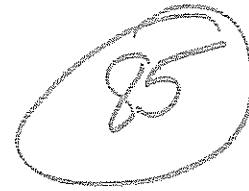


1)

===== Start of Answer #1 (1662 words) =====

Dear Jeff (J),



I'm sorry to hear of the passing of Bill Gaines (BG). He has left a substantial amount of money to his trust, and you as Trustee have the important duty to administer this money. As I understand, the entire trust estate was left to a valid California Charitable Trust and there is a direction to the Trustee (you) to also file papers with the Federal Internal Revenue Service to qualify as a charitable trust.

Although I've been told the California Charitable Trust is valid, you need to make sure that the trust will qualify for a charitable trust with the Federal Government. To create a charitable trust, first there needs to be the intent to create a charitable trust, and this we have through BG's express directions. There needs to be a trust res, or property, in order to fund the trust. We have that also. There has to be a Trustee, which you are, although any trust will not fail for the lack of a trustee, a court will appoint one if none exists. Charitable trusts can go on indefinitely, and are not subject to the rule against perpetuities. For most trusts, there needs to be ascertainable beneficiaries. However, for a charitable trust, there must be no ascertainable beneficiaries, because it has to serve a purpose which helps the public at large and not a small amount of defined people. Purposes which fulfil a public good can include endication, health care, public parks, and, as we have here, the relief of poverty.

*facts say it is valid*

This trust may have a problem qualifying as a charitable trust if the only purpose of the trust is to end poverty in a small town of only 80 people. The court may see this as a defined group of people rather than the required unascertainable beneficiaries. The trust does state that the income should go to other non-profits which shared BG's vision of ending poverty. If the money does indeed go to other non-profits, and it is used with discretion to help only those suffering from poverty

in that area, then that may be alright. Although with over \$10 Billion dollars in the trust res, this is a narrow goal to target. I will get to that in a minute.

The trust states that the net income is to be distributed by the trustee to other non-profits, as I just mentioned. It appears BG has given you a power of appointment, in that you have discretion to decide which non-profits get that income. This discretion will be helpful as we move forward in discussing what to do with this incredibly large sum of money.

First, I'd like to let you know that as a trustee, you have many duties to the beneficiaries of this trust, and the Attorney General has standing to bring action against you if you breach these duties. You could be personally liable for a breach, which we want to avoid for your sake, and the trust's sake. The main duties of a trustee are:

The duty of Loyalty:

This means that you must have undivided devotion to the purpose of the trust and its beneficiaries. You must act only in the best interest of the trust, and you are strictly prohibited from what is called 'self-dealing.' This means you are not allowed to buy anything from the trust, sell anything from the trust, and that you have a duty to act on the behalf of all the beneficiaries, not just some of them. (This is the duty of impartiality.) You are not allowed to benefit from the trust, except that you can have reasonable compensation for your efforts. The trust says that you can take 10% of the net income of the Trust Estate as a fee, anually. Although this is stated clearly, it is also clearly stated that ALL the income from the turst should go to non-profits. Because of this inconsistency, a court would probably hold that you are entitled to reasonably compensation, which may be far less than 10% of the income from the trust, given the very large sum in the Trust Estate.

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The duty to Collect and Protect the Res:

Trusts have bifurcated interests- the legal title is held by the trustee, and the equitable title is held by the beneficiaries. You should make sure that all the trust interests are titled in your name, as trustee, so you have the control over the res needed to fulfil your duties. To protect the res, you must act as a prudent investor would, which leads us to the duty to prudently invest.

The duty to earmark:

When collecting the trust res, be sure to keep it apart from your own private money and from any other money you may manage. There is a rule against co-mingling of funds, even if it does not harm the trust.

The duty of prudence:

Trustees are required to act as a reasonably prudent person would when overseeing the kind of trust they are administering. In this case, the trust explicitly directs you to keep all the trust money in the computer company. However, your duty is to the beneficiaries, not to the Settlor (the person who created the trust), and you are required to keep a diversified portfolio. An express direction, such as we have here, may be reasonable in some cases, but to be completely safe, I recommend seeking the court's advice as to whether you can or should diversify this money. If they allow or order you to do so, I reccomend hiring an investment professional to help you decide how to diversify. You can use a reasonable amount of money from the trust assets to pay for such a professional, but you cannot delegate your duty- you can only have them help you decide how to do it.

