this examination consists of 6 pages
please ensure that you have a complete paper

the university of british columbia
faculty of law

final examination – fall 2014

law 452b
succession

section 1
professors low and wickstrom

total marks: 100

time allowed: 3 hours, 20 minutes
(inclusive of reading time – you may start writing at any time)

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notes: 1. this is an open book exam. you may bring in any materials you wish.

2. the exam consists of two questions, each worth equal marks. answer both questions.

3. you are not required to address any tax issues in your answers.

4. all events outlined in the exam will be deemed to occur in british columbia and british columbia law will apply.

this examination consists of 2 questions
QUESTION No. 1 – 50 Marks

[In the following question identify the legal issues that arise on the facts below, and suggest, with reasons, how those issues should be resolved.]


In 1986, Michelle, then aged 35, agreed to work for Stephen as a live-in housekeeper. In addition to room and board, she was paid a monthly salary. She in effect also became a surrogate mother to the three children.

Stephen was a distant and remote father and had little interaction with his children. He supported them financially while they were at university, and they graduated debt-free. He supported Justin for four years while he was a graduate student. After they graduated, he gave them no financial help, even when occasionally he was asked to do so. After they left home, Stephen rarely saw them, and the children made few efforts to get in touch with him.

In 2005 I.M. Competent made, and saw to the proper execution, of a will for Stephen. The will left all his property to the British Columbia Foundation, an incorporated Society whose objects were solely charitable. Competent was named the executor of Stephen’s will.

Competent raised and discussed with Stephen the omission in the will of any provision for his children and Michelle. Stephen said he and his children were like strangers and he felt no obligation to provide for them. Stephen said Michelle was well provided for as she had saved most of her salary, and had invested it well. After the last of the children left home in 2000, he ceased paying her a salary, but opened a joint bank in her and his name. He paid $10,000 a month into the account and Michelle paid all their expenses from it. At Stephen’s death there was $150,000 in the account.

Competent knew that many of Stephen’s friends regarded Stephen and Michelle as being in a “common law” relationship. Stephen said he and Michelle were merely good friends. It was true that they regularly socialized together and he admitted on a few occasions they had had sexual relations. But they regularly occupied separate bedrooms, even when on vacation together.

As well as drafting the will, Competent also prepared, and had properly executed, an enduring power of attorney for Stephen. Competent was named as attorney, and the power conferred on the attorney was “anything I can do by an attorney.”

In 2006, Stephen met Tom, a fundraiser for the Yukon Foundation, another incorporated society whose objects were also solely charitable. They immediately “hit it off”. Tom invited Stephen to Yukon Foundation functions, and took him regularly to lunch and dinner. Stephen often referred to Tom as the “son he would have liked to have had.”

In 2010, people began to notice that Stephen was at times unable to complete a line of thought and he would lose the thread of conversations. Eventually, in 2012, two doctors certified that he was incapable of managing his affairs.
QUESTION No. 1 – Continued

Using the power of attorney, Competent began taking care of Stephen’s financial affairs. In 2013, acting under the power, he transferred the bulk of Stephen’s property to the Trusty Trust Company, to hold on the following trusts:

(i) To pay the income, and so much of the capital as Trusty Trust Company saw fit, to or for the benefit of Stephen; and

(ii) On Stephen’s death to distribute the property to such persons or purposes as Stephen, if he should again become capable, should appoint; and

(iii) In default of such appointment by Stephen, for such persons or purposes as Competent, using the power of attorney, may appoint.

Competent made an appointment, directing that the amount in the trust at Stephen’s death was to be divided into four parts, with one part to be paid to each of Avril, Rita, Justin and the British Columbia Foundation. Competent states that he acted in the way he did so that probate fees would not be payable on Stephen’s death, and to prevent will variation claims by Stephen’s children.

Stephen died in June, 2014. He lived in his house until his death, with Michelle and a care-giver looking after him. All expenses were paid by Trusty Trust Company out of the trust. However, after the trust was set up, no further payments were made by the trust company into the joint bank account in the names of Stephen and Michelle.

Competent located Stephen’s 2005 will in a bank safety deposit box in Stephen’s name. The bank records showed that the box had last been accessed in June 2011. The will had a line in red ink drawn diagonally across all its pages.

Competent also found a second document in the box. The second document, undated, was of a type Stephen used when he would write letters, with his name and address printed at the top. The following was written in what is accepted as Stephen’s handwriting:

“I want all to go to the Yukon Foundation. This should suffice I think, though as usual the lawyers may want more.

