



**5 Stone  
Buildings**

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**Variation of Trust Act  
applications**

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## Variation of Trust Act 1958

- Act allows trusts to be altered:
  - Children
  - Incapacitated
  - Unborns
  - People who may obtain an interest in a trust in the future (but not if the interest has vested)
  - Protective Trusts
    - Except in the case of protective trusts this must be for the benefit of the beneficiary or class of beneficiaries

## Applications to postpone a minor's interest

- Prodigal child
  - *Re T's settlement trusts* [1964] Ch 168
- Too much too young
  - *Re Holt's settlement trusts* [1969] Ch 100
- Tax-driven
  - *Ridgwell v Ridgwell* [2007] EWHC 2666

## *Wright v Gater* [2011] EWHC 2881

- Cases do not establish that postponement of vesting beyond the age of majority is beneficial in principle
- This must be established in each case on the facts
- In this case “any reasonable person” would regard absolute entitlement at 18 as posing risks to the beneficiary
- Revised proposal approved

## Procedural Points

- In all cases except adult who lack capacity the correct venue is the High Court - the judge will now normally be a Master
  - A Part 8 Claim Form and witness statement
- In the cases of adults (but not children see *ET v JP* [2018] EWHC 685 (Ch)) who lack capacity the correct venue is the Court of Protection
  - Court of Protection Forms

Sometimes you will need a Chancery Division judge wearing two hats



## Practical tips

- Plan ahead if there is a tax or vesting deadline
- Seek listing assistance from the clerks
- Arrange an appropriate litigation friend for minors
- Separate counsel for the minors / unborns
  - Do you have more than one class, you may need a number of counsel
  - Negotiation may take time
  - The arrangement may need to be redrafted - avoid a resettlement
  - The opinion needs to be written
  - All this should be done prior to issuing the claim



## Privacy

- *V v T* [2014] EWHC 3432
- *MN v O* [2019] EWCA Civ 679
- General rule that hearings are to be in public applies
- But the court may order that hearings take place in private or may make anonymity orders
- If privacy/anonymity is sought apply to the Master before issuing the application

## Do you *really* need a VTA?

- Is it possible that you might be able to use a trust power which you already have
- An extended section 32 power ?
  - This will be implied in trusts and intestacies after 2014 by the Inheritance and Trustees' Powers Act 2014
- Is the Inheritance (Provision for Family and Dependents) Act 1975 a better tool?
  - Retrospective tax after two years



## A new perpetuity period?

- *Re Holt's settlement trusts* [1969] Ch 100
- *Wyndham v Egremont* [2009] EWH 2076
- *Allfrey v Allfrey* [2015] EWH 1717

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Thank you.  
Any questions please email  
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