

Jacob sets up a trust in his will to provide an income for his wife and his four children. His will names two executors; his brother Edward and Jacob's son George, who are also named as trustees. Unfortunately, Jacob dies young, when his son George is only 10 years old. Edward proceeds to administer Jacob's estate and then carry out the terms of the trust. The trust property consists of land and shares.

Jacob's widow, Anne and her adult children, Richard, Susan and Timothy, are dissatisfied with the way that the trust is being run. They consider that Edward is endangering the trust property by making risky business deals and, also, that he is favouring George in his distribution of the trust income. They want Edward and George to resign as trustees and be replaced by a trust corporation. The trust, set out in the will, says nothing about who has the right to appoint new trustees. Edward refuses to resign. Advise Anne and her four children.

Suggested Answer

Some basic rules seem to have been broken. The appointment of a child trustee is void: section 20 of the Law of Property Act 1925; nor can a child be the trustee of land: section 1(6) of the Law of Property Act 1925.

Two trustees are desirable for land: sections 2(1) and 27(2) of the Law of Property Act 1925 and section 14(2) of the Trustee Act 1925. Two trustees can sell the land, overreaching the beneficial interests and giving a good legal title to a purchaser. One trustee cannot do this.

Despite the reforms in the law in section 19 of the Trusts of Land and Appointment of Trustees Act 1996, the beneficiaries cannot replace the trustees. All the beneficiaries are needed and George, who is not just a trustee, but also a beneficiary, is not *sui juris*, even if he could be persuaded to remove himself as trustee. So the situation would still resemble *Re Brockbank*, under which beneficiaries did not have the power to appoint trustees.

Section 36 of the Trustee Act 1925 gives the grounds for replacing trustees. George is an infant and is so covered by the section, but it would need to be proved that Edward was unfit to act as a trustee. Anyway, there does not seem to be anyone who could exercise the section 36 power. There are no appointors mentioned in the trust and the existing trustee, Edward, does not want to appoint another trustee.

The beneficiaries would need to go to court and perhaps the court would appoint under section 41 of the Trustee Act 1925. *Re Tempest* mentions a number of factors. The wish of the testator was to appoint Edward and George. All the beneficiaries need to be protected and Edward seems to be favouring one beneficiary. If Edward is not investing wisely, this could be endangering the trust fund.

Edward could be removed and replaced for endangering trust property and favouring one beneficiary: *Letterstedt v Broers*, *Carvel Foundation v Carvel*.

If the court was very concerned a judicial trustee could be appointed: *Carvel Foundation v Carvel*.

It is possible that the court might not wish to go that far. They might consider that it would cost the trust too much to appoint a trust corporation: *Letterstedt v Broers, Re Brockbank*. Edward could be left in place and an independent trustee could replace George: *Re Tempest*. Edward could also be strongly directed as to how to run the trust properly, rather than being removed: *Cowan v Scargill*.