

It is fundamental to the nature of a trust that a trustee acts in accordance with certain duties and powers conferred on them either expressly by the trust instrument or implied by the statute, so as to properly facilitate the administration of these trusts., For the purposes of this question Peter is a trustee and must conform to these powers and duties. As a trustee Peter must exercise such care and skill as is reasonable in circumstances¹ (, Peter should be advised that his duty of care applies to all his extensive range of powers and any breach of this would enable the trust accounts to be surcharged with the income or capital that would have been trust income or capital but for his Peter"s breach of the equitable duty of care in acting within the powers conferred by statute or the trust instrument.

Peter should be advised that his role as a trustee is to act as custodians of the capital value of the trust fund, whether represented by money, land or other property. These goals are achieved by granting the trustees a power, now usually *a duty of investment*. that he could make as if he were absolutely entitled to the assets of the trust. While managing and administering this trust Peter should be advised that he is bound to exercise a standard of care while exercising his power in relation to investment, in other words as stated by Lord Lindley in *Re Whiteley*² he must have acted as an ordinary man of business would act if he were minded to make investments on behalf of people. As There are no express powers of investment in this case and therefore the power of investment is governed by the Trustees Act 2000 .This statutory power is subject to the statutory duty of care³ which implies that Peter has to exercise such care and skills as is reasonable in the circumstances having regard to the ‘standard investment criteria’(S4) ensuring that trustees have regard to the suitability of the investment and its suitability in the overall profile of the trust and a need for diversification(s4(3)a and b, While exercising his power of investment Peter must have obtained or considered advice (s5). Proper advice is defined as ‘the advice of a person who is reasonably believed by the trustee to be qualified to give it by his ability in and practical experience of financial matters relating to the proposed investment(s5(4).

¹ ss1, 2 Sch of Trustee Act 2000

² (1886) 33 Ch D 347

³ s1 and Sched 1 to the Act

As regards the family trusts of Chris, James and Sally Although there is no indication whether Peter has invested the fund he should be advised that if he omitted to invest the £250,000 or failed to invest the money within a reasonable time he will be charged interest⁴. In *Cann v Cann*⁵ Kay J considered that six months was the maximum period. While dealing with Tabitha's trust fund which amounts to £50,000 precisely the same principles will apply if he failed to invest within a reasonable time or did not invest the money at all. Having for the purpose of exercising his duty of investment as a trustee, Peter has all the powers of an absolute owner in relation to trust land⁶ and thus was within the ambit of his duty to invest while granting the lease on Molineux Cottage⁷ however he must have exercised this duty in accordance with the statutory provisions under the Trustee Act 2000 i.e he must have taken proper steps by consulting a practical valuer to ascertain the proper rent. if he omitted to exercise diligence, this can amount to a breach of trust and he would be automatically liable for the loss of value of the Cottage. Although he may try to plead s61 Trustees Act 1925, on the grounds that he should be excused liability because he has acted honestly or fairly

Peter can be advised that since there in the absence of an express power, he can sanction the payment of part of the capital trust fund for the benefit of a beneficiary before he reaches the contingent age. The Power of Peter to do this is vested in s32 of the Trustees Act 1925 which confers on him *the power of advancement* enabling him in these circumstances, anticipate the vesting in possession of the beneficiary contingent interest by raising money on account of his interest and paying or applying it for his benefit. An immediate problem is whether the proposed use is of James advancement and benefit within s32. Following *Pilkington v IRC*⁸The word 'advancement in this context means the establishment in life of James or at any rate some step which will contribute to his establishment. This means that the capital to be advanced to James will provide some

⁴ (See *Gilroy v James*(1882) 30 WR 745;*Stafford v Fiddon*(1857) 23 Beav 386; and *Re Jones*(1883) 49 LT91.)

