

1)

A. Should the court grant Betty's petition to dissolve the Farm Trust?

Trust Formalities- Testamentary Trust

Valid trust must contain ascertainable beneficiaries, valid purpose, property res, trustee, intent and settlor.

Here, settlor Grandma (G) died in 2020 leaving valid will incorporated with a trusts.

Intent

Here, grandma intended to leave the large farm to the City for general benefit and for income distribution for her granddaughter's kid Betty.

Beneficiaries

Beneficiaries clearly stated in the will named by Tom, Betty and Carol for the Ancestry Trust and City on Farm Trust.

Valid Purpose

Purpose must not illegal.

Here, purpose is not illegal because G left the farm to benefit her grandchildren and the benefit for the City.

Property Res

Here, she left her residuary estate equally between Farm and Anchstry Trusts.

Charitable Trust

Charitable trust is specifically created to benefit community at large by settlor's intent.

Here The Farm trust is for benefit to community at large because G intended to support City's organic farming.

Thus, trust is charitable.

Cy Pres

Court can modify trust to closest to its purpose.

Here trust frustrated when lost licence.

Thus, court can dissolve the trust.

B. Dissolution of Ancestry Trust

Mandatory Trust - Ancestry Trust

A mandatory trust is specifically intended to achieve a purpose without leaving discretion to trustee.

Here, Ancestry Trust does not have discretion because G directed the trustee to distribute all income from annually in equal shares to Tom, Betty and Carol. Tom has duty of care and duty of loyalty to other beneficiaries.

Thus, this trust is mandatory.

Duty of Care

A trustee has duty to act as reasonable person when managing the trust.

Here, Tom did not act reasonably because when he unexpectedly incurred a large debt for medical expenses he wrote check from the assets of the trust without getting consent of other beneficiaries. Although he planned to repay the trust he dies without doing so.

Thus, he breached his duty.

Duty of Loyalty

A trustee has a duty to be loyal to other beneficiaries, this duty includes no self-dealing, being impartial while distributing.

Self Dealing

A trustee shall not use trust assets as his own.

Here, Tom used the trust assets as his own because he paid his medical debts from the trust.

Thus, he breached his duty.

Duty of Impartiality

A trustee must be impartial when he distributes the assets, which means he should distribute equally.

Here T did not distribute equally because he likely got more than his share when he received check to pay his medical debt.

Thus, he breached his duty.

Termination of Trust

If trust fails to achieve aimed purpose the beneficiaries can agree to terminate the trust or the court may terminate it.

Here, trust's purpose is frustrated because trust's purpose was to distribute income to grandchildren equally, however it failed when Tom unreasonably took portion to pay his medical debts without getting consent of other beneficiaries.

Thus, there is valid reason to terminate the trust.

Omitted Child

A child is omitted if he born after the will created. An omitted child gets his fear share if he is not intentionally left outside of the trust, given his share outside of the trust or, if settlor has other issues that received substantial part of estate or omitted child's other parent received substantial potion.

Here, Darcy was omitted because he was born in 2023, after the trust was created in 2020. However, his parent Betty received the rest of the assets as a residuary because trust failed.

Thus, omitted child cannot get his share.

Conclusion

As discussed above, since the purpose of trust has failed and the sole beneficiary is Betty, the court should grant her petition.

C. Repayment of Anchestry Trust

Personal Liability

When trustee breaches his fiduciary duties to other beneficiaries, the trustee becomes personally liable for the breach. The breached trustee must reimburse the undeserved shares to trust.

Here, in 2024 Tom breached his fiduciary duties because he paid his debts out of Trust and died without repaying it. Since Tom became personally liable for the repayment his estates must reimburse to the trust.

Thus, the court should order Tom's estate to repay.

Question #1 Final Word Count = 695

END OF EXAM