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The Fiction of the "Age of Majority" in Wills

It is not uncommon for a Testator of a Will (i.e. the Will-Maker) to establish a trust under their Will in order to preserve part or all of their Estate's residuary assets, after payment of all the Estate's liabilities, ("the Residuary Estate") to ensure that all intended beneficiaries receive the testator's specific bequest(s).

In order to ensure that any such residuary trust is properly managed, it is common for the Will to stipulate rules and conditions for the person administering the Will's Residuary Estate trusts (i.e. the Executor operating subsequently in a Trustee capacity) to comply with. This is addition to their various duties and obligations under the *Trustees Act.*

Residuary Trusts

One such situation that is often provided for is the Residuary Estate is to be held on bare trust ("Residuary Trust") until a specified beneficiary reaches a certain adult age (i.e. "the Age of Majority"). The age can be any age determined by the Will maker e.g. 18, 21, 25 or even older.

The usual motive for postponement is usually reservation about the maturity and responsibility of the relevant beneficiary/ies. However, if this Age of Majority gets put back too far, say 30+ years of age, it's often seen as unreasonable and/or a Will-maker just trying to 'rule from the grave'...

Until the specified beneficiary reaches the Age of Majority stipulated in the Will, their Residuary Trust, or the relevant part of it, will be held on trust by the Trustee for that specified beneficiary. In the interim the trustee is usually permitted to apply part of the Residuary Trust's capital and income towards the beneficiary's "health, education, welfare, advancement etc".

The Rule in Saunders v Vaultiers

However, what is not that commonly known to the public, is despite the intentions of the Will Maker, the rule in *Saunders v Vaultiers (1841) EWHC Ch J82* (**the Rule**), permits the beneficiaries of a trust, to seek to have the trust vested and property distributed to them (even prior to the Age of Majority) if:

1. all beneficiaries are 'sui juris' (i.e. under no legal incapacity such as being a minor or having a mental incapacity);
2. the beneficiaries are unanimous as to the vesting of the trust early; and
3. the beneficiaries constitute the only persons entitled to the trust property.

The result could be that once the youngest beneficiary attains adulthood, all of the beneficiaries may seek to have the trust property distributed to them. This is despite the Will Maker wanting to wait until the youngest beneficiary reached a certain (older and more mature) age.

Basically, for example this means that, despite a Will-maker's parent's best intentions and plans through their Will, therefore an Estate "Trust Kiddie" (as sometimes that colloquial phrase may be used) can effectively 'collapse' their Residuary Trust and have all the money/ assets given to them as early as their 18th birthday - OMG party time!

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However, vesting of a trust under the Rule, as opposed to a (bare) Residuary Trust, may be more difficult with Testamentary Trusts.

Testamentary Trusts

A testamentary trust is simply one that is not created until your death in accordance with the instructions in your will. Usually a testamentary trust has a much larger and indeterminate 'pool' of general beneficiaries in addition to relevant primary beneficiaries. As a result, the requirements to vest the trust early are much harder to satisfy.

There are a number of advantages of a testamentary trust, including: income tax streaming and certain tax benefits for minors, capacity to invest widely, leveraging investment as well as asset protection for the beneficiaries. A main feature of a testamentary trust can be to provide tax-effective bequest as well as providing some asset protection for the primary beneficiary, which aligns with the Will-maker's intention for that beneficiary.

Whilst general trust law already provides some degree of asset protection, a well drafted clause in a testamentary trust can make it harder for a court to make effective orders detrimental to a beneficiary.

All just some food-for-thought in the evermore complex world of proper Estate & Succession Planning.

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