

10)

1.

When a settlor creates a trust, it may be used against the settlor's creditors unless a settlor creates an irrevocable trust. If the settlor creates an irrevocable trust, then there is a guarantee that the funds within the trust will never come back to the settlor and so the settlor's creditors have no rights to access it.

A beneficiary's creditors cannot reach trust res if the trust is a spendthrift trust, because the beneficiary has no power to reach the funds and move them. The beneficiary's creditors may only claim the trust res once there has been a payment by the trustee.

Once there is a spendthrift trust, there are certain specific statutory exceptions as to who may access the spendthrift trust and they include: any creditors for the health and safety of the beneficiary, any tax liens, and any child support or spousal support obligations.

With that background, the following debts and obligations may or may not be satisfied by the principal and or income from the trust as follows:

(a) Adverse Money Judgment against Sam in a personal Injury lawsuit

The money judgment may not be paid from the trust res against Sam. Although Sam was the settlor and also a beneficiary, the trust does not fail because Sam is not the sole beneficiary. Because his son is also a beneficiary of the trust, and the trust is an irrevocable spendthrift trust, the judgment lien creditor cannot access the trust in order to receive payment

(b) Unpaid Credit Card Charges by Ben

Since the trust is a spendthrift trust, and a credit card charge is not one of the statutory exceptions that are able to access a spendthrift trust, the credit card company will not be able to access the trust income or principal to satisfy the debt. It can only access the trust res once a payment has been made out.

(c) IRS tax lien against Sam

The IRS will be able to access the trust res because it is one of the statutory exceptions that is allowed to access a spendthrift trust.

(d) Ben's unpaid hospital bill

The hospital will be able to access the trust res because it is one of the statutory exceptions that is allowed to access a spendthrift trust because it is an expense made for the health of the beneficiary.

(e) Outstanding child support obligation owed by Sam for a child from a prior marriage.

The child support obligation would be able to reach the spendthrift trust because it is one of the statutory exceptions that is allowed to access a spendthrift trust.

2.

The Bank should affirmatively respond to Ben's request to pay his tuition because the Bank has been instructed to do so by the terms of the trust.

This trust is a discretionary trust, which means that the trustee may pay the beneficiary at its discretion for anything that is laid out in the terms of the trust. Here, the terms of the trust stated that the Trustee may pay Ben from the trust principal for any necessary college expenses. This means that the Bank will have to determine what is a necessary college expense. Tuition is certainly a necessary expense, so Bank will have to pay that out per the terms of the trust.

10)

1. Debts and Obligations

The issue is what debts and obligations can be satisfied with income and/or principal from the trust.

To create a valid trust, a settlor who is at least 18 and of sound mind, must intent to create a trust, must concurrently transfer trust property into the trust, must have ascertainable beneficiaries, and must have a valid trust purpose. Upon the creation of a valid trust, the trustee owns legal title to the trust res for the benefit of the beneficiaries. The beneficiaries hold equitable title. The settlor can be the beneficiary so long as there is an independent trustee. The trust cannot be formed to defraud creditors. A spendthrift trust is created to provide for the needs of the beneficiaries. To be valid, it must restrict both involuntary and voluntary transfers. The trustee has the sole discretion in determining whether to make a distribution. In general, creditors may not attach any of the trust property until it has been distributed to the beneficiary. Creditors who can break through the spendthrift trust include the government for taxes, creditors supplying necessities, and marital support obligations.

Here, a valid spendthrift trust was created for the benefit of Sam and Ben during Sam's lifetime and the trustee, the Bank, has the discretion in determining when to distribute the trust res to the beneficiaries. There is no indication that the trust was created for any unlawful purpose.

A. Personal Injury Lawsuit

The issue is whether a creditor for a personal injury lawsuit can break through the trust. A personal injury lawsuit judgment is not the type of creditor that is entitled to break through the spendthrift trust. There is no indication that the purpose of the trust was to defraud this creditor in any way and there is no indication that this lawsuit was related to a DWI incident.

Therefore, this judgment cannot be satisfied by the trust principal or income until the trustee distributes the funds to Sam, upon which time, the creditor can attach those funds.

B. Unpaid Credit Card Charges

The issue is whether a creditor for unpaid credit card charges can break through the trust. Unsecured credit card debt is not the type of creditor that is entitled to breach through the spendthrift trust. There is no indication that the purpose of the trust was to defraud the creditor. A creditor cannot force the trustee to distribute trust funds.

Therefore, the unpaid credit card charges cannot be paid by the trust principal or income. Once they are distributed to Ben, then the creditor can attach them.

C. IRS Tax Lien

The issue is whether the IRS tax lien can be paid from the trust. Tax liens from the IRS can break through the trust and are entitled to payment despite the trust. As such, the tax liens can receive the income from the trust. To the extent that the income does not satisfy the lien, the IRS can also take from the principal.

