

Trusts
Prof. DeMeo
Spring 2011 Exam
Issue Outline for Question 1

Joe's Duties as Trustee

1. Duty of Loyalty
 - a. Duty not to commingle
 - b. Duty to Earmark
 - c. Self-Dealing
 - d. Duty of Impartiality
2. Duty to Inform
3. Duty to Account
4. Breach
 - a. Consequences
 - b. Damages
 - c. Surcharge
 - d. Removal of Trustee with accounting
5. What are Durable Banks duties?
 - a. File suit to retrieve property from Acme
 - b. File suit to retrieve property from city

Charitable Trust

1. Purpose
 - a. Charitable?
 - b. What is the use intended?
2. Elements of a valid trust
 - a. Trustee
 - b. Corpus
3. Cy Pres
 - a. Gift to Acme – Valid/Void
 - b. City violates use condition (condition subsequent)
 - c. Who gets if Void?

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Issue Outline for Question 2

1. Is Jimmy's trust valid?
 - a. Trustee?
 - i. No, but a trust will not fail for want of a Trustee. The court will appoint a trustee. Jimmy's nearest relative.
 - b. Corpus
 - i. Yes. Jimmy's property.
 - c. Beneficiary
 - i. Ascertainable? Probably
 - ii. No survivorship requirement, so possibly too broad
 - iii. Court will assume Jimmy meant relatives living at his death – rule of construction.
 - d. Purpose – Private = valid
 - e. Execution
2. Power of Appointment
 - a. Is the Power of Appointment exercised properly?
 - i. Jimmy's identification of the power in his mother's estate is probably enough specificity to avoid vague residuary exercise of the power of appointment.
 - b. Are the objects permissible and reasonably ascertainable?
 - c. Is Jimmy's language of exercise sufficient, or does it violate the express terms of the power?
 - d. Relatives vs. grandchildren.
 - i. Relatives are not permissible objects
 - ii. Grandchildren are relatives of Jimmy
 - iii. Courts might save the appointment to the grandchildren because they meet the conditions.
 - e. Do the grandchildren get something from Mom's estate?
 - f. Allocation Doctrine applies
3. Class Gift
 - a. Relatives may be too broad a term. However, if the court can find some evidence that the grandchildren are the intended beneficiaries then the gift is saved. Otherwise, the gift fails for indefinite beneficiaries.
 - b. Is there a Rule Against Perpetuities problem?
 - i. There is with regard to the power of appointment.
 - ii. But the interests are certain to vest or fail within the period of the Rule and Jimmy's life, because he is a measuring life. Upon his death the power is exercised, or not, and the interests will vest, or not, then.