

## Sample Exam Questions for the Law of Trusts

The following questions are offered to provide a sense of the **type** of questions you might expect on the exam. They do **not** reflect an entire exam.

Every exam will differ. In this case, you are required to select from a list of responses to indicate if statements are true or false, to match statements to questions, and to answer multiple-choice questions. The remaining questions will require you to analyze scenarios in order to identify and apply relevant legal principles.

You are reminded to always read the question carefully. For example, questions that may seem similar to questions from the Review Questions or Online Course Content may be slightly different. These changes will affect the answer and/or the scope of the answer required.

Full text answers are not provided to the questions requiring analysis. Rather, for purpose of this sample, key points that should be raised are noted in bullet form. Full text answers would be required on the exam.

You should also refer to:

- [STEP Diploma for Canada Exam Rules & Regulations](#), and
- [Tips for Preparing for and Writing a STEP Diploma for Canada Exam](#).

### QUESTIONS:

#### Type A: True/False Questions

Indicate whether the statement is true or false by circling the letter “T” or “F”  
[5 marks]

- |  |          |          |
|--|----------|----------|
| A1. The default rule with respect to delegation by trustees is that trustees may delegate the exercise of their duties and powers whenever and to whomever they choose.  | <b>T</b> | <b>F</b> |
| A2. Trusts have been classified by, among other things, how the trust was created, according to the objects of the trust, and whether the trust was created during the life of the settlor or on the death of the settlor. | <b>T</b> | <b>F</b> |
| A3. An express trust for persons is a trust in which the objects of the trust are persons instead of purposes.   | <b>T</b> | <b>F</b> |

- A4. There are two elements to the requirement of certainty of subject matter where the trust is intended to be a fixed trust for persons: (i) the property that is to be subject to the trust obligations must be described with sufficient precision so that it can be clearly identified; and (ii) the interests of the beneficiaries in the property that is subject to the trust must also be clearly defined. T      F
- A5. Under the federal *Income Tax Act* a non-profit organization is always treated as a charitable organization so that it can give receipts for donations made thereby allowing the donor to take a tax credit for a charitable donation. T      F

**Type B: Match Statements to Questions**

On the blank line following each question below please write the letter corresponding to the sentence or phrase set out on the following page that best answers the question. [5 marks]

- B1. What is a “mere power” (or “pure power”)? \_\_\_\_\_
- B2. What is a pour over trust? \_\_\_\_\_
- B3. What is testamentary trust? \_\_\_\_\_
- B4. What is a trust instrument? \_\_\_\_\_
- B5. Name three exceptions to the rule that non-charitable purpose trusts are not valid trusts. \_\_\_\_\_

*Possible answers:*

- a. It is a will prepared in compliance with the applicable wills legislation.
- b. It is a written document that sets out the terms of the trust.
- c. It is a trust that takes effect on death and that is created in a will that complies with the applicable wills legislation.
- d. These are: (i) the erection of a monument at a gravesite; (ii) the maintenance of a gravesite; and (iii) the care of specified animals.
- e. These are: (i) the relief of poverty; (ii) the advancement of religion; and (iii) the advancement of education.

- f. It is a trust to which property is subsequently added pursuant to a will.
- g. It is a power the trustee must exercise.
- h. It is a power that the trustee may choose not to exercise.
- i. It is a type of power that gives trustees a discretion in the distribution of income or capital to trust beneficiaries.

**Type C: Multiple Choice/Select correct statements**

Select the best answer by circling the letter of the statement(s) that answer the question [5 marks]

C1. What are the 3 certainties?

- (a) They are: certainty of subject matter, objects and purposes
- (b) They are: certainty of object, property and intent
- (c) They are: certainty of beneficiaries, objects and property
- (d) None of the above

C2. Which of the following have been given as possible reasons for the non-validity of non-charitable purpose trusts? Circle each letter corresponding to a reason given for the non-validity of a non-charitable purpose trust.

- (a) Non-charitable purpose trusts allow for the creation of trusts that hinder or delay creditors.
- (b) Non-charitable purpose trusts allow for excessive delegation of testamentary powers.
- (c) The settlors of non-charitable purpose trusts never have legal capacity to deal with property.
- (d) Non-charitable purpose trusts often provide for perpetual duration and thus violate the rule against perpetuities.
- (e) There needs to be someone in whose favour the court can decree performance.
- (f) A non-charitable purpose trust is too uncertain to be enforced.
- (g) Non-charitable purpose trusts can never be properly constituted.
- (h) Non-charitable purpose trusts are contrary to the *Canadian Charter of Rights and Freedoms*.

## Type D: Scenarios for Analysis

### Question #1: [15 marks]

Jerome is 62 years old and of sound mind. He has two children – Caleb, age 25 and Ella, age 27. Ella has one child (Jerome's grandchild). Caleb and Ella are both enrolled in post-secondary education, which Jerome has been paying for. Caleb and Ella are doing well at school and are quite capable of managing their own affairs.

Jerome doesn't want to just give money to his children because he wants them to use it only for their education. He could continue to pay for his children's education directly but is concerned that if he becomes incapacitated or dies the children's education will not be provided for.

- a) What is the term sometimes used to describe the type of trust that might be appropriate in these circumstances?
- b) Suppose:
  - an *inter vivos* trust is suggested to provide for the education of the children.
  - that under the proposed trust a substantial sum of money is to be settled on trustees for the purpose of educating Jerome's children.
  - that the draft trust instrument has a list of beneficiaries that includes only Caleb and Ella and directs the trustees to use the income from the fund for the education of the children but provides no other purpose for the use of the income of the fund.
  - the trust instrument provides that the interest of either child in the use of funds for that child's education comes to an end on the death of the child.

