

**The University of Alberta
FACULTY OF LAW**

FINAL EXAMINATION — 24 APRIL 2003

LAW 580 : B1 — TRUSTS (CHAMBERS)

TIME ALLOTTED: 2 HOURS, PLUS 10 MINUTES READING TIME **

** *Before the two-hour examination begins, you will have ten minutes to read this examination question paper. During the reading time, you may write on this examination question paper, but may not write in the examination answer booklets. The examination supervisor will announce when reading time begins and when the examination begins.*

- INSTRUCTIONS:**
1. Do not enter your name on any answer sheets or booklets. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number for this examination only and should be entered on the examination answer booklets in the space provided for your surname. This will provide for anonymity during marking.
 2. This examination question paper has six questions on three pages. Please check to ensure that it is complete before starting.
 3. Answer every question. Please note the number of possible marks and suggested time for each question and apportion your time accordingly.
 4. Write or print your answers legibly and concisely in the examination answer booklets provided.
 5. This is an 'open book' examination. You may bring any printed or written material (other than examination answer booklets) with you into the examination room. No electronic devices (such as calculators or mobile phones) may be used during the examination.
 6. Failure to stop writing at the end of the examination period may result in a deduction of grade or a refusal to accept your examination answer booklets.

Note: There are a total of 60 possible marks and 120 minutes for this examination.

QUESTION 1 (10 marks, 20 minutes)

Royal and Etheline were husband and wife. They have three children who are now adults: two sons, Chas and Richie, and one adopted daughter, Margot. In 1992, Royal and Etheline each made a will. Royal's will left his entire estate to Etheline, if she survived him. If she did not survive him, their house was to go to Chas and the remainder of Royal's estate was to be divided equally between Richie and Margot. Etheline's will left her entire estate to Royal, if he survived her. If he did not survive her, their house was to go to Chas and the remainder of her estate was to be divided equally between Richie and Margot.

In 1996, Royal died and Etheline received sole ownership of the house and its contents, which had been owned by Royal and Etheline as joint tenants and therefore did not form part of Royal's estate. Royal's estate was very small, consisting only of his clothes and books.

In 1999, Etheline married Henry and, in 2001, she transferred her house to herself and Henry as joint tenants. They lived happily together in their house until Etheline died in 2002. She died intestate because her will was automatically revoked by her marriage to Henry. Under the Intestate Succession Act, RSA 2000, Henry was entitled to \$40,000 and one-third of the remainder of Etheline's estate, while Chas, Richie, and Margot were entitled to equal shares of the remaining two-thirds of Etheline's estate. The house did not form part of her estate, but now belongs to Henry as the surviving joint tenant.

Pagoda was appointed administrator of Etheline's estate and received legal ownership of it. The net value of the estate, after payment of all taxes and debts, was \$940,000. Pagoda distributed it as follows: \$340,000 to Henry and \$200,000 each to Chas, Richie, and Margot.

Chas seeks your legal advice. Can he get the house from Henry? Why or why not?

QUESTION 2 (10 marks, 20 minutes)

Refer to the facts in question 1, above. Richie and Margot seek your advice (and Chas does not). They want all of Etheline's net estate (\$470,000 each instead of \$200,000 each). Chas no longer has any of the \$200,000 he received from her estate, but spent every last penny on an unsuccessful scheme to create a new breed of Dalmatian mice. Do Margot and Richie have any claims against Pagoda, Henry, or Chas? Explain your answer and feel free to refer to advice given in question 1 instead of repeating that advice.

QUESTION 3 (10 marks, 20 minutes)

Explain how the following terms are used in the law of trusts (2.5 marks, 5 minutes each):

- (a) beneficial ownership,
- (b) constitution,
- (c) constructive trustee, *and*
- (d) power.

QUESTION 4 (10 marks, 20 minutes)

If you pay money to me to be used only for a specific purpose that benefits no one in particular, it should not matter whether that purpose benefits the public or not. Discuss.

QUESTION 5 (10 marks, 20 minutes)

Maud and Roland met at the University of Alberta in 1996, while Maud was an M.A. student in history and Roland was a B.A. student being tutored by Maud. That year, Maud was offered a Rhodes Scholarship to do a D.Phil. in history at the University of Oxford and Roland was admitted to the LL.B. programme at the University of Alberta. Maud and Roland also fell in love and Maud moved in with Roland, who lived in a small house he had inherited from his mother's estate. After many long discussions, Maud decided to turn down the scholarship to Oxford and stay with Roland while he attended law school.

Roland received his LL.B. in 1999 and was admitted to the Law Society of Alberta in 2000. During the four years while Roland was a law student and an articled clerk, Maud worked full time as a waitress. Her salary and tips were used to pay their expenses, including groceries, utilities, clothing, and Roland's tuition and books. When Roland became an articled clerk, his income was less than Maud's income as a waitress. They lived less frugally on their combined incomes, but did not save any money. Roland's income increased dramatically when he became a lawyer in 2000 and Maud began working part time as a waitress.

In 2001, Maud discovered that Roland was having an affair with Sabine, a young lawyer who works with Roland. Maud moved out of Roland's house and returned to full-time work.

In 2003, Roland married Sabine. He sold his house for \$200,000 and paid that money to Sabine, who used it as the down payment on a new \$500,000 house. Sabine is the sole registered legal owner of the new house and it is mortgaged to a bank for \$300,000 but free of other encumbrances. Roland and Sabine live together in the new house, they each earn \$100,000 per year, and they take several vacations every year travelling to exotic places. Meanwhile, Maud is still working full time as a waitress. She lives in a rented apartment and has no savings. She tried to get into a doctoral programme in history, but cannot get any scholarship funding nor can she get admitted to Oxford or any other major university.

Maud seeks your legal advice. She is unhappy that Roland is so happy and rich, while she is so miserable and poor. What can she do?

QUESTION 6 (10 marks, 20 minutes)

Refer to the facts in question 5, above. Would it make a difference if Roland never inherited a house from his mother and Maude and Roland had lived together in a rented apartment? Why or why not? Should it make a difference?

END OF EXAMINATION