

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 2, 2016

FINAL EXAMINATION	DURATION				
LWZ211 – Trusts	<table border="1"> <tr> <td>Reading Time:</td> <td>20 minutes</td> </tr> <tr> <td>Writing Time:</td> <td>180 minutes</td> </tr> </table>	Reading Time:	20 minutes	Writing Time:	180 minutes
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INSTRUCTIONS TO CANDIDATES

1. This examination paper **contains FIVE (5) questions all arising from the same set of facts.**
2. **All FIVE (5) questions must be answered.**
3. This examination accounts for sixty (60) assessment marks (60% of the unit assessment).
4. **Each question** is of equal **marking value of twelve (12) marks** as set out immediately following each question.
5. Use only black or dark blue ink. Do not write in pencil.
6. Read ALL questions carefully.
7. Please ensure that your Name and Student Number are written clearly in the space provided at the top cover page of the examination answer booklet(s) and on this examination question paper.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

No calculators are permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	2 x 20 Page Book 2 x Scrap Paper

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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BLANK.**

EXAMINATION QUESTION PAPER

Answer All Five (5) Questions

In accordance with the terms of reference in the following paragraphs, on the basis of the principles of trusts only, analyse and address the **five (5) questions** later specified in respect of the assumed facts of the problem of **Tom's Testament** which appears after the terms of reference.

Terms of Reference:

Assume that you are employed as a legal practitioner in a particular legal firm ("the legal firm") from which the client, specified in assumed facts of the following problem, has asked for guidance. Your role in the legal firm is as a member of a team of lawyers who work together on issues. The leader of that team has asked you to write an internal advice for her information and of all of the other members of the team (who will all review your advice) as part of the process of the team assembling an agreed overall advice for the client.

Your role in the team is to consider how the principles of trusts apply in relation to the matters set out in the assumed facts of the problem. You are regarded as being the team-member who is most proficient in the field of trusts. For that reason, your advice is intended to concentrate on how the principles of trusts apply in relation to the matters set out in the assumed facts. You have been asked for a trusts analysis partly because of your expertise and also for the reason that other lawyers in the team have been assigned to consider the other components of law.

Your advice must also take into account that the team leader does not practise in the trusts field. For that reason, she is no longer familiar with the principles of trusts and has specifically instructed you not to assume any background knowledge on her part. Moreover she has asked you to write your report in an educative and analytical manner to give her the opportunity to revise her forgotten knowledge of trusts. Also, it is very important that you give definitive authority for any propositions contained in your advice because your team leader or other members of the team may wish to verify what you say.

Be sensitive to your brief being limited to the topic of trusts. Stick to the principles and doctrines of trusts and try not to venture into the fields of the laws of Contract, Property, Succession, Partnership, Tort, Consumer law, Criminal law, Family law, Insurance Law and similar fields. Other members of the legal team have been assigned to consider how those other components of law apply to the case.

The Problem of Tom's Testament

Assume These Facts:

Tom Andrusca was an unmarried multi-millionaire, with no children or other known relatives, who died suddenly leaving a will that appointed his close friend Magnus Andersen (with his permission and agreement) to be his trustee and executor. The will provided that all of Tom's assets were to pass to, and be held by, Magnus Andersen as trustee on the following trusts (quoting from the will):

1. As to \$40,000 in trust to look after Mr Shadow, my Kelpie dog, until his death.
2. As to \$140,000 in trust to erect and permanently maintain a suitable headstone over my grave.
3. As to my house called *Mons Repos* in trust to be used as an orphanage.
4. As to \$1,000,000 in trust for the Ron Barassi Junior AFL Association to raise the standard of sporting amenity for its members.
5. As to the rest and residue of my estate in trust for Andrea McNamara and Max Levy in equal shares.

Prior to Tom's death he also made a direct donation to the Ron Barassi Junior AFL Association ("the RBJAA"). He had sent the RBJAA \$500,000 under cover of a letter saying that it was a gift "for the sole use" of the RBJAA.

After Tom's death, and when the contents of his will became known, Andrea and Max requested a conference with Magnus Andersen (Tom's executor and trustee). At that meeting they put arguments to Mr Andersen to the effect that they, Andrea and Max, should get all of Tom's assets including *Mons Repos* on the grounds of invalidity of the gifts.

