

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

FINAL EXAMINATION – April 2021

LAW 451.001
Trusts

Dennis Pavlich

EXAM PASSWORD: 2Htz78
RESUME CODE: B13BF6

TOTAL MARKS: 100

(8:50 AM PDT) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS AND 15 MINUTES**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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.

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. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

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. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

CONFIDENTIALITY REGULATIONS – READ CAREFULLY

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

A breach of these regulations may constitute student misconduct, and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5** minutes attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, flinn@allard.ubc.ca, for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:

Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking – Galileo**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, flinn@allard.ubc.ca, and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to studentservices@allard.ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

THE EXAMINATION CONSISTS OF FOUR QUESTIONS.

MARKS

- 20** 1. Tilly died on April 1, 2021. Clause 6 of her will, made on March 17, 2021, read as follows:

“I leave all of my estate to my friend Basil Bloggs. He is to pay himself \$25,000, and after that I rely on him to deal with the property in the way I indicated to him.”

Tilly had gone to see Bloggs on March 16, 2021, but Bloggs was away on a business trip, and did not return until March 31, 2021. Tilly saw Bloggs on that date. She gave him a sealed envelope. She told him “This concerns my will; look after it for me.” Bloggs replied: “I will see to things.”

After Tilly’s death, Bloggs opened the envelope. It contained a letter, dated March 16, 2021, which read:

“Dear Basil,
After paying yourself \$25,000, you are to distribute the rest of my estate to such persons (other than you, Basil Bloggs) and their families and relatives as you decide.
(signed) Tilly Tubbs”

Tewksbury is Tilly’s closest relative, and would inherit all of Tilly’s property if Tilly’s will is ineffective. Tewksbury consults you, and asks you to find as many legal hurdles as you can in the way in which Tilly has provided for the distribution of her estate. Provide Tewksbury with a reasoned opinion.

MARKS

- 30** 2. Tally Tubbs died in 2017. By her will she left all of her property to Byron Black and Wendy White to hold on trust to pay the income of the property to her husband, Sloth, for life, and on his death to divide the property equally between their three sons Tom, Dick and Harry. In 2017, the three sons were 25, 17 and 10 respectively.

Question 2 Continued;

The will contained no investment clause. The residue consisted of the following property:

- (a) A restaurant that Tally Tubbs had operated in premises she owned in fee simple. The restaurant never made a profit, and Tally Tubbs regarded it as something of a hobby. The trustees tried to find a buyer for the land and the restaurant, but failed. In 2019, Byron Black bought the land and the restaurant business. White, Sloth, Tom and Dick consented to the sale. Harry was not consulted. Black made a slight profit on running the restaurant. In March, 2020 Black resigned as trustee, and in May, 2020 sold the land to a developer, getting twice as much as he had paid for it.
- (b) Chez Nous, which had been the family home. Since Tally Tubbs's death, Sloth and Harry have lived in the house, rent-free. Tom and Dick have consistently objected to this, saying the house should be sold and the proceeds invested.
- (c) 1,000 shares in Eldorado Mines Limited. The shares were worth 5 dollars a share when Tally Tubbs died, and are now worth 2 dollars a share. They have never paid a dividend. Wendy White also owns some Eldorado shares in her own right. She genuinely believes the shares will increase significantly in value, but is also afraid that if the trust shares are sold now it may depress the value of the Eldorado shares. She has persuaded Black that the trustees should not sell their holding.
- (d) 10,000 out of the 12, 000 outstanding shares of Rich Holdings Ltd. Black and White used their majority shareholding to elect themselves as directors of Rich Holdings. They received the usual directors' fees. In November 2020, they sold all the assets of Rich, and decided to distribute to the proceeds of the sale as dividend.

Question 2 Continued;

When Black resigned as trustee, White decided that she needed some advice on how she and Black had been administering the trust. She consults you. Provide her with a memorandum, identifying any issues that arise out of the administration, and suggest, with reasons, how those issues should be resolved.