⁵ 1884)51 IT 770

⁶ S6 TLATA 1996

⁷ s3 TA 2000

⁸ [1964] AC 612

permanent benefit or advantage in his life, accordingly *Re Williams' Will trusts*⁹ gave some direction as to when advancement may be applied and this was held to include purposes for the “advancement of any business” in which the beneficiary might be concerned. Peter should also be advised that the s32 power conferred upon him is not a power to advance only but a power to apply capital for ‘benefit’. Benefit in this context could mean maintaining and supporting the beneficiary. This principle was applied in the case of *Re Breed's Will*¹⁰. **s32 (1)(a)** enables trustees to advance half of a beneficiary presumptive or vested share or interest¹¹ and when this is done **(s32(1)(b))** confers on the trustees the power to take into account the advancement when the beneficiary becomes absolutely entitled to their interest. Subject to no contrary intention, **s32(1)(c)** states that A power of advancement will only be exercisable if it does not clearly prejudice a prior interest and the person expresses his consent in writing. In *Henley v Wardell*¹² it was held that a trust Instrument gives trustees the power of advancement it does not release the trustees from the need to obtain the consent of the beneficiary entitled to the prior income. As regards the Family trusts for Chris, James and Sally Peter can be advised that since there is no express power of advancement he may advance capital for the benefit of James and An immediate problem is whether the proposed use is of James’ advancement and benefit within s32 From the facts in question it seems likely that the proposed use is within the section, especially since it is very much associated with his engineering apprenticeship to this end s32(1)(a) will apply and Peter can therefore at his discretion either hand over money to James or apply it on his behalf, If Peter advances the money to James, he has the complete discretion to ensure that the advancements are applied for the purposes for which they were stipulated, if Peter fails in this duty, he is in breach of trust in connection with the exercise of the power of advancement and may be required to account for the money improperly advanced. This rule was enunciated in *Re Pauling's Settlement Trusts*¹³. Peter should also be advised that when James becomes entitled to his interest(reaching 25) the advancement he has received would be taken into account.**(s32(1)(b))**. However in this case since there is no contrary intention subject to

⁹ [1953] Ch 138

¹⁰ (1875) 1 Ch. D.226

¹¹ The one-half provision was considered in *The Marquess of Abergavenny v Ram* {1981} 2 All ER 643

¹² (1988) The Times 29th of January

¹³ (1964) Ch 303

s32(1)(c) Peter's power of advancement will be exercisable in so long as it does not clearly prejudice Chris and he expresses his consent in writing.

As regards Sally the same principles above will apply since her education will also fall under the definition of benefit.

As regards Tabitha trust there would be no need for Peter to advance any capital to her as there is no indication from the facts that she is in need for any advancement and as she will soon be 25 she would have fulfilled the contingency as imposed by the trust thereby entitling her to an absolute, vested and indefeasible interest in the trust fund¹⁴.

A Trustee may also exercise his statutory **power of maintenance**. This power is contained in s31 of the Trustee Act 1925 and this section specifically authorises income to be paid for an infant's beneficiary maintenance, education or benefit. However s31(1)(ii) as amended by the Family Law Reform Act 1969 states that an adult beneficiary with a contingent interest on attaining the age of eighteen years has not a vested interest in such income, the trustees shall henceforth pay the income of that property and any accretion to him. However the power of maintenance takes subject to any prior interests¹⁵. The issue here is whether Peter can exercise his statutory power of maintenance as regards the trust of Chris, James and Sally.

Because James and Sally are over 18 they would be classified as adult beneficiaries and it would be unlikely that Peter would be able to exercise his statutory power of maintenance in their favour by using part of that income from the trust to set up James business or to pay Sally's school fees. Any accumulated income under s31(2)(iii) on James and Sally's share would not be available to them as there is a prior interest. The income would be paid to Chris.

In regards to Tabitha's trust, Peter should be advised that if she did not have a vested interest in income during minority, the accumulations made during her minority will accrue to the trust capital when she attains 25 pursuant to s 31(2)(ii) she becomes entitled to the trust capital including the accumulations when she is 25.