The duty to inform:

Upon a trust becoming irrevocable, the trustee has a duty to inform the beneficiaries of the status of the trust. Here, there are no specific identified beneficiaries, although BG mentioned non-profit organizations that shared his vision of ending poverty in Radiator Springs. If you know which non-profits these

are, you should contact them and check in as soon as possible. Also, if you decide to diversify or petition the court to change some part of the trust, you need to inform them.

The duty to account:

You are charged with managing a very large sum of money. You must make sure that it is accounted for, taxes are filed on time, and that you annually put out an accounting report for the beneficiaries. You can delegate the bookkeeping duties, so long as you find someone suitable and oversee their work. If you hire someone who is not licensed, or is not reasonable under the circumstances, you could be personally liable. You can spend a reasonable amount out of the trust to pay someone to work with you on this.

Also, you have a duty to only perform as you are directed under the trust. If you do something that the trust does not allow you to do (without the court's approval) you can be held strictly liable for overreaching your power over the trust.

Now that I've laid out the main duties, I'd like to talk to you about the trust in general.

\$10 Billion is an enormous amount of money. It was very generous for BG to leave this in trust for charitable purposes, but it strikes me as strange that he specified it to be used to end poverty in his hometown only. Although I've not been told about any mental issues on his part, if you know of anything strange going on with regards to his mental ability, we should look at that right away. If he lacked capacity when he made his trust, it may be invalid. For instance, is it true that Radiator Springs is as poor as he says it is?

Assuming that it is, it seems that the relief of poverty in Radiator Springs is a narrow target to hit with such an abundance of money. There is a doctrine called cy pres, where a court can allow a charitable trust to change its purpose in order

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to make the most reasonable use of the money. It may be worth considering how much good this trust can do if it expands its scope. In order for cy pres to apply, it has to have become impracticable or impossible to fulfil the mission of the charitable trust without a deviation from the directions of the trust. In California, the courts can also be petitioned to apply cy pres in a situation where there is 'waste,' which means that the money is not being used for its highest or most reasonable purpose. The court may look at the language in the trust and agree to strike the condition of giving only to non-profits specific to Radiator Springs. Because there is more than enough money to help that town, the court may decide to allow the trust to dedicate itself to ending poverty on a larger level- in California, or in the US, for example. The facts say that BG was on boards of various non-profits. The court may find that it is appropriate to bring some of those into the benefit of the trust. The California Trust has been in existence for 30 years. We could look to the beneficiaries under that trust to see if it would be appropriate to continue funding them. This could also save the non-profit status of the trust, if the court finds that a charitable trust cannot be dedicated to definite takers, ie the people who live in Radiator Springs.

I know this is a lot to think about, and you have a big job ahead of you. I hope this gives you a starting map, and as you move forward, feel free to contact me for more information or assistance petitioning the court.

Regards,

==== End of Answer #1 =====

2)

===== Start of Answer #2 (1416 words) =====

December 18, 2013



Mr. Frederick Von Frankenstein:

I appreciate you contacting our firm regarding your late father's will. First, I would like to pass on my condolences, it is a very difficult time losing your grandfather.

I understand your concern regarding Bofort Von Frankenstein last will and testament. The fact that you, his grandson, appears to be left out of his will seems suspicious in nature and warrants further investigation. Upon a cursory look of the facts you shared with me on our prior conversation, there appears to be several issues of concern that I will go into further detail on.

- ✓ 1. Your father's age in regards to capacity, undue influence, and fraud
- ✓ 2. Validity of the execution of the will
- ✓ 3. Intestacy issues (Anastasia parentage)
- ✓ 4. Potential malpractice issues with regards to Attorney Adolph

✓ In order for anyone to execute a valid will it must comply with the probate code. There must be a showing of intent and capacity. A person must be 18 years of age or older, know the extent of their property, the natural objects of their bounty and understand they are executing a will.

We have quite a few issues here. True, your grandfather is more than 18 years old, he was in fact 93, the fact that he was worried what was left of his massive fortune tells us he understood the extent of his property, the natural objects of his bounty include his wife, Frau Blucher, and you his grandson. Furthermore, the fact that your father made an appointment with his attorney Fritz means he understood the nature that he was creating a will.

