

EXAMINERS' ANALYSIS OF QUESTION NO. 12

1. Trusts and estates in Michigan are statutorily governed by the Estates and Protected Individuals Code ("EPIC"), MCL 700.1101 et al.

1. EPIC provides as follows with respect to the creation of a valid trust:

(1) A trust is created only if all of the following apply:

(a) The settlor has capacity to create a trust.

(b) The settler indicates an intention to create the trust.

(c) The trust has a definite beneficiary or is either of the following:

(i) A charitable trust.

(ii) A trust for a noncharitable purpose or for the care of an animal . . .

(d) The trustee has duties to perform.

(e) The same person is not the sole trustee and sole beneficiary.

MCL 700.7402(1)(a)-(e). A charitable trust is one that is created "for the relief of poverty, the advancement of education or religion, the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes, any purpose described in section 501(c)(3) of the internal revenue code or any other purposes the achievement of which is beneficial to the community." MCL 700.7405(1).

Margo's pronouncement at the awards banquet satisfied all of the statutory elements to create a valid charitable trust. Margo, as the settler, (a) apparently had the capacity to create a trust since the facts do not suggest otherwise; (b) clearly

indicated her intention to create a trust; (c) stated her purpose in creating a trust, which was to advance education in the arts and benefit the community so as to qualify it as a charitable trust; (d) charged the trustee museum with the duty of displaying the collection; and (e) did not create a situation where there was just one beneficiary who was also the sole trustee. The fact that there was no writing creating the trust is not fatal to its validity, as "a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence." MCL 700.7407. It is very likely that such clear and convincing evidence exists to support creation of a valid charitable trust in the instant case for the reasons stated above--including also the fact that her oral declaration at the awards banquet was witnessed by 300 people.

2. According to EPIC, "[a]ny part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will." MCL 700.2101(1). Because Margo had no surviving spouse, and no surviving descendant or parent, the portion of her estate not disposed of by her valid will (i.e. the art collection items owned by her at the time of her passing) would ordinarily have been evenly distributed between her two brothers by representation. MCL 700.2103(c). However, EPIC further allows a decedent by a will to "expressly exclude or limit the right of an individual or class to succeed to property of the decedent that passes by intestate succession." MCL 700.2101(2). Because Margo in her valid will excluded Dennis from any distribution of the art collection items owned by her at the time she passed away, Blake would be entitled to all of those assets. The fact that Blake is Margo's half-brother is of no consequence since according to MCL 700.2107 "[a] relative of the half-blood inherits the same share he or she would inherit if he or she were of whole blood."

If it is determined that Margo created a valid trust during her lifetime with respect to the \$700,000 portion of her art collection that was in storage, Dennis and Blake would each take under Margo's will an undivided \$200,000 ownership interest in Margo's home, and Blake would also take the entire home art collection valued at \$500,000 through intestate succession. However, if it is found that Margo did not create a valid trust during her lifetime, Dennis and Blake would still each take an

undivided \$200,000 ownership interest in Margo's home under her will, but Blake would succeed to not only the \$500,000 portion of the art collection that was located in Margo's home but also the \$700,000 portion that was in storage.