

EXAMINER'S ANALYSIS OF QUESTION NO. 8

(1) Valid Trust Likely Created

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 five methods of creating a trust: (i) when there is transfer of property to a trustee during the settlor's life or by will or other disposition taking effect on the settlor's death, (ii) when there is a declaration by the owner of property that the owner holds identifiable property in trust, (iii) when there is an exercise of a power of appointment in favor of a trustee, (iv) by declaring an irrevocable trust under MCL 700.7820a, and (v) when there is a promise by one person to another person to hold property for the benefit of a third person. MCL 700.7401(1) (a) - (e).

Regardless of the method chosen, a trust is created only if five statutory requirements are met, which are as follows: (i) the settlor has capacity to create a trust; (ii) the settlor indicates an intention to create the trust; (iii) the trust either has a definite beneficiary, is a charitable trust, is a trust for a noncharitable purpose, or is a trust for the care of an animal, as provided in MCL 700.2722; (iv) the trustee has duties to perform; and (v) the same person is not the sole trustee and sole beneficiary. MCL 700.7402(1).

Lastly, the Michigan Trust Code specifically permits the creation of oral trusts. MCL 700.7407 provides that "[e]xcept as required by a statute other than the [Michigan Trust Code], 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, 613 (1965); *Harmon v Harmon*, 303 Mich 513, 519 (1942).

In this case, it appears that Kia created a valid trust in March 2018.

As to the trust creation method, Kia created the trust by declaration as to the owner of the property (the stock of ABC Beauty Company) that she was holding the property in trust, thus satisfying MCL 700.7401(1).

The statutory requirements also appear to be satisfied. Nothing in the facts call into question Kia's capacity to create the trust. Kia clearly indicated her intentions to create the trust when she announced the creation of the trust in front of other patrons and employees at the restaurant. The trust has definite beneficiaries - Jane and Sara. Kia, as the trustee, had duties to perform - she was to hold and manage the stock. And, the same person was not the sole trustee and sole beneficiary. While Kia was the sole trustee, she was not the sole beneficiary.

(2) Clear and Convincing Evidentiary Standard

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." Jane and Sara would appear to satisfy a "clear and convincing" evidentiary standard based on Kia's announcement to all of the other patrons and employees at the restaurant.

(3) Spa Trip Expenses

Generally, 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)(c) provides that the requirement contained in MCL 700.7404 prevails over any term in the trust. MCL 700.7404 provides that a trust may be created "only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve." MCL 700.7404.

Most of the expenses of the spa trip appear to satisfy the requirements of MCL 700.7404. Transportation, lodging, food, yoga, massages, facials, and wine are neither unlawful nor contrary to public policy. So, those terms of the trust are valid. However, because the "Magic Dragon" spa treatment is unlawful, the expenses related to such treatment would not be considered a valid term of the trust, and the related expenses would not be permitted.