring or creating a legal interest or charge or any other incumbrance shall be deemed to constitute actual notice to all persons and for all purposes as from the date of registration or other prescribed date, and so long as the registration continues in force and the registry is open to public inspection.

(4) When notice is properly given to an agent employed in a transaction, such notice shall be imputed to the principal who shall be affected by it whether the notice is communicated to him or not:

Provided that no imputation to the principal of any such notice shall be made—

- (a) where there has been fraud on the part of the agent in the matter: or
- (b) where the notice is not in respect of a matter which is material to the particular transaction.

(5) Constructive notice under subsection (1) above may be established where the purchaser or his agent—

- (a) has omitted to make proper enquires into the vendor's title; or
- (b) omitted to follow upon enquiry suggested by some matter of which he has actual notice: or

(c) designedly abstained from enquiry for the purpose of avoiding notice.

And in any of the above cases the court will impute to the purchaser or his agent knowledge of what he would have discovered if he had made the inquiries which a prudent purchaser or his agent would have made in the circumstance.

(6) Where an instrument respecting land or any matter thereof is rendered void or unenforceable for non registration by any other law in force against a purchaser in good faith for valuable consideration, such a purchaser shall not be otherwise prejudicially affected by notice of such instrument or matter.

24. (1) Where a trust exists and there is no trustee to execute it, the person in whom the trust property is vested shall hold it as trustee so that the want of trustee may not affect the beneficial interest.

(2) If a testator shows an intention to create a trust but does not appoint a trustee, his personal representatives shall be deemed to be trustees.

(3) Where a settlor of property appoints a sole trustee who subsequently disclaims the trust, the property shall revert to the settlor or if dead to his personal representatives, who shall hold the property upon the trusts specified in the settlement.

(4) Where on the death of a sole or sole surviving trustee, the trust property, whether real or personal, vests in his personal representatives subject to the trust until new trustees are appointed, the personal representatives, though not bound to accept the position and duties of trustees, shall be capable of exercising or performing any power or trust which the deceased trustee could have exercised or performed except otherwise provided in the trust instrument.

25. (1) When purchase-money for property is provided by two persons in unequal shares and the conveyance thereof is taken to themselves jointly, on the death of one of them, the other being entitled to the property at law, shall be treated in equity as a trustee for the deceased's representatives to the extent of the share of the purchase-money advanced by the trust instrument.

(2) Where the purchase-money is contributed equally by two persons, the surviving person may be presumed to be entitled to the whole property in equity as well as at law on the death of one contributor except where otherwise expressly provided by them.

26. If a mortgage is made to two persons jointly, it shall be immaterial whether the money advanced equally or unequally, the survivor of the two shall be a trustee for the representatives of the deceased mortgagee to the extent of his proportion of the loan.

27. Where partners acquire property, they shall be presumed in equity to hold it as beneficial tenants in common so that on the death of any of the partners the property shall be held by the surviving partner or partners in trust for the representatives of the deceased partner to the extent of his share of the purchase money in proportion to the value of the property at the time of his death.

Equality is
equity

Equity
never lacks
a trustee

28. (1) Whenever property is to be divided between rival claimants and there is no other basis for division, the court shall effect the division or distribution of the property by applying the principle of equality.

(2) If a testator in his will expresses a general intention in favour of a class, and a particular intention in favour of individuals of a class to be selected by another person, and the particular intention fails from that selection not being made, the court, in carrying into effect the general intention in favour of the class, shall divide whatever property that relates thereto among all the members of the class equally.

(3) Where there is an unexercised trust-power, the court shall, in executing the same, divide the property among all the members of the class equally notwithstanding that the donee of the power might have given unequal shares.

(4) Where there would be a failure of trust by reason of the uncertainty of the interest of the beneficiaries, the court may cure the uncertainty by dividing the trust property among the beneficiaries in equal shares.

(5) Where property held on trust becomes divisible into shares under the provisions of this section, any money or property which by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall subject to any contrary intention expressed or appearing from the circumstance of the case, be taken as being as settled in or towards satisfaction of the share of such child and shall be brought into account at a valuation (the value to be reckoned as at the death of the intestate) in accordance with the requirements of the personal representative.

29. (1) Subject to the provisions of this Law, the exercise of jurisdiction in respect of equitable remedies shall be a matter of discretion of the court:

Provided that such discretion is judicially exercised so that it shall not be—

- (a) arbitrary; or
- (b) capricious; or
- (c) dependent upon the mere pleasure of the judicial officer of the court

And provided further that it is a sound and reasonable discretion which is governed, as far as possible, by general rules and principles, but at the same time allows the withdrawal or grant of remedy according to the circumstances of each particular case, when the rules and principles will not furnish any exact measure of justice between the parties.

(2) In granting an equitable remedy the court will, while exercising its discretion, ensure in any case before it that there is an infringement of right and that the case is one to which equitable relief is applicable.

(3) No relief shall be given by the court in equity where legal remedy is adequate or where the conduct of the applicant for relief is such as does not justify the grant of it

30. Where a person seeks to avoid fraudulently the performance of a duty or of a trust by using a statute as a means thereof, the court in its equitable jurisdiction shall interfere to prevent the party from—

Equity will not permit a statute to be a cloak for fraud

- (a) making an unconscionable use of his statutory rights, or
- (b) deriving advantage under the statute to the effect of bringing about the very evil which the statute was passed to prevent

(2) Where any law provides that—

- (a) trusts of land; or
- (b) all testamentary dispositions.

shall only be in writing and a person takes real estate by instrument inter vivos or real or personal estate upon intestacy or under a will and in either case in pursuance of a trust arrangement, of which he was cognizant that the property should be held by him upon trust, the court shall not allow such a person to use that law as a means of avoiding the performance of the trust.

(3) Nothing in the foregoing provision under subsection (2) shall be construed as empowering the court to set aside any law in force for reason of that provision except that the court can always exercise its power under the provision to fasten on the person who gets a title under the law and impose on him a personal obligation and thus prevent him from applying the law as an instrument of accomplishing a fraud.

31. (1) Where an action is based on fraud, the period of limitation as provided by any law in force shall not begin to run until the plaintiff has discovered the fraud, or could with reasonable diligence have discovered it.

Fraud and limitation law

(2) If the defendant in an action based on fraud is a trustee, the period of limitation under any law in force shall never begin to run so as to bar the action, though the *cestui que trust* may be deprived of his remedy through his own laches or acquiescence.

32. The court may not, in its exercise of general equitable jurisdiction, allow any party in any proceedings before it to invoke the absence of a necessary seal or writing seal or writing or such of seal or formality in order to evade a clear moral obligation otherwise enforceable under any law.

Absence of seal or writing

33. (1) The court shall not enforce an incompletely constituted trust in favour of any volunteer.

Equity will not assist a volunteer

(2) Where valuable consideration is given by or on behalf of a volunteer, an incompletely constituted trust in favour of such a volunteer is enforceable.

(3) For the purposes of this section a valuable consideration includes marriage insofar as it concerns the spouses and the issue of the marriage only and as it is applicable to pre-nuptial settlements and to post-nuptial settlements made pursuant to ante-nuptial agreements.

(4) A trust shall be deemed to be incompletely constituted where —

- (a) the settlor has not declared himself to be the trustee of the property forming the subject-matter of the trust; or

- (b) the property has not been duly transferred to others to hold as trustees by the settlor using whatever form that is necessary to transfer the legal interest in the property.

(5) Where there has been an imperfect gift to a person and the person is subsequently appointed the executor of the donor of the imperfect gift, subject to his will being proved by the executor, such gift will become perfected.

(6) If the intention of the donor to pass the property where it is a *donatio mortis causa*, to the donee can be clearly shown, the court may on application by the intended donee, compel the donor's representatives to perfect the gift notwithstanding that the intended donee is a volunteer,

(7) Subject to the provision of subsection (3) of this section, a “volunteer” means a person who does not give valuable consideration in the common law sense such as money or money's worth or any such value within the usually accepted sense of the term in the law of contract

(8) Where the donee of an imperfect gift takes out letters of administration to the donor's estate, the gift shall for that reason become perfected

Provided that in all respects other than formalities necessary to transfer a legal title it would otherwise have been a perfect gift.

(9) The court shall not regard an imperfect gift as a declaration of trust in favour of anyone who does not give valuable consideration unless the donor—

- (a) declares himself a trustee in respect of the gift, or
- (b) does all that is necessary to pass a legal or equitable title therein, according as the subject-matter of the intended trust be legal or equitable.

PART II—EQUITABLE REMEDIES

Specific Performance

34. (1) The court in the exercise of its equitable jurisdiction, shall grant a decree of specific performance only in cases where the remedy at law to satisfy the plaintiffs complaint is inadequate.

Specific performance only where legal remedy is inadequate

(2) Where damages at law will give a party the full compensation to which he is entitled, and will put him in a position as beneficial to him as if the agreement had been specifically performed, the court will not grant specific performance.

(3) Specific performance shall be available in all cases of sale or lease of land provided that the jurisdiction of the court in this regard is confined to personal coercion of the recalcitrant party and is not extended to land situated outside the court's jurisdiction.

(4) The remedy of specific performance shall be applicable to any executory contract:
Provided that-

- (a) the remedy at law in respect of such contract is inadequate;
- (b) the contract is not—
 - (i) for loan of money except where permitted under a statute; or
 - (ii) for building houses except if the building work is defined by the contract and the plaintiff's interest in performance of the contract is so substantial that damages would not compensate him for the defendant's failure to build and the defendant is in possession of the kind on which the building is to be done.

Condition
for grant of
specific
performance

35. (1) Specific performance will not be granted of a contract which is immoral or contrary to law of this State. And in this regard the court shall not order the return of money paid on the consideration of the illegal or immoral contract, nor enforce a contract that is void at law for want of consideration.

(2) Where the court is requested to enforce a contract entered into in another country outside Nigeria, it shall be enough that the contract should be valid according to the law of that country, for if any part of that contract is inconsistent with the policy of Nigerian law, the contract will not be enforced, even as to the whole part of it which may not be open to the same objection, and may be the only part remaining to be performed.

Equitable
doctrine of
part
performance

(3) The court will enforce a contract which, owing to the absence of any written document cannot be easily proved at law, if the case is one to which it will apply its doctrine of part-performance. And for avoidance of doubt for this doctrine to be applicable the court will satisfy itself that—

- (a) The acts relied upon must be such as not only to be referable to a contract such as that alleged, but to be referable to no other title;
- (b) they must be such as to render it a fraud in the defendant to take advantage of the contract not being in writing;
- (c) the contract to which they refer must be such as in its own nature is enforceable by the court;
- (d) there must be proper parol evidence of the contract which is let in by the acts of part-performance;
- (e) the acts relied upon should have been performed by the plaintiff as he cannot base his case on any performance by the defendant.

Sale of
shares etc.

36. The court may grant specific performance of an agreement—

- (a) for the purchase of stock and shares;
- (b) for the sale of specific or ascertained goods, either conditionally, or upon such terms as to damages, payment of the price and otherwise as to the court may seem just.

37. (1) Specific performance will not be ordered of acts which would require supervision by the court and in particular, the court in making an order for specific performance shall ensure that No order where court supervision or personal service involved

(a) ineffective decrees are not issued;

(b) its orders can be enforced in practice.

(2) The court shall not grant specific performance of contracts for personal work or service and where such an agreement for personal work or service form an integral part of a larger agreement, it will prevent the court from decreeing specific performance of the larger agreement.

38. Where a chattel or specific article is wrongfully withheld and the plaintiff cannot be adequately compensated by damages because— Delivery of chattel

(a) the article or chattel is unique in its nature: or

(b) the article or chattel is associated with rights in real estate, the court may compel the specific return of such article or chattel, provided that by doing so, great hardship would not be inflicted on the defendant

39. (1) Where a partnership agreement is for a fixed term and has been already partly performed, the court may decree that such agreement be specifically enforced where it is necessary that the status of the partners should be determined. Partnership agreement

(2) The court may not specifically enforce a voluntary agreement or an agreement that is determinable at will and in particular the court shall not enforce an agreement to enter into partnership for no fixed term.

40. (1) The remedy of specific performance may carry, as incidental to it, a right to compensation Trustees and agents

(2) Where there is a breach of trust, a remedy shall be granted not in damages but by making the trustee restore the property with which he is chargeable, and account for profits which he has made or which he is to be taken to have made.

(3) The court may compel an agent to account to his principal for secret profits which he has made

41. (1) An action for specific performance is subject to the provisions of the law relating to limitation of actions. Specific performance and limitation law

(2) The court may not decree specific performance unless in cases where the parties seeking it come promptly and as soon as the nature of any particular case will admit.

42. Where the price paid on a sale of any commodity or for service rendered is found to be inadequate by the court or having regard to the actual value of the commodity sold or the service rendered, the court may not by reason of such finding alone refuse to grant specific performance Inadequate price

unless where the circumstances are such that the court will deduce from the finding some fraud or other factor that could render enforcement inequitable.

Misdescription
of the subject
matter

43. (1) Where there is a misdescription in respect of a contract of sale of any property which leads to a difference in identity of the property the court will not grant specific performance to force the purchaser to take such property if substantially different from that which he contracted to buy.

(2) The provision of the foregoing subsection shall not be construed to affect the obligation of a purchaser of land who fails to inspect such land to take the land without compensation for patent defects.

(3) The court may decree specific performance subject to compensation where a misdescription leads to a deficiency in quality or quantity of the property bargained for but does not affect its substance.

44. (1) The court may refuse to decree specific performance if by doing so a doubtful title ^{Want of good title} would be forced on any of the parties.

(2) Where a vendor has no title whatever to the property which he purpose to sell, the court shall not decree specific performance but shall leave the purchase to his remedy at law.

(3) If the title of the vendor to the property contracted to be sold is clouded with such doubt as renders subsequent litigation exceedingly probable, the court may refuse to compel the purchaser from carrying out the contract to purchase the property.

(4) Where a vendor contracts to sell property which includes a part which he has no title to sell, the court may decree in favour of the purchaser specific performance of the contract to convey all that part of the property which the vendor can convey, with compensation for the purchaser's disappointment in respect of the other part of the property to which the vendor has no title.

45. (1) Where there is a fundamental mistake in respect of a contract of sale of any property which ^{Mistake} will occasion such hardship amounting to injustice on a party to the contract, the court shall refuse to decree specific performance for reason of such mistake.

(2) If the mistake relating to the contract is not sufficiently fundamental to avoid the contract it may nevertheless constitute a ground for payment of damages.

(3) Where the mistake consists not in the formation of the contract but in its reduction into writing, the court may, on proof of the mistake in the writing, grant specific performance of the real contract as thus proved by parol evidence and having regard to the circumstances of each case.

Lapse of
time

46. (1) If time is of the essence of a contract, it shall be a good ground for the court to refuse specific performance thereof where the plaintiff has not performed his part of the contract within the proper time or reasonable time thereafter

(2) Time will be considered of essence of a contract in the following cases—

- (a) where the contract expressly states that time shall be of the essence of the contract;
- (b) where time was not originally of the essence of the contract but has been made so by one party giving a notice to the other. Such notice, however, can only be given after the other party has been guilty of unreasonable delay and the time mentioned in the notice must be reasonable;
- (c) where from the nature of the property' time may be considered to be of the essence of the contract.

Where delay
in evidence of
abandonment

47. A party in a proceeding before the court may be precluded from obtaining specific performance by the court where such party is guilty of such delay in performing his part of the contract as to evidence an abandonment of the contract notwithstanding that time is not of the essence.

