



# NATIONAL COMMITTEE ON ACCREDITATION

## SAMPLE EXAMINATION

### TRUSTS

© 2009 Federation of Law Societies of Canada. All rights reserved.

For personal educational purposes only. This document may not be reproduced or distributed in whole or in part without the prior written permission of the Federation of Law Societies of Canada

© 2009 Fédération des ordres professionnels de juristes du Canada. Tous droits réservés.

Aux fins de formation personnelle seulement. Ce document ne peut être reproduit ou distribué en totalité ou en partie sans la permission écrite préalable de la Fédération des ordres professionnels de juristes du Canada.

**TRUSTS SAMPLE EXAMINATION  
NATIONAL COMMITTEE ON ACCREDITATION**

Instructions:

1. Answer in complete sentences, paying careful regard to the particular instructions provided.
2. The examination is 3 hours in length.
3. This is an open book examination. You may bring into the examination and consult any material.
4. The examination will be marked on a pass/fail basis.
5. If a statute must be relied upon to answer the question, rely on the statute in force in the jurisdiction where you are writing the examination.
6. The value of each question is identified immediately above the question asked.



**TRUSTS SAMPLE EXAMINATION  
NATIONAL COMMITTEE ON ACCREDITATION**

**Question 1 – 25 marks**

1. Sam has established an inter vivos trust. He transferred 1 million to the trustees, and furnished the following “Trust Indenture” which the Trustees signed:

- (a) A significant portion of the capital is to be invested in a sum sufficient to produce a reasonable annual income to fund the following:
- (i) 50% of the annual income should be paid to the Credit Hospital for its cancer ward, where my second cousin Irma received such tremendous care; and
  - (ii) 50% must be paid annually among those relatives of mine who merit payment.

At the end of 25 years, the capital is to be used to promote the merits of Western liberal democracy in the Middle East.

- (b) The balance of the capital is to be given to social clubs which I have been associated with.

Sam has now had second thoughts because of some economic misfortune he has suffered and has asked the trustees to return all of the money to him. \$100,000 has been distributed already under clause (b) to the Presbyterian Church at Lancaster, where Sam worshipped. The Church had numerous social activities for its members. The Presbyterian Church used half of the money to fund a retreat for its members, \$25,000 for new flooring and furniture in its vestibule, and has \$25,000 left in its building fund account. The cancer ward at the Credit Hospital was closed in a health care reorganization before it could receive any money. Advise Sam on whether he can get any or all of the money back.

**Question 2 - 15 marks**

2. The Morrison family wishes to set up the Shayna Foundation to honour the memory of their daughter, Shayna, who committed suicide while on the drug, Zolcrest, an anti-depressant drug that some believe has been linked to suicide. In the meantime, the family is suing the Canadian Government for approving Zolcrest without adequate clinical information, as well as the manufacturer of Zolcrest, Harmony Pharmaceuticals, for failing to provide adequate warnings. The defendants claim that there is no clinical proof that the drug contributes to the suicidal ideation already present in some cases of depression. The family’s lawyer has drafted objects clauses for the foundation:

The objects of the foundation are to:

- (1) fund research into, and publication of, previously unreported harmful side effects for pharmaceutical drugs that have been approved for distribution in Canada;
- (2) to research and develop appropriate standards for the approval of drugs for distribution by governments and to encourage high standards for the approval of the distribution of pharmaceuticals internationally; and
- (3) as incidental thereto, to lobby the government of Canada to change the regulations surrounding the approval of pharmaceuticals by requiring studies to include significant samples of subjects of all ages.

You work for the Canadian Government and have been asked to review the Shayna Foundation application for “registered charitable” status so that it can issue tax receipts for donations. Documents filed with the application show that to date, the Shayna Trust, a fund comprised of donations made to the family after Shayna died, has been used by the Morrisons to hire experts who are attempting to establish links between Zolcrest and suicide. You have also received an opinion from Health Canada that there is no medical indication requiring all drug testing to be done on subjects of all ages, as scientific evidence does not reveal an appreciable difference in side effects between older teenagers, and young and adults under the age of 45 for most almost all classes of pharmaceuticals. Give a detailed opinion on whether this foundation should be approved, giving full legal reasons for your decision.

