

1. Daniel cannot if he wishes to assign the undistributed income to Camco in 2008. Under Texas law, a spendthrift clause that prevents a beneficiary from assigning or disposing his interest will be valid and if violated can result in the depletion of the Trust. If a trust is made irrevocable by the settlor, the trust cannot be changed without the settlor's permission. Here, the Trust that Elizabeth created for Daniel was irrevocable and contained a spendthrift clause. This not only prevents outside creditors, but also deterred the beneficiary from using the funds in any other matter than prescribed without the settlor's permission. Therefore, Daniel could not assign the undistributed income to Camco in 2008 without being in violation of the trust.
2. No Camco could not reach the trust assets in 2008 to satisfy its judgment. Under the Trust Code where a trust has a spendthrift clause the trust is protected from outside creditors and the only exception to that would be child support, contract for necessities, and the IRS. Here the facts do not state whether the contract Daniel had with Camco Inc. was for necessities ie. medicine, food etc. In 2008 Camco could not reach the trust corpus. However, once the trust is extinguished and given to Daniel, Camco would be able to reach the trust corpus.
3. No, Elizabeth's inability to serve as a trustee does not cause the trust to fail. Under the Trust Code, no trust ever fails for a lack of a trustee. If there is no trustee available, the court would appoint one. Here, even though Elizabeth is unable to serve as a trustee because she was completely incapacitated in the accident the trust would not fail. The court would just appoint a trustee in this situation. Therefore, the trust would not fail.
4. No, Graham cannot unilaterally revoke the trust, but he can terminate it by legal process in 2009. Under Texas law, only a beneficiary or the settlor can unilaterally terminate a trust or revoke a trust. This cannot be done by an outside guardian without court approval. However, because Graham is Elizabeth's legal guardian, she can petition the court by legal process that the trust be terminated because the Settlor is unable to provide for herself and the assets being placed in the trust are need for the best interests of the ward. The court can then consider the totality of the circumstance and decide or not decide to terminate the trust.

END OF EXAM

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1. Daniel cannot assign the undistributed income to Camco to satisfy the judgment against him. Here there is a valid trust and a valid spendthrift clause within that trust that prevents him from doing just that. For there to be a valid spendthrift clause it must be attached to a valid trust. In Texas, in order to have a valid trust there must be a writing, a settlor, a beneficiary, a trustee, trust property, delivery of the trust property to the trustee and the trust must be for a lawful purpose. Here there is a writing and the beneficiary is Daniel. The settlor is Elizabeth and she is also the trustee. There is no provision in Texas saying that a settlor cannot appoint themselves as trustee so this is valid under the Texas Trust code. There is also property which is the income from the mineral interests and the mineral interests were delivered into the trust because they are in Elizabeth's possession. Additionally, the trust is for a valid purpose which is to support and benefit her nephew Daniel. Spendthrift provisions are entirely legal and enforceable in Texas and they are intended to protect the trust assets from creditors of the beneficiary. This spendthrift trust prohibits Daniel from being able to dispose of or assign his interest to anyone and that will be held to be enforceable. Therefore, Daniel cannot assign the undistributed income to Camco to satisfy the judgment.

2. Camco cannot reach the trust on its own to satisfy the judgment. The spendthrift clause not only prevents Daniel from being able to use up the assets on his own but it also prevents creditors and liens from being able to get ahold of the assets in the trust. There are certain creditors that can make a claim and put a lien on a spendthrift trust such as debts for necessities, child support, and judgment's from personal injury cases but this is not one of those situations. In this instance, Camco is claiming a judgment from a breach of contract suit and therefore they will not be able to reach the trust corpus to satisfy the judgment. However, if the trust is dissolved and the property and corpus paid out in full to Daniel, they can then obtain an interest in the property free of the spendthrift clause.

3. No Elizabeth's inability to serve as trustee in 2009 does not cause the trust to fail. A trust never fails for lack of a trustee. There are certain situations in which a trust might arise where there is no trustee - because the person named is no longer alive, or no person was named, or the person refuses to perform as trustee - in these situations the court will appoint a trustee. This is the only element of the trust that has liveness. There was a valid trust that was being served properly and effectively for four years of the 20 year lifespan of the trust. Merely, because

Elizabeth can no longer serve does not mean the court will allow the trust to fail. In this situation the court will likely appoint Graham as trustee if he is willing to serve since he is Elizabeth's guardian. However, if there are substantial assets in the trust and it is prudent to do so, the court might find a bank or corporate trustee that can serve effectively. The trustee will be compensated so banks as trustees aren't a bad option.

