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Testamentary Trust

A trust may be created through a will.

Here, the facts indicate that Grandma's will was valid and created two trusts. Therefore the Farm Trust and Ancestry Trust are valid.

A. Betty's Petition to Dissolve the Farm Trust

Charitable Trust

A charitable trust is one that is for the benefit of the general public. A trust can be general or have a specific purpose.

Here, Grandma left the Farm Trust to the city, for the purpose of the general benefit of the city. However, when determining the purpose of the trust, you look the intent of the settlor. Grandma did prefer for the trust to be an organic farm. Although it was preferred by Grandma that the farm be used as an active organic certified farm with no pesticides, it doesn't say that it was explicit on that condition and that the trust would fail without it being an organic farm.

Since Grandma left the trust to the city for the general benefit of the City, this is a charitable trust of a general purpose.

Cy Pres

When the charity of a trust is no longer in effect, a successor of the organization or a like organization with the same goals can take over if the trust was given for a general purpose and not specific to that named charity.

Here, the farm has not been dissolved, but it has lost its certification to be an organic farm. The Farm trust is a general trust for the city and although grandma preferred it to be for an organic farm, as mentioned, it is not explicit on that condition. The City can argue that under the Cy Pres doctrine, the Farm Trust may still be in effect, because Grandma intended for the trust to benefit the city in general. Betty however will argue that the farm trust is specifically for the purpose of the organic farm and because of this the farm trust will fail because the pesticides now being used on the farm. If the court holds that the trust was intended for the specific purpose of the organic farm and not the general benefit of the city, which would give the city more leeway, the city can argue for a trust modification.

Trust Modification

A modification of a trust can be made if all beneficiaries agree and it does not frustrate the material purpose of the trust.

The city is the beneficiary of the Farm trust and it is very likely that they would agree to the modification of the trust to include the pesticides. Grandma wanted the farm to be a benefit of the city and the farm would still be intact, it would just use pesticides. The city can argue that the trust can be modified to include the farm, but to use pesticides, especially because it was only Grandma's preference that the farm be pesticide free.

B. Betty's Petition to Dissolve the Ancestry Trust

Termination of Trust

A trust terminates on its own after a stated condition, specific time, or the purpose of the trust is now frustrate or illegal.

The beneficiaries of the trust are Betty, Carol, and Tom. Betty is seeking to dissolve the ancestry trust, whereas the other two beneficiaries have objected to Betty's petition. Grandma stated the condition that if the trust fails for any reason that they trust are given to Betty's children. At this time, Betty only has one child. Because the assets upon termination are to be distributed to Betty's children, it is not likely that the court will agree to terminate the trust, because of the unascertained beneficiaries, meaning any of Betty's potential unborn children. There is no other reason for the trust to fail, although Grandma said for "any reason," nothing has presented itself to cause the trust to currently fail. And because Carol and Tom are objecting to it, it is not likely the court will grant Betty's request.

C. Tom's Estate

Duty of Loyalty

A trustee has the duty of loyalty to the trust and its beneficiaries, to act in their best interest, no self-dealing, and to put the trust and its beneficiaries first.

Tom breached his duty of loyalty to the trust. He should only be acting in the trusts best interests and no self-dealing, which puts his interests over the trust. By using the trust funds to pay for his own medical expenses he breached his duty of loyalty, because he was using the trust for his own advantage.

Trustee's Duty to Separate Assets

The trustee has a duty to not co-mingle the funds of the trust and to keep the trust assets separate from their own.

Tom incurred medical debt, in which he wrote a check from the assets of the Ancestry Trust to pay off the debt. Tom co-mingled the trust assets with his own debt and did not keep the two separate.

Repayment

When a trustee breaches their duty and uses the trust assets the beneficiaries can sue for reimbursement of the gain the trustee received by using trust assets.

Tom used the trust funds to pay for his personal medical expenses. This is no way was using the trust assets for the benefit of the trust, as he was doing it for his own benefit. it is irrelevant that Tom intended to pay back the money, he should have not used the money to begin with. Because of Tom's breach of his fiduciary duties of using the trust assets for his personal benefit, the court should order Tom's estate to repay the Ancestry Trust.

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END OF EXAM