Stephen MacDonald”

At the date of Stephen’s death, there was $1 million in the trust and little else in his personal name and:

(1) Avril had some money of her own, but was married to a very wealthy husband;

(2) Rita had property worth twice as much as the amount in the trust;
QUESTION No. 1 – Continued

(3) Justin had a regular income, but had saved little. In the two years before his father’s death, he had from time to time periods when he had little energy, but his doctor could not determine the cause, nor did he seem concerned. However, in September, 2014, Justin was found to have a very rare disease which was not in itself fatal, but which would gradually diminish, eventually totally, his ability to work.

END OF QUESTION 1.

QUESTION No. 2 – 50 Marks

[In the following question identify the legal issues that arise on the facts set out below, and suggest, with reasons, how those issues should be resolved.]

Portia married twice. By her first marriage she had a daughter, Diana, and 4 sons John, Paul, Ringo and George. After her first husband’s death, Portia married Atlas. There were no children of the second marriage, but Atlas had one son, Brian, from an earlier marriage. Portia, Atlas, Diana and her four brothers lived in Vancouver. Brian lived in California.


Diana made her will in 1997. I.M. Able, Diana’s lawyer, made the following notes of the instructions she got from Diana:

(i) $50,000 to brother Ringo, if dead to wife;
(ii) Banana Inc. shares to John and Paul;
(iii) Sell Orange Inc. shares and pay proceeds into Tiddleycove Credit Union account and divide equally between Ringo and George;
(iv) Residue: 20 to each of John, Paul, Ringo and George, the remainder to her nieces/nephews.

Able prepared the will. Diana read it over and it was then properly executed. In part the will read as follows:

1. I leave $50,000 to my brother Ringo, but if he predeceases me to his wife.
2. I leave all my Banana Inc. shares to my brothers John and Paul.
QUESTION No. 2 – Continued

3. I direct my executors and trustees to sell the Orange Inc. shares I own at my death and to pay the proceeds into my Tiddleycove Credit Union account to be paid to Ringo and George.

4. I leave to each of John, Paul, Ringo and George one-twentieth of the residue and the remainder of the residue to my nieces and nephews (Dolly, Garth, Bono and Cher).

5. Any other dispositions made by me are to be read as being part of this will.

Diana insisted on the addition of clause 5 over the objections of Able.

At the date the will was made, Diana had two nieces, Dolly and Cher, and two nephews, Garth and Bono.

In 2000, Brian paid a rare visit to Diana. She told him his four step-brothers benefitted under her will, but he did not. Brian said that was unfair, particularly as most of what she owned had come from Atlas. Eventually she agreed that Brian would get out of the residue one-half of what a step-brother was getting. He then said he would cause no trouble after her death, but that he would like Diana to make the gift in her will to the ABBA Trust, which he had set up in 1995 for his children. The trust contained no powers of variation, but Brian had the power to revoke it.

In 2002, Banana Inc. was taken over by Pear Inc. As part of the take-over, all Banana Inc. shareholders surrendered their Banana Inc. shares and were issued Pear Inc. shares.

In 2005, Ringo and his wife, Jennifer, separated and have lived separate and apart ever since, though no steps have been taken to formally end the marriage. In 2006 Ringo commenced living with Leslie in what is accepted by most of their friends and family as being a marriage-like relationship. Diana made it clear she disapproved of the relationship.

In 2010 Diana decided that the Orange Inc. shares were going to decline in value. She sold 4,500 of her shares for $180,000 and deposited the money in the Tiddleycove Credit Union account. That brought the amount in the account up to $200,000. She retained 500 shares which she still owned at her death and which were then worth $20 a share. During her lifetime she made no further deposits into the account, but by her death had withdrawn $50,000 from it.

In 2011, Diana realized she had never made the provision for Brian she had promised to make. She drew up in her own handwriting, signed and dated the following document:

I promised Brian he would get something on my death. To keep my promise I therefore direct my executors to pay ten per cent (10%) of the residue to the ABBA Trust. Otherwise, the rest of my will stands as it is.

In 2012, (i) Paul died; and (ii) Ringo had a child named Tony. Paul was survived by his spouse and two children of his spouse by an earlier marriage. Paul had treated the children as if they were his own. Diana was aware of this and accepted them as members of the family, and they called her "Auntie Diana".
QUESTION No. 2 – Continued

Diana died in June 2014. Assume that all the people referred to above survived her, unless the contrary is indicated. At the date of her death, George and his wife were in the process of adopting a child. The adoption was not finalized until two months after her death.

When Brian discovered what he described as the “debacle” that had arisen on Diana’s death, he said Able should be sued for everything she was worth.

END OF EXAMINATION