Tricky or
unfair conduct

48. (1) Where the contract sought to be enforced by the court is tainted with fraud either on the parties or on the public, and such fraud is not sufficient to justify the rescission of the contract, the court may still refuse the equitable remedy of specific performance if the conduct of the plaintiff has been tricky or unfair.

(2) A party seeking an order for specific performance of a contract may not be refused such remedy merely by reason of his silence on, or failure to disclose, some material facts for which there is no legal duty on him to disclose all the time of entering into the contract.

(3) For purposes of the above subsection a party who stands in a fiduciary position to the other party shall be regarded by the court as being under a duty of disclosure and may be refused the remedy of specific performance where he fails to make the disclosure.

(4) If the subject-matter of a contract is sale of land, the vendor shall be bound to disclose defects in his title him and any latent defects in the quality of the known to him notwithstanding that he is not in any fiduciary-relationship with the purchaser.

(5) Where there is a physical defect unknown to either party in respect of the subject-matter of the contract between them, the court may in its discretion, order specific performance of the contract:

Provided that the defect is not such as to prevent any party from acquiring substantially what he has contracted for.

49. Nothing in this Law shall be constructed as restricting the discretion of the court to refuse to grant specific performance where it would inflict on the defendant great hardship provided that such hardship must have existed at the date of the contract.

Hardship
defendant

50. The court may not grant specific performance in the following circumstances—

Illegal contracts

- (a) where a statutory corporation enters into a contract which is *ultra vires*,
- (b) where an agreement involves a breach of a prior agreement, or a breach of trust, or the payment of an unlawful premium, or the payment of a higher rent than the law allows, or the sale of the goodwill of a business unconnected with the business premises.

51. (1) The court shall not order specific performance except in respect of a complete and definite contract.

Incomplete contracts

(2) In determining whether there is a complete contract in any particular case the court shall have to consider in whole what has passed between the parties by way of fellers and conversation and as construed by the court in accordance with the good faith and real intention of the parties.

(3) Where a contract is subject to the fulfillment of a condition precedent, the court may not decree specific performance until such condition is fulfilled, unless the condition is solely for the benefit of the plaintiff when he may waive it and seek for the enforcement of the contract.

(4) Where there is merely trivial uncertainty in the contract which can be removed by inquiry, the court may decree specific performance of such contract.

52. (1) The court shall not directly decree the enforcement of an arbitration clause in a contract between two parties

(2) On the application of any of the parties to the proceedings the court may exercise its discretion to stay the proceedings to enable the party to resort to arbitration.

53. The court shall not grant specific performance on the application of an infant.

54. (1) When seeking an order for specific performance of a contract for the sale of land, it shall be necessary for the purchaser to satisfy the court that he has tendered a conveyance to the vendor for execution and that this has been refused.

(2) Where a vendor shows a good title to the land which he has contract to sell and satisfies the court that he has always been ready and willing to complete the sale, it shall not be necessary for him to prove that he has tendered a conveyance.

55. (1) Where a purchaser has taken possession of property under a contract of sale, he shall be barred from setting up as a defence an action for specific performance on the ground that the title of the vendor is defective.

(2) The provisions of the foregoing subsection shall not apply, and so a purchaser may resist an action for specific performance notwithstanding that he has gone into possession where—

- (a) the contract provides for the purchaser to take possession before a good title is shown, or
- (b) the defect in the vendors' title is such as can be removed.

Arbitration

Want of mutuality

Procedure

Effect of possession

Injunctions

56. (1) The court in the exercise of its equitable jurisdiction may make an order for an injunction directing a person to do or refrain from doing a particular act in circumstances where monetary compensation does not afford adequate remedy to the injured person. Nature of injunction

(2) An order made under the preceding subsection may be mandatory or prohibitory having regard to the circumstances of any particular case or proceeding before the court and according as it purports to be an order to do or to refrain from doing an act.

(3) Subject to the provisions of the foregoing subsections, the court in making an order and in this regard may, in particular cases, make an order for—

- (a) interim injunction; or
- (b) interlocutory injunction; or
- (c) perpetual injunction.

(4) Where the court grants an interim or interlocutory' injunction it may require the plaintiff or the party to whom it is granted to give an undertaking to be responsible for any damage caused to the defendant or the other party against whom the order is made if it turns out all the hearing of the case between the parties that he was not entitled to the relief;

Provided that where the plaintiff is the Attorney-General suing on behalf of the State Government the undertaking shall not be given.

57. (1) Subject to the provisions of this Law and any other written law in force in the State, the court shall grant injunction to restrain the breach of a negative contract provided that such a contract is enforceable. Breach of contract and other wrongs.

(2) Where a party expressly contracts not to do a thing, the court shall have no discretion to exercise, but shall merely confirm by its order what has already been agreed upon by the party.

(3) A contract for personal services may not be indirectly enforced by an order for injunction, if the contract is positive in form.

(4) Where any contract other than a contract for personal services is positive in form it may nevertheless be enforced by injunction provided that it is negative in substance.

(5) Subject to the provisions of subsection (3) an injunction may be granted! to restrain a breach of the negative agreement:

Provided that if the negative term is merely a repetition in a negative form of the whole of the positive contract, no injunction will be granted.

(6) The court will not grant injunction to restrain a breach of a negative term in a contract if by doing so, the defendant would, in effect, be compelled either to carry out his contract or to remain idle.

Injunction: when to be granted

58. (1) The court may grant an injunction if it considers it just and convenient to do so in respect of—

- (a) trespass;
- (b) nuisance;
- (c) defamation; or
- (d) other wrongs:

Provided that only damages in each case would not be an adequate remedy for the wrong which is committed or which is likely to be committed.

(2) Where the injury to the plaintiff—

- (a) is small; and
- (b) can be estimated in money; and
- (c) is one which can be adequately compensated by a small money payment, damages in lieu of injunction will be awarded by the court.

Damages in lieu of injunction

59. (1) The court may in any case where it could grant an injunction, award damages in substitution for or in addition thereto.

(2) Where the right to an injunction is in any way lost, no award of damages shall be made under this section.

(3) Damages may be awarded under the provisions of this section for apprehended or threatened infringement of a right notwithstanding that an injunction may also be granted as an additional remedy or in lieu of the damages

60. (1) The court, in entertaining an application for an order to restrain the continuance of any wrongful act, may grant a prohibitory or restrictive injunction, that injunction may be granted

(2) Mandatory injunction may be granted by the court in an appropriate case if the effect is to restrain the continuance of any wrongful omission

(3) Where the final determination of the parties' rights has been made, the court may make an order for perpetual injunction as it may deem fit having regard to the circumstances of the case between the parties.

(4) An interlocutory or interim injunction may be granted before the trial of any action where the court considers it just or convenient so to do in order to keep things in status quo until the question at issue between the parties can be determined.

(5) In granting an injunction under this section it shall be necessary for the party applying to the court for the remedy to establish some legal or equitable right to support the application.

61. (1) Where a restrictive covenant contained in a lease runs with the land, the court may enforce such covenant by injunction against any subsequent owner except where he has obtained the legal estate bona fide for value without notice, actual or constructive, of the covenant.

(2) The provision of the foregoing subsection shall not apply to positive covenants.

(3) It shall be necessary for the party seeking to enforce any restrictive covenant under this section to show that —

- (a) the covenantor is bound by the covenant; and
- (b) he is entitled to enforce the covenant.

(4) A person other than the covenantee may enforce a restrictive covenant if there is a general building scheme

(5) Subject to the foregoing provisions, an assignee of the covenantee may enforce a restrictive covenant only if either—

- (a) he is a purchaser of land to which the benefit of the covenant was attached; or
- (b) the benefit of the covenant has been assigned to him

62. A remainder man may apply to the court for an injunction to prevent the tenant for life from committing waste.

And where the tenant for life is unimpeachable for waste, he may be restrained from committing equitable waste or wanton act of destruction under this section.

63. (1) The court may restrain by injunction any public nuisance at the suit of the Attorney-General of the State or at the suit of any private individual who suffers special damage over and above other members of the public as result of the public nuisance.

(2) Where a private nuisance causes injury to property, the court may grant an injunction at the instance of the owner of such property, restraining the continuation of such nuisance:

Provided that the injury is such as cannot be compensated for by damages or to occasion a constantly recurring grievance.

(3) If the nuisance merely affects the comfort of a person other than causing injury to his property, the court may, in considering an application for injunction by the aggrieved party, have regard to

Waste and
repairs

Nuisance

the fact that a person must be prepared to put up with such inconveniences as necessarily result from a reasonable user of his neighbour's property

Patents

64. (1) An injunction may be granted by the court to restrain threats of proceedings for infringement of a patent, unless the person threatening proceeds to test the validity of his claim immediately by commencing an action for infringement.

(2) The court will not grant interlocutory injunction unless the validity of the patent has been already established or is not contested.

An order for account to be kept by the defendant may be made by the court.

(3) After proof of validity of the patent, the court may grant a perpetual injunction whether the breach of the patent is innocent or intentional.

(4) Damages may only be awarded by the court when a patent is knowingly infringed.

65. (1) An injunction may not be granted to an expelled member of a club who has no right of property.

Expulsion from clubs

(2) Where a club is constituted and its members have right of property, an Expulsion injunction may be granted by the court to prevent expulsion if the rules of the club have not been strictly complied with, or if the member has not been given an opportunity of being heard, or if the committee of the club has not acted bona fide.

(3) For purposes of this section the word "club" includes professional and trade associations and friendly societies.

66. (1) A person may be restrained by injunction from doing any acts which induce purchasers to believe that his goods are those of another.

Passing off

(2) Before granting an injunction under this section, the court must be satisfied that the members of the public have been confused by the acts of the defendant.

67. (1) An injunction may be granted at the instance of any writer to restrain the publication by another of any material written by such writer

Copy right

(2) Where the author of a written material is dead, the court may grant an injunction to his executors to restrain any publication of the material by another.

Confidential
confirmation

68. The court may grant an injunction to restrain what it considers to be wrong whether arising from violation of a right or from breach of contract or confidence and in particular may make an order of injunction to restrain—

(a) a legal practitioner from disclosing the secrets of his clients.

- (b) an ex-servant from improperly using knowledge of any secret process acquired by him during his employment;
- (c) a person from procuring a breach of an obligation by a skilled worker not to work for a trade rival.

69. (1) An injunction may be granted to restrain the publication of a libel

Provided that—

- (a) there is 3 danger of a repetition of the libel, and
- (b) the court considers it reasonable that such relief should be granted having regard to the circumstances under which the application for the order is made.

(2) The court shall have jurisdiction to restrain by injunction—

- (a) the making of untrue statements which are calculated to injure a person in his trade or business;
- (c) false statements of fact as to the personal character of conduct of a prospective employee in any post or office.
- (d) groundless threats of legal proceedings for an alleged infringement of registered design.

70. (1) Where the court grants an injunction, it will be enforced by committal for contempt, both against the parties enjoined and against all others knowingly abetting them in their breach of the injunction for reason of obstructing the course of justice.

(2) An injunction against a corporation which has been willfully disobeyed shall be enforced by—

- (a) sequestration of the corporation's property; or
- (b) attachment of the directors or other officers; or
- (c) sequestration of the property of the officers or directors of the corporation.

71. The court may refrain from imposing immediate injunction—

- (a) where the plaintiff has suffered no pecuniary damage; or
- (b) where the plaintiff has in the past permitted the conduct of which he complains; or
- (c) where the injunction sought is mandatory and there is no immediate damage; or
- (d) where war conditions make this course desirable.

72. The court may make binding declaration of right at the instance of any party interested in the subject matter of the declaration whether any consequential relief is or could be claimed or not.

Withholding
injunction

Court may
make
declaratory
judgment

False
statement

Enforcement

(2) A declaration under this section may be made even if no cause of action is disclosed by the party asking for it:

Provided that some relief is sought or that a right to some substantive relief should be established by him.

(3) No declaration as to the true construction of documents shall be made by the court on any motion for judgment in default of defence.

73. (1) Every declaration claimed must relate to some legal right conferring some tangible benefit on the plaintiff.

Restrictions
on declaratory
judgment

(2) The court shall not make a declaration on a subject, relief in respect of which, it has no jurisdiction.

(3) A declaratory judgment may not be given where the only remedy open to the plaintiff is—
(a) one prescribed by statute;
(b) an application for an order of mandamus; or
(c) an application for an injunction in lieu of an information in the nature of a quo warranto;

Provided that the jurisdiction of the court is not ousted by a statutory remedy which is purely in the nature of a penalty and which in fact affords no remedy to the plaintiff for the wrong of which he complains.

Invalidation of
unjust verdict

74. Where a person would otherwise be without a remedy for an injustice the court may make a declaration of the invalidity of a determination of a statutory tribunal, notwithstanding that such determination of the tribunal is judicial, disciplinary or administrative or is made final by statute.

Declaratory
judgment is
discretionary

75. (1) The power of the court to make a declaratory judgment shall be discretionary and shall be exercised judicially with due care and caution.

(2) The court shall not exercise its power under this section where the relief claimed is unlawful or unconstitutional or inequitable for the court to grant.

(3) No declaration as to legitimacy shall be made except under the court's statutory powers

(4) Notwithstanding the generality of the provisions of the foregoing subsections, the court shall not in particular make a declaratory judgment—

(a) where the question raised is purely academic; or

(b) where the declaration would be useless or embarrassing; or

(c) where some adequate alternative remedy is available.

76. (1) A declaratory judgment may be made against the Attorney-General of the State as representing the State Government, in cases where some other judgment would have been appropriate; against an individual by—

Declaratory
judgment
against
Attorney-
General

(a) injunction:

(b) order of specific performance;

(c) judgment for recovery of land or other property.

(2) The court may make a declaration against the State Government as it may make against an individual;

Provided that—

(a) no declaration or injunction may be made against an officer of the State Government if the effect is to give any relief against the State Government which could not be obtained in ordinary proceedings;

(b) declaration is the appropriate relief having regard to the circumstances of the matter before the court.

Rescission

77. The court may, on the application of a party to any transaction, set aside such transaction and restore the party to his original position it, considering the circumstances of the transaction the court considers it just and equitable to do so.

Nature of
rescission

78. Any party who has been discharged by breach of any contract or transaction may recover damages for the breach:

Discharge by
breach

Provided that he has not by reason of such breach or for any other cause rescinded the contract or the transaction.

Illegality

79. Where any transaction or contract is tainted with illegality the court, in entertaining any application in respect thereof, shall not make any order for any restitution of property affected by such contract or transaction.

Grounds
for
rescission

80. Notwithstanding Ute generality of the provisions of section 77, The court may grant rescission of a contract or other transaction on the ground of—

- (a) fraudulent misrepresentation;
- (b) innocent misrepresentation where the contract is still executory;
- (c) constructive fraud,
- (d) breach of the term of contract entitling one party to rescind,
- (e) misdescription by a vendor under a contract for the sale of land, provided that such misdescription is substantial.

81. (1) Any party may waive his right of rescission in respect of any contract provided he has full knowledge of the facts and has willingly affirmed the contract.

(2) Where any person has waived his right of rescission of a contract under subsection (1) he will not be allowed to revive this right except as otherwise expressly provided by the terms of the contract.

(3) The court will not grant any application for rescission of any contract if the parties to the contract cannot be restored to their former positions.