Specifically they said that each of the following were unlawful, unenforceable, invalid or void:

- (a) the gift made to the RBJAA before Tom died; and
- (b) all of the gifts under Tom's will (other than the gift in their favour);

Following that conference, enquiries made by Magnus Andersen, as the executor and trustee of Tom's will, revealed that:

- (c) Mr Shadow was 8 years old at the time of Tom's death. A veterinarian gave Mr Andersen expert advice that the duration of Mr Shadow's remaining lifespan could be reliably estimated at approximately 6 years. The same expert provided Mr Andersen with an estimate of annual expenses for the sustenance, shelter and medical care of Mr Shadow at or about the approximate sum of \$5000 per annum.
- (d) In Tom's personal effects, Mr Andersen found 3 written reports in respect of a proposed headstone for Tom's grave when required. The first report was from a well-known undertaker, the 2nd report was from a consulting architect and the 3rd report was from a financial actuary. In substance, the combined effect of the 3 reports, was that:
- I. A headstone for which Tom had expressed a preference could be made and installed for no more than \$30,000;
 - II. The remaining sum of \$110,000 would be a sufficient amount of money to set aside in an interest-bearing bank investment account to provide a permanent income stream which would be sufficient to fund ongoing costs associated with the headstone;
 - III. The budget for ongoing costs included provision for the headstone's regular maintenance, repair and periodic reconstruction, reinstallation and other forms of renewal, when required, for an indefinite period.
- (e) In a nearby suburb Mr Andersen traced an existing orphanage called **The Refuge**. It is managed and operated by a community-based incorporated association. Its name is **Keep Kids Safe Inc.** (the "KCSI association"). The substantive meaning and effect of the sole objectives of the KCSI association are to acquire establish and operate orphanages for the refuge of children bereft of parents or otherwise in necessitous circumstances. The chief operating officer of the KCSI association is Harold Farquhar. Mr Andersen consulted with Mr Farquhar and enlisted his help to conduct an inspection of **Mons Repos**. They found it to be a large 3 story luxury mansion which was certainly capable of being utilised as an orphanage. It had generous internal accommodation and suitable areas for kitchen, dining, recreation and general amenities with substantial gardens and attractive grounds. It also had significant likely maintenance costs. There was no provision in the will for money to fund the operation of any proposed orphanage nor were there any funds for the maintenance and general upkeep of **Mons Repos**. After the inspection Mr Farquhar made a proposal to Mr Andersen to the effect that the KCSI association would be more

than pleased to take possession of *Mons Repos* on some form of binding agreement to the effect that it would be used exclusively for an orphanage operated by the KCSI association, at its expense, and on terms that it would be liable for the cost of maintenance and general upkeep of the building.

- (f) The RBJAA is a voluntary (unincorporated) association with members throughout Australia. The objective of the association is to inspire young AFL aspirants to excellence in the AFL game by motivation based on the example of the life and achievements of Ron Barassi. Membership is limited to 2 classes. That is, "Leadership Members" who must be adult persons of good character with a history of a distinguished record as an AFL football club player. The 2nd classification of membership, referred to as "Junior Members", is open to any persons under the age of 18 who have an interest in AFL football and who seeks the guidance of the Leadership Members. The Junior Members are not required to pay any membership fees and, as children, have no voting rights under the Constitution of the RBJAA. Throughout Australia there are 9000 Junior Members who are guided and mentored by the Leadership Members (the numbers of whom usually average at about 80 to 100). At the time of the visit by Andrea and Max to Magnus Andersen the RBJAA had not yet spent the inter vivos gift of \$500,000.

Magnus Andersen has consulted your team leader, in the legal firm for which you work, regarding the claims of Andrea and Max. Your team leader has briefed you with a record of the foregoing facts and requested you to provide him with a report on the implications of the principles of trusts as they may apply to the facts. He has asked that you advise him as to which doctrines might be mobilised in support of the claims of Andrea and Max and what may be their prospects of success.

Your Task: Write the necessary report identifying and reviewing the principles and doctrines of trusts that are relevant, explain how they may apply, whether they are likely to be successful and if so why; and alternatively, if not – why not.

Do so in the form of an individual report for each of the following issues raised as separate questions:

Question 1.

Is the trust for the support and shelter of Mr Shadow, the Kelpie dog, in some way defective (whether unlawful, unenforceable, invalid or void) as alleged by Andrea and Max?

(12 Marks)

Question 2.

Is the trust for the installation and maintenance of the headstone in some way defective (whether unlawful, unenforceable, invalid or void) as alleged by Andrea and Max?

(12 Marks)

Question 3.

Is the trust of the house *Mons Repos* for use as an orphanage in some way defective (whether unlawful, unenforceable, invalid or void) as alleged by Andrea and Max?

(12 Marks)

Question 4.

Is the gift of \$1,000,000 "in trust" to raise the standard of sporting amenity for the members of the RBJAA in some way defective (whether unlawful, unenforceable, invalid or void) as alleged by Andrea and Max?

(12 Marks)

Question 5.

Is the gift of \$500,000 made by Tom during his lifetime under cover of a letter saying that it was a gift "for the sole use" of the RBJAA in some way defective (whether unlawful, unenforceable, invalid or void) as alleged by Andrea and Max?

(12 Marks)

END OF EXAMINATION QUESTION PAPER