

WILLS & TRUSTS

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Practice Trusts Essay Questions

[for use during Review Session II]

Question 1¹

The following provisions are found in the valid will of Phil A. Thropist:

“Article IV — Trusts

- A. I give \$500 to my son, Frank, with the expectation that he will distribute it to his children.
- B. I give \$1,000 to my son, George, in trust to pay the income to my devoted friend, Joe College, if he survives me.
- C. I give \$1,000 to my brother, Henry, to pay the income to the March of Dimes.
- D. I give the entire contents of my safety deposit box (#421A) at Octopus National Bank to my son Frank, in trust, to pay the income to Susan Swails for life, remainder to Sam Matteson. If Susan does not survive me, the gift in trust is cancelled and the contents of the box are to go outright to Sam.
- E. I give \$1,000 to my darling wife, Sarah, in trust, to keep the grandfather clock, which I left her in Article II of my will, in running condition.
- F. I give the rest, residue, and remainder of my estate to the trustees, in trust, of the trust established by me on * * * . (full description of trust).”

Mr. Thropist executed this will on January 3, 2000, and died on November 13, 2010. Frank refuses to distribute any of the \$500 to his children but rather has purchased a new set of reporters for his law office with the money. Joe College died on September 1, 2010, leaving a wife and two kids. Henry now resides in the Texas State Home for the Criminally Insane after being judged incompetent and insane for his participation in the

¹ Adapted from prior Prof. Beyer exam.

infamous Texas Chainsaw Massacres. The safety deposit box referred to in part D is empty and contains a note saying, "I intend to place \$10,000 cash in this box before I die." The trust referred to in part F is valid in all respects. When the will was executed, Frank and George were the sole beneficiaries of the trust. In 2006 the trust was validly amended by Mr. Thropist changing the beneficiary to his wife, Sarah.

Assume that the Texas Trust Code and other relevant statutes were in force in their present form at all relevant times. No other provision of Mr. Thropist's will is relevant to this problem.

Question 2²

You have been hired by the Last National Bank (LNB) of Texas to advise them on trust matters. LNB tells you it was named as the trustee for an inter vivos trust to pay income to A for life, remainder to B. LNB wants to know its rights, obligations, duties, etc. with regard to the following items. Explain your answers **fully**. Assume that no provisions of the trust instrument are relevant unless specifically stated.

- A. LNB wants to commingle some of the assets of this trust with the assets of other trusts for which it is also named as trustee.
- B. LNB wants to invest trust assets in the Alchemy Corporation. This corporation claims its scientists are on the verge of being able to turn lead into gold.
- C. LNB is considering selling a particular trust asset. Walter, one of the beneficiaries, is interested in purchasing the asset.
- D. LNB's president wants to purchase one of the trust assets. She is willing to pay the fair market value of the asset. The trust instrument specifically grants the trustee's officers the power to buy trust assets.
- E. Settlor has threatened to revoke the trust if he becomes dissatisfied with the way things are handled. The trust instrument, however, is silent on whether the settlor can revoke.

² Adapted from prior Prof. Beyer exam.

Question 3³

Connie, who died in 2009, left a will which created a trust of which her son, Sam, was to be both trustee and life income beneficiary. On Sam's death, the successor trustee was to distribute the corpus outright to the then surviving issue of Connie's predeceased daughter, Deborah. The trust contained a standard clause regarding trustee's powers, including the power to "sell, invest, and manage" the trust property.

Common shares of Hercules Corp., a well-established, successful manufacturing company, made up 30% of the original trust corpus. For years, Hercules regularly paid generous cash dividends, all of which Sam, as trustee, allocated to income. In 2009, instead of paying a cash dividend, Hercules distributed a dividend of its own stock which Sam also allocated to income.

In January 2010, Fabulon, Inc., a newly formed company, made an initial public offering of its common stock. The prospectus stated that Fabulon had created a new material similar to fiberglass, but which experimental testing had shown to be of superior durability. The prospectus further disclosed the company's intent to distribute most of its earnings as dividends.

After reading the Fabulon prospectus in February 2010, Sam sold the trust's Hercules stock to his wife at its current fair market value. The sale of stock produced a profit for the trust, and Sam allocated the capital gain portion to the income account. He used the balance of the proceeds to purchase Fabulon stock for the trust.

Hercules continued to prosper and its stock continued to appreciate. Fabulon's product failed and, in September 2010, Fabulon went bankrupt and its stock became worthless.

Has Sam breach his duties as trustee? Discuss.

