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Spring Semester 2022

Foundations and Trusts

June 22nd, 2022

Duration: 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains three pages and three questions.

Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	15 points	33.3 %
Question 2	15 points	33.3 %
Question 3	15 points	33.3 %
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Total	45 points	100 %

We wish you a lot of success!



Part 1 (15 Points)

All void or what?

The Freedom Family Foundation (FFF) was established in 1920 by Mr. X as the (late) founder (according to its preamble "as a family foundation within the meaning of Articles 87 and 335 of the Swiss Civil Code") by notarial deed in Zurich. The purpose of the foundation was "to support the members of the X family by bearing the costs of education, endowment, support, bathing and recreational cures and in other emergency situations".

Shortly before the deadline for registration expired, in December 2020, the foundation council wanted to register the foundation in the commercial register of the Canton of Zurich. Surprisingly, however, this registration was refused. The register held that by naming "bathing and recreational cures" the foundation was pursuing inadmissible maintenance purposes and was therefore to be considered null and void. The foundation could, as the register wrote, of course go to a court if it did not agree with this decision.

The responsible persons of the FFF and the beneficiaries (the decedents of the founder) come to you and ask for advice on what could be done in this situation.

Question 1 (10 Points): Please answer the question by discussing the crucial strategic points and naming the possibilities and risks of an appropriate course of action.

Question 2 (5 Points): Please explain whether a foundation with the same features that would have been established in Liechtenstein in 2010 would be recognized in Switzerland.

Please answer the above questions citing the appropriate legal provisions wherever applicable.

Part 2 (15 Points)

Ms. Limonetta Tartaruga is a Swiss national with legal domicile in Berne, Switzerland. At present, she owns and runs a successful business (a Swiss LLC of which she is the sole shareholder), which makes up over 80% of her personal wealth. The LLC in turn holds a large, diversified share portfolio, consisting of shareholdings in several large Swiss and international companies. Ms. Tartaruga is widowed and has three children, all of whom live in Switzerland and neither of which she trusts with taking over the company (or having any involvement with its management).

Question 1 (14 Points): Ms. Tartaruga wants to set up a trust for the benefit of her three children, with the shares in the LLC being the primary trust asset.

- Please explain whether Swiss law allows this and whether you think this is a good idea and why.
- What law(s) can she submit the trust to? Could it be Swiss law?
- What types of trust are at her disposal, which one would you recommend she use, and why?
- Do you foresee any inheritance law issues, and if so, which ones? Is there a way to deal with them *ex ante*?



- e) What are the advantages of setting up the trust *inter vivos* vs. *mortis causa*?
- f) Would a common law foundation be a suitable alternative to a trust? What are its advantages compared to a trust or a Swiss foundation? Is there a particular jurisdiction providing for common law foundations that you would recommend, and why?

Question 2 (1 Point): Plot twist – Ms. Tartaruga has recently been elected into high-ranking political office. What can she do to avoid conflicts of interest between her political work and her business?

Please answer the above questions citing the appropriate legal provisions wherever applicable and please exclude any tax considerations.

Part 3 (15 Points)

Ms. Tartaruga is told that she should settle an irrevocable discretionary trust during her lifetime. She can either (i) transfer the LLC into this trust during her lifetime while she is the sole beneficiary or (ii) appoint the irrevocable discretionary trust as her sole heir in her last will. Her children will be in the class of beneficiaries. It is in the sole discretion of the trustee to decide on distributions. The trustee may distribute income and/or capital. The children have no powers in the trust deed.

Question 1 (7 Points): What are the tax consequences in scenario (i) when Ms. Tartaruga settles an irrevocable discretionary trust and transfers the LLC into the trust during her lifetime. Please consider the tax consequences upon

- a) Settlement
- b) During the lifetime of Ms. Tartaruga
- c) Distributions
- d) Upon her death

Question 2 (4 Points): What are the tax consequences in scenario (ii) when Ms. Tartaruga settles an irrevocable discretionary trust with minimal capital and the LLC is transferred upon her death by her last will?

Please consider the tax consequences upon

- a) Settlement
- b) Upon her death

Question 3 (4 Points): Addition to the plot: The Trust deed foresees that the children can decide in their last will what shall happen with their share of the trust funds. Would this change the tax consequences upon the death of Ms. Tartaruga?

Please answer the above questions citing the appropriate legal provisions wherever applicable and please exclude any civil law aspects.