

## Question MEE 5 – February 2022 – Selected Answer 1

### **1. Bank's reach on Bob's interest**

The Bank cannot reach Bob's interest.

A spendthrift clause is a clause in a trust that prevents both the beneficiaries from transferring their interest in the trust and denies creditors the ability to touch trust assets in order to pay debts. If they are located in a trust, they are strictly enforced by courts.

Here, the language of the settlor's trust states that "No income beneficiary may alienate or assign his or her trust interest, nor shall such interest be subject to the claims of his or her creditors. This language is an valid spendthrift clause and therefore, creditors cannot reach the trust assets in order to recoup on their debts.

Therefore, the Bank cannot reach Bob's interest.

### **2. Former wife's reach on Bob's interest**

The former wife can reach Bob's interest.

Spendthrift clauses are unenforceable if the creditor is seeking to obtain distribution for child support or tax purposes.

Here, the former wife is seeking to enforce a \$30,00 judgment against Bob for unpaid child support owed for their five year-old son. Child support is one exception in which a creditor may touch a beneficiary's interest in the trust. The former mother is doing just that and therefore, is entitled to reach Bob's interest to pay the child support judgment.

Therefore, the former wife can reach Bob's interest.

### **3(a) Classification of Power of Appointment**

The classification of Power of Appointment is a special power of appointment.

There are two classes of power of appoint. They can either be a general power of appointment or a special power of appointment. A settlor who leaves a general power of appointment in their trust allows the person holding the right to dispose of the assets in the trust however she pleases. A special power of appointment on the other had occurs when a settlor gives specific directions as to who the holder of the power may grant the assets to.

Here, the language in the settlor's trust states, " Trust principal will be distributed following daughter's death "as she may appoint by her will, among her heirs at law and in such shares and in such shares as she in, her sole discretion, may deem appropriate." The Settlor is giving her specific directions on who she may grant the

trust assets to. By this language the settlor established that the daughter can only dispose of the trust assets among her heirs. The Settlor than does not have the power to dispose of the assets in whomever she pleases. Since she is restricted on who she may give the trust income to after her death, this is considered to be as special power of appointment.

Therefore, the classification of Power of Appointment is a special power of appointment.

### **3(b) Appointment to Twins**

An appointment of trust principal by daughter to settlor's twins will not be effective.

The daughter has a special power of appointment that states she can only appoint the trust income to her heirs. Heirs mean children. The twins are the daughter younger siblings and that would be beyond the power of appointment granted to her by the settlor.

Therefore, an appointment of trust principal by daughter to settlor's twins will not be effective.

### **3(c) Fails to Exercise Power of Appointment**

The daughter's children will receive the power of appointment if she fails to exercise.

If a power of appointment holder does not exercise her power of appointment, the holder of the power's children will take as default.

Here, the daughter holds the power of appointment and if she does not exercise it, her children will take by default. Therefore, Ann and Bob will take by default.

Therefore, the daughter's children will receive the power of appointment if she fails to exercise.

## **Question MEE 5 – February 2022 – Selected Answer 2**

MEE Question 5

### **1.) Satisfaction of Bank's Judgment against Bob**

The bank may not reach Bob's interest in present and future distributions of trust income to satisfy its judgment against Bob. At issue is whether a judgment lien creditor can reach the trust income from a spendthrift trust. The general rule is that a

creditor cannot reach the trust income from a spendthrift trust. A spendthrift trust is protected from claims by creditors. The trust created by Settlor is a spendthrift trust. The trust instrument specifically states that, "No income beneficiary may alienate or assign his or her trust interest, nor shall such interest be subject to the claims of his or her creditors." The bank has a \$20,000 judgment against Bob for a loan that Bob did not repay, and is a creditor. Because this is a validly created spendthrift trust, the bank may not reach Bob's interest to satisfy its judgment.

## 2.) Satisfaction of Bob's Former Wife's Judgment against Bob

Bob's former wife may reach Bob's interest in present and future distributions of trust income to satisfy its judgment against Bob. At issue is whether a lien for unpaid child support can be satisfied from a spendthrift trust. As discussed above, Settlor created a spendthrift trust based on the specific language. While the general rule is that a creditor cannot reach the trust income from a spendthrift trust, there is an exception for child support payments. Bob's wife has a \$30,000 judgment against Bob is for unpaid child support for their five-year-old child. Because her lien is for child support payments, the outcome is different for Bob's ex-wife than for the bank discussed in 1 above. Bob's ex-wife may reach Bob's interest in present and future distributions of trust income to satisfy her child support judgment against Bob.