(4) Any innocent misrepresentation which affects any contract or any other transaction shall not give the party aggrieved any right to rescind the contract after completion.

(5) Where a third party has acquired rights for value under a contract before it is rescinded, the right to rescind is lost and cannot be enforced through the court.

Rectification and cancellation

82. (1) The court may grant the remedy of rectification on the ground of mistake where—

Court may
rectify
document

- (a) there is an oral agreement between the parties to the transaction:
- (b) it is a mistake of all the parties, and
- (c) due to this mistake the instrument embodying agreement does not represent the true intention of all the parties.

(2) The court may under this section reform or rectify any instrument so as to make it accord with the true agreement of the parties.

(3) No rectification shall be decreed by the court—

- (a) if the result of such rectification can be achieved by the parties through other means

(b) where the mistake is not common to all the parties but merely unilateral, provided that no fraud is established against the other party.

(4) Any party who seeks rectification shall establish his case before the court by clear and satisfactory evidence leaving no reasonable doubt upon the mind that the instrument sought to be rectified does not embody the final intention of the parties.

83. The court shall have jurisdiction to rectify every instrument which is not expressly excepted under this Law or any other law in force in the State. Unless barred by statute

And in particular, the articles of a company shall not be rectified under the provisions of this Law.

84. Notwithstanding the provisions of the last foregoing two sections, the court may at its discretion refuse to order rectification in any proceedings before it. Rectification is discretionary

PART III —TRUST AND TRUSTEE

Preliminary

85. In this Part—

“assign” means to execute mid perform even necessary or suitable deed or act for assigning surrendering or otherwise transferring land or which the person so executing and performing is possessed, either for the whole estate of the person so possessed or for any less estate: and “assignment” has a corresponding meaning;

”beneficiary” means a person entitled to beneficial interest in trust property;

“charitable object” include an educational institution, a hospital, a society or institution for aid to poor or handicapped persons, and churches run by full-time ministers of religion.

“contingent right” in relation to land includes a contingent or executory interest, a possibility coupled with interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained: also whether Vested or contingent”

“constructive trust” includes any trust imposed by law on 3 trustee or other person deemed to be a trustee in respect any property.

“convey” in relation to any person includes to execute every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposition of land whereof the person conveying is seized nr possessed or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, and to perform nil formalities required by law of the validity of the conveyance and “conveyance” has a corresponding meaning:

“Court” means High Court

"devise" means a gift of land or interest in land made by will, and "devisee" means a person to whom such gift is made;

"donee" in relation to will, includes a devisee of a real property, a legatee of personal property and the donee of a power of appointment whether general or special;

“equitable estate” means right in property of which the legal ownership is vested in another person, or in the equitable owner in another capacity, and "equitable interest" has a similar meaning;

“executed trust” means a trust under which the beneficial interests are fully and completely limited and defined by the settlor at the time of the creation thereof;

“executory trust” means trust under which the beneficial interest are merely indicated by the settlor and left to be completely defined and limited by the trustee or other person at a future date;

"gift" in relation to a will includes a devise of a real property and bequest of personal property, and "give" and its derivatives have a corresponding meaning;

“grantee” means a person to whom property real or personal is transferred; "grantor" means a person by whom property, real or personal is transferred;

“hereditament” means real property which under an intestacy occurring before the commencement of this Law might have devolved on an heir;

implied trust" includes any trust deemed by the law to arise from the presumed intention of the settlor

“income” includes rents, profits and interest on capital:

"instrument" includes any documents, law, decree or any "trust instrument" has a similar meaning;

"Land" includes land of any tenure; buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, leases or other corporeal; hereditament, and easement, right of way privilege, or benefit in, over, or derived from land; but not an undivided shore of land;

“legacy” means a gift of personal property or interest therein made by will;

"legatee" means a person to whom a legacy is given.

"lunatic" means person of unsound mind whether CT not certified to be so by a medical practitioner.

"mortgage" and "mortgagee" include a charge or chargee by way of legal mortgage, and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

"object" in relation to a trust means the person intended by the settlor to be the beneficiaries under the trust.

"pay into court" as applied to stocks and securities include to deposit or transfer the same in or into court:

"person" includes a company, association or body of person (corporate or incorporate) also a charitable, religious or educational institution;

"person of unsound mind" means any person, not being an infant, who, whether or not declared a lunatic or an insane or a mentally incompetent person, is incapable, from infirmity of mind to manage his own affairs.

"personal representative:" means an executor (original or by representation) or administrator with or without the will annexed) for the time being of a deceased person or any family head of other person administering the estate of a deceased person under customary law;

"possession includes receipt of rents and profits or the right to receive the same, if any; and 'possessed applies to receipt of income of any to an vested estate less than a life interest in possession or in expectancy in any land.

"property" includes real and personal property, and any estate, share or interest in any property, real or personal; and any debt, and anything in action, and any other right or interest, whether in possession or not;

"public officer" means any person who holds any office or carries out any function or duty for which he receives regular emoluments out of the public revenue of the State whether on a permanent basis or for a specified period or for an indefinite period;

"public trustee" means any person appointed to the office of Public Trustee under the Public Trustee Law, or any statute re-creating or replacing the same, or, if there is no person for the time being holding the office, the Accountant-General of the State;

"resulting trust" means any trust which arises when any person transfers any property to, or buys any property in the name of another person without declaring any trust, or declaring trusts which

do not exhaust the beneficial interest in the property and without expressing any intention that such other person shall be beneficially entitled to such property.

"rights" includes estates and interest;

"sale" includes an exchange;

"securities" includes stocks, funds, and shares; and transferable by delivery or by delivery and endorsement;

"settlor" means a person who creates or declares a trust;

"State" means Enugu State of Nigeria;

"stock" includes fully paid up shares and, so far as relates to vesting orders made by the court under this law, any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

"subject-matter of the trust" means the property intended by the settlor to be held on trust;

"testator" means the person by whom a will is made;

"subject-matter of the trust" means the property intended by the settlor to be held on trust;

"testator" means the person whom a will is made;

"things in action or choses in action" includes debts, shares, debentures, stocks, dividends on shares or stocks, right to rent, annuities, cheques, permission notes, bills of exchange and other negotiable instruments, insurance policies, pensions, patents, copyrights, securities for payment of money, and right of action.

"transfer" in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, anything on the part of the transferor done to effect and complete the title in the transferee and in relation to other property, includes conveyance or other assurances also an assignment;

"trust" includes a trust for sale arising under any Act or law having effect in the State, and also implied, resulting and constructive trusts, and the cases where the trustee has a beneficial interest in the trust property, representative or the public Trustee, but does not include the duties incident to an estate conveyed by way of mortgage, and trustee has a corresponding meaning;

"trust corporation" means the Public Trust or a corporation appointed by the court in any particular case, or entitled under the Public Trustee law, to act as custodian trustee;

"trust for sale" in relation to land means, in Immediate binding trust for sale, whether or not exercisable all the request or with the consent of any person, and with or without power at discretion to postpone the sale;

"trustee for sale" means the person (including a personal representative holding land on trust for sale;

"trust property" includes any property which is subject to a trust or comprised in an estate administered by the Public Trustee.

"trustee" includes a personal representative and a trustee appointed by the court and "new trustee" includes an additional trustee;

"will" has meaning assigned to that expression under the Administration of Estate Law.

86. (1) This Part of this Law, except where otherwise expressly provided, applies to all trusts madeApplication or having effect in the State including, MO far as any trust arises thereunder, executorships and administratorships constituted or created either before or after the commencement of this Law.

Provided that nothing in this subsection shall affect the legality or validity of anything done before the commencement of this law except as otherwise expressly provided.

(2) The powers conferred by this Part of this Law on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, and unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, it any, creating the trust, and have effect subject to the terms of that instrument.

This Part of this Law does not affect the legality or validity of anything done before the commencement of this Law except as otherwise expressly provided.

(3) This part of this Law shall apply to trusts arising under or created by any written law in force in the State relating to—

(a) vesting of communal land in trustees; and

(c) perpetual succession to land belonging to religious, charitable, cultural or other organization, but only insofar as the provisions of this Part of this Law are not inconsistent with the provisions of such written law, and in case of such inconsistency, unless this Part of this Law otherwise provides, the provisions of such written law shall prevail.

(4) This Part of this Law shall apply to the State.

Voluntary Creation of Trusts

Creation of
trust by
transfer of
property

87. (1) Where the owner of any property by writing transfers it to another person with intention, expressed to the instrument of transfer, that such property is to be held on trust for, or is otherwise to be applied for the benefit of any person or class of persons of whom the settlor may be one, such property shall become trust property and shall be dealt with accordingly.

(2) Where the owner of property, without valuable consideration, transfers the same to any other person with the intention that such property shall be held on trust for, or otherwise applied for the benefit of any person or class of persons of whom the settlor may be one, and such intention is not expressed in the instrument of transfer, such property shall, notwithstanding the absence of such express intention be held on trust for the intended beneficiaries.

(3) Where it is alleged that a trust arises under subsection (2) of this section any person may establish by evidence—

(a) the true intention of the settlor; and

(b) the identity of the intended beneficiaries thereunder, and the court shall give effect to such intention,

(4) Where a trust arises under subsection (2) and intended beneficiaries cannot be identified, the trust property shall be held by the grantee on trust for the grantor, if he is dead, for his general residuary devisee or legatee or the persons entitled to his estate on intestacy, as the case may be.

(5) Where the owner of property by a written instrument transfers it to another person with intention expressed in the instrument that the transferee should hold the same on trust, or on a particular trust, oral evidence shall not, in the absence of fraud, mistake, duress or undue influence, be admissible to show that such transferee is intended to take the property beneficially, or to hold it on a different trust

(6) Where the owner of property declares in writing that he shall henceforth hold the same on a particular trust, oral evidence shall not, in the absence of fraud, mistake, duress or undue influence, be admissible to show that such transferee is intended to take the property beneficially or to hold it on a different trust.

(7) “Owner” in this and the next succeeding section includes a person having a power of appointment, general or special, over property.

88. (1) Where the owner of any property—

Creation of
trust by
declaration

- (a) declares in the appropriate manner that such property shall henceforth be held by him on trust for, or be applied by him for benefit of, one or more persons of whom the owner himself may be the one, or
- (b) transfers such property or interest to any other person and, either before or at the time of such transfer, declares in the appropriate manner that henceforth that property shall be held on trust for, or for the benefit of, one or more persons of whom the owner may be one, such property shall henceforth become trust property and the trust thereby created shall be enforceable by or on behalf of the persons intended to be beneficiaries thereunder.

(2) A declaration under this section shall be deemed appropriate and effectual to create a trust in the following cases, that is to say -

- (a) where the subject-matter of the trust is personal property other than an equitable interest, and the declaration is made by a written will or by some other writing signed by the senior, or by word of mouth spoken in the presence and, to the hearing of not less than two persons of full age and understanding.
- (b) where the subject matter of the trust is an equitable interest (whether in personal property or in real property), and the declaration is made by a written will or by any other writing signed by the settlor or his agent thereunto authorized in writing.
- (c) where the subject-matter of the trust is land or any interest in land, and the declaration is made by a written will or by other writing signed by the settlor.

(3) Nothing in this section shall be construed as requiring that any special form of words shall be necessary for a valid declaration of trust under this section, and for the avoidance of doubt, a trust shall be deemed to be effectively created if the intention so to do shall appear from, or is necessarily implied in, the words used by the settlor.

(4) Nothing in this section shall affect the provisions of this Law or of any other written law of the State relating to—

- (a) resulting, implied and constructive trusts or any other trust arising by operation of law; or
- (b) dispositions made by will, or gifts made in contemplation of the donor's death.

89. Where a testator devises or bequeaths any property to any person and it appears on the face of the will that such devisee or legatee is not intended to take any beneficial interest in such property, then and in every such case—

- (a) such property shall be held on trust by the devisee or legatee, as the case may be, for the persons intended by the testator to take the beneficial interest therein; and

Where no
beneficial
interest
intended for
donee

- (b) any person may identify' by evidence the person or persons intended by the testator to take the beneficial interest in such property and where such beneficiaries are ascertained they shall be entitled to enforce the trust:

Provided that where the intended beneficiaries are not ascertained such property shall be held by the devisee or legatee as the case may be for the general residuary devisee or legatee of the testator as the case may be or persons entitled on the intestacy of the testator.

90. (1) Where any gift, whether absolute or not, is made in a will to any one or more persons (whether such gift be made to them as joint tenants or as tenants in common and the persons, in writing whether before or after the execution of the will, that such gift is to be held by him or them on trust for the persons named or otherwise sufficiently described to him or them, any person may by evidence, written or oral—

- (a) show that the gift is intended by the testator to be held on trust by all such persons, and

- (b) establish the identity of the persons intended by the testator to take the beneficial interest in such property

(2) Nothing in any other written law of the State shall affect the provisions of this section.

91. Where—

- (a) a testator devises or bequeaths any property to any person; or

Precatory
trust

(b) any person transfers any property to any other person without valuable consideration; and such devise, bequest or transfer as the case may be contains words indicating a desire, confidence, wish, hope, request, prayer, expectation or recommendation that such property be applied for the benefit of other persons or class of persons by the person to whom the same is devised, bequeathed or transferred as the case may be, unless a contrary intention appears in the will or instrument of transfer either expressly or by necessary implication.

92. (1) Where property is given by will to any person to be held by him on trust for another person, being a child or other issue of the testator, such gift shall not fail by reason only that the intended beneficiary dies in the life time of the testator, if the intended beneficiary leaves any child who survives the testator, and such property shall be held on trust for the benefit of the estate of such beneficiary. Trust not to fail in certain circumstances

(2) Where property is given by will to any person to be held by him on trust for another person, such gift shall not fail by reason only that the intended trustee dies before the testator, but shall be held on trust by the personal representative for the time being of such trustee, and where the chain of representation is broken the gift shall be held on trust by the testator or his personal representative for the time being.

(3) The provisions of the foregoing subsections of this section shall apply to any trust arising under section 100 of this Law.

(4) Where any property is given by will to any person to hold the same on trust for an object, or for the benefit of objects to be subsequently communicated by the testator to the donee, and the testator fails to make such communication, such property shall be held on trust by the donee or his personal representative, if he be dead, for the residuary legatee or devisee of the testator or the person entitled on the testator's intestacy as the case may be.

(5) Where a testator fails to dispose of part of his estate by his will his executor or other representative shall, pending distribution, hold such property as is not disposed of on trust for persons entitled under the testator's intestacy, unless it be expressed in the will that the executor shall take such property beneficially.

(6) Where power is given to any person to appoint property, by his will or otherwise, to any particular person or class of persons, and the donee of such power for any reason fails to exercise the same effectively, the personal representative of such donee shall hold such property on trust for the person intended to be benefited unless a contrary intention appears in the will or other instrument creating the power.

93. (1) Where any property is given to any person by will and such contains a direction or request that the donee of such property is to maintain or take care of the children of the testator, the donee shall hold such property on trust and shall apply the same as follows—

- (a) the whole property with the accrued profits thereof shall be applied in equal shares in the maintenance or advancement of each child until he attains the age of twenty-five years, or being female, married under that age and thereafter,
- (b) so much of such property with the accrued profits thereof as may still be reasonably necessary for the maintenance or advancement of any of such children shall be applied to his or their maintenance or advancement until such necessity shall cease.

Provided that if the testator is not survived by any children, the property shall become part of the residuary devise or legacy, or devolve on intestacy, as the case may be, of the testator, unless a contrary intention is shown in the will either expressly or by necessary implication.