What happens to the capital of the fund when Caleb and Ella have both died and what problem does that create? Explain why the capital of the fund is treated in the way you suggest and explain why it creates a problem.

- c) Suppose the trust instrument was modified to deal with the distribution of the capital of the fund by providing that if Caleb and Ella were to die the capital would go to Lucy, Jerome's 21-year old niece (or her estate if she is deceased). Lucy is also of sound mind and is capable of managing her own affairs. What could happen if Caleb, Ella and Lucy all agree that they no longer want the money for their education? Explain why.

**Question #2: [5 marks]**

Tomas and Alberto are trustees of a trust the trust property of which includes shares in a private company that were transferred to the trustees on the creation of the trust. The settlor had been involved in building up the private company and did not want the shares sold and, consequently, the trust instrument provided that the shares were not to be sold.

The shares in the private company held in trust by Tomas and Alberto accounted for 30% of the issued voting shares of the company. Because Tomas and Alberto held shares in their capacity as trustees they received notice of a shareholders' meeting. When they attended the shareholders' meeting they became aware that the company had significant potential but, due to internecine strife between the other shareholders, the company's potential could not be fully achieved. Tomas and Alberto have convinced one of the other shareholders who holds 25% of the voting shares of the company to sell his shares. If Tomas and Alberto can acquire those shares they will have sufficient control over the company to make the changes they believe will produce significant gains for the company. The trust fund includes substantial property other than the shares in the private company and there are more than adequate funds to acquire the additional private company shares as part of the trust property. Tomas and Alberto want to buy the shares for themselves so they can personally profit from the potential gains they believe they can make by exercising control over the company. Is there a problem with the plan Tomas and Alberto are proposing? Explain.

## **ANSWERS**

Type A: True/False - Answers: A1 - **F**, A2 - **T**, A3 - **T**, A4 - **T**, A5 - **F**

Type B: Match Statements to Questions – Answers: B1 – **h**, B2 – **f**, B3 – **c**, B4 – **b**,  
B5 – **d**

Type C: - Multiple Choice/Select Correct Statements - Answers: C1- **b**,  
C2 – **b,d,e,f**

Type D: - Scenarios – Answer points:

### **Question #1**

a) An “education trust”

b) *What happens to the capital?*

- the trust has not said what is to happen to the interest in the capital
- if such a trust is created the settlor, Jerome, will not have dealt with his entire interest in the property
- the capital would therefore “automatically result” (or go back to) to Jerome when the life interests of Caleb and Ella come to an end on their death

*Treating the capital this way is a problem because:*

- Jerome is much older than Caleb and Ella; he is likely to die before both Caleb and Ella have died
- Jerome’s remaining estate may have been dealt with long before the capital in the fund results to him
- the resulting capital of the trust will have to be dealt with either under Jerome’s will or by way of intestate succession possibly many years after Jerome’s death and possibly many years after the administration of his estate was completed
  
- there are also potential detrimental tax consequences since Jerome continues to have an interest in the trust

c) *If Caleb, Ella and Lucy all agree that they no longer want the money for their education:*

- Caleb, Ella and Lucy could terminate the trust before they have completed their education
- they could do so under the rule in *Saunders v. Vautier*
- the rule in *Saunders v. Vautier* provides that one or more beneficiaries, all of full legal capacity, and who is, or are collectively, entitled to all the beneficial interest in the trust may apply to have the trust terminated and the assets transferred even though the trust instrument calls for final payment to be delayed.

- here Caleb, Ella and Lucy are all over the age of majority (i.e. they are not minors)
- they appear to be of sound mind, capable of managing their own affairs, and therefore capable of understanding the nature and effect of terminating the trust
- they have the requisite legal capacity to terminate the trust under the rule in *Saunders v. Vautier*
- Caleb, Ella and Lucy also represent all the beneficial interest in the trust since Caleb and Ella have life interests and Lucy has the remainder interest
- therefore they could terminate the trust under the rule in *Saunders v. Vautier* and require the trustees to distribute the funds to them
- even though settlor's intended purpose for the trust has not been fulfilled
- this result may not arise in Alberta and Manitoba where the rule in *Saunders v. Vautier* has been abrogated by legislation that provides the court with a discretion to refuse to approve a termination of a trust if the termination is not of a "justifiable character" – however, the fact that the termination of the trust is inconsistent with the wishes of the settlor may not be sufficient to prevent a termination of the trust

## **Question #2**

Yes, there is a problem

### *Law*

- as trustees Tomas and Alberto owe fiduciary duties
- one of those fiduciary duties is the duty of loyalty (i.e. the duty to act in good faith in the best interests of the beneficiaries)
- under this duty of loyalty a trustee should not engage in a transaction in which he has a conflict of interest – i.e. where his personal interest, or an obligation under some other fiduciary relationship, conflicts with the interests of the beneficiaries under the trust

### *Applied*

- the plan Tomas and Alberto have proposed raises a conflict of interest
- the best interests of the beneficiaries (assuming Tomas and Alberto are right in their belief that substantial gains can be made) is to buy the shares in their capacity as trustees for the benefit of the trust beneficiaries
- however, their plan is to buy the shares for themselves is to gain personally from the potential gains they believe they can make by exercising control over the company
- their personal interest therefore conflicts with the best interests of the beneficiaries and therefore if they proceed with their plan they will have breached their fiduciary duty of loyalty