

Question MEE 4 – July 2022 – Selected Answer 1

1. Whether the AD trust was validly created and if so, when it was created.

The AD trust was not validly created because she did not presently deliver assets to the trust. However, if it is found to be valid, it became valid when Arlene transferred the bonds as assets of the trust.

In order to create a trust, the settlor must have a present intent to create the trust, deliver assets to fund the trust, have ascertainable beneficiaries, a trustee, give active duties to the trustee, and the trust must have a proper purpose. Any purpose that is not illegal is proper. Under the Uniform Trust Code, trusts are assumed to be revocable unless stated otherwise.

Here, Arlene had present intent to create a trust. She stated her intent in the trust document and named herself as trustee. She listed her three nieces as beneficiaries. All three were alive at the time of the trust instrument and were ascertainable at the time the trust was created. However, at the time present intent existed to create the trust, there was no delivery of assets. Instead, Arlene referred assets to "Schedule A" and wrote in schedule A that no assets were transferred at that time. However, later, when she obtained assets, she put them in the trust's name and labeled them in "Schedule A." If this late delivery is found to be acceptable since it was referenced in an attached document, the trust would have been validly created upon delivery of the bonds.

In conclusion, there was not a valid trust because delivery was not simultaneous with the present intent to create. However, if the addition of "Schedule A" rendered the later delivery acceptable, the trust was created upon delivery of the bonds.

2. Assuming the AD trust was validly created, whether it was effectively revoked.

Under the UTC, trusts are assumed to be revocable. They may be revoked similarly to a will. One way to revoke is to physically destroy the physical trust/will itself. This can include crossing out the words and writing revoked, burning, tearing up, etc. Anything that indicates on the face of the trust that the settlor had the present intent to revoke and took action upon that intent, satisfies revocation.

Here, the AD trust is under the supervision of the UTC. The UTC assumes trusts to be revocable unless stated otherwise. There is nothing in the trust that states it is irrevocable and as such will be deemed revocable. Arlene took the physical copy of the trust, drew a big X through the front page and wrote "This AD Trust is Revoked."

I'm taking back the assets." This writing, paired with the physical defacing of the document and Alrene's intent rendered the trust effectively revoked.

In conclusion, the trust was effectively revoked by destruction.

3. Whether the trust for Donna was valid.

Trusts may be express or implied. Typically, under the statute of frauds, wills and trust must be created by a signed writing. However, an implied trust can be created where property is given to be held in trust for another. Elements of a trust are stated above.

Here, Arlene gave her friend the bonds and necklace and asked her to hold them in trust until Donna turned 18. She then instructed her friend to sell the items and pay for Donna's college. Arlene had present intent to give the items in trust. She named a trustee in her friend. She identified the beneficiary as Donna, a living ascertainable being. She gave the trustee active duties to maintain the bonds and necklace and to sell them and pay for Donna's college when she became of age. Furthermore, she set a distribution age for which the friend could disburse the remaining assets. The friend agreed to this trust and became the trustee.

In conclusion, if the state recognizes an oral express trust, the trust for Donna was validly created.

4. Whether the testamentary trust for the Political Party was valid.

There are two types of trusts: private and charitable. A private trust is for private ascertainable beneficiaries and a charitable trust must not have any ascertainable beneficiaries and be for a charitable purpose. Charitable purposes can include gifts to organizations for charitable purposes, to help the general community, to help local charitable organizations, etc. The main issue is that the beneficiaries must not be ascertainable. The funds must be used for a public good.

If a trust is not charitable it is private. Private Trusts must have ascertainable beneficiaries. An ascertainable beneficiary must not violate the rule against perpetuities. RAP holds that a beneficiaries interest must vest, if at all, within 21 years of a life in being.

Here, it is apparent that Arlene attempted to create a charitable trust in her will by designating the political party as the beneficiary and naming its purpose to help the political party. However, this is not a charitable purpose and such trust has ascertainable beneficiaries in the political candidates. This renders the trust private.

Since the trusts beneficiaries are ascertainable, they must comport with RAP. However, it is impossible to tell which political candidate's interest will vest in the interest within 21 years and there is no life in being at the time in which the interest is to be gauged on.

