

THIS EXAMINATION CONSISTS OF 5 PAGES
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THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2022

LAW 451
Trusts

Section 1
Professor Pavlich

TOTAL MARKS: 100

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

NOTE:

1. This examination consists of FIVE (5) questions. **ANSWER ALL QUESTIONS. All questions carry equal marks.**
2. This is an OPEN BOOK examination.
3. If, in answering a question, alternative conclusions are reasonably possible, state and discuss them. 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 FIVE (5) QUESTIONS

MARKS

- 20** **1.** Tom Tewksbury, a wealthy man who had lived his life as a very successful businessman, died in January, 2021. He disliked lawyers and was confident that he could better craft and draft his own will with guidance from a law, self-counsel website intended for use by laypersons with small, uncomplicated estates. In this will he made the following dispositions:
- a) "\$1 million to my cousin Mildred knowing she will use the money to secure the future of my prodigal son Basil
 - b) My properties in Richmond BC to be held in trust for my daughters Tanya and Belinda for their lifetimes and thence in equal shares between my kith and kin alive at my death
 - c) \$2 million to my son Damien and when he dies the remainder to the survivor of his children and grandchildren who reaches the age of 25 years
 - d) \$1 million to the inhabitants of Whistler BC in such proportions as my son James shall determine
 - e) The residue of my estate to the executors of my estate to be distributed to such of my employees as they shall in their discretion think fit."

Mildred, Tanya, Belinda, Basil and Damien survive Tom. Damien is appointed executor and trustee. Damien has 2 children - Mike aged 24 and Suzanne aged 18 years. Mike and Suzanne have no children. Damien and his children would like to benefit from a time limited tax advantage and have agreed to share the \$2 million now. You are the lawyer acting for the trustee/administrator for the deceased's estate and required to assess the validity of the above dispositions and proposals.

MARKS

- 20** **2.** Giving full reasons for your answer, you are required to discuss whether the *Quistclose* Trust should be abolished or retained.

MARKS

- 20** **3.** The Whistler Village Association, a non-charitable, unincorporated club, exists to assist in policing and assisting in safeguarding the amenities of Whistler. It receives its funds from member's subscriptions, gifts by will and from the proceeds of local events such as jumble sales and raffles, money in collection boxes and one large donation from a large corporation that has a written undertaking from the president of the Association protecting its anonymity. While the Association's work was important in the founding days and early growth of the municipality, as a major and established City in the province, Whistler's future has been and is fully secure under legislation and the huge investments (monetary, social and recreational) of corporations and the government in the success of the resort municipality. The Whistler Village Association has increasingly, over the years become redundant. There is now considerable disagreement what to do with the substantial surplus funds that remain. In addition, the 10 employees of the organization, facing termination, are eager to attain the relatively large surplus in their contributory, defined-benefit, pension fund. They discover that this surplus has been removed from the fund on the instructions of the club president (of the Whistler Village Association) who is also the sole trustee administering the Association's funds. The president believes this surplus belongs to the current subscriber-members of the Association of whom there are now only a dozen.

The president seeks your advice (bearing in mind you have not perused all the documentation affecting this situation) on how to proceed with termination of the Association and the pension fund surplus following general principles of trust and contract law. You are required to indicate in general terms clauses in the Whistler Village Association's bylaws you would look for to explain the destinations of all funds remaining in the hands of the moribund club. Give full reasons for your answer including fiduciary and unjust enrichment considerations, if any.

MARKS

- 20** **4.** Rav and Octavia are trustees of a fund set up in the later part of 2021 in favour of Wang Yong as life tenant and Snooks as the remainder. The trust consists of shares in numerous companies, cash on deposit and various real estate and other property investments. Rav is appointed a director of one of the companies in which the trust has a shareholding because the combined total of the trust's shareholding and his own shareholding (which he purchased at the same time the

(Question 4, continued)

trust invested in the company) makes him a major investor. He is paid \$50,000 per annum for this and has received dividends of some \$100,000 in respect of his own shares. Acme Ltd is a financial services company and attempts to bribe Octavia to transfer to them some of the trust's business. Octavia is reluctant, but after checking the history of Acme Ltd she persuades Rav that they should transfer some \$1 million worth of trust assets with Acme Ltd for investment. In return, Octavia receives some shares in Acme Ltd that double in value due to the spectacular success of the company over the next 6 months. The trust's investment has also doubled. Other trust property includes a leasehold interest in an office complex in Vancouver and, as trustees, Rav and Octavia are offered the chance to purchase the reversion for \$2 million. They refuse, in good faith, on the advice of Acme Ltd, which is predicting an economic downturn in the commercial sector of the real estate market. The reversion in the lease is placed on the open market, and Octavia purchases it for \$1.5 million at an auction. Octavia has arranged a sale of the reversion to a property developer for \$2 million completion to be effected in 6 months. In the meantime, Snooks has sold and disposed of his remainder to Vernon without advising Rav and Octavia.

Wang Yong, Snooks and Vernon learn of these events and seek your advice. Please discuss and analyze fully giving the legal basis with reasons on which your advice is based. Indicate what typical provisions in settlements of this kind you might look for and, if found, would influence your answer.

MARKS

- 20** **5.** Alvin and Bo are trustees under the will of Sanders who died in January 2022. Under the terms of the trust, the trustees are to hold various items of furniture, some family heirlooms and cash in Sanders' deposit account on trust for Park for life, thence absolutely to his children. In 2020, Alvin approached Jeremiah, a stockbroker, to seek his advice on the investment of the money, and although Jeremiah was only recently authorized to act as a broker, he confidently recommended several investments. Alvin paid over half the trust monies to Jeremiah in order to pursue and execute the recommended investment policy after telling Bo that this was "purely a matter of form". Jeremiah invested the money as arranged but, due to his inexperience of high-tech stocks, all the investments made a substantial loss. In response to Jeremiah's further requests, Alvin

(Question 5, continued)

paid over the rest of the monies, this time failing to consult Bo. Due to luck, the second batch of investments in blue-chip stock made a substantial profit and the eventual sum repaid the trust exceeded the original sums invested. Meanwhile, Park has persuaded both trustees to sell the furniture and family heirlooms and use the proceeds to purchase a very expensive sports car for him. In early 2022 Park dies and his two living children become aware of how the trust has been administered. Advise the children, giving full reasons for your answer.

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