

QUEEN'S UNIVERSITY
FACULTY OF LAW
LAW 463 (TRUSTS)
FINAL EXAMINATION
DECEMBER 2012
PROF CD FREEDMAN

INSTRUCTIONS: This examination is THREE (3) HOURS in length.

There are THREE (3) parts in this examination.

Part A consists of ONE (1) question and is worth 1/3 of the total marks available.

Part B consists of ONE (1) question and is worth 1/3 of the total marks available.

Part C consists of FOUR (4) questions, together worth 1/3 of the total marks available. All five questions are of equal value.

Please answer all questions in the answer booklets provided. Please write legibly. ANSWERS NEED NOT BE LENGTHY BUT SHOULD BE COMPLETE.

Put your student number on the front page of all answer booklets. Please number the booklets in their correct order.

GOOD LUCK!

Special Aids:

This is an open-book examination.

PLEASE NOTE:

“Proctors are unable to respond to queries about the interpretation of exam questions. Do your best to answer exam questions as written.”

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Part A: 1/3 TOTAL MARKS

Suggested Time Allocation: 60 Minutes

Widget Corporation ('Widget') manufactures parts for cell phones. Most of the manufacturing takes place abroad and regional instability in the area has interfered with operations there. Two customers in particular have complained that their own operations are at risk as a result. Seeing an opportunity, the CEO of Widget (Smidget) approached both customers to negotiate financing so that Widget could start a small manufacturing facility in Canada. Smidget outlined costs and promised both customers a return on investment as well as priority for the supply of parts. Xelus Inc. agreed to provide \$500,000 to be used to pay Widget's payroll for the next 5 months. Pogers Inc. agreed to provide \$2,000,000 for the manufacturing equipment. Both Xelus and Pogers accepted Smidget's assurance that the money advanced would be used only as agreed, be held by an independent lawyer and only advanced by him or her consistent with the agreement, and that the full amount advanced would be repaid within 24 months from receipt by Widget at the rate of 6% per annum.

Smidget instructed Widget's lawyer, Bertram, to document the agreement with Xelus and Pogers. Bertram did so and the agreement was executed by all parties. Given that neither Xelus nor Pogers were resident in Ontario, Bertram offered to help arrange for a local lawyer to hold the money subject to the terms of the agreement. Both Xelus and Pogers accepted Bertram's offer and Bertram arranged for Angela to be retained. Angela was a lawyer in her first year of practice who rented an office from Bertram. Although not her employer, Bertram had agreed to act as Angela's mentor when he rented his spare office to her and sent her clients from time to time.

On November 1, 2012 Xelus and Pogers transferred the money to Angela's trust account. At that point Widget was barely hanging on as a business; they were \$1,000,000 in overdraft at the bank and owed their employees about \$100,000 in back pay. They also owed Bertram \$200,000 for his past legal work. Angela informed Bertram that she had received the money from Xelus and Pogers and he in turn provided her with a draft authorization to her bank to transfer the entire \$2.5 million to his trust account (he said that this was his usual practice in arrangements of this sort and would save on banking charges and avoid delay when Widget needed to draw on the money). Angela was surprised and a little flustered; she was unsure what to do and didn't want to give Bertram the idea that she didn't trust him. She decided to sign the authorization and agreed to fax it to the bank immediately, which she did. The bank made the authorized transfer from Angela's trust account to Bertram's trust account. The next day, Amanda wasn't sure she did the right thing and called the CEOs of both Xelus and Pogers to inform them of her actions. Both became concerned.

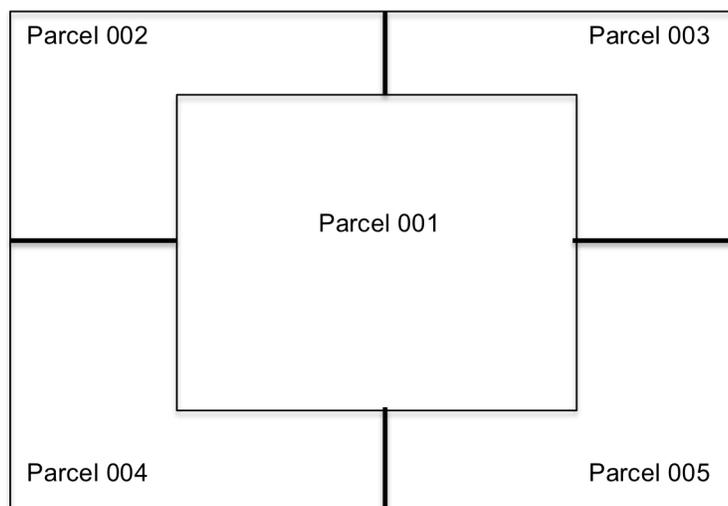
On November 2, 2012 Bertram provided Widget with a trust cheque for \$1,300,000 which was deposited into its account (Bertram told Smidget that he thought it would save time later to give Widget more of the money from Xelus and Pogers now). Widget paid its employees their back pay and their pay for the current month and sent a cheque by post to its machinery suppliers for \$100,000. The remaining \$1,000,000 was put towards Widget's overdraft with its bank. Bertram used the Xelus and Pogers money in his trust account to pay his outstanding invoice to Widget. The remainder is still in his trust account.

