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1. Brad does not have a valid claim against Bank, because the inspection was performed properly by Bank prior to adopting the position of trustee.

The issue is whether Brad has a valid claim against Bank for the loss of the sale of the service station.

In Texas, a party designated as a trustee to a trust may voluntarily refuse to act as trustee if they believe they may not be able to exercise the duties of a trustee sufficiently. A trustee has fiduciary duties to a trust that include the duty of loyalty and the duty to care for the trust corpus. A trustee's duty of care necessitates that the trustee act as a reasonable and prudent person when managing and looking after the property. The trustee must also provide an accounting of transactions including the trust property annually, as well as a report of the value of the property. Inspection of the trust property is proper and necessary for a trustee to be able to fulfill their duty of care, by giving them a complete view of the value of the property.

A beneficiary has standing to sue a trustee for breach of its duties, as the beneficiary has a direct justiciable interest in the outcome of any transactions related to the trust property.

Here, Seth's valid testamentary trust sought to appoint Bank as the trustee to care for and manage the trust assets, including the service station. Bank properly had the service station. The inspection revealed significant environmental problems with the station, which would have undoubtedly necessitated further care and management that Bank may not have wished to undertake. Bank's acceptance of the trusteeship was voluntary, and therefore, Bank could properly refuse to act as trustee. Bank also declined to act as trustee and submitted a writing to Brad refusing to accept the appointment. This was the proper forum to refuse the position.

The inspection was not improper as it was carried out prior to Bank accepting the trusteeship. That Brad lost the sale of the service station as a result of the inspection does not lead Bank to be liable. Bank did not perform any other illegal act in having the inspection done that would subject it to liability from Brad. While Brad does have standing to sue as the beneficiary, there is no valid cause of action.

Therefore, Brad does not have a valid claim against Bank, because the inspection was performed properly by Bank prior to adopting the position of trustee.

2. The Court is likely to rule that Shelter is not a proper beneficiary under the trust because the trust language providing the gift was precatory and ineffective to transfer any property to it.

The issue is whether or not Shelter is a valid beneficiary of the testamentary trust.

In Texas, the courts generally seek to honor the intent of the settlor by enforcing the plain language of the trust. A gift that is left to a beneficiary cannot be conveyed properly through the use of precatory language. Precatory language is language that does not evidence the settlor's intent to transfer the property, but expresses a mere wish that it be transferred. Proper language to transfer property includes the words - "shall," "must", "transfer," etc. Precatory language is ineffective to transfer trust property and includes words such as "desire," "wish," "want," etc.

Here, in the language of the trust, Seth left his entire estate to Brad using the words "I hereby leave my" He also wrote that he "wished" that Brad would use the significant cash in the estate to benefit Shelter. However, this language was precatory and is ineffective to effect any kind of testamentary trust transfer. It is not sufficient evidence that the settlor Brad actually left something to Shelter. He merely expressed a wish that Brad would take something out of the

estate he was being left to give to Shelter as the beneficiary.

Therefore, the Court is likely to rule that Shelter is not a proper beneficiary under the trust because the trust language providing the gift was precatory and ineffective to transfer any property to it.

3. The Court will likely rule that Brad cannot be appointed trustee of the trust, as to do so would merge titles to the trust corpus and destroy the purpose and existence of the trust.

The issue is whether Brad, as the sole beneficiary of the testamentary trust, may also be the trustee of the trust.

In Texas, a trustee for a trust holds legal title to the trust corpus for the benefit of the beneficiary(s). The beneficiary(s) own equitable title to the corpus. The trustee has the legal power to dispose of, manage, and disburse the property of the trust according to the wishes of the settlor as expressed in the language of the trust. However, a trust in which the trustee and the beneficiary are the same party is not valid under Texas law, as in that case, the legal title and the equitable title merge into one party, eliminating the purpose of the trust. Once this merger of title occurs, the trust is extinguished. A court will not allow a beneficiary under a trust to be appointed as trustee of the trust in order to prevent this from happening.

Here, Seth's trust initially appointed Bank as the trustee and Brad as the beneficiary. This was proper. However, since Bank declined to serve as trustee, Brad wishes to be appointed trustee. However, at Seth's death, Brad is now a beneficiary with equitable title to the trust corpus. If the court were to allow Brad to be both the beneficiary and the trustee of his own trust, he would then have legal title as the trustee, and equitable title as the beneficiary, which would merge title and destroy the purpose of the trust.

Therefore, the Court will likely rule that Brad cannot be appointed trustee of the trust, as to do so would merge titles to the trust corpus and destroy the purpose and existence of the trust.

END OF EXAM

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Trust

1. No. Brad does not have a valid claim against bank, as they are entitled to inspect the property and may decide whether or not to agree to be a trustee.

2. The Court will likely find that the shelter does not have a valid claim as a beneficiary because the words were merely precatory in nature; however, it is also possible that the court could find that a valid honor trust has been established, but it is unlikely.

3. The court will probably deny the request because the trustee cannot be both the sole trustee and beneficiary due to merger.

1. Bank's Refusal to be Trustee

Under the Texas Estates Code (previously the Texas Probate Code), trustees have a duty to make a proper accounting of the assets and an appraisal. Also under the Estate Code

Here, the Bank made an inspection of trust property prior to committing to trust. Because of the results of the finding they elected not to be trustee, which is permissible. Upon investigation of the trust res, the Bank discovered a defect and did not want to continue on as the trustee, withdrawal of the trustee does not harm the trust because the court will just appoint a new one. The bank withdrew before it signed its acceptance, so it was not required to submit an accounting.

