

Perpetuities Act will come into effect from August

The rule against perpetuities is one of the rules developed by English courts to restrict dispositions of property which might tie up land for a long period.

The courts have deemed it necessary to place some restraint on schemes that tied up land "in perpetuity".

The rule is usually stated as follows:

No interest in property is valid unless it must vest (take effect), if at all, earlier than 21 years after the death of a person alive at the time the interest was created.

The rule is one of initial certainty.

The rule requires that it must be certain, when the disposition is made, that the property must vest (if it is ever going to vest) in a person within the perpetuity period.

To what property does the rule apply?

While the purpose of the rule was originally to ensure the free alienability of land it has been applied to many dispositions of personal property, powers of sale, a special power of appointment, the creation of options to purchase land and various other interests, but does not apply at all or with full force to certain charitable gifts.

The range of interests to which the rule applies may be extended as the necessity arises: *Re Ashforth, Sibley v Ashforth* [1905] 1 Ch 535, at p545.

How long is the perpetuity period?

The perpetuity period is defined by reference to 21 years after the end of a "life in being" at the time the interest is created.

The Perpetuities Act retains the rule but introduces repairing legislation to cure some of the known problems caused by the rule. It

replaces the rule of initial certainty with a "wait and see" approach.

Under the "wait and see" rule, the instrument creating an interest is assumed to be valid and only becomes invalid if a contingent interest cannot or does not in fact vest within the perpetuity period.

At the outset you cannot be certain that the instrument is valid, but you must "wait and see", sometimes until the expiration of the perpetuity period.

Power to specify a perpetuity period.

As an alternative to the present perpetuity period, there should be allowed such period, not exceeding 80 years, in an instrument creating an interest.

The Perpetuities Act reforms other problems related with the Rule.

The Perpetuities Act also reforms two other related areas of law.

The Rule in *Whitby v Mitchell*.

A rule, also known as the rule against double possibilities, was

stated in a case in 1890 and has been known since as the rule in *Whitby v Mitchell* (1890) 44 Ch.D.85;

If an interest in land is given to an unborn person, any remainder to his or her issue is void, together with all subsequent limitations.

This rule is abolished.

The rule against accumulations.

The rule against accumulations is not directed specifically at trusts but affects them.

It is concerned with the person who seeks to set aside a fund, have it accumulate for many years and then, at the end of the period, have it passed to a beneficiary, usually a lineal descendant of the settlor.

To prevent this accumulation, the UK Parliament passed the Accumulations Act in 1800 (presently in force in the Northern Territory). The Act limits the accumulation period to one of four periods which the settlor (person creating the fund) might choose.

This rule is abolished.

*Stephen Herne
Policy Division
Department of Law*

Sex offences and the law of evidence

Several important law reforms — relating to sexual offences and the law of evidence — will come into operation on August 1, 1994.

The Evidence Amendment Act 1994 prohibits a judge from warning the jury that it is unsafe to convict a person on the uncorroborated evidence of a child.

The Evidence Amendment Act (No 2) 1994 enables vulnerable witnesses to give evidence by alternative means.

The Oaths Amendment Act 1994 provides a new test of competency for a child giving unsworn evidence.

The Sexual Offences (Evidence and Procedure) Amendment Act 1994:

- Extends the Act to a wider class of sexual offences;
- Provides that leave of the court must be obtained before evidence of the sexual history between the complainant and the defendant can be led;
- Amends the Act in relation to the need to corroborate the evidence of a complainant in a sexual assault;
- Amends the doctrine of recent complaint and;
- Prohibits direct examination of the complainant by the accused.