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UESTION NUMBER 1

FEBRUARY 2019 BAR EXAMINATION

In 2015, Sally executed a trust agreement for the benefit of her only child Ben, who is 35 years old and unable to manage money. Sally transferred \$500,000 and deeded a commercial building in trust to Ted, naming Ted as trustee. The trust provides that the income be distributed to Ben during his lifetime and the remainder to Ben's children living at the time of Ben's death. The trust provides that Sally can revoke the trust in a writing signed by her and delivered to the trustee. The trust states:

The trustee shall distribute to my son, Ben, such amounts of income as the trustee, in the trustee's sole and complete discretion, deems appropriate for Ben's health, support or maintenance. Such income shall be paid to the beneficiary personally and to no other, whether claiming by the beneficiary's authority or otherwise.

The commercial building produced a 3 percent return. Ted sold the building to himself and invested the proceeds in a low-risk venture that yielded 5 percent. Ted paid less than fair market value, but reasoned that the increased investment return would benefit the trust in the long run. Ted hired his wife, a certified public accountant, to perform accounting services for the trust and paid her at her normal rate.

In 2016, Ben married Wilma. Six months ago, they were divorced and Wilma was awarded alimony. Sally was outraged when she learned of the alimony award. Sally called Ted and instructed: "I hereby revoke the trust. I will confirm my revocation in a letter." Sally died the following week without writing the letter.

Ben has demanded that Ted transfer the entire trust assets, free of trust, to the administrator of Sally's estate. Ben claims the trust was revoked. In the alternative, he argues the trust should be terminated. Ted refuses to terminate the trust. Wilma has demanded Ted pay her alimony due out of the trust income or principal. Ben has no children, living or deceased.

Ben seeks your advice as to the merits of his and Wilma's claims. Prepare a memo evaluating the validity of the trust, claims, and likely outcomes from this situation.