

Question 12 – July 2019 – Selected Answer 1

(1) A judgment against Selma for unpaid child support may be satisfied by Trust 1 principal and income.

In Texas, a trust is a valid interest giving a trustee the right to handle trust property on behalf of the beneficiary. Certain trusts will give the trustee the sole discretion to make payments from the trust. A trustee may be required to satisfy judgment of the beneficiary based on unpaid child support.

Here, Selma created the trust for her benefit, thus Selma is the beneficiary. Selma named the bank as the trustee of the trust and gave Bank the sole discretion to make payments out of the trust. If Selma has a judgment against her based on unpaid child support, a trustee may be obligated to pay the unpaid child support with either the principal or the income of the trust. Trust 1 named Selma the beneficiary. Trust 1's principal and income may both be reached based on an unpaid child support judgment. Therefore, Trust 1 may satisfy the unpaid child support.

Trust 2 named Selma's mother Barbara as the beneficiary and stated that the payments for Barbara were based solely on her support and maintenance. A judgment against Selma for unpaid child support will not be considered for the maintenance and support of Barbara. Since Trust 2 is for the benefit of Barbara; Trust 2 cannot be reached for the judgment against Selma for unpaid child support.

(2) The IRS tax lien against Selma may be satisfied by Trust 1 principal and income.

In Texas, a trustee may be required to make payments based on a judgment of an IRS lien. Here, Selma has a judgment against her for an IRS tax lien. The IRS tax lien can reach Trust 1 based on the fact that it is Selma's debt and obligation. Even though, the bank was given sole discretion to make payments on behalf of the trust; Bank will still be required to satisfy the IRS Tax Lien by using Trust 1's principal or income. Therefore, Trust 1 can be reached to satisfy the IRS tax lien.

Trust 2, is for the sole benefit of Barbara (support and maintenance) and Trust 2 will not be obligated to satisfy the IRS tax lien against Selma.

(3) The Bank has discretion to use Trust 1 to satisfy the judgment against Selma for a contract dispute and Trust 1 income may satisfy the judgment.

As stated, when a Bank has sole discretion to satisfy a judgment the Bank may at its discretion make payment from the Trust. Here, the facts state that Selma has a

judgment against her for a contract dispute. Since the Bank, as trustee, has the discretion to make payment Bank may or may not make payments from Trust 1 to satisfy the judgment. If Bank does decide to use Trust 1 to satisfy the judgment against Selma, Bank may satisfy the judgment with payment from the trust income.

Trust 2, is for the benefit of Barbara and Trust 2 will not be used to satisfy the judgment against Selma for the contract dispute.

(4) The unpaid hospital bill owed by Barbara may be paid with the income or principal of Trust 2.

As stated, Trust 2 names Barbara as a beneficiary and the purpose of Trust 2 is for Barbara's support and maintenance. Here, an unpaid hospital bill can be seen to be in support and maintenance of Barbara based on the necessity to get treatment. Since the unpaid hospital bill relates to the support and maintenance of Barbara; the Bank as trustee may satisfy the unpaid hospital bill with the principal and income of Trust 2.

Trust 1, being for the benefit of Selma cannot be reached to satisfy the unpaid hospital bills for Barbara since the trust names Selma as a beneficiary and Bank has the sole discretion to make payments. Therefore, Trust 1 income and principal cannot be reached to satisfy the unpaid hospital bills owed by Barbara.

(5) Neither Trust 1 or Trust 2 can be used to satisfy Barbara's credit card debt for online betting.

Since Trust 2 is solely for the support and maintenance of Barbara; her online betting debt cannot be satisfied by Trust 2. An online betting debt cannot be seen to be in support or maintenance of Barbara. Therefore, the Bank as a trustee will not satisfy the unpaid credit card debt using the principal or income; since the credit card debt for online betting is outside the scope of the trust.