MARKS

- 20** **3.** In 2000 Pierre and Louise, husband and wife, emigrated from France to Canada. They incorporated a company, Eiffel Ltd. They each took 500 shares in the company. The company bought a farm near Kelowna.

In 2002 Pierre wrote to his brother Robert, who still lived in France, and suggested that Robert send one of his children to Canada to help on the farm. Pierre said in his letter that “the child will be well provided for.” Robert replied that he agreed to that proposal.

Jacques, one of Robert’s sons, then age 16 years, was sent to Canada. He was not aware of the correspondence between Pierre and Robert. Jacques worked hard on the farm until 2017. He was fed and clothed and given money when he asked for it, but got no regular wages and did not take any holidays.

In June 2018 Jacques told Pierre that he wanted to take a 2-month holiday with some friends, and asked for enough money for the vacation. Primarily because he disapproved of Jacques’ friends, Pierre would not give Jacques any money, and said he could not take such a long break. Jacques left the farm and never returned.

The farm owned by Eiffel Ltd increased steadily in value during the 1990s as Kelowna expanded, and it became more likely that the property might be used for residential development. In March 2019, Eiffel sold the farm for 3 million dollars. The company invested the money.

Louise died in December 2020. By her will she left her Eiffel shares to Pierre. The share certificates were found in Louise’s safety deposit box. There was attached to them a note in Louise’s handwriting, which read: “I

Question 3 Continued;

hold 250 of these shares for Jacques. He works so hard and deserves more than he gets". The note was signed by Louise, but not dated.

Jacques is now aware of all of the above facts. He asked you for an opinion as to what claims he may have against Pierre and against Louise's estate. Provide him with a reasoned opinion on all aspects of the law affecting Jacques entitlements.

MARKS

- 30** 4. Tanya Tewksbury agreed to act as the sole trustee of an inter vivos trust set up in 1995 by her friend Sally Snooks. Sally Snooks drafted the trust herself. It was a short document and reads as follows:

"I hereby transfer all my shares in Mirage Ltd. to Tanya Tewksbury on trust to pay the income to my husband Silas for life, remainder to our son Les Snooks if he is alive at Silas's death, but if Les is not then alive to the survivor of his children in equal shares. Tewksbury is required to retain the shares."

Les has three children: Chad (16 years old), Xavier (22 years old) and Mabel (12 years old).

Sally Snooks also sent Tewksbury a letter, telling her "not to tell Les' two sons about the trust", warning her that "if you do they will make your life miserable."

The Mirage shares were duly transferred to Tewksbury and recorded in the Company register. The shares generate significant income, but recently there have been reports of a decline in leadership and the prospect of losses.

Tewksbury seeks your advice on the following matters:

- (a) Silas is always complaining that the income from the trust is insufficient. Tewksbury has from time to time made payments to

Question 4 Continued;

him out of capital. Les now complains that the capital is being unduly depleted.

- (b) Chad, one of Les' children, has just reached the age of 19 years. He has a well-deserved reputation as a spendthrift. He knows nothing about the trust.
- (c) Xavier, another of Les' children, wishes to study law. He has failed on three occasions to gain admission to a Law Faculty in Canada. He has been admitted to a private law school of dubious repute in the United States. Three years at the school will cost a total of \$US200,000. If he completes the three years he will probably have to spend a further year at a Canadian Faculty. Admission is not guaranteed. He does not know of the trust. However, Les asks Tewksbury to promise to fund Xavier's expenses in the United States out of capital. Tewksbury has refused. She made a note in her trust records: "Not a good bet. Sally Snooks agrees. In addition, she says they have never had a lawyer in the family ("what", she asks, "will the neighbours think?"). Les has asked to see all the trust records.
- (d) Les would like help from the trust to fund Mabel's very expensive dance classes.
- (e) Les would like his three children to succeed equally if he (Les) was to predecease his father Silas Snooks.

Advise Tewksbury, with reasons, on whether she has been acting properly, on what she should now do, and on whether it is likely she would get any assistance from the courts if she applied for directions. Give full explanations for your answers.

END OF EXAMINATION