An argument could be made that perhaps your grandfather's capacity is at issue here. If it could be shown through extrinsic evidence that

- he was becoming forgetful in nature
- had any delusions that were the product of a sick mind
- could not deal with the realities of life

We could make an argument with an accumulation of factors to dispute his capacity. Although you did not provide me with any specific facts to back this up, it warrants more thought on your part as to whether or not this might help you think of recent events and your grandfather's actions.

Where I see greater cause for concern has to do with undue influence. This is where we would show your grandfather was susecible, that Frau has opportunity to influence him and based on this influence his will shows an unnatural result. Here, your father wanted to meet up with his attorney Fritz. When he was driven by his step-daughter, Anastasia and his wife Frau, they did not go to his attorney, but rather an attorney that was picked out by Frau. Through further investigation we now know that Frau and Attorney Fritz were having an affair. It has been documented that your grandfather was very nervous about this meeting, but obviously stayed to continue with the process. If we had facts to show that he felt he could not go against his wife and step-daughter, this could strengthen our argument that there was

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undue influence.

Your grandfather wanted Frau to have a good income for life, he could have been setting up a life estate or support trust. Which ever is true, the fact that your grandfather originally wanted the remainder of his estate to go to you, but upon execution, you were completely left out of the will is a testament that there was an unnatural result. It is not unusual for a husband to want to care for his wife for her remaining years, but to have the remainder of his estate upon his wife's death go only to her daughter is not natural by any means. Frau would have to rebut a presumption of undue influence, if she could not, the will would fail and would be distributed according to intestacy. We will discuss intestacy later in this letter. I do believe we would have a strong argument here and the courts would not probate the will.

There is also the issue of fraud. There is Fraud in the Inducement and in the Execution. We would be looking at Fraud in the Inducement. This is another area of Frau's ~~incestuous~~ relationship with Attorney Adolf could benefit us in our argument. Again, this has to do with the remainder of the estate upon Frau's death going only to Anastasia. Your grandfather's intent was to have the remainder of his estate go to you, but the drafted will did not dictate that, but rather Anastasia gets everything. Although Frau

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could argue that Bofort knew Anastasia was his biological daughter, but because of social pressures never officially claimed her as such. Leaving the remaining portion of his estate to Anastasia, his daughter, this is not an unnatural result. Children born out of wedlock still receive the same benefits as those born into the marriage. Although it is not certain your grandfather knew of Anastasia actual parentage, DNA tests confirm this.

Our strongest argument though goes to the formalities of the execution of the will. A will must be signed by the testator, and two disinterested witnesses, it must be either signed in their presences or acknowledged by the testator that the signature is his signature. Here, we have attorney Adolf as the first witness, but the second witness was his secretary. There is nothing to indicate that they were both there at the same time or that your grandfather acknowledge his signature to the secretary or the fact that it was his will. If this is not strictly complied with, the will could fail. Although I would assume the attorney would come back with the argument that his is an attorney that drafts wills for a living. He watched your grandfather sign the will and perhaps could argue there was line of sight for his secretary as your grandfather did so. But I believe this is our strongest argument and should prevent the courts from probating the will and having it fall by intestacy.

If the will were to fall by intestacy, we have several factors to consider.

- Frau would receive all community property as she already owned 1/2 of it, she would be granted your grandfather's 1/2.
- Frau would also receive all quasi-community property. Again, she already owned 1/2 of it, she would be granted your grandfather's 1/2.
- Separate property on the other hand would be divided up based on who was still alive.

but with Separate property we have an additional issue regarding Anastasia. Anastasia could still receive here share of intestate property if it could be proven that she was actually your grandfather's daughter. She would then receive her share based on being a pretermitted child in that your grandfather did not know of her existence as his actually biological daughter. With DNA tests showing a 99.9% certainty that she is your grandfather's biological daughter, she would received a portion of the estate through an intestate share. Here, your grandfather had 2 children, your father and Anastasia. This means Frau would receive 1/3 of the separate property and the other 2/3 would be split between Anastasia and your father. Depending on the jurisdiction, there is splitting the property per capita by representation or per stirpes.

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But the result would essentially be the same. Your father's share of the separate property would pass along to you as you would step into his shoes.

We also have a potential malpractice suit. Attorney Adolf was the drafter of the will, but was carrying on an intimate relationship with Frau. This could be cause for a tortious interference suit. In that he had a legal duty to your grandfather to represent him in his expert capacity as an attorney, he breached that duty by carrying on a relationship with your grandfather's wife and not listening to your grandfather's wishes. But for that breach, you would have been named in his will. Adolf's malpractice was both the actual and proximate cause of your loss in being named in the will.

