

立法會 *Legislative Council*

LC Paper No. LS57/12-13

Paper for the Bills Committee on Trust Law (Amendment) Bill 2013

Termination of a trust by beneficiaries

Background

At the meeting of the Bills Committee held on 27 May 2013, information was requested on the law that governs the termination of a trust by beneficiaries and whether such a termination is subject to conditions and restrictions. The information is set out below for ease of reference.

The common law rule in *Saunders v Vautier*¹ (the Rule)

2. The Rule is that an adult beneficiary of a trust, who is of sound mind and is entitled to the whole beneficial interest, can direct the trustee to transfer the trust property to him or her. The consequence of this transfer will be the termination of the trust. When there are more than one beneficiaries, a trust may also be terminated when all the actual and possible beneficiaries so agree.

Application of the Rule

3. Application of the Rule is subject to the following qualifications: -
- (a) If the beneficiary's interest is contingent upon a particular condition, the Rule is not applicable².
 - (b) In cases in which there are two or more beneficiaries, if it is possible

¹ (1841) 4 Beav 115 and (1841) Cr & Ph 240. The case concerns certain shares being held on trust for Vautier until he attained the age of 25. When Vautier attained the age of 21, he applied to court for the transfer of the share to him. The court held that, because he was now an adult and had an absolute indefeasible interest in the trust, he could claim the transfer of the trust property to himself even though he had not attained the age of 25. On appeal, the appeal court held that the interest was vested in him, but the enjoyment of it was postponed until Vautier turned 25, so the trust could be terminated.

² *Re Couturier* [1970] 1 Ch 470, 473 (Joyce J)

to sever the interest of one of them without harming the remainder, the Rule can apply as regards that individual's interest only³. Where, however, landed property is left to be put on sale and the proceeds are to be divided between beneficiaries, a beneficiary has no right to require the transfer to him of his undivided share of the landed property since to allow that undivided share to be so taken by one would be detrimental to the other beneficiaries⁴.

- (c) Where beneficiaries are entitled to a trust property one after another⁵, the Rule can apply, but only if, all the beneficiaries being of full capacity, they agree in the direction to the trustees that the trust property be transferred to them.
- (d) The Rule is also applicable to discretionary trusts⁶. For example, where the trustees are required to distribute the whole of the fund, but they have a discretion as to which people from a particular class of potential beneficiaries will benefit and by how much, it is possible to treat all of these people as though they were one person⁷.
- (e) The Rule applies even if the settlor purports to exclude it⁸.

Conclusion

4. On the question of whether a termination of a trust by beneficiaries under the Rule is subject to conditions and restrictions, our view is that in the light of the existing case law, there do not seem to be any conditions and restrictions to which the termination of a trust by beneficiaries is subject.

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³ *Re Sandeman's Will Trusts*, *Sandeman v Hayne* [1937] 1 All ER 368; *Lloyd's Ban plc v Duker* [1987] 1 WLR 1324

⁴ *Re Marshall*, *Marshall v Marshall* [1914] 1 Ch 192 at 199, CA (Eng); *Re Horsnail*, *Womersley v Horsnail* [1909] 1 Ch 631; *Re Kipping*, *Kipping v Kipping* [1914] 1 Ch 62, CA (Eng)

⁵ *Anson v Potter* (1879) 13 Ch D 141; *Re White* [1901] 1 Ch 570

⁶ *Re Smith* [1928] Ch 915; *Schmidt V Rosewood Trust Ltd* [2003] 2 AC 709, [40]

⁷ *Re Nelson* [1928] Ch 920n

⁸ *Stokes v Cheek* (1860) 28 Beav 620