4. Graham probably will not be able to unilaterally revoke the trust or terminate it by legal process in 2009. In order for a trust to be revoked or terminated it must be a revocable trust or it must be done directly by the settlor. Here the settlor is incapable of revoking the trust and a trust that is expressly made to be "irrevocable" will be held to be such therefore it cannot be terminated unilaterally by Graham for this reason. However, a trust can be terminated for several other reasons - for instance if the trust purpose is satisfied, or if the trust is no longer profitable or economically worthwhile to maintain. In these situations the corpus of the trust will then be given to the beneficiary or whoever is named to take the corpus. However, the purpose of the trust is clearly not satisfied in this instance and therefore the trust will not be able to be terminated. The trustee's can all agree to terminate the trust but it must not be in violation of that trust purpose. Here, the purpose of the trust was to provide Daniel income for 20 years that could not be reached by creditor's. This was likely to be a support trust which was intended to support Daniel's life and there was no intent to just give him the money free and clear. Additionally, with the spend thrift clause being added in, terminating the trust will run in exact contradiction of the trust purpose because if terminated, the corpus will be able to be reached by creditors of Daniel's as well as this judgment against him. Also, the trust has not become impractical to maintain. It still maintains the same corpus - the mineral interests - and pays the same amount to Daniel each year despite Elizabeth's lack of earning capacity. Elizabeth's intent was not to take the money back for herself and that is part of the reason she made the trust irrevocable. It is unlikely, despite her current situation and need for the funds, that Graham will be able to revoke the trust.

However, the court might allow the revocation of the trust if it is for the corpus to be given to Elizabeth rather than to be paid out directly to Daniel according to the trust terms. This is because the settlor (Elizabeth) is still alive and is the only one with the power to revoke the trust. Once she became incapacitated, Graham was appointed as her guardian and must act in a manner that is within the best interests of the ward (Elizabeth). The court might determine that revoking the trust to pay to her is within the best interest of the ward, but it is unlikely and they

will most likely maintain the trust purpose and continue paying to Daniel.

END OF EXAM

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(1) Daniel may not, if he wishes to do so, assign the undistributed income to Camco in 2008 to satisfy the judgment against him. The general rule is that a spendthrift provision is inserted into a trust to protect the trust corpus from judgment creditors. The general rule is that a spendthrift trust prevents the voluntary or involuntary transfer of a beneficiary's interest in the trust assets. Finally, the general rule is that the spendthrift provision will be strictly construed.

These rules are applicable here because in 2005, Elizabeth, a highly paid executive officer of a Texas Corporation, established an irrevocable trust naming her nephew Daniel as the beneficiary. The trust contains a spendthrift provision that reads: "The beneficiary of this trust is hereby restrained from anticipating, encumbering, alienating, or in any other manner assigning or disposing of his interest in either the corpus or income of the trust estate, and is without power to do so."

In January, 2008, a judgment was entered against Daniel in a breach of contract suit. Camco, the judgment creditor, threatened Daniel that, unless Daniel signed an irrevocable assignment to Camco of the undistributed trust income for the next five years, it would obtain a writ of execution and levy on the trust corpus to satisfy the judgment. Daniel may not, however, assign the undistributed income to Camco in 2008 to satisfy the judgment against him because the spendthrift provision expressly provides that Daniel may not assign his interest and will be strictly construed.

Therefore, Daniel may not, if he wishes to do so, assign the undistributed income to Camco in 2008 to satisfy the judgment against him.

(2) Camco may not reach the trust corpus in 2008 to satisfy the judgment. The general rule is that a creditor may reach the trust assets when the trust is revocable. The general rule is inapplicable here because in 2005, Elizabeth established an irrevocable trust naming her nephew Daniel as the beneficiary. These facts indicate that an irrevocable trust was established so that a judgment creditor may not reach the corpus. The general rule is also seemingly inapplicable because Camco seeks to enforce its judgment against Daniel and not Elizabeth.

