Empire College School of Law
Professor DeMeo
Wills & Trusts – Final
Spring 2010
Thursday, April 15, 2010

Student ID_____

Question 1 – One Hour

Aunt Mabel was partial to preserving open space in her city of residence. She drafted a trust with the following language:

"Upon my death, after payment of taxes and expenses of administration, I instruct my successor trustee to hold, administer and distribute the trust estate as follows:

1. Each year, on January 1st, the trustee shall distribute 4% of the gross value of the trust estate to any one or more of the following entities, which shall be selected by the trustee each year:

   A. Euphoria County Open Space District;
   B. Wildlife Refuge, a private foundation;
   C. Save the River, a non-profit organization, with the mission to preserve the local river, its wildlife and its attributes;
   D. Any other person or entity that the trustee chooses consistent with my wishes under this Trust."

2. If the Trustee does not choose any such entity or person listed above, the income generated by the trust shall be added to principal and carried forward."

After Aunt Mabel's death, the trustee paid taxes and expenses of administration and set up proper trust investments. Each year the trustee rendered an accounting to the beneficiaries.

Three years passed before the trustee distributed any funds, which were paid to Wildlife Refuge. Research on the State website by the trustee would have revealed that Wildlife Refuge did not qualify as a non-profit entity when it received the money. In fact, trustee, a long time friend of Aunt Mabel's, was on the board of directors for Wildlife Refuge. In reality Wildlife Refuge was a front for international political activism supporting fringe groups in foreign countries, a fact known to Aunt Mabel. Most of the resources of Wildlife Refuge are used to bomb and destroy heavy equipment used to cut down rain forests.

Three more years passed before another distribution was made, again, only to Wildlife Refuge.

Save the River's executive director finally read one of the accountings and realized they were eligible for distributions. After several attempts to obtain a distribution from the trustee over the course of three years, Save the River comes to you for advice on how to get some of the trust money.

Please advise Save the River as to the legal rights and issues presented by this set of circumstances. Be sure to use sound legal analysis in your advice to Save the River. Do not discuss powers of appointment or Rule Against Perpetuities in your response to this question.

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Question 2 – One Hour

Uncle Joe died leaving a trust for his two sons. The pertinent part of the trust states:

> "The trustee shall maintain and use the trust for the proper care, support, maintenance, and education of my two sons for their lives, and to distribute so much of the net income and principal, or both, to or for the use or benefit of each son, at any time, and from time to time. The rest and remainder of the trust estate shall be distributed to my grandchildren who survive the last of my sons to die, in equal shares, to be paid when each reaches the age of 21 years."

The trust contained a spendthrift clause. Both sons were alive at Uncle Joe's death.

One of the sons, Jens, is a gambler. He has a large debt at Creek Bolder Casino.

The other son, Tam, is a philanderer with two children out of wedlock. He is also a dead beat and does not consistently pay child support.

The Casino and the mother of the two children contacted the trustee to demand payment. The Casino demanded that Jens' entire debt be paid immediately. The trustee liquidated some of the trust investments and paid to the Casino one-half of Jens' debt, but refused to pay any more.

The mother demanded that the trustee pay to her the entire delinquent support for the children. The trustee refused and sent her away. Later that day, the trustee paid to Tam some income from the trust.

What are the rights and entitlements of the beneficiaries and creditors?

Use sound legal analysis in your response.