Question 4⁴

Tom is trustee of a trust created by Abe in 2005. The corpus consists of stocks and bonds worth \$150,000, an apartment house appraised at \$650,000 in a neighborhood which is becoming increasingly industrial, and a vacant lot. Yearly net income from the

³ Adapted from California Bar Examination Question 4 (Feb. 1996).

⁴ Adapted from California Bar Examination Question 1 (Feb. 1992).

stocks and bonds is \$12,000, and from the apartment house is \$36,000. Tom has held the lot for five years, not wanting to sell it at a sacrifice because the uncertainty of zoning and the location of a proposed highway. The trust instrument directs Tom to pay the income from the trust to Abe for life and, at Abe's death, to divide the corpus between Abe's children, Ben and Cathy.

At the end of 2010, Tom sold the vacant lot for \$50,000, the fair market value. He also sold some stocks for \$35,000, realizing a \$10,000 gain. Tom used this money along with \$25,000 of accumulated rental income to build an addition to the apartment house.

In another 2010 transaction, Tom sold for \$25,000 stocks that had been purchased for \$25,000, and lent the proceeds to PQ Corp. at 1%, below the prevailing interest rate. The loan is secured by a first mortgage on unimproved realty worth \$30,000. For several years, Tom has performed substantial services for PQ Corp. as a consulting engineer. He owns 100 shares of its common stock. There are 1,000,000 PQ shares outstanding.

1. Has Tom breached his duties as trustee and, if so, what are his liabilities to the beneficiaries? Discuss.

2. Has Abe received all the income to which he is entitled? Discuss.

Question 5⁵

Grandfather ("G"), a widower, has accumulated wealth and desires to dispose of some of it through the use of trusts. His first act on Monday morning is to phone his attorney's office. On his attorney's private answering machine, G leaves the following recorded telephone message, "Effective tomorrow, I'm giving you my liquor store business for my son, Jim, including all inventory, accounts receivable, the property on 10th street, and my liquor store account with First State Bank. I want all income, in quarterly payments, to go to Jim for life, and at his death, I want the income to go to Jim's only daughter, Lou until she's 35. Then she can have it all. I've sent the bank a letter today to tell them the account is yours, as trustee, from now on. The delivery service will bring you all the books and record tomorrow. I've talked to Jim already and told all my suppliers and debtors. I've made up my mind about this, but I might want to change it or get rid of it later. Draw up whatever papers we need. By the way, if I do decide to change something or call this whole thing off later, how can I do it? Call me."

⁵ Adapted from Texas Bar Examination Question 11 (Feb. 1988).

Later that Monday, G and his trusted friend, Hal, drove to the office of G's stock transfer agent. By written instrument, G conveyed his mutual fund holdings to Hal as trustee of a revocable trust which named G's girlfriend, Ty, age 65, as beneficiary. The stated purpose of the trust was to soothe G's conscience for having wronged Ty on many occasions. No consideration was paid by Hal or Ty. G retained the power to modify the trust and to add property to the trust. By a second written instrument, G conveyed his 300 shares of technology stock in trust to Hal as trustee of a revocable trust benefiting G for life and then to Hal. Hal, as trustee, took possession of the shares of stock that very day.

G also conveyed a parcel of commercial real estate to his daughter Jan. The grantee was referred to as "Jan Jones, trustee". G did not explicitly set forth any trust terms or trustee powers or limitations in the deed or in any other document. After executing and recording the deed with the county clerk, G placed the deed in an envelope, along with a copy of the Texas Trust Code, and mailed it by certified mail to Jan.

On Tuesday, as G drove down Ty's street on his way to tell her about her status as his named beneficiary, he saw her through the window in the arms of another man. G immediately picked up his cellular phone and called Hal with instructions that the recently created trust drafted in favor of Ty was revoked, effective immediately. The betrayal was too much for G. He suffered a massive coronary that evening and died. He had not had a chance to meet with his attorney concerning the trust agreements for Jim and Lou.

Discuss the following fully:

[1] Did G create a valid trust in favor of son, Jim and granddaughter, Lou? Explain.

[2] Assume that a trust was created for Jim and Lou. When G's attorney heard G's recorded message, he did not wish to serve as trustee. What would be the result? What action should the attorney take? What action should the attorney avoid?

[3] Answer G's final question for the attorney: assuming a valid trust had been created and assuming G had not died until much later, how could modification or revocation be accomplished?

[4] Did G create a valid trust for his daughter, Jan? Explain.

[5] (a) Did G create a valid trust in favor of Ty? (b) For purposes of discussion, assume G created a valid trust in favor of Ty. What was the effect of G's notice of revocation?