(2) Where property is held on trust under the foregoing subsection, the donee shall be titled beneficially to so much of such property and accrued profits therefrom if any, as shall not be reasonably required for the maintenance or advancement of the testator's children after they shall have all attained the age of twenty-five years, or being female married under that age.

94. Where a person, is given any property to hold the same on a specific trust and the trust so created does not affect the whole of such property or exhaust the beneficial interest therein, so much of the property or interest as is not affected or exhausted shall be taken beneficially by the trustee, unless a contrary intention shall appear by the instrument or words creating the trust. Where specific trust not exhausted

95. (1) No trust, however arising, shall fail by reason only that no trustee thereof exists or has been appointed. Where specific trust not exhausted

Request to
maintained
testator's
children

(2) Where a trust is created but a trustee is not effectually appointed by (he settlor, or the trustee refuses to accept the trust, or dies before the trust comes into force then and in every such case, the person in whom the trust property is for the time being vested shall be deemed to be the trustee of such property for the purpose of the trust:

Provided that this subsection shall be without prejudice to the operation of the provisions of this part of this Law regarding the appointment of trustees by the court or otherwise.

96. (1) No trust shall be validly created in respect of any property unless—

Requirements
of valid
trustee

- (a) from the words by the settlor there appears a clear intention to create a trust; and
- (b) the subject-matter of the trust is certain or reasonably capable of being ascertained, at the time of creation of the trust; and
- (c) the objects of the trust are certain or reasonably capable of being ascertained, at the time of creation of the trust: and
- (d) the settlor can reasonably be deemed to have, by word or deed, divested himself of all subsisting interests in the subject-matter of the trust, or has declared himself to be a trustee in respect thereof.

(2) The objects of trust shall, for the purposes of subsection (1) (c) of this section, be deemed to be reasonably capable of being ascertained where the settlor, at the time of creation of trust—

- (a) manifests a clear intention that such objects shall be selected or nominated by another person, and
- (b) given the name or sufficient description of the person who shall select or nominate such objects.

(3) No formal words shall be needed for the creation of any trust, whether the same be executed or executory but where technical terms are employed in the creation of the executed trust, such terms shall be construed in their legal and technical sense, unless the settlor clearly expresses a contrary intention.

Creation by Operation of Law

97. Where any property is by will or otherwise given to any person for the duration for the life of such person or the duration of the life of any other person, and the same property is on the same or on a subsequent occasion given to any other person with effect from the cessation of the interest for life first given, then and in every such case, such property shall, as regards the second interest given therein, be held on trust by the person to whom the life interest is given or his personal representative, if no other trustee is appointed in respect of such property.

98. (1) Where any person agrees, for valuable consideration given by another person (thereinafter called the promisee), to do any act or thing expressed to be for the benefit of some person other than the promisee, and, it appears that no monetary benefit is intended to accrue to

the promisee from the contract so formed, such promisee shall be deemed to have entered into such contract as a trustee for the person intended to benefit therefrom.

Contract
for benefit
of third

- (2) Where a trust arises under the foregoing subsection then notwithstanding any law to the contrary having effect in the State.
 - (a) the person intended to benefit from the contract thus formed shall be entitled to enforce the same, notwithstanding that he is not a party thereto; and
 - (b) the promisee shall be entitled to enforce such contract, notwithstanding that he shall not have suffered any monetary loss by reason of the breach of such contract.

99. (1) Where any person purchases or takes conveyance of any property in the name of any other person, such property shall be held on trust by the person in whose name such purchase or conveyance is made or taken for the person who made the purchase or took the conveyance; and in such case it shall be immaterial whether such purpose or conveyance was made or taken in names which include that of the person who made the purchase:

Conveyance
on another's
name

Provided that where the person who pays the purchase money is the husband or a parent of, or stands in *loco parentis* to person in whose name the purchase or conveyance is made, it shall be presumed that the person in whose name the purchase or conveyance is made is intended to take the property beneficially, unless a contrary intention be proved.

(2) The foregoing subsection shall not apply in any case where its application will assist the person making such purchase or taking such conveyance to evade any law or regulation in force in the State or to perpetrate a fraud on the Government or on any person or body of persons.

Husband
and wife

(3) Where any property is purchased

- (a) with money contributed to any proportion by husband and wife; or
- (b) out of joint savings or joint bank account of husband and wife; or
- (c) with savings made by a wife out of housekeeping money such property shall be held on trust by the person in whose name it is purchased for the benefit of the husband and wife in equal shares.

100. (1) Where a person is induced by fraud or mistake—

(a) to convey without valuable consideration or for nominal consideration only; or
(b) to give by will, any property of which he is seized or possessed, to any other person, such property shall be held by the grantee or donee on trust for such grantor or testator or, if he be dead, his personal representative, and such property may for all purposes be traced in the hands of the grantee or donee or his successor in title.

(2) Where any person, with intent—

- (a) to defraud any person; or
- (b) to commit a fraud upon the law, transfers or by will gives any property to any other person, such property shall be held by the grantee or donee on trust for the grantor or testator, as the case may be or, if he be dead, his personal representative and such property

may for all purposes be followed in the hands of such grantee or donee or his successor in title.

Gratuitous
transfer

101. Where any person, without valuable consideration, transfers any property of which he is seized as owner or possessor to any other person, it shall be presumed that the grantee was intended to hold such property on trust for the grantor or his personal representative, unless a contrary intention shall be established.

Provided that where the grantor is the husband or a parent of, or stands *loco parentis* to, the grantee, such transfer shall be presumed to be made for the advancement of the grantee, unless a contrary intention shall be established.

102. Where a trust for sale arises under a will as regards any property, such property shall be held on trust by the trustees named in such will, or if they are dead, by their personal representative, and where the will does not name any trustees of property on trust, such property shall be held on trust for sale by the testator's personal representative or by such other person as may be in possession of the property at the time of the testator's death.

Trust for sale
under a will

103. Where any property is given by will or transferred by any person to any charitable object and such gift or transfer for any reason fails to take effect, such property shall vest in the Public Trustee and shall be applied by him to any object which in his opinion most closely resembles the object intended by the testator or grantor.

Where gift
to charity
fails.

Partnerships If two or more persons join together to carry on any business or profession as partners, then subject to the express terms of their partnership agreement, if—

- (a) any property belonging to the partnership;
- (b) any property acquired by any partner with the funds or credit of the partnership;
- (c) any rents, profits or other accretion to any property of the partnership;
- (d) any property acquired by any partner by virtue of his position as such partner;
- (e) any property acquired by any partner with the aid of the goodwill or other asset of the partnership and
- (f) any property acquired by any partner during any time wherein he ordinarily does work for the partnership,

shall be deemed to be trust property. and shall be held and accounted for as such by the partner who so acquires, or has possession of, the same

Lease
renewed in
name of
trustee, etc

105. Subject to the provisions of this Part of this Law and to any order of the court—

- (a) where any person renews in his own name or in the name of any person other than the beneficiary under the trust, the lease of any property held by him on trust, the property comprised in the lease so renewed shall be held by that person on the same trust as before the renewal.

- (b) a personal representative, while acting as such, and until he shall have completed administration in accordance with the Law for the time being in force in the State shall hold the estate of the deceased person on trust for the creditors of, and beneficiaries claiming under the will or intestacy of such deceased person.
- (c) where any person, not being a trustee or personal representative and not having authority in that regard deals in any manner with trust property or the estate of a deceased person, he shall be deemed to be a trustee by his own wrong in respect of such trust property or estate, as the case may be, as he shall have dealt with.
- (d) any rents, profits or accretions of any kind which shall attach or come to any trust property shall be held on trust, for the person entitled to beneficial interest in such trust property, by the person who collects, or obtains possession of the same.
- (e) any profits or personal advantage obtained by a trustee by reason of his dealing with trust property, or by reason of his being such trustee, shall be held by him on trust for the persons entitled to beneficial interest under such trust.
- (f) where any person, whether or not for valuable consideration, acquires any property which is subject to a subsisting trust, or any interest in such property, he shall hold the same on trust for the beneficiaries of that trust, if he has or may reasonably be deemed to have notice actual or constructive, of such trust:

Provided that this provision shall not apply where the transaction under which such person acquires such property or interest is lawfully authorized under the trust to which the property is subject, or is done by order of the court.

- (g) where any person, without notice of any subsisting trust affecting any property, acquires such property or any interest therein without valuable consideration or for nominal consideration only, he shall hold such property as trustee for the persons entitled to beneficial interest in such property under the original trust.
- (h) where any banker, legal practitioner or any other person, not being a co-trustee, received from a trustee any money which is part of a trust property, he shall hold such money on trust for the persons entitled to beneficial interests in such trust property, if he knows or ought reasonably to have known that such money is being applied in a manner inconsistent with such trust.
- (i) in any case where—
 - (i) a trust is created but the senior's intention fails for any reason to be carried out; or
 - (ii) a trust is created and the settlor's intention is completely carried out, but the trust property fails to be exhausted; or
 - (iii) a mortgage property by virtue of the power in that behalf conferred upon him by the law or the mortgage, and any money shall remain after the mortgage debt and incidental expenses shall have been discharged; or

- (iv) a fund or other property is held on trust for a particular society purpose and such society is later dissolved or such purpose later fails or otherwise comes to an end, leaving part of the fund or property unexhausted,

such property or fund or so much thereof as shall not be exhausted, as the case may be, shall be held on trust by the person having possession or control thereof for the senior or his personal representative, or where the property or fund is contributed by two or more persons, for such persons or their respective personal representatives:

Provided that if the court on the application of any person interested in the trust fund is of opinion that the settlor or contributor had a general charitable intention or intended that such property or fund shall never revert to them in part or in whole, it may order that such property or fund shall be applied to such object or purpose as in the opinion of the court must closely resembles the original object or purpose of such trust;

Provided also that where the court considers that it would be unreasonably difficult to find the settlor or the contributors, it may order that the same be applied for such charitable purpose as it may direct.

Family
head as
trustee

106. (1) Where the head of a family, village or other community dispose of land or other property of such community, he shall hold the proceeds thereof on trust for members of the community.

(2) This section shall apply subject to the right, if any of the head of a family to raise money for the burial ceremonies of a deceased member of such family by selling or pledging part of the family property where to do so is reasonable and necessary,

Money
collected
from the
public

107. (1) Where any person by advertisement or otherwise collects money or other property from members of the public or any section thereof not being exclusively members of a religious group, in aid, or for the promotion, or for the attainment, of any object or purpose, he shall hold such money or other property as trustee and shall apply the same exclusively for the object or purpose for which it was collected, and shall be liable to account for the same

Provided that where

- (a) such collection is unlawful or
- (b) it is, or becomes, unlawful or impossible to apply money or property so collected to such object or purpose; or
- (c) part of such money or property shall remain after that object or purpose shall have been fulfilled:

such money or other property or what remains thereof, as the case may be, shall vest in the Public Trustee and shall be used by him for any charitable object, or for an object or purpose which in his opinion and subject to any order of court, shall most resemble the object or purpose for which the collection, if lawful, was originally made.

(2) The Attorney -General or the Public Trustee may institute action in the court, and the court shall have and exercise jurisdiction, to compel any person who so collects money or property or has possession of money or other property so collected to do all or any of the following acts or things, that is to say—

- (a) to render account of the same; and
- (b) to apply the same to the abject for which it was collected, where such object is a lawful one or
- (c) to pay the same over to the Public Trustee or his nominee or
- (d) to do any other act or thing in regard to such money or property as the court may deem fit to order.

108. (1) Where after the commencement of this Law any public officer during his tenure of office, or by virtue of his holding or having held position as such officer acquires—

Public
officer
acquiring
money
unlawfully.

- (a) any money other than money received by him as lawful remuneration for his office or obtained by him from any other source permitted by law; or
- (b) any property other than property acquired by him with money lawfully received or obtained by him before or during his tenure as such officer.

such money or property shall be deemed to have been unlawfully acquired by him by virtue of his position as such officer, and he shall hold such money or property on trust for the people and Government of the State, and it shall be immaterial whether such money property was acquired in the name of such officer or in any other name.

(2) The provisions of the foregoing subsection shall apply where money is paid or property transferred to any other person at the direction of a public officer, or with intent that the same shall belong to the public officer—

- (a) to render an account of all moneys and other property received or acquired by him during his tenure or by virtue of his position as such officer together with all rents, profits and proceeds of sale thereof, if any, and
- (b) to surrender to the State such moneys or other property together with the rents, profits and proceeds of sale thereof, if any, as may be found to be unlawfully received or obtained; and
- (c) to do any such other act or thing in regard to such moneys or other property as the court may deem fit to order, and
- (d) the burden shall be on such public officer to show the satisfaction of the court that any money or other property alleged in the proceedings to have been unlawfully acquired by him was in fact lawfully acquired.

(4) Any person may apply to the Attorney-General for the *fiat*: and may on the authority of such *fiat* issued under the hand of the Attorney-General institute action in the court under this section

against a person alleged to have collected money from members of the public, or to have unlawfully acquired money or other property by virtue of his position as a public officer, as the case may be:

Provided that where any three or more persons apply jointly to the Attorney-General for a *fiat* to institute an action under this section and shall support such application with a written Statement duly sworn to by them and setting out the facts on which they intend to rely at the trial of such action, the Attorney-General shall issue such *fiat* to them unless their sworn statement fails to disclose a *prima facie* case against the person intended to be proceeded against;

Provided further that where an application for a *fiat* under this subsection is refused, the applicants may appeal to the court against such refusal.

(5) No court shall have jurisdiction to hear any action for damages for defamation or otherwise instituted against an person by reason only—

- (a) that such person made allegation to the appropriate authorities to the effect that a public officer unlawfully received or obtained money or other property during his tenure, or by virtue of his position, as such officer; or
- (b) that such person under a *fiat* issued by the Attorney-General instituted legal action against a public officer under this section.

(6) For the purpose of this section "the appropriate authorities" means the Attorney-General of the State, the Chief Judge of the State, the Public Trustee, or any Federal Officer of comparable status.

109. (1) Where a judgment is given for the specific performance of a contract concerning any interest in land, or for the sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in case arising out the doctrine of election or otherwise, the court may declare—

Vest order
consequential
on judgement
for specific
performance,
etc

- (a) that any of the parties of the action are trustees of any interest in the land or any part thereof within the meaning of this Part of this Law or
- (b) that the interest of unborn persons who might claim under any party to the action, or under the will or trust of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interest of persons, who on coming into existence, would be trustees within the meaning of this Part of this Law.

(2) Where any person enters into a valid contract which can be specifically enforced to sell any property to any other person, such person shall, until he shall have delivered possession of such property to the person who contracts to purchase the same, hold the same on trust for such person.

(3) Where any person acting as auctioneer sells any property belonging to any other person, he shall hold the proceedings of such sale on trust for the owner thereof.

Invalid trusts

110. (1) No trust shall be validly created by will or otherwise—

- (a) where the object or purpose or such trust is contrary to public policy, morality or religion:
or
- (b) unless the intended beneficiaries of such trust are individual human beings or class of human beings or charitable object.

(2) In particular, and without prejudice the generality of the foregoing subsection—

- (a) no trust shall be valid if it the intention or necessary result of its creation is to defraud any person or lawfully constituted authority;
- (b) no trust shall be valid if it be for the benefit of any illegitimate child not in existence at the date of the creation of the trust:
- (c) no trust shall be valid if it is intended or is reasonably likely to promote an unlawful object or cause;
- (d) no trust shall be valid if it is induced by duress, intimidation, undue influence, misrepresentation or mistake whether of facts or of law.