### Question 3 - 25 marks

3. Harman died, leaving his entire estate in trust with his cousin Eldridge and with Stonebridge Trust Corporation, as co-trustees. The estate was held for the benefit of Eldridge and for his children, who were aged 21, 17 and 14. The three children and Eldridge were to receive an equal share of the income for fifteen years, after that, Eldridge was to have the income until his death, and after Eldridge’s death the youngest was to receive the capital of the estate. The property consisted of shares in three Canadian companies, as well as several mortgages that Harman, who was involved in money lending, had issued. Four of the mortgages were quire conventional, but three of the mortgages were second or third mortgages, carrying illegal interest rates of more than 60% per year, when bonus payments were factored in. Neither Eldridge nor Stonebridge Trust Corporation was aware of the *Criminal Code* provision declaring such rates to be criminal interest rates.

The first of the three Canadian companies in which the trust held shares, Stelmo, is a steel manufacturer that was considered in the securities industry to be a “blue chip” firm. The other two companies, Goldfind and Silvercrest, were more in the nature of penny stock, carrying a high risk, but an outside chance at heavy reward. The trust document contained the following clause:

26(a) I authorize my trustees to administer any of the investments, in the form they are in at the time of my death, whether those investments are of a kind authorized by law for trustees.

27(b) Assets of the estate should be called in and converted into stable, income-earning investments.

At first the estate was producing a sizeable income. Two of the high-interest rate mortgages fell due within a few months of Harman's death, and in each case the mortgagors asked that the mortgages be renewed. Stonebridge Trust Company was insecure about whether the mortgages should be renewed given that they were not well secured, but Eldridge, who was a lawyer, provided a letter to the mortgage company indicating:

Clause 26(a) of the Trust document authorized specifically the continuation of investments in the form they were in at the time of Harman's death. In my opinion, the renewal of the mortgages falls within the terms of the trust. I have discussed this matter with my children, who are the other beneficiaries of the estate, and we wish us to renew the investments.

Stonebridge Trust Company told Eldridge that if he provided a letter of direction from his children confirming their desire, witnessed by another lawyer, they would agree to the renewal of the mortgages. Eldridge prepared a direction which his partner, Eli, witnessed his children execute. The document was sent to Stonebridge and the mortgages were renewed.

Within a year of the death of Harman, rumours began to circulate that Stelmo was in financial trouble. This caused the stock to decline. Stonebridge Trust Company had recently been involved in a refinancing at Stelmo, and was aware that Stelmo was achieving record sales in spite of its money trouble. What was causing the problem in Stonebridge's view, was the union contract and the potential legal obligation of Stelmo to recapitalize the pension fund as a result of alleged improper withdrawals that had occurred earlier. Instead of selling the Stelmo shares, Stonebridge encouraged Eldridge to approve the sale of the penny stock and to invest the proceeds in the depressed Stelmo shares, which Stonebridge considered to be undervalued as a result of investor panic. It believed the shares would shoot up once the perceived crisis passed. The trustees had held onto the penny stock for 11 months and it had been losing money and wanted to get rid of it. Eldridge replied that he knew nothing about stock and he would need time to think about it. After two weeks Stelmo was pressuring him, but Eldridge did not respond because he had not had time to do any proper research. Stonebridge Trust Company left a phone message for Eldridge telling him they were going ahead with the sale and purchase. Eldridge did not reply and Stonebridge went ahead with the trade. It sold the stock in Goldfind and Silvercrest, at 50% of what the stock was worth when Harman died, and used the proceeds to add to the trust's Stelmo holdings. A week later, Stelmo went bankrupt. Its shares are now worth 10 cents on the dollar. It turns out that Stelmo's

record sales were achieved without profit because of a depressed market caused by international competition.

In the meantime, two of the mortgage borrowers who had high interest loans with Harman before his death had themselves gone bankrupt, sparking an investigation. This led the RCMP to discover the trust was involved in high interest loans. The RCMP ultimately executed a search warrant at the Offices of Stonebridge Trust Company, seizing the relevant documents. Both Stonebridge and Eldridge have been charged criminally with engaging in criminal interest rate transactions and have spent \$20,000 to date of trust money defending those charges.

During their investigation, the RCMP also learned that Eldridge had been holding three bonds owned by his deceased brother, which he did not tell Stonebridge about. He had sold them and used the money for a family trip to Europe, and to purchase a large home for the family in which he lived with his children, and to fund an apartment for his estranged wife.

The Official Guardian was notified and is now suing on behalf of Eldridge's 14 and 17 year old children for breach of trust. Identify the breaches of trust, considering any possible defences that either or both of the trustees may have.

