

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

FINAL EXAMINATION – APRIL 2020

LAW 451.001  
Trusts

Professor Dennis Pavlich

**EXAMSOFT PASSWORD:**  
**EXAMSOFT RESUME CODE:**

**TOTAL MARKS: 100**

**WRITING TIME ALLOWED: 3 HOURS**  
**PREPARATION TIME ALLOWED: 10 MINUTES**

Preparation Time has been given to download/print/set up for your exam once the exam has been made available online through Canvas. This time cannot be used for writing exam answers. All exam answer uploads will be monitored to ensure that typing of answers only occurred for the allotted Writing Time.

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This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings. The use of library books is not permitted.

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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## MARKS

- 20 1. As a futurist well acquainted with the law of trusts, you are commissioned to write a memorandum outlining how the structure of constructive trusts, especially those resulting from *ad hoc* fiduciaries, could be deployed or adapted to help the plight of British Columbians troubled by economic and social problems existing today and that may emerge in the world of tomorrow.

## MARKS

- 40 2. On June 1, 2018, Sid Samuels died. He was a man of some financial means who had been a long-time resident of Belcarra, an incorporated hamlet on the outskirts of Vancouver with a population of approximately 750 persons. Belinda Samuels, his widow, is wealthy in her own right. Their two children, Billy and Bessie currently aged 19 and 15 years respectively, also survive him. Sid, informed by a "Self-Counsel" blog on the internet, drafted his own will, the important provisions of which are as follows.
- I. I NOMINATE, CONSTITUTE AND APPOINT the Benevolent Trust Company to be the Executors of this my will and the Trustee of my Estate (hereinafter referred to as "my Trustee").
  - II. I GIVE, DEVISE AND BEQUEATH unto my Trustee all my estate, both real and personal, of whatsoever nature and kind and wheresoever situate, upon the following trusts, namely:
    - (a) To set aside the sum of one million dollars and to keep it invested as my Trustee shall, in its uncontrolled discretion, think fit. During the 21 years following my death my Trustee shall distribute the income and capital of the said one million dollars among my beloved friends in Canada, living at the date of my death, whom my Trustee, in its uncontrolled discretion, may think to be deserving;
    - (b) To set aside \$500,000 and distribute it to members of the Wildlife Protection Club of Belcarra and failing them the residents of Belcarra; and
    - (c) To hold the residue of my estate for my wife, Belinda Samuels, during her life, and, upon her death, to divide the said residue equally between my two children, Billy Samuels, and Bessie Samuels.

III. IN ADDITION to all the powers by this my will or any statute or law conferred on it as my Trustee:

- (a) it shall have the power to sell, call in and convert into cash the whole or any part of my estate and property herein devised and bequeathed to it as shall not consist of cash; but
- (b) it must retain any real estate investments held by me at the time of my death for 10 years."

On December 1, 2018 the Trust Company consults you about the will and gives you the following information about Sid's assets which at the date of his death, consisted of the following:

- (a) Liquid funds which are sufficient to satisfy the sums referred to in Clauses II(a) and II(b) of the will;
- (b) A mansion in Shaughnessy, Vancouver;
- (c) Whiteacre, which is a tract of undeveloped land on Vancouver Island that generates no income and, all things considered, is heavily taxed;
- (d) Five thousand shares in The Inspiration Company, which is a company listed and trading on the Toronto Stock Exchange;
- (e) \$1 million in Government bonds;
- (f) Royalties on a heavily in demand book that Samuel published in January 2018;
- (g) A reversionary interest in Blackacre that he inherited from his father's estate in which the life tenant is an 85 year-old aunt who resides in an elder-care home. She suffers with terminal cancer.

In relation to Bequest 2(a) the Benevolent Trust Company has, for the time being, invested the one million dollars in Guaranteed Investment Certificates. It now wishes, however, to embark on a more ambitious scheme of investment, and seeks general guidance on the limitations imposed by the law on the scope of its investment power and on any extramural or intramural arrangements that it may wish to make in furtherance of that power. You are also told that the Company has received a letter from John Green, a Toronto businessman, who has demanded that the Company produce up-to-date accounts of Bequest II (a), and give him a complete explanation of its plans for investment and distribution.

You are also advised that The Inspiration Company shares are worth about \$100 a share, and the company has regularly, over the last five years, paid an annual dividend of not less than \$5 a share, though 10 years ago the shares were extremely low as The Inspiration Company had sought and obtained a temporary court order protecting it from its creditors. The company rearranged its business

plan and is now operating successfully with the same executive leadership it had had when it went into receivership.

