

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

FINAL EXAMINATION – APRIL 2021

LAW 452.001  
Succession

Simi Dosanjh

**EXAM PASSWORD: p5FZj7**  
RESUME CODE: B13D91

**TOTAL MARKS: 100**

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

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS, 20 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.

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This is an open book examination. You may refer to any materials you wish.

**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.**

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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**

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**MARKS**      **QUESTION 1**

**65**      Mr. and Mrs. Kim are 68 and 66 years of age respectively. They have operated their small business, a convenience store in New Westminster, BC for the past 30 years. The store was operated through a BC corporation, Kim's Convenience Inc., of which Mr. Kim and Mrs. Kim were the sole shareholders, each holding a 50% interest in the company.

Mr. and Mrs. Kim had two adult children, Jung and Janet. Jung had been estranged from Mr. Kim for several years, but maintained a relationship with his mother and his sister. Jung had attempted to reconcile with Mr. Kim in the past and gave up when his father did not appear to be reciprocating his efforts. Janet had a great relationship with her parents, and she spent every spare minute working with them in the family business and played a big role in helping them grow the business to become a well-known landmark in their city. Jung had no interest in the business whatsoever.

In September, 2020, Mr. Kim engaged Mr. Shae Dee to act as his estate planning lawyer and prepare a Will for him after coming across a Groupon for his services. Although he had built a very successful business, Mr. Kim had little exposure to complex legal and financial planning. His previous work experience involved teaching elementary school math when he lived in Korea. Mrs. Kim, on the other hand, felt that something was "off" about Mr. Shae Dee and decided not to have her estate planning documents prepared by him.

At the time that his Will was drawn up, Mr. Kim's estate consisted of:

- (i) 50% of the shares of Kim's Convenience Inc. The total value of the company was comprised of the following:
  - a. a bank account, which consistently has a cash balance of around \$260,000;
  - b. two company-owned vehicles worth \$35,000 each;
  - c. a commercial building with a fair market value of \$3,000,000; and
  - d. the retail business, having recently been valued at \$1,600,000;
- (ii) An RRSP with a value of \$525,000;
- (iii) A TFSA with a value of \$80,000; and

**Question 1 continued...**

- (iv) 50% or \$1,000,000 in Mr. and Mrs. Kim's jointly owned principal residence.

Mr. Kim's Will included an executor compensation clause, which permitted a lawyer acting as executor to charge legal fees for any legal work associated with the estate (in addition to executor fees). The Will appointed Mr. Shae Dee as executor because Mr. Kim was advised by him that anyone acting as executor would be entitled to compensation, so he may as well have a professional take care of the estate for the exact same cost.

The Will called for a distribution of Mr. Kim's estate to Mrs. Kim, if she survives him for 30 days. If she does not survive him for 30 days, then the distribution would take place as follows:

*To Janet I leave my interest in the commercial building, my principal residence and my retail business.*

*I leave the residue of my estate, including any bank accounts, to Jung.*

Janet was named as the sole beneficiary on Mr. Kim's RRSP and TFSA.

The Will was executed at the office of Mr. Shae Dee, who witnessed the Will along with his secretary.

In February, 2021, Mrs. Kim was diagnosed with multiple sclerosis (MS). She began finding it difficult to dress herself and experienced increasing difficulty with mobility. It is now April, 2021 and Mrs. Kim now requires her husband or children's assistance with most ordinary tasks of daily life, including eating and drinking. Never abandoning her sense of humour, Mrs. Kim often remarks to her family that while she may be at their mercy for now, they better not try to keep her alive if she completely loses her marbles!

Mr. Kim fears that Mrs. Kim's cognitive abilities are rapidly declining. A medical assessment has confirmed that Mrs. Kim has developed Alzheimer's Disease. She is easily confused and unable to make decisions about her personal finances any longer, though at times she is perfectly lucid for short intervals.

Mrs. Kim's assets include the other 50% of the shares of Kim's Convenience Inc., her \$1,000,000 interest in the jointly owned principal residence, and a cottage on the Sunshine Coast that she acquired from her mother when it had a value of

**Question 1 continued...**

only \$500,000 (it is now valued at 1,600,000). She also owns an RRSP with a value of \$300,000.

Mrs. Kim has not executed a Will or any incapacity planning documents.

Mr. Kim has decided to seek legal advice regarding his and Mrs. Kim's estates. He was unsuccessful in reaching Mr. Shae Dee, as his phone line had been disconnected. Upon further inquiry, Mr. Kim discovered that he had been disbarred for serious professional misconduct.

- (a) Mr. Kim has come to you for advice about any estate and incapacity planning options available to Mrs. Kim, and the implications of having no planning on the distribution of her estate on death, and decisions respecting her finances, personal care and health care matters upon incapacity. Mr. Kim would also like you to review his Will and is seeking your advice regarding any legal issues that may arise with respect to his own estate. Mention any improvements that Mr. Kim could make to his planning.
- (b) It is now January, 2022 and Mrs. Kim has died. An old Will and codicil of hers is found, torn in half and neatly taped back up, in a box containing her wedding ring and some heirloom jewelry that was passed to her from her grandmother. The Will was executed in 1986, prior to her marriage to Mr. Kim in 1990. Under the Will, Mrs. Kim leaves a cash legacy of \$10,000 in favour of the BC Children's Hospital and the residue of her estate to whomever shall be the Pastor at her church when she dies. The codicil was executed in 1991 and increases the cash legacy to \$20,000. Both documents were signed by Mrs. Kim and witnessed by two of her closest friends at the church. One of the witnesses, Pastor Nina, has been the Pastor at Mrs. Kim's church for the last three years and wants Mrs. Kim's will and codicil to be given full effect.

