

Question 3 – July 2015 – Selected Answer 1

1. The Redacre trust was valid under Texas law, but the Whiteacre trust was not.

A trust conveying real property in Texas should be in writing. A trust in Texas is considered revocable unless stated otherwise. In addition, in a trust where the settlor and the beneficiary are the same person, the trust "merges" and can no longer exist. Otherwise, trusts could be used for settlor's to develop ways to keep their assets from creditors.

The Redacre Trust is valid. The trust is settled by a person who is not the beneficiary. There is no requirement that the trust be explicitly revocable or not to be valid. Texas law assumes that a trust is revocable, unless there is language to the contrary.

The Whiteacre Trust is not valid. A trust must have a settlor, trustee, and named beneficiaries. Creating a trust for "safekeeping" is not a valid beneficiary.

2. As trustee of Seth's property, Larry owes Seth duties of good faith and prudent investing.

A trustee is forbidden from using any trust assets for personal gain such as using the property to take out a mortgage or borrowing money in the name of the trust. Even if the Whiteacre trust is not a valid trust, Larry is estopped from taking advantage of the failure of the trust for his own financial gain.

Larry, as trustee, is not entitled to sell the corpus of the trust without a court order and for specifically permitted reasons. Any action that a trustee takes with respect to the property of a trust is per se fraud on the trust. By selling Whiteacre, without any terms in the trust instrument or a court order permitting it, Larry committed fraud upon the trust and Seth has an action against Larry for the proceeds of Whiteacre. Selling He can also remove Larry as trustee of the Redacre Trust as a result of his fraud, and should do so.

Although Larry does owe a duty of prudent investing on the trust, his actions of unilaterally selling real property and depositing the proceeds in his personal bank account amount to fraud, and not prudent investing. Prudent investing is more applicable to stocks of a trust and other interest bearing accounts. Real property requires more guidance by the trust or supervision of a court for a trustee to dispose of it.

3. If title to Blueacre was issued to Larry as a trustee, Seth can compel Larry to convey Blueacre to him.

A trust conveying real property need to be in writing if the deed indicates that the property that is the corpus of the trust is held by a trustee.

The facts are silent as to whether the instrument of conveyance named "Larry as trustee" as the grantee. If this were the case, Larry would be required to convey Blueacre to Seth. Also, this trust would be deemed revocable since there was no language (since there was not even a writing) indicating that the trust was revocable. Seth could thus terminate the trust and take possession of the corpus.

Absent Larry's name on the deed as trustee, Seth should try to argue that as Larry was trustee for other trusts in which Seth was the settlor, Larry is estopped from denying his role as a trustee with respect to Blueacre. He accepted the property under the agreement that it would be sold back to Seth at a later date. If Larry is deemed a trustee in this situation, Seth can compel Larry to convey Blueacre to him. Absent this finding, Seth will have a difficult time proving the oral agreement, as real property can be conveyed by gift without consideration.

Question 3 – July 2015 – Selected Answer 2

1. The Redacre trust is valid, but the whiteacre trust is not valid.

The issue is whether a valid trust is created and can a valid trust be created when there is no named

beneficiary.

To create a valid trust there must be a settlor who conveys property to a trustee for the benefit of a beneficiary with intent to create a trust. The trust must be for a lawful purpose. The trust can be revocable or irrevocable. The property can be conveyed at a later time, but the trustee must have rights to the property at some point. If a trust is made during a settlor's life and is not explicitly irrevocable, then it is a revocable trust.

The Redacre trust is a valid trust. It has a settlor. Seth is the settlor. It was conveyed "for the benefit of my son, Jack." Jack is an identifiable beneficiary. For the benefit of my son is a lawful purpose. Larry was named as trustee. Redacre was conveyed to the trustee and in the conveyance it stated that "redacre shall be held for the benefit of Jack, a minor." The conveyance included a detailed property description, so it was valid since Redacre was identifiable. Although the word "trust" was not used directly, the intent to create a trust is clear, thus a trust was effectively created. Since the trust document did not state whether it was revocable and Seth is still alive, the trust is revocable.