Oral Evidence

111. Where any property is transferred *inter vivos* or given by written will to any person and su will or transfer contains express intention that such property shall be held on trust by the donee or grantee, as the case may be, oral evidence shall not be admissible to show that the donee or grantee was intended to take the property beneficially.

Oral evidence
not to
contradict
written trust

Rule against perpetuities

112. (1) Subject to subsection (2) the rule known as the Rule against Perpetuities shall cease to apply to any trust created or having effect in this State, and so a beneficial interest contained in will or trust made or coming into effect before or after the commencement of this Law shall not be void by reason only that it creates or contains future equitable interest in property which may vest later than the period of one or more lives in being at the creation thereof plus twenty-one years plus any actual periods of gestation,

Rule against
perpetuities
abolished

Beneficial
interest must
be capable of
vesting within
one hundred
years

(2) Any beneficial interest in property expressed to arise under a trust or will shall be void if such interest is not capable of becoming absolute or vesting in the beneficiary within the period of one hundred years from the creation of the trust or the death of the testator, as the case may be, and for avoidance of doubt, a beneficial interest which is expressed to arise at future date shall not be void if at the creation of the trust or coming into effect of the will containing the same, as the case may be, there is a likelihood that such interest will become absolute or vest in the beneficiary within the next one hundred years.

Appointment and Discharge of Trustees

Appointment of
trustees of
settlement and
dispositions on
trust for sale of
land

Object
contrary to
public
policy, etc

113. (1) Appointment of new trustees of conveyances on trust for sale on the one hand and of trustees of the settlement of the proceeds of sale on the other hand, shall, subject to any order of the court, be effected by separate instruments but in such manner as to secure that the same persons shall become the trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale.

(2) Where new trustees of a conveyance on trust for sale relating to a legal estate are appointed, a memorandum of the persons who are the trustees for sale shall be endorsed on or annexed thereto by or on behalf of the trustees of the settlement of the proceeds of sale, and the conveyance shall, for that purpose, be produced by the person having the possession thereof to the last-mentioned trustees when so required.

(3) This section applies only to dispositions of land.

(4) In this section, “trustees of the settlement of the proceeds of sale” means persons having responsibility for administration of the proceeds of sale of land which is subject to a trust for sale.

114. (1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead or remains out of Nigeria for more than twelve months or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, or has been convicted of an indictable offence, or is bankrupt or insolvent, then subject to the restrictions imposed by this Part of this Law on the number of trustees—

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any creating the trust, or /
- (b) if there is no person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee;

may by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of Nigeria, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, or has been convicted of an indictable offence, or is bankrupt or insolvent, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, but subject to the restrictions imposed by this Law on the number of trustees.

(3) A sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting office of executor.

(4) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

115. (1) Where, at the commencement of this Law there are more than four trustees holding on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

Limitation of
number of
trustees

(2) In the case of dispositions on trust for the sale of land made or coming into operation after the commencement of this Law—

(a) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;

(b) the number of the trustees shall not be increased beyond four.

(3) This section only applies to dispositions of land, and the restrictions imposed on the number of trustees do not apply—

(a) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or

(b) where the net proceeds of the sale of the land are held for like purposes.

116. (1) On the appointment of a trustee for the whole or any part of trust property—

(a) the number of trustees may, subject to the restrictions imposed by this Part of this Law on the number of trustees, be increased; and

(b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trust distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or if only one trustee was originally appointed, then save as hereinafter provided, one separate trustee may be appointed; and

(c) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from its trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Part of this Law shall authorize the appointment of a sole trustee, not being a trust corporation where the trustees, when appointed would not be able to give valid receipts for all capital money arising under the trust.

117. (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustee, and such other persons, if any, as are empowered to appoint trustees, by deed consent to the discharge of the trustees and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall by the deed, be discharged therefrom under this Part of this Law, without any new trustee being appointed in his place.

Retirement of
a trustee
without a new
appointment

(2) This section shall not apply to executors or administrators.

118. (1) Where by a deed a new trustee is appointed to perform any trust, then—

- (a) if the deed contains a declaration by the appointor or to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or trustee other thing in action so subject shall vest in the persons who by Virtue of the deed become or are the trustees for performing the trust the deed shall operate without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust, the estate, interest or right to which the declaration relates; and
- (b) if the deed is made after the commencement of this law and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates interests and rights with respect to which a declaration could have been made.

Vesting
trust
property in
new or
continuing
trustees.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—

- (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates, and
- (b) if the deed is made after the commencement of this Law and does not contain such a declaration, the deed shall be subject to any express provisions to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Law shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2) of this section, as the case may require, such estate, interests and rights as are capable of being and ought to be, vested in those persons.

(4) This section does not extend-

- (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debenture or debenture stock:
- (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture:
- (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under any enactment In this subsection "lease" includes an underlease and an agreement for a lease or underlease.

119. (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

Devolution
of powers
or trusts

(2) Until the appointment of new trustees the personal representatives or representative or a sole trustee, or, where there are two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power of trust which was given to, or capable of being exercised by the sole or last surviving or continuing trustee, or other trustees or trustee of the trust.

(3) This section takes effect subject to the restrictions imported in regard to receipts by a sole trustee, not being a trust corporation

(4) In this section "personal representative" does not include an executor who has renounced or has not proved the will.

POWER AND PROTECTION OF TRUSTERS

General Power

120. (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public action or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit,

Power of trust
for sale to sell
by auction etc.

with power to vary any contract for sale and to resell without being answerable for any loss if he acts in good faith.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.

(3) The receipts in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(4) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a trust for sale of land.

(5) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

(6) Where trustees are authorized by the instrument if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner they shall have a power to raise the money required by sale of mortgage, conversion or calling in of all or any part of the trust property being in possession:

Provided that this section shall not authorize the sale of any building in which the beneficiaries, or any of them, lives or causes on their business or profession except with the consent of such beneficiaries.

(7) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes.

(8) Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustee for sale in reference thereto and subject to

the terms of the instrument creating the trust) execute, or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Appointment
of agent

121 (1) A trustee may appoint a legal practitioner to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust.

(2) A trustee may appoint a bank or legal practitioner to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance or otherwise.

(3) A trustee shall not be liable for breach of trust by any such appointment.

(4) Nothing in this section shall exempt a trustee from any liability that he would have incurred if this Part of this Law had not been passed, where he permits such money, valuable consideration or property to remain in the hands or under the control of the bank or legal practitioner for a period longer than is reasonably necessary to enable the bank or legal practitioner to pay or transfer the same to the trustee.

(5) This section shall apply whether the money, valuable consideration or property is received before or after the commandment of this Law.

122. (1) A trustee intending to remain out of Nigeria for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from Nigeria of all or any trusts, power and discretions vested in him as such trustee, either alone or jointly with any other person or persons:

Power to
delegate trust
during absence
abroad.

Provided that a person being the only other co-trustee, and not being a trust corporation shall not be appointed to be an attorney under this section.

(2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts defaults of the donor.

(3) The power of attorney shall not come into operation unless and until the donor is out of Nigeria and shall be revoked by his return.

(4) If the power to attorney confers a power to dispose or deal with land, it shall be attested by at least one witness, and shall be registered in accordance with the Land Instruments (Preparation and Registration) Law with a statutory declaration by the donor that he intends to remain out of Nigeria for a period exceeding one month from the date of such declaration or from a date therein mentioned. Declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee in good faith.

(5) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of tiny person dealing with the donee in good faith

(6) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had notice actual or constructive that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(7) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument

creating the trust, including power himself to delegate to an attorney, power to transfer by this section.

(8) The fact that it appears from any power of attorney given under this section, or from evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

123. Trustees may deposit any documents held by them relating to the trust, or to the trust property with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in request of such deposit shall be paid out of the income of the trust property.

Deposit of documents for safe custody.

Insurance

124. (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three-fourth parts of the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of income of any property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

Power to insure.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

125. (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, of any covenant or of any obligations statutory or otherwise, or in performance be capital money for the purpose of the trust.

Application of insurance money where policy kept up under any trust under any trust, power or obligation.

(2) If any such money is receivable by any person other than the trustees of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, the trustees of the trust, or if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money—

- (a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by sale under such trust;
- (b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or if in court, under the direction of the court, in rebuilding, reinstating, replacing or repairing the property lost or

damaged but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust, to the investment of money subject to the trust. -

(5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise,

(6) This section applies to policies either before or after the commencement of this Law, but only money received after such commencement.

126. A purchaser or mortgagee, paying or advancing money on a sale or mortgage made or purporting to be made under any trust or power vested in trustees, shall not be obliged to investigate whether such money is wanted, or whether more than is wanted is raised.

Protection of
innocent
purchasers and
mortgagees.

Provided that if he has actual knowledge, or should in the circumstances have known, that no such money is wanted or that more than is required is being raised, he shall be entitled to the property thus purchased or repayment of the money thus advanced, as the case may be, only insofar as the money he paid or advanced is in fact-

- (a) paid over to and received by the beneficiaries under the trust, or
- (b) used on lawful and reasonable expenses connected with such sale or mortgage.

127. (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

- (a) ascertain the amount or value thereof or any part thereof;
- (b) accept in or towards satisfaction therefor, at the market or current value, any authorized investment;
- (c) allow any reasonable deductions for duties, costs, charges and expenses;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release; without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) Trustees may, when reasonably necessary for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agents) ascertain and fix the valuation of any trust property and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(3) Trustees shall_____

- (a) whenever required so to do by the court or the Public Trustee; and.

Power to
accumulate
supplies
income
during

- (b) once in every period of three years, if not otherwise required so to do by court or the Public Trustee, prepare a full and accurate account of the trust property and shall submit a copy therefor to the Public Trustee and each of the beneficiaries under the trust or where the beneficiaries are a body of persons or charitable objects to the persons for the time being in charge of such body or objects.

(4) Where it is reasonably necessary that an account required under the foregoing subsection shall be prepared by an independent accountant or auditor, the reasonable costs of such preparation shall be paid, rateably where necessary, out of the capital and income of the trust property.

128. During the infancy of a beneficiary under any trust, the trustees may, subject to an order of court and notwithstanding anything contained in any law of the State accumulate by way of bank deposits or authorized investments so much of the income of such property or so much of the share thereof of the infant beneficiary, as shall not be reasonably required for the education, maintenance or advancement of such beneficiary.

129.(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court, and the same shall, subject to rules of court, be dealt with according to the orders of the court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, or other depository, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

(6) Where a trustee has been absent from Nigeria for a year and is not likely to return at an early date, or where the trustee is dead or unable to draw upon trust money, any person with whom such trust money is deposited or into whose hand the same may have come shall apply to the Public Trustee or the court for leave to pay such money to the Public Trustee or the court as the case may be.

(7) Where any person is in possession or control of any money belonging, or payable from any source, to an infant or lunatic, such person may, instead of paying the same to the parent or guardian of the infant or the lunatic as the case may be, pay it into court or to the Public Trustee:

Provided that a person making such payment shall at the same time supply the court or the Public Trustee as the case may be such particulars of such infant or lunatic as shall be sufficient to enable adequate notice of payment to be given to the parent or guardian of the infant or the committee of the lunatic as the case may be.

Power of New Trustees

130. Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions and may in all respects act as if he had been originally appointed a trustee by the instrument if any, creating the trust.

Power of new trustees appointed by the court.

Investments

131. (1) A trustee may, if to do so is otherwise reasonable and proper invest trust money in such securities as are designated in, or by the authority of the Trust Investment in Government Securities Act or any other investment enactments of the Federal legislature amending, re-enacting or replacing same

(2) A trustee may, if specifically authorized so to do by the will or instrument creating the trust invest trust money in the following classes of securities, that is to say—

- (a) stocks of a building society incorporated by statute or controlled by the Government of the State; or
- (b) stocks of a housing authority incorporated by statute or controlled by the Government of the Federation of Nigeria, or by the Government of the State; or
- (c) stocks of a finance company incorporated by statute or controlled by the Government of the Federation of Nigeria or the Government of the State.

(3) In this section—

- (a) a body is "controlled" by a government if such Government owns all or a majority of the share capital thereof;
- (b) a body is "incorporated by statute" if it is established by a statute enacted for the sole purpose of creating that body.

(4) A trustee having power under the will or instrument creating the trust to invest trust money in any of the securities described in subsection (2) shall, notwithstanding such authorization obtain leave of court before making such investment

132. (1) Where a trustee improperly advances trust money on a mortgage security which at the time of such investment would be a proper investment in all respects for a smaller sum than actually advanced thereon, the security shall be deemed an authorized investment for such smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) A trustee shall be chargeable for money or securities in respect of which he signed a receipt along with other trustees, whether he signed such receipt for the sake of conformity or otherwise.

Protection of Trustees

Protection
against
liabilities in
rents and
covenants..

.32. (1) Where a personal representative or trustee liable as such for—

- (a) any rent, covenant or agreement reserved by or contained in any lease; or
- (b) any indemnity given in respect of any rent, covenant or agreement referred to in the foregoing paragraph,

satisfies all liabilities under the lease which may have accrued, and been claimed, up to the date of the conveyance hereinafter mentioned, and where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee agreed to lay out on the property demised, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter—

- (i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or the trust estate to meet any future liability under the said lease.
- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease

(2) This section operates without prejudice to the right of the lessor or the persons deriving title under the lessor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding any thing to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section “lease” includes an underlease, an agreement for a lease or underlease and any instrument given any such indemnity as aforesaid or varying the liabilities under the lease, and “lessee” includes any person deriving title under him.

134. (1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a disposition on trust for sale or personal representatives, may give notice by advertisement in the Enugu State Gazette and in a newspaper circulating in the area in which the land is situated. and such other like notices including notices elsewhere than the State, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice, or, where

more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives have had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution but nothing in this section—

- (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser in good faith and without notice, who may have received it; or
- (b) free the trustees or personal representatives from any obligation to make searches similar to those which an intending purchaser would be advised to make

(3) This section applies notwithstanding anything to the contrary to the will or either instrument, if any, creating the trust.

135. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that all the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

Provided that—

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

136. (1) Subject to the provisions of subsection (2) of section 141, a trustee shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee nor for those of any banker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any security nor for any other loss, unless the same happens wholly or partly through his own fault.

(2) A trustee may reimburse himself or pay or discharge out of the trust property all expenses reasonably and properly incurred by him in or about the execution of the trust or powers.

POWERS OF THE COL RT

Appointment of New Trustees

137. (1) The court may, on application made to it in any manner in that behalf, and whenever it is necessary or expedient, appoint a new trustee either in substitution for or in addition to any existing trustees or although there is no existing trustee, but subject to the provisions of this law regarding the number of trustees permissible.

(2) In particular and without prejudice to the provisions of the foregoing subsection, the court may make an order appointing a new trustee in substitution for a trustee who is convicted of a felony, or is a lunatic, or is insolvent, or is a corporation which is in liquidation or has been dissolved or has otherwise ceased to function effectively

(3) A trustee appointed under this section shall have the same powers and be subject to the same obligations and liabilities as a trustee appointed in the instrument creating the trust, or under any power for that purpose contained in such instrument.

(4) The power of appointment conferred by this section shall be exercised subject to the provisions of this Law regarding the number of trustees that may exist in respect of the same property.

