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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 2, 2017				

LWZ211 – Trusts	DURATION	
	Reading Time:	20 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
<ol style="list-style-type: none"> 1. This examination paper contains EIGHT (8) questions all arising from the same set of facts. 2. Candidates must answer any SIX (6) of the EIGHT (8) questions according to their choice. 3. This examination accounts for sixty (60) assessment marks (60% of the unit assessment). 4. Each question is of equal marking value of ten (10) 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		
<u>You may begin writing from the commencement of the examination session.</u> 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	

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DOUBLE-SIDED.**

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LEFT BLANK.**

EXAMINATION QUESTION PAPER

Answer Your Choice of SIX (6) Questions From The Total of EIGHT (8) Questions

In accordance with the terms of reference in the following paragraphs, on the basis of the principles of trusts only, analyse and address your choice of six (6) questions from the total of eight (8) questions later specified in respect of the assumed facts of the problem of **Trent's Testament** which appear 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 and 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.

Assumed Facts: **The Problem of Trent's Testament**

General Events: - The following is an outline of some circumstances and events that are relevant to questions arising from Trent Hillier's affairs.

Art Collection: - Over many years, Trent had accumulated a collection of indigenous art. He did not know its value but he considered it to be very significant. He had paid a total of more than \$100,000 whilst accumulating it over many years. Approximately 12 months prior to his death Trent formulated a plan to sell the collection.

To achieve a sale Trent placed the collection with Origins Gallery Pty Ltd ("the gallery"). His understanding with the gallery was that it would display the collection, for sale, at one of its impending major art fairs to be staged in Melbourne.

The gallery's general plan for the art fair was to display a substantial range of indigenous art from many other sources. Trent asked the gallery to feature his collection, as a separate collection,

adjacent to, but not mixed in with, the gallery's other stock. Trent's motive for that request was that he considered the collection to be uniquely interconnected and therefore more valuable, if sold as a whole, than it would be if sold in parts.

Not long prior to Trent's death, the gallery went into liquidation for reasons related to insolvency. A liquidator's report was made available to people with a relevant financial interest. The report disclosed that the gallery had sold Trent's collection for \$348,000 and that money had been credited to its own account shortly after the relevant sale. However the gallery had not accounted to Trent in any way for those sale proceeds.

The liquidator's report indicated that assets of the gallery (principally its own bank account) were not adequate to satisfy its debts and the claims of financially aggrieved persons. Nonetheless the gallery's accounts were in credit to the extent of \$972,000.

Foundation Gift – At or about a year prior to his death, Trent had donated \$350,000 to the Muse Foundation Pty Ltd ("the foundation"). By its constitution, the foundation was established for the sole purpose of providing support to the arts. It solicited donations from philanthropically motivated donors and devoted that money to benefiting artistic activities and entities.

The donations qualified donors for a tax deduction because the foundation was accredited with the Australian Taxation Office in a way that made donations tax-deductible provided they were voluntary and unconditional. Trent had made his donation under the cover of a letter in which he stated that he would prefer the foundation to use the money to assist the Darwin Chorale to purchase sheet music, repair instruments, underwrite the expenses of visiting conductors and meet the cost of venue and piano hire where relevant.

Darwin Chorale was a voluntary unincorporated association of choral enthusiasts. It had no constitution and only kept very basic records; just a cash book and rudimentary minutes. To the extent there was any mission statement or theme in those records, they suggested that the basic purpose and objective of Darwin Chorale was to provide an outlet for singers and musicians to meet together and enjoy the uplifting experience of group singing. Some of the choir sessions were conducted in private (with visitors welcome if interested) whilst other sessions were presented for public appreciation at the Darwin Entertainment Centre on a fee for ticket basis. The proceeds of ticket sales were usually devoted to the sort of general purposes that Trent had in mind when he made his donation.

Trent duly claimed and received a tax deduction for his \$350,000 donation. Otherwise things did not go otherwise exactly how Trent had intended. The foundation did not pass the money on to the Darwin Chorale. It is conceivable (but there is no proof) that the foundation gave the money to some other beneficiary. The foundation did not keep separate accounts in respect of each particular donation, but rather kept all donations in the same general fund. At the time of Trent's death, the foundation's funds amounted to \$1,723,000 but that sum was quite insufficient to meet its financial obligations.

Approximately 4 months after the tax deduction for Trent's donation was accepted by the Australian Taxation Office, shortly before Trent's death, the foundation went into liquidation because it was unable to pay its debts and otherwise meet its obligations. Investigation has not revealed where the foundation's money has gone. It may have been defalcations but perhaps it was simply incompetence and bad management. There is no reliable basis for speculating.

