2)

======== **Start of Answer #2 (1506 words)** ========

1. What is the likely result of Henry (H)'s suit against Sis?

Creation of Trust

A settlor can create a trust if there is (1) manifestation of intent to create a trust; (2) trust property; (3) ascertainable beneficiary; (4) valid trust purpose.

Manifestation of intent to create a trust

Here, Wynn (W) manifested her intent to create a trust by setting up an irrevocable trust, putting her $100,000 she had saved from her earnings during marriage, and appointing SIs and H as the co-trustees.

Trust property

W put $100,000 she had saved from her earnings during marriage is the trust property.

Ascertainable beneficiary

W directed one-half of the trust income to be paid to herself for her life and the other one-half to be paid to Charity, and all remaining assets were to go to Charity upon her death.

Therefore, Charity and W were the beneficiaries and they are ascertainable as they can be easily identified.

Valid and legal trust purpose

The purpose of this trust was to support W for her life and to support for disaster relief of the Charity during W's life and for any purpose after her death. These purposes were not illegal so they are valid trust purpose.

Revocability of the trust

Unless there is express intent, trust is usually revocable during the settlor's lifetime. However, the facts state that W set up an irrevocable trust. Therefore, the court will respect this and treat it as irrevocable trust.

Charitable Trust

A charitable trust may be created for (1) governmental purpose; (2) promotion of public health; (3) promotion of public interest; (4) advancement of education or religion; or (5) other purposes.
Here, the half of the trust income was to be paid to the Charity so one-half of W's trust was a charitable trust.

Trustee as a fiduciary

Trustee is necessary to maintain the trust but the court does not defeat the trust because of lack of a trustee. A court will appoint a trustee if there is none appointed by the settlor. A trustee is a fiduciary to the trust and should not breach the enumerated duties.

Duty of care

A trustee must administer the trust as a reasonable person would manage her own property.

Here, Sis sold all the XYZ stocks without consulting with any other investment experts and made a sole decision without approval of W or H.
Sis also did not consult with any real estate expert regarding purchase of the house and bought it by her sole decision.

Sis breacher her duty of care.

Duty of loyalty

A trustee for a trust owes a duty of loyalty to the beneficiary and she or he must avoid conflict on interest.

Here, Sis sold all the XYZ stock and invested the proceeds and invested the proceeds in a new house, in which she lived rent-free.

Although as a trustee, she can make some decisions regarding investment, Sis cannot live in the house and pay no rent, which solely serving her own interest and breaching her duty of loyalty.

Facts do not show whether W was informed on this or whether W allowed Sis to live in the house. Unless W was informed about the purchase of the house and allowed Sis to move in without paying any rent, Sis breached her duty of loyalty as a trustee.

Duty to invest

Under Prudent Investor Act, a trustee must invest as a reasonable person would manage her own property and she must also diversify the investment. A trustee's single investment transaction will not be evaluated but the tola portfolio as a context will be evaluated.

Sis will argue that she had a duty to invest for W and that was why she sold all XYZ stocks and invested in a new house, because she determined that it would be the better investment.

However, this argument will fail because she made a sole decision without asking W or co-trustee H about the decision and she also lived rent-free. Additionally, Sis did not diversify the investment and she put all the proceeds in a house. Although the house increased in value 20%, Sis still breached her duty of loyalty.

Remedies

Because Sis breached her trustee's duties, H will be able to prevail on this action.

Because Sis took the house for rent free, Sis will be ordered to pay the fair amount of rent that she was supposed to have paid while she was living in the house.

2. What is the likely result of Henry (H)'s suit against Charity?

H will argue that Charity used the trust income for purposes that are not allowed under the trust purpose, which was disaster relief, and H will pursue the return of the income spent for administrative costs.

Charity will argue that because there was no disaster during W's life, the purpose may be modified upon the need for the Charity under Cy Pres doctrine.

Cy pres

Under the Cy Pres doctrine, if the original purpose of the trust cannot be served exactly, the court will not defeat the trust but rather attempt to keep the trust if the material purpose of the trust can be maintained.

Here, Charity will argue that the material purpose of this charitcable trust was to support the Charity. W made it clear that after her death, all remaining assets, including the one-half of the assets that was paid to W during her life, were to go to Charity and W did not designate any limitations on the use of the money. Charity will argue that this shows W's intent to create a charitable trust on the material purpose to provide general financial support of its operation.

Conclusion

Since the facts do not state that there were any disasters, the court is likely to agree with the Charity and H might not be able to prevail on this action.

3. What rights, if any, does Henry (H) have in the trust assets according to California law?

California is a community property (CP) state. All property acquired during marriage are presumed to be CP. All property acquired by either spouse before or after marriage is her or his SP. All property acqured by either spouse by gift, bequest, or devise is his or her SP even though it is acquired after marriage. Rents, interests or profts from a spouse's SP is also his or her SP.

Quasi-community property is all property acquired by spouses while domiciled in non-community property state, which would have been CP, had the parties been domiciled in CA at the time of acquisition.

Courts will determine the character of property by (1) presumptions; (2) transmutations; or (3) tracking down the source of funds used to acquire the property.

At divorce, the CP will be subject to equal division in kind unless special exception applies.

Characterization of Trust property of $100,000

Here, facts state that Henry (H) and Wynn (W) lived in a non-CP state during the first 10 eyars of their marriage and then they moved to CA. Facts also state that W kept all her earnings in a separate account. W's earnings in the couple's original domicile was SP.

However, as H and W moved to CA, each spouse's earnings are categorized as CP under CA law. Therefore, W's earnigns during marriage will be categorized as CP and H has a right to one half of the amount under the doctrine of equal division. Here, the facts state that
W set up a trust with $100,000, which is CP, and appointed SIs and H as co-trustees. The trust is consisted of W's earnings that she has saved in the non-CP state and her earnings in CA. W's earnings in the non-CP state will be treated quasi-CP and it is treated the same as CP.

The assets in the trust is CP and therefore, H has a one half interest in the trust property.

Spouses' Management and control

Each spouse has a right to equal management and control. A spouse who is a primary manager of property must give written notice to the non-managing spouse if she is selling the property.

Here, W invested all assets in XYZ stocks without giving any notice to H and the

value of the stocks later decreased in value by 10%.
H will argue that thehe spouses are subject to fiduciary duties to each other in their confidential relationship and W should have notified H properly. H will argue that because W breached her fiduciary duty and sold the stoks without his knowledge, which resulted in the loss of the value of property, H is entitled to the 100% of CP.

W may argue that H already knew about the investment as he was a co-trustee and therefore, she did not have to separately notify H.

Conclusion

Although W did not specifically notified H on the purchase of the stocks, the court is not likely to hold W liable for her purchase as breach of fiduciary duty.

H has a one half interest in the trust asset as it was CP.

Question #2 Final Word Count = 1506

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