(5) An appointment under this section and any consequential vesting order or conveyance shall not operate as a discharge from liability for the acts or omissions of the former or continuing trustees done before such appointment.

138. Where the court appoints a corporation other than the Public Trustee, to be a trustee either solely or jointly with another person the court may authorize the corporation to charge such remuneration for the service as trustee as the court may think fit.

Court may
authorize
remuneration of
trust
corporation.

Vesting Orders

139. (1) In any of the following cases, namely—

Vesting orders
of land.

- (a) where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power.
- (b) where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—
 - (i) is an infant or a lunatic or under any other disability; or
 - (ii) is out of the jurisdiction of the court, or
 - (iii) cannot be found, or being a corporation, has been dissolve
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
- (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;

- (e) where there is no personal representatives of deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
- (f) where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement.
- (g) where land or any interest therein is tested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Part of this Law called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the court may direct or releasing or disposing of the contingent right to such person as the court may direct.

(2) Where the order is consequential on the appointment of a trustee, the land or interest therein shall be vested for such estate as the court may direct in the persons who on the appointment are the trustees

(3) Where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

140. (1) Where any person entitled to or possessed of any interest in land or entitled to a contingent right in land, by way of security for money, is an infant, the court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

(2) Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for this Part of this Law and the court may if it thinks expedient, make an order vesting

the land or any part thereof for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other persons:

Provided that, in the case of a legal mortgage, the estate to be vested in the mortgagee shall be a term of years absolute.

(3) Where the court declares that, by virtue of the provisions of this Part of this Law—

Vesting order
in place of
conveyance.

- (a) any property is held on trust by any person; or
- (b) any person is, or is deemed to be a trustee in respect of any property;

the court may, on the same or a subsequent occasion, make a vesting order relating to such trustees or the rights of any persons with regard to such property.

(4) In cases where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

141. (1) In any of the following cases, namely-

- (a) where the court appoints or has appointed a trustee or where a trustee has been appointed out of court under any statutory or express power;
- (b) where a trustee entitled, whether by way of mortgage or otherwise alone or jointly with another person to stock or to a thing in action—
 - (i) is under disability; or
 - (ii) is out of the jurisdiction of the court; or
 - (iii) cannot be found, or being a corporation, has been dissolved; or
 - (iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled; or
 - (v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him;
- (e) where it uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing action is alive or dead.
- (f) where stock is standing in the name of a deceased person whose personal representative is under disability.
- (g) where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient;

the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the court may appoint.

Provided that—

Power to accumulate supplies income during minority.

Vesting orders as to stock and things in action.

- (i) where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on appointment, are the trustees; and
- (ii) where the person who right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

(2) In all the cases where a vesting order can be made under this section, the court may if it is more convenient, appoint some proper person to make or join in making the transfer:

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the company or society whose stock is to be transferred.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Part of this Law may transfer the stock to himself or any other person, according to the order, and all companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section, it shall not be lawful for any company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Part of this Law is to be exercised.

(6) The provisions of this Part of this Law as to vesting orders shall apply to shares in ships registered under the laws relating to merchant shipping as if they were stock.

142. Where a vesting order is made as to any land under this Part of this Law founded on an allegation of any of the following matters, namely—

- (a) the personal incapacity of a trustee or mortgagee; or
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved; or
- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or
- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested;

the fact that any such allegation is or turns out to be untrue shall not affect the validity of the order made; but this section does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

143. (1) The powers conferred by this Part of this Law as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charitable institution or society over which the court would have jurisdiction upon duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

(2) Where an infant is beneficially entitled to any property the court may, with a view to the application of the capital or income thereof for the maintenance, education or benefit of the infant, make an order—

- (a) appointing a person to convey such property; or
- (b) in the case of stocks or other things in action, vesting in any person the rights to transfer or call for a transfer of such stocks, or to receive the dividends or income thereof, or to sue for and recover such things in action, upon such terms as the court may think fit.

(3) A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

- (a) as if the person who before the appointment was the trustee, if any, had duly executed all proper conveyances of the property for such estate or interest as the court directs; or
- (b) if there is no such person, or on such person of full capacity, as if such person existed and had been of full capacity and had duly executed all proper conveyance of the property for such estate or interest as the court directs:

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Other Orders

144. (1) Where in the management or administration of any property vested in trustees any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee by the trust instrument, if any, or by law. the court may by order confer upon the trustee, either generally or in any particular instance, the necessary power for the purpose, or on such terms, and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

Power of court
to authorize
dealing with
trust property

(2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

145. (1) An order under this Part of this Law for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or the application of any person duly appointed trustee thereof.

Persons entitled to
apply for orders

(2) An order under this Law concerning any interest in land, stock, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

(3) An application under this section may be made to the court or to a Judge in Chambers in accordance with rules made in that behalf by the High Court (Civil Procedure) Rules Committee or, where no such rules have been made, by writing, (whether formal or otherwise) setting out the name and address of the applicant the person likely to be affected by any order made by the court and their places of abode or business, the property or interest to be affected by the order, and the nature of the order desired:

Provided that where an application is made to a Judge in Chambers, he may direct that the same be transferred to the cause list to be dealt with in court.

(4) In this section "order" includes any judgment, ruling, direction or vesting order made or given by the Court.

Power to give in
absence of a
trustee.

146. Where in any action the court is satisfied that diligent search has been made for any person, who, in the character of trustee, is made a defendant in any action, to serve him with a process, of the court, and that he cannot be found. the court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his legal practitioner at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to charge
costs on trust
estate

147. The court may order the costs and expenses of an incident to any application for an order appointing a new trustee, or for a vesting order, of an incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

148. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary; the court may, if it thinks fit, make such order as to the court seems just, for impounding all or any part of the interest of such beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Power to make
beneficiary
indemnity for
breach of trust

(2) This section shall not apply where the beneficiary' making the instigation or request or giving the consent in writing is an infant or a lunatic; but subject to this provision, the section shall apply to breaches of trust committed as well before as after the commencement of this Law.

149. The court or a Judge in Chambers may, on application made in that behalf of a beneficiary Account or by the Public Trustee or by any person interested in a trust, order the trustee to file with the court, either on one occasion or at stated intervals, true account of the assets and liabilities including incomes, accretions and expenditures of such trust.

Miscellaneous Provisions

150. A person shall not cease to be a trustee by reason only that he is convicted of a felony, where trustee is convicted of felony but the court may, on application made by a co-trustee or beneficiary under the trust remove such a person with or without appointing a new trustee in his place

151. (1) This Part of this Law and every order purporting to be made under it. shall be a Indemnity complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it.

(2) Nothing in this section shall prevent the court from revoking any order obtained by fraud or deceit.

152. (1) Nothing in this Part of this Law shall affect any vesting order or appointment made or other thing done under any written law relating to trusts and trustees in force within the State at the date when any such order or appointment was made or such other thing was done, and any order or appointment so made may be revoked or varied in like manner as if it had been made under this Part of this Law. Savings

(2) References in any document to any such written law as aforesaid shall be construed as references to this Part of this Law or to the corresponding provisions therein.

PART IV—PUBLIC TRUSTEE

Definition

153. In this Part of this Law—

“court” means the High Court;

"expenses" includes costs and charges:

‘letters of administration" means letters of administration of the estate and effect of a deceased person, whether general or with a will annexed, or limited either in time or otherwise;

“lunatic” includes—

- (a) a person adjudged a lunatic under the provisions of the Lunacy Law, and;
- (b) a person with regard to whom it is proved to the satisfaction of the court that the person is through mental infirmity arising from disease or age incapable of managing his affairs.

“private trustee” means a trustee other than the Public Trust, or the office of the committee or receiver of the estates of a person incapable of managing his own affairs; and “trustee” shall be construed accordingly;

“trust property” includes all property in the possession or under the control wholly or partly of the Public Trustee by virtue of a trust.

Establishment of Public Trustee

Appointment of
public Trustees
and officers

154. (1) There is hereby established the office of Public Trustee.

(2) The Public Trustee—

- (a) is a corporation sole under that name, with perpetual succession and an official seal; and
- (b) may sue and be sued under that name like any other corporation sole; but an instrument sealed by him shall not, by reason of his using a seal, be rendered liable to a higher stamp duty than if he were an individual.

155. (1) There may from time to time be appointed a fit person to the office of Public Trustee and the office may be held in conjunction with any other office which the Civil Service Commission may approve.

Appointment of
public Trustee and
officers

(2) There may also be appointed such persons to be officers of the Public Trustee as are considered necessary for the purposes of this Law.

156. The person appointed to the office of Public Trustee is entitled to appear in court in person in a proceeding in which the Public Trustee is a party.

person holding
office of Public
Trustee may
appear in court
in person

Power and Duties of Public Trustee

157. (1) Subject to the provisions of this Law and the regulations made thereunder, the Public Trustee may, if he thinks fit—

Powers and duties
of the Public
Trustee

- (a) act as an ordinary trustee;
- (b) act as a custodian trustee;
- (c) appointed trustee by the court;
- (d) become a trustee by virtue of any written law in force in the State.

(2) Subject to the provisions of this Law and to the regulations made thereunder, the Public Trustee—

- (a) may act either alone or jointly with any other persons or body of person in a capacity to which he is appointed in pursuance of this Law; and
- (b) shall have the powers, duties, and liabilities and he entitled to the same rights and immunities and be subject to the control and orders of the court as a private trustee, committee or receiver acting in the same capacity.

(3) The Public Trustee may decline, either absolutely or except on the prescribed conditions, to accept a trust but he shall not decline to accept a trust on the ground only of the small value of the trust property.

(4) The Public Trustee shall not accept—

- (a) a trust which involves the management or carrying on of a business except in the cases in which he is authorized to do so by regulations made under this Law: nor
- (b) a trust under a deed of an arrangement for the benefit of creditors; nor
- (c) the administration of an estate known or believed by him to be insolvent.

158. The Public Trustee may accept trusts which are exclusively for religious or charitable purposes.

Public Trustee as Custodian Trustee

159. (1) Subject to regulations made under this Law, the Public Trustee may, if he consents to act as such and whether or not the number of trustees has been reduced below the original number, be appointed to be custodian trustee of a trust either—

- (a) by order of the court made on the application of a person on whose application the court may order the appointment of a new trustee, or
- (b) by the testator, settlor, or other creator of a trust; or
- (c) by the person having power to appoint new trustee.

(2) Where the Public Trustee is appointed to be custodian trustee of a trust—

- (a) the trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made by the court,
- (b) the management of the trust property and the exercise of a power or discretion exercisable by the trustee under the trust shall remain vested in trustees other than the custodian trustee (which trustees are hereinafter referred to as “managing trustees”);
- (c) as between the custodian trustee and the managing trustees and subject and without prejudice to the rights of other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustee shall have free access thereto and be entitled to take copies thereof or extracts therefrom;
- (d) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or other powers or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust, or involves personal liability upon him in respect of calls or otherwise, but unless he so concurs, the

Power to accept
charitable trusts

Custodian
trustee

custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them;

- (e) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee; but the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they may direct, or into such bank to the credit of such person as they may direct, and in such case, shall be exonerated from seeing to the application of those moneys and shall not be answerable for the loss or misapplication of them;
- (f) the power of appointing new trustees, when exercisable by the trustees shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power of applying to the court for the appointment of a new trustee as other trustees;
- (g) in determining the number of trustees for the purposes of an Act or Law the custodian trustee shall not be reckoned as a trustee;
- (h) the custodian trustee, if he acts in good faith, shall not be liable—
 - (i) for accepting as correct and acting upon the faith of a written statement by the managing trustees as to a birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact upon which the title to the trust property or a party thereof may depend, nor
 - (ii) for acting upon a legal advice obtained by the managing trustees independently of the custodian trustees;
 - (iii) the court may, on the application of either the custodian trustee, or any of the managing trustees, or of a beneficiary, and on proof to their satisfaction that it is the general wish of the beneficiaries, or the custodian trusteeship, make such vesting orders and give such directions as in the circumstances may seem to the court to be necessary or expedient.

(3) The provisions of this section may apply in like manner as to the Public Trustee as to a banking or insurance company or other body corporate entitled by regulation made under this Law to act as custodian trustees, with power for such a company or body corporate to charge and retain or pay out of the trust property fees not exceeding the fees chargeable by the Public Trustee as custodian trustees.

- 160.** (1) The Public Trustee may by that name or other sufficient description be appointed—
- (a) to be trustee of a will or settlement or other instrument creating a trust; or
 - (b) to perform a trust or duty belonging to a class which he is authorized by regulations made under this Law to accept: and may be appointed—

- (i) whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the commencement of this Law; and
- (ii) either as an original or as a new trustee, or as an additional trustee, in the same cases and in the same manner and by the same persons or court, as if he were private trustee, with this addition that, though the trustees originally were two or more, the Public Trustee may be appointed sole trustee.

(2) Where the Public Trustee has been appointed a trustee of a trust, a co-trustee may retire from the trust notwithstanding that there are not more than two trustees; but the Public Trustee shall not be so appointed either as a new or additional trustee where a will, settlement, or other instrument creating the trust or duty contains a direction to the contrary unless the court otherwise orders.

(3) Subject to subsection (5), notice of a proposed appointment of the Public Trustee either as a new or additional trustee shall where practicable be given in the prescribed manner to all persons beneficially interested who are resident in Nigeria and whose address are known to the persons proposing to make the appointment or, if the beneficiaries are infants, to their guardians.

(4) If a person to whom such a notice has been given within twenty-one days from the receipt of the notice applies to the court, the court may if having regard to the interests of all the beneficiaries it considers it expedient so to do, make an order prohibiting the appointment being made.

(5) A failure to give a notice under this section shall not invalidate an appointment made under this section.

161. (1) Whether or not the Public Trustee is appointed a committee or receiver of a lunatic he may apply to the court to direct a settlement of the property of a lunatic under this section.

(2) Upon that application, the court may direct a settlement to be made of the property of a lunatic or a part of or an interest in it, on such terms and subject to such powers and provisions as the court may deem expedient, and in particular may give those directions—

- (a) where the property has been acquired under settlement, a will or an intestacy, or represents property so acquired, or
- (b) where—
 - (i) by reason or a change in the law of intestacy or of a change in circumstances since the execution by the lunatic of a testamentary disposition, or of an absence of information at the time of that execution, or
 - (ii) on account of the form or management of the property or the expenditure of money in improving or maintaining the property: or
 - (iii) for any other special reason, the court is satisfied that a person might suffer an injustice if the property were allowed to devolve as undisposed of on the death intestate of the lunatic or under a testamentary disposition executed by him.

