Equity and Secret Trusts: Essay to Advice on Distribution of Estate

In this essay I will advise Joey's executors Rachel Green and Ross Geller, as to the distribution of his estate according to Joey's intentions and his will he left behind. I will cover the issues including the Whatsapp conversation between Joey and Phoebe Hannigan, his friend, entrusting him with his will which he sent a copy to his solicitor Alex Garret. Which included an attached document and letter of proof from Royal Mail that the letters were delivered to Professor Ross Geller at the University of London on 5th June 2018. I will be discussing whether there has been a valid will, a possible secret trust to Monica, whether Joey has created a valid inter vivos trust and the distribution of his estate and gifts he intended to his friends.

Firstly, a trust is defined as where property held by one person for the benefit of another, with legal and equitable ownership being separated. The people who are entrusted with the trust and is responsible for the distribution of property and assets are trustees which in this case are Rachel Green and Ross Geller. The people who benefit from the will are beneficiaries.

To ensure a valid will there are requirements

Section 9 Wills Act 1837

No will shall be valid unless –

- it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and
- it appears that the testator intended by his signature to give effect to the will; and
- the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the time; and
- each witness either –
- attests and signs the will; or
- acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witnesses), but no form of attestation shall be necessary.

Here, it appears that Joey fulfilled these requirements on his will. However, it appears that Joey may have possibly made a secret trust. Secret trusts are Snell's Equity defines a secret trust as: one which gives effect to the express intentions of a testator which are not contained in a written document duly executed as a will. A will is a public document. The advantage of a secret trust is that the testator may use a will to implement his wish to establish a trust on his death without disclosing the intended beneficiary or the terms under which he holds. It appears as it is a gift on the face of the will. This is supported by the case Rawston v Freud 2014 where it was said "A secret trust can be created by a testator who leaves property (by his Will or by intestacy), on the strength of an undertaking given by the person who takes that property, to hold it when received on trust for a third party. It is long established that the court will enforce performance of the undertaking given for the benefit of the third party." Secret trusts are made when testator does not want anyone to know what or whom they will give their estate or assets to. Half secret trusts are when testator makes a will and leaves property in his will on trust to a

named trustee and the trust is stated on the will but not the terms. The purpose of this is to decrease the risk of fraud. A case to support half secret trust is