In conclusion, the trust to the Political party is invalid because it is not charitable and violates RAP.

5. If the trust to the political party is invalid, who will the remaining funds be distributed to.

If a will fails to dispose of the testator's property, property will pass by intestacy. Intestacy looks to the blood related heirs of the decedent's body. Under this state's law, a decedent without descendants that dies with property will have the property distributed per stirpes to the issue of his or her parents, aka her siblings and their descendants. Per stirpes states that the interest will vest equally in the first generation of descendants regardless of if they are living and each share will be divided equally amongst that generation. If that generation is not living, their descendants will take their share equally. Modern per stirpes states that the interest will vest in the first living generation and be equally divided at the generation. The state law here says "per stirpes" not "modern per stirpes" and as such, the property will be divided according to that rule of law.

The \$300,000 not disposed of prior will be distributed per stirpes between Bob, (Carla, Donna, and Edna) and Fred. Bob will take 1/3. Fred will take 1/3 in place of his deceased father, and Carla, Donna, and Edna will split a 1/3 share in place of their mother.

Question MEE 4 – July 2022 – Selected Answer 2

IA. The AD Trust was validly created four years ago.

The issue is whether the AD Trust was validly created when there was no trust property when the Declaration of Trust was executed. Creation of a valid trust requires: (1) settlor intent to create a trust under which legal and equitable title to the trust property is split and fiduciary duties are created in the trustee; (2) capacity of the settlor; (3) ascertainable beneficiaries; (4) trust property (the res); (5) compliance with any required formalities; and (6) a proper purpose. However, the trust need not have trust property in it at the time the trust is created - assuming the other elements are met, it will be created at the time the trust property is transferred into the trust. The

trust property can be anything transferable and it must be identifiable to a certainty. Settlor capacity requires that the settlor be over the age of 18 and of sound mind at the time of the trust creation, and that she understand the nature of her act, the nature and extent of her property, who her family members are, and that she be capable of making an orderly distribution of her property. The purpose need only be something not illegal, against public policy, or impossible.

Here, the settlor (Arlene) had intent to create a trust as evidenced by the Declaration of Trust in which she "creates the Arlene Doe Trust (AD Trust)" and splits the legal and equitable title between herself as trustee and herself and her nieces as beneficiaries. Although the sole trustee cannot be the sole beneficiary, here there is no issue because Arlene's nieces are also beneficiaries. There are no facts to indicate Arlene lacked capacity. The beneficiaries are ascertainable: Arlene, Carla, Donna, and Edna. The purpose is probably to support herself and her nieces, which is a valid purpose. Thus, the trust was created when it was funded with property, which was four years ago when Arlene revised the trust to list the bonds as assets of the trust.

IB. Assuming the AD Trust was validly created, it was effectively revoked.

The issue is whether a trust can be effectively revoked by physical act. A trust is presumed to be revocable during the settlor's lifetime unless the trust states that it is irrevocable or there is other evidence to the contrary. A revocable trust is revocable under the Uniform Trust Code if it can be shown by clear and convincing evidence that the settlor intended to revoke the trust.

Here, Arlene's trust does not say whether it was revocable or not, so it will be presumed to be revocable during her lifetime. Arlene writing across the face of the declaration of the Trust that it "is revoked" and she "is taking back the assets" is sufficient clear and convincing evidence that she intended to revoke the trust. Thus, the trust was effectively revoked when she wrote across the face of the Declaration.

II. The trust for the benefit of Donna was valid.

The issue is whether an oral trust is valid. As described above, creation of a valid trust requires: (1) settlor intent to create a trust under which legal and equitable title to the trust property is split and fiduciary duties are created in the trustee; (2) capacity of the settlor; (3) ascertainable beneficiaries; (4) trust property (the res); (5) compliance with any required formalities; and (6) a proper purpose. Generally, trusts can be created orally (except in certain situations involving real property otherwise covered by the Statute of Frauds). Creation of a trust also does not require any "magic words" so long as the settlor's intent is ascertainable.

