

Question MEE 3 – July 2023 – Selected Answer 1

1. With the consent of daughter may a court authorize the trustee to terminate the trust and purchase Annuity A?

State A allows for a trust to be terminated with consent of all the beneficiaries, if the court concludes that continuing the trust is not necessary to achieve any material purpose of the trust. (section 1) Further, the trust property may be distributed as all beneficiaries agree when terminated in accordance with section 1. (section 2)

Here, Tom made the material purpose for the trust clear by stating the primary purpose was "to ensure" Betty has "sufficient funds to provide for her care and support her for the rest of her life." Any remaining funds from the trust after Betty's death would go to the daughter, but this was not a purpose of the trust but rather a fail safe to avoid the funds from escheating.

Here, the trust is failing to provide for the material purpose. Thus, the facts establish that trust is not necessary to achieve the material purpose. Further assuming daughter consents, and Betty's consent is already given as this would be following her request, all the beneficiaries would consent.

Therefore, with the consent of daughter, a court may authorize the termination of the trust and the authorize Annuity A, as this is done with consent of all beneficiaries and "distributed as agreed by all the beneficiaries."

2. Without the consent of daughter may a court authorize the trustee to terminate the trust and purchase Annuity B.

As stated in the relevant statute (section 4), when not all beneficiaries consent to the termination of a trust (as is stated in section 1 above), a court may approve termination anyways if it "is satisfied that, if all the beneficiaries had consented" the trust could have been terminated in accordance with the other requirement in section 1 (see above). Additionally, section 4 requires the court determine that the termination would protect the non-consenting beneficiary "in accordance with the testator's probable intention."

Here, daughter's lack of consent does not prohibit a court from terminating the trust so long as should she have consented (1) the trust's continuance is not necessary to achieve any material purpose of the trust (established above); and (2) that daughter's interest can be appropriately protected in accordance with the testator's probable

intent. Here, Tom's intent regarding daughter's interest is only that any funds remaining for go to her rather than the state. Annuity B allows for there to be funds, though less, available for daughter after Betty dies--this is in accordance with Tom's intent.

Therefore, court may authorize the trustee to terminate the trust and purchase Annuity B.

3. May a court, not authorizing the termination of the trust and without daughter's consent, authorize the trustee to pay 100% if the trust income to Betty.

Trust Code Section 5 allows for a court to modify a dispositive terms of a trust if due to circumstances not anticipated by the testator the modification will further the primary purpose of the trust. And as far as practicable, the modification must be made in accordance with the testator's probable intention.

Here, the facts have already been established (above) that the primary intent was to see to the needs of Betty for the rest of her life. Due to unforeseen inflation the trust is no longer achieving its material purpose, but a modification that allowed Betty 100% of the interest would further (or get close to) achieving the primary purpose. Further, this modification would be made in full accordance to the not only the testator's probable intention but his actual stated intention.

Therefore, even if a court does not authorize the termination of the trust, the court may authorize a modification to the trust, without daughter's consent, to pay 100% of the trust income to Betty in accordance to Tom's primary purpose and intent.

Question MEE 3 – July 2023 – Selected Answer 2

1. Whether the court may authorize the trustee to terminate the trust and purchase Annuity A if the daughter consents to the termination and purchase of Annuity A

Under common law, a support trust is created when a testator creates a trust for the support and care of a person's life. The support does not need to be basic necessities, but rather support includes maintaining the standard of living of the person. Under State A's trust code, a trust may be terminated upon consent of all the beneficiaries, if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. Once the trust is terminated, the beneficiaries have full

power over the trust property and can direct the trustee to do what they wish with the trust property.

Here, if the daughter consents to the termination, the court would need to assess whether a material purpose still exists. Tom created a support trust as the primary purpose of the trust is to ensure there will be sufficient funds to provide for her care and support for the rest of her life. Annuity A would provide payments sufficient for Betty's care and support for the rest of her life. If the daughter consents to the termination and the purchase of Annuity A, the court may authorize because the continuance of the trust is not necessary to achieve any material purpose of the trust.

Therefore, it is likely the court may authorize the trustee to terminate the trust and purchase Annuity A if daughter consents.

2. Whether the court may authorize the trustee to terminate the trust and purchase Annuity B if the daughter does not consent.

Section 4 of State A's Trust code states if not all beneficiaries of a trust consent, the court may terminate sua sponte if (1) had all the beneficiaries consented the trust could have been terminated under section 1 of the State A's Trust Code and (2) interests of the beneficiary who does not consent can be appropriately protected in accordance with the testator's probable intention.

Here, the daughter is a beneficiary because she holds the future interest of the trust. (1) if daughter had consented to the termination of the trust and purchase of annuity B, the trust could have been terminated under section 1. (2) Annuity B would provide daughter with a cash payment payable upon Betty's death. The court could argue that although it would be substantially less than the amount the daughter would receive under the trust, Testator did not create the trust to provide for his daughter, rather he only left anything to his daughter because he did not want the trust property to escheat to the state. The daughter will argue that Annuity B does not appropriately protect her interest because she would receive substantially less than she would under the trust.

Therefore, the court may have the power to authorize the termination of the trust and purchase of Annuity B if it finds that the amount given under Annuity B to daughter is still protected with Tom's intent.

