

JULY 2012 MICHIGAN BAR EXAMINATION MODEL ANSWERS

ANSWER TO QUESTION NO. 1

(1) A "trust" is defined as the right to the beneficial enjoyment of property to which another holds legal title. The property is held by the trustee at the request of the settlor for the benefit of a third party (the beneficiary). Black's Law Dictionary, 8th Ed.

In order to establish a valid trust, the trust must comply with the requirements contained in the Michigan Trust Code, MCL 700.7101, et seq. Michigan recognizes four methods of creating a trust: (1) the transfer of property to another person as trustee during the settlor's lifetime or by disposition taking effect upon the settlor's death; (2) a declaration by the owner of the property that the owner holds identifiable property as trustee; (3) the exercise of a power of appointment in favor of a trustee; and (4) a promise by 1 person to another person whose rights under the promise are to be held in trust for a third person. See MCL 700.7401(1) (a)-(d).

No matter which method is chosen, a trust is created only if five statutory requirements are met: (1) the settlor has the capacity to create a trust; (2) the settlor indicates an intention to create the trust; (3) the trust either has a definite beneficiary, is a charitable trust, is a trust for a non-charitable purpose, or is a pet care trust; (4) the trustee has duties to perform; and (5) the same person is not the sole trustee and sole beneficiary. See MCL 700.7402(1) (a)-(e).

Lastly, the Michigan Trust Code specifically permits the creation of oral trusts. MCL 700.7407 states that "[e]xcept as required by a statute other than this article, 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." Thus, while a trust in real property cannot be established verbally, see MCL 566.106, a trust in personal property may be established by oral declaration. *Osius v Dingell*, 375 Mich 605 (1965); *Harmon v Harmon*, 303 Mich 513 (1942).

In this case, it appears that a valid oral trust was created in April 2010. Regarding the method of creation, the facts indicate that Dennison, the owner of the property, declared that he held the identifiable property (500 shares of Acme Anvil Company stock) as trustee. Thus, MCL 700.7401(1)(c) is satisfied.

The requirements for the creation of a trust also appear to be satisfied. Nothing in the facts calls into question Dennison's capacity to create a trust, and he clearly indicated his intent to create a trust. Moreover, the trust has definite beneficiaries---Dennison, Scott, Ed and Paul. Additionally, the trustee (Dennison) had duties to perform: he had a duty to manage the trust assets in good faith and to pay for the vacation expenses. Lastly, the same person was not the sole trustee and sole beneficiary. While Dennison was the sole trustee, he was not the sole beneficiary. Therefore, MCL 700.7402(1)(a)-(e) appears to be satisfied, and a valid oral trust was created in April 2010.

(2) As indicated above, a trust need not be in writing, "but the creation of an oral trust and its terms may be established only by clear and convincing evidence." Dennison's statement, announced to all of the patrons and employees at the local diner, would appear to satisfy a "clear and convincing" evidentiary standard.

(3) Generally speaking, the terms of a trust are to be carried out as nearly as possible in order to give effect to the intent of the settlor. *In re Maloney Trust*, 423 Mich 632, 639 (1985).

While the terms of the trust normally prevail over the provisions of the Michigan Trust Code, MCL 700.7105(2) sets forth a list of requirements that may not be dispensed with in favor of the trust terms. MCL 700.7105(2)(c) provides that the requirement contained in MCL 700.7404 prevails over any term in the trust. MCL 700.7404, in turn, provides that a trust may be created "only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve."

Most of the enumerated expenses appear to satisfy the requirements of MCL 700.7404. Lodging, food and beverages, and fishing and hunting gear are neither unlawful nor contrary to public policy. Therefore, those terms of the trust are valid. However, because gaming for "any money" is unlawful, see MCL

750.301, the expenses related to \$5 poker would not be considered a valid term of the trust.