

ISSUE CHECKLIST – TRUSTS

TRUST VALIDITY

- Requirements of a trust
 - Trust property
 - Illusory interest
 - Identified beneficiaries
 - Exceptions
 - Class gifts
 - Charitable trusts
 - Omitted children
 - Intent to create trust
 - Trustee
 - If no named trustee
 - Legal purpose
- Trust types and formalities
 - Writing and delivery
 - Testamentary trust
 - California Probate Code
 - Inter vivos trust
 - Transfer in trust
 - Real property
 - Execution and delivery
 - Writing requirement
 - Personal property
 - Delivery
 - Actual
 - Symbolic
 - Constructive
 - Charitable trust
 - Charitable purposes
 - Cy pres
 - Totten trusts
 - Honorary trusts

CHALLENGING TRUST VALIDITY

- Undue influence
 - Traditional approach
 - Confidential relationship approach
- Fraud
 - Fraud in the inducement
 - Fraud in the execution

BENEFICIARY/CREDITOR RIGHTS TO DISTRIBUTION

- Lapse and anti-lapse statutes
 - Limitation: class gifts
- Alienation
 - Discretionary trusts
 - Voluntary alienation (assignments)
 - Involuntary alienation (debts/creditors judgement)
 - Mandatory trusts
 - Spendthrift clauses
 - Limitation: settlor creating spendthrift for themselves
 - Surplus
 - Support trusts
 - Limitation: settlor creating support trust for themselves

TRUST TERMINATION/MODIFICATION

- Revocability
 - General rule – revocable
 - Express reservation
 - CA presumption
 - No express reservation required
 - Termination of irrevocable trusts
 - Settlor and beneficiaries agree to terminate
 - Settlor deceased, beneficiaries agree, no material purpose unfulfilled
 - Operation of law
 - Illegal
 - Impractical
 - Impossible
- Parties power to terminate
 - Settlor
 - Beneficiaries
 - Trustees
- Modification by court
 - Unforeseen circumstances and beneficiary agreement
 - Charitable trusts: cy pres

POWERS AND DUTIES OF A TRUSTEE

- Trustee's powers
 - Expressly granted in trust
 - Necessary for management
 - Implied power to contract, sell, lease and transfer
- Duty of care
- Duty to invest
 - State lists
 - Common law prudent investor test
 - Uniform prudent investor act
- Duty to diversify
- Duty to make property productive
 - Rental property
- Duty to be impartial
 - Re present beneficiaries
 - Re present and future beneficiaries
- Duty of loyalty
 - Self-dealing
 - Prohibited transactions
 - When authorized
 - Remedies
- Duty to disclose
- Duty to account
- Duty to earmark
- Duty to collect and protect trust property
- Duty not to commingle funds
- Duty not to delegate
- Duty to inform beneficiaries of trust document
- Liability of trustee under Uniform Trustees' Powers Act
 - Liability in contract
 - Liability in tort
- Remedies for beneficiaries based on trustee's breach of duty

REMEDIES

- Resulting trusts
 - Based upon presumed intent of parties
 - Transfer property back to settlor or settlor's estate
 - When arises
 - Trust ends by own terms
 - No beneficiary
 - Charitable trust
 - Impossibility
 - Impracticality
 - Cy pres cannot be used
 - Trust becomes illegal
 - Excess corpus
 - Purchase money resulting trust
 - Semi-secret trust
- Constructive trust
 - To prevent fraud/unjust enrichment
 - Transfer of property to intended beneficiary
 - Secret trust – admission of extrinsic evidence
 - Oral real estate trusts – SOF defense
- Removal of trustee