

The Problems with the Amendment of a Living Trust in South Africa

Authors : Rika van Zyl

Abstract : It was ruled that an inter vivos trust must be amended according to the rules of the stipulatio alteri, or 'contract in favour of a third party', that South African adopted from its Roman-Dutch common law. The application of the principles of the stipulatio alteri on the inter vivos trust has developed in case law to imply that once the beneficiary has accepted benefits, he becomes a party to the contract. This consequently means that he must consent to any amendments that the trustees want to make. This poses practical difficulties such as finding all the beneficiaries that have accepted to sign the amendment that the trustees would want to circumvent in administering the trust. One of the questions relating to this issue is, however, whether the principles of the stipulatio alteri are correctly interpreted and consequently applied to the inter vivos trust to mean that the beneficiaries who accepted must consent to any amendment. The subsequent question relates to the rights the beneficiary receives upon acceptance. There seems to be a different view of what a vested right or a contingent right of the beneficiary means in relation to the inter vivos trust. These rights also have an impact on the amendment of a trust deed. Such an investigation and refining of the interpretation of the stipulatio alteri's application on the inter vivos trust may result in solutions to circumvent the adverse effects of getting the beneficiary's consent for amendments.

Keywords : inter vivos trust, stipulatio alteri, amendment, beneficiary rights

Conference Title : ICPIIL 2018 : International Conference on Private International Law

Conference Location : London, United Kingdom

Conference Dates : October 15-16, 2018