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Dear Rainbow School,

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There are two main issues that arise in the administration and distribution of Aunt Mable's trust. The first issue is whether Uncle Joe as trustee breached any fiduciary duties that he owed to use as beneficiaries under the trust. The second concern deals with charitable trusts and whether the City of Euphoria would qualify as having a valid charitable purpose.

### Breach of Trustee's Duties

First lets examine the trust. Trusts can be either mandatory or discretionary. Here, Aunt Mabel created a discretionary trust. The trust gave Joe the discretion to determine who to distribute the trust property or trust res to. Thus Joe could decide which charity out of the four he could distribute the res to. However, In CA for trusts that are discretionary, the trustee must still make his decisions reasonable and must not exercise his discretion arbitrarily, unless stated otherwise in the terms of the trust. If it is discovered that Joe for any reason acted arbitrarily or acted unreasonably in his distribution could be grounds for a breach. However, more information would be needed to make this determination.

In addition to acting reasonable in exercising his discretion, a trustee has many other duties he owes to Rainbow School. You and the three charities are beneficiaries under the trust and own equitable title to the trust property. Uncle Joe as trustee owns legal title. As trustee Joe owes to you a broad range of fiduciary duties. The Broadest of all the duties is the Duty of Loyalty. The

duty of loyalty states that the trustee must act solely in the beneficiaries best interest. Stemming from this duty of loyalty is a subset of other related duties. Lets examine these duties and see if there is any possible breach:

### Duty of Impartiality

The duty of impartiality arises when there are multiple beneficiaries. The duty requires that the trustee be reasonable in respecting the interests of each beneficiary. The duty however, does not require absolute fairness if the grantor(aunt Mabel) expressed a preference for one beneficiary over another. Here there is no indication that Aunt Mabel preferred any one of the charities. So, Joe should have treated each charity fairly. Here the facts show that he distributed the res equally.

### Duty Against Self-Dealing

The duty of against self-dealing prohibits a trustee from gaining a personal advantage in administering the trust. This can arise if a trustee has a personal stake in the transaction. The further inquiry rule states that if such self-dealing is established no further inquiry is made and a breach of the trustee's fiduciary duties is presumed. In CA, this duty against self-dealing is reflected in the duty to avoid conflicts of interest. Similar to the no further inquiry rule a presumption of breach of duties is created when a trustee gains an advantage in a transaction with the trust. Here the facts show that Joe used the income from the residue estate for living expenses and took a trustee fee. Nowhere in the express language of the trust does it state that Joe could use the income for living expenses. This use of funds could violate the duty against self-dealing.

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Further the use of the funds could implicate the duty not to commingle funds and to keep the funds separate from the trustee's personal funds.

### Duty to Take Control of Property & Administer Trust

Joe failed to distribute immediate. The trustee has a duty to administer the trust and take control of the res. He should have distributed the res in a reasonable time. Absent a valid reason for the tardiness of distribution, Joe may have violated this duty as well.

### Duty To Account and Inform

Joe should provided accounting and information to Rainbow during the mutiple years he sat on the trust res. A failure to account and inform beneficiaries of actions in the administration of a trust could constitute a possible breach.

The next issue is whether the City of Euphoria's building of a opera house that profited the city violated the Charitable Trust.

Aunt Mabel created a Charitable Trust. A trust is charitable if it has a charitable purpose. A charitable purpose includes trust that combat poverty, advance education and religion, are for government or municipal purposes, promote health or are for the benefit of the community as a whole. The Rainbow school obviously qualifies under the advancing education category.

Aunt Mabel expressly stated if the res was to go to the City of Euphoria it was for the purchase of park land only and not to be used for city facilities. Although

governmental or municipal purposes qualifies as a valid charitable purpose, the trustee is free to mandate the ways in which the money is to be used so long as it is legal. It appears that the City may have breached this express requirement by building a for-profit opera house. The City was only to use the res to purchase park land and instead bought a lot to build a city facility. This would seem to be a direct violation of the express requirement in Mabel's trust. The City could argue that the opera house benefited the community as a whole and should be permitted; however, the express terms of the trust should control here.

Does Acme Explosives Qualify as a Charitable Trust?

As stated above, a charitable trust must have a charitable purpose. Although three of the charities seem to qualify under at least one of the categories, Acme Explosives may not. Acme Explosives is for Wiley Coyote and his own personal pursuits. Depending on what activities Wiley Coyote is involved with, it may not qualify as a charitable purpose. If this were the case, then the property distributed to Acme should be redistributed to the other valid charitable trusts.