3. Whether the court may authorize the trustee to pay 100% of the trust income to Betty without the daughter's consent.

Section 5 of State A's Trust code states, a court may modify the dispositive terms of a trust if because circumstances not anticipated by the testator, the modification will further the primary purpose of the trust. The modification must be made in accordance with the testator's probable intent. A life estate holder is entitled to the trust income, while the remainder holder is entitled to the trust principal.

Here, Betty was diagnosed with a health problem that caused her to move into a nursing home after Tom died. Additionally, nursing home fees have dramatically increased, which the facts indicate Tom had not anticipated. Tom's intent to only give 80% of the trust income to Betty was to put the other 20% in the principal to generate more future income for Betty. The modification to give Betty 100% of the trust income to meet her current nursing home expenses is in line with Tom's primary purpose of the trust -- to support Betty.

Therefore, it is likely that the court may modify the terms of the trust to give Betty 100% of the trust income because there was unanticipated circumstances and giving Betty 100% of the trust income would be in line with Tom's primary intent.

Question MEE 3 – July 2023 – Selected Answer 3

1. The issue is whether, if the daughter consents to the termination of the trust and the purchase of Annuity A, a court can authorize the trustee to terminate the trust and purchase Annuity A.

Section 1 of State A's Trust Code states, "A trust may be terminated upon consent of all the beneficiaries, if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust."

In this situation, the trustee has the consent of all of the beneficiaries, which are just Betty and the daughter. Tom stated in section 1 of the trust that the primary, or material, purpose in creating the trust was to make sure that there would be sufficient funds to provide for Betty and support her for the rest of her life. Here, the trust is no longer serving that purpose, since it is no longer generating enough income to provide for Betty's nursing-home fees. This means that continuation of the trust is not necessary and is in fact counter-productive to achieving Tom's purpose in providing and caring for Betty. Therefore, the trust can be terminated under § 1 of the Trust Code.

2. The issue is whether, if the daughter does not consent to the termination of the trust and the purchase of Annuity B, a court can authorize the trustee to terminate the trust and purchase Annuity B.

Section 4 of State A's Trust Code states that if not all beneficiaries consent to a proposed termination of trust, the court may nonetheless approve the termination if, if all of the beneficiaries had consented, the court could terminate the trust under § 1 and the interests of a beneficiary who does not consent can be appropriately protected in accordance with the testator's probable intention.

Here, not all of the beneficiaries are consenting to the termination of the trust. However, a court may still approve the termination. The first question is whether, if the daughter did consent, the court could terminate the trust under § 1. Section 1, as discussed above, requires that the court conclude that continuation of the trust is not necessary to achieve any material purpose of the trust. The court will likely conclude that the continuation of the trust is not necessary to achieve its purpose for much the same reasons as discussed above. The trust no longer provides for Betty's comfort and care, because it does not generate enough income to do so. Since the trust is not serving its main purpose, the trust can be terminated by a court.

The second prong of the inquiry is whether the interests of a beneficiary who does not consent can be appropriately protected in accordance with the testator's probable intention. The daughter is the beneficiary who does not consent. Tom's intention was not to benefit the daughter in any way. He stated in § 3 of the trust instrument that the daughter was only receiving the trust assets because Tom had no other family, and he did not want the property to escheat to the state. Tom and his daughter were estranged, and it is unlikely that he meant to benefit her as a purpose of the trust. Therefore, the fact that the daughter will receive less money under Annuity B than she would under the terms of the trust should not concern the court, since it was never Tom's intention to benefit the daughter through the trust. Therefore, Annuity B would still protect the daughter's interests in accordance with Tom's intention. The court can authorize the trustee to terminate the trust and purchase Annuity B.

3. The issue is whether the court can, without the daughter's consent, authorize the trustee to pay 100% of the trust income to Betty.

Section 5 of State A's Trust Code states, "A court may modify the dispositive terms of a trust if, because of circumstances not anticipated by the testator, modification will further the primary purpose of the trust. To the extent practicable, the modification must be made in accordance with the testator's probable intention."

Assuming that the court does not authorize the termination of the trust, the court can still modify the terms of the trust under § 5. The first question is whether modification will further the primary purpose of the trust due to circumstances not anticipated by the testator. Here, it has been established that Tom's primary purpose in creating the trust was to take care of Betty. Nursing-home fees have dramatically increased, a circumstance that Tom did not anticipate. Therefore, modifying the trust, which would allow for enough money to pay Betty's nursing home fees and therefore care for her, would satisfy the primary purpose of the trust.

The second issue is whether the modification of increasing the trust income paid to Betty to 100% would be in accordance with the testator's probable intention. It seems likely that it would. Tom only authorized payments of 80% because he wanted to invest some of the income such that Betty would get greater returns over time. However, this goal was solely to generate more income for Betty in order to fulfill the primary purpose of the trust, which is to provide for Betty's care and support. If it became necessary to pay out more of the income for Betty's care and support, it seems probable that Tom would agree to this rather than to reinvesting the income. This is especially true given Betty's age of 79, which does suggest that she will not need payments for a significantly long period of time in the future, so reinvesting is less important.

Additionally, as discussed above, Tom's intent was not to enrich his daughter at all, and he left her the trust assets solely because he did not have any other family. Therefore, the fact that paying out 100% of the trust income to Betty might decrease the amount that goes to the daughter after Betty's death is not important for the court to take into consideration, since the amount of trust assets received by the daughter was not important to Tom.

For these reasons, a court could authorize the modification of the terms of the trust such that Betty receives 100% of the trust income, rather than 80%.