Therefore, it is unlikely that Brad can recover against the Bank because they were within their rights to refuse appointment after examining the property and they appropriately submitted a written denial evidencing such.

2. Shelter Beneficiary Status

Under the Texas Estates code a trust is valid when a settlor with capacity and intent to create a trust delivers res to a trustee for the benefit of beneficiaries, and the trust has a valid purpose. There is no special language required for the creation of a trust but precatory words can destroy the trust altogether - such as I wish. Honorary trusts also exist, typically for a term of years - these are mostly used on pets in Texas though and aren't particularly common.

Here, the settlor created a pour over trust, which is a trust that arises from a will. By way of will he made his intent and delivery (even if trustee fails), for the benefit of Brad and he wants Brad to use the money to support the shelter. However, the language is that of I wish, if settlor wanted Shelter to be a beneficiary he would have left the estate in trust to be BRAD AND SHELTER, but his I wish language will most likely be seen as precatory and invalidate the trust. The Court will either strike the requirement to support the trust or just vest Brad with fee simple.

Therefore, it is unlikely the shelter will be found to be a beneficiary because the language is precatory. The shelter can try to argue that a honor trust was created, but that will be very difficult to prove.

3. Brad as Trustee

Under the Texas Estates code a beneficiary may be trustee if they are not the only trustee

or beneficiary. If they are the rule of merger would applied and they would just receive fee simple.

Here, there is an obvious dispute as to beneficiaries. The court would be best off to appoint another corporate trustee (which won't require bond), because they are the group most likely to be impartial to the beneficiaries. If the shelter is somehow found to be a beneficiary then Brad would be unlikely to be impartial. Brad also would be ineligible if he was insane, unsuitable, an infant(minor), or a felon.

Therefore, it is unlikely that Brad will be found 'suitable' as a trustee because of the ongoing beneficiary issues if a honor trust is somehow imposed.

END OF EXAM

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1. Brad does not have a valid claim against Bank because it did not breach any duties to Brad.

Trustees are permitted to inspect assets prior to accepting appointment as trustee and to turn down the appointment if it so chooses. Once a trustee accepts the appointment, it must act as a fiduciary to the beneficiaries of the trust. Under this fiduciary duty, the trustee owes the beneficiary of a trust the duty of loyalty and the duty of care. With respect to the duty of loyalty, the trustee is required to put the interests of the beneficiary ahead of his own interests and refrain from engaging in self-dealing. Under the duty of care, the trustee is required to act as a reasonable person would in managing caring for the trust assets.

Here, it was well within Bank's rights to inspect the assets of the trust and to decline appointment if it so chooses. Because Bank had not yet been appointed as trustee, it is unclear if the fiduciary duties of a trustee extended to Bank at the time that Bank ordered the inspection of the service station. However, even if the fiduciary duties did extend to Bank, Bank did not breach either of its fiduciary duties. First, Bank did not breach the duty of loyalty. Bank acted in the best interest of Brad when it ordered the inspection of the service station because Bank was attempting to protect Brad against future liabilities that may arise from the trust asset. There is no evidence that Bank took any action which would have placed its own interests ahead those of Brad's. Second, Bank did not breach its duty of care. As discussed above, it was objectively reasonable for the Bank to order an inspection of the service station because it had several underground storage tanks which potentially posed an environmental hazard. Bank's order of the inspection did not deviate from what a reasonable person would do with their assets under the circumstances. Since the Bank did not violate its duties, if they attached at all, Brad does not have a valid claim against bank.

2. The court will rule that Shelter is not a beneficiary because the grant uses precatory language.

Trusts are a bifurcated transfer of real property interests. The trust must have a trustee and at least one beneficiary who is different from the trustee. Once the property (or res) of the trust has been transferred into it, the trustee holds legal property to the trust assets and must hold or utilize them in a manner that benefits the beneficiaries. The beneficiaries hold equitable title to the property, which means they are entitled the benefit of the trust, include any proceeds from it. In order to create a trust, the settlor must use definitive language such as "held in trust" or "for the benefit of." A trust will not be created where the settlor uses precatory language such as "wish" or "desire." Only beneficiaries of a trust will have standing to challenge the management of the trust.

Here, there was a clear trust created with Brad as the beneficiary, evidenced by the language "to my son, Brad, to be held in trust." However, the later language "[I] wish that Brad use the significant cash in my estate to benefit the Lost Pet Shelter (Shelter)" is precatory because it conveys only a desire to use the property in a certain way, not a demand. Therefore, there was no trust created to benefit Shelter. Because Shelter will be unable to show a beneficial interest in the property, it lacks standing to assert a challenge to the management of trust assets.

3. The court will deny Brad's request to be appointed as trustee because it will effectuate a merger.

As discussed above, creation of a trust bifurcates the interests in the property into a legal title

holder and equitable title holder. While a single person (or entity) can act as both the trustee and the beneficiary, this is not the case where the sole trustee is the sole beneficiary. This is because when both the legal and equitable interests are possessed by a single person, the two interests merge and the trust is defeated. Where the named trustee refuses appointment and the trust does not specify a backup trustee, the court may utilize discretion in appointing a successor trustee so that the trust survives.

Here, appointment of Brad would operate as a merger. As discussed above, Shelter has no beneficial interest in the trust assets. Therefore, the only beneficiary of the trust is Brad. If Brad were appointed as trustee, he would hold both legal title and equitable title to the trust assets. Consequently, the two titles would merge and the trust would be destroyed. Since Brad is not a proper choice as trustee, the court will appoint a successor trustee to manage the assets of the trust, so that its settlor's intent can be effectuated. Because appointment of Brad would operate as a merger, the court will not appoint Brad as trustee.

END OF EXAM
