LAW | NEWS

Saunders v Vautier is bad law and should be repealed

PREMIUM OPINION

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Anthony Grant

In recent articles in *LawNews,* I have referred to several sections in the Trusts Act 2019 that require trustees and the courts to administer trusts in ways that accord with a settlor's intentions.

The Trusts Act achieves this by saying that trustees must have regard to a trust's "objectives" (ss 4(a), 50(1)(a) and 21); its "permitted purpose" (ss26(b) and 9); its "proper purpose" (ss 27 and 94); and the "intentions" of the settlor (ss 124(4) (c) and 25 (4) (c)).

This is a sensible development since trusts are not created in a vacuum. They are created by settlors with specific purposes in mind and it is entirely reasonable that in the absence of good reasons to the contrary, trustees and the courts should try to ensure trusts fulfil the purposes their settlors intended them to achieve.

The Act's focus on seeking to fulfil a settlor's intentions for a trust has one glaring anomaly, ss 121 and 122. These broadly enact the rule in *Saunders v Vautier* [1841] EWHC J 82.

Section 121 provides that if all the beneficiaries are adults and have no disability, they can require a trustee to transfer the trust's assets to them. They will then be free to ignore the settlor's intentions and do whatever they like with those assets.

Section 122 of the Trusts Act 2019 is broadly similar: it enables adult beneficiaries to agree unanimously to vary a trust in ways that will defeat a settlor's intentions.

The doctrine in *Saunders v Vautier* is fundamentally inconsistent with the directives in the Trusts Act that trustees and the courts should try to implement the "purposes" and "intentions" of a settlor. It authorises beneficiaries to disregard a settlor's intentions and either modify a trust in ways a settlor would not approve or bring the trust to an end, thus defeating the settlor's intentions.

I suspect most people would agree that if a parent wants to create a trust which provides food and housing for a child with chronic ill-health, it is morally wrong for the child to be able to terminate the trust prematurely to spend the money on drugs and high-living, but that is what *Saunders v Vautier* allows.

American doctrine

The courts in the USA did not agree with *Saunders v Vautier*. They rejected the decision in favour of a doctrine of "material purpose". Under this doctrine, the courts will not terminate a trust if it conflicts with the "material purpose" the settlor had for the trust.

The "material purpose" doctrine in the USA sounds similar to the provisions in the Trusts Act which require trustees and the courts to have regard to a trust's "objectives", its "permitted purpose", its "proper purpose" and the "intentions" of the settlor.

The two sections that broadly enact *Saunders v Vautier* in the Trusts Act are sections 121 and 122. Two sections which follow almost immediately after them empower a court to approve the termination, variation or resettlement of trusts. Both those sections require that when they do so, the courts must, "take into account the intentions of the settlor of the trust in settling the trust".

The obvious inference for requiring courts to take into account a settlor's intentions is to cause them to implement those intentions where it is sensible to do so, and not to discard them.

I suspect *Saunders v Vautier* has survived for so long in our law because it is rarely invoked and is not generally regarded as involving many trusts.

However, with a prevailing trend for trusts to have fewer beneficiaries (to limit the degree of disclosure of information to beneficiaries), the case may now have greater practical significance.

Even if that were not the case, the focus in the Trusts Act on the need for trustees and the courts to try to implement a settlor's intentions for a trust is in clear conflict with the doctrine in *Saunders v Vautier* that gives beneficiaries express permission to ignore a settlor's intentions and permits them to terminate a trust and take all its assets without any constraints on what can be done with them and when.

New Zealand should follow the USA example and reject this scenario on the grounds that the "material purpose" of the settlor should be the factor that governs the future of the trust.

To express the position simply: beneficiaries should not be allowed to ignore a settlor's intentions and be given statutory authority to hijack a trust

against a settlor's will.

Anthony Grant is an Auckland barrister and trustee, specialising in trusts and estates