- (3) The court may direct the committee or receiver of the lunatic or a trustee for him—
- (a) to execute a vesting instrument, conveyance or other instrument; and
 - (b) to do any other act or thing which may be required for giving effect to the settlement, in the name and on behalf of the lunatic and, for that may—
 - (i) make a vesting order; or
 - (ii) appoint a person to convey:
- (4) This section—
- (a) applies whether or not the lunatic has executed a testamentary disposition and notwithstanding that it is not known whether he has executed such a disposition or not; but
 - (b) does not apply when he is an infant.
- (5) A person who under an enactment for the time being in force relating to the administration of property has a spes successions (whether under a testamentary disposition which is known to exist or in the event of the intestacy of the lunatic) or an interest in the property of the lunatic or in part of it, as well as the committee or receiver and any other person, may request the Public Trustee to apply to the court under this section and, if the Public Trustee neglects or refuses to do so, such a person may himself apply to the court under this section, but notice of his application shall be served on the Public Trustee who may appear on the hearing of the application.
- (6) Where the devolution for the property of the lunatic would be subject to native law and custom and would not pass under an enactment for the time being in force relating to the administration of property, a person who would have a spes successions according to native law and custom shall have the same right as a person who would have a spes successions under subsection (5)
- (7) Subject to making due provision for the maintenance of the lunatic in accordance with his station in life, whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing by means of a power of appointment or revocation or otherwise, for the possibility of the lunatic recovering full capacity, the court may, in making an order under this section, have regard to—
- (a) the manner in which the property has been settled or dealt with on former occasions.
 - (b) in the case of land or house built on it, the claims or relatives, employees or dependants to the use or occupation of the land or house, and the expediency of settling personal estate to devolve with the land or house:
 - (c) the maintenance or education of any illegitimate children of the lunatic and the maintenance of their mother or mothers;

- (d) the maintenance of a wife married according to native law and custom who would not have a spes succession under subsections (5) and (6), or the maintenance of the parents of the lunatic;
- (e) the continuation or provision of any pensions, and the application of a part of the income for charitable purposes;
- (f) the provisions of a testamentary disposition of the lunatic;
- (g) the expediency of the provision for—
 - (i) annual or capital charges and powers to create them;
 - (ii) discretionary trusts, for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good loss by fire (in lieu of. or in addition to. insurance) or for other purpose;
 - (iii) the extension of statutory powers of investment, management or otherwise;
 - (iv) the manner in which costs are to be raised and paid, whether out of the settled properly or otherwise;
 - (v) other matter or thing which, having regard to the nature of the settlement or the property lobe settled, and the management, development and enjoyment, of the settlement or property, and die persons who are to take cither successively or otherwise, the court may consider material

(8) At any time before the death of the lunatic the court may, as respects property remaining subject to the trusts of a settlement made under this section, on being satisfied that a material fact was not disclosed to the court when the settlement was made, or on account of a substantial change in the circumstances, by order vary the settlement in such manner as it thinks fit, and give consequential directions.

(9) The Chief Judge may make rules for giving effect to the provisions of this section, and in particular—

- (a) for compelling information to be furnished respecting, and the production of, testamentary dispositions, and the lodgment thereof in court, or respecting a person who might receive a benefit under a settlement directed by the court under this section: or
- (b) for prescribing what notices, if any, of the proceedings are to be served. and for dispensing with the notices; and
- (c) where necessary', for making representation orders

(10) In this section "testamentary disposition" means an instrument executed by the lunatic while of full testamentary capacity, which, if unrevoked might, on his death, be proved as a will or codicil, and the court may act on such evidence as to the existence or absence of a testamentary disposition us it thinks fit.

162. The court may remove a private trustee if the court is satisfied that the continuance of the existing trustee in office may be detrimental to the execution of the trust notwithstanding that misconduct or maladministration has not been proved against him.

Removal trustee
by court

163. (1) If in pursuance of a regulation under this Law the Public Trustee is authorized to accept by that name probates of wills or letters of administration, the court may grant probate of a will or letters of administration to the Public Trustee by that name

Granting probate
to Public Trustee

(2) For the purpose of subsection (1) the court shall consider the Public Trustee as in law entitled equally with other persons or class of persons to obtain the grant of letters of administration, save that—

- (a) the consent or citation of the Public Trustee shall not be required for the grant of letters of administration to another person; and
- (b) as between the Public Trustee and the widower, widow, or next of kin of the deceased, the widower, widow or next of kin shall be preferred, unless for good cause shown to the contrary.

164. (1) An executor who has obtained probate, or an administrator who has obtained letters of administration and notwithstanding that he has acted in the administration of the deceased's estate, may with the sanction of the court and after such notice to the person beneficially interested as the court directs, transfer the estate to the continuing executors or administrators, if any.

(2) The order of the court sanctioning the transfer shall, subject to this, give to the Public Trustee all the powers of that executor or administrator.

(3) The executor and administrator shall not in any way be liable in respect of an act or default in preference to that estate subsequent to the date of the order, other than the act or default of himself or of persons, other than himself, for whose conduct he is in law responsible.

165. The court may, on the application of a person beneficially interested appoint the Public Trustee, if sufficient cause is shown, in place of all or an existing executor or administrator or of a guardian of infants, or committee or receiver of a person incapable of managing his own affairs.

166. The order of the court granting probate or letters of administration to the Public Trustee sanctioning the transfer of an estate to the Public Trustee or the appointment of the Public Trustee as executor or administrator of an estate shall subject to this Law give to the Public Trustee all the powers of the Administrator-General under the Administration of Estate Law except that where at the time of the transfer to, or appointment of, the Public Trustee, the estate is fully administered and only the residue is transferred, the Public Trustee, shall not be entitled to the remuneration allowed to the Administrator-General when administering estates.

167. In any case where the Public Trustee may be appointed by the court under subsection (1) of section 157 or subsection (1) of section 159 of this Law, when the persons beneficially interested

Appointment of
the Public
Trustee in place
of executor or
administrator

Powers of Public
Trustee on
obtaining grant
of probate or
letters of
administration

are minors or otherwise incapacitated from managing their own affairs, the Public Trustee may himself apply to be appointed.

Public Trustee may apply for appointment in case of person not sui juris

Liability and Fees

168. The revenues of Enugu State shall be liable to make good all sums required to discharge the liability to which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed and which neither he nor any of his officers could by the exercise of reasonable diligence have averted; in that case neither the Public Trustee nor the revenue of the State shall be subject to any liability.

Liability general revenue

169. In all cases where the revenues of Enugu State have to be utilized under the provisions of section 168, it shall be lawful for the court, if it appears that the person holding the office of Public Trustee has acted honestly and ought fairly to be excused for the breach of trust or other act or omission by which the liability was incurred and for omitting to obtain the directions of the court in the manner in which the liability was incurred, to relieve the person either wholly or partly from personal liability or the breach or other act or omission under this Law.

Officer holding office of Public Trustee may be exempted by court from general liability

170. (1) There shall be charged in respect of the duties of the Public Trustee such fees whether by way of percentage or otherwise, at the Commissioner may fix.

Fees charged by Public Trustees

(2) Expenses which might be retained or paid out of the trust property if the Public Trustee were a private trustee, shall be so retained or paid and the fees shall be retained or paid in the like manner as and in addition to those expenses.

(3) The fees shall be paid to the Accountant-General for credit of the appropriate fund.

(4) The incidence of the fees and expenses under this section as between capital and income shall be determined by the Public Trustee.

(5) In the section "Commissioner" means the Commissioner charged with responsibility for administration of estates

Supplement Provisions

171. A person aggrieved by an act or omission of the Public trustee in relation to a trust may apply to the court and the court may make such order in the matter as the court thinks just

Appeal to court from Public Trustee

172. (1) The Public Trustee or an officer of the Public Trustee shall not act under this law for reward except as provided by this Law.

Mode of action of public Trustee

(2) The Public Trustee may, subject to the regulations made under this Law employ for the purposes of a trust such legal practitioners, bankers, accountants and brokers, or others ns he considers necessary.

(3) In determining the persons to be employed in relation to a trust the Public Trustee shall have regard to the interests of the trust, but subject to this, shall, whenever practicable, take into

consideration the wishes of the creator of the trust and of the other trustees, if any, and of the beneficiaries, whether expressed or as implied by the practice of the creator of the trust, or in the previous management of the trust.

(4) A person prescribed may, on behalf of the Public Trustee, take an oath, make a declaration, verify an account, give personal attendance at a court or place, and do any act or thing which the Public Trustee is required or authorized to take, verify, give or do.

(5) Where a bond or security would be required from a private person upon the grant to him of administration, or upon his appointment to act in n capacity, the Public Trustee, if administration is granted to him or if he is appointed to act in such a capacity, shall not be required to give the bond or security but shall be subject to the same liabilities und duties as if he has given the bond or security.

(6) The entry of the Public Trustee by that name in the books of a company does not constitute notice, of a trust, and a company is not entitled to object to enter the name of the Public Trustee on its books by reason only that the Public Trustee is a corporation, and. in dealings with property the fact that the person or one of the persons dealt with is the Public Trustee does not of itself constitute notice of a trust.

Investigation amt Audit of Trust -Accounts

173. (1) Subject to regulations under this Law and unless the court otherwise orders, the conditions und accounts of a trust shall, on an application being made and a notice thereof being given in the prescribed manner by a trustee or beneficiary, be investigated and audited by such legal practitioner or public accountant as may be agreed on by the applicant and the trustees or, in default of agreement, by the Public Trustee or some person appointed by him.

Investigation and
audit of trust
accounts

(2) Expect with the leave of the court such an investigation shall not be required within twelve months after a previous similar investigation or audit and a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

(3) The person making the investigation or audit (hereinafter called the “auditor”)—

(a) shall have a right of access to the books, accounts, and vouchers of the trustees, and to securities and documents of title held by them on account of the trust; and

(b) may require from them such information and explanation as are necessary for the performance of the duties.

(4) Upon the completion of the investigation and audit the auditor shall forward to the applicant and to every trustee a copy of the accounts together with a report thereon, and a certificate signed by him to the effect—

(a) that the accounts exhibit a true view of the state of the affairs of the trust; and

(b) that he has had the securities of the trust: fund investments produced to and verified by him; or

(c) as the case may be, that the accounts are deficient in such respects as are specified in the certificate.

- (5) A beneficiary under the trust shall, subject to regulations under this Law, be entitled—
- (a) at all reasonable times to inspect and take copies of the accounts, report and certificate; and
 - (b) at his expense, to be furnished with copies thereof or extracts therefrom.
- (6) The auditor may be removed by order of the court and if he is removed, or resigns, or dies, or becomes incapable of acting before the investigation and audit is completed, a new auditor may be appointed in his place in like manner as the original auditor.
- (7) The remuneration of the auditor and the other expenses of the investigation and audit shall—
- (a) be such as may be prescribed; and
 - (b) unless the public Trustee otherwise directs be borne by the estate.
- (8) In the event of the Public Trustee directing as under subsection (7) he may order that those expenses be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.
- (9) If the person having the custody of a document to which the auditor has a right of access under this section—
- (a) Fails or refuses to allow him to have access thereto; or
 - (b) in any way obstructs the investigation or audit the auditor may apply to the court, and thereupon the court shall make such order as it thinks just.
- (10) A person who in a statement of accounts, report, or certificate required for the purposes of this section willfully makes a statement that is false in material particular is guilty of an offence and liable on conviction to imprisonment for twelve months or a fine of two hundred naira or both

Regulations

174. (1) The Executive Council may make regulations for currying into effect the objects of this law and, in particular, for all or any of the following purposes— Power to make regulations

- (a) prescribing the trusts or duties which the Public Trustee is authorized to accept or undertake, and the security if any, to be given by the Public Trustee and his officers;
- (b) the transfer to or from the Public Trustee of any property;
- (c) the accounts to be kept and the audit of the accounts;
- (d) the establishment and regulation of a branch office;
- (e) excluding a trust from the operation of this Law or a part of this Law;
- (f) the form and manner in which notices under this Law shall be given.

(2) If the regulations require a declaration to be made for a purpose, any person who makes the declaration knowing it to be untrue in a material particular is guilty of an offence and liable on conviction to a fine of two hundred naira or imprisonment for twelve months or both.

175. (1) This Law shall not have effect—

- (a) in relation to a matter in respect of which the Federal Public Trustee has in pursuance of a written law commenced to function at the date of the commencement of this Law and in respect of which he is willing to continue to function; nor
- (b) in relation to a matter which it is agreed between the Federal Public Trustee and the Public Trustee appointed under this Law, can more conveniently be dealt with by the Federal Public Trustee.

(2) In a case where subsection (1) applies, the Federal Public Trustee shall continue to act in accordance with that written Law.

Subsidiary Legislation

THE PUBLIC TRUSTEE REGULATIONS

Made under section 174

1. These regulations may be cited as the Public Trustee Regulations

Short title

2. In these regulations—

Interpretation

“trust” includes a trust duty or office which the Public Trustee is authorized by the Law or by these regulations to accept; and the expression “trustee” shall be construed accordingly;

“trust instrument” includes an instrument, Act, Law, or order of court, by which a trust is created or declared;

“trust property” includes all property subject to a trust, or comprised in an estate, which is proposed to be administered by the Public Trustee.

3. (1) The central office of the Public Trustee shall be situated in Enugu.

Offices

(2) Branch offices may from time to time be established by the Governor at such places in Enugu State as may be prescribed by notice in the Enugu *State Gazette*

4. There may from time to time be appointed to the branch offices officers of such ranks and designations as the Civil Service Commission may decide who shall generally assist the Public Trustee in the performance of his duties and shall have the powers and perform the duties assigned to them by or under these regulations;

Offices of
the Public
Trustee

5. Subject to the Law and to these regulations, the Public Trustee is authorized_____

Authorize
d duties.

- (a) to accept a trust created or declared by a trust instrument or arising upon an intestacy;
- (b) to accept and perform the duties of the office of guardian of an infant beneficiary when those duties and office are incident to the office of trustee of a trust which he has accepted:
- (c) to accept any duty incident to, and act in. the office of agent or attorney for any person where the execution of a trust is involved in the office;
- (d) to accept by the name of Public Trustee probate or letters of administration of any kind and either as principal or as agent of a person;
- (e) to accept as custodian trustee created or declared by a trust instrument:
- (f) to receive any money or damages paid to him on behalf of, or in trust for, a person in pursuance of an order of court and to apply the same in accordance with any order or directions of the court or a Judge thereunder;
- (g) to receive any sum of money paid to him on behalf of, or in trust for, a community or group being a sum paid or awarded to that community or group of persons as value or compensation for the acquisition by Government or any person or persons of land or property belonging to that community or group of persons, and to apply that money in accordance with a scheme or trust created or approved by that community or group of persons;

but he shall not accept the trust of any instrument made solely by way of security for money.

6. The Public Trustee may, if he thinks fit_

- (a) act as custodian trustee of a trust which involves the management or carrying on of business, but upon the condition that—
 - (i) he shall not act in the management or carrying on of such business, and
 - (ii) he shall not hold any property of such a nature as will expose the holder thereof to any liability except under exceptional circumstances and when he is satisfied that he is fully indemnified or secured against loss;
- (b) accept as ordinary trustee, under exceptional circumstances, a trust which involves the management or carrying on of business, but upon the conditions that, except with the consent of the Accountant-General, he shall only carry on the business—
 - (i) for a short time not exceeding eighteen months, and
 - (ii) with a view to sale disposition or winding up, and
 - (iii) if satisfied that the business can be carried on without risk or loss.

7. (1) A testator may appoint the Public Trustee to be trustee or custodian trustee under a testamentary' instrument without previously applying to him for his consent to act as such, but

except as provided in subregulation (2), the appointment shall not have effect unless and until his consent to act is obtained in accordance with these regulations

(2) Where an appointment under subregulation (1) has been made the Public Trustee may, at any time after the of his appointment has come to his knowledge, act as if an application for his consent had been received by him.

(3) No person who is not a testator shall appoint the Public Trustee to be trustee or custodian trustee unless he first obtains the consent of the Public Trustee to act as such before making the appointment.

