



SAMPLE: MEE OUTLINE

Trusts

II. Creation of a Trust (July 2015, Feb 2013, July 2008, Feb 2007, Feb 2006, July 2005, July 2004, July 2001, Feb 1997)

1) **Requirements to Create a Valid Express Trust: (Feb 2007, Feb 2006, July 2005, July 2001, Feb 1997)**

Green dates show you when an essay subject was tested on the MEE

a) A trust is valid if it has a trustee, beneficiary, and trust property.

Many MEE sample answers also discuss the importance of intent to create a trust (#TBT I).

i) **Trustee**

(1) A trustee manages the trust property and holds it for the benefit of the beneficiaries. A trustee's duties do not have to be expressly stated. Many statutes give a trustee implied powers to preserve trust property, invest prudently, etc.

(2) Note: A trust will not fail for lack of a specifically-appointed trustee. (The court will simply appoint one.) (July 2001)

ii) **Beneficiary**

(1) There must always be beneficiaries who can enforce the trust.

(2) In a private express trust, beneficiaries must be definite and ascertainable.

(a) Ex.: A trust made in favor of "friends" is indefinite because it is impossible to determine the precise number of persons who fit this description (Feb 2007, July 2005) but something like "the friend that took care of me for the last 20 years of my life" may be valid so long as that person is ascertainable.

(b) Ex.: A court may interpret a trust made in favor of "my family" to mean one's heirs.

(c) Ex.: A trust made to "my grandchildren" is valid even if no grandchildren are then living. They are ascertainable even though they do not yet exist.

(d) Note: The same person cannot be the sole trustee and sole beneficiary or the trust will collapse.

iii) **Trust Property (Trust Res)**

(1) Trust property must be identifiable.

(a) Ex.: "I declare myself trustee over some of my mutual funds" would not be a trust because the trust property is not adequately identified. "I declare myself trustee over all of my mutual funds" is a trust because the trust property is identified.

(2) A promise to give property in the future does not suffice unless there is consideration.

(a) Ex.: If Harry promised he would create a trust of property he might inherit from his mother, that promise would be unenforceable. (July 2001) (Note that if there was consideration given for the promise, it would be enforceable under contract law.)

(3) If a trust that is invalid for lack of assets is later funded, a trust arises at that time if the settlor re-manifests his intention to create a trust.



(a) Ex.: A settlor announced that he was going to create a trust and signed a napkin memorializing his intention. However, it was not funded until he deposited \$100,000 into a bank account in the name of “Settlor, as Trustee of the Settlor’s Family Trust” three years later. It then became a valid trust at that point in time. (Feb 2006)

iv) **Intent to create a trust:** No specific words are needed but a present intent is needed.

2) A trust does not need:

a) **Witnesses:** A trust does not need witnesses, or to be executed like a will. (Feb 2013)

b) **Writing (for personal property)**

i) For personal property, an oral trust is valid but the terms need to be proved by clear and convincing evidence. In order to give real property, the trust must be in writing.

c) **Delivery of trust assets (in some cases).**

i) A settlor does not always have to deliver trust property to the trustee (for example, if it is a testamentary trust or self-declaration of trust, no delivery of trust assets is required). In other cases, the settlor must deliver trust property to the trustee.

3) When will a court imply a trust even if no valid trust exists? (Feb 2007)

a) **Resulting Trust – not a real trust**

i) A resulting trust generally arises where: an ***express trust fails*** (e.g., beneficiaries cannot be ascertained or purpose is unlawful) or an ***express trust does not make a total distribution***.

ii) The court will imply a trust and make the settlor or his heirs the beneficiary.

(1) Ex.: (from above) A trust made to “my grandchildren” may be valid even if no grandchildren are then living. They are ascertainable even though they do not yet exist. However, if no grandchildren are born the trust fails for lack of beneficiaries and a resulting trust arises in favor of the settlor.

b) **Constructive Trust – not a real trust (never been tested)**

i) A constructive trust is an **equitable remedy** that applies when there is ***fraudulent, wrongful or otherwise unconscionable conduct*** and ***unjust enrichment***.

(1) Ex. (famous case): Testator wrote a will. Later, she wanted to change it and execute a new one. However, due to fraudulent misrepresentation, undue influence, and later the murder of the testator by the beneficiaries of her original will, testator never executed a new will so her old will survived. A constructive trust is created and the takers under the original will will hold a constructive trust for those who would have taken.

4) Validity of a trust when provisions violate public policy:

a) Trust provisions that violate public policy are void and the provision is deleted from the trust.

i) Trust provisions that restrain marriage or divorce are void. (July 2015)

(1) Ex.: A trust provision which states a beneficiary shall have no interest under the trust unless he obeys the instructions of the settlor regarding marriage is void.

ii) However, some courts have upheld trusts when the true motive is to provide for a beneficiary while the beneficiary was single. A marriage restriction tied to a surviving spouse’s interest is valid.

This goes on for 17 pages total. It has every issue since 1995 in the outline.



Trusts Tested Issues:

At the end of the outline, we show you visually when and how certain topics were tested in the past.

July 2016:

Feb 2016:

July 2015: Trust provisions that violate public policy, Prudent person rule, Self-dealing by Trustee, duty of loyalty (and damages).

Feb 2015:

July 2014:

Feb 2014: Future interests issue, Uniform Principal and Income Act, distribution of trust assets after trust terminates.

July 2013:

Feb 2013: Future interests issue, Amendment of trust.

July 2012: Termination of trust under Common Law and the UPC, Effect of termination, Class gift.

Feb 2012:

July 2011: Equitable deviation, cy pres.

Feb 2011: Discretionary trusts, Class gift, Adopted child treated same as biological child

July 2010:

Feb 2010: Class gift and antilapse statute, disclaimer of interest, Uniform Principal and Income Act and duty to diversify, Self-dealing by Trustee, duty of loyalty (and damages).

July 2009: cy pres, Uniform Principal and Income Act, Self-dealing by Trustee, duty of loyalty (and damages).

Feb 2009:

July 2008: Amendment of trust and poulover will involved, Class gift and antilapse statute, construction of a trust

[This goes back to 1995]