Trust 1 for the benefit of Selma cannot be reached to satisfy the judgment for Barbara's unpaid credit card debt for online betting because Selma is the beneficiary and the Bank as trustee cannot make payments to satisfy the debt on behalf of Barbara.

Question 12 – July 2019 – Selected Answer 2

First, because all of the liabilities and debts were incurred after the trust's creation, there is no need to analyze whether any trust protections would be put aside by the court because the trust was created to defeat, delay, or defraud the creditors.

1. Judgment for unpaid child support

Principal

Creditors will be able to satisfy their judgment for Selma's unpaid child support out of Trust 1.

The first issue is the impact of the irrevocability and spendthrift clauses. Generally, revocable trusts that allow the settlor to access the trust principal at will do not protect the trust principal from creditors. The general rule is that creditors can access whatever the settlor or beneficiary can access.

Texas recognizes and enforces spendthrift provisions. Spendthrift provisions remove any discretion or ability of the beneficiary to access, transfer, or encumber the principal of the trust. Because the beneficiary cannot access the trust principal either, Texas enforces the spendthrift provision to prevent creditors from forcing a transfer of the trust principal to satisfy judgments.

As such, generally, the spendthrift trust cannot be used to satisfy the judgment debts of the beneficiaries.

However, Texas alters this rule for specific cases, including contracts for necessities and unpaid child support judgments. While generally the trust principal would be safe, it is not in terms of the unpaid child support.

Income

The trust 1 income will also be accessible to the child support judgment creditor. The income of the trust is given out by the trustee in a discretionary manner, with no guidelines or restrictions beyond the trustee's discretion. The terms specifically state "Bank is given sole discretion to pay all or part of net income."

As such, the creditor can access all of the income from the trust, because it can be discretionarily distributed to the beneficiary. The spendthrift protections provide the benefit of making the garnishment and attachment of the judgment a repetitive and inconvenient process (they have to do it for every distribution), but they creditors would be able to do so for the child support because the trust is discretionary.

2. IRS Tax Lien

As above, the spendthrift clause and irrevocable nature of Trust 1 would prevent the IRS from reaching the trust principal to satisfy the tax lien for unpaid taxes.

However, the trust's net income would be available to satisfy the judgment, because distributions of the net income are discretionary. If the beneficiary could access that portion of the trust, then it is available to satisfy the creditors of that beneficiary. The IRS is permitted special standing to satisfy their liens through the income of the beneficiary.

Additionally, the IRS would be able to garnish the individual distributions made out of the trust, as would any other creditor. Garnishing, levying on bank accounts, and other collection practices would be made difficult by the need for repeated action, however.

Therefore, the IRS would be able to access the net income when it was distributed to Selma, as discussed above.

3. Contract Judgment

Analysis for the availability of trust principal and income to satisfy contract judgment liabilities is similar to that of the IRS Tax lien, with one exception: they do not have the special standing to use an irrevocable spendthrift trust's income to satisfy their debt.

A standard judgment creditor cannot access trust principal in an irrevocable spendthrift trust.

A standard judgment creditor CAN, however, attempt to levy on, garnish, or otherwise recover their judgment from the discretionary distributions made by the trustee to the beneficiary.

4. Unpaid hospital bills

The income from Trust 2 can be used to satisfy the hospital bills owed by Barbara. Trust 2 is a support and maintenance trust; the trustee must pay out from the trust's income whatever is reasonably needed to support Barbara. A hospital visit, in addition to being a contract for necessities, is essentially the purpose of the trust. Moreover, the trust is not a discretionary trust; the trustee must make the distribution as necessary to pay the hospital bill.

Unlike Trust 1, Trust 2 does not contain language on revocability. Because it was an inter-vivos trust, and Selma is presumably still alive, the trust is revocable. A revocable trust permits the settlor to gain access the principal of the trust at will. If a settlor has access to the principal, any creditor of the settlor will be able to likewise access the principal. Here, however, the settlor is not the hospital bill debtor, so the principal will not be accessible for the hospital bill creditor.

