NOTE: 1. This examination consists of FOUR questions. They are NOT of equal mark.

2. This is an OPEN BOOK examination requiring answers fully explained.

3. If, in answering a question, alternative conclusions are reasonably possible, state and discuss them. If you need additional facts to answer a question, state what they are and why they are necessary.

4. If you think that statements of law you make in answering one question are relevant in another, and you wish to cross-reference, indicate clearly the passages to which you are referring.

THIS EXAMINATION CONSISTS OF FOUR QUESTIONS
1. On January 1, 2014 Trudy Tratch, a philanthropically, eccentric heiress, died. In 2010, she personally wrote and executed her will and last testament using “self counsel” precedents and relied on advice gathered from time to time from lawyer friends. In it she named Tom Tewksbury as her executor and trustee for the administration of her estate. Later, after her death, he accepted this appointment in the course of the probate process. In the will, Trudy bequeathed gifts of $500,000 each to:

(a) the Vancouver Association for the Homeless (“VAH”), a charity that is incorporated under the B.C. Society Act;

(b) the Wildlife-at-Sea Protection Club (“WPC”), a voluntary association of members;

(c) Tewksbury who is empowered, “if he so decides, and I trust he will” to dispense “such amounts as he chooses” to “any or all of my acquaintances who have showered me with love and kindness during the many happy years I have spent on planet Earth.”

In addition, the will provides that the trustee, after payment of debts, should deal with the residue of the estate as follows:

(d) at the discretion of “my trustee”, income from the residue of her estate is to be given on the trustee’s selection those among her “relatives” who “for their lives” may be in need of financial assistance;

(e) generate “sufficient income” to support Trudy’s favoured companion: Whiskers the cat; and $1000 per annum to “my close friends”;

(f) in respect only of the shares in Bongie Pumps Manufacturing and Services Inc., to pay the dividends to Basil Bongie during his life time. Basil, a wealthy man, had been her cohabiting partner for one year prior to her death.

(g) the remainder in her estate was left to her daughter Beryl Bloggs.

Tewksbury has accepted the appointment as executor and trustee. He claims also as a legatee.

During his administration it has emerged that the Vancouver Association for the
Homeless had, in 2012, become moribund and its premises purchased by and transferred to another incorporated Society: the Group for Canadian Homelessness among whose recipients are several well-to-do, unsuccessful artists who wish to live within a bohemian-style community. Likewise, the Wildlife-at-Sea Protection Club had disbanded after irreconcilable disagreements among its members. It's members split into two organizations: the Whale and Dolphin Sanctuary and the Organization to Teach Tricks to Pacific Whales.

After paying the few debts of the estate, Tewksbury ascertains that the trust assets consist of the following:

1. Real estate – “Blackacre” and “Greenacre”. Blackacre is located in a desirable part of Vancouver and yields a high level rent return. In Greeenacre Trudy is holds a remainder in which the life tenant, Lionel, is 30 years of age;
2. Considerable shareholding in "blue chip" securities called Apple Inc.;
3. A fleet of vintage Mercedes Benz motor vehicles;
4. Trudy’s estate also owns the majority shareholding (75%) in a closely held corporation – “Bongie Pumps Manufacturing and Services”. Basil is the principal operator of the company which has a history of generating large revenues because of his excellence as an entrepreneurial engineer and Trudy’s financial assistance (through repaid loans) from time to time. In July 2014, the assets of the company are appraised at $2 million.
5. Cash in the sum of $5 million in a BMO Bank savings account that yields interest at 0.8%.

The will has a clause imposing a duty on the trustee to sell “all the assets except the shares in Bongie Tourist Inc., though my trustee has a duty to postpone sale of qualified assets indefinitely if this, in his sole and uncontestable discretion" is his judgment about appropriate, prudent, business practice”.

Shortly, after Trudy’s death, Basil suffers a stroke, is physically incapacitated, and his children from a previous relationship wish the company to be wound up so that they can obtain their share of its assets if he dies as they are the sole heirs in his estate. Tewksbury, in control of Bongie Pumps Inc., is agreement with winding up the company. Using his majority vote in the company he has voted that the liquidation of the assets are returned to shareholders as dividends. This, With Basil’s knowledge, has been accomplished. It transpires that Tom and Basil have a close friendship that started when they were both in grade 1 at school.

