

THIS EXAMINATION CONSISTS OF 7 PAGES  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA  
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2021

LAW 451/551  
Trusts

Section 2  
Professor Eric B. Clavier

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS  
(plus 15 minutes reading time)

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NOTE:

1. This is an open book examination. A candidate may bring into the examination room any written materials they wish.
2. ANSWER Questions 1 and 2 and EITHER Question 3 or Question 4 (i.e., you must answer THREE questions in total). You may answer them in any order.
- 3 PLEASE budget your time.

LAW 451.002/551.002  
Questions 1 & 2

**MARKS**

**30**

1. Tina, who has recently died, made a fortune from her cannabis business activities over the years. She does not have any children but she does have several nieces and nephews and more distant relatives. She left a will containing the following trust provisions:
  - (a) "\$500,000 to be given to any of my old friends who have fallen on hard times";
  - (b) "\$1 million to be distributed amongst employees and ex-employees of my businesses, entirely at the trustees' discretion"; and
  - (c) "the rest of my estate to be divided equally amongst my relatives."

Consider the validity of these provisions.

**MARKS**

**50**

2. Sarah Connor ("Sarah") settled the Terminator Trust (the "Trust") on March 2, 2001. Sarah had two children: John Connor ("John") and Kate Connor ("Kate").

Kate has one child, Kyle Reese ("Kyle").

The Trust Deed contains the following key provisions:

- (a) Definitions

"discretion" means the absolute and uncontrolled discretion to the extent enabled by law; and

"division date" means March 1, 2022 (the "Division Date").

- (b) Trustee's Powers and Discretions

All determinations which the Trustee is authorized to make and all powers and discretions which are given to the Trustee to exercise,

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Question 2 continued

shall be made and exercised by him in what he considers to be the best interests of the beneficiaries. They are absolute and are not to be controlled or reviewed by any beneficiaries, Court or tribunal.

(c) Trustee

John is the trustee (the "Trustee") of the Trust.

(d) Beneficiaries

John and Kate are the primary beneficiaries of the Trust.

(e) Payments before the Division Date

The Trustee shall hold the trust fund and until the Division Date, he may from time to time pay to or apply for the benefit of John and Kate and their issue (such group being herein called the "Settlor's Family") or such one or more of them to the exclusion of the others and in such proportions as the Trustee may determine, all or so much of the net income, if any, derived from the trust fund and so much of the capital thereof as the Trustee may from time to time determine to be appropriate for the respective care, maintenance, education, advancement in life or other benefit of the Settlor's Family.

(f) Distribution

At the Division Date, the Trustee shall divide the remaining trust fund into two equal shares and distribute to John and Kate one half each, or if either should be deceased at the Division Date, to their issue who shall be alive at the Division Date that portion intended for either John or Kate in equal shares.

(g) Trustee's Discretion

The Trustee in exercising the powers and discretions given to him shall have regard for the totality of the powers and discretions conferred upon him. The Trustee may, for example, invest the trust funds for capital growth rather than income if such a policy otherwise seems to them to be a prudent one. The Trustee in exercising his investment powers to adopt the investments standard and policy which a businessman of prudence with comparable assets would adopt in investing his own assets, notwithstanding that such investments may be of a speculative character, attended with hazard

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Question 2 continued

and do not result in an even-handed treatment of the beneficiaries entitled in succession. The Trustee shall not be limited to those investments in which a trustee, having regard to the doctrine of prudence ordinarily applicable to a trustee, should invest assets held by him in trust for others.

(h) General Powers of the Trustee

In addition to all other powers conferred upon him by this Trust or by any statute or general rule of law, the Trustee shall have the power and authority:

(i) Investment

To invest any money constituting part of the trust fund in any investments which the Trustee considers advisable, notwithstanding that such investments may not be investments authorized by law for trustees.

(ii) Incorporation

Without in any way limiting the generality of the foregoing paragraphs, the Trustee shall be entitled to incorporate and organize a corporation for the purpose of acquiring assets of the trust fund.

(iii) Loans

To advance moneys out of the trust fund by way of loan to any individual or corporation, including, without limitation, any beneficiary or to any corporation in which the Trustee holds shares, such loans to be made with or without interest, upon such terms as to payment and with or without security all as the Trustee deems advisable.

(i) Exercise of Discretion

The Trustee shall exercise the powers and discretions given to him in what he deems to be the best interests, whether monetary or otherwise, of the beneficiaries, whether or not such exercise may have the effect of conferring an advantage on any one or more of the beneficiaries at the expense of the other beneficiaries or would otherwise, but for the foregoing, be considered as being other than

LAW 451.002/551.002  
Question 2 continued

an impartial exercise of their duties hereunder or as not being the maintaining of an even hand among the beneficiaries, and all such exercise of their powers and discretion shall be binding upon all the beneficiaries and shall not be subject to any question by any person, official, authority, Court or tribunal whatsoever or whomsoever.

Sarah died in 2007.

Skynet Inc. ("Skynet") was incorporated in British Columbia on April 30, 2001 and John is its director. The Trust is the sole shareholder of Skynet.

While acting as trustee of the Trust, John has been involved in a number of companies, including the following:

- (a) T-1000 Inc. ("T-1000"); and
- (b) Cyberdyne Systems Ltd. ("Cyberdyne"),  
(the "Companies").

The Trust does not own shares in either of the Companies.

To the knowledge of Kate and Kyle, as trustee of the Trust, John caused at least the following transactions to occur:

- (a) between May 21, 2002 and December 31, 2008, the Trust transferred \$1,500,000 to Skynet;
- (b) on February 15, 2013, Skynet loaned \$500,000.00 USD (with interest of 2% per annum) to T-1000, secured by a promissory note; and
- (c) on March 15, 2014, Skynet loaned \$500,000.00 with interest of 10% per annum) to Cyberdyne, secured by a promissory note.

Since the settlement of the Trust, no Trust monies have been distributed to Kate or Kyle.

Since the settlement of the Trust, John has not accounted to the beneficiaries of the Trust.

Advise Kate and Kyle on:

- (a) John's possible conflict(s) of interest;

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Question 2 continued

- (b) John's adherence to the prudent investor standard;
- (c) John's failure to account;
- (d) any remedies available to the beneficiaries; and
- (e) the Trust provisions limiting judicial review of John's actions as trustee.

**\*\*\*\* PLEASE TURN TO THE NEXT PAGE \*\*\*\***

LAW 451.002/551.002  
Questions 3 & 4

**YOU MAY PICK TO ANSWER EITHER QUESTION 3 OR QUESTION 4**

**DO NOT ANSWER BOTH QUESTIONS!**

**MARKS**

**20**

- 3.** Distinguish between a secret trust and a semi-secret trust.

OR

**MARKS**

**20**

- 4.** Outline the circumstances in which a constructive trust may arise.

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