

PERPETUITIES AND ACCUMULATIONS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

The rule against perpetuities

The common law rule

5. The rule against perpetuities was developed by the courts at the end of the seventeenth century. The rule restricts the time period within which future interests in property must vest. The perpetuity period is the length of a life or lives in being, plus 21 years. A life in being means a life in being at the time of the disposition. Lives in being may be expressly specified in the instrument by which the disposition is made (for example, by using a royal lives clause like “the lineal descendants of Queen Victoria living at the time of my death”). If no lives are specified, the lives in being will be the persons whose lives are connected with the date of vesting of the disposition. So, for example, in a gift to “the first of A’s great-great-grandchildren to play chess with B”, where no such great-great-grandchildren have been born at the time of the gift, B’s is the measuring life – the life in being.
6. The application of this common law rule, which still applies without statutory modifications to dispositions made before 16 July 1964, can be demonstrated by an example. X makes a gift of property in a will to the first of A’s children to attain the age of 21. On X’s death the will takes effect. It purports to create a property interest for the first of A’s children to meet the condition specified. The perpetuity period will begin to run on the date of X’s death and will continue for the remainder of A’s life plus 21 years. If one looks at the matter as at the date of X’s death, it is certain that any child of A will attain 21 (if at all) within 21 years of A’s death, since A cannot produce more children once dead. The gift therefore does not infringe the rule against perpetuities.
7. On the other hand, a gift in X’s will to the first of A’s children to become a doctor would be void at common law, assuming none of them is already a doctor. It is not certain, at the date of X’s death, that any child of A will become a doctor (if at all) within 21 years of A’s death. It is certainly possible that a child of A may become a doctor within that time. However, looked at from the date of X’s death, it is possible that the first child of A to become a doctor may not do so until after the perpetuity period has expired. Hence the gift would be void at common law.
8. The rule against perpetuities was originally developed in the context of family settlements to curtail control by one generation of the use of property by future generations. However, the rule was later extended to other types of property rights such as future easements, options to purchase and some rights of pre-emption.