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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – APRIL 2019

LAW 452
SUCCESSION

Section 1
PROFESSORS:
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TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS, 20 minutes
(inclusive of reading time – you may start writing at any time)

NOTE:

1. This is an open book examination. You may bring in any materials you wish.
2. THIS EXAMINATION CONSISTS OF 2 QUESTIONS, each worth **equal marks. ANSWER BOTH QUESTIONS.**

MARKS **QUESTION No. 1**

50 Logan Roy died on January 27, 2019 at age 80 leaving a last will dated March 20, 2013 (the "Will"). For the purposes of this question, assume that the Will was formally valid and that all parties are domiciled in British Columbia. The Will was prepared by Logan's long time lawyer, Mr. Schmidt.

Logan left behind the following family members: his third wife Marcia, to whom he had been married for 16 years, and his three surviving children: Connor (50), Roman (39) and Siobhan (36). Logan had another child, Kendall, who died in a skiing accident in January 2017 at age 45. Kendall had two children: Sophie and Iverson, both of whom were small children when Logan died. Marcia and Logan did not have any children together but she does have a son from a prior marriage, Amir.

Logan died leaving a controlling stake in his media company, Waystar, worth approximately \$20 million. He also owned his Shaughnessy mansion in joint tenancy with Marcia (worth \$10 million) and a ski chalet at Whistler (worth \$5 million) which was in his name alone.

Logan also was joint tenant on a cabin on Gabriola Island. The cabin had been in the Roy family for a number of generations and Logan received it by inheritance in 1975 (when it was worth \$15,000). In 2012, Logan put Roman on title to the cabin as a joint tenant. In 2012 the cabin was worth \$2 million. At the time, Logan told Roman he was putting his name on title because it would save probate fees on Logan's death. Logan exclusively used the cabin, both before and after Roman became a joint tenant, and Roman (like his siblings) was only able to visit the cabin when invited by his father. No taxable disposition of an interest in the cabin was reported by Logan on his 2012 tax return. At Logan's death, the cabin was worth \$2.5 million.

Logan had RRSPs worth \$4 million (of which Marcia was designated beneficiary) and other non registered investments worth \$6 million. He also had a collection of gold coins that he kept in a vault in his basement. The value of the coin collection was approximately \$500,000.

The Will had the following dispositive provisions:

1. To my wife Marcia, I leave a cash gift of \$1 million. As this is a late in life marriage for us both, and she has received assets outside of my estate, I am of the view that this is more than adequate provision for her and I particularly do not wish for her son to enjoy the benefit of my estate.

2. I leave 1/3 of my coin collection to my granddaughter Sophie and 4/5 of my coin collection to my grandson Iverson.

3. The residue of my estate I leave in equal shares among such of my sons and daughters as shall be alive at my death per stirpes PROVIDED THAT if any of my sons or daughters shall then be dead, the legacy to which the said deceased son or daughter would have otherwise been entitled shall be divided equally among the surviving sons and daughters.

4. I further direct that if any of my surviving sons and daughters marries or enters into a common law relationship with anyone of the Roman Catholic faith, that child's gift shall be treated as if that child predeceased me and will be distributed in accordance with paragraph 3 above.

In 2012, Siobhan started dating Tom, a Roman Catholic, and by the time of Logan's death they had been married for two years.

Kendall had been the presumptive heir to the family business and when he died in 2017, there was no obvious successor to Logan. As such, on Kendall's death, Logan came out of retirement and started running Waystar again. The two years between Kendall's death and Logan's death were difficult for the whole family as it was clear that Kendall had been Logan's favorite and he had little time or patience for his surviving children. Connor lived off the grid, on a ranch property in the Kootenays that Logan had purchased for him in the 1980s for about \$50,000 (it is now worth close to \$500,000). Connor didn't visit his father much and, while they were not estranged, they were not close. Connor makes little money from his ranching business and barely scrapes by, often needing to take out short term loans to make ends meet.

Roman tried to work with his father in the family business over the years, but his hard partying lifestyle made him a less than ideal employee. Ultimately Logan had to fire him in May 2017. This led to an estrangement that was unresolved at the time of Logan's death. Roman had never received financial support from Logan. He did make a considerable amount of money as a realtor when he was in his 20s and he owns three condos in Coal Harbour, worth \$1.5 million each, two of which he receives rental income from.

Question 1 Cont'd. . .

Siobhan had an excellent relationship with Logan until she started dating Tom. Logan was a militant atheist and he refused to attend Siobhan and Tom's wedding because it was held in a Catholic church. Siobhan made efforts throughout the years to repair things with her father, efforts that were not reciprocated by Logan. Like Connor, Siobhan received a gift of real property from her father, a house in Kitsilano, which was worth \$600,000 when it was purchased for her in 2002 and is now worth \$3 million. Siobhan works as a political consultant and Tom is a lawyer and they are financially secure.

Marcia came into the relationship with Logan with virtually no assets of her own.

Discuss the issues that arise from this fact pattern and, where applicable, the planning advice you would give Logan Roy to avoid some of the possible disputes that could arise in his circumstances.

END OF QUESTION 1.

MARKS**QUESTION No. 2****50**

Colonel Mustard died in March of 2019 at the age of 73 and domiciled in British Columbia. He was survived by two adult children, Plum and Peacock. He had been predeceased by his son Green in 2016. Green left 3 children, all of whom survived Colonel Mustard.

Ms. Scarlett was a lodger who lived with Colonel Mustard from March of 2016 until his death. Colonel Mustard had taken her in as a lodger in order to earn extra cash and because he liked to put his assets to work. During their cohabitation, Ms. Scarlett and Colonel Mustard had become very close and had even taken a few holidays together. They socialized with their neighbour Mrs. White down the street, who thought they made a nice couple. After Ms. Scarlett moved in, Colonel Mustard let his housekeeper Xena go.

Question No. 2, continued . . .

Colonel Mustard had made a will in 1999 that was witnessed by his lawyer and the lawyer's assistant. In that will he named Green as the executor. All of the dispositive provisions of that will are reproduced below:

I leave my personal effects to be divided in accordance with any memorandum I have left with my will.

I leave my Okanagan cabin to Green.

I leave my home to Plum and Peacock equally. If either of them have died before me then those of such child's children who are living at my death shall take my deceased child's share of my home.

In early 2018, Colonel Mustard was diagnosed with early stages of dementia. He was forgetting where his car was parked and had trouble paying his bills. Peacock had an enduring Power of Attorney granted in 2016 and was assisting with Colonel Mustard's day to day financial matters. Peacock also continued to make gifts from Colonel Mustard's bank account to the veterans charity that Colonel Mustard supported throughout his life. Late in 2018 Colonel Mustard had signed a document (found after his death in his safety deposit box by Peacock) that stated as follows:

"I love Ms. Scarlett with all my heart and she has been such a comfort to me. She should have my house when I am gone."

It was signed by Colonel Mustard and witnessed by Ms. Scarlett.

When he died, Colonel Mustard owned his home in his name alone worth approximately \$1.5 million, a joint account with a Miss Scarlet worth approximately \$50,000 into which his pension was deposited, non-registered investments in the amount of \$200,000, a cabin in the Okanagan, and personal effects. Colonel Mustard also had an RRSP worth \$100,000 directly naming Plum, Peacock and Green as beneficiaries. This was done by beneficiary designation.

Discuss the issues arising in respect of Colonel Mustard's estate.

END OF EXAMINATION