The Wildlife Protection Club has assets of \$50,000 and, with now only two octogenarian members, is, without drastic efforts to get new members from a hamlet with a dwindling population, close to moribund status.

The Benevolent Trust Company asks for your advice on its responsibilities on determining the ultimate destination of the property in the estate, and for advice on other significant issues concerning its administration that may confront it in the discharge of its obligations under the will.

The trustee is aware of Belinda's independently wealthy status and has learned that she and Billy are on very bad terms. Benevolent also has recently ascertained from Billy that he wishes to terminate the trust and accelerate his income. Bessie is not of the same mind. Also, advise the trustee what it must expect if Billy was to press his claim through litigation and indicate the legal obstacles Billy might face that would impair his ability to succeed in any action to collapse the trust, at least as it affects him.

## **MARKS**

- 25**    **3.** Basil age 25 years and his cousin, Belinda, age 17 years are the beneficiaries under the Surrey Trust which holds a large chunk of shares in the well-managed and highly-profitable Acme Ltd., a closely-held corporation. Travers is the trustee of the Surrey Trust. Basil also has a registered estate in fee simple in Blackacre which is filled with high-end antique furniture and very expensive, signature pieces of art that are appreciating rapidly in value. These pieces were acquired a couple of years ago from a single seller.

On November 12 Basil writes to Travers instructing him to hold all the assets to his account in the Surrey trust for his fiancée at that time, Bridget. Basil informs Bridget of what he has done. However, by November 30 Basil and Bridget have broken up and Basil instructs Travers not to proceed further with transfers to Bridget, but instead to transfer the shares in Acme to Belle his new paramour. He advises Belle of his gift and this time Travers, who has become Basil's very close friend, executes a share transfer form for shares in Acme and sends the forms off to registered office. Belle in the mean-time has, in turn, agreed to dispose of her gift from Travers to Bellamy, a brother to whom she is heavily in debt. She phones Travers and advises him of what she has done.

On that same day, Basil has orally agreed to transfer his interest in the furniture and art to his brother Baldwin. He hands Baldwin certificates from the sellers of these

goods guaranteeing their artistic and antiquarian authenticity as well as signed document of transfer. Basil engaged in this transaction with Baldwin after showing him a letter received from a fraudster claiming the art work is hers and supplying forged documents that show the collection, bought by Basil from one seller, had in the distant past been stolen from her father. Basil having then delivered the art to Baldwin told the fraudster that he, Basil, no longer owned the art and furniture.

On December 1, Basil suffers massive heart attack and dies. His intestate estate is administered by his mother, Beryl, who, under *Wills, Estate and Succession Act*, is his heir. She also becomes his executrix. It also turns out that Beryl owed Basil \$20,000 for arrear rent on Blackacre which she had leased from Basil. On his death-bed he muttered forgiveness of the debt.

Advise Beryl of her rights to Basil's property in light of the above transactions giving full reasons and explanations for your answer. Would your answer in respect of the shares and art/antiques have been different if:

- (a) On November 12 Basil had orally surrendered his equitable interest to Travers with the intention that Travers should declare a new trust for Bridget?
- (b) The trustee is found to be in breach of trust to Belinda? If you find a breach, indicate how might that breach have been avoided.
- (c) Beryl would like to keep the pieces of furniture and art for herself especially in light of the fact that Baldwin is a prodigal and dislikes her intensely.
- (d) Belinda's parents, on learning of the above events as they relate to the Surrey Trust oppose the dealings by Travers.

**Give full reasons and explanations for your answer to Beryl on these events.**

### **MARKS**

- 15      4. Cain and Abel were partners in a legal practice. They leased Brownacre and commenced practice sharing sophisticated and expensive computer equipment and software. The term of the lease was for 3 years and contained an option to renew. They quarreled excessively and decided to terminate their partnership. At this time the lease came up for renewal. Abel refused to exercise the option to renew jointly with Cain even though Cain demanded he (Abel) do so. Instead, on his own, Abel approached the landlord seeking a renewal of the lease in his own name offering a premium rent for the renewed lease. The landlord agreed and Abel resumed practice on his own account directing Cain to vacate the premises and offered Cain half the value of all equipment in the practice. Advise Cain on his rights and possible remedies giving full reasons for your answer.

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