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

FINAL EXAMINATION – APRIL 2022

LAW 452.001
Succession

Professor: Simi Dosanjh

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS, 20 MINUTES
inclusive of reading time

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

THIS EXAMINATION CONSISTS OF 4 QUESTIONS.

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MARKS **QUESTION 1**

65 **(a)** Kay Adams is 60 years of age and resides in Vancouver, British Columbia. She does not currently work outside of the home; however, she spent many years providing accounting services when she working with her husband, Michael Corleone, in their family business.

Kay and Michael had two children together: their 27-year old son, Anthony and their 24 year-old daughter, Mary. Anthony was troubled as an adolescent and became increasingly withdrawn from the family as he got older. In November, 2020, when Anthony was 25 years old, he left home after a bitter argument with his parents. Neither Kay nor Michael has heard from him since despite their many attempts to contact him and locate him. Kay recently heard from his past acquaintances that Anthony had debilitating mental health issues and had become a serious drug user. He was last seen around the Vancouver downtown eastside. Kay and Michael's investigations turned up many leads suggesting that Anthony is no longer alive, although they have no evidence to confirm those reports.

Kay and Michael separated in December, 2020 after a tumultuous several months at home together during the Covid-19 pandemic. In the beginning of January, 2021, Kay and Michael attempted to reconcile and began to reside together in the family home once again. All the while, they were seeking counselling from the Corleone family's trusted advisor, Tom. Kay confided in Tom that she was extremely intimidated by Michael's family and she believed they caused her to become isolated from her own family and friends. Michael's parents, Vito and Carmela, as well as his siblings, Connie and Sonny, were constantly meddling in their family affairs, including in the raising of their children, and they took great interest in all of their financial matters. After an argument with Michael in February, 2021, Kay told him, "I am done with this relationship" and advised Tom that she "no longer wanted to have anything to do with the toxic Corleone family". Neither Kay nor Michael has taken any steps to begin divorce proceedings.

Since May, 2021, Kay has been in a new romantic relationship with her partner, Fredo, with whom she began living together in August of that same year. Kay and Fredo take a shared responsibility for all household chores and maintenance, attend events together and live in most respects as a committed couple in a conjugal relationship. Kay and Fredo kept most of their finances separate, but they have a joint bank account that they use for household expenses and vacations. Although Fredo has gotten to know Mary, Kay has never been introduced to any of Fredo's friends or family and Kay has been wary about making her relationship "too" public for fear of how Michael's family would react if they were to find out about it.

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Question 1(a) continued...

In 2005, Kay and Michael executed wills that were prepared by Tom, the family advisor (and lawyer). Under Kay's will, Michael is named as the executor and sole beneficiary of all of her assets, except for her collection of designer handbags and jewelry, over which she gave Michael a general power of appointment with verbal instructions to divide those assets between Mary and her best friend, Hannah. In the event that Michael were to predecease Kay, her will names the Corleone Family Trust as the alternate beneficiary of all of her assets. She was told by Michael and his siblings that this is "the way it has to be" and would bring dishonour on the family if she were to deviate from that distribution.

The Corleone Family Trust was established in 1995 and holds a significant share of the Corleone family's wealth. The current trustees of the trust are Michael, Vito and Carmela. It is amendable and revocable pursuant to its terms; however, it has never been amended.

Kay's will contains an attestation clause and was witnessed by a secretary and an articling student who worked under Tom. At the time she executed her will, Kay was in the presence of both the secretary and the articling student, while Michael, Vito and Carmela waited outside the room and can be seen motioning for her to hurry up through the glass door. Kay does not recall if the articling student read the will out to her, but she remembers thinking that it was odd that neither he nor the secretary brought any notepads with them to take notes on.

It is now 2025 and Kay's assets include:

- (i) private company shares in the Corleone family company, having a value of \$5,000,000;
- (ii) her principal residence, having a value of \$2,000,000;
- (iii) her handbag and jewelry collection, having a value of \$450,000;
- (iv) her bank and investment accounts at RBC, which have a combined value of \$950,000;
- (v) a jointly owned bank account with Mary, with a value of \$500,000, which was opened shortly before Kay departed on an 18-country trip of a lifetime in 2021; and
- (vi) her vehicle, which is valued at \$150,000.

Kay met with you via Facetime three months ago to advise that she wishes to create a new Will as she no longer wants the Corleone family to take any benefit under her will. In addition to the 2-hour long conversation, Kay also prepared a detailed summary of the discussion and her instructions to you and sent them via email. Her instructions include:

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Question 1(a) continued...

