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THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2018

LAW 451  
Trusts

Section 1  
Professor Pavlich

TOTAL MARKS: 100

**TIME ALLOWED: THREE (3) HOURS  
and 15 MINUTES reading time**

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- NOTE:
1. This examination consists of THREE (3) questions. They are NOT of equal mark value.
  2. This is an open book exam.
  3. If, in answering a question, alternative conclusions are reasonably possible, state and discuss the alternatives. If you need additional facts to answer a question, state what they are and why they are necessary.
  4. If you think that statements of law you make in answering one question are relevant in another, and you wish to cross-reference, indicate clearly the passages to which you are referring.

**THIS EXAMINATION CONSISTS OF THREE (3) QUESTIONS**

**MARKS**

- 50** 1. Belinda Bloggs and Sid Snooks married in 1995. It was the second marriage for both. They each had children from their earlier marriages.

In 1998, Belinda transferred a substantial part of her extensive property holdings to an *inter vivos* trust ("Belinda's Trust"). The trustees were Trustus Trust Co. ("Trustus"), and Tilly Tewksbury.

Belinda's father had set up a trust in 1985 ("Dad's Trust"). He transferred property of substantial value to the UBC Trust Co. to hold for Belinda's mother for life, remainder to Belinda absolutely.

Clauses 3, 4, 5, 6, **7 and 8** of Belinda's Trust read as follows:

3. Bloggs covenants that she will transfer to the trustees any assets she receives under the trust (Dad's Trust) her father established in 1985.
4. The beneficiaries of this trust are:
  - (a) Bloggs, Blogg's children and their families;
  - (b) Snooks, Snook's children and their families, except Snook's daughter June, her husband Tom and their issue;
  - (c) such persons, or such charitable organizations or trusts, as the trustees may appoint.
5. During Belinda Bloggs' lifetime, the Trustees shall pay income, and so much of the capital as they see fit, to Belinda.
6. After Belinda Blogg's death, so much of the capital and income of the trust as the trustees from time to time may decide is to be paid to or for the benefit of such one or more of the beneficiaries as the trustees in their absolute discretion shall select.
7. After the decease of Belinda Bloggs the trustees will cause to be erected and maintained a fitting, memorializing statue in a fitting place at a university as a tribute to and commemorating the intellect of Belinda Bloggs.
8. This trust shall terminate 21 years after the death of Belinda Bloggs."

Belinda Bloggs died on July 1, 1999. By her will, she left the residue of her estate to those persons who from time to time are the directors of Question 1, continued:

Bloggs Inc., a family company, to be held on trust for such charitable purposes as will benefit the directors, officers and employees of the company or their relatives and whom, in their uncontrolled discretion the directors may, from time to time, choose.

Belinda's mother died in 2015. The UBC Trust Co, as trustee of Dad's Trust, was advised by its lawyer, I.M. Good, that Belinda's remainder interest under Dad's Trust was an asset of Belinda's deceased estate. (Assume this part of the opinion is valid.) Good also concluded that clause 3 of Belinda's Trust could not be enforced by the trustees of that trust. The remainder interest was, therefore, treated as passing under Belinda's will. The property in Dad's Trust is regarded as transferred to the directors of Bloggs Inc. to be held on the terms of Belinda's will.

June and Tom were killed in a skiing accident in January 2018, leaving one young child, Claire. June and Tom died penniless. Apart from his house, Sid has no major assets and he lives on a small pension. Sid asked Trustus and Tewksbury to make some payments to him out of Belinda's Trust so that he could take care of Claire. They refused. Sid then borrowed \$500,000 from his bank, giving the bank a mortgage over his house. He used the money to set up a trust for Claire. He defaulted on the loan, and the bank threatened to foreclose. Trustus and Tewksbury advanced him \$500,000 to pay the loan off.

With the date for the termination of Belinda's Trust fast approaching, Trustus and Tewksbury are trying to decide how to make a final distribution of the trust assets. They are under severe and contradictory pressure from Belinda's children and Sid's children. A number of charities have complained that no payments have been made to charity, and have asked to see the trust documents, accounts and the records of trustee meetings. Moreover, with the financial pressures caused by demands on the trust, no memorial has been erected commemorating Belinda Bloggs. Tewksbury is so shaken by all of this that she does not want to make any further distributions.