#### **Question 4 – 15 marks**

4. Trent approached Durban Publishing with a proposal. He wanted to find authors who would write a series of books on international criminal law for high school and community college students and he had a substantial plan for promoting international law courses in social science and political science programs at both levels. The plan involved the conduct of seminars in which teaching packages, including film footage he had collected, maps, and an interactive software program he developed, could be used to persuade schools and boards to initiate the program. Trent had done a market study and believed that the program could result in the sale of more than 10,000 teaching packages over two years, at a cost of \$45.00 per student, plus \$1000.00 for each course and he proposed raising funds to subsidize this from various foundations he had identified. This would make curriculum introduction attractive. Trent entered into a contract with Durban for one year as a consultant to begin the project, and was paid \$30,000.00. While he proved to be creative, he was disorganized and ineffective. Durban Publishing refused to renew the contract and since that time, Trent has been trying for the past five years to get the project off the ground. Trent has now learned that Durban had continued to develop the project without him, and in fact had begun to market it internationally. It achieved substantial profits. The assets of Durban Publishing, including the International Law Project, have now been purchased by Stellar Corporation and the Durban Publishing has wound up and distributed its sale proceeds among its seven shareholders. Trent has come to see you for your opinion on whether he can sue anyone. Discuss in detail whether he can use any equitable rights or remedies, and with what effect?

**Question 5 – 10 marks**

5. Two years ago, Sarah, a successful entrepreneur, was being criticized by her husband, Milton, for never sharing her wealth with his family. Sarah said he was wrong and that she was generous to both sides of the family. She sat down and wrote a cheque in the amount of \$50,000 payable to her husband's mother, saying, "this will help take care of the costs of her care." Sarah put it in her purse. She also wrote on a piece of paper, "I hereby direct Milton to use the Lac Larmer property for the benefit of his brothers and sisters." She signed it and delivered the paper to him. The Lac Larmer property was in Sarah's name alone and no steps were taken to transfer it. Milton did not discuss a transfer with Sarah as he was going to be the executor of Sarah's estate, so he put the paper with her other testamentary documents. A year later, Sarah fell into money trouble and decided to put her property into Milton's name, including the Lac Larmer property. Now that her business is healthy again, she wants Milton to transfer the property back to her. Milton and Sarah are having marital difficulties and he is considering his legal options. He has asked you whether he can transfer the Lac Larmer property back to her, and whether she is bound to give the \$50,000 to Milton's mother to pay for her care. Give him advice.

**Question 6 - 10 marks**

6. TCL Logistics is a "load broker" operating a freight brokerage and warehousing business. It contracts with carriers to move freight for its clients and collects payment from the clients for the cost of the carriage, plus its own fee. Section 15 of the provincial *Load Brokers Regulation* provides:

15(1) Every load broker shall hold in trust, for the benefit of the carriers to whom the load broker is liable to pay carriage charges, all the money the load broker receives ... in respect of the carriage of goods by carriers except,

- (a) money in excess of the carriage charges; and
- (b) interest on money held by the load broker for less than 30 days.

The Regulations go on to require the "load broker" to maintain and designate a trust account and to pay the deemed trust money into that account. In spite of this, TCL failed to establish a trust account. All of the money it received for carriage of goods was paid into its general bank account where it was commingled with other funds. TCL does have a computerized system for tracking carriage contracts, which identifies amounts received and amounts payable. In the standard contracts it enters into with carriers, there is no mention of trust, with TCL Logistics "agree[ing] to pay the amount due on the carriage contract within 30 days of the completion of the carriage contract." TCL has now gone bankrupt under Federal bankruptcy legislation. The interim bankruptcy receiver discovered that there was more than 2.5 million that had been collected from clients for goods that had been carried, but not paid to carriers. At the time of bankruptcy there was only \$150,000 in the general account. Another 1.1 million was owed by clients to TCL.

The interim receiver paid the \$700,000 that it collected from these clients into a separate bank account pending the resolution of the estate.

The Yukon Bank is a secured creditor of TCL, holding a floating charge over all of TCL's assets. The Bank is claiming that all of the funds held in TCL's general account and by the interim bankruptcy trustee in the separate account are subject to their secured charge and it is demanding the money be paid to it. The carriers claim that all of the money received by TCL was trust money and should be divided among the carriers. They rely on section 67(1)(a) of the federal *Bankruptcy and Insolvency Act* which provides:

67(1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person...

For its part, section 67(3) provides that money subject to deemed trusts under Provincial legislation requiring money to be held in trust for the payment of taxes owed shall be treated in cases of bankruptcy as trust money. Who will be entitled to the money in issue?