This is a difficult situation. Not only have you lost your grandfather, but you are also looking at a rather small portion of his estate. The fact that Anastasia is most likely your grandfather's daughter legally permits her to retain a portion of the estate.

I look forward to discussing more of this with you at our next meeting to see how we want to proceed.

Sincerely,

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===== End of Answer #2 =====

3)

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===== Start of Answer #3 (1681 words) =====

1) What are the respective property interests of the family members:

90

**Hugh's sister, Fannie:** Hugh's testamentary trust creates a life estate for Fannie. From the life estate, Fannie is entitled to both mandatory distributions of the total income of the trust and also additional principal, at the discretion of the trustee, for her health, maintenance, and support. She may alienate her

interests in her mandatory distributions, which are also alienable to any and all of her creditors (who stand in the beneficiaries shoes). As to discretionary support payments, she has no right to alienate them as they are for her support only (the intended purpose). Thus, most of her creditors may not access such discretionary support payments either; although, exceptions exist.

**Hugh's wife, Clara:** Clara has a vested remainder in the trust. She is entitled to receive the balance of the Trust upon the death of Fannie, should she survive her. This would terminate the trust and the balance would merely pass to Clara. She may then do with the balance whatever she wish.

**Clara's heirs:** Clara's heirs have a shifting executory interest, which they would receive if Clara does not survive Fannie (which, given Fannie's condition, she is likely to survive her).

As a corollary issue, there are issues which relate to this portion of the gift, as it is considered a class gift to the heirs of Clara--should she not survive Fannie. Should it be an issue, a courts would need find that Clara's heirs are an ascertainable beneficiary in order for the gift to be valid within the trust. Modernly, Courts would look at the heirs of Clara as they exist upon her death, in order to make distributions to them as set forth in the trust documents. Such heirs would receive equally from the trust corpus in this unlikely scenario of Clara predeceasing Fanni.

Should she have no heirs, her estate passes intestacy, and (in light of having no heirs), the property would escheat to the government.

**Hugh's nephew, Greeden:** Greeden's interest in Hugh's estate is legal, as he is only the Trustee. He has no equitable interest, however, which belongs to the aforementioned beneficiaries who hold the life estate and remainder, respectively. In light of his legal interests, however, he does have various powers and duties in his capacity as Trustee. He owes a fiduciary relationship to all beneficiaries. Many of his duties are discussed hereinbelow, as they relate to question 2.

Additionally, Hugh also has 100% interest in Fannie's estate. Because of the residuary clause in Hugh's trust, leaving the remainder to Clara, Fannie's estate has no interest in Hugh's trust.

**Hugh:** Hugh is the grantor/settlor. Neither him, nor his estate, have an interest in the trust. There is no reversion interest in light of Clara being a vested remainder with a residuary which creates a shifting executory interest.

**2) What problems or potential breaches of trust do I foresee:**

**Duty of Impartiality and Duty to Make Discretionary Support Payments**

✓ Trustees have a duty to remain impartial with respect to balancing of interests between life estate beneficiaries and remainder beneficiaries. A trustee must provide adequate income as per the terms of the trust, etc., while also preserving the principal for the remainder beneficiary. In California, a Unitrust election is possible; whereby, a set percentage of the income may be elected to pay to the life estate to preserve the remainder's interest. This, however, is not an issue here, as Greeden isn't likely to preserve Clara's interest.

Here, Greeden has a discretionary duty to pay to provide support to Fannie for her health, maintenance, and support from the trust principal. In light of Greeden's harbored resentment towards Clara, it's possible he might be less likely to preserve her remainder interest in the trust, and abuse his discretion in making payments to his mother Fannie, as to her support, maintenance, and health; thereby, eliminating some of the trust principal.

In light of these potential issues, I would speak to Greeden very carefully as to be sure to detail his duties to act in good faith and to act reasonably with respect to the duty to provide discretionary support payments.

✓ **Duty to Inquire**

Further, as a corollary of the above issue, if Greeden has laid his resentment to rest, he must be sure that he acts in good faith and reasonably as to making these support payments to Fannie. For example, perhaps if Fannie wishes to receive payments in favor of holding them for Greenen (as her estate is going to him), Greeden will need to ensure that he is not paying more from the trust than is actually necessary for Fannie's health, support, and maintenance.

