

Trusts Question

Prior to his death, Settlor created a valid irrevocable trust and named Trustee as trustee. The trust instrument specified that:

- 1) Trustee shall distribute trust income to Trustee's adult children, David and Edna, in such amounts as Trustee, in Trustee's absolute and uncontrolled discretion, shall determine.
- 2) Trustee may distribute all trust income to either David or Edna.
- 3) Trustee shall have the power to sell any trust property.
- 4) This trust shall terminate in 10 years and, upon its termination, Trustee shall distribute 60% of trust property to David and Edna, in equal shares.
- 5) In view of my long-standing interest in the area of education, Trustee shall distribute all remaining trust property to my alma mater, Business College.

During the last year of the trust, Trustee paid all trust income to David. Trustee's decision was motivated solely by her personal disagreement with Edna's political opinions.

During the same year, Trustee decided to sell certain trust assets. Solely to avoid paying a 6% sales commission that would have reduced the trust's sales proceeds, Trustee, in her personal capacity, purchased these assets for their undisputed fair market value. After the sale, the assets unexpectedly increased in value. Trustee recently sold these assets to a bona fide purchaser for a significant profit and retained the profit for herself.

The trust has terminated, and Trustee has discovered that Business College no longer exists. Trustee seeks judicial approval to distribute Business College's share of the trust to Settlor's estate.

1. Did Trustee breach any fiduciary duty by paying all trust income to David during the last year of the trust? Explain.
2. Must Trustee return to the trust the profit she retained from assets she purchased from the trust? Explain.
3. Should a court authorize Trustee to distribute trust property that was payable to Business College to Settlor's estate? Explain.