

ANSWER TO QUESTION NO. 3

1. Validity of the testamentary Trust:

A testamentary trust is a trust created within a will and executed with the formalities required of a will, which does not take effect until the death of the settlor. *In re Messer Trust*, 457 Mich 371 (1998); MCL 700.7401(1)(a).

Generally, a will is valid in Michigan if it is (1) in writing, (2) signed by the testator, and (3) signed by at least two witnesses within a reasonable time after witnessing either the testator signing the document or acknowledging the will. MCL 700.2502(1). In this case, because Amanda Alistair's document is not witnessed, it is not a valid will under the general provisions governing wills.

However, Michigan law also recognizes holographic wills, which are valid if the document is dated, signed by the testator, and the material portions of the document are in the testator's handwriting. A holographic will does not require witnesses. MCL 700.2502(2). Here, because the facts indicate that the will was "handwritten by Alistair," and the document was signed and dated, it is a valid holographic will.

In order to ascertain whether a valid trust has been created within the will, the trust must comply with the requirements contained in the Michigan Trust Code, MCL 700.7101, et seq. Pursuant to MCL 700.7402, a trust is created only if the 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) either the trust has a definite beneficiary, is a charitable trust, a trust for a non-charitable purpose or a pet care trust; (4) the trustee has duties to perform, and (5) the same person is not the sole trustee and sole beneficiary.

Here, all of the statutory requirements for the creation of a trust have been met. The document handwritten by Alistair evinces her capacity to create a trust, indicates a clear intention to create a trust, the trust is for her pets' care. Moreover, Candy Coffman as trustee has duties to perform under the trust, and she is not a beneficiary at all, much less the "sole beneficiary." Therefore, the document written by Amanda Alistair is a valid testamentary trust.

2. Reduction of the trust property:

Michigan law specifically recognizes the validity of pet care trusts. MCL 700.2722(2). MCL 700.2722(3)(f) specifically gives a court the discretion to reduce the amount of property in a pet care trust "if it determines that that amount substantially exceeds the amount required for the intended use." Thus, if a court were to determine that \$20 million dollars "substantially exceeds" the amount required to provide for the maintenance and care of the cats for the duration of their lifetime, the court may permissibly reduce the trust property accordingly.

When the trust property is reduced, the amount of the reduction passes as "unexpended trust property" under §2722(3)(b). As the terms of the trust provide that Jessica Jejune is to receive the remaining trust assets, Jessica would receive the funds if the court exercised its discretion and reduced the amount of property in the trust.