Still, Camco may not reach the trust corpus. The general rule is that a spendthrift provision is inserted into a trust to protect the trust corpus from judgment creditors. The general rule is that a spendthrift trust prevents the voluntary or involuntary transfer of a beneficiary's

interest in the trust assets. Finally, the general rule is that the spendthrift provision will be strictly construed.

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Therefore, Daniel may not, if he wishes to do so, assign the undistributed income to Camco in 2008 to satisfy the judgment against him. Further, Camco may not reach the trust corpus in 2008 to satisfy the judgment.

(3) Elizabeth's inability to serve as trustee in 2009 does not cause the trust to fail. The general rule is that a valid trust is established when a trustor delivers res with the intent to establish a trust with a lawful purpose to benefit a beneficiary. The general rule is that a valid trust is established when the trustor names a trustee and grants the trustee powers regarding the trust corpus. The general rules are applicable here because in 2005, Elizabeth established an irrevocable trust naming her nephew Daniel as the beneficiary. The trust is funded with the income Elizabeth receives from mineral interests she owns. Elizabeth named herself as trustee of the trust. The trust document does not provide for a successor trustee. These facts indicate, therefore, that Elizabeth established a valid trust and named herself as trustee.

The issue, however, is whether Elizabeth's inability to serve as a trustee in 2009 causes the trust to fail. The general rule is that no trust will fail for lack of a trustee. The court will likely adjudicate a person to serve as the trustee so that the trust may be continued for its lawful

purpose. The general rules are applicable here because in 2009, Elizabeth was involved in a serious accident, became completely incapacitated, lost all her earning capacity, and was unable to carry out her duties as trustee. These facts indicate, therefore, that Elizabeth is unable to continue operating as trustee. Because the trust document does not provide for a successor trustee, the court should terminate the trust or adjudicate a new trustee.

(4) Graham may not unilaterally revoke the trust; Graham may not likely terminate the trust by legal process in 2009. The general rule is that a trust is revocable at any time via a signed writing unless the trust expressly states that the trust is irrevocable. The general rule is applicable here because in 2005, Elizabeth established an irrevocable trust. These facts indicate that Elizabeth established an irrevocable trust.

Graham may not unilaterally revoke the trust. The general rule is that when a trustor may not revoke a trust, the guardian of the trustor's person and/or estate may not revoke the trust. The general rule is applicable here because in 2005, Elizabeth established an irrevocable trust. In 2009, Elizabeth was involved in a serious accident, became completely incapacitated, lost all her earning capacity, and was unable to carry out her duties as trustee. Graham was appointed by the Court to be her guardian. The facts do not indicate whether Graham served as the guardian of the ward, as guardian of the estate, or as guardian of the ward and the ward's estate. Assuming *arguendo* that Graham was appointed guardian of Elizabeth's estate, these facts indicate that he is not able to revoke the trust unilaterally because Elizabeth did not have that power.

Graham may not unilaterally revoke the trust. The general rule is that a guardian may not revoke a trust unilaterally. The general rule is applicable here because in 2005, Elizabeth established an irrevocable trust. In 2009, Elizabeth was involved in a serious accident, became completely incapacitated, lost all her earning capacity, and was unable to carry out her duties as trustee. Graham was appointed by the Court to be her guardian. The facts do not indicate whether Graham served as the guardian of the ward, as guardian of the estate, or as guardian of the ward and the ward's estate. Assuming *arguendo* that Graham was appointed guardian of Elizabeth's estate, these facts indicate that he is not able to revoke the trust unilaterally because Elizabeth did not have that power.

Graham may likely terminate the trust by legal process in 2009. The first issue is whether Graham may assert the claim. The general rule is that Texas does not recognize a trustee by

estoppel. The general rule is that a trustee may initiate suit regarding the trust. These general rules are applicable because in 2005, Elizabeth established an irrevocable trust. In 2009, Elizabeth was involved in a serious accident, became completely incapacitated, lost all her earning capacity, and was unable to carry out her duties as trustee. Graham was appointed by the Court to be her guardian. The facts do not indicate, however, that the court appointed Graham as trustee. These facts indicate that Graham does not have standing to assert a claim against the trust. The trust was funded by Elizabeth's mineral interests.

END OF EXAM