

**The University of Alberta
FACULTY OF LAW**

FINAL EXAMINATION — 15 DECEMBER 2003

LAW 580 : A1 — 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.
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Note: There are a total of 60 possible marks and 120 minutes for this examination.

QUESTION 1 (10 marks, 20 minutes)

In 2002, Barry was admitted to the LLB programme at the University of Alberta. Barry's sister, Rhonda, was very proud of Barry's achievement and sent him a cheque for \$15,000, with a letter that said:

'Congratulations on your admission to law school. Please find enclosed my cheque to you for \$15,000. This is my gift to you, but you can use it only to pay your law school tuition fees and for no other purpose.'

Barry deposited Rhonda's cheque in his bank account, which was overdrawn by \$2,000 as a result of Barry's vacation to Hawaii. The deposit raised the balance of the account to \$13,000. In September 2002, Barry paid his tuition for first year with a cheque drawn on that account for \$5,000, leaving a balance of \$8,000. During the 2002-2003 academic year, Barry drew on the account to pay for books and other expenses, reducing the balance to \$6,000.

Unfortunately, because of Barry's inability to understand the rule against perpetuities, the postal acceptance rule, and the federal government spending power, he failed his first year and decided that there must be more to life than the law. In September 2003, Barry paid the remaining \$6,000 to his new girl friend, Lena. She deposited the money in her bank account and used \$5,000 of it to pay her tuition fees for second year of law school. The remaining \$1,000 is still in her account.

Rhonda is upset that Barry dropped out of law school and wants the \$15,000 back. Did Barry hold the \$15,000 received from Rhonda in trust? Why or why not?

QUESTION 2 (10 marks, 20 minutes)

Refer to the facts in question 1, above. If Barry did hold the \$15,000 in trust, did he breach that trust and what claims might be available arising from that breach?

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) account,
- (b) advancement,
- (c) certainty of words, *and*
- (d) discretionary trust.

QUESTION 4 (10 marks, 20 minutes)

In Canada, all trustees are held to the same standard. Discuss.

QUESTION 5 (10 marks, 20 minutes)

Ruth and Cal met in 1996 in their first year at the University of Alberta. They fell in love and moved into an apartment in Edmonton together. They lived together for seven years while Ruth obtained her BA and LLB and Cal obtained his BA and MA. They pooled their resources and shared a joint bank account, but Cal had a separate bank account in which he had invested \$25,000 that he had inherited from his mother's estate. He was hoping to use that money to buy a house, in accordance with his mother's dying wishes.

In 2003, Ruth started articles of clerkship at a prestigious, but conservative law firm in Edmonton and Cal received a scholarship for doctoral studies in England. They agreed that Ruth would stay in their Edmonton apartment, while Cal was away in England. Cal added Ruth as a joint owner of his account so that Ruth could access the account in case of an emergency. Cal also told Ruth that, if he died, she should keep the money for herself and use it to buy a house.

At an office Halloween party, Ruth had too much to drink and got carried away with Lenny, who was attending the party as the guest of Eleanor, another lawyer in the firm. The office manager, Dennis, heard noises coming from Ruth's office and opened the door to discover Ruth in a state of undress and in a compromising position with Lenny.

The next day, Dennis told Ruth that he was obliged to tell the senior partners about the incident, but could forget what he had seen if Ruth paid him \$10,000. Ruth withdrew \$10,000 in cash from the account with Cal's inheritance and paid it to Dennis, who used it to buy shares in HAL corporation.

Cal came home for the Christmas vacation and discovered that Ruth had withdrawn \$10,000 from the account. Ruth confessed everything and Cal was furious. Cal broke up with Ruth and wants the money back. Unfortunately for Ruth and Dennis, they were both fired after Lenny told Eleanor about the incident and Eleanor told the senior partners (and Ruth's principal received permission from the Law Society to terminate her articles of clerkship).

Does Cal have any claim to Dennis's shares in HAL corporation? Why or why not?

QUESTION 6 (10 marks, 20 minutes)

Refer to the facts in question 5, above. Does the partnership that employed Ruth and Dennis have any claim to Dennis's shares in HAL corporation? Why or why not? If both Cal and the partnership have claims to those shares, which claim has priority?

END OF EXAMINATION