The Whiteacre trust is not a valid trust under Texas law. Like the Redacre trust, the whiteacre trust had a settlor (Seth), had a trustee (Larry), had the intent to create a trust (language stated "set up a trust"), property was conveyed (Whiteacre), and was for a lawful purpose (safekeeping), but the trust did not have a beneficiary. Without a beneficiary a trust fails. Further, although safekeeping is lawful, a trust cannot be created simply to safe keep the settlor's assets and keep them from creditors. This may be a benefit of some trusts, but it cannot be the sole purpose for creating a trust. In fact, if this trust had been validly created, it would not have protected Seth's property since it is revocable and did not contain a spendthrift clause. The conveyance to whiteacre was valid and stated that whiteacre shall be held for safekeeping," but safekeeping is not a proper reason for creating a trust. Without a beneficiary and since the trust was create for the purpose of safekeeping without another reason, the trust was not validly created.

2. As a result of the sale of Whiteacre, Seth can require Larry to turnover the proceeds and may be able to void the conveyance. Seth can also remove Larry as trustee.

The issue is what remedies does a trust settlor have when the trustee sell's property without the settlor's knowledge and places the proceeds in a private bank account.

A trustee has the power to do with trust assets as he see's fit as long as the UPI and UPIA are complied with and the trustee does not exceed the scope or purpose of the trust. A trustee has a duty of care. This duty cannot be removed and is a fiduciary duty. A trustee also has a duty of loyalty to act in the best interest of the trust. A trustee may not remove these duties unilaterally. Further a trustee must invest the assets and use reasonable standards to do so as guided by a reasonable prudent investor and the UPI and UPIA.

Larry breached his duty of loyalty and care by selling Whiteacre and placing the proceeds in a private bank account. As trustee Larry was not required to inform Seth of the sale, but since the sale was of the only trust property, this was likely not a wise investment decision. Placing the proceeds in a private bank account is a clear violation of the duty of loyalty to the trust.

Seth has standing to seek remedies since he is the settlor and still has interest in the revocable trust (assumes the trust was valid). The proceeds of the sale belong to the trust and not to Larry, so Larry must place them in the trust. He is not entitled to keep them. If the buyer of whiteacre was not a BFP and had a reason to know that the conveyance was not proper, then Seth may be able to get title to whiteacre back. Seth can definitely remove Larry from is trust position as trustee since he breached his duty of loyalty and likely due to breach of duty of care since the sale does not appear to be a wise investment decision. Trustee's usually receive reasonable compensation, and due to his actions, Seth can seek the remedy of withholding compensation.

3. Seth can compel Larry to convey Blueacre to him.

The issue is whether a purchase money resulting trust was created and if so, does that entitle to purchaser to

conveyance of title upon demand.

A purchase money resulting trust (PMRT) is created when title to property is given to another person who is not the purchaser of the property. A presumption of a gift is created if title is given by the purchaser to a family member. If title is not given to a family member, but rather to a lawyer or friend, a presumption arises that the title was not a gift of the land, but rather a PMRT. When a PMRT is created, the person who has title to the land must convey the land to the purchaser upon demand.

Seth bought Blueacre, but was concerned about the publicity regarding the acquisition so he put the full purchase price in Larry's name. Larry is Seth's lawyer and friend, but he is not related to Seth and is not a family member. They orally agreed that Larry would prepare documents conveying Blueacre to Seth at a later date. Since Larry was not related to Seth, PMRT was created from this transaction. Even though the agreement to convey title was oral, which violates the Statute of Frauds - since conveyances of land must be in writing - a PMRT required conveyance of title upon demand. Thus, when Seth asks for conveyance of title and Larry refuses, Seth can compel Larry to give him title.