July 2020, Essay 3
TRUSTS & WILLS-ESTATES QUESTION

Ann, a successful entrepreneur, grew up in a small town in State A. Ann's family could not afford to send her to college, but a group of local store owners, sensing Ann's potential, paid Ann's tuition for college and graduate business school. Twenty years later, in honor of the store owners, Ann created a trust and funded it with $1,000,000.

Under the terms of the trust, the trustee (a local bank) must annually use trust income to purchase and install seasonal plantings on all principal streets in the town where Ann grew up. The trustee is authorized to invade trust principal to purchase and install such plantings if the trust income is insufficient. The trust instrument further provides that the trust will last in perpetuity or until such time as the principal of the trust has been exhausted; no individuals are named as trust beneficiaries. Currently the trust's annual income is $40,000 and the annual cost of seasonal plantings is anticipated to be about $35,000.

Last week, Ann died unexpectedly and without a will. At the time of her death she had $100,000 in a bank account in her name alone. Ann's uncle and niece survive her.

The personal representative of Ann's estate properly filed an action to set aside the $1,000,000 trust on the ground that it is invalid under the common-law rule against perpetuities, which applies in State A. The personal representative also requested judicial approval of a proposal to distribute the assets of the allegedly invalid trust, with the other assets of Ann's estate, to Ann's niece but not to her uncle. Ann's uncle contends that he is entitled to half of Ann's estate.

State A has adopted the Uniform Trust Code.

1. May the trust endure for its stated duration (in perpetuity or until its assets are exhausted)? Explain.

2. Assuming that the trust cannot endure for its stated duration, could a court preserve the trust for any period of time to carry out Ann's intentions? Explain.

3. To whom should Ann's estate be distributed and in what shares? Explain.

SMART ANALYSIS

Legal Problems

Point One(a) (45%)

Did Ann create a valid charitable trust? A trust is charitable if it serves a governmental purpose or is otherwise beneficial to the community. Ann's trust for the beautification of the community serves these charitable purposes.

Point One(b) (10%)

Assuming that Ann created a valid charitable trust, may the trust endure in perpetuity or until its assets are exhausted? A charitable trust can last in perpetuity; it is not invalid under the rule against perpetuities.

Point Two (5%)

Assuming that the trust cannot endure for its stated duration, could a court preserve the trust for any period of time to carry out Ann's intentions? Assuming that the trust cannot last for its stated duration, under the Uniform Trust Code the court could authorize the trust's continuation for up to 21 years after its creation to carry out its noncharitable purposes so long as those purposes are not capricious.

Point Three (40%)

To whom should Ann's estate be distributed and in what shares? The answer depends on how State A determines heirship. If State A uses the consanguinity method of determining heirship, Ann's heirs are her uncle and niece, who would take equal shares. If State A uses the parentelic method, Ann's only heir is her niece.

Summary

Ann's trust is a valid charitable trust because civic improvement is a permissible charitable purpose. Charitable trusts are not subject to the common law rule against perpetuities and therefore, Ann's trust can last in perpetuity.

A trust may be created for a noncharitable purpose without any definite beneficiaries but having an otherwise valid purpose. However, such a trust cannot be enforced for more than 21 years after its creation. Here, it is unclear whether the trust can be continued under that rule because the facts do not indicate when Ann created the trust.

Ann's estate is distributable to her heirs. Under the civil law consanguinity method, Ann's heirs are her uncle and her niece, who would take in equal shares; under the parentelic distributional method, Ann's only heir is her niece.

February 2019, Essay 5
TRUSTS & FUTURE INTERESTS QUESTION

Eight years ago, a settlor created a $300,000 irrevocable trust. The settlor's brother is the sole trustee of the trust. The trust's primary beneficiaries are the settlor's son and daughter. The trust instrument provides, in relevant part:

> During the term of this trust, the trustee shall pay to and between my two children so much, if any, of trust income and principal as he deems advisable, in his sole discretion, for each child's support. Upon the death of the survivor of my children, the trustee shall distribute any remaining undistributed trust principal and income equally among my surviving grandchildren.

The trust contains a spendthrift clause that prohibits the voluntary assignment of a beneficiary's interest and does not allow a beneficiary's creditors to reach that interest.

Two months after creating the trust, the settlor died. Both the settlor's son, now age 35, and the settlor's daughter, now age 32, survived the settlor and are still alive. The settlor's son has three living children, now 9, 11, and 14 years of age. These children currently live with their mother, from whom the settlor's son was divorced seven years ago. The settlor's daughter is unmarried and has no children. Both the son (employed as a waiter) and the daughter (employed as a bookkeeper) have earned, on average, less than $35,000 per year during the past seven years.

Over the past eight years, the son has incurred and has not paid the following debts:

(a) $10,000 to a hospital for the son's emergency-room care

(b) $35,000 to his former wife in unpaid, judicially ordered child support

(c) $5,000 to a friend for repayment of a loan, five years ago, to purchase a high-end computer-gaming system for recreational use

Repayment of the debt to the friend was due last year, but the son defaulted on the loan.

During the first year of the trust, the trustee distributed $9,000 of trust income to each of the settlor's two children for their support. Thereafter, relations between the settlor's son and the trustee deteriorated. After the son and his wife divorced, the trustee frequently told others, behind the son's back and without any direct basis, that the son was an "adulterer" and a "terrible father." The trustee often referred to the son as a "bum," and he told the settlor's daughter, without any explanation, "Your brother is rude to me."

Over the last seven years, although the son's and daughter's financial needs were similar, the trustee has distributed $80,000 from trust income and principal to the settlor's daughter and nothing to the settlor's son, despite the son's repeated requests for trust distributions to help him pay his hospital bill, child support, and loan.

1. Given the terms of the trust the settlor created, could the trustee have properly distributed trust assets to the son to enable him to pay (a) his hospital bill, (b) child support, and (c) the loan to purchase the computer-gaming system? Explain.