NOTE: 1. This is an open book examination, and candidates may refer to any materials.

2. ANSWER ALL QUESTIONS.

3. Students are not allowed to bring any electronic materials to the exam
1. A fully discretionary inter vivos trust resident in Canada was established on February 1, 1994. It acquired 100% of the common shares of a new company incorporated at the same time, which then commenced new business. The principal of the business, Claire, and her husband are healthy 75 year olds now. Their three children range in age from 35 to 47. The company shares are now worth $20 million. Discuss tax concerns and the forward planning options, with an emphasis on the tax issues. Please also identify what questions you might ask the clients before settling on a plan. How might your answer be different if one or more of the beneficiaries is a non-resident of Canada? What if the trust permitted the addition of other beneficiaries?

2. Sam attends your law office and asks you for estate planning advice in the following circumstances. He is 73 years old and recently married to Kate (who is 45), his second wife. His previous wife died 5 years ago, with whom he has three adult children. Kate has two children of her own from a previous marriage, both of whom are financially irresponsible. Sam's assets consist of a home worth $5 million (no mortgage), a cottage purchased in 1970 for $40,000 now worth $1.5 million (no mortgage) and an investment account with his broker worth $2 million with an adjusted cost base of $800,000. He would like to allow his wife Kate to use the home and the cottage, and get the benefit of some income for her lifetime, but he wants his children to ultimately inherit these assets and the investment account on her passing. He wants to minimize taxes payable on his death. What would you advise and why? Identify the tax issues and opportunities.

3. Luke died in September of 2014 owning fixed value non-voting preferred shares with a nominal paid-up capital and adjusted cost base and a redemption amount of $5 million (from a previous freeze). A discretionary trust owns the common voting shares which have a value of about $1 million (representing the growth since the freeze). The Company owns commercial rental real estate with a cost base of $500,000 and a fair market value of $6 million. Luke’s executor and children are considering selling the real estate and winding up the company.

(a) Describe the tax consequences on death to Luke and his estate.
(Question 3, continued)

(b) What post-mortem tax planning would you consider and what tax risks would be involved?

(c) What might you have recommended during Luke's lifetime to minimize the tax consequences and maximize the flexibility for the post mortem planning?

20 4. Dustin comes to you with the following scenario. He owns 100% of the shares of Opco, a company engaged in active business. It will very soon be generating excess profits which will not be needed for personal spending by the family. He wants to reinvest this excess cash in other passive investments. He believes his business is worth about $1.5 million but he believes he can sell it in about 5 years for $5 million. He has a non-working spouse and 3 kids, aged 17, 19 and 20. All will be in University for the next few years. What plan would you suggest, why, and what tax risks are you concerned about?

20 5. Angeline settled a discretionary trust by contributing $500 to it. The trust acquired shares in Opco. Angeline and her husband were the trustees, and both of them and their adult children were beneficiaries. Over the years, dividends were paid to the trust and flowed out, mostly to the adult kids who paid tax thereon. The shares now have considerable value. Angeline's specific intention was to income split with her kids.

(a) Was she successful? Why or why not?

(b) If not, what could she do now to fix the situation?

(c) If she cannot fix it, what are her options to terminate the trust in the most tax effective manner?

END OF EXAMINATION