Trustus seeks legal advice from its lawyers, Plunder and Pillage. You are articulated to Plunder. He asks you for an opinion on the following matters:

- (1) Was the trust created by Belinda's will a valid trust?
- (2) Was Belinda's Trust (that is the *inter vivos* trust created in 1998) valid?
- (3) Assuming, whatever you may have decided under (2), that Belinda's Trust was valid, identify any issues that may arise (a) out of what the trustees have done, or not done, to date, and (b) in relation to what the trustees should do in contemplation of the termination of the trust; and indicate how those issues should be resolved.

## **MARKS**

- 25** 2. Buffett runs an investment advisory service. He entered into a contract with the trustees of the Lawn Mowers' Union Pension Trust to provide them with investment advice. There are 4 trustees, all elected by the members of the union – some 30 persons.

Clause 8 of the contract reads as follows:

- (8) Buffett provides advice only. Decisions on the making of investments are to be made by the trustees, and they are to decide if a proposed investment is one which is within their legal investment powers.

Initially, the trustees carefully considered Buffett's advice. They generally acted on it and the returns made on the investments recommended by Buffett were very good. Eventually, the trustees developed such faith in Buffett that they followed his advice with little, if any, debate. Buffett was aware of this.

In 2015, the amount held in the trust had increased so much that the trustees decided to improve the position of the members of the pension plan. They considered increasing benefits (which would benefit immediately those already retired and would in due course benefit non-retired members when they retired), and reducing the monthly contributions made by current non-retired members. (Authority to do any one of those things required approval by the members of the plan, two of whom cannot be located). They eventually decided only to reduce contributions. None of the four trustees at the time were retired, and they were making contributions.

In 2016, Buffett recommended that the trustees buy shares in Inspiration Insurance Ltd. A careful reading of a general opinion on investments given to the trustees by their lawyer, I M. Competent, made it clear that Inspiration was a questionable investment to hold. The trustees misread the opinion, thought the investment was authorized, and decided not to seek a further opinion. In part they were influenced by what another opinion would cost. They went ahead and bought some Inspiration shares. Buffett had some doubt about the trustees' authority to do this, but decided not to raise the issue with them. Competent reviewed all the minutes of trustee meetings. The minutes showed the Inspiration investment had come under discussion and deliberation with the trustees opting for purchase. Competent prepared a number of documents needed to complete the purchase of the Inspiration shares.

The Inspiration shares are now worth only 10% of what the trustees paid for them. The drop in value flows from the discovery that Inspiration's auditors, at the urging of the chairman of its board, had been consistently overstating the funds Inspiration had in reserve to pay insurance claims.

One of the trustees, Green, was so impressed by Buffett that she used Buffett's advice to the trustees in making her own investments. Green did, however, always check with her own investment advisor, and did not invest if her own advisor recommended against investing. In one case, Green made an investment which Buffett had recommended to the trustees, but which the trustees had decided, quite rightly, was outside their range of permitted investment. All told, Green invested on her own behalf \$50,000 of her own money in investments recommended by Buffett. The investments she made were at a time worth \$250,000, but because of a slump in the market are now worth only \$125,000.

A group of retired members of the pension plan have become dissatisfied with how the trust has been run. They consult the law firm of Pillage and Plunder, giving it all the above information. They are also concerned that approval for the decrease in contributions and increase in benefits is not valid without the approval of all the members. You are articulated to Pillage. He asks you to prepare a memorandum, assessing any claims which the members of the plan may have against (1) the trustees, (2) Green, (3) Buffett and (4) Competent. They also seek your advice on eradicating the pension plan using principles in *Saunders v. Vautier*.

**MARKS**

- 25**      3. Discuss the nature of the interest that a beneficiary has in a constructive trust. Your discussion should include examples of how the beneficiary's interest is established under current law and the usefulness in equity of the categories advanced by the Supreme Court of Canada for the conditions of when a constructive trust will be applied. Evaluate the role of equity in affording relief to claimants in this area of the law.

**\*\*\*END OF EXAMINATION\*\*\***