¹⁴ Saunders v Vautier (1841) 4 Beav 115

¹⁵ (Re Turner's Will Trusts [1937] Ch 15; I.R.C v Bernstein [1961] Ch.399, CA

It is an inflexible rule of Court of Equity, ***that a person in a fiduciary position such as the respondent is not unless otherwise expressly provided entitled to put himself in a position where his interest and his duty conflict***: Lord Hershell, *Bray v Ford*¹⁶. The rule extends to the purchase of a trust property by the trustee¹⁷ and the transaction is voidable at the instance of any beneficiary and no matter how far, open or honest it may have been¹⁸. For the purposes of the application of this principle the courts¹⁹ will regard the trustee- beneficiary relationship with Peter and Chris, James, Sally as Fiduciary and that of Peter and Tabitha as fiduciary also

Following the acquisition of Tabitha's Cottage by Peter and Tabitha, the self-dealing rule will apply and they may have to set aside *ex debito justitiae*, however far the transaction²⁰. This rationale behind this rule is that since in a purchase by Peter from his trust, he is both vendor and purchaser he might place himself in a position where his interest and conflict²¹ and this makes the sale becomes necessarily bad. In such circumstances it would be difficult to determine from evidence whether or not the purchase has been made in advantageous terms and if Tabitha exercises the right to have the sale to set aside, then the property reverts in the trust and Peter receives back the price he paid with interest. Peter should be advised that however in principle here seems no reason why he should not be allowed to purchase the trust property since Tabitha agreed and is *sui juris* and she is absolutely entitled to the whole of the beneficial interest in the property provided of course he disclosed to her all the information which he possessed relating to the property.

¹⁶ (1986)

¹⁷ *Wright v Morgan*

¹⁸ *ex parte James* (1803) 8 ves 337

¹⁹ *Att General v Goddard*(1929) L.J ; *Reading v Att General* (1957) AC 507

²⁰ *Megarry VC Tito v Waddell*(1977) Ch 106 at 224-225

²¹ Lord Eldon LC in *Ex parte Lacey*(1802) ves 62

Following the decision in *Holder v Holder*²². Tabitha acquiesced in the purchase of the trust and cannot now seek to set aside.

The basic rule is that the trustees must act in accordance with the trust instrument i.e must not deviate from the terms of the trust.

As regard Chris, James and Sally's trust, Peter is advised to distribute the trust fund according to the terms of the trust instrument.

Peter should be advised that while dealing with Tabitha's trust When she attains 25, She would have fulfilled the contingency of attaining 25 as imposed b the trust, and may demand her share from Peter following the rule of *Saunders v Vautier*²³, a beneficiary of full age who has an absolute, vested and indefeasible interest in the property may at any time direct the trustees to hand over the trust property to them. The issue in question is Jennifer expressed concern to Peter to delay the gift until Tabitha is 35. The rule applied in *Re New*²⁴ demans any power of Peter to vary the terms of the trust, except with Tabitha's consent.

Given her present stance this does not appear to be a viable option. Peter might have to apply to the court to authorise variation of the trust under its inherent jurisdiction.

Following *Chapman v Chapman*²⁵, his application will not be successful since the court held that they only had power to approve an arrangement only where there was a genuine dispute about the rights of beneficiaries. Peter may then seek to rely on the statutory provisions under s57(1) TA 1925 the effect of this section is that the court may empower trustees to perform any act relating to the management or administration of trust property which is not authorized by the trust instrument but in the opinion of the court expedient :*Re Downshire Settled Estates*²⁶ Any attempt of Peter to apply under the Variation of Trust Act 1958 would prove unsatisfactory as the classes of people on whose behalf a court may sanction a variation

²² [1968] Ch 303,

²³ (1841) 4 Beav 115, (M & B)

²⁴ [1901] 2 Ch 534

²⁵ {1954} AC 429

²⁶ [1953]ch 218 at 214