Essentially, he also has a duty to make a good faith inquiry only as to her reasonable needs for support, etc. Here, the abuse is potentially located within the beneficiary (Fannie), but Greeden must, nevertheless, make good faith inquiries, and follow-up to ensure accuracy, regarding only what is necessary for her health, maintenance, and support. Any more, or a lack of good faith and reasonableness, would leave him potentially liable for breach.

**Duties of Loyalty**

Trustees also have duties of loyalty to the beneficiaries, including avoiding all self-dealing and avoiding conflicts of interest. This essentially is a duty to place the beneficiaries interest above trustee's at all times, and not to take advantage of one's position in a transaction (self-dealing), and to avoid conflicts of interest in which any transaction or relation is between or relates to a potential family member.

Here, the trust requires Green to remit mandatory income payments to his mother, and make discretionary support payments to her as well. Thus, the Trust permits him to, essentially, participate in a conflict of interest (making payments from the Trust to his mother).

This duty relates to impartiality, in that he must still consider Clara's interest as a remainder in the Trust, despite the trust's express language.

✓ Further, in light of Greeden's resentment, I might anticipate him overstepping his duties under the trust as to self-dealing and conflicts, and either giving too much to his mother (a co-breach of duties regarding loyalty and impartiality), and/or participating in some self-dealing in light of him being upset he didn't have the remainder interest.

Thus, Greeden must be very careful as to both the types of transactions he enters into, so as to not personally benefit from any transactions, and as to the discretionary payments he remits to his mother.

✓ **Duty to Inform and Account**

Upon request of a beneficiary, a Trustee has a duty to provide accurate and complete accounting regarding the trust and all trust documents. This, like some of the above, might also be prone to abuse. Thus, it would be important for Greeden to understand the importance of keeping accurate records, maintaining good accounting, etc.

Should Clara request accounting from him, he must be sure to provide a full and accurate accounting in a timely matter--setting aside any resentment he has against her. Further, I would also counsel Greeden that prior to entering into any transaction and/or prior to making any substantial (or even small) changes regarding trust assets, that he approach the court for authorization and an order to do so--setting forth that such actions appear reasonable, and in good faith, etc. This, and properly requesting payment for himself, must be done in the Court, and is likely prone to breach given the facts.

**Duty of Prudence**



Additionally, I would inform Greeden of his duties regarding the trust investment, as they may also be prone to breach of trust between the parties. In particular, California employs the prudent investor rule as to maintenance of a trust's investments, in particular giving consideration as to the entire portfolio as to such investments. This includes acting as a prudent investor would, under the circumstances, and taking into consideration the trust assets, terms of the trust, the beneficiaries (both of them, and their interests, and all other factors relating to the trust. The Duty of Prudence also relates to a duty to diversify trust assets so as to best minimize risk and also increase trust profits, etc.

For example, Greeden might be liable for breach if he were to take the approach of maximizing the trust corpus over the short term, in favor of high risk investments--which could provide significant funds to Fannie, but harm Clara. I would counsel that he must take particular care to, again, remain impartial, and always consider *both* the life estate and remainder interest when making any investment related decisions (or even choosing not to make investment related decisions if not doing so might cause harm to the remainder's interest.

Thus, in spite of Clara, he must refrain from improperly investing in trust assets, and also ensure her interest is protected and that the principal might grow with his investments--so that stillness doesn't harm her. While this relates to impartiality as well, he has the further burden of having to act as a prudent investor under this duty. And, given the seemingly large size of the estate, I might counsel Greeden to seek outside support and, perhaps, delegate such duties to limit his own liability from Clara--who may, herself, have issues with Greeden.

### **Other Duties**

Further, Greeden's right to any income for his work as trustee in the trust is also prone to abuse. I would duly inform him of the most he is able to take and all relevant sections of the probate code which relate to Trustee payments. He may not take more, and must fully account in front of the court before taking anything.

Also, he has duties which relate to this as to earmarking and against comingling assets. He must ensure that, despite his frustrations and resentment, that he does not commingle and/or use any assets which belong to the trust with his or for himself, and he must act as to trust funds in his capacity as trustee--not himself individually. Again, despite being angry, he must not be "willy nilly" as to all duties; else he may be liable for all related damages.