

**Trusts & Equity**  
**Fall Term 2018**

**Discussion Questions No. 1**

1. The testator died and in his Will transferred his house and contents to the Estate Trustee of his estate with the following instructions:

*I direct my Estate Trustee to sell the house and everything in it, invest the proceeds, and hold the capital and income on trust. Pay a fair and sensible income to Abby during her life, and, transfer the capital and the remaining income to Abby's children (equally or in such shares as Abby stipulates on her death).*

The residuary legatee (the person who receives all remaining assets of the estate when all debts have been paid and all gifts distributed by the executor) of the testator's estate is his son, Bertram. The testator died a month ago, and, alas, Abby died yesterday (survived by her two children). One of Abby's children says that he was to be given a two-thirds share according to his mother's wishes.

**Advise the Estate Trustee.**

2. Your client, Mrs. Eudora Wealthy, is eighty-four years old. She is presently married and has been once divorced; both her husband and her ex-husband are alive. She has five adult children and two minor children. She has managed to acquire substantial assets (approximately \$10,000,000) through her acquisition of residential property in Toronto which she rents to tenants at exorbitant prices. Mrs. Wealthy has advised you that she fears that she may not be as sharp intellectually in the future as she is now. Accordingly, she wishes to make the following dispositions in trust with effect as soon as practicable:

- a) to provide for the educational needs of her various children, both during and after her life, so long as they devote themselves to studies leading to a professional career and do not fritter away their time (and her money) on frivolous subjects;
- b) to make provision for the youngest child, both during and after her mother's life, so that her needs are taken care of – she is mentally disabled and your client fears for her ability to work and provide for herself as an adult. Your client is particularly worried that the child make come under the influence of her spendthrift father upon attaining the age of majority;
- c) to provide a scholarship for deserving students to attend York University to study for a degree in law, provided that they practice their profession after they leave school for at least for consecutive years.

**Advise Mrs. Wealthy.**

3. A purchases 3 lottery tickets for \$10 each; he intends to keep one for himself, and declares himself trustee of the remaining two tickets – one for each of his friends B and C (and tells them about the tickets). A doesn't choose amongst the three tickets before

the draw, and neither does he set aside any particular ticket for either of his friends. On the night of the draw, one of the three tickets wins a prize of \$1,000,000.

**Advise B.**

4. The testator makes the following dispositions in his will:

- a) \$1,000 to each of my old friends;
- b) \$100,000 to the old members of York University in equal shares;
- c) \$50,000 to graduates of York University with degrees in law in such shares (if any) as my trustees in their absolute discretion see fit;
- d) \$1,000,000 to the residents of the City of Toronto in such shares (if any) as my trustees in their absolute discretion see fit.

**Are these gifts valid?**

5. Ian transfers his cottage to his friend, Jerome. Just before he did so, Ian told Jerome that he wanted him to hold the cottage for his next-door neighbour, Katharine.

**Advise Katharine.**

6. Your client, Able, instructs your advice respecting to his intention to make the following dispositions upon his death:

- a) To transfer his sizeable real estate and stock holdings to a trusted friend, Doris, on the following conditions:
  - i. that Doris holds the assets for his wife Ethel during her life, and, on Ethel's death, that the remainder should be split evenly between his 4 children (Fiona, Grace, Howard, and Isaac) unless his wife directs to the contrary during her life;
  - ii. that no one should ever receive any of his money unless he or she is a fine and upstanding citizen of integrity (and just to be sure, that no monies can ever be transferred without informing Ethel of the intended transfer so that she can raise an objection);
  - iii. that if there is any dispute as to the operation of the scheme, the money should revert to his estate; and,
  - iv. recognizing that the qualities that Able admires most often require education and a variety of different life experience, that Doris should be able to give any of the children money during Ethel's lifetime for education or travel should Ethel herself refuse to do so.

- b) To transfer the capital sum of \$100,000 to his secretary Betty for life, remainder to her son Clifford. Able is reticent to explain why he wishes to make this gift but is adamant that it be done, and that it be done in some confidence;
- c) To transfer \$25,000 to Doris for her to distribute randomly to the residents of Kingston (but in the form of \$20 notes, each one of which will have Able's name hand-written in purple ink somewhere on the note).

**Advise Able.**