Advise Xelus and Pogers.

Part B: 1/3 TOTAL MARKS

Suggested Time Allocation: 60 Minutes

Adam purchased some property in February, 2012 for \$1.5 million and wanted to put it in trust. He knew a trust manager (Frank) at the Professional Trust Company (PTC) and approached Frank to secure PTC's appointment as a trustee. Adam then retained a real estate lawyer and had the land divided into five parcels (as below). Adam then drafted and executed a legal instrument to settle the trust (**reproduced on page 4 of this examination**). As per the trust settlement, title to the land was then transferred into the names of Adam and the Professional Trust Company as trustees together with the sum of \$100,000.



After Adam told his children of the trust and its terms in April 2012, his family began to bicker. The arguments continued all summer and eventually the children stopped talking to Adam and to each other. A few weeks ago Adam had enough and went to talk to Frank. They decided that it would be best to sell the land and did so for \$2,000,000 to a third party through a real estate auction last week. The sale closed last week and the proceeds of the sale remain in the trust account of the lawyer retained by the trustees for the sale.

Frank was fired yesterday by the PTC for dealing with client's funds improperly. Indeed it appears that Frank helped himself to over \$80,000 of the money held in the trust account set up by Adam for the trust and used it (and other client money) to support his gambling habit. PTC's investigation revealed that Frank misused about \$320,000 in client money overall. There is now about \$1,000,000 in Frank's personal bank account (he admits that he only had about \$500 in the account before he started to use clients' money). No one can tell whose money Frank gambled with on any given day, only that he won about \$2,000,000 overall. Aside from the money in his bank account, the rest of the money won by Frank is gone – he spent it all. Frank has no other assets other than the money in the bank.

Advise Adam.

TRUST SETTLEMENT

I, Adam, give land described as parcels 001-005 in the City of Kingston, Frontenac County and the sum of \$100,000 to myself and the Professional Trust Company as trustees to be held on the following terms:

- (i) parcel 001: to be maintained as a common area so long as the surrounding lands are held by or for my children or their descendants;
- (ii) parcel 002: to my son Bertram for life, and after his death to any of his colleagues or acquaintances as my trustees in their absolute discretion select;
- (iii) parcel 003: to my daughter Carolyn for life, and after her death to any person or charity to whom she appoints the land in her will up to one-half of the property held in trust;
- (iv) parcel 004: to my daughter Doris for life, and after her death to her great-great-grandchildren;
- (v) parcel 005: to my son Edward for life, and after his death to Queen's University;
- (vi) my trustees shall use the funds provided to maintain parcel 001;
- (vii) the trustees shall take all steps to protect and manage the trust property in the best interests of the beneficiaries;
- (viii) no trustee shall be held liable for breach of trust except where such breach was occasioned by his or her dishonest or malicious act.

MADE BY ME AT KINGSTON, ONTARIO this *15th* day of March, 2012.

Witnessed by

A. Jones

witness

B. Smith

witness

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)
)

Adam

Adam

PART C: 1/3 TOTAL MARKS

Suggested Time Allocation: 60 Minutes

Answer all 4 questions. Each is of equal value.

1. A power of appointment was donated to a trustee in favour of seven beneficiaries, exercisable once per year per beneficiary on that beneficiary's birthday. The trustee doesn't know the birthday of any of the seven people and has taken no steps to learn of any of their birthdays. **Advise the beneficiaries.**

2. The will of the testator sets out a gift in the following terms: 'to the Minister of the Church that I attend, Alex Axelrod, I give the sum of \$10,000 for the purposes that I have made clear to him.' Alex advises that the testator told him that he was going to give him a 'special responsibility' in his will, and Alex promised that he would do his best to fulfil any reasonable request. The estate trustee has given Alex a sealed envelope in which there was a name of a woman living overseas together with her address. Initial inquiries reveal that the woman did know the testator but refuses to advise how she knew him or in what circumstances. Alex does not feel comfortable giving the money to the woman as he suspects that the testator had an extra-marital affair with her and does not want to be complicit in deceiving the testator's surviving spouse. **Advise the parties.**

3. A group in Kingston responded to the elimination of the penny from circulation by the Royal Canadian Mint by setting out jars in public places displaying a sign which said 'donate your pennies to buy ponies for children living in the North End'. Municipal regulations forbid the keeping of horses and ponies within the city boundaries, including the 'north end' of the City. About \$1200 has been raised. **Advise the organizers of the penny drive.**

4. Upon what basis can the terms of a trust be modified in each of the following circumstances:
 - (a) where all beneficiaries are of age and represent all interests of whatever sort in a private trust;
 - (b) where a beneficiary is a minor and has a contingent share in a private trust;
 - (c) where the trust is to provide for the relief of poverty of the testator's family members and the testator dies survived by no family members;
 - (d) where the trust obligates the trustees to provide funds yearly 'for the washing of windows of Macdonald Hall, Queen's University, Kingston, Ontario so that students will have something interesting to do during classes.'