

QUESTION 8 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

After Dwayne's wife died in 2001, Dwayne created a valid trust for the benefit of his son Paul. The language of the trust requires the trustee, Big Bank, to pay, \$25,000 per year to Paul for 20 years. After the expiration of the 20-year period, the remainder of the trust is to be evenly distributed between Ed and Scott, Dwayne's best friends. The trust contains the following language:

No interest of any beneficiary in the income or principal of this trust shall be transferable by the beneficiary, nor shall such interest be subject to the claims of the beneficiary's creditors by garnishment, attachment, or other legal process.

When Dwayne died in September 2004, the trust's assets were worth nearly \$3,000,000. In accordance with the directives of the trust, Big Bank paid Paul \$25,000 every January 1 for several years. In June 2010, Paul filed a petition to set aside the trust. Paul claimed that Dwayne lacked capacity to form the trust, that the trust did not reflect Dwayne's true intent, that the trust was the result of the undue influence of Ed and Scott.

In July 2010, Paul's ex-wife Sara filed a claim seeking an interest in Paul's annual trust distribution. Sara sought to enforce a valid child support judgment which was currently approximately \$39,000 in arrears. Sara demanded that the entire amount of the child support arrearage be paid in full.

Assume that this is otherwise a valid testamentary trust under Michigan law. Discuss the likelihood of success of: (1) Paul's challenge to the validity of the trust; and (2) Sara's claim against Paul's annual trust distribution. (3) Would the analysis regarding Sara's claim be different if the trust contained the following distribution provision in addition to the above-quoted provision: "The trustee is hereby given the power to pay the beneficiary in such amounts as the trustee in its sole judgment shall determine."

Explain your answers.

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