

Instructor: Prof. Freeman

1. Sandra bequeathed \$500,000 "to Tammy in trust to pay the income to Albert for life, then to distribute the principal to the children of Albert and their heirs. But if Albert's interest is granted, transferred, aliened, or otherwise assigned by way of anticipation of unreceived payment, or if any person should attempt to take or apply such interest by any legal or equitable process in satisfaction of any debt or liability of Albert, then Albert's interest shall cease and determine and Tammy shall hold the corpus in trust to pay the income to Albert, his wife for the time being, or to his children and more remote issue if any, for the benefit of one of them or one or more of them to the exclusion of some or others, and at such times, and in such shares and proportions, as Tammy in her absolute and uncontrolled discretion shall determine; with the power in Tammy to accumulate the income and not distribute any portion of the income to any of the beneficiaries but rather to add it to and treat such accumulated income as a part of the principal. At the death of Albert the trust shall be terminated and the principal and accumulated income if any shall be distributed "to the children of Albert and their heirs." Tammy paid all of the interest to Albert since Sandra's death until last month, when Albert purported to assign his entire interest in the trust to William. Tammy has asked for your advice as to what she should now do. What advice do you give?

BEST ANSWER

This type of trust, known as a protective trust is often used in jurisdictions where spendthrift trust are not recognized. The protective trust allows the grantor to still control how the trustee will distribute the money to the beneficiary and gives the trustee discretion once the beneficiary has attempted to transfer his interest by a forfeiture for alienation clause.

In the instant case, Tammy, the trustee, had followed the terms of the trust by paying the interest to Albert since the grantor's death. However, Albert attempted to transfer his interest in the trust income so the forfeiture for alienation has now come into play. Now Tammy has the discretion to pay Albert, his current wife or his children any amount she sees fit, if she chooses to pay them at all. Tammy no longer has any duty to pay Albert or his assignee the income from the trust. However, since Tammy knows of Albert's assignment to William any money she would agree to pay to Albert should now go directly to William, because she is aware of the assignment.

Therefore, Tammy now has discretion to pay anyone listed (Albert's assignee, Albert's wife & children) any amount that is deemed appropriate in her sole discretion. The trust would eventually terminate, per the terms of the trust agreement, at Albert's death with the principle and accumulated income going to Albert's children and their heirs.

2. In 1990, Susan executed and delivered to Terry a written instrument whereby she transferred \$400,000 "to Terry in trust to pay the income to Allen, and then to distribute the principal to Allen when he reaches the age of 30." In 1998 Allen, who prefers to live a simple life in a small cabin in a rural area, brought suit to compel Terry to pay over the principal to Allen, who is now 25. Susan consents to Allen's request. What result, and why?

BEST ANSWER

This is a *clafin* (postpones enjoyment) trust. The issue is whether the trust may be terminated early. The general rule is that a trust may be terminated with consent of ALL the beneficiaries (as long as they all have capacity) unless it defeats a material purpose of the trust. The purpose of this trust is to postpone the enjoyment of the principal by Allen until he is 30 or by Allen's consent (the only beneficiary) termination is not valid b/c it defeats a material purpose. However Susan the settlor is consenting to Allen's request to terminate the trust since the settlor, who created the purpose of the trust, is consenting to its termination along with the only beneficiary the trust will be terminated and Terry the trustee should pay the principal to Allen (the beneficiary).

3. Sidney bequeathed \$500,000 "to Timothy in trust to pay the income to Alice for life, then to pay the income to the children of Alice for life, then to distribute the principal to such grandchildren of Alice as the first-born child of Alice shall appoint." Other than Alice's equitable life estate, discuss the equitable interests created by the bequest.

BEST ANSWER

The children of Alice have a vested life estate or possibly contingent life estate on being born (subject to partial divestment) this would vest at death of Alice, if not already vested. The principal to the grandchildren is a contingent remainder, conditioned upon 1st born child of Alice exercising her special appointment. The power is valid because the 1st born child of Alice will necessarily exercise appointment within her own lifetime. In order for the exercise of the power to be valid must not be capable of being exercised outside the Rule of Perpetuities because then the property might vest outside the rule. No interest is given unless must vest, if at all, within 21 yrs. of some life in being at the creation of the interest. The grandchildren's interest will vest when 1st born child of Alice exercise her right of appointment. If 1st born child of Alice was born at death of Sidney then doesn't violate rule-- because she is the life in being and she will exercise her power of appointment necessarily within her own lifetime. But if 1st born child of Alice not born at death of Sidney (time interest is created) the rule starts to run from the creation of the interest, then Alice will be life in being and interest will fail because we can't say with mathematical certainty that within 21 yrs. of death of Alice that the interest will vest in grandchildren. Because although Alice's children will be born at Alice's death, her grandchildren may not be born.