Arizona Trusts

Problems

Please address these problems by reference to the appropriate provisions of Arizona statutes concerning trusts that accompany today’s assignment.

1. Settlor S conveys $1,000,000 in cash “to T in trust to pay the income to B for life and then to pay the principal to R if R survives B, and if R does not survive B, then to such one or more of R’s spouse and R’s issue as R appoints by will.”

   a. Who are the beneficiaries of this trust?
   b. T holds the money as cash in a secure piggy bank. B sues T for breach of duty. Who wins?
   c. T invests the money in 18% bonds of Junk, Inc., which is on the verge of bankruptcy. After Junk, Inc. goes bankrupt, the bonds become worthless. Do B or R or both have any claims against T?
   d. T invests the money in raw land that has significant potential for long-term growth in value. B sues T for breach of duty. Who wins?
   e. T invests the money in Treasury bonds paying a stable 4% interest. R sues T for breach of duty. Who wins?

2. Suppose the trust agreement in Problem 1 explicitly requires the trustee to invest the $1,000,000 in income-producing real property. T decides that an apartment building would be an appropriate investment.

   a. Can B or R challenge T’s decision to buy an apartment building?
   b. Can T sell to the trust an apartment building that T personally owns and has a fair market value of $1,000,000? (What, in this context, does it mean for T to “sell to the trust”?)
   c. After purchasing an apartment building from an unrelated third party for $1,000,000, can T loan $10,000 to the trust to purchase fire and damage insurance, paying himself back out of the rental income (with interest) before making any income payments to B?
   d. Can T acquire an apartment building with a fair market value of $2,000,000 by using the trust’s corpus of $1,000,000 to acquire an undivided 50% interest and using T’s personal funds to acquire for T in T’s individual capacity the other undivided 50% interest? Would the result be a cotenancy? What kind? Who would be the cotenants?

3. After buying the apartment building in Problem 2, T enters into an agreement with Heat Pump, Inc. to replace all the heating and air conditioning in the building. The agreement states that T is signing the agreement in his representative capacity as trustee and identifies the trust as the beneficial owner of the building. If the trust is unable to make the payments to Heat Pump, is T personally liable?

4. Suppose the trust agreement in Problem 1 explicitly prohibits the purchase of real property for the trust. Nonetheless, T makes a deal with an unrelated third party Seller to acquire Seller’s apartment building for $1,000,000, signing the purchase contract in his representative capacity as a trustee. Later T seeks to rescind the deal with Seller on the ground that the trust agreement prohibits the purchase of real property. Can Seller force specific performance of the
sale contract? If Seller does get specific performance and the property turns out to have a fair market value of only $500,000, is T liable to anybody?

5. Mother M transfers to T in trust $1,000,000 worth of Treasury bonds paying annual interest at 5%, or $50,000 per year. The trust agreement requires that the income from the trust be paid out monthly to M’s son S for S’s life, after which the trust corpus goes to S’s estate. The trust agreement also provides that S’s interest in neither income nor principal shall be subject to voluntary or involuntary transfer.

   a. S runs up a large bill to Owner, who runs a local entertainment spot. In order to continue to receive O’s services, S transfers his right to receive income from the trust. O now demands that T pay S’s bill out of trust income. How should T respond?
   b. What if O gets a judgment against S for $50,000 and demands that T start paying to O the monthly income payments that have been going to S?
   c. Suppose O is a judgment creditor for $500,000 and S dies. Can O satisfy the judgment from T?

6. Suppose the trust in Problem 5 required the trustee to pay income or principal or both, in the trustee’s discretion, for the education or support of S. How would the answers change?

7. Suppose S in Problem 5 places the $1,000,000 worth of bonds in trust, naming T as trustee and himself (i.e., S) as beneficiary. The trust agreement provides that S’s interest in neither income nor principal shall be subject to voluntary or involuntary transfer. S convinces O to grant S credit by transferring to O S’s right to receive income and principal payments from the trust until S’s debt to O is paid. How would the answers to the questions in Problem 5 change?

8. Suppose in Problem 5 that the creditor is a former wife of S who seeks alimony or child support payments. How does the problem change?