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

FINAL EXAMINATION – DECEMBER 2022

LAW 451/551
Trusts

Section 2
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 all questions. You may answer them in any order.

3 PLEASE budget your time.

Questions 1 & 2

**MARKS

20**

**1.** Carla, 39 years old, died in an airplane crash. She made a fortune over the years from her personal coaching business called “Training for the Stars” (“Stars”). Carla was a frequent flyer with several airlines due to her extensive travel to clients’ private residences around the world. Carla was so devoted to her personal coaching enterprise and to her Stars clients that she avoided all personal relationships which could distract her from her true calling. She also learned a pivotal life lesson when her long-estranged parents tried to rekindle their broken relationship after Carla made Forbes’ “40 under 40” list last year. As of Carla’s last day, she considered her only remaining relationships to be those with her staff, her Stars clients, and the baristas at Starbucks in YVR’s international departure lounge. She left a will containing the following trust provisions:

(a) “All my frequent flyer points to be transferred to my dear barista named Edgar (or possibly his name is Edmund), from the Starbucks at YVR international departure lounge and if he cannot be located, to any of the baristas there”;

(b) “$7 million to be distributed entirely at my trustee’s discretion, amongst Stars’ employees and contractors, provided that they do not use the distributed funds for frivolous purposes”; and

(c) “the rest of my estate to be divided equally amongst Stars’ clients.”

Consider the validity of these provisions.

**MARKS**

**20**

**2.** Nicole is a wealthy widow who has recently died. Fritz is her executor and trustee. Nicole’s heir is her partner Avon as life tenant, and the remainder is bequeathed to her son Warren Jr. The residue of the deceased’s estate consists of:

(a) 5,000 shares in Tons of Singles, Inc. a closely held corporation that operates a dating website, valued at $10 million;

Questions 2 (continued), 3 & 4

(b) An insurance policy on the life of her former spouse, Warren Sr., who is still alive aged 55 years;

(c) A house on Point Grey Road, worth $12 million;

(d) Royalties in a bestselling book she wrote just prior to her death;

(e) The right to an insurance policy on Avon’s death; and

(f) $120,000 in her bank account.

Advise Fritz on his obligations in the administration of Nicole’s estate.

**MARKS**

**10**

**3.** Provide a broad distinction between a constructive and a resulting trust.

**MARKS**

**50**

**4.** Alex settled $1.2 million in trust for her son, Michael, an adult with a learning disability who was unable to live independently. Alex acted as the initial trustee and named her sisters, Tracey and Jenny, as successor trustees. Tragically, Alex tragically died in a hotdog eating competition in 2015. Following his mother’s passing, Michael moved in with his dad, Hardeep. Alex and Hardeep divorced in 2008 and there is evidence that Alex was deeply concerned about protecting the funds from her former spouse and ensuring that there were adequate funds for Michael during his lifetime.

Under the terms of the trust:

(a) all determinations which the trustees are authorized to make and all powers and discretions which are given to the trustees to exercise, shall be made and exercised by them in the best interests of Michael, the sole beneficiary of the trust. They are absolute and are not to be controlled or reviewed by any Court or tribunal;

Question 4 (continued)

(b) all trustee decision-making must be unanimous;

(c) the trustees, in their absolute discretion, may make payments to Hardeep, for the use and sole benefit of Michael;

(d) the trustees shall invest the trust assets only within Canada;

(e) the trustees may make loans out of the trust to any individual or corporation, and such loans may be made with or without interest, upon such terms as to payment and with or without security, as the trustees deem advisable; and

(f) the trustees shall not be liable for any breach of trust unless it is caused by their own fraud or gross neglect.

In 2022, the trustees refused numerous requests from Hardeep for funds for Michael, including funds for acupuncture and chiropractic care, a vacation to Japan, spa treatments, a BMW M3, and a luxury mattress.

Between the date of Alex’s death to present date, the trustees had provided funds totaling about $139,000 for Michael, including payments for extra-curricular activities, travel expenses for an annual guided trip with his support group, and clothing. The trustees provided reasons for denying the other requests including that they believed the requested items were not actually needed by Michael and/or appeared to be for the benefit of Hardeep (in the case of the M3), and/or were covered by Michael’s disability benefits.

Since the death of Alex, the trustees have not provided an accounting to Hardeep, for the benefit of Michael.

With the Canadian economy struggling during the COVID-19 pandemic, in 2021, Tracey and Jenny decided to invest $500,000 of trust money in a U.S.-based company working on an injectable bleach product to counteract COVID-19, which investments have decreased in value by 99% to date. Tracey was initially unsure about making this investment but Jenny was able to convince her sister that she was better positioned to make investment decisions for the trust because she had taken a two-hour online investment course offered by Donald Trump. Tracey reluctantly agreed.

Question 4 (continued)

Jenny’s common law spouse, Hiva, owned a restaurant and wine bar in Kits that needed money to continue operating due to unanticipated closures during the pandemic and corresponding staffing issues. Jenny was not able to convince Tracey to invest in the restaurant but she did convince Tracey that they should loan Hiva $200,000 of interest-free trust money, to be repaid by Hiva over a 10 year term. Last week, Hiva’s restaurant officially closed its doors because most of its patrons got food poisoning from eating there. Hiva and Jenny have advised Tracey that Hiva plans to declare bankruptcy and that the trust is unlikely to ever be repaid. Tracey is wondering to herself whether Jenny and Hiva have joint finances and whether Jenny’s assets might be at risk.

Hardeep is very unhappy with the way Jenny and Tracey have been performing the trust and he is concerned about the status of the trust funds generally.

Advise Hardeep on:

(a) Jenny and Tracey’s investment in U.S.-stocks;

(b) Jenny and Tracey’s adherence to the prudent investor standard;

(c) Jenny’s possible conflict(s) of interest, if any;

(d) the trustees’ failure to account to date;

(e) the Trust provisions limiting judicial review of the trustee’s actions; and

(f) any remedies available to Michael, as trust beneficiary.

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