Here, Arlene intended to create a trust because she told her friend to hold the package "as trustee for Donna," which is sufficient to show settlor intent to split legal and equitable title and create enforceable fiduciary duties in the trustee. Again, no facts indicate that Arlene lacked capacity. The trust has an ascertainable beneficiary: Donna. The trust property is identifiable to a certainty because it was in a package given to the friend and described as containing a necklace and bonds. Although the trust was oral, it was not required to be in writing. The purpose of supporting Donna's education is a proper purpose. Thus, the trust for the benefit of Donna is valid.

III. The testamentary trust for the benefit of the Political Party was not valid.

The issue is whether supporting a political party is a valid purpose for a charitable trust such that it need not comply with the Rule Against Perpetuities. A charitable trust is similar to a standard trust described above except its beneficiaries need not be ascertainable, it must have a charitable purpose, and it need not comply with the Rule Against Perpetuities. A charitable purpose is one for a: (1) governmental purpose; (2) a health purpose; (3) an education purpose; (4) a religious purpose; or (5) an anti-poverty purpose. The Rule Against Perpetuities is a common law rule that states that any non-vested interest must vest, if at all, within 21 years of the death of a life in existence at the time of interest is created. If a charitable trust's purpose is impossible or impractical and the settlor had a general (not specific) charitable intent, a court will use the cy pres doctrine to reform the trust to be as close to the settlor's intent.

Here, the trust for the Political Party's purpose is to support candidates for public office who accept its political views. This is probably not a sufficient governmental charitable purpose because it does not support the government in general - instead, its purpose is to support political candidates, which is not a charitable purpose. Thus, the trust is not a valid charitable trust and violates the Rule Against Perpetuities because it creates an interest that carries on forever (a "perpetual trust"). The cy pres doctrine is not applicable because the trust's purpose is not impractical or impossible - it is just not a charitable purpose. Therefore, the testamentary trust for the benefit of the Political Party was not valid, and the language creating the trust will be struck.

IV. Assuming the testamentary trust to Political Party is invalid, the bank account should be distributed to Bob, Fred, Carla, Donna, and Edna.

The final issue is who the bank account should pass to under intestacy laws. Arlene's will has no residuary clause, so anything in her estate that has not passed outside of probate will pass to her intestate heirs. The necklace and the bonds will pass outside

of probate pursuant to the trust described in Part II, so the only remaining property to distribute is the bank account with a balance of \$300,000.

This jurisdiction is a per stirpes jurisdiction, which means that the property will be distributed at the first level with heirs. It will be divided equally into shares for survivors at that level or predecessors at that level who left heirs. Here, Arlene is survived by no children of her own - so the property will be divided at the level of her siblings. She had one surviving brother and two surviving siblings who died with heirs, so 1/3 of the bank account will go to Bob; 1/3 will go to Fred (through his deceased father); and 1/3 will be distributed between Carla, Donna, and Edna (through their deceased mother). Thus, Bob will receive \$100k, Fred will receive \$100k, and Carla, Donna, and Edna will each receive around \$33,333.

Question MEE 4 – July 2022 – Selected Answer 3

1(a). The issue is whether the AD Trust was validly created and the date that it was created.

A private express trust is created by a settlor and must include the following elements: (i) intent; (ii) valid trust purpose; (iii) ascertainable beneficiaries; and (iv) trust property. For intent, the settlor must have a present intent to part and distribute property. Any trust purpose is valid so long as it is not illegal. A private express trust must list ascertainable beneficiaries so that the trustee knows who the beneficiaries are. Lastly, a trust must have *res* or property.

Here, the AD Trust was not validly created until four years ago. Ten years ago, Arlene Doe signed and dated a "Declaration of Trust." She clearly had an intent to part with property because the trust stated that upon Arlene's death, all trust assets shall be paid in equal shares to Arlene's three nieces. The trust has a valid purpose-- to distribute Arlene's property upon her death and there are three ascertainable beneficiaries because the document names Arlene's three nieces. However, the trust could not have been validly created ten years ago because it was missing trust property. Arlene had attached Schedule A but wrote "I have not transferred any assets to this trust yet." It was not until four years ago when Arlene bought bonds and revised Schedule A that there was trust property.