Subdivision – Trent had a large piece of development land at Palmerston that was in the process of a subdivisional development into six (6) commercial sites and twenty two (22) residential sites. The anticipated value of the residential sites was an average of \$250,000. At the time of his death twelve (12) of the residential sites had been completed; two (2) of which had been given to the NT Government. The remaining 10 were lawfully capable of being sold or assigned but had not

actually been sold or contracted for sale. Trent's policy was to hold on to his land until the market was at its peak.

Child Care Site: About three (3) months before he died, Trent and his wife Mrs Hillier had a discussion regarding two (2) of the residential lots in the Palmerston subdivision. They both agreed that those lots were ideally suited to be a site for a child care centre. Their focus was not self-interested; they did not have young children. Nor was it mercenary; they had noticed how badly the young working people of Palmerston were serviced for child care and they wanted to give the allotments to the government for that purpose. So, not long after that, the two of them went to see the NT Government Minister in charge Families and Children. They told the Minister that they wished to give the two (2) lots to the NT Government so that they could be utilised by some form of publicly sponsored child care facility. The Minister thanked them and agreed to accept the land saying words to the effect: "Your gesture is very much appreciated. Not just by me but also by those whom I represent. I wish they were all like you. What can I do in return? At least I can save you the legal costs on the paper work. I will have my people do everything necessary to transfer the land into Government ownership free of cost to you." The Minister was as good as his word. Trent was subsequently invited back to the Department where all necessary papers were signed and put into effect to vest ownership of the two (2) lots in the NT Government. However shortly after Trent's death Mrs Hillier learned, through a whistle blower's leak, that the NT Government was negotiating with a super market chain to sell the land to it for \$750,000. As executor Mrs Hillier felt that she should be able to sue the Territory Government to stop any sale. She said to the team leader at the legal firm "If Trent had known that they were going to rip us off like this, he would have just left the land to me or to his family".

Death of Trent

Somewhat unexpectedly, Trent died of an aneurysm of the brain which manifested itself without any prior warning and with no opportunity to receive any relevant medical aid.

Trent's Assets at Death

At the time of his death, Trent's assets were:

Domestic Residence: Trent had a residence which he personally occupied, with his wife and family, of a value of around \$1,750,000. He also had the usual domestic assets such as motor vehicles, furniture and similar.

Liquid Assets: Trent had liquid assets, in the form of bank balances, amounting to almost \$8 million.

Share Portfolio: Trent had a very significant share portfolio including a parcel of 5,000 shares in BHP Limited worth approximately \$35 each.

Property Portfolio: Trent had a very significant portfolio of houses and apartments, three (3) retail shops in suburban locations and two (2) warehouses all of which were occupied by paying tenants generating significant income.

Indigenous Art: Trent had his rights against the gallery (or its liquidator) in respect of the collection of Australian indigenous art.

The Subdivision – The ten (10) residential sites in the subdivision (those remaining after having given two (2) lots to the government) that were completed and lawfully capable of being sold or assigned and the balance of the subdivisional site.

Trent's Will

Fortunately, Trent had made prudent arrangements about the possibility of death. He had made an appropriate will the relevant contents of which are as follows.

LAST WILL AND TESTAMENT

1 THIS WILL is made by me Trent John Hillier of 18 Cullen Bay Crescent LARRAKEYAH in the Northern Territory of Australia, business proprietor, as follows.

2 I HEREBY REVOKE all former wills and testamentary dispositions heretofore made by me AND DECLARE this to be my last will and testament.

3 CONDITIONAL UPON the contingencies expressed, I APPOINT the following successive persons to be my executor and to hold the office of trustee in respect of any dispositions made in trust hereunder: -

3.1 my wife Alana Florence Hillier if she shall survive me and if not, or if she shall renounce or resign, or die during, office;

3.2 Arafura Trustees Ltd (ACN 102 207 903) a corporation that conducts business throughout Australia including in the Northern Territory;

AND WHERE in this my will I use the expression "my trustee" that expression shall be taken to include such person or entity as by the operation of this my will is the executor thereof.

4 **I direct my trustee** to trace, demand and take any necessary legal proceedings to get in the whole of my tangible entitlements to and in respect of any matter of value whatsoever including (but not limited to) any existing identifiable real and personal property (including, without being limited to, any chose in action by force of which it may be possible to realize any tangible asset or benefit) and convert into money such sufficient part thereof (that does not then consist of money at the date of my death) as may be necessary to enable my trustee to pay all of my just debts, funeral and testamentary expenses, and any succession estate or other death duties which may become payable in respect of my estate, out of my estate (if possible in a manner which shall not require any adjustment or apportionment between any of the beneficiaries under this my will or any codicil hereto) and, subject to any specific bequest, legacy, devise or direction contained herein, to stand possessed of all remaining money, real and personal property that comprises my net estate on trust to be distributed in accordance with the following contents of this my will.