Discuss the issues arising in respect of these documents, including the effect of the codicil. How would your analysis change if the Will and codicil had been executed after March 31, 2014?

END OF QUESTION 1.

**QUESTION 2**

At the time of Mrs. Kim's death, she was residing in a long-term care facility as her family found it impossible to manage her day-to-day needs themselves. As a result of her worsening MS and since her Alzheimer's diagnosis, she experienced significant mobility issues and decreasing cognitive function. During visits with family members and friends, Mrs. Kim sometimes forgot their names, or failed to recognize them. On one occasion, while recounting the details of a recent visit by Mr. Kim with her nurse, she repeatedly referred to Mr. Kim as her brother. The nurse knew that Mrs. Kim was an only child and when she attempted to correct her, Mrs. Kim laughed at the prospect that Mr. Kim was her husband and "corrected" the nurse by insisting that he had always been such a wonderful brother.

Mrs. Kim became very social at the long-term care facility, attending as many organized activities and social gatherings as possible. After approximately six months of living there, she had become very friendly with a fellow resident, Pastor Choi, and eventually the two of them had struck up a romantic relationship. Soon, it was common knowledge among the other residents and staff at the facility that Mrs. Kim and Pastor Choi were an "item". They would rarely attend any social functions at the facility without the other, and they took all of their meals together. The details of Mrs. Kim's close relationship with Pastor Choi were never discussed with her family or anybody else outside of the care facility.

Meanwhile, Mrs. Kim's family continued to visit her regularly, although with Janet's new job as a junior photographer for Vogue Magazine, she was required to travel several times a month, and her visits became more infrequent. Nonetheless, she always made time it a priority to visit when she was in town (at least one weekend a month). Mrs. Kim complained to Mr. Kim and Jung that Janet had abandoned her and didn't care about her anymore. While Mr. Kim tried to reassure her that Janet still cared about her but was busy building a career for herself, Jung was never as concerned about the preservation of Mrs. Kim and Janet's relationship. Instead, he seized every opportunity to throw his sister under the proverbial bus. He would frequently joke with his best friend, Kimchee, and his girlfriend, Shannon, that at this rate, his mother would disinherit Janet entirely in favour of him.

During one of their visits, Mrs. Kim noted in passing to Jung that she didn't have a Will and didn't know how her assets would pass on her death. When Jung facetiously suggested that she should add him as a joint owner on her cottage, he was surprised (and delighted) that Mrs. Kim said she would think about it. While the family no longer used the cottage together, Mr. Kim and Janet continued to separately enjoy the cottage. Janet, in particular, had a deep emotional attachment to the property.

**Question 2 continued...**

For the next couple of weeks, Jung obsessively talked to Mrs. Kim about the ownership of her cottage and the preparation of her Will. Jung advised Mrs. Kim that he had found a lawyer who could draft a Will for Mrs. Kim and suggested that he could convey her instructions to the lawyer on her behalf. The lawyer was an acquaintance of Jung's and accepted Mrs. Kim's instructions from Jung. After a draft of the Will was ready, Jung invited the lawyer to attend Mrs. Kim's care facility with him to have the Will signed. The lawyer, a nurse and Jung were all present in Mrs. Kim's room when the lawyer pulled the Will out of his briefcase and showed it to Mrs. Kim, telling her "this is the Will exactly as you wanted me to prepare it". The lawyer advised that he only had a few minutes to spare, and asked Jung to leave the room so Mrs. Kim could review and execute the Will. Clause 4 of the draft Will set out the following instructions regarding the distribution of her estate:

*4. I hereby direct my Executor to distribute my estate in the following manner:*

- (a) to give a cash legacy of \$1,000 to my husband, Mr. Kim; and*
- (b) to give the residue of my estate to my son, Jung Kim.*

The Will also contained a clause explaining that she has decided to disinherit Janet since Janet has decided to prioritize her friends and social life over Mrs. Kim and that she has effectively abandoned Mrs. Kim.

At the same time, the lawyer presented Mrs. Kim with the transfer documents to be executed if she wanted to transfer ownership of her cottage to Jung.

Mrs. Kim saw that Jung was peering into the room through a window and quickly nodded to the lawyer in agreement with the contents of the Will and the transfer documents. She noted, however, that the cash legacy of \$1,000 should read, "to my brother, Mr. Kim", not "to my husband". An alteration was made and the Will was subsequently signed by Mrs. Kim, the lawyer and the nurse.

Of the facts and events described in this question, which could give rise to a legal challenge, by whom and on what basis?

**END OF EXAMINATION.**