Therefore, the AD Trust was validly created four years ago.

1(b). The issue is whether the AD Trust was effectively revoked.

The traditional rule was that a trust was presumed irrevocable unless otherwise stated. The modern rule and the UTC rule is that a trust is presumed revocable unless otherwise stated. A revocable trust can be revoked by the settlor at any time during their life.

Here, the jurisdiction has adopted the UTC and the trust instrument had no provision regarding whether it was revocable or irrevocable. As such, the AD Trust is presumed revocable and Arlene, as the settlor, could revoke it at any time. Arlene did revoke the AD Trust by writing across the face of the "Declaration of Trust" that "this AD Trust is revoked" and "I'm taking back the assets."

Therefore, the AD Trust was effectively revoked.

2. The issue is whether the trust for the benefit of Donna was valid.

As explained above, a private express trust requires intent, valid trust purpose, ascertainable beneficiaries, and trust property. The Rule Against Perpetuities (RAP) does apply to trusts and requires that a gift in a trust vest within a life in being plus twenty-one years. A mandatory trust, as opposed to a discretionary trust, instructs the trustee exactly how to distribute trust property.

Here, Arlene created a valid trust when she gave her friend a package containing a valuable necklace and the bonds. She instructed the friend to hold this package as trustee for Donna. She further instructed the friend to sell the package when Donna reaches age 18, use the proceeds to pay for Donna's college education and give her what's left over when she reaches the age of 22. This trust shows Arlene's present intent to part with property; a valid trust purpose to pay for Donna's education and support her; Donna is the ascertainable beneficiary; and the necklace and bond are the trust property. This is a mandatory trust because Arlene is specifying how her friend, as trustee, is to distribute the principal and income generated by the trust. This trust does not violate RAP because Donna is 16 years old so we will know with certainty within her life whether she goes to college.

Therefore, the trust for the benefit of Donna is valid.

3. The issue is whether the trust for the benefit of the Political Party was valid.

Some jurisdictions allow non-charitable trusts. These are trusts that are not made to ascertainable beneficiaries but that also do not serve a charitable purpose. Charitable trusts must have some charitable purpose such as reducing poverty, furthering education, or serve the community as a whole. Charitable trusts are not subject to

RAP and they do not have the ascertainable beneficiaries requirement because they must benefit the community as a whole. When a settlor creates a trust that does not have a charitable purpose but that also does not have ascertainable (named) beneficiaries, then they have created a non-charitable trust, which are subject to RAP.

Here, Arlene created a testamentary trust to benefit Political Party. This is not a charitable trust because Political Party's exclusive mission is to support candidates for public office who accept its political views. This is not a charity that is helping the community as a whole. Thus, because this is a non-charitable trust, it is subject to RAP. Arlene stated that the trust was a "perpetual trust." Consequently, this trust will violate RAP and is invalid.

Therefore, the trust of the benefit of the Political Party is invalid because it violates RAP.

4. The issue is to who should receive the balance of the bank account assuming that the testamentary trust to the Political Party was invalid.

The relevant statute in the jurisdiction states that "If a decedent dies intestate without a surviving spouse, issue, or parent, the decedent's property is distributed to the issue of his or her parents *per stirpes*. A decedent dies intestate when they die without a will or the distribution of their property is not fully accomplished by the will so intestacy rules apply. The *per stirpes* method of distribution divides property equally at the next generation among those surviving or leaving issue (descendants).

Here, if the Political Party trust is deemed invalid, then the distribution of the bank account will be done according to intestacy. The statute listed above governs because Arlene was only survived by her younger brother Bob, her three nieces (Carla, Donna, and Edna), and her nephew Fred. Applying the *per stirpes* distribution, Bob will be entitled to 1/3, Carla, Donna and Edna will each be entitled to 1/9 taking from their mother's share, and Fred will take 1/3 (which is his father's share).

Therefore, the bank account should be distributed to Bob, Carla, Donna, Edna, and Fred according to the portions above.