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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 2, 2018				

LWZ211 – Trusts	DURATION	
	Reading Time:	20 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
<ol style="list-style-type: none"> This examination paper contains FOURTEEN (14) questions. Candidates must answer any SIX (6) of the FOURTEEN (14) questions according to their choice. This examination accounts for sixty (60) assessment marks (60% of the unit assessment). Each question is of total equal marking value of ten (10) marks as set out immediately before each question and apportioned between parts of a question as designated at the end of each part. Use only black or dark blue ink. Do not write in pencil. Read ALL questions carefully. 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 ANY 6 QUESTIONS FROM THE TOTAL OF 14 QUESTIONS

Question 1 (total 10 marks)

Answer both parts (a) and (b)

Part (a) Explain the **difference between express trusts and non-express trusts** and give examples of trusts falling into each of the two categories. **(5 marks)**

Part (b) Give examples of **three legal relationships in respect of property** created by and enforced under equitable principles in our law, which are **not trusts**, and explain their qualities particularly as contrasted to the qualities of trusts. **(5 marks)**

Question 2 (total 10 marks)

Answer both parts (a) and (b)

Part (a) Write a short account of the facts of the case of **Dean v Coles (1921) 30 CLR 1** and explain the principles on which it was decided and for which it stands. **(5 marks)**

Part (b) Write a short account of the facts of the case of **West v Federal Commissioner of Taxation (1949) 79 CLR 319** and explain the principles on which it was decided and for which it stands. **(5 marks)**

Question 3 (total 10 marks)

Answer both parts (a) and (b)

Part (a) State, explain and review (by reference to examples), the **Rule Against Perpetuities** in both its original and contemporary forms. **(5 marks)**

Part (b) Write a short account of the facts of the case of **Thomson v Federal Commissioner of Taxation (1959) 102 CLR 315** and explain the principles on which it was decided and for which it stands. **(5 marks)**

Question 4 (total 10 marks)

Answer both parts (a) and (b)

Part (a) Write a short account of the facts of the case of **Barclays Bank v Quistclose Investments [1970] AC 567** and explain the principles on which it was decided and for which it stands. **(5 marks)**

Part (b) Write a short account of the facts of the case of **Saunders v Vautier (1841) 49 ER 1829; 4 Beav 115** and explain the principles on which it was decided and for which it stands. **(5 marks)**

Question 5 (total 10 marks)

Answer both parts (a) and (b)

Part (a) Write a short account of the facts of the case of **Re Boyes (1884) LR 26 Ch 531** and explain the principles on which it was decided and for which it stands. (5 marks)

Part (b) Write a short account of the facts of the case of **Kelly v Perpetual Trustee (1963) 109 CLR 258** and explain the principles on which it was decided and for which it stands. (5 marks)

Question 6 (total 10 marks)

Answer both parts (a) and (b)

Part (a) Write a short account of the facts of the case of **Re Cook's Settlement Trust [1965] Ch 902** and explain the principles on which it was decided and for which it stands. (5 marks)

Part (b) Write a short account of the facts of the case of **Commissioners for Special Purposes of Income-Tax v Pemsel [1891] AC 531** and explain the principles on which it was decided and for which it stands. (5 marks)

Question 7 (total 10 marks)

Answer both parts (a) and (b)

Part (a) The case of **Nelson v Nelson (1995) CLR 538** is a decision that is considered to be a departure from the prior thrust of the law. What was the basis of the High Court of Australia's decision, what principles of law were involved and how did they differ from those previously followed? (5 marks)

Part (b) Under the terms of a deed, a settlor purported to gift \$400,000 to the Corporation of the City of Darwin to be held by it "**in trust for the establishment and maintenance of a Rodeo venue**". Is this a valid trust? If not why not and what is the outcome? If it is not a valid trust, is there any means by which, if given adequate prior legal advice, the settlor could have substantially achieved at least part of his or her objectives? (5 marks)

Question 8 (total 10 marks)

Answer both parts (a) and (b)

Part (a) In what general circumstances is it normal for a court to recognise and enforce the existence of a constructive trust? Review the main cases that provide relevant principles and examples, and state the effect of any statutes, that specifically deal with the subject. (5 marks)

Part (b) Explain the facts and main principles of the case of **Loughnan v McConnell [2006] QSC 359** and comment on social and legal significance of the case in contemporary Australian society. (5 marks)

Question 9 (total 10 marks)

Answer both parts (a) and (b)

Part (a) Write a short account of the facts of the case of **Andco Nominees Pty Ltd v Lestato Pty Ltd (1995) 126 FLR 404** and explain the principles on which it was decided and for which it stands. **(5 marks)**

Part (b) Explain, by reference to decided cases and general principle, the meaning and significance of the expression “**other purposes beneficial to the community, not falling under any of the proceeding heads**” as used in the law of trusts. **(5 marks)**

Question 10 (total 10 marks)

The following cases each deal with a number of rules, concepts, and issues relevant to the status, responsibilities and obligations of trustees. Explain the facts and reasoning of those cases and, by reference to rules, views and concepts to be found in statute, other cases, and learned publications. Provide your analysis and observations on the subjects of those cases with your own views as to the most desirable approach to the topics dealt with in those authorities.

- **Elders Trustee and Executor Co. Ltd v Higgins (1963) 113 CLR 426,**
- **Turner v Turner [1984] Ch 100,** and
- **Holder v Holder [1968] Ch 353**

Question 11 (total 10 marks)

The following cases each deal with an aspect of rules, concepts, and issues relevant to the status, responsibilities and rights of trustees and beneficiaries. Explain the principles of those cases and provide your analysis and observations on the subjects of those cases with your own views as to the most desirable approach to the topic dealt with in those authorities.

- **Pearson v Commissioner of Taxation (2001) 116 FCR 357,**
- **Lidden v Composite Buyers Ltd [1996] FCA 1613,**
- **Ramage v Waclaw (1988) 12 NSWLR 84,**
- **Lamru v Kation (1998) 44 NSWLR 432,** and
- **Hughes v NM Superannuation (1993) 29 NSWLR 653**

Question 12 (total 10 marks)

By reference to decided cases outline and discuss the grounds, and the general circumstances in which, a trustee may be held to be liable to a beneficiary.

Question 13 (total 10 marks)

The case of **Benzija v Adriatic Fisheries (1984) 37 SASR 545** deals with the rules, concepts, issues and differing viewpoints relevant to the power to remove a trustee. By reference to the facts and reasoning of the case in the light of rules, views and concepts to be found in statute, other cases, and learned publications provide your analysis and observations on the subject with your own views as to the most desirable approach to the topic.

Question 14 (total 10 marks)

The following cases each deal with concepts and issues relevant to the status of trusts and purported trusts. Explain the facts and doctrine of those cases and provide your analysis and observations on the subjects of those cases with your own views as to the most desirable approach to the topics dealt with in those authorities.

- **Re Scarisbrick [1951] 1 Ch 622,**
- **Ballarat Trustees Executors and Agency Co v Federal Commissioner of Taxation (1950) 80 CLR 350,**
- **Salvation Army Property Trust Case (1952) 85 CLR 159,**
- **Re Resch's Will Trusts [1969] 1 AC 514,**
- **Re Darwin Cyclone Tracy Relief Trust Fund (1979) 39 FLR 260,** and
- **Aboriginal Hostels Ltd v Darwin City Council (1985) 55 LGRA 414**

END OF EXAMINATION QUESTION PAPER