



5 Stone Buildings

Hancock v Watson Trusts and Advancement

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Introduction

- If you have Hancock v Watson Trusts can you exercise an extended power of advancement in favour of the initial beneficiaries?
- *Womble Bond Dickinson (Trust Corporation) Ltd & Ors v Glenn & Ors* [2021] EWHC 624 (Ch)
- Master Clark



The Trusts I

"the Trustees shall hold the Remaining Fund and the income thereof in trust for all or any one or more of the Beneficiaries who shall attain the age of twenty five years or shall be living and under that age at the end of the Trust Period in such shares as the Trustees shall at any time or times during the Trust Period ... by any deed or deeds revocable or irrevocable appoint..."

Trusts II

"Provided always that the share (hereinafter called "the Allotted Share") taken by any of the Beneficiaries (in this clause referred to individually as "the Beneficiary") under the trusts declared by Clause 9 ... shall not vest in him or her absolutely but shall be retained by the Trustees and held on the following trusts:

(1) The Trustees shall hold the Allotted Share and the income thereof in trust for the Beneficiary during his or her life..."

Trusts III

- Subject as aforesaid, the Trustees shall hold the Allotted Share and the income thereof ... upon trust-
- (a) for the first and other sons of the Beneficiary successively according to seniority in tail male with remainder
- (b) for the first and other sons of the Beneficiary successively according to seniority in tail with remainder
- (c) **for the Beneficiary absolutely.**

Section 32 TA 1925

- *Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of **any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion,***

S. 32-the Proviso



- Provided that—
- (c) no such payment or application shall be made so as to prejudice any person entitled to any **prior** life or other interest, whether vested or contingent, in the money paid or applied **unless such person is in existence and of full age and consents in writing to such payment or application.**

Hancock v Watson Trusts?

- The Rule:-

“Where there is an absolute gift to a legatee in the first instance and trusts are engrafted or imposed on that interest which fail, either from lapse or invalidity or any other reason, then the absolute gift takes effect so far as the trusts have failed to the exclusion of the residuary legatee or next-of- kin as the case may be”.

Where does the rule apply?

- Not just in cases where there has been a failure of the following trusts
 - *AG v Lloyds Bank Ltd.* [1935] A.C. 382
 - Estate duty case
 - *The Secretary for Justice v Chinachem Charitable Foundation* [2015] HKCFA 35
 - Rule of construction
 - *Watson v Holland* [1985] 1 all ER 290
 - How to identify Hancock v Watson trusts
 - *Fyfe v Irwin* [1939] 2 ALLER 271

These were engrafted Trusts

- Absolute gift followed by engrafted trusts
- Fact beneficiary was the ultimate beneficiary just demonstrated that *Hancock v Watson* intended to apply
- Effect of trusts is
 - Each Beneficiary had an absolute interest in capital
 - Liable to be defeated on the birth of a son

Did section 32 apply?

- Clearly applied to ultimate interest in capital but
 - Prior consent of unborn beneficiaries possibly required
 - *Re Beckett's Settlement* [1940] Ch. 279
 - *IRC v Bernstein* [1961] Ch. 399
- The Beneficiaries absolute interest in capital liable to defeasance.

Lewin Lifeline



"We consider that s.32 is applicable since the beneficiary takes a vested interest in capital, subject to satisfying any relevant contingency, that interest being defeasible in the event of others taking capital under engrafted trusts.

Consequently, until that interest in capital has been defeated the beneficiary retains an interest in capital, and the statutory power is available, though the interests of the other capital beneficiaries (at least if in existence) will perhaps amount to prior interests, requiring their consent."

Did the unborns have a prior interest?

“if the absolute interests of the Grandchildren are, as between themselves and the Unborns, subject to those of the Unborns, does that render the latter “prior” to the former? I have not found this an easy question to answer.”

“‘prior’ refers to the order in which the trust property is enjoyed, a life interest being enjoyed before the interest in remainder.”

Some Unanswered Questions

- Can the Court dispense with consent?
 - *Re Forster's Settlement* [1940] Ch. 279_
 - Hint s.57 could be used
 - *Re Beal's ST* [1932]2 Ch 15
 - Court can dispense with consent to exercise of power of sale
 - *Kain v Hutton* [2008] NZSC 61
 - Statutory power of advancement in NZ different and clear court can dispense with consent.

Blessing

- *Public Trustee v Cooper*[2001] WTLR 901, 922-924
 - 13 sub-funds
 - those subject to the application could be used to give the young adult beneficiaries a good start in life

Conclusions

- Worth looking to see if life interest trusts are actually engrafted trusts
- Certainly before any beneficiaries taking under the engrafted trusts come into existence s.32 or possibly express power can be used.
- Draughtsmen might consider
 - Dispensing with consent
 - Inserting express power to benefit the absolute beneficiaries.

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Thank you,
any questions?

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