(4) It shall be the duty of a person who is appointed by a testator to be co-trustee with the Public Trustee, and who does not renounce or disclaim the trust, to give to the Public Trustee notice in writing of his appointment as co-trustee as soon as practicable after the appointment has come to his knowledge.

8. (1) Upon receiving an application for his consent to act as trustee or as custodian trustee, the Public Trustee may—

Matters to be
enquired into
by Public
Trustee before
consent

- (a) require to be produced to him the trust instrument (if any); or
- (b) require to be supplied to him—
 - (i) a copy of the instrument and of any other document affecting the trust.
 - (ii) any particulars as to the nature and value of any trust property.
 - (iii) any liabilities attaching to any trust property.
 - (iv) the holder of any trust property.
 - (v) the names and places of abode of the beneficiaries and trustees under the trust, or
 - (vi) such other information relating to the trust as he may consider desirable to obtain in any particular case.

(2) As soon as possible after receiving such an application the Public Trustee shall take into consideration upon such evidence as may appear to him sufficient—

- (a) the gross capital value of the trust property;
- (b) the mode of investment and the condition of the trust property;
- (c) the situation, tenure, and character of any land comprised in the trust property;
- (d) liabilities, if any, attaching to the trust property or the holder thereof;
- (e) the duties incident to the office of trustee of the trust;
- (f) the places of abode and circumstance of any beneficiaries; and

(3) After considering the matters set out in subsection (2) the Public Trustee shall decide whether to accept or refuse the application, and shall give notice to the applicant of the acceptance or refusal and, in case of any acceptance, shall in writing under his official seal signify his consent to act in the trust.

(4) On the appointment of the Public Trustee being completed the Public Trustee shall, where branch offices have been established, determine whether the trust shall be administered from the central office or from a branch office, and shall give directions accordingly, and such direction may at any time be rescinded or varied by him at his discretion.

Administration of Trusts and Estates

9. There shall be kept at the central office of the Public Trustee such registers and books as may be required for recording or entering the following particulars of any trust or estate which the Public Trustee is administering—

Registers to
be kept by
Public
Trustee.

- (a) the date of the acceptance of the trust;
- (b) particulars of the trust property from time to time;
- (c) the names and places of abode of the person or persons entitled to the capital and in receipt of the income of the trust property;
- (d) a reference to any notice received of a dealing with a beneficial interest in the trust property and of any exercise for a power relating to the trust for estate;
- (e) an entry of any decision or opinion of the court in respect of the trust or estate;
- (f) such entries of his decisions and such other particulars as the Public Trustee may think fit;

and these particulars shall be recovered or entered accordingly.

10. The Public Trustee may—

- (a) invest or retain invested money belonging to a trust or estate and coming to his hands in any mode of investment expressly or impliedly authorized by the trust instrument or, if there is no trust impliedly authorized by the trust instrument or, if there is no trust instrument, by a written law for the investment of trust funds; and
- (b) if authorized by the trust instrument in such manner as to retain any investment existing at the date of the commencement of the trust.

but he shall not invest, or hold any investment in such manner as to expose him to liability as the holder thereof, unless he is satisfied that he is fully indemnified or secured against loss.

11. The Public Trustee shall keep separate accounts for every trust or estate.

12. (1) Where a deed or other trust instrument requires to be executed by the Public Trustee under his official seal, the seal may be authenticated by the signature of the Public Trustee or of

Separate
accounts.

Authentic
ation by
seal

Investment

an officer of the Public Trustee duly authorized by the Public Trustee in that behalf under his seal.

(2). A deed or other instrument purporting to be a deed or instrument executed by the Public Trustee and to be sealed with his seal authenticated in the manner provided in this regulation shall be received in evidence and be deemed to be a deed or instrument so executed without further proof unless the contrary is shown.

13. (1) The income of the trust property may be paid to the person for the time being entitled to receive it either through a bank or direct.

(2) Where authority is given to a corporation or bank to pay any income to any person, the books of that corporation or bank showing the payment of that income in accordance with the authority shall be sufficient discharge to the Public Trustee.

(3) Where authority is given to a person to pay any income to the bank account of the person entitled the certificate of that bank stating the receipt of that income is a sufficient discharge to the Public Trustee.

(4) Where a person is solely entitled to receive any income, the Public Trustee may, on the request in writing of the person, authorize that person for such period as the Public Trustee may think fit to collect or arrange for the collection of that income and during the continuance of the authority, the request in writing shall be a sufficient discharge to the Public Trustee in respect of that income.

14. The Public Trustee may, if the special circumstances of the case appear to him to render it expedient so to do, pay to any other trustee of the trust, or allow that other trustee to receive, the income of the trust property or any part thereof upon that trustee undertaking to apply it in the manner directed by the trust.

Public Trustee
may pay
income to
other trustee

15. Subject to the Law and these regulations and to the terms of the trust, the Public Trustee may, in the administration of a trust or estate, take and use professional advice and assistance in regard to legal or other matters, and may act on credible information, though less than legal evidence, as to matters of fact.

Power to take
professional
advice

16. The Public Trustee may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until the declaration or evidence is produced.

Evidence that
person entitled
to money or
property is
alive

17. Where—

- (a) a person appearing to be beneficially entitled to a sum of money under the trust or to be interested in the trust property cannot be found: or
- (b) it is not known whether such a person is living or dead, the Public Trustee may apply to the Court for directions as to the course to be taken with reference to the person and, until order is made, shall keep any sum payable to the person, and if it is kept for more

Order for
direction

Who may
receive
income of
trust property

than six months shall invest it or deposit it at interest and shall accumulate the dividends or interest thereof.

Inspection of
register

18. (1) Upon an application in writing by or with the authority of a person interested in the trust property the Public Trustee shall—

- (a) permit the applicant or his legal practitioner or other authorized agent to inspect and take copies of any entry in a register or book relating to the trust or estate and (so far as the interest of the applicant in the trust property is or may be affected thereby) of any account notice or other document in the custody of the Public Trustee;
- (b) at the expense of the applicant supply him or his legal practitioner or other agent authorized in writing with a copy of such an entry, account notice, or document, or with an extract therefrom;
- (c) give to the applicant or his legal practitioner or other agent authorized in writing such information respecting the trust or estate and the trust property as may be reasonably requested in the application and which is within the power of the Public Trustee.

(2) Subject to the provision of subregulation (1) the Public Trustee shall observe strict secrecy in respect of a trust or estate which he is administering.

Investigation and Audit of Trust Accounts

Investigation
and audit of
trust accounts

19. An application under subsection (1) of section 173 of the Law shall be made to the Public Trustee and notice of the application shall, unless the Public Trustee otherwise directs, be given by the applicant to every other person being a trustee or beneficiary under the trust.

Investigation
and audit of
trust
accounts

20. (1) Upon receiving an application under regulation 19. the Public Trustee may in his absolute discretion by notice in writing to the applicant require that before a day to be specified in the notice such security, by deposit of a sum of money, as he may deem sufficient, shall be given to him by the applicant for the payment of any expenses of the investigation and audit which may be ordered by the Public Trustee to be paid by the applicant personally.

(2) Where such a requirement is made no further proceedings shall be taken on the application until the security has been given, and if it is not given before the day specified in the notice the application shall be disallowed unless the Public Trustee under special circumstances thinks fit to extend the time for giving the security or to dispense with the security.

(3) A sum so deposited shall be kept by the Public Trustee on deposit in his name at a bank until all proceedings in connection with the investigation and audit have been concluded, and thereupon the deposited sum shall be applied in or towards payment of any expenses of the investigation and audit which may be ordered to be paid by the applicant personally and the balance, if any, shall be paid to the applicant.

21. The Public Trustee may in his discretion on the application of a trustee or beneficiary direct that the investigation and audit shall extend only to a specified period of time or to a specified part of the trust property or shall otherwise be restricted.

Investigation
and audit may
extend to
specified time
and property

22. If within one month from the date of the application under subsection (1) of section 173 of the Law no legal practitioner or public accountant is appointed by the applicant and the trustees to conduct the investigation and audit, there shall be deemed to be a default agreement within the meaning of the subsection and the applicant may apply to the Public Trustee accordingly.

Failure to appoint legal practitioner or public accountant for purpose of the investigation.

remuneration of auditor

23. The Public Trustee shall determine the remuneration of the auditor and the other expenses of the investigation and audit, but he may refer the cost of any legal practitioner, being part of the expenses, to a taxing officer to be appointed by the court and, in such a case, the amount of the costs when taxed shall be included in the expenses.

Public Trustee may require auditor to forward copies of accounts

24. (1) Upon the completion of the investigation or audit the auditor shall forward to the Public Trustee—

- (a) copies of the report and the certificate of the auditor under section 173 of the Law; and
- (b) such copies of accounts and other documents as the Public Trustee may require.

and the Public Trustee shall consider all these copies before giving any direction or making any order under subsections (7) and (8) of that section

(2) The expenses of making and forwarding the copies and the fee of the Public Trustee, within the limits prescribed by or pursuant of an order relating to the fees of the Public Trustee for the time being in force, shall for the purpose of subsections (7) and (8) of section 173 of the Law be part of the expenses of the investigation and audit.

parties may be heard before order.

25. (1) Before making an order under subsection (7) and (8) of section 173 the Public Trustee shall, if any of the parties interested so desires, hear the parties in such manner as he may think fit

(2) The order shall specify the person by or to whom a sum is to be paid and the amount of the sum: and furthermore—

- (a) the order may direct payment of the taxed costs of a legal practitioner employed in connection with the investigation and audit; and
- (b) the costs shall be taxed by a taxing officer to be appointed by the court;
- (c) the amount of the costs when taxed shall be paid as if the amount had been specified in the order.

(3) The order may be enforced in the same manner as a judgment or order of the court to the same effect.

Miscellaneous

26. The accounts of the Public Trustee shall be audited and the securities held by him verified from time to time by such person or persons as the Governor may appoint and in accordance with such directions as may be given by the Governor.

Accounts of the Public Trustee to be audited.

What the
officers of the
Public Trustee
may do

27. An officer of the Public Trustee authorized by him in writing in that behalf may take an oath, make a declaration, or give personal attendance at any court or place.

28. (1) A notice or application required to be given or made for the purposes of the Law or these regulations to the Public Trustee may be addressed to him by the name of his office to his office at Enugu, or where branch offices have been established, if the notice relates to a trust or estate in course of administration or proposed to be administered from a branch office, then that branch office

(2) A notice or application required to be given or made for the purposes of the Law or these regulations to a person other than the Public Trustee may be addressed to that person at his last known place of abode or place of business.

(3) The notice or application is duly given or made if it is delivered to the addressee at the place at which it is addressed or sent to him at that address by post.

(4) Where a person who may make an application, or give a consent, or do an act, or be a party to a proceeding under these regulations is an infant, idiot or lunatic, the guardian or, as the case may require, the committee or receiver of the estate of that of that person, may make the application in place of that person and shall otherwise represent that person for the purposes of these regulations.

(5) Where—

- (a) there is no guardian or committee or receiver of the estate of the infant, idiot, or lunatic; or
- (b) a person is of unsound mind, or incapable of managing his affairs but has not been found or adjudged to be a lunatic,

it shall be lawful for the court to appoint a guardian of such an infant, idiot, lunatic, or person for the purpose of any proceedings under these regulations and from time to time to change that guardian.

29.(1) The Public Trustee may in writing authorize an officer of the Public Trustee appointed under subsection (2) of section 4 of the Law to exercise and perform, either generally or in relation to a particular case and subject to such conditions and restrictions as the Public Trustee may impose, all or any of the powers and duties of the Public Trustee under these regulations except the power or duty of determining whether a trust or estate shall be administered from the central office or from a branch office.

(2) An authority, condition or restriction given or imposed under this regulation may at any time in like manner be withdrawn or varied by the Public Trustee at his discretion.

30. The Public Trustee may frame and cause to be primed and circulated or otherwise promulgated such forms and directions as he may deem requisite or expedient or for facilitating proceedings under the Law or these regulations

Notices.

Delegation
of power.

Forms

PUBLIC TRUSTEE (FEES) REGULATIONS

Made under Section 170

1. These regulations may be cited as the Public (Fees) Regulations.
2. In these regulations the expression “small estate” means an estate whose capital value is proved to the satisfaction of the Public Trustee to be less than four hundred naira.
3. The fees specified in the Schedule shall be paid in respect of the duties of the Public Trustee under the Law.

SCHEDULE

(Section 170)

A-ACCEPTANCE FEE, PLAYABLE AT THE COMMENCEMENT OF ADMINISTRATION

	SCALE	
<i>Minimum Composite Fees</i>	<i>Executorships</i>	<i>Existing Will</i>
	and Administratorship	Trust or settlement Trusts of New
	Settlements	Transferred To the public Trustee

	N	N
Where the value of the property is #200 or less	10.00	10.00
Where the value of the property exceeds #200 but Does not exceed#1,000....	25.00	25.00
Where the value of the property exceeds #1,000 but does not exceed #3,000	40.00	40.00
Rate per cent, on the gross capital value where the value of the property exceeds N3,000	N	N
On the first 10,000 up to N50,000	5.00	4.50
On the excess of N 10.000 up to N 100,000.....	3.00	2.50

On the excess of N50,000 up to N 100,000.....	2.00	1.50
On the excess of N100,000 up to N150,000.....	1.50	1.00
On the excess of N150,000.....	1.00	0.50

B—CAPITAL FEES ON WITHDRAWAL

Upon the withdrawal of any capital from the trust property a fee of five per cent, shall be charged upon the capital value of the property withdrawn.

1. Upon annual income paid direct to the

beneficiary or to his bank or recognized

agent without previous collection by the

Public Trustee—

(a) in the case of small estates not exceeding

₦ 100.00..... Nil

(b) on the other estate..... \$ per cent.

2. Upon annual income collected by the Public

Trustee previously to distribution to

beneficiary or to his bank or recognized

agent—

(a) in the case of small estates not exceeding

₦ 100.00..... Nil

(b) on the other estate..... \$ per cent

D—MANAGEMENT FEES

₦

1. Upon any investment by way of mortgage of charge—

For every N200.00 and also every fractional part

of N200.00. of the amount advanced

15.00

2. Upon the sale or purchase of trustee securities — For every N200.00, and also for every fractional part of N200.00. of the sale of purchase money	8.00
3. Upon the sale or purchase of non-trustee securities— For every N200.00. and also for every fractional part of N200.00, of the sale purchase money	15.00
4. Upon the sale or purchase of buildings or other improvements on land or transfer or acquisition of right of occupancy For every N200.00 of the sale or purchase money or of any other consideration for transfer or acquisition of right of occupancy	15.00
5. Upon the sale of a business— For every N200.00. and also for every fractional part of the price of the goodwill	15.00
6. Upon the raising of money by mortgage or charge of trust property_____ For every N200.00 and also for every fractional part of N200.00. of the amount raised	15.00
7. Upon any special visit to a beneficiary	15.00
8. Upon the inspection of any land or building— For every N200.00, and also for every fractional part of N200.00. of the total annual rent collected	5.00
9. Upon all rents collected by Public Trustee— For every N200.00, and also for every fractional part of N200.00, of the total annual rent collected	25.00
10. Upon recovery of income tax_____ For every N200.00, and also for every fractional part of N200.00, recovered	15.00

E— REGISTRATION FEE

~~N~~

Upon registering a notice of any dealing with a
beneficial interest in trust property

5.00

F—INQUIRY FEES

For each reply or statement furnished for the purpose
of dealing with a beneficial interest

5.00