- (i) removing Michael and naming you as her executor;
- (ii) removing Michael as her residuary beneficiary and naming Mary in his place;
- (iii) removing the Corleone Family Trust as the alternate residuary beneficiary and naming her best friend Deepa in its place; and
- (iv) adding a gift to her insurance agent, Mr. S.M. Arty, of \$500,000.

Kay advises you that although she wants to name Mr. S.M. Arty as a beneficiary under her will, she plans to speak with him about distributing the funds to Fredo. She is adamant that this arrangement should be kept a secret from Michael and his family, and she only trusts him to carry out her wishes. Mr. S.M. Arty first met Kay at a multi-level marketing convention and has assured her that he is trustworthy, even though he has made a few questionable business decisions in the past that have landed him in hot water.

She is also concerned about a property that she and Michael had purchased for Anthony, which remains registered in his name. Anthony's weekend condo, valued at \$1,000,000, has been vacant since he left home.

Kay has a very busy schedule, and can never find the right time to meet with you to execute a new will. She has asked Deepa and one other friend to attend with her as witnesses, but they have not been able to coordinate their schedules (although they frequently have virtual wine and cheese nights together). Kay has heard that she may be able to get her friends on the phone to witness her signature, but she isn't sure exactly how to do that.

In the meantime, Kay has taken a pen and crossed out all references to Michael and the Corleone Family Trust in her will. Where the reference is to the executor, she has replaced Michael with "lawyer?". Where the reference is to Michael or the family trust as beneficiaries, the original words can no longer be made out. Where Michael's name previously appeared as beneficiary, she has written in "MARY", and where a reference to the family trust was previously made, she has written in "Deepa???". None of the interlineations on the will have been initialled or signed.

Unbeknownst to Kay, Fredo has also been carrying on another romantic relationship since long before they even met. Fredo and his boyfriend, Vincent have an "understanding" that they may see other people, but they are and will always be each other's "number one". Vincent is an international businessman and is most often travelling for work. When he does come to Vancouver (approximately one or two weekends a month), he and Fredo stay together in their shared penthouse apartment near Stanley Park. Due to the nature of their unconventional beliefs around their relationship, Fredo and Vincent have largely

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Question 1(a) continued...

kept their relationship to themselves. They have filed their income taxes as “spouses” for many years and Vincent, being the higher income earner, has always financially supported both of them, even when he is away on work assignments.

Two weeks ago, Vincent died. Vincent’s siblings have now discovered the details around his relationship with Fredo and they are claiming a share of his intestate estate as Vincent has no children or parents. The siblings claim that Vincent and Fredo are not spouses; and if they were spouses at one time, they are now separated because Fredo is in another relationship.

Today, you received a “cease and desist” letter from Michael’s lawyer suggesting that Kay must not alter her will as she and Michael had a verbal agreement and a mutual understanding that they would not change their wills without the other’s express written consent. Michael’s lawyer threatens to sue Kay “for everything she has” if she attempts to renege on their agreement.

Advise Kay and Fredo regarding the legal issues arising in respect of the facts above.

(b) It has now been eight months since Kay spoke with you about the changes she wishes to make to her will. Over the last month, some of Kay’s friends have been noticing that she has been forgetting things that she would normally remember, such as birthdays, invitations to events, dates and the content of their conversations. Some of her friends believe that she is able to carry on normal conversations some of the time, while others feel that she is no longer the same person. Kay’s medical team opines that Kay is incapable of managing her own affairs. There is no question, however, that Kay had full capacity when she provided her will instructions to you.

Discuss the issues arising under these new facts.

Assuming that Kay has lost capacity to make a new will, what advice would you give her personal representative regarding how her testamentary wishes may be given effect?

END OF QUESTION 1.

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MARKS **QUESTION 2**

- 10** Discuss the role of extrinsic evidence in the construction of wills. In your answer, describe what is meant by the “armchair” rule and how that rule has been applied in the jurisprudence.

QUESTION 3

- 15** Describe some planning strategies that may be implemented as a means to avoid probate on death, including joint ownership, multiple wills, and the transfer of assets into *inter vivos* trusts such as alter ego trusts or joint partner trusts. Discuss the potential advantages and pitfalls of these strategies.

QUESTION 4

- 10** Discuss the functions of the formal validity requirements under *WESA*. Are there any exceptions to the formalities that must normally be observed under *WESA*? What, if any, remedies are available to give effect to a will that fails to meet the required formalities?

END OF EXAMINATION.