5. **I give devise and bequeath** all my real and personal property unto my trustee in trust to make the following dispositions:

5.1 The sum of One Hundred Thousand Dollars (\$100,000) to my friend Eleanor Harrison noting however that it is my expectation that she will share some of that fund with her son Jonathan;

5.2 To my trustee, 1,000 shares in BHP Limited in trust for Eleanor's daughter Diana;

5.3 As to five (5) of the residential allotments in my Palmerston development, in trust for such five (5) diligent, and humane, Charles Darwin University Law School students as may be selected by my trustee according to that criteria (respectively one (1) separate allotment each);

5.4 As to 5% of my net estate, in trust to be devoted to the search for reconciliation between the competing codes of civilization that now confront the Australian public. By that expression I am referring to the likely increasing social tension, and a possible overt conflict, between members of Australian society on the basis of, on the one hand, their adherence to principle of government by secular democracy and, on the other hand, those Australians who adhere to religious faiths which subscribe to the principle of theocratic government. My trustee may execute this trust by my trustee alone or through the agency of whatsoever entity or entities as may, in the discretion of my trustee, be chosen or established by my trustee;

5.5 I give to my trustee \$1,000,000 and request that my trustee dispose of the same in accordance with any existing or future memorandum written or signed by me: and

5.6 I give the residue of my net estate to my said wife Alana Florence Hillier;

[----end of relevant provisions of the will----]

After Trent's death Mrs Hillier found in his possessions a document signed by him which read as follows: "To My Trustee: This is the written memorandum referred to in clause 5.5 of my will. The benefit of the gift made by that clause is to go to Charmaine Ledgerwood for the purpose of providing financial backing for her campaign to oppose immigration."

Trustee Seeks Legal Advice

The widow Mrs Hillier survived her husband and took office as executrix of the will and trustee of the dispositions made under it. She has come to your legal firm for advice on how to implement the provisions of the will and as to the meaning and validity of some parts of the will. Moreover the trustee is concerned to more clearly identify what should be legitimately treated as part of the net estate of Trent Hillier.

Examination Tasks:

In accordance with the terms of reference given previously, write the necessary report for the guidance of your team leader in respect of **any six (6) of the following eight (8) questions** according to **your choice**.

Question 1

Apart from possible criminal proceedings against the management of the gallery, is there a basis on which the \$348,000 received by the gallery for Trent's indigenous art collection might be recovered from the Liquidator?

(10 Marks)

Question 2

Can the \$350,000 donation to the Muse Foundation Pty Ltd be questioned or recalled? Is there any basis on which that money could be recovered from the foundation?

(10 Marks)

Question 3

Can Trent's gift to the NT Government of the two (2) allotments in Palmerston be questioned or recalled? Is there any basis on which the executrix could prevent the government from selling the land? Is she able to legally claim the land back on behalf of the estate of her late husband?

(10 Marks)

Question 4

What is the meaning and effect of the legacy of One Hundred Thousand Dollars (\$100,000) in favour of Eleanor Harrison, as expressed in paragraph 5.1 of the will? Is that disposition valid, invalid or deficient in any respect? If so, why? What, if anything, follows from the possibility of any invalidity or deficiency in respect of the disposition?

(10 Marks)

Question 5

What is the meaning and effect of the disposition of shares in trust for Diana, as expressed in paragraph 5.2 of the will? Is that disposition valid, invalid or deficient in any respect? If so, why? What, if anything, follows from the possibility of any invalidity or deficiency in respect of the disposition?

(10 Marks)

Question 6

What is the meaning and effect of the disposition in trust regarding Charles Darwin University Law School students as expressed in paragraph 5.3 of the will? Is that disposition valid, invalid or deficient in any respect? If so, why? What, if anything, follows from the possibility of any invalidity or deficiency in respect of the disposition?

(10 Marks)

Question 7

What is the meaning and effect of the disposition in trust regarding the possibility of reconciling secular and theocratic government as expressed in paragraph 5.4 of the will? Is that disposition valid, invalid or deficient in any respect? If so, why? What, if anything, follows from the possibility of any invalidity or deficiency in respect of the disposition?

(10 Marks)

Question 8

What is the meaning and effect of the disposition expressed in paragraph 5.5 of the will combined with Trent's memorandum? Is that disposition valid, invalid or deficient in any respect? If so, why? What, if anything, follows from the possibility of any invalidity or deficiency in respect of the disposition?

(10 Marks)

END OF EXAMINATION QUESTION PAPER