Advise Beryl, giving full reasons for your answer, concerning the proper administration and distribution of Trudy’s estate.
MARKS 20

2. Tewksbury and Toolan are trustees of a fund set up in 2010 in favour of Brendon Bard. The trust property consists of shares in numerous companies, cash on deposit and various property investments, including the settlor’s “favorite horses”. Tewksbury is appointed a director of one of the companies in which the trust has a shareholding because the combined total of the trust’s shareholding and his own shareholding (which he purchased at the same time the trust invested in the company) makes him a major investor. He is paid $10,000 per annum for this and has received dividends of some $20,000 in respect of his own shares. Acme Inc. is a financial services company and attempts to bribe Toolan to transfer to them some of the trust’s business. Toolan is reluctant, but after checking the history of Acme Inc. he persuades Tewksbury that they should transfer some $500,000 worth of assets to the company for investment. In return, Toolan receives some shares in Acme Inc. that double in value due to the spectacular success of the company over the next six months. The trust’s investment has also doubled. Another trust property is the leasehold of an office complex in Vancouver. As trustees, Tewksbury and Toolan are offered the chance to purchase the reversion for $300,000. They refuse, in good-faith, on the advice of Acme Inc., which is predicting a recession. The reversion is, however, placed on the open market, and Toolan purchases it for $200,000 at an auction. Toolan has arranged a sale in six months to a property developer $350,000.

Discuss addressing fully all issues raised in the fact pattern indicating with full arguments how they may be resolved.

MARKS 15

3. On June 1, 2014 Bertrand Brindle entered into a contract with Ace Construction Inc. to build a prefabricated house. A term of the contract was that the purchase price of $1 million had to be paid by way of installments: $100,000 as a down payment; $250,000 upon completion of the architectural specifications and drawings; and $650,000 when the house was delivered complete. It was agreed that The Safety-Net Bank would hold all monies and release appropriate sums to Ace as the work was completed according to stages of the drawings and construction specified in the contract.

After Bertrand’s payments of $100,000 and $250,000 Ace went bankrupt. The receiver in bankruptcy declined to complete the construction of the house as the cost of completion would have exceeded the sums outstanding under the agreement. Neither can the receiver transfer the property in its present state to Brindle as the Bank also claims the real estate as security under an unsecured loan. Both the receiver and the Bank take the position that Brindle has no secured position and must rank with the general creditors of Ace. The house is
currently worth $750,000.

Brindle seeks your advice. Prepare argument(s) that will justify Brindle recovering the full sum he has paid, indicating weaknesses in your argument(s).

MARKS 25

4. Belinda Bloggs was 15 years old her life when she was rescued in a drowning incident by a family friend, Taryn Tewksbury, then aged 35 years. Belinda survived, but was left somewhat mentally incapacitated. Seven years later and by dint of extremely hard work she graduated from a Community College and managed to secure a low-paying job that she lost within a year of her employment. Fortunately, soon after this upset, Belinda obtained a court award of $2 million from the swimming pool operators in a successful negligence lawsuit. She invested this sum in very low risk, low interest bearing, bank account. Belinda grew very close to Taryn who had became her only confidante and close friend and to whom she (Belinda) was extremely grateful and upon whom she was dependent for advice, emotional support even on the most ordinary decisions concerning the normal ups and downs of life. So eight years after graduating, jobless and with a judgment award, Belinda took up residence with Taryn paying full board and lodging from income generated from investments of her judgment award. A cohabiting relationship ensued. Shortly thereafter, Taryn easily persuaded Belinda to give her $250,000 as a reward for rescuing her. Taryn used this money to invest in high yield, risky investments. Within a year of investment they had doubled in value. Belinda’s parents learned of this arrangement, and within 18 months of the start of the relationship with Taryn, persuaded Belinda to break up with Taryn.

The property relationships between Belinda and Taryn is further complicated by the fact that Taryn had transferred her fee simple title in Brownacre to Belinda. Taryn, a very successful radio personality, had received threats from a former lover alleging sexual assault because of consensual sado-masochistic encounters. Anxious that her home, Brownacre, is secure from surrender to creditor attack she had, unknown to Belinda, transferred and registered title in Belinda’s name. Brownacre is valued at $250,000.

Belinda seeks legal counsel from you. Advise her with full reasons for your conclusions.

END OF EXAMINATION.