THIS EXAMINATION CONSISTS OF 3 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 451

Trusts

Section 1

Professor Adam Hofri-Winogradow

**TOTAL MARKS**: 100

**TIME ALLOWED**: 3 HOURS

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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 all questions. You may answer them in any order.

3 PLEASE budget your time.

Questions 1, 2 & 3 [question 3 continued on next page]

**MARKS: 20**

1. Gundap, a real estate entrepreneur, established Yokohama Candy Corporation (Yokohama), a property development company. Yokohama purchased a highly coveted lot in Yaletown and set about planning and building a luxury condo tower called Candy Towers. To fund the planning and building, Yokohama pre-sold units in the future tower to interested investors. 27 investors signed contracts to purchase units and pre-paid the cost (CAD $2 Million each) into Yokohama’s general bank account. Simultaneously, Yokohama borrowed other funds from Aceh Investment Bank. Unfortunately, Yokohama defaulted on its repayment obligations to Aceh, and was placed into receivership on Aceh’s application. Work on the condo tower stopped with the tower unfinished. The receiver now controls all monies held by or for Yokohama, amounting to $551,629 in total. The pre-paying investors argue that they enjoy the status of trust beneficiaries and so should be repaid their prepayments in preference to Aceh and all of Yokohama’s other creditors.
2. Discuss the investors’ trust argument. Are they correct? State your position and support it with pertinent arguments. (14 points)
3. If the investors are indeed trust beneficiaries, what rights and/or remedies can they get against Yokohama? (6 points)

**MARKS: 20**

 **2**. Claude Rochefoucauld made a large fortune breeding geese for the production of foie gras. Shortly before his death, he transferred 100% of the voting shares of his company, Fatty Products Ltd (Fatty), to a new trust he created, appointing his eldest son, Xavier, trustee and expressly empowering Xavier in the trust instrument to exercise all powers over the trust assets that Xavier could exercise if he was their owner other than as trustee. Claude made his spouse, Genevieve, and his four children, Xavier, Xe, Xomon and Xian, beneficiaries, and provided in the trust instrument that Xavier was to exercise all his powers as trustee for the exclusive benefit of the beneficiaries. Following Claude’s death, Xavier used his power as owner of 100% of the shares of Fatty to appoint himself CEO of the company. He then used his power as trustee to sell all the shares of Fatty to a new company he established, Whirlwind Ltd, receiving in return a promissory note to pay the trust, in ten years’ time, the value of the Fatty shares sold.

Genevieve, Xe and Xomon are quite upset about Xavier’s actions, and apply to the court to have Xavier removed as trustee and have his actions (appointing himself CEO of Fatty and selling all the shares of Fatty to Whirlwind) declared null and void. In support of her brother, Xian testifies that Claude asked Xavier, before Claude’s death, to act exactly as Xavier had acted, and that Xavier had done so out of his fierce sense of loyalty to his late father.

Discuss Genevieve’s, Xe’s and Xomon’s application and Xian’s testimony.

**MARKS: 30**

1. Sergei, a 31-year-old Vancouver resident, is still living with Yuki, his mother. Yuki is divorced. Sergei and Yuki are quite close; though Sergei is working full time as an insurance broker, Yuki is

Questions 3 [continued] & 4

 still providing him with room and board free of charge. While Sergei’s salary is paid into his

separate bank account, the household expenses are largely paid from Yuki’s account. During July 2020 Yuki brought home a bull terrier, which Sergei named Mumtaz. Yuki and Sergei then proceeded to care for Mumtaz together. The dog’s food, health and other needs were sometimes paid for out of Yuki’s account, sometimes out of Sergei’s, with no clear allocation of responsibility for Mumtaz’s needs.

In August 2021 Sergei met Antonella, a circus dancer recently arrived from Buenos Aires. The two fell in love, and Antonella joined Sergei and Yuki’s household, living with them and contributing to household finances out of her income. Antonella took a particular liking to Mumtaz, and with time, gradually came to spend a significant part of her paychecks on him, nursing him through a long episode of heartworm and taking care of his many medical, clothing and emotional needs.

To Antonella’s great sorrow, in October 2022 Sergei decided to end his relationship with her, and asked her to move out of his and Yuki’s home. In tears, Antonella asked for Sergei’s permission to take Mumtaz with her, a request Sergei refused.

1. Having moved out, Antonella is looking for legal arguments that could assist her in obtaining custody of Mumtaz. What arguments, if any, can she raise? List them and discuss Antonella’s chances of success. (10 points)
2. Following the end of his relationship with Antonella, Sergei realized it’s time for him to live on his own, and left his mother’s house, taking Mumtaz with him. Yuki would like to keep Mumtaz. What arguments, if any, can she raise? List them and discuss Yuki’s chances of success. (20 points)

**MARKS: 30**

 **4**. Shiv is a securities trader working out of Toronto. He uses a custodian account at TD Bank. Shiv allows Georgette, a fellow trader, to use his TD Bank account: Georgette deposits and withdraws money and other assets into and out of the account. Every once in a while, Georgette pays Shiv a small commission for her use of his bank account. Shiv does not monitor Georgette’s use of his account. Unbeknownst to Shiv, Georgette deposited some tech stocks in his account. These stocks were subject to the Browne family trust, and came into Georgette’s hands when she was hired by Abdul, trustee of that trust, to provide trading services to the trust.

On October 20, 2023, TD Bank collapsed, following a bank run, and ceased operations. Depositors could no longer withdraw or otherwise reach money and assets they had with the bank at the time of its collapse. $200,000 worth of tech stocks, subject to the Browne family trust, were deposited with TD Bank at the time of its collapse, and could not be retrieved. The stocks were uninsured, and the government chose not to bail out either TD Bank or its depositors.

Carrie Browne, beneficiary of the Browne family trust, asks you for advice regarding her legal options in trying to retrieve the value held for that trust in TD bank at the time of its collapse. Advise Carrie as to her legal options and each option’s likelihood of success.

**END OF EXAMINATION**