

Tommy and his wife, Anthea, have life interests in a family trust, which was established by Tommy's father. The remainder is shared equally between their children, on condition that they remain members of the Orthodox Jewish faith.

The family lives in London. Tommy and Anthea are shocked by the crime in the city and resent the high rates of tax that they have to pay in England. They want to move to the Isle of Man and relocate the trust there, replacing the trustees with trustees resident in the Isle of Man. Tommy and Anthea believe that they will pay less tax in the Isle of Man, but they have not researched the matter yet. They have four children, but three of them have expressed no interest in the Orthodox Jewish faith, so they want to delete the condition in the trust requiring their children to remain in that faith. Instead, they want to insert a condition that the children do not become entitled until they are 25 years old.

Cyril, the eldest child, is 22 and opposes the proposed variations of trust, as he wants to remain in London.

Bernard is 16 and an Orthodox Jew, so he opposes the variation that would remove the religious condition in the trust.

The youngest two children, Dolores and Edna, are 14 and 13 respectively and are happy to agree to whatever their parents want.

Advise Tommy and Anthea on whether the court will give permission for their proposed variations.

Suggested Answer

Under the Variation of Trusts Act 1958, the court is able to consent to changes in the trust, on behalf of those who cannot consent for themselves. Under section 1(1) (a), the court may consent for Dolores and Edna, who are children. The same would apply to Bernard, because he is also a child and even though he objects, the court would decide what was truly for his 'benefit'.

Cyril is an adult and the court cannot consent for him: *Re Berry*. It is unlikely that subsection (b) can be used, as according to *Knocker v Youle*, even though he only has a contingent interest, he is, like the Australian cousins in that case, already a fully entitled and identifiable beneficiary. The parents need his actual consent: Disregarding the consent of an adult is very rare and has only been done under different legislation in *Hambro v Duke of Marlborough*.

It is possible that Tommy and Anthea might have more children so section 1(1) (c) is also relevant. The court must be asked to consent on their behalf and decide whether the proposed variation is actually for their "benefit".

The court decides whether the proposed variations are for the 'benefit' of the beneficiaries for whom they are deciding. Tax saving is generally acceptable as long as Tommy and

Andrea have proof that they will save tax: *Re Holt*. Tax-saving plans are not without risk, so it has to be a bargain that a reasonable adult would be prepared to accept: *Re Cohen*.

A move abroad merely to save tax is not acceptable (*Re Weston*) but genuine, permanent moves are: *Re Windeatt*.

The wishes of the testator may also be relevant: *Re Stead*. They were, however, disregarded in *Goulding v James*.

Deleting a religious condition was done in *Re Remnant*, but there the family were all agreed. I think that the court would disregard the objections of one child, particularly as this sort of condition might contravene human rights.

Lastly, postponing the vesting of the children's interests is acceptable, if the court believes it to be for their benefit: *Re T*, *Re Holt* and *Wright v Gater*.