## 3.) Power of Appointment

### (a) *Classification of Daughter's Power of Appointment*

Daughter's power of appointment is a testamentary power of appointment. The trust instrument requires that Daughter appoint "by *her will*, among her heirs at law and in such shares as she, in her sole discretion, may deem appropriate." It is a testamentary power of appointment because it requires that Daughter make the appointment in her will.

### (b) *Appointment of Trust Principal by Daughter to Settlor's Twins*

Although Daughter has agreed to effectuate her father's goal of ensuring that the twins receive a share of the trust principal after her death, it may be difficult to accomplish this goal under the current language of the trust. As currently drafted, the appointment language provides that the trust principal will be distributed following daughter's death, "as she may appoint by her will, *among her heirs at law*, and in such shares as she, in her sole discretion, may deem appropriate." Assuming that both Ann and Bob survive her, Daughter's two heirs would be her two children. A living person has no heirs, so Ann and Bob would need to survive her in order to qualify as heirs under her will. Although the twins are half-siblings of Daughter, they would not take as her heirs under a typical intestacy statute.

### (c) *Passage of Trust Principal upon Daughter's Death*

If Daughter fails to exercise her power of appointment, the trust principal would likely go to Ann and Bob (assuming they survive her). As stated in 3(b) above, a living person has no heirs. However, if Ann and Bob survive her they will be her 2 heirs. The twins are Ann's half-siblings. Under traditional intestacy provisions, one's estate would pass to her issue rather than her siblings. Settlor could however revise the trust. Although it is an irrevocable trust, Settlor could possibly revise it, but he would need the consent of all potential beneficiaries, including Daughter, Ann and Bob. If Settlor is still living when Daughter dies and Daughter has failed to exercise her power of appointment before her death, a resulting trust may be created to satisfy Settlor's intent.

### **Question MEE 5 – February 2022 – Selected Answer 3**

1. The Bank will not be able to reach Bob's interest of trust income to satisfy Bob's judgment.

A spendthrift trust is created when a settlor's trust instrument states that none of the trust's interest can be reached by the claims of creditors. A creditor cannot compel distribution of funds to satisfy a judgment and can only receive the income from the trust after the distribution to a party in the trust.

Here, a spendthrift trust was created when the Settlor stated in the trust instrument that "no such interest be subject to the claims of his or her creditors." Through the language of the trust instrument a spendthrift was created and since Bob is a beneficiary of the trust, the bank will not be able to receive payments from the trust in order to satisfy Bob's debt and can only obtain interests from the trust after they have been distributed to Bob.

2. Bob's former wife can reach Bob's interest in present and future distributions because her judgment against Bob is for unpaid child support.

A former spouse can enforce judgments against an beneficiary if that judgment is for child support.

Here, in order to abide by the public policy of enforcing child support claims, Bob's former wife can enforce the \$30,000 judgment against Bob for unpaid child support even though a spendthrift trust was created by the Settlor. The former wife's child support claim is an exception to the rule that bars creditors from reaching interest in the trust.

3(a) Daughter has a special power of appointment because she only has the power to distribute trust principal in the manner that was created in the trust instrument.

Here, the trust instrument states that the trust principal will be distributed to the Daughter's "heirs at law and as she in her sole discretion may deem appropriate. This is a special power of appointment because the daughter has the sole discretion to appoint in her will how the shares will be distributed among her heirs. She also does not have the power to assign any portion from the trust that is outside this special power of appointment.

3(b) An appointment of principal by the Daughter to Settlor's twins would likely not be effective because the twins are not the daughter's heir at law and the trust is not modifiable.

A beneficiary that holds a power of appointment can only appoint the principal in the manner that was outlined in the trust instrument. An irrevocable trust is not modifiable.

Here, the daughter has only the power to appoint by will shares in her discretion among her heirs at law. Since the Settlor's twins are not the Daughter's heir at law, she will likely not be able to appoint trust principal to them. Moreover since the Settlor established an irrevocable trust, the trust cannot be modified to allow the Daughter to distribute principal to the twins.

3(c) If the daughter fails to exercise her appointment the trust principal will likely pass to her heirs at law or the court will try to distribute the principal in a manner that satisfies the trust purpose.

If a beneficiary fails to exercise their power of appointment, the trust principal will be distributed in a manner that satisfies the trust purpose and the Settlor's intent.

Here, if the daughter does not exercise her power of appointment, a court will likely still distribute the interest among her heirs if they find the settlor's purpose was for the daughter's heirs to receive the trust principal.