5. unpaid charges on Barbara's Credit Card

The unpaid charges on Barbara's credit card bill for online betting will in no way be satisfied through trust principal or assets.

Trust 2 is a support and maintenance trust. It includes spendthrift provisions preventing the transfer of principal or income except as is required by the purpose of the trust. Texas enforces such spendthrift provisions to ensure that beneficiaries are protected from their own destructive behavior, as is the case here with Barbara's online gambling.

As such, the principal and income cannot be transferred to the credit card company.

Question 12 – July 2019 – Selected Answer 3

Question 12(1): The judgment against Selma for unpaid child support may reach the principal of both Trust 1 and Trust 2 and the income of Trust 1, but may not reach the income of Trust 2.

Trust 1 is an irrevocable spendthrift trust created by Selma for her own benefit. While creditors are not permitted to reach the principal of an irrevocable spendthrift trust, there is an exception for unpaid child support. This is to prevent the creation of a trust for avoiding certain creditors. For that reason, the judgment against Selma may be paid out of the principal of Trust 1. The provision limiting transferability does not limit the ability of creditors to reach it.

Further, in the case of a spendthrift trust, the income paid out is subject to the trustee's discretion. Here, the purpose of the trust is to provide discretionary income to Selma. Considering there is no set purpose for the funds, the moment Selma receives them, they are liable to attachment by any creditor. Therefore, the income of Trust 1 may be reached.

As to Trust 2, there is a presumption in Texas that trusts are revocable. The principal of a revocable trust is functionally the same as an asset of the settlor, because they

may revoke the trust and re-take title at any time. A creditor is allowed to attach these assets, and thus, the judgment against Selma can reach the principal of Trust 2.

On the other hand, income paid out of the trust to Barbara is not reachable, because the assets have passed to another party.

Question 12(2): The IRS tax lien may reach the principal of both Trust 1 and Trust 2 and the income of Trust 1, but may not reach the income of Trust 2.

In process and effect, IRS tax liens are considered the same as unpaid child support. For those reasons, the answers here are substantively the same as those above, and thus, the IRS tax lien may reach the principal of both Trust 1 and Trust 2 and the income of Trust 1, but may not reach the income of Trust 2.

Question 12(3): The judgment against Selma in a contract dispute can reach the income of Trust 1 and the principal of Trust 2.

The analysis here has a one key difference--a contract plaintiff cannot reach into the principal of an irrevocable trust like a tort plaintiff can. Therefore, the principal of Trust 1 cannot be reached, however, for the reasons stated above, the income may still be reached. As to Trust 2, the analysis remains the same. The principal of Trust 2 may still be reached, because it is a revocable trust, but the income may not, because the assets have passed to Barbara.

Question 12(4): The unpaid hospital bill may reach only the income of Trust 2.

Here, and in the next question, the recover sought is only against Barbara. None of the assets set aside by Selma for herself may be reached by creditors seeking recovery from her mother. For this reason, the analysis will be limited only to Trust 2.

As mentioned above, Trust 2 is a revocable trust. In the context of a revocable trust, the principal is still legally considered to remain with the settlor. For this reason, the principal of Trust 2 may not be reached. On the other hand, the income may be reached. While Trust 2 is limited in that it may only be paid at the discretion for support and maintenance, this appears to fit within that group. There is a fair claim that payment is discretionary, and thus could not be immediately reached to satisfy the claim. However, a hospital bill is a necessity, and a creditor for a necessity may take, even from a discretionary trust.

Question 12(5): The unpaid charges on Barbara's credit card for online betting may not reach any trust.

Again, the Trust 1 is not at issue here, because recovery is sought from Barbara. Further, for the same reasons as above, recovery may not be made from the principal of Trust 2. Finally, unlike with the hospital bill, gambling debts are not within the confines of "support and maintenance," nor do they qualify as a necessity, and thus, the income of Trust 2 may not be reached.