Potential Options:

More information is needed to determine whether Joe breached, actually breached, his duty and whether the City violated the requirements of the charitable trust. If it is determined that Joe did breach his fiduciary duties as trustee, he can be liable for damages. Trust law attempts to make whole the victim of the breach or place them in the position but for the breach. If it is discovered that Joe

✓ should have given more or all of the property to Rainbow but for his breach, the court could award you the property you should have received. If the City of Euphoria violated the terms of the trust they should be liable for the breach. Although there is some evidence of a potential breach on the part of Uncle Joe and the City, more information needs to be gathered. As a beneficiary you are entitled to a copy of the trust unless stated otherwise in the terms of the trust. In CA, once a trust has become irrevocable or upon the death of the grantor you can request a copy of the trust. Access to the trust will allow you to determine whether Uncle Joe was permitted to use the income to pay for his personal expenses or whether he was justified in such a long delay before making distribution.

# Blue Book

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INSTRUCTOR *De Meo*

EXAM SEAT NO. \_\_\_\_\_

SECTION *02*

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GRADE *85*

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## Trustee

A trust will not fail for want of a trustee. The court will appoint one. This trust is signed and notarized, it contains res, he had the intent to create it, and we will assume he had the capacity, and at least one ascertainable beneficiary to whom the trustee will owe a duty. Relatives are ascertainable as beneficiaries of a trust. And it was in writing to satisfy the statute of fraud for the transfer of the real property.

✓ Jimmy's trust is valid.

## Power of Appointment

Jimmy's mom was the donor creating a power of appointment in Jimmy (donee) to designate the new owner of the appointive property.  $\frac{1}{3}$  of Jimmy's mom's estate. The objects were the donor's grandchildren. The grandchildren whose exercise the power would be favored in would be the appointees. ~~The donee was not~~

If the donee fails to exercise the power it goes to the takers in default. If there are no takers in default it ~~goes~~ reverts to the donor's estate. If there is a residuary clause it will be transferred accordingly. Otherwise it will pass by the rules of intestacy.

A general power of appointment is one in which the donee can exercise the power in his favor, his estate or his creditors. For tax purposes a general power is treated as the property being owned by the donee & will be included in their gross estate.

A special power of appointment is one in which the donee cannot exercise the power in favor of himself, his estate or his creditors. For tax purposes a special power of appointment is not included in the donee's gross estate.

Special powers of appointment can be exclusive or non-exclusive. Exclusive, the donee can choose the object to appoint to at the exclusion of others. Non-exclusive the donee must appoint some property to each object.

In this case it is a special power of appointment that is exclusive. Jimmy cannot appoint himself, but he can choose ~~whichever~~ any grandchild he wants or all of them.

Presently Exercisable / Testamentary

If Jimmy had a revocable living trust the power would have been presently exercisable because the only term used by his mother was



in his trust. However, it was not exercised and therefore when Jimmy died the trust became irrevocable so it is a testamentary transfer.

### Valid Exercise of Power

An exercise of a power of appointment is only valid if it is exercised specifically by the terms of the creating document. If there is an ineffective appointment the exercise is deemed as if the donee had failed to exercise the appointment. Therefore it would go to takers in default, & if none revert back to Jimmy's mom's estate.

In this case it was an ineffective appointment. Mom wanted Jimmy to choose among her grandchildren not all of the relatives. ~~There are no default takers.~~

The exercise by Jimmy will be treated as though he failed to exercise his power unless it can be saved by allocation or capture.

Allocation refers to a special power of appointment which is what Jimmy has. The allocation doctrine applies when the donee of a special power creates an instrument which purports to blend the appointive property with his own personal property ~~it with, the~~ the allocation doctrine will: (1) unblend the property and (2) first, and only

allocate the appointive property & distribute among the eligible appointees. After that has been satisfied if the donee, Jimmy, has enough of his own personal assets, the allocation will be carried out as necessary to try to achieve his dispositive scheme.

~~Therefore~~ Jimmy had an exclusive power of appointment which meant he could choose any of the grandchildren. Interpreting his intent, by using the term "relatives" he would all inclusively mean each and every grandchild. Therefore, the  $\frac{1}{3}$  of Mom's estate would be divided equally among each and every grandchild who was living at his death. Any of Jimmy's remaining assets would go to all of the relatives (including the grandchildren) ~~at~~ alive at his death.

### Rule Against Perpetuities

Does not apply. At Jimmy's death all living beneficiaries are fully vested & entitled to distributions. No contingencies have been attached.