Therefore, the IRS Tax Lien can be satisfied from the trust.

D. Ben's unpaid hospital bills.

The issue is whether Ben's unpaid hospital bills can be paid from the trust. Hospital bills are debts for necessities and therefore, the creditors can break through the trust. As such, the hospital can receive the income from the trust. To the extent that the income does not satisfy the lien, the hospital can also take from the principal.

Therefore, the hospital bills can be paid by the trust.

E. Child Support.

The issue is whether the child support payments can be paid by the trust. Unpaid child support obligations are the type of creditors that can break through the trust. Therefore, these obligations can be satisfied by the income and if not enough, can be satisfied by the principal.

Therefore, the child support payments can be paid by the trust.

2. Tuition

The issue is whether the Bank should pay Ben's tuition.

The trustee has the discretion to pay the tuition from the trust as per the instructions in the trust document. The trust document states that the trustee may pay for Ben's necessary college expenses. Ben has enrolled in college and has requested that the trustee pay for his tuition. As such, if Ben needs the funds for college expenses then the trustee can give them to him as per the terms of the trust. College tuition qualifies. As such, the trustee should pay Ben's tuition. However, once the funds are released from the trust, the creditors for Ben's unpaid credit card charges can reach the funds. Therefore, the trustee should warn Ben of this and determine the proper solution in the best interests of Ben, which would likely require that the trustee directly pay the tuition from the trust rather than distributing to Ben first.

10)

(1) In establishing a spendthrift trust, the Trustor places the contents of the trust out of the reach of each of creditors that may ordinarily be able to reach it. Here, Sam established a spendthrift trust for the care of him and his son Ben. As a general rule, Creditors may not reach the trust. However, as Sam placed the discretion of the spending of the trust income solely in the Bank, the Bank may choose to pay particular debts and will also be required to pay others.

(a) The adverse money judgment against Sam may be satisfied with trust funds.

This is the exact type of debt that spendthrift trusts aim to protect. As the Bank has sole discretion to pay net income from the trust to Sam and Ben, the Bank cannot pay money to creditors of this type. However, once the trust allocates money to Ben and/or Sam, creditors may reach the money. Here, if the Bank were to pay any amount to Sam, this money would be in the reach of the adverse money judgment.

One exception to all of this however, as it applies here, is that if the party that establishes the spendthrift trust is the same party that creditor's are trying to reach, there is no protection from creditors. This means that, because Sam is the one that has a money judgment against him and Sam is the same person that created the spendthrift trust, the creditors can reach the trust.

For the reasons listed above, the adverse money judgment against Sam may be satisfied with trust funds.

(b) The unpaid credit card charges by Ben may not be satisfied with the trust funds.

The unpaid credit card charges may not be satisfied with trust funds. As explained in (a), creditors cannot reach the contents of a spendthrift trust and this protection does apply to Ben's unpaid credit card charges because Ben is not also the creator of the trust.

For this reason, the unpaid credit card charges by Ben may not be satisfied with the trust funds.

(c) and (e) The IRS tax lien against Sam and the outstanding child support obligation owed by Sam for a child from a prior marriage may be satisfied with both the trust income and principal.

Certain obligations may not be simply dismissed with the creation of a spendthrift trust, especially if the party that owes the obligations is also the party that created the spendthrift trust. Federal taxes and child support payments are both included in this category. The public policy concerns of hiding from one's tax and familial responsibilities simply by creating a trust are astronomical. There are certain obligations that cannot be simply dismissed or sheltered from in this manner. The Bank will be obligated to pay both the federal tax lien as well as the outstanding child support obligations from the trust funds. This may be done from either the income or the principal of the trust.

(d) Ben's unpaid hospital bill may be satisfied with trust income at the Bank's sole discretion.

Ben's unpaid hospital bill may be satisfied with trust income at the Bank's sole discretion. As the trust instructs the Bank to pay Ben and Sam during their lifetime, this includes the discretion to pay for fundamental and necessary items in Ben and Sam's life. This includes, medical treatment as Ben received here. The Bank has the authority, under their sole discretion, to pay for the hospital bills incurred during Ben's lifetime and therefore the unpaid hospital bills may be satisfied with trust income at the Bank's discretion.

(2) The Bank must pay for Ben's tuition pursuant to his request and it must pay from trust principal. The trust dictates that Ben may be paid from the trust principal for any necessary college expenses. Unlike the allocaton of the trust income in the sentence before, there is no statement of "at Trustee's sole discretion." This means that the Trust must act in accordance with the Beneficiary's needs, and as instructed in the trust, Ben may be paid for any necessary college expenses. This includes his college tuition. As such, the Bank must pay for Ben's college tuition from the trust principal.
