

• HASTINGS-BASS CASES

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It is difficult to keep pace with the Hastings-Bass principle and its various adaptations. Its most recent applications were in the English cases of *Pitt v Holt* [2010] WLR (D) 2 and *Futter v Futter* [2010] EWHC 449.

Pitt v Holt

Mr Pitt was severely injured in a road accident. He received £1.2m in damages and, following his wife being appointed his Receiver under the Mental Health Act (which the court held to be a fiduciary position) this sum was transferred to a discretionary settlement.

Unfortunately, no one had considered the impact of inheritance tax and on Mr Pitt's death the IHT problem arose. Mrs Pitt argued that the settlement should be set aside on two grounds:

the Hastings-Bass jurisdiction; and/or

the equitable jurisdiction to set aside a voluntary disposition vitiated by mistake.

The Court held that the settlement could be set aside under the Hastings-Bass jurisdiction.

WHY IS PITT SIGNIFICANT?

As the court noted, there was no decided authority applying the Hastings-Bass principle to anyone other than trustees. However, the court said that a Receiver under the Mental Health Act was in a similar position to a trustee in key aspects - the Receiver had a fiduciary duty, exercisable for the benefit of another. The Court therefore applied Hastings-Bass and set aside the settlement.

Interestingly, the mistake argument was not accepted. In a principle which is now well founded, and discussed at some length by Mr Justice Norris in *Futter v Futter*, the principle

of mistake and the Hastings-Bass principle, are quite separate principles and should not be confused, the latter being based on an invalid exercise of a trustee's powers.

FUTTER V FUTTER

Mr Justice Norris's approach to this matter, which again was a case of a trustee exercising its discretion in circumstances which created an unexpected tax liability for its beneficiary, is very interesting. It seemed that while he was reluctant to apply the Hastings Bass principle, he felt that as a first instance judge, he was compelled to follow established precedent.

Indeed, his reasoning for adopting the principle was expressed thoughtfully and in a manner which is difficult to find fault with. The lawyers at HMRC must be wondering how to approach these cases in light of this recent decision, which again dismissed arguments from the Revenue that the Rule had been taken to absurd lengths.

Importantly, the case highlights that the principle itself is now becoming well established, and if it is to be restricted in the future, it will need a superior court with a taste for the bold assertion that the development of the principle itself has diverted from its true course. The principle seems to have moved quite a distance from the often cited quote of Park J in *Breadner v Granville Grossman* [2001] 1 Ch 523 where he said "it cannot be right that whenever trustees do something which they later regret and think that they ought not to have done, then they can say that they never did it in the first place".

A full case note